

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 16TH DAY
OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C11/74/23

FRANK KOFI ASIEDU ----- PETITIONER

(Suing Per his Lawful Attorney

Henry Quinoo, Community 2, Tema)

VRS.

GIFTY AFUA SOSU ----- RESPONDENT

PETITIONER'S ATTORNEY PRESENT

RESPONDENT ABSENT

YAW PAINTSIL, ESQ. FOR THE PETITIONER PRESENT

JUDGMENT

FACTS:

The petitioner, a Ghanaian ordinarily resident in Italy filed the instant petition for divorce on 24th November, 2022, through his Lawful Attorney, Henry Quinoo against the respondent, also a Ghanaian resident in Italy pursuant to leave granted by the court. The petitioner avers that he got married to the respondent under customary law in Ghana and later converted the customary marriage into a monogamous Ordinance marriage at the Accra Metropolitan Assembly on the 6th day of January, 2001. The petitioner further states that immediately after the celebration of the marriage, he and the respondent travelled to Italy where they cohabited as man and wife and the marriage is blessed with one child by name Juanit Asiedu.

The petitioner states that there are differences between the parties which have strained their marital relationship. The chief among the differences between the parties as alleged by the petitioner is the refusal of the respondent to work and support the family. Additionally, petitioner says that the respondent does not respect him and treats him contemptibly before his friends. The respondent has also unceremoniously left the matrimonial home and has vowed not to return despite repeated demands on her by her family and friends to return. The petitioner states further that the respondent has caused him so much embarrassment, distress and anxiety such that he has lost interest in the marriage and cannot reasonably be expected to marry the respondent any longer and that the marriage has broken down beyond reconciliation.

A copy of the notice of divorce petition was served on the respondent outside the country with leave of the court at her foreign address in Italy but she failed to enter appearance either by herself or through a lawyer and also failed to file an answer to the petition for divorce.

LEGAL ISSUE

The sole issue for the determination of the court is whether or not the marriage has broken down beyond reconciliation.

ANALYSIS

Under the **Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts set out in **section 2(1) of Act 367** namely, adultery, unreasonable behaviour,

desertion, failure to live as man and wife for two (2) years, failure to live as man and wife for five (5) years and irreconcilable differences.

Additionally, under Act 367, a court may refuse to grant a petition for divorce notwithstanding the fact that a petitioner has proved any of the facts in **section 2(1)**, if there is reasonable possibility of reconciliation. In the case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that:

“The Matrimonial Causes Act, 1971 (Act 367), does not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to court and pray for the dissolution of their marriage just for the asking. The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act for the purpose of showing that the marriage has broken down beyond reconciliation. Section 2(3), which is pertinent, provides that even if the court finds the existence of one or more of those facts it shall not grant a petition for divorce unless it is satisfied that the marriage has broken down beyond reconciliation...the petitioner is under a duty not only to plead any one or more of those facts in section 2(1) of the Act but he must also prove them. Equally the court is under a statutory and positive duty to inquire so far as it reasonably can, into the charges and counter-charges alleged. In discharging the onus on the petitioner, it is immaterial that the respondent has not contested the petition, she must prove the charges and, flowing from all the evidence before the court, the court must be satisfied that the marriage has irretrievably broken down.”

The petitioner in the instant petition, set out to prove fact 2(1)(f) namely; *that the parties have after diligent effort been unable to reconcile their differences.*

To succeed under **section 2(1)(f)**, there must be evidence that irreconcilable difference exists between the parties within the meaning and intendment of **section 2(1)(f)** of the Matrimonial Causes Act, 1971(Act 367). In **Mensah v.**

Mensah [1972] 2 GLR 198 -209 @ 206 the court held that for **section 2(1) (f)** to apply, the following elements must be present;

- (a) *There should exist differences between the parties.*
- (b) *They should have made diligent efforts to reconcile these differences,*
- (c) *They should have been unable to effect the reconciliation of the differences.*

The petitioner's Lawful Attorney, Henry Quinoo testified and tendered in evidence a notarised Power of Attorney translated by the Ghana Institute of Languages Transbureau from Italian language to English language and stamped at the Land Valuation Division admitted and marked as **Exhibit "A" series**, in which the petitioner authorizes him to commence the instant divorce petition against the respondent who is also resident in Italy. The petitioner's attorney testified that the parties got married under customary law in Ghana and later converted their potentially polygamous customary marriage into a marriage under the Ordinance on 21st February, 2006 at the Marriage Registry of the Accra Metropolitan Assembly (AMA). In support, he tendered in evidence **Exhibit "B"**, a copy of the marriage certificate evidencing the marriage celebrated between the parties. According to his testimony, after the celebration of the marriage, the parties cohabited in Italy and there is one child to the marriage named Juanit Asiedu. The Attorney further testified that as soon as they moved to Italy the attitude of the respondent towards the petitioner changed.

The petitioner says that he had several misunderstandings with the respondent which strained their relationship. The respondent refused to work and any attempt to talk about her refusal to work was met with insults. The petitioner states that he reported the behaviour of the respondent to her parents in Ghana who occasionally called to advice the respondent. The petitioner says that the respondent has unceremoniously left the matrimonial

home for the past three (3) years. The respondent has refused to return to the matrimonial home despite repeated demands on her by her family and some respectable members of the community where they lived. The respondent has caused the petitioner much embarrassment, distress and anxiety such that the petitioner has lost interest in the marriage and cannot be expected to marry the respondent any younger.

All the processes in the suit were served on the respondent with leave of the court outside the jurisdiction but she failed to appear to defend the petition for divorce. The allegation of the petitioner's attorney in the petition for divorce remains uncontroverted by the respondent. The allegation that she has left the matrimonial home now intending never to return to the marriage to resume cohabitation as husband and wife remains unchallenged. Thus, from the evidence led by the petitioner, differences exist between the parties and the parties after diligent efforts have been unable to reconcile their differences. Under the circumstances, I hold that the marriage celebrated between the petitioner and the respondent ha broken down beyond reconciliation.

CONCLUSION

In conclusion, I hold that the Ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and enter judgment for the petitioner as follows;

1. I hereby decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 21st February, 2006 at the Principal Registrar of Marriages Office, Accra.
2. The Registrar of the court shall cancel the original copy of the marriage certificate number *REM/371/2006*.

3. No order as to costs.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**