

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 5<sup>TH</sup> DAY  
OF MAY, 2023 BEFORE HER HONOUR, AFIA OWUSUAA APPIAH  
(MRS) THE CIRCUIT COURT JUDGE.

SUIT NO: C5/169/2023

BERNICE ANNA BONNEY

HSE NO 28,OBONU STREET

DANSOMAN ACCRA

PETITIONER

V

DENNIS NELSON

HSE NO 28,OBONU STRRET

DANSOMAN ACCRA

RESPONDENT

### JUDGMENT

Petitioner herein on the 14/2/2023 instituted the instant petition against Respondent herein praying the court for a sole relief i.e

- i. That the marriage celebrated between the parties has broken down beyond reconciliation.

Parties herein on the 14<sup>th</sup> of August 2015 then spinster and a bachelor got married under the Ordinance at Corpus Christi Church Sakumono, Accra and thereafter cohabited in the United Kingdom. There are no issues of the marriage neither has there been any court proceedings between the parties herein. Petition contends that contrary to the expectations of love and mutual friendship that motivated the marriage, the relationship between the parties has been plagued with tension, endless quarrels and misunderstandings that is now unbearable to her. She alleged unreasonable behaviour of Respondent in the form of reckless and behaviour resulting in verbal abuse and series of embarrassment on her, frustrations and emotional distress. She contended further that this unreasonable behaviour has led to parties not living together

as husband and wife since 2020. She therefore contended that the marriage has broken down beyond reconciliation.

Respondent entered appearance personally and in his answer to the Petition denied causing Petitioner any emotional distress or unreasonable behaviour. He contended however that it was Petitioner who rather puts him through emotional distress. He stated further that Petitioner makes life unbearable for him and as such made the issue of cohabitation a 'a big deal'. He averred further that Petitioner had time without number expressed misgivings about the marriage and appears better without him hence their separation.

Despite this express consent to the dissolution of the marriage by the parties, there is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states "The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation." Section 2(3) of Act 367 provides "Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation." The court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instance which suffice as proof of break down of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation.

In the case of **ADWUBENG V DOMFEH (1997-98) 1 GLR 282** it was held per holding 3 as follows: "*...And sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities*".

The court per the pleadings of the parties has to determine whether or not the marriage celebrated between the parties has indeed broken down beyond reconciliation as claimed by Petitioner.

Petitioner per her evidence on oath testified that the marriage between the parties contrary to her expectations has been fraught with frequent quarrels and tension. She stated that Respondent does not respect her and denies her simple courtesies. According to Petitioner, Respondent has embarrassed her severally and verbally abuses her. She contended for the greater part of the marriage there has been no intimacy between her and Respondent which has had a toll on her. Parties have also since 2020 been separated with Respondent returning to the United Kingdom with no intentions of returning back to Ghana. Petitioner contended that she has lost any iota of love she had for Respondent and need to completely detach from him to maintain her sanity as she suffers anxiety disorders just by his closeness. She stated that several attempts to reconcile their differences have been unsuccessful. Petitioner as exhibit A tendered a photocopy of the marriage certificate in evidence.

Respondent testified through his lawful attorney James Ghansah. The power of attorney is in evidence as exhibit 1. According to the attorney, Respondent after the filing of the petition has relocated to the United Kingdom hence his representation. The attorney testified that parties after the marriage cohabited in United Kingdom and Ghana respectively. He stated that Petitioner accords Respondent very little respect resulting in their separation since 2020. He contended that parties have had difficulties to make their union meaningful and all attempts to reconcile them have proven futile.

Section 2(1) of Act 367 requires that a petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation. Petitioner's ground for seeking the dissolution of

the marriage is unreasonable behaviour of Respondent because of which she cannot be reasonable expected to live with him as husband and wife. Respondent denies these alleged unreasonable behaviour and rather attribute the inability to reconcile the differences of the parties to Petitioner's disrespect to him.

**Section 2(1)(b) of Act 367** provides that where the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent same suffice as proof of the break down of the marriage beyond reconciliation.

**In the case of Knudsen v Knudsen [1976] 1GLR 204, Amisah JA**

stated that "the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party, which would lead to this conclusion, would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.",

Although Respondent failed to attend trial and or cross-examine Petitioner on her evidence of his unreasonable behaviour, he denied same in his answer and averred that Petitioner would be put to strict proof of same the allegations of unreasonable behaviour. He therefore had put his alleged unreasonable behaviour in issue. It was therefore not sufficient for Petitioner to merely repeat her allegations without cogent proof. The Supreme Court in the case of **DON ACKAH V PERGAH TRANSPORT LTD [2010] SCGLR 728 at 736**, held as follows "It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay,

documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence". Petitioner merely repeating her assertions without any cogent evidence of the alleged unreasonable acts of Respondent in the light of the denial of same by Respondent fails to establish her claim of unreasonable behaviour of Respondent causing the break down of the marriage.

In the case of **KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J** held as follows, "The sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the petitioner is also obliged to comply with section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that section. .... It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2 (1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the court's power. Once he or she comes within any one of the provisions in section 2 (1) (e) and (f), the presumption is in his favour; proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation. Proof of five years' continuous separation enables the marriage to be dissolved against the

will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage.”

From the evidence of both parties however, it is disclosed that the marriage has been burdened with unresolved differences. Both parties have testified to the fact that there is tension, constant quarrels, disrespect and inability to reconcile their differences. They both further testify that all attempts to reconcile their differences have proved futile. Under **section 2(1f)** of Act 367, where parties after diligent efforts are unable to reconcile their differences, same suffices as breakdown of the marriage. Further per her evidence on record, parties have failed to live together as husband and wife since 2020. **Section 2 (1d) of Act 367** provides that where a petitioner proves “that the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce, provided that the consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal”.

It is not in dispute that the parties have not lived together as husband and wife since 2020, a period of more than 2 years immediately preceding the filing of this Petition on 14/2/2023 thereby falling within section 2(1d) of Act

367. Respondent does not challenge the grant of the Petition. He through his lawful attorney at paragraph 7 of his witness statement adopted as his evidence in chief state that it is best both parties goes their separate ways. This suffices as consent by Respondent to the grant of the petition for dissolution of the marriage.

The court is therefore satisfied that the parties have failed to lived together as husband and wife for a period of more than 2 years immediately preceding the presentation of this petition and additionally unable to reconcile their differences after diligence. The court therefore finds that the marriage celebrated between the parties on 14/8/2015 at Corpus Christi Catholic Church Sakumono broken down beyond reconciliation.

Accordingly it is decreed that the marriage celebrated between the parties herein at the Corpus Christi Catholic Church, Sakumono be and same is dissolved today the 5<sup>th</sup> day of May, 2023.

There shall be no order as to cost.

**PETITIONER PRESENT.**

**RESPONDENT'S LAWFUL ATTORNEY PRESENT.**

**FELIX NANA YAW OSEI FOR PETITIONER PRESENT**

**SGD**

**H/H AFIA OWUSUAA APPIAH (MRS)**

**CIRCUIT COURT JUDGE**