

**IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 24TH
FEBRUARY 2023, BEFORE HER HONOUR AFIA OWUSUAA
APPIAH (MRS), CIRCUIT COURT JUDGE**

SUIT NO: C5/162/2022

DANIEL TETTEH NORMAN

H.NO E1105/12

KOTOBABI

PETITIONER

V

VIVIAN AMETSIKOR

H/NO LA ACCRA

RESPONDENT

JUDGEMENT

At the Presbyterian Navity Church, La on 30/6/2001, parties herein a pastor and a prophetess got married. They cohabited at Teshie, Dansoman and LA. There are no issues of the marriage and there has been no previous court proceeding in this marriage.

Petitioner has filed for the dissolution of this marriage on grounds that Respondent after 13 years of marriage requested for dissolution of the marriage on grounds that Petitioner was the cause of their inability to have children. pursuant to that a meeting was organized between the two families on the 12/6/2014 and the items that constituted the basis of their customary marriage was returned and subsequently the marriage dissolved by the family. Since 2014 June parties have failed to live together as husband and wife till date. He therefore prays the court for the dissolution of their ordinance marriage.

Respondent in her answer to the petition stated that upon several visitations by the parties to the police hospital, they were both declared normal and capable of having children and given medication but Petitioner failed to take his drugs and informed her he was not interested in having children. she stated that she opened a church at La and asked Petitioner to join her in running the church but he rather came to run the church down by spreading falsehood against her. Respondent stated that when she got an opportunity to travel to Canada Petitioner frustrated her efforts in acquiring the visa and she was denied same. She further admitted that their families on the 12/6/2014 dissolved the customary marriage between the parties and they have not lived together as husband and wife since. She therefore cross-petitioned for

- a. dissolution of the ordinance marriage celebrated between the parties .
- b. lump sum financial settlement.

Issues to be determined

1. Whether or not the marriage celebrated between the parties on the 30/6/2001 has broken down beyond reconciliation.
2. Whether or not Respondent is entitled to lump sum financial settlement.

Issue one- whether or not the marriage celebrated between he parties has broken down beyond reconciliation.

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(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.

Both Petitioner and Respondent pray the court for dissolution of their marriage per their petition and cross- petition. Petitioner testified that Respondent after thirteen years of marriage Respondent expressed her desire for dissolution of the marriage. Their families met and after deliberation and Respondent insisting on dissolving the marriage, the customary marriage was dissolved by the families on the 12/6/2014. He contended that parties have since not lived together as husband and wife.

Petitioner called his sister, Gladys Adoleyfio Blemahdoo-Ahoto testified as PW1. She testified that sometime on 2014, the Petitioner informed her that Respondent said she was no longer interested in the marriage and wanted same dissolved. At a meeting held between the two families, Respondent's family repeated the intentions of Respondent and subsequently the customary marriage was dissolved. Petitioner was asked to vacate the matrimonial home within a month and he did so. She confirmed that parties have since not lived together as husband and wife.

Respondent in her testimony admitted requesting for the dissolution of the marriage and the families dissolving the customary marriage on 12/6/2014. She however attributed her decision to leave the marriage to several unreasonable behaviour of Petitioner including sabotaging her work as a prophetess and causing her church members to leave the church, frustrating her visa application to Canada. According to Respondent, Petitioner teamed up with his 19 years daughter who lived with them, stopped eating her food but ate the food cooked by his daughter who lived with them; whenever Petitioner and his daughter were chatting and saw her approaching them, they would get up and leave or move to another location. She therefore informed her family about Petitioner's attitude and a meeting was called in an attempt to reconcile them. However Petitioner at the meeting instead of apologizing to her and reconciling when asked whether or not he wanted the marriage dissolved answered in the affirmative three times. Her family therefore had no choice than to return his items to him to dissolve their customary marriage in accordance with custom. Respondent further

confirmed that parties have since June 2014 not lived together as husband and wife and also prays the court for the dissolution 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... Subsection (3) contains an important provision which brings into focus the general scheme of the Act, which is to encourage reconciliation as far as may be practicable. Thus section 8 enjoins the petitioner or his counsel to inform the court of all attempts made to effect a reconciliation and gives the court power to adjourn the proceedings at any stage to enable attempts at reconciliation to be made if there is a reasonable possibility of reconciliation. It is, however, wrong, in my view, to say that proof of total breakdown of the marriage and the possibility of reconciliation should be taken "disjunctively." This, counsel for the respondent explained, meant that there is a burden to prove separately that the marriage has broken down and even when it is proved that it has broken down that there should be the further proof that it is beyond reconciliation. 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) of Act 367 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."

From the evidence of Petitioner, which has been admitted and or corroborated by PW1 and admitted and confirmed by Respondent, parties

have since June 2014 i.e over 7 years immediately preceding the presentation of this petition which was filed on 19/1/2022 have not lived together as husband and wife.

Section 2(1e) of Act 367 provides that where the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition, same suffices as prove of the breakdown of the marriage beyond reconciliation. Under this section, petitioner need not establish any wrongdoing on the part of the Respondent neither is the consent of Respondent required. Evidence of parties having failed to live together as husband and wife for a period over 5 years immediately preceding the petition amount and suffice as proof of breakdown of the marriage beyond reconciliation. Per the evidence of the parties, meeting by families resulted in the family dissolving the “purported” customary marriage between the parties. I say “purportedly dissolved the customary marriage” because in Ghana, a customary marriage may be converted into an Ordinance marriage or marriage of Mohammedans. The common practice in Ghana is that parties who wish to marry under the Ordinance marriage first contract a customary marriage and subsequently convert same into an ordinance marriage. Under the laws of Ghana, there are three types of marriages namely Ordinance marriage, Customary marriage and marriage of Mohammedans all independent of each other. When a customary marriage converts to an ordinance, rights, privileges and liabilities of the customary marriage ceases to exist and becomes extinguished and the Ordinance marriage comes into being. Therefore unlike customary marriages which can be dissolved by the families in accordance with customary law, an ordinance marriage as stated supra can only be dissolved by a court. The acts of the respective families of the parties purporting to have dissolved the non existing customary marriage is therefore a nullity and void.

Although the court appreciates the importance of reconciliation in matrimonial cases, the failure of the parties to live together as husband and wife for a period of more than 5 years immediately preceding the presentation of the Petition satisfies the court that the marriage celebrated between parties herein has broken down beyond reconciliation and same cannot be salvage. The court finds that the said marriage celebrated between the parties on

30/6/2001 at Presbyterian Navity Church, La, has broken down beyond reconciliation as canvassed by parties herein. Judgment is hereby entered in favour of both Petitioner and Respondent on in relief one of the petition and cross Petition.

Accordingly the court hereby decrees the said marriage be and same dissolved today the 24th day of February, 2023 forthwith.

Issue two- whether or not Respondent is entitled to lump sum financial settlement.

Respondent as her relief two prays the court for an order of lump sum financial settlement against the Petitioner.

Under Section 20 of Act 367, it is further provided that the Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable and such payment may be made in gross or by installments.

In the case of **OBENG V OBENG [2013] 63 GMJ 158**, the court of appeal held that

"what is just and equitable may be determined by considering the following factors; income, earning capacity, property and or financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the break down of the marriage, the age of each party to the marriage and the duration of the marriage."

Respondent's evidence on record is centered solely on what led to the parties separation and failure to live as husband and wife in 2014. From the record, upon the families purported dissolution of the marriage, Petitioner moved out of the matrimonial home on the instructions of Respondent's family and parties have lived separately and independently of each other since then. Respondent during the subsistence of the marriage acquired a school and currently runs the school. No hardship has occurred and would occur to Respondent after this dissolution of the marriage. it would therefore be unfair and unjust to award any amount as financial settlement in favour of

Respondent. Accordingly, Respondent's prayer for financial provision is dismissed.

Parties to bear their respective costs.

PETITIONER PRESENT

RESPONDENT PRESENT

BELINDA NARKLEY QUAYNOR FOR PETITIONER ABSENT

(SGD)

H/H AFIA OWUSUAA APPIAH (MRS)

CIRCUIT COURT JUDGE

