

IN CIRCUIT COURT '1' HELD AT TAKORADI IN WESTERN REGION ON
FRIDAY, 21ST JULY, 2023 BEFORE HIS HONOUR MICHAEL KUDJO AMPADU,
CIRCUIT COURT JUDGE

SUIT NO. C5: 19/2023

BETWEEN

MARY M. E. YANZUH

.....

PETITIONER

AND

RICHARD DUAH NSENKYIRE

.....

RESPONDENT

JUDGEMENT

Counsel: Lawyer Victor Owusu for Petitioner
 Lawyer Samuel A. Adinkrah for Respondent

On the 23rd day of June, 2023 this Court granted the Petitioner's petition and dissolved the Ordinance marriage which was celebrated between them on 16th of December, 2006 and reserved the judgement to today 21/07/2023.

A divorce petition filed on the 21/02/23 for the following reliefs;

- i. Dissolution of the marriage between the parties celebrated on the 16th day of December, 2006;

- ii. An order granting custody of the three (3) minor children of the marriage, namely Baffour Kofi Nsenkyire, Awo Pinaman Nsenkyire and Nana Kwaku Duah Nsenkyire to the Petitioner with reasonable access to the Respondent;
- iii. An order for the Respondent to continue to maintain the aforesaid three (3) children of the marriage by generally providing their needs including paying for their school fees, providing them with accommodation, paying their medical bills, paying their feeding and other necessities of life;
- iv. Any other further order as the Honourable Court may deem fit.

The petition showed that the Petitioner is a staff of the Judicial Service and resident at Dzorwulu, Accra in the Greater Accra Region of the Republic of Ghana while the Respondent is a businessman and resident at Samreboi in the Western Region of the Republic of Ghana and within the jurisdiction of this Court.

That the parties married under the ordinance on the 16th day of December, 2006 at the Marriage Registry of the Sekondi-Takoradi Metropolitan Assembly and that after the marriage, the parties have not lived or cohabited together as the Petitioner has lived at Takoradi, Kumasi and Accra while the Respondent at all material times, lived at Samreboi.

The Petitioner stated that there are three (3) children of the marriage who are Baffour Kofi Nsenkyire, Awo Pinaman Nsenkyire and Nana Kwaku Duah Nsenkyire who are fourteen (14), twelve (12) and ten (10) years respectively and are all living with the Petitioner at Accra where they also attend school.

The Petitioner averred that the marriage has broken down beyond reconciliation. It is the presentation of the Petitioner that because of the nature and circumstances that led to the breakdown of the marriage, the parties to the marriage have, after diligent effort, been unable to reconcile their differences. Petitioner said all attempts by friends

and family members to settle the differences between them have proved futile and that due to the inability of the parties to reconcile their differences after diligent efforts and attempts, there has been no effective communication between the parties for a considerable period of time as a result of which the parties cannot be expected to live together as husband and wife.

It is the Petitioner's claim that though she lives with the children of the marriage as the mother, the Respondent as the father of the children maintains them including providing money towards the payment of their school fees, medical bills, food and other necessities of life and has also provided them with accommodation.

According to the Petitioner, considering the fact that the parties to the marriage have after diligent effort been unable to reconcile their differences, the fact that there is no effective communication between them as required of married couples and the fact that they have, for some years, not lived and treated each other as husband and wife and all attempts to help resolve these issues have failed, it is her prayer that the marriage between them be dissolved since same has broken down beyond reconciliation and therefore petitions for the reliefs endorsed above.

The Respondent entered appearance by his counsel and in his reply to the petition stated that he does not intend to contest the petition for divorce. Despite the Respondent's intention not to contest the petition, the Petitioner who had filed her witness statement to this Court was called upon to testify for her reliefs to be determined. She therefore testified via zoom on the 23/06/23 and her evidence to the Court was materially the same as what was contained in her petition for divorce.

In cross-examination of her by counsel for the Respondent, the Petitioner confirmed all the averments contained in her petition and particularly made it clear to the Court that despite the breakdown of their marriage beyond reconciliation, the Respondent

has continued to play his role as father to the children of the marriage by providing them all they need in their everyday life.

Section 2(1), (d), (e), (f) of the Matrimonial Causes Act, 1971, Act 367 provides that:

2 (1) *For the purpose of showing that the marriage has broken down beyond reconciliation, the Petitioner shall satisfy the Court of one or more of the following facts;*

- d. That 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 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;*
- e. That 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; or*
- f. That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.*

The law requires the Petitioner to satisfy the Court of one or more of the above in proving to the Court that the marriage has broken down beyond reconciliation. In her petition and in her evidence to the Court, the Petitioner stated that after the marriage, the Respondent has at all times lived at Samreboi whiles she has lived at Takoradi, Kumasi and now in Accra. Petitioner also stated that they have not treated one another as husband and wife for a number of years and all attempts by friends and family members to settle their differences have proved futile. For how long these non-cohesion between them has happened was not told the Court but that notwithstanding, the Respondent in his reply to the petition intimated his intention not to contest the petition. This response is consent that he agrees to the dissolution of the marriage because it has broken down beyond reconciliation.

There is evidence before the Court, which evidence was not denied by the Respondent, that all attempts by friends and family members to settle the differences between the parties have proved futile.

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.”

From the facts and evidence before this Court and from the reply of the Respondent to the petition, the Court finds that the Ordinance Marriage which was celebrated between the parties on the 16th day of December, 2006 at the Marriage Registry of the Sekondi-Takoradi Metropolitan Assembly and within the jurisdiction of this Court has broken down beyond reconciliation. The Court therefore dissolves same and grants a decree of divorce to that effect.

The following reliefs are granted as agreed by the parties to this petition;

1. Custody of the three (3) children of the marriage namely; Baffour Kofi Nsenkyire, Awo Pinaman Nsenkyire and Nana Kwaku Duah Nsenkyire are hereby granted in favour of the Petitioner with reasonable access to Respondent.
2. The Respondent is also ordered to continue to maintain the children of the marriage as he has been doing by generally providing them with accommodation, paying their school fees, paying their medical bills, paying for their feeding and other necessities of life as and when they become due and or needed now and in the future.

The petitioner is also ordered to take good care of the children and also to ensure that they do all the good things required of children such as going to school and also to directing them towards a better future as long as they continue to stay with her.

SGD
H/H MICHAEL KUDJO AMPADU
CIRCUIT COURT JUDGE