

**IN THE GENDER-BASED VIOLENCE CIRCUIT COURT, SEKONDI-W/R, HELD
ON MONDAY, 7TH AUGUST 2023 BEFORE HER HONOUR
NAA AMERLEY AKOWUAH (MRS.)**

C4/01/23

MRS. ELIZABETH AMA ADDO

PETITIONER

V.

JOHN KOBINA ADDO

RESPONDENT

.....
PETITIONER: PRESENT

RESPONDENT: ABSENT (REP. BY THOMAS BAIDEN)

C/PET.: PAMELA AVOH-MENSAH
.....

JUDGEMENT

The marriage sought to be dissolved in this case was contracted between the parties on 27th July 1997 at Effiakuma Catholic Church under the ordinance governed by *The Marriages Act (CAP127)*. The marriage, spanning nearly three decades, did not produce an issue, even though the Petitioner had a child from her previous marriage.

From the facts, the relationship between the parties turned sour occasioning the moving out of the Petitioner from the matrimonial home at Anaji into her mother-in-law's house at Sekondi Ridge. The Petitioner claimed the marriage has broken down beyond reconciliation and alleged adultery, lack of intimacy, emotional pain, and unreasonable behavior of the Respondent, as the causes for its current state.

The Respondent denied the allegations of adultery and unreasonable behavior, citing adultery on the Petitioner's part. He also blamed the lack of intimacy between them

on the cold reception the petitioner met his advances. The Respondent was initially opposed to the grant of divorce but later during the hearing, communicated his acceptance if the Petitioner insisted on its grant.

Per the dictates of *section 8(2) of the Matrimonial Causes Act, 1971 (Act 367)* on 23rd November 2022, the Court adjourned the matter to 14th December 2022 to enable the parties to engage in a Court-Connected Alternative Dispute Resolution attempt for reconciliation. The report brought to court by Mr. James A. Kainyiah the mediator indicated that:

- Parties agreed to the grant of divorce.
- Petitioner wanted no compensation save for chop money the Respondent had not paid.
- Respondent was in no position to pay due to a recent operation he had and being a retiree.
- Petitioner withdrew the claim.
- Parties well determined to divorce as all efforts by the Respondent's uncle to reconcile them proved unsuccessful.

Notwithstanding the agreement of the parties, it is trite that a marriage celebrated under the ordinance may be dissolved only if it meets the requirement stated in *Section 1(2) of Act 367*, i.e., that "*the sole ground for granting a petition of divorce shall be that the marriage is broken down beyond reconciliation*". For a party to show that a marriage has broken down beyond reconciliation, he or she must prove the existence of any one or more of the six factors mentioned in *Section 2(1) (a-f) of Act 367* that is:

- (a) *That the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;*
- (b) *That the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;*

- (c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;*
- (d) 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, 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.*

Section 2(3) of Act 367 states that the existence of one or more of the six factors in subsection one (1) does not lead to an automatic grant of divorce unless the court is satisfied that the marriage is indeed broken down beyond reconciliation. Consequently, a court may not grant a divorce petition as even the establishment of any one or more of the factors under **section 2(1) of Act 367** does not translate into an automatic grant of divorce. The court at all times must be satisfied that the marriage is beyond reconciliation before a divorce is granted. The court has to decide whether the evidence provided is dispositive of the question of breakdown of marriage beyond reconciliation.

Section 10(1) of the Evidence Act 1975, (NRCD 323) places an obligation on a party to establish a requisite degree of belief concerning a fact in the mind of a tribunal of fact or the court. Thus, for the party to satisfy the court that the marriage is broken down beyond reconciliation, the Petitioner must provide sufficient evidence to prove that fact. See the cases of *NDK Financial Services v Ahaman Enterprise Ltd., Attorney*

General & Alex A. Aduko [2021] DLSC 10690 and Zabrama v Segbedzi [1991] 2GLR. 221-247.

The petitioner alleged four grounds as the basis of her petition. These are *Section 2(1) a, b, c, and f of Act 367*. In *Danquah v. Danquah (1979) GLR 371*, it was held that section 2(1) of Act 367 required that a petitioner must satisfy the court of one or more of the six factors to ascertain that the marriage is broken down beyond reconciliation and to do so, those facts must be pleaded and proved. Petitioner testified that the marriage has broken down beyond reconciliation because of:

- The refusal of the Respondent to allow her to adopt a child which has caused her to be childless after the loss of her child from her previous marriage. She testified that she wanted to adopt but the Respondent refused and at 64 years, currently, she had been denied the right to be a mother.
- The Respondent verbally assaulted the Petitioner, often maliciously telling her not to kill him (Respondent) like she killed her first husband. Petitioner stated that this has led to her being depressed and developing High Blood Pressure.
- Respondent's habit of bringing other women to their matrimonial home, both when she was present and absent, was traumatizing and disrespectful to her. Petitioner recounted that in one instance, she met one of Respondent's paramours in sleepwear in the matrimonial house. In the presence of the paramour, Respondent did not acknowledge her as his wife but rather protected the paramour and ushered her out in his own time. These situations led the Petitioner to decide to curtail intimacy with the Respondent.

Respondent did not testify. In a letter, he communicated to the Court his inability to participate in the hearing due to medical ill-health and his doctor's advice to desist from embarking on any journey that would put a strain on the post-surgery wounds he was being attended to. In the same letter, he consented to the grant of divorce and

reiterated the discussions and agreements reached between the parties and the ADR officer. On the preceding and authority of Or. 36 r. 1 (2) (a) of C.I. 47 which provides that *“where an action is called for trial and a party fails to attend, the trial Judge may where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim”*, the Court heard Petitioner’s evidence-in-chief on 06/07/2023. In the absence of the Respondent to cross-examine her, she closed her case. Based on Respondent’s letter earlier referenced, the hearing ended without further recourse to him although Petitioner was ordered to serve Respondent with a final Hearing Notice to notify him of pending judgment and for him to take a step, were he desirous of same.

At the end of hearing, the sole issue was whether or not Petitioner proved the allegations of adultery, and desertion, whether she and Respondent had lived apart for two years before the presentation of the petition, and failing to reconcile, despite their best efforts.

Adultery and unreasonable behavior have been extensively dealt with by the Ghanaian courts in cases such as *Happee v Happee [1974] 2GLR. 186 HC*, where it was held that the respondent wife’s behaviour of lodging unsubstantiated claims to her petitioner-husband’s employers, harassing him at the offices of his lawyer, lodging complaints with the police, and causing his arrest in a public and most embarrassing way while on an airplane and abusing the legal process just to frustrate the husband amounted to unreasonable behaviour. In the instant case, I find that refusing to allow the Petitioner to adopt a child, knowing very well the reproductive challenges they faced as a couple and the death of her child from a previous marriage, leaving her completely childless, amounted to unreasonable behavior. The verbal assaults on the Petitioner cannot be seen otherwise than as unreasonable behavior and I so find.

From her Pleadings, the ground of desertion was unfounded. The literature on desertion discussed in **Rayden on Divorce (9th ed.)**, p. 165, para. 120 and **Bromley's Family Law, 11th edition**, page 218 discusses the four elements required to support a finding of desertion against a party, i.e., *de facto separation*, *animus deserendi*, want of reasonable excuse, and lack of consent from the other spouse. In the case of *Juliana Darko v Stephen Darko* [High Court, Suit No. BDMC 405/2014, 24th June 2016], the petitioner averred that the parties had been separated and living apart for three to four years and had not had sex within the period because the respondent deserted the matrimonial home with the explanation that the spirit of the Lord had instructed him so to do. The court made a finding of fact that the respondent had deserted the matrimonial home when he admitted to sleeping in the church since 2011. In the instant case, it was the petitioner who left the matrimonial home, not the respondent.

On the date of judgment, however, Respondent was absent but represented by a relative who reiterated, once again, his consent to the dissolution of the marriage.

Having thoroughly examined the Pleadings, conducted an inquiry into the matters in issue, and the evidence given, I am convinced that the marriage between the parties is broken down beyond reconciliation. Accordingly, I decree that the ordinance marriage celebrated between Elizabeth Ama Addo and John Kobina Addo on 27th July 1997 at the Effiakuma Catholic Church be and is hereby dissolved.

DECISION

On the foregoing, the petition for divorce is granted on the finding that the marriage between the parties has broken down beyond reconciliation on the basis of s. 2 (1) (a), (b) & (f) of Act 367.

Elizabeth Ama Addo v. John Kobina Addo

On the authority of s. 42 (1) (b) of the Courts Act, 1993 (Act 459), the ordinance marriage between Elizabeth Ama Addo and John Kobina Addo celebrated on 27th July 1997 at Effiakuma Catholic Church, Takoradi is hereby dissolved and a certificate of divorce shall issue.

No order as to costs.

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H/H NAA AMERLEY AKOWUAH (MRS)