

**IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI-WESTERN
REGION, HELD ON THURSDAY, 16THFEBRUARY 2023 BEFORE H/H NAA
AMERLEY AKOWUAH (MRS)**

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C4/40/2021

FLORENCE GAISIE

VRS.

ATO KWAMENA GAISIE

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PETITIONER: PRESENT & PRO SE

RESPONDENT: ABSENT

C/PET.: SAMUEL AHORLU-ADINKRAH, Esq.

C/RESP.: SAMUEL AGBOTTA, Esq.
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JUDGMENT

On the authority of Or. 65 of the High Court (Procedure) Rules, 2004 and the Matrimonial Causes Act, 1971 (Act 367), Petitioner filed a petition in the Registry of the Court on 15/06/2021. Per her petition, she prayed the Court for a dissolution of her marriage to Respondent because in her opinion, it had broken down beyond reconciliation due to unreasonable behavior, desertion and adultery.

In her Pleadings, set out in the 'Particulars of Breakdown' Petitioner averred that;

- a. The Respondent threatened to kill the Petitioner and the two children of the marriage and Petitioner made a report to the Police and brought an application for Protection before the High Court Sekondi and same was granted.*
- b. The Respondent has deserted the matrimonial home for the past years*
- c. The Respondent is living with another woman in Accra*
- d. That attempts by family members of the couple and elders of the church to resolve the differences between the couple have proved futile.*

In his Answer, Respondent denied the matrimonial offences attributed to him. He averred that it was rather Petitioner who relocated to an unknown place and denied him access to their two children. He averred that it was due to the High Court restraining order against him, granted without notice to him he claimed, that compelled him to relocate to Accra and not because he was living with another woman or deserted the matrimonial home. Further, he denied attempts at settlement being made by the parties, their families or the church. He admitted the registration of a company known as Flogal Company Ltd. but averred that same had been defunct since 2018 and which fact Petitioner knew when she wrote to the Registrar General of Companies requesting that her name be struck out as a shareholder, a request that was duly granted. However, the said "Flogal Engineering Ltd." mentioned by Petitioner in her Pleadings was set up and registered by himself and one Samuel Ohene Kwapong and in which Petitioner has no shares or interest in. Respondent admitted that the parties acquired a plot of land, currently with an uncompleted building on it, at Assakae and prayed that it be distributed equitably. However, he refuted that the plots of land at Tetegu, Accra and the Mitsubishi Pajero were his; rather that they were for his brother Timothy Gaisie. Finally, Respondent denied the existence of a Chevrolet Avio car.

Both parties agreed that the marriage has broken down and should be dissolved. The bone of contention is whose actions or inactions led to the breakdown of the marriage?

Is this a relevant issue for determination considering that both Petitioner and Respondent averred that the parties have been separated for the past seven (7) years? Being a material issue set down after trial, I shall deal with it due to its conclusive nature and then deal with ancillary issues of property claims thereafter.

S. 2(1) (e) of Act 367 provides that;

(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:

(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"

Under the provision above, proof of the parties living apart continuously for 5 years without more, entitles parties to the grant of a divorce. In ***Eugenia Atswei Yawson Adjei v Alberto Akuetteh Osasu [petition filed on 15/07/2016]*** the High Court granted a divorce decree on the finding that the parties had not lived together as husband and wife for six years, having cohabited for less than a few months together after the marriage celebration. In the *locus classicus* ***Kotei v Kotei [1974]2 GLR 172***, Sarkodee J noted that;

"once the facts are proved bringing the case within any of the facts set out in s. 2(1)(e) 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 s. 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 ... As the provision of the Act stands, it seems no blame need be attributed to either party and there may be no passing of any sort of moral judgment. There may be no need to label one or the other party as technically innocent even though the conduct of both has brought about the breakdown of the marriage"

In the instant case, the marriage between the parties was contracted on 23/12/2006. At the time of filing the petition (15/06/2021), Petitioner pleaded that the then fifteen-year-old marriage had suffered more than seven years' separation. In other words, as at 2014, the parties were separated. I find that other pieces of evidence on record such as Exh. B, the High Court Order for Protection dated in 2015 and directed at Respondent support the assertion that the parties have not lived as husband and wife for more than five (5) years. Timelines set out in the parties' Pleadings as regards the establishment of the Flogal Company, Petitioner applying for her name to be struck out, etc. give further support to the assertion of not living together for more than five years. In addition to the foregoing, in *Opoku & Ors. (No. 2) v Axes Co. Ltd. (No. 2) [2012]2 SCGLR 1214@1227*Gbadegbe JSC said that;

"Once there has been such an unequivocal admission before a Court in respect of a claim or part thereof as was done in the case before us and not withdrawn, there cannot in principle be any objection to a decision based thereon"

In *Ewusie-Mensah v Ewusie-Mensah [1992]1GLR 271* admissions upon which a party or Court may rely on for judgment should have been made either in Pleadings or in writing before the Court and under such circumstances a party need not lead evidence to support the fact/claim in issue and a finding of fact could be made on same based on the admission. A similar position is expressed in Or. 23 rules 1&6 of the High Court (Civil Procedure) Rules, 2004 C.I. 47).With the satisfaction of substantive, procedural and case law on the fact of admission, I hold that s. 2(1) (e) of Act 367 has been proved.

Accordingly, I find that the marriage between the parties has broken down beyond reconciliation.

ANCILLARY ISSUES

In paragraph 11 of her petition, Petitioner pleaded that the Assakae land with an uncompleted building on it was matrimonial property. Then in paragraph 19 of her Witness Statement, she testified that she purchased the same plot of land in 2005 before she and Respondent were married. In other words, the land is not matrimonial property such that it would be settled in both parties' favour, as claimed by Respondent as provided for in Art. 22 (3) of the Constitution, 1992. Petitioner did not provide evidence of acquiring the Assakae land pre-marriage but to support her claim that she put up the building on the Assaekae land, Petitioner tendered a copy of a loan agreement for GHC30, 000 which she said she took and a receipt of the sale of another plot of land of hers for GHC7,000 which was invested in the building at Assakae.

In paragraph 22 of her Witness Statement, Petitioner abandoned her claims in the building and plots of land at Tetegu, the Mitsubishi Pajero and Hyundai Santa Fe, maintaining the claim for the Assakae land and Chevrolet Aveo, allegedly acquired from the personal resources of Petitioner even though acquired during the pendency of the marriage. Reference the case of *Peter Adjei v Margaret Adjei [2019] DLCA 7763* where matrimonial and self-acquired property within a marriage was distinguished.

Respondent was personally served with all processes filed in this suit, including several Hearing Notices served on him before and during hearing. He filed an Answer and Witness Statement through a lawyer but failed/and or refused to attend Court even once. Indeed, Hearing Notices were served on Respondent to attend Court and cross examine Petitioner on the claims made but he failed to. At the conclusion of hearing, a final Hearing Notice was served on Respondent informing him of judgment reading.

On the authority of Or. 36 r. 1 & 2, page 34 of the book ‘Essentials of the Law of Evidence’ by Justice S.A. Brobbey and the case of *Republic v High Court, Accra; Ex parte State Housing Co. Ltd. No. 2 [2009] SCGLR 185*, I hold that Respondent abandoned his case and cannot claim a violation of the rules of natural justice merely because he filed Pleadings. I subscribe to the position of the learned Justice Samuel Marful-Sau’s statement at page 131 of his book “*A Practical Guide to Civil Procedure in Ghana*” as follows;

“The court is entitled to proceed with the trial even where a party is absent without any good reasons. A party who fails to attend court for the trial may be deemed to have abandoned his case”

Accordingly, the judgment and decisions herein are based on Petitioner’s evidence before the Court.

DECISION

Petition for divorce is granted on the finding that the marriage between the parties has broken down beyond reconciliation on the basis of section 2(1)(e) of the Act 367.

On the authority of s. 42 (1) (b) of the Courts Act, 1993(Act 459), it is decreed that the Ordinance Marriage between Florence Gaisie and Ato Kwamena Gaisie celebrated on 23/12/2006 at the Calvary Charismatic Center, Takoradi is hereby dissolved and a certificate of divorce shall issue to that effect.

CONSEQUENTIAL ORDERS

- i. Custody of the two children, Fiifi Dawson Gaisie and Ekow Gaisie is granted to Petitioner with reasonable access to Respondent.

- ii. The plot of land at Assakae with a building thereon is settled in favour of Petitioner.
- iii. Maintenance of GHC1000, as was awarded pending trial, is awarded as final maintenance order. Respondent shall pay the amount on monthly basis for the upkeep of the children.
- iv. Respondent shall pay the children's school fees and medical costs as and when it arises.
- v. Petitioner shall provide for the children's daily clothes, school uniforms, festive clothes and minor daily necessities.
- vi. With no evidence of the existence of a Chevrolet Aveo with registration number GR 1261 -X, the claim for the return or replacement of same is dismissed.
- vii. Considering the financial standings of both parties, the length of the marriage and the full facts, it is my considered opinion that an award for financial provision will neither be in the best interest of the parties nor the children.
- viii. Costs of GHC4, 000 awarded in favour of Petitioner.

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H/H NAA AMERLEY AKOWUAH (MRS.)