

IN THE GENDER-BASED VIOLENCE CIRCUIT COURT, SEKONDI-W/R, HELD ON  
TUESDAY, 17<sup>TH</sup> AUGUST 2023 BEFORE  
H/H NAA AMERLEY AKOWUAH (MRS.)

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C4/01/23

RICHARD KOFI ANNAN

PETITIONER

V.

WIHEMINA COKER DAVIS

RESPONDENT

.....  
*PETITIONER: PRESENT*

*RESPONDENT: ABSENT*  
.....

### JUDGEMENT

The parties in this matrimonial cause married under the ordinance in February 2017 at the Ebenezer Presbyterian Church, Pedu in the Central Region. Respondent tendered in, as part of her evidence, the marriage certificate which was admitted and marked as **Exhibit 1**.

In this petition, the main issue for determination is whether or not the marriage contracted by the parties has broken down beyond reconciliation. According to Section 1 of the Matrimonial Causes Act, 1971 (Act 367), the sole ground for the grant of a petition for divorce is that the marriage has broken down beyond reconciliation. The duty of the Petitioner is to satisfy the Court that indeed, the marriage has broken down beyond

reconciliation. For this purpose, section 2(1) of Act 367 provides that the Petitioner must adduce evidence to establish one or more of the following facts to prove that the marriage has truly broken down beyond reconciliation:

- 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 2 years immediately preceding the presentation of the petition*
- d) That the parties to the marriage have not lived as husband and wife for a period of at least 2 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, the court may grant the 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 5 years immediately preceding the presentation of the petition*
- f) That the parties to the marriage have after diligent effort, been unable to reconcile their differences.*

Pursuant to Section 12 of the Evidence Act, 1975 (NRCD 323), the standard of proof required in divorce and matrimonial causes, being a civil matter, is proof on a balance or preponderance of probabilities. This means that there must be a degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence. The burden shall ordinarily be on the Petitioner who must satisfy the court that the marriage has reached an irreconcilable stage. In proving his case, the petitioner must dislodge both the legal/persuasive burden and the evidential burden. Reference sections 10 & 11 of NRCD

323. To discharge the legal/persuasive burden, he is obliged to establish a requisite degree of belief concerning the alleged facts in the mind of the Court. In order to meet the evidential burden, a party must introduce sufficient evidence to avoid a ruling on the issue against him.

As the court noted in the case of Adjetey v Adjetey [1973] GLR. 69, it is incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough.

In his Evidence in Chief, the Petitioner mentioned that he wanted a divorce because various attempts to reconcile the marriage had failed. It may be useful to consider the petitioner's own words:

*"I want a divorce because I realized that my wife did not want the marriage. When the issues cropped up, I went to see people to talk to my wife but she refused to listen to them. I even called my mother to talk to her and my mother told me that my wife told her that she would not return to the marriage ..... I went back to the church elders who came to our house so that they could talk to my wife but one of them who took my wife as her own daughter told me that she had called my wife countless times but she refused to come. I also went to see my Bishop so that he could call my mother-in-law for us to sit and talk. When the Bishop called my mother-in-law, she told him that the 3 of them had decided already not to continue with the marriage and that there has been 4 years of marriage and there was no child".*

Petitioner further said that his wife had returned the Bible, ring, and schnapps used to customarily contract the marriage.

In her testimony, the Respondent mentioned that after being apart for 6 months and 2 weeks, she thought he had had enough time to decide whether he wanted the marriage or not. They both became upset and the Petitioner started looking for money to pay off

the loan which she took for them to buy a car. It was then that she realized there would not be any reconciliation.

The petitioner in his testimony also stated that another reason for his petition to the Court for divorce was that his wife had moved on with someone else and they have a child together. This, the Respondent admitted during cross-examination. Here are some extracts of the Respondent's cross-examination:

Q: *Did your parents know that you have met a man and were having an affair with him?*

A: *Yes, they knew because of what had gone on*

Q: *So the man that you have a child with, who is he to you?*

A: *He is my child's father*

As has already been stated, Section 2 of Act 367 enlists 6 grounds to prove that the marriage has broken down beyond reconciliation. Among these grounds is that the Respondent has committed adultery and that by reason of the adultery, the Petitioner finds it intolerable to live with the Respondent. Adultery has been defined by section 43 of Act 367 to be the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse. With Respondent's admission, on the authority of Or. 23 r. 1&6 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) and the case of *Ewusie-Mensah v Ewusie-Mensah [1992]1GLR 271*, neither party had to lead evidence to support the admission and a finding of fact is hereby made that s. 2(1) (a) has been established. Indeed, it is common knowledge that bare adultery is difficult enough for most couples to live with and so, adultery that produces a child, especially by the wife with another man, is most likely an insurmountable challenge. This observation is important considering that s. 2(3) of Act 367 gives a court the discretion to refuse a petition for divorce even where any of the grounds in paragraphs a-f of s 2(1), Act 367 is established. In this case, it is my considered opinion that under the circumstances, it

would be literally impossible for the parties to live together as a married couple and a divorce would best their needs.

In addition to the admitted adultery, both parties detailed several irreconcilable differences between them which they could not resolve even after diligent efforts. These differences included disagreements on fertility options and solutions to their difficulties in conception, Respondent's refusal to take medications prescribed by fertility doctors targeted at curing his diagnosed low sperm count, not adhering to suggested routines, refusing to have sexual intercourse with the Petitioner (when she ovulated as recommended by their doctors), etc.

From the above, it is quite apparent that indeed, the marriage between the parties has broken down beyond reconciliation by virtue of the fact that diligent attempts to reconcile their differences have failed.

In conclusion, on all the evidence before this court, there is ample evidence that shows that the marriage between the parties has broken down beyond reconciliation and I so find.

## DECISION

I hereby grant the petition for divorce dated 29/04/2022 on the finding that the marriage between the parties has broken down beyond reconciliation on the basis of s. 2 (1) (a) of Act 367.

On the authority of s. 42 (1) (b) of the Courts Act, 1993 (Act 459) the ordinance marriage between Richard Kofi Annan and Wilhemina Coker Davis celebrated on 04/02/2017 at the Ebenezer Presbyterian Church, Pedu-Cape Coast in the Central Region is hereby dissolved and a certificate of divorce shall issue.

## TERMS OF SETTLEMENT

1. That Plaintiff *[sic]* has paid the said recovery sum of Fourteen Thousand, Four Hundred Ghana Cedis (GHS14, 400) in respect of Dodge Avenger Saloon car.
2. That Parties have also agreed that the document regarding the said vehicle was initially registered in their names but Defendant *[sic]* has agreed to release every document to ensure that Plaintiff *[sic]* transfers the ownership of the said vehicle in his name henceforth.
3. That Parties have further agreed that Plaintiff *[sic]* commit the said one plot earlier demanded by Defendant *[sic]* in cash of Five Thousand Ghana Cedis (GHS5, 000)
4. That Plaintiff *[sic]* has agreed to be granted within five (5) ending, 2023 to effect payment of the agreed Five Thousand Ghana Cedis (GHS5, 000) to fulfill the settlement.
5. That Defendant *[sic]* has further given Plaintiff a specified account details where lodgment will be made for Defendant *[sic]* to acknowledge receipt respectively.

In accordance with the Alternative Dispute Resolution Act, 2010 (Act 798) the above adopted Terms of Settlement shall form part of this judgment and constitute orders of the court.

.....  
**H/H NAA AMERLEY AKOWUAH (MRS.)**