

**IN THE CIRCUIT COURT '1' HELD AT ADENTAN BEFORE HIS HONOUR
ISAAC ADDO ON WEDNESDAY, 26TH APRIL, 2023**

SUIT NO. C5/030/2023

CHRISTIANA OFORI

PETITIONER

VRS

PATRICK HONNY

RESPONDENT

PARTIES PRESENT

**ALICE NIMAKO DEBRAH, ESQ. HOLDING THE BRIEF OF BOBBY BANSON,
ESQ. FOR THE RESPONDENT PRESENT**

NO LEGAL REPRESENTATION FOR THE PETITIONER

JUDGEMENT

On the 5th December, 2022, the Petitioner filed this instant Divorce Petition seeking the following reliefs:

1. That the marriage celebrated under the Marriage Ordinance Act on the 6th day of September, 2014 be dissolved.
2. That Respondent should be ordered to pay maintenance towards the upkeep and education of our child.
3. Both parties to bear their own costs.

Upon service of the Petition on the Respondent, the Respondent entered Appearance on the 20th January, 2023 through his lawyer, Bobby Banson, Esq. Thereafter, the Respondent filed an Answer and Cross Petition on the 23rd February, 2023 seeking the following reliefs:

1. That the marriage be dissolved.

2. That the Petitioner be granted custody of their daughter, Avrie with reasonable access to Respondent.
3. Respondent shall pay GH¢700.00 maintenance every month for the upkeep of their child and increase it when he secures a job.
4. Each party shall bear his/her costs.

The Petitioner filed a Reply to Respondent's Answer and Answer to Cross Petition on the 14th March, 2023. This Court differently constituted set down the matter for trial.

Dotse JSC in the case of *Gladys Mensah v. Stephen Mensah* [2012] 1 SCGLR 391 quoted Lord Denning in his book, "LANDMARKS IN THE LAW" Butterworths, 1954, writes at page 176 "on change in attitude of the British people to Divorce" as follows:

"There is no longer any binding knot for marriage. There is only a loose piece of string which the parties can untie at will. Divorce is not a stigma. It has become respectable. One parent families abound."

The learned Supreme Court Judge stated in the same judgement that the above quotation can equally be said to be applicable to the Ghanaian society as well.

Before the trial commenced, the parties filed Terms of Settlement and the content is as follows:

"1. WHEREAS THE PETITIONER commenced the present divorce petition on the 5th day of December, 2022, for the following reliefs:

- i. That the marriage celebrated under the Marriage Ordinance Act on the 6th day of September, 2014 be dissolved.
- ii. That Respondent should be ordered to pay maintenance towards the upkeep and education of our child.
- iii. Both parties to bear their own costs.

2. WHEREAS THE RESPONDENT has filed an Answer to the Petitioner's Divorce Petition on 23rd February, 2023 seeking:

- i. That the marriage be dissolved.
- ii. That the Petitioner be granted custody of their daughter, Avrie with reasonable access to Respondent.
- iii. Respondent shall pay GH¢700.00 maintenance every month for the upkeep of their child and increase it when he secures a job.
- iv. Each party shall bear his/her costs.

3. NOW THE PARTIES have mutually agreed to dissolve this matter amicably on the following terms as contained herein:

4. IT IS MUTUALLY AGREED AS FOLLOWS:

- a. That the Petitioner be given primary custody of their child namely Avrie Kathleen Honny (5) years with reasonable access to the Respondent in the following manner:
 - i. All vacations of the child be shared equally between the Respondent and Petitioner.
- b. That the Respondent would bear the cost of 50% of educational expenses, i.e. tuition fees and transportation to school of the child.

- c. That the Respondent would pay Seven Hundred Ghana Cedis (GH¢700) as monthly maintenance for the child subject to increment if the Respondent gains employment.
- d. That both the Petitioner and Respondent will each bear the cost of their own legal fees.”

The Court therefore adopted the Terms of Settlement reached by the parties and filed before this Court as consent judgement save paragraphs 1 (i) and 2 (ii) where the Court took evidence from the parties to satisfy itself of section 1(3) of the Matrimonial Causes Act, 1971 (Act 367). In the case of *Ameko vrs Agbenu* [2015] 91 G.M.J. 202 C.A., the Court at page 209 per Dennis D. Adjei, J.A. held that:

“Suffice to say that the failure by the trial Circuit Judge to take evidence in the matter before dissolving the marriage is contrary to sections 1 and 2 of the Matrimonial Causes Act and it is therefore a nullity”

THE CASE OF THE PETITIONER

The Petitioner got married to the Respondent under the Ordinance on the 6th September, 2014 in Accra. That the parties after celebration of their marriage cohabited at Lakeside Estate then to Ashaley Botwe till 2018 when the Petitioner left. There is one (1) issue of the marriage. It is the case of the Petitioner that the marriage between the parties has broken down beyond reconciliation. The Respondent emotionally abused the Petitioner and would not speak to the Petitioner for long periods of time with no reason. The Respondent stopped maintaining the Petitioner since 2018. All attempts by the family to settle their differences yielded no results. That the Respondent was unfaithful during the

subsistence of the marriage and as a result got the Petitioner infected with Sexually Transmitted Diseases. The Respondent got to know of his infection but did not inform the Petitioner until the Petitioner got ill.

THE CASE OF THE RESPONDENT

The Respondent states that the Petitioner went to his boss and told a lie about him, and as a result of that he lost his job. The Respondent states that it is the Petitioner who is abusive, domineering and abuses the Respondent physically and verbally. That the Petitioner smashed the Respondent with remote control, slapped him often and on one occasion, the Petitioner ripped Respondent's tennis bag destroying it. The Respondent states that he had always provided for the Petitioner and the child until the Petitioner left the matrimonial home with the only child of the marriage without notice to the Respondent. It is the case of the Respondent that he has never had sexual intercourse with the Petitioner after the birth of their five (5) year old child and so he could not be responsible for the Petitioner's Sexually Transmitted Disease.

The legal issues that fall for determination after the end of the trial are as follows:

- a. Whether or not the marriage between the parties has broken down beyond reconciliation.
- b. Whether or not the parties after diligent effort have not been able to reconcile their differences.

Before I examine the evidence adduced at the trial, it is pertinent to set out the relevant sections of the Matrimonial Causes Act, 1971 (Act 367) below.

Sections 1(2), 2(1)(b)(f) of Act 367 provides as follows:

"1(2) the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

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:-

(b) that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

In the case of Mensah v Mensah [1972] 2 GLR 198, Hayfron-Benjamin J. (as he then was) held that:

"... it is therefore 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 be enough..."

From the evidence adduced at this stage of the trial, it is not disputed that the marriage between the parties has broken down beyond reconciliation. What is also obvious from the proceedings is that the parties have after diligent efforts been unable to reconcile their differences. In the circumstances I hold that the marriage between the parties has broken down beyond reconciliation.

On the totality of the evidence, I enter judgement in favour of the Petitioner for the following reliefs:

- a. The Ordinance marriage (CAP 127) celebrated between the parties on the 6th September, 2014 is hereby dissolved.

b. Parties to bear their own costs.

**SGD.
ISAAC ADDO
CIRCUIT JUDGE
26TH APRIL, 2023**