IN THE CIRCUIT COURT OF GHANA HELD AT CIRCUIT COURT '2', ACCRA ON THURSDAY, 31ST AUGUST, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

SUIT NO.:

C5/79/2023

ATSU SEGBORNYA EDEM ------- PETITIONER

VRS

FOSTER TAWIAH ------- RESPONDENT

PETITIONER PRESENT

RESPONDENT PRESENT

NANA KWAME OFORI AMANFO, ESQ. FOR THE PETITIONER PRESENT

NO LEGAL REPRESENTATION FOR THE RESPONDENT

JUDGEMENT

The Petitioner commenced this action by a Divorce Petition filed on the 13th October, 2022 seeking the following reliefs:

i. Dissolution of the marriage contracted by the parties on August, 2008.

ii. Custody of the children of the marriage with reasonable access to the Respondent.

iii. An Order by the court for the Respondent to pay the school fees, school feeding fees and medical bills of the children.

iv. An Order by the Court for the Respondent to pay Five Hundred Ghana Cedis (GH¢500.00) per each child per month as maintenance fees.

v. Such further order(s) as the Honourable Court may deem fit.

The Respondent filed an Answer to the Petition on the 17th January, 2023 and set up a cross petition seeking the following reliefs:

i. That the marriage between eth Petitioner and Respondent be dissolved.

ii. That custody of all the three children be granted to the Respondent since the Petitioner is now studying at University of Education, Winneba and has left the children who are all girls in the hands of a stranger boyfriend of the Respondent while the Petitioner is granted unlimited access to the children.

iii. That the Respondent be made to contribute GH¢600.00 monthly towards the maintenance of the children should the Petitioner win the custody of the children.

The venerable 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 before this Court on the 15th August, 2023. For the avoidance of doubt, I reproduce the contents as follows:

"**TERMS OF SETTLEMENT**

A. WHEREAS:

1. The Petitioner caused a Petition for Divorce to be issued out of the Registry of this Honourable Court on the 13th day of October, 2022 against the Respondent herein seeking the reliefs endorsed thereon.

2. The Respondent filed an Answer and Cross-petitioned for the Dissolution of the marriage on the 17th day of January, 2023.

3. The Parties have mutually agreed to resolve this matrimonial cause amicably on the terms contained herein as between them.

B. IT IS HEREBY MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:

1. That the Ordinance Marriage celebrated by the Parties on the 3rd day of August, 2008 at Hohoe E.P. Church be dissolved forthwith by the Honourable Court since it has broken down beyond reconciliation.

2. That no properties have been acquired during the marriage.

3. That Custody of the Children of the marriage be given to the Petitioner with reasonable access to the Respondent.

4. That the Respondent shall pay the school fees, items on school prospectus and contribute an amount of Six Hundred Ghana Cedis (GH¢600.00) a month as maintenance fees for the three children.

5. That the Respondent shall in addition make direct interventions in buying clothes, shoes, school items, approved school books and other necessaries of life for the children when the need arises.

6. That during the pendency of this Agreement the Parties undertake to desist from acts which are likely to result in harassment, verbal abuse or torture and the Parties further undertake to respect the privacy of each other and not disturb each other's peace.

7. That the Parties shall endeavor to have open and free communication to promote the well-being of the children.

C. ENTIRE TERMS AND AGREEMENT

1. These terms constitute the entire undertaking and agreement between the Parties in relation to the matrimonial cause and fully supersedes any and all prior agreements, arrangements, representations or understanding (whether orally or in writing) between the Parties pertaining to the subject matter of this Settlement.

2. That these terms of Settlement as executed between the Parties shall be filed and entered as consent judgement in this SUIT.

3. That each Party shall bear his or her legal expenses.

4. That this conclusively determines the matter."

The court adopted the Terms of Settlement filed before this Court as Consent Judgement save paragraph B(1) on dissolution of the marriage, where the court took evidence to satisfy itself on section 2(3) of the Matrimonial Causes Act, 1971 (Act 367).

In the case of *Charles Akpene Ameko vrs Saphira Kyerema Agbenu* [2015] 99 GMJ 202 His Lordship Justice Dennis Adjei, J.A. succinctly put thus:

"*The trial Circuit Judge dissolved the marriage without evidence. The combined effect of sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367) is that for a Court to dissolve a marriage, the court shall satisfy itself that it has been proved on the preponderance of probabilities that the marriage has broken down beyond reconciliation.*

That could be achieved after one or more of the grounds in section 2 of the Act have been proved."

The learned Justice continued thus:

"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 Court further held through Her Ladyship Justice Avril Lovelace-Johnson J.A. (as she then was) at page 209 that:

"It being a nullity, every proceedings which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect to stand there. It will collapse".

THE CASE OF THE PETITIONER

The gist of the Petitioner's case is that the Respondent unceremoniously and without any provocation or excuse left the matrimonial home in 2018 when their third child was two months old to stay with his sister at Dansoman. The Respondent has since refused/failed to return to the matrimonial. All attempts by the relatives of both parties to convince or persuade the Respondent to return to the matrimonial home and to revive their normal marital and family relationship

proved futile. It is the case of the Petitioner that the parties have not lived together as husband and wife for a continuous period of four years immediately preceding the presentation of this Petition for Divorce. In addition, the Respondent failed to discharge his obligations as a father. In occasions when the Respondent sends some money, the amount was meagre and not adequate to cater for the three children. According to the Petitioner, she has been responsible for about ninety percent of the children's school fees, maintenance, feeding, medical, clothing and all the necessaries of life for the three children. That the Respondent's total neglect of the family and the children has caused the Petitioner much anxiety, physical and emotional pain, stress and embarrassment.

THE CASE OF THE RESPONDENT

The Respondent in stating his case told the court that the marriage had gone through ups and downs. The Respondent single handedly incurred all cost pertaining to their marriage and used money to influence and secure the transfer of the Petitioner to join him in Kumasi from Dzolokpuita in the Volta Region, and then to Accra. The Petitioner made it a habit to deny the Respondent of his conjugal rights.

The law on dissolution of ordinance marriages can be found at sections 1 and 2 of the Matrimonial Causes Act, 1971 (Act 367). It reads:

1. Petition for divorce

(1) A petition for divorce may be presented to the Court by either party to a marriage.

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

2. Proof of breakdown of marriage

(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:

(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, 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.

(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) 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.

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 not be enough …..…*"

Furthermore, even though the court may find in existence more of the facts specified in the provisions above, the law do not require the court to decree divorce unless it was satisfied, on all the evidence, that the marriage has indeed broken down beyond reconciliation.

From the entirety of the evidence adduced at the trial and the pleadings filed, the court finds that the parties have not lived together as husband and wife for the past four (4) years immediately preceding the presentation of the petition for divorce. In addition to that, the Respondent has given his consent to the dissolution of the ordinance marriage celebrated between the parties. What is also obvious from the proceedings and the pleadings is that the parties have after diligent efforts been unable to reconcile their marriage notwithstanding efforts by relatives of both parties to do so. In the circumstances, I hold that the marriage celebrated between the parties has broken down beyond reconciliation.

In the circumstances, I hereby enter judgement in favour of the Petitioner as follows:

a. The Ordinance Marriage celebrated between the parties on the 3rd August, 2008 at the Evangelical Presbyterian Church, Hohoe with Certificate Number EPC/HH/059/08 is hereby dissolved.
b. Terms of Settlement (supra) is hereby adopted and entered as consent judgement.

(SGD) ISAAC ADDO
CIRCUIT JUDGE
31ST AUGUST, 2023