

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 26<sup>TH</sup> JANUARY, 2023

SUIT NO. C5/76/22

SETH KWAKU AMPADU

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PETITIONER

VRS

MARY TETTEH

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RESPONDENT

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**JUDGMENT**  
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The parties to this petition celebrated their marital union under *Part III of the Marriages Act* on the 23<sup>rd</sup> day of March, 2013 at the Community Worship Centre, Community 10, Tema. There is one issue of the marriage.

The petitioner presented the instant petition to this court on the 16<sup>th</sup> day of May, 2022 for the court to dissolve their marital union on the basis that same has broken down beyond reconciliation. He averred that they have not lived together for a continuous period of three (3) years prior to the presentation of the petition and all efforts by family and friends to help reconcile their differences have failed beyond reconciliation.

Further that he left the matrimonial home in March, 2019 because he is no longer interested in the marriage and has since indicated his intentions to end the marriage between the parties. That he has been and would continue to pay all educational and medical expenses in relation to the child, rent a single room self contain for the child and maintain the child with an amount of two hundred and fifty Ghana cedis (Ghs 250) per month.

He prayed the court to dissolve their marriage and grant custody of the only issue of the marriage to the respondent with reasonable access to him.

The respondent in her answer to the petition admitted that their marriage has broken down beyond reconciliation and that they have not lived together for a period of three (3) years preceding the presentation of the petition as the petitioner moved out of the matrimonial home in March, 2019.

She contended that they acquired a half piece of land at Katamanso and Appolonia respectively and she financially contributed to the acquisition of same. That the petitioner also sold a Toyota corolla vehicle which she had purchased on her own and subsequently used the proceeds to purchase a Nissan Juke vehicle.

That the amount petitioner provides as maintenance for the child is woefully inadequate and she has had to augment same as well as supplement the rent amount of one hundred and ten Ghana cedis (Ghs 110.00) a month in order to find more suitable accommodation for the issue of the marriage.

She also contended that the respondent has remarried and cohabits with the other woman even though their marriage still subsists. She cross petitioned for a dissolution of the marriage, an order for the petitioner to maintain the child with an amount of five hundred Ghana cedis (Ghs 500.00) per month subject to a yearly review from the date of judgment.

Also for an order for the petitioner to pay the educational and medical expenses of the child as and when it falls due, an order for the petitioner to rent a suitable

accommodation for her and the child and an order for financial settlement of twenty five thousand Ghana cedis. (Ghs 25,000)

The petitioner filed a reply and denied the claims of the respondent. In the course of proceedings, the parties settled the ancillary claims thereby leaving the court to determine only one issue; whether or not their marriage has broken down beyond reconciliation.

### **THE CASE OF THE PETITIONER**

In his written evidence in chief, the petitioner said he is an accounts officer and the respondent is a trader. He repeated most of the averments in his petition as to the basis of the breakdown of their marriage. He further testified that he is not married to any other woman.

### **THE CASE OF THE RESPONDENT**

In her evidence in chief, the respondent said she is a seamstress. She tendered in evidence EXHIBIT 1 as their marriage certificate. She also repeated the claims in her answer as her evidence in chief and agreed that their marriage has broken down beyond reconciliation.

### **CONSIDERATION BY COURT**

- 1. Whether or not the marriage between the parties has broken down beyond reconciliation.*

Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the respondent in her answer admits that the marriage has broken down beyond

reconciliation and also alleges unreasonable behavior and adultery, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation. See the case of *Ameko v. Agbenu* [2015] 91 G.M.J.

Blacks' law dictionary, (8<sup>th</sup> edition, 2004 p. 1449) defines divorce as "*the legal dissolution of a marriage by a Court.*" In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner's basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is that they have not lived together as husband and wife for more than three (3) years prior to the presentation of the petition. It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him to lead cogent and positive evidence to establish the existence of his claim in the mind of the court. See the case of *Takoradi Flour Mills v. Samir Paris* [ 2005-6] SCGLR 882 and *Ackah v. Pergah Transport Ltd* (2010) SCGLR 728.

*Section 2 (1) (d) of the Matrimonial Causes Act, 1971, (Act 367) provides that;*

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:

(d) that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or

The evidence of the petitioner is that he vacated the matrimonial home in March, 2019 and has since indicated that he is no longer interested in the marriage and also expressed his intentions to end the marriage. He presented this petition for dissolution of their marriage on 16<sup>th</sup> May, 2022. Between March, 2019 to May, 2022 is a period of a little over three (3) years.

The petitioner under cross examination by learned counsel for the respondent had answered:

Q: *You stated in paragraph 10 of your evidence in chief that you have not lived together for a continuous period of three years as a husband and wife. Is that correct?*

A: *Yes My Lord.*

Q: *and all efforts by family members to reconcile you and the respondent have not been successful*

A: *Yes My Lord*

Q: *and as a result of the difficulty in reconciling your differences, you have left the matrimonial home since March, 2019*

A: *Yes My Lord.*

The respondent in her evidence in chief admits these matters and agrees that the petitioner left the marriage and also communicated his intentions to end the marriage to her. There is no better proof of a fact than an admission by the opposing side and there can be no objection to a decision made by a court in reliance on such an admission. See the decision of the Supreme Court in the case of *Opoku & Ors. (No.2) v. Axes Co Ltd. (No 2) [2012] 2 SCGLR 1214.*

She herself does not only consent to the dissolution of the marriage but is desirous of ending same as she prayed the court by way of cross petition to dissolve the said marriage.

From their evidence, they have lived separate lives for more than three (3) years preceding the presentation of this petition. But for the filing of the petition, the petitioner did not know of the whereabouts of the respondent and the child of the marriage. They have also worked out a means of communicating and providing for the child in the past three (3) years.

That shows clear and incontrovertible evidence that respondent was ready and willing for a divorce even before the petitioner filed this petition. The two grounds having been met, I hereby hold that the marriage between the parties has broken down beyond reconciliation as the parties had not lived together as husband and wife for a period exceeding three (3) years prior to the filing of this petition and both sides consent to the dissolution of their marriage.

It is my opinion that when parties have been married for a reasonably lengthy period and have issues of the marriage, when they seek to go their separate ways, a court of

competent jurisdiction in making enquiries as to the breakdown of the marriage, must seek to promote cordiality and civility between the parties during and after the court proceedings. That is healthy not only to the parties and their future relationship as co parents but to society as a whole.

To borrow the words of *Sarkodee J (as he then was)* in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* “For it is better: “When regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.”

Consequently, I hereby decree a dissolution of their marriage celebrated on the 23<sup>rd</sup> day of March, 2013 at the Community Worship Centre, Community 10. Their marriage certificate issued to them in recognition of their marriage is hereby cancelled. The Registrar is to notify the administrator of the church of the cancellation to enable them amend their records accordingly.

Let the terms of settlement in respect of the ancillary reliefs filed in this court on the 13<sup>th</sup> day of December, 2022 at 2:50pm and which is duly signed by the parties and their respective lawyers be and same is hereby adopted as consent judgment. The usual default clause applies.

**H/H BERTHA ANIAGYEI (MS)**  
**(CIRCUIT COURT JUDGE)**

SARAH COLEMAN FOR THE PETITIONER PRESENT

PAUL KWAKU DANSO AMOAKO FOR THE RESPONDENT PRESENT