

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 20TH JULY, 2023

SUIT NO. C5/60/23

DELADEM KOMLA LOGLO

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PETITIONER

VRS

EMERALD ASEYE LOGLO

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RESPONDENT

JUDGMENT

When a man and a woman agree to be joined together in holy matrimony, it is usually because they have upon careful thought and reflection, arrived at the conviction that they have found a solid rock in each other and want to move into the future as one unit; having each other as their anchor. Unfortunately, sometimes that anchor sometimes does not hold steadfast and so one party would present a petition for the ship that holds their marriage to be wrecked by means of a decree of dissolution.

About fifteen years ago, precisely on the 30th day of December, 2007 the parties herein, in the full glory of their youth and desirous of becoming man and wife and being recognized as such in the eyes of all men, God and the law, celebrated their marital union under the ordinance at the Charismatic Evangelist Ministries Church, Accra. Their union produced two children; a boy and a girl who are all minors.

The respondent herein was initially the petitioner in this matter. She petitioned for a dissolution of their marriage on the grounds that same has broken down beyond reconciliation. However, she discontinued her petition in the course of proceedings. At the time, the petitioner (then respondent) had a cross petition for dissolution of their

marriage and he elected to proceed with his cross petition after the petitioner discontinued her petition. He thus became the petitioner and the petitioner became the respondent in this matter.

The basis of his petition for dissolution of their marriage is that same has broken down beyond reconciliation due to the unreasonable behaviour of the respondent. He prayed the court:

1. That the marriage celebrated between the parties on the 30th day of December, 2007 be dissolved
2. That the court recognizes and maintains the level of fees and mode of payment and other necessities which he performs for the kids.
3. That the court should settle the debt free property being House No GN 0802-2800 Massachusetts, Community 25 on the respondent as property and financial settlement
4. The court should settle semi detached houses on the respondent as he will continue paying off the loans outstanding on same
5. Any other equitable relief that the Honourable Court may make to secure the welfare of the children
6. Legal fees and costs in the matter

The respondent in her answer admitted that their marriage has broken down beyond reconciliation and laid the blame at the doorstep of the unreasonable behavior of the petitioner. She cross petitioned for;

- a) That the marriage celebrated between the respondent and petitioner on 30th December, 2007 be dissolved

- b) That the respondent be accorded custody of the two children of the \marriage with reasonable access to the petitioner
- c) That the petitioner be ordered to pay the school fees, clothing, transport/fuel allowance, medication and monthly feeding allowance of Ghs 3,000
- d) An order for the equitable sharing of properties acquired during the marriage as stated in paragraph 13 supra
- e) An order for the petitioner to pay financial settlement of Ghs 500,000
- f) Any legal or equitable relief that the court may deem fit to make
- g) Legal and solicitor's costs.

In the course of proceedings, the parties settled all the ancillary reliefs and filed terms of settlement at the registry of this Court. That being so, the only issue for the court to determine is whether or not their marriage has broken down beyond reconciliation.

THE CASE OF THE PETITIONER

Petitioner's evidence is that he and the respondent married a few years after tertiary school when they were around 26 and 27 years old respectively. That they have had two children and also took in respondent's niece. That the respondent quit her job in 2013 and has not taken up any formal employment since then.

He continued that their marriage has broken down completely and one of the reasons is the incessant digital and verbal abuse that he has been subjected to since the respondent commenced divorce proceedings. That she sends him insults via WhatsApp sometimes right after she has made overtures at reconciliation.

That in January, 2023, the respondent sent him a message telling him in no uncertain terms that she did not consider them married anymore. That she gives contradictory instructions with regard to the management and feeding of the children.

That over the past few months, she leaves and returns home at will without informing him of her whereabouts. She also does this without a care as to how he would combine his work with taking care of the children. She also returns home after many days with excuse duties from doctors indicating that she be excused from house chores and the taking care of the children.

Further that several attempts at settlement with prominent people in their lives have failed. He tendered in evidence EXHIBIT A, B and C series as evidence of the messages that the respondent sends to him. He did not call any witnesses and closed his case after this.

THE CASE OF THE RESPONDENT

Respondent's evidence is that the petitioner does not support her and insults her without reason. That he also compares her to the wives of his friends. That they are not able to sit as a family to discuss issues as all attempts end up in quarrels. That they are not compatible.

That various attempts to reconcile them have been made by marriage counsellors, their families and friends but all did not yield any results. That their marriage has broken down beyond reconciliation and same ought to be dissolved by the Court. She did not call any witnesses and closed her case after this.

CONSIDERATION BY COURT

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

Blacks' law dictionary, (8th 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 cause's 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 the unreasonable behavior of the respondent. 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*.

Divorce is by means of enquiry and a court must satisfy itself through 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, 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.*

Although both parties allege unreasonable behavior, in the course of the court's enquiry into whether or not their marriage has broken down beyond reconciliation, the abundant evidence on record is that they have been unable to reconcile their differences after several efforts by professional counsellors, well wishers and their families.

As one of the basis for arriving at a conclusion that a marriage has broken down beyond reconciliation is inability to reconcile after diligent efforts, I would first deal with the available evidence on that ground. *Section 2 (1) (f) 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:

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

The parties to this action are testament to the statement that two persons cannot walk together unless they have agreed to do so. The respondent herein appears to have taken a firm stance against continuing to walk together with the petitioner despite the best efforts of counsellors, family members and well wishers to reconcile their differences and place them back on the path of an eternal walk in agreement.

The petitioner on his part, after many attempts at reconciliation, appears to have resigned himself to a decree of dissolution as the ultimate fate of their marriage. In this court, both of them are clear in their minds that their marital differences cannot be resolved.

The contents of EXHIBIT A and B series, which are WhatsApp conversations between the two, with the respondent being the one who constantly sends unpleasant messages

show that their marriage is slowly drifting towards the point of being toxic. That is not healthy for the parties themselves and their children. 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.

In so doing, where the enquiry establishes a common ground which is without blame to one party as having led to the breakdown of the marriage beyond reconciliation, it should rely on same to dissolve the marriage rather than seek to apportion blame. 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.”

In the circumstances, I hereby find that the marriage between the parties has broken down beyond reconciliation due to their inability to reconcile their differences after diligent efforts. I hereby decree and declare a dissolution of the marriage celebrated between them on the 30th day of December, 2007 at the Charismatic Evangelist Ministries Church, Accra.

Their marriage certificate issued to them in recognition of their marriage is hereby cancelled. The registrar is to notify the administrator of the Charismatic Evangelist

Ministries Church, Accra, of the cancellation to enable them amend their records accordingly.

Let the terms of settlement, filed at the registry of this Court on the 29th day of June, 2023 and which is duly signed by the parties and their respective lawyers, be and same is hereby adopted as consent judgment of the Court. The usual default clause applies.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

JOHN KLUTSE FOR THE PETITIONER PRESENT

EDWARD METTLE NUNOO FOR THE RESPONDENT PRESENT