

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON FRIDAY THE 17<sup>TH</sup>  
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE**

---

**SUIT NO.C5/79/22**

**PATIENCE ALORGBEY ----- PETITIONER**

**VRS.**

**GODWIN OBUADEY ----- RESPONDENT**

---

**PARTIES**

**PRESENT**

**WILLIAM NEWMAN, ESQ. FOR THE PETITIONER PRESENT**

**KEZIA PEACE KENNETH AZUMAH, ESQ. FOR THE RESPONDENT**

**PRESENT**

---

**JUDGMENT**

---

**FACTS:**

The petitioner and the respondent, then a spinster and a bachelor respectively got married under customary law on 28<sup>th</sup> August, 2015. On 29<sup>th</sup> August, 2015, their potentially polygamous marriage was converted to one under the marriage ordinance at the Royal House Chapel, Michel Camp, Tema on 29<sup>th</sup> August, 2015. Thereafter, the parties cohabited in Kpone and Community 5 both within Tema. There is one issue to the said marriage by name Kuku Elikplim Nartey Godwins, aged 6 years at the time of filing the instant petition for divorce. There has been a court proceeding concerning the child of the marriage at the Family Tribunal, Tema instituted at the behest of the respondent of which a Ruling was delivered by the Honourable Court on the 15<sup>th</sup> February 2022.

The petitioner, believing that the marriage celebrated between the parties has broken down beyond reconciliation prays the court for the following reliefs;

- a. That the marriage celebrated in fact between the parties be dissolved.

- b. That the Petitioner be given full custody of the child of marriage with the Respondent having reasonable access to the child.
- c. That this Honourable Court affirms the decision of the Family Tribunal dated the 15<sup>th</sup> of February, 2022 save that the maintenance amount should be varied to One Thousand Ghana Cedis (GH¢1,000) as a result of the child's medical condition of gastritis and allergies.

The respondent also cross-petitioned as follows;

- a. That the marriage between the parties be dissolved.
- b. That Respondent picks the child from school on Friday after school and return him to school on Monday morning every month and half of the vacation decision as indicated in the Family Tribunal Judgment dated February 15, 2022.
- c. That this Honourable Court affirms the decision of the Family Tribunal Court given on the 15<sup>th</sup> February, 2022, that maintenance amount should be GH¢500.00 a month as he is paying school fees, medical bills, half rent of the child and he is not in the financial position to pay more maintenance.
- d. And any order(s) as this Honourable Court deems fit.

The petitioner avers that for more than two years preceding the presentation of the petition for divorce, she and the respondent had not lived together as husband and wife. The petitioner claims that there is no emotional connection and intimacy between them and the respondent has behaved in such a way that she cannot reasonably be expected to live with him as a result of the bad behaviour. The petitioner further avers that the respondent verbally and physically assaults the petitioner anytime there is a misunderstanding. In one of such episodes, the respondent in a fit of rage violently threw the petitioner on the kitchen floor

thereby breaking a bone in her spine and this has severely affected the spine of the petitioner. Despite the knowledge that the petitioner has a broken spinal bone, the respondent continues to physically assault the petitioner any time a misunderstanding ensues. Again, the respondent physically and verbally abuses the petitioner and humiliates her in the presence of friends and families of which one of such incidents occurred at the petitioner's work place in the presence of visitors and co-workers.

The petitioner further states that the respondent has deserted her for a continuous period of at least two years. According to the petitioner, on or around the 24<sup>th</sup> of December, 2019, the petitioner returned from work to find out that the respondent had packed all his belongings and vacated the family house on his own volition. The petitioner and the respondent do not live together as husband and wife. Subsequent to the alleged desertion, a family meeting was held again in an attempt to reconcile parties and persuade the respondent to return to his matrimonial home but all these attempts made by the family were an exercise in futility as the respondent refused to heed to the call to return home and reconcile with the petitioner.

The respondent, though not opposing the petition for divorce denies the allegations levelled against him by the respondent. The respondent states that even though they lived in the petitioner's official bungalow, he paid the monthly rent to the petitioner because it was deducted from her salary. He further states that their marital issues started when they moved into the said bungalow. The petitioner, the respondent alleges, cultivated the habit of insulting and falsely accusing him of not being able to provide shelter for his family hence, his decision to move out of the official accommodation of the petitioner. The respondent further contends that it is the behaviour of the petitioner which is unreasonable leading to the breakdown of the marriage. The respondent says that it is the

petitioner who always insults family members and friends anytime they want to reconcile them as husband and wife. On one occasion, the petitioner insulted the respondent's father that he did not train the respondent properly. The respondent maintains that it is the petitioner who has behaved unreasonably and cites an instance where the petitioner bit and pulled his manhood which has caused him abdominal pains for two years. The respondent attributes the petitioner's injury to a slip in the bathroom on three occasions and that the respondent states that he took care of the medical bills of the respondent. The respondent therefore denies abusing and assaulting the petitioner. The respondent further denies deserting the petitioner since she changed the locks to the house denying him access and also subjected him to insults because she was paying the medical bills.

#### **ATTEMPTS AT SETTLEMENT**

During the pendency of the suit, the parties and their respective lawyers attempted settlement and filed terms of settlement on 25<sup>th</sup> August, 2023 on the ancillary reliefs but the parties could not reconcile their differences and both maintained that the marriage had broken down beyond reconciliation. The court therefore proceeded to take evidence to satisfy itself that the marriage has indeed broken down beyond reconciliation.

#### **LEGAL ISSUE**

Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

#### **ANALYSIS**

**Section 1(2)** of the Matrimonial Causes Act, 1971 (Act 367), provides that the sole ground for granting a petition for divorce is that the marriage has broken

down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts stipulated under **Section 2(1)** of Act 367, namely; adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five (5) years immediately preceding the presentation of the petition and lastly, irreconcilable differences. In the case of **Kotei v. Kotei** [1974] 2 GLR 172, the court held in its holding 1 that:

*“once one of the grounds specified in section 2 (1) of Act 367 was proved a decree of dissolution should be pronounced in favour of the petitioner. It was, however, wrong to contend that proof of total breakdown of the marriage and the possibility of reconciliation should be taken disjunctively so as to require firstly, proof of a breakdown and secondly, proof that it was beyond reconciliation.”*

Additionally, **Section 2(3)** of Act 367, enjoins the court to inquire into the facts alleged in support of the dissolution of the marriage and the court shall refuse to grant dissolution of the marriage notwithstanding the fact that any of the facts are proved if there is a reasonable possibility for reconciliation. Thus, in the case of **Adjetey & Anor v. Adjetey** [1973] 1 GLR 216, the court held in holding 2 that:

*“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was 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 had broken down beyond reconciliation would not be enough.”*

The parties in the instant petition made mutual allegations of unreasonable behaviour against each other and also relied on the failure to live as husband and wife for a continuous period of at least two years immediately preceding the

presentation of the petition for divorce and desertion.

To prove that the marriage has broken down beyond reconciliation, the petitioner testified and tendered a copy of the marriage certificate evidencing this fact admitted and marked as **Exhibit “A”**. The petitioner testified that the marriage was bedevilled with issues due to unreasonable behaviour exhibited by the respondent in the course of the marriage. In or around 2018, they had a verbal altercation which degenerated into physical assault on her by the respondent. The petitioner states that the respondent forcibly pushed her down the kitchen floor. As a result of the physical assault, she was diagnosed with a broken hip bone and underwent treatment for same. In support, she tendered in evidence the medical reports admitted and marked as **Exhibit “C”**. The petitioner further testified that on another occasion, a disagreement ensued between parties and led to some physical altercation between the parties. The respondent again states that the petitioner with such brute force pushed her on the floor in the bathroom despite his knowledge that she had a broken hip bone as a result of the last incident. As a result of the push and the persisting injury to the hip, it was difficult for her to walk. The respondent had to immediately convey her to the hospital and she was informed that she needed surgery on the hip bone. In support of this allegation, she tendered in evidence **Exhibit “D”**. Again, in or around December 2019, another argument ensued between the parties which also led to a fight and she had to bite the shoulder of the respondent in self-defence since she was emotionally drained by the numerous abuses meted out to her by the respondent. The abuse had had an emotional drain on her and she could not endure it any longer. When she threatened to report the respondent at the Domestic Violence and Victims Support Unit (DOVVSU) should the abuse persist, the respondent left the matrimonial home.

The petitioner further testified that the respondent in or around March 2020 picked up the issue of the marriage to spend time with him but failed to return the child due to a misunderstanding. The Respondent in clear disregard to her warning physically abused her again for questioning him on why the child was not returned. She subsequently reported him to the Domestic Violence and Victims Support Unit (DOVVSU) and he was invited. She tendered in evidence the invitation admitted and marked as **Exhibit “E”**. The petitioner admits that the parties have not lived together as husband and wife for a continuous period of more than two (2) years. She therefore maintains that the marriage has broken down beyond reconciliation.

The respondent on his part testified that their marriage did not begin on a good note. He recounts that a few months after their marriage, the petitioner exhibited a habit of biting, insulting, raising her voice at him without any provocation from him whatsoever. Anytime families of both parties meet to resolve their marital issues, petitioner will insult all present so their issues are never resolved. The respondent further testified that they have separated as a couple for two (2) years on grounds that petitioner has been physically violent towards the respondent. According to the respondent, the petitioner has a habit of biting him whenever there is misunderstanding and this attitude has persisted from the inception of the marriage. He tendered **Exhibit “5”**, to show that the petitioner bit him on several parts of his body. The respondent further states that the petitioner also had the habit of pulling his manhood which has caused him abdominal pains for the past two (2) years.

Additionally the respondent denies abusing the petitioner during the subsistence of the marriage but rather it was the petitioner who continuously abuses him physically, verbally, emotionally and psychologically. The respondent further

denies that he pushed her in the kitchen causing her to break her spinal cord. The respondent says that according to the doctor such fracture is through sporting activities and it is aggravated by the slightest fall. Also, the petitioner informed Frederick Atsu that her fracture is due to a slip in the bathroom and that it was the respondent who paid for her medical bills when she slipped in the bathroom. In support, he tendered in evidence **Exhibit “6”**, a cheque he issued to the family doctor.

The respondent further testified to the help that he offered the petitioner when she fell including cooking for her and caring for the child of the marriage but the petitioner subjected him to various forms of abuse which compelled him to leave the matrimonial home. The respondent further testified that the petitioner has consistently maltreated him and caused him such pain and anxiety that he cannot reasonably be expected to live with her. The respondent maintains that the marriage has broken down beyond reconciliation since various attempts made by families and friends to reconcile their differences have proved futile. He therefore prays the court to dissolve the marriage since he has suffered depression, pain, and anxiety and a feeling of worthlessness during the marriage.

The evidence led by the parties is characterised by accusations and counter accusations of unreasonable behaviour exhibited towards each other. The petition set out to be a bitter one with the parties battle ready to prove the respective allegations made against each other. However, after the parties attempted settlement and failed to effect reconciliation, they agreed that their marriage could no longer be salvaged and agreed on their terms on the ancillaries should the court dissolve the marriage. In the spirit of their settlement and the calming of tempers after their settlement discussions, the parties, elected not to conduct any rigorous cross-examination. The evidence of the parties regarding the allegations of



behaviour was not tested under the fire of rigorous cross-examination for the court to choose between the two rival versions of whose behaviour led to the breakdown of the marriage. What remains, on the evidence is that, the parties to the marriage had not lived together as husband and wife for more than two years prior to the presentation of the petition for divorce and they consent to the dissolution of the marriage. The consent to the dissolution can be gleaned from the fact that the respondent also cross-petitioned for the dissolution of the marriage. Additionally, when the court adjourned proceedings for them to reconcile their differences, they came to the irresistible conclusion that the marriage celebrated between them has broken down beyond reconciliation. The evidence on record also shows that various attempts made by the families and the friends of the parties to reconcile them have proved futile. The court therefore holds that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce.

### **CONCLUSION**

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce and enter judgment in the following terms;

- 1.I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the parties on 29<sup>th</sup> August, 2015 at the Royal House Chapel International Church, Michel Camp.
- 2.The parties shall present the original copy of the marriage certificate No. *RC1/MC/008/15* for cancellation by the Registrar of the Court.
- 3.The Terms of Settlement filed by the parties in the Registry of this Court on 25<sup>th</sup> August, 2023 on the ancillary reliefs signed by the parties and their respective

lawyers is hereby adopted as consent judgment. Per the parties' own Terms of Settlement, the parties agree that:

- a. The judgment of the Family Tribunal dated the 15<sup>th</sup> of February 2022 be affirmed by this Honourable Court.
- b. The respondent shall pay up all payments in arrears following the decision of the Family Tribunal.
- c. The respondent shall pay a monthly maintenance of Seven Hundred Ghana Cedis (GH¢700) for the upkeep of the child of the marriage to the Petitioner.
- d. The aforementioned amount shall be paid into a designated bank account to be provided to the Respondent by the Petitioner.
- e. That each party shall bear his/her own attorneys' fees and costs in connection with this matter and that each party agrees that the terms of this consent judgment constitute a full and final resolution of their claims in this suit.

**SGD.**

**H/H AGNES OPOKU-BARNIEH  
(CIRCUIT COURT JUDGE)**