

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON FRIDAY THE 10TH
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/116/23

VINCENTIA OSEI	-----	PETITIONER
VRS.		
ENOCH SEKYE	-----	RESPONDENT

PETITIONER REPRESENTED BY PEARL AKABAGRE PRESENT	
RESPONDENT	PRESENT

ESENAM MENSAH, ESQ. FOR THE PETITIONER PRESENT

JUDGMENT

FACTS:

The petitioner filed the instant petition for divorce pursuant to leave granted by the Court on 22nd June, 2023 to issue divorce petition within two years of marriage. The parties got married on 15th July, 2022 at the Registry of the Tema Metropolitan Assembly. After the marriage, the parties cohabited at Community 19, Tema. There is no issue to the marriage. The petitioner is a trader and the respondent is an accountant. On 22nd June, 2023, the petitioner filed the instant petition for divorce alleging that the marriage celebrated between herself and the respondent had broken down beyond reconciliation and prayed the court for the following reliefs’

- a. That the said marriage be dissolved.
- b. That an order be directed at the respondent to pay to the petitioner a lump sum of GH¢100,000 as alimony.
- c. Cost including legal fees.

The petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him. The petitioner states that the respondent often abuses her emotionally and the respondent is disrespectful to her. The petitioner says that the respondent blatantly undermines and disregards her as a wife and makes her feel worthless. Additionally, there is no communication between them and the respondent treats her as non-existent. The respondent talks down on her and belittles her and the respondent refused to support her decision to further her education and was content with her remaining a trader. The elders from both families have made various attempts to reconcile their differences which have all proved futile.

The petitioner further alleges that the respondent moved out of the matrimonial home and relocated to Ashongman and has spurned every opportunity for her to visit him at his new place of abode. She contends that by leaving the matrimonial home and neglecting to care for her, the respondent has deserted her. As a result of the failure of the respondent to maintain her, her working capital has depleted since she has had to use that money to maintain herself and sometimes, she has had to rely on her parents for her daily sustenance. The respondent has not shown affection and love towards her and for some time now, they have not lived together as husband and wife. She therefore maintains that the ordinance marriage celebrated between them has broken down beyond reconciliation and ought to be dissolved.

The respondent filed a four-paragraph answer on 11th July, 2023 in which he admits that the marriage between the parties has indeed broken down beyond reconciliation since the parties do not live together as husband and wife and are currently living separately. The respondent further states that he does not wish to contest any of the petitioner's claims. The respondent also prayed the court for

the dissolution of the marriage celebrated between them.

ATTEMPTS AT SETTLEMENT

Under **Section 8** of the matrimonial Causes Act, 1971(Act 367), a petitioner or her Counsel is mandated, upon hearing of a divorce petition, to inform the court about the various attempts made to effect reconciliation before and after the proceedings and the court is enjoined to adjourn proceedings for a reasonable time if there is a reasonable possibility for reconciliation. Consequently, on the parties first appearance in court, the court adjourned proceedings to enable them effect reconciliation. When the court resumed sitting, Counsel for the petitioner informed the court about their inability to reconcile and filed terms of settlement in which they agreed to the dissolution of the marriage and terms on ancillary reliefs should the court grant the main relief of the dissolution of the marriage. Since **Section 2(2)** of Act 367 enjoins the court to inquire, as far as is reasonable, into the facts alleged by the parties, the court set down the issue of the dissolution of the marriage for consideration 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

Under **Section 1** of the Matrimonial Causes Act, 1971 (Act 367), 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 2 years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years immediately preceding the presentation of the petition and lastly, irreconcilable differences. **Section 2(3)** of Act 367, enjoins the court to inquire into the facts alleged in support of the dissolution. 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.

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.”

The petitioner testified through her Lawful Attorney, Pearl Akabagre who testified and tendered in evidence the power of attorney, admitted and marked as **Exhibit “A”**. The marriage certificate was also admitted and marked as **Exhibit “B.”** The petitioner’s Attorney repeated the testimony of the petitioner on oath that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him. The petitioner’s attorney further testified that the respondent often abused the petitioner emotionally and the respondent is disrespectful to her. Again, the respondent blatantly undermines and disregards the petitioner as his wife and makes her feel worthless. The respondent has ceased all forms of communication with the petitioner and shuns her. The respondent belittles the petitioner at the least opportunity and failed to support her decision to further her education.

The petitioner's Attorney further states that various attempts made by the elders of both families have not yielded any positive outcome. Consequently, the respondent left the matrimonial home to live at Ashongman and has denied the petitioner the opportunity for her to visit him at his current place of abode. The respondent has deserted the matrimonial home and has also neglected to maintain her causing the petitioner extreme hardship since she has used her working capital to maintain herself. Thus, in view of the respondent's failure to show any kind of love and affection towards the petitioner, the marriage contracted between the parties has broken down beyond reconciliation.

The respondent on his part did not mince words and stated that the marriage has broken down beyond reconciliation because the petitioner denies him any form of intimacy and denies him sex and does not show any affection towards him. The petitioner is not tidy and leaves the house unkempt. The marriage has broken down beyond reconciliation and that is evidenced by the fact that they do not live together as husband and wife and are currently living in separate houses. Their family members are aware of their differences and have tried several times to reconcile them but she returns to the same behaviour. They have consequently agreed to go their separate ways.

The evidence led by both the petitioner and the respondent shows that the parties have serious differences between them and after diligent efforts, they have not been able to reconcile their differences. Although the parties made accusations and counter accusations against each other in proof of the breakdown of the marriage, the parties, in the spirit of the settlement failed to conduct any rigorous

cross-examination and are agreeable that their marriage has indeed broken down beyond reconciliation. The evidence led by the parties is indicative of the fact that serious differences exist between the parties and that the parties after diligent efforts have been unable to reconcile their differences within the meaning and intendment of Section **2(1) (f)** of Act 367. On whether diligent efforts have been made by the parties to reconcile their differences, in the case of **Mensah v. Mensah** [1972] 2 GLR 198 -209 @ 207.

“The question then arises whether there have been any diligent efforts to resolve these differences. The Act is silent on who should make the diligent effort; should it be the petitioner, the respondent or both, or can it even be the children or the church, or other third parties? I am of the view that all that is required under the section is that a genuine effort should have been made by someone. Who made the effort is I think not very relevant, but the effort must have been unsuccessful.”

The parties recounted the various attempts made at effecting reconciliation between them by well-meaning family and friends. For a considerable period of time now, the parties have not lived together as husband and wife. When the court adjourned proceedings for the parties to effect reconciliation, the parties failed to reconcile their differences to resume cohabitation as husband and wife and agreed that the marriage be dissolved. Under the circumstances, I hold that the ordinance marriage celebrated between the parties has indeed broken down beyond reconciliation.

On the ancillary reliefs, during the pendency of the suit, the parties attempted settled and filed terms of settlement in which they settled the ancillary reliefs. During the trial, the petitioner tendered in evidence the terms of settlement admitted and marked as **Exhibit “B”**. Thus, the parties having filed their own terms, the court adopts same as consent judgment on the ancillary reliefs.

CONCLUSION

In conclusion, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the 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 petitioner and the respondent on 15th July, 2022.
2. The Registrar shall cancel the original copy of the marriage certificate number *ROM/370/2022*.
3. The Terms of Settlement admitted and marked as **Exhibit “B,”** signed by the parties is hereby adopted as consent judgment on the ancillary reliefs.
Per the parties own Terms;
 - i. The respondent shall pay to the petitioner an amount of GH¢25,000 as alimony.
 - ii. The parties shall bear their own costs in the suit.
 - iii. The terms shall constitute the entire understanding of the parties and completely extinguishes the rights, obligations and claims of the parties arising from the suit.

SGD.

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