

IN THE CIRCUIT COURT HELD AT DANSOMAN-ACCRA ON  
TUESDAY THE 20<sup>TH</sup> DAY OF JUNE, 2023 BEFORE HER HONOUR  
HALIMAH EL-ALAWA ABDUL BAASIT

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SUIT NO.: CCD/C4/17/23

DR. BONIFACE YEBOAH ANTWI- PETITIONER  
187 ADOM CITY ESTATE  
COMMUNITY 25, TEMA

VRS.

OPHELIA ANARFI - RESPONDENT  
15 CORDYLINE STREET,  
EXHIBITION DOWN-DANSOMAN

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**PARTIES:**

PETITIONER – PRESENT

RESPONDENT – PRESENT

**COUNSEL:**

NO LEGAL REPRESENTATION

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**JUDGMENT**

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**Background**

The Petition was filed on the 18<sup>th</sup> of April 2023 and the Petitioner prayed for the following reliefs;

- i. Dissolution of the ordinance marriage celebrated between the parties as having broken down beyond reconciliation.
- ii. An order granting custody of the Four (4) year old child with reasonable access to the Respondent.
- iii. Any further order(s) this honourable Court may deem fit.

The Respondent filed her Answer to the Petition on the 6<sup>th</sup> of April 2023 and also cross petitioned for the following;

- a) That the Ordinance marriage celebrated between the Petitioner and the Respondent on December 7, 2017 at the Bread of Life Methodist Church, Dansoman-Exhibition, be dissolved.
- b) That the Respondent should be given custody of the only issue of the marriage with reasonable access to the Petitioner.
- c) That the Petitioner does not want any lump sum to be paid to the Respondent.
- d) That the Petitioner be made to pay an amount of money monthly as maintenance.
- e) That the Respondent should be given an equitable share of a plot of land acquired by the Respondent at Kasoa-Tomefa near Nurses Quarters but developed by both the Respondent and the Petitioner.
- f) That the Petitioner be made to provide equally with the Respondent for the cost of schooling (school fees, school feeding fees, school uniform) for the only child of the marriage.
- g) Any other orders that the Court may deem fit.

### **Issue(s) for Determination**

On 1<sup>st</sup> of June 2023, the parties executed and filed Terms of Settlement in final settlement of the matter before the Court. On the 13<sup>th</sup> of June 2023, the Court heard the case of both the Petitioner and the Respondent on oath as they gave short evidence in chief with each opting not to cross-examine the other. In view of the above, the main issue for determination is *whether the marriage between the parties ought to be dissolved by the Court.*

**Analysis:**

The Matrimonial Causes Act, 1971 (Act 367) provides in its Section 1(2) that “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”. Section 2 of Act 367 further provides on Proof of breakdown of marriage as follows; (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 as:

- a) *that the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or*
- b) *that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or*
- c) *that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or*
- 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*
- e) *that the parties to the marriage have not lived as man 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.”*

In the instant case, the Petitioner has to satisfy the Court of one or more of the grounds under section 2(1) of Act 367 as proof that the marriage has broken down beyond reconciliation. The Court also has to satisfy itself that the

grounds for dissolution canvassed by the Petitioner falls within Section 2 of Act 367. To prove that the marriage has broken down beyond reconciliation, the Petitioner per his evidence in chief testified, among others, that he got married to Respondent on the 7<sup>th</sup> of December 2017 at Bread of Life Methodist Church, Dansoman-Exhibition under the Ordinance Marriage. However, few months into the marriage, the Respondent started showing her true colours which resulted in frequent quarrels that continued during pregnancy till the birth of the only child of the marriage. The Petitioner testified further that the quarrels were due to lack of cooperation and understanding between them but progressed over time affecting him emotionally as the Respondent publicly disgraced him before his colleagues, Police Officers and his relatives who were called to mediate.

He continued by testifying that the Respondent shows him no respect, disregards his leadership and demonstrates no cooperation for decisions to be taken jointly. The Petitioner again testified that the Respondent left home on countless occasions and will not communicate with him for months, a situation he found very unfortunate and frustrating because he struggled emotionally to live under the same room with the Respondent. The Petitioner concluded by testifying that the Respondent has been irresponsible since the inception of the marriage as she does not respect his views and he has realized that they are not compactible but every effort made by him to have the issues between them resolved amicably did not yield results. Additionally, the Respondent refused to talk to him, does not respond to his calls, sexual intimacy between them ceased since November 2022 as they have not lived as man and wife since then till date.

In view of the testimony of the Petitioner, the Court is of the opinion that the basis for the dissolution of the marriage as well as his testimony before the

Court falls under Section 2 (1)(b) of Act 367 which states that '*Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent*'. In the case of **Ansah Vs. Ansah [1987-88] GLR 1127**, the learned Judge in emphasizing the standard of proof required by law in proof of breakdown of a marriage beyond reconciliation stated that, '*...The test under section 2 (1) (b) of Act 367 is ... the conduct must be such that a reasonable spouse in the circumstances and environment of these spouses could not be expected to continue to endure...*'. Similarly, it has been held in the case of **Kotei vs Kotei [1974] 2 GLR 172** 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 aim of the instant Court is to ascertain whether the marriage has indeed broken down and relies on the evidence before the Court. The Petitioner's testimony shows that the marriage had issues, but the Respondent also testified in Court on the issues of the marriage. As such, the Respondent gave her oral testimony in Court on the 13<sup>th</sup> of June 2023 where she admitted the celebration of the marriage in 2017 and stated, among others, that the marriage has never been blissful because Three (3) months into the union, the Petitioner exhibited unreasonable behaviours and left for the United Kingdom to complete his PhD study. She testified further that the home environment was hostile with Petitioner's maltreatment and quarrels to the extent that she had to fight back resulting in verbal exchanges which drew the attention of other neighbours who are mostly the Petitioner's colleagues. She continued that the Petitioner insisted she leaves the matrimonial home of which she eventually had to leave the home peacefully to avoid being physically abused. She stated further that the pattern of physical, emotional

and psychological abuse became burdensome for her and believed that the marriage must end for the safety and health of the child. Respondent insists that the Petitioner has not been committed to the marital vows as he takes delight in bringing other females into the matrimonial home which created a toxic and unhealthy home environment that caused her delays in her PhD programme. The Respondent concluded by pleading for the dissolution of this marriage.

On the evidence, I find that the Respondent has also proved that the marriage has broken down beyond reconciliation. It is observed that the Respondent indeed deserted the matrimonial home, but it appears to the mind of the Court that she had to leave because of the Petitioner's behaviour as her testimony paints the picture that he had become an overbearing, domineering and a dictatorial husband. In fact, from the totality of the evidence of the Respondent, she appears to be fed up with the marriage as she specifically states in paragraph 12 of her Witness Statement; *'the home environment is hostile with the Petitioner's constant control, accusations, maltreatment and quarrels''*. The Respondent also prays and pleads with the Court to dissolve the marriage of which the Court relies on the case of **Addo vs. Addo [1973] 2 GLR 103**, where it was opined by the Court that *'I think the Court should come to her aid and offer her a relief. 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, the court finds that the marriage between the parties had indeed broken down beyond reconciliation as parties are unable to reconcile their differences and same ought to be dissolved by the Court.

### **Terms of Settlement**

Parties after a successful mediation at the Court Connected Alternative Dispute Resolution (CCADR) Center, on 1<sup>st</sup> of June 2023 executed Terms of Agreement and prays the Court to adopt same as their Consent Judgment in respect of ancillary reliefs prayed for by both parties. As such parties agreed to settle the suit in the following manner;

- a. That the dissolution of the marriage be referred to Court.
- b. That the Petitioner has agreed to pay a monthly maintenance allowance of Five Hundred Ghana Cedis (Ghc500.00) and that will be paid into a separate account that will be created by the Respondent at a later time.
- c. That the Petitioner has agreed to pay for school fees, feeding fees, books, uniforms and all other things pertaining to education of the sole child of the marriage.
- d. That the Petitioner has agreed to renew the National Health Insurance Scheme (NHIS) of the child and also pay for all other medical bills not covered by NHIS.
- e. Both parties have agreed that the Respondent takes custody of the child whilst the Petitioner is granted access to the child on weekends, holidays and shared vacations.
- f. That the Petitioner has agreed to give out a parcel of land at Kasoa-Tomefa to Respondent.

### **Conclusion**

It is not in dispute that the parties have not lived together as husband and wife since November 2022 neither have they had sexual relations since then. Additionally, both the Petitioner and the Respondent have taken entrenched positions and prays for the marriage to be dissolved. The Court therefore finds that the marriage between the parties celebrated on 7<sup>th</sup> of December 2017 at Bread of Life Methodist Church, Dansoman-Exhibition, Accra has broken

down beyond reconciliation and the said marriage is hereby dissolved this 20<sup>th</sup> day of June, 2023. Accordingly, the Court adopts the Terms of Agreement executed by the parties on 1<sup>st</sup> of June 2023 before **Madam Nancy Aboagye**, the Mediator herein, as Consent Judgment in relation to any ancillary reliefs in this suit.

SGD

**H/H HALIMAH EL-ALAWA ABDUL-BAASIT  
CIRCUIT COURT JUDGE**