

IN THE CIRCUIT COURT (11) HELD AT ACCRA ON TUESDAY, THE 24<sup>TH</sup> DAY OF  
MAY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT, THE  
CIRCUIT COURT JUDGE

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SUIT NO.  
C5/295/2022

EDNA ANOWA QUAO  
NEAR ROLAND HOTEL,  
OFANKOR.

PETITIONER

VS

RICHMAN NII ARDEY TACKIE  
DANSOMAN CONTROL,  
ACCRA

RESPONDENT

-----JUDGEMENT-----  
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**Background:**

The Petition was filed on the 25<sup>th</sup> of May 2022 and the Petitioner prayed for the following reliefs:

- i. Dissolution of the Ordinance marriage contracted between the parties as having broken down beyond reconciliation.
- ii. Any further reliefs this Court may deem fit.

The basis of the instant Petition is that the parties got married customarily and the marriage was converted into an Ordinance marriage on the 18<sup>th</sup> of May 1996. The marriage had Three (3) children and all have attained the age of majority but the Petitioner insists that the marriage has broken down beyond reconciliation as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him any longer. With respect to the particulars of unreasonable behaviour, the Petitioner states that the Respondent refused to maintain the Petitioner and the issues of the

marriage since he left the matrimonial home in 2014 till date. She continued that the Respondent has been hostile and verbally assaults the Petitioner without any provocation whatsoever. She concluded the Petition by stating that all attempts by family and friends to reconcile the parties have proved futile.

The Respondent filed an Answer to the Petition on the 17<sup>th</sup> of June 2022 where he denied most of the averments contained in the Petition but cross petitioned for the dissolution of the marriage.

### **DETERMINATION**

On the 4<sup>th</sup> of April 2023, both parties gave testified by giving their evidence in chief but counsel for both parties opted not to cross-examine the parties. In view of the above, the main issue for determination is whether the marriage between the parties ought to be dissolved.

### **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”*. Petitioner therefore 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 this end, the Petitioner per her evidence in chief testified that she was legally married to the Respondent on the 18<sup>th</sup> of May, 1996 and there are Three (3) issues of the marriage. The Petitioner testified among others that the Respondent hardly lives up to his financial obligations throughout the marriage and attempts by the respective families to reconcile their differences have been unsuccessful as the Respondent does not

cooperate. Consequently, the parties have not lived together as husband and wife for the past Eight (8) years as they live in separate locations. She concluded by stating that the Respondent's conduct has caused her so much pain, embarrassment and emotional trauma that she cannot legally remain married to him.

In view of the above, the Petitioner's ground for seeking dissolution of the marriage therefore falls under Section 2 (1)(e) of Act 367 which provides that the Petitioner proves that '*... the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition...*'. 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*". The Court held further that "*Notwithstanding proof of one of the facts showing that the marriage had broken down the court had a discretion to refuse to grant the decree of dissolution on the ground that the marriage had not in fact broken down beyond reconciliation. The discretion given to the court was not a discretion to grant but a discretion to refuse a decree of dissolution. The burden was not on the petitioner to show that special facts or grounds existed justifying the exercise of the court's discretion; once he or she came within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367, the presumption was in his or her favour.*"

### **Conclusion**

It is not in dispute that the parties have not lived together as husband and wife for the past Eight (8) years or more neither have they had sexual relations within the period. Additionally, attempts at reconciling the differences of both parties have been futile. Under section 2 (1)(e) of Act 367, it is irrelevant whether or not there has been any wrong doing on the part of the Respondent. The most important fact to be considered is whether or not the

court is satisfied that for a period of at least Five (5) years preceding the Petition, the parties have not lived together as husband and wife.

Per the record, the parties have not lived as husband and wife for a period of over 9 years immediately preceding the presentation of this Petition, that is, since 2014. Parties having failed to live as husband and wife for a period of about 9 years immediately preceding the presentation of the Petition satisfies the court that the marriage celebrated between parties herein has broken down beyond reconciliation and same cannot be salvaged. The court therefore finds that the marriage between the parties celebrated on the 18<sup>th</sup> day of May 1996 at the Divine Healer's Church, Accra has broken down beyond reconciliation. The court hereby decrees the said marriage dissolved this 24<sup>th</sup> day of May, 2023.

**COUNSEL**

- 1. Yaa A. Nyarko for M. Aliga Esq. for the Petitioner present.**
- 2. S. T. Tamakloe Esq..... for the Respondent present.**

**H/H HALIMAH EL-ALAWA ABDUL-  
BAASIT**

**CIRCUIT COURT JUDGE**