

**IN THE CIRCUIT COURT HELD AT KWABENYA ON FRIDAY THE
15TH DAY OF SEPTEMBER, 2023 BEFORE HER HONOUR MAWUSI
BEDJRAH, CIRCUIT JUDGE**

SUIT NO. A4/34/2023

OPOKU JOSHUA AGYEMANG

PETITIONER

VRS

PRISCILLA NINEY KUSAH

RESPONDENT

PETITIONER

PRESENT

RESPONDENT

ABSENT

JUDGMENT

In a petition filed on 6th June, 2023, Petitioner prays for dissolution of the marriage celebrated between the parties on 19th December, 2010 as having broken down beyond reconciliation.

Petitioner further prays the Honourable Court that;

- i. Custody of the children of the marriage be given to him since the children have been living with him since the Respondent left the matrimonial home, with reasonable access to the Respondent
- ii. Any further reliefs as the Court may deem fit.

Petitioner states that the marriage has broken down beyond reconciliation because Respondent has behaved in such a way that Petitioner cannot reasonably be expected to live with her as wife. His reasons are that;

- i. Respondent refuses to have sexual intercourse with Petitioner and does so only at her convenience that is when she feels like doing so
- ii. Respondent sleeps with the children in their room
- iii. There have been unresolved misunderstandings in the marriage where there is no conclusive agreement on issues
- iv. Respondent cooks when she feels like doing so
- v. Respondent leaves the matrimonial home to the mother's house anytime Petitioner goes through financial difficulties
- vi. The above incident has happened on four occasions and the last time was in 2019, after which Petitioner has asked Respondent not to come back

- vii. Respondent has moved out of the matrimonial home for the past three years.
- viii. Family members and church elders have met on several occasions to resolve the issues but to no avail

Respondent, per the answer filed on 11th July, 2023, admits that the marriage has broken down beyond reconciliation and admits all that Petitioner has said. Thus, the marriage contracted between the parties on 19th December, 2010 at the Church of Pentecost, Achimota should be dissolved.

THE EVIDENCE

Petitioner testified by himself and gave oral evidence to substantiate his claim that the marriage has broken down beyond reconciliation. In summary, Petitioner states that in 2019, his wife walked out of the matrimonial home out of anger. Being the fourth time she walked out of the matrimonial home, Petitioner decided not to allow her back to the house. Petitioner then informed his mother who called for a meeting of the families. The families tried to bring the parties back but this was not successful. All efforts by their pastors and elders to bring them together have also failed.

Respondent also testified by herself and gave oral evidence in the matter. She testified that she and her husband have been married for thirteen (13) years but have lived separately for the last four years.

The parties decided not to cross-examine each other on their respective evidence, hence admission of same.

EVALUATION OF EVIDENCE AND APPLICATION OF THE LAW

The parties, having filed terms of settlement in respect of the ancillary reliefs being sought by Petitioner, the issue left to be determined by the court is whether or not the marriage has broken down beyond reconciliation.

Under the Matrimonial Causes Act, 1971 (Act 367), specifically section 1, the sole ground for the grant of divorce is whether the marriage has broken down beyond reconciliation. Sections 2 (a) to (f) further provide any of the factors that must be established to prove the breakdown of the marriage.

I have noted that Petitioner has based his claim on the unreasonable behaviour of Respondent. However, I have also noted from the evidence that the parties have not lived as husband and wife for over three (3) years. Per section 2 (1) (d) of Act 367, where the parties to the marriage have not lived as husband 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, it becomes a ground for the Court to grant a divorce. Further, under section 2 (1) (f) of Act 367, if the parties to the marriage after diligent efforts have been unable to reconcile their differences, it is also a ground for the Court to grant divorce.

From the evidence of Petitioner, which was not challenged by Respondent, the parties have not lived together as husband and wife for over three (3) years. Further, the interventions of family, pastors and elders have failed to reconcile their differences. Applying sections 2 (1) (d) and 2 (1) (f) of Act 367 to the evidence given in this matter, I find and hold that the marriage has broken down beyond reconciliation.

Accordingly, it is hereby decreed that the marriage celebrated between Petitioner and Respondent on 19th December, 2010 and evidenced by Marriage Certificate No 11108 and Licence Number AMA 8276/2010 be and is hereby dissolved forthwith on the ground that same has broken down beyond reconciliation. The Marriage Certificate is cancelled.

The Terms of Settlement filed by the parties on 14th July, 2023 is hereby adopted as Consent Judgment. Thus;

- i. The Petitioner is granted custody of the three children of the marriage with reasonable access to the Respondent
- ii. The children are at liberty to spend their vacation and holidays with the Respondent
- iii. The Petitioner has agreed to pay the school fees and medical expenses of the three children of the marriage
- iv. The Petitioner has agreed to maintain the three children of the marriage
- v. The terms herein shall be in full and final satisfaction of the claims by either party against each other.

Her Honour Mawusi Bedjrah