

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 8<sup>TH</sup> JUNE, 2023

SUIT NO. C5/27/22

VERONICA AYEH - PETITIONER

VRS

EMMANUEL KWAKU AYEH - RESPONDENT

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**JUDGMENT**  
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On the 1<sup>st</sup> day of October, 2004 at the International Central Gospel Church, Accra, the parties herein celebrated their marriage under the ordinance. They have three issues, all male and aged twenty five (25) and sixteen (16) years as at the date of the presentation of the petition.

The Petitioner presented this Petition on the 2<sup>nd</sup> day of December, 2021 and averred that their marriage has broken down beyond reconciliation. She contended that the Respondent has behaved in such an unreasonable manner that she cannot be expected to continue to live with him as husband and wife, that all efforts made to reconcile them by family and friends have failed.

She prayed the court for the following reliefs;

1. Dissolution of the marriage contracted on the 1<sup>st</sup> of October, 2004
2. Monthly maintenance of GH¢1,500.00 for the three children

3. That Petitioner and Respondent share equally the four bedroom house at Dawhenya
4. Financial provision of ten thousand Ghana cedis (GH¢10,000) as compensation.

The Respondent in his Answer to the Petition denied the claims of Petitioner. He however admitted that their marriage had broken down beyond reconciliation and all efforts to reconcile them had failed. He cross-petitioned for the following reliefs;

- a) An order for dissolution of the marriage
- b) An order that custody of Kelvin Asamani (16 years old) be granted to the Petitioner with reasonable access to the Respondent
- c) That the two bedroom self-contained house at Kpone be granted to the Petitioner
- d) That the four single rooms apartment be granted to the Respondent to enable him rent same out and use same to provide for the caring and maintaining of the children.

In the course of proceedings, the parties settled the ancillary reliefs and filed terms of settlement on the 14<sup>th</sup> day of March, 2023. That left the court with the determination of only one issue; whether or not their marriage has broken down beyond reconciliation.

### **THE CASE OF THE PETITIONER**

In her Evidence-in-Chief, the Petitioner averred that their marriage had broken down beyond reconciliation as all attempts by family members and friends to have the matter amicably resolved had proved futile.

She said that the Respondent had been untruthful to her and did not respect her as a wife. Respondent neither paid the school fees of the children nor maintained the home. He also hid behind his busy schedule at work and did not sleep in the home all the time.

Further that the Respondent assaulted her at the least confrontation and she had developed a medical condition due to the incessant assault on her by the Respondent. She also claimed that Respondent threatened to kill her anytime they quarreled. He also insulted her.

She prayed the court to dissolve their marriage as the Respondent consented to same.

### **THE CASE OF THE RESPONDENT**

In his Evidence-in-Chief, the Petitioner testified that their marriage had broken down beyond reconciliation as all attempts by both families to help them reconcile their differences had not been successful.

He said that they began having issues in their marriage about ten years ago largely due to the Petitioner's lack of respect, that trivial matters easily infuriated the Petitioner and this usually resulted in a breakdown of communication between them, sometimes lasting for six months.

The respondent said that the Petitioner insults him before the children and the househelp and he has had cause to report her conduct to her family elders on several occasions. He said the Petitioner did not appreciate all his contributions and role in the education of their children and had turned the children against him.

Further that the behavior of the Petitioner had caused him much anxiety, distress and embarrassment as a result of her unreasonable behavior and he could not reasonably be expected to live with her as a wife.

## CONSIDERATION BY COURT

1. Whether or not the marriage between the parties has broken down beyond reconciliation

“Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the Respondent in her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation”. See the case of **Ameko v. Agbenu [2015] 91 G.M.J.**

Blacks’ law dictionary, (8<sup>th</sup> edition, 2004 p. 1449) defines divorce as “*the legal dissolution of a marriage by a Court.*” In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In *section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a Petitioner must establish one of six causes, that is adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner’s basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is that all attempts to reconcile their differences has failed and the

Respondent has behaved in such an unreasonable manner that she cannot be expected to continue to live with him as husband and wife.

As she is asserting, she bears the burden of leading relevant, cogent and credible evidence to prove her claim on a balance of probabilities. See the case of *Takoradi Flour Mills v. Samir Paris* [ 2005-6] SCGLR 882 and *Ackah v. Pergah Transport Ltd* (2010) SCGLR 728.

The Respondent also cross-petitioned for a dissolution of the marriage citing the same grounds as the Petitioner; inability to reconcile their differences and unreasonable behavior on the part of the Petitioner. As he was asserting, he also bore the burden of proof in establishing his claims against the Petitioner.

Although both parties allege several grounds for the breakdown of their marriage, it is trite that proof of one of the grounds is sufficient for the court to arrive at a conclusion that the marriage has broken down beyond reconciliation. To that extent, I would first deal with the ground of inability to reconcile their differences after diligent efforts. This is one of the grounds which when proven, entitles the court to dissolve a marriage without laying blame at the feet of either party.

***Section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367) provides that;***

“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; that the parties to the marriage have, after diligent effort, been unable to reconcile their differences”.

It is my opinion that when parties have been married for a reasonably lengthy period and have issues of the marriage, when they seek to go their separate ways, a court of

competent jurisdiction in making enquiries as to the breakdown of the marriage must seek to promote cordiality and civility between the parties during and after the court proceedings. That is healthy not only to the parties and their future relationship as co-parents but to society as a whole.

To borrow the words of *Sarkodee J (as he then was)* in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* " 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."

The evidence of the Petitioner is that she and the Respondent have had several issues and attempts by family and friends to reconcile them have failed. That their marriage has broken down beyond reconciliation and nothing can be done by way of reconciling them.

The Respondent admits this and testified that they have been having issues in their marriage for the past ten years and all attempts by both sides of the family to reconcile them have failed. He does not only consent to a dissolution of the marriage but cross-petitions for same to be granted.

It is a legal known that there is no better proof of a fact than an admission by the opposing side and there can be no objection to a decision made by a court in reliance on such an admission. See the decision of the Supreme Court in the case of *Opoku &Ors (No.2) v. Axes Co Ltd. (No 2) [2012] 2 SCGLR 1214*.

In the course of proceedings, they both informed the court upon enquiry that there was no possibility of reconciliation. Until the Petitioner vacated the matrimonial home, they had both reported various incidents of acrimony in the house to the court. Their children have not been spared this acrimony and whereas the Respondent says it is the Petitioner who has turned the children, particularly the first born, against him, the Petitioner says it is the Respondent's actions which have led to that situation. Indeed, one of their biological children was to testify for the Petitioner against the Respondent. For the past decade, it appears that their marriage has been fraught with various security institutions like DOVVSU due to the various complaints of assault they have made against each other.

To borrow the words of Amissah J.A in the case of *Knudsen v. Knudsen* [1976] 1 GLR 204, "if a man comes to court saying that his marriage has reached a stage that he "cannot reasonably be expected to live" with his wife any more, should a court say to him oh yes you can?". In the circumstances of this case, both the man and woman are in court saying they cannot continue on the journey of marital eternity and apart from the fact that all diligent attempts to reconcile them have failed, no further attempt can be made to salvage their almost thirty year union.

From the totality of their evidence, it appears their home has not known any peace for over a decade. The Petitioner has practically begged this court to dissolve their union and the Respondent insists on same. I find that in the circumstances, it is best to dissolve their marriage as no further attempt at resolving their differences would yield any positive results.

As one of the grounds for a dissolution of a marriage is that the marriage has broken down beyond reconciliation due to the inability of parties to reconcile their differences after diligent effort, I find that per the admission of the Respondent, that ground has been

established. I thus find that there is sufficient cause to hold that their marriage has broken down beyond reconciliation on that ground alone.

Consequently, I hereby decree a dissolution of their marriage celebrated on the 1<sup>st</sup> October, 2004 at the International Central Gospel Church, Accra on the basis that same has broken down beyond reconciliation due to the inability of the parties to resolve their differences after diligent effort. Their marriage certificate issued to them in recognition of their marriage; No. ICGC 42-04 is hereby cancelled. The registrar is to notify the administrator of the church of the dissolution to enable them amend their records accordingly.

Let the terms of settlement, filed on the 14<sup>th</sup> day of March, 2023 at 1:23pm and which is duly signed by the Petitioner and her witness as well as the Respondent and his counsel, be and same is hereby adopted as consent judgment. The usual default clause applies.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

PRINCE KWEKU HODO FOR THE RESPONDENT