

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 25<sup>TH</sup> DAY  
OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

---

SUIT NO. C5/79/23

REGINA NYANTAKYIWAH MINTAH ----PETITIONER

VRS.

ISAAC NANA OPPONG

----

RESPONDENT

---

PETITIONER

PRESENT

RESPONDENT

ABSENT

---

### JUDGMENT

---

#### FACTS:

The petitioner and the respondent both Ghanaians living in Tema and the United States of America respectively got married under **Part III of the Marriages Act (1884-1985) Cap 127**, at the Accra Metropolitan Assembly on May 29, 2015. After the marriage, the parties cohabited at Bethlehem in the petitioner's aunt's house for barely two (2) months before respondent returned to the United States of America where he ordinarily resides. There is no issue in the marriage and there has been no proceeding in respect of the

marriage except the instant petition filed on 17<sup>th</sup> February, 2023, pursuant to leave granted by the court to issue divorce petition notice of which was served on the respondent in the United States of America. The petitioner, in her petition, alleges that the marriage celebrated between herself and the respondent has broken down beyond reconciliation and prays the court for the sole relief of the dissolution of the marriage contracted between herself and the respondent on 29<sup>th</sup> May, 2015.

The petitioner, in her petition for divorce, alleges that the respondent has behaved in such a way that she cannot reasonably be expected to live with him as a result of the bad behaviour. According to the petitioner, the respondent met her at Ablaze Ministry Church where he was a guest speaker at a Convention in Somanya and they immediately became friends. At the time the respondent was already married and lived with his wife in the U.S.A. The petitioner further claims that in the year 2014, the respondent informed her that his marriage with his wife had hit the rocks and proposed to marry her and after a series of discussions she agreed to marry the respondent. Pursuant to that, in November 2014, the respondent sent his brother to perform the customary marriage rites on his behalf to the petitioner's parents at their residence in Dome, Accra. Subsequent to the celebration of the customary marriage, the respondent came to Ghana and they converted their potentially polygamous customary marriage to an ordinance marriage on 29<sup>th</sup>

May, 2015, at the Accra Metropolitan Assembly registry in Accra. After the marriage, they lived together at Bethlehem near Tema and later at the respondent's brother's house in Asene for two months before the respondent returned to the United States of America. The petitioner mentions that the respondent took their marriage certificate along with the assurance of using it to prepare travel documents for her to join him in the U.S.A.

According to the petitioner, the marriage between them was rosy until 2017 when she had the opportunity to travel to South Africa with her female friend. When she informed the respondent about the trip, he expressed discontentment even though she had already paid for the ticket and accommodation. Despite the disapproval of the respondent, she travelled with her friends and whilst in South Africa, she sent a message to the respondent that she had arrived in South Africa but the respondent failed to reply to her messages. Later, she received a message from the respondent threatening to return to Ghana to divorce her to give her the freedom to do as she pleases. Surprised by the message, she called the respondent's brother from South Africa for assistance and upon her return, she informed her mother about what the respondent had told her. Her mother, unhappy about what she had told her, discussed the issue with the respondent's brother and her mother informed the respondent's brother to tell the respondent to come and divorce her.

Subsequently, the respondent claimed that the petitioner's mother had threatened to harm his family both physically and spiritually, leading him to decide not to remain married to her. The petitioner further states that her uncle, who resides in the U.S.A., tried to resolve the issue between the parties, but the respondent was unyielding to efforts made at reconciliation which thwarted the efforts her uncle made at settling the issue. The petitioner states that her family apologized to the respondent's family for what her mother had said. However, due to all the issues that arose, the petitioner lost interest in the marriage and decided to seek a divorce for both parties to go their separate ways. Consequently, in March 2018, drinks were presented to the respondent's family to symbolize the dissolution of the customary marriage. The petitioner states that she is of the firm belief that the marriage has broken down beyond reconciliation and prays the court to dissolve the marriage celebrated between the parties at A.M.A marriage registry on 29<sup>th</sup> May, 2015.

### **LEGAL ISSUE**

Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

### **ANALYSIS**

Under 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. See **Section 1** of the MCA. To succeed, a petitioner is required to plead and prove one of the facts set out in **Section 2(1)** of Act 367 namely, adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as man and wife for five years, irreconcilable differences.

The parties are also mandated to inform the court about all attempts made at reconciliation and the court shall refuse to grant a petition for divorce if there is a reasonable possibility for reconciliation. Also, the court has a statutory duty to enquire into all the facts alleged in support of the fact that the marriage has broken down beyond reconciliation and the court shall decline to grant a dissolution of the marriage if there is a reasonable possibility for reconciliation. See the case of **Donkor v. Donkor** [1982-1983] GLR 1158. This legal proposition is amplified in the case of **Danquah v. Danquah** [1979] GLR 371, where the court held in its holding 2 that:

*“The Matrimonial Causes Act, 1971 (Act 367), imposed on the court a species of restriction which was unique. For having established by section 1 (2) that the sole ground for granting a petition should be that the marriage had broken down beyond reconciliation and having by section 2 (1) laid down those facts the proof of which should, prima facie, show that the marriage has so broken down, section 2 (3)*

*authorised the court to grant a petition for divorce only when the court was satisfied, on all the evidence, that there has been an irreconcilable breakdown of the marriage.”*

The petitioner in the instant petition has set out to prove that for at least five years immediately preceding the presentation of the petition for divorce, they have not lived as man and wife. To succeed under **Section 2 (1)(e)**, the petitioner is required to prove that for a continuous period of five years immediately preceding the presentation of the petition for divorce, she and the respondent had not lived together as man and wife. The law does not require proof of any matrimonial offence committed by the other spouse and there is no need to establish blame. Proof of not having lived together as man and wife for a continuous period of at least five (5) years coupled with inability of the parties to reconcile to resume cohabitation as husband and wife shall suffice. In the case of **Kotei v. Kotei** [1974] 2 GLR 172, where the High Court presided over by Sarkodie J, (as he then was) in espousing on **section 2(1) (e)** of Act 367 held @ 175-176 that:

*“Proof of five years’ continuous separation enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who cannot be blamed for the breakdown of the marriage”.*

The court continued to say at page 176 that:

*“There must be a total breakdown of the consortium vitae. Mere physical separation is not sufficient; a petitioner has to prove not only the factum of separation but also that he*

*or she has ceased to recognise the marriage as subsisting and intended never to return to the other spouse... Therefore, it seems the state of mind of the parties needs to be considered, that is, whether they treated the marriage as at an end. It may not matter whether the state of mind of one of the parties was not communicated to the other."*

The petitioner testified and repeated her averments contained in the petition for divorce on oath that after the marriage, she cohabited with the respondent in Ghana before he returned to the United States of America with the hope that the respondent will file the necessary documents to enable her join him in the United States of America. The petitioner testified that she had the opportunity to travel to South Africa with a female friend in the year 2017 which she informed the respondent but the respondent expressed his disapproval after she had paid for the ticket and accommodation. When she got to South Africa, she sent a message to the respondent informing him that she had arrived in South Africa but he did not respond the way she had expected the respondent to do and to her chagrin, she received a message from the respondent that he was coming to Ghana to divorce her so that she can do whatever she wants. She contacted the respondent's brother to intervene in the matter and he assured her that he would discuss with the respondent. The petitioner testified that she informed her mother about the happenings in her marriage and later, her mother informed her that she had told the respondent to come and divorce her.

The respondent then claimed that the petitioner's mother had threatened to harm his family both physically and spiritually hence his decision not to continue with the marriage. The petitioner further states that various attempts made by her uncle who resides in the United States of America to resolve the differences between the parties proved futile since the respondent remained adamant. The petitioner's family visited the respondent's family to apologise for the comments of her mother for the respondent to divorce the petitioner but they were met with insults which informed her decision to seek for divorce. In March 2018, her family returned the customary drinks to the respondent's family to symbolize a dissolution of the customary marriage celebrated between the parties. Thus, the marriage has reached a point that they cannot reconcile their difference and that informs her decision to come to court for formal dissolution of the marriage.

The notice of the divorce petition and all processes in the suit were duly served on the respondent at his address in the United States of America but the respondent failed to enter appearance and to defend the suit. In the case of the **Republic v. High Court (Fast Track Division), Accra Ex-parte State Housing Company Limited (No. 2)** [2009] SCGLR 185 at 190, the Supreme Court per Georgina Wood, C.J (as she then was) held that:

*"A party who disenables himself or herself from being heard in any proceeding cannot*



*turn round and accuse an adjudicator of having breached the rules of natural justice”.*

The respondent was given every opportunity to contest the testimony of the petitioner that for five years preceding the presentation of the petition for divorce, they have not lived together as husband and wife but he has spurned the opportunity to be heard. The testimony of the petitioner leading to the breakdown of the marriage remains uncontradicted. The petitioner having established that there has been a complete cessation of consortium vitae between a husband and a wife for five years prior to the presentation of the petition for divorce, coupled with the fact that attempts made by well-meaning people to reconcile the differences between the parties have proved futile, the court has no discretion in the matter than to accede to the prayer of the petitioner and declare that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

### **CONCLUSION**

In conclusion, I hold that the ordinance marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore grant the petition for divorce and enter judgment for the petitioner in the following terms;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent at the Accra Metropolitan Assembly marriage registry on May 29, 2015.
2. The petitioner shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. There shall be no order as to costs.

**H/H AGNES OPOKU-BARNIEH**

**(CIRCUIT COURT JUDGE)**