

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

SUIT NO.C5/105/23

RHANDA KABBARA ----- PETITIONER

VRS.

KENNEDY KORANTENG ----- RESPONDENT

PARTIES

ABSENT

KEKELI SEFA, ESQ. WITH JUABENG SERWAA ODOI, ESQQ. HOLDING
THE BRIEF OF ANDREW APPAU OBENG, ESQ. FOR THE PETITIONER
PRESENT

JUDGMENT

FACTS:

The petitioner herein contracted a customary marriage at Agona-Swedru on 17th of July 1997. The said potentially polygamous customary marriage was converted to a marriage under **Part Three of the Marriages Act, 1884-1985 (CAP 127), Cap 127**, at the Accra Metropolitan Assembly on the 1st November

2000. After the marriage, the parties cohabited at Kwashieman, Accra before relocating to Tema. There are three (3) issues to the marriage namely, Michael Appiah Koranteng, 22 years old; Casey Omama Koranteng, 21 years old; and Rhanda Oboama Koranteng, 17 years old at the times of filing the instant petition for divorce. There have been no previous legal proceedings regarding this marriage in this court or any other court prior to the instant petition for divorce. On 4th May, 2023, the petitioner filed the instant petition for divorce alleging that the Ordinance Marriage celebrated between herself and the respondent has broken down beyond reconciliation and prays the court for the dissolution of the marriage celebrated between the parties on 1st November 2000 and a further order for the parties to bear their own costs.

The petitioner avers that the marriage celebrated between herself and the respondent has broken down beyond reconciliation. The petitioner states that the respondent has since the inception of the marriage behaved in a manner that she cannot reasonably be expected to live with him as he has caused the petitioner anxiety, distress and embarrassment. According to the petitioner, the respondent left the matrimonial home without her consent on 22nd October, 2022. Consequently, the customary marriage between the parties has been dissolved at the instance of the petitioner due to irreconcilable differences. Despite efforts from family and friends to reconcile the parties, the differences between the parties remain unresolved. Based on that, the

parties acknowledge that the marriage has failed and they have both agreed to the dissolution of the marriage. The petitioner therefore prays the court to dissolve the marriage celebrated on 1st November 2000, and that each party bear their own costs.

The respondent was duly served with the petition for divorce but he failed to enter appearance. When the matter was set down for trial, the respondent appeared in court and the court granted him leave to enter late appearance. The respondent failed to file an answer to the petition and also did not file any witness statement in the case but the parties filed terms of settlement in which the respondent consented to the dissolution of the marriage. The court therefore proceeded to take evidence to satisfy itself that the marriage has broken down beyond reconciliation as mandated by the matrimonial Causes Act (1971) Act 367.

LEGAL ISSUE

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

ANALYSIS

Section 1 of the Matrimonial Causes Act, 1971(**Act 367**), provides that the sole

ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts set out in **Section 2(1) of Act 367**, namely, adultery, unreasonable behaviour, desertion, failure to live as husband and wife for at least two years, failure to live as man and wife for five years and irreconcilable differences. To promote reconciliation as far as may be practicable, **Section 8** enjoins the petitioner to inform the court of all attempts made to effect reconciliation. Further to that, Act 367 imposes an obligation on the court to enquire carefully into the facts alleged and shall refuse to grant the petition if there is a reasonable possibility for reconciliation. In the case of **Mensah v. Mensah** [1972] 2 GLR 198, the court held in its holding 1 that:

“Under Act 367, s. 2(2) the court has to inquire into the facts alleged by the parties. However, the court does not have to hold such inquest in all cases. Where the evidence of a petitioner stands uncontradicted an inquest is not necessary unless it is suspected that the evidence is false or the true position is being hidden from the court.”

From the facts alleged in the petition, the petitioner set out to prove fact 2(1)(f), that the parties after diligent effort have been unable to reconcile their differences. To succeed under **Section 2(1) (f)**, there must be evidence that irreconcilable difference exists between the parties within the meaning and intendment of **Section 2(1)(f)** of the Matrimonial Causes Act, 1971(Act 367). In

the case of **Mensah v. Mensah** [1972] 2 GLR 198 -209 @ 206 the court held that for **Section 2(1)(f)** to apply, the following elements must be present;

(a) there should exist differences between the parties.

(b) they should have made diligent efforts to reconcile these differences, and

(c) they should have been unable to effect the reconciliation of the differences.

The court further held at page 206 that:

"...Difference which cannot possibly affect the subsistence of the marriage are not sufficient. Evidence of petty quarrels and minor bickerings, which are but evidence of that frailty which all humanity is heir to is not sufficient. The differences must be real and not imaginary; they should be so deep as to make it impossible for the parties to continue a normal marital relationship with each other."

The petitioner testified that she and the respondent got married under customary law at Agona-Swedru on the 17th July 1997, and the customary marriage was later converted to a marriage under the **Part Three of the Marriages Act, 1884-1985 (CAP 127)** at Accra Metropolitan Assembly on the 1st of November 2000. There are three children to the said marriage two of whom are adults. The petitioner testified that due to the differences between the parties in the marriage, the respondent left the matrimonial home without her consent on the 22nd October 2022. According to the petitioner, throughout the marriage, the respondent's behaviour has caused the Petitioner anxiety, distress, and embarrassment, making it impossible for them to continue living

together. To further show that the marriage has broken down beyond reconciliation, the petitioner testified that customary marriage has been dissolved at her instance since several attempts made by their family and friends to settle the differences between them have proved futile. According to her testimony, due to the irreconcilable differences, she and the respondent have accepted that the marriage has failed and have agreed to the dissolution of the marriage based on terms. She tendered in evidence a copy the said Terms of Settlement admitted and marked as **Exhibit "A" filed** in the Registry of this court on the 13th July 2023, which should be adopted as part of the judgment of the court upon the dissolution of the marriage. The petitioner therefore prays the court to grant her the relief for the dissolution of the marriage and order the parties to bear their own costs.

The respondent was duly served with the processes in the suit but failed to contest the petition for divorces and indicates that he has consented to the dissolution of the marriage. The fact that the marriage has broken down beyond reconciliation is symbolized by the fact that the customary drinks have been returned which is a clear indication by both families that the differences between the parties have not been reconciled despite diligent efforts. On the totality of the evidence led by the petitioner, I hold that the ordinance marriage celebrated between the parties has broken down beyond reconciliation. I accordingly grant the petition for divorce.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly 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 on 1st November 2000.
2. The petitioner shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. The Terms of Settlement filed by the Parties in the Registry of this Court on 13th July, 2023 and signed by both parties and Counsel for the petitioner is hereby adopted as consent judgment. Per the parties' own terms;
 - i. The petitioner shall pay the sum of One Hundred Thousand Ghana Cedis (GH¢100,000) as financial provision to the respondent.
 - ii. Each party shall not lay claim to any property acquired by either party during the marriage.
 - iii. The terms of settlement embody the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations, oral or written, express or implies other than those contained in the terms of settlement.

4. No order as to costs.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)