

**IN THE CIRCUIT COURT HELD AT TECHIMAN ON THURSDAY 18TH DAY OF
MAY, 2023 BEFORE H/H S. D. KOTEY ESQ SITTING AS CIRCUIT COURT
JUDGE**

S/NO. C4/05/23

JANET YEBOAH

PETITIONER

VRS.

GYAMFI JOSEPH

RESPONDENT

JUDGMENT

The petitioner has presented a petition for the dissolution of her marriage to the respondent. The respondent has also cross petitioned for the dissolution of the marriage. According to the petition, the parties were married on 30th January, 2016. in the Roman Catholic Church Aworewa, Techiman. The parties have one issue between them who is eight years old at the time of the petition. The petition states that there have been no previous proceedings in any court prior to the petition in relation to the marriage.

According to the petitioner, the reason for the presenting the petition is that they have not lived as husband and wife for a continuous period of two years immediately preceding the presentation of the petition. The petitioner further alleges unreasonable behaviour on the part of the respondent. She alleges that the respondent has been physically abusing her. She again alleges that the respondent has such bad temper that he threatened to kill or maim her on one occasion.

On his part, the respondent also alleges unreasonable behaviour against the petitioner as the reason he wants the marriage dissolved. He accuses the petitioner as having abandoned the marriage. He says that the respondent has left the matrimonial home for an unknown place.

The court set down the course for trial. Both parties did not invite any witness aside themselves. The trial was a very simple one with both parties not cross examining the other after their respective evidences in chief.

The evidence presented by the petitioner is that the marriage has broken down beyond reconciliation on the basis that both parties have not lived together as man and wife since 2020 when the petitioner moved out of the matrimonial home. According to the petitioner, she moved out of the matrimonial home because of lack of love and affection. She maintained that she has since returned the customary drink to the family of the respondent to end the customary marriage between them. The respondent did not cross examine the petitioner as already mentioned. That means that the respondent does not dispute what the petitioner testified to. When it was the turn of the petitioner to also cross examine the respondent, he also chose to impliedly admit all that the respondent has said. I gathered from the conduct of the parties that they were bent on going their separate ways and were prepared to accept each other's accusation.

It is important to point out to the parties that what they seek from the court is declaratory order. Being declaratory, the court can only pronounce upon established facts from the evidence adduced. In the case of *ROCHER SEFA V. BANK OF GHANA* the court relied on the English *Metzgar* case (1977) 3 All ER 444 @ 451 which held that: *"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what it has found to be the law after proper argument, not merely after admission by the parties"*

It was therefore necessary for the parties to prove their allegations against each other and not merely admit allegations against them. While the petitioner was unwilling to probe the allegations of unreasonable behaviour against her by the respondent, the respondent was equally unwilling to probe the allegations of unreasonable behaviour also against him. What that means is that both parties admit they have behaved unreasonably against each other. That cannot be reasonably probable. However, what I find is that the parties have demonstrated that they have not lived as man and wife for a continuous period of two years immediately preceding the presentation of the petition.

Section 2 (1)(d) of the Matrimonial Causes Act, 1971 (Act 367) provides that in proving that the marriage has broken down beyond reconciliation, the parties may show that they have not lived together as man and wife for two years immediately preceding the presentation of the petition and the respondent consents. The evidence from the petitioner and the respondent as has already been shared above is that the parties have not lived as man and wife for a period of two years. The failure of the respondent to challenge that evidence from the petitioner on that claim is evidence of his consent to the dissolution of the marriage on that ground. Another form of consent by the respondent to the dissolution of the marriage is deduced from the respondent own claim that the petitioner has also abandoned the matrimonial home and they have not had sex within the period the petitioner has been away. The cross petition by the respondent on the same basis as the petitioner is yet also another evidence from which the court infers consent from the respondent for the dissolution of the marriage. I find that Section 2 (1)(d) of the Matrimonial Causes Act has been established. The court finds that the marriage between the parties has broken down beyond reconciliation on the basis that the parties have not lived together as man and wife for a period of two years and the respondent consents to the dissolution of the marriage. In the circumstance, it is my unpleasant duty to declare that the marriage between the parties is hereby dissolved,

The petitioner prays for maintenance of the only issue of the marriage. There is no request for custody of the child by the petitioner. Rather, she seeks maintenance of the child from the respondent. It is as if the child is also in the custody of the petitioner or if not in the custody of the petitioner, the parties agree that the child stays in the custody of the applicant. Like the case of the grounds of the petition, the respondent did not challenge this claim. I proceed to grant custody of the child of the marriage to the petitioner. On the issue of maintenance, the court will offer the parties the opportunity to make a submission to the court on the basis of which an order of maintenance for the child.

I make no further order as to cost.

SGD

HH SAMUEL DJANIE KOTEY