IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 19TH DAY OF JANUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/11/24

KOFI BENTSI-ENCHILL ----- PETITIONER

VRS.

EMELIA DORREN YALLEY ----- RESPONDENT

PETITIONER'S ATTORNEY PRESENT

RESPONDENT PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

The petitioner and the respondent got married under **Part III of the Marriages Act (1884-1985) Cap 127** at the Lighthouse Chapel International, Tema on 12th March 2006. Thereafter, parties cohabited at Kpone, Tema. The petitioner is a businessman and the respondent is a freight forwarder. There is no issue to the marriage. On 18th August 2023, the petitioner filed the instant petition for divorce alleging that the marriage celebrated between the petitioner and the respondent had broken down beyond reconciliation and prayed the court to dissolve the ordinance marriage subsisting between the parties.

The petitioner alleges that the marriage celebrated between the petitioner and the respondent has broken down due to the unreasonable behaviour exhibited by the respondent in the marriage. The petitioner further alleges that the parties to the marriage are incompatible and there is no effective communication between them. The petitioner states that the parties have been separated for the past 7 years and there has not been any sexual intimacy between them since then. The petitioner states that the customary marriage celebrated between the parties was dissolved in the year 2019 by

their families when all attempts to reconcile their differences proved futile. The petitioner therefore prays the court for the dissolution of the marriage celebrated between the parties on 12th March 2006.

The respondent also cross-petitioned for the dissolution of the marriage celebrated between the parties and states that the marriage has broken down beyond reconciliation since various attempts made by both families, relatives and friends to reconcile their differences have failed. The respondent says that due to the problems in the marriage, they are no longer living together as husband and wife since the petitioner presented a customary drink to her family and the marriage was dissolved customarily. The respondent further states that since the customary marriage has been dissolved for more than four years now, it would just be fair to dissolve the ordinance marriage in court for them to go their separate ways. The respondent maintains that the marriage ought to be dissolved since she consents to the dissolution of the marriage between the parties.

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 prove one of the six (6) 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 petitioner in the instant petition has set out to prove fact 2(1) (e) namely. *"that she and the respondent have not lived as man*

and wife for a continuous period of at least five years immediately preceding the presentation of the petition."

In the case of **Donkor v. Donkor** [1982-1983] GLR 1158, the High Court, Accra, per Osei-Hwere J, held that the petitioner must plead and prove any of the six facts set out in the law to show that the marriage has broken down beyond reconciliation. The court further held that this obligation remains on the petitioner even when the petition is not contested.

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. See **Section 2(3)** of the MCA and the case of **Adjetey & Adjetey** [1973] I GLR 216 at page 219. The court is further enjoined to enquire into the circumstances alleged and to refuse to grant a petition for divorce if there is a reasonable possibility of reconciliation.

To succeed under fact **2 (1)(e),** all that the petitioner is required to prove is 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 husband and wife. The law does not require proof of any matrimonial offence and there is no need to establish blame. Proof of not having lived together as husband and wife for a continuous period of at least five (5) years coupled with the inability of the parties to effect reconciliation to resume cohabitation as husband and wife shall suffice.

I am fortified in this view by the case of **Kotei v. Kotei [1974] 2 GLR 172,** where a husband petitioned for divorce alleging that he and the respondent-wife had not lived as husband and wife for six years and that the marriage had broken down beyond reconciliation and should be dissolved. It was the petitioner's case that he had recognised and continued to recognise that the marriage was at an end and that he never

intended to take back his wife. In resisting the petition, the respondent asserted that she still loved her husband, that she was still waiting for the husband to send for her and was willing to make attempts at reconciliation if the proceedings were adjourned for that purpose. The High Court per Sarkodie J, espousing on **section 2(1) (e)** of the MCA held that at pages 175-176

"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 further held at page 176 as follows;

"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 through an Attorney, Kelvin Aggor who testified that the petitioner is his cousin and that the respondent is the wife of his cousin the petitioner herein. The petitioner's attorney testified that the parties got married under the Ordinance Marriage Cap 127 at the Light House Chapel International Church on 12th March 2006. After the marriage, the parties cohabited at Kpone and there is no issue between the parties. The petitioner's attorney further testified that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her as husband and wife. According to his testimony, there has not been any sexual intercourse between the parties for over 7 years. There is also a total lack of communication between them and they have not been living together as husband and wife. The petitioner states that the parties are generally incompatible and the marriage experienced no peace hence, the marriage has broken down beyond reconciliation and

that it ought to be dissolved.

The respondent also on her part testified that she consents to the dissolution of the marriage celebrated between herself and the respondent. The respondent in her testimony before the court admits that there has not been any sexual intimacy between the parties for the past seven years. She also says that there is no peace between them in the marriage and that both families have agreed for their marriage to be dissolved. The respondent says that the parties are no longer living together as husband and wife and the petitioner presented the customary drinks to her family for the dissolution of the customary marriage. Moreover, they have both agreed to the dissolution of the ordinance marriage celebrated between the parties and that the marriage ought to be dissolved.

From the evidence led by the petitioner and the defence put up by the respondent, the parties are agreeable that for more than five years immediately preceding the presentation of the petition for divorce, they had not lived as husband and wife. Once this fact is established, it becomes superfluous for a party to establish a matrimonial offence committed by the other party since the marriage then could be dissolved against the wishes of a party who has committed no matrimonial offence. On the evidence, various attempts by the parties themselves and their family members to reconcile their differences have proved futile culminating in the dissolution of their customary marriage and the instant petition for the dissolution of the ordinance marriage. 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 marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I therefore enter judgment for the petitioner herein as follows;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 12th March 2006 at the Lighthouse Chapel International, Tema.
2. The parties 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.

SGD.
H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)