IN THE DISTRICT COURT, LA, TRADE FAIR-ACCRA, HELD ON THE 5TH DAY OF APRIL, 2023, BEFORE HIS HONOUR JOJO AMOAH HAGAN SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A4/73/2021

BETWEEN

CYNTHIA QUARTEY……..PETITIONER
BAWALESHIE
ACCRA

AND

SOLOMON ODIKRO…….RESPONDENT
TESHIE
ACCRA

JUDGMENT

1. The Petitioner herein filed her "form for petitioner" before this Court alleging that by reason of irreconcilable differences, the marriage celebrated between her and the Respondent should be dissolved. In

addition to the prayer for a dissolution of the marriage, the Petitioner prayed for custody of the child of the marriage and for maintenance of GHC500.00. In his amended "form for respondent" the Respondent implicitly rejected Petitioner's prayer for the dissolution of the marriage by praying that the couple be reconciled. He also prayed for a distribution of three chamber and hall amongst the parties. That would be taken to be a prayer in the alternative considering that the Respondent, a lay person, was not represented by counsel and would therefore be assumed to be unskilled in the art of settling such processes. In any case, the Respondent made this inference I made express in his statement to the Court on 6 July 2022.

2. I am quite inclined to grating a dissolution of marriages where the parties are ad idem that the marriage be dissolved. To me, it is pointless and even dangerous in some circumstances to refuse to dissolve the marriage when the parties agree that it be dissolved. But

the same cannot hold where one party desires to remain married to the

other. Under those circumstances the Court must enquire critically into the case presented by both parties to determine whether the marriage has indeed broken down beyond reconciliation. I do not present this as a principle of law since it is a truism that under all circumstances, that is whether the parties are ad idem or not, that the Court must determine from the evidence whether the marriage between the parties has broken down beyond reconciliation.

3. Under subsection (2) of section 1 of the Matrimonial Causes Act, 1971 (Act 367), the sole for the dissolution of marriage is when the marriage has broken down beyond reconciliation. Therefore where there is a chance for reconciliation, the Court ought not to grant the divorce. To succeed in establishing this ground the Petitioner must prove that the Respondent committed adultery; behaved in a way that she cannot reasonably be expected to live with him; desertion by the Respondent for a continuous period of two years; that the parties have

not lived together as husband and wife for a continuous period of two years or five years immediately preceding the filing of the petition; or that the parties have despite diligent effort not been able to reconcile their differences. The Court is not duty bound to grant the divorce notwithstanding evidence of the above unless on all the evidence it is convinced that the marriage has broken down beyond reconciliation: see section 2 of the Matrimonial Causes Act and *Kotei v. Kotei[1974] 2 GLR 172.*

4. In her witness statement and her supplementary witness statement the Petitioner testified that the couple got married on 12 February 2015 and had been in the marital union for six (6) years. Out of the said marriage the couple had one issue. According to the Petitioner, she lived with the Respondent and the issue of the marriage until the Respondent deserted the matrimonial home. She testified further that the couple had for the past three years had a series of

irreconcilable differences after several attempts by their families to no

avail. Additionally, she alleged that the Respondent had behaved violently towards her on numerous occasions and threatened to kill her for which reason she reported the matter to the Police. Under cross-examination she testified further that the Respondent did not understand anything. He quarrelled always and beat her up. Respondent denied this and alleged that the reason the Petitioner has filed the instant petition was that she had another man in her life. The Petitioner denied this allegation. She claimed by reason of the beatings and quarrels she moved to Dodowa. The Petitioner informed the Court the parties were advised to go to court and she decided to take that advice. The Respondent denied that he was violent towards the Petitioner. He also denied that he was quarrelsome.

5. I should have thought that once these allegations have been denied, the Petitioner would call witnesses such as family members who attempted to reconcile the parties, and call witnesses from

DOVVSU regarding the allegation of violence or assault. Indeed by the

provisions of section 8 of the Matrimonial Causes Act the Petitioner or her counsel are bound to inform the Court of all efforts made by or on behalf of the Petitioner, both before and after the commencement of the proceedings to effect a reconciliation. Additionally, the Petitioner on the issue of the Respondent's alleged desertion failed to testify on the length of the desertion whatsoever. Beyond these, the Petitioner ought to have demonstrated by her evidence that she could not reasonably be expected to live with the Respondent by reason of his unreasonable behaviour. The test to determine whether the Petitioner could not reasonably be expected to live with the Respondent has been held to be an objective one related to the circumstances of the petition: see *Ansah v. Ansah [1982-83] GLR 1127.* And as the Court held in *Mensah v. Mensah [1972] 2 GLR 198*

> *"[i]n determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including*

the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter."

Elsewhere on page 203 the Court delivered itself as follows:

"The court ought to grant a divorce only where there has been a breakdown of the marriage beyond reconciliation. It is obligatory on the petitioner to prove one or more of the specified facts in order to establish that the marriage has broken down beyond reconciliation obviously on all the evidence. Having established these facts to such a standard as to lead the court to make a finding that these facts exist, the court can still refuse to grant the decree because it is not satisfied that the marriage has broken down beyond reconciliation."

6. I have given due consideration to the entire case and the evidence led in support of the Petitioner's pray to divorce and I am not entirely convinced that she proved to my satisfaction that the marriage between the parties has broken down beyond reconciliation. The petitioner for divorce is accordingly dismissed. The corollary to this is that the claim for a distribution of the alleged matrimonial property is equally dismissed.

7. On the issue of maintenance and custody claimed by the Petitioner, neither the Petitioner nor the Respondent gave any evidence to enable to Court consider to whom custody of the child in issue should be given and how much maintenance should be awarded from the financial circumstances of the parties. There is therefore no basis to interfere with the status quo ante. No order as to costs.

SGD
JOJO AMOAH HAGAN
CIRCUIT COURT JUDGE