

IN THE DISTRICT COURT ONE, TEMA ON WEDNESDAY 22ND
NOVEMBER 2022 BEFORE H/W BIANCA ADWOA OSEI-SARFO (MRS.),
SITTING AS MAGISTRATE.

A4/97/2021

MONICA AGYEMAN

PETITIONER

VRS

ELIJAH APPIAH-KUBI

RESPONDENT

PET.: Present

RES.: Present

Time: 12:00 P.M

COUNSEL: Parties Self Represented

JUDGMENT

This is a divorce petition come to judgment.

The parties in this suit were married under the Ordinance on the 21/06/2008 at the Tema Municipal Assembly, Tema. Their Marriage Certificate has licence number TMA/RM/1189/2008. They have two children together.

It is the case of the petitioner that the Respondent has impregnated another woman while she was pregnant for him, and that the Respondent had also committed bigamy. The Petitioner averred that the Respondent had deserted their matrimonial home to live with the 'new woman' who had already had seven children from a previous marriage.

She told the Court that when she gave birth, the Respondent asked her to go and live with her mother and to leave their matrimonial home which they both felt was uncalled for.

The Petitioner further averred that the Respondent was currently engaged to another woman and living with her in their matrimonial home. She prayed for a grant of her Divorce Petition, and custody of the children with visitation rights to the Respondent.

The Respondent averred that after their marriage, at a point things started going badly for him, and the Petitioner allowed external influences from her marriage to mar their marriage. He averred that the Respondent started to mistreat him and started a relationship with another man when he made losses from a farming venture he invested into which failed.

He told the Court that things became difficult to the extent that he was ejected from their rented room and had to perch with a friend whilst the Petitioner looked on unconcerned although she was well to do then.

The Respondent told the Court that he waited for a year and a half before 'going in for another lady' when he realised that the Petitioner had made up her mind to marry her new lover. He said that the Petitioner's lover had since then performed her knocking rites and even requests to see their children and he allows them to do so. The Petitioner again averred that one day upon his return from work, the Petitioner had packed out everything of hers, threw her wedding gown on the compound with the scattered pieces of their wedding gown which she had shredded.

He averred that he had been living with their children for the past eight years, but the Petitioner had forcibly taken them from school one day and had come claiming that that she was the one taking care of them. He agreed to the grant of the divorce petition and prayed for custody of the children.

The sole issue for consideration in this matter is whether or not the marriage has broken down beyond reconciliation.

Section 1 (1) of the Matrimonial Causes Act, 1971, declares that the sole ground for granting a divorce petition shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367, The Matrimonial Causes Act 1971 provides as follows:-

(1) That for the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the Court of one or more of the following facts:

(a) that the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) that the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce;

(e) that the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

(2) On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Notwithstanding that the court finds the existence of one or more of the facts specified in subsection (1), the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation.

Subjecting the evidence led in this matter to the test under section 2(1) of the Matrimonial Causes Act 1971, Act 367 and the foregoing facts gleaned from the petition and the trial, it has been incontrovertibly established as follows.

1. That the parties are currently estranged.
2. That the parties to the marriage have been unable to reconcile their differences.
3. That the Petitioner avers that the Respondent has committed adultery and the Respondent admits same.
4. That there has been no sexual intimacy between the parties for over eight years.

Finally, it is clear that the parties are unwilling or unable to reconcile as all attempts by family to reconcile them have failed.

From the foregoing, it is the considered opinion of this court that the marriage has broken down beyond reconciliation, the divorce petition is granted and the marriage is hereby dissolved, and the Court orders as follows.

1. The marriage celebrated between Monica Agyemang, the Petitioner herein, and Elijah Appiah-Kubi, the Respondent herein, at the Tema Municipal Assembly, on

the 21/06/2008, has broken down beyond reconciliation, the divorce Petition is granted, and the marriage is dissolved.

2. The Marriage Certificate with License number TMA/RM/1189/2008 is cancelled. Let a Divorce Certificate issue in lieu from the Court Registry.
3. Custody of the children is granted to the Petitioner, with access to the Respondent every other weekend from 9:00am in the morning till 5pm the next day ie Sunday. Parties are to share school holidays equally between them.
4. The Respondent is to cater for all the medical and educational needs of their two children, and the Petitioner is to provide for their clothing needs, feeding needs at home.
5. No further orders.

SGD

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H/W MRS. BIANCA ADWOA OSEI-SARFO (ESQ.)