

**IN THE DISTRICT COURT HELD AT WAMFIE ON MONDAY THE 31<sup>ST</sup> DAY OF  
OCTOBER, 2022. BEFORE HER WORSHIP DZIFA AZUMAH ESQ. DISTRICT  
MAGISTRATE**

**SUIT NO.A4/11/2022**

- 1. JANET YEBOAA**
- 2. NANA ADWOA FIMA**  
**(PER HER LAWFUL ATTORNEY)**

**VRS**

**OPPONG ANSU**

**JUDGMENT**

Through her lawful Attorney a petition was filed on 16<sup>th</sup> of February, 2022 for the dissolution of the marriage celebrated between the Petitioner and the Respondent on 13<sup>th</sup> March 2011 at the Christian Praise International Centre (CPIC), Wamfie in the Bono Region, wherefore the petitioner sought the following reliefs:

- (a) That the ordinance marriage celebrated between the parties on 13<sup>th</sup> March, 2011, be dissolved.
- (b) Custody of the children be given to the Respondent but the petitioner be permitted to send the children abroad whenever the opportunity avails itself in the best interest of the children.

The grandmother of the petitioner, Nana Adwoa Fima who was appointed the lawful Attorney, tendered in her Power of Attorney which appointed her as an Attorney in evidence. Same was marked as Exhibit 'A'. As the Attorney, she gave evidence through her counsel and also tendered the exhibit through same. Upon service on the Respondent of the divorce petition he filed his answer and also prayed the court to dissolve the ordinance marriage between the parties.

The main issue for the determination of this court was whether or not the marriage between the parties have broken down beyond reconciliation, and if so, to whom custody of the children will be granted.

The Matrimonial Causes Act, 1971 (Act 367) governs divorces in the country. Under section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367), a court shall not grant a petition for divorce unless the marriage is proven to have broken down beyond reconciliation. And under section 2(1) of Act 367, for the purpose of showing that the marriage has broken down beyond reconciliation, a petition for divorce shall satisfy the court of one or more of the following facts:

- (a) That the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent.
- (b) That the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

- (d) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consent, to the grant of a decree of divorce;
- (e) That the parties to the marriage have not lived as husband 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.

It has been held in a no of cases including Donkor V Donkor (1982-83) GLR 1158 that the Matrimonial Causes Act, 1971 ( Act 367), did not permit spouses married under the Marriage Ordinance, Cap 127 (1951 Rev.) to come to court and pray for the dissolution of their marriage just for the sake of asking. And that the petitioner in such a case for the dissolution of marriage must first satisfy the court of any one or more of those facts set out in section 2(1) of Act 367, not only by pleading them but also by proof for the purpose of showing that the marriage has broken down beyond reconciliation.

The court further explained that section 2(3) of the Act, provided that even if the court found the existence of one or more of those facts, it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation.

Petitioner led evidence through her Attorney in her witness statement to establish her claim that the marriage had broken down beyond reconciliation. Petitioner led evidence that the Respondent is of unreasonable behavior as he feels in secured in the marriage and unnecessarily accuses the petitioner of having committed adultery with another man in Ghana; the respondent has cut off all forms of communication with the petitioner and only communicates with the petitioner whenever he feels like.

The Respondent went to the petitioner's family to announce that he will no longer marry the petitioner again, and has persisted in his demand for divorce till date among other

forms of behavior. The respondent's conduct has caused the petitioner much anxiety, distress and psychological and emotional problems. The Respondent did not cross-examine the witness after the tendering in of her evidence in chief. There was no other witness for the petition.

The Respondent on his part agrees that the Marriage between himself and the petitioner be dissolved. In his evidence, he said there was indication that we (Petitioner and Respondent) are not interested in the marriage again and for that he Respondent was praying the court to grant them divorce.

He also prayed the court to dissolve the marriage between him the respondent and the petitioner which was contracted on 13<sup>th</sup> day of March, 2011 at Christian Praise International Centre (CPIC), Wamfie.

Following from all the evidence before the court, the court must be satisfied that the Marriage had irretrievably broken down. See

Danquah V Danquah (1979) GLR 371

Donkor V Donkor (1982-83) GLR 1158

Undoubtedly, the parties have also not cohabited as husband and wife for more than (2) two years. This is one of the grounds recognized under section 2(1) of the Matrimonial Causes Act, 1971 (Act 367) for proving that a marriage has broken down beyond reconciliation. The petitioner per her averment stated that she left Ghana since January 2017.

The court in Kotei V Kotei (1974) 2 GLR 172 stated as follows:

Once the facts are proved bringing the cases within any of the fact, set out in 2(1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words

the burden is on the petitioner to show that special grounds exist justifying the exercise of the court power's.

I will therefore grant the petitioner's prayer and pronounce a dissolution of the marriage between her and the Respondent.

This court hereby holds that the marriage Celebrated between the parties herein on 13<sup>th</sup> March 2011 be dissolved and same is dissolved.

Now, we come to the issue of custody of the children. The Respondent during cross-examination by counsel for the petitioner admitted that the children of the marriage were already with him respondent. He also admitted that the petitioner had been assisting in the maintenance of the children.

In an answer to a question whether he will have any problem with the situation where in the future the petitioner will like to take the children along to Holland where she lives, Respondent said it will not worry him at all, if the petitioner wanted to invite the children to Holland.

"Even if she wants to do so today, I am ready to give them to the petitioner. On that grounds, Custody of the children is given to the Respondent, but the petitioner will be permitted to send the children abroad whenever the opportunity avails itself in the best interest of the children.

**H/W DZIFA AZUMAH ESQ.**

**(MAGISTRATE)**