

**IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A NSAWAM ON 28TH
DAY OF JULY 2023 BEFORE HER HONOUR SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE**

SUIT NO. A4/10/22

**ELIZABETH BOATENG
C/O. FOBS LEGAL CONSULT
2ND FLOOR YEVU PLAZA
AMASAMAN**

PETITIONER

VRS

**ALEX GYAPONG
SHAI HILLS MILITARY
TRAINING SCHOOL
SHAI HILLS NEAR ACCRA**

RESPONDENT

PARTIES: PETITIONER PRESENT. RESPONDENT ABSENT BUT REPRESENTED BY
CHARLES BOAMOAHO OPOKU

COUNSEL: NASH KWAME ADJEI FOR PETITIONER ABSENT.

JUDGMENT

The Petitioner commenced the present action in this Court praying for the following reliefs:

- a. That the marriage in fact celebrated between the parties be dissolved.
- b. That the Respondent settles the Petitioner with a lump sum of Forty Thousand Ghana cedis (GH¢40,000.00 as alimony.
- c. That the Respondent pays for the cost of instituting this suit, including Petitioner's lawyer's fees.

PETITIONER'S CASE

According to Petitioner she and the respondent have been married under the ordinance since the 10th of April 2013 and the marriage did not produce any child. The Petitioner claimed that in 2019, the respondent visited her and upon seeing some text messages between the Petitioner and her colleague teacher, the Respondent became suspicious of the Petitioner and accused her of cheating. The Petitioner added that following this, the Respondent stated that he was no longer interested in the marriage and he went ahead to find himself another lady. The Petitioner mentioned that the marriage between the parties have broken down beyond reconciliation and prayed the Court to dissolve it accordingly.

RESPONDENT'S CASE

It is the Respondent case that he and the Petitioner are married under the ordinance. The Respondent continued that after a long period of absence he visited her, only to find out a series of text messages between the Respondent and another man depicting that the Petitioner had been cheating on him. The Respondent mentioned that he agrees to the dissolution of the marriage and has also agreed to settle the Petitioner with a lump sum of GH¢30,000.00 including legal fees.

In the circumstance the issue that falls for determination is:

Whether or not the marriage has broken down beyond reconciliation.

The law on dissolution of marriages is laid out in the Matrimonial Causes Act, 1971 (Act 367). Sections 1(2) and 2(1)(3) of Act 367 provides as follows:

"1(2) the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

2(1) 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 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 consents to the grant of a decree of divorce, provided that the consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal;

(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.

(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."

Per the evidence adduced at the trial, the Respondent has made an allegation of adultery against the Petitioner which allegation the Petitioner has denied. And that although the Petitioner has denied and sought to explain this to the Respondent, the Respondent is not budging. Per the evidence, the Petitioner commenced the present action because Respondent is no longer interested in the marriage and that the marriage has broken down beyond reconciliation. At paragraph 7 of Petitioner's witness statement she states as follows:

"(7). I state that the marriage between me and the Respondent has broken down beyond reconciliation and pray that the Court dissolves it and accordingly make judgment as agreed between myself and the Respondent at ADR under the auspices of the Honourable Court."

It is to be noted that, both parties waived cross-examination and so neither Petitioner nor Respondent was cross-examined on their evidence.

The position of the law is that, the Court ought to accept the evidence led by a party, where his opponent fails to lead contrary evidence or challenge same under cross-examination by deeming the evidence as having been admitted by his opponent.

In Takoradi Flour Mills vrs Samir Faris [2005-06] SCGLR 882, the Supreme Court held that:

“where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial Court.”

The Court at the commencement of the matter referred the parties to Court connected ADR as well but this was also unsuccessful; the parties failed to reconcile. It is clear that, the parties do have irreconcilable differences. Upon this finding of irreconcilable differences, I hereby hold that the marriage has broken down beyond reconciliation.

In Mensah v. Mensah [1972] 2 GLR 198, Hayfron-Benjamin J. (as he then was) held that:

“... it is therefore incumbent upon a Court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough...”

The Court is satisfied on all the evidence adduced at the trial that, the marriage has broken down beyond reconciliation. I accordingly enter judgment in favour of the Petitioner as follows.

- i. The marriage celebrated between the parties on the 10th April, 2013 is hereby dissolved.

The terms of settlement executed by the parties on the 2nd of February, 2023 for the ancillary reliefs is hereby adopted as the consent judgment of this Court as follows:

- ii. That Elizabeth wanted an alimony and legal fee of GH¢40,000.00 and GH¢5,000.00 respectively.
- iii. That both parties agree on GH¢30,000.00 for both.
- iv. That Alex agree to pay in two instalments being GH¢15,000.00 on 28th April, 2023 and the second instalment being final payment on 28th July, 2023, amount of GH¢15,000.00.
- v. That Elizabeth will move out of the barracks upon the receipt of the final payment in July ending 2023.
- vi. That both parties agree this settlement ends their dispute.

There will be no order as to cost.

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H/H SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING AS
ADDITIONAL MAGISTRATE
28/07/2023