IN THE DISTRICT MAGISTRATES COURT HELD AT NSAWAM N.A.M.A ON FRIDAY, 10TH MARCH, 2023 BEFORE HER WORSHIP SARAH NYARKOA NKANSAH MAGISTRATE

SUIT NO. A4/28/22

OTOO ASARE ------- PETITIONER
ACCRA

VRS

DINA OMANE ------- RESPONDENT
ACCRA

PARTIES: PETITIONER PRESENT, RESPONDENT ABSENT.

NO LEGAL REPRESENTATION

JUDGEMENT

The Petitioner commenced this instant divorce petition praying the Court for the following relief:

"An order for the dissolution of the ordinance marriage between Petitioner and Respondent contracted on the 5th September, 2017."

PETITIONER'S CASE

It is the Petitioner's case that, he and Respondent have been married for the past five years as part of a contract for Respondent to be able to take the Petitioner to the United States of America. Petitioner continued that, as the contract was done on the blind side of their parents and family, both Petitioner and Respondent were advised to dissolve the marriage and as such, Petitioner claims to have refunded all expenses made by the Respondent. Petitioner therefore prayed the Court to dissolve the marriage. The Petitioner closed his case thereafter.

RESPONDENT'S CASE

It is Respondent's case that, the Petitioner is seeking for a divorce due to the fact that there is no child in the marriage after five (5) years of marriage. The Respondent also maintained that, the marriage was contracted on the blind side of the families of both parties and with the sole aim of taking the Petitioner to the United States of America. The Respondent added that, the families of both parties advised that the marriage should be dissolved and that the Petitioner refunded all expenses made by the Respondent. Respondent closed her case thereafter.

In the circumstance the issue that falls for determination is:

a. ***Whether or not the marriage has broken down beyond reconciliation.***

Among others, the parties have stated childlessness, lack of parental consent and refund of monies owed as their reasons for which they desire the Court to dissolve the marriage.

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:

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

b. *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:- ...*

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

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

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

f. *(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;*

g. *(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*

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

i. *(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."*

As shown in the provision reproduced supra, there is only one ground upon which a divorce petition may be granted in our Courts; and parties ought to adduce evidence to establish facts which fall within the prescription made out under section 2 of Act 367 to show that their marriage has broken down reconciliation.

The reasons given by the parties per their evidence do not find expression within the prescription given under the applicable law. The parties have not demonstrated per their evidence that, there is unreasonable behaviour or irreconcilable differences, desertion or even adultery where one of the parties finds it intolerable. In the absence of the establishment of these facts the Court cannot proceed to conclude that, the marriage has broken down beyond reconciliation.

It is trite learning that, the consent of parents and family members is not a requirement for contracting an ordinance marriage under our laws. Even in customary law marriages where a valid marriage may be secured for parties with the consent of parents, parental consent has been described in such instances to only have the effect of ratification. Dr. Kofi Oti Adinkra in his Article Essentials of a ***Customary Law Marriage: A New Approach 1980 VOL XII RGL 40-52*** stated inter alia that

"family consent is a mere ratification of the agreement between a man and a woman to live as husband and wife. It is desirable but it is not a condition precedent to the creation of a valid customary law marriage"

If this is the case with customary law marriage, then what more with a marriage under the ordinance; which is the type of marriage contracted by the parties in the present case. So, for the parties to mention lack of parental consent as a reason for which they want this marriage to be dissolved is a complete non-starter in my opinion.

What is even more interesting is that, even where the prescribed facts have been established by evidence, a Court can still refuse the grant of a Petition if it is not satisfied that the marriage has broken down beyond reconciliation.

In the present case there is no evidence on record to show that, any attempts at reconciliation were made. In order to grant a divorce petition, attempts at reconciliation should have at least failed prior. Without attempting to reconcile, how can the Court satisfy itself that, the marriage has indeed broken down beyond reconciliation. The marriage may have broken down but perhaps not beyond reconciliation.

The Matrimonial Causes Act, 1971 (Act 367). Section 2(2) provides that:

"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."

In ***Mensah v. Mensah [1972] 2 GLR 198***, the Court 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…".

I have considered the whole of the evidence adduced at the trial and I am not satisfied that the marriage has broken down beyond reconciliation. I accordingly dismiss the petition in its entirety. There shall be no order as to cost.

……………….…………………………………..

H/W SARAH NYARKOA NKANSAH
MAGISTRATE
10/03/2023