

**IN THE DISTRICT COURT '1' CAPE COAST**  
**BEFORE HER HONOR VERONIQUE PRABA TETTEH, ESQ**  
**SITTING ON THURSDAY 13<sup>TH</sup> OF JULY, 2023 AS AN ADDITIONAL**  
**MAGISTRATE.**

**SUIT NO: A4/26/2023**

**BEATRICE JENNIFER ARTHUR** - **PETITIONER**  
**OF CAPE COAST**

**VRS**

**FRANK TAKYI TUFFOUR** - **RESPONDENT**  
**OF CAPE COAST**

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Parties Present

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**JUDGEMENT**

The matrimonial causes Act, is an act that provides for matrimonial causes and other matters connected with it. Section 1 is emphatic that the sole ground for granting a petition for divorce must be because the marriage has broken down beyond reconciliation. The Act further provides the factors for proving the breakdown of the marriage.

Section 2 (1) (a) and (d) are the factors of proof relevant to this case. They provide as follows:-

***2. Proof of breakdown of marriage***

*(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.*

*(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.*

This petition instituted by the petitioner was filed on the 30<sup>th</sup> of September 2022 and she seeks the following reliefs:

- a. An order for divorce
- b. Any order fit to make under the circumstances.

The respondent filed his answer to the petition on the 19<sup>th</sup> of October 2022. In the last paragraph of his answer the respondent stated the following

*16. that the marriage has not broken down and should not be dissolved. However, should the marriage be dissolved according to the wishes of the petitioner, the respondent should continue to have custody of the children with access to the petitioner.*

In summary, the only other relief sought by the respondent was for custody of the children who are already in his possession but with an order for reasonable access to the petitioner.

Both parties testified in support of their case. Their testimonies were a repeat of their pleadings. For the plaintiff she alleged that while the parties lived together, the respondent had committed adultery with another woman. When she was cross examined on this fact, she maintained her allegation and stated that the respondent had even confessed it to her. This was all denied by respondent in his answer and during the cross examination. The petitioner also stated that the parties had not lived together as husband and wife for the past 3 years and that no sexual intimacy had occurred between them during that period.

While the respondent did not deny that the parties had not lived together as husband and wife, he denied committing adultery with another woman and rather pointed fingers at the petitioner as the one who had committed adultery. He also narrated several instances where the petitioner had committed adultery or he suspected her of committing adultery. His evidence also revealed that attempts to reconcile the parties had failed because the petitioner and her family members refused to participate in the reconciliation attempt.

Sections 2(2) and (3) of Act 367 provides that:

*(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.*

*(3) Although 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.*

Having carefully considered the facts alleged by the parties, I am satisfied that the marriage has broken down beyond reconciliation. This is due to the fact that the parties particularly the petitioner has shown little interest in the reconciliation attempts made by the respondent. I also find that the parties have not lived together as husband and

wife for the 2 years immediately preceding the presentation of this petition. I will therefore grant the dissolution of the marriage celebrated between the parties on the 13<sup>th</sup> of September 2013 at the Wesley Methodist Church Cape Coast.

Since the respondent has custody of the children and petitioner did not dispute his continuous custody, the respondent is granted custody of the two children of the marriage. The petitioner is to have access to the children, including spending weekends, vacations and holidays with her.

SGD

**H/H VERONIQUE PRABA TETTEH, ESQ**

**(CIRCUIT COURT JUDGE)**