

IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 13TH DAY OF JUNE, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE

SUIT NO. G/WJ/DG/A4/51/2023

YVONNE AKOSUA YEBOAH

PETITIONER

VRS

EBENEZER MENSAH ONUMAH

RESPONDENT

PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

BRIEF FACTS

The petitioner, a petty trader and respondent, a consultant with Janu Ghana Limited, both Ghanaians were legally married under the ordinance (CAP 127) on 10th September 2011 at the Alive Chapel at Tesano in Accra. After the marriage, parties cohabited at Banana Inn and then to McCarthy Hill and finally at Dansoman all in Accra. Parties have one child between them.

The Petitioner filed a petition at the registry of this court on 27th January 2023 and prayed for the dissolution of the parties' marriage on the ground that same has broken down beyond reconciliation due to the fact that parties have not lived together as man and wife since the year 2015 due to the irreconcilable differences of the parties.

The Respondent filed an answer to the petition on 24th February 2023 and denied the claims of the petitioner. He cross petitioned for the dissolution of the parties' marriage.

On 28th of March 2023, parties were referred to the CCADR for a possible reconciliation. Parties were unable to reconcile but instead filed terms of agreement with regard to custody and maintenance of the only issue of the marriage.

The court therefore set down the issue of whether or not the marriage between the parties has broken beyond reconciliation for determination,

THE CASE OF THE PETITIONER

The Petitioner averred that the marriage between the parties has broken down beyond reconciliation due to the fact that parties have not lived together as man and wife for the past seven years.

According to the petitioner, she was compelled to move out of the matrimonial home due to the hardship she was going through during the pendency of the marriage. She however failed to particularise the alleged hardship.

She added that parties had irreconcilable differences throughout the pendency of the marriage and as a result after all attempts at reconciliation proved futile, the families of the parties met and dissolved the marriage customarily in the year 2015 and since then parties have lived separate lives.

In support of her case, she tendered the marriage certificate with licence number G.72117 as proof of the existence of the marriage between the parties.

THE CASE OF THE RESPONDENT

Respondent admits that the parties' marriage has broken down beyond reconciliation. He did not explain why the marriage has broken down in his own estimation.

According to him, he is solely responsible for paying the school and feeding fees of the only issue of the marriage even though petitioner works in the Risk Department of leshego at their Airport Branch and earns lucrative salary.

BURDEN OF PROOF

It is trite that sections 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

THE COURT'S ANALYSIS AND OPINION

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains 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 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 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
- (f) That the parties after a diligent effort been unable to reconcile their differences.

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that 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.

In **GILBERT ANYETEI V SUSSANA ANYETEI, CA/J4/67/2021 DATED 2/3/2023**, Pwamang JSC held as follows;

“The law is that the only ground on which a court would order the dissolution of a marriage is that the marriage has broken down beyond reconciliation particulars of which are required to be specifically pleaded and proved by evidence adduced in court. It is therefore not sufficient for a judge to grant a divorce just because both parties endorsed that relief on their pleadings.”

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the fact that parties have not lived as husband and wife for seven years.

At page 313 of the book “**The Law on Family Relations in Ghana**” by **William Cornelius Ekow Daniels**, the learned author stated as follows;

“The fifth fact which can be proved to establish breakdown of a marriage in accordance with section 1(2) (e) of the Act is “that 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”. The fact will have to be proved by satisfying the court that the parties have not lived as husband and wife for a continuous period of at least five years. The court should not concern itself with the question who was responsible for the separation. There is no need for the court to attribute blame.”

Respondent declined the invitation to cross examine the petitioner on her assertions and also refused to testify as he insisted that he has already given his consent for the dissolution of the marriage and will therefore not contest same.

I find however from the pleadings and evidence that, respondent has not denied the assertion of the petitioner that the families of both parties dissolved the customary law marriage in 2015. He also did not deny petitioner’s assertion that following the dissolution of the customary law marriage parties have continuously lived physically apart and have ceased to recognise the marriage as subsisting for the past seven years.

From the totality of the evidence therefore, I find that the marriage between the parties has indeed broken down beyond reconciliation by reason of the fact that the parties have not lived as husband and wife since 2015.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Yvonne Akosua Yeboah and Ebenezer Mensah Onumah celebrated at the Olive Chapel International at Accra on 10th September 2011 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

The Terms of Agreement between the parties dated 5th April 2023 is adopted as consent judgment and made a part of the final judgment of this court.

I make no order as to costs.

.....

H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE