

**CORAM: HER WORSHIP NANA ABENA ASOH OWUSU-OMENYO (MS.),  
MAGISTRATE, DISTRICT COURT '1', KANESHIE, SITTING AT THE FORMER  
STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR  
WORKERS' COLLEGE, ACCRA ON 23<sup>RD</sup> JUNE 2023**

**SUIT NO: A8/146/23**

**PRISCILLA DARKOWAH** } **PETITIONER**

**VRS.**

**SAMUEL YOBO** } **RESPONDENT**

**PETITIONER**

RESPONDENT

## JUDGMENT

## INTRODUCTION

The petitioner has brought the instant suit for a dissolution of her marriage to the respondent celebrated at the Christ the King Methodist Church Koforidua, on the 29th June 2013. The parties have no issue.

## CASE OF THE PETITIONER

It is the case of the petitioner that the respondent has behaved unreasonably towards her. She particularizes the unreasonable behaviour as they having never shared any peace, love or affection associated with marriage since their union.

She also says that they have lived apart for the past eight years because they are incompatible and are unable to share a common boundary. Further, the respondent was having extra marital relations with another woman and when she complained the respondent fought her. That he currently lives with the said woman with whom he has a child. Finally, the customary drinks were returned to the family in January 2019 to dissolve the marriage.

### **CASE OF THE RESPONDENT**

Respondent in his response indicated that, after the marriage the parties lived together at Amasaman until he came back from work one day and realized the petitioner had packed out of the matrimonial home. That all efforts to have her move back home have proved futile. In addition to this, the petitioner was very rude and disrespectful towards him.

### **ISSUES**

1. The only issue for determination is whether or not the marriage between the parties has broken down beyond reconciliation.

### **LAW**

In order to consider whether this petition merits a decree of divorce, I am obliged to look at the legal provisions on divorce in the *Matrimonial Causes Act, 197, (ACT 367)*. **Section 1(2) of (ACT 367)** states *"The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation."*

In order to establish if indeed her marriage has broken down beyond reconciliation, the petitioner must establish any of the grounds set out in **Section 2(1) of (ACT 367)**: the provision reads:

*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 such adultery the petitioner finds it intolerable to live with the respondent; or*
- b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or*
- c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or*
- d) that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or*
- e) that the parties to the marriage have not lived as man 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.*

A reading of the pleading of the parties shows that they seized living together as husband and wife a while ago. That there must have been a fundamental issue that affected their marriage to get them to that point. One thing both of them agree to is the fact that after diligent effort from their families there were unable to reconcile their differences.

I ask myself what this fundamental matter is, and I conjecture it may stem from the allegations of infidelity leveled against the respondent by the petitioner. The petitioner

in paragraphs 7 and 11 of her witness statement paints a picture of a cheating spouse who currently lives with his concubine and has a child by her. The respondent however during the trial did not cross examine the petitioner to debunk the allegations. The law as established in the case of *Quagraine v Adams 1981 GLR 599*, is *that if a witness testifies and the opponent consciously fails or refuses to cross examine him, the court may consider the evidence as admitted by the opponent*". See also *Essential of the Law of Evidence @ page 171 by Justice S.A Brobbey*. The respondent did not make an attempt at denying the allegations of adultery nor did he deny the fact that he had a child with another woman.

I am therefore of the firm opinion that the respondent indeed has committed adultery. The evidence of both parties clearly indicates that their marriage has been on the rocks and these proceedings were only a matter of time. Seeing as the customary drinks had been returned to the family of the respondent it is clear that there is no going back for the petitioner.

Having established that the respondent had committed adultery, and they have not lived as husband and wife for at least eight years and also that after diligent effort they were unable to reconcile their differences, I find in accordance with the law that the marriage between the parties has broken down beyond reconciliation.

**FINAL ORDERS:**

1. That the marriage between the parties celebrated on the 29th June 2013 at the Christ the King Methodist Church Koforidua has broken down beyond reconciliation and is hereby declared dissolved.
2. There is no order as to cost.

**NANA A. A. OWUSU-OMENYO (MS.)**

**(MAGISTRATE)**

