

IN THE DISTRICT COURT HELD AT NKROFUL ON FRIDAY 17TH DAY OF NOVEMBER 2023, BEFORE HER WORSHIP AWO AMISSAH FRENCH ESQ. AS MAGISTRATE

SUIT NO. A4/11/22

MRS. FATIMATA MOHAMMED PETITIONER

VS.

MR. GODFRED ARMOO RESPONDENT

Petitioner present

Respondent present

Parties self-represented

J U D G M E N T

The Petitioner, a teacher by profession, filed a petition in this Court on the 1st day of March, 2023, praying the Court to dissolve the Ordinance Marriage celebrated between Petitioner and the Respondent on the 10th day of October, 2020, praying that the Court

- a. Dissolves the marriage; and
- b. Grants Petitioner custody of the only child of the marriage by name Susanna Armoo aged 2 years.

The Petitioner's case is briefly that she has been married to the Respondent for the past three years which marriage was blessed with one child by name Susanna Armoo aged 2 years. Petitioner avers that after the marriage ceremony, she lived together with the Respondent in the house rented and furnished by Petitioner. Petitioner further avers Respondent deserted their matrimonial home but later returned, and that the Petitioner

accepted him back expecting Respondent will change his attitude but to no avail. Petitioner further avers that Respondent did not disclose to Petitioner that he had a total of seven other children outside wedlock prior to marrying Petitioner but lied to her that he had only three children outside wedlock. Petitioner further averred that Respondent is adulterous and fails to maintain their daughter and household. Petitioner further avers that Respondent at any given opportunity harasses and insults her and has behaved in such an unacceptable, unbearable and unreasonable manner, forcing her to desert the marital home.

The Respondent for his part denied all of Petitioner's averments and averred that it is rather the Petitioner's conduct which has resulted in Respondent losing trust in her and the marriage. Respondent admitted that the marriage should be dissolved.

In proof of the existence of a marriage under the Ordinance, the Petitioner tendered in evidence a marriage certificate, that was issued to the parties on the 10th day of October, 2020 by the Ellembele District Assembly. *This marriage certificate was admitted into evidence and marked as Exhibit A.*

Now section 22 of the Matrimonial Causes Act, 1971 (Act 367) states;

"22. (1) In all proceedings under this Act, it shall be the duty of the Court to inquire whether there are any children of the household.

(2) The Court may, either on its own initiative or on application by a party to any proceedings under this Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.

(3) Without prejudice to the generality of subsection (2), an order under that section may—

(a) award custody of the child to any person;

(b) regulate the right of access of any person to the child;

(c) provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage.”

From the evidence on the record, parties were blessed with one child by name Susanna Armoo (2 years). Guided by the outcome of a social enquiry conducted on both parties, I thus order as follows:

1. **Custody**

Custody of the child of the marriage by name Susanna Armoo is hereby granted to the Petitioner. I hereby grant reasonable access to the Respondent on weekends within which period parties are to accord each other with the needed respect. The child/issue is not to be taken outside the jurisdiction except with the consent and concurrence of the other party, and with the approval of the Court.

2. **Monthly Maintenance:**

An amount of **Four Hundred Ghana Cedis (GH¢ 400)** only per month is to be paid by the Respondent to the Petitioner for the child/issue to cater for her upkeep. This said amount shall be maintained till such time that a party applies for a variation of same.

3. **Educational Arrangements:**

The Respondent shall bear the cost for all educational needs of the child/issue with the exception of feeding and transportation expenses which shall be borne by the Petitioner.

4. **Clothing Needs:**

The Petitioner shall bear the cost of the ordinary day-to-day clothing needs of the child, while the Respondent caters for the festive clothing needs of the child.

5. Medical Health Arrangements:

The Petitioner shall ensure that the National Health Insurance card of the child/issue is renewed when due. In the event that the child/issue has any health condition which is not covered by the National Health Insurance Scheme, the Petitioner shall ensure that the child/issue receives the best of medical care and the payment in full of such medical service rendered shall be made by the Respondent.

Now having concluded with custody and maintenance arrangements of the sole child of the marriage, the only issue for determination therefore is whether or not the parties' marriage has broken down beyond reconciliation?

Now, Section 2(2) of the Matrimonial Causes Act, 1971 (Act 367) 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." The Court is thus required to establish from the evidence whether the facts support the claim by the Petitioner that the marriage has broken down beyond reconciliation.

The Court's duty therefore is to critically consider the facts in evidence and determine whether or not the marriage has broken down beyond reconciliation.

Section 2 of the Matrimonial Causes Act, 1971 (Act 367) states as follows;

"(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 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”.*

The Court has to therefore analyze the evidence on record to find out if any one or more of the facts in *Section 2 of Act 367* is made out in order to establish that the parties' marriage has in fact broken down beyond reconciliation.

From the evidence on the record, it is evident that both parties had, prior to the petition, been separated and were living apart. In any case Respondent did not object to Petitioner's prayers for dissolution of the marriage. There leaves no point to therefore belabour, seeing that the horse of love has already bolted; also noting that the customary

marriage has since been dissolved about a year ago. Parties are simply unable to reconcile their differences.

Thus from the evidence on the record, I find and hold that paragraph (f) of subsection (1) of section 2 of Act 367 has been satisfied. Thus I therefore hold that since paragraph (f) of subsection (1) of section 2 of Act 367 has been established, the marriage has indeed broken down beyond reconciliation.

Accordingly, the marriage certificate (Exhibit A) is cancelled forthwith and a Divorce Certificate is to be issued to each party.

No Orders made as to costs and no Orders made for monetary compensation for the Petitioner as Petitioner made no such claims per her endorsement on the Divorce Petition.

**SGD
H/W: AWO AMISSAH FRENCH
DISTRICT MAGISTRATE, NKROFUL
7TH NOVEMBER, 2023**