

IN THE CIRCUIT COURT ASHAIMAN HELD ON THE 17<sup>TH</sup> DAY OF NOVEMBER,  
2023 BEFORE HIS HONOUR SIMON NKETIAH GAGA, CIRCUIT COURT JUDGE

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SUIT NO. C5/10/2023

ELLEN ADOMA OSEI  
H/NO. TDC 1, NEW QUARTERS  
ASHAIMAN

PETITIONER

VRS

ALFRED ADU MENSAH  
H/NO. E11 AKPLEHE LK  
ZENU ASHAIMAN

RESPONDENT

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J U D G E M E N T

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On 6<sup>th</sup> February, 2023 the Petitioner herein filed this Petition against the respondent for the following reliefs

- (a) Dissolution of their ordinance marriage.
- (b) Petitioner to be granted custody of their children with reasonable access to the respondent.
- (c) Respondent to maintain the children including but not limited to the payment of school fees and medical bills as and when it falls due.

PETITIONER'S CASE

The Petitioner in her evidence in chief averred that she married to the respondent under the marriage Ordinance (Cap 127) at the Royal House Chapel International Tema Central on the 20<sup>th</sup> December, 2014 she tendered the marriage certificate in evidence as Exhibit A.

That after the marriage they co-habited at Ashaiman. There are three issues from the marriage namely KENDRICK ADU MENSAH -8 YEARS OHENEBA KWAME ADJABENG MENSAH- 6 YEARS AND ALFRED ADU MENSAH JUNIOR 4 YEARS

The petitioner is a trader while the respondent is a Freight Forwarder. After the celebration of the marriage they lived a normal and blissful marriage until the respondent started communicating with his former girlfriend.

The petitioner challenged the respondent of his continuous communication with that said lady. However, the respondent did not mine her. This led to several quarrels between them. The petitioner lost trust in the respondent and the marriage. So she told the respondent of her desire for the dissolution of their ordinance marriage.

Their respective families met and advised that the petitioner should separate from the respondent a while to facilitate their reconciliation.

After they lived separately for about a year, the petitioner made her mind that both of them should live his or her separate life and inform her family of that decision. As a result, about two years ago, the families met and dissolved the customary marriage.

Even though the ordinance marriage is still subsisting, the respondent is in the adulterous relationship with a certain woman and currently they are living together. She therefore prays the court to grant her reliefs as endorsed on the Petition.

The petitioner called only one witness to corroborate her evidence.

### **RESPONDENT'S CASE**

The respondent in his evidence before the court admitted married to the petitioner under the ordinance marriage. That they have three issues from the marriage.

According to the respondent, the petitioner does not respect him and has been provocation him at the least. That she is quarrelsome and about two years ago, the customary marriage was dissolved. He therefore prayed the court to grant the divorce.

## TERMS OF SETTLEMENT

Counsel for the respondent informed the court that the parties have settled the ancillary reliefs which was filed on 17<sup>th</sup> March, 2023. She prayed the court to adopt same. The parties agreed to the terms of settlement as stated by counsel.

## EVALUATION

The parties have virtually settled the issue of the ancillary reliefs and have come to the conclusion that their marriage be dissolved.

Section 2(2) and (3) of the Matrimonial Causes Act, 367, of 1971 states as follows:

“On a petition for divorce it shall be the duty of the court to inquire so far as is reasonable, into the facts at least by the petitioner and the respondent”

Section 2 (3) states as follows

“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”

This accounts for the reason why though, the parties have agreed to the dissolution, the court took evidence to that effect.

To grant divorce, the court should be satisfied that one or more of the facts stated in section 2 (1) (a) to (f) of the MCA exist. These are Adultery, Desertion, unreasonable behavior, and that the marriage has broken down beyond reconciliation.

In the instant action, the families of both the petitioner and the respondent have not been able to bring the parties together as husband and wife. The parties accused each other of unreasonable behavior.

Joseph Laryea Annan, Uncle of the petitioner who testified as PW1 corroborated the evidence of Petitioner, that the respondent has been behaving unreasonable towards the petitioner, and was living an adulterous life.

All these evidence point to the fact that the court could decree the dissolution. However, this pronouncement by the court is a discretion given to the court

**See Kotey vrs Kotey (1974) IGLR 172**

From the evidence on record, perhaps due to the fact that they have settled on the ancillary reliefs, they did not want to open fresh wound so they did not cross examine themselves. However, both have come to the conclusion that they cannot live together as husband and wife.

Having dealt with ancillary reliefs by reason of the fact that the parties have not been living together for some time now and upon the unreasonable behavior of both parties, the marriage has broken down beyond reconciliation.

It can be inferred from both parties that they are no longer interested in the marriage.

On the fact on adultery in my opinion because the parties have agreed that they can no longer live as husband and wife, did not lead any evidence to prove same apart from repeating it in her evidence.

I therefore decree the said ordinance marriage entered into on the 24<sup>th</sup> December, 2014 with certificate number **RCI/TC/020/14** as dissolved. The parties can go their separate ways as bachelor and spinster.

The court has endorsed with the exception of point one (i) what the parties agreed on and filed same at this court as terms of settlement which states as follows

1. The marriage between the parties be dissolved.
2. That the petitioner be granted custody of the issues of the marriage with reasonable access to the respondent.

3. That the respondent shall pay to the additional One Thousand Ghana Cedis (GH¢1,000.00) every month for the maintenance of the three issues.
4. The respondent shall pay for school fees and medical bills of the children as and when they are due.

H/H SIMON NKETIAH GAGA  
CIRCUIT COURT JUDGE

Parties present.