

GHANA / JUDGMENT

OSEI VRS ADONTENG (C5/268/2023) [2024] GHACC 153 (1 March 2024)

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IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 1ST MARCH 2024, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS), CIRCUIT COURT JUDGE SUIT NO: C5/268/2023 ELIZABETH OSEI DANSOMAN PETITIONER VRS WILLIAM ADONTENG CAMARA- ACCRA RESPONDENT

JUDGEMENT

Petitioner herein caused the instant petition to be issued against the Respondent herein on the 3/5/2023. Per the petition, Parties herein got married under the Marriage Ordinance (Cap 127) on the 8th of March 2014 at the Kingdom Gospel Ambassadors Chapel, Accra. Thereafter, parties cohabited in Accra within the jurisdiction of the court. Petitioner contends that the marriage celebrated between parties have broken down beyond reconciliation. According to her, Respondent has been insulting her that she is barren and should find a new husband and has been engaged in immoral affairs outside the marriage through which he has fathered a 1 child. she avers that she had no alternative than to leave the matrimonial home. Petitioner contended that Respondent is now virtually living with the new woman in the matrimonial home. she therefore prays the court for a singular relief ie that the marriage be dissolved. ; Respondent in his answer to the petition agreed that the marriage between the parties has broken down beyond reconciliation but denied the allegations of adultery and unreasonable behaviour leveled against him by the Petitioner. According to him he has never insulted Petitioner that she is barren. In respect of the allegation of having fathered a child through immoral affairs, he contend that he fathered that child before the marriage. Respondent averred further that Petitioner left the matrimonial home sometime in 2021 to visit her brother at Sakumono and upon her return she packed all her belongings out of the house to a place unknown to him till date. Respondent averred further that attempts by their families to reconcile them had proved futile. He therefore consented to the dissolution of the marriage. Marriage is a sacred institution that is zealously guarded by the courts. In Ghana, an ordinance marriage may only be dissolved by a court and that also after it has been established by cogent evidence that the marriage has broken down beyond reconciliation. (See section 1(2) of the Matrimonial Causes Act, 1971 Act 367). has broken down beyond reconciliation. Section 2(1) of Act 367 requires that a petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down

beyond reconciliation. Petitioner's ground for seeking the dissolution of his marriage to Respondent is based on unreasonable behaviour. Section 2(1)(b) of Act 367 provides that where the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent same suffice as proof of the break down of the marriage beyond reconciliation. Parties relied on their witness statements filed on 17/01/2024 and 19/01/2024 establishing that their marriage has broken down beyond reconciliation. Petitioner testified that after 6 years of marriage, Respondent had a child with another woman and has since then behaved unreasonably towards her without any provocation. She stated further that Respondent began calling her barren sometimes in public and finally asked her to marry anyone of her choice. She therefore had no alternative than to leave the matrimonial home since 2021. She however contended that for the past 8 years parties have lived separately Respondent in his evidence denied calling Petitioner barren. According to him he had been committed to saving the marriage and has engaged the sister Dora and her aunt to assist in reconciliation but Petitioner has continuously failed or refused to appear for reconciliation. He contended further that he had been providing sufficiently for the maintenance of Petitioner in terms of accommodation, upkeep money among others but Petitioner stopped performing her matrimonial activities like purchasing of items for their domestic usage as couple, withdrawal of sexual intimacy among other. He confirmed that in 2021, Petitioner left the matrimonial home on her own volition under the pretext of visiting her sick brother and had since not returned save to pack her belongings out of the matrimonial home. He stated that till date he does not know where Petitioner is staying and she has refused to disclose same to him as well. Respondent further testified that their respective families met and asked Petitioner three times whether she wanted to continue the marriage and she answered in the negative. Respondent therefore admitted in his testimony that the marriage between the parties 3 herein has broken down beyond reconciliation. What constitutes the fact of Unreasonable behavior under section 2(1)(b) of Act 367 has been discussed in the case of *Mensah v Mensah* [1972] 2 GLR

198. The court held per Hayfron-Benjamin that “in determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behavior including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter. The test is objective”. Also in the case of *Knudsen v Knudsen* [1976] 1GLR 204, Amissah JA stated that “the question therefore is whether the Petitioner established that the Respondent behaved in such a way that he could not reasonably be expected to live with her. Behaviour of a party, which would lead to this conclusion, would range over a wide variety of acts. It may consist of one act if of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.” On oath and in his pleadings, Respondent challenge Petitioner's alleged unreasonable acts. It was therefore not sufficient as held per the principle in *Zabrama v Segbedzi* supra for Petitioner to merely repeat his denied averment. The evidence

of Petitioner on record does not satisfactorily prove as a fact the alleged unreasonable behaviour of Respondent on the preponderance of probability. From the evidence of both parties supra however, it is evident that parties are unable to reconcile their differences despite diligent effort. They have since 4 2021 not lived together as husband and wife with the whereabouts of Petitioner unknown to the Respondent. Several attempts at reconciliation by their families have proved futile. Both parties agree that the marriage celebrated between them has broken down beyond reconciliation. All these evidence satisfy the court that parties after diligent efforts are unable to reconcile their differences. Under section 2 (1f) of Act 367, where the parties to the marriage have, after diligent effort, been unable to reconcile their differences, same is proof that the marriage has broken down beyond reconciliation. The marriage celebrated between the parties on 8th of March, 2014 at Kingdom Gospel Ambassadors Chapel Accra has broken down beyond reconciliation as claimed by Petitioner and confirmed by Respondent The court therefore is satisfied per the evidence on record that the marriage between parties herein has broken down beyond reconciliation due to parties inability to reconcile their differences after diligent efforts. The court accordingly hereby decrees the said marriage celebrated between parties herein on 8th of March 2014 at Kingdom Gospel Chapel Ambassadors Chapel Accra be and same dissolved today, the 1st day of March, 2024 forthwith. There shall be no order as to cost.

PARTIES ORESENT MR SAMUEL OFORI FOR PETITIONER PRESENT 5 MR SETH ANIM ANNOR H/B OF SIRIPI KAITOO FOR REPSONDENT PRESENT (MRS) CIRCUIT COURT JUDGE

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