

IN THE CIRCUIT COURT 3 HELD AT ACCRA ON FRIDAY THE 20<sup>TH</sup> DAY OF  
JANUARY, 2023 A. D. BEFORE HER HONOUR SUSANA EDUFUL (MRS.),  
CIRCUIT COURT JUDGE

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SUIT NO. C5/363/2022

EDWARD OPARE DONKOR

PETITIONER

VS.

QUEENIA BANSON MIEZAN

RESPONDENT

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PETITIONER PRESENT AND REPRESENTED; RESPONDENT ABSENT

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**JUDGMENT**

The Petitioner filed the petition on July 28, 2022. The Parties to this suit got married under the Marriage Ordinance (cap 127) on September 24, 2012 at the Accra Metropolitan Assembly. The parties have no child of the said marriage, however the Petitioner has 3 children whereas the Respondent has 2 children from their previous marriages and prior to the parties coming together as husband and wife. The Petitioner is seeking the annulment of the of the marriage on the grounds that the Parties to the marriage have consummated

### **Section 13—Nullity.**

(1) Any person may present a petition to the court for a decree annulling his marriage on the ground that it is by law void or voidable (in this Act referred to as "a decree of nullity").

(2) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall, subject to subsection (3), be voidable on the ground—

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or

(b) that at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or

(c) that the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(d) that the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.

(3) The court shall not grant a decree of nullity in a case falling within paragraphs (b), (c) or (d) of subsection (2) unless it is satisfied that—

(a) the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and

(b) proceedings were instituted within a year from the date of the marriage; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.

(4) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

#### **Section 9—Restriction on Petitions Within Two Years of Marriage.**

(1) Subject to subsection (2), no petition for divorce shall be presented to the court within two years from the date of the marriage.

(2) The court may, on application, allow the presentation of a petition for divorce within two years from the date of the marriage on the ground of substantial hardship suffered by the petitioner or depravity on the part of the respondent.

(3) In determining the application under subsection (2) the court shall have regard to the interest of any child of the household and to the question whether there is a reasonable possibility of reconciliation between the parties.

(4) If it appears to the court that leave under subsection (2) was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of two years from the date of that marriage upon the same, or substantially the same, facts as those proved in support of the dismissed petition.

Order 65 rule 2 of the C.I 47 High Court Civil Procedure rules

All proceedings for divorce, nullity, presumption of death and dissolution of Marriage, maintenance orders and child custody orders under the Act, shall commence by petition.

live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition.

The Petitioner prayed to the Court that the marriage celebrated between the parties be dissolved.

**Section 2(1) of Act 367** stipulates the facts which a petitioner or a cross-petitioner may rely on to prove that the marriage which is sought to be dissolved has broken down beyond reconciliation are as follows;

- a. That the Respondent has committed adultery and by the 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 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 live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f. That the parties have after diligent effort been unable to reconcile their differences.

The Petitioner was therefore called upon to prove her claim. Petitioner filed her witness statement on May 14, 2021 and relied on it as her evidence to the court.

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under **section 2(1)(e) of the Matrimonial Causes Act, 1971 (Act 367)** “That the

Parties to the marriage have not live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition”

At the close of the trial, the legal issue that fell for determination by the court was;

**Whether or not the marriage celebrated between parties on November 24, 2012 at the Accra Metropolitan Assembly has broken down beyond reconciliation.**

The Petitioner tendered in evidence Exhibit A which of the Marriage Certificate to prove that she was indeed married to the Respondent. According to the Petitioner their marriage was blessed with one child named Wisdom Okafor aged Seven (7). Petitioner further stated that after their Marriage they co-habited at Dansoman Accra. However, after two years the Respondent lived alone in the matrimonial home. The Respondent travels to Nigeria being a Nigerian and would not return for a long time without any tangible explanation, and will occasionally call to inquire about his son. The Petitioner also stated that for the past 5 years the parties have not lived as husband and wife. The Petitioner prayed the court to dissolve the Marriage as several attempts at reconciliation proved futile.

The Petitioner did not call any witness.

The Respondent confirmed in his evidence to the court that he was indeed happily married to the Petitioner until the Respondent found out that he was already married customarily. Thereafter the Petitioner began to nag and make life uncomfortable. The Respondent subsequently deserted the matrimonial home. Respondent told the court that he has given his consent to the dissolution and prayed that their marriage is dissolved and the terms of settlement, adopted by the court as consent judgment.

The Respondent also did not call any witness.

After taking the evidence of the Petitioner as a whole, The Court is of the opinion that the parties have been able to prove to the satisfaction of the court the grounds under **section 2(1)(e) of the Matrimonial Causes Act, 1971 (Act 367)**. "That the Parties to the marriage have not live as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition". The evidence given by both parties show that the parties have not lived as husband and wife for the past 5 years and that the parties have after diligent effort been unable to reconcile their differences.

The Court therefore finds that the marriage celebrated between the parties herein has broken down beyond reconciliation and same is dissolved.

## **DECISION**

1. The marriage celebrated between the Petitioner herein, Edward Opare-Donkor and the Respondent herein Queen Banson Meizan on September 24, 2021 at the Accra Metropolitan Assembly hereby declared by this court a nullity. The marriage certificate with registration No.1502/MC/2021 is hereby cancelled.
2. The court makes no order as to cost.

## **LEGAL REPRESENTATION**

**BENEDICTOR MAWUSI FIANOO FOR THE PETITIONER**

**H/H SUSANA EDUFUL (MRS.)  
(CIRCUIT JUDGE)**