

IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON FRIDAY
THE 22ND DAY OF DECEMBER, 2023 BEFORE HIS HONOUR SIMON NKETIAH
GAGA CIRCUIT COURT JUDGE

SUIT NO: C5/03/19

AKOFA AKU KPE
H/NO. U26
TEMA

PETITIONER

VRS:

HENRY NHYIRA BART-PLANGE
TEMA

RESPONDENT

J U D G M E N T:

On the 28th day of August, 2018 the petitioner herein filed this petition against the respondent for the following relief:

“The Dissolution of their marriage celebrated under the Ordinance”

After serving the petition on the respondent on the 31st August, 2018, the petitioner abandoned the petition and went to sleep.

NOTICE OF INTENTION TO PROCEED

On the 9th day of August, 2023 the respondent filed notice of intention to proceed which was served on the petitioner. I believe the respondent came under order 37 Rule three (3) of CI47 which states as follows:

“Where six months have elapsed since the last step taken in any case or matter, the party who wishes to proceed shall give to every other party not less than twenty-eight-day notice of intention to proceed.

Sequel to this, the respondent filed a response to the petition and filed a Cross-petition. The petition was set down for trial.

The parties were ordered to file disclosures.

On 21st August, 2023, the petitioner filed a notice of consent to this court praying the court to grant the divorce.

The court ordered the respondent to serve a hearing notice on the petitioner. Same was served on the petitioner but she failed to attend court.

It is to be noted that part of the hearing notice reads as follows:

“...If when the case is called you do not appear and answer the court will proceed to hear the case without you.”

Relying on this principle, the court ordered the respondent to mount the witness box to prove his cross-petition.

EVIDENT OF THE RESPONDENT

The respondent in his Evidence in Chief before the court said that he married to the petitioner under the Ewe Customary Law which was later converted into the Ordinance marriage at the Light House Chapel International, Community 8 on the 14th of February, 2010. He attached a copy of an extract of the marriage certificate in evidence as Exhibit “I”.

According to the respondent after the marriage, they variously lived at VALCO Flat, Community 12 and later moved to Community 8, Tema. That they do not have any issue.

According to the respondent, the petitioner in 2017 travelled to Germany on a work related journey. Upon her returned, the respondent realized that the petitioner was in an amorous relationship with another man. This made the respondent to move out of the matrimonial home in October, 2017.

For the past seven (7) years they have not lived together as husband and wife. The petitioner through the sister of the respondent told the respondent that she was no longer interested in the marriage.

He said that all attempts by their family members to reconcile them as husband and wife has not succeeded.

According to the respondent, the marriage has broken down beyond reconciliation.

The respondent therefore prayed the court to grant the divorce.

EVALUATION

It is clear from the evidence before this court that the parties are no longer interested in the marriage. This is because after the respondent filed a crossed petition, the petitioner in addition to her petition, file a letter of consent at the court that the court should grant the divorce and that she could not attend the proceedings at the court.

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 matrimonial cases Act, 367 of 1971 exist these are

1. Adultery
2. Desertion
3. Unreasonable behavior
4. The marriage has broken down beyond reconciliation in the instant case, both the petitioner and the respondent accused each other of adultery.

Also, both the petitioner and the respondent families could not bring the parties together as husband and wife.

All the facts point to the fact that the court could decree the dissolution of the marriage. However, this is a discretion given to the court.

SEE: KOTEY VRS KOTEY (1974) IGLR 172.

I therefore decree that the ordinance marriage contracted between the petitioner and the respondent on the 14th day of February, 2010 with certificate number LCI/TP/007/2010 as dissolved. The parties may go their separate ways as bachelor and spinster.

No order as to cost.

(SGD)

H/H SIMON NKETIAH GAGA

(CIRCUIT COURT JUDGE)

Jt.