

GHANA / JUDGMENT

Eshun Vrs Hagar [2023]

GHADC 34 (9 March 2023)

[2023] GHADC 34

COURT

District Court

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CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT
MAGISTRATE, DISTRICT COURT “B”, SEKONDI ON 9TH MARCH,

SUIT NUMBER A4/52/2022 DANIEL KWEKU ESHUN V ABA HAGAR - - PETITIONER RESPONDENT

TIME: 10:57 AM PETITIONER RESPONDENT - - PRESENT PRESENT PETITIONER REPRESENTED
BY EDMUND ACQUAAH ARHIN DEFENDANT UNREPRESENTED

JUDGMENT

Per the petition filed on 06/04/2022, Petitioner wants a dissolution of the marriage contracted on 22/08/1998 at the Church of Pentecost, Sekondi. The parties have two children aged 20 and 13 years. Currently living apart, Petitioner contends that Respondent's unreasonable behavior has led to the breakdown of the marriage. Particulars of unreasonable behaviour among others were that Respondent is disrespectful, discourteous, and quarrelsome. Respondent has deprived him of sex for the past three years. Communication between the parties has not been effective for the past two years. Petitioner prays for the following reliefs: 1. 2. That the marriage between the parties be dissolved. That custody of Daniel Eshun Jnr be granted to the Petitioner with reasonable access to the Respondent In her Answer, Respondent denied almost all the allegations of unreasonableness as stated in the particulars. Respondent claimed on the contrary that it is the Petitioner who has behaved unreasonably by refusing to maintain the Respondent for the past three years and that the Petitioner is lazy and has chosen prayers as his profession and does not want to work to maintain his family. That the Petitioner has committed adultery with young ladies he pretends to have prayer programmes with. The Respondent, therefore, cross-petitioned as follows: 1. That the court should grant the Petitioner's application for dissolution of the marriage celebrated between the parties. 2. 3. Respondent be granted custody of the children

with reasonable access to the Petitioner. An order for the Petitioner to maintain the two children at GH¢800.00 a month Both parties testified by themselves and did not call any witnesses. The issue settled for determination was whether or not the marriage between the parties has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent The sole ground for the grant of divorce in Ghana is that the marriage has broken down beyond reconciliation. This is provided under section 1(2) of the Matrimonial Causes Act 1971, Act 367. Section 2(1) (b) Act 367 (supra) also provides that: “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 facts contained therein. Only the relevant section will be quoted in this judgment, which is:

- (b) that the respondent has behaved in a way that the petitioner cannot be reasonably be expected to live with the respondent; According to Mrs. Frederica Ahwireng-Obeng, the author of “Contemporary Principles of Family Law in Ghana”, ‘Unreasonable behaviour’ has been defined in English law “as conduct that gives rise to injury to life, limb, health or conduct that gives rise to a reasonable apprehension of such danger. The conduct must be grave and weighty and must make living together impossible. It must be serious and higher than the normal wear and tear of married life” Section 2(1) (b) of Act 367 (supra) requires that a Petitioner must prove the conduct constituting the unreasonable behaviour on the part of the Respondent and the fact that she cannot reasonably be expected to live with him as a result of the bad behaviour. It is the case of the Petitioner that the parties have been married for over 23 years and that throughout these 23 years, the Respondent has been rude, discourteous, and quarrelsome in the marriage. The Petitioner avers that the Respondent demands to be paid an amount of GH¢80.00 before he could have sex with her and that for the past three years, there has not been any sexual encounter between the parties. It is the case of the Petitioner that the Respondent has indicated to him on numerous occasions her desire to seek for divorce and that the attitude/behaviour of the Respondent has made it extremely difficult for the parties to live together as husband and wife. Petitioner says family members of the parties have tried on countless occasions to settle the parties’ differences but have failed. Hence the instant petition. The Respondent on the other hand denies that she has been insulting the Petitioner. She says that for the past three years, Petitioner has not been maintaining her. However, three months prior to the filing of this petition the Petitioner came demanding sex. According to the Respondent, she jokingly said that she would only allow it if he paid GH¢80. The Respondent admits that she had been advocating for the dissolution of the marriage because the Petitioner does not treat her well and is in amorous relationships with other young girls. Respondent agrees to the dissolution The court ordered for parties to file their respective witness statements and the same was complied with. However, when the trial began both parties failed to cross-examine each other on their evidence. The Respondent for example indicated to the court that she agreed to the dissolution of the marriage and did not intend to conduct any cross- examination. The effect is that whatever the Petitioner alleged has been acknowledged and is true. See IBRAHIM VRS ABUBAKARI (2001-2001)1 GLR 540. Again, in TAKORADI FLOUR MILLS VRS SAMIR (2005-2006) SCGLR 882 it was held that “in law where evidence is led by a party and

that evidence is not challenged by the opponent in cross-examination and the opponent did not also tender evidence to the contrary, the fact deposed to in the evidence is deemed admitted by the party against whom it is admitted and ought to be accepted by the court". It is the case of the Petitioner that the Respondent is rude and disrespectful and has been for the past 23 years. The Petitioner does not exactly say the specific actions of the Respondent that is rude and disrespectful. I must say that even though the Respondent failed to cross-examine the Petitioner thereby making the averments true, it might seem that the Petitioner condoned the acts of the Respondent by staying with her throughout the 23 years of their marriage having exhibited those rude or disrespectful behaviour. What is clear from the evidence that is not disputed by the parties is that they have not lived as husband and wife continuously for over three years and that the Respondent has even moved out of the matrimonial home with the parties' last child for the past two years. The learned William Ekow Daniels in his book "The Law on Family Relations in Ghana, 2019 @ page 312 states that "The test to determine whether or not the parties are not living as husband and wife has no relation to the physical state of things such as houses or households, but rather it is to be considered from the point of view of whether there is absence of consortium or cessation of cohabitation". (emphasis mine) Section 2(1)(d) of the Matrimonial Causes Act, 1971, Act 367 also stipulates that "the parties to the marriage have not lived as husband 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 the decree of divorce." From the evidence, there has been non-cohabitation and no sexual intercourse between the parties for over 3 years preceding this petition. The Respondent also consents to the dissolution of the marriage from the answer filed. Besides the above, the parties also say that numerous attempts at reconciliation have also failed. Certainly, there is sufficient evidence to justify a conclusion that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation having considered all the facts and evidence. In the circumstances, I hereby declare that the marriage celebrated between the parties on the 22nd of August, 1998 at the Church of Pentecost has broken down beyond reconciliation and that same be and is hereby dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number COP/SEK/F55/1998 pursuant to Licence No. 50/16/12/88 is hereby cancelled. CUSTODY Both parties are seeking the custody of Daniel Eshun Jnr. with reasonable access to the other. Section 2(1) of the Children's Act 1998 (Act 560) provides that "The best interest of the child shall be paramount in a matter concerning a child." Also in *In Re G (Children)* (2006) 4 ALL ER 241, Lord Nicholls of Birkenhead stated "as in all cases concerning the upbringing of children, the court seeks to identify the course which is the best interest of the children. Their welfare is the court's paramount consideration." Section 45(1) of Act 560 (supra) also stipulates as follows: "A family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access" In the instant case, Daniel is a minor aged 13 years and for the past three years, he has been living with his mother, the Respondent. It is my humble view that it would not be in his best interest to change his environment, especially where the Petitioner has not given the court any cause to change

same. In the circumstances, I hereby grant custody of Daniel Eshun Jnr to the Respondent with reasonable access to the Petitioner. The Respondent is further claiming from the Petitioner the monetary value of a butterfly sewing machine that the Petitioner gave to his child. The Petitioner did not contest this and has indicated to pay for same. DECISION 1. The marriage contracted between the parties herein on the 22nd of August, at the Church of Pentecost, Sekondi has broken down beyond reconciliation and same be and is hereby dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number COP/SEK/F55/98 pursuant to licence No. 50/16/12/88 is hereby cancelled. 2. Custody of Daniel Eshun, Jnr. is granted to the Respondent with reasonable access to the Petitioner. 3. Petitioner is hereby ordered to pay the monetary value of the Butterfly Sewing Machine of GH¢830.00 to the Respondent 4. Petitioner is ordered to pay an amount of three hundred and fifty Ghana cedis (Gh¢350.00) as maintenance towards Daniel Eshun Jnr. per month. 5. The Petitioner is ordered to pay to the Respondent an amount of Three Thousand Ghana Cedis (GH¢3,000.00) as alimony by 15/5/2023 6. There is no order as to cost. (SGD) H/W ROSEMARY EDITH HAYFORD (MRS) MAGISTRATE 8

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