

GHANA / JUDGMENT

Ghartey Vrs Asante [2023]

GHADC 324 (21 June 2023)

[2023] GHADC 324

COURT

District Court

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Judgment (Divorce) 2023

IN THE DISTRICT COURT / KASOA CENTRAL REGION

SUIT No. A4/263/2022

CATHERRINE BETTY GHARTEY } PETITIONER

VRS: ALEXANDER BAMFO ASANTE
} RESPONDENT

JUDGMENT

GIVEN BY H/W STEPHEN OFORI AKRASI ESQ (DISTRICT MAGISTRATE) DATED 21/6/2023
Judgment (Divorce) 2023 IN THE DISTRICT MAGISTRATE COURT HELD AT KASOA ON
WEDNESDAY, THE 21ST DAY OF JUNE, 2023 BEFORE HIS WORSHIP STEPHEN OFORI AKRASI
ESQ, THE DISTRICT MAGISTRATE. SUIT No. A4/263/2022 CATHERRINE BETTY GHARTEY }
PETITIONER VRS: ALEXANDER BAMFO ASANTE } RESPONDENT

JUDGMENT

..... .. The Petitioner and the
Respondent were married under Ordinance marriage 1884,(CAP

127) on 1/10/2022. The Marriage was evidenced by a Marriage Certificate Number 5629 with
License Number CAFM/2000. There is five issues of the marriage. Per the petition filed on
the 29th day of April, 2000, the petitioner sought divorce on grounds that the marriage has
broken down beyond reconciliation. That the Judgment (Divorce) 2023 respondent has put
up an unreasonable behavior to such an extent that the said misbehaviour of the
Respondent has affected her psychologically that she can no longer cope with the situation

and therefore seeks dissolution of the marriage. In the particulars of misconduct, the Petitioner avers that:

- i. That the Respondent is abusive and this behaviour started after the marriage. ii. That the Defendant indulged in adulterous behaviour 10 years into the marriage to an extent that one of the paramours often frequent the matrimonial home. iii. That the Respondent has ceased talking to her till date. iv. That there has not been sexual intimacy for many years. That she waited patiently in contemplation that the behaviour of the Respondent. v. That Respondent has made it overtly demonstrated to whole world that he does not love her.
- vi. Parties have not lived as husband and wife for about many years.
- vii. That all efforts to make the Respondent come back home has proved futile. viii. That the Respondent has been indulging in extramarital affairs resulting in one issue with one of the women. ix. The Respondent has caused the petitioner much anxiety and trauma. x. That all efforts to reconcile them have proved futile. Petitioner is therefore seeking for: Judgment (Divorce) 2023
- i. The dissolution of the marriage as same has broken down beyond reconciliation. ii. Custody of the two minors of the marriage with reasonable access to the Respondent. including legal fees. iii. Any further orders as this court may deem just. Respondent on his part conceded at ADR that the Plaintiff is the bona fide owner of the property and Parties signed terms of agreement to that effect. The Respondent openly informed the court that he was not going to submit any witness statement once he has conceded defeat and true to his words the Respondent has since failed to submit his witness statement and also to cross examine the Plaintiff. LEGAL ISSUES AND APPLICATION OF LAW The legal issues for determination per the facts are:
 1. Whether or not the marriage has broken down beyond reconciliation.
 2. Whether or not the conduct of Respondent constitutes unreasonable behavior to ground dissolution of the marriage. The evidential rule in civil cases is that the burden of proof rests upon the party who substantially asserts the affirmative of his case. In the case of *Lamprey alias Nkpa vrs. Fanyie and Others* (1989-90) 1 GLR 286 the Supreme court held that on general Judgment (Divorce) 2023 principles, it was the duty of the Plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the Defendant to lead sufficient evidence to tilt the scale in his favour. This is clearly covered in section 10,11,12 and 14 of the Evidence Act, 1975, NRCD 323. In *Majolagbe v Larbi* (1959) GLR190 @ 192, Ollennu J (As he then was) had this to say on what constitutes proof in Law: “Proof in law is the establishment of facts by proper legal means where a party makes an assertion capable of proof in some way, e.g. by producing documents, description of things, reference to other facts, instances or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath, by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true’. I shall

proceed to deal with the second and third issues since the first issue is not controverted. Moreso, the ability to prove the second issue, that is unreasonable behaviour suffices for the proof that the marriage is broken down beyond reconciliation, (See Section 2(1) (b) of the Matrimonial Causes Act 1971 (Act 367) It states: “A Petitioner may rely on the fact that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent to prove that a marriage has broken down beyond reconciliation.” Unreasonable behaviour has been defined in English law as: Judgment (Divorce) 2023 “Conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such damage. Thus actual injury does not have to be established. In *Gollins v Gollins* [1964] A. C. 644, the House of Lords stated as follows: “If the conduct can be called cruel it does not matter whether it springs from a desire to hurt or selfishness or sheer indifference.” Thus, a petitioner who relies on unreasonable behaviour for divorce must establish two things:

1. The conduct constituting the unreasonable behaviour on the part of the respondent; and
2. The fact that he/she cannot reasonably be expected to live with the respondent as a result of the bad behaviour. The court of Appeal in the case of *Knudsen V Knudsen* [1976] 1 GLR 204 had this to say on what constitute unreasonable behaviour: “The behaviour of a party which will lead to this conviction would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of a persistent course of conduct or a series of acts of different 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.” I have examined the rival dispositions and found that due to absence of eye witnesses evidence it is uncertain as to which of the parties put up unreasonable behaviour. I however found as a fact that the marriage has broken down beyond reconciliation. I therefore, decree that the marriage celebrated between the Petitioner and the Respondent on 8th April, 2006 (evidenced by Marriage Certificate Number 503384 with License Number AMA 2395579 is hereby dissolved forthwith on the ground that same Judgment (Divorce) 2023 has broken down beyond reconciliation. Accordingly, Parties must bear their own cost and the Petitioner is to drop the name of the Respondent. Plaintiff : Present Respondent) : Present (SGD) STEPHEN OFORI AKRASI ESQ. (DISTRICT MAGISTRATE) 7

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Prepared on 29 October 2026 · Esheria