

GHANA / JUDGMENT

AVEDZI VRS AVEDZI (G/WJ/DG/A4/65/23) [2024] GHADC 135 (27 February 2024)

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IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 27TH DAY OF FEBRUARY, 2024 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE AGNES ADETI AVEDZI PETITIONER SUIT NO. G/WJ/DG/A4/65/23 VRS AMOS KOFI AVEDZI RESPONDENT PETITIONER IS PRESENT AND SELF REPRESENTED. RESPONDENT IS PRESENT AND REPRESENTED BY ABOAGYE AGYEMANG ESQ.

JUDGMENT

BRIEF FACTS The Parties both Ghanaians got married in accordance with Part III of the Marriages Act 1884-1985 (CAP 127) on 7th November 2020 at the Pentecost International Worship Centre at Dansoman in Accra. After the celebration of the marriage, parties cohabited at Sahara in Dansoman. There is no issue of the marriage. The Petitioner filed a petition for divorce against the Respondent on 28th February 2023 for the dissolution of the ordinance marriage celebrated between the parties as same has broken down beyond reconciliation. Respondent filed an answer to the petition on 21st March 2023 and cross petitioned for the dissolution of the parties' marriage. The Petitioner filed a reply on 21st July 2023 After the close of pleadings the Court set down the matter for trial. **THE CASE OF THE PETITIONER** It is the case of the petitioner that parties lived together as husband and wife for two years after the celebration of the marriage. It is her further case that during the period within which parties cohabited, they did not have any sexual relations for a whole year. She added that during consummation of the marriage, the Respondent had erectile dysfunction, odd secretions and blisters around his groin. According to her, she advised Respondent to seek medical help to no avail. She pleaded that Respondent did not eat her food and chose to eat that of his family members. She pleaded further that Respondent insulted and abused her verbally calling her names to wit "sick and crazy woman." She added that Respondent humiliated her before his family and church members by telling them that she cannot cook or manage the matrimonial home. She alleged that Respondent locks her out of the matrimonial bedroom compelling her to sleep in the kitchen. It is the further case of the Petitioner that all attempts by the church to reconcile parties have proved futile. In support of her case, she tendered the marriage certificate of the parties' in evidence and same was admitted and marked as Exhibit A. She again tendered an audio recording of insults meted out to her by the Respondent without any objection. Same was admitted and marked as Exhibit B. She

tendered minutes of a reconciliation meeting held with members of the church of parties. Same was admitted and marked as Exhibit C. Petitioner did not call any witness. RESPONDENT'S CASE IN ANSWER It is the case of the Respondent that Petitioner has deserted the matrimonial home to an unknown location since June 2022 and all attempts to get her to resume cohabitation have failed. It is the further case of Respondent that he has been to the family house of Petitioner several times to no avail as she plays hide and seek with him. According to Respondent, a year after the parties' marriage, Petitioner told him that his semen after sexual intercourse with her smells badly and therefore refused to have sex with him since then. Respondent added that he reported the conduct of the Petitioner to her church elders at Dansoman where efforts were made at reconciliation however Petitioner still failed to have sexual intercourse with Respondent. Respondent stated that Petitioner has been insulting him in the presence of her family members and church elders making unfounded allegations against him. Respondent stated further that all attempts at reconciliation by family members of both parties, church leaders and friends have proved futile due to the recalcitrant attitude of the Petitioner. Respondent accused Petitioner of cruelty in that she starved him sexually for a continuous period of almost two years. Respondent concluded by stating that for almost the entire period parties cohabited as husband and wife, there has been confusion, misunderstanding, mistrust and lack of compromise. He prayed the court to dissolve the parties' marriage on the ground that same has broken down beyond reconciliation. The issue set down for determination by the Court is whether or not the parties' marriage has broken down beyond reconciliation. BURDEN OF PROOF The standard of proof in civil cases is proof on the preponderance of probabilities. In *Poku v Poku*[2007-2008] 2 SCGLR 996 at 1022, Georgina Wood CJ as she then was stated as follows; "Generally, the burden of proof is therefore on the party asserting the facts with the evidential burden shifting as the justice of the case demands. The standard or degree of proof must also necessarily be proof on the preponderance of the probabilities within the meaning of Section 12(2) of the Evidence Act, 1975 (NRCD 323)" On the issue of whether or not the marriage between the parties has broken down beyond reconciliation, sections 1(2) and 2 of the Matrimonial Causes Act, 1971 (Act 367) reads;

1. Petition for divorce
 - (2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.
2. Proof of breakdown of marriage
 - (1) 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 following facts;
 - (a) that the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent
 - (b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent

- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition (d)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 a decree of divorce provided that the 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 despite the refusal;
 - (e) that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition or
 - (f) that the parties to the marriage have after diligent effort been unable to reconcile their differences.
- (2) on a petition for divorce the Court shall inquire so far as is reasonable into the facts alleged by the petitioner and the respondent.
- (3) Although the court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied on all the evidence that the marriage has broken down beyond reconciliation. From the evidence, the petitioner alleged that the marriage celebrated between the parties has broken down due to the unreasonable behaviour of Respondent. At page 124 of the book “At a glance! The Marriages Act And The Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng, the learned author on unreasonable behaviour states as follows; “Section 2(1)(b) makes it clear that the petitioner must firstly establish unreasonable conduct on the part of the respondent and secondly that as a result of the bad conduct, the petitioner cannot reasonably be expected to live with the respondent. The court will require strong evidence to establish unreasonable behaviour. Normal wear and tear incidents of married life will not amount to unreasonable behaviour.”(emphasis is mine) Though both parties were in court, they all declined to cross examine each other on their assertions. In *Takoradi Flour Mills v Samir Faris* [2005-2006] SCGLR 882, the Supreme Court held as follows; “The law is well settled (as held by the trial court and affirmed by the Court of Appeal) that where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial court.” Applying the law cited supra to the totality of the evidence before me, I find that parties have not lived as husband and wife since June 2022 due to the constructive desertion of the Petitioner from the matrimonial home. Accordingly, I find that the marriage between the parties has broken down beyond reconciliation. I do hereby decree that the ordinance marriage celebrated between Agnes Adeti Avedzi and Amos Kofi Avedzi on 7th November 2020 at the Pentecost International Worship Centre at Dansoman in Accra is hereby dissolved. A certificate of divorce is to be issued accordingly. I make no order as to costs.

HW RUBY NTIRI OPOKU MRS. (DISTRICT MAGISTRATE)

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Prepared on 29 October 2026 · Esheria