

GHANA / JUDGMENT

Terkper Vrs Padi [2023]

GHADC 256 (16 March 2023)

[2023] GHADC 256

COURT

District Court

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IN THE DISTRICT COURT HELD AT SOMANYA ON THURSDAY THE 16TH DAY OF MARCH, 2023 BEFORE HIS WORSHIP MICHAEL DEREK OCLOO. SUIT NO: A4/01/2021 ERIC KOFI TERKPER } PETITIONER VRS BRIDGET PADI } DEFENNDANT PARTIES: : PRESENT DOLLAH DAMIEH BLACKMORE DJABA-MENSAH ESQ. COUNSEL FOR THE PETITIONER PRESENT : KOFI KONLAN FOR RESPONDENT : PRESENT J U D G M E N T The Petitioner commenced the instant action against the Respondent for the following reliefs:

- i. An order for the dissolution of the marriage between him and the Respondent. ii. An Order for the grant of custody of the children to the Respondent with reasonable access to the Petitioner iii. An Order for the single room apartment bought at Mampong Odumase Krobo to be given to the Respondent as compensation. The case of the Petitioner is that he married the Respondent under the Krobo Customary Law which was converted to Ordinance marriage at the District Court Somanya on 5/9/2014. He tendered the marriage Certificate which was admitted in Evidence and marked. The marriage is blessed with two (2) children namely Mavin Terkper and Shennel Terkper who are 5 and 3 years old respectively and attend St. Theresa Preparatory School at Agomanya. Before the marriage the Petitioner was attending the Church of Pentecost Agormanya whiles the Respondent was attending the Amazing Grace Ministries at Mampong Odumase Krobo and one Deacon George Pleaded with the Petitioner to allow the Respondent to continue to attend the Amazing Grace Ministries, Mampong Odumase but the Petitioner disagreed with him. The Petitioner added that after the marriage he told the Respondent to join him to fellowship at the Church of Pentecost, Agormanya but the Respondent refused on grounds that she was not comfortable with the doctrine of the Petitioner's Church. This led to misunderstanding and several quarrels and as a result of which the Respondent vacated the matrimonial home with the first child to a rented room in April 2016 at a time that she was pregnant and expecting the 2nd child without the consent of the Petitioner. He further stated that the Respondent gave birth to the 2nd child at the VRA Hospital Akosombo and after she was discharged, he pleaded with her to come back to the matrimonial home with the children but she refused. He added that by the relocation to a rented room the Respondent had denied him sex and

refused to cook and wash his clothes. According to the Petitioner, he has been taking good care of the Respondent and the children in terms of feeding, accommodation, health, clothing and payment of school fees. He added that the said maintenance extends to Kingsley Terkper who is about 18 years of age and the son of the Respondent with another man before the marriage. He stated that the Respondent granted him access to the children until one day when she refused same with the reason that the Petitioner intended to run away with the 1st child. The Petitioner further stated that on one occasion there was a quarrel between him and the Respondent which emanated from his attempt to have access to the children and the Respondent reported the matter to the Police and he was arrested and put in cell at the Police station at Akuse. It is the Petitioner's case that the Respondent assaults him verbally anytime there is a misunderstanding between them and concluded that several attempts by family elders of both parties, Pastors and friends to resolve the matter have proved futile. In the evidence of PW1 Dora Adu and PW2 Lawrence Naryo Terkpe they corroborated the Evidence of the Petitioner however PW1 added that the Respondent threatened to divorce the Petitioner if he (Petitioner) insisted that she (Respondent) should leave her Church to join him at the Church of Pentecost because she was not comfortable with the doctrine of the Church of Pentecost. The Respondent filed a cross Petition as follows:

1. An order of the Court for the dissolution of the marriage between her and the Petitioner.
2. An order for payment of alimony of GH¢20,000.00.
3. An order for the Petitioner to maintain the children of the marriage.
4. An order for the grant of 50% share of each of the Land bought and the matrimonial home built during the pendency of the marriage. In her Evidence in chief the Respondent stated that after the marriage she was attending the Petitioner's Church, the Church of Pentecost, but found out that the Petitioner's Church doctrine permits the wearing of ear rings whiles her Church Amazing Grace Tabernacle Church is against the wearing of same. She added that the Petitioner and her aunty insisted that she (Respondent) must always wear ear rings each time she attended the Petitioner's Church but she refused to do same and as a result the Petitioner started assaulting her and disgracing her even in public at the slightest provocation. She therefore went back to fellowship with her Church which incurred the displeasure of the Petitioner who resorted to physically assault her at the slightest provocation. According to the Respondent the Petitioner beat her mercilessly in the year 2015 so she left the matrimonial home until the Petitioner promised to stop same before the Respondent's family elders at a settlement meeting when she returned. She added that in the year 2018 she was pregnant with the 2nd child but the Petitioner beat her again and she reported the matter to the Police but withdrew same from the Police station for settlement for the sake of the marriage upon advice by family members. She further stated that in the year 2018 the Petitioner came to her store and assaulted her and she reported same to the Akuse Police who arrested the Petitioner. The arrest incurred the displeasure of the Petitioner and he decided to discontinue with the marriage as a result even when the

Respondent had rendered an apology for causing his arrest. The Respondent further stated that the Petitioner beat her mercilessly in the year 2016 to the extent that she could not wash her clothes so she took same to someone to assist her to wash same but the Petitioner misconstrued the said conduct to mean she (Respondent) had packed her belongings out of the matrimonial home. As a result the Petitioner ejected the Respondent from the matrimonial home. It is the contention of the Respondent that they bought a piece of Land measuring 150 X 100m located at Agormanya and opposite the Agormanya Roman Catholic Church and built a 4 bedroom self-contained house at Somanya-Akweteman during the pendency of the marriage. She added that she personally bought a single room apartment of GH¢2,300.00 before the marriage and only borrowed GH¢200.00 from the Petitioner to pay the land lord in respect of the rented room which served as the matrimonial house at the time. DW1 Okyeame Narh Kwao and DW2 George Kwame corroborated the Respondent's evidence and added that the Respondent apologized to the Petitioner for causing his arrest after he (Petitioner) had beaten her at a settlement meeting in the presence of elders of both parties but the Petitioner did not accept the apology and rather started shouting and saying he was no longer interested in the marriage because, the Respondent caused his arrest. The Legal issue for determination by the court is whether or not the marriage has broken down beyond reconciliation. Section 2 of the matrimonial causes Act 1971 (Act 367) 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 following facts: 2 (1) (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 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.
 - (f) That the parties to the marriage have after diligent effort been unable to reconcile their differences. Evidence adduced during hearing indicate that the Respondent vacated the matrimonial home to stay in a rented apartment. The Petitioner contended that the Respondent left the matrimonial home on her own volition without his consent. The Respondent maintained that she was ejected from the matrimonial home by the Petitioner. Irrespective of the two
- (2) accounts, the real issue is that the Respondent has vacated the matrimonial home and living in a rented apartment. These constitute desertion on the part of the Respondent with its consequent denial of sex and inability to cook for the Petitioner and wash the Petitioner's clothes. It is also clear from the evidence adduced that the Petitioner and the Respondent have not lived as man and wife for a continuous period of at least two (2) years immediately preceding the presentation of the Petition as the Respondent has vacated the matrimonial home since April, 2016 and the Respondent has consented to the grant of the divorce. The consent is expressed in the cross Petition of the Respondent where she prayed for an Order for the dissolution of the marriage. It is also clear that there has been several attempts to

resolve the matter by elders of both families, pastors and friends which have all been unsuccessful and to the extent that the Petitioner expressed his disinterest in the marriage openly during a settlement meeting in the presence of family elders of both parties, pastors and friends. By extension this constitutes the fact that the Petitioner and the Respondent have been unable to reconcile their differences after diligent effort. During Cross Examination of the Petitioner by counsel for the Respondent the following transpired: Q. You filed the Petition for divorce? A. Yes. Q. Since when have you ceased to live with the Respondent as husband and wife? A. Since 2016. During Cross Examination of the Respondent by Counsel for the Petitioner the following transpired: Q. You have not lived as husband and wife since 2016. A. Yes is true. From the above it is clear that the marriage has broken down beyond reconciliation. In the circumstance I declare the Ordinance marriage between ERIC KOFI TERKPER herein referred to as the Petitioner and BRIDGET PADI herein referred to as the Respondent duly dissolved. The terms of settlement agreed upon by the parties and their respective Counsels have been filed in Court and copies given to each party. (SGD) H/W MICHAEL DEREK OCLOO (MAGISTRATE) 1/03/2023 F. T. 5

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