

GHANA / JUDGMENT

Apeakoran Vrs Eshun [2023]

GHADC 36 (8 March 2023)

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8 March 2023

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CORAM: HER WORSHIP MRS. ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT
MAGISTRATE, DISTRICT COURT “B”, SEKONDI ON THE 8TH OF MARCH, 2023

SUIT NUMBER A4/8/2023 EPHRAIM NANA APEAKORAN V CECILIA SENYA ESHUN - -
PETITIONER RESPONDENT

TIME: 12:57 PM PETITIONER RESPONDENT - - PRESENT PRESENT PARTIES UNREPRESENTED

JUDGMENT

Per the petition filed on 9/9/2022, Petitioner prays for a dissolution of the marriage contracted on 16/07/2005 at the Wesley Methodist Cathedral, Sekondi. The parties have four (4) minor children. Currently living apart for over two (2) years prior to the filing of the petition, Petitioner contends that Respondent's unreasonable behavior has led to the breakdown of the 1 marriage. He further prays that both parties be asked to share the responsibilities of the upkeep of the four children. In her Answer filed on 3/10/2022, Respondent denied all the allegations of unreasonable behaviour leveled against her and says that it is rather the Petitioner who has caused her emotional trauma, and psychological distress and has behaved unreasonably. Respondent cross-petitioned as follows:

1. The court should grant the Petitioner's petition for the dissolution of the marriage
2. Grant custody of the children of the marriage to Respondent with reasonable access to the Petitioner
3. Further order to compel the Petitioner to maintain the four children at GH¢2,000.00 per month i.e. GH¢500 per child per month

4. Additional orders to compel Petitioner to pay Azaryne Doudua Apeakoran's school prospectus and PTA Dues totaling GH¢8,000.00
5. Further order to the Petitioner to pay the educational expenses of the other three (3) children who are currently at the basic level of their education.
6. Order the Petitioner to refund to the Respondent the money for her fibroid surgery that was diverted to pay the children's school fees. After hearing, 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. 2 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 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. The cases of Darko v Darko [2011] 29 GMJ 121 CA and Donkor v Donkor [1982-83] GLR 1156@1158 refers. To prove these two requirements, Petitioner had to lead evidence in support of his claim and the court had the duty to objectively determine, on the facts presented, whether he cannot reasonably be expected to live with Respondent. I wish to state that before the trial ended the parties themselves filed their terms of settlement in respect of the ancillary reliefs for the adoption by the court. Accordingly, the same will be adopted and incorporated into this judgment. 3 PETITIONER'S CASE It is the case of the Petitioner that the parties have been married under the ordinance for about 17 years. He is a Security Officer and the Respondent is a teacher. The petitioner avers that the Respondent has behaved in such a way that he cannot reasonably be expected to live with her as he has caused him so much pain, anxiety, and distress. Petitioner says the Respondent called him a useless man, a criminal, a bastard, and irresponsible. That the Respondent refused to cook regularly for him in spite of him providing sufficient housekeeping money. Petitioner says that the Respondent has been comparing him with other men and concluded that the Petitioner is a failure, a cursed man with bad luck, and that she regrets the day she decided to marry him. Petitioner further avers that the Respondent confessed to him of sleeping in the house of one Mr. Edwards Arthur who is her

former head teacher and that said Mr. Arthur knows how to treat or handle a lady better than the Petitioner. Besides that, he is more important to the Respondent than the Petitioner. Petitioner says that Respondent told him it was because of his bad character that chased him out of the Ghana Prisons Service and University of Mines and Technology, Tarkwa. Petitioner further avers that the Respondent has left the matrimonial home since September 2020. Petitioner says that the Respondent has been extremely ungrateful especially since he supported the Respondent among others financially for her to successfully complete her first and second degrees. The Petitioner tendered over 33 Exhibits in support of his case. Exhibits A, A1 – A28 are essentially WhatsApp chat communication between the parties from January 2021 to date Exhibits B and B1 are divorce proceedings filed in 2015 by the Petitioner Exhibits C and C1 are communication between the UMat and the Petitioner. 4 The Respondent on the other hand denies she has behaved unreasonably. She contends that it is rather the Petitioner who has behaved in a way that she cannot reasonably be expected to live with him. It is the case of the Respondent that the Petitioner brought his mother to their matrimonial home without her knowledge and the said mother took over their home such that the Petitioner consulted his mother before taking any decision that bothered their lives. Respondent avers that the Petitioner constantly verbally abused her in the presence of his mother, their children, and the university community when they lived in Tarkwa. When the Respondent got himself into trouble at the University, the Respondent says she took charge and paid for the services of a lawyer which resulted in the discharge of the Petitioner, in the end, the Petitioner accused her of sleeping with the said lawyer. It is the case of the Respondent that the Petitioner is irresponsible and does not take care of the children of the marriage. He refuses to pay for their educational needs as well as the maintenance of the children. Respondent agrees to the dissolution of the marriage.

Analysis

I gathered from Exhibit “C” tendered by the Petitioner that there have been earlier court proceedings between the parties sometime in 2015. It was instituted by the Petitioner for the dissolution of the parties’ marriage. The Respondent in her answer prayed for reconciliation. It is not known from the evidence the outcome of the earlier petition. I can only infer there was no dissolution then. In this case, however, the Respondent agrees to the dissolution. It might seem from the evidence that the parties from time immemorial have been having issues. One of the reasons the petitioner gives for the dissolution is that the Respondent has referred to him as irresponsible. Respondent does not deny this at all and says that the Petitioner had refused to maintain the children of the marriage and pay for their books and educational needs for the past two years. Petitioner confirms that indeed that was the case. He refused because the 5 Respondent changed the schools of the children and moved them from Tarkwa without his consent. It is the Respondent’s case that she had to do that because her health was failing and she had to be close to family. However, the evidence clearly suggests that the Petitioner had also moved from Tarkwa to Accra. Who then was going to take care of the children if they were left in

Tarkwa? I do not for once condone the action of the Respondent by not informing the Petitioner of the move from Tarkwa to Takoradi and changing their school. Much as I find her reason reasonable, I am still of the opinion that she should have informed the Petitioner about it before changing their school. Be that as it may, that did not warrant the reaction of the Petitioner by failing to maintain his own children and pay for their educational needs for two years simply because he was upset with the Respondent. The Respondent then had to fall on the very money she had saved for her fibroid surgery to take care of the needs of the children. These children were innocent and did not deserve the treatment meted out to them by their own father. To that extent, I am of the humble view that the Petitioner behaved unreasonably. I have perused the Exhibits tendered by the Petitioner. In there, there seem to be accusations and counter-accusations that came about as a result of the failure of the Petitioner to maintain the children and pay for their educational needs. Serious and unpalatable words were used on each other. For example, the Petitioner demanded receipts for items that the Respondent had purchased and when the Respondent could not provide them because according to her no receipts were given, it degenerated into words of insults. Petitioner referred to the Respondent as a liar, a bad wife, a cheap woman, a big fool, unfaithful woman. The respondent also said the Petitioner was a cursed man and irresponsible. From a thorough reading of the exhibits and the evidence of the Petitioner, he alleges adultery on the part of the Respondent yet was he 6 unable to prove any such. On the totality of the evidence, I find that the parties have irreconcilable differences. Besides that, the parties have not lived as husband and wife for over two years now. The Respondent left the matrimonial home sometime in September 2020 and there had not even been any sexual relationship between the parties prior to the Respondent leaving the matrimonial home. In this case, also, the Respondent is not withholding her consent, she agrees to the dissolution. See Section 2(1) (d) of the Matrimonial Causes Act, 1971. There is evidence that family members, Pastors, and church members have all tried to resolve the parties' differences and reconcile them but to no avail. I have, therefore, no doubt in my mind that the marriage celebrated between the parties has broken down beyond reconciliation. Accordingly, I decree that the ordinance marriage contracted between the parties herein on the 16th of July, 2005 at the Wesley Methodist Cathedral, Sekondi be and is hereby dissolved. In the circumstance I accordingly hereby adopt the terms of settlement filed by the parties on 8/3/2023 as follows:

DECISION

1. The marriage contracted between the parties herein on the 16th of July 2005 at the Wesley Methodist Cathedral Sekondi has broken down beyond reconciliation and same be and is dissolved. It is ordered that a decree of divorce be granted; the marriage certificate with registration number WMC/SKD/23/2005 pursuant to licence no. SAEMA/204/2005 is hereby cancelled.
2. Custody of the four (4) issues of the marriage is granted to the Respondent with reasonable access to the Petitioner. 7
3. The Petitioner will provide the educational materials for the four children i.e. textbooks, exercise books, school uniforms, sport fees and PTA dues as and when they fall due.

4. Petitioner will further provide the footwear and school bags of the children.
5. Respondent will bear the accommodation and other household expenses of the four children since they are currently living with her.
6. Petitioner is ordered to maintain the four children of the marriage at GH¢1,600.00 per month that is GH¢400.00 per child per month.
7. Petitioner is ordered to pay GH¢2,500.00 of the arrears of 2021/22 academic expenses totaling GH¢4,500.00. Respondent is also to pay the other half i.e.GH¢2,000.00
8. The Respondent is also to provide breakfast and snacks for the children
9. The Petitioner is ordered to pay GH¢5,000.00 out of the GH¢8,000.00 being admission fees, items in the prospectus and other medical expenses by the 30th of April, 2023. The Respondent is ordered to pay the remaining balance of GH¢3,000.00
10. The Petitioner is ordered to pay GH¢200.00 out of the total of GH¢340 as transportation of the children from Adiembra to the school of the children at Beach Road. The Respondent is ordered to pay the balance of GH¢140.
6. There is no order as to cost. NB: The Petitioner has paid the educational arrears of GH¢2,500 to the Respondent. (SGD) H/W ROSEMARY EDITH HAYFORD (MRS) MAGISTRATE 8

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