

GHANA / JUDGMENT

TAWIAH VRS ASARE (G/WJ/DG/A4/107/23) [2024] GHADC 138 (13 February 2024)

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IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 13TH DAY OF FEBRUARY, 2024 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE VICTORIA OWUSU TAWIAH PETITIONER SUIT NO. G/WJ/DG/A4/107/23 VRS CHARLES ASARE RESPONDENT PARTIES ARE PRESENT BRIEF FACTS

JUDGMENT

The Petitioner, a staff of the Ghana Meteorological Agency and the Respondent a retired Director of the Environmental Protection Agency both Ghanaians got married under customary law at Kumasi in the Ashanti Region and converted same under the Ordinance on 29th October 2013 at the Accra Metropolitan Assembly in Accra. After the celebration of the marriage, parties cohabited at House Number GS-0141-4615 at New Gbawe in Accra. There is one issue of the marriage namely Charlene Adwoa Birago Asare aged seven years. The Petitioner filed a petition for divorce against the Respondent on 6th July 2023 for the following reliefs;

- a. An order for the dissolution of the ordinance marriage contracted between the Respondent and the Petitioner as same has broken down beyond reconciliation
- b. An order directed at Respondent to pay the sum of GHC1,500.00 monthly as maintenance for the only issue of the marriage
- c. An order directed at Respondent to pay the school fees and medical bills of the child until she attains the age of majority
- d. An order for custody of the only issue of the marriage with reasonable access to the Respondent.
- e. Any order as this Honourable Court may deem fit. Respondent filed an amended answer to the petition on 1st August 2023 and cross petitioned as follows;
 1. An order for the dissolution of the ordinance marriage contracted between the Petitioner and the Respondent on 29th October 2013 at the Accra Metropolitan Assembly.

2. The Respondent shall pay an amount of GHC500.00 every month to the petitioner as maintenance for the only child of the marriage
3. The Respondent shall continue to be responsible for and pay the school fees, educational expenses, hospital bills from public hospital for the only issue of the marriage until she attains the age of majority.
4. Petitioner should be ordered to provide clothing for the child
5. Custody to be granted to petitioner with reasonable access to the respondent
6. An order directed at Petitioner to apply the returns on the GHC40,000.00 investment for the care of the child
7. An order directed at Petitioner to register the child with the National Health Insurance Scheme. Parties agreed on the ancillary reliefs and accordingly filed Terms of Settlement at the Registry of this court on 29th August 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 the marriage of the parties has broken down beyond reconciliation due to the unreasonable behaviour of the respondent. She particularised the behaviour of the respondent to the extent that the respondent consistently and without provocation picks up quarrels with her and insults her whenever he pleases. It is her further case that the respondent has developed the habit of beating her sometimes to the point of death. Petitioner added that in January 2020, respondent beat her, packed out her belongings and in the company of his driver Mohammed Ali drove her to her parents in Kumasi saying that he was no longer interested in the marriage. Petitioner testified that upon the advice of her parents, she went back to the matrimonial home however respondent persistently maltreated her to the extent that she lost a pregnancy. She subsequently moved out the matrimonial home however respondent paid compensation of GHC40,000.00 to her begging that he would not repeat the bad behaviour which still persisted even when she moved back into the matrimonial home. Petitioner concluded that she has suffered at the hands of the Respondent and that it would be unreasonable for her to continue living with him as her husband. She prayed the court to dissolve the marriage. She did not call any witness. RESPONDENT'S CASE IN ANSWER Respondent on the other hand testified that he met the Petitioner in the year 2011 at the Tesano Club house in Accra and got married to her after two and a half years of courtship. It is the further case of the Respondent that after the celebration of the parties' marriage, he bought her a Toyota Camry saloon car at the cost of USD20,000.00 He added that he enrolled Petitioner into a two year Master of Philosophy Degree and a further three year Doctor of Philosophy Degree at the Kwame Nkrumah University of Science and Technology and paid all her school fees and living expenses. According to the Respondent, he sacrificed his education and future because he stopped pursuing his Doctor of Philosophy Degree in Environment Technology Programme in London to pave way for Petitioner's continued education. Respondent added that Petitioner deserted the matrimonial home in 2019 due to the fact that he protested against the several calls she received from persons unknown to

him. After reconciliatory efforts by family of both parties, Petitioner returned to the matrimonial home and persisted in her unacceptable behaviour. In January 2022, Petitioner deserted the matrimonial home and has refused to return even though he reported the conduct of petitioner to her mother who is ordinarily resident in the United States of America. It is the case of Respondent that in the year 2021, he gave the petitioner the sum of GHC40,000.00 to put it in an investment for and on behalf of the only issue of the marriage for the upkeep of the child on his retirement. He prayed the court to dissolve the marriage and order Petitioner to use the proceeds from the investment to cater for the needs of the only issue of the marriage. **ISSUE SET DOWN FOR DETERMINATION** 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 she was compelled to move out of the matrimonial home due to the unreasonable behaviour of the 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 the Petitioner has been unable to satisfy the burden cast on her to prove unreasonable conduct on the part of the respondent for which reason she cannot reasonably be expected to live with him as a wife. I find the story of the Respondent to be more probable in the sense that it is uncontroverted from the facts and evidence that parties have not lived as husband and wife since January 2022 due to the desertion of the petitioner from the matrimonial home. Accordingly, I find that the marriage between the parties has broken down beyond reconciliation due to the fact that parties have not lived as husband and wife since January 2022 as a result of the desertion of the Petitioner from the matrimonial home. I do hereby decree that the ordinance marriage celebrated between Victoria Owusu Tawiah and Charles Asare on 29th October 2013 at the Accra Metropolitan Assembly 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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