

GHANA / JUDGMENT

ODOOM VRS AFFISAAH (C5/78/2024) [2024] GHACC 255 (17 July 2024)

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17 July 2024

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IN THE CIRCUIT COURT “11” HELD IN ACCRA ON WEDNESDAY, THE 17TH DAY OF JULY 2024,
BEFORE HIS HONOUR BASILIA ADJEI-TAWIAH, CIRCUIT COURT JUDGE SUIT NO. C5/78/2024
JUDICIAL ODOOM VS DANIEL AFFISAAH

JUDGMENT

===== By a petition filed on 18th October 2023, the Petitioner herein petitioned this Court for divorce on grounds that the Respondent has behaved in a manner that the Petitioner cannot reasonably be expected to continue the marriage. The Respondent entered Appearance to the suit on 25th October 2023 but did not file an Answer to the Petition to date. However, on 31st October 2023, the Respondent filed a process titled “Consent To Dissolution of Marriage in Respect of the Above Named Couple” This was the only process filed by the Respondent in the suit post filing Notice of Entry of Appearance. It is therefore safe to say that this suit was not contested by the Respondent. It is the Petitioner’s case that the marriage contracted between the parties has broken down beyond reconciliation and all attempts to resolve the differences between the parties have proved futile due to the lack of cooperation from the Respondent. The 1 Petitioner alleged that the parties have not lived together due to some serious misunderstanding which caused the Respondent to move out of the matrimonial home. That the Respondent has failed to answer her phone calls for seven months prior to the filing of the petition. That this has caused the Petitioner anxiety, distress, discomfort and pain, according to paragraph 11 of her witness statement. The Witness statement of Petitioner was adopted as her evidence in chief (E.I.C) without any opposition from Respondent. Uncontroverted stands the Petitioner’s evidence on record that the marriage has failed due to the alleged neglect and uncooperative attitude of the Respondent which can be captured under Unreasonable Behaviour in accordance with Section 2(1)(b) of the Matrimonial Causes Act, Act 367... “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: —

- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. In the absence of evidence by the Respondent on the issue to challenge that presented by the Petitioner to this Court, the Court could reach a conclusion that the marriage has broken down beyond reconciliation based on the existence of the fact of unreasonable behaviour on the part of the Respondent. Section 11(1) of the Evidence Act 1975 (NRCD 323), provides that: “For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on an issue”. This position of the law was amply explained by the Court in the case of *IN RE ASHALEY BOTWE LANDS; ADJETEY AGBOSU & OTHERS* [2003-2004] SCGLR 400, 425-426. The Supreme Court speaking through His Lordship Brobbey JSC held as follows: “The effect 2 of section 11 (1) and 14 and similar sections in the Evidence Decree, 1975 may be described as follows: A litigant who is a defendant in a civil case does not need to prove anything; the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court must make a determination of fact, or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has a duty to help his own cause by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence the court will be left with no choice but evaluate the entire case on the basis of the evidence before the court, which may turn out to be the only evidence of the plaintiff. (emphasis mine). If the court chooses to believe the only evidence on record the plaintiff may win and the defendant may lose. Such loss may be brought about by default on the part of the defendant. In the light of the statutory provisions, literally relying on the common law principle that the defendant does not need to prove any defence and therefore does not need to lead any evidence may not always serve the best interest of the litigant even if he is a defendant. The above cited case was applied in *LINDA AKOTO vs. BRIGHT KWASI MANU* [2022] DLSC11680 where the Respondent filed a Petition seeking dissolution of her marriage with the Appellant and claimed some ancillary reliefs. The Appellant failed to file an Answer. When the Respondent testified and stated that the Appellant has two other houses apart from their matrimonial house. The Appellant failed to challenge the Respondent on this assertion. The Apex Court held; the trial judge was thus right when she settled the matrimonial house on the Respondent as there is unchallenged evidence on record that the Appellant has two other houses aside the matrimonial house. The argument from counsel for the Appellant that the trial Judge should have found out the 3 location of the said properties, its value etc. and her evaluation of the evidence on record was without merit. If the Appellant had challenged this piece of evidence, then the Respondent would have been obliged to give the particulars the Appellant is referring to. Again, in the case of *TAKORADI FLOUR MILLS v SAMIR FARIS* [2005-2006] SCGLR 882, holding (1) where their Lordships held that: “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. In the instant case, the Respondent did not deliver an Answer to the Petition and did not appear before the Court to raise any objection to the testimony of the Petitioner or to cross examine the Petitioner after being served with the court processes. On the contrary, the Respondent filed on 31st October 2023 what he described as Consent to the dissolution of the marriage between the parties instead of delivering an Answer to the Petition. It is imperative to note that the failure of the Respondent to participate in the proceedings has not been helpful to the Court, however, the mandate of the Court to do justice must be carried out under any circumstances. The only evidence before the court now is that of the Petitioner to determine that the marriage celebrated between the parties has indeed broken down beyond reconciliation. Based on the evidence adduced by the Petitioner, I find that the facts alleged by Petitioner to be more probable than otherwise. I am satisfied that the marriage celebrated between the parties on 5th October 2019 at Apostolic Church, Accra in the Greater Accra Region has broken down beyond reconciliation under Section 2(1)(b) of Act 367. The marriage is hereby dissolved on the Petitioner's terms. The Marriage Certificate No. AC/LB/149 with Licence No. AMA 101906026/2019 is accordingly cancelled. 4 The Parties shall bear their own legal costs. H/H BASILIA ADJEI-TAWIAH CIRCUIT COURT JUDGE 5

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Prepared on 29 October 2026 · Esheria