

GHANA / JUDGMENT

Able Vrs Dzade [2023]

GHADC 690 (24 January 2023)

COURT
ghadcDECIDED
24 January 2023

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IN THE DISTRICT COURT HOLDING AT DODOWA SHAI OSUDOKU ON TUESDAY THE 24TH DAY OF JANUARY, 2023 BEFORE HER WORSHIP BRIDGET AKPE AKATTAH THERESA DZIEDZORM ABLE PETITIONER SUIT NO. A4/13/2022 VERSUS DAVID DZADE RESPONDENT

JUDGMENT

Per a petition filed on the 26th of August, 2021, the Petitioner sought the following reliefs:

- a) That the said marriage as celebrated by both parties on 2nd July, 2019 under the Ordinance be dissolved accordingly.
- b) To pay all monthly arrears of maintenance as promised from July 2019 till date.
- c) An order or orders as the Honourable Court deems fit. Respondent on his part filed his answer to the Petition on 1st September, 2021 upon service on him of the Petition. Parties were however referred to Alternative Dispute Resolution (ADR) and both parties entered into and filed their terms of settlement on 16th September, 2021. This Court proceeded to take evidence to establish the breakdown of the marriage beyond reconciliation. The main issue for the determination of this Court is whether or not the marriage between the parties has broken down beyond reconciliation? This is a matrimonial cause governed by the Matrimonial Causes Act, 1971 (Act 367). It is therefore in the nature of a civil claim. The onus therefore, of producing evidence of Page 1 of 4 any particular fact, as in all civil cases, is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. The authorities are also in harmony that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323). The burden of producing evidence has been defined in Section 11 (1) of NRCD 323 as follows; “11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”. The burden of proof is also not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the

burden of proof is contained in Section 14 of NRCD 323 as follows: “14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting”. So in accordance with the general rule of procedure, the Petitioner had the burden of proving all the averments she made against the Respondent on a preponderance of probabilities. If she succeeds in establishing her averments by evidence, the onus will then shift to the Respondent to lead some evidence to rebut same. Under section 1(2) of the Matrimonial Causes Act, 1971 (Act 367), a Court shall not grant a Petition for divorce unless the marriage is proven to have broken down beyond Page 2 of 4 reconciliation. And under Section 2(1) of Act 367, for the purposes of showing that the marriage has broken down beyond reconciliation, a petitioner for divorce 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;
- 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. It has been held in a line of cases including *Donkor v Donkor* [1982-83] GLR 1158 that the Matrimonial Causes Act, 1971 (Act 367), did not permit spouses married under the Marriage Ordinance, Cap. 127 (1951 Rev.), to come to Court and pray for the dissolution of their marriage just for the asking. And that the Petitioner in such a case for dissolution of marriage must first satisfy the Court of any one or more of those facts set out in section 2 (1) of the Act (above), not only by pleading them but also by proof for the purpose of showing that the marriage had broken down beyond reconciliation. The Court explained further that Section 2 (3) of the Act, provided that even if the court found the existence of Page 3 of 4 one or more of those facts it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation. The Petitioner led evidence and called one witness. The case the Petitioner put across is that the Respondent does not satisfy her sexually and this made her to desert the matrimonial home for more than two years now as we speak. All efforts by the families of both parties and their pastors at resolution of the differences between the parties yielded no positive result, hence this present action. The Respondent also led evidence and called one witness in the person of the brother of the

Respondent Anthony Dzade. The Respondent admitted having challenges in their marriage which remained unresolved and the Petitioner deserted the matrimonial home with intent never to return to same. He therefore prayed the Court for the marriage to be dissolved. On the totality of the evidence on record, I am satisfied that the marriage has broken down beyond reconciliation. I therefore grant the Petitioner's prayer and pronounce dissolution of the marriage between her and the Respondent. The marriage between the parties on 2nd July, 2019 is hereby dissolved. No order as to costs. (SGD.) HER WORSHIP BRIDGET AKPE AKATTAH DISTRICT MAGISTRATE Page 4 of 4

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