GHANA / JUDGMENT

KWAKWA VRS ALLAN (G/WJ/DG/ A4/94/23) [2023] GHADC 1046 (24 October 2023)

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COURT	CASE / FILE NUMBER
District Court	G/WJ/DG/A4/94/23

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IN THE DISTRICT COURT HELD AT WEIJA ON TUESDAY THE 24TH DAY OF OCTOBER, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE SANDRA KWAKWA PETITIONER SUIT NO. G/WJ/DG/A4/94/23 VRS EDWARD ALLAN RESPONDENT PARTIES ARE PRESENT AND SELF REPRESENTED

JUDGMENT

The petitioner then a spinster and the respondent then a bachelor, both Ghanaians resident in Ghana got married under the ordinance at St. Bartholomew Anglican Church at Teshie on 12th April 2008. Parties are blessed with one issue of the marriage namely Emmanuel Kobby Allan aged 14 years. The petitioner filed a petition at the registry of this court on 17th May 2023 against the respondent for the following reliefs;

1. That the ordinance marriage between the parties should be dissolved.
2. That an order should be directed at respondent to pay a lump sum compensation
3. An order for costs against the respondent after trial and any further orders as the court may deem fit. The respondent filed an answer to the petition on 5th June 2023 and cross petitioned for the dissolution of the parties' marriage. On 13th June 2023, the court referred parties to the Court Connected Alternative Dispute Resolution for a possible reconciliation. The feedback from the mediator indicated that on 14th June 2023, parties reached an agreement on the ancillary reliefs. The court therefore set down the matter for trial. THE CASE OF THE PETITIONER It is the case of the petitioner that the marriage between the parties has broken down beyond reconciliation due to the unreasonable behaviour of the respondent and she cannot reasonably be expected to live with him as a wife. She particularised the conduct of the respondent to the extent that respondent has been womanizing for a long time which has brought about quarrels between the parties. She averred that respondent makes telephone calls to his girlfriend in their bedroom from 8pm to 12 midnight and refuses to sleep in the same bed with her. She pleaded that because of

the womanizing attitude of the respondent, she and her son were not happy in the matrimonial home as respondent never spent quality time with the family. According to the petitioner, the respondent planned to relocate to the United Kingdom with the assistance of his lover however luck eluded him when the husband of his lover got wind of it and sent his wife down to Ghana to ostensibly marry the respondent. In the estimation of the petitioner, parties' marriage has broken down beyond reconciliation due to the unreasonable behaviour of respondent. Petitioner tendered the marriage certificate with licence number AMA/612/2008 as evidence of the parties' marriage. Same was admitted and marked as Exhibit A. She did not call any witness. RESPONDENT'S CASE Respondent on the other hand pleaded that parties have lived separately for two years with no intention of resuming cohabitation and all attempts by family and friends to reconcile them have proved futile. He prayed the court to dissolve parties' marriage and grant custody of the only issue of the marriage to petitioner with reasonable access to him. Respondent did not call any witness. ISSUES SET DOWN FOR DETERMINATION The issue set down for determination by the court was whether or not the marriage of the parties has broken down beyond reconciliation. BURDEN OF PROOF It is trite that the standard of proof in all civil matters is by a preponderance of probabilities. In Gihoc v Hanna Assi [2005-2006] SCGLR 458 at 486, the Supreme Court speaking through Sophia Akuffo JSC as she then was held as follows; "Hence by virtue of the provisions of NRCD 323, in all civil cases, judgment might be given in favour of a party on the preponderance of the probabilities...rather than on an archaic principle which might not accord with reason or common sense." Section 1(2) of the matrimonial Causes Act 1971 (Act 367) reads; 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 must satisfy the court on 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;

(f) that the parties to the marriage have after diligent effort been unable to reconcile their differences. Section 2(2) of Act 367 reads; On a petition for divorce, the court shall inquire so far as is reasonable into the facts alleged by the petitioner and the respondent Section 2(3) of Act 367 also reads; 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. The petitioner relied on the fact that respondent has behaved in a way that she cannot reasonably be expected to live with him. She is therefore required to prove the conduct constituting unreasonable behaviour on the part of the respondent and the fact that she cannot reasonably be expected to live with respondent. At page 141 of the book "At a glance! Contemporary Principles of Family Law in Ghana by Mrs. Frederica Ahwireng-Obeng, the learned author explained that "unreasonable behaviour has been defined in English law as conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger..." She explained that the conduct must be grave and weighty and must make living together impossible. She added that it must be serious and higher than the normal wear and tear of married life. From the evidence, I find that apart from the bare assertions of the petitioner, she could not lead any evidence to show the unreasonable conduct on the part of respondent for which reason she cannot reasonably be expected to live with him. I find the story of the respondent as more probable as respondent testified that parties have not lived as husband and wife for a continuous period of two years which assertion was not denied by the petitioner. From the totality of the evidence before this court therefore, I find that the parties' marriage has broken down beyond reconciliation due to the fact that parties have not lived as husband and wife for two continuous years preceding the presentation of this divorce petition and respondent consents to the grant of same. I therefore proceed under Section 47 (1)(f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Sandra Kwakwa and Edward Allan celebrated at St. Bartholomew Anglican Church at Teshie on 12th April, 2008 is hereby dissolved. I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly. The terms of Agreement of the parties dated 14th June 2023 is adopted as consent judgment and made a part of the final judgment of this court. I make no order as to costs. .....(SGD)..... H/W RUBY NTIRI OPOKU (MRS) DISTRICT MAGISTRATE 6

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