

GHANA / JUDGMENT

Yeboah Vrs Oppong [2023]

GHADC 695 (14 July 2023)

[2023] GHADC 695

COURT

District Court

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CORAM: HER WORSHIP NANA ABENA ASOH OWUSU-OMENYO (MS.), MAGISTRATE, DISTRICT COURT '1', KANESHIE, SITTING AT THE FORMER STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS' COLLEGE, ACCRA ON SUIT NO: A8/20/2022 REBECCA YEBOAH } PETITIONER VRS. EUGENE OPPONG } RESPONDENT

JUDGMENT

The parties to the instant marriage were married on the 18th Day of May 2019, at the International Central Gospel Church Osu. They share three (3) children. The petitioner filed this petition on the 17th Day of September 2021 and particularized various acts of unreasonable behaviour on the part of the respondent. She prayed for a dissolution of her marriage to the respondent and custody of the three issues of the marriage with reasonable access to the respondent. The respondent cross petitioned and prayed that the petition be dismissed as it lacks a legal basis for her reliefs. This court ordered parties to file witness statements which order both parties complied with. The court thus adopted the witness statements of the parties. The only ground for the dissolution of a marriage in Ghana is that the marriage between the parties has broken down beyond reconciliation. This ground is provided in section 1(2) of the Matrimonial Causes Act 1971 (Act 367). In order to establish that her marriage has broken down beyond reconciliation, the petitioner is enjoined to prove that one or more of the grounds laid down in section 2(1)(a)-(f) exist in her marriage. Section 2(1)(a)-(f) states:

- (a) That the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or
- (b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or
- (c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

- (d) that the parties to the marriage have not lived as man 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 such 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 notwithstanding the refusal; or
- (e) that the parties to the marriage have not lived as man 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. The petitioner seeks to rely on unreasonable behavior and per the test of unreasonable behaviour in the case of *HUGHS V. HUGHS* 1973 2 G. L. R. 342, the petitioner must show the court that the respondent's behavior reached a certain degree of severity..... that no reasonable person would tolerate. The petitioner avers that the attitude of the respondent has caused her great physical and emotional trauma. She does not however give any particulars of the behavior she complains about. She only states that the respondent does not give her information. She further states that the said behaviour has caused her embarrassment amongst her peers. I find all these assertions interesting because the petitioner neither in her claim or witness statement state specifically the acts of the respondent that she complains off. The court in the case of *MENSAH v. MENSAH* (1972) 2 GLR 198 observed that 'the conduct complained of must be sufficiently grave and weighty enough to justify the finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The parties must be expected to put up with what has been described as reasonable wear and tear of married life' The petitioner in my opinion seeks to rely on mere trivialities to dissolve her marriage as she is unable to describe in detail or summary any particular actions of the respondent that have been unreasonable towards her. On the basis of unreasonable behaviour per section 2(1)(b) of Act 367, the petitioner has failed to show that her marriage has broken down beyond reconciliation. I however note that the parties verbally informed this court that they would like the marriage to be dissolved as they cannot continue living together as husband and wife. I cannot hold a party or parties to a union they do not wish to be part of. I therefore find that in accordance with section 2(1)(f) of Act 367, the marriage between the parties has broken down beyond reconciliation. **CUSTODY MAINTENANCE AND ACCESS** Both parties have prayed this court for custody to the issue of the marriage. I am therefore obligated under the law to make custody order in their best interest. Section 22(1) of Act 367, states that in any proceedings under the ACT, whether for divorce or nullity it is the duty of the court to inquire if there are any children of the house hold and the court may on its own initiative or on the application by any of the parties to the proceedings make an order concerning the children of the household which it thinks reasonable for the benefit of the child. Such orders may include inter alia custody awards. In making custody order the Children's Act 1998, Act 560 enjoins the court to as a matter of importance consider the best interest of the child. It is my considered opinion that the best interest of the children of the household will be served if custody is given to the petitioner. I make this decision in the light

of the ages of the children of the marriage and the need for young children to stay with their mother. Final Orders:

1. That the marriage between the parties celebrated on the 18th day of May 2019 at the International Central Gospel Church has broken down beyond reconciliation and is hereby declared dissolved. That custody of the children of the marriage is hereby granted to the petitioner with reasonable access to the respondent. He is to have them every weekend and during the long vacations of their school.
2. That the respondent is to be responsible for all expenses consequential to the education of the children.
3. He is to be responsible for all their medical and health expenses as well and register them on the national health insurance scheme if he has not already registered same.
4. He is to pay an amount of Three Hundred Ghana Cedis (GHS 300.00) a week cumulating to One Thousand Two Hundred Ghana Cedis (GHS 1200.00) a month for the three children.
5. Each party is to bear their own cost. NANA A. A. OWUSU-OMENYO (MS.) (MAGISTRATE)

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