

GHANA / JUDGMENT

# DARKO VRS NARH (C5/202/2023) [2024] GHACC 158 (22 March 2024)

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IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 22ND OF MARCH 2024, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS) CIRCUIT COURT JUDGE C5/202/2023 LILLIAN DARKO PETITIONER VRS EVANS NARH RESPONDENT

## JUDGMENT

Parties herein on the 12th day of February 2021 tied the knot under ordinance at the Adenta Municipal Assembly. They thereafter cohabited at Ashalley Botwe, near Lakeside in Accra. This union is blessed with one child, Richlove Abena Aboagye born on 28th June 2022. Petitioner herein per her petition filed at the registry of the court on 16/03/2023 contends that the marriage celebrated her and Respondent has broken down beyond reconciliation due to the unreasonable behaviour of Respondent. She therefore prays the court for the following reliefs;

- a) That the marriage contracted between the parties on the 12th February, 2021 be dissolved on the ground that the said marriage has broken down beyond reconciliation due to the unreasonable conduct of the Respondent.
- b) That the Petitioner be granted full custody of the child namely; 1
- c) Richlove Abena Aboagye, with reasonable access to the Respondent.
- d) That the Respondent be ordered to provide a decent accommodation for the Petitioner and the child.
- e) That the Respondent be ordered to pay One Thousand Ghana Cedis (Gh¢ 1000) every month for maintenance of the child.
- f) That the Respondent be ordered to pay a lump sum of Fifty Thousand Ghana Cedis (Gh¢ 50,000) to the Petitioner. Respondent in his answer to the Petitioner denied any unreasonable behaviour on his part. He attributed Petitioner deserting the matrimonial home to the influence of his mother in law who claimed had sowed a seed of discord in petitioner's mind. He stated he loves Petitioner and is prepared to work on the marriage to ensure they come back together and be a happy family. On the orders of the court, parties filed their respective witness statements in support of their case. Parties in the course of the

trail and prior to the hearing of the case attempted out of court resettlement. They executed terms of settlement and caused same to be filed at the registry of the court on 22/09/2023. Counsel for parties herein however on 16/02/2024 prayed the court for leave to withdraw the said filed terms of settlement as they had filed another terms of settlement on the said 16/02/2024 in final settlement of the case before the court. Per this filed terms of settlement filed on 16/02/2024, parties agreed on terms as below; 2

- i. The Court to dissolve the marriage celebrated between the Petitioner and Respondents per the prayers of the parties before the Honourable Court. ii. Custody of the child of the marriage to remain with Petitioner with reasonable access to Respondent. Frequency and period of access by Respondent to the child of the marriage to be determined by the Court. iii. Respondent to pay monthly maintenance of Six Hundred Ghana Cedis (Gh¢ 600) to Petitioner for the upkeep of the child of the marriage. Respondent to pay the school fees and medical bills of the child of the marriage. iv. These terms of settlement embody the entire understanding of the parties in respect of the matters contained herein and there are no promises, terms, conditions or obligations, oral or written, express or implied other than those contained in these terms of settlement. v. Save that either party reserves the right to sue in respect of any cause of action that may arise after the execution and adoption of this agreement. The Parties relinquish all claims in respect of, or in connection with this suit and the Parties to the settlement hereby declare that they will not on any account institute or prosecute any action or proceeding in any court, tribunal or another forum in respect of the subject matter of this suit. vi. That these terms shall constitute consent judgment by the parties to be adopted by the Honourable Court. As can be read at paragraph 1 of the terms of settlement, parties herein agreed that the court dissolve the marriage celebrated between them. Section 1 of the Matrimonial Causes Act, 1971 Act 367 provides that “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”. Thus though both parties consents to dissolution of 3 the marriage, the court has to satisfy itself that the marriage between parties herein has indeed broken down beyond reconciliation. . Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.” Section 2(3) of Act 367 provides “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 court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367 has outlined several instances that suffice as proof of break down of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation. The court therefore heard the evidence of parties to determine whether the marriage between the parties has broken down beyond reconciliation. The evidence of Petitioner per her witness statement filed on 19/01/2024, she currently lives at Okorase, Suhum in the Eastern Region of Ghana and has not lived as husband and wife with Respondent six months

prior to the filing of the Petition in March 2023. According to Petitioner, the conduct of Respondent forced her to move out of the matrimonial home to her parents home at Suhum. She testified that Respondent gets irritated by her for no reason and would get angry without provocation. She stated that this resulted in a strain on their relationship causing her to suffer neglect, lack of care, support and attention, pain anxiety, distress and embarrassment. She testified further that during her pregnancy, Respondent showed no concern for her and failed to provide financial support to her. She continued that Respondent refuses or neglects to provide adequate financial support to her and the child with communication between them broken down since 2022 till date. Petitioner in her evidence stated although they lived together for the greater part of 2022 before she moved out of the matrimonial home, there was a total breakdown of communication and sexual intercourse between them. Petitioner concluded that several attempts at reconciliation by their families have proved futile with the Respondent unwilling to settle matters at the last attempt at settlement meeting. Respondent on the other hand testified that he lived happily with Petitioner as husband and wife in a kiosk prior to and after their marriage due to their inability to rent better accommodation. However after his mother-in-law moved in with them to assist with the care of their child after the birth of the child, things suddenly turned sour. He stated that his mother-in-law's claim that he could not give Petitioner a decent life surprised him because he lived with Petitioner in that same kiosk during courtship and even after marriage without any complaint from Petitioner. According to Respondent, he informed their pastor about this issue and Petitioner was advised to bear with him and for them to live within their means for the time being and build their lives together however this advice fell on deaf ears. According to Respondent he returned from work one day to find that Petitioner and her mother had left the matrimonial home with the child barely a month after the birth of their child and has till date not returned. He stated that he has been providing for the child of the marriage by sending Petitioner GHc100 weekly and also buys food and baby items for her monthly when she brings the child to the hospital in Accra for medical check-ups. Respondent further testified that Petitioner's family had returned to him the customary drink presented as her bride price back to him effectively dissolving the traditional marriage between them. 5 The evidence of the parties as summarized supra discloses a lot of differences between the parties, which they are unable to reconcile. From the record, parties have since 2022 had communication problems and have not had sexual intercourse since. Petitioner moved out of the matrimonial home in 2022 and has till date failed to return to same. The pastor of parties and family of members of the parties are unable to resolve the differences between the parties. The evidence on record also discloses that the family of Petitioner have taken a step further and returned the customary head drink back to Respondent to signify the dissolution of the marriage between the parties. The purported act of dissolving the customary marriage of the parties is an act in futility due to the marriage between the parties being an ordinance marriage. However, this act establishes that the family of Petitioner has concluded that the marriage has broken down beyond reconciliation. It further establishes that parties are unable to resolve their differences after diligent effort. In the case of KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J

held as follows, “the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the Petitioner is also obliged to comply with Section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that Section... proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation...It is accepted that proof of one or more of the facts set out in Section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in Section 2 (1) of Act 367 a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the Court’s power.” Under section 2 (1f) of Act 367, where the parties to the marriage have, after diligent effort, been unable to reconcile their differences, same is proof that the marriage has broken down beyond reconciliation. The evidence of the parties on record coupled with the terms of settlement where they both agree for the marriage between them to be dissolved by the court satisfies the court that parties after diligent efforts are unable to reconcile their differences sufficing as proof of the breakdown of their marriage beyond reconciliation. The court therefore finds per the evidence on record that the marriage celebrated between the parties herein has broken down beyond reconciliation due to parties’ inability to reconcile their differences after diligent effort. Accordingly judgment is entered in favour of Petitioner. The court decrees the said marriage celebrated between the parties herein at Adenta Municipal Assembly, Accra on the 12/02/2021 be and same is dissolved today, 22nd day of March, 2024 forthwith. ANCILLARY RELIEFS 7 As mentioned supra, the parties executed terms of settlement on 1/2/2024 same of which was filed at the registry on the 6/2/2024. Both parties prayed the court to adopt same as consent judgment during their evidence on oath. This court therefore adopts the said terms of agreement as consent judgment consequential to the dissolution of the marriage of the parties and orders as follows;

- i. Custody of the child of the marriage is granted to Petitioner with reasonable access to Respondent. ii. Respondent shall pay monthly maintenance of Six Hundred Ghana Cedis (Gh¢ 600) to Petitioner for the upkeep of the child of the marriage. iii. Respondent shall pay the school fees and medical bills of the child of the marriage. iv. That save that either party reserves the right to sue in respect of any cause of action that may arise after the execution and adoption of this agreement, Parties herein relinquish all claims in respect of, or in connection with this suit and Parties will not on any account institute or prosecute any action or proceeding in any court, tribunal or another forum in respect of the subject matter of this suit. Parties in their said terms of settlement deferred the determination of the frequency and period of access by Respondent to the child of the marriage to the Court. The court is mandated under section 22(2) of Act 367, either on its own initiative or on

application by a party to proceedings under the Act, makes an order concerning a child of the household, which it thinks reasonable, and for the benefit of the child. An order under that subsection may award custody of the child to any person; regulate the right of access of any person to the child; provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage. The court must consider the best interest of the child, the age of the 8 child, desirable to keep siblings together, need for continuity in the care and control of the child among others. Considering the age of the child in issue ie about 1 year 9 months currently and being a female child, sleep over access is not desirable and reasonable at this stage of her life. Accordingly the court orders that Respondent be and is granted supervised visitation rights to the child every weekend and holidays for a minimum of 2 hours a day to build and foster father-daughter bond between him and the child until the child attains 7 years. Thereafter, parties may review the access terms as shall be reasonable at that period.

## Conclusion.

The court in determination of this matter makes the following orders;

1. The court decrees the said marriage celebrated between the parties herein at Adenta Municipal Assembly, Accra on the 12/02/2021 be and same is dissolved today, 22nd day of March, 2024 forthwith.
2. Custody of the child of the marriage is granted to Petitioner with reasonable access to Respondent.
3. Respondent is granted supervised visitation rights to the child every weekend and holidays for a minimum of 2 hours a day to build and foster father-daughter bond between him and the child until the child attains 7 years. Thereafter, parties may review the access terms as shall be reasonable at that period.
4. Respondent shall pay monthly maintenance of Six Hundred Ghana Cedis (Gh¢600) to Petitioner for the upkeep of the child of the marriage.
5. Respondent shall pay the school fees and medical bills of the child of the marriage.
6. That save that either party reserves the right to sue in respect of any cause of action that may arise after the execution and adoption of this 9 agreement, Parties herein relinquish all claims in respect of, or in connection with this suit and Parties will not on any account institute or prosecute any action or proceeding in any court, tribunal or another forum in respect of the subject matter of this suit. There shall be no order as to cost. PETITIONER ABSENT RESPONDENT PRESENT KWABENA AGYEKUMHENE FOR PETITIONER ABSENT THEOPHILUS TETTEH ADIKO HOLDING THE BRIEF OF BEN ADEKANLE FOR RESPONDENT PRESENT H/H AFIA OWUSUAA APPIAH (MRS) (CIRCUIT COURT JUDGE) 10

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