

GHANA / JUDGMENT

YEBOAH VRS FERKAA

(BR/DR/DC/A4/10/2022) [2023]

GHADC 1182 (18 December 2023)

[2023] GHADC 1182

COURT

District Court

CASE / FILE NUMBER

BR/DR/DC/A4/10/2022

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IN THE DISTRICT COURT, DROBO - BONO REGION

SUIT NO. BR/DR/DC/A4/10/22

KWASI YEBOAH STEPHEN

H/NO. DR 179, KRUPIASE DROBO :

:

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: PETITIONER

VRS:

FERKAA RUTH

OF PAOLO EMILIANI 175,

ITALY:

:

:

RESPONDENT

=====

JUDGMENT

DELIVERED BY H/W LINDA E. NYAHE ESQ. (MAGISTRATE) DATED: 18/12/2023. IN THE DISTRICT COURT HELD AT DROBO ON TUESDAY, 18TH DAY OF DECEMBER, 2023. BEFORE HER WORSHIP LINDA ENYONAM NYAHE (ESQ). MAGISTRATE SUIT NO. BR/DR/DC/A4/10/22 KWASI YEBOAH STEPHEN H/NO. DR 179, KRUPIASE DROBO : : :: : PETITIONER VRS: FERKAA RUTH OF PAOLO EMILIANI 175, ITALY: : : RESPONDENT

===== PARTIES PRESENT AND SELF
REPRESENTED

JUDGMENT

BACKGROUND

The Petitioner is a farmer domiciled in Italy but resides in Drobo whenever he is in Ghana. The Respondent is also a farmer currently domiciled in Italy. The Petitioner and the Respondent got married under the ordinance system of marriage (Cap

127) on the 10th day of March, 2016 in this very court (Drobo District Court) and right after the marriage they traveled outside Ghana and co-habited in Italy. There were no issues of the marriage. Per a petition filed on 29th April, 2022, the Petitioner prays as follows;

- a. An order for the dissolution of the marriage between the parties.
- b. Any further other or others that the Honourable Court deems fit. PETITIONER'S CASE It is Petitioner's case that prior to the marriage, he was resident in Italy and he came to Ghana and married the respondent. The petitioner averred that in less than a year after the marriage he was able to move with the respondent to Italy to stay together. The petitioner further stated that the behavior of the respondent changed and all of a sudden the respondent started disrespecting him both in public and in the matrimonial home. The respondent refused to have sex with him for no reason and this resulted in series of long misunderstandings and quarrels between the parties. That there were instances that the respondent called the police in Italy to arrest him on the charge of harassment. That the petitioner reported the matter to the family members of the respondent to call her to stop her unreasonable behavior but all efforts to resolve their difference was to no avail. The petitioner says that the respondent has deserted the matrimonial home for the past 4 years in Italy and for that matter have not had sex since their separation. That the parties have divorced customarily for the past 2 years. That the marriage has broken down irretrievably. RESPONDENT'S CASE The respondent stated that during the pendency of the marriage, they had numerous misunderstandings which sometimes resulted in quarrels due to the quick temperedness of the petitioner. That the petitioner became an authoritative husband in the marriage and without any provocation, assaults her due to that she reported the Petitioner to the police. She added that her refusal to have sex with the Petitioner was due to the maltreatment by Petitioner and series of long misunderstandings and quarrels between the parties. The respondent further averred that she reported the conduct of the petitioner to the elders of their respective families but all effort made for the petitioner to put an end to his dictatorship and the continuous assault on her proved futile. That the behavior of the petitioner was unreasonable to her and she cannot be reasonably expected to live with him. That the parties have been separated and divorced customarily for the past 2 years and for that matter have not had sex since their separation. The marriage between them had broken down irretrievably. ISSUE The only issue outstanding for determination by the Court is whether or not the marriage between the parties has broken down beyond reconciliation. ANALYSIS OF EVIDENCE AND APPLICATION OF THE LAW Per Section 1 of the Matrimonial Causes Act, 1971 (Act 367); "the sole ground for granting a petition for divorce shall be that

the marriage has broken down beyond reconciliation. Section 2 of the Matrimonial Causes Act outlines the grounds to be satisfied in order for this Court to be persuaded that a marriage has indeed broken down beyond reconciliation as follows: “2. Proof of breakdown of marriage

- (1) 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:
 - (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; or
 - (f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences”. Section 2(3) of the Act provides; “Notwithstanding that the Court finds the existence of one or more of the facts specified in section 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 parties testified by their lawful attorneys and called no witnesses. During trial, the parties were given the opportunity to cross examine each other but they failed to do so. It is a cardinal principle of evidence that he who alleges must prove or substantiate his claim. Generally, in civil cases, the burden of proof lies on the Plaintiff and in this case the Petitioner to prove to the Court that the marriage has indeed broken down beyond reconciliation. See the case of BISI VS. TABIRI ALIAS ASARE [1987-1988] 1 GLR 360. It is an elementary principle of law that in civil litigation, where no issue was joined as between parties on a specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue. See the cases of FORI VS AYEREBI & OTHERS

[1966] GLR 627-649 AND BONSU VRS KUSI & KUSI [2009] DLSC 2499 BILLA v SALIFU [1971] 2 GLR 87-107 The Respondent admitted in her written response that she has deserted the matrimonial home for the past four (4) years. The fact that the parties have been separated for continuous 4 years and for that matter have not had any conjugal relations for the past 4 years was not in issue as Respondent does not dispute same. No further evidence was

therefore required from Petitioner on this issue. Per the uncontroverted evidence on record, I find that the parties have irreconcilable differences and have been unable to resolve same even after attempts to settle. Clearly, the marriage between the parties have broken down irretrievably. Thus, I find on the totality of the evidence that due to irreconcilable differences, separation for 4 years, unreasonable behavior and desertion by the Respondent, the marriage has broken down beyond reconciliation. Accordingly, I decree the marriage celebrated between the parties on 10th March, 2016 at Drobo District Court dissolved. The said marriage certificate with license number DMC/BA/DC/06/2016 and Certificate number 06/2016 is hereby cancelled. There will be no order as to cost. Parties shall bear their own cost. SGD..... H/W LINDA ENYONAM NYAHE (ESQ) (DISTRICT MAGISTRATE) 5

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