

GHANA / JUDGMENT

Andrew Vrs Oforiwaa [2023]

GHADC 110 (3 February 2023)

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3 February 2023

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IN THE DISTRICT MAGISTRATE COURT HELD AT NEW TAFO-AKIM ON FRIDAY 03-02-2023
BEFORE HER WORSHIP JOSEPHINE SARFO (MRS.) SUIT NO: A4/7/2022 ADU ANTWI ANDREW H/
NO. F9 OLD-TAFO, AKIM PETITIONER VRS GEORGIA OFORIWAA OLD-TAFO, AKIM
RESPONDENT PARTIES - PRESENT NANA AMA ASASE FOR PHIDELIS OSEI-DUAH FOR
RESPONDENT-ABSENT

INTRODUCTION

JUDGMENT

The Petitioner issued out this Petition claiming against the Respondent as follows: Dissolution of the Marriage, celebrated on 19th May 2018 between the Parties. To the Petitioner's Petition, the Respondent filed an Answer and also Cross-Petitioned as follows:

- a. Financial settlement of Twenty Thousand Ghana Cedis (GHC 20,000.00) as compensation.
- b. Any order the honourable Court deem fit. PETITIONER'S CASE The case of the Petitioner is that the parties got married under the ordinance on 19th May, 2018 at the Rhema Assemblies of God Church, Akyem Tafo. After the celebration of the 1 marriage, the parties cohabited at Old Tafo-Akim. That there is no issue to the marriage. That both parties are professional teachers. The Petitioner asserts that the Respondent has behaved in such a way that he cannot reasonably be expected to live with her; she has caused him much anxiety, distress and embarrassment. That the marriage is based on deceit and he cannot continue with such marriage. The Petitioner averred that the Respondent has committed adultery and he only came to the knowledge of Respondent's adulterous act after he had seen a facebook chat between the Respondent and her paramour wherein they discussed their sexual exploits. According to the Petitioner, their families meet on 18th October 2021 to conciliate on the issue of Respondent's infidelity and she admitted having committed adultery at the said meeting in the presence of her parents; he was advised to initiate this instant Petition if he could no longer continue with the marriage. RESPONDENT'S CASE The Respondent per her Answer to the petition, and cross-petition averred that she had a conversation with a friend the contents of which was unpalatable but has since apologized to the Petitioner. According

to Respondent though there was a meeting on 18th October 2021, the Petitioner left the meeting in anger causing the meeting to end inconclusively. The Respondent further asserted that the Petitioner has caused her much worry, humiliation and anxiety as such she could not reasonably be expected to live with him. The Respondent prayed for the dissolution of the marriage and GHC 20,000.00 as financial settlement. 2

ISSUES

Emanating from the pleadings and facts of this case, the following issues were set down for trial:

1. Whether or not the marriage between the parties has broken down beyond reconciliation?
2. Whether or not the Respondent is entitled to alimony? BURDEN OF PROOF Section 11(1) of the Evidence Act, 1975 (NRCD 323) provides that, “for the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue”. In *Re AshalleyBotwe Lands; Adjete Agbosu and others vrs Kotey and Others* [2003- 2004] SC GLR 420. It was held inter alia at page 425 that; “(5) the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial, depending on the issue(s) asserted and/or denied”. It was further stated as per *Brobbeey JSC* at page 425 that; “.... if the court has to make a determination of a fact or of an issue and that determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing.... The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court.....” Section 12 of NRCD 323 further provides that proof must be by a preponderance of probability. “Preponderance of probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.” This position was affirmed by the Supreme Court in the case of *Adwubeng v Domfeh* [1997-98]1 GLR 282 where it was stated that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities. The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under Section 2(1) of the Matrimonial Causes Act, 1971, (hereinafter called Act 367) the Petitioner would have to satisfy the Court that the marriage has broken down beyond reconciliation. The Petitioner in this case would have to prove that the Respondent’s behavior is such that a reasonable person in the circumstances and environment of the parties could not be expected to continue to endure. He would also have to convince the Court that he and the respondent have, after diligent effort, been unable to reconcile their differences. The evidence of the Petitioner is that the Respondent has committed adultery with one Addo John. That he chanced upon a facebook chat on the Respondent’s phone between the Respondent and the said Addo John which revealed explicit sexual contents about their sexual escapades with each other suggesting that the two were involved in extra- marital affairs. He tendered into evidence copies of the said chat retrieved from the Respondent’s Facebook Messenger,

labelled as Exhibit 'A' According to the Petitioner, he confronted the Respondent about the contents of the chat and she admitted having committed adultery with Addo John and pleaded for forgiveness from him while threatening to kill herself should the Petitioner inform her parents about his finding. An audio recording of Respondent's purported admission was also tendered in evidence as Exhibit B. That a meeting was held between their families on 18th October, 2021 at the Respondent's parents' house and at the said meeting the Respondent admitted having committed adultery with Addo John. That the Respondent verbally and physically 4 abused him and on one of such occasions put toothpaste in his eyes when his toothbrush accidentally fell on the washroom curtains. Despite all the abuse he suffered at the hands of the Respondent, he performed all his responsibilities as a married man by providing food and paying utility bills however the Respondent painted a different picture to her parents. The respondent during the subsistence of the marriage usually told him that she had no love for him but was forced by her parents to marry him as he was a good person but she would be happy should the marriage be dissolved. The Respondent also testified that the parties have lived happily together since they got married until two years ago when the Petitioner's attitude towards her changed; the Petitioner stopped communicating with her and was always chatting with other ladies whom he claimed to be his friends on his phone and had sneaky conversations with them at very late hours of the night when they were both supposed to be in bed. That prior to marrying the Petitioner, he owned a photocopying and printing press in Akyem Tafo which he operated alongside his teaching job and upon marriage, the Petitioner informed her that he needed to restructure the printing press business and asked her to take care of their feeding and other expenses in the house to enable him purchase a few machines for the business which she agreed. The Respondent averred that she paid half of their house rent while the Petitioner paid the remaining half and whenever she was unable to pay hers as a result of financial constraints, the Petitioner would refuse to communicate with her for several days and weeks until she made the money available to him. Due to this she had had to resort to taking loans over the years to be able to raise money for the payment of their rent which loans she was still servicing. That the Petitioner did not involve her in decision making and did not respect her as his wife. According to the Respondent, prior to the institution of this divorce petition, the Petitioner had refused to sleep in the bedroom and on their matrimonial bed for over nine months and had equally refused to have any form of sexual intercourse with her. The Respondent denied having 5 any sexual relations with Addo John and stated that the only reason she admitted having inappropriate conversation with a male friend was because the Petitioner threatened her with divorce if she failed to admit so. That she never assaulted the Petitioner physically or verbally rather the Petitioner verbally and physically abused her whenever they had some form of misunderstanding and as a result of which she once suffered a miscarriage. The Respondent further averred that the Petitioner only paid the electricity and water bills while she took care of the food, groceries, gas, etc. Though there was a meeting between the two families sometime in October, 2021, at reconciliation, it failed because the Petitioner stormed out of the meeting in anger amidst claims of not having any intentions of continuing with the marriage. Section 2 of Act 367

provides that, “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 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; 6
- 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;
- f) That the parties to the marriage have after diligent effort, been unable to reconcile their differences”. “The burden of proof is throughout on the person alleging adultery, there being a presumption of innocence. A suit for divorce is a civil and not a criminal proceeding, but same strict proof is required of adultery as is required in a criminal case before an Accused person is found guilty; that is, the tribunal must be satisfied on proof beyond all reasonable doubt”- per Rayden in his learned treatise on Divorce (7th ed.) as cited in the case of *Quartey v Quartey and Another* [1972] 1GLR 6. The Court further held in *Quartey v Quartey and Another* supra, that, “it is a matter of inference and circumstance. It is easy to suggest conditions which can leave no doubt that adultery has been committed, but the mere fact that people are thrown together in an environment which lends itself to the commission of the offence is not enough unless it can be shown by documents, eg. Letters and diaries, or antecedent conduct that the association of the parties was so intimate and their mutual passion so clear that adultery might reasonably be assumed as the result of an opportunity for its occurrence”. The Petitioner relied on the contents of Exhibit A and contended that the Respondent had committed adultery. For the purpose of this judgment some extracts of the contents of Exhibit A has been reproduced below; Page 21-22 R- IS RAINING HERE PAAA OOOOO AJ- EII IT’S MEANS YOU NEED SOMETHING RIGHT R- YOUR DICK OOO IS SOOO NICE N IT WAS KILLING ME OOO 7 Page 23-24 R- YOU ARE VERY STRONG OOOOO AJ- YOU DON’T LIKE IT R- SINCE THEN THE LOVE... I HAVE FOR YOU IS GROWING PAAA OOO. THE LOVE IS DEEP Page 25-26 AJ- I MISS THE BODY ROUGH R- SAME HERE OOO R- WE HAVE TO MEET ON TUESDAY OOO AJ- AT WHERE SAME KOFORIDUA RIGHT R- OR ANY LOCATION AJ- OHK R- WHERE DO YOU WANT US TO MEET OR YOU HAVE ANOTHER PLACE. BABY R U OFFLINE. AM MISSING YOU PAA OOO AJ- SAME TOWN BUT DIFFERENT HOTEL OOO. R- KK, GREAT, BIG DICK..... The reasonable

inference that can be gathered from the above extract is that the Respondent and Addo John used to meet and have sex with each other at scheduled times and places while the Respondent was still married to the Petitioner. In fact, the Respondent as can be deduced from the entire trajectory of her chat with Addo John at a point informed Addo John that the love she had for him was increasing since they met to engage in sexual intercourse. The Respondent did not deny the authorship or knowledge 8 of Exhibit A. Though she admitted having the chat with Addo John whom she asserted was her friend before she got married to the Petitioner, she described the contents of the chat as inappropriate conversation. In the candid opinion of the Court, to describe the contents of the chat between the Respondent and Addo John as inappropriate is not only an understatement but also an attempt on the part of the Respondent to water down the severity of an act such as adultery. The content of the chat clearly shows a sexual relationship between two lovers who after their sexual encounters relished in reminiscing about their encounter in order to keep aflame the spark between them. The following statement of Respondent at Paragraph 8 of Exhibit B, “she will insult me with it. you know how my mum is. She will insult me and go like, ‘when you went into marriage, if you had not engaged in extra marital affair, would he have gotten angry?’. She will use words like ‘adulterer, look at her....’”, further corroborates the contention of the Petitioner that the Respondent has committed adultery. Both parties accused the other of several acts of misconduct including verbal and physical assault, I am however of the firm belief that what sounded the death knell on this marriage was when the Petitioner came to the knowledge of the Respondent’s extra- marital affairs with Addo John. While under cross-examination, the Petitioner contended that he saw the messages on a Wednesday and the meeting between the families was convened on the Monday of the week thereafter. The swiftness with which the Petitioner sought to bring the issue of the Respondent’s adultery to the knowledge of her parents shows the seriousness he attached to the issue. In view of the foregoing, I hold that the Respondent has committed adultery and the Petitioner finds it intolerable to live with her. The evidence before this Court also establishes that all efforts to reconcile the parties have proved futile and both parties consent to the divorce. I hold that the marriage between the parties has broken down beyond reconciliation and the said marriage is hereby dissolved. 9

PAYMENT OF COMPENSATION The Respondent is praying for an amount of GHC 20,000.00 as financial settlement from the Petitioner. The Petitioner denied that she is entitled to this sum. The Respondent thus needed to lead evidence to establish why she was entitled to this amount. Section 19 of Act 367 states that, “the Court may, whenever it thinks just and equitable award maintenance pending suit or financial provision to either party to the marriage, but no order pending suit or financial provision shall be made until the court has considered the standard of living of the parties and their circumstances”. Factors to be considered in awarding financial provision include the following: the income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future; the financial needs, obligations, and responsibilities each of the parties has or is likely to have in the foreseeable future; and the standard of living enjoyed by the family before the breakdown of the marriage. The Court must also take into consideration the ability of the spouse who will be

required to make the payment. In assessing the financial provision, I have taken into consideration the vocations of Petitioner and Respondent both being professional teachers meaning they are both gainfully employed. The Petitioner filed his affidavit of means and averred that as a teacher he earns GHC 2,511.44 as net salary every month with a monthly expenditure of GHC 1,400.00. Respondent also averred per her affidavit of means that she earns GHC 2,003.76 as net salary every month with a monthly expenditure of GHC 1,680.00 and an additional quarterly expenditure of GHC 350.00. From the parties' affidavit of means filed, it is evidently clear that they are both financially sound. I am not taking into account the conduct of either of the parties. My focus at this juncture is to look at the realities and attempt to put the Respondent in the position she would have been had the marriage not broken up. Prior to the marriage, the Respondent was a teacher and remained so throughout the subsistence of the marriage. I do not think that her standard and style of living will suffer as a result of the dissolution of the marriage. I am also aware that whatever household chattels the parties had during the marriage were shared between them upon the dissolution of the customary marriage. The Respondent testified that she agreed with the Petitioner's proposal for her to take care of the home while he ploughed his earnings into his printing press business after the parties got married. She also paid fifty percent of their annual rent and had to contract loans to enable her meet this obligation such that she is still servicing the loans till date. The Petitioner on the other hand denied that the Respondent supported him in all these instances and averred that he solely bore the responsibility of fending for the household including paying utilities and it was on only one occasion when the Respondent added GHC 1000.00 to their rent as Respondent preferred a different accommodation from the previous place they lived. It is settled law that in litigation, he who asserts must prove and win his case on the strength of his own case and not the weakness of the defence. SEE HOLDING 2 OF OWUSU V TABIRI AND ANOTHER (1987-88)¹ GLR 287. Thus the burden was placed on the Respondent to establish that the parties had an agreement that she take on the burden of fending for the household as she alleged. I am not unaware of the general principle that the ordinary incidence of commerce has no application in marital relations between husband and wife; however, for someone who contended that she was still servicing loans she contracted to pay the parties' rent the Court would have expected that evidence of such loans she had contracted will be produced before this Court. The Respondent failed to lead any evidence to prove this fact. Furthermore, nowhere on the Respondent's pay slip attached to her Affidavit of Means did the Court notice any evidence of loan deductions from her salary. I would state that the contributions of either of the party during the marriage however meagre or substantial were done for the mutual benefit of both parties and for the continuity of the marriage. More so each party has prospects to increase the earnings or standard of living in the foreseeable future. For the above stated reasons and in the interest of justice and equity, I will exercise my discretion and not award any compensation to the Respondent. DECISION I find from the evidence led before this Court that the marriage between the parties has broken down beyond reconciliation. I therefore decree that the marriage be dissolved. The marriage between the parties is hereby dissolved. I will make no order as to costs. Each party to bear the own costs. H/W

JOSEPHINE SARFO (MRS.) SGD 12

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