

GHANA / JUDGMENT

ADOBEA-OWUSU VRS DONKOR (G/DG/AC/A4/45/23) [2023] GHADC 827 (17 November 2023) [2023] GHADC 827

COURT

District Court

CASE / FILE NUMBER

G/DG/AC/A4/45/23

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CORAM: IN THE DISTRICT COURT, ACHIMOTA – ACCRA HELD BEFORE HIS WORSHIP PRINCE OSEI OWUSU SITTING AS DISTRICT MAGISTRATE ON 17TH NOVEMBER, 2023 SUIT NUMBER: G/DG/AC/A4/45/23 ADWOA ADOBEA-OWUSU

- PETITIONER H/N B7, ACHIMOTA ACCRA VS JONATHAN DONKOR

- RESPONDENT MAMPON OKAI AVENUE, LAPAZ ACCRA

..... TIME: 8:47AM

PARTIES PRESENT JANE TACHIE-MENSON FOR RESPONDENT

JUDGMENT

Petitioner commenced this action on 18/4/23 praying for the following reliefs;

- a) An order for the dissolution of the marriage celebrated between the parties as same has broken down beyond reconciliation due to the unreasonable behavior of the Respondent.
 - b) Any other orders or relief as the court shall deem fit to decree
- P a g e 1 | 6 The undisputed facts are that the parties are both Ghanaian, married under the Ordinance on 6th October, 2018 at Ebenezer Methodist Church, Siwdo Cape Coast and there is no issue in the marriage, both parties are journalist It is the Petitioners case that the marriage between her and the Respondent has broken down beyond reconciliation, alledging unreasonable behavior on the Respondent part. She averred that the Respondent did not reveal his sexual status before marriage. She stated that the Respondent engages in masturbation to satisfy himself instead of satisfying the Petitioner which the Petitioner claim has caused her psychological trauma. The Petitioner further averred that the Respondent suggested artificial insemination to produce babies instead of sexual intercourse with her. According to the Petitioner they had not had sex or any form of intimacy for all these period since October 2021. She said all attempts to reconcile their differences by consultant and family members, have proved futile. In his answer to the Petition filed on 3/5/23 the Respondent averred in response to

petitioner's assertion that the marriage has broken down beyond reconciliation that was the Petitioner who rather promised to help Respondent to find lasting solution to the situation of not reaching climax and release during sperm sex. According to the Respondent the prolong menstrual flow of the Petitioner made him to resort to masturbation and it is better to masturbate than to cheat on the Petitioner. The Respondent further stated that Petitioner's discomfort during sex makes him feel uncomfortable to the extent of losing erection. The Respondent further more indicated that the Petitioner packed some of her belongings from the matrimonial home. The Respondent admitted the marriage has broken down beyond reconciliation. The suit was set down for trial. P a g e 2 | 6 The main issue for determination is whether or not the marriage has broken down beyond reconciliation within the purview of the Matrimonial Causes Act 1971 (Act 367). Evaluation of Evidence/ Legal Analyses Section 1(1) of the Matrimonial Causes Act 1971 (Act 367) allows either party to a marriage to present a petition to the Court for divorce. Section 1(2) of the Act further emphasis the sole grounds for granting a petition for divorce shall be that marriage has broken down beyond reconciliation. In order to prove that the marriage has broken down beyond reconciliation, a Petitioner shall prove to the satisfaction of the Court the existence of at least one of the six facts specified in Section 2(1)(a) – (f) of Act 367. Proof of any one of these facts raises a presumption that the marriage has broken down beyond reconciliation. If any of the facts is made out, the Court must grant the dissolution unless it is satisfied that the marriage has not broken down irretrievably. See the case of Kotei V. Kotei [1974]2 GLR, Ash V. Ash [1972] 1 ALL ER 582; Pheasant V. Pheasant [1972] 1 ALL ER 587. In proving that the marriage has broken down beyond reconciliation, the Petitioner has the burden to satisfy the Court on at least any of the following facts:

- (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 continuous period of at least two years immediately preceding the presentation of the Petition; or P a g e 3 | 6
- (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. A petitioner may satisfy the Court that a marriage has broken down beyond reconciliation by adducing evidence that are in tandem with Section 2 (1)(b) of Act 367. This

section is to the effect that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him or her. The Cambridge Advanced Learner's Dictionary (4th edition) has defined behavior generally as "the way that a person behaves in a particular situation or under particular conditions." Baker P in *Kats v. Katz* [1972] 3 All ER 219 put it as follows: "behavior is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband's love, or not being as demonstrative as he thinks she should be. Behavior in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and in my view, it must have some reference to the marriage. Unreasonable behavior in marriage can take several forms such as threats, assault or violence, insults, sex deprivation, amongst others. In dealing with behavior, the question, is whether the Petitioner can reasonably be expected to live with the Respondent. The P a g e 4 | 6 Court ought to take cognizance of the personalities of the individuals before it and evaluate the impact of the Respondent's conduct on that particular Petitioner, having due regard to the history of the marriage and their relationship. See the case of *Livingstone – Stallard v Livingstone Stallard*; *Knudsen v Knudsen* [1976] 1 GLR 204; *Mensah v Mensah* [1972] 2 GLR 198. The Petitioner's evidence was that the Respondent has been denying her sex and has resorted to masturbation. Due to these, the Petitioner, asserted that the Respondent had behaved unreasonably for which she could not live with him as his conduct caused her pain and anxiety. It must be put on record that the allegation the Petitioner made was not denied by the Respondent. The Petitioner bore no burden of satisfying the Court on her allegation of unreasonable behavior against the Respondent. I found as a fact that the parties have not had sex since October 2021 and have no intention of resuming consortium. In the case of *Santos V. Santos* [1972] 2 ALL ER 246, the Court of Appeal determined the legal meaning of living apart requires physical separation and mental separation. It stated that physical separation alone is not enough. It also has to be shown that one party has ceased to recognize the marriage as existing. It can be mutual or it can be unilateral. The Court also held that this does not have to be communicated to the other spouse. In other words, more physical separation without more did not constitute living apart. See the case of *Addo V. Addo* [1973] 2 GLR 103. It is not in dispute that the parties have not had sex since October 2021, and do not want to resume consortium, and that the marriage has come to an end. The Court therefore concludes in respect of fact under Section 2(1) (d) and (f) Act 367, the Court concludes that the marriage between the parties has broken beyond reconciliation. In the light of the foregoing, I hold that, P a g e 5 | 6

- 1) The Ordinance Marriage celebrated between the parties on 6th October 2018 at Ebenezer Methodist Church, Cape Coast is hereby dissolved.
- 2) There will be no order as to cost. HIS WORSHIP PRINCE OSEI OWUSU DISTRICT MAGISTRATE P a g e 6 | 6

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