

GHANA / JUDGMENT

KWADU VRS DUKSON (A4/11/22)

[2023] GHADC 967 (16 November 2023)

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COURT

District Court

CASE / FILE NUMBER

A4/11/22

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IN THE DISTRICT COURT HELD AT NKROFUL ON THURSDAY 16TH DAY OF NOVEMBER 2023, BEFORE HER WORSHIP AWO AMISSAH FRENCH ESQ. AS MAGISTRATE. SUIT NO. A4/11/22 CHARLES WAHAB KWADU PER HIS LAWFUL ATTORNEY SAMUEL AMIHERE PETITIONER VS. JOYCE DUKSON RESPONDENT Petitioner's lawful Attorney present Respondent present Parties self-represented J U D G M E N T The Petitioner, a teacher by vocation, filed a petition in this Court on the 26th day of July, 2022, praying the Court to dissolve the Ordinance Marriage celebrated between Petitioner and the Respondent at the Nkroful District Court on the 2nd day of May, 2014. He prayed the Court to

- a. Dissolve the marriage; and
- b. Any further Order that this Court deems fit. The Petitioner's case is briefly that he married the Respondent on the 2nd May, 2014 and has one issue with her. Petitioner avers that a year after the marriage the relationship turned sour leading to a communication barrier as between himself and the Respondent. Petitioner further avers that for the past seven (7) years there has been no sexual intercourse as between himself and the Respondent and that in parties bid to go their separate ways, he has since compensated the Respondent with an amount of Twelve Thousand Ghana Cedis (GHC 12,000), a plot of land and an uncompleted building, which Respondent has accepted. The Respondent for her part testified that after their marriage ceremony, Petitioner left for the United States of America while she remained ere in Ghana and that for the past seven (7) years, there's been no sexual intercourse between herself and the Petitioner. Respondent further avers that communication between herself and the Petitioner has broken down and that the Petitioner has, for the past seven (7) years, refused to remit her as his wife. Respondent further avers that in view of developments she accepted compensation of an amount of Twelve Thousand Ghana Cedis (GHC 12,000), a plot of land and an uncompleted building. In proof of the existence of a marriage under the Ordinance, the Respondent tendered in evidence a marriage certificate, that was issued to the parties on the 2nd day of May, 2014 by the Nkroful District Court. This marriage certificate was admitted into evidence and marked as Exhibit A. Now section 22 of the Matrimonial Causes Act, 1971 (Act 367) states; "22. (1) In all proceedings under this Act,

it shall be the duty of the Court to inquire whether there are any children of the household.

- (2) The Court may, either on its own initiative or on application by a party to any proceedings under this Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.
- (3) Without prejudice to the generality of subsection (2), an order under that section may—
 - (a) award custody of the child to any person;
 - (b) regulate the right of access of any person to the child;
 - (c) 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.” From the parties’ written statements filed, it is on the record that parties during the pendency of their marriage were blessed with one female child by name Aisha Gladys Wahab Kwadu, aged 13 years and thus I hereby order as follows: 1. Custody Custody of the child/issue is hereby granted to the Respondent. I hereby grant generous access to the Petitioner, within which period parties are to accord each other with the needed respect. The child/issue is not to be taken outside the jurisdiction except with the consent and concurrence of the other party, and with the approval of the Court.
2. Monthly Maintenance: An amount of Five Hundred Ghana Cedis (GH¢ 500) only per month is to be paid by the Petitioner to the Respondent for the child/issue to cater for her upkeep. This said amount shall be maintained till such time that a party applies for a variation of same. 3. Clothing Needs Respondent is ordered to cater for all ordinary or day to day clothing needs of the child while Petitioner caters for all festive clothing needs of the child. 4. Educational Arrangements: The Petitioner shall bear the cost for all educational needs of the child/issue.
5. Medical Health Arrangements: The Respondent shall ensure that the National Health Insurance card of the child/issue is renewed when due. In the event that the child/issue has any health condition which is not covered by the National Health Insurance Scheme, the Respondent shall ensure that the child/issue receives the best of medical care and the payment in full of such medical service rendered shall be made by the Petitioner. Now having concluded with custody and maintenance arrangements of the child of the marriage, the only issue for determination therefore is whether or not the parties’ marriage has broken down beyond reconciliation? Now, Section 2(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that; “On a petition for divorce, it shall be the duty of the Court to inquire, so far as is reasonable into the facts alleged by the Petitioner and the Respondent.” The Court is thus required to establish from the evidence whether the facts support the claim by the Petitioner that the marriage has broken down beyond reconciliation. The Court’s duty therefore is to critically consider the facts in evidence and determine whether or not the marriage has broken down beyond reconciliation. Section 2 of the Matrimonial Causes Act, 1971 (Act 367) states as follows; “(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 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 Court has to therefore analyze the evidence on record to find out if any one or more of the facts in Section 2 of Act 367 is made out in order to establish that the parties’ marriage has in fact broken down beyond reconciliation. From the hearing, it was evident that both parties had, prior to the petition, been separated and were living apart for about seven (7) years. In any case Petitioner has already compensated the Respondent with an amount of Twelve Thousand Ghana Cedis (GHC 12,000), a plot of land and an uncompleted building, which Respondent has magnanimously accepted. Thus from the evidence on the record, I find and hold that paragraphs (d) and (e) of subsection (1) of section 2 of Act 367 has been satisfied. In answer to the first issue, I therefore hold that since paragraphs (d) and (e) of subsection (1) of section 2 of Act 367 has been established and Respondent consents to the divorce, the marriage has indeed broken down beyond reconciliation. Accordingly, the duplicate marriage certificate (Exhibit A) is cancelled forthwith and a Divorce Certificate is to be issued to each party. No Orders made as to costs. SGD H/W: AWO AMISSAH FRENCH DISTRICT MAGISTRATE, NKROFUL 16TH NOVEMBER, 2023

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