

GHANA / JUDGMENT

Asiedu Vrs Nibe-ang [2023]

GHADC 195 (26 January 2023)

COURT
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26 January 2023

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IN THE DISTRICT COURT HELD AT SOMANYA ON THURSDAY THE 26TH DAY OF JANUARY, 2023 BEFORE HIS WORSHIP MICHAEL DEREK OCLOO SUIT NO: A4/121/2023 DANIEL ASIEDU } PETITIONER VRS JOYCE NIBE-ANG } RESPONDENT PARTIES: PRESENT : J U D G M E N T The Petitioner instituted the instant action for the following reliefs:

1. Dissolution of the marriage between him and the Respondent.
2. Custody of the 2 children of the marriage. The Respondent filed a Cross Petition as follows:
 1. An Order of the Court to dismiss the Petitioner's Petition for divorce.
 2. An Order of the Court to dismiss Petitioner's relief sought. The Petitioner is a Police Officer and the Respondent is a student. The Petitioner per his Witness Statement stated that he married the Respondent under Ordinance marriage on 27/8/2011 at the Presbyterian Church of Ghana, Kukurantumi and they stayed at Kukurantumi for some time and later relocated to Adomi Senchi Police Barracks when the Petitioner was transferred to Adomi Senchi Police Station. He added that the marriage is blessed with two children namely Kerrison Nhyira Asiedu and Richmond Aseda Asiedu who are 10 and 6 years respectively. He further stated that after some few years into the marriage, the Respondent started exhibiting signs of disrespect towards him such as making calls and receiving calls sometimes up to 11pm to persons who the Petitioner does not know. According to the Petitioner he saw some text messages on the Respondent's cell phone which indicated that the Respondent's is dating another man by name Mr. Augustine Dagao- who is a married man. He tendered the photographs of the said Dagao Augustine which was admitted in evidence and marked as exhibits 'A' and 'B'. 1 He added that the Respondent and the said Augustine Dagao have been exchanging text messages and gave Augustine Dagao's Vodafone number as 0203022960 and the MTN Number as 0244297565. Also, he stated that the Respondent sent her nude pictures showing her vagina to Mr., Dagao who also sent his naked pictures showing his penis to the Respondent and he tendered pictures of same which were admitted in evidence and marked as Exhibit 'F' and 'G' respectively. The text messages were also marked as Exhibit 'J' series. The marriage certificate was also admitted in evidence and marked as Exhibit 'H'. He stated that the Respondent has denied him sex for the past two (2) years. He concluded that elders

of both families and Pastor Fred Amenya of Apostolic Church of Ghana had tried to settle the matter but to no avail. In the witness statement of the Respondent she stated that the nude pictures were meant for the Petitioner on request and in doing so she mistakenly sent same to unintended recipients including the said Augustine Dagao. She added that Mr. Augustine Dagao is his childhood and family friend and he is married with children as such there was no way she would have any amorous relation with him. Also the Petitioner has impregnated a certain lady who has given birth. In conclusion, she stated that she is a student as such she makes several late night calls to her colleague students for discussion of topics and assignments. She concluded that there are no issues and even if there are they can be resolved at home without it leading to divorce as she is 7 months pregnant which the Petitioner has not denied responsibility. The legal issue for determination by the Court is whether or not the marriage has broken down beyond reconciliation. Section 2 of the matrimonial cause Act 1971 (Act 367) provides that for the purpose of showing that a marriage has broken down beyond reconciliation the Petitioner shall satisfy the Court of one or more of the following facts: 2 (1) (b) That the respondent has behaved in such 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.
- (f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences. 2 An otherwise peaceful marriage developed some challenges after few years into same. The Petitioner maintains that the challenge was due to the emergence of an amorous relation between the Respondent and a certain man called Augustine Dagao. The Petitioner tendered the naked pictures of both the respondent and Augustine Dagao which they exchanged or sent to each other which were admitted in evidence and marked. He also tendered the pictures of Augustine Dagao which were as admitted in evidence and marked. The Petitioner also tendered the text messages (chat) between the Respondent and Augustine Dagao. There is the need to reproduce the said chat below and for the purposes of guidance and direction, Resp represents Respondent and Aug. stands for Augustine. Resp: Good evening bra Augustine. I've not been myself after the post. Guilt and sadness have taken over my life since afternoon. I beg of u pls let my mistake be a secret between us. I find it even very difficult sleeping can you pls delete it from your phone. Aug: Sweet these pictures are secured but to make you confident and comfortable I will delete them. I have just deleted them. Resp: Thank you very much, u are a genius Aug: Of course I do what is right and make you comfortable around me. During cross examination of the Respondent by the Petitioner the following ensued: Do you remember that on 15/7/2022 the two of us went to your family head at Wa. Yes. Q. A. do you remember that at Wa naked pictures of you and one Augustine Dagao were Q. shown to the gathering. A. Q. Yes. I am putting it to you that the said naked pictures depicted your vagina and Augustine Dagao's penis. A. Yes. Do you remember that your head of family told you that it is an abomination for you Dagao who Q. as a married woman to exchange your naked pictures with a man Augustine is not your husband? A. Yes. I am putting it to you that Augustine Dagao is never your brother rather he

is Q. serious sexual partner. your A. His is my family brother. 3 It is clear from the above that the Respondent sent her naked pictures to Augustine: a conduct which is not appropriate for a married woman to exhibit. With such behaviour, the Petitioner cannot reasonably be expected to live with the respondent. On page 241 of the 3rd Edition of William E. Offei's book titled Family law In Ghana it is stated that "desertion is not a withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state. The state of things may be termed for short 'the home'...There must be a forsaking and abandonment of the other spouse; a willful breaking off of conjugal relations... There may be animus deserendi without the factum of separation as where the parties live not as two households under the same roof, but as one household." In the instant case there is a peculiarity which is found in the fact that both the Petitioner and the Respondent live as one household under the same roof but in different rooms where the Respondent has willfully broken off conjugal relations. That is to say that the Respondent has denied the Petitioner sex for 2 years which constituted desertion. It is prudent to look at the issue of resolution. The Petitioner maintains per his witness statement that attempts made to resolve the matter have all been futile and the Respondent per her witness statement is of the opinion that the matter can be resolved. During Cross Examination of the respondent by the Petitioner the following transpired: Do you remember that my head of family Mr. Fred Amenyah told you to invite your Q. mother to come to Accra for a resolution meeting? A. Yes however he did not specify that it should be my mother, rather he said I should invite 2 of my relatives. Do you remember that you called my head of family on phone and told him that your Q. mother said she could not honour the invitation and she could not get any member to represent her at the said meeting (proposed). family Yes however I told him that my mother was dead and those who were to accompany A. me had suggested that we join them in the Upper West region. It is clear from the above that an attempt to resolve the issue could not take place. This confirms the fact that in totality the Petitioner and the respondent have been unable to reconcile their differences after diligent effort. It must also be noted that the Respondent contended that the denial of sex on her part could not have been for a period of 2 years as alleged by the Petitioner. When she Cross-Examined the Petitioner the following transpired: 4 Q. I am putting it to you that we have been having sex even when the case is in Court. A. That is not true. Q. I am putting it to you that we even had sex last Saturday (10/12/2022). A. That is not true even I was on night duty on the said date. At this stage the Respondent, with leave of court, showed a recorded video of a sex act between her and the Petitioner which was viewed by both parties in chambers. The Respondent then continued with the cross examination as follows: Q. This happened at 4:14 pm on that day. A. That is not true. The Petitioner is of the view that it was an old video coverage. Apart from the stated time at 4.14 pm the exact date was absent on the tape. The court could therefore not ascertain the validity of the Respondent's evidence. The suggested conclusion is that the Respondent was unable to prove her allegation. I have considered all the evidence adduced during hearing and it is my finding that the marriage has broken down beyond reconciliation. In the circumstance I hereby declared the ordinance marriage between Daniel Asiedu herein referred to as the Petitioner and Joyce Nibe-Ang herein

referred to as the Respondent duly dissolved. Order as follows:

1. That the Petitioner shall pay an alimony of GHC5,000.00 to the Respondent.
2. That custody of the 2 children is granted to the Respondent with reasonable access to the Petitioner during school holidays.
3. That the Petitioner shall pay a monthly maintenance of GHC200.00 in respect of the 2 children.
4. That the Petitioner shall pay the school fees of the 2 children as and when they are due.
5. That the Petitioner shall provide decent accommodation for the 2 children of the marriage to enable the Respondent to take care of them. There is no order as to distribution of property as no property was jointly acquired during the pendency of the marriage.
SGD..... 5 H/W MICHAEL DEREK OCLOO (MAGISTRATE) 26/01/2023 F. T. 6

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