GHANA / JUDGMENT

KYERE VRS KWAA (C4/10/2023) [2024] GHACC 102 (2 February 2024)

COURT
ghacc

DECIDED
2 February 2024

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IN THE CIRCUIT COURT HELD AT TECHIMAN ON FRIDAY 2ND FEBRUARY, 2024 BEFORE H/H SAMUEL DJANIE KOTEY ESQ. SITTING AS A CIRCUIT COURT JUDGE SN: C4/10/2023 KYERE KWABENA VRS JULIANA KWAA

JUDGMENT

The parties were married under the ordinance on 23rd August, 2013 at the church of Pentecost Dwomor assembly here in Techiman. Given the date of the said marriage, the parties have been married for close to ten (10) years at least preceding the presentation of the petition for dissolution of their marriage. Their union has not produced any issues. No properties have also been acquired which the parties want the court to share between them. When the petition was filed, the respondent did not file an answer. Rather, she proceeded to file a witness statement when the petition was set down for trial. At the trial, the respondent was in court when the petitioner testified. She cross examined the petitioner. After his evidence, the petitioner did not invite any witness. The respondent also never sought leave of the court to file answer to the petition on the basis of which she could testify. The present judgment therefore is based on the petition and testimony of the petitioner alone. Whether or not the respondent contests the petition, the court will only grant the award based on a showing that the marriage has broken down beyond reconciliation within the meaning of section 1(2) of the MATRIMONIAL CAUSES ACT, 1971, (Act 367). The reason for the petition for the divorce according to the petitioner is that the respondent has deserted the matrimonial home. He also says that the respondent has returned the customary drinks that he (petitioner) presented to the respondent's family when performing the marriage rites for her hand in marriage customarily. Customarily, the return of the marriage drink is sufficient evidence of the dissolution of the customary marriage between the parties. If the parties were married only under customary law, then this singular act would have been held sufficient to dissolve the marriage. The parties before me however were not married under customary law alone. They proceeded to celebrate the marriage under the ordinance. Dissolution of marriage under the ordinance however is based on only one ground; that is that the marriage has broken down beyond reconciliation. It places a higher burden on the party seeking divorce of the marriage celebrated under the ordinance than it does for a customary marriage. The evidence that the respondent has returned the customary marriage

drink is not conclusive evidence that the marriage between the parties has broken down beyond reconciliation. That evidence can be taken together with others in coming to that conclusion. However, that alone is not sufficient to lead the court to find that the ordinance marriage has broken down beyond reconciliation. The reason for the divorce according to the petitioner, is that the respondent has moved out of the matrimonial home. This action by the respondent can mean two things under section 2 of Act 367: desertion by the respondent or the decision by the respondent not to live with the petitioner any longer as married couple. The petitioner testified in this petition that the respondent abandoned the matrimonial home after prolonged unresolved marital disputes. This was not disputed by the respondent. The conclusion is that the respondent has indeed vacated the matrimonial home. And as I have already stated, it could mean that the respondent has either deserted the marriage or that she does not want to remain married to the petitioner. Whatever conclusion the court can draw from the action by the respondent in moving out of the matrimonial home can only be based on the date the respondent moved out of the matrimonial home. Without evidence of the date the respondent moved out of the matrimonial home, the court cannot conclude that the respondent has either deserted the marriage or has decided not to remain in the marriage as wife of the petitioner. Section 2(1)(c) is on desertion as a ground for concluding that the marriage has broken down beyond reconciliation. It requires that the respondent has deserted the petitioner for at least two years immediately preceding the presentation of the petition. Section 2(1)(d) also provides that where the parties 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 divorce, then the marriage has be held to have broken down beyond reconciliation. Then there is Section 2(1)(e) which provides that where the parties have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition then the court will hold that the marriage has broken down beyond reconciliation. The time the respondent has been away from the matrimonial home therefore becomes necessary. In his petition for divorce however, the petitioner did not provide the date the respondent moved out of the matrimonial home. It was the same when he testified. He left out that most important details that the court requires in determining desertion or refusal to live with the petitioner as man and wife under the law. In answer to a question from the court, the petitioner testified that the respondent moved out two years after their marriage and has since not returned to the matrimonial home. According to the petitioner in his evidence to the court, the respondent has moved out of the matrimonial home for close to eight (8) years immediately preceding the presentation of the petition. Giving the period the respondent has been away from the matrimonial home, it leaves the court to find that both section 2(1)(c) and 2(1)(e) have been established. The court can safely conclude from the actions of the respondent which she did not contradict when she had the chance to cross examine the petitioner, that she has deserted the marriage within the meaning of section 2(1)(c) of Act 367. The court also evinces an intention on the part of the respondent by her conduct that she does not also want to remain the wife of the petitioner at least for the period that she moved out of the matrimonial home. That intention was furthered when the respondent returned the customary marriage drinks to the family of the petitioner. That is evidence by the respondent that she does not intend to remain the wife of the petitioner from that moment she took that step.

From the foregoing, I find from the evidence before me that the marriage between the parties herein has broken down beyond reconciliation for desertion and failure to live together as man and wife. Accordingly, I hereby dissolve the marriage between the parties. H/H S. D. Kotey Legal representation Petitioner in person Respondent in person

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