

GHANA / JUDGMENT

GAVU VRS GAVU (C5/11/2024) [2024]

GHACC 162 (16 February 2024)

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IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 16TH DAY OF FEBRUARY, 2024
BEFORE HER HONOUR, AFIA OWUSUAA APPIAH (MRS) THE CIRCUIT COURT JUDGE. SUIT NO:
C5/11/2024 RACHEL GAVU NO.17 JUNGLE AVENUE EAST LEGON ACCRA PETITIONER V LIPE
JOHNSON GAVU NO.5 DZADZA CLOSE ABOFU ACHIMOTA RESPONDENT

JUDGMENT

An ordinance marriage was celebrated between parties herein at the Registrar General's Department Accra on the 14th day of February 2004. Parties thereafter cohabited at Teshie-Nungua before finally settling at Abofu. There are two issues of the marriage namely Oye Yawa Gavu aged 18 years and Lipe Kojo Gavu aged 17 years. Petitioner is an administrator in a company whilst Respondent is a pharmacist. There have been no previous court proceedings between parties herein. According to Petitioner in her petition before the court, Respondent has behaved in a way that she cannot reasonably be expected to live with him as husband and wife. She contended the marriage between her and Respondent 1 has broken down beyond reconciliation. She therefore prayed the court for the following reliefs; i. ii. The marriage celebrated between the parties on the 14th of February, 2004 be dissolved by the court. That the Petitioner be granted custody of the children with reasonable access to the Respondent (there is only one child below 18 years) iii. The Respondent be ordered to pay to the Petitioner Five Thousand Ghana Cedis each month as maintenance. iv. The Respondent should be ordered to pay the children's school fees, medical expenses and maintenance from now till the completion of tertiary education or any time thereafter as the Respondent may deem necessary. v. The Respondent be ordered to pay cost of the suit. Respondent in his answer to the Petition denied any unreasonable behaviour on his part but admitted that parties have not lived together as husband and wife. Respondent indicated that he was not opposed to reliefs (i) and (ii) of Petitioner as listed supra and further stated that from his meager salary he caters for the educational and medical expenses of the children. He prayed the court to order parties to each bear their own cost. From the pleadings, the following issues arise for determination by the court.

1. Whether the marriage celebrated between the parties has broken down beyond reconciliation claimed by the parties

2. Whether or not Respondent is liable to pay Petitioner's loan facility of GHc60,000 together with interest.
3. Whether or not Respondent is liable to pay alimony of GHC50,000. 2
4. Whether or not Respondent is liable to pay Petitioner's cost of this suit. Prior to the hearing of the matter, parties herein on 21st November, 2023 executed terms of settlement in respect of the ancillary reliefs claimed by Petitioner. This said terms was filed at the registry of the court on 24/11/2023. a. b. That the marriage celebrated between the Parties on the 14th day of February, 2004 be dissolved by this honourable court. That in terms of the maintenance of the issues of the marriage, the Respondent shall be responsible for the following: i. Payment of the school fees as well as accommodation fees for both children of the marriage until they complete tertiary education or anytime thereafter as the Respondent may desire to. ii. Medical expenses of both children.
 - Pursuant to this, the Respondent may put the children on National health insurance or reimburse the children upon presentation of receipt of payments made. iii. Provision of groceries and provisions for both issues for school. c. That the Petitioner shall also be responsible for the following: i. ii. Provision of food for both issues when they are home. Provision of clothing for both issues till they are done with tertiary education or anytime thereafter as the Petitioner shall so desire.
- d. No order as to cost.
- e. Each party shall bear their respective costs. 3 The sole issue left for determination by this court is whether or not the marriage celebrated between parties herein has broken down beyond reconciliation as claimed by both parties. There is only one ground for dissolution of a marriage under the laws of Ghana. Section 1(2) of the Matrimonial Causes Act, 1971 Act 367 states "The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation." Section 2(3) of Act 367 provides "Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation." The court is therefore mandated to satisfy itself by evidence that indeed the marriage between the parties has broken down beyond reconciliation before a grant of dissolution. Section 2(1) of Act 367, has outlined several instance which suffice as proof of breakdown of a marriage. A petitioner must satisfy the court of one or more of the instances listed therein as proof that the marriage has broken down beyond reconciliation. Parties herein testified solely and relied on their witness statements filed on 27/10/2023 and 24/10/2023 respectively. Petitioner's evidence on oath is that Respondent left her and the children to live in Keta for over 10 years now. According to her, she has single handedly lived with and provided for the children during these years of Respondents absence with the latter barely visiting the children for the period he has been out of town. She contended that Respondent abruptly stopped sending monthly allowance for the upkeep of the children and has neglected to provide maintenance for the home.

Petitioner stated that, at the inception of the marriage, it was agreed between parties that she would be responsible for the educational expenses of the children from their infancy till Junior High 4 School and thereafter respondent take over until they complete the University. According to her, she has satisfied hers but Respondent had failed to discharge his part. Petitioner contended that her relationship with Respondent has become estranged to on the few occasions he visits the family, she is unable to relate to him as a husband. She further testified that efforts by some family members of their respective families to settle their differences have been unsuccessful. Respondent on the other hand testified that there has been some intermittent problem between him and Petitioner, which is common in marriages. He stated that physically, it became necessary for parties to live apart because of the demands of their professional work. According to him, the decision to move to the Volta Region was driven by pragmatic considerations to harness viable income-generating opportunities, specifically availability of land for farming and other avenues. Respondent further stated that on numerous occasions, members of their respective families have convened in genuine efforts to bridge any perceived divides in belief of possible resolution and his family awaited a follow-up meeting with Petitioner's family for nearly five months only to be served with the Petition for divorce. He stated that during this period, his father died and same did not even deter Petitioner's family from attempting a customary dissolution of the marriage. Respondent stated that he is not opposed to the dissolution of the marriage. From the evidence before the court, parties to this marriage have for the past 10 years live apart. This physical separation has affected the marriage to the extent that the relationship between the parties is estranged. Petitioner states that she is unable to relate to him as her husband the few times he visits the family and it has become impracticable to bear the title Respondent's wife. Respondent has confirmed that there have been problems in the marriage and 5 numerous meetings held by their families to resolve same to no avail. According to Respondent not even the death of his father stopped Petitioner and her family from attempting to dissolve the customary marriage. These pieces of evidence cumulatively reveal that parties have differences, which they are unable to resolve after diligent efforts. Under section 2 (1f) of Act 367, where the parties to the marriage have, after diligent effort, been unable to reconcile their differences, same is proof that the marriage has broken down beyond reconciliation. It has been held further in the case of KOTEI V KOTEI that "It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation. It is also conceded that notwithstanding proof the court can refuse to grant the decree of dissolution on the ground that the marriage has not broken down beyond reconciliation. It will be noted that the discretion given to the court is not a discretion to grant but to refuse a decree of dissolution. This means that once facts are proved bringing the case within any of the facts set out in section 2

- (1) a decree of dissolution should be pronounced unless the court thinks otherwise. In other words, the burden is not on the petitioner to show that special grounds exist justifying the exercise of the court's power." The evidence of the parties on record and their agreement to

the fact that the marriage has broken down satisfy the court that parties after diligent efforts are unable to reconcile their differences. The court there finds per the evidence on record that the marriage celebrated between the parties herein has broken down due to inability to irreconcilable difference after diligent effort. 6 Accordingly the court decrees the said marriage celebrated between the parties herein at Registrar General's Department, Accra on the 14/02/2004 be and same dissolved today, the 16/02/2024 forthwith. ANCILLARY RELIEFS As stated supra, parties prior to the hearing of the case executed terms of agreement together with their respective counsel and filed same at the registry of the court on 24/11/2023. Petitioner and Respondent prays the court for adoption of the said terms in respect of Petitioner's ancillary reliefs. The court has perused the said filed terms of agreement which bears the signatures of parties and their respect counsel and finds same properly executed. The court accordingly adopts the said filed terms of agreement filed on 24/11/2023 as consent judgment of the parties in respect of the ancillary reliefs and as they are as follows:

- a. That in terms of the maintenance of the issues of the marriage, the Respondent shall be responsible for the following: i. Payment of the school fees as well as accommodation fees for both children of the marriage until they complete tertiary education or anytime thereafter as the Respondent may desire to. ii. Medical expenses of both children.
 - Pursuant to this, the Respondent may put the children on National health insurance or reimburse the children upon presentation of receipt of payments made. iii. Provision of groceries and provisions for both issues for school. 7
- b. That the Petitioner shall also be responsible for the following: iii. iv. Provision of food for both issues when they are home. Provision of clothing for both issues till they are done with tertiary education or anytime thereafter as the Petitioner shall so desire.
- c. No order as to cost.
- d. Each party shall bear their respective costs. PETITIONER PRESENT RESPONDENT (SELF REPRESENTED) ABSENT AFIA BEMAH OSEI HOLDING THE BRIEF OF ANDREW APPAU FOR PETITIONER PRESENT (SGD) H/H AFIA OWUSUAA APPIAH (MRS) (CIRCUIT COURT JUDGE) 8

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