

GHANA / JUDGMENT

ADDO VRS CODJOE (C5/309/2022) [2024] GHACC 185 (5 January 2024)

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IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 5TH OF JANUARY 2024, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS) CIRCUIT COURT JUDGE C5/309/2022 WINFRED KWESI ADDO PETITIONER VRS MAGDALENE YEDUWAH CODJOE RESPONDENT

JUDGMENT

On 29th day of October 2015, parties herein a communications specialist and Marketer respectively then a bachelor and a spinster got married under customary law in Accra and subsequently converted same into an Ordinance marriage at a ceremony at the Martyrs of Uganda Catholic Church, Accra on the 31st day of October 2015. This union is blessed with one child, Valerie Aku Ese Addo, aged 4 years at the time of the filing of this petition. Parties after the marriage cohabited at Dome in Accra. On the 13th day June 2022, Petitioner herein caused a petition to be filed before the court praying the court for the following reliefs;

- a. That the marriage celebrated in fact between the parties be dissolved.
- b. That the Respondent be granted custody of the issue.
- c. That the Petitioner be granted reasonable access to the issue 1
- d. That the issue spends two weekends in a month with the Petitioner just as the Respondent.
- e. Upkeep of the child should be shared between Petitioner and Respondent
- f. Any further order(s) that this Honourable Court may deem fit. According to him, the marriage celebrated between him and Respondent had broken down beyond reconciliation due to the unreasonable behaviour of Respondent. Respondent in her answer to the Petition agreed that the marriage between parties has broken down beyond reconciliation but denied any unreasonable behaviour on her part. She averred that it was Petitioner rather that has behaved unreasonably in the marriage. She also cross-petitioned the court as follows;
 1. The dissolution of the marriage between the parties.
 2. The grant of custody of the little child to the Respondent.

3. The Petitioner be granted reasonable access on weekends but the child should not be allowed to spend the night with him on each day on account of his unreasonable outings and drinking lifestyle.
4. Provide decent accommodation for the child and mother.
5. Provide maintenance, pay the child's school fees and pay the child's medical bills.
6. Pay a financial settlement of GH250,000.00 (GHC Two hundred and fifty thousand cedis)
7. Pay the legal fees of the Respondent
8. And any other reliefs the honourable court deems fit. Both parties per the pleading aver that the marriage celebrated between them has broken down beyond reconciliation and pray for dissolution of the 2 marriage. Section 1 of the Matrimonial Causes Act, 1971 Act 367 provides that “The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation”. Thus though both parties have averred in their pleadings that the marriage has broken down of the said marriage beyond reconciliation for a petition for dissolution would be granted. The standard of proof in civil case such as the present action is proof on the preponderance of probabilities. Section 12(2) of Evidence Act NRCD 323 defines preponderance of probabilities as “Preponderance of the probabilities means that a degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.” In the case of *ARYEH & AKAKPO V AYAA IDDRISU* [2010] SCGLR 891, the Supreme Court unanimously held that a party who has counterclaimed bore the burden of proving his counterclaim on the preponderance of probabilities and would not win on that issue only because the original claim had failed. See the cases of *Malm v Lutterodt*

[1963] 1 GLR SC & *Apea v Asamoah* [2003-2004] 1GLR SC 226, 246. Respondent therefore also must lead evidence to prove his assertions. Both Petitioner and Respondent therefore assume the onus to lead sufficient evidence in support of their assertions and their reliefs. On the orders of the court, parties filed their respective witness statements in support of their respective cases. To promote reconciliation, parties were referred to the Alternative Dispute Resolution Centre by the court. Mediation between them in respect of reconciling as a couple was unsuccessful. However, parties agreed on dissolution of the marriage and all other ancillary issues raised in their pleadings. 3 Despite this express consent to the dissolution of the marriage by the 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 instances that suffice as proof of break down 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. In the case of KOTEI V KOTEI [1974] 2 GLR 172, Sarkodee J held as follows, “the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. But the Petitioner is also obliged to comply with Section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367), which requires him to establish at least one of the grounds set out in that Section... proving one of the provisions without more is proof of the breakdown of the marriage beyond reconciliation...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 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 4 Section 2 (1) of Act 367 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 court therefore heard the evidence of parties in respect of the claim that the marriage between the parties has broken down beyond reconciliation. According to Petitioner in his witness statement filed on 23/11/2022, he testifies that Respondent has showed unreasonable behaviors in the course of the marriage which causes him much anxiety and distress of which he can no longer reasonably live with. He stated that Respondent gets easily angered at the slightest matter and have at some instances lashed out at him in anger resulting in the verbal and physical abuse against him in the presence of the issue and the issue’s nanny. He contended that after the birth of the issue, love making between him and Respondent became debilitated with Respondent showing very low interest in making love to him a situation he has protested against. He stated Respondent sees herself as a perfectionist and never compromises on any issue of dispute. Petitioner testified further that the slightest error by him in the marriage was a recipe for chaos in the matrimonial home and Respondent constantly disrespected him. He stated that the tension and constant misunderstanding led to him sleeping in his office some nights and only to return home in the morning to freshen up and return to work and taking up a job as a hailing driver to escape from the woes of the marriage and make extra money. Petitioner continued that he discussed the deteriorating issues in the marriage with Respondent’s father on the 10th of April 2021 and a meeting was held on 17th June 2021 to aid reconciliation of their differences in the marriage. Due to the 17th June meeting failing to yield the necessary outcome, a meeting was held on the 18th of June 2021, this time in attendance was the father of respondent, some family members of both parties and Respondent’s parish priest. He stated that he realized the depth of 5 irreconcilable differences. Parties were asked to separate for sometime and they have been separated since then. He stated that on one occasion when he visited the issue of the marriage and went out with the issue to purchase cartons of water, Respondent upon their

return snatched the child from him, rained insults on him and loudly abused him verbally in the presence of the issue and the nanny causing some neighboring families on the compound to come out of their corridors. The court adopted respondent's witness statement as her evidence in chief also testified that soon after the marriage, Petitioner started putting up unreasonable behaviour. She stated that Petitioner never returned home early from work during weekdays and stayed out completely during weekends. She stated that Petitioner goes outings with friends and girlfriends and gets heavily drunk. She stated further that contrary to Petitioner's agreement during their courtship not to wear earrings as it was a sign of indecency, Petitioner soon after the marriage started wearing same. She stated that Petitioner changed from being a religious person she knew to someone who refused to go to church even on Sundays and took exception to her taking the child to church on Sundays. She stated further that Petitioner had no time to assist her in the household chores and would further insult her at the least engagement and would extend same to the nanny. According to Respondent initially she kept the issues of the marriage to herself but later confided in the priest who officiated their marriage, Rev Jesse but realizing that she was extremely traumatized decided that her father be involved. On the 10th of April 2021, her father met with Petitioner and herself to discuss the marital issues that she had disclosed to him and they went for another meeting on the 17th of April 2021 all aimed at reconciling them. She continued that her father met with the auntie of Petitioner when things were still not improving between them to complain about Petitioner's habit of staying out of the home 6 for 2 to 3 days and habitually coming home late. Petitioner's auntie however informed her father that she believes Respondent is possessed by a marine spirit which makes Petitioner unable to stay home. Subsequently a meeting was held on 18th of July 2021 with their family members and the officiating priest. She stated that Petitioner at the meeting insisted on separation but was told to hold on for sometime. Surprisingly, Petitioner went to the priest the next day that his mind was made up and the separation should be immediate. On 8th August 2021, during a meeting with one Pastor Courage Mensah, Petitioner's uncle, auntie and her father, she agreed to the separation which is against her Catholic faith with access to the issue outlined for Petitioner. Respondent continued that during the last meeting held in 26th of June 2022, Petitioner crossed the redline when he interrupted her father's talk by telling him in the face that he was talking "bullshit". Her father surprised by the insult in the face left the meeting and this is what has triggered the dissolution of the marriage as she cannot come to terms with Petitioner's insult to the face of her father. The evidence of the parties as summarized supra discloses a lot of differences between the parties which they are unable to reconcile. From the record, there have been several attempts to reconcile the differences of the parties by Respondent's father, their respective families and several meetings held to that effect. Unfortunately, all these attempts proved futile with respondent's father being insulted at the last meeting by Petitioner. The attempts at reconciliation not only failed but same resulted in separation of the parties since June 2021. All these evidence satisfy the court that parties after diligent efforts are unable to reconcile their differences. 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. The court therefore finds per the evidence on 7 record that the marriage celebrated between the parties herein has broken down due to parties' failure to reconcile their difference after diligent effort. Accordingly the court decrees the said marriage celebrated between the parties herein at Martyrs of Uganda Catholic Church Accra on the 21/10/2015 be and same is dissolved today, 5th day of January, 2024. ANCILLARY RELIEFS As mentioned supra, the parties executed terms of settlement on 21/4/2023 and prayed the court to adopt same as consent judgment during their evidence on oath. Parties per their terms of settlement agreed as follows;

- i. That custody of their issue will be that of the Respondent. ii. Visitation by the Petitioner will be done every second week and forth week of every month. iii. That Petitioner have agreed to provide for a monthly maintenance allowance of GHc600.00 (six hundred Ghana Cedis only) on monthly basis which have been agreed to by the Respondent. iv. Education and health for their child will be the responsibility of the Petitioner.
- v. Both parties have agreed to an alimony settlement of GHc20,000 (Twenty Thousand Ghana Cedis Only) payment should be done within 12(twelve) months in a monthly amount of GHc1,700.00(Thousand Seven Hundred Ghana Cedis Only) vi. Both disputing parties are therefore praying the Honourable court to accept the above settlement as a consent judgment. This court therefore adopts the above terms of agreement as consent judgment consequential to the dissolution of the marriage of the parties. 8 There shall be no order as to cost. PARTIES PRESENT CHRISTIAN LEBRECHT MALM HESSE FOR PETITIONER ABSENT JOHNSON AMETOWU FOR RESPONDENT PRESENT H/H AFIA OWUSUAA APPIAH (MRS) (CIRCUIT COURT JUDGE) 9

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