

GHANA / JUDGMENT

Antwi Vrs Asante [2023]

GHADC 8 (3 May 2023)

[2023] GHADC 8

COURT

District Court

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CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT
MAGISTRATE, DISTRICT COURT “B”, SEKONDI ON 3RD MAY, 2023

SUIT NUMBER A4/51/2023 ALEX ANTWI V MAVIS ASANTE - - PETITIONER RESPONDENT

TIME: 9.10 AM PETITIONER RESPONDENT - - PRESENT PRESENT PARTIES UNREPRESENTED

JUDGMENT

The instant petition was filed by the Petitioner against the Respondent on the 21st of April 2023. The Petitioner prayed to the court for the dissolution of the marriage celebrated between the parties on the 19th of January, 2018 at the District Magistrate Court, Sekondi. The petitioner says the said marriage has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent. There are no issues of the marriage. In an Answer filed on 25/04/2023, Respondent admits that the marriage between the parties has indeed broken down beyond reconciliation and counter-petitioned for its dissolution. Petitioner's Case It is the case of the Petitioner that both parties are Ghanaian but he is ordinarily resident in Spain. After the marriage, both parties co-habited at Essipon. According to the Petitioner after the parties got married everything was all right between the parties until it got to a time when communication ceased to the extent that for the past two years, there has been no communication between the parties. The petitioner avers that as a result of the inability to communicate effectively, there has not been any sexual encounter between the parties for the past three years. Petitioner further avers that there exists no love between the parties and they have been living their separate lives for the past three years. Petitioner says that the parties have mutually decided to have the marriage dissolved by the court. Respondent's Case The Respondent on her part admits that the marriage celebrated between the parties has broken down beyond reconciliation. The

Respondent further admitted all the averments of the Petitioner except that the breakdown of the marriage is not entirely her fault. It is the case of the Respondent that she is currently a Queen mother which Petitioner did not agree or give his consent to. As a result, communication between the parties most of the time ended up in misunderstandings and arguments. Respondent says the parties have not lived together as husband and wife for over three years and she consents to the dissolution. Per the pleadings before this court, the determinable issue was whether or not the marriage celebrated between the parties had broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent. Per section 1(2) of the Matrimonial Causes Act 1971 (Act 367) the sole ground for granting a petition for divorce shall be that the marriage had broken down beyond reconciliation. Section 2(1) of the Act specifies acts that prove the breakdown of marriage beyond reconciliation to include facts that:- (i) That the Respondent has committed adultery (ii) Respondent had behaved in a way that Petitioner could not reasonably be expected to live with Respondent (iii) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition (iv) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years, and that the Respondent does not withhold his consent for the dissolution (v) That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition (v) That the parties to the marriage have after diligent effort been unable to reconcile their differences Per section 2(3) of the Act, although the Court finds the existence of one or more of the facts specified under section 2(1), the Court shall not grant the petition for divorce unless it is satisfied on all evidence that the marriage had been broken down beyond reconciliation. Petitioner, per section 11 of the Evidence Decree 1975 (NRCD 323) had to persuade Court to believe that the marriage had broken down beyond reconciliation. He had to do so by proving at least one of the acts listed under section 2(1) of the Act above. The parties testified by themselves and did not call any witnesses. The Petitioner tendered the marriage certificate as Exhibit A. Petitioner in his evidence stated that the parties got married sometime in 2018. They lived together at Essipon but he also works in Spain and so he travels a lot there. It is further the evidence of the Petitioner that everything was going on smoothly in the marriages when they married but it got to a time that communication was not effective because of where he was. Petitioner says that he used to travel a lot to Ghana however, each time he came they had issues with their sexual life because the Respondent wanted to become a queen mother and Petitioner disagreed and that started the genesis of their problems. The Respondent on the other hand stated that initially when the Respondent travelled to Spain, he used to communicate through normal calls. However, he stopped and switched to whatsapp calls. But this had its challenges such that if she didn't have data or was out of coverage area the call would not come through. The situation worsened during the Covid period when communication ceased. Respondent further stated that when she was informed that she had to be installed a queen mother she called the Petitioner and informed him about it but he was not in favour. It is the case of the Respondent that she could not refuse it since it had gotten to the turn of her family otherwise it would shift to another family. All explanations to the Petitioner still did not go down well. Respondent says that her work as queen mother entails a lot since she has seven subdivisions under her. Respondent

further says that the Petitioner has failed to come to Ghana for over three years and there has not been any sexual relationship between them. Respondent avers that she expected the Petitioner to support her but since he has refused, she is also not ready to leave her queen mother's duties because of her marriage therefore she agrees to the dissolution. From the evidence, both parties agree that indeed communication stalled sometime in

2019. The Petitioner stated that sometime in 2021 November he came down to Ghana but all efforts to reach out to the Respondent failed. All calls to the three phones of the Respondent did not go through. All searches to locate the Respondent was futile thus he had to return to Spain. Respondent says that at that time she was preparing for her coronation and was in hibernation. Again, the network in their area is poor and it was always difficult for calls to go through. The Respondent however under cross examination stated that if the Petitioner had given him prior notice that he was coming she would have made some arrangements. I gather from the evidence that the parties have some irreconcilable differences, the Petitioner is not in favour of the Respondent being installed as a queen mother. On the other hand, that is exactly what the Respondent like, and indeed she has accepted same fearing that if she does not accept same, it would move to another family. This is one issue that is tearing the marriage apart. Besides this issue, the parties have not lived as husband and wife for over three years essentially because of the entrenched position the parties have taken. There is total cessation of cohabitation and no consortium. Section 2(1)(d) of the Matrimonial Causes Act 1971 (Act 367) specifies acts that prove the breakdown of marriage beyond reconciliation to include facts that:- (iv) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years, and that the Respondent does not withhold his consent for the dissolution. In this instant case from the evidence, the Respondent is not withholding consent for the dissolution. She wholly agrees. In the circumstances, I am of the humble view that the marriage celebrated between the parties has broken down beyond reconciliation as they have been unable to reconcile their differences. I hereby declare that the ordinance marriage contracted between the parties herein on the 19th of January, 2018 at the District Magistrate Court, Sekondi be and is hereby dissolved. It is hereby ordered that a decree of divorce be granted; the marriage certificate No. DCS/MC/02/2018 pursuant to licence no. DCS/RC/07/2018 is hereby cancelled. There is no order as to cost. (SGD) H/W ROSEMARY EDITH HAYFORD (MRS) MAGISTRATE 6

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Prepared on 27 October 2026 · Esheria