

GHANA / JUDGMENT

Brew Vrs Brew [2023]

GHADC 31 (5 June 2023)

[2023] GHADC 31

COURT

District Court

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CORAM: HER HONOUR (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS ADDITIONAL
MAGISTRATE, DISTRICT COURT “B”, SEKONDI ON THE 5TH JUNE, 2023

SUIT NUMBER A4/10/2023 ANGELA BREW V MOSES BREW - - PETITIONER RESPONDENT

TIME: 9.24 AM PETITIONER RESPONDENT - - ABSENT ABSENT

JUDGMENT

The Petitioner filed the instant petition on the 6th of October, 2022 against the Respondent and prayed the court to dissolve the marriage celebrated between the parties forthwith on the 16th of July, 2015. The Petitioner avers that the said marriage has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent. Also, the parties have not lived together as husband and wife for over three years. By an order of substitution granted to the Petitioner on the 28th of November, 2022, the petition was served on the Respondent on the 7th of December, 2022. On the return date, 15th of December, 2022, the Respondent failed to appear in court or file an answer to the Petition. Therefore, the court gave further orders for the Petitioner to file her witness statement and serve the same on the Respondent. The suit was thus adjourned to the 26th of January, 2023. The suit subsequently suffered a couple of adjournments. On the 19th of April, 2023, the day for trial to commence, the Respondent had still not filed any process even though he had been served with the petition and all other processes. The court, therefore, proceeded to hear the matter under Order 25 r 1 (2) of CI 59. Order 25 rule 1(2) of the District Court Rules, 2019 (C. I. 59), provides that “where an action is called for trial and a party fails to attend the trial the Magistrate may where the Plaintiff attends and the Defendant fails to attend, dismiss the counterclaim, if any, and allow the Plaintiff to prove the claim” The same applies to divorce proceedings in this case, therefore, a party who fails to appear in court after

due service on him is taken to have deliberately failed to take advantage of the opportunity to be heard. In such a situation, the audi alteram partem rule cannot be said to have been breached. The court having satisfied itself that there was proof of service on the Respondent proceeded to hear the matter. The Petitioner testified through her attorney and did not call any witnesses. She tendered two Exhibits, Exhibit A, the power of attorney and Exhibit B, the marriage certificate in support of her case. PETITIONER'S CASE Petitioner says that the parties have not lived as husband and wife for over three years and they have not had any sexual relations for about six years. It is the case of the Petitioner that the Respondent requested the Petitioner to contract a loan facility for him abroad and when the Petitioner refused, communication between the parties stalled. The petitioner avers that the Respondent is abusive and has referred to her as a prostitute to the hearing of all his friends. However, she has been supportive and has even paid for the education of the children of the Respondent from primary to SHS as well as providing for clothing and other items. In the Petitioner's case, the Respondent does not reciprocate this gesture but disrespects her by moving about and bringing women into their matrimonial home. Petitioner says the parties were not compatible religiously and the Respondent tried to force her to participate in strange activities at certain churches and a mallam's place. 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 which prove breakdown of marriage beyond reconciliation to include facts (only relevant sections will be quoted) that:- (i) Respondent had behaved in a way that Petitioner could not reasonably be expected to live with Respondent (iii) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent is not withholding consent (iv) 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. She had to do so by proving at least one of the acts listed under section 2(1) of the Act. 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. It must be noted that Petitioner's evidence was not challenged and it is the only piece of evidence on record. I will summarize Petitioner's evidence and analyse same in determining the above issue. The Petitioner is a health worker and ordinarily domiciled in the United Kingdom. In the witness statement filed by her attorney, Mrs. Beatrice Ofori Darko, she stated that the parties have been married for over seven (7) years but they have no children even though the Respondent had two children before the parties got married. The Petitioner has been very loving, caring and supportive towards the Respondent to the extent that she took care of the Respondent's children from primary to senior high school by paying for their education and buying clothing and other items for them. Petitioner stated that the Respondent moves around with women and on one occasion even brought a woman to their matrimonial home in Ghana. It was further averred that the

Respondent verbally abused the Petitioner and called her a prostitute on several occasions. Respondent further soiled the reputation of the Petitioner by calling his friends abroad and telling them that the Petitioner was a prostitute and was available for their use. Respondent was also fond of disrespecting and bullying the Petitioner in public by shouting at her and using demeaning words against her. Petitioner says this caused her much anguish and brought a strain on their relationship, thereby making it difficult for her to remain married to him. Respondent later asked the Petitioner to contract a loan facility abroad for him and when she refused because she was not sure how it would be paid back, Respondent stopped communicating with her. All efforts by the Petitioner to reach out on the phone to the Respondent were not successful because the Respondent refused or cut her off completely. The parties have not spoken since

2020. Family members have tried to reconcile the parties but to no avail. As I indicated earlier the evidence of the Petitioner's attorney was never challenged. This is because the Respondent failed to appear in court. The effect is that the above piece of evidence is deemed to be true since it was not challenged. See: IBRAHIM VRS ABUBAKARI (2001-2001)¹ GLR 540. Again, in TAKORADI FLOUR MILLS VRS SAMIR (2005-2006) SCGLR 882 it was held that in law where evidence is led by a party and that evidence is not challenged by the opponent in cross-examination and the opponent did not also tender evidence to the contrary, the fact deposed to in the evidence is deemed admitted by the party against whom it is admitted and ought to be accepted by the court. The petitioner claims the respondent verbally abused her and even called her a prostitute. William E. Offei in his book "Family Law in Ghana", 3rd Edition at page 299 stated that threats of actual personal violence and use of offensive language are considered unreasonable. Insulting the Petitioner and referring to her as a "prostitute" is demeaning and very offensive in my humble view. Again, the Respondent refused to talk to the petitioner because she failed to contract the loan facility for him. I must say that the reason the petitioner gives for not taking the loan makes a lot of sense. Firstly, the loan was to be contracted in the United Kingdom in the name of the Petitioner. The Respondent himself lives in Ghana. According to the Petitioner, the Respondent did not give her any assurances of how the loan would be repaid and she also cannot pay off the said loan should there be a default. It is my humble view that these are legitimate concerns and to the extent that the Respondent took offence for which reason he has ceased to talk to the Petitioner since 2020 is baffling. I, therefore, find the actions of the Respondent very unreasonable. The further evidence that stood unchallenged is that the parties have not lived continuously as husband and wife for over two years. The learned William Ekow Daniels in his book "The Law on Family Relations in Ghana, 2019 @ page 312 state that "The test to determine whether or not the parties are not living as husband and wife has no relation to the physical state of things such as houses or households, but rather it is to be considered from the point of view of whether there is absence of consortium or cessation of cohabitation". The last time the Petitioner came to Ghana was about three years ago. The parties have not lived under the same roof for over three years. The evidence is even further that there has not been any sexual relationship between the parties for over six (6) years. The law

stipulates that there would not be any consent required from the Respondent. In any case, the Respondent did not appear in court at all even though there was proof of service on him, it presupposes that the Respondent is not objecting to this divorce. Having analyzed the facts and evidence, it is my humble view that the marriage contracted between the parties has broken down beyond reconciliation as a result of the unreasonable behaviour of the Respondent. In respect of attempts at reconciliation, Petitioner's evidence stood unchallenged that family members of both parties had tried to resolve their differences but to no avail. I find this step to be a good attempt at reconciliation which did not work. On the whole, I find the marriage of the parties to have broken down beyond reconciliation due to the unreasonable behaviour of the Respondent and I so hold. In the circumstance I declare that the ordinance marriage contracted between the parties herein on the 16th of October, 2015 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 with Licence No. DCS/MC/66/2015 pursuant to licence number DCS/66/2015 is hereby cancelled. There is no order as to costs. (SGD) H/H ROSEMARY EDITH HAYFORD (MRS) MAGISTRATE 7

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