

GHANA / JUDGMENT

GIFTY ROCKSON VRS RESPONDENT (C5/52/2023) [2023] GHACC 1073 (3 March 2023) [2023] GHACC 1073

COURT

Circuit Court

CASE / FILE NUMBER

C5/52/2023

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IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY, 3RD DAY OF MARCH 2023
BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. SUIT No: C5/
52/2023 GIFTY ROCKSON PETITIONER V RESPONDENT

JUDGEMENT

The Petitioner issued the Petition from the Registry of this Court on the 20/09/22 and prayed as follows:

- i. That her marriage to the Respondent be dissolved ii. That the petitioner be granted custody of the child of the marriage with reasonable access consisting of one weekend every month to the Respondent. iii. That the Respondent pays for the school fees and provide maintenance amount of GHC 600 every month which maintenance would include accommodation, feeding, snacks for school, electricity, water and entertainment to be reviewed upwards every two years. iv. That the Respondent pays Lump sum (GHC 35,000.00) for emotional abuse suffered by the Petitioner at the hands of the Respondent during their married life. The Respondent after he was served with the petition cross petitioned as follows: i. ii. iii. iv. That the marriage celebrated between the parties under the ordinance on the 9th day of April 2011 be dissolved in favour of the Respondent. That the Respondent be granted a weekly weekend access to the child of the marriage when school is in session and full custody of the child during vacations. That the Respondent settle school fees and related bills of the child. That any health-related bill concerning the child is settled by Respondent. The case of the Petitioner is that the Parties married under the ordinance marriage under the Marriages Act (CAP 127) on the 9th of April 2011 at Presbyterian Church of Ghana, Salvation Congregation, Nungua-Accra. After the marriage the parties cohabited at 37 Military Hospital, Accra, until now where the Petitioner resides at community 8, Tema. The Petitioner is a caterer whilst the Respondent is a military nurse, a specialist in pediatrics and a rank of Warrant Officer 1. There is an issue of the marriage called Godfred Aseda

Rockson age 9 years of age and a pupil of Tema Christian Centre, Community 7, Tema. It is the case of the Petitioner that the marriage has broken down beyond reconciliation due to the unreasonable behaviour of the Respondent and for that matter she seeks dissolution. The Petitioner makes the case that the Respondent after the marriage, has become sexually aggressive, demanding hard core and excessive sex which leads to extreme lower abdominal pains and when she complains the Respondent says she can quit if she cannot carry on. The petitioner referenced various fit of temper of the respondent and says further that the respondent made an attempt to beat her up once when he came home when he came home to meet their househelp eating lunch at home. The petitioner says the respondent makes up stories that he the petitioner exchange sexual messages with another person. The petitioner says that she was forced to leave the house in 2021 after her health suffered greatly as a result of continues emotional abuse, trauma and uncaring behaviour of the respondent. It is the case of the petitioner that the respondent has been cohabiting with another woman since she moved out and the lady has gained the status of a wife and when parties attempted to reconciled the respondent said that he cannot do anything about his present arrangement with this woman. The petitioner says all attempts by families of the parties to reconcile the differences between the parties, have after diligent efforts, proved futile. On the 28th of September 2022 an appearance was filed on behalf of the Respondent by his Counsel and on 10th of November 2022, an answer and cross-petition was filed on behalf of the Respondent by his Counsel. The Respondent in his answer denied the various allegations about the cause of the breakdown of the marriage and stated that the petitioner though a caterer has been working with the National Investigative Bureau (NIB), formally Bureau of National Investigations (BNI). The respondent said until the petition was issued, sexual aggressive had never been raised as an issue of concern during the pendency of the marriage and they were in active sexual relationship couple of years before the parties got married and hence the claim of the respondent becoming sexually aggressive after the marriage cannot be correct. The Respondent stated how the petitioner shows gross disrespect to him as husband and the petitioner compares him to her ex-boyfriend. The respondent states further that the petitioner continued her romantic relationship with her ex-lover even during the pendency of the marriage. The respondent says that prior to the departure of the petitioner from the matrimonial home, respondent called on several persons of repute to intervene and they all engaged the petitioner to reconsider her decision but petitioner neglected all the appeals and left the matrimonial home with the child of the marriage. Respondent says that the petitioner moved out of the matrimonial home without a just cause and despite his pleas and that of others the petitioner actualized her intentions and moved out of the matrimonial home. The respondent then stated that the petitioner is not entitled to any of the reliefs and counterclaimed for the marriage to be dissolved in his favour per the reliefs stated above. After close of pleadings, an application was filed for setting down and on the day of the application, parties were ordered to file their witness statement and exhibits together with their pretrial check list. Later case management conference was conducted for the parties and the case was ripped for hearing. During the trial, Petitioner relied on her witness statement filed and was cross examined by counsel on

the other side. The respondent also opened his case and was cross examined afterwards and at the close of the hearing the court had the opportunity to hear the parties. In matrimonial causes, the duty of the Court is to find out if the marriage has broken down beyond reconciliation. And in determining that the law provides under section 2 of the MATRIMONIAL CAUSES ACT, 1971 ACT 367 with the heading “proof of breakdown of marriage” indicates the various scenarios that when they happen, the court can conclude that the marriage has broken down beyond reconciliation. From the pleadings and the proceedings before the court it is not in doubt that the marriage has broken down beyond reconciliation. The Petitioner in her petition asked for the dissolution of the marriage and the respondent also in his answer consented to the dissolution and stated that the relief of the petitioner should not be granted and rather prayed the court to grant the dissolution of the marriage in his favour. The parties have indicated various behaviours as indicated above which are unreasonable, for which they cannot be expected to live with each other. Again, from the pleadings and the proceedings the parties have not been able to resolve their differences after various attempts by respective families, and as the respondent puts it, “several persons of repute”, to reconcile their differences. The petitioner in her witness statement put it in crystal clear terms in these paragraphs:

5. The Respondent and I are not compatible in every sphere of life and staying together is no longer possible and I wish to be divorced from him and we have been living apart for about a year now.
6. We have both moved on with our lives and the only thing which we have in common is our child. The parties also had challenge with sexual activities even though from the record they have been active before, especially, before the marriage. This was the concern of the Respondent and this is how he put it in paragraph 17 of his witness statement:
17. I continued to suffer as a husband when petitioner continuously denied me of sex for close to 2 years before the petitioner moved out of the matrimonial home. From the proceedings, the parties have also drifted apart such that there is barely any communication between them and arrangement for the respondent to have access to the child is done through the child they have in common. This manifested clearly during the proceedings, as the parties, even had complaints as to when the child should be picked up and how often, during the weekend, the child will be with the respondent. The parties during the hearing showed emotions, making their case before the court. This demonstrates the fact that, they have had some affection before, for each other and they both never expect this day to come. However, from the record parties have come to the end of the road and now they both prefer to go their separate ways. Therefore, the court concludes that the marriage celebrated by the parties at the Presbyterian Church of Ghana, Salvation Congregation at Nungua-Accra is hereby dissolved. The Petitioner prayed the court, per her petition, for custody and access to the respondent one weekend every month, maintenance of GHC 600 every month. The petitioner changed this reliefs in her witness statement before the court, but she did not amend her petition. The court will stick to the petition as was issued from the registry of the

court. The petitioner also asked for the sum of GHC 35, 000 for emotional abused suffered but the law, section 20, of the matrimonial causes, provide for property settlement and financial provision in lieu of and nothing for emotional abuse suffered as prayed by the petitioner. I have also gone through the witness statement of the petitioner which was adopted as her evidence in chief over and over and there is no evidence led of any emotional abuse suffered and that means same was abandoned and not proved before the court. The petitioner is therefore not entitled to that relief before the court. The orders of the court will therefore be, Custody will be granted to the petitioner and reasonable access to the respondent. The respondent will have access to the child two weekends in every month beginning from March 2023 and the weekends that the respondent will have access to the child the respondent will pick the child at 8 am on Saturday and return the child on Sunday at 4pm. During vacation the child will spent 3 days immediately after vacation, and 3 days before school reopens, if the vacation is less than a month but if the vacation is a month and more the issue will spend one week after vacation and one week before school reopens with the petitioner and in between the respondent will have access to the child. The child will be picked up by the respondent at 8 am and anytime the respondent is returning the child to the petitioner, it should be at 4 pm on that particular day. The respondent will pay maintenance of GHC 600 with biannual increase of 20 percent, starting from the end of March 2023 and the money should be paid on 28th day of every month. The respondent will pay for the education of the child and parties to share in taking care of the health care needs of the child. No order as to financial provision and no order as to cost. SGD HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE. 7

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