

GHANA / JUDGMENT

GYINAA VRS YAW (BR/DR/DC/
A4/13/2022)
[2024] GHADC 238 (27 August 2024)

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DECIDED
27 August 2024

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IN THE DISTRICT COURT, DROBO BONO REGION IN THE MATTER OF AN APPLICATION FOR DISSOLUTION OF MARRIAGE BY; SUIT NO. BR/DR/DC/A4/13/2022 DIANA GYINAA OF H/NO. BI-2037-6950, KWAMESEKROM PETITIONER VRS PATRICK ASI YAW RESPONDENT OF H/NO. BLOCK P, PRISONS QUARTER'S, NSAWAM

JUDGMENT

DELIVERED BY H/W LINDA E. NYAHE ESQ. (MAGISTRATE) DATED: 27/08/2024 0 IN THE DISTRICT COURT HELD AT DROBO ON TUESDAY, THE 27TH DAY OF AUGUST, 2024. BEFORE HER WORSHIP LINDA E. NYAHE (ESQ.) (MAGISTRATE) SUIT NO. BR/DR/DC/A4/13/2022 IN THE MATTER OF AN APPLICATION FOR DISSOLUTION OF MARRIAGE BY; DIANA GYINAA OF H/NO. BI-2037-6950, KWAMESEKROM PETITIONER VRS PATRICK ASI YAW RESPONDENT OF H/NO. BLOCK P, PRISONS QUARTER'S, NSAWAM

===== PETITIONER - PRESENT
RESPONDENT- ABSENT

JUDGMENT

The parties who are both Ghanaians got married under the Ordinance on the 7th day of October, 2012 at the Church of Pentecost, Kwamseikrom. The petitioner is unemployed and resides at Kwasmeseikrom whereas the respondent is a Prisons Service Officer and reside in Nsawam Prisons Quarters. After the marriage, the parties cohabited at Nsawam and the marriage is blessed with three (3) issues namely Benedicta Abena Addo aged 11 years, Godfred Kwaku Kyereme aged 8 years and Richlove Afia Pomaa aged 2 yrs. Petitioner filed for dissolution of the marriage celebrated between her and the respondent on grounds that the marriage has 1 broken down beyond reconciliation. The petitioner cited the unreasonable behavior of the respondent as cause of the breakdown of their marriage. The petitioner submitted that, during the pendency of the marriage, the respondent caused her untold anxiety, stress, embarrassment etc. stemming from unsubstantiated accusations of infidelity leveled against her (petitioner) by the respondent without any proof whatsoever. That the respondent changed his behavior and started maltreating

and disrespecting the petitioner both in public and in the matrimonial home. The respondent became so unreasonable that he would not allow the petitioner to talk to anybody even colleague workers, church members, etc. That anytime the respondent sees or meets the petitioner with anybody at all, the respondent will subject her to physical assault and there were instances where she reported the matter to the police. Petitioner averred that at a point in time she realized that the reason the respondent was maltreating her was because the respondent was seeing another woman and for that matter wanted the petitioner to leave the matrimonial home so that he can have his way and marry his new girlfriend. Petitioner states that, true to her words from 2018-2021, the respondent filed a petition for divorce and when that attempt failed, he went ahead and married the woman but unfortunately for him his new wife died. The petitioner says she has deserted the matrimonial home for the past 8 months and the parties have not had sex for about 1 year now. The petitioner stated that during the pendency of their marriage, they jointly built four-bedroom house with hall, kitchen, toilet and bath facilities situate at Kwamesekrom. Per a petition filed on 18/05/2022 the petitioner is seeking reliefs as follows;

1. An order for the dissolution of the marriage between the parties.
2. A fair share of four (4) bedrooms house with hall, kitchen, toilet and bath facilities
3. An alimony of GH¢10,000.00 2
4. Custody of Richlove Afia Pomaa to the petitioner with reasonable access to Benedicta Abena Addo and Godfred Kwaku Kyereme on vacations.
5. An order to maintain Richlove Afia Pomaa with GH¢300.00, pay medical bill, school fees, clothing, etc
6. Any further order or orders that the Honourable Court deems fit. The respondent filed an Answer to the Petition denying the averments contained therein. It is his case that during the pendency of the marriage, the petitioner formed the habit of going to watch TV elsewhere and comes back at about 1:00am. The respondent said he has about 4 TV sets but the petitioner does not watch that but usually goes out from their room to another place to watch TV. The respondent said he advised the petitioner to desist from that bad behavior but the petitioner took offence and packed away whilst respondent left for work. The respondent says he has not beaten, maltreated or harassed the petitioner in anyway as she is alleging in her petition. The respondent averred he has no other woman apart from the petitioner as his customary and legal wife. The respondent therefore stated that it is the decision of the petitioner to divorce him and as such she has packed out when respondent was not around. The respondent averred that he has not sacked the petitioner. That the petitioner's parents advised her to go back to her matrimonial home but petitioner refused to go back and instead issued court summons to dissolve the marriage. The respondent said the petitioner has sent one bottle of Schnapp to the respondent's father and the marriage has been dissolved customarily. The respondent said all efforts made for the parties to resolve their issues have proven futile hence petitioner is still seeking for divorce. The respondent further explains that since the 3 petitioner has returned the customary drink leading to the

dissolution of the marriage customarily, she is not entitled to any compensation for alimony. respondent therefore cross-petitioned and prayed as follows:

- a. The respondent is not interested in the dissolution
- b. The petitioner is not entitled to a share in his personal properties since petitioner has dissolved the marriage by herself.
- c. The petitioner is not entitled to any alimony or push off of GH¢10,000.00
- d. The petitioner can take custody of the last-born child Richlove Afia Pomaa now 2 years whilst the remaining 2 Benedicta Abena Addo now 11 years and Godfred Kwaku Kyeremeh also 8 years are in the custody of the respondent.
- e. Any further order or orders the Honourable Court deems fit. The issues for determination at the end of the trial were identified as;
 - a. Whether or not the marriage has broken down beyond reconciliation.
 - b. Whether or not the four (4) bedrooms house with hall, kitchen, toilet and bath facilities situate at Kwamesekrom was acquired jointly by the parties during the pendency of their marriage.
 - c. Whether or not petitioner is entitled to a fair share of the said house.
 - d. Whether or not the Petitioner is entitled to financial provision of GH¢10,000.00 she seeks. The standard of proof in civil cases has been set out in sections 10 and 12 of the Evidence Act, 1975 (NRCD 323). The standard required is preponderance of probabilities which means the party on whom the onus lies has to produce evidence which considered in the light of the facts leads you to believe what he claims is true. SEE: BISI VS. TABIRI ALIAS ASARE [1987-1988] 1 GLR 360 at page 361 4 Generally, in civil cases the burden of proof lies on the Plaintiff however since the respondent also cross-petitioned, he also had the burden likened to that of the petitioner. At the trial, the petitioner testified by relying on her witness statement filed on 29/06/2022 and also called one other witness; Kwadwo Yeboah (PW1). The witness statement of the Petitioner was by and large a repetition of her pleadings. She also tendered into evidence a Petition filed by the respondent for Divorce at the Nsawam District Court which was struck out for want jurisdiction. Same was admitted into evidence and marked Exhibit A series. PW1, petitioner's father a carpenter also testified to roofing the house subject matter in contention without any payment for his services since he considered the house to be for his daughter and son-in-law (respondent). He also testified to how petitioner supervised the construction of the house whiles the respondent was in Nsawam. The respondent also testified and called one (1) witness thus Op. Ankamah Peter (DW1). He relied on his witness statement filed on 08-08-23 which was also by and large a repetition of the averments contained in his Answer. The respondent tendered into evidence a copy of the marriage certificate and a police statement of one L/CPL Samuel Dumavor of Nsawam Prisons to substantiate his claims of petitioner's infidelity and same was admitted

into evidence and marked Exhibits 1 and 2 respectively. DW1 testified that the land upon which the house subject matter in dispute sits on is family land. Their respective testimonies/ evidence will be delved into where necessary in the course of resolving the issues. Now I seek to resolve the issues raised. Whether or not the marriage has broken down beyond reconciliation. 5 Section 1 of the Matrimonial Causes Act, 1971 (Act 367) states that: “the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Section 2 of the Matrimonial Causes Act, 1971 (Act 367) outlines the grounds to be satisfied in order for this Court to be persuaded that a marriage has indeed broken down beyond reconciliation: ;2. Proof of breakdown of marriage (1). For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the Court of one or more of the following facts: (a). That the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent; (b). That the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent; (c). That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; (d). 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 consents to the grant of a decree of divorce, provided that the consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal; (e). 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; or 6 (f). That the parties to the marriage have, after diligent effort, been unable to reconcile their differences. Section 2(3) of the Act provides; “Notwithstanding that the Court finds the existence of one or more of the facts specified in section 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 uncontroverted evidence on record has it that the petitioner has deserted the matrimonial home and as a result the parties no longer live together as husband and wife. The parties have also admitted having dissolved their marriage customarily after several attempts at reconciliation failed. It is obvious from the evidence that differences exist between the parties and they have been unable to resolve their differences after diligent efforts. I conclude that the marriage celebrated between the parties has broken down beyond reconciliation. Accordingly, I decree the marriage celebrated between the parties under Part Three of the Marriages Act on 7th October, 2012 at the church of Pentecost, Kwamesekrom with certificate number 9697 per license number DR/BA/DMC/04/13, dissolved. The said marriage certificate of which a copy was attached as Exhibit 1 is hereby cancelled. I seek to resolve reliefs b and c which bothers on the four bedrooms house together. The petitioner testified that in 2014, the respondent bought the plot on which the disputed house is situate. That when they decided to build, the respondent gave her money and she came down from Nsawam to Kwamesekrom to purchase sand and cement for moulding blocks. Petitioner said, she contracted labourers to mould the blocks and at the same time supervised the

construction of the house. Petitioner told the Court that she went back to be with respondent and spent 4 months. The respondent then gave her money again to come back to Kwameseikrom and continue the 7 construction work. That she had to shuffle in between Kwameseikrom and Nsawam until the completion of the building. That his father, PW1 also roofed the said house without charging the respondent workmanship. Petitioner's evidence was corroborated by the PW1. Initially, respondent denied that petitioner assisted with the supervision of the construction of the house. He told the Court that he put up the house for his parents on his parent's land and they are now occupying same. And that the petitioner did not contribute in anyway either financially or in kind to the construction. However, later in the trial, he admitted that indeed the petitioner assisted in the supervision by fetching water but she did not do that alone and that she was supported by her sisters contrary to his testimony that the petitioner did nothing to support the construction of the building subject matter in dispute. This is seen during cross-examination of petitioner by respondent below; Q. I am putting it to you that you were not the only person who fetched water for the construction of the house but you were joined by my sister, nephews and nieces? A. It is never correct. I fetched the water for the construction of the house with my younger sister and Paulina. I was even pregnant at the time with the 2nd child. It is pertinent to state that Article 22(3) of the 1991 constitution of Ghana provides as follows;

- (3) With a view to achieving the full realization of the rights referred to in clause (2) of this article -
- (a) spouses shall have equal access to property jointly acquired during marriage;
- (b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage. 8 The law is that any property that is acquired during the subsistence of a marriage is presumed to have been jointly acquired by the couple and upon divorce should be shared between them on the equality is equity principle. This presumption of joint acquisition is however, rebuttable upon evidence to the contrary. See the cases of Ernestina Boateng V. Phylis Serwah Boampong Nyamekye and Mark Adu Mark Adu Prempeh Jnr. [2021] DLSC 10165 and Peter Adjei V. Margaret Adjei [2021] DLSC 10158. It is clear that the property under contention was acquired during the pendency of the marriage. It is also evident that the petitioner supported in the construction of the building although not financially but in terms of supervision and labour. Further, the law also recognizes substantial contribution under the marriage setting. The presumption that the property is jointly owned therefore holds in these circumstances. In my humble view, the respondent has not been able to prove to the contrary that the house under contention is a family property. Assuming it is, then he intended to exploit the petitioner knowing that the property is family land in that case equity must come in. It will only be fair, just and equitable that the petitioner is given a share of the 4 bedrooms house for her contribution to its construction. Per the equality is equity principle the Court deems it fit to give the petitioner two rooms out of the said house. Whether or not the petitioner is entitled to financial provision of GH¢10,000.00 she is seeking. The jurisdiction to make an award of

financial provision is provided by sections 19 and 20 of the Matrimonial Causes Act, 1971 (Act 367). This means that it is mandatory that a judge who exercises the discretion under sections 19 and 20 of Act 367 to award a party financial provision takes into account the circumstances of the parties in order to do justice to both of them. These circumstances may include the financial standing of each party as borne out of the evidence led at trial, 9 the ages of the parties and ability to remarry, the balance of dependence that existed among the parties during the marriage, the employment status and the professional standing of each party, the income earning capacity of each party, the duration of the marriage, the contribution of each party towards maintaining the marriage, sacrifices made or opportunities forgone due to the marriage, among others. The parties have been married for about 12 years now. The petitioner is unemployed but the respondent is employed with The Ghana Prisons Service as a prisons officer. He has a fixed source of income unlike the petitioner. During the trial, the Court ordered the respondent to furnish the Court with latest pay slips which he did. The petitioner says initially he was working at Coca Cola but the respondent forced her to stop her work. Petitioner is advised to find something to do earn her income in order to support herself and the children as well. The petitioner with three children as woman and our society is not likely to find a husband. Age may not also be on her side. The petitioner is praying for alimony of GH¢10,000.00 which respondent says she is not entitled to because he says it is the petitioner who opted for the divorce. The Court has also held that in awarding compensation, the amount awarded should not be such that will cripple the finances of the party against whom it is made. In assessing the situation at hand and taking into consideration the earnings of both parties and their peculiar situations as well as financial obligations, the Court deems it just and fair to award the petitioner a lump sum of GH¢5,000.00 as financial provision. The respondent is given six months to make payment For the issue of custody, both parties agree that custody of Richlove Afia Pomaa the youngest be given to the Petitioner with reasonable access to Respondent whereas custody of Benedicta Abena Addo and Godfred Kwaku Kyereme be given to the respondent with reasonable access to the petitioner on vacations and holidays till the children reach the age of majority. Since, the parties do not have any problem with this arrangement, they shall maintain the status quo. 10 Finally, the respondent does not dispute payment of maintenance towards the upkeep of the youngest child with petitioner. However, he prays that the Court orders him to pay GH¢200.00 instead of GH¢300.00 petitioner prays for. Having regards to the financial obligations of the respondent, the Court orders him to pay monthly maintenance of GH¢250.00 subject to review towards the upkeep of the youngest child with the petitioner. Further, the respondent shall pay the school fees, and medical bills of the children as and when they arise while petitioner takes care of other miscellaneous. Both parties shall ensure the general wellbeing of the children and ensure that from time to time they spend time together as siblings to foster love and unity among them. Judgement is hereby entered for the petitioner on her reliefs. There will be no order as to cost. Parties shall bear their won cost. SGD..... H/W LINDA ENYONAM NYAHE (ESQ)

MAGISTRATE 11

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