

GHANA / JUDGMENT

KWADJE VRS BOTWE (A4/25/2023) [2024] GHADC 172 (29 February 2024)

COURT
ghadcDECIDED
29 February 2024

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE DISTRICT MAGISTRATE COURT TAKORADI MARKET CIRCLE
FEBRUARY, 2024. BEFORE HER WORSHIP
HELD ON THE 29TH DAY OF
CATHERINE OBIRI ADDO ESQ.
SUIT NO.A4/25/2023
NANCY KWADJE
P.O.BOX 783
TAKORADI

VRS:

.....
PETITIONER
PETER KINGSLEY BOTWE RESPONDENT
TAKORADI

JUDGMENT

The petitioner on the 10th day of May 2023 invoked the court's jurisdiction in a petition for divorce under section 1 of the Matrimonial causes Act, 1971 (ACT 367) for the dissolution of his ordinance marriage with the respondent. The petitioner also prayed for other reliefs consequent to the dissolution of the marriage. The reliefs are:

- Custody of the two children be given to the petitioner with reasonable access to respondent.
- That the respondent made to pay the school fees and to provide accommodation.
- That the respondent maintains the children Ghc 600.00 per month.

- d. No order as to cost. The undisputed facts in this case are that, the parties celebrated their marriage on the 30th day of August 2019 with the marriage certificate filed to this court on the 16th day of March 2023. And cohabited at Takoradi after the marriage. The parties do not also dispute that the marriage begot two children namely Joel 1 Ato Kwamina Kingley Botwe and Henry Adom Kingsley Botwe 2 years and 1 year respectively who are by the laws of Ghana juveniles. **BURDEN OF PROOF** It's essential to note that the burden of proof lies with the petitioner, who must demonstrate, based on the balance of probabilities, that the marriage has irreparably broken down. Legal principles dictate that the party making the allegations must provide convincing evidence to substantiate their claims. The court adheres to the principle that the party raising the issue in their pleadings bears the initial burden of proof, with the burden only shifting to the opposing party when some evidence is presented to support the claim. See the cases of *ABABIO V AKWASI III* (1994-1995) 2GBR, 774, and *BISI V TABIRI* (1987-1988) 1GLR 360 Similarly in the case of *DANQUAH V DANQUAH* (1979) GLR 371 the court held: "The requirement in section 2(1) of Act 367, that the petitioner must satisfy the court of one or more of those facts therein specified to prove that the marriage had broken down beyond reconciliation would mean those facts the petitioner had both pleaded and proved. It would accordingly exclude facts pleaded but not proved or facts proved but not pleaded". The test to apply in evaluating the evidence is equally stated in holding 1 in the case of *ANSAH V ANSAH* (1982-83) GLR 127 as follows: "On the facts, the husband had behaved in such a way towards the wife that she could not reasonably be expected to live with him on application of the matrimonial causes Act 1971 (Act 367), s. 2(1) (b). the test under the section, was whether the petitioner could reasonably be expected to live with the respondent in spite of the latter's behavior. The test was therefore objective. But the answer obviously had to be related to the circumstances of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious since mere trivialities would not suffice".
- 2 DISSOLUTION OF MARRIAGE**
- In a divorce proceeding, it's crucial for the court to thoroughly assess all the evidence presented, rather than simply accepting one party's claim of a broken marriage. The court's evaluation should determine if the evidence aligns with any of the grounds specified in section 2 of the Matrimonial Causes Act (MCA). According to section 1(2) of the MCA, the sole basis for granting a divorce is the irreparable breakdown of the marriage. To establish this breakdown, the petitioner and/or the respondent must provide evidence supporting any of the factors outlined in section 2(1)(a) to (f) of the MCA. This principle was elucidated in the case of *MENSAH V MENSAH* 1972 2GLR 198-209 by HAYFRON BENJAMIN J (as he then was) on page 202. The judge emphasized that the court should only grant a divorce when there's clear evidence of an irreparable marriage breakdown. Even if the specified facts are proven to the court's satisfaction, it still has the discretion to deny the decree if it believes the marriage hasn't irretrievably broken down. The courts duty therefore as set out under section 2(2) and (3) of Act 367 is to inquire into two matters
- a. On a petition for divorce the court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

- b. 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. Section 2 (1) of Act 367 provides the various circumstances proof of which will ground an order dissolving a marriage. The law provides as follows: 3 2(1) for the purposes 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;
- 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 courts is satisfied that it has 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
- f. That the parties to the marriage have, after diligent effort, been unable to reconcile their differences. EVALUATION. The petitioner's reason for the aforementioned view that the marriage has broken down beyond reconciliation is that, according to her, the challenges in their marriage started in the year 2020 when respondent began abusing her and always pick up quarrel with the petitioner and threatening the petitioner with a knife and threatened her that if she reports same to the police, he will perform a spiritual direction to cripple her. 4 According to the petitioner, the respondent has refused to work and always stays at home, when she questions him to that effect, the respondent indicated that God revealed to him to preach the Gospel. The petitioner added that, the respondent does not maintain the children of the marriage as such the petitioner bears all the responsibilities by paying school fees, paying rent, clothes, feeding of the children including the respondent himself. She added that, the respondent has neglected his responsibilities as a father and moved out of the matrimonial home to stay with his mum for the past 2years, without any maintenance money nor paying the school fees of the kids. According to the respondent, although she accepts that the respondent brother and sister gave her some money and food stuffs to cater for the hospital; expenses of the birth of the second child of the marriage, it is never correct that the brother of the respondent has been maintaining her regularly. The petitioner further avers, there has been two attempts by families on both sides to settle their

differences but all proved futile. According to her, as we speak respondent still stays in her mother's house and has left the responsibility of the children on her. She attached as exhibit A, pictures of the respondent holding a knife during one of his episodes of threatening the petitioner and pictures of the foodstuffs given to her by the respondent brother and sister. She therefore prays the court for a decree of dissolution of the marriage contracted between the parties and the respondent ordered to pay the school fees of the children and to provide accommodation for them and to maintain the children of the marriage ghc600.00 monthly. The respondent after being served with the petition, filed a response to same and cross petition for dissolution of the marriage contracted between him and the petitioner, and prayed that custody of the two children of the marriage be granted to petitioner with reasonable access to him. The respondent avers, it is never correct 5 that he threatened the petitioner with a knife during an argument. He contended that, he was about to take his breakfast and while he picked the knife to cut a loaf of bread, the petitioner took a picture of him which is in evidence as exhibit A, alleging that he was going to kill her which was never his intention. He added that as a pastor, he has no much income that notwithstanding, he maintains the petitioner and the children in his small way. He recounted circumstances where his twin brother and sister had to give the petitioner money to maintain the children due to his financial difficulties. He added that the petitioner has stopped taking his money as she alleged, he is an occultist and any money that will come from him is an occult money as such she stopped taking monies from him. He added that it is not correct that he has left the matrimonial; home, but he did so because of the abnormal behavior of the petitioner by constantly taunting him to leave the matrimonial home and indeed went ahead to sack him from the matrimonial home. He added that the petitioner had at all material times, been aware of his financial status before they got married. He added that he is trying his best to maintain the family although the petitioner has refused to take his money alleging it is an occult money. He added that the petitioner has made up her mind to seek for dissolution of the marriage because he has no money, he is therefore pleading with the court to maintain the two children of the marriage ghc 200.00 subject to review when his financial status becomes stable. He added that the petitioner has behaved in a way that he cannot reasonably be expected to live with her and prays for a dissolution of the marriage contracted between them. Although both parties have sought ancillary reliefs, it's important to clarify that these ancillary reliefs are subservient to the primary relief for the dissolution of the marriage. The court will first address the issue of marriage dissolution before considering any ancillary matters. The key question at hand is whether the marriage between the parties has reached a state of irreparable breakdown. In a divorce proceeding, it's crucial for the court to 6 thoroughly assess all the evidence presented, rather than simply accepting one party's claim of a broken marriage. The court's evaluation should determine if the evidence aligns with any of the grounds specified in section 2 of the Matrimonial Causes Act (MCA). It is prudent to note that per the evidence before this honorable court, both parties are ad idem about the fact that, the marriage between them be dissolved. Although the respondent stated in his evidence to the court that he never threatened the petitioner nor abused her and performs all his duties as a husband and father in the marriage, it's

worthy of note that the respondent chose not to cross-examine the petitioner regarding the petitioners' assertions before this court. In line with the legal precedent set in *FORI V AYIREBI* 1966 GLR 627 SC, it is established that when a party makes an unchallenged averment, no further evidence or issues need to be addressed on that particular matter. Additionally, when a party presents material evidence that remains unchallenged during cross-examination, there is no requirement to provide additional evidence to support that fact. This principle is further supported by the case of *TAKORADI FLOUR MILLS V SAMIR FARIS* (2005-

2006) SCGLR 882. Therefore, the court accepts as factual that the respondent indeed abused the petitioner and threatened her with a knife. The court further finds as factual that the respondent has failed to maintain the children of the marriage and to pay school fees and other expenses of the children. Although the respondent accepts that he has failed to do same due to financial constraints which the petitioner is aware of same, that alone is not sufficient. The court further finds per the evidence of the petitioner which remained unchallenged by the respondent that families on both sides have tried to resolve their differences but all proved futile. Having failed to maintain the home nor the children of the marriage hiding under the guise of not having money and leaving all responsibilities on the petitioner, amounts to unreasonable behavior on the part of the respondent. 7 In light of these circumstances, the court finds the respondent's behavior and conduct as listed above which same was unchallenged during cross examination, unreasonable. After a thorough analysis of the evidence presented by the petitioner, and considering the fact that it remains undisputed by the respondent, the court hereby determines that the marriage between the parties has indeed broken down beyond reconciliation. As the court has found supra, that both families on both sides have tried to resolve their differences and same proved futile shows the irreconcilable differences between them as such this court finds in terms of section 2(1) (f) of the Matrimonial causes Act, Act 367. In the case of *KOTEI V KOTEI* (1972) 2GLR 172, the court held: "Once the facts are proved bringing the case within any of the facts set out in 2(1), a decree of dissolution should be pronounced unless the court thinks otherwise....." On the totality of the evidence before the court, the court is satisfied that the marriage between the parties have broken down beyond reconciliation as such this court accordingly decree a dissolution of the marriage contracted between the parties on the 30th day of August 2019, with the marriage filed to this court per certificate no. 442/ 2019 and license number STMA/ RM/0764/2019 hereby cancelled. ANCILIARY RELIEFS. I take the view that it is the responsibility of both parents of the children to contribute to the maintenance of the children so the parties will each contribute to the maintenance of the children. 8 The petitioner per his reliefs prayed the court for custody of the two children of the marriage be granted to her with reasonable access to the respondent which the respondent admits same. Section 45 of Act 560 the children Act states that when it comes to custody, the court considers the best interest of the child and the importance of a young child being with his mother when making an order for custody or access. Despite section 45 supra, both parties are ad idem that custody

of the children of the marriage be granted to the petitioner with reasonable access to the respondent in the circumstance, custody of the two children of the marriage Joel Ato Kwamina Kingsley Botwe and Henry Adom Kingsley 2years and 1year respectively, is hereby granted to the petitioner with reasonable access to the respondent. The respondent has access to the children during weekends, vacations and holidays to spend time with the children and to make sure to return them once school resumes. The petitioner in addition is seeking for GHC 600.00 monthly so maintenance to be paid by the respondent for the children of the marriage. The respondent on the other hand prays the court to pay ghc 200.00 monthly as he receives little money from his pastoral work. Per the evidence before the court, the petitioner admitted that the respondent has no sustainable income as such she was the one taking care of the home and maintaining the children. In fact, the ghc200.00 proposed by the respondent is unsustainable owing to the current economy of the country where prices of goods and commodities are on the rise. In the circumstance the court will award what is reasonable. In view of the foregoing this court orders the respondent to maintain the children of the marriage ghc 400.00 monthly, as the petitioner has indicted in her petition to the court that she is a civil servant, it means she is employed and has a reliable source of income as such the petitioner is to bare the remaining ghc 200.00 as maintenance for the children. The respondent is ordered by the court to pay the school fees and medical bills as well as other educational expenses of the children as and when the need arises. The respondent is further 9 ordered to look for a suitable accommodation for the petitioner and the children of the marriage by the August 2025 when the rent expires. There will be no order as to cost to foster good will between the parties. Each party will bear their own cost of litigation. (SGD) H/W CATHERINE OBIRI ADDO ESQ: (MAGISTRATE) 29/2/2024 REPRESENTATION PARTIES APPEARED PRO SE Ladd.* 10

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghadc/2024/172/eng@2024-02-29/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/peter-kingsley-botwe-divorce-ghadc-2024>

Prepared on 26 October 2026 · Esheria