

GHANA / JUDGMENT

Bruku Vrs Kporku [2023]

GHADC 349 (2 March 2023)

[2023] GHADC 349

COURT

District Court

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IN THE DISTRICT MAGISTRATE COURT ADENTAN, SITTING BEFORE HER WORSHIP LINDA AMISSAH ON THURSDAY THE 2ND DAY OF MARCH, 2023 SUIT NO: A4/75/21 JOSEPHINE BRUKU PETITIONER V PRINCE KPORKU RESPONDENT

JUDGMENT

The parties were married under the ordinance on the 15th day of September 2018 at the Apostolic Church, Madina. The parties after the celebration of the marriage cohabited at Ashalley Botwe. There are no issues of the marriage. The petitioner petitioned this Court on the 31st of March 2021 alleging the marriage has broken down beyond reconciliation and prayed for the following reliefs:

- The dissolution of the ordinance marriage between the parties. • Lump sum financial settlement
- Any order as the court deems fit It is the case of the petitioner that the marriage has broken down beyond reconciliation because the parties have for the past year not had any form of intimacy and also the respondent did not disclose his sexual inadequacies to her. After the celebration of the marriage, she noticed that the respondent is incapable of satisfying her sexually. The respondent can barely last for five minutes and will ejaculate. The respondent continuously denied her sex and only became active and engaged in sex upon the consumption of aphrodisiacs. Anytime she expresses her desire for sex, the respondent tells her he is not a sex machine. Also, the respondent brought his children from an earlier relationship into the marriage but prevented her from bringing her children. He has diverted all his attention to these children and has refused to engage her in conversation as his wife in the matrimonial home. This has led to acrimony and tension Page 1 of 6 between the parties to the extent that she can barely have any meaningful discussion with the respondent. According to the petitioner, several attempts made by family members and their religious leaders to assist them resolve their differences have proved futile. As a result of the goings-on, in January 2020, she moved out of the matrimonial home. The respondent filed an answer to the petition and cross-petitioned for the dissolution of the marriage. He

basically denied all the allegations made by the petitioner. The petitioner also filed a reply on the 28th of April 2021. In her witness statement, the petitioner repeated some of the averments in her petition and added that prior to the celebration of the marriage, on a few occasions, she had sexual intercourse with the respondent. At the time, she did not have any cause to complain about his sexual performance. After the celebration of the marriage, she noticed that the respondent could not perform satisfactorily. He could only perform upon the consumption of Aphrodisiacs. There was no passion in their sexual life because the respondent will insist, they have sex anytime he erects. Also, the respondent insists they have anal sex anytime she menstruates and will become upset when she turned down the request. The respondent denies her sex especially when she has the desire and he does not. The respondent would wear singlets tacked into his boxers to sleep. For three months, the respondent refused to eat her food with the excuse that he was fasting only for her to find out that he was not fasting but had deliberately refused to eat her food. Prior to the celebration of the marriage, the respondent informed her he wanted one of his children named Edem to move in to live with them. She later got to know that the purpose of the marriage was to use the marriage certificate to obtain custody of the respondent's child who was at a Children's home in Ho. She cared for the respondent and all the children he brought to the home by providing for their needs. With time, the respondent disregarded her presence in the home as the wife however gave all attention to his children. He frustrated her and this Page 2 of 6 led her to move out of the matrimonial home in 2020. Their families tried to assist them reconcile however this failed. Sometime in 2020, the respondent served her with a divorce certificate which she later found to be fake. The petitioner concluded that the respondent has caused her so much pain that she cannot reasonably be expected to live with him as his wife. The petitioner tendered as exhibit A, a copy of their marriage certificate, as exhibit B, a copy of the fake divorce certificate. CASE OF THE RESPONDENT It is the case of the respondent that the parties were classmates. They later met after each of them had divorced and decided to get married. At the onset of their relationship, since both of them belonged to the same old students' social media platform he decided to let their classmates know of their relationship however, the petitioner dissuades him from doing so. Two weeks before the celebration of the marriage, he posted the date of the marriage on their alma mater's platform. To his surprise, one of their classmates indicated that the petitioner is his wife and accused him of stealing his wife. He was greatly troubled however he could not disclose same to his family and friends outside that platform. He decided to opt out of the marriage but was advised by some classmates not to do so. The petitioner did not also deny what was said. He is thus surprised when the petitioner as part of her reasons for asking for the dissolution of the marriage mentions deceit. The respondent tendered as Exhibit 1, conversations on the school social media platform. The respondent stated that the petitioner disliked his children and also showed no interest in the marriage. With regards to his inability to satisfy her sexually, the respondent stated that he cannot have sex with the petitioner more than twice a week though he was determined to improve. The petitioner always returned from work after 10 pm and requested sex. She was not ready to scale down her daily demands for sex. It is as a result of his inability to satisfy Page 3 of 6 the petitioner

with regular sex she left the matrimonial home. Although the petitioner left the matrimonial home, in 2019 at Christmas, he sent her a fowl and money for Christmas. In January 2020, the petitioner came to pack her belongings from the matrimonial home whilst he was at work. The respondent admitted that their family members tried to intervene in reconciliation however it failed. Through a friend, she obtained a divorce certificate which turned out not to be genuine. The respondent denied having anal sex with the petitioner. The petitioner being a caterer, he provided her with the necessary tools and money she needed for her work. His business was hard hit by the Covid 19 pandemic and also by the expenditure he made in getting custody of his child who was at the Children's home. He alleged that the parties are sexually incompatible and not that he deceived the petitioner when it came to his sexual prowess. He prays the court to dissolve the marriage but not to make any order for financial settlement in the petitioner's favour. As provided by Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367), the sole ground upon which an order for the dissolution of a marriage can be made is that the marriage has broken down beyond reconciliation. Section 2(1) of the same Act, however, requires that the petitioner prove one or more of the facts set out in the said section. By section (2) (1) (b) of Act 367, where the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, the court may dissolve the marriage. In the present case, the petitioner made a number of allegations. Notable among them is that the respondent consumes aphrodisiacs anytime he wants to have sex with her. She also told the court it is when she has menstruated that the respondent wants to have sex with her. These are conducts that can be considered unreasonable within the criteria of Section 2(1)(b) of the Matrimonial Causes Act. The respondent was however silent on these allegations. It can therefore be inferred that these allegations are admitted. Page 4 of 6 Having satisfied Section 2(1) of the Matrimonial Causes Act, the next task is to find out from the evidence whether or not there has been a failed attempt at reconciliation in satisfaction of Section 8(1) of the Matrimonial Causes Act, Act 367 which provides: on the hearing of a petition for divorce, the petitioner or his counsel shall inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings to effect reconciliation. In the present case, the petitioner informed the court that the families of both parties attempted reconciliation which failed. The respondent admitted this piece of evidence. This court is therefore satisfied that there has been a failed attempt at reconciliation. Besides praying to the court for the dissolution of the marriage, the petitioner also asked for financial settlement. Section 20 of the Matrimonial Causes Act 1971, Act 367 provides for financial settlement. It states as follows: "the court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable and immovable property as settlement of property rights or in lieu therefore or as part of financial provision as the court think just and equitable". S. 20(2) gives the court discretion to make payment and conveyances in gross or by instalment. In making an award for financial settlement, the court is to take into consideration the ability of the spouse who will be required to make the payment. The court must also consider the standard of living of the parties and their circumstances. In the present case, the respondent

who is required to pay informed the court that he is a mechanic. He also informed the court that the Covid -19 pandemic has affected his business. Notwithstanding this, from the processes filed by the parties, at the date of filing the petition, the parties had been married for close to three years. It is evident that the petitioner offered domestic services for the respondent until she moved out of the matrimonial home especially when the parties were living with the respondent's children. The court can therefore not ask her to walk away from the marriage with Page 5 of 6 empty hands. Although the respondent prays the court that no amount should be settled on her, the court thinks otherwise. Having satisfied all the requirements of the Matrimonial Causes Act on the grant of dissolution of marriage, I am satisfied that the marriage 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 the 15th of September 2018 at the Apostolic Church, Madina with certificate number RC/7027598 dissolved and the certificate of marriage accordingly cancelled. The court on all the evidence also orders the respondent to settle on the petitioner an amount of twenty thousand Ghana cedis to be paid in two equal installments. The first instalment is to be paid by 31st March 2023 and the second and final instalment is to be paid by 30th of April 2023. There will be no order as to costs. (SGD) H/W LINDA AMISSAH MAGISTRATE Page 6 of 6

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