

GHANA / JUDGMENT

Andoh Vrs Andoh [2023]

GHADC 35 (15 March 2023)

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15 March 2023

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CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT
MAGISTRATE, DISTRICT COURT 'B', SEKONDI ON THE 15TH OF MARCH, 2023

SUIT NUMBER A4/4/2023 EMMANUEL ANDOH

- PETITIONER V RACHEL ANDOH
- RESPONDENT

TIME: 10.16 AM PETITIONER PRESENT RESPONDENT PRESENT

JUDGMENT

The parties were married under the ordinance on the 10th day of March 2007. They are both Ghanaians. The Petitioner is a driver and the Respondent is also a Trader. There are four (4) issues of the marriage; Emmanuel Andoh (13 years), Isaac Andoh (11 years), Judith Andoh (7 years), and Juliet Andoh (7 years). Per the petition filed on the 24th day of August 2022, the Petitioner says the marriage celebrated between them has broken down beyond reconciliation and is praying for the following reliefs: i) That the marriage celebrated between the parties be dissolved. 1 ii) That the Respondent is granted custody of the children of the marriage with reasonable access to the Petitioner. iii) Maintenance of the children at GH¢400.00 per month. The Respondent filed an Answer to the petition on the 27th day of September 2022 in which she admitted the breakdown of the marriage but denies most of the material particulars. She cross-petitioned as follows:

- a) That the marriage should be sustained. In the event that the Petitioner still insists on the dissolution, then a claim for arrears of maintenance for nine (9) years at GH¢100.00 per month.

- b) Compensation of GH¢20,000.00. The Petitioner avers that the parties have been married for the past 15 years. However, due to misunderstandings and differences between them, the parties have been living apart for the past 7 years. The petitioner avers further that the Respondent left the matrimonial home to leave with her parents and on one occasion indicated to the brother of the Petitioner that she was no longer interested in the marriage. According to the Petitioner, his family members approached the Respondent and her family for an amicable resolution to bring the parties together but to no avail. It is the case of the Petitioner that there has not been any effective communication as well as any sexual intercourse between the parties for the past seven years. The Respondent, on the other hand, stated that contrary to the assertion of the Petitioner that she left the matrimonial home, it was the Petitioner himself who took her to her parents two weeks after she delivered their twin babies. Subsequently, she has made several attempts to return to the matrimonial home, but the Petitioner has been 2 preventing her and even changed the locks to the doors to the matrimonial home. Respondent says she still loves the Petitioner and thinks the marriage can be salvaged. The issue for determination at the end of the trial thus is whether or not the marriage between the parties has broken down beyond reconciliation. Per Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) the sole ground for the grant of a divorce petition is that the marriage has broken down beyond reconciliation. For the court to be persuaded that the marriage has indeed broken down beyond reconciliation, the petitioner must lead evidence to establish any one or more of the five facts enumerated in section 2 (1) of the Act. As in any civil case, the standard of proof is proof on the preponderance of probabilities per section 12 of the Evidence Act 1975 (NRCD 323). I glean from the Petition that the Petitioner grounds his reason for the breakdown of the marriage on desertion and the fact that the parties have not lived together as husband and wife continuously for over 5 years. The Petitioner in his evidence stated that the Respondent left the matrimonial home without recourse to him. Respondent however says that it was the Petitioner himself who brought his brother's car and packed out all her things and together with the children took them to Respondent's mother's house. She claims she made several efforts to go back but the Respondent did not allow same. The Respondent says that the Petitioner eventually changed the locks to the doors of the matrimonial home and even destroyed an oven she used to bake with. The Petitioner does not deny he changed the locks to the matrimonial home but gives the excuse that the original locks got spoilt hence the change. I find the excuse of the Petitioner not tenable. Assuming it was even the truth that the old locks got spoilt and were changed by him and if indeed he had the 3 intention to allow the Respondent to come home, to my mind, he could have given the Respondent a spare key to have enabled her to gain access to the matrimonial home but he failed to do so. Again, there is evidence that the oven that the Respondent used to work with was destroyed by the Petitioner. The Petitioner does not deny doing that but gives the excuse that the said oven was built too close to the house and heat emanated from it, for which reason he had to destroy same with the intention to build another one. But the Petitioner failed to do as promised thus the Respondent was out of a job. This is what ensued under cross-examination Q. Did you build another oven A. No, I did not Q. Why A. Takes a long time

(afterthought) From the above, it can be seen that the Petitioner does not give any reason for his failure to construct another oven for the Respondent. It can only be inferred that his failure was just to prevent the Respondent from coming to the matrimonial home. That being the case the Petitioner cannot turn around and accuse the Respondent of leaving or deserting the matrimonial home. In any case, the Respondent still has her belongings in the matrimonial home which the Petitioner confirmed under cross-examination. Q. I put it to you that I have my belongings in your room A. That is correct I find that the Respondent did not desert the matrimonial home as the Petitioner wants this court to believe. I find the evidence of the Respondent more credible that it was the 4 Petitioner himself who took her to her mother's house and not that she voluntarily left the matrimonial home. On the evidence, I further find that the parties have not lived together as man and wife for over seven years since the parties' last twins were born and the Petitioner took the Respondent to her mother's house. There has not been any consortium between the parties for that long. Even in the case of *ADDO v ADDO* (1973) 2 GLR 103, where the parties lived under the same roof, the Court held that though the parties lived under one roof, they were in effect two separate households as there was no consortium and there was withdrawal of marital obligations by the parties. The Court held that the marriage had broken down beyond reconciliation. In this case, however, the parties were not under the same roof, they have lived separately for the past seven years. The learned William Ekow Daniels in his book "The Law on Family Relations in Ghana, 2019 @ page312 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 the absence of consortium or cessation of cohabitation". Both parties have testified that they have not had any sexual intercourse for over seven years. It is trite law that the court will dissolve a marriage on the above ground where consent is not required and where the parties have not lived together as husband and wife for over 5 years. See Section 1 (2) (d) of the Matrimonial Causes Act 1971, Act 367. In this instant case, they have not lived together for over 7 years, a clear ground for divorce. In the circumstances, I find, therefore, on the evidence, that the marriage celebrated between the parties has broken down beyond reconciliation. Accordingly, I 5 decree the marriage celebrated between the Petitioner and the Respondent on the 10th day of March 2007, be and same hereby dissolved. Regarding the custody issue, the parties are ad idem that the Respondent be granted custody with reasonable access to the Petitioner. I shall not disturb this arrangement. The Petitioner has offered to pay maintenance of GH¢400.00 per month for the children of the marriage. It is the view of the court the that amount is woefully inadequate to cater for four children and accordingly, I shall settle on an amount of GH¢800.00 per month for the children. The Respondent is praying the Court order the Respondent to pay an amount of GH¢20,000.00 as compensation. Section 43 of Act 367 defines financial provision as including all forms of financial support provided by one spouse to the other or to a child of the household. Compensation has been defined in "Black's Law Dictionary, Ninth Edition" as "Payment of damages, or any other act that a court order to be done by a person who has caused injury to another. In theory,

compensation makes the injured person whole.” I am of the humble opinion that this is not the case for financial compensation as no liability has been established. I, however, believe under the circumstances that the Respondent may be referring to financial provision. Taking all the circumstances of the petition into consideration, including the fact that the Petitioner has not maintained the Respondent for a long time I shall award an amount of GH¢4,000.00 as a financial provision DECISION

1. The marriage contracted between the parties herein on the 10th day of March 2007 at the Holy Power Evangelistic Church, Shama Junction be and is hereby dissolved. Marriage certificate with number HOPEC/SJ/009/07 and pursuant Licence No. SAEMA/71/2007 is hereby cancelled. 6
2. The Respondent is granted custody of the four children of the marriage with reasonable access to the Petitioner prior due notice to the Respondent
3. The Petitioner is further ordered to maintain the four children with an amount of Eight hundred Ghana cedis (GH¢800.00) a month.
4. The Petitioner shall be responsible for the educational and medical needs of the children as and when they fall due.
5. The Petitioner is ordered to provide suitable accommodation for the children of the marriage.
6. The Petitioner is ordered to pay an amount of Four Thousand Cedis (GH¢4,000.00) to the Respondent as financial provision
7. There is no order as to cost (SGD) H/W ROSEMARY EDITH HAYFORD (MRS) MAGISTRATE 7

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