

GHANA / JUDGMENT

# MENSAH VRS ARTHUR (A4/ 38/ 2023) [2024] GHADC 173 (28 February 2024)

COURT  
ghadcDECIDED  
28 February 2024

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## Source record

IN THE DISTRICT MAGISTRATE COURT TAKORADI MARKET CIRCLE  
HELD ON THE 28TH DAY OF FEBRUARY 2024. BEFORE HER WORSHIP

|                              |                                                                                 |
|------------------------------|---------------------------------------------------------------------------------|
| CATHERINE OBIRI ADDO<br>ESQ: | SUIT NO. A4/ 38/ 2023<br>NORA BADU MENSAH ..... PETITIONER<br>APOWA<br>TAKORADI |
| VRS:                         | REBEN ARTHUR ..... RESPONDENT<br>TAKORADI                                       |

## JUDGMENT

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The petitioner has filed for the dissolution of the marriage between herself and the respondent, which was contracted under the ordinance CAP 127. The couple has two children from the marriage, Damien Kwabena Mensah, Ommo Aku Alimah Arthur 10 and 2years old respectively. The petitioner asserts that their marriage has irretrievably broken down, and she provides several reasons to support this claim. According to the petitioner, the respondent has little to no affection for her. She added that one particular night, she was vomiting and had blood in her urine amidst severe pains but the respondent failed to help her and slept. The petitioner added that the respondent disrespected her by calling her names in the presence of their friends, insulting her at the slightest provocation, and sometimes making vile statements about her private parts. According to the petitioner, respondent informed his friends that he had no intension of marrying her but did so as it is convenient of taking monies from her. According to the petitioner, the respondent neglects his duty towards the children of the marriage. She added that she always pays the kids fees but the respondent fails to refund same to her, she added that the respondent also fails to pay for the books and medical bills of the children of the marriage. Petitioner avers, although she admits that the respondent gives her monthly maintenance of GH

400.00 for the upkeep of the kids and an extra GH 500.00 for the school fees of the kids whiles he instruct him top-up the remaining balance of the fees. Petitioner further indicated, the respondent alleged he is not closer to his extended family and advised her to also distant herself from her extended family. She recalls an incident where she went to withdraw money to be given to her mother and was attacked by robber with a knife, when he reported same to the respondent, he scolded her as to why she should withdraw money and give to her mum in the first place. He added that, they both lives in different regions. Whiles she lives in Takoradi the respondent lives in Aflao in the Volta region and due to the distance between her and the respondent, the respondent does not visit her often he visits once in a year and has warned her not to visit him at Aflao. Petitioner added that even when she wanted to take a transfer to Aflao to be with the respondent he refused alleging that Takoradi is huge enough to contain her. She added that even when she moved out of her apartment to a different apartment, the respondent asked her to pay for the rent advance and promised to reimburse her but he refused. She therefore prays the court for a decree of dissolution of the marriage contracted between her and the respondent, she also sought for custody of the two children of the marriage and an order for maintenance for the children of the marriage. It is worthy of note that the respondent after been served with the petition for divorce and hearing notice on the 28th day of July 2023, and subsequently been severed with hearing notices on the 26th day of September 2023, 7th December 2023, and 14th of February 2024, respondent failed to appear in court to contest the action despite processes and hearing notices served on him. Order 25 rule 2(a) of the C.I 59 states: "Where an action is called for trial and a party fail to attend, the trial magistrate may

- (a) Where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim if any and allow the plaintiff to prove the claim....." Similarly in the case of *REPUBLIC. V CIRCUIT COURT JUDGE EX PARTE DZAKA* (1984-86) 1GLR 741 at holding 1 the court held "..... situations where both parties were aware of or had been served with hearing notice and yet one party failed to appear at trial, in such a case, the party who failed to appear could be said to have deliberately abstained from taking advantage of an opportunity to be heard and no breach of the audi alteram partem rule could be said to have occurred....." ..../3
- 3 - Base on the above position of the law, the court calling on the petitioner to open her case was in order. The primary issue to be determined in this case is whether the marriage between the parties has genuinely deteriorated beyond the possibility of reconciliation. 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 360n Although the petitioner seeks ancillary reliefs, it's important to clarify that these ancillary reliefs are secondary 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 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. .../4

- 4 - The petitioner asserts that the respondent disrespected her by calling her names, insulting her at the slightest provocation, and making vile statements about her private parts, telling his friends he had no intention of marrying her but did so as it was convenient for him to take her money. It is worthy of note that the petitioner did, not make it clear the kind of names that the respondent calls her. All that she stated in court is that the respondent started calling her names which is not sufficient enough. The petitioner should have made it clear to the court the kinds of names the respondent calls her but she failed to do that. She added that, the respondent insults her at the slightest provocation and make vile statements about her private parts. The court finds that, it is never correct that the respondent fails to pay the children fees as the petitioner wanted the court to believe. In fact in the petitioner's own evidence to the court, she accepted that the respondent gives her GH4,00.00 monthly as maintenance and extra GH500.00 for the school fees of the children and asks her to top up. In fact, this court believes that children of a marriage are the collective responsibility of both parents and not the responsibility of one particular partner in a marriage. If the respondent pays half payment of the fees and asks that the petitioners top up the rest of the balance as she has alleged, the court do not see this as irresponsible on the part of the respondent. The petitioner has indicated in court that she is a custom officer and as a custom officer, she is employed as such she is in the position to help the respondent take care of the children of the marriage. She added that the respondent fails to pay books as well as medical bills of the children of the marriage. According to her the respondent failed to pay for the rent of the family when they were moving into another apartment. The court finds that the distance between the parties thus the petitioner and the respondent is something that can be easily be resolved by both parties but they failed to do. From the totality of the evidence presented, by the petitioner, the court finds that, insulting your wife at the slightest provocation and making vile statements about her private parts, as well; as telling friends that you are not interested in marrying her but you did same as a result of monies you get from her amounts to unreasonable behavior on the part of the respondent.

In addition not paying the medical bills and books of the children of the marriage and refusing to pay rent or provide accommodation for the petitioner and the children of the marriage are unreasonable on the part of the respondent. And since there is no contrary evidence before the court, the court accepts as factual that indeed the respondent behaved unreasonably. In view of the foregoing, the court finds in terms of section 2(1) (b) of the MCA In light of these circumstances, the court finds the alleged issues were issues that could have been easily resolved by the parties but they failed to do so causing a wear and tear of their married life. After a thorough analysis of the evidence presented by the petitioner, and considering the fact that it remains undisputed by the respondent, the court has determined that the marriage between the parties has indeed broken down beyond reconciliation. In line with the precedent set in the case of KOTEI V KOTEI (1972) 2GLR 172, the court pronounces a decree of dissolution of the marriage between the parties. This marriage, originally contracted under CAP 127 is hereby dissolved, and the marriage certificate is canceled accordingly. Regarding the ancillary reliefs, the petitioner has expressed her desire for custody of two children of the marriage Damien Kwabena Mensah, Ommo Aku Alimah Arthur 10 and 2years old respectively. Considering the fact that, the children has always been in the custody of the petitioner and the desire for siblings to stay together and per section 45 of the children act, the court order the status quo to remain. Custody of the two children of the marriage Damien Kwabena Mensah, Ommo Aku Alimah Arthur 10 and 2years old respectively are granted to the petitioner with reasonable access to the respondent. The respondent has access to the children during school holidays and vacations to spend time with their children but he is to make sure to return the kids when school resumes to enable them prepare for school. In addition, the petitioner is seeking for maintenance for the two children of the marriage. In awarding maintenance certain factors are taken into consideration for example the remuneration of the respondent and the ability of the respondent to pay. Since there is no remuneration of the respondent before the court, the court will award what is reasonable in the circumstance. In view of the foregoing the court hereby order the respondent to maintain the two children of the marriage with an amount of GH700.00 a monthly and to pay the school fees, medical bills and other educational expenses of the children of the marriage as and when the need arises. The clothing of the children of the marriage should be borne by the petitioner. There will be no order as to cost. (SGD) H/W CATHERINE OBIRI ADDO ESQ: (MAGISTRATE) 28/2/2024 REPRESENTATION PETITIONER- APPEARED PRO SE RESPONDENT- ABSENT. Ladd\*.

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Prepared on 28 October 2026 · Esheria