

GHANA / JUDGMENT

AMPONSAH VRS AKORLI (G/WJ/DG/A4/86/23) [2024] GHADC 137 (27 February 2024)

COURT
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27 February 2024

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IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 27TH DAY OF FEBRUARY, 2024 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE MAVIS AFUA AMPONSAH PETITIONER SUIT NO. G/WJ/DG/A4/86/23 VRS RICHMOND AKORLI RESPONDENT PARTIES ARE PRESENT AND SELF REPRESENTED BRIEF FACTS

JUDGMENT

The Parties got married under customary law on 28th November 2015 and cohabited at Weija Old Barrier. Parties have two issues of the marriage namely Selassie Grace Akorli aged 6 years and Delali Tyra Akorli aged 2 years six months. The Petitioner filed an application for divorce at the registry of this court pursuant section 41(2) of the Matrimonial Causes Act, 1971 (Act 367) on 18th April 2023 against the Respondent for the following reliefs;

- a. Dissolution of the customary marriage between the parties as same has broken down beyond reconciliation
- b. Custody of the children of the marriage with reasonable access to the Respondent
- c. An order directed at the Respondent to maintain the children with the sum of GHC1,000.00, pay their school fees and medical bills as and when payments fall due
- d. An alimony of GHC20,000.00 Respondent failed to file an answer to the petition even though the court afforded him the opportunity to do so. According to him, he has given his consent for the dissolution of the parties' marriage. On 18th July 2023, parties were referred to the Court Connected Alternative Dispute Resolution (CCADR) to attempt reconciliation. On 24th July, 2023, the feedback from the mediator indicated that parties had reached agreement on the ancillary reliefs. The Court therefore set down the matter for trial. The issue set down for determination is whether or not the parties' marriage has broken down beyond reconciliation. BURDEN OF PROOF It is trite that he who asserts assumes the burden of proof. Section 17(a) and (b) of the Evidence Act, 1975 (NRCD 323) reads as follows; Except as otherwise provided by law;

17. Allocation of burden of producing evidence Except as otherwise provided by law,
 - (a) The burden of producing evidence of a particular fact is on the party against whom a finding of that fact would be required in the absence of further proof
 - (b) The burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact. In *Okudjeto Ablakwa (No. 2) v A-G & Obetsebi-Lampitey (No. 2)* [2012] 2 SCGLR 845 @ 867, Brobbey JSC explained the principle cited supra as follows; “What this rule literally mean is that if a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish. PETITIONER’S CASE Petitioner testified by herself and did not call any witness. It is the case of the Petitioner that Respondent has shirked his responsibilities as a husband and a father and as a result she has taken up the sole responsibility of providing for the two issues of the marriage. She testified further that Respondent assaults her physically and verbally anytime he pleases and he has threatened to assault her till she collapses. According to her, she has suffered enough and that the marriage has caused her pain. She therefore prays the court to grant her reliefs. In resolving the issue set down for determination, section 41(3) of Act 367 provides as follows;
 - (3) In the application of section 2(1) to a marriage other than a monogamous marriage, the court shall consider the facts recognised by the personal law of the parties as sufficient to justify a divorce including in the case of a customary law marriage but without prejudice to the foregoing, the following:
 - (a) wilful neglect to maintain a wife or child
 - (b) impotence
 - (c) barrenness or sterility
 - (d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship and
 - (e) persistent false allegations of infidelity by one spouse against another
 - (4) Subsection 3 shall have effect subject to the requirements of justice, equity and good conscience. From the evidence, Respondent never raised any objection when the Petitioner testified that Respondent not only shirked his responsibility as a husband and a father but also subjected Petitioner to physical and verbal assault. Again, Respondent was in court during the hearing of Petitioner’s evidence but elected not to cross examine Petitioner on her evidence. In *re AshaleyBotwe LANDS; AdjeteyAgbosu & Others*[2003-2004] SCGLR400, 425-426, Brobbey JSC held as follows; “The effect of Section 11(1) and 14 and similar sections in the Evidence Decree, 1974 may be described as follows: A litigant who is a defendant in a civil case does not need to prove anything; the plaintiff who took the defendant to court has

to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of fact, or of an issue ant that determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has a duty to help his own cause by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but evaluate the entire case on the basis of the evidence before the Court which may turn out to be the only evidence of the plaintiff. If the Court chooses to believe the only evidence on record, the plaintiff may win and the defendant may lose. Such loss may be brought about by default on the part of the defendant. in the light of the statutory provisions, literally relying on the common law principle that the defendant does not need to lead any evidence may not always serve the best interest of the litigant even if he is a defendant.” In *Takoradi Flour Mills v Samir Faris* [2005-2006] SCGLR 882, the Supreme Court held as follows; “The law is well settled (as held by the trial court and affirmed by the Court of Appeal) that where the evidence led by a party is not challenged by his opponent in cross examination and the opponent does not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the opponent and must be accepted by the trial court.” Applying the law cited supra to the facts and evidence before me, I have no reason not to believe the evidence of the petitioner. I accordingly find that the customary law marriage of the parties has broken down beyond reconciliation due to the Respondent’s wilful neglect to maintain the petitioner and the two issues of the marriage. I do hereby decree that the customary law marriage celebrated between Mavis Afua Amponsah and Richmond Akorli on 28th November 2015 is hereby dissolved. A certificate of divorce is to be issued accordingly. The terms of agreement of the parties dated 24th July 2023 is hereby adopted as consent judgment and made a part of the final judgment of this court. I make no order as to costs.

HW RUBY NTIRI OPOKU MRS. (DISTRICT MAGISTRATE)

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Prepared on 30 October 2026 · Esheria