

GHANA / JUDGMENT

Asare Vrs Aklasu [2023]

GHADC 184 (20 January 2023)

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20 January 2023

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IN THE DISTRICT MAGISTRATE COURT HELD AT NEW TAFO-AKIM ON FRIDAY 20-01-2023
BEFORE HER WORSHIP JOSEPHINE SARFO (MRS.) SUIT NO: A4/8/22 BISMARK ASARE HOUSE
NUMBER TE 236 NEW-TAFO-AKIM PETITIONER VRS VALENTINA AKLASU NEW TAFOA
RESPONDENT PETITIONER - PRESENT RESPONDENT-ABSENT

INTRODUCTION

JUDGMENT

The Petitioner issued a Petition out of the registry of this honourable court on 23/12/21 seeking a dissolution of the ordinance marriage contracted between the parties on 16th December 2017 at the Global Evangelical Church, New Tafo-Akim. On the parties' first appearance before the Court on 8th July, 2022, the Respondent was ordered to file her Answer to the Petition however she failed or refused to do so and did not make any further appearance in Court despite several hearing notices having been served on her. PETITIONER'S CASE The Petitioner gave evidence himself per his Witness Statement filed on 29th August

2022. The Petitioner testified that after the celebration of the marriage the parties cohabited at New Tafo-Akim in the Eastern Region. The Petitioner stated that he is 1 a Miner and that during the subsistence of the marriage, he gave money to the Respondent monthly for keeps however the Respondent gave the money to her ex- boyfriend to rent a room. According to the Petitioner, when the Respondent became pregnant, she refused to inform him about it and also did not inform him about suffering a miscarriage. That he paid the tuition fees for the Respondent to pursue a degree in Accountancy at the Koforidua Technical University however she dropped out of school on the basis that Petitioner was informing people about the fact that she was pursuing a degree. The Petitioner further stated that the Respondent was making arrangements to travel to either to Italy or USA without his knowledge. That during the marriage, anytime he requested to have sex with the Respondent she refused and rather gave him money to buy fuel to contract the services of another female for the purpose. According to the Petitioner, the Respondent was not sleeping in their matrimonial bed but slept in the couch whenever he returned from trek. That Respondent has behaved in such a way that he cannot reasonably be expected to live

with her and has caused him much anxiety, distress and embarrassment. That all attempts by both families to settle their difference have proved futile and thus the marriage should be dissolved. RESPONDENT'S CASE It is pertinent to note that the Respondent neglected to file an Answer and all material times was absent during proceedings even though hearing notices were always and diligently served on her. EVIDENCE The Petitioner filed one witness statement. Respondent did not file any witness statement. 2 BURDEN OF PROOF Section 11(1) of the Evidence Act, 1975 (NRCD 323) provides that, "for the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue" In Re AshalleyBotwe Lands; Adjete Agbosu and others vrs Kotey and Others [2003-2004] SC GLR 420. It was held inter alia at page 425 that; "(5) the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial, depending on the issue(s) asserted and/or denied". It was further stated as per Brobbery JSC at page 425 that; "... if the court has to make a determination of a fact or of an issue and that determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing.... The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court....." Section 12 of NRCD 323 further provides that proof must be by a preponderance of probability. "Preponderance of probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence." This position was affirmed by the Supreme Court in the case of Adwubeng v Domfeh [1997-98]1 GLR 282 where it was stated that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities. The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. Under Section 2(1) of the Matrimonial Causes Act, 1971, (hereinafter called Act 367) the Petitioner would have to satisfy the Court that the marriage has broken down beyond reconciliation. Section 2 of Act 367 provides that, "for the purpose 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 of the Petition;

- 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 such consent shall not be unreasonably withheld and where the court is satisfied that it has been so withheld, the court may grant a petition for divorce under this paragraph notwithstanding the refusal;
- e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition;
- f) That the parties to the marriage have after diligent effort, been unable to reconcile their differences". From the pleadings and witness statement of the Petitioner, various allegations of unreasonable behavior, failure to live together as husband and wife and inability to reconcile differences were made by the Petitioner. According to Section 2 of Act 4 367, a Petitioner may rely on the unreasonable behavior of the Respondent and the fact that the Petitioner cannot reasonably be expected to live with the Respondent to prove that the marriage has broken down beyond reconciliation. The Petitioner may also rely on the fact that the parties have after diligent effort, been unable to reconcile their differences to prove that the marriage has broken down beyond reconciliation. I find from the evidence led before this Court that the marriage between the parties has broken down beyond reconciliation. I therefore decree that the marriage be dissolved. The marriage between the parties is hereby dissolved. There will be no order as to costs. H/W JOSEPHINE SARFO (MRS.) SGD 5

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