

GHANA / JUDGMENT

Essilfie Vrs Appiah [2023]

GHADC 40 (14 March 2023)

[2023] GHADC 40

COURT

District Court

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CORAM: HER WORSHIP (MRS.) ROSEMARY EDITH HAYFORD, SITTING AS DISTRICT
MAGISTRATE, DISTRICT COURT “B”, SEKONDI ON THE 14TH MARCH, 2023

SUIT NUMBER A4/18/2023 HENRY FRITZ ESSILFIE V VERONICA APPIAH - - PETITIONER
RESPONDENT

TIME: 8.45 AM PETITIONER RESPONDENT - - PRESENT PRESENT

JUDGMENT

The Petitioner filed the instant petition on the 2nd of November, 2022 against the Respondent and prayed to the court for the following reliefs:

1. Dissolution of the marriage celebrated between the parties forthwith.
2. Custody of the two children of the marriage is to be granted to the Petitioner with reasonable access to the Respondent. The petitioner says the marriage has broken down due to unreasonable behaviour and desertion on the part of the Respondent. The particulars gleaned from the Petition among others are as follows:
 1. The Respondent is troublesome and is fond of attacking the Petitioner with any available object at the least provocation.
 2. The Respondent is violent and always fights with the Petitioner

3. The Respondent has deserted the matrimonial home and the children since 2012 In her Answer filed on 24/01/2023, Respondent denied any form of unreasonable behaviour. Respondent says that from the onset of the marriage Petitioner always verbally abused her and her mother amidst threats of their lives. Efforts were even made by family members to resolve their differences but to no avail hence her reason for leaving the matrimonial home. Respondent cross-petitioned as follows:
 1. Dissolution of the marriages between the parties
 2. An order of the court to compel the Petitioner to pay alimony to the Respondent
 3. Access to the children of the marriage during weekends and vacations. Per section 1(2) of the Matrimonial Causes Act 1971 (Act 367) the sole ground for granting a petition for divorce shall be that the marriage had broken down beyond reconciliation. Section 2(1) of the Act specifies acts that prove the breakdown of marriage beyond reconciliation to include facts that:- (i) That the Respondent has committed adultery (ii) Respondent had behaved in a way that Petitioner could not reasonably be expected to live with Respondent (iii) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition (iv) That the parties to the marriage have not lived as husband and wife for a continuous period of at least two years, and that the Respondent does not withhold his consent for the dissolution (v) That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition (v) That the parties to the marriage have after diligent effort been unable to reconcile their differences Per section 2(3) of the Act, although the Court finds the existence of one or more of the facts specified under section 2(1), the Court shall not grant the petition for divorce unless it is satisfied on all evidence that the marriage had been broken down beyond reconciliation. Petitioner, per section 11 of the Evidence Decree 1975 (NRCD 323) had to persuade Court to believe that the marriage had broken down beyond reconciliation. He had to do so by proving at least one of the acts listed under section 2(1) of the Act above. Per the pleadings before this court, the determinable issue was whether or not the marriage celebrated between the parties had broken down beyond reconciliation as a result of the
 - (a) unreasonable behaviour of the Respondent.
 - (b) Desertion of the Respondent Petitioner per his witness statement stated that the parties have been married for the past seventeen years and there are two issues of the said marriage. It is the case of the Petitioner that the Respondent is troublesome, easily gets angry, and refuses to perform her duties in the matrimonial home. Petitioner says that the Respondent can stay in the house for about three days without attending to the children and the Petitioner. It is his case that the Respondent is very quarrelsome and it was after one of such quarrels with the Petitioner that she left the matrimonial home in 2012 and has never returned. After she left, there was a meeting by both families sometime in 2014 to attempt reconciliation but that proved futile. Subsequently, the Petitioner was asked to compensate

the Respondent with an amount of GH¢2,200.00 which he did after an appeal from Legal Aid. Petitioner attached a copy of the Legal Aid Agreement as Exhibit A. It is the case of the Petitioner that the parties have not lived as husband and wife since 2012 and he is the one who has been solely responsible for the two children of the marriage. Petitioner further tendered Exhibit B, the marriage certificate. The Respondent on the other hand says that because of the constant threat to her life, the parties were advised to separate for some time and she has since been living with her parents. Respondent avers that the Petitioner is quick-tempered and when he is angry the way he speaks is scary amidst the threat. An example in point was that there was a misunderstanding between the parties and the Petitioner threatened to kill her. According to the Respondent, the matter was reported at the police station but was subsequently brought home for settlement. A claim the Petitioner denies though. It is the case of the Respondent that it was during this settlement that the family members entreated her to separate from the Petitioner. She assumed that the parties would reconcile after a while, but that did not happen and the parties stayed separated for close to 10 years. Respondent avers that she was further advised not to take her children since doing so would affect their education, thus the children stayed with the Petitioner. Respondent says that during that period the Petitioner failed to maintain her and through the intervention of Legal Aid, Petitioner was ordered to pay her an amount of GH¢2,200.00 as maintenance and the same has since been paid. I must say that from the evidence the Petitioner did not substantiate most of the allegations made. For example, the Petitioner says that the Respondent is troublesome, violent, and always fights with the Petitioner. The Respondent denies these claims; therefore, the burden was on the Petitioner to have led evidence to establish these acts which when proven would amount to unreasonable behavior but the Petitioner failed to do so. The Respondent also averred that the Petitioner threatened to kill her as a result of which the matter was reported to the police and later their landlord or lady who even heard same told one Osofomaame about it, the matter was withdrawn from the police station and Respondent was advised to leave the matrimonial home. The Petitioner vehemently denied this claim. He said nothing of the sort happened that got to the police. The Respondent also had the burden to prove these allegations but she failed to do so. Just the mere averment. They both mounted the box and repeated what they had stated in their witness statements without leading cogent evidence to support same. The evidence is however clear that since the Respondent left the matrimonial home in 2012, the last time she saw the children of the marriage was in 2015 and to date, she had never seen her own children. The Respondent gives the reason that it was the Petitioner who prevented her from seeing her own children. I find that reason strange though because the matter was decided upon at Legal Aid and if it were true that the Petitioner was preventing her from seeing her own children, all that the Respondent had to do was to have gone back to Legal Aid or to have instituted an action at the family court but she failed to do any of that. I find the behaviour of the Respondent unreasonable. Did the Respondent desert the matrimonial home and the children of the marriage? The Petitioner in his petition indicated that the Respondent deserted the family for almost 10 years and did not make any efforts to come back. The Respondent on the other hand avers that she did not leave the matrimonial home

voluntarily but was asked by the family members of both parties to leave the matrimonial home for some time. She had hoped that the parties would reconcile. The Petitioner denies this explanation of the Respondent and says that none of the family members suggested any separation but rather it was the Respondent herself who packed her things and left. Section 2 (1) (c) of the Matrimonial Causes Act, 1971, Act 367 stipulates another ground to show that a marriage has broken down beyond reconciliation as : “(c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.” In *Frowd v Frowd*, Jeune P defined desertion to mean the cessation of cohabitation brought about by the fault or act of the parties. Therefore, the conduct of the parties must be considered. If there is good cause or reasonable excuse, it seems to me there is no desertion in law” In this instant case, the Respondent avers that she had to leave because the Petitioner had threatened to kill her and upon the advice of both family members he was asked to leave. I have already indicated in this judgment that the Respondent could not prove her assertion that the Petitioner threatened to kill her which would have justified that she had a good reason for leaving. I do not, therefore, see any good cause or reason for leaving, in the circumstances I find that the Respondent has deserted the matrimonial home for close to 10 years. Clearly, throughout this period, there was a total absence of consortium and cessation of cohabitation between the parties prior to the filing of the petition. Section 1(2)(e) of the Act stipulates that to constitute a breakdown of marriage the Petitioner must show “that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition”. The evidence is clear that the parties have not lived as husband and wife for a continuous period of close to 10 years. It is trite that consent from the Respondent is not needed for the dissolution of the marriage. Having analyzed the facts and evidence, I find that the marriage celebrated between the parties on the 9th of August, 2009 at the Metropolitan Offices has broken down beyond reconciliation due to the unreasonable behaviour of the Respondent and I so hold. In respect of the GH¢2,200.00 that was paid by the Petitioner to the Respondent, Exhibit A, the agreement signed at Legal Aid, clearly indicates that same was compensation and not maintenance arrears as the Respondent wants this court to believe. I proceed to make the following orders based on the evidence so far adduced,

1. I hereby declare the ordinance marriage contracted between the parties herein on the 9th of August, 2009 at the Metropolitan Offices, Sekondi be and is hereby dissolved. It is hereby ordered that a decree of divorce be granted; the marriage certificate No. 255/2009 pursuant to marriage licence no. SAEMA/255/2009 is hereby cancelled.
2. Custody of the two children of the marriage (Blessing Adom Essilfie, 14 years and Godslove Essilfie, 10 years) are hereby granted to the Petitioner with reasonable access to the Respondent during vacation and visitation fortnightly.
3. Petitioner is ordered to pay to the Respondent an amount of GH¢1,000.00 as financial provision.

4. There is no order as to cost. (SGD) H/W ROSEMARY EDITH HAYFORD (MRS) MAGISTRATE 8
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Prepared on 24 October 2026 · Esheria