

GHANA / JUDGMENT

Amoanab Vrs Bola [2023]

GHADC 464 (15 March 2023)

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15 March 2023

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IN THE DISTRICT COURT 2, TAMALE HELD ON WEDNESDAY 15TH MARCH, 2023 BEFORE HIS WORSHIP D. ANNAN ESQ. BETWEEN SUIT NO. A4/6/22 AMOANAB FELICIA - PETITIONER AND VINCENT SPIO BOLA - RESPONDENT

JUDGMENT

INTRODUCTION

1. This judgment relates to dissolution of marriage.
2. The parties herein married under the Marriage Ordinance, 1951 Rev. (CAP 127) on 9th September, 2016 at the Accra Metropolitan Assembly, Accra in the Greater Accra Region of Ghana. The parties are Ghanaian citizens. The Petitioner is a nurse at the Tolon Hospital, Tolon while the Respondent is an administrator at Kole-bu Teaching Hospital, Accra. There is one issue of the marriage, Weperi Bola, 5yrs. There are no listed properties acquired during the marriage.
- 1 -
3. On 12th April, 2022 the Petitioner filed this petition against the Respondent for the following reliefs:
 - a. Dissolution of the marriage between the parties.
 - b. Custody of the issue of the marriage.
 - c. Maintenance of the issue for life.
 - d. Maintenance arrears of GHS900.00 per month for 28 months.
 - e. That the Respondent be ordered to pay the costs of the suit.
4. The Respondent on 13th May, 2022 filed a motion challenging the jurisdiction of this court, praying for the matter to be transferred to Accra. The Petitioner disputed the said motion. On 2nd June, 2022 this court per Order 5 rule 2(6) of the District Court (Civil Procedure) Rules, 2009 assumed jurisdiction, after considering the circumstances of both parties. The

Respondent, subsequently, filed an answer and cross-petition on 29th August, 2022. I must mention here that the Respondent's answer and cross-petition has several infractions with the rules of pleadings which I shall later dealt with in this judgment.

5. The respective cases of the parties are detailed below. PETITIONER'S CASE
 6. The grounds for Petitioner's case are that the Respondent has behaved unreasonably and deserted the marriage. According to her, shortly after the birth of Weperi Bola, the child was constantly ill, which later was diagnosed as cerebral palsy. So in April 2017, the parties agreed that the Petitioner sends the child to Tamale for local treatment. She added that when she came to Tamale, she stayed with her sister, Augustina Amoanab (PW1) for about two years. Due to the fact that PW1 was living
 - 2 - in a chamber and hall with her three children, it was an inconvenience, so she (Petitioner) rented a new place in order to have privacy anytime Respondent visits. All this while, Respondent was supporting them on a monthly maintenance of GHS700.00 as well as paying for the child's medical bills. However, in September 2019 the Respondent abandoned all his responsibilities towards them, knowing very well that their child needed intensive care. Petitioner contended that Respondent refused to pick her calls. According to her, Respondent claims she is in a relationship with another man so this man should rather cater for her and the child. She averred that the child's food supplement costs over GHS600.00, not to think of the hospital bills, diapers, feeding and other needs. She tendered in evidence Exhibit A series being receipts of food supplements. She added that it was at Wiaga Hospital that the child was diagnosed of cerebral palsy and had to begin physiotherapy at Tamale Teaching Hospital. Exhibit B series are the medical IDs of the various hospitals. Abandoned by the Respondent, she applied for a part-time job with an NGO and had to engage a nanny (an elderly woman) to take care of the child. She added that while paying for the nanny, she was also catering for her sick mother (who is now deceased) and her own schooling. Petitioner indicated that it was only when this case was filed that Respondent started sending GHS300.00 per month, which to her is woefully inadequate.
 7. Petitioner contended further that despite married to the Respondent under the ordinance, her bride price had not been paid. All attempts, through her pastor and family members of both parties, to get Respondent to perform the traditional marriage rites have proved futile. To her, the attitude of the Respondent indicates that this marriage cannot survive and as such should be dissolved. Hence, this present petition. Petitioner's Witness.
 - 3 -
 8. Petitioner called one witness, her sister, Augustina Amoanab (PW1). PW1 corroborated the above evidence. She confirmed that Petitioner stayed at her place for almost two years.
- RESPONDENT'S CASE

9. As mentioned earlier, there are some infractions in Respondent's answer and cross- petition, regarding how the pleadings were set out. The rules of pleadings are trite and that a party (a) pleads relevant facts, (b) pleads point of law, but not law, (c) pleads only material facts and (d) pleads fact, not evidence. Particularly on pleading facts, not evidence, it is required that the pleading must contain only the material facts that the party wishes to rely on and not the evidence by which they are proved. This is aimed at avoiding lengthy pleadings and such pleadings constitute an abuse of process. All facts which tend to prove the fact in issue will be relevant at trial, but they are not material facts for pleading purposes. In *Williams v. Wilcox* (1838) 8 A&E 314 @ 331 per Lord Denman C.J stated that, "[i]t is an elementary rule in pleading that when a statement of facts is relied on, it is enough to allege it simply without setting out the subordinate facts which are the means of proving it or the evidence of sustaining it." See also the case of *Phillips v Phillips* (1878) 4 Q.B.D. 127. In our present case, the Respondent attached exhibits such as medical reports, WhatsApp messages, bank account statements, mobile money statements, among others as part of his answer and cross- petition, as if he was giving evidence at trial. This amounts to an abuse of the process and as such, I will disregard the evidence so pleaded.
10. Also, in his cross-petition, this is what counsel for Respondent pleaded: "A declaration that the Honourable District Court has breached the rules of court and the rule on jurisdiction regarding the venue of the action by proceeding with it despite the pendency of an appeal against its own ruling and also a repeat
 - 4 - application to stay proceedings, both currently subsisting at the High Court in Tamale."
11. I am at a loss at this cr0ss-petition. It has nothing to do with the Petitioner's petition. It appears counsel for Respondent is very dissatisfied with the decision of this court to assume jurisdiction of this matter. At the time of writing this judgment, I am informed that the High Court, Tamale had on 9th November, 2022 affirmed the ruling of this court. The High Court having ruled on the jurisdiction of this matter, then there is no cross-petition. In effect, I am of the firm view that the above cross-petition is an abuse of the court process and same is struck out.
12. Having dealt with the above infractions, below is what Respondent contended in his answer. Respondent basically disputed the dissolution of the marriage. In his answer, he stated that soon after the birth of Weperi Bola, it was noticed he had constant convulsion, a sickness later diagnosed as cerebral palsy. He admitted that the child needs constant care or special attention throughout his life. He contended that it was the Petitioner who initially wanted to send the child to a fetish priest in Kasoa for local treatment. However, upon medical advice Petitioner abandoned that and the child was referred to Korle-Bu Teaching Hospital, where he works. Respondent averred that at Korle-Bu it was indicated that the child needed a pediatric neurosurgeon. Despite this, Petitioner moved to Tamale with the child on his blind side. Nonetheless, he followed up and visited the child and wife in Tamale, sent them monthly maintenance, paying for medical bills and even paid for the rent. He averred that he had showed love and care to Petitioner and the child, to which he believes that he has not

behaved unreasonably. Respondent, however, argued that on one of his visits to Tamale he found out that the Petitioner was in a relationship with one Issah. He stated that he discovered this on Petitioner's Facebook page and also clothes of Issah in the

- 5 - rented room. To him, this confirmed Petitioner's infidelity/adultery. Respondent, however, did not plead adultery or provide particulars of same.
- 13. Further in his answer, Respondent averred that during his visits to Tamale, Sandema, Wiaga, Bolga and the likes in the years 2020 and 2021 parties had sexual intercourse. Also, it is untrue that he had stopped picking Petitioner's calls. He also disputed any agreement between the parties to which he was to pay GHS900.00 per month as monthly maintenance. Lastly, he disputed that no meeting, invitation or attempt had been made at reconciling their differences. Rather, the above events have taken a toll on his health such that he is presently suffering from a kidney infection, which he is undergoing a dialysis at Korle-Bu.
- 14. In brief, he is opposed to the dissolution of the marriage and prayed the court to dismiss this case as having no merit and to offer the Petitioner an opportunity to go back, more particularly for the sake of their vulnerable child who needs both parents.
- 15. When the case was set down for hearing, the Respondent was duly served through his lawyer, yet neither him nor his lawyer came to court. I shall deal with the effect of their non-attendance later in this judgment. THE EVIDENCE AND THE LAW
- 16. Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that a decree for divorce shall be granted only on the ground that the marriage between the parties has broken down beyond reconciliation. Section 2(1) of the Act specifies the conditions to be proved that the marriage has broken down beyond reconciliation to include:
 - a. that the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent;
 - 6 -
 - b. that the Respondent has behaved in such 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 man 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; or

- f. that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.”
17. The law, therefore, enjoins either party to satisfy the court on one or more of the aforementioned grounds for a dissolution of the marriage, see also the cases of Ansah
- v. Ansah [1982-83] 2 GLR 1127 and Akoto v. Akoto [2011] 1 SCGLR 533. Section 2(3) of Act 367 further provides that: “Although the Court finds the existence of one or more of the facts specified in subsection 1, the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.”
18. Regarding failure to attend court, the law is that where a party fails to appear in court after due service on him, he is said to have deliberately failed to take advantage of the opportunity given him to be heard. The audi alteram partem rule cannot be said to have been breached. The court is entitled to proceed with the trial to conclusion and make
- 7 - deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial, see the cases of In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA and Ankumah v. City Investment Co. Ltd. [2007- 2008] 1 SCGLR 1068. In Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185 Wood JSC (as she then was) stated authoritatively at page 190 as follows:- “A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice.”
19. As mentioned earlier, counsel for Respondent and the Respondent failed to attend court. Counsel for Respondent withdrew from the case on 20th December, 2022. This court afforded the Respondent several opportunities to be heard, i.e. 21/12/22, 6/2/23, 28/2/23 and 15/3/23, but he failed to take advantage of it. Respondent would file a letter and/or with an excuse duty for not attending court. In his letters Respondent would state, “until such time I will be well enough to attend court...”. When is ‘well enough’? In his letter dated 13th March, 2023 the attached excuse duty from Korle-Bu Teaching Hospital had expired on that same day. It appears to this court that Respondent is filing these excuses simply to frustrate the hearing of this case. Also, it appears he is holding onto the fact that this court should not assume jurisdiction of the matter. Well, that has been affirmed by the High Court as far back as 9th November, 2022 and yet he has failed to take advantage of the opportunity given him to be heard. Having heard the Petitioner and her witnesses under oath and Respondents failing to take advantage of the opportunity to be heard, I shall proceed as necessary.
20. From the evidence, all that the court is to satisfy itself is that the marriage has broken down beyond reconciliation. According to the Petitioner, the Respondent had

- 8 - abandoned his responsibilities to her and the child. Again, the Respondent falsely accused her of infidelity. All attempts to have their differences reconciled have failed. On the totality of the evidence, I find that the Respondent has behaved unreasonably such that the Petitioner cannot be expected to live with him as a wife.
 - 9 -
21. Let me also point out here that the non-payment of the Petitioner's bride price does not in any way serve as a ground for dissolution of the marriage. The marriage was duly celebrated under the ordinance. As a matter of law, the performance or non- performance of the traditional marriage, i.e the customary marriage, has no legal effect whatsoever on this marriage. In all instances, a valid ordinance marriage shall prevail against a customary marriage, see sections 74 and 76 of CAP 127.
 22. In effect, I, therefore, decree that the marriage between the Petitioner and the Respondent herein, celebrated 9th September, 2016 at the Accra Metropolitan Assembly with certificate number 1693/MC/2016 and licence number AMA/16/67202/2016 be and is hereby dissolved. Divorce certificate to issue.
 23. Finally, regarding the issues of custody and maintenance of the child, Weperi Bola, the law enjoins the court to consider the benefit/interest of the child. Section 22(2) of Act 367 provides: "The Court may, either on its own initiative or an application by a party to proceedings under the Act, make an order concerning a child of the household which it thinks is reasonable and for the benefit of the child."
 24. Section 2(1) of the Children's Act 1998 (Act 560) captioned, Welfare Principle of a Child provides that: "The best interest of the child shall be paramount in any matter concerning a child, and it shall be the primary consideration of any court, person, institution or other body in any matter concerned with a child".
 25. In considering what constitutes the benefit of the child, Owusu-Addo J in *Ansah v Ansah* (supra) held in holding 3 that:
 - 10 - "... the Court's duty was to make an order which was reasonable for the benefit of the children. In deciding what was in the best interest of the children, the conduct of the parents, ... the pattern of life set up for the children since cohabitation ceased between the husband and wife were important matters to be taken into consideration"
 26. Also, on the claim of maintenance, section 47(1) of Act 560 stipulates that: "A parent or a person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, basic education and reasonable shelter for the child."

27. From the evidence, the child is presently in the care of the Petitioner and undergoing physiotherapy at Tamale Teaching Hospital. He is 5years old and needs special attention. I, therefore, see no other basis than to grant custody to the Petitioner and grant reasonable access to the Respondent. For emphasis, custody is given to the Petitioner. The child is, however, to spend the public holidays with the Respondent. The care of the child shall be the joint responsibility of the parents.
28. On the monthly allowance, I did not find any agreement to which the amount of GHS900.00 was to be paid of which same had not been paid since September, 2019. I shall therefore not make any determination as to maintenance in arrears. However, I hereby order the Respondent to pay GHS1,000.00 per month in addition to the payment of medical bills, effective March 2023.

CONCLUSION

29. In sum:
- a. The marriage between the parties is hereby dissolved. Divorce certificate to issue.
 - 11 -
 - b. Custody of the issue of the marriage, Weperi Bola, is granted to the Petitioner with the Respondent given reasonable access. Reasonable access here includes public holidays.
 - c. Maintenance assessed at GHS1,000.00 per month, effective March, 2023. In addition, Respondent is ordered to pay for the medical bills of the child.
 - d. Costs of GHS10,000.000 is awarded in favour of the Petitioner. H/W D. ANNAN ESQ. [MAGISTRATE] ESTHER YIRIBOM ESQ. FOR THE PETITIONER
- References
1. ss. 1(2), 2(1), 2(3), 22(2) of the Matrimonial Causes Act, 1971 (Act 367)
 2. ss. 74 and 76 of Marriage Ordinance, 1951 Rev. (CAP 127)
 3. ss. 2(1) and 47(1) of the Children's Act 1998 (Act 560)
 4. Williams v. Wilcox (1838) 8 A&E 314 @ 331
 5. Phillips v Phillips (1878) 4 Q.B.D. 127
 6. Ansah v. Ansah [1982-83] 2 GLR 1127
 7. Akoto v. Akoto [2011] 1 SCGLR 533
 8. In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA
 9. Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1068.
 10. Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185

- 12 -

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Prepared on 27 October 2026 · Esheria