

GHANA / JUDGMENT

Abitty Vrs Zormelo [2023]

GHADC 559 (23 February 2023)

COURT
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23 February 2023

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23: 02: 2023 1 IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON THURSDAY THE 23RD DAY OF FEBRUARY, 2023 BEFORE HER WOSHIP GIFTY CUDJOE THE MAGISTRATE PETITION FOR DIVORCE BETWEEN SARAH ABITTY AND ZORMELO BRIGHT SUIT NO. A4/18/2021 SARAH ABITTY) PETITIONER VERSUS ZORMELO BRIGHT) RESPONDENT J U D G E M E N T The Petitioner filed for dissolution of the Marriage she contracted with the Respondent on grounds that the marriage has broken down beyond reconciliation. The Petitioner therefore prays for the following relief(s).

1. Dissolution of the marriage between Petitioner and Respondent since it has broken down beyond reconciliation.
2. An Order for compensation for inconvenience caused her for eleven (11) years.
3. An Order for custody of the children between them.
 - (a) Confidence Zormelo
 - (b) Seraphine Zormelo 2
4. An Order for maintenance arears for desertion for two (2) years.
5. Cost. The Petitioner stated as follow: That she was in a concubinage relationship with the Respondent in 2008. While attending a remedial class. The Respondent promised to assist her complete the education but he did not. That after her 1st child, the Respondent promised he will help her complete her education but did not. She got pregnant again and upon delivery of the 2nd child she persuaded the Respondent to place her in school and he complied. That in 2015, the Respondent performed all the necessary customary rites. After the marriage she got to form (3) and during the registration Period she needed money to register for her WASSCE. She informed the Respondent about the fee but the money was not forth coming. A lady introduced her to a man for assistance. Upon reaching the man's house the man forcibly had sex with her. He then offered her the money but she refused same and run away. That very month she confessed the occurance to her evangelist and she was advised to confess to the Respondent which she did. That Respondent became worried but assured her that he has forgiven her and they continued to live as husband and wife. She

later gets admitted to the Teacher Training College but upon admission she became pregnant again and so could not continue her education. She gave birth but lost that child. they continued to live as husband and wife. She once intercepted a conversation on phone between the Respondent and another. She confronted the Respondent and he admitted he was in a relationship with one Joyce. The Respondent reminded her of her own adultery three years back. The Respondent reported the incident of her adultery to her father as well as her inlaws. She asked permission to go and maintain her father's farm at Bowiri: Upon her return the Respondent failed to allow her into their matrimonial home. She managed to enter but the Respondent mounted pressure on her to leave. She packed some few clothes and left and has been leaving with her Sister till date. Two years later thus on 15th April 2021, the Respondent 3 presented drink to one of her uncles for divorce. She was informed by her father and they all lamented because the Respondent's conduct was against custom and tradition within the period, the Respondent deprived her access to the children since he ejected her from the matrimonial home. The Respondent is currently in his new relationship with the said Joyce. She is therefore praying for compensation for neglect, maintenance and for all the physical, emotional and psychological trauma she had gone through. In response to the claims Respondent affirm marriage to the Petitioner with two children. That the Petitioner has a child before they met. That he saw the child through Primary to J.H.S. as his own child. They lived happily till one evening Petitioner told him she has a confession to make and that she had an extra marital affair with another and the reason was that she sought financial assistance from the man and he forced had sex with her he requested to know the man so he can report to the Police but to no avail. The Petitioner revealed to him he had informed their evangelist. He became offended for exposing their marital problem. He said he will forgive her on condition that she will produce the man she had the affair with. That the incident was revealed to him after a year. Respondent thereafter started putting up behavior which was very irritating and he found it intolerable to continue to live with Petitioner. A friend sent him a list on WhatsApp to purchase some items. Petitioner got offended when she saw the list. She wanted to know if he was the father of that friend's child. Out of anger he told her the child was his. The Petitioner thereafter attempted to poison herself and he reported to her father together with the incident of her extra marital affair. He then agreed with his father and father in law that the whole issue should be dealt with before the Petitioner can be accepted into the matrimonial home. His father later informed his elders and they attempted to arbitrate on the issue of adultery and divorce but there was no settlement because the Petitioner failed to produce the man, she committed the adultery with. The elders gave Petitioner (3) three months to mention the man so they can arrive at a decision but that also failed. After some years he received a call from Petitioner that she was still his wife. He became alarmed and so presented two bottles schnapps to one Mr. Kinsley Abitty to announce to the family to divorce the Petitioner. The issues for the court to determine are: 4

- (a) Whether or not the marriage has broken down beyond reconciliation.

- (b) Whether or not the Respondent must compensate the Petitioner for physical, emotional and psychological trauma
- (c) Whether or not custody of the children should be granted to the Petitioner. Parties married customarily can Petition the court to have their marriages dissolved and apply for ancillary relief such as maintenance, custody and the like just as those married under Ordinance. In this Petition the court finds as a fact that the Parties married customarily in 2015. Again as a general rule a Petitioner must have cogent reasons for wanting a divorce and court will only grant the divorce if it is satisfied that the marriage has broken down beyond reconciliation. Section (2) of the matrimonial cause Act 1971 (Act 367), sub sections 1 (a) (b) and (c) gives directions for the purpose of showing that a marriage has broken down beyond reconciliation and the burden on a Petitioner to satisfy the court of one or more of such grounds. For the purposes of my discussion and analysis I will quote three (3) of such grounds. A Petitioner must satisfy the court of the following facts - one or more: 2 (1)(a) - That the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent.
- (a) That the Respondent had behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (b) That the Respondent had deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition. The court finds as a fact that as 5
- (a) The time of hearing this divorce Petition, the Petitioner is heavily pregnant for another and the Respondent also has moved on with another. This revelation is conclusive that the marriage has broken down beyond reconciliation. However, for the purposes of the subsequent relief(s) the Petitioner prays for, the court to analyze their evidence further and conclude/decide whether or not some injustice occurred against the Petitioner during the Persistence of the marriage and whether or not some compensation will be appropriate. In this Petition, the court finds that the grounds based on which the Petitioner Petitioned is premised on adultery and desertion. The Petitioner contended that she intercepted a list and chart between the Respondent and one Joyce and when she confronted him he admitted he was in a relationship with her. He subsequently reminded her of her own adulterous behavior previously. CROSS EXAMINATION ON PETITIONER REVEALS: - Q. How did you find out I had a child outside the marriage? A. From your phone, a list popped up and I questioned you. Q. A. Q. A. Q. A. What was the name? Abra. What convinced you to believe the child is mine? I did not see a name on the book list. Did you call the one who sent the message? She confirmed the child is yours. It is noted that beside the Petitioner's mere averment about the adultery committed by the Respondent no further evidence was led to confirm same by both PW (1) and PW (2). It is the Petitioner's evidence that the Respondent married to the Joyce mentioned earlier. What is not clear is whether or not the said Joyce is same revealed as "Abra" during cross examination to 6 conclude effectively that the Respondent committed adultery during the persistence of the marriage is not

overwhelmingly clear as per the evidence. However, having moved on with another without proper dissolution of the customary marriage between the parties the court can confirm adultery. (In the case of): Kotei versus Kotei

[1974] 2 GLR 172, it was held that once any of the grounds specified in Section 2 (1) of the Matrimonial Act was proved the decree of divorce should be pronounced. Has the Petitioner committed Adultery? The evidence adduced in support of this averment is confessed by the Petitioner herself and supported by all witnesses. Following her confession, The court finds that the parties lived together continuously as husband and wife upon the Respondents assurance of forgiveness. In point of law series relying on Section 3(b), Matrimonial Causes Act. 1971. "A party to a marriage cannot rely on the ground of adultery as the bases for divorce where that party after finding out about the adultery, had sex with the adulterer for more than six months". The above Provision coupled with the evidence that the Respondent lived with Petitioner beyond her confession nullified the ground of adultery against her as well. 7 Having discussed all of the above the court finds that the customary marriage contracted between the parties was not dissolved before the Respondent moved on with another the Petitioner also revealed that she was prevented from re-entry into the matrimonial home. The Respondents defence that she took an overdose of his medication the reason he asked her to leave the matrimonial home was not supported by further evidence nor corroborated. The court therefore finds that the Petitioner was eliminated by a clear rough tactics and on this score award some compensation based on waste of time and inability to further her education cannot hold. The marriage contract entails child bearing and therefore she cannot be compensated for childbirth since the children belong to both Parties. The children's Act, 1998 (Act 560) is the primary legislation that sets out the law on access and custody to these children. I quote the stated provisions. Section 44 - Access. "A Parent, family member or any persons who has been caring for a child may apply to a family tribunal for Periodic access to the child Section 45 - Considerations for custody or access".

- (1) A family tribunal shall consider the best interest of the child and the importance of a young child being with his mother whether making an order for custody or access. The children are with the Respondent. The condition of the Petitioner as the court finds it will not be prudent to consider access of the children in the circumstance. The court will allow her put to bed and custody and access considered thoroughly later. Custody shall remain with Respondent and reasonable access granted Petitioner. The court therefore Orders the Respondent to pay an amount of (GH¢4,000.00) Four Thousand Ghana Cedis to the Petitioner. That should be paid in (5) equal instalments beginning January, 2023. The court took this decision because the Respondent has not gone through due process to dissolve the marriage he contracted between the two families. Any other compensation pleaded for by the Petitioner is hereby dismissed. 8 Cost of GH200.00 awarded against the Respondent. Plaintiffs- Not represented Defendant -Represented by Ernest Dela Akatey. SGD..... THE MAGISTRATE GIFTY CUDJOE

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