IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON THURSDAY THE 12TH DAY OF OCTOBER 2023 BEFORE HIS HONOUR CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

A2/08/2023

MAAME AMPONSAH	**---**	**PLAINTIFF**
	VRS.	
ISAAC MBA	**---**	**DEFENDANT**

JUDGMENT

In this life, nothing is permanent including the experience of true love. In fact aside the supernatural love of God, the love felt amongst mere mortals is fleeting. Love, if not constantly worked upon would soon fade into oblivion. This is the sorry state of the case of the parties who were once embroiled in the beauty, fervour and passion of love but now have to swallow the bitter pill of the realization that their love was not to last.

Plaintiff feels Defendant is the cause for the end of their once flourishing union and hence feeling aggrieved, she seeks due compensation. She claims that their union was premised on the assurance that Defendant would marry her but this was never fulfilled hence the present action seeking, inter alia, general damages for breach of promise to marry and the refund of an amount of GH¢2,300 which she alleges she gave to Defendant in the course of their relationship as a loan.

Although the Defendant, by his pleadings, admitted promising to marry the Plaintiff, he however appeared to deny breaching the said promise. On the issue of the GH¢2,300.00 being claimed by Plaintiff, Defendant again admitted being indebted to her but proceeded to counterclaim for loss of earnings of GH¢100.00

per day from 16th August 2022 till date of judgment as he alleged that Plaintiff had seized his motorbike which he was using for commercial purposes.

By virtue of the pleadings the following issues stand out for determination;

a. Whether or not Defendant has breached his promise to marry the Plaintiff?

b. Whether or not Defendant is entitled to loss of earnings? Under Section 11(1) and (4) and 12(1) & (2) of the Evidence Act, the burden of persuasion requires proof by preponderance of the probabilities. So that a party who asserts a position must do so to the degree of certainty of belief in the mind of the court of facts by which this court must be convinced of the existence of those facts as being more probable than otherwise. In Bisi v. Tabiri alias Asare [1987-88] 1 GLR 360, the Supreme Court had this to say on the burden of proof:

> "The standard of proof required of a plaintiff in civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the triers belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognized that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected…"

Thus since it was Plaintiff who was alleging that Defendant had breached his promise to marry her, the onus fell upon her to establish her assertion on the balance of probabilities. It is trite that the burden of persuasion in all civil cases lies on the one entitled to begin or the person who alleges that another has done or failed to do a particular thing and in this case the burden rests on Plaintiff.

The standard of proof remains unchanged and the court must be convinced by that degree of certain necessarily expected in any civil suit. (See: Ackah vrs. Pergah Transport Limited & Ors. [2010] SCGLR 728).

Breach of promise to marry is actionable under customary law and I do not intend to reinvent the wheel. The learned author Professor W. C. Ekow Daniels in his book „The Law of Family Relations in Ghana" reiterated this at Page 102 that "it is now beyond question that actions for breach of promise of marriage under customary laws are maintainable". This was the position of the Court in Donkor vrs. Ankrah [2003-2005]2 GLR 125 where Dotse JA (as he then was) sitting as an additional High Court
Judge, held that;

> "on the authorities, the principle that breaches of promise to marry were not actionable under customary law must be restricted to breaches in respect of marriages preceded with or by the betrothal ceremony when the female had not reach the age of maturity. Since on the evidence there had been no betrothal of the Plaintiff but the parties had been in concubinage for a period of three years before the defendant performed etsir nsa for the Plaintiff, the principle was not applicable in the instant case. Accordingly, the Plaintiff"s action against the Defendant was maintainable"

In other words, an action for breach of promise to marry is actionable under customary law in so far as there was no betrothal of a party, usually the woman. In this case, there is no evidence to suggest that the Plaintiff was betrothed to the Defendant. This action is therefore maintainable.
The first issue to determine is whether or not Defendant breached his promise to marry Plaintiff. As noted earlier, the Defendant by his pleadings, particularly paragraph 2 of his Statement of Defence filed on the 7th of October 2022,

admitted promising to marry Plaintiff. Thus no issue was joined on whether or not Defendant made the promise to marry Plaintiff. This is the position of the law and same has been supported in a myriad of case law. In Fori vrs. Ayirebi [1966]2 GLR 627 the Court held that, **"When a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment…".** This holding was reiterated by the Supreme Court in the case of Kusi & Kusi vrs. Bonsu [2010] SCGLR 60 at 78-79 by Wood C.J (as she then was) who observed that, **"it is an elementary principle of law that in civil litigation, where no issue was joined as between parties on a specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue".**

Consequently, it is a fact that Defendant promised to marry the Defendant. If Defendant promised to marry Plaintiff, did he breach that promise? It first ought to be answered by Plaintiff by establishing the said breach on the balance of probabilities. Thus Plaintiff testified to the effect she met Defendant who expressed interest in her and despite the fact that she already had four children as a widow he was willing to do the needful and marry her. That due to this she introduced the Defendant relevant persons in her family before whom Defendant asked for time to organize himself so he could adequately perform the customary marriage rites. In spite of the fact that these rites had not been performed, the parties started living together for about a year, behaving as thought they were married. She further alleged that, in the course of their relationship, the Defendant travelled for a funeral in his hometown but upon his return he told her that "…his relatives advised him that marriage could not work out between their tribesmen and the Asante people hence he can no longer continue to marry me". This led to a quarrel between the two which saw Defendant leaving the house for good and their relationship coming to an end. Hence according to Plaintiff, Defendant breached his promise to marry her

when he alleged that marriage between his tribe and the Asantes was impossible. This assertion by Plaintiff was however neither denied nor challenged by Defendant during the cross examination of Plaintiff. The legal implication of his failure shall be discussed later in this judgment. Suffice it to say however that, in his defence Defendant alleged that the reason for his refusal to marry the Plaintiff was because Plaintiff at a time held his penis which had left him with an ailment. He brought up this issue for the first time during the cross examination of Plaintiff when he questioned her as follows; Q. You held my penis and squeezed it this has resulted in a medical issue which I am still treating. That is why I have not married you?

> A. Not true. It is never true I held and squeezed you penis. There is no medical evidence to that effect. You are currently living with another woman.

Plaintiff on her part did not let this assertion slide unchallenged as she duly cross-examined Defendant during his cross examination as follows;

> Q. I suggest to you that I had no issues with you. I came to meet you and gave you provision. I never pulled you penis as you allege?
>
> A. You pulled my penis when you came.

It was therefore incumbent upon Defendant to establish the fact that Plaintiff had in fact pulled his penis which had resulted in a medical condition. Defendant however failed to lead any evidene to that effect. His assertion therefore that Plaintiff pulled his penis and left him with an ailment remained unsubstantiated. On the other hand as noted earlier, Defendant failed to deny or challenge Plaintiff under cross examination when she alleged that Defendant told her that marriages between his tribe and the Asantes could not work which lead to their breakup. The legal implication of Defendant's failure was that he is deemed to have admitted the truth of Plaintiff's assertion. In the case of Hammond vrs. Amuah and Anor [1991] 1 GLR 89, it was held that when a party

had given evidence of a material fact and was not cross-examined upon it, he needed not call further evidence of that fact. Consequently, this Court finds that the sole reason for Defendant's breach of his promise to marry Plaintiff was his belief that marriage between his tribe and the Asantes would not work.

In an article by H.J.A.N. Mensa-Bonsu (as she then was) titled "The action for Breach of Promise to Marry in Ghana: New life to an old rule." (1993-95) Review of Ghana Law 41 at page 44, the learned author and now Justice of the Supreme Court of Ghana observed that;

> "An action for breach of promise to marry arises when a person **makes a promise to marry another**, and refuses to perform"

She further stated at page 61 that;

> "…On the whole it is better for society to hold people to promises made – even of marriage - and to declare the parameters within which one may change one's mind without causing hardship to another".

Hence if there is a refusal or failure to perform one's promise to marry another, a breach may generally be inferred unless it can be established that the refusal or failure fell within such permitted societal parameters by which one may change his mind. What are these permitted societal parameters? In the considered opinion of the Court, any unreasonable behaviour on the part of the promisee is good grounds to abort any promise to marry. Such unreasonable behaviour may include but is not limited to, cheating, nagging, engaging in societal vices, incessant gossip, theft, constant quarrels, domestic abuse (emotional and psychological in nature) etc. Certainly the list is in-exhaustive. The onus however rests upon the person deemed to have breached the promise to establish on the balance of probabilities, an unreasonable behaviour on the part of the promisee for which reason he opted to breach the promise and should the behaviour complained of be established, the promisor cannot be

held liable. In the instant suit however, Defendant had failed to establish any unreasonable behaviour on the part of the Plaintiff which could have justified his breach. On the contrary, his breach was premised upon a misguided and untrue belief that marriages between his tribe and the Asantes would not work. Consequently, it is the considered view of the Court that the Defendant‟s breach of his promise to marry Plaintiff was unfounded and as such Plaintiff is entitled to compensation.

The next issue is ascertain whether or not Defendant is entitled to loss of earnings?

Where a person is deprived of earnings which would have enured to him by virtue of the commercial use of his vehicle owing to the conduct of another, that person who suffered the loss would, as a matter of course, be entitled to special damages in the form of loss of earnings for the entire period his vehicle could not reasonably be used by him. In the case of Agyemang v. Wireko and Another [1980] GLR 478 the Court recognized the right of Plaintiff to claim for loss of earnings when his vehicle, a Taxi, was wrongfully seized by the police in Kumasi on the instructions of the first defendant. Thus in the instant suit, if it is established that;

a. The motorbike in question belonged to Defendant;

b. The motorbike was used for commercial activity; and

c. The motorbike was wrongfully seized by the Plaintiff

then Defendant would be entitled to loss of earning for the period he was deprived of the use of his motorbike.

However in the course of trial it as revealed that, the motor bike in question, did belong to Defendant. The motorbike developed a problem which prompted the Plaintiff to send same for servicing. After servicing, it appears, Plaintiff refused to give the motorbike to Defendant until he paid for the cost of the

servicing. Some how, Defendant got the motorbike and managed to sell same to a third party. Upon obtaining the said money from the sale of the motorbike, Defendant paid Plaintiff the monies she incurred in servicing the motorbike. This was revealed under cross examination when Plaintiff questioned Defendant as follows; Q. After you sold the motor bike you and others brought the money you owed me?

A. That is true. I paid you all monies including the expenses you made over the motorbike.

By his own admission, the motor bike had been sold by him and so he had no motorbike for which he could claim any loss of earnings from date of seizure till date of judgment. Moreover, it is the considered view of the Court that even if there was a seizure of the said motorbike, same was permitted at law due to Plaintiff‟s right to be compensated for the servicing of the motorbike.

Plaintiff had the right to retain the motorbike until expenses she incurred in its servicing are duly refunded. Defendant accordingly failed to establish any loss of earnings on his part.

It would be recalled that Plaintiff by her writ also claimed an amount of GH¢2,300.00 however, in the course of trial it was revealed that this sum was liquidated when the parties earlier attempted settlement hence that claim died a natural death. Plaintiff was again claiming an amount of GH¢4,000.00 as general damages. However by virtue of the fact that she specified the sum she sought the Court to award her, the damages she claimed was in actual fact special damages. Special Damages has been described in many ways such as “express loss”, “particular damage”, “damage in fact”, “special or particular cause of loss.” (See: Radcliffe v Evans [1892] 2 QB 524 at 528). Special Damages are such a loss that will not be presumed by law. They are special expenses incurred or monies actually lost. It is that specific loss suffered by Plaintiff as a result of Defendants action. Since Special Damages is quantifiable, the rule is

that it ought to be specifically pleaded, particularized and proved failure of which that claim must fail. (See: Kubi and Others v. Dali [1984-86] GLR 501 and Bank for Housing and Construction v Boahen [1994-95] GBR 646). In the Delmas case (supra) Dr Twum JSC (as he then was) opined as follows;

> "… Where the plaintiff has a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything unless general damages are also appropriate."

In this case however, Plaintiff failed to lead any evidence quantifying the loss or injury she has suffered for which special damages to the tune of GH¢4,000.00 ought to be awarded her. Her claim for special damages out to fail.

Nevertheless, by virtue of the fact that defendant's action had occasioned a breach in his promise, Plaintiff was as a matter of course entitled to damages for the wrong caused her. The principle is that, General Damages is such as the law will presume to be the natural or probable consequence of defendant's act. It arises by inference of the law and therefore need not be proved by evidence (See: Delmas Agency Ghana Limited v Food Distributor International Limited [2007-2008] SCGLR 748). Hence when there is an infringement upon a right, the natural and probable remedy is general damages for that infringement.

Consequently, taking into consideration the fact that the parties entered into a relationship in 2021 and cohabited as „man and wife" for not less than one year, with the promise that Defendant would seal his intention to marry Plaintiff, and taking into consideration the flimsy excuse for the breach of his promise, this Court finds that Plaintiff is entitled to General Damages for breach of promise to marry which the Court assess at GH¢6,000.00 which is reasonable given the circumstances of the case.

Judgment in part is accordingly entered in favour of Plaintiff as follows;

a. The Defendant is ordered to pay an amount of GH¢6,000.00 as general Damages for breach of his promise to marry Plaintiff.

b. Cost of GH¢2,000.00 is awarded against Defendant.

Defendant failed to establish his counterclaim. Same is dismissed however this Court shall order Plaintiff to deposit into Court an itel phone which Defendant gave Plaintiff to use same temporarily, within three days from the date of this judgment.

SGD
H/H CHARLES KWASI ACHEAMPONG ESQ.
CIRCUIT COURT JUDGE – GOASO