

IN THE CIRCUIT COURT HELD AT TECHIMAN ON WEDNESDAY 13TH MARCH,
2024 BEFORE H/H SAMUEL DJANIE KOTÉY ESQ. SITTING AS A CIRCUIT COURT
JUDGE

SN: C11/05/2021

WILLIAM BAFFOUR GYAN

VRS

ANTWI MARY

JUDGMENT

The plaintiff claims that the defendant has breached her promise to marry him as a result of which he prays the court to make a declaration to that effect. He also wants the court to declare title to property identified by the digital address TO – 0520 – 7818 in him against the defendant. The plaintiff further wants the court to order the recovery of items he says he purchased to perform the customary rites for the defendant's hand in marriage. Plaintiff also prays for order of injunction to restrain the defendant from dealing with the house claimed under his relief 2.

The defendant filed a statement of defence denying the averments in the plaintiff's statement of claim. In her statement of defence, she did not promise marriage to the plaintiff. She admits being the concubine of the petitioner without more. She averred that the land on which the plaintiff put up the house belongs to her mother. Interestingly, the defendant abandoned the trial and did not appear throughout the trial. Her lawyer was equally absent from the trial despite filing of her witnesses statements and pre-trial checklist.

It will appear that the plaintiff will enjoy some benefits arising from the absence of the defendant at the trial. The benefits are rather insignificant in this case. The defendant put the claims of the plaintiff in issue requiring that the plaintiff proves those claims on the preponderance of the probabilities. The absence of the defendant regardless, the standard of proof remains proof on the preponderance of the probabilities as provided under section 12 of the Evidence Act, 1975 (NRCD 323). In the case of CONCA ENGINEERING (GHANA) LIMITED V MOSES [1984-86] GLR 319-334, Apaloo CJ in stating the burden imposed on the plaintiff relative to his or her claims in the absence of the defendant said the following:

"... in our adversary system, the plaintiff who seeks a declaration of title must establish this by clear and acceptable evidence whether or not the defendant against whom he seeks the relief was present or absent."

The evidence that the plaintiff presents, must be sufficient as to lead the court to the conclusion on his claims that it has a more probable occurrence than not. The benefit that the absence of the defendant may inure to the plaintiff is that the evidence that the plaintiff presents will not be challenged under cross examination. That notwithstanding, the plaintiff's evidence must be convincing to the court so that a reasonable mind will find his story as having a more probable occurrence than not.

At the direction stage, the issues adopted by the court for determination were:

- a. Whether or not the plaintiff and the defendant agreed to marry?
- b. Whether or not the parents of the parties agreed to the plaintiff's proposal to get married?
- c. Whether or not plaintiff purchased items that were to be used for the marriage ceremony between the parties.

- d. Whether or not the plaintiff expended an amount of Twenty Thousand Ghana Cedis (Ghc 20,000.00) to build a house on a land gifted to him by the defendant's mother which was to be used as matrimonial home when the parties get married.

In the case of NSOWAA AND ANOTHER V BAMBA AND ANOTHER (J4/11/2016) [2017] GHASC 6 (26 JANUARY 2017) Per Anin Yeboah JSC (as he then was) guided the courts on how to go about adopting issues for the trial at the direction stage as follows:

"We are also of the opinion that although the judge who presides over the hearing of the applications for directions has an important role to play in directing the future course of the trial for the purpose of moving the action towards a more expeditious disposal, having regard to the critical role that directions play in our jurisprudence, he is required to offer an opportunity to the parties through counsel before pronouncing in the matter as he did."

This court offered the parties the opportunity to present their issues for the trial. The plaintiff was the only party who proposed issues for the trial. The issues proposed by the plaintiff and adopted by the court as enumerated above can be refined in order to determine the critical issues with the view to determining all the matters in controversy. Some of the issues proposed can be merged with others. The authority above stands for the proposition that judges must recognise the important role they play in shaping the issues adopted for the trial which eventually affects the decision they render on the basis of those issues. The judge must carefully adopt issues raised by the pleadings and necessary for the eventual determination of the matter and avoid tangential issues which only prolong the trial. In view of the above and taking into account the plaintiff's claims, and having paid attention to the pleadings filed in this matter the court finds it necessary that the issue of whether or not the defendant has breached the agreement to marry the plaintiff becomes necessary. That issue is raised by the pleadings. Apart from that, the issue is also relevant for determining the claim of the plaintiff. For the reasons assigned

herein, I modify the issues adopted with the view to achieving substantial justice as follows:

Issues a, and b, are merged into one as whether or not the parties together with their parents agreed for the parties to marry. Issue c and d, are both adopted as the third issue and fourth issues respectively. In the circumstance therefore, the issues for determination in this judgment are:

- a. Whether or not the parties together with their parents agreed for the parties to marry.
- b. Whether or not defendant has breached the agreement to marry the plaintiff.
- c. Whether or not plaintiff purchased items that were to be used for the marriage ceremony between the parties.
- d. Whether or not the plaintiff expended an amount of Twenty Thousand Ghana Cedis (Ghc 20,000.00) to build a house on a land gifted to him by the defendant's mother which was to be used as matrimonial home when the parties get married.

Having identified the issues for determination, I proceed now to determine them in the manner they have been raised, beginning with the first issue.

Whether or not the parties together with their parents agreed for the parties to marry

This issue is at the very heart of the matter before me. The plaintiff wants the court to declare that the defendant has refused to marry him and that refusal has resulted in a breach by the defendant of the agreement to marry she had with plaintiff. The plaintiff must offer evidence that there was an agreement between the parties to marry. It must also be shown that the parents of both parties witnessed the said agreement between the parties to marry.

The evidence of the plaintiff on this issue offered by him is that the defendant was his concubine at a time until she agreed to move the relationship into marriage in 2019. The

witness that the plaintiff invited did not offer any evidence on this issue. He testified to the putting up of the house in dispute. Although the plaintiff wanted the court to hold that the parents of the parties were agreeable to the decision by the parties to get married, he never invited any of the parents as a witness. Beyond that, there is the need for the plaintiff to provide evidence that corroborated the claim that the defendant agreed to marry him. Agreement between two parties without evidence of it in writing cannot be proved by merely repeating an averment on oath especially in the absence of the other party to challenge that assertion. Without evidence of the said agreement in writing, proof of the fact of the agreement must be ascertained from pieces of evidence taken together corroborating each other. The question is whether there were such evidences from which the court could conclude that the defendant indeed agreed to marry him. From the testimony of the plaintiff, owing to the agreement to marry, he purchased some items such as clothes, luggage, and ring, to be used for the marriage ceremony. He also testified that defendant's mother gifted him a plot of land to build a house to serve as their matrimonial home. He also told the court that he financed and facilitated the training of the defendant as police officer at the police training school. The strongest and most significant evidence corroborating the claim of agreement to marry was the evidence that the defendant's mother allegedly gifted a land to him to build their matrimonial home on same. The plaintiff provided evidence that he has built on this land that belonged to the mother of the defendant. Although the fact of the gift is yet to be proved, the fact that the plaintiff has a house on the said land pictures of which he tendered in evidence before the court means that he was permitted to put up the building on the said land that he did not own, That piece of evidence suggests in the strongest terms yet that the mother of the defendant was aware of the agreement between the parties to get married in the not too distant future. For the mother of the defendant to have permitted the plaintiff to establish a property on her land was evidence that she was preparing them for the future of their marriage. It is evidence that the mother of the

defendant believed that the parties will honour their promise to each other to get married. From the evidence presented, I find that there existed an agreement between the parties to get married to each other. The evidence of the plaintiff on this issue is sufficient to compel a finding by this court that there was exchanges of promises by the parties before to marry each other.

Whether or not defendant has breached the agreement to marry the plaintiff.

The plaintiff wants the court to make a finding that the defendant has breached her promise to marry him. He seeks an enforcement of the promise of the defendant to marry him by the court. The plaintiff must show that he has provided consideration which entitles him to enforce the promise. In the case of *AFRIFA V CLASS PETERS* [1975] 1 GLR 359 it was held that the consideration for a promise to marry is the exchange of promises to marry given by each party. The plaintiff has testified that he also promised marriage to the respondent and did actually proceed to purchase some of the items that will be required for the marriage. That is sufficient evidence that the plaintiff has provided sufficient consideration to enforce the promise by the defendant to marry him. According to the plaintiff, the defendant informed him on phone that she will no longer marry him. He testified that the defendant refused to answer his phone calls to her. For a breach of contract to be found, the plaintiff must show that he requested the defendant to marry him and she refused. The evidence from the plaintiff that the defendant told him on phone that he will no longer marry him is evidence of anticipatory breach of the agreement by the defendant. In the case of *FROST V KNIGHT* (1872) L.R. 7 EXCH 111, the defendant promised to marry the plaintiff after his (defendant's) father died. While the father was still alive, the defendant repudiated the contract and was sued by the plaintiff. It was held that that the defendant had breached the contract. In this case, the statement by the defendant that she will not marry the plaintiff is a breach of the

agreement to marry the plaintiff. I hold that the defendant has breached the promise to marry the plaintiff.

Whether or not plaintiff purchased items that were to be used for the marriage ceremony between the parties.

In the evidence of the plaintiff, he testified that he purchased clothes, luggage, and ring which he said were to be used for the marriage ceremony. He testified that he placed them in the possession of the defendant. In the statement of defence of the defendant, denied the claims by the plaintiff on this issue and stated that plaintiff rather bought kente, native sandals and white lace which he gave to defendant's mother. The plaintiff's claims having been contested, the plaintiff ought to have presented evidence of the purchase of those items he claims. His testimony without any corroboration from any other witness or circumstances is not sufficient to prove his claims. The evidence offered by the plaintiff on this issue is not sufficient to prove his claims on the preponderance of the probabilities. I am unable to find for the plaintiff that he purchased other things apart from the ones the defendant has admitted. The plaintiff could not offer evidence that he purchased ring, and luggage aside the cloths, white lace and native sandals that the defendant admitted in her statement of defence. In relief (iii) of the plaintiff's claims contained in his amended writ of summons, he wants to recover the sum of Ghc 30,0000.00 which he says was what he spent in purchasing those items for the marriage, from the defendant. In the first place, I have found that the plaintiff has failed to prove that he purchased things beyond those admitted by the defendant as having been purchased by plaintiff for the marriage ceremony. Secondly, the plaintiff did not tender any receipt for the purchase of those items which sums up to the amount he claims in this court. His claims for Ghc 30,000.00 is not proven on the preponderance of the probabilities. The plaintiff cannot succeed on that claim. At best what the court can grant to him, and hereby proceeds to grant him is an order directed at the defendant to return

the kente, white lace and the native sandals she received from the plaintiff towards the marriage which has failed to be celebrated. The claim for the sum of Ghc 30,000.00 from the defendant fails for want of evidence and same is accordingly dismissed.

Whether or not the plaintiff expended an amount of Twenty Thousand Ghana Cedis (Ghc 20,000.00) to build a house on a land gifted to him by the defendant's mother which was to be used as matrimonial home when the parties get married.

The claim by the plaintiff on this issue appears to be a claim in special damages. The plaintiff is not claiming that he has built on the land he said was gifted to him by the defendant's mother, rather that he actually spent the sum of Ghc 20,000.00 in doing so. That calls for evidence setting out the particulars forming the basis of the said claim of Ghc 20,000.00 as having been used in building. The plaintiff in his statement of claim mentioned that he spent the sum of Ghc 20,000.00 on the disputed building. Then in his evidence in chief, the plaintiff says that he spent about thirty thousand Ghana cedis (Ghc 30,000.00). The plaintiff did not provide any document in evidence as the basis of his claim apart from photographs of a certain building. The plaintiff's witness 1 also testified that he was the mason that built the house in dispute. His testimony is rather to the fact of the building of the house not the cost of building of the house. For instance, he did not even tell the court what he charged for his services as mason when he worked on the building.

As said, the claim by the plaintiff on this issue is not that he has built a house on the land allegedly given to him by the mother of the defendant. His claim is that he has spent about Ghc 30,000.00 on the said building. That claim requires better proof than the plaintiff has provided. The evidence offered by the plaintiff goes rather to the construction of the house and not about the amount spent in putting up the house. In that regards therefore, the court hereby finds that the plaintiff has failed to prove that he spent about Ghc 30,000.00 in putting up the building as he wants the court to believe.

In the writ of summons of the plaintiff as amended, the he wants the court to declare that he is the one with title to the house built on the said land allegedly given to him by the mother of the defendant and further an order of recovery of possession of the said house. It has been found to have been established by evidence that the building was put up by the plaintiff from his own resources. The plaintiff's own testimony as corroborated by the mason who put the said house is sufficient to make this finding. The plaintiff also admits that the land on which the building was put up was given to him by the defendant's mother. He says the land was a gift to him by the mother of the defendant. That fact has been disputed by the defendant in her statement of defence. Having been disputed, the burden was on the plaintiff to provide evidence of the making of the gift as was stated in the case of *YOGUO V AGYEKUM* [1966] GLR 482-494. The plaintiff did not provide evidence of the making of the gift, the giving of aseda or the acceptance of the gift. Evidence of these essentials of a valid customary law gift was very necessary in proving the existence of the gift especially in this case where the defendant disputed that the land was gifted to the plaintiff. The plaintiff needed to have proved that the mother of the defendant did make a gift of the land to him. He failed to do so. Having failed to do so, but having successfully shown that he built the disputed house on the said land, the court holds that the plaintiff has an interest in the house but not the land. In the circumstance, the claim to the disputed house as though the land also forms a part of the house is erroneous. The court holds that since the plaintiff has interest in the house and not the land, the claim for the declaration of title to the house will be granted on terms that the declaration does not extend to the title to the land. In the circumstance, the court proceeds to hold that in respect of the property including the land, the plaintiff has an interest not more than the value of the building on the land. The interest of the plaintiff in the property is the equivalent of the building on the land. To know his interest in the land in terms of percentage, the land the building ought to be valued and shared between the

plaintiff and the owner of the land in the ratio of the percentage of the respective aspect of the property they each own.

The plaintiff's claim for injunction against the defendant in relation to the house is decreed but does not apply in the defendant's capacity as claiming through her mother or any other person found to own the land on which the building is resting.

I award cost of Ghc 10,000.00 against the defendant in favour of the plaintiff.

Sgd

H/H SAMUEL DJANIE KOTEY ESQ.

CIRCUIT COURT JUDGE

Representation

Stephen Osei Kofi for plaintiff present

Margaret Mary Adjei Twum for defendant absent.