

**CORAM: HER WORSHIP AWO AMISSAH FRENCH (MS.), JUDGE, SITTING AS
MAGISTRATE AT THE DISTRICT COURT, NKROFUL, ON THE 31ST DAY OF
JULY 2023.**

SUIT NO: A11/37/23

GRACE CUDJOE

PLAINTIFF

VRS.

FRANCIS NZEMOBA

DEFENDANT

PLAINTIFF PRESENT

DEFENDANT PRESENT

PARTIES SELF-REPRESENTED

JUDGMENT

The Plaintiff issued a writ of summons in this court on 25th day of April, 2023 seeking against the Defendant, the following reliefs;

- a) An order of the Court compelling the defendant to compensate plaintiff with Fifty Thousand Ghana Cedis for wasting her time and also or defendant to take care of her illness which defendant caused;

- b) Mandatory order of the Court directed at the defendant to grant her reasonable access to the child Bernard Nzemoba aged 7 years; and
- c) Costs.

The plaintiff's case is simply that she met and married defendant when he was in JHS 2, customarily, for which purpose she stopped schooling. Plaintiff avers that defendant had an extra marital affair which resulted in the said adulterer placing a curse on her leading to the loss of her first pregnancy and her possession by what she calls the "smaller gods". She averred that she subsequently got pregnant for the second time but developed medical conditions owing to her possession by the fetish. She further averred that owing to these developments involving her possession by the fetish, defendant subsequently divorced her. However, after he divorce, plaintiff further avers defendant sought to reconcile with her, leading to her going to sleep at defendant's house, having sexual intercourse with him and attending to his needs. Plaintiff called two witnesses being her mother and father.

Defendant for his part maintained that after the divorce on 1st September, 2017, he never returned to plaintiff to marry her again neither did he promise her a re-marriage and that he only came to her to visit and spent time with their son, who was at the time at a tender age of 2 years old. Defendant further averred that their divorce was initiated by plaintiff's father who maintained and insisted on his daughter (plaintiff) becoming a fetish priestess, a fact which he was not in support of. Defendant called his father as his sole witness.

Let me first note that relief (b) was struck out and same referred to the family tribunal in view of the nature of the subject involving matters of custody and access.

Also, parties were referred to ADR for an attempt at an amicable resolution of the matter but settlement broke down due to the fact that per the ADR notes dated 22nd June, 2023, plaintiff's relief sought for fifty thousand Ghana Cedis was reduced to fifteen thousand Ghana Cedis but defendant insisted on paying five thousand Ghana Cedis.

Now the Evidence Act, 1975 (NRCD 323), per section 10(1) states as follows;

For the purposes of this decree, the burden of persuasion means the obligation of the party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

By the provisions of Section 10 (1) of the Evidence Act NRCD 323, the burden is placed on the plaintiff who brought the defendant to court to produce such quality of evidence which will convince the court of the existence of the facts she asserts in her favour and once that burden is discharged the plaintiff will succeed in her claim.

In the case of Barima Gyamfi and Another v Ama Badu (1963) 2GLR at 597 the Supreme Court per Sakodee- Addo, Ollennu and Blay JJ.S.C stated among others that;

"In a civil case, the decision must be upon the balance of probabilities established by preponderance of the evidence. Where the preponderance of the evidence is in favour of the plaintiff, a judge is fully justified in granting the plaintiff's relief sought". Again in civil matters as provided for in *Section 11 (4) of the Evidence Act, 1975 (NRCD 323), the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

Again, the Act says that the burden of persuasion requires a person to establish the existence or non-existence of a fact by a preponderance of the probabilities. "Preponderance of the probabilities" means that degree of certainty of belief in the mind

of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence

This matter bothers on breach of promise to marry and the sole issue for determination is whether or not defendant promised to marry plaintiff, after their divorce, gleaned from their relations following the divorce?

Elements of the Action

(i) The Promise

There must be evidence supporting a mutual exchange of promise. The marriage promise may be proved by a verbal promise of marriage. The promise may be conditional, in which case there must be evidence of fulfilment of the condition before an action for the breach would lie. Where there is a general promise of marriage, an intention to perform within a reasonable time would be imputed.

The court in the case of Afrifa versus Class-Peters[1975] DCLA 9275 has held as follows:

“ breach of a bare promise to marry which has not led to the establishment of the betrothal status often involves no legal liability to compensate...”

Also in the case of Serwa versus Hashimu and another (J4/31/2020)[2021] GHASC 3 (14th April, 2021) , the court held as follows:

“ an action for breach of promise to marry arises when a person makes a promise to marry another and refuses to perform.....”

The facts of circumstances leading to the parties divorce, which parties dwelt on heavily in their testimonies is irrelevant for the purpose as the divorce, as at the time of this

present suit had already occurred. From the record, plaintiff indicates that she regained amorous contacts with defendant, after the divorce for which she stayed at his house on occasion, attended to his needs and had sexual intercourse with him. Defendant on the other hand maintained he only visited plaintiff to enable him gain access to his son. These pieces of evidence in no way point to defendant promising plaintiff marriage for which such an action will lie.

What I glean from the record is rather that the plaintiff is peeved because after divorcing her, defendant is doing well and has gone in for another woman.

I therefore holding dismissing plaintiff's action as unmeritorious and same must fail.

I will however award cost of GHc 2,000 in her favour .

SGD

H/W AWO AMISSAH FRENCH (MS.)

MAGISTRATE

NKROFUL DISTRICT COURT

NKROFUL