

IN THE DISTRICT COURT CAPE COAST
BEFORE HIS HONOUR JAMES KOJOH BOTAH,ESQ
SITTING ON WEDNESDAY 19TH OF APRIL, 2023 AS AN ADDITIONAL
MAGISTRATE.

SUIT NO: A4/20/2023

ANASTASIA NANCY PENNIEN

- PETITIONER

VRS

CHRISTOPHER YAW ADU-ASAMOAH

- RESPONDENT

PARTIES PRESENT

PHILIP O. DARKO FOR B. ACKAAH GYASI FOR THE RESPONDENT ABSENT

RULING

On 11th January 2023 the petitioner herein filed a petition for divorce against the respondent seeking the following reliefs:

- a. Dissolution of the ordinance marriage contracted in December 2007;
- b. Payment of 50% share of the value of the Mercedes Benz Saloon car;
- c. Payment of the 50% share of the value of the three(3) flat body trucks;
- d. Payment of 50% share of the value of the Rubber Plantation;
- e. Payment of 50% share of the value of the oil palm plantation;
- f. Payment of 50% share of the value of the House at Kasoa;
- g. Payment of 50% share of the value of the House at Esreso, Kumasi; and
- h. An amount of GHC50,000 as alimony after trial.

On the 22nd February 2023 the respondent through his lawyers filed a motion on notice to strike out the petition for divorce on jurisdictional ground.

The petitioner who is unrepresented by legal counsel filed an affidavit in opposition to the application on 2nd March 2023.

In paragraphs 3, 5 and 6 of the respondent's affidavit in support of the application he averred that since the petitioner's petition for divorce relates to an ordinance marriage, it is against the rules of court for same to be commenced at the District

Court 1, Cape Coast. The respondent further averred that this court being a District Court has no jurisdiction whatsoever to entertain the Petition for Divorce before it. Respondent prayed the court to decline jurisdiction in the matter and to further strike out the case for want of jurisdiction.

In arguing the motion, Counsel for the respondent submitted that by Section 1 (1) of the Matrimonial Causes Act, 1971 (Act 367) a petition for divorce may be presented to the court by either party to the marriage. Section 43 of Act 367 defines the court mentioned in Section 1 (1) as the High Court or the Circuit court. Counsel for the respondent submitted that Section 40 of Act 367 is the only exception under which the District Court will have jurisdiction to entertain the dissolution of an ordinance marriage.

Counsel for respondent further submitted that the Matrimonial Causes Act, 1971 (Act 367) which is a specialised legislation as compared to the Courts Act 1993 (Act 459) and the District Court Rules 2009 (C.I.59) gives the jurisdiction for the dissolution of ordinance marriages to the Circuit Court or the High Court as courts of first instance. Counsel referred the court to the unreported ruling in the case of **The Republic v. The District Court, Sekondi, Ex-parte Martin Offei, Sally Offei Interested party Suit** No. E9/28/2018 delivered on 9/4/2018. At page 6 paragraphs 1,2 and 3 of the said ruling, counsel for the respondent extensively quoted the words of P. Bright Mensah, Justice of the High Court (as he then was) to buttress his submissions. Counsel for respondent also referred the court to the case of **Barclays Bank (Gh) Ltd v. Ghana Cable co. Ltd** [1995-1996] 1GLR 289-296 C.A and submitted that the Matrimonial Causes Act is the specific legislation which deals with ordinance marriages and its dissolution, and that whereas the District Court has jurisdiction to entertain dissolution of customary law marriages, the Matrimonial Causes Act specifically exempts the District Court from jurisdiction to entertain dissolution of ordinance marriages.

Counsel for respondent concluded by praying the court to decline jurisdiction in the instant matter and to strike out the petition for divorce for want of jurisdiction, so that the petitioner can either go to the High Court or Circuit Court.

The issue for determination in this ruling is whether or not the District Court has jurisdiction to entertain and dissolve monogamous marriages under The Marriage Act, 1951 (CAP 127).

In Practice and Procedure in the Trial Courts and Tribunals of Ghana (2011) 2nd Edition, page 31 the learned Author and Jurist S.A. Brobbey JSC (Retired) defined jurisdiction in the following words:

“The jurisdiction of a court is the authority of that court to entertain or decide a case. It connotes the limit or extent of the power of the court.”

The learned Samuel Marful-Sau JSC of Blessed Memory at page 2 of his book A Practical Guide To Civil Procedure in Ghana (2017) also defined jurisdiction as follows:

“Jurisdiction connotes whether or not a court has the power to do what it is doing. The issue of jurisdiction is very fundamental in all judicial proceedings. It goes to the root of every proceeding. A court can only hear or determine a matter in which it has jurisdiction.”

It is trite learning that jurisdiction is a creature of statute. According to the learned Samuel Marful-Sau at page 2 of the above book of his, the jurisdiction of a court is determined by the 1992 Constitution, the Courts Act 1993 (Act 459) and any other relevant statute. To determine whether or not a court has jurisdiction in a matter, one should refer to the Constitution, the Courts Act or the appropriate statute that deals with the subject matter of the case under reference. With particular reference to the District Court, the jurisdiction of the District Court is regulated by the Courts Act 1993 (Act 459) as amended by the Courts (Amendment) Act 2002 (Act 620); the Courts Regulations 2020 (L.I.24 29) and the District Court Rules, 2009 (C.I.59) as amended by the District Court (Amendment) Rules 2016 (C.I 97) and the District Court (Amendment) Rules 2020 (C.I 134).

In respect of the issue for determination, Section 47(1)(f) of the Courts Act 1993 (Act 459) as amended by section 5 of the Courts (Amendment) Act 2002 (Act 620) provides as follows:

“(1) A District Court shall within the area of its jurisdiction have civil jurisdiction in the following matters-

(f) in divorce and other matrimonial causes or matters and actions for paternity and custody of children.”

Order 32 rule 1(1) of the District Court Rules, 2009 (C.I 59) elaborates on the matrimonial jurisdiction conferred on the District Court by section 47(1)(f) of Act 459 as amended by Act 620 by the provision that the District Court has matrimonial

jurisdiction over cases involving divorce, paternity, custody of children and other matrimonial causes.

I have appraised the respondent's affidavit in support of the application and also paid much attention to counsel for respondent's viva voce submissions in further support of the same application. However, I am unable to be persuaded that in the face of the express provisions of section 47(1)(f) of Act 459 as amended by Act 620 and order 32 rule 1(1) of C.I.59, that the District court has no jurisdiction to determine a marriage celebrated under the Marriage Act 1951 (CAP 127). Counsel for respondent has emphasized in his submissions that sections 1 (1) and 40 of Act 367 has conferred jurisdiction on the dissolution of monogamous marriages at first instance on the High Court and the Circuit Court and that a District Court can only have jurisdiction to dissolve a monogamous marriage if the Chief Justice transfers under section 40 of Act 367 such a matter to it. Counsel has described Act 367 as a specialised legislation as compared to Act 459 as amended. On the contrary it is my opinion that Act 367 is the general law on matrimonial causes and other related matters as captured in the preamble, whilst Act 620 is the specific law that deals with the jurisdiction of the District Court and clothes the District Court with the requisite jurisdiction to determine divorce cases. Unlike the repealed section 47(1)(f) of Act 459 which conferred jurisdiction on the District Court to hear only divorces arising from customary law marriages, there is no such restriction in the new provision of section 47(1)(f) of Act 620. The import of the amended provision is that the District Court has jurisdiction in both monogamous and customary law divorces.

I have read the two (2) judicial authorities cited by counsel to buttress his application. In the unreported case of the **Republic v. The District Court, Sekondi, exparte Martin Offei, Sally Offei Interested Party**, the Court acknowledged at page 6 of the ruling that section 47(1)(f) of Act 620 gives jurisdiction in matrimonial causes to the District Court. However, the court relied on the rules of interpretation in arriving at its final decision which is that the District Court lacked jurisdiction to entertain a matrimonial cause under Act 367. Interestingly enough in **The Republic v. District Magistrate Court, Apam and Bondzie Atta Quaye Ex parte Mrs. Victoria Quaye** Civil Appeal No.H1/55/2017 delivered on 5/12/2017, the Court of Appeal Cape Coast upheld the decision of the Winneba High Court to quash the proceedings of the District Court, Apam only on the ground of not affording the respondent the opportunity to be heard before dissolving an ordinance marriage. The Winneba High Court declined to make a pronouncement that the District Court

Apam did not have jurisdiction to entertain a monogamous marriage divorce under CAP 127.

Counsel for respondent also referred the court to the Barclays Bank (Gh) Ltd case. This case propounded the following principle of law:

“The general rule of law was that where there was a specific legislation covering any given situation, the court would not apply general provisions for the situation.”

I have already expressed the opinion that Act 620 is the specific legislation that clothes the District Court with jurisdiction to dissolve both customary law and monogamous marriages. Act 367 on the other hand is the general law on matrimonial causes in our courts. Applying the above principle of law, Act 459 as amended by Act 620 overrides Act 367 in that it has provided specifically for the dissolution of marriages by the District Court.

For all the reasons stated in this ruling, I hereby dismiss the instant motion before me as meritless. The respondent is hereby ordered to file his answer to the petition for divorce filed on 11/01/23 for same to proceed on its natural course.

I award GH¢1,000.00 as costs in favour of the petitioner.

**H/H JAMES KOJOH BOTAH,ESQ
(CIRCUIT COURT JUDGE)**