

IN THE CIRCUIT COURT HELD AT WEIJA-ACCRA ON THE 12<sup>TH</sup> DAY OF  
JULY, 2023 BEFORE HIS HONOUR JAMES KOJO BOTAH  
CIRCUIT COURT JUDGE

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SUIT      NO.

C4/41/2022

LOVELACE AGYEKUM  
R 182, UNIVERSITY RD  
KASOA  
DIGITAL ADD.: GS-0623-9406

..... PETITIONER

VRs

GODFRED BONSU  
30 DARKOMAN RD  
RESPONDENT  
DIGITAL ADD.: GA-464-1664

.....

.....  
PARTIES – PRESENT

JOSEPH KWODWO AMANKWAA FOR PETITIONER - ABSENT

AGYEI NUAMAH FOR RESPONDENT      - PRESENT

.....  
RULING

On 25<sup>th</sup> January, 2023 the Petitioner through her lawyer filed two motions on notice for determination, namely, Motion on Notice for an Order Appointing an Independent Audit of Medical and General Solution Limited Account and Motion on Notice for an order of Interim Preservation of Property. The Respondent has filed an affidavit in opposition to both motions. However, before

the applications could be heard and determined on its merits, counsel for Respondent filed a notice of intention to raise preliminary legal objections on 23<sup>rd</sup> May, 2023.

Counsel for Respondent anchored his preliminary legal objections on four grounds. The first is that this court lacks jurisdiction to hear the petition for divorce before it. Counsel for Respondent referred the court to Sections 31 and 32 of the Matrimonial Causes Act 1971 (Act 367) and the case of Mosi v Bagyina [1963] 1GLR 337 and then submitted that a citizen of Ghana must be domiciled in Ghana for three (3) years before filing a petition for divorce. The petitioner stated in her petition for divorce that the parties relocated to Ghana in 2021. According to counsel for Respondent, the petitioner is not qualified under Section 31 of Act 367 to file the petition for divorce because it is less than three years. She is also not a citizen of Ghana per the section. The court therefore lacks jurisdiction to determine the petition for divorce under section 31 of Act 357. If the court proceeds to determine the petition for divorce without jurisdiction it will render any decision of the court a nullity, counsel further submitted.

Counsel's second ground of objection is that the petitioner has alleged fraud in her supplementary affidavit in support filed on 6<sup>th</sup> April, 2023. In the petition for divorce and the main motion she never mentioned fraud. She did not also particularize fraud.

The third ground of objection is that the petitioner did not seek leave of the court before filing her supplementary affidavit in support on 6<sup>th</sup> April, 2023 in respect of her two pending separate motions. According to counsel for respondent, on 30<sup>th</sup> March, 2023 the court struck out the petitioner's supplementary affidavits in support as withdrawn with leave to refile. However, the petitioner failed to seek leave of the court before refiling her supplementary affidavits in support on 6<sup>th</sup> April, 2023 thus rendering them incompetent.

The fourth leg of counsel's preliminary legal objection is that, counsel for petitioner did not state his solicitor's license on the petition for divorce and on the applications as required by the rules of court and practice. It is the submission of counsel for respondent that the petition for divorce and subsequent motions are incompetent and therefore must be struck out.

Counsel for petitioner opposed the preliminary legal objection. He submitted that sections 31 and 32 of Act 367 is not about jurisdiction. The petitioner is a citizen of Ghana. The marriage was celebrated in Ghana. The court has jurisdiction to entertain the petition for divorce. Counsel for petitioner further submitted that, the respondent's counsel has filed processes in the matter and that by his act he has conferred jurisdiction on the court.

With respect to the second ground of objection, counsel for petitioner submitted that they stated in their supplementary affidavit in support that the respondent without the authority of the petitioner fraudulently registered her car in his name.

Concerning the third ground of objection, counsel for petitioner submitted that the respondent's counsel did not exhibit anything to show that the court asked them to seek leave to file supplementary affidavit in support and the respondent's counsel has even responded to their supplementary affidavit in support.

On the issue of the solicitor's license, counsel for petitioner submitted that he stated his license number on the petition for divorce and does not need to state his license number on the subsequent court papers. Counsel emphasized that he has a practicing license and can produce his solicitor's license. Section 81 of C. I. 47 according to counsel can even cure this.

The issues for determination in this ruling are:

- 1) *Whether or not this court has jurisdiction to entertain the petition for divorce before it;*

- 2) *Whether or not paragraph 7 of the supplementary affidavit in support of the motion for interim preservation of property filed on 6<sup>th</sup> April, 2023 should be struck out for failure of the petitioner to plead fraud;*
- 3) *Whether or not supplementary affidavit in support of the motion for appointment of an independent audit on Medical and General Solution Ltd and the supplementary affidavit in support of the motion for interim preservation of property all filed on 6<sup>th</sup> April, 2023 should be struck out for failure of the petitioner to seek leave of the court before filing the processes; and*
- 4) *Whether or not the petition for divorce and the subsequent processes filed by counsel for petitioner should be struck out for his failure to state his solicitor's license on the court processes.*

Section 42 (1) (a) of the Courts Act 1993 as amended by the Courts (Amendment) Act 2002, Act 620 confers civil jurisdiction on the Circuit Court in civil matters or causes including divorce cases.

Section 31 of the Matrimonial Causes Act 1971 (Act 367) provides as follows:

*"The Court shall have jurisdiction in any proceedings under this Act where either party to the marriage:*

- a) is a citizen of Ghana; or*
- b) is domiciled in Ghana; or*

*c) has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings”.*

Paragraph 1, 2, 4 and 8 of the petition for divorce filed on 5<sup>th</sup> July, 2022 says that the parties are citizens of Ghana. They married under the Marriage Act 1951 (CAP 127) on 19<sup>th</sup> August, 2019. The parties cohabited in Accra and Belgium after the marriage. They relocated to Accra in 2021. In paragraph 5 of his Answer and cross petition, the respondent denied that the parties are citizens of Ghana.

The respondent has not produced any evidence before the court to show that the petitioner or the parties are not Ghanaians. The Certificate of Marriage issued to the parties on 19<sup>th</sup> August, 2019 by the Ejusu Municipal Assembly after the celebration of their marriage before the Assembly is no proof that the parties are non-Ghanaians. Section 31 of Act 367 says that for the court to be seised with jurisdiction to entertain a matrimonial cause one of the parties must be a citizen of Ghana or must be domiciled in Ghana or has resided in Ghana for at least three (3) years before the commencement of the petition for divorce. The Marriage Certificate issued to the parties merely indicates on the face of it that the parties were resident in Belgium at the time they celebrated the ordinance marriage and not emphatically that they were Belgium citizens. At the time of the filing of the petition for divorce on 5<sup>th</sup> July, 2022, both parties were resident in Accra, Ghana as per the residential addresses of the parties endorsed on the

petition for divorce. Going by Order 3 rule 2(1) (a) of C. I. 47 the respondent should have raised an objection to the jurisdiction of the court to hear the matter at the time the petition for divorce was filed. He failed to do so and rather went ahead to file an Answer and other subsequent processes. By so doing he has waived his right to challenge the jurisdiction of the court to entertain the matter as counsel for petitioner submitted.

I am not convinced that the respondent has succeeded in establishing on the basis of section 31 of Act 367 that this court lacks jurisdiction to entertain the instant matter. The objection to the court's jurisdiction is accordingly dismissed.

In respect of the second ground of objection, I agree with counsel for respondent that the petitioner did not plead fraud in her petition for divorce. The issue of fraud was also not mentioned in her motion filed on 25<sup>th</sup> January, 2023. However, in her supplementary affidavit in support of the motion filed on 6<sup>th</sup> April, 2023 the petitioner alleged at paragraph 7 that the respondent fraudulently registered her car in his name without her consent and authority. Since the petitioner failed to plead fraud at the onset of the case or in her main motion and particularized same as required by law, the word "fraudulently" at paragraph 7 of the supplementary affidavit in support will be struck out and is hereby expunged. The rest of the paragraph is saved.

On 30<sup>th</sup> March, 2023, counsel for respondent raised an objection to the supplementary affidavits in support filed by petitioner on 24<sup>th</sup> March, 2023 for non-compliance with Order 19 rule 4 of C. I. 47. The objection was sustained by the court and the processes were struck out as withdrawn with leave to re-file. The petitioner was already granted leave to refile the struck out processes. She does need to file a formal application to pray for leave which has already been given. The third leg of preliminary legal objection is unfounded and is hereby dismissed.

In the case of **The Republic v High Court (Fast Track Division Accra Exparte: Justin Pwavra Teriwajah (Henry Nuerty Korboe and Reiss & Co. (Gh) Ltd Interested Parties)** 2014 68 GMJ 1 at 16-17 Anin JSC as he then was held that a solicitor's license is to be procured annually by lawyers who would want to practice law for a particular year and that a lawyer cannot sign documents or represent a party in court unless he has obtained a valid solicitor's license for the purpose. It is usually the practice that lawyers who have filed processes for and on behalf of their clients will endorse on the processes their solicitor's license in addition to their names and business addresses. I have examined the processes filed by counsel for the petitioner. He has not stated his solicitor's license on the processes filed thus raising a doubt as to whether or not he has a solicitor's license to practise as a lawyer in court. If counsel for petitioner has been licensed,

he is yet to produce his license to convince the court. As it stands now, there is no evidence before the court that counsel for petitioner has been licensed to practise as a lawyer. The fourth ground of objection is sustained. However, I will not strike out the petition for divorce merely on this ground. The sins of counsel for petitioner should not be visited on the petitioner because his solicitor's license is now an issue. Counsel for petitioner is to produce and show to the court his solicitor's license if he is to continue to represent the interest of his client in court. After evidencing his solicitor's license, counsel for petitioner is to henceforth clearly state his solicitor's license on all other processes to be filed by him.

For all the reasons stated herein in this ruling, I refuse to strike out the petition for divorce as prayed. Suit is to take its normal course.

**(SGD)**  
**H/H JAMES KOJOH BOTAH**  
**CIRCUIT COURT JUDGE**