

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 12TH JANUARY, 2023

SUIT NO. C5/16/22

JOEL BORTEI BISSINAH - PETITIONER

VRS

AFUA AFRIYIE ABOAGYE - RESPONDENT

JUDGMENT

The petitioner, being of the firm conviction that the marriage celebrated between him and the respondent on the 12th day of January, 2016 at the marriage registry of the Ledzokuku Krowor Municipal Assembly was a nullity, petitioned this court on the 22nd day of October, 2021 for an annulment of the said marriage.

According to his petition, after their marriage, he and respondent only lived together during the periods that he was in the country. There is no issue of the marriage. He contended that the marriage is a nullity on the basis that the respondent was married to one Frederick Fereku Nyeteng Nara on the 28th day of December, 2012 and the said marriage is still subsisting. That the respondent failed to disclose this to him until same was made known to him by the US embassy in Accra.

In her response, respondent contended that after their marriage, they lived together at her house in Amasaman whenever the petitioner who is ordinarily resident outside the country, returned every year.

That there were lots of issues in the marriage including cheating, gross disrespect, emotional abuse and neglect which led to their separation. She denied that there was any marriage between her and the said Fred Fereku Nyeteng Nara for her to have disclosed same to the petitioner.

She averred that their marriage has broken down beyond reconciliation and prayed the court to dissolve their marriage.

The issues to be determined by the Court are;

1. Whether or not the marriage between the parties is a nullity
2. If not, whether or not the marriage between the parties has broken down beyond reconciliation.

THE CASE OF THE PETITIONER

In his written evidence in chief, the petitioner testified that he is ordinarily resident in the United States of America. That after their marriage in 2016, he proceeded to file immigration papers to enable the respondent join him in the United States as his wife. However, the findings of the embassy indicated that respondent was already married. He tendered in evidence documents from the embassy as EXHIBIT 1.

That when he asked the respondent if she had ever applied for a US visa, she responded in the negative. On the day respondent appeared before a consular officer, it was revealed that she was married to one Frederick Fereku Nyeteng Nara and an immigration process had already been filed for her. He tendered in evidence EXHIBIT B as the certificate of marriage. That when he confronted the respondent, she said she had agreed to marry the said man for immigration purposes. That he verily believes that the marriage celebrated between them is void and a nullity.

THE CASE OF THE RESPONDENT

In her evidence in chief, the respondent said on the 9th of February, 2017, when she went for a visa interview at the U.S embassy, she was denied on the basis that she already had an existing marriage with one Fred Nara. That she had no idea of the marriage and that was the first time she was hearing of it.

That in mid -2012, after she completed nursing training, her mother who is resident in the U.S.A. asked her to go and see one Mr. Ben for assistance to file a visa for her to join her in the U.S.A. That she met with the said man who took copies of her passport and birth certificate and told her that she would hear from him.

Later, upon the instructions of Mr. Ben, she met with a certain man who was in the company of Fred Nara. They were introduced and after that they communicated once in a while. That later, Mr. Ben explained the details which included getting married. That she then opted out.

About three months later, Fred called to tell her that he had gone for the interview and had his visa but needed money for a plane ticket. That Mr. Ben had suggested that he call her and that she could still join him to travel so that her mother could pay for the plane tickets. That she still refused. She did not hear from Fred again until January, 2016 when she searched for him on Facebook. She insisted that she told the petitioner this story prior to him filing for her and he indicated that once she had never been to the embassy, there was no issue.

Respondent closed her case after this.

CONSIDERATION BY COURT

Part II of the Matrimonial Causes Act, 1971 (Act 367) is headed “Other Matrimonial Matters”.

Section 13 which begins the part provides that:

Section 13—Nullity.

(1) Any person may present a petition to the court for a decree annulling his marriage on the ground that it is by law void or voidable (in this Act referred to as “a decree of nullity”).

(2) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall, subject to subsection (3), be voidable on the ground—

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or

(b) that at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or

(c) that the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(d) that the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.

(3) The court shall not grant a decree of nullity in a case falling within paragraphs (b), (c) or (d) of subsection (2) unless it is satisfied that—

(a) the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and

(b) proceedings were instituted within a year from the date of the marriage; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.

(4) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

The basis of this petition is **Section 13(1) of Act 367**. According to the petitioner, his marriage to the respondent is void on the basis that the respondent was married to another at the time of their marriage.

From the evidence, there is no dispute that the parties celebrated their marriage under **Part 111 of the Marriages Act, (CAP 127)** in January, 2016. Per the provisions of that act, any marriage contracted under that part i.e. ordinance is monogamous and neither of the parties to the marriage may enter into any form of marriage be it customary or otherwise with another person during the subsistence of the marriage.

If either party contravenes this provision, a party commits bigamy which is a criminal offence under **Section 262 of the Criminal Offences Act, 1960 (Act 29)** and punishable as a misdemeanor.

The case of the petitioner is that as at the time of their marriage, the respondent was married to another under the same Ordinance. He tendered in evidence as EXHIBIT 2 a marriage certificate dated the 28th day of April, 2012. It indicates that a marriage was contracted between Frederick Fereku Nyeteng Nara and the respondent herein at the Accra Metropolitan Assembly.

EXHIBIT A is a notice of intent to revoke. It is dated the 18th day of February, 2018 and is from the US Department of Homeland Security, US Citizenship and Immigration Service. It is addresses to the petitioner herein. It notifies him that his earlier petition filed for the respondent herein which was approved in August, 2016 is being revoked on the basis that the respondent appears to have entered into a prior marriage solely for immigration purposes with the said Fredercick Nara.

That even though the said Frederick Nara (primary applicant) appeared for an interview and was issued a visa, the respondent did not appear for the interview with him. Also that her name was added to the details of the primary applicant after he had won the diversity visa lottery.

In this court, the respondent had maintained that she knew nothing about the existence of any marriage between herself and the said Frederick Nara until she attended the interview at the US embassy with regard to the claim filed for her by the petitioner herein.

I have had cause to believe the respondent. This is because although as at 2012 she was a nurse and that has not been disputed in this court, the information on EXHIBIT B as to profession is that she is a student. Again, she indicates that the said agent took copies of her passport and birth certificate. A birth certificate indicates amongst others the names of a person's parents. Thus the name of the respondent's father could easily have been obtained from her birth certificate.

Her father's name and profession or occupation as contained in EXHIBIT B was also in dispute. Respondent in this court strenuously denied that her father was a businessman and indicated that her father has always been a teacher. At page 24 of the record of

proceedings, under cross examination by learned counsel for the petitioner, this is what transpired;

Q: Do you know Frimpong Kwame.

A: I do not know anyone by that name.

Q: What is the name of your father?

A: Kwame Aboagye-Frimpong.

Q: And the Kwame Frimpong signed Exhibit B.

A: As I have stated, my father's name is Kwame Aboagye-Frimpong and he insists on his hyphenation and he is a teacher by profession who has never done business in his life.

Also, the respondent put across the case that the 28th day of April, 2012 was a Saturday; a day on which the Accra Metropolitan Assembly which is a public institution does not work. As a date is a factual event, I take judicial notice that indeed the said date was a Saturday; a weekend day on which public bodies do not work.

Respondent also tendered in evidence EXHIBIT 2 as her passport page. It was for the purpose of indicating her signature to the Court. Her signature on EXHIBIT 2 is not present on EXHIBIT B; her supposed marriage certificate to Frederick Nara.

Again, the respondent had maintained under cross examination that she only met with the said Frederick Nara after he had won the diversity visa lottery and that she was not a participant in the process. EXHIBIT A confirms her claim. Page 2 under the heading of "Prior marriage entered into for immigration purposes" indicates that the respondent was "actually added to the primary applicant's DV application after he won the lottery".

In the course of trial, it came out that the respondent had applied for a diversity lottery visa and been successful in 2018. She says that she did not follow through with the process. That is an indication that even after the issue of her refusal by the embassy after her interview in February, 2017, she was still exploring other avenues to travel to the U.S.A.

Reasonable persons act in a reasonable manner. It would be most unreasonable for the respondent who wanted to travel to join her mother in the United States, to be aware of a pending interview for her to legally travel to the United States and not take advantage of it since 2013 only to marry the petitioner in 2016 and then attempt to get to the U.S.A through the same means; marriage of a spouse.

Furthermore, the course of cross examination, the respondent tendered in evidence through the petitioner EXHIBIT 1. It is divorce certificate between the respondent herein and Frederick Nara dated the 5th day of January, 2015. The document is duly attested to by the Judicial Secretary and the Ministry of Finance.

According to the respondent, this is a document that the petitioner obtained on his own because he wanted to. At page 11 of the record of proceedings, this is what transpired when respondent cross examined the petitioner;

Q: Did you process to get a back dated divorce certificate to assist in the Immigration process or not.

A: My lord, I did not.

Q: Please take a look at this document. It is the divorce certificate. Do you remember it?

A: My Lord, I have seen a soft copy of the document before.

I believe the case of the respondent that it is the petitioner who obtained EXHIBIT 1 in an attempt to indicate to the US immigration authorities that the respondent was not married to the said Frederick Nara as at the time of her marriage to him.

This is because per EXHIBIT A, one of the highlighted conclusions on page 2 is that “no evidence has been presented to show that this prior marriage has been terminated, therefore, it cannot be found that the beneficiary was free to enter into the current marriage with the petitioner.” That means that there was no evidence of a divorce between the respondent and the said Frederick Nara as at the date of her interview with the US embassy.

It appears that EXHIBIT 1 was obtained to prove that the respondent’s supposed marriage with Frederick Nara was dissolved as at the time of her marriage to the petitioner herein and she was thus free to contract the marriage with the petitioner.

The question is if he believed that the respondent was lawfully married to the said Frederick Nara prior to her marriage to him and failed to disclose this to him, why would he go to all these extents to assist the respondent to “beat the system” and receive a positive feedback from the US immigration authorities?

Per EXHIBIT A, the notice of intention to revoke was communicated to the petitioner in February, 2018. If he was indeed of the belief that the respondent had lied to him and committed bigamy by marrying him, one would have expected that it takes him a short time, surely not the over three (3) years eight (8) months that it took him to file this petition for nullity of their marriage.

The actions of the petitioner confirm the claim of the respondent that he did not only believe her when she indicated to him that she was not aware of her supposed marriage to Frederick Nara but had also taken steps through a manipulation of the Ghanaian legal system to attempt to rectify the situation.

On these conclusions, I hereby find that the respondent prior to her marriage to the petitioner on 12th January, 2016 was not aware of any marriage to Frederick Fereku Nara. A party must not only be aware of, but must be of sound mind and of legal age in order to contract a marriage. The respondent not being aware of the said marriage means the marriage does not hold.

In any case, if EXHIBIT 1 is anything to go by, then unless legal steps are taken to set it aside on grounds of fraud or forgery, then for all intents and purposes, that purported marriage was dissolved by a High Court in January 2015; about a year prior to the marriage of the parties herein.

After an analysis of the law and the evidence in support of this case, I hereby dismiss the petition for annulment of the marriage celebrated between the parties on the 12th day of January, 2016.

The second issue which is whether or not the marriage of the parties has broken down beyond reconciliation.

In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. Divorce is defined as “*the legal dissolution of a marriage by a Court.*” See *Blacks’ law dictionary, (8th edition, 2004 p. 1449)*. The court must enquire as far as is reasonable into the reasons for the divorce and may either

grant or refuse to decree a divorce after hearing. See the case of *Ameko v. Agbenu* [2015] 91 G.M.J.

The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*. In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery which the offended party finds intolerable to live with; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

As one of the basis for arriving at a conclusion that a marriage has broken down beyond reconciliation is inability to reconcile after diligent efforts, I would first deal with the available evidence on that ground. *Section 2 (1) (f) of the Matrimonial Causes Act, 1971, (Act 367) provides that;*

2. (1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts:

(F) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

The evidence on record in this case leaves no shred of doubt that the parties cannot resolve their differences and continue to live together as husband and wife. The issues

between them have extended to their families particularly respondent's mother and father. The parties have also not lived as husband and wife since 2019 when according to the respondent, she threw the petitioner out of her house due to his constant abuse.

Neither of them are also in favour of reconciliation. At the commencement of proceedings, the court sought to promote reconciliation but both parties were clear in their minds and answers to the court that no attempt can be made to successfully reconcile them.

Consequently, I hereby find that all diligent efforts made to reconcile them have failed and their marriage has broken down beyond reconciliation. I hereby issue a decree of dissolution to dissolve the marriage celebrated between the parties at the Ledzokuku Krowor Municipal Assembly on the 12th day of January, 2016.

Each party is to bear their own costs in suit.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

OSCAR ASANTE NNURO FOR THE PETITIONER PRESENT