

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON  
THURSDAY, THE 25<sup>TH</sup> DAY OF JULY, 2023 BEFORE HER HONOUR  
HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE

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SUIT NO.: CCD/C8/17/23

**CHRISTABEL NYARWAA BAAH**  
SUING PER HER LAWFUL ATTORNEY  
BAAFI ASANTE

**PETITIONER**

**VS**

**NICHOLAS ABAYEMAH DASSAH**

**RESPONDENT**

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**PARTIES:**

PETITIONER'S LAWFUL ATTORNEY – PRESENT  
RESPONDENT – PRESENT

**COUNSEL:**

NO LEGAL REPRESENTATION

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**JUDGMENT**

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**Background:**

On the 30<sup>th</sup> of May 2023, the Petitioner herein, through her Lawful Attorney filed a Petition at the Registry of this court praying for the nullification of the marriage celebrated between the parties on the 15<sup>th</sup> of February, 2018 on grounds that the purported marriage is a nullity. The basis of the Petitioner's claim is that the parties met online via Facebook somewhere November, 2017 and subsequently fell in love with each other. Subsequently, the Petitioner had the opportunity to come down to Ghana and both agreed that they will get married but there will be no sexual intercourse since they were both getting to know each other. The

Parties then proceeded to the District Court, Koforidua for the celebration of their marriage on the 15<sup>th</sup> day of February, 2018. After the celebration of the marriage, the Respondent insisted on having sexual intercourse although parties had agreed to stay away from sex which resulted in the Respondent verbally and physically abusing the Petitioner. Petitioner says it was then that it dawned on her that the marriage was not built on real love and affection, neither were they compactible. Consequently, the Petitioner she finally took the decision to pack all her belongings and leave the country just Two (2) days after the celebration of the marriage. She concluded by stating that she could not bear the Respondent's inhumane treatment hence her prayer for the sole relief of the annulment of the marriage celebrated between the parties.

The Respondent filed his Answer to the Petition on the 27/6/2023 and confirmed the celebration of the marriage. He stated that they both agreed to abstain from sex but after the celebration of the marriage, the Petitioner still refused to have sexual intercourse of the Respondent which resulted in unending issues to the extent that the Petitioner packed all her belongings and moved out from her matrimonial home in April, 2018 back to the United States. He stated further that he has no objection to the nullification of our marriage since several efforts made by Respondent, family and friends to settle the matter has failed, hence his consent for the nullification of the marriage.

### **DETERMINATION**

In view of the above, the main issues for determination are;

- (a) Whether or not the marriage of the Parties is by law valid, void or voidable;

(b) Whether or not the marriage of the parties can be nullified by the court.

### **ANALYSIS**

In the instant case, the Petitioner prays the court to nullify the marriage but he court has to first ascertain whether the marriage is either valid, void or voidable. The marriage of the parties was celebrated at the District Court, Koforidua hence it is a marriage celebrated under the Marriage Ordinance (Cap 127). According William E. Offei in **Family Law in Ghana**, 1998 at page 143, '*...a marriage celebrated under the Marriage Ordinance (Cap 127) or under the Common Law may be valid, void or voidable*'. A Marriage is said to be valid when it fulfils all the conditions stated by the law, however, in the case of **De Reneville vs. De Reneville** [1998] 1 All E. R. 56 at 60, Greene M. R. stated that "*A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be treated by both parties to it without the necessity of any decree annulling it*". The Judge then defined a voidable marriage as follows; '*... a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction*'.

**Section 13(1) of the Matrimonial Causes Act, 1971(Act 367)**, a person may present a Petition to the Court for a decree annulling a marriage on the ground that it is by law void or voidable. By **section 13(4)** of Act 367 supra, a void marriage shall not be regarded as valid even when a court has not granted a decree of nullity and nothing can validate a void marriage. Such a marriage is void and it is not necessary to obtain a court order decreeing the marriage to be void. One of the circumstances under which a marriage is regarded as voidable is where there is lack of consummation due to wilful refusal by the Respondent to consummate. Consummation has been

defined as achievement of full penetration in the normal sense. It must amount to full and complete intercourse. Intercourse must amount to full and complete penetration. A transient penetration will not amount to full and complete penetration. One of the angles consummation is looked at is a wilful refusal to have sexual intercourse and this occurs when one of the parties refuses to have sexual intercourse without just cause. (See the book of **Contemporary Principles of Family Law in Ghana**, authored by Mrs Frederica Ahwireng-Obeng, 2015 at pages 92-96).

In the instant case, the Petitioner, through her Lawful Attorney, repeated her averments contained in the Petition for annulment on oath and testified that there was never sexual intercourse between them. The Respondent also repeated his averment on oath and admitted that indeed there was never sexual relations between them. Thus, from the pleadings of the parties and the evidence led, the material facts alleged by the Petitioner is not disputed by the Respondent. In the case of **Re Asere Stool; Kotei v. Asere Stool** [1961] GLR 493 SC, the Supreme Court held that: *“Where an adversary had admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than relying on such admission which is an example of an estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some states of facts which he has formally asserted. This is a salutary rule of evidence based on common sense and expediency.”*

It is the contention of the court therefore that since the parties never consummated the marriage as a result of the wilful refusal of the Petitioner to have sexual intercourse with the Respondent, the marriage between the parties is indeed voidable. Consequently, the court upon finding that the marriage is voidable, shall proceed to determine if same can be annulled by this instant

court. It is noteworthy that the position of the law is that for a marriage to be declared as a nullity, the refusal to consummate the marriage must have persisted up to the time of the presentation of the Petition. The evidence on record shows that that the Petitioner deserted the marriage after Two (2) days and returned to the United States of America, this fact was admitted to by the Respondent and is therefore not in dispute. Thus, on the totality of the evidence led by the Petitioner and the Respondent in this case, I hold that the Petitioner proved her case on a balance of probabilities that the marriage was voidable as there was no consummation and same becomes void after it has been annulled by the instant court.

### **CONCLUSION**

The Ordinance Marriage celebrated between the Petitioner and the Respondent on the 15<sup>th</sup> of February, 2018 at the District Court Koforidua is a voidable marriage as there was no consummation. Accordingly, the Petition for annulment is granted and I enter judgment for the Petitioner in the following terms;

1. I hereby grant a decree of nullity for the nullification of the Ordinance Marriage celebrated between the Petitioner and the Respondent 15<sup>th</sup> of February, 2018 at the District Court, Koforidua this 25<sup>th</sup> day of July, 2023.
2. The parties shall present the original copy of the Marriage Certificate for cancellation by the Registrar of the Court.
3. There shall be no order as to costs.

**HALIMAH EL-ALAWA ABDUL-  
BAASIT  
CIRCUIT COURT JUDGE**