

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY, 3RD DAY OF NOVEMBER 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

SUIT No: C5/218/2023

JOY OBENG OTIBU SUING PER
HER LAWFUL ATTORNEY
NANCY JONES WATTS
NORTH ADENTA-ACCRA

PETITIONER

V

DOMINIC KOFI SARPONG
EAST AIRPORT-ACCRA

RESPONDENT

JUDGEMENT

The Petitioner filed a petition before this Court seeking dissolution of her marriage to the Respondent. The Lawful Attorney of the Petitioner issued the Petition on behalf of the Petitioner from the Registry of this Court seeking the following reliefs:

- i. That the marriage in fact celebrated between the parties be dissolved.

The Respondent in a terse Answer stated in paragraph 2 of the 3-paragraph answer that “The Respondent admits paragraph 8 of the petition and adds that he indeed consents to the dissolution of the marriage. At the close of the pleadings and the filing of setting down, the court granted the parties a viva voce hearing before the court.

From the pleadings the parties married on the 16th of February 2016, but the parties did not cohabit. The petitioner is a citizen of the United States and domiciled in New York and the Respondent is a citizen of Ghana domiciled in Ghana and there are no issues of the marriage. The Petitioner pleaded further that there is no issue to the marriage and the marriage has broken down beyond reconciliation as the parties to the marriage have not lived together as man and wife for 7 years and the parties have not been able to reconcile their differences after diligent effort.

The Respondent in his answer to the petition admitted the allegation of fact and consented to the dissolution of the marriage and indicated that all efforts at reconciliation have proved futile. The Respondent then concluded, by saying, "Wherefore the Respondent prays that the marriage between the Petitioner and Respondent celebrated on 16th February 2016 be dissolved".

The petition was ripe for hearing and the Lawful Attorney gave evidence on behalf of the Petitioner and testified that the petitioner is her daughter, and she has given her power of Attorney which she tendered and same was admitted as exhibit A. She gave further evidence that, her daughter is married to the Respondent who is supposed to join her in the United States, so they live their life together, but the Respondent has not been able to join the petitioner, because of the estate of the father of the Respondent which he had to manage and some family issues he had to deal with.

The Lawful Attorney, further, stated that, "the situation has prolonged, and distance has become an issue and neither of the parties wants to relocate, and the family has agreed, and the parties also agree that the marriage is called off". The Attorney of the Petitioner then prayed the court to dissolve the marriage and adopt the terms of settlement filed on record, so that the parties would go on with their lives.

The further evidence of the Petitioner was that after the marriage the petitioner left Ghana after a about a week, and she has returned to Ghana in 2017 and 2018. The Attorney of the Petitioner, after indicating to the court, that she cannot say whether the marriage is consummated or not but is for the parties to say, said the marriage to her knowledge was not consummated by the parties. The case of the Petitioner was closed after her evidence and the Respondent was called upon to testify before the court.

The evidence of the Respondent was that he knows the petitioner who is his wife, and he is before the court because he and the wife decided to part ways and drafted their terms and conditions and decided to dissolve the marriage. The Respondent said he had family issues to attend to in Ghana and so he refused to join the wife in the United States. He also stated that he did not ask the Petitioner to join him in Ghana and he also testified that the marriage between the parties has not been consummated. The case of the Respondent was closed after his testimony before the court and that brought the hearing of the petition to an end.

From the evidence, before the court, the parties agree that the marriage has not been consummated by the parties. Even though the marriage has not been consummated, the Petitioner seeking to terminate the relationship caused a petition to be issued for the dissolution of the marriage.

The law provided under the Matrimonial Causes Act, provides at

13. Nullity

(1) A person may present a petition to the Court for a decree of nullity for annulling the marriage on the ground that it is by law void or voidable.

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

(a) that the marriage has not been consummated owing to the willful refusal of the respondent to consummate it.

In this case before the court, the marriage is not consummated as both parties agree, but the parties have not taking any action to annul the marriage as required by law. In this case before the court, it is rather the Petitioner has issued a petition for the dissolution of the voidable marriage contrary to law. A marriage which has not been consummated cannot be dissolve by a petition, in accordance with law, but ought to be annulled.

A marriage is said to be consummated as soon as the parties have sexual intercourse after the solemnization of the marriage. See: Bromley, Family Law (6th ed) pp. 84. The law is that a marriage celebrated under part three of the Marriages Act, 1884-1985 (Cap 127) may be valid, voidable or void. As indicated supra, a marriage that is not consummated is voidable marriage and 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.

In valid marriage, it is required by law, where one of the parties to a valid marriage wishes to terminate it, he has to file divorce proceedings for the dissolution of the marriage. Where, however, a proceeding is initiated to bring a void or voidable marriage to an end, as it is the case under consideration, it ought to be one for annulment, and not dissolution, of the marriage. Such proceedings is called nullity proceeding.

From the record before the court, the parties agree to the dissolution of the marriage and have filed terms which they pray the court that same should be adopted by the court as the judgment of the court. The legal principle, under dissolution of marriage, is that it is a valid marriage that parties can file a petition to have divorce proceedings, for the dissolution of the marriage. In that circumstance, the principle of law, as required

under the Matrimonial Causes Act, 1971 (Act 367) is that the court must hear the parties and come to the conclusion that the marriage has broken down beyond reconciliation, and accordingly pronounce the same. See: **Trudy Amanor v Emmanuel Agyeman (2002) DLHC11656, Adjetey v Adjetey (1973) 1 GLR 216**

When this is done, then, the marriage can be dissolved and then if the parties have agreed on terms with respect to the ancillary reliefs, then, the court can adopt same as the terms of settlement and then the judgment of the court. In this case, on record, there is certificate of marriage which is an indication of the celebration of the marriage between the parties. The parties also signed terms of settlement which was also filed.

The Attorney of the Petitioner giving evidence prayed the court to adopt their terms of settlement as Judgment of the court. I must say that it can only be granted if the court, after taking evidence comes to the conclusion that the marriage has broken down beyond reconciliation, then goes ahead to dissolve the marriage. And it is in the case of a petition for dissolution of the marriage that the same can be done by the court.

In this case before the court from the evidence the court makes a finding of fact that the marriage has not been consummated which means the marriage of the parties before the court is voidable. In that case any prospect to terminate the relationship as the parties from their pleadings and their testimony before the court desires will not be by petition for the dissolution of the marriage.

The requirement of the law will be a proceeding to be initiated for annulment and not petition for dissolution of the marriage as the petitioner did through her attorney. Therefore, since the ground for dissolution of marriage as petitioned and the evidence provided through trial before the court is not founded, as the marriage is not valid but voidable, the petition of the petitioner before the court for the dissolution of the marriage and agreed by the respondent cannot be granted. The petition before the court

will therefore be dismissed as the same is contrary to law and procedure and hence incompetent. And since the petition for the dissolution of the marriage is dismissed, the prayer of the parties for their terms of settlement to be adopted by the court as judgment of the court cannot also be granted. In conclusion the petition is dismissed as incompetent.