

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY
THE 13TH DAY OF OCTOBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO. C4/06/2023

BETWEEN:

PATIENCE AFI OFFEI
H/NO. UNKNOWN
SAPEIMAN

...

PETITIONER

AND

TIMI ADEYEMO
OF STATE FARM INSURANCE
AGENCY MORAGA
CARLIFORNIA USA
14080 MORAGA ROAD STE 1 MORAGA
CA 94556 U.S.A

...

RESPONDENT

PARTIES: PETITIONER PRESENT
RESPONDENT ABSENT

PETITIONER IN PERSON

JUDGMENT

By leave of Court on 28th October, 2022, the instant Petition was filed on 4th November, 2022, notice of which was served outside the jurisdiction. The Petitioner claims against Respondent the following reliefs:

- i. “Dissolve the marriage as it has broken down beyond reconciliation.
- ii. Custody of the only child be granted to the Petitioner with reasonable access to the Respondent.
- iii. Maintenance of GHs1500.00 a month of the issue of the marriage and provision of decent accommodation of the issue of the marriage till she turns 21 years.
- iv. Any other order as to costs.”

Petitioner says that the Parties celebrated a customary marriage on 25th October, 2014 at Winneba in the Central Region. According to her, the marriage was done by proxy in the presence of the parents of the Parties as both parties were then resident in Belgium. According to Petitioner, on 1st November, 2014, a religious marriage took place between the Parties in Belgium. Petitioner says that the Parties stayed together in Belgium from November, 2014 till June, 2015. According to Petitioner, she moved to Ghana in July, 2015 to spend sometime here as the Respondent had issues with visa and documentation. Petitioner says that there is one issue to the marriage aged seven (7) years old. She says that trust broke down in the marriage hence the marriage became estranged, and Respondent became verbally abusive without provocation. She says that the parties were advised to separate for the marriage to heal naturally but the Respondent now lives with another woman in USA and has told Petitioner to look for another man. She says that the marriage has broken down beyond reconciliation hence the instant petition.

I note that on 17th November, 2022 notice of the Petition was dispatched through DHL to the Respondent's address. Having noted that the twenty-one days given for Respondent had lapsed, the action was accordingly set down for trial.

Petitioner testified on 1st September, 2023. She testified that she has been married to Respondent for the past 8 years. According to her, sometime on 25th October, 2014 the parties got married with events held in Accra and Belgium. According to her because she was living in Belgium with the Respondent, but her parents were in Ghana, so the customary marriage was celebrated in their absence in Winneba, Ghana. She stated that the Customary Marriage was registered at the Efutu Municipal Assembly, Winneba. She stated that a religious ceremony was held on 1st November, 2014 in Belgium. She testified that in July, 2015, Respondent had some issues with his visa so she was forced to return to Ghana and Respondent made other plans to relocate, at which point she was heavily pregnant and almost due to deliver. She says that after delivery in Belgium, she returned to Ghana to enable her mother to give her some care as that was her first experience. She testified that Respondent relocated to Slovenia and when she came Ghana, Respondent came to join her in May, 2016 and they continued to live as husband and wife.

According to her, in February, 2017 a distant family member asked her for a charger which she gave to him and the Respondent accused her of being

intimate with the said person, so this led to him not trusting her anymore. She testified that the Respondent did not want her to attend any event and was always suspicious of her. She stated that one day things got out of hand and she spoke her mind so the Respondent left to his parents in Togo. She testified that in August, 2018, she saw a video and copies of photographs of the Respondent in a marriage ceremony with another woman. She testified that she felt heart broken because their families advised that they both wait for 5 years to be sure that the marriage was indeed broken down beyond reconciliation. She stated that she blocked the Respondent on social media and somewhere in August, 2017 the Respondent sent her an email requesting to take up responsibility for the issue. She says that the marriage cannot work again as the Respondent is married and living together with another woman. She says that the only issue of the marriage has been in her care since birth, and she is seven years old now. She tendered the following Exhibits:

- Exhibit A: Registration of Customary Marriage Certificate
- Exhibit B: Form of Register of Customary Marriage
- Exhibit C Series: Photographs

The evidence of Petitioner is that there was a religious ceremony held in Belgium after the customary marriage was contracted. There is however no evidence that the said ceremony was a monogamous marriage which converted the said customary marriage. Thus, on the evidence I find that the religious ceremony held did not constitute a marriage under the ordinance or one which converted the customary marriage, but a marriage blessed by the church. See **APPOMASU v. BREMAWUO AND ANOTHER [1980] GLR 278**. I therefore find that the customary marriage contracted on 25th October, 2014 subsists.

Section 41 of the **MATRIMONIAL CAUSES ACT, 1971 (ACT 367)**, permits the application of the provisions of the Act to a marriage other than a monogamous marriage. The section provides as follows:

“41(2) On application by a party to a marriage other than a monogamous marriage, the Court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may
(a) consider the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

(b) grant any form of relief recognised by the personal law of the parties to the proceedings, in addition to or in substitution for the matrimonial reliefs afforded by this Act.

(3) In the application of section 2 (1) to a marriage other than a monogamous marriage, the Court shall consider the facts recognised by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage, but without prejudice to the foregoing, the following:

(a) wilful neglect to maintain a wife or child;

(b) impotence;

(c) barrenness or sterility;

(d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship; and

(e) persistent false allegations of infidelity by one spouse against another:

(4) Subsection (3) shall have effect subject to the requirements of justice, equity and good conscience.

(5) In the application of this Act to a marriage under customary law, the words “child of the household” shall be construed as including a child recognised under customary law as a child of the parties.”

The sole ground for divorce under Ghanaian law is found in Section 1(2) of the **MATRIMONIAL CAUSES ACT, 1971 (ACT 367)**. It states as follows:

“The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.”

In proving the breakdown of marriage, the Petitioner has a burden of proving one or more of the factors listed under Section 2(1)(a) -(f) of Act 367.

From the evidence, the Parties have not lived together as man and wife since the year 2017. Section 2(1)(c) of Act 367 provides as follows:

“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:

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;”

The instant Petition was filed in 2022 and according to Petitioner's evidence, Respondent deserted her in the year 2017.

In the case of **MENSAH V. MENSAH [1972] 2 GLR 198**, it was held by Hayfron-Benjamin as follows:

“Under Act 367, s. 2(2) the court has to inquire into the facts alleged by the parties. However, the court does not have to hold such inquest in all cases. Where the evidence of a petitioner stands uncontradicted an inquest is not necessary unless it is suspected that the evidence is false or the true position is being hidden from the court.”

Since Petitioner's evidence stands uncontradicted though Respondent was duly served with all processes including hearing notices, an inquest is not necessary. I find that at least one ground has been established in proof of the breakdown of the marriage. Based on the evidence, I am satisfied under section 2(3) of Act 367 that the marriage between the Parties has broken down beyond reconciliation. I therefore decree that Customary Marriage celebrated in Winneba on 25th October, 2014 and registered at the Effutu Municipal Assembly on 3rd November, 2014 is hereby Dissolved.

In view of the fact that Petitioner has been the primary caregiver of the only issue, custody of the issue is granted to the Petitioner with reasonable access to the Respondent. As the age of majority is eighteen years, relief “iii” shall be granted in the following terms:

iii. Respondent is to pay maintenance of One Thousand Five Hundred Cedis (GH¢1,500.00) to Petitioner each month and is to provide a decent accommodation for the issue and Petitioner until the issue turns eighteen (18) years old.

In view of the fact that processes were served on Respondent outside the jurisdiction via DHL, I shall award costs of Four Thousand Ghana Cedis (GH¢4,000.00) in favour of Petitioner against the Respondent.

(SGD.)
H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN