

IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI ON
THE 3RD DAY OF NOVEMBER, 2023, BEFORE HER LADYSHIP AFIA N. ADU-
AMANKWA (MRS.) J.

SUIT NO. E6/6/22

SICCA GIUSEPPE

PETITIONER

VRS.

AMA TAKPUIE

RESPONDENT

JUDGMENT

By a petition issued on 28th October 2021, the petitioner seeks the following reliefs:

- “a. A decree of nullity annulling the marriage between the Petitioner and the Respondent on 10th January 2004 on grounds of fraud, misrepresentation and contrary to law.
- b. An order nullifying all consequential acts of the parties flowing from the said marriage as null and void.
- c. An order setting aside the judgment of the Circuit Court, Takoradi dated 18th May, 2021 obtained by the Respondent in respect of properties solely financed by the Petitioner but in the joint names of the parties as matrimonial property consequent on the null marriage.
- d. Any other relief the Court deems fit to award under the circumstances”.

The petitioner, an Italian national, married the respondent, a Ghanaian, on 10th January 2004 in Italy. They relocated to Takoradi shortly after the celebration of the marriage.

There are no issues between the parties. It is the petitioner's case that the ordinance marriage between him and the respondent is a nullity. He contends that at the time of the marriage, the respondent was customarily married to one Anthony (Tonny) Wobir, hence the present action to annul the marriage.

In response to these allegations, the respondent has denied her marriage to Anthony Wobir. She explained in her answer that Anthony Wobir was the father of her son.

BURDEN OF PROOF

In civil suits such as this one, it is trite that the petitioner bears the burden to lead evidence to prove all that he asserts in his petition for the annulment of the marriage. By the principle of proof in civil suits as expounded by Kpegah JA (as he then was) in **Zambrama vrs. Segbedzie [1991] 2 GLR 221**, the petitioner must prove the averments contained in his pleadings to the standard required by law. The burden of persuasion, which rests on a party, has been defined in **section 10 (1) of the Evidence Act, 1975 (NRCD 323)** as follows:

"...the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court".

The petitioner is obliged to establish the existence or non-existence of the facts he alleges by a preponderance of the probabilities. In discharging this onerous burden, the petitioner is required under section 11(4) of NRCD 323 to produce sufficient evidence which, on the totality of the evidence, leads a reasonable mind to conclude that the existence of the facts is more probable than its non-existence.

MERITS

A marriage celebrated under the Marriage Act 1884-1985, Cap 127, may be valid, void or voidable. A void marriage is a marriage which is so defective that the law regards it as

being non-existent. It is a marriage that does not comply with the substantive and procedural requirements stipulated under Part Three of Cap 127. A decree is not needed to set aside a void marriage. This is because a marriage never existed, so there is nothing to set aside. However, for purposes of applying for ancillary reliefs, which the petitioner seeks and to prove to the world that the marriage was not valid, a party to a void marriage may apply for a decree to declare the marriage void. The petitioner contends that his marriage to the respondent is a nullity, given that the respondent was lawfully married to one Anthony Wobir at the time of the marriage. A successful prosecution of this claim would entitle the petitioner to a nullity decree as being lawfully married before the date of marriage is one of the circumstances under common law and Cap 127 that would render a marriage void.

The petitioner testified that he was an Italian national and a pensioner, having retired from active service in Italy, whilst the respondent was a Ghanaian businesswoman and ordinarily resident in Italy. He married the respondent in Italy on 10th January 2004. After the marriage, they lived in Italy briefly and relocated to Takoradi, Ghana, in February 2004, where he has since resided. Following their relocation to Ghana, he acquired a house at Ituma, Inchaban, in their joint names. The respondent persuaded him that acquiring the property in their joint names was the only way he could get his resident permit, so he agreed with the respondent out of his respect for her as his wife. The petitioner further testified that at all material times prior to the marriage, whilst in Italy, he observed the presence of one Anthony (Tonny) Wobir in the respondent's life. Following several enquiries about Anthony (Tonny) Wobir, the respondent told him that Anthony (Tonny) Wobir was her family relative. Recently, he learned that Anthony Wobir was the respondent's husband and not her family relative, as she made him believe. He had discovered from the respondent's relatives that Anthony Wobir was the respondent's husband, having been customarily married to him under Ghanaian

customary law sometime in 1980, prior to her marriage to him in Italy on 10th January 2004. He recounted that in 2004, when they first came to Ghana, a man called him asking about the whereabouts of his wife Ama (respondent), but he ignored the call because he knew he was the respondent's husband. The respondent and Anthony had a son named Anthony Kojo Wobir. They had also jointly acquired a property at Funko near Apowa, in the Western Region of Ghana, where she resided with their son whenever the respondent was in Ghana. The petitioner further testified that several trips by the respondent back to Italy after their relocation to Ghana were to visit and stay with her customary law husband, Anthony (Tonny) Wobir, currently resident in Italy. Recently, the respondent had unsuccessfully attempted to dissolve her customary marriage with Anthony (Tonny) Wobir when he learned of her deceit and fraud.

Due to some misunderstanding, the respondent instituted an action at the Circuit Court, Takoradi, against him and one other for a declaration that she was a joint owner of the various properties he acquired during the marriage and shipped to Ghana upon their relocation. The respondent obtained judgment against him on 18th May 2021.

PW1, Frank Kweku Agyepong, the respondent's elder brother, corroborated the petitioner's evidence and confirmed the respondent's marriage to Anthony Wobir. He testified that in 2004, the respondent introduced the petitioner to him as her business partner whom she had brought to Ghana to do business with. At the time, the respondent sought his assistance to lodge the petitioner in his premises while they looked for accommodation. He obliged the respondent and accommodated the parties at his house at H/No.9 Type Adiembra, Sekondi, for about ten months. When the parties lodged with him, their head of family, Major Newton Takpuie, visited them and, upon seeing the petitioner with the respondent, inquired from the respondent who the petitioner was. She told him that the petitioner was her business partner. Their head of family asked the respondent because the family knew her to be married to Tonny Wobir since 1979. Tonny

Wobir was a resident of Italy, and he had a son named Anthony Kojo Wobir with the respondent.

PW1 recounted in his testimony that in 1979, when Tonny Wobir returned from Italy, his family learnt that he had impregnated the respondent. In line with the customs and traditions of their respective families, Tonny Wobir's family came to perform the customary marriage ceremony of the respondent to their family in 1980. He was present at the customary marriage ceremony. Before the marriage, Tonny's mother, together with two other persons, met with their family for the customary requirements for the marriage, but they were told to wait until the respondent had delivered her baby. After the marriage ceremony, the respondent joined Tonny Wobir in Italy. At the time, her child was about five years old. Before leaving, the respondent left the child in his care and that of his late mother. To the best of his knowledge, the respondent had lived in Italy with her husband, Tonny Wobir, for all these years until he learned of this petition.

The witness further testified that after the petitioner left his house with the respondent in 2005 to live at Ituma, on two different occasions, she returned from Italy but did not go to the respondent's house at Ituma but lodged with him. On both occasions, after selling the goods she brought from Italy, the respondent returned to Italy without staying at the respondent's place at Ituma. He once asked the respondent why she had brought the petitioner to Ghana but had abandoned him to return to Italy and had refused to look out for him on those two occasions she visited Ghana. However, the respondent warned him not to interfere in her affairs. To the best of his knowledge, the customary marriage between the respondent and Tonny Wobir still subsisted as there had been no dissolution of that marriage. According to him, if any such dissolution had been done, he would have been aware of it being the eldest surviving child among his siblings, including the respondent.

The respondent testified through her attorney, Ben Korankye. He testified that the respondent was his adoptive daughter. According to him, the parties got married under the ordinance in Italy. The respondent was ordinarily resident in Italy for about forty (40) years before returning to Ghana with the petitioner. He denied that the petitioner solely acquired the property of the parties at Ituma and that apart from financially contributing to the acquisition of the house and other properties, the respondent had worked with the labourers, carried water, mortar and sand without any fees to ensure that the house was put up in time for her and the petitioner to move into occupation.

Regarding the respondent's marriage to Anthony Wobir, he testified that the respondent worked as a caretaker of the petitioner's mother at the petitioner's house for ten (10) years and lived there with the petitioner and his mother. The parties met Anthony Wobir once at the supermarket, where the respondent introduced Tony to the petitioner as the father of the respondent's son. The attorney denied, as untrue, the petitioner's allegation that the respondent introduced Anthony Wobir to the petitioner as a family member. He also denied that the respondent instituted an action at the Circuit Court, Takoradi, against the petitioner and another for a declaration of title to property. He explained that the action aimed to access her matrimonial home, which the petitioner and his paramour had taken over. He explained that although Anthony Wobir was the father of the respondent's son, the two had never been married. The respondent had been in Italy and, for thirty (30) years, worked in the home care service and was very financially supportive of the petitioner in coming to Ghana and acquiring all the properties they acquired. He further denied that the respondent had made several trips to visit Anthony Wobir but travelled to London to work.

The petitioner claims that the respondent was married to Tonny Wobir at the time of his marriage to her. The respondent denies this allegation, contending that Tonny Wobir is the father of her child, Anthony K. Wobir and not her husband. It is the petitioner's word

against the respondent's. However, I am more inclined to believe the petitioner, given that his evidence was corroborated by no less a person than the respondent's elder brother. The respondent's evidence was uncorroborated. The evidence of PW1 is very material. Even though, ordinarily, it was expected of him as the respondent's brother to have given evidence in her favour, he testified to things within his knowledge. He was emphatic in his testimony that the respondent was married to Tonny Wobir. His evidence that he was present during the customary marriage ceremony of the respondent to Tonny Wobir was not challenged by the respondent. According to him, the marriage had not been dissolved as he would have known of such dissolution given his status as the first child of his parents. I have no reason to doubt his evidence. On the other hand, the respondent's attorney did not appear to be seised of the facts he had testified to. Even though he testified that the respondent was his adoptive child, he knew next to nothing about her. He had never met Tonny Wobir or his son, Anthony Wobir. He did not know the supermarket where the parties met Tonny Wobir, yet he was able to testify to it. Unsurprisingly, he hardly knows anything about the respondent as he only adopted her in 2017 and may hardly know anything about her life before her adoption.

On the whole, I find as a fact that the respondent is still married to Tonny Wobir. I am also satisfied with the evidence that before the petitioner purported to contract the monogamous marriage with the respondent, there was a subsisting customary marriage between the respondent and Tonny Wobir. I hold, therefore, that by the laws of this country, the subsequent monogamous marriage with the respondent was null and void – vide section 42 of the Marriage Ordinance, Cap.127 (1951 Rev.).

The petitioner further prays for an order nullifying all consequential acts of the parties from the marriage. I am unable to grant this relief, given its vagueness. The petitioner has failed to particularise what those consequential acts are. It is trite that a judgment must have clarity on the exact relief that is granted by the court so that it may not create further

complications or difficulty in execution. Without clear directives regarding the consequential acts, the court is disabled from granting same, and hence, the relief is dismissed.

The petitioner seeks to set aside the judgment of the Circuit court dated 18th May 2021. He contends that based on his marriage with the respondent, the Circuit Court, Takoradi granted her access to his property as his wife. Given that the court's judgment was premised on the marriage, its subsequent nullification rendered it moot. The respondent's attorney tendered the judgment of the Circuit Court as exhibit "2". Per exhibit "2", the respondent, as plaintiff therein, sued the petitioner as 1st defendant and one other, a house-help who lived in the matrimonial home with the respondent. The reliefs sought by the respondent in that suit were the ejection of the 2nd defendant from the matrimonial home, access to the matrimonial home and an order restraining the 1st defendant from disposing of joint matrimonial properties. The court found as a fact that the respondent was entitled to an equal or half share of the properties adjudged to have been jointly owned by the parties, including the matrimonial home. Based on this finding, the court granted her relief of access to the matrimonial home.

Counsel for the petitioner has not been able to cite any law granting this court, which is exercising neither an appellate nor supervisory jurisdiction, the power to set aside the judgment of a court that has been regularly obtained. In any case, the trial judge did not make a finding of fact that the petitioner solely financed the acquisition of the matrimonial home to necessitate the setting aside of the judgment by virtue of the annulment of the marriage. It was the respondent's case that she jointly acquired the properties with the petitioner. She could jointly own the property with the petitioner not necessarily by virtue of her marriage to him but by her substantial contribution towards its acquisition.

In consequence, jurisdiction is not vested in the court to set aside the judgment of the Circuit Court dated 18th May 2021.

(SGD.)

H/L AFIA N. ADU-AMANKWA (MRS.)

JUSTICE OF THE HIGH COURT.

COUNSELS

Amy Bondzie-Hanson (holding Constantine Kudzedzi's brief) appears for the Petitioner.

Philip F. Buckman appears for the Respondent.