

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA-GHANA, A.D. 2004

CA. 25/2003
12TH FEBRUARY, 2004

CORAM –
FARKYE, JA
ANINAKWAH, JA
ADDO, JA

ABDULAI KARDO] ... PLAINTIFF/APPELLANT

VRS.

MUMUNI BILLA] ... DEFENDANT/RESPONDENT

J U D G E M E N T

FARKYE, JA -

This appeal is in respect of the judgment of the Circuit Court, Sekondi delivered on the 6th September 2002.

The facts of the case are that one Samba Kardo, now deceased, was a tenant of the State Housing Unit, H/No. B. 10 South Effiakuma Estate Takoradi.

Samba Kardo had two children: the Plaintiff and Bintu Mumuni Kardo deceased. During the life time of Samba Kardo, the State Housing Company wrote to all the tenants living in its units and offered the units to the tenants for sale. Samba Kardo who was old, weak and ill signed an affidavit to the effect that he wanted his daughter, Mumini Bintu Kardo to buy the unit. The house was therefore sold to Mumuni Bintu Kardo who paid the selling price. Mumuni Bintu Kardo allowed her father Samba Kardo to stay in the house until his death. The Defendant/Respondent married the said Bintu Kardo and the two lived together in the house of the Defendant/Respondent till Mumuni Bintu Kardo

died. The Defendant/Respondent who was living in P.W.D. quarters allowed the Plaintiff/Appellant to live in the house No. B. 10 Effiakuma Estate. When the Defendant/Respondent was retrenched from P.W.D. he went to live in house No. B. 10 Effiakuma Estate as the surviving widower of his deceased wife.

The Plaintiff/Appellant took an action claiming the house No. B. 10 Effiakuma Estate, judgement was given against the Plaintiff/Appellant hence this appeal.

The Plaintiff/Appellant filed three grounds of appeal namely:

- (a) The judgment is against the weight of evidence led at the trial.
- (b) The trial judge erred in holding that the fact that Bintu Mumuni Billa owned H/No. B. 10 South Effiakuma Takoradi was not in dispute.
- (c) The trial judge erred in holding that there was a valid customary marriage celebrated between the Defendant and Bintu Mumuni Billa.

At the close of the suit, the parties agreed that the house in dispute ie. House No. B. 10 South Effiakuma Estate fell under the estate of Madam Bintu Mumuni.

The only substantive issue that remained to be resolved was whether or not the Defendant/Respondent customarily married Madam Bintu Mumuni.

The Plaintiff/Respondent throughout the trial maintained that the Defendant/Respondent never married the said Bintu Mumuni who was his sister but he admitted that the Defendant/Respondent lived with Mumuni Billa Bintu.

The Plaintiff/Appellant in his evidence-in-chief stated that the Defendant/Respondent never bought Kola nuts for the Mallams and the chiefs in the Community in which he and Defendant/Respondent lived for the performance of the marriage of Mumuni Bintu.

The Defendant/Respondent on the other hand led evidence to show that upon meeting Mumuni Bintu, deceased, he (Defendant/Respondent) proposed marriage to her. The Defendant/Respondent approached Bintu's father now deceased, and asked for the hand of Bintu. He later presented kola nuts and money to the father of Bintu as custom of

Malians demanded. After this Bintu came to the house of the Defendant/Respondent and co-habited with him.

The Defendant/Respondent finally performed the Moslem wedding known as “Amariya”, which sealed the marriage between the Defendant/Respondent and Bintu Mumuni deceased.

The Defendant/Respondent was never challenged under cross-examination on any of these pieces of evidence led by the Defendant/Respondent.

The claim by the Plaintiff/Appellant that the Defendant/Respondent never bought kola nuts for the Mallams and the chiefs in the Community in which he and the Defendant/Respondent lived is not reasonable because if a man wanted to marry a woman the custom was performed before the father of the woman. Kolanuts and money would be given to Samba Kardo, the father of Bintu Mumuni and not to the Mallans and chiefs of the Community.

Bintu Kardo who was originally known by that name given to her by her late father became known as Bintu Mumuni which name derived from the Defendant/Respondent who is known as Mumuni Billa. The father of the Plaintiff/Appellant used this name Bintu Mumuni in his affidavit to the State Housing /corporation. Exhibit “1” paragraph 3 of the Affidavit of Samba Kardo stated as follows: “That Madam Bintu Mumuni is my daughter.” The question to ask is if Madam Bintu Mumuni was not married to Mumuni Billa why then did the Father of Bintu Kardo use the name Madam Bintu Mumuni in Exhibit 1?

The logic answer is that Madam Bintu Kardo was married to Mumuni Billa and that was the reason the father Kardo used the name Madam Bintu Mumuni in Exhibit 1.

under cross-examination P.W. 1 was asked the following questions:

Q: I am suggesting to you that when someone wishes to marry a daughter he has to perform customs to the father first.

A: They will inform the father before he invites the chief.

Q: Customs will first be performed to the father.

A: Yes.

Q: Now if there is to be a divorce it is the father who has to return those items to
The husband.

A: Yes.

Clearly the above quoted questions and answers show that the Defendant/Respondent gave kola nuts and money to the father of Mumuni Bintu for the marriage of Mumuni Bintu.

For a marriage to be lawful there must be the consent of the man and the woman who are of age to become husband and wife. In other words marriage must be a voluntary consent of a man and a woman to live together as husband and wife. All other ceremonies and expenses pertaining to the marriage are superfluous.

The agreement of the parties to live together as husband and wife and also the consummation of the marriage by cohabitation are the essentials of a valid customary marriage.

The Plaintiff/Appellant in obtaining Letters of Administration to administer the estate of the late Madam Bintu Kardo used the name Madam Bintu Mumuni. See Exhibit "A". This goes to confirm that the Defendant/Respondent married Madam Bintu Mumuni. From the above the learned trial Judge was right in his judgment that the Defendant/Respondent married Madam Bintu Mumuni during the life time of Madam Bintu Mumuni.

Therefore the judgment was not against the weight of evidence adduced at the trial and the learned trial Judge did not err in holding that there was a valid customary marriage celebrated between the Defendant/Respondent and Bintu Mumuni Billa deceased.

Accordingly all the grounds of appeal fail. The appeal is dismissed and the judgment of the lower court confirmed.

Costs of ₦2 million for the Defendant/Respondent against the Plaintiff/Appellant..

Mr. S.Adinkrah for Mr. Amua-Sakyi for the Plaintiff/Appellant.

Mr. Bodza-Lumor for the Defendant/Respondent..

S.T. FARKYE
JUSTICE OF APPEAL

I agree

R.T. ANINAKWA
JUSTICE OF APPEAL

I also agree

E.A. ADDO
JUSTICE OF APPEAL