IN THE CIRCUIT COURT HELD AT KUMASI ON FRIDAY 27TH JANUARY 2023
BEFORE H/H GLORIA MENSAH – BONSU (MRS)

SUIT NO. A4/99/2022

ABIGAIL YEBOAH AMOAH **PETITIONER**

VRS

MATTHEW OPOKU **RESPONDENT**

JUDGMENT:

The Petitioner has filed this petition for a decree of nullity of her ordinance marriage CAP 127 with the respondent herein. The said ordinance marriage was celebrated on the 2nd day of August 2020 at the Presbyterian Church of Ghana, Mampong, in the Ashanti Region of the Republic of Ghana. wherefore the petitioner prayed for the following reliefs:

1. That the marriage be declared nullity under section 13 (2) of the MCA.
2. That the marriage be annulled.
3. An order to recover land documents and all belongings of the petitioner from the respondent.
4. Alimony,

The respondent entered appearance denied each and every allegation levelled against him and further prayed for dissolution of the marriage instead of a decree of nullity. the respondent further prayed that the court ignore all the reliefs the petitioner is seeking

The brief facts of the petitioner's case are that the petitioner is a teacher and the respondent a cocoa purchasing clerk, that the parties got married under the ordinance. That after the marriage the parties never lived as husband and wife. That the petitioner amongst others never maintained her after the marriage, persistently subjected her to incessant verbal abuse and violent disrespectful behaviour without any provocation. That the petitioner impregnated another woman called Sarah Adjabeng during the time of the preparation for marriage without the knowledge of the petitioner. That the

said Sarah gave birth to the petitioner's son a month after their marriage and the petitioner and his mother went to name the said child as Benjamin Osei Adusei Opoku. That the repondent took all their wedding gifts and money to the said Sarah for her upkeep and also lied to the petitioner that he borrowed an unspecified amount of money from his work place to support their wedding. For this and many more, it is the case of the petitioner that the respondent has caused her much anxiety, distress and embarrassment when he knew another woman was pregnant for him and yet went ahead with the ordinance marriage.

The respondent's case is that the parties co habited at Bohyen so it is never true that parties did not stay together after the marriage. And that the petitioner understands peculiar circumstances surrounding the birth of the child so she should not hide under that reason as the major reason for the breakdown of their marriage. That the marriage is breaking down as a result of the petitioner's own bad conduct and her mother's unnecessary interference in their marriage. The respondent avers that by virtue of the fact that the other woman got pregnant long before their marriage the petitioner cannot describe the marriage between them as voidable or nullity.

The petitioner waived her 3rd and 4th claim and therefore the only issues before the court is;

1. Whether or not the marriage is voidable and therefore a decree of nullity be pronounced.

Determination of the issue;

The law is trite that the party who asserts a fact assumes the responsibility of proving same. The burden of producing evidence as well as the burden of persuasion is cast on the petitioner herein. The petitioner therefore bears the burden of prove to produce the evidence of facts in issue that has the quality of credibility to enable the court grant her claim, short of which her claim may fall. It is trite law, that matters that are capable of proof must be proven by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact is more probable than its non-existence. See **Section 11(4) OF NRCD 323, Ackah v Pergah Transport Ltd & ORS [2010] SCGLR 728 and Gihoc Refrigeration & Household Products Ltd v Hanna Assi [2005-2006] SCGLR 458**.

Determination of issue

Whether or not the marriage is voidable and can be declared a nullity by the court. Section 13 of the Matrimonial Causes Act, 1971, Act 367 provides as follows;

Section 13—Nullity.

(1) Any person may present a petition to the court for a decree annulling his marriage on the ground that it is by law void or voidable (in this Act referred to as "a decree of nullity").

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

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or

(b) that at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or

(c) that the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(d) that the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.

(3) The court shall not grant a decree of nullity in a case falling within paragraphs (b), (c) or (d) of subsection (2) unless it is satisfied that—

(a) the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and

(b) proceedings were instituted within a year from the date of the marriage; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.

(4) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

My understanding of the law as provided under section 13(2)(c) is that a marriage can be said to be voidable where the respondent was at the time of the marriage pregnant by some person other than the petitioner; the law stipulates that the respondent should be pregnant by some other person other than the petitioner, so the question is who can be pregnant is it a man or a woman? The answer definitely is a woman so the provision as envisage by the law makers arises when the respondent at the time of the marriage is carrying another man's child without the petitioner's knowledge, it is clear that the provision refers to instances where the respondent is a woman carrying a child out of wedlock without the petitioner's knowledge. In my opinion the law clearly did not make provision for instances where the respondent is a man and has impregnated another woman other than the petitioner. In addition to section 13(2) the petitioner has the dual duty to not only prove the existence of the circumstances in 13(2) but also required by law to prove that the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and proceedings were instituted within a year from the date of the marriage; and also marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.

In applying the present facts to the law, the petitioner has been unable to satisfy the requirements of the law that makes a marriage voidable, the present circumstances in which the respondent had a child just after the marriage and some other woman gotten pregnant for the respondent does not qualify under the circumstance that section 13 of MCA had in mind to make a marriage voidable.

In that regard I find that I am unable to declare the marriage a nullity on the grounds presented by the petitioner herein due to the fact that he does not fall under the dual requirement. So granted that the petitioner's circumstance fell under those envisioned by the law maker she would have been disqualified by her inability to satisfy the other ambit of the law.

In the circumstance the marriage can only be dissolved and not annulled. From the evidence on record the marriage has now subsisted for more than two years so the

court can make a decision as to whether or not the marriage has broken down beyond reconciliation.

A valid ordinance marriage may be brought to an end or dissolved on the sole ground that the marriage has broken down beyond reconciliation as provided under **Section 1(2) of the Matrimonial Causes Act, 1971(Act 367).**

The petitioner seeking to dissolve the marriage on the sole ground that the marriage has broken down beyond reconciliation shall establish any one or more of the six facts or any one of the 6 marital offences provided under **Section 2 of Act 367,** in order to succeed.

The petitioner in this case alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him.

First of all, I would like to evaluate the evidence to see if the petitioner has been able establish unreasonable behaviour on the part of the respondent. Unreasonable behaviour is a conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger. According to this definition actual injury does not have to be establish, mere apprehension of such injury is enough so far as it has led to the breakdown of the marriage beyond reconciliation. The conduct however must be grave and weighty and must make living together impossible.

In establishing unreasonable behaviour section 2(1) b of MCA implies that the petitioner must prove two things

1. The conduct instituting the unreasonable behaviour on the part of the respondent.
2. The fact that he or she cannot reasonably be expected to live with the respondent as a result of the bad behaviour. See the case of **Andrew v Andrew.**

In the present case the conduct complained of by the petitioner has been stated above in the case of the petitioner and that of the respondent.

The respondent did not cross examine the petitioner and the counsel for the petitioner also did not conduct any extensive cross examination probably because the failure of the respondent to cross examine connotes admission. See the case of

The burden of prove lies with the petitioner herein and the test to be applied is an objective test which is a question of fact for the court to decide not the petitioner. In the case of **Ansah v Ansah [1982] GLR 1127-1133** the court stated as follows; the test under section 2(1)b was whether the petitioner can reasonably be expected to live with the respondent in spite of the latter's behaviour. The test was therefore objective but the answer has to be obviously related to the circumstances of the petition in question, that had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious since mere trivialities will not suffice. The law enjoins the court in assessing such a conduct, to take into account the character, personality, disposition and behaviour of the petitioner as well as the behaviour of the respondent as alleged and established in the evidence. The conduct might consist of one act if of sufficient gravity or of a persistence course of conduct or series of acts of different kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so. The evidence on record shows that there is lack of trust, unity and respect in the marriage.

And upon a careful evaluation and extensive analyses of the evidence adduced by both parties as a whole, I find that sufficient evidence has been adduced to establish that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

The court having considered the evidence before me in its entirety, is satisfied therefore that the ordinance marriage CAP 127 subsisting between the parties has broken down beyond reconciliation and same is hereby dissolved forthwith.

I make no order as to cost.

H/H GLORIA MENSAH–BONSU(MRS)
(CIRCUIT COURT JUDGE