

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 10TH DAY OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/40/23

PATRICIA ANSONG ----- PETITIONER

VRS.

KWADWO OKYERE ----- RESPONDENT

PARTIES

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

Petitioner, a Marketer and the respondent, a Businessman got married under Part III of the Marriages Act (1884-1985) Cap 127 on 7th June, 2022, at the Tema Metropolitan Assembly. Thereafter, the parties cohabited at *House No. A/45 West End Road, Kasoa*. There is no issue in the marriage however, the respondent has children from a previous marriage. On 17th November, 2022, the petitioner filed the instant petition for annulment pursuant to leave granted by the court on 11th November, 2022, alleging that the marriage celebrated between the parties has broken down beyond reconciliation and praying the court for an order for annulment of the marriage contracted on the 7th June, 2022 under the Ordinance Marriage Cap 127 at the Tema Metropolitan Assembly.

The petitioner avers that the marriage has not been consummated since its inception. The petitioner alleges that the respondent is impotent and all efforts made to treat him have proven futile. According to the petitioner, on

the night of the honeymoon, she realized that the respondent cannot perform his conjugal rites as a man. This created misunderstanding between the parties which made the petitioner move back to her parents' house. That the respondent has behaved in a manner that the petitioner cannot reasonably be expected to live with him as husband and wife for which reason they have been living separately. The petitioner further avers that there is no effective communication between them and as a result, they have agreed to go their separate ways. Additionally, all efforts made by members of their families to resolve their differences have proved futile because the petitioner can no longer live with the respondent under deception. That the respondent has been untruthful from the onset of their relationship. In the circumstances, the marriage has broken down beyond reconciliation

LEGAL ISSUE

Whether or not the marriage celebrated between the petitioner and the respondent has not been consummated owing to the wilful refusal of the respondent to have sexual intercourse with the petitioner.

ANALYSIS

Under **section 13(1) of the Matrimonial Causes Act, 1971(Act 367)**, a person may present a petition to the Court for a decree of nullity for annulling a marriage on the ground that it is by law void or voidable. **Section 13(2)** further states some of the circumstances under which a marriage will be deemed void or voidable in the following terms;

“(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 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."*

The petitioner in the instant petition for annulment relies on **section (13)(2)(a)** to contend that the Ordinance marriage celebrated between herself and the respondent has not been consummated owing to the wilful refusal of the respondent to consummate it. The principle of law is that he who alleges must prove and the balance of proof is on a preponderance of probabilities only. Thus, the petitioner bears the burden to prove that there has been no sexual intercourse between the parties after the marriage and secondly that the refusal on the part of the respondent to consummate the marriage is without just cause.

LexisNexis Glossary defines consummation as:

"The first act of sexual intercourse between a couple following their marriage. A marriage can be rendered null and void if it has not been consummated whether as a result of one party's wilful refusal to consummate or inability to do so."

In the case of **Horton v. Horton** [1947]2 All E.R at 871, Lord Leweitt defined the term "wilful refusal" in the following terms;

"The word connote, I think, a settled and definite decision come to without just excuse, and, in determining whether there has been such a refusal, the judge should have regard to the whole history of the marriage"

Also, in the case of **Dickinson v. Dickson** [1913] p.198 the term wilful refusal was defined as follows:

“By wilful refusal I do not mean a mere temporary unwillingness due to a passing phase, or the result of coyness a feeling of delicacy, affected or real, or nervous ignorance, care and kindness, but wilful, determined and steadfast refusal to perform the obligations and to carry out the duties which the marriage contract involves”

The petitioner testified on oath that after the celebration of the marriage, she cohabited with the respondent in his house at Kasoa. According to her testimony, the respondent consistently refused to have sexual intercourse with her. When she enquires from the respondent to know if there was a reason, all he would say is that he is just tired or not in the mood and that has always been his excuse. Based on that she suggested that they seek medical help for the condition but he refused on countless occasions. She invited their parents and they requested to see the respondent over the issue but on countless occasions, the respondent did not turn up. She left to her parents' house hoping that the respondent will come and see her but he failed to do so. The petitioner further testified that the respondent had children before the marriage but concealed this fact from her only for her to find out later. Based on that, she prayed the court to grant the dissolution of the marriage.

When the petitioner filed the motion on notice for leave to issue divorce petition within two years of marriage, the respondent did not oppose the application. When the petition was filed, the respondent entered appearance and consented to the dissolution of the marriage. The respondent failed to attend the trial to challenge the petitioner on the allegation. Consequently, there is no challenge to the evidence of the petitioner that the marriage between herself and the respondent has not been consummated. There is a dearth of authorities on wilful refusal to consummate a marriage in Ghana

but the courts have had the occasion to pronounce on the importance of sexual intercourse not only immediately after the marriage but also throughout the marriage. In the case of **Opoku-Owusu v. Opoku-Owusu** [1973] 2 GLR 349-354 at page 351 the court held that:

“The mutual right to intercourse after the marriage has been consummated continues during marriage but this right must be reasonably exercised. One spouse is not bound to submit to the demands of the other if they are unreasonable and inordinate or are likely to lead to a breakdown in health. On the other hand a wilful refusal by one spouse to have sexual intercourse may entitle the party suffering to leave if in all the circumstances of the case it can properly be “regarded as grave and weighty and if it has adverse effect on the health of the other spouse.”...I think it is right to say that the spouse who suffers as a result of an unreasonable insistence on sexual intercourse will be entitled to leave the other.”

On record, there is no justification for the refusal of the respondent to have sexual intercourse with the petitioner. I therefore find the conduct of the respondent in refusing to have the marriage consummated to be wilful. Accordingly, I declare the marriage celebrated between the petitioner and the respondent to be void.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent is null and void owing to the wilful refusal of the respondent to consummate the marriage. I therefore grant the petition for nullity and enter judgment for the petitioner in the following terms.

1. I hereby grant a decree for the nullification of the marriage celebrated between the petitioner and the respondent on 7th June, 2022 at the Tema Metropolitan Assembly.
2. The petitioner shall present the original copy of the marriage certificate No. *ROM/ 292/2022*, for cancellation by the Registrar of the Court.
3. No Order as to costs.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)