IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 2ND DAY OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/73/23

IVY ADJOA TETTEY ----- PETITIONER

VRS.

ANDREWS KWEKU TETTEY ----- RESPONDENT

PARTIES ABSENT

EVANS RACAHAM ABBEYQUAYE, ESQ. FOR THE PETITIONER PRESENT

JUDGMENT

FACTS:

The petitioner filed the instant petition for annulment on 30th January, 2023 against the respondent herein alleging that the Ordinance marriage celebrated between herself and the respondent on 21st July 2012 at the Church of Pentecost Osu, is null and void and of no legal effect and prays the court for the sole relief of the annulment of the Ordinance marriage celebrated between the parties.

The gravamen of the case of the petitioner as gleaned from the petition is that the petitioner, then a spinster, got married to the respondent then believed to be a bachelor customarily and later converted their customary marriage which is potentially polygamous into a monogamous marriage under **Part III of the Marriages Act (1884-1985) Cap 127** on the 21st day of July, 2012 at the Church of Pentecost, Osu in Accra. After the marriage, the parties lived

together at Darkuman in Accra and Dahwenya within the Prampram District in the greater Accra Region of Ghana. There are two children of the marriage namely; Jaden Elikem Tettey and Elise-Odelia Keni Tettey, aged 8 years and 5 years respectively

The petitioner states that in the year 2018, the parties decided to go on vacation to the United States of America. In the process of applying for the visa, she discovered that the respondent was already married to another woman and that the marriage was subsisting at the time the parties applied for the visa. The petitioner confronted the respondent about his earlier marriage and he confirmed that he was indeed married to one Nana Akua Afriyie Arthur in the year 2003 and that the said woman left the matrimonial home a long time ago. The petitioner advised the respondent to take steps to remedy the situation by legally dissolving his earlier marriage to enable them regularize their marriage. According to the petitioner, since 2018, the respondent has failed and or refused to take legal steps to dissolve his earlier marriage to the said Nana Akua Afriyie Arthur. She therefore contends that the marriage celebrated between the parties is null and void and of no legal effect.

The respondent entered appearance on 21st February, 2023 and filed an answer on the same date in which he admitted the fact of the marriage between the parties. In response to the allegation that the respondent was married to someone else at the time of their marriage, he states that during his National Service days in the year 2003, he got married to the said Nana Akua Afriyie Arthur and the union between them lasted for only three months. According to him, his duty post was at Juaso and the distance between them created a challenge in the marriage. As a result, they separated for a long time with no form of contact or communication between them. The respondent

states that when the petitioner prompted him about the subsistence of his earlier marriage, he made efforts in contacting the said woman through her sister but to no avail. He also visited the family house of the lady in issue at Gbawe but he was told they had relocated and their whereabouts was unknown. After the fruitless search for the said Nana Akua for eight years, he got married to the petitioner herein. According to him, the only time his earlier marriage became an issue was when he applied for visa and the information came out and all efforts made to trace his first wife have proved futile. According to him, although per the law the marriage is null and void, they have been happily married with two kids without any issue. According to him, there is room for reconciliation and regularization but if the petitioner insists, the court can grant her the decree of nullity.

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 annulling a marriage on the ground that it is by law void or voidable. By **section 13(4)**, a void marriage shall not be regarded as valid even when a court has not granted a decree of nullity and nothing can validate a void marriage. Such a marriage is void and it is not necessary to obtain a court order decreeing the marriage to be void. In the case of **De Reneville v. De. Reneville,** Greene M.R. described a void marriage as follows:

"A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be treated by both parties to it without the necessity of any decree annulling it."

One of the circumstances under which a marriage is regarded as void is where one of the parties to an ordinance marriage, prior to the celebration of the marriage, was in a subsisting valid marriage. In the case of **Genfi II v.**

Genfi II [1964] G.L.R. 548 HC, the petitioner was married to one Rose Amoah under customary law but subsequently contracted a marriage under the Marriage Ordinance with the respondent. Subsequently, the petitioner filed a petition for a declaration that the marriage celebrated under **Cap 127** was null and void because at the time of the celebration, there was a valid customary marriage in existence between the petitioner and Rose Amoah. **Sowah J** (as he then was) held that the marriage under Cap 127 was null and void.

The petitioner in the instant case repeated her averments contained in the petition for annulment on oath that she discovered in the year 2018 through visa application processes that the respondent had a subsisting marriage between himself and one Nana Akua Afriyie which was celebrated prior to the celebration of their ordinance marriage. In support, she tendered in evidence **Exhibit "B"**, which is a marriage certificate dated 18th January, 2003 with certificate number *ROM/0047/2003* between Tetteh Andrew Kwaku, the respondent herein and Nana Akua Afriyie Arthur at the then Tema Municipal Assembly Chamber.

The respondent also repeated his averment on oath and admitted that indeed he was married to the said woman but they had been separated for so many years and they had each moved on with their lives. Consequently, because of the separation, he thought there was no marriage between them and he got married to the petitioner in the year 2012 and it only became an issue in 2018 when he attempted to apply for a visa. According to him, he has tried all he could to cancel the previous marriage but he is not able to locate the said lady for the marriage to be dissolved. Again, due to the fact that he is happily married with two kids with the petitioner and they are staying under one roof, he humbly plead that they are given the opportunity to reconcile and regularize their marriage because of the love he has for his new family.

From the pleadings of the parties and the evidence led, the material facts alleged by the petitioner is not disputed by the respondent. The only contention of the respondent is that he had long separated from the said Nana Akua Afriyie Arthur and they are happily married. The effect of such admission is that the petitioner is relieved from strict proof of the averments. In the case of **Re Asere Stool; Kotei v. Asere Stool** [1961] GLR 493 SC, the Supreme Court held that:

"Where an adversary had admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than relying on such admission which is an example of an estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some states of facts which he has formally asserted. This is a salutary rule of evidence based on common sense and expediency."

It is noteworthy that the long period of years that parties to an ordinance marriage have separated is not sufficient to dissolve a valid subsisting ordinance marriage. Also, the number of years the petitioner and the respondent have lived together as husband and wife and having a happy home and children cannot metamorphose a void marriage into a valid one. Thus, the prayer by the respondent for reconciliation and regularization of their void ordinance marriage is untenable since you cannot put something on nothing and expect it to stand. In the case of **Haywood v. Haywood** [1961] All ER 236, 241 Philomon J held that:

"It would be contrary to all principle if a ceremony which is by definition null and void could be converted into something valid and binding and capable of conferring status by the act or inaction of a party"

Therefore, on the totality of the evidence led by the petitioner and the respondent in this case, I hold that the petitioner proved her case on a balance

of probabilities that at the time of the celebration of the ordinance marriage between herself and the respondent on 21st July, 2012, there was a subsisting ordinance marriage between the respondent and one Nana Akua Afriyie Arthur which had not been dissolved by a court of competent jurisdiction nor had the marriage come to an end by reason of the death of the said woman. Once this fact is established, no amount of reconciliation and regularization can validate the status of the parties in the subsequent marriage. Once the foundation of this marriage is tainted, a subsequent dissolution of the marriage between the respondent and the said Nana Akua Afriyie Arthur cannot in any way turn a marriage which is void ab initio into a valid one.

The court appreciates the sentiments expressed by the respondent on the impact of the petition for annulment on the children between the parties but that is not enough for the court to put together a marriage that was legally torn asunder from the onset. Moreover, the law is clear on the status of children of annulled marriages since **Section 14** of the Matrimonial Causes Act, 1971(Act 367) provides that children of the parties to a decree of nullity shall be deemed to have the same status and rights as if the marriage of the parents had been dissolved rather than annulled.

On the totality of the evidence led, I hold that the petitioner proved her case on a balance of probabilities that the Ordinance marriage celebrated between the parties is a nullity. Accordingly, I hereby grant the petition for nullity and decree for the nullification of the ordinance marriage celebrated between the petitioner and the respondent on 21st July, 2012.

CONCLUSION

In conclusion, I hold that the ordinance marriage celebrated between the petitioner and the respondent on 21st July, 2012 at the Church of Pentecost,

Osu, Accra is null and void since at the time of the celebration of the said marriage, the respondent was in a subsisting monogamous ordinance marriage. Accordingly, the petition for annulment is granted and I enter judgment for the petitioner in the following terms;

1. I hereby grant a decree of nullity for the nullification of the ordinance marriage celebrated between the petitioner and the respondent on 21st July, 2012 at the Church of Pentecost, Osu, Accra.
2. The parties shall present the original copy of the marriage certificate number *COP/080/03/2012* for cancellation by the Registrar of the Court.
3. There shall be no order as to costs.

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