IN THE CIRCUIT COURT HELD AT MPRAESO ON THURSDAY 16TH DAY OF FEBRUARY 2023 BEFORE HIS HONOUR STEPHEN KUMI, ESQ CIRCUIT JUDGE.

CASE NO: C11 / 4 / 23.

IN THE MATTER OF ESTATE OF YAW OFORI AKOWUAH

AND

IN THE MATTER OF APPLICATION FOR VARIATION OF BENEFICIARIES NOMINATION OF YAW OFORI AKOWUAH TO INCLUDE AKOWUAH TO INCLUDE MENSAH AMEMAKALOR ALICE AFI (WIFE), ANTHONY YAW BOYE OFORI AKOWUAH (SON), NANA YAW AGYEKUM AKOWUAH (SON), OFORI YEBOAH KWABENA VICTOR (SON) AND OFORIWAA ABENA ANGEL (DAUGHTER) PURSUANT TO SECTION 73 (3) OF THE NATIONAL PENSIONS ACT, 2008, ACT 766.

AND

IN THE MATTER OF:

MENSAH AMEMAKALOR ALICE AFI. - APPLICANT

VRS

S.S.N.I.T
ANTHONY YAW BOYE AKOWUAH - RESPONDENTS.

JUDGMENT:

In this judgment, I have been called upon to make a determination whether or not the Applicant was the surviving spouse of one Yaw Ofori Akowuah, now deceased, at the time of his death intestate on 23rd January, 2021, to warrant an order of the court to vary the beneficiaries nomination of the deceased to include the Applicant.

Undoubtedly there are antecedents to the instant judicial exercise which I hereby attempt to summarize as follows: The late Yaw Ofori Akowuah was a member of the Social Security and National Insurance Scheme until his demise on 23rd January, 2021. The deceased -during his lifetime- nominated his father,

Anthony Yaw Boye Akowuah- the 2nd Respondent herein- as the sole beneficiary of his social security benefits.

From the investigations of the 1st Respondent- SSNIT- they deposed that the deceased had been survived by a spouse- the Applicant herein- and four (4) children. However, the said spouse and four children of the deceased were not nominated as beneficiaries by the deceased.

The law is that where a member of the scheme dies, a lump sum is payable to the deceased's family who are either dependants and who have been validly nominated as beneficiaries of the deceased. See section 73 (1) of the National Pensions Act, 2008 (Act 766).

Notwithstanding that provision above, it is also statutorily provided under section 73 (3) of the Act 766 (supra) that;

> ***"Where a deceased member failed to nominate a surviving spouse and children as beneficiaries, the spouse and children may apply to the court for a variation of the nomination to include them".***

Pursuant to section 73 (3) of Act 766 (supra), the Applicant herein, acting through her learned Counsel- Phidelis Osei Duah, Esq, brought an originating motion on notice for the court to vary the beneficiaries nomination to include her and the four (4) surviving children. Applicant brings the instant application because she claims she is/was the surviving spouse of the late Yaw Ofori Akowuah at the time of his death.

As required under the rules of court, copies of the processes were served on the 1st Respondent- SSNIT; at their Nkawkaw branch- and on the 2nd Respondent/ sole beneficiary, Mr. Anthony Yaw Boye Akowuah. In the affidavit filed by 1st Respondent, they stated they were not opposed to the application and agreed for the Applicant and the surviving children to be included as beneficiaries as according to the 1st Respondent from its investigations, the Applicant and the four children are the surviving spouse and surviving children of the deceased.

However, things have not been so straightforward in the case of the 2nd Respondent, which has brought some new twist to the application. The 2nd Respondent- the original 100% sole beneficiary of the deceased's social security benefits- is opposed to, nay, vehemently opposed to the application.

But he is not generally opposed to the variation application. For while he recognizes the four children as the surviving children of his late son and thus must be included as beneficiaries, he however objects

to any form of variation to include the Applicant. His reasons are captured in paragraphs 4 to 7 of his filed affidavit in opposition dated 3rd October, 2022, as follows;

> **"4. That I deny paragraph 3 of the Applicant's affidavit in support of her motion save that the marriage between the applicant and my son Yaw Ofori Akowuah was dissolved before he died.**
>
> **5. That I further state that on the 15th day of September, 2017, the Applicant together with a man known and called Mr. Kyeremanteng brought to me a bottle of schnappe with an information that she is no more married to the late Yaw Ofori Akowuah.**
>
> **6. That I further state that I invited my son, Yaw Ofori Akowuah, and gave him the same information given to me by the Applicant and he accepted same.**
>
> **7. That I partially admit paragraph 6 of the Applicant's affidavit in support of her motion save that the deceased Yaw Ofori Akowuah was survived by four children but without the Applicant been his wife because the marriage was dissolved prior to his death".**

On 11th when the application came up for hearing, Counsel for the Applicant moved the motion and the 2nd Respondent opposed the application on substantially the same grounds as stated above. Counsel for the Applicant denied that the marriage between the Applicant and the deceased had been dissolved before or at the time of his death.

The court was of the view that in that state of affairs, issues had been joined as to whether or not the marriage had been dissolved at the time of the death of the Yaw Ofori Akowuah; or in other words whether or not the Applicant validly divorced the late Yaw Ofori Akowuah before his death.

The court was also of the view that the question was one which could not be resolved by affidavit evidence due to its contested nature. The court therefore ruled to take evidence on oath in a mini trial for the parties to adduce evidence in that regard.

I find support from the following ipsissima verba of Anin Yeboah JSC (as he then was) in the case of ***Ebusuapanyin Kofi Essuon v Charles Kofi Boham; Unreported; Civil Appeal No. J4/1/2014; delivered on 21st May, 2014,*** thus;

> ***"In our opinion, as the facts in this case show, the contentious nature of the issue called for adduction of evidence by the party who raised the issue. The dispositions in the affidavit which***

were stoutly denied were not proved when counsel for the respondent moved the motion to non-suit the appellant herein.

As the respondent herein bears the burden of proof of the issue he was enjoined by the basic rules of evidence to prove the issue on preponderance of probabilities. This has been the position of the law expounded lucidly by our sister Adinyira JSC in the often-quoted case ACKAH v. PERGAH TRANSPORT LTD [2010] SCGLR 731.

As the motion was moved and was stoutly opposed without any supporting evidence to back the depositions in the affidavit it was not proved by the respondent that indeed the appellant was estopped by the ruling of the Circuit Court, Cape Coast.

The law requires more evidence than what was placed before the learned judge at the High court. See MAJOLAGBE v. LARBI [1959] GLR 190 and ZABRAMAH v. SEGBEDZI [1991] 2 GLR 221 CA… The determination of the vital issue by motion in this case in our opinion was not based on the settled practice or under any rule of procedure..".

The court therefore conducted a trial to take evidence to determine the issue. In doing that, the court additionally ruled to order the 2nd Respondent to give evidence first as he bore the burden of proof and burden of persuasion on the issue and to prove same on the balance of probabilities. See the case of ***Ackah v Pergah Transport Ltd (2010) SCGLR 728 at 731 per Adinyira JSC (as she then was).***

The court had ruled accordingly so because the issue was not about the capacity of the Applicant- which is that she was never married to the late Yaw Ofori Akowuah; in which case the Applicant would ordinarily have been required to assume the burden of proof to prove on the balance of probabilities that she was ever married to the deceased.

However, since the 2nd Respondent does not deny that the Applicant was ever married to the deceased but his real contention was one in the nature of a positive assertion that the Applicant divorced the late Yaw Ofori Akowuah before his death- which the Applicant had denied- the 2nd Respondent rather assumed the evidential and legal burden to prove his positive assertion of the divorce and not for the Applicant to prove her negative assertion that she did not divorce the deceased before his death.

For the law as was held **In R v Turner [1816] 5 M and S 206** at **211; per Bailey J (as he then was)** is that;

"I am of the same opinion. I have always understood it to be a general rule, that if a negative averment be made by one party which is peculiarly within the knowledge of the other, the party

within whose knowledge it lies, and who asserts the affirmative is to prove it, and not he who avers the negative".

Within our Ghanaian criminal jurisprudence, the above principle of law has been famously held in the case of **Salifu and Another v The Republic (1974) 2 GLR 291; where Ata-Bedu J (as he then was), held at holding 2 of the case as follows which applies to this case** *mutatis mutandis***;**

"The law, in cases where knowledge of a fact was peculiarly within the knowledge of an accused person a negative averment was not to be proved by the prosecution but on all the contrary, the affirmative must be proved by the accused as a matter of defence. If the first appellant said he had exhibit B as the written authority from the fourth prosecution witness then the burden of proving this, in the light of the above principle of law, lay on him and it was not for the prosecution to prove the negative…".

EVIDENCE ADDUCED BY THE 2ND RESPONDENT:

The 2nd Respondent told the court that before his son died in January, 2021, he had been hospitalized at the Holy Family Hospital, Nkawkaw, in December, 2020. According to him, while his late son was on admission, he had informed him that the Applicant had sued him before the Abetifi District Court for maintenance and custody of their children, amidst alleging that the marriage between them had broken down beyond reconciliation. Exhibit A series comprised of maintenance processes filed at the Abetifi District Court by the Applicant against the deceased.

In addition, he testified that on the 18th day of September, 2017, the Applicant came to his house in the company of a man he introduced as her grandfather and told him she was no longer interested in marrying the deceased; after which the Applicant presented a bottle of schnappe to show she was divorcing the deceased. According to the 2nd Respondent, despite his efforts to dissuade the Applicant and to refuse the drink, he was unsuccessful as the Applicant and her grandfather insisted on giving him the drink, which he eventually accepted.

Furthermore, the Applicant in a meeting called by the 1st Respondent- SSNIT- and which was attended by the Applicant and other family members of his late son, the Applicant stated that even though she had wanted to perform widow-hood rites upon the death the deceased, she had been prevented by the 2nd Respondent.

2nd Respondent also told the court that during all the time that his late son was on admission at the hospital, the Applicant never visited him to care for him; and that even following his discharge from

the hospital before his death, his late son rather chose to come to him or to spend his vacations with him rather than with the Applicant as they were not living together as husband and wife.

The 2nd Respondent called one witness in support of his case. She was Christiana Akowuah; sister of the 2nd Respondent. Her testimony was to corroborate the previous evidence of the 2nd Respondent. According to her, in September, 2017, the Applicant called her on phone and told her she had returned the customary drinks to their family and that from that day onwards, she had left or divorced the deceased. According to her, she subsequently went to the 2nd Respondent who confirmed the Applicant had brought the drinks to divorce the deceased.

She also testified that before the deceased passed on, he brought the children to live with his mother, claiming that the Applicant had returned the children to him; albeit she later found that the Applicant had come for the children again. It was therefore her evidence that the Applicant was not married to the deceased at the time of his death.

It is important to state that following the close of the case of the 2nd Respondent, the learned Counsel for the Applicant from the announced to the court that the Applicant would not open her defence and invited the court to adjourn the case for judgment based on the evidence before it.

The 2nd Respondent appeared unhappy and frustrated by that pronouncement by the Counsel; saying or suggesting that the Applicant ought to open her defence on the grounds that he had some questions to ask her on the issue.

Inasmuch as the court appreciates the frustrations or displeasure of the 2nd Respondent, however it must be clearly stated that even though the decision of the Applicant electing not to testify at the trial might be uncommon, but it is no way uncceptable and irregular per the settled practice of the courts in civil proceedings.

In simple terms, I hold that it was entirely within the right of the Applicant to refuse to open her defence or give a response and could not be compelled to testify just for the 2nd Respondent to ask her questions.

For the general principle of law is that a party cannot be compelled to adduce evidence in a trial. In this direction I intend to refer to some cases on this principle of law. Appropriate references are made to the following authorities for illustration and support.

In **Baron v. Larbi (1962) 1 GLR 168**, in a Practice Note, Ollennu J (as he then was), delivered himself as follows:-

> ***"… a party to a suit is not bound to give evidence and the court cannot compel him to give evidence if he does not want to. And if a party, having gone into the witness box and sworn or***

affirmed elects to give no evidence his opponent is not obliged to cross- examine him. This procedure, therefore, is not irregular, and cannot vitiate the proceedings and the judgment in the case."

In **Armah v. Hydrafoam Estates Ltd (2013-2014) 2 SCGLR 1551 at 1567**, which was cited to us by Counsel for Respondents, Benin JSC held thus:-

"A Court has no duty to call upon any party to testify in the case; the court acts as an umpire and only hears such evidence as the parties will proffer; whether the parties will testify or not is none of the Court's business. Indeed for a court to insist that a party should testify will amount to the judge descending into the arena of conflict. After determining the triable issue/s the trial court leaves the field clear for the parties themselves to decide who will testify. We know of no law or rule which entitles a court to call upon a party to testify in the action. If such a law or rule does we would venture to say that it is inapplicable under legal dispensation."

CONSIDERATION OF THE OBJECTION AND THE DECISION OF THE COURT:

So my task in this ruling is to determine whether or not the Applicant divorced the deceased Yaw Akowuah before his death. Or in other words whether or not the Applicant had divorced the deceased at the time of his death.

An affirmative or positive answer will mean that the Applicant could not have been and was not the surviving spouse of the deceased to enable her benefit from and come within the provision of section 73 (3) of the Act 766 to entitle her to an order of the court to vary the beneficiaries nominations of the deceased to include the Applicant.

The converse equally holds true: That is if the court were to give a negative answer to the question- which is that the Applicant did not divorce the deceased before or at the time of his death, then that will make her the surviving spouse of the deceased and ***a fortiori*** be entitled to an order of the court to vary the beneficiaries nominations to include her.

So it is asked if the 2nd Respondent succeeded to prove on the test of balance of probabilities that the Applicant divorced the deceased Yaw Akowuah before his death?

Let me start from the point that from the totality of the evidence adduced before the court, it is not in dispute that the Applicant and the deceased were Akans and more specifically natives of Kwahu. They thus married under the Kwahu and Akan customary law.

For example, during the cross-examination of the 2nd Respondent by the learned Counsel for the Applicant, the following excerpts left no one in doubt that the Applicant and the deceased as Akans contracted their marriage under the Akan and Kwahu customary law:

"Q: You are aware that your son and the Applicant were married under the Akan custom?

A: Yes.

Q: I hope you are aware or have knowledge of the Kwahu customs.

A: Yes".

If the Applicant and the deceased son of the 2nd Respondent as Akans married under Akan and Kwahu customary law, then I hold that it was only under the Akan and Kwahu customary law that they could have divorced or dissolved their marriage.

In ***Mariama Esseku v Adams Inkoom and 2 Others; Unreported, Suit No. H1/223/2008, and delivered on 14th March, 2013,*** the parties had originally married under the Akan customary law, after which they went to bless it at the Mosque. Following some disagreements between them, the husband reported the wife to the Ahmaddiya Marriage Committee in Tema.

The committee, after investigations found the complaint true and meritorious and accordingly, dissolved the marriage through traditions and customs of Islam/Muslims. The wife had rejected and failed to recognize that as a dissolution of their marriage.

On appeal to the Court of Appeal on the husband's purported disposition or sale of the matrimonial home to a third party, one of the issues that was decided on appeal at the Court of Appeal from a decision of the trial High Court, was whether the Ahmaddiya Marriage Committee had validly and properly dissolved the marriage of the parties. The court, speaking through Dennis Adjei JA, held as follows;

"From the evidence before the court, the customary marriage has not been dissolved and the parties are recognized as married couple. The parties who marry under a customary law must dissolve it according to the same custom. Else the marriage will subsist until it is properly dissolved.

It is my finding that the marriage was not contracted under the Act, but under Akan custom and there is evidence that the matter has not been dissolved and the parties are deemed to be a married couple until their marriage is dissolved in accordance with the appropriate custom".

In applying the above decision to the facts of the case, as the parties agree that they married under the customs of Akan and Kwahu, then I hold that it was only by or under the Akan and Kwahu customs that they could have customarily divorced or dissolved their customary marriage.

So was that the case in the disputed divorce of the deceased son of the 2nd Respondent by the Applicant? During the evidence-in-chief of the 2nd Respondent and in his subsequent cross-examination by the Counsel for the Applicant, the following two versions were alleged and suggested as the procedure for the dissolution of marriage under the Akan and Kwahu customary law.

> ***"Q: Can you tell the court the custom or the procedure for marriages dissolved customarily in the Kwahu area?***
>
> ***A: One would present drinks to whoever is involved. The spouse who wants to dissolve the marriage would present the drinks to the other spouse and vice versa.***
>
> ***Q: I put it to you that the presentation of the drinks by either of the parties is just a first step or an intention to divorce and not the actual dissolution of the marriage customarily.***
>
> ***A: I disagree.***
>
> ***Q: I am suggesting to you that that it is after the parties to the marriage have expressed an intention to divorce that is when a meeting is convened by both families for an attempt at reconciliation of the parties.***
>
> ***A: I disagree with you.***
>
> ***Q: And that key among the witnesses to be present for a dissolution to be effective are the persons who presented the drinks and the persons who accepted the drinks at the time the marriage was contracted.***
>
> ***A: It is not correct…"***

So what is the true legal position on what constitutes a valid customary divorce? I will state and discuss the following authorities and then relate or apply them to the facts and evidence adduced in this case and then rule if what happened between the Applicant and the deceased son of the 2nd Respondent met the requirements or conditions under the Akan customary law divorce.

I will first start with Justice T. O. Elias, a former Attorney-General and Chief Justice of Nigeria, in his book " Ghana and Sierra Leone; The Development of their law and customs". At pages 179-180, he wrote inter alia that customary divorce in Ghana is possible "***by mutual termination of the marriage by the parties, witnessed by the elders acting as a kind of domestic tribunal".***

He also added that for customary divorce to be valid, that mere word of mouth is not enough, and that "***certainly formalities must also be observed; for example chalking the woman or releasing her in the presence of witnesses..***"

By way of judicial precedent from some of the decisions from our superior courts, in the case of ***Ruth Arthur v John Hector Ansah and Another; Unreported; Civil Appeal No. 62/2002; delivered on 31st July, 2003***; the Court of Appeal speaking through Owusu Ansah JA (as he then was) held as follows as to the essential elements of a valid customary divorce;

> ***"… It is well settled customary law that when there is a declaration of intention to seek divorce, both families of the couple meet together for the dissolution of the marriage. They try to reconcile the couple. When reconciliation fails, they find out if either party owes the other. Then libation is poured, and Kaolin is smeared on the body of the woman in the presence of both families and other neutral and responsible persons. Where it is the wife who seeks the divorce she is requested to return the dowry paid. Where it is the husband who seeks the divorce he is normally to give some lump sum to the wife as some kind of alimony or compensation.***
>
> ***In this case the 1st Defendant, who alleges that the marriage had been dissolved has the burden of persuasion as to that fact, the existence of which is essential to the defence — albeit on the preponderance of probabilities…".***

Owusu Ansah JA went ahead to quote the following from John Mensah Sarbah's "Fanti Customary Law"; 3rd Edition at page 52, where the learned author stated thus:

> ***"Notwithstanding the vague ideas in the coast town about divorce of native marriage, there is no doubt that, save and except the competence of a native tribunal to decree the dissolution of marriage, the right of divorce is marital only."***
>
> ***"The wife cannot declare her marriage void, nor can her family give her permission to remarry in the absence of the consent of her husband, signified by his releasing her from her conjugal obligations, either by chalking her or saying so in the presence of competent witnesses."***

DECISION OF THE COURT

So where does all the above findings and conclusions and authorities leave me? Useful and precious lessons have been learnt from the above authorities. It is found that a particular procedure is followed when marriage is to be dissolved under the customary law among the Akans that the Applicant and the late son of the 2nd Respondent belong to.

From the evidence adduced by the 2nd Respondent and his sole witness, it is clear and I accordingly find that no satisfactory evidence has been adduced on the balance of probabilities that the customary processes and procedure were followed to the letter to dissolve the marriage between the Applicant and the late son of the 2nd Respondent.

This is because in the opinion of the court, divorce under customary law goes far and beyond the mere intention, vituperations and declaration of a spouse that they want to divorce the other. The 2nd Respondent had seemingly harped on the court process for maintenance of the children at the Abetifi District Court in which the Applicant had alleged that the marriage between her and the deceased had broken down beyond reconciliation as evidence of the dissolution of the marriage.

Now, apart from the fact that it was not a divorce action before that court- and I even doubt if that forum had jurisdiction to dissolve the marriage- I hold that the mere statement of the Applicant that in her view the marriage with the deceased son of the 2nd Respondent had broken down beyond reconciliation was not conclusive evidence of divorce neither did that become a judgment of a court.

Indeed, whether or not a marriage has broken down beyond reconciliation is a question of fact for a judge or tribunal to make as same is a judicial function and not one to be determined by a probably disappointed or unhappy or frustrated spouse from vagaries of marriage.

In the case of ***Adjetey v Adjetey (1973) 1 GLR 216, Sarkodier J (as he then was)*** stated the following to illustrate the duty of a trial judge in petitions for divorce:

> ***" On a proper construction of this subsection of the Act, the court can still refuse to grant a decree even when one or more of the facts set out in section 2 (1) has been established.***
>
> ***It is therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough".***

In addition, the DW1- sister of the 2nd Respondent- during her cross-examination by the learned Counsel for the Accused conceded that beyond the words of the Applicant that she had divorced the

past and the presentation of the drinks by the Applicant to the 2nd Respondent, no meeting was called between the two families for customary procedure to comply with towards a divorce.

> ***"Q: I put it to you that after the sending of the drinks to announce the intention to divorce, the father who gave out the marriage has to call the parties' families for a meeting to reconcile the parties.***
>
> ***A: It should have been done.***
>
> ***Q: And so in this particular instance, did that happen between the Applicant family and your family?***
>
> ***A: No".***

In the light of the above, the court finds and holds that the Applicant did not validly divorce the deceased son of the 2nd Respondent, Yaw Ofori Akowuah, before or at the time of his death. In other words and in more clear words, the court finds and holds that the Applicant was still married to and was the surviving spouse of the late Yaw Ofori Akowuah at the time of his death.

The effect is that the court appropriately rejects or overrules the objection raised by the 2nd Respondent. The court holds that the Applicant has the right and capacity to have brought the instant application for an order of the court for the variation of beneficiaries nomination of the deceased to include her as a beneficiary of the SSNIT benefits of her deceased husband together with the surviving children.

In the premises, it is hereby ordered by this court for the beneficiaries nomination of the deceased Yaw Ofori Akowuah to be varied by the 1st Respondent, SSNIT, to include the Applicant, Mensah Amemakalor Alice Afi and the four surviving children as per the following proportions or percentages:

1. ***Sixty (60) percent to the above-mentioned four surviving children;***
2. ***Twenty-five (25) percent to the 2nd Respondent herein.***
3. ***Fifteen (15) percent to the Applicant herein.***

I must clearly state that the percentages awarded above to the named beneficiaries were not done in vacuum. The law requires of me to take a decision and give my reasons. The authorities are legion: See the case of Annous v Appoh) 1980 GLR 883, where Justice Charles Crabbe held as follows;

> ***"It is of importance that reasons be given for a judgment or decision of a court. For the dominant purpose of all our efforts to do justice between man and man is subserved by the idea of the binding force of precedent. A judgment is thus not much of a help without the reasons therefor. In other words, there can be no valid judgment without reasons. Dictum of Lord Diplock in Au Pui-Kuen v. Attorney-General [1979] 2 WLR 274 at page 278 to 279 P.C.".***

It is stipulated under section 81 (7) of the Act 766/2008 (supra) inter alia that in a case where the deceased is survived by a child or (children), sixty (60) percent of the survivor's benefits is distributed to the said child or children; while the balance of forty (40) percent goes to the persons nominated by the deceased member.

So it was why the court ordered to award sixty (60) percent of the benefits to be given to the four surviving children of the deceased. It was a statutory stipulation by the lawmaker which I was bound to comply with willy-nilly.

However same cannot be said for the distribution to persons nominated by the deceased member and for persons who have been included as beneficiaries upon a successful application for variation as we have in this case.

It appears that in such instances, the lawmaker or Parliament left the sharing or distribution of the outstanding 40 percent to the discretion of judges based on factors a judge considers to be just or fair or equitable. It was in the exercise of that discretion why the court apportioned the above percentages to the Applicant and 2nd Respondent respectively; based mainly on the evidence adduced by the 2nd Respondent as the Applicant and her Counsel exercised a right not to call evidence of their own to rebut the evidence led by the 2nd Respondent. I was thus bound and entitled to form my decision and reasons based on the evidence adduced by the 2nd Respondent only.

Now, in terms of the reasons for the court distributing 15 percent and 25 percent of the benefits to the Applicant and the 2nd Respondent, the court evaluated and considered the evidence which showed largely that even though the Applicant did not legally and customarily divorce the deceased, however there was overwhelming evidence that she had constructively evinced every intention and taken concrete steps and made personal efforts to divorce the deceased. It is said that equity looks to the intent rather than the form.

Morevover, the evidence equally showed that the Applicant subsequently abandoned the deceased for some couple of years, did not attend to him, nor cared for him, especially when he was admitted to the hospital for some time, and had to be assisted by and attended to by the 2nd Respondent.

In that state of affairs, the court was of the opinion that for the Applicant to now show up in court with this application for a share of the SSNIT benefits of the very man she had left and deserted is not only opportunistic but also unconscionable, which should not be rewarded with any significant or large portion of the benefits. Equity does not allow a person to take advantage of their own wrong. It is immoral!

I make no order as to costs.

SGD:

STEPHEN KUMI, ESQ,

CIRCUIT JUDGE.

<u>LEGAL REPRESENTATION:</u>

PHIDELIS OSEI DUAH FOR THE APPLICANT PRESENT

1ST RESPONDENT- ABSENT.

2ND RESPONDENT REPRESENTED PRO SE

s.k….