

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON THURSDAY, 2ND
DAY OF MARCH, 2023 BEFORE HER HONOUR KIZITA NAA KOOWA
QUARSHIE, CIRCUIT COURT JUDGE

SUIT NO. C5/294/2022

GEORGINA APPAU

VS

MR. ROBERT OFORI FRIMPONG

RULING

I have heard both learned counsel for the Respondent/Applicant and the Petitioner/Respondent.

The prayer of the Applicant is that the action be dismissed for want of jurisdiction. Respondent vehemently opposes.

Applicant contends that the parties have been granted a divorce and Respondent says she is unaware of same.

Counsel for the applicant pointed to exhibit 'ROF 1' a divorce decree granted by the Circuit Court to the parties on the 17th August, 2009. He also referred to exhibit 'ROF2', a search conducted by the Registry of the court indicating that Respondent had been served with the petition and a receipt of registered mail. Exhibit (ROF3).

According to Applicant the petition was served on Respondent at the following address:

39 Parry Road

Manchester Longsight
England

Before counsel for Applicant brought his submission to an end he referred the court to an Exhibit 'A' attached to the Affidavit in Opposition of the Respondent.

The said exhibit is a Tenancy Agreement between the Respondent and a company in United Kingdom "Guinness Trust Group". He said the court should not admit the exhibit. He said the Tenancy Agreement is a foreign document which is not authenticated or certified and therefore not admissible.

He referred to the case of Juxon Smith v KLM Royal Dutch Airline {2005-2006} SCGLR which stated that as a rule there is no presumption of authenticity and authorization by a foreign official signature unless the following conditions are satisfied.

- a. The signature must be that of an official of an international public entity or a state recognized by Ghana.
- b. The writing to which the signature is affirmed is accompanied by a signed and sealed certificate of the genuineness of the signature and official position of the person who signed it.
- c. The certification and authorization is signed and delivered by a diplomatic agent of Ghana or of a commonwealth country who is assigned or accredited to the country Ghana; or a Commonwealth country

The only exception to the general rule falls under Section 161(3) of N.R.C.D 323, 1975 where the powers is reserved in the court to presume authenticity.

Respondent as previously stated was vehemently opposed. She said she was unaware of the divorce proceedings that resulted in the divorce of decree between herself and the Applicant dated 17th August, 2009. She said she had not

provided any address to Applicant and did not stay at the address where the petition was allegedly mailed to. Exhibit 'A' a Tenancy Agreement attached to her affidavit in opposition had the address of

17 Mendy Street
High Wycombe
Buckinghamshire HP11 2NZ

Again Applicant had not added any record of proceedings in support of the alleged divorce certificate.

Counsel for Respondent discredited Applicant's case Juxon Smith v KLM Royal Dutch Airline. He said the said case does not fall on all four with this present case. That Exhibit 'A' was not a bilateral agreement between states but a Tenancy Agreement and prayed for Applicant's application to be dismissed as it seeks to throw dust in the eyes of the court.

From the fore-going the main issue for determination is whether or not the application should be dismissed for want for jurisdiction.

The Respondent by a petition filed on the 24th of May, 2022 prayed for

- i. A dissolution of the marriage between herself and the Respondent/Applicant.
- ii. That the court grants custody of the only child of the marriage Robert Appau.
- iii. An order for the maintenance of the child including education, health, feeding clothing and any such periodical payments as may be just.
- iv. An order for the Applicant to pay to the Respondent a substantial sum being a portion of money she spent during the period of pregnancy and upkeep till date of the only child of the marriage

- v. An order for Respondent to pay cash the sum of GH¢100,000.00 being alimony.

That the following property be settled in favour of Respondent.

- a. A 40% share of the four bedroom house at Ashongman which Respondent contributed substantially to its completion
- b. Cost incurred as a result of the prosecution of this petition by Respondent as well as Respondent's solicitor's fees assessed at the Ghana Bar Association approved scale of fees.
- c. Any other order(s) as this Honourable Court may deem fit.

Applicant prayed earlier that the case be dismissed for want of jurisdiction because an earlier court had dealt with the matter, also known as Res Judicata.

According to the Oxford Languages Res Judicata means a matter has been adjudicated by a competent court and therefore may not be pursued further by the same parties.

Res Judicata is not applicable here, since there are other issues to be dealt with.

The Divorce Certificate does not disclose that all matters have been dealt with in this case. As Respondent rightly stated the record of proceedings should have been attached to Applicant's exhibits to determine fully what the previous court had dealt with. The divorce is only one aspect of the reliefs sought by the Respondent. Assuming without admitting that there even was a divorce that alone cannot lead to the conclusion that the reliefs claimed had been pronounced upon by an earlier court.

The Applicant who is claiming that divorce has been granted has the burden to prove that indeed the marriage has been dissolved. As this is a civil action the

proof should be by a preponderance of the probabilities. See section 12(1) of 12(2) of the Evidence Act 1975 NRC 323.

BY COURT: This Court notes that there are matters to be dealt with and the case must go on trial to determine same. The court has jurisdiction to do so. See sections 31, 33 and 34 of the Matrimonial Causes Act 1971 which deals with General Matrimonial Jurisdiction, Additional Jurisdiction relating to financial provision and Additional Jurisdiction relating to child custody respectively.

In respect of Exhibit 'A' attached, the court notes that when the matter goes to trial Applicant will have the opportunity to discredit same at the appropriate time.

The court dismisses the applicant's instant application and orders the applicant to file his response if any to Respondent's petition.

No cost will be awarded

H/H KIZITA NAA KOOWA QUARSHIE
CIRCUIT COURT JUDGE