

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON THURSDAY, THE 25TH DAY OF JULY, 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL BAASIT, CIRCUIT COURT JUDGE.

SUIT NO.: CCD/C4/25/23

FAUZIA AMADU - PETITIONER

VS

MICHAEL MUSTAPHA ADAM - RESPONDENT

PARTIES:

PETITIONER - PRESENT
RESPONDENT - ABSENT

COUNSEL:

NO LEGAL REPRESENTATION

JUDGMENT

Background:

Petitioner herein per the Petition filed at the Registry of the Court on the 5th of June, 2023 prays the Court for a nullification of the marriage celebrated between the parties at the Holy Cross Catholic Church, Tamale on the 22nd December, 2017. The basis of the instant Petition is that the parties got married after a few months of courtship but after the celebration of the marriage, the Respondent has behaved in ways that the Petitioner finds it very difficult to live with him as her husband. Petitioner states further that after the marriage, she was based at Tamale while Respondent was in Accra but comes to Tamale at his own convenience. It is the Petitioner's contention that she has been staying with her parents even though she is married to the Respondent without knowing when she was going to join the Respondent in a matrimonial home.

Sometime in 2018, she visited the Respondent in Accra without his knowledge only to discover that the Respondent was already married to another woman and the couple have Three (3) children. Upon confrontation, Respondent admitted that he was indeed marriage and this subsequently resulted in series of tensions, arguments and misunderstanding between the parties especially when the Respondent told her to be a second wife because his first wife is the mother of his children and that he cannot kick them out. Consequently, the parties have lived separately for the past Five (5) years now of which the Petitioner prays for an order annulling the marriage celebrated between the parties.

On the 27/6/23, the Respondent filed an Answer to the Petition wherein he insisted, among others that the Petitioner has behaved unreasonably as he has been a very good and lovely husband to the Petitioner and her family. He stated that he informed the Petitioner to be patient for him to put things in order before she moves in with him but the Petitioner was impatient. He concluded by stating that the marriage has broken down beyond reconciliation and prays the court to grant the Petitioner's request. The Petitioner then applied to set the issues down for trial and same was granted with the Court ordering parties to file their Witness Statements and Pre-Trial Checklist but the Respondent failed to comply with the orders. The Respondent was subsequently served with all other Court processes including Court notes and Hearing Notices but the Respondent again failed to respond to any of the said Court processes. The Court accordingly proceeded to hear the case of Petitioner since Respondent, after being duly served, failed to appear before the Court to exercise the rights available to him as part of the civil practice in our Courts.

Determination

On the 18/7/25, the Court heard the case of the Petitioner on oath as she gave a short evidence in chief. Consequently, the main issue for determination is **whether the marriage between the parties can be nullified**. It is to be noted that, the failure of the Respondent to appear at trial to cross examine the Petitioner on the evidence or challenge same either in cross examination or by contrary evidence does not exonerate the Petitioner from satisfying the Court that the marriage should be nullified. The Standard of proof in civil case such as the present action is proof on the preponderance of probabilities. This is statutory and has received countless blessing from the Courts of this land in plethora of authorities. See sections 11(4) and 12 of the **Evidence Act, 1975 (NRCD 323)**. Section 12(2) defines preponderance of probabilities to mean that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence. In the case of **Adwubeng vs. Domfeh** (1997-98) 1 GLR 282, it was held per holding 3 as follows: *"...sections 11(4) and 12 of NRCD 323 clearly provided that the standard of proof in all civil actions, without exception, was proof by a preponderance of probabilities"*. Similarly, it is trite that the failure of a party to deny a material averment constitute an admission of same and such implied admitted fact requires no further proof. As the Supreme Court in the case of **Fori vs. Ayirebi and Other** [1966] GLR 627 held *"when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact"*.

Analysis

In the instant case, the Petitioner prays the Court to nullify the marriage of the parties was celebrated at the Holy Cross Catholic Church, Tamale on the 22nd December, 2017 under the Marriage Ordinance (Cap 127). According William E. Offei in **Family Law in Ghana**, 1998 at page 143, '*...a marriage celebrated under the Marriage Ordinance (Cap 127) or under the Common Law may be valid, void or voidable*' A Marriage is said to be valid when it fulfils all the conditions stated by the law, however, in the case of **De Reneville vs. De Reneville** [1998] 1 All E. R. 56 at 60, Greene M. R. stated that "*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*". The Judge then defined a voidable marriage as follows; '*... a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction*'.

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) of Act 367 supra, 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 instant case, the Petitioner, repeated her averments contained in the Petition for annulment on oath and testified that the Respondent as at the time of getting married to her was already married to another woman. This fact was not disputed nor denied by the Respondent as he admitted same in his answer to the Petition. 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."

Similarly, it is trite that the failure of a party to deny a material averment constitute an admission of same and such implied admitted fact requires no further proof. As the Supreme Court in the case of **Fori vs. Ayirebi and Other** [1966] GLR 627 held "*when a party had made an averment and that averment was not denied, no issue was joined and no evidence need be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of that fact*". It is the contention of the Court that since there was another marriage subsisting before this instant marriage was celebrated, the second marriage is void. In fact, 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.

Thus, on the totality of the evidence led, I hold that at the time the parties contracted the instant marriage in the year 2017, the Petitioner's first marriage was still subsisting. The Respondent's own admission that he was legally married to another woman prevents him from contracting another marriage under the Ordinance. Once this fact is established, the Petitioner will be entitled *debito justitiae* to a decree of nullity. I therefore declare the Ordinance marriage celebrated between the parties to be void. Accordingly, I hereby grant the Petition for nullity and decree for the nullification of the Ordinance

marriage celebrated between the parties at the Holy Cross Catholic Church, Tamale on the 22nd December, 2017.

CONCLUSION

I hold that the Ordinance Marriage celebrated between the Petitioner and the Respondent at the Holy Cross Catholic Church, Tamale on the 22nd of December, 2017 is a null and void marriage since at the time of the celebration of the said marriage, the Respondent was in a subsisting 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 at the Holy Cross Catholic Church, Tamale on the 22nd December, 2017 this 25th day of July, 2023.
2. The Petitioner shall present the original copy of the Marriage Certificate for cancellation by the Registrar of the Court.
3. There shall be no order as to costs.

H/H HALIMAH EL-ALAWA
ABDULBAASIT
CIRCUIT COURT JUDGE