

IN THE CIRCUIT COURT HELD AT TECHIMAN ON WEDNESDAY 21<sup>ST</sup> JANUARY, 2024 BEFORE H/H SAMUEL DJANIE KOTEY ESQ. SITTING AS A CIRCUIT COURT JUDGE

SN: C4/09/2023

AUXILIA ADJEI

VRS

STEPHEN GYASI APPAU

**JUDGMENT**

The parties were married under the ordinance on 30<sup>th</sup> July, 2014 at the District Court Sunyani. Since their marriage, they have not had any issues and the said marriage has not been the subject of any action in court before the presentation of the present petition. The petition seeks an annulment of the marriage between the parties rather dissolution. The basis of the petition is that the parties are closely related by blood. The petitioner informs the court that the respondent is the daughter of his uncle. Thus, the parties before me are cousins. The petitioner informs the court that since this fact came to their knowledge and attention about a year ago, they have not been able to have sexual intercourse with each other. She further says that as a result of this knowledge, they have not been able to continue their relationship as married couples. According to the petitioner they no longer cannot live together as husband and wife.

In his answer to the petition, the respondent admits all the averments in the petition. He also avers that the parties have been separated customarily and all customary rites performed to end the marriage customarily. The parties inform the court that they have applied to the court for the court to declare their marriage, a nullity. During the trial, I

noticed that the parties were always in court wearing a posture of regret. I could tell from their demeanor that they wished they had known of this before their marriage was celebrated. Their posture in court demonstrated that if they had the power to erase this history they share together, they would have done so without any hesitation. There is nothing about his marital history that they seemed proud about in court. I observed the difficulty they had recounting their journey to the court. I was therefore not surprised that the parties decided they will not involve any other person in the trial of their petition. They therefore testified alone and refused to invite any witness.

At the end of the trial, the court finds that the marriage celebrated under the ordinance which ordinarily ought to have satisfied the provisions of the Marriage Ordinance, Cap 127 failed section 42 of the said Act. The parties were not permitted by law to marry each other by reason of the prohibited level of consanguinity between them. The evidence suggests however that the parties were not complicit in the act. From the evidence of both parties, they were never aware of the close family ties they share at the time that they were celebrating the marriage. A marriage between persons within the impermissible degrees of consanguinity and affinity is null and void. In his book entitled 'Family Law in Ghana', 5<sup>th</sup> edition, at page 69, the learned author William E. Offei defined consanguinity as the relationship that proceeds from a common ancestry or blood relationship and affinity as the relationship formed through marriage as opposed to blood relationship. Although the marriage between cousins may be permitted under akan custom, under section 42 of the Marriages Act Cap 127, it is not permissible. The present marriage between the parties was an ordinance one. The marriage which was celebrated between the parties was a nullity from the beginning on the basis that the parties were within the prohibited degrees of consanguinity. The court did not have to pronounce on the marriage to bring it to an end. The marriage was a nullity from the start. The marriage between the parties is hereby nullified.

I make no further orders.

SGD

HH S.D. KOTEY

*Representation*

*Petitioner by herself*

*Respondent by himself*