

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
HELD AT CAPE COAST IN THE CENTRAL REGION ON WEDNESDAY THE 5TH
DAY OF APRIL 2023 BEFORE HIS LORDSHIP JUSTICE BERNARD BENTIL - HIGH
COURT JUDGE**

SUIT NO.: E12/98/2023

PROFESSOR DOMINIC K. FOBIH & ANOR

VRS

DR. NICK FOBIH & ANOR

JUDGMENT

The Caveators, Dr. Nick Fobih, (hereinafter called 1st Caveator), Nicholas Fobih (herein after called 2nd Caveator) and Beatrice Boateng, (herein after called 3rd Caveator), who was later joined to this Application are seeking to caveat an intended marriage between Professor Dominic Kwaku Fobih (herein after called 1st Respondent) and Mary Nyamekye Oduro (herein after called 2nd Respondent). The 1st Caveator is the son of the 1st Respondent, the 2nd Caveator is a nephew to the 1st Respondent while the 3rd Caveator is claiming to be the Wife of Professor Dominic Kwaku Fobih.

It is the case of the 1st and 2nd Caveators that 1st Respondent, who suffered a stroke some time ago, is no longer making sound decisions. In particular, they believe that his intention to contract this marriage under Ordinance CAP 127, is based on unsound reasoning. Similarly and allied to this, the 1st Respondent has threatened to disown his adult children, including the 1st Caveator for their hostility towards his intended nuptials.

The 1st Respondent we are told, called one of his children in the United States of America and repeated this threat.

In his Affidavit of Interest, the 1st Caveator points to the age difference between the Respondents; the 1st Respondent being Eighty (80), while his potential bride is Thirty (30) years old. He believes that the weight of this fifty-year gap will weigh heavily on the union and result in another nasty divorce, as has been the lot of 1st Respondent in the last three of his marriages. He points out that it took Four (4) long years for his last divorce to be concluded and says he does not think the 1st Respondent should put himself in a position where he could potentially be similarly importuned. To him, a lady in her prime will only be compelled by ulterior motives to enter a marriage with a man so many years her senior.

The 1st Caveator also accuses the 2nd Respondent of serial infidelity. According to him, his investigations have shown that the 2nd Respondent is currently embroiled in three active romantic liasons and that one of her alleged paramours currently resides in a property that the 1st Respondent has provided for her at Agona Swedru. This same gentleman, he also alleges, routinely visits the 2nd Respondent at Assin Jakai during weekends and shares a room with her that was also provided by the 1st Respondent. The 1st Caveator further alleges that a gentleman by name K. Owusu, another of the 2nd Respondent supposed lovers, started his romantic affair with her long after the 2nd Respondent relationship with the 1st Respondent. Indeed, the alleged affair is at the root of a bitter family feud and has led to the estrangement of relations between Mr. Owusu and his father as well as with his father's nephew. The 2nd Respondent we are told, has reported to friends that the 1st Respondent has some gold in his room, the fact of which has been confirmed by his family, for whom he holds this gold in trust.

The 1st Caveator avers that the relationship constitutes a material threat to his father's safety and well-being. He is concerned that the 2nd Respondent, in keeping with an evolving practice among young ladies in Swedru, Cape Coast, Accra and other places, is only contriving to maintain a relationship with an elderly gentleman with the intention of beguiling him to leave his property to her and then kill him so she can take possession of those properties. In paragraph G of his affidavit of interest, the 1st Caveator alleges that the 2nd Respondent connived with one of her alleged lovers to defraud the 1st Respondent of GHC10,000, in a scheme which she pretended to be completely unaware of.

The 1st Caveator also accuses 2nd Respondent of abandoning the 1st Respondent when he suffered the stroke, which is evidence, he believes that she has no good intentions or love for his father. The marriage, he argues, is merely one of convenience and which is colored by secrecy and dishonesty. Apparently, while they were informed that the marriage ceremonies would take place on 28th October, the plan was actually to have it on the 21st of that month. The 1st Caveator is convinced that the 2nd Respondent and her family are driven by ill motives that will inevitably be to his father's disadvantage. Therefore, he and the family want to take it upon themselves to protect his father from her and perhaps himself, especially as they deem his decision-making abilities to be compromised by his recent ill health. This responsibility weighs all the more heavily as the family were involved in his previous divorces to Suzanna, Patricia, Leticia, Mary Akobeng and notably, Beatrice.

The affidavit in support submitted by the 2nd Caveator, is not materially different from that submitted by the 1st Caveator. Indeed, it appears to be a copied and pasted version of the same version of events as related by the 1st Caveator and so does not require us to go any further into it.

Following a prayer to this court, the 1st Caveator was granted leave to submit a supplementary affidavit on 8th February, 2023, which he proceeded to do on the 10th of that same month. In this new filing, the 1st Caveator informs the court that the 1st Respondent is currently married to the 3rd Caveator, his stepmother. In support of this claim, the 1st Caveator presented the court with a statutory declaration, marked Exhibit DF1, in which 3rd Caveator testifies that she is still married to the 1st Respondent. This affidavit in substance, unfortunately, offers little by way of support to 1st Caveator claims.

In his response, the 1st Respondent denies that he is still married to the 3rd Caveator. In his version of events, 1st Respondent stated that he was customarily married to the 3rd Caveator on 24th January, 2015 and the said marriage was dissolved between the parties in the first quarter of the year 2020 at the instance of the 3rd Caveator in the presence of one Kweku Adarkwa and Mr. Joe, all of Assin Jakai as witnesses to the 3rd Caveator. Kwaw Abaidoo, Krontihene's linguist and Adjoa Anhwere were also witnesses whereby the 3rd Caveator was compensated in accordance with Akan custom after the dissolution of the said marriage.

On the 23rd March, 2023, the 3rd Caveator filed a motion for joinder, seeking to be recognized as the 3rd Caveator. However, minded of the need to ensure that the case is decided with finality and in the interest of justice, the court granted her motion so her voice could also be heard. It should be noted that the caveat attached to the application came well outside the twenty-one day window in which a caveat can be entertained. In her affidavit, she maintained that she is still married to the 1st Respondent and tendered the very same declaration already presented by the 1st Caveator. It should also be noted that there is a high bar for entry into such a case. The 3rd Caveator needed more than a self-declaration, especially as a Beatrice had been named as an ex-wife in the filings of the 1st Caveator.

Before I get to the respective merits of the caveat before us, I wish to make an observation on the process that led us here.

“Under Cap. 127 Section 57

- (1) Where a caveat is entered against the issue of a registrar’s or marriage officer’s certificate, the registrar or marriage officer, shall without delay refer the matter to a Justice of the High Court.
- (2) Where the Justice is satisfied that legal grounds do not exist for forbidding the issue of the certificate, the Justice shall remove the caveat in the prescribed manner without requiring any of the parties to appear.
- (3) In any other cases the Justice shall summon the parties to the intended marriage and the person by whom the caveat was entered, and shall require the last-named person to show cause why the registrar or marriage officer should not in due course issue the certificate.
- (4) The case shall be heard and determined in a summary manner, and the Justice may award compensation and costs to the party injured, if it appears that a caveat was entered on insufficient grounds.”

When such a petition is filed at the District Court, the Registrar at that court must forward it to the High Court, where a Registrar will put it before a Judge. The Judge may decide, after an initial assessment, whether there is enough merit for the case to be heard. Failing to find any such merit, the Judge would be within his power to dismiss it even without inviting the parties to present their cases in open court. In this case, however, the case was curiously sent to His Lordship the Chief Justice for him to exercise his power under the Courts Act, Section 124. This approach has unduly delayed the case and we must

make sure that in future, we do not inconvenience parties through the misapplication of the process.

With regard to the case itself, I should point out that a caveat of this nature can only succeed by relying on the factors which renders a marriage a nullity. According to section 74 of the Marriages Act, 1884-1985 (CAP 127), the grounds for setting aside a marriage for it being void ab initio is as follows:

1. Existing Lawful Marriage
2. Prohibited Decree of Consanguinity and Affinity
3. Marriage Age and Consent

The question to ask is whether the caveators were able to establish the existence of any of these three ingredients. It is clear to this court - and should be to anyone - that at 80 and 30 years of age, both of the parties to the proposed marriage are well within the age that our laws require for them to embark on such an -undertaking. The court also has no reason to believe that the 1st Respondent is so impaired by his recent illness that he is unable to understand the terms of or enter into a contractual relationship, including marriage. That leaves the matter of marriage.

The main issue that arises for determination in this trial is whether or not the marriage between the 1st Respondent and 3rd Caveator has been dissolved. While the 1st Respondent contends it has been dissolved, it is the 3rd Caveator's contention that it has not. It is the case of *Attah v. Annan* [1975] 1 G.L.R 366 that spells out the law on the dissolution of a customary marriage. This authority clearly shows the position of the law at 369-370.

Following the grant of the application for joinder, the 3rd Caveator, filed her affidavit of interest and unsurprisingly deposed in same that she remains hitched in matrimony to the 1st Respondent, Interestingly, the said application apart from merely stating that the

3rd Caveator is still married to the 1st Respondent, did not disclose any important facts to corroborate the assertion contained in the affidavit that indeed the marriage still subsists. The court is thus confronted with her oath and that of the 1st Respondent, both sharply contradictory on the material issue of whether they remain married to each other or not.

A party who makes allegations has the burden to lead evidence to prove those allegations unless they are admitted by the other party. If he fails to do that, a ruling on those allegations will be made against him. See **Okudzeto Ablakwa (No. 2) v Attorney General and Another [2012] 2 SCGLR 845 at 867.**

Also, a person who makes an averment or assertion which is denied by his opponent has a burden to establish that his averment or assertion is true and he does not discharge this burden unless he leads admissible and credible evidence from which the fact(s) he asserts can properly and safely be inferred. (See **Zabrama v Segbedzi [1991] 2 GLR 221.**)

Therefore, the onus, without doubt, lies on the Caveators to adduce sufficient evidence in support of its claims. The burden of persuasion in civil matters requires the Caveators herein, who had the evidential burden to discharge, to produce sufficient evidence such that a reasonable mind (such as this court) will come to a conclusion that its claims or averments have been established on the preponderance of probability or that, they are more probable than that of the Respondent. See **sections 10 to 17 of the Evidence Act.**

It is important to note that in the 1st Respondent affidavit in opposition to the joinder, he stated without any equivocation that he was no longer married to the 3rd Caveator. While it is the true that the court disagreed with his opposition to the joinder, portions of his affidavit have subsequently been adopted as part of the court's records, confirming their relevance and reliability. In strenuously denying that his marriage to the 3rd Caveator no longer subsists, the latter stated that somewhere in 2020 at the instance of the 3rd Caveator in the presence of one Kweku Adarkwa and Mr. Joe, all of Assin Jakai as witnesses to the

3rd Caveator. Kwaw Abaidoo, Krontihene's linguist and Adjoa Anhwere were also witnesses whereby the 3rd Caveator was compensated in accordance with Akan custom after the dissolution of the said marriage.

Both Adwoa Anwhere and Alex Boateng who without the leave of the court filed their affidavits in support of 3rd Caveator's affidavit of interest, disclose nothing material that could point to the existence of marriage between the 1st Respondent and the 3rd Caveator. The rules of court are meant to be obeyed and not taken lightly. In the succinct words of Bamford-Addo JSC (as she then was) in the case of **OPPONG V ATTORNEY-GENERAL AND OTHERS [2000] SCGLR 275 AT PAGE 277**, "*they are meant to ... keep the wheels of justice rolling smoothly.*" Thus, in the opinion of this court, the said affidavit is therefore defective and cannot be used in this instant matter. Even as the court would not gloss over as their action of not seeking its leave before filing their affidavits as it offends the rules of court, their situation is made much worse because their unwarranted intrusion into the case proved unhelpful to the court, especially in the absence of any extenuating facts which would have been borne out by their affidavits.

This court is minded to agree with 1st Respondent's narration as contained in his affidavit in opposition to the Caveators' affidavits that indeed he is no longer married to 3rd Caveator. Beyond providing the names of persons who were present at the ceremony to annul the marriage, he went a step further to challenge the 1st Caveator in his affidavit of interest that the said Beatrice referred to in the names of 1st Respondent's divorced wives and the 3rd Caveator are one and the same. 1st Caveator did not offer an explanation for the inclusion nor the omission, if indeed there was one, that 1st Respondent was already married to someone else, in this case, the 3rd Caveator. 1st Caveator's failure to do either of the two scenarios contemplated can only strengthen the case of the 1st Respondent to his detriment.

On the balance of probabilities, the court is persuaded that the 1st Respondent's affidavit presents a more compelling narrative fortified with verifiable facts that show that indeed he is no longer married to 3rd Caveator. The Caveators' affidavits on the other hand are empty and bereft of any substance to ground their claim that the opposite is the case. As a result, the court is able to conclude that the marriage between 1st Respondent and 3rd Caveator has been dissolved.

The court wants to believe that the caveators are indeed motivated by genuine concern for the 1st Respondent. However, these concerns, no matter how passionately felt, cannot themselves be repackaged as legal rights. Having scoured all our laws, the holy texts of all the major religions and several authorities on the subject, I have been unable to find any legal ground on which this concern can be sited. In their filings, the caveators invite us on an exhilarating journey into a miasma of frivolous soap opera intrigue. The court, however, is not in a position to give comfort to the moral apprehensions of a family who disapprove of a member's choice of partner. I cannot, from the judge's seat, convert their fears into a law, no matter how raw and well-founded those fears may be. It is not the court's place to determine what age gap between partners is considered appropriate or not. The court, or indeed the caveators cannot determine how an adult chooses to dispose of his hard-earned resources. Indeed, as revealed in the filings, the 1st Respondent has already built a house for the 2nd Respondent and so the marriage is not absolutely necessary for her designs or his money if that is indeed her plan. The 1st Respondent may choose to hand over his property or leave it to her on his passing if he so chooses, whether or not they are married.

It is clear to this court that this whole exercise is an overzealous attempt to interfere with an attempt by an adult man to seek what he considers to be his highest happiness, based

on real or imagined moral objections. While the caveators are entitled to their moral considerations, the court is not able to lend its authority and fiat to this flight of fancy, which reaches so far as to constitute an abuse of the respondents' rights. With no justifiable grounds in sight, this court sees no reason why the respondents may not be married. The caveat filed by the caveators is hereby removed and the respondents can therefore go ahead to marry at any time of their choosing. We can only ask the 1st Respondent to forgive his son and nephew for they know not the power of love. The court awards cost of GH¢20,000 against 1st Caveator; GH¢20,000 against 2nd Caveator; and GH¢10,000 against 3rd Caveator. All monies must be paid or deposited with the court before any further actions can or may be taken by the Caveators.

(SGD)

BERNARD BENTIL, J.
[HIGH COURT JUDGE]

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