

**IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD IN TEMA ON MONDAY THE 31ST DAY OF JULY 2023 BEFORE
HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)**

Time: 10:40 am

SUIT NO: E5/30/2018

GRACE ADDISON

... PETITIONER

VRS

CYRIL MARCHANT & ANOR.

... RESPONDENTS

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PARTIES

Petitioner's Lawful Attorney – Wisdom Ebo Panford (Present)

1st Respondent –Present

2nd Respondent- Absent

LEGAL REPRESENTATION

Ms.Vivienne Tetteh for the Petitioner – Present.

Mr. Frank Mensah for the Respondents – Present.

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JUDGMENT

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By a Petition filed on the 27th of April, 2018, Petitioner herein Grace Addison is praying the Court for the following reliefs:

- 1) A declaration that the marriage celebrated between the 1st Respondent Cyril and Abigail Marchant is null and void and an Order annulling the said marriage celebrated between the 1st Respondent and the Co-Respondent.*
- 2) Dissolution of the marriage celebrated between the Petitioner and 1st Respondent on the 15th of June, 1998.*
- 3) Declaration of title to House No. 047 Afienya and recovery of possession.*

Her contention is that 1st Respondent herein has contracted another marriage with 2nd Respondent whilst the marriage between her and 1st Respondent is still subsisting.

1st Respondent Cyril Marchant on the 29th April, 2019 per leave of Court filed an Amended Answer to Petition and also Cross-petitioned. What he is basically contending is that Petitioner is not reliable, is not truthful nor is she a trusted wife. That during the subsistence of their marriage, the Petitioner has had two (2) children with another man and is presently living in his house in London with the said children.

He therefore cross-petitions as follows:

- i) A dissolution of the marriage between Petitioner and 1st Respondent.*
- ii) A declaration of title to House No. 407 Afienya in favour of 1st Respondent.*
- iii) Recovery of possession of the said house in favour of the 1st Respondent.*
- iv) Alimony or compensation of Fifty Thousand Ghana Cedis (GH¢50,000.00) in favour of the 1st Respondent.*
- v) Cost, including legal fees.*

By way of an Answer to the Respondent's amended Answer to Petition, Petitioner denies having committed adultery and that she had her children years after 1st Respondent gave her a copy of a Divorce Certificate.

It is Petitioner's assertion that it is rather the 1st Respondent who has committed bigamy by marrying the 2nd Respondent.

In the course of the trial, Parties through their respective Counsel sought leave of the Court to settle the matter amicably.

The Court granted them leave to settle only the ancillary reliefs but in respect of the dissolution of the marriage, the Court ordered that evidence will be taken.

Parties filed their respective Witness Statements 1st and 2nd Respondents: Cyril Marchant and Abigail Marchant filed their respective Witness Statement on 3rd October, 2019.

Petitioner's Lawful Attorney Wisdom Ebo Panford on the 12th of February, 2020 also filed a Witness Statement on behalf of the Petitioner.

It must be noted that Counsel for Petitioner had already indicated to Court that Petitioner is domiciled in the United Kingdom and has suffered some mental illness as a result of which she is in an institution and so she cannot travel to Ghana in respect of this trial. Hence her appointment of the Lawful Attorney, Wisdom Ebo Panford.

Trial commenced on 28th July, 2023 with Petitioner's Lawful Attorney, Wisdom Ebo Panford tendering his Witness Statement which the Court duly adopted as his evidence-in-chief.

He was cross-examined by Counsel for Respondents. During cross-examination this ensued among others:

Q: It is the case of the Petitioner whom you represent that the marriage celebrated between her and the 1st Respondent Cyril Marchant on the 15th of June, 1998 has broken down beyond reconciliation and should be dissolved by this Court, is that not so?

A: Yes, My lady.

Q: It is also the case of the Petitioner that the alleged marriage between the 1st Respondent and the 2nd Respondent is invalid because the marriage between her and the 1st Respondent is still subsisting, is that not so?

A: Yes My lady, that is so.

Q: Again it is your case that the said marriage between the 1st Respondent and the 2nd Respondent be annulled by this Court is that not so?

A: Yes My lady.

After Petitioner's Lawful Attorney had been cross-examined 1st Respondent Cyril Marchant took the stand. He relied on his Witness Statement filed on the 3rd of October, 2019 and same was adopted by this Court as his evidence-in-chief.

He was cross-examined by Counsel for the Petitioner. He was posed these questions among others during Cross-examination:

Q: You agree with me that the marriage between you and Petitioner has broken down beyond reconciliation?

A: Exactly, yes.

Q: You also agree that the Court should dissolve that marriage?

A: Yes, exactly.

2nd Respondent was conspicuously absent from Court.

At the end of the trial, there was no dispute about the fact that both parties Petitioner and 1st Respondent agree that their marriage must be dissolved.

In the case of 2nd Respondent, though she was not in Court to tender her Witness Statement which was filed alongside that of the 1st Respondent, and be cross-examined on same, she has consistently been to this Court and a cursory glance at her demeanour depicts confidence and she also carries herself publicly as the wife of 1st Respondent and even bears his name as Abigail Marchant.

In view of the fact that both 1st Respondent and Petitioner agree that their marriage is still subsisting, the purported marriage between 1st Respondent Cyril Marchant and 2nd Respondent Abigail Marchant amounts to bigamy, which is, when a person is married to two people at the same time.

In the instant Petition there are two issues raised which ought to be determined.

- 1) Whether or not the marriage between Petitioner and 1st Respondent has broken down beyond reconciliation.*
- 2) Whether or not the purported marriage between the 1st Respondent and 2nd Respondent should be annulled.*

Issue 1

Section 1 of the Matrimonial Causes Act provides:

Petition for Divorce:

- 1) A petition for Divorce may be presented to the Court by either party to a marriage*
- 2) The sole ground for granting a Petition for Divorce shall be that the marriage has broken down beyond reconciliation*

Section 2 (1) of the Matrimonial Causes Act (Act 367) provides:

2)Proof of breakdown of marriage:

- 1) For the purpose of showing that the marriage has broken down beyond reconciliation, the Petitioner shall satisfy the Court of one or more of the following facts:*
 - a) That the Respondent has committed adultery and that by reason of such adultery, the Petitioner finds it intolerable to live with the Respondent or*
 - b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent or*
 - c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition or*
 - d) That the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the grant of a decree of divorce provided that such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal or*

e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition or

f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

In the instant Petition, per the pleadings of parties which same were reiterated in their Witness Statements adopted by this Court as their evidence-in-chief, I am of the considered opinion that the marriage between the parties, has broken down beyond reconciliation.

Both parties cannot deny the fact that they have committed adultery. Petitioner, by having two (2) children even though this marriage which she is now seeking its dissolution is still subsisting and yet to be dissolved. 1st Respondent has also been boldly displaying the fact that he has married the 2nd Respondent whilst his marriage to Petitioner is still subsisting.

The actions of the Petitioner and the 1st Respondent amounts to adultery which provides as one of the ground for dissolution of marriage.

Again, **Section 2(1)e** which is that parties have not lived together as husband and wife for a continuous period of at least five (5) years prior to the divorce presentation also suffices. From the evidence adduced, it is clear that Petitioner and 1st Respondent have not lived together as man and wife for a period exceeding five (5) years.

I also find that both parties have behaved in a way that they cannot possibly be expected to live with each other as married couple.

For the above stated reasons, I find that the marriage between parties herein: Petitioner: Grace Addison, 1st Respondent, Cyril Marchant which was contracted on 15th June, 1998 at the Tema Municipal Assembly has broken down beyond reconciliation and I hereby decree same as dissolved.

Issue 2

On the issue of whether or not the purported marriage between 1st Respondent and 2nd Respondent amounts to bigamy and same ought to be annulled.

It is my considered opinion that, the fact on ground is that both 1st Respondent and the 2nd Respondent have not denied that there is the subsistence of the marriage between Petitioner and the 1st Respondent, and have gone ahead to contract another marriage and carry themselves publicly as husband and wife. The marriage between 1st Respondent Cyril Marchant and 2nd Respondent Abigail Marchant is hereby annulled on the ground that same is void.

In respect of the ancillary reliefs, parties have filed Terms of Settlement on the 18th of July, 2023 to which all three of them have appended their respective signatures and want the Court to adopt same as Consent Judgment.

I will reproduce same:

Terms of Settlement

The Petitioner herein filed a Petition for Divorce against the Respondent and Co-Respondent herein for the reliefs endorsed on the Petition.

The Respondent and Co-Respondent also filed their Answer and cross-petitioned for the reliefs endorsed in their Cross-petition.

The Petitioner and Respondents in this suit have agreed to settle ancillary issues raised in their Petition and Cross-Petition and have agreed as follows:

- 1) That the parties have agreed that the marriage between them be dissolved.*
- 2) That the property in dispute, House No. 047, Afienya be shared between the parties in the following manner.*
- 3) That the 1st Respondent shall take the house on Plot No. 047, Afienya.*
- 4) That Petitioner shall take the bare land on the Southern part of the land starting from the pillar in the backyard wall closest to the house to the adjoining wall dividing the plot and its neighbour on the south-end of the plot (in other words on the left side whiles facing the Plot No.047 Afienya).*
- 5) That the said Plot measures approximately 60ft. by 90 more or less and depicted in the attached Site Plan of Plot No. 047 Afienya.*
- 6) That the parties shall engage a Surveyor to prepare a Site Plan in the name of the Petitioner or whoever she chooses.*
- 7) That the parties agree that the said piece of land shall become the bona-fide property of the Petitioner to deal with it as she pleases.*
- 8) That the parties shall equally bear the cost of preparing the Site Plan.*
- 9) That on the basis of Paragraph 8 the parties agree that each party shall bear his/her cost of this proceedings.*

The Court hereby adopts these Terms of Settlement in its entirety as Consent Judgment.

**H/L: RITA AGYEMAN-BUDU (MRS)
(JUSTICE OF THE HIGH COURT).**