

GHANA / JUDGMENT

Offei Vrs Christian [2023]

GHADC 598 (27 January 2023)

[2023] GHADC 598

COURT

District Court

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE DISTRICT MAGISTRATE COURT TAKORADI MARKET CIRCLE
HELD ON THE 27TH DAY OF JANUARY 2023 BEFORE HER WORSHIP

CATHERINE OBIRI ADDO
ESQ:

SUIT NO. A4/223/2022
MERCY AMENNI OFFEI. PETITIONER
PER HER LAWFUL ATTORNEY
ALICE ARTHUR
H/NO. 28/5
EFFIAKUMA
VS
BRIGHT CHRISTIAN RESPONDENT
ANAJI
TAKORADI

JUDGMENT

The petitioner through her attorney petitioned for dissolution of the marriage contracted between her and the respondent and sought for a decree of dissolution of the marriage contracted between the parties. The petitioner in her evidence to the court alleged that she is a nurse and resident in the United States of America. According to the petitioner before her departure to USA, her family made a marriage arrangement for her. Subsequent to that her mother took an amount from the respondent's mother and she spent a reasonable amount on the respondent's senior brother in the USA. Petitioner avers she has never been in love with an arranged marriage according to her the consensus to such a marriage came from her parents which she accepted same and she has forwarded some money for settlement. She further avers she agrees with the divorce if the court grants same since there is no friendly relationship between them and pleads with the respondent and his family that he shall have a wife of his

choice. In petitioner's response to the answer of the respondent, she avers that, it is never true that there has been any sexual relationship between her and the respondent after the forced marriage documentation. She avers after the said forced marriage documentation she left the country. According to her, it is true that she collected sixteen thousand cedis from one Madam Rebecca Christian and it was respondent who informed her of his desire to join her in the USA. According to petitioner she equally spent an amount of six thousand dollars on the medical bills of one Stephen Christian in the U. S. A between 2018 and 2022. Later the said Stephen Christian again was admitted to the hospital and she spent thousand dollars on him again which is seven thousand Ghana cedis. She further avers in the year 2018, she gave three thousand Ghana cedis to one Rebecca Christian as part payment. She therefore pleads with the court to disregard the response of the respondent and to make the divorce order in favour of both of them. The respondent speaking through his attorney with the said power of Attorney in evidence as Exhibit 2, on the other hand aver in his evidence to the court that he and the respondent got married under the ordinance on the 27th day of September 2017 he therefore tendered the said marriage certificate in evidence as exhibit 1. According to the respondent there is no issue in the marriage. Prior to the marriage the petitioner won American lottery and they had a discussion in respect of the lottery where they came to a conclusion that he assists the petitioner in all her paper work. Pursuant to that agreement, her mother one Rebecca Christian gave an amount of GH¢ 18,000.00 to the petitioner's mother called Alice Arthur at her residence at Effiakuma to be given to the petitioner to facilitate the process of her American lottery. According to the respondent, the petitioners' papers in the USA was ready somewhere October 2017, at Indiana power in the USA and prior to that, thy decided the petitioner will invite him to visit her after two years of her stay in the USA. In the first two years, communication between him and the petitioner was okay but in the third-year communication broke and he tried his possible best to keep up with the communication but same proved futile. Petitioner in 2021, informed him he can proceed with paper work to join her and she has instructed her lawyer in that regard in relation to the paper processing. Subsequent upon that, petitioner requested he sends thousand dollars and GH¢ 5,000.00 for immigration processing. He transferred the said amount through his brother Charles Christian who sent same to the petitioner through her UMB Account. Respondent avers, after payment of the said money the lawyer of the petitioner in the USA one Iris Marte office manager at offices of Lally & Ahn 261 old York Rd called him and requested he forward to him all his details including three pictures of himself and the petitioner through the mail. The same lawyer called a year after he has sent his details to her and indicated to him the processing had been approved and was to be scheduled for an interview however the petitioner upon hearing the process had been approved, called to inform him that she has authorized her lawyer to revoke the processes. According to respondent when he inquired from the petitioner why the processes were revoked by her however, she indicated to him she wants a divorce because she has found someone else in America. Respondent further avers, in his answer to the petition that he has no objection to the dissolution of the marriage as same has broken down beyond reconciliation. He however prays the court to recover the sum of GH¢16,000.00 from the petitioner being amount owe and due to the respondent. The issue for determination in this suit is whether or not the marriage between the parties has broken down beyond reconciliation. Petitioner in her evidence

to the court alleges she has never been in love of arranged marriages and the consensus came from her family which same was accepted by her and in addition there has not been any friendly relationship between him and the respondent. The respondent on the other hand in his evidence to the court alleged, that the petitioner upon winning the American lottery and getting married to her, promised to invite him to the USA and base on the said discussions he paid an amount of GHC 18,000.00 through his mother to the petitioner's mother for processing the petitioner's paper works to the USA. In addition, the petitioner's attorney through her answers to questions asked by the respondent to the court, sought to make it known to the court that the marriage between the parties was a contract marriage. The relevant cross examination is as follows: Q: is it your case that the petitioner is not interested in the marriage? A: yes, she is no longer interested in the marriage and respondent says he is no longer interested in the marriage Q: for how long have they not have sex in the marriage? A: They have not consummated the marriage but the contract marriage has lasted for at least 5years. It is worthy of note that in Family Law, a marriage is either valid or invalid and there is no third category of marriages of convenience, or contract marriage or connection marriages which are partly valid for some purposes and partly invalid for others. Under cap 127, once both parties to a marriage entered into a monogamous marriage, have capacity to marry, and satisfy the statutory conditions under part 5 of the ordinance, they voluntarily consent and go through the ceremony of marriage and sign the register, it is a valid marriage and cannot be terminated except through matrimonial proceedings in court. In this case petitioner indicating to the court that the marriage is an arrange marriage which she is not interested in same, does not make the said marriage void since she consented to same and signed the said marriage certificate. See the case of ERNESTINA BOATENG VRS PHYLIS SERWAA AND OTHERS CIVIL APPEAL NO J4/08/2020 per Pwamang JSC. See also the case of SERWA VRS HASHIMU and ANOTHER (J4 31OF 2020) (2021). Base on the above position of the law, the court finds that, the marriage is valid and as such need to be subjected to the provisions of the Matrimonial Causes Act, Act 367. Although the respondent sought for ancillary relief, the ancillary relief, is subservient to the relief for dissolution of the marriage as such same cannot be granted until the relief for dissolution is granted. I shall therefore determine the issue for the dissolution of the party's marriage before I deal with the issue of ancillary relief. The question is, has the marriage between the parties broken down beyond reconciliation, if so then then petitioner is entitled to a decree of dissolution of their marriage. It is trite that a court hearing a petition for divorce, is obligated to carefully consider all the evidence before it as a mere assertion by one party that the marriage has broken down. The court must consider whether the evidence adduce situate the case of the petitioner and respondent cross petition for dissolution of marriage within any of the grounds in section 2 of the MCA. Per section 1(2) of the Matrimonial Causes Act, Act 367 hereafter referred to as the MCA, the sole ground for the grant of divorce is that the marriage has broken down beyond reconciliation. For the purpose of showing that the marriage has broken down beyond reconciliation, any of the facts enumerated under section 2(1) (a) to (f) of the MCA must be proved by the petitioner and or the respondent in their respective evidence. This was explained in the case of MENSAH V MENSAH 1972 2GLR 198-209 by HAYFRON BENJAMIN J (as he then was) at page 202 where the respected judge said "From the relevant sections of the Matrimonial Causes Act 1971 Act 367 namely sections 1(2) and 2(1) and (3) the

court ought to grant a divorce only where there has been a breakdown of the marriage beyond reconciliation. It is obligatory on the petitioner to prove one or more of the specified facts in order to establish that the marriage has broken down beyond reconciliation obviously on all evidence. Having established these facts to such a standard as to lead the court to make a finding that these facts exist, the court can still refuse to grant the decree because it is not satisfied that the marriage has broken down beyond reconciliation. The evidence before the court shows that the parties have not consummated their marriage since the celebration of the said marriage in 2017. In fact, the respondent avers in his answer to the petition that he always makes love to the petitioner under duress since the petitioner denied him sexual intercourse. This assertion, by the respondent was denied by the petitioner where she stated in her response to the answer that they never lived as husband and wife and there has never been any sexual relationship between her and the petitioner because few days after the said arranged marriage, she left the country. This assertion of the respondent that the he always have sex with the petitioner under duress has vehemently been denied by the petitioner who offered an evidence to the contrary indicating that there has never been any sexual intercourse between her and the respondent. This assertion of the petitioner was neither challenged by the respondent neither did the respondent led evidence to the contrary. It is trite that where a party makes an averment which is not challenged by the opponent under cross examination neither does the opponent led evidence to the contrary, those averments shall be accepted by the court. Per the above position of the law, the court finds that the marriage has not been consummated. Base on the above position of the law the court finds that since the ordinance marriage of the parties in 2017, the said marriage has not been consummated and in addition the petitioner indicated that few days after the said marriage in 2017, she left Ghana. The court further finds that the parties have not lived as husband and wife for a continues period of five years immediately preceding the institution of the action in court. Since the court has found supra that the parties have not lived as husband and wife for a continues period of 5 years immediately preceding the institution of the marriage in court in addition for the lack of consummation of the said marriage for 5years, the court therefore finds the irreconcilable differences between them. In the circumstance the court finds per section 2(1) (e) of the MCA. The court per the evidence before it, is satisfied that the marriage between the parties has broken down beyond reconciliation. In view of the foregoing this court accordingly decree a dissolution of the marriage contracted between the parties on the 27th day of September 2014per the marriage certificate tendered in evidence as exhibit 1, with certificate no 513/2017 hereby cancelled. In respect of the ancillaryrelief, the respondent in his response to the court is seeking to recover the GH¢ 16,000.00 that he allegedly paid to the petitioner to enable her process her American lottery visa. This assertion by the respondent was admitted by the petitioner in her response to the answer to the petition that she indeed accepts that it is true that she collected an amount of GH¢16,000 from the respondent mother one Madam Rebecca Christian however she also spent an amount of six thousand dollars and thousand dollars respectively on the medicals and hospital bills of one Stephen Christianin the USA respectively. The plaintiff attorney indicated in 2018 she paid an amount of GH¢3,000.00 to the mother of the respondent Rebecca Christian as part payment of the GH¢ 16,000.00 paid to the petitioner. Once she paid the GH¢3,000.00 to the respondent mother as part payment of the GH¢16,000.00 received from the

respondent, the court finds that there is an intention on the part of the petitioner to refund the GH¢16,000.00 to him. Petitioner indicated that he made several expenses in respect of one Stephen Christian. Obviously, there is no evidence to the effect that the said expenses she made on the said Stephen Christian was authorized by the respondent and he agreed to refund same to her. The petitioner did not make that known to the court. The court finds that the expenses the petitioner incurred on the said Christian Stephen cannot bind the respondent. In the circumstance since the petitioner has indicated that she has already paid GH¢3,000.00 to the respondent mother which was not challenged by the respondent, the court accepts same. In the circumstance it is the determination of the court that, the petitioner is to refund the outstanding balance of GH¢13,000.00 to the respondent. I make no order as to cost to foster good will between the parties. (SGD) H/W CATHERINE OBIRI ADDO ESQ: (MAGISTRATE) REPRESENTATION PETITIONER- APPEAR PROSE RESPONDENT- SAMUEL ADINKRAH ESQ. 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://ghalii.org/akn/gh/judgment/ghadc/2023/598/eng@2023-01-27
CASE PAGE	https://chat.esheria.ai/case-law/ghana/bright-christian-dissolutionofmarriage-district-court-2023

Prepared on 26 October 2026 · Esheria