

GHANA / JUDGMENT

Monica Acheampong Vrs Stephen Kwame Owusu [2023] GHACC 516 (27 January 2023)

[2023] GHACC 516

COURT

Circuit Court

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IN THE CIRCUIT COURT 3, HELD AT ACCRA TUESDAY THE 27TH DAY OF JANUARY 2023 BEFORE HER HONOUR SUSANA EDUFUL (MRS.), CIRCUIT COURT JUDGE. COURT CASE NO. C5/31/2023
MONICA ACHEAMPONG PETITIONER VRS STEPHEN KWAME OWUSU RESPONDENT

RULING

The Respondent/Applicant is by this motion seeking an order to dismiss the petition filed as irregular. The Petitioner/Respondent filed a petition for the dissolution of marriage on August 25, 2022. According to the Petitioner the parties are married under customary law. Their marriage was celebrated on or about May 1986. The ground for the petition is unreasonable behavior on the part of the Respondent/Applicant. The Respondent filed a conditional appearance on September 27, 2022. The Applicant has brought this application on the grounds that they are married under customary law, which is a marriage between the two families of the parties. The Respondent/Applicant has stated that by custom the Petitioner must inform the Respondents family but she has not done so. It is the Applicants contention that if the court goes ahead to hear and dissolves the marriage it would have been done without the knowledge of the family and the family may still consider the marriage as persisting. In Response, the Petitioner/Respondent has stated that she sought leave of the court to file the Petition and same was granted by the court. According to the Petitioner she has returned the drinks to the Respondents family as required under customary law. Section 41 of Act 367 1971 allows a party to a customary marriage to apply to the court in order to dissolve his or her marriage in accordance with the Matrimonial Causes Act 1971 Act 367. Section 41—Application of this Act.

- (1) This Act shall apply to all monogamous marriages.
- (2) On application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may—

- (a) have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;
- (b) grant any form of relief recognized by the personal law of the parties to the proceedings, either in addition to or in substitution for the matrimonial reliefs afforded by this Act.
- (3) In the application of section 2 (1) of this Act to a marriage other than a monogamous marriage, the court shall have regard to any facts recognized by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage (but without prejudice to the foregoing) the following—
 - (a) willful neglect to maintain a wife or child;
 - (b) impotence;
 - (c) barrenness or sterility; (d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship;
 - (e) persistent false allegations of infidelity by one spouse against another: Provided that this subsection shall have effect subject to the requirements of justice, equity and good conscience. Having considered the provision under Section 41 of the Matrimonial Causes Act 1971, Act 367, it does not provide any condition precedent to be complied with before an application can be heard under this section. The Respondent has satisfied all the processes required by law to evoke the Jurisdiction of this court hence the proper forum. The Court presumes that the presentation of the drinks by the Petitioners/Respondents family is to notify the Respondents/Applicants family of her intention to divorce the Respondent Applicant. Consequently, this application is refused. The case will take is normal course. Cost of GH¢2,000.00 is ordered against the Applicant herein. LEGAL REPRESENTATION JOSUAH ADDA-BOATENG FOR APPLICANT SAMUEL NANA BAMPOE-PARRY FOR RESPONDENT H/H SUSANA EDUFUL (MRS) (CIRCUIT COURT JUDGE) 4

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