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EFFECT OF VOID MARRIAGE

Case Title: Mrs. Nana Ama Twumasi v. Brenya Akosua Twumasi & Anor

Suit No.: H1/127/2022

Court: 10th November 2022

Corom: Kwofie JA (Presiding)
Baffour JA
Gaisie JA

Date: 20TH MARCH 2023

A. RELEVANT FACTS

The Appellant was married to one Prof. Patrick Twumasi (now deceased) under Akan customary law in 1983, which marriage was subsequently converted to a marriage under Part III of the Marriages Act 1884 -1985 on 26th December 1987. The said marriage produced three issues. The couple travelled around the world and were seen and recognized as a married couple by all who knew them.

The Appellant's case before the trial court in part was that before her marriage to the deceased Professor, she was informed by the deceased that a previous marriage contracted by and between the deceased and one Dutch woman by name Maria Theresa Sleggers, which produced three issues had been dissolved.

The Respondents to the Appeal, who are the two surviving children from the first marriage between the deceased and Maria Theresa Sleggers, applied for and were issued with Letters of Administration through their lawful attorney. The Appellant and her children were not included in the application, and therefore the Appellant contended that her interest and those of her children could not be adequately catered for by the Respondents who had been issued with the Letters of Administration.

Before the Trial High Court, the Respondents denied the existence of any valid marriage between the deceased and the Appellant, on the basis that the purported marriage contracted between the Appellant and the deceased was a void marriage, since in 1987 when the alleged marriage took place, the deceased was lawfully married to their mother, Maria Theresa Twumasi, which marriage had been contracted sometime in 1956. Their mother died in 2003 before the death of their father, the deceased.

B. ISSUE FOR DETERMINATION

The relevant point of law raised for determination by the Court of Appeal

touched on the nature, constitution, and effect of a void marriage. Thus, whether a person who was a party to a marriage as “a spouse” and had lived in this marriage and all along conducted his/her affairs as a wife/husband and had been projected as such had rights or entitlements upon the death of “the other spouse” to the marriage.

C. DECISION OF THE HIGH COURT

After trial, the High Court held that on the facts, the marriage contracted by and between the Appellant and the deceased was a void marriage because of the existence of the prior marriage between the deceased husband and Maria Theresa Twumasi, with the effect that she could not benefit as a spouse out of the estate of the deceased. The Court further held that the three children begotten out of the void marriage were children of the deceased and entitled to their fair share of the estate of the deceased and accordingly one of them was added in addition to the Administrator-General of Ghana as co-administrators.

D. APPEAL TO THE COURT OF APPEAL

On appeal, the Court of Appeal held in part that *“By section 13(4) of the Matrimonial Causes Act, 1971 (Act 367) as long as the marriage of the deceased to the late Maria Theresa Sleggers had not been dissolved in spite of the fact that they had lived apart since 1981 and conducted their affairs as a divorced couple, the second marriage of the deceased to the Appellant would be deemed to be a void marriage. Being a void marriage there was no need for any action to have been taken towards the annulment of that marriage. In other words, a void marriage would always remain a void marriage and it was only superfluous for an action to have been taken towards its annulment. For the law does not recognise that any such marriage ever existed at all.*

However on the facts of this case, the family of the deceased husband recognized and acknowledged the Appellant as the widow of the deceased, by their conduct and in particular by adding her name as the widow in the publications made in the newspaper announcing his death and also permitting her to write a tribute as the widow which was published in the funeral brochure and related documents. In addition she was permitted by the family to perform customary rites reserved only for surviving widows. Therefore, as there was no existing marriage between the late Prof. Patrick Twumasi and Maria Sleggers by virtue of the death of the latter in 2003, the public acknowledgement of the Appellant as an uncontested wife by the family of the late Professor Patrick Twumasi evidenced by the incidents recounted makes appellant a surviving widow under customary law... She was a customary law wife after 2003 and remained same till the death of Prof. Patrick Twumasi.”

KYEI BAFFOUR JA held in part that “The evidence on record impels me to come to the conclusion that the formal customary law marriage in 1983 and the Ordi-

nance marriage in 1987 were void under law. However, that after 2003 with the death of Maria Theresa Sleggers the appellant and the late Prof Patrick Twumasi lived as husband and wife and were acknowledged as such by the family of the late Yaw Twumasi as his widow at the time of his death. Being a widow therefore she was entitled to be joined as an administrator of the estate in place of the Administrator-General that was joined by the trial court.

E. COMMENTS

1. The decision of the Court of Appeal no doubt has opened new frontiers in the pursuit of the rights of women in particular in the estate of their deceased husbands. In the instant case, the resultant effect of the decision was that it allowed the Appellant to benefit under the estate of her deceased husband even if the marriage was deemed to be void, for the most part of the time they lived together as husband and wife.
2. It is important to analyze and appreciate this case in its proper context and have regard to the specific and peculiar facts and circumstances that informed the decision.
3. It is however doubtful if there is a binding authority in support of the decision of the Court of Appeal, to the effect that a customary law marriage was established after the death of Maria Theresa Sleggers, particularly when both courts held that, that customary law marriage celebrated in 1983 was void.
4. It is important to note that there is no evidence that the parties to the marriage did any positive acts after the death of Maria Theresa Sleggers in 2003 to marry again. At all material times, there was only one customary law marriage contracted by and between the parties, which marriage was held to be void by both courts, and the effect of that declaration was that, that customary law marriage which was purportedly celebrated in 1983 was void from that date in 1983 and not in 2003 when Maria Theresa Sleggers died.
5. With this in mind it is hoped that the courts will take the opportunity, in appropriate cases to expand on the contours of what appears to be a new jurisprudence and learning in respect of what happens to an otherwise void marriage, upon the death of a party to the prior existing marriage.
6. It would also be useful to find out what the courts will hold, if for instance the subsequent marriage is an Ordinance marriage. In that situation, would the death of a spouse in a previous Ordinance marriage necessarily constitute the subsequent marriage valid for all purposes?