IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2022

BEFORE HER HONOR: SIE-A-NYENE G. YUOH ,,,,….....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……...ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE……..…….ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….…..ASSOCIATE JUSTICE

Lucy Stewart Saint-Jean of the City of Monrovia, Republic of Liberia…. Appellant	)	
Versus	)	APPEAL
Etienne C. Saint-Jean also of the City of Monrovia, Republic of Liberia….Appellee	)	
GROWING OUT OF THE CASE:	)	
Etienne C. Saint-Jean also of the City of Monrovia, Republic of Liberia….Plaintiff	)	
Versus	)	ACTION OF DIVORCE FOR IMCOMPATIBILITY OF TEMPER
Lucy Stewart Saint-Jean of the City of Monrovia, Republic of Liberia…. Defendant	)	

Heard: April 20, 2022 Decided: December 15, 2022

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On July 27, 2018, Etienne C. Saint-Jean, appellee herein, filed before the Sixth Judicial Circuit Court for Montserrado County a six count complaint in an action of divorce against the appellant, Lucy M. Stewart Saint-Jean, and substantially alleged that he and the appellant were joined in a holy matrimony on May 20, 2012 at the First Baptist Church in Congo Town; that the marriage has been blessed with two children; and that the couple has lived together peacefully until 2015 when irreconcilable differences developed between them resulting into incompatibility of temper and making cohabitation difficult, if not impossible. For reasons stated, the appellee prayed the lower court to cancel, dissolve and annul the marital contract between the parties and thereafter declare them as separate and distinct persons as if they were never married.

On August 3, 2018, the appellant filed her answer and averred, *inter alia*, that she was taken aback by the untrue negative characterization made against her in the appellee's complaint; that rather it is the appellee who is the "leech and poison" in their relationship because he has the tendency of treating her with contempt and giving cold shoulder when domestic issues arose; that the appellee hardly supported her and did not care for her wellbeing; that while she was getting along with the appellee's behavior, she was surprised when the appellee "extracted his belongings" from their home and instituted this action; that assuming that there exist conflict or misunderstanding which is not the case, there is a remedy other than an action of divorce; and that she still loves and treasures the appellee in spite of any misunderstanding. The appellant therefore prayed the lower court to deny and dismiss the appellee's action of divorce. Pleading rested after the filing of the appellee's reply in which he denied the allegations as are contained in the appellant's answer and reaffirmed the allegations as are contained in his complaint.

On October 2, 2019, that is a little over a year, the appellant filed a motion for alimony and legal fee requesting the lower court to order the appellee to pay the amount of US$2,000.00 for her monthly support pending the disposition of the case. In justifying her application for the said amount, the appellant averred that the appellee had abandoned his marital home leaving her to shoulder household expenses totaling US$7,080.00 which include rental and utility bills and that the abandonment by the appellee of his marital home had resulted to the appellant's inability to liquidate a loan she had secured from the GN Bank Liberia Limited thereby exposing her three bedroom house to public auction.

In responding to the appellant's motion, the appellee contended that the averments of the appellant that he abandoned his household obligation as to rent and utilities is false and outrageous; that he works with the United Nations World Food Program in Zambia making a monthly salary of US$3,000.00 inclusive of rent, feeding and transportation; that he regularly remit money to the account of the appellant and to the United States of America for the support of his two children and that the allegations of the appellant are false and misleading. The appellee therefore prayed the lower court to deny and dismiss the appellant's motion for alimony and legal fees.

The lower court held that suit money or counsel fee and alimony are matters of law. But, the court modified the amounts for suit money from US$3000.00 to US$1,500.00; and for the *alimony pendente lite* from the monthly amount of US$2,000.00 to US$750.00 to be paid retroactively as of the commencement of the divorce action. The appellee excepted and announced appeal to the Supreme Court of Liberia which was denied by the lower court on ground that its ruling on the motion was interlocutory and not final. Subsequently however, the appellee filed a petition for a writ of certiorari before the Justice in Chambers of the Supreme Court during its October Term, A.D. 2019. The records further show after a conference, the succeeding Justice in Chambers declined to issue the writ and ordered the lower court to resume jurisdiction over the case and proceed in keeping with law.

The lower court having read the mandate of the Justice in Chambers of this Court on August 21, 2020, resumed jurisdiction as directed in the mandate and proceeded to assign the matter for trial. Before trial could commenced, on October 2, 2020, the appellant filed a seven count bill of information informing the lower court that she had filed on November 1, 2019 a petition for child custody before the same court requesting the return of her son, Lemuel C. Saint-Jean, since the appellee was engaged in UN missions outside Liberia; that she had executed an "attestation of payment and waiver of all claims growing out of the action of divorce" (attestation); and that the only outstanding issue for resolution by the court is the issue of the child custody to be submitted to the court.

At the call of the case on the said October 2, 2020, the appellant, by leave of court, spread on the records the pendency of her bill of information at which time the appellee seized the opportunity to resist the information contending that a petition for child custody is a separate and distinct suit from an action of divorce; and that the appellant having received the amount of US$7,000.00 and attested to a stipulation for divorce, the trial court should deny the appellant's bill of information and proceed to try the action. The trial judge agreed with the appellee's contentions and ruled denying the bill of information.

The case progressed to a full trial with the appellee producing two witnesses; the appellee himself and Reginald Burton Taylor, to substantiate his allegations of facts as are contained in his complaint. The appellee testified to the "attestation" signed by the appellant as the quintessence of his evidence. On the other hand, the appellant

produced three witnesses; the appellant herself, Delia Clarke Kamara and Rev. Dr. Emmanuel Nimely, tending to establish that the quarrel between the parties was about the loan the appellant received from the bank, but that she is still in love with the appellee.

After the close of evidence, the lower court entered final ruling adjudging the appellant liable on the basis of the "attestation" and ordered the marriage between the parties dissolved and a decree of divorcement issued to that effect. We quote excerpt of the trial judge's final ruling as follows:

> "Section 8.1 (D) of the Domestic Relations Law is controlling in the determination of this action of divorce, which provides that "an action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the grounds (D), where as a result of incompatibility of temper the defendant is so extremely quarrelsome and intolerably pugnacious to the plaintiff that life together between plaintiff and defendant becomes dangerous to the plaintiff".
>
> In the mind of the court, and using or referring to the Defendant's document known and referred to as "Attestation of payment and waiver of claim", where the Alimony and the counsel fees are being paid, an admission made by the Defendant herself that only issue in dispute is custody of their minor child, said assertion is conclusive to the determination of this matter. According to section 25.8(1) of the Civil Procedure Law, "all admission made by a party himself or by his agent acting within the scope of his authority are admissible." The Defendant acknowledged signing waiver to the divorce except the custody of their child. The court concludes that there is no impediment or outstanding issue to prevent the granting of the appellee's divorce. Both parties agreed, especially the appellant that only the point of disagreement between the parties is that of the custody of their lone child; that is to say, as between the appellee/the husband and the appellant/the wife, which one of them should have custody of the child. The Court says the issue of custody is not raised in the complaint nor the answer, but rather, is the subject of a separate document or action, namely "a petition for

child custody" which was filed separately from the complainant and the answer, and as such, will be treated separately upon the assignment and hearing of the petition for child custody. In light of the facts and circumstances narrated above, the court is inclined to granting the appellee's divorce and thereafter will determine which of the parents should have custody of the child after the hearing of the petition for child custody.

"The court says that in light of the document executed by the defendant entitled: "Attestation of payment and waiver of claim", which was admitted into evidence as part of the records in this case, serves as the best evidence in these proceedings. Section 25.6(1) of the civil procedure Law further states, "the best evidence which the case admits of must always be produced, that is, no evidence is sufficient which supposes the existence of better evidence. Therefore the court determines that there is no reason why the plaintiff's divorce should not be granted, and accordingly the court holds that in the absence of any ground or reason to the contrary, the complaint of the plaintiff is sustained and the answer of the defendant is overruled. It is the consider opinion of this court that the plaintiff has proved his case by preponderance of evidence and has met the requirement set forth in section 8.1 (D) of the Domestic Relations Law. This court says during argument, the counsel for Defendant contended that the Defendant is still in love with her husband, by that defendant does not want a divorce. Interestingly, the book of Amos 3.3 in the Holy Bible says how two can walk together, except they agreed**.** In the instant case, the two parties are not in agreement to live together as husband and wife, the wife may still love her husband as claimed by her but to the contrary the husband does not want to marriage due to his reasons stated in the pleadings and his testimony.

WHEREFORE, AND IN VIEW OF THE FOREGOING LAWS, it is the Ruling and final judgment of this court that the Defendant is adjudged LIABLE and the plaintiff's Divorce is hereby granted, and the matrimonial ties existing between plaintiff and the defendant as husband and wife, be and same is hereby ordered annulled, dissolved, made null and void forever; and the parties are hereby declared two

separate and distinct persons as though they were never married. The clerk of this court is hereby ordered to issue a Bill of Divorcement and give same to the plaintiff upon the payment of the Divorce Tax fee by the plaintiff in evidence of this final Judgment, granting the plaintiff's Divorce as prayed for. Costs of these proceedings are disallowed. And it is hereby so ordered.

GIVEN UNDER MY HANDS AND SEA OF COURT THIS 16th DAY OF OCTOBER A.D. 2020.

HIS HONOR J. KENNEDY PEABODY
RESIDENT CIRCUIT JUDGE
6th JUDICIAL CIRCUIT, CIVIL LAW COURT
MONTSERRADO COUNTY, R.L"

We also find it necessary to reproduce the "attestation" which is at the core of this appeal as follows:

"KNOW ALL MEN BY THESE PRESENTS; that I Lucy Stewart Saint-Jean, by and thru my legal counsel Cllr. Samuel S. Pearson, defendant in the above entitled cause of action, do hereby attest and acknowledge receipt from Etienne C. Saint-Jean, by and through his legal counsel Cllr. Micah Wilkins Wright the amount of SEVEN THOUSAND UNITED STATES DOLLARS (US$7,000.00).

That I herein further attest and acknowledge that the said amount represents final settlement of alimony due me and as well extinguishes other related claims surrounding the divorce action which is pending before the civil Law court undetermined and shall further bring to finality issues raised in the petition for the writ of certiorari filed and pending before the supreme court.

That upon receipt of the said amount, the lone issue of contention left for consideration, consistent with the action of divorce, is and shall be the issue of the child, LEMUEL C. SAINT-JEAN that was born during the course of the marriage and that the said issue shall be submitted to the sixth judicial circuit civil Law court so that the Judge can pass on same, in keeping with law.

This indenture shall remain in full force and effect and shall constitute the legal authority of the parties from time to time until the final determination of the Divorce Action out of which this instrument grows.

Signed by:_____
Lucy Stewart Saint-Jean
Defendant/Respondent

Attested by:_____
Cllr. Samuel S. Pearson
Counsel for Defendant

_____ _____
Cllr. Micah Wilkins Wright
Counsel for plaintiff

Done this _____day of August, A. D. 2020"

Having appealed from the final ruling, the appellant has urged upon this Court, in her four-count bill of exceptions, to reverse the said ruling on grounds, *inter alia*, that the "attestation" which formed the basis of the judge's ruling was neither pleaded nor filed to form part of the records in the action of divorce; that the said instrument was not intended for "automatic termination" of the action of divorce; and that the trial judge erred when he held that the evidence adduced by the appellee met the requirement of proof by the preponderance in substantiation of his allegations of incompatibility of temper.

For the resolution of this case, we are asked to determine whether execution of the attestation instrument by the appellant waiving all claims relative to the action of divorce terminates the cause in the face of the proviso in the said instrument for the parties to submit the issue of child custody to the court? And whether the appellee met the requirement of proof by the preponderance of the evidence in substantiation of his allegation of incompatibility of temper?

Our review of the appellant's brief and arguments of the appellant's counsel before this Court however show that the main contention of the appellant is that the trial judge erred when he refused to "incorporate" or consolidate her petition for child

custody and the action of divorce but, that he ruled solely on the action of divorce which was a breach of the agreement between the parties insofar as the attestation is concerned. This lone contention couched in the appellant's brief is in direct contrast with the appellant's bill of exceptions in which she assigned error to the judge relying on the attestation in the determination of the action, contending that the attestation was neither pleaded nor filed to have formed part of the records. Albeit, the records show that it was the appellant who introduced the attestation via a bill of information to bring the attention of the lower court to the execution of the instrument. The bill of information having been denied and dismissed, the attestation was by operation of that dismissal of the information stricken from the records. But, the records also show that the attestation instrument was testified to, confirmed, reconfirmed and admitted into evidence by the appellee without objection from the appellant. We hold that the attestation not having been objected to during the trial by the appellant, she is now estopped by operation of the doctrine of laches and waiver to raise this issue before this Court of last resort for the first time. The appellant ought to have objected to the production of the attestation during trial in the face of the dismissal of her bill of information. And not having done that, she waived objection to the attestation after it having been testified to, confirmed and admitted into evidence. *Nagbe v. Nagbe, 40 LLR 337 (2001), Intestate Estate of Anderson v. Neal, 41 LLR 314 (2002), Dennis v. Shiance et al, Supreme Court Opinion, October Term, A.D. 2012, Edith Gongloe v. NEC et al, Supreme Court Opinion, March Term, A.D. 2021*

It goes without saying that the contention of the appellant that the trial court refused to give credence to her corroborated testimony that she still loves the appellee and that their differences over the payment of loan to the bank was resolvable are irrelevant in the face of the written consent to a divorce signed by the parties (the attestation). More importantly, the appellant has not alleged or proved fraud, misrepresentation, undue influence, duress or any other legal grounds to have warranted the setting aside of the attestation.

Howbeit, the appellant strenuously argued that the intent and purpose of the attestation were to consolidate the issue of child custody and divorce action for determination by the lower court. Conversely, the appellee contended that the petition for child custody which was filed by the appellant after the filing of the action of divorce by the appellee are two separate and distinct causes that are not

jointly triable. The appellee further argued that the appellant is not estopped from requesting assignment for the hearing of the petition for child custody filed by her. The compelling question that this Court must answer is whether under the facts and circumstances of this case and the controlling law in this jurisdiction, a petition for child custody ought to have been entertained and determined by the lower court after the appellant raised the issue? The lower court in its determination of this question reasoned as follows:

> "the issue of custody is not raised in the complaint nor the answer, but rather, is the subject of a separate document or action, namely a petition for child custody which was filed separately from the complaint and the answer, and as such, will be treated separately upon the assignment and hearing of the petition for child custody. In light of the facts and circumstances narrated above, the court is inclined to granting the plaintiff's divorce and thereafter will determine which of the parents should have custody of the child after the hearing of the petition for child custody. The court says that in light of the document executed by the defendant entitled: 'Attestation of payment and waiver of claim', which was admitted into evidence as part of the records in this case, serves as the best evidence in these proceedings."

The trial judge, in passing on this issue in his final ruling asserted that "(the) Defendant acknowledged signing waiver to the divorce except the custody of their child. The court concludes that there is no impediment or outstanding issue to prevent the granting of the appellee's divorce. Both parties agreed, especially the appellant that only the point of disagreement between the parties is that of the custody of their lone child; that is to say, as between the appellee/the husband and the appellant/the wife, which one of them should have custody of the child.

We note that this ruling of the trial court, which relied solely on the attestation signed by the parties, considers the said instrument as an agreement by the parties for the resolution of pending issues between them as regard their disputes which are the subject of actions between them before the court. The parties specifically referred to the action of divorce and the petition for child custody, both of which were pending before the court. The parties also determined, by their understanding, how the court was to dispose of those issues. Considering that we have held hereinabove that the

attestation is properly before this court, and the appellant having stipulated therein*:* "that I herein further attest and acknowledge that the said amount represents final settlement of alimony due me and as well extinguishes other related claims surrounding the divorce action which is pending before the Civil Law Court undetermined and shall further bring to finality issues raised in the petition for the writ of certiorari filed and pending before the Supreme Court", We are inclined to agree that the lower court gave a clear interpretation of the first aspect of the attestation and strictly ordered its enforcement by granting the action of divorce. We however disagree with his reasoning that because the action of divorce was separate and distinct from the petition for child custody, the two could not jointly be heard and disposed of.

The parties, by the attestation, brought the petition for child custody and the action of divorce into one-fold to be determined by the lower court. While we agreed that the two actions are separate and that ordinarily each should be heard separately, however, by virtue of the attestation executed by the parties which became controlling in the two cases, the parties, by their action married, consolidated, and combined the two actions as one. If the attestation is to be controlling, all of the issues in the two actions as addressed by that instrument were to be resolved together. We therefore hold that the trial court was in error when it proceeded to dispose of the divorce action without also addressing the petition for child custody which was the "lone issue of contention" in accordance with the understanding of the parties. To our mind, leaving this second aspect or segment of the attestation without a resolution as contemplated by the parties tilted the scale of justice disproportionately to the appellee which was adverse to the promotion of justice. This Court says that the parties having freely reached the understanding that the attestation was the controlling instrument in the resolution of their controversy and that the only outstanding issue identified in that instrument was the issue of the custody of the child, it was incumbent upon the trial court to give that deference to the sanctity of the parties' agreement.

We have consistently held that "the sanctity of contract, without reference to form, nature or kind, …is guaranteed both by the Constitution and the statutory laws of Liberia…"; and we have upheld "… the guarantee of contracts and the rights of the parties thereto as long as the provisions contained therein do not contravene or

infringe upon the Constitution and the statutory laws enacted by the Legislature under authority of the Constitution, or is not adverse to or against public policy." *Liberia Material Ltd v His Honor Gbeneweleh et al. Opinion of the Supreme Court, October Term, A.D. 2014,*

While it is our finding that the trial court was in error when it failed to resolve the issue of child custody before the grant of the appellee's divorce, can that error be resolved by disturbing the decree of divorcement issued by the trial court especially considering the understanding reached by the parties in the attestation? Indisputably the parties, by the attestation, resolved all of the issues as were raised in their respective pleadings in the divorce action and agreed that the prayer of the appellee for a divorce against the appellant be granted. In the face of that understanding, it will make no difference whether the trial court final determination on the issue of divorce is here now disturbed on the ground that the child custody issue was not determined. What in our opinion is expedient at this time is to ensure that the question of custody be expeditiously heard and determined by the court as a matter of first priority. The issue of the divorce, by the term of the attestation, is a *fait accompli*. We therefore do not feel justify to disturb that decree of divorcement.

In view of the above, and this Count having taken cognizance of the allegations contained in the appellant's petition for custody that in 2017 the appellee requested her to allow their three years old son, Lemuel Christopher Saint-Jean, to travel to the United States of America for the purpose of visiting the appellee's mother; but that since that time, all efforts by her to have the child returned to Liberia and keep in touch with her child proved futile for the last five years, which allegations were unrebutted during arguments before this Court, we therefore deem it necessary that while the hearing and determination of custody is pending, the trial court is ordered to ensure that the appellee forthwith provides the appellant a working and accessible telephone number and current address where the child resides to accord appellant access to the minor child.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court adjudging the appellant liable in the action of divorce and declaring the marriage between the appellant and appellee dissolved and annulled is affirmed. The lower court is ordered to hear and dispose of the issue of the custody of the child

within six months as of the reading of the mandate. Costs are ruled against the appellee. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and enforce the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Samuel S. Pearson appeared for the appellant. Counsellor M. Wilkins Wright of the Wright & Associates Law Firm appeared for the appellee.