IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA

CORAM: *DENNIS DOMINIC ADJEI, JA (PRESIDING)*

ERIC KYEI BAFFOUR, JA

OBENG – MANU JNR, JA

SUIT No. H1/233/2018

DATE: 30TH JULY, 2020.

OBED HOYAH - RESPONDENT/APPELLANT

VRS

NAA KWARLEY QUARTEY - PETITIONER/RESPONDENT

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JUDGMENT

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OBENG – MANU JNR, JA

"It was all Mrs. Bumble. She would do it," urged Mr. Bumble; first looking round, to ascertain that his partner had left the room.

That is no excuse," returned Mr. Brownlow. "You were present on the occasion of the destruction of these trinkets, and, indeed, are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction."

If the law supposes that," said Mr. Bumble, squeezing his hat emphatically in both hands, "the law is a ass — a idiot. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is, that his eye may be opened by experience — by experience." ***OLIVER TWIST by Charles Dickens (1838).***

INTRODUCTION

"The law is an ass" is a proverbial expression of English origin. The ass being referred to here is the English colloquial name for a donkey, not the American 'ass', which we will leave behind us at this point. Donkeys have a, somewhat unjustified, reputation for abstinence and stupidity that has given us the adjective 'asinine'. It is the stupidly rigid application of the law that this phrase calls into question.

When Mr. Bumble, the unhappy spouse of a domineering wife, is told in court that "...the law supposes that your wife acts under your direction", he was being held vicariously liable for the torts of his wife, a fully grown adult woman. Mr. Bumble was not amused by this.

In this appeal, we are being called upon to correct the misconception that "the law is an ass".
The law, indeed, is not an ass. The law, although strong as steel, is flexible, malleable and sometimes, even ductile.

I have had the benefit of reading the opinion of my learned brother Baffour, JA, in draft. I am entirely in agreement with the ideas propounded by him which have expanded the frontiers guiding the distribution of matrimonial property where the husband has other wife or wives who may not necessarily be parties litigant in the divorce proceedings. Admittedly, previous judicial pronouncements on the subject of distribution of matrimonial property upon divorce had mainly been in

cases where the parties were married under the Marriage Ordinance, CAP 127. My learned brother's suggestions will henceforth be the light for our path whenever we are confronted with the issue of distribution of matrimonial property amongst **parties** litigant in divorce proceedings where the husband is in polygyny.

FACTS

The Petitioner/Respondent, hereinafter called the Petitioner and the Respondent/Appellant, hereinafter called the Appellant were both divorcees as at 24th June, 2005. They are both Gas. The Petitioner at all times material to this suit was an architect, working with the Architectural and Engineering Services Limited (AESL), Accra. The Appellant was also at all times material to this suit a Banking Official, working with SG-SSB Limited, Kokomlemle branch, Accra, now Société Générale. The Petitioner's father was a Structural Engineer who was initially working as the managing director of NTHC ESTATES LIMITED. Upon retirement, he set up a consultancy and his daughter the Petitioner worked with him on part-time basis. Petitioner therefore earned additional income from the consultancy firm in which she partnered her father. The Petitioner was introduced to the Appellant by her friend. The parties were therefore friends at that time, not a married couple since the petitioner was still a married woman. Indeed she was then known as Mrs. Naa Kwarley Amofa. She offered her services as an architect to sketch a building plan for the OKPOI GONNO building plot. This plot had been acquired by the Appellant from his personal resources. The sketch was discussed between the two and after same was approved, the real drawings were made. According to the Petitioner, she did not charge any professional fees for the architectural designs she made for the construction of a house on Plot No.56 MARKET STREET OKPOI GONNO TESHIE, ACCRA, as her services were offered on friendly basis.

This was at a time the petitioner was still married to Mr. Amofa, her former husband in or around 2003. According to the Appellant, he funded the construction of the Okpoi Gonno house from various sources such as selling property he owned in the United States, redeeming his investments from Databank and HFC bank and those for his daughters, liquidating a 41K Fund (Provident Fund) from City Bank, loans from his employer, salary, bonuses and other entitlements that accrued to him in the course of his employment.

The Petitioner however claims she sometimes bought cement with her own money and paid for the services of masons and other workers on the building. In addition, Petitioner asserted that profits they made from a contract they executed by their jointly owned company 'OBHONA' were plough into the construction of the house.

The Appellant also countered that the Petitioner has a building at Kasoa. Appellant asserted that he personally drove the Petitioner to the site. He tendered in evidence a photograph of the foundation of a building and a site plan of two plots of land located at Odupongkpehe, Kasoa in the Awutu Efutu Senya District of the Central Region he claims are those of the Petitioner. The said exhibits are marked as Exhibits 10 and 18A respectively, (see pages 356 and 357 of the ROA). The Petitioner however asserts that she lost these two plots of land after she had started foundation works on the land but was unable to secure documentation thereon. This was confirmed by her father. The Appellant appears to have abandoned the pursuit of this subject.

On 25th June, 2005, they were married under Ga customary law at the Petitioner's father's house at Teshie, Accra. The Petitioner at the time of the marriage had a daughter from a previous marriage. The Appellant also had two daughters from one of two previous marriages, as well as two sons by a different woman during the subsistence of his marriage to the Petitioner.

After the marriage, they immediately moved into HOUSE No.56 MARKET STREET OKPOI GONNO TESHIE, ACCRA, where they cohabited. The building

plot on which this house was built was acquired from the Appellant's sole resources at a time he was not yet married to the Petitioner. The house though not yet completed was however habitable. The Petitioner's daughter moved in to live with the parties. The parties who were both full time workers and earning monthly salaries shared the living expenses between them. The Appellant paid the Electricity and Water bills. In addition, he bought bulk food items such as rice, fish, oil and meat from time to time. The Petitioner bought groceries and vegetables such as tomatoes, okroes, toiletries and items such as mosquito spray. She also bought market items such as dried fish. After they were married, they jointly formed a company known as OBHONA, an acronym formed from their names OBED, HOYAH and NAA. It was a construction company which was awarded a contract for the rehabilitation of the Conference Centre by the Ministry of Foreign Affairs.

The Appellant's maternal grandmother had a house at Nima. It was in bad shape and the Appellant desired to have same rehabilitated. He consulted his wife the Petitioner who personally visited the house and took measurements thereof. The house originally consisted of three bedrooms. She sketched drawings for two separate apartments to accommodate the two brothers namely; the Appellant and his younger brother. Each apartment comprised two bedrooms. However the bedrooms in one apartment were bigger than those in the other. The refurbishment was financed by the Appellant after the drawings had been approved by their uncle Prof. Adzei Bekoe. The Appellant thereafter chose the apartment with the bigger rooms for himself.

Subsequently through the prompting of the Petitioner's father who was the Managing Director, the Appellant applied for and was offered two Estate houses from NTHC. Through the intervention of the Petitioner's father, the project Manager together with Petitioner's father found a plot for a semi-detached house. They however realized that being a corner plot, the semi-detached house could not be contained on it, so Petitioner's father instructed that they should build one

half of the semi-detached house on that particular plot. It was a two-bedroom house which was to cost about thirty-eight thousand US Dollars ($38,000). According to Petitioner's father, he followed up to the site to ensure that the building was positioned well enough to create a bigger land for future development so the construction started that way. At a certain level, the Appellant applied officially to purchase that particular house. The offer was made by NTHC Estates Limited to the Appellant who accepted same. The Appellant however states that he did not accept the initial offer made by NTHC at the time Petitioner's father was the Managing Director. According to him he accepted a subsequent offer made to him during the time Mr. Agboadoh was the Managing Director and when Petitioner's father had retired. According to Appellant at the time he accepted the offer, the price had changed from thirty-eight thousand US Dollars ($38,000) to forty-eight thousand US Dollars ($48,000). The extra plot was priced about four thousand eight hundred US Dollars ($4,800). The entire corner plot was a unique plot which they described in NTHC as a "protocol plot".

Another three-bedroom house was built on the vacant plot in front of the two-bedroom house. The design of this other three-bedroom house was done by the petitioner. However, both properties were paid for by the salary of the Appellant. The two-bedroom NTHC property was known as No.2 Palm Link Road, NTHC Estates, Nmai Djor. This was constructed by NTHC. The three-bedroom also became known as No.4 Palm Link Road, NTHC Estates, Nmai Djor. However, this, too was paid out of the salary of the Appellant.

The Appellant acquired four building plots of land arranged by his employers. These plots of land were situated in a village called Odumase near Dodowa. The financing of the plots of land were done through payroll deductions and through the personal savings of the Appellant.

In February 2010, following some misunderstanding between the couple, the Appellant, under the guise of moving to live closer to his workplace so as to be

punctual to work moved from Teshie to live in his refurbished grandmother's house at Nima. Understandably, Nima is much closer to his workplace which is at Kokomlemle than Okpoi Gonno at Teshie. He will go to work from Nima from Monday to Saturday when he will return to Okpoi Gonno on Saturday night and leave on Sunday morning to attend church and resume his stay at Nima until the following Saturday night. According to the Appellant, the Petitioner had been nagging him unnecessarily. The Petitioner had transformed into an irritant, constantly taunting him that her former husband, Mr. Amofa wanted her back. The Appellant claims that the Petitioner will normally tell him to his face that she had regretted getting married to him. This partly accounted for the appellant relocating to his grandmother's house at Nima. Thus, according to the Appellant, the couple had not lived as husband and wife since February, 2010. However, the Petitioner contends that the couple had not lived as husband and wife since March, 2012 rather not February, 2010. According to her, they **"were reconciled somewhere in 2011, but in March, 2012, his attitude changed again". (See Page 72 of the ROA)**

It was in March 2012 that the Appellant left the matrimonial home and came back to spend only Saturday nights in the house without performing any conjugal functions.

The families of both parties attempted to reconcile the couple. They met at the house of Prof. Adzei Bekoe. It became clear that the Appellant was determined that the marriage be dissolved. He was even prepared to financially settle the Petitioner with GH¢15,000 which the Petitioner and her family refused to accept. The Appellant increased the financial settlement to GH¢20,000 but the Petitioner would still not accept it. At this juncture, Prof. Adzei Bekoe directed that if the marriage would be dissolved then it must be dissolved at the venue the same was contracted i.e. at the house of the Petitioner's father. A subsequent meeting at the Petitioner's father's house of the parties and members of the family could neither resolve nor dissolve the marriage. While the Appellant was waiting for the matter to be

resolved by way of the Petitioners acceptance of his offer of financial provision, the Appellant was served with the petition for divorce. The Appellant insists that the marriage was customarily dissolved, the Petitioner denies that it was, and that informs his cross-petition, among others, for:

a) "Declaration that the customary marriage has already being (sic) dissolved with the exception of settlement of financial provision on the Petitioner"

Petitioner's father supports the petitioner that no rites were customarily performed in accordance with Ga custom to dissolve the marriage. However, at page 183 of the ROA, the Appellant accepted during cross-examination that the marriage had not been dissolved. Hear the Appellant during cross-examination:

Q: Were drinks exchanged-Did you offer schnapps and was this accepted?

A: They did not accept the schnapps, but they took the money.

Q: I am putting it to you that the marriage had not been dissolved?

A: No, it has not been dissolved.

In the course of his stay at Nima, the Appellant met one Deborah Hammond. The Appellant got married to her by performing two customary rites. The first was in 2010. The final one was in January 2013. Deborah Hammond thus became the Appellant's second wife. They had two children (boys) namely; Obed Junior and David. Matters came to a head when after being served with the Petitioner's petition for divorce the Appellant brought his second wife to the Okpoi Gonno house to live there. This was after Appellant had persistently put pressure on Petitioner to quit the house as he was no longer interested in the marriage.

The Petitioner returned from Church one Sunday morning to find that the second wife (Deborah Hammond) was cooking in her kitchen in the Okpoi Gonno house. She had earlier found Deborah Hammond's car parked in her parking lot in the yard. Determined not to be ousted, the Petitioner entered the kitchen, smashed the cooking utensils of her rival and overturned and poured out the food which

she was cooking. This led to a fight which resulted in both parties sustaining injuries. The Petitioner enlisted the services of some men she claimed to be her relations to drive Deborah Hammond's car out of the compound and park same outside. In addition, Deborah Hammond's belongings were thrown out of the house. Both parties reported the matter to the police. The Appellant naturally sided with Deborah Hammond. The Petitioner, sensing that Appellant was determined to evict her from the Okpoi Gonno house which she described as her matrimonial home and to which she felt she had a better entitlement, decided to institute a legal action in court to protect her interest. Petitioner therefore on 16th January, 2013, filed a petition for divorce before the high court in which she prayed for the following reliefs:

a) An order that the customary law marriage celebrated between the parties to this suit herein on the 25th of June, 2005, at Teshie Nungua, within the jurisdiction of this court be dissolved as same has broken down beyond reconciliation.
b) An order that the Petitioner is entitled to one half of all properties acquired by the parties to this marriage during the marriage.
c) An order that the Respondent pays to the Petitioner GH¢300,000 as financial provision.
d) An interim injunction restraining the Respondent, his agent or personal representative, anyone claiming through him from interfering with the Petitioner's quiet enjoyment of the matrimonial home pending the final determination of this suit.
e) An order that the Respondent be mulcted with costs of this suit."

The Appellant filed an answer and cross-petitioned for the following:

a) "Declaration that the customary marriage has already being (sic) dissolved with the exception of settlement of financial provision on the Petitioner.
b) Each party bears their own cost.
c) An order that the Respondent pay a reasonable financial provision to the Petitioner."

JUDGMENT OF THE HIGH COURT

After a full trial, the learned trial judge delivered judgment on 10th November, 2014, (see page 220-233 of the ROA) summed up as follows:

1. The evidence led by both parties supports the position that the customary law marriage celebrated between the parties on 25th June, 2005, has broken down beyond reconciliation. The said marriage is thus decreed to be dissolved.
2. In respect of HOUSE No.56 MARKET STREET OKPOI GONNO TESHIE, ACCRA which the Petitioner describes as the matrimonial home, the authorities all deal with the property acquired in the course of the marriage. That being so, the Petitioner cannot lay claim to it.
3. Since the NTHC properties i.e. as No.2 Palm Link Road, NTHC Estates, Nmai Djor and as No.4 Palm Link Road, NTHC Estates, Nmai Djor were acquired in the course of the marriage, even though the Respondent paid for them, on the basis of Mensah vs. Mensah (2012) 1 SCGLR 391 at 401 they are hereby ordered to be shared between the parties on a 50:50 basis.
4. The four plots of land at Odumase near Doodowa which were also paid for by the Appellant are to be shared on the same 50:50 basis.
5. The shares acquired in CAL Bank and Benso Oil Palm are on the authority of HANNAH ASSI vs. GIHOC REFRIGERATION (2007-2008) SCGLR 16 which allows a court to do justice by giving a party what has not been asked for but which is supported by evidence led ordered to be shared on 50:50 basis.

6. By way of financial provision, it is ordered that the Respondent pays to the Petitioner the sum of GH¢150,000 (one hundred and fifty thousand Ghana Cedis).
7. Cost of two thousand Ghana Cedis (GH¢2,000) awarded in favor of the Petitioner.

NOTICE OF APPEAL

On 17th December, 2014, the Respondent/Appellant being aggrieved and dissatisfied with the judgment of the High Court filed a notice of appeal to this court. Subsequently learned counsel for the Appellant upon discovering a myriad of errors in the notice of appeal applied to this court for leave to amend same. On 31st July, 2018, leave was granted by this court for the notice of appeal to be amended. Pursuant to the grant of leave, the following new grounds were filed;

3. GROUNDS OF APPEAL

a. The decision to award the sum of GH¢150,000.00 as financial settlement to the Petitioner in addition to the properties is unreasonable and oppressive.
b. The court's distribution of marital properties acquired during the subsistence of the marriage is not equitable and supported by sound consideration of law.

4. RELEIFS SOUGHT

a. 3-bedroom house on the NTHC plot should be shared on 50:50 basis.
b. The lump sum of **GH¢150,000.00** awarded to Petitioner/Respondent should be set aside.

ANALYSIS OF THE GROUNDS OF APPEAL

On 31st July, 2018, this court granted leave to the Appellant to amend his notice of appeal thus on 6th August, 2018, the amended notice of appeal pursuant to leave granted on 31st July, 2018 was filed. It must be noted that this process was not compiled as part of the ROA. It is loosely attached to a written submission of the Appellant. It is therefore not paginated. Looking at the amended notice of appeal vis-à-vis the original notice of appeal which can be found at pages 236-237 of the ROA, it becomes apparent that some of the grounds of appeal have been abandoned. This is so because, the grounds of appeal contained in the original notice of appeal were four, namely; (a), (b), (c) and (d). However, the new grounds contained the amended notice of appeal filed on 6th August, 2018 pursuant to leave granted on 31st July, 2018 contains three grounds namely; (a), (b) and (c). Indeed the third ground is effectively no ground at all since it merely states:

"C further grounds to be filed upon receipt of the record of proceedings"

Thus two grounds remain to be dealt with, namely; (a) and (b), i.e.

"a. The decision to award the sum of GH¢150,000.00 as financial settlement to the Petitioner in addition to the properties is unreasonable and oppressive.

b. The court's distribution of marital properties acquired during the subsistence of the marriage is not equitable and supported by sound consideration of law".

Before proceeding to discuss the grounds of appeal, we would like to comment on the refusal by the learned trial judge to decree an entitlement of the petitioner to HOUSE No.56 MARKET STREET OKPOI GONNO TESHIE, ACCRA or any portion thereof. The evidence before the court is clear that at the time the Appellant purchased Plot No.56 Market Street Okpoi Gonno, he and the Petitioner were then not a married couple. While the Appellant was then a bachelor; the Petitioner was still married to her former husband Mr. Amofa. Indeed during the time she made sketches and

subsequent architectural designs based on which the Okpoi Gonno house was built, the parties were then mere friends, not a married couple.

During cross examination by counsel for the Appellant soon after the Petitioner had concluded her evidence in chief, she made the following concessions at Pages 77-78 of the ROA.

"Q: When the land was acquired, you were still Mrs. Naa Kwarley Amofa?

A: Yes, my Lord.

Q: When you did the sketches for the matrimonial home, you were still Mrs. Naa Kwarley Amofa?

A: Yes, my Lord.

Q: When did you cease to be called Naa Kwarley Amofa?

A: In 2003.

Q: You got married in June 2005, is that correct?

A: Yes, my Lord."

The law is that the period of cohabitation before marriage is not taken into account in assessing the length of the period of the marriage. In the case of **CAMPBELL vs. CAMPBELL {1977} 1 AER1,** it was held that:

"it is the ceremony of marriage and the sanctity of marriage which counts; rights and duties and obligations begin on the marriage and not before; there is no doctrine of relation-back of matrimony" per Sir George Baker, P

The learned authors of RAYDEN & JACKSON ON DIVORCE & FAMILY MATTERS, 17TH EDITION, (BUTTERWORTHS) opined that in great many of the cases, public opinion would readily recognize a stronger claim founded upon years of marriage rather than years of cohabitation.

The learned trial judge was therefore right when she held that the Okpoi Gonno property had not been acquired before the parties got married, the Petitioner has no claim to the said property for any portion thereof. We therefore affirm the decision of the learned trial judge.

GROUND (A) OF THE APPEAL

"The decision to award the sum of GH¢150,000.00 as financial settlement to the Petitioner in addition to the properties is unreasonable and oppressive."

What is financial settlement?

A divorce financial settlement is a term the court uses to describe the financial proceedings within a divorce. It is very important for a party or parties separating from their partners through divorce to obtain a financial settlement. This is because outstanding financial claims may come back to disrupt their lives even years after the divorce has been finalized. This is why it is crucial for parties in divorce proceedings to put their financial affairs in order and have a binding court order stating what the financial arrangements between husband and wife are. These arrangements which are covered by the financial court order may include, but are not limited to, the following:

i. Property
ii. Money, shares, savings and investments
iii. Division of debts and pensions
iv. Lump sum payments
v. Children/spousal maintenance
vi. Personal belongings for example pets and cars.

It is advisable to do so before one of the partners remarries as it becomes more contentious where new parties enter the picture.

By provisions of Section 20 (1) of the Matrimonial Causes Act 1971, (Act 367)

" the courts may order either party to the marriage to pay to the either party a sum if money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision the court thinks just and equitable"

Thus in the case of **RIBERIO vs. RIBERIO [1988-1990] 2 GLR 109, SC,** the Supreme Court decreed the award of a lump sum of the modern equivalent of GH¢150,000 as financial settlement. This figure awarded by the court in those days i.e. over 30years ago was very huge. That award, it must be stated was not made in a vacuum, it was made having regard the circumstances of the case. Mr. RIBERO was a wealthy man who owned 10 houses. His spouse was a housewife and there were children of the marriage. The award in those circumstances was reasonable and in accord with what the same court subsequently said in the case of BOAFO vs. BOAFO [2005-2006] SCGLR 705, at page 714 as follows:

"This constitutional provision (and indeed Section 20 (1) of the Matrimonial Causes Act, 1971 (Act 367), only makes provision for the equitable distribution of property jointly acquired without, understandably, laying down proportions in which such property may be distributed. The reason is not difficult to find. The question of what is "equitable", in essence, what is just, reasonable and accords with common sense and fair play, is a pure question of fact dependent purely on the particular circumstances of each case. The proportions are, therefore fixed in accordance with the equities of any given case".

In our present case, the parties are both gainfully employed. The Petitioner is a professional architect and a fully recognized member of the Ghana Institution of Architects (GIA). She is a full-time employee of the Architectural and Engineering Services Limited. In addition, she was partnering her father, a Structural Engineer in her father's consultancy firm whereat she earned additional income. Her marriage to the Appellant lasted for a relatively short period of six years. The marriage produced no issues (children). The Appellant was also gainfully employed. He worked as a banking official at the Société Générale Bank. He had four children; two (older girls) from a previous marriage and the other two younger ones (boys)

from a current marriage. By current marriage is meant the second wife, indeed a co-wife (rival) of the Petitioner before her marriage to the Appellant was dissolved on 10th December, 2014. During the course of the marriage, having regard to the fact that the parties were both earning income, they agreed to and indeed shared responsibilities and financial obligations pertaining to the running and maintenance of the home.

"The Appellant paid the Electricity and Water bills. In addition, he bought bulk food items such as rice, fish, oil and meat from time to time. The Petitioner bought groceries and vegetables such as tomatoes, okroes, toiletries and items such as mosquito spray. She also bought market items such as dried fish."

In making an order for financial provision in favor of the Petitioner therefore, the court must take into consideration the afterlife of the marriage. The court must ask: what financial responsibilities lie ahead of either party which are required to be discharged by them under the law? Is there any responsibility or obligation whose discharge could be imperiled by the making of the order for financial provision? The learned authors of RAYDEN & JACKSON ON DIVORCE & FAMILY MATTERS, 17TH EDITION, (BUTTERWORTHS) AT PAGE 637 had this to say

"it has, however been said that there is life after a divorce and where the discharge of his reasonable living expense makes it impracticable for a husband to maintain his former wife and children, either no order will be made or the order will be substantially reduced to that which the husband can afford."

In the circumstances of our present case, the Petitioner has not been disadvantaged in any way by the divorce. During the time that she was married to the Appellant, she continued to practice her profession, drawing her regular monthly salary and allowances for which she did not account to the appellant, save for her monthly contributions in the running of the home.

She also continues to earn additional income from her consultancy job as a partner to her father's Structural Engineering Firm. She has not been saddled with any mouth to feed by the Appellant since they had no child together as a married couple. It is in evidence that her ex-husband Mr. Amofa who is the father of her daughter who she brought into the marriage is alive and is maintaining or ought to maintain his daughter.

On the other hand, the Appellant after the divorce still has a wife to maintain and four children to maintain, two of them infant boys.

The law in Ghana is that every man has a choice of law to make when he embarks on a marriage journey. He can choose to marry under native customary law which in all cases is potentially polygamous. There are no limitations as to the number of wives a man is entitled to marry. The only limitations, (which of course are not set by law) may well be human endurance and the contents of the man's pocket. By human endurance is meant that a man who chooses to marry a long line of women will not have the luxury of telling the next wife in line that he is tired and therefore she must allow him to rest. Every wife will definitely insist on her pound of flesh when it is her turn. The number of women a man decides to marry will therefore be dictated by the residual power of his waist.

He can choose to marry under Mohammedan Law if he subscribes to the Islamic faith. Under the marriage of Mohammedan's Ordinance, (CAP 129) a man is entitled to marry up to four (4) wives at any given time but not more. Though marriage under Mohammedans' Ordinance, (CAP 129) is also potentially polygamous, there are limitations as to the number of wives a man is entitled to marry at any given time.

Last but not the least, is marriage under the Marriage Ordinance, (CAP 127) under this type of marriage, a man can only marry one wife (monogamy). The one wife here will fit into the classical common law definition of

marriage as stated by Lord Penzance in the celebrated case of **HYDE vs. HYDE [1866] (LR) 1 P & D 130** as follows:

"I conceive that marriage, as understood in Christendom may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others."

For over a century, this definition held sway. However it is now moot, since 2014, when the Marriage (Same Sex Couples) Act 2013 (UK) came into force allowing Same Sex Marriage in England and Wales.

In the present case, the Appellant chose to marry the Petitioner under Ga customary law. This choice of law straight away sent a signal to the Petitioner and her family that the marriage was a potentially polygamous one. Polygamy is the practice of marrying multiple spouses. When a man is married to more than one wife at the same time, sociologist call this Polygyny. In contrast, Monogamy is marriage consisting of only two parties i.e. normally one man and one woman.

The common law definition as posited by Lord Penzance above does not apply to the kind of marriage which was contracted by the parties herein. They chose to marry under native customary law which is potentially polygamous as already stated. If we may be permitted to hazard a definition of Marriage Under Native Customary Law, it will go like this:

Marriage as is understood in the traditional customary setting is the voluntary or involuntary union for an indefinite period between one man and an indeterminate number of women before an assembly of the families of both parties to the exclusion of all other men, while, of course, all eligible women are free to join the union.

Thus, the Appellant having married a second wife did not commit any offence under the laws of Ghana. He therefore owed an equal obligation to maintain his said second wife and the children born to him by her body. Public policy would frown upon him if he abdicated his civic duties toward

his said second wife and her children. Consequently, a court, seized with information to the effect that the Appellant has a second wife, and which ignores all the responsibilities associated with the maintenance of the second wife while making an order for financial settlement would be going contrary to law and ought to be whipped into line.

This is because the Appellant has to discharge all his marital responsibilities towards his second wife with his monthly salary, which is, on the evidence before the court, his only source of income. We must not lose sight of the fact that this same monthly salary from his employers Société Générale Bank is heavily committed and exposed to the amortization of debts. These debts were contracted by the Appellant in the course of acquiring the following properties; No.2 Palm Link Road, NTHC Estates, Nmai Djor and No.4 Palm Link Road, NTHC Estates, Nmai Djor and the four (4) building plots at Odumase, near Doodowa. It is in evidence that the Appellant is still paying for these properties by way of monthly deductions from his salary. These properties have been decreed to be shared on 50:50 basis. The million Cedi question is this:

From where is the Appellant going to raise this whopping sum of GH¢150,000 which by the evidence on record far exceeds his annual gross income, bearing in mind that the Petitioner is the 50% beneficiary of all ongoing monthly deductions from the Appellants salary to pay for the properties?

As an appellate court, we are not to interfere with the findings of a trial court if those findings are supported by the evidence on record. However, we have the right to interfere with, and substitute our own findings, where the findings of the trial court are not supported by the evidence on record and in other circumstances. In the case of **AMOAH vs. LOKKO & ALFRED QUARTEY (Substituted by) GLORIA QUARTEY & OTHERS [2011] 1**

SCGLR 505 at pages 514-515, the Supreme Court speaking through Aryeetey, JSC, stated thus regarding the findings of the trial court:

"It is only when the findings of the trial court are not supported by the evidence that the appellate court could interfere and substitute its own findings for that of the trial court. It is trite law that the trial court has the exclusive duty to make primary findings of fact which will constitute the means by which the final outcome of the case would be arrived at. For the trial court's findings to be irrefutable: first, it must be supported by the evidence on record; second, it must be based on credibility of witnesses: third, the trial court must have had the opportunity and advantage of seeing and observing the demeanor of witnesses; and fourth it must be satisfied of the truthfulness of the testimony of witnesses on any particular matter…… the appellate court can only interfere with the findings of the trial court if they are wrong because (a) the court had taken into account matters which were irrelevant in law; (b) the court excluded matters which were critically necessary for consideration; (c) the court had come to a conclusion which no court properly instructing itself would have reached, and (d) the court's findings were not proper inferences drawn from the facts."

For the last three reasons i.e. (b) (c) and (d), we will have to disturb the findings of the learned trial judge and substitute findings of our own. The findings we have referred to above as regards the afterlife marriage situation of the Appellant clearly warrant our disturbance of the findings of fact by the learned trial judge and the substitution of same with findings of our own.

It is clear that the award of GH¢150,000 to the Petitioner by way of financial provision is manifestly unfair having regard to the peculiar circumstances of this case. The Appellant has been made to give up enough by way of property to the Petitioner already. He is not the kind of man of means who can afford to pay that sum of money to the Petitioner to boot without falling foul of the law with regard to the discharge of his other legal responsibilities.

In his answer and cross-petition filed in response to the Petitioner's petition on 6th February, 2013, which can be found at pages 9 to 11 of the ROA, the Appellant himself cross-petitioned, among others, for:

"(c) an order that the Respondent pay (sic) a reasonable financial provision to the Petitioner"

At page 184 of the ROA, the Appellant in his answers to cross-examination questions clearly conceded that he ought to pay some reasonable financial provision to the Petitioner. Below is the dialogue which ensued between counsel for Petitioner and the Appellant:

"Q: In paragraph 19 c of your answer you asked the court to make an order that you will pay a reasonable financial provision to the Petitioner?

A: Yes, because in my opinion the marriage was dissolved at that meeting.

Q: How much in your estimation is a reasonable provision?

A: I will leave that to the wisdom of the court."

Indeed the Appellant has always been willing to pay some form of financial settlement to the Petitioner as is the custom prevalent in most ethnic communities in Ghana. At page 177 of the ROA, the Appellant in answer to cross examination questions revealed that he made two separate offers to pay money to the Petitioner by way of financial settlement:

"Q: Your two bottles of schnapps and fifteen Thousand Ghana cedis (GH¢15,000) was rejected by the Petitioner. Is that the case

A: Yes, it was

Q: You topped up the amount of money for compensation of Twenty Thousand Ghana Cedis (GH¢ 20,000) together with 2 bottles of schnapps. Is that the case

A: Yes, that is so at the subsequent meeting"

The Appellant has not demonstrated any unwillingness to pay some reasonable amount by way of financial settlement to the Petitioner. Indeed in local parlance that payment is acknowledge and commonly referred to as

"customary push-off". The complaint of the Appellant is against the magnitude of the award. We agree with the Appellant that the award of GH¢150,000 is rather on the high side.

It is for these reasons that we hereby set aside the order of GH¢150,000 by way of financial provision made by the learned trial High Court Judge. In its place, we make an award of GH¢40,000 by way of financial settlement in favor of the Petitioner, which in our view, we think is reasonable.

For these reasons we allow ground (a) of the Appellant's grounds of appeal in part.

GROUND B

"The court's distribution of marital properties acquired during the subsistence of the marriage is not equitable and supported by sound consideration of law."

Before we deal with this ground, there were other ancillary reliefs which were granted to the Petitioner by the learned trial judge. These relate to the CAL Bank and Benso Oil Palm Plantation shares. Some of these shares were purchased in the joint names of the parties while others were purchased in the sole name of the Appellant. It does appear from the reliefs sought by the Petitioner in her petition namely; paragraph 15(a)-(e) (See page 5 of the ROA) that she did not directly endorse her petition with a specific relief that the said shares should be settled on her or be divided amongst both parties. However, a close reading of relief 15(b) shows that the Petitioner intended to be granted a relief entitling her to one half of all the properties acquired by the parties to this marriage during the marriage. In this connection, the Petitioner gave evidence regarding the acquisition of the shares.

At page 92 of the ROA, the Petitioner had this to say:

"Q: I am suggesting to you that the Respondent never proposed to you after the divorce?

A: He did. After that we started doing things together such as putting our monies together, buying Benso shares together, CAL Bank shares and opened a company together."

This was not challenged by the Appellant. We find that the learned trial Judge was right when she invoked the principle in **HANNAH ASSI vs. GIHOC REFRIGERATION (2007-2008) SCGLR** 16 case which allows a court to do justice by giving a party what has not been asked for but which is supported by evidence led. We accordingly affirm the order of the learned trial judge awarding 50% of the CAL Bank and the Benso Oil Palm shares to the Petitioner on account of the fact that it appears undisputed from the evidence that the said shares were acquired together.

The main thrust of the argument in Ground B is to the effect that the Petitioner has been awarded a surplus age of properties. According to the Appellant, the Petitioner got more than her due. The Appellant prays particularly that since he solely acquired and financed the payment for the two NTHC properties namely; No.2 Palm Link Road, NTHC Estates, Nmai Djor and No.4 Palm Link Road, NTHC Estates, Nmai Djor and since the only role played by the petitioner in the acquisition of these said properties was the sketch and architectural drawings made by her to guide the construction of the three bedroom estate house on the corner plot, it is only fair that the Petitioner be allowed a 50% share in the 3-bedroom house which was constructed from scratch with the Appellant's money and with the Petitioner's technical and architectural drawings and supervision. Petitioner would want us to interfere with the 50:50 order of settlement on both parties as regards the 2-bedroom NTHC Estate house. He however agrees that 3-bedroom NTHC Estate house be settled on both parties on 50:50 basis. For

similar reasons, the Appellant also prays that we interfere with the award of 50% of the Odumase building plots to the Petitioner. According to him those 4 building plots were arranged for him by his employers SG-SSB Bank now Société Générale Bank Limited. Payment for them was directly deducted from his salary at source.

At page 229 of the ROA which happens to be page 10 of the judgment of the learned trial judge, the judge had this to say:

"The proposition of the law is that where a husband and his wife evince an intention to acquire property as a family asset, the presumption is that the beneficial interest belongs to both jointly. The property may be bought in the name of the husband alone or in the name of the wife alone but nevertheless if it is bought with money secured by their joint effort and where it is impossible fairly to distinguish between the effort of the one and the other, then the beneficial interest is presumed to belong to both of them."

While acknowledging that the money with which the building plots were paid for is not money secured by the joint efforts of both parties, and that it is from the salary of the Appellant alone, it is also the case that at the time the said building plots were acquired, the Petitioner was the wife; *qua*, the only wife of the Appellant. It is also acknowledged that the Petitioner was also earning a salary; but it never occurred to her to offer her own salary or any part thereof to secure payment for these plots. However, the fact still remains that those building plots were acquired during her reign as the sole wife of the Appellant. To deny her a share in those building plots will mean that the second wife who subsequently joined the marital union is going to reap where she did not sow. Thus, as regards the Odumase building plots, we will affirm the order of the learned trial High Court Judge awarding and settling the said plots on both parties on 50:50 basis.

In the case of **CHRISTIANA QUARTSON vs. PIOUS POPE QUARTSON [2012] 2 SCGLR 1077**, the supreme court within the same year that

MENSAH vs. MENSAH [2012] 1 SCGLR 372 was decided, had this to say through Ansah, JSC:

"The Court's decision in **MENSAH vs. MENSAH [2012]** is not to be taken as a blanket ruling that afford spouses on unwarranted access to property when it is clear on the evidence that they are not so entitled. Its application and effect will continue to be and defined to cater for the specifics of each case. The ruling, as we see it, should be applied on a case by case basis, with the view to achieving equality in the sharing of marital property. Consequently, the facts of each case would determine the extent to which the decision in **MENSAH vs. MENSAH [2012]** applies."

The presence in the marital union of a second wife ought to be taken into consideration when sharing property acquired by the divorcing parties. The distribution must not be done in such a way as to unjustifiably enrich the latest entrant into the marital union to the detriment of the wife during whose reign as the wife those properties were acquired. Distribution of property among divorcing parties within a polygamous setting must be guided by the dictum of Ansah, JSC above stated.

In the case of the two NTHC Estates, the Petitioner's father in his capacity as the Managing Director of NTHC Estates was instrumental in the offer by NTHC Estates of the said properties to the Appellant. This was at a time the Petitioner was married to the Appellant. Moreover, the Appellant himself admits the professional efforts by way of the sketch and architectural drawings of the petitioner which guided the construction of the 3-bedroom house on the corner plot of the NTHC Estates. Thus, although, the Petitioner may not have contributed financially towards the acquisition of the two NTHC properties, her father's signature and that of herself run through those two NTHC properties for which reason the Petitioner cannot be denied an entitlement to portions of those two properties.

It is for these reasons that we decline the prayer of the Appellant to set aside the award of 50% share in the 2-bedroom NTHC house. In effect we affirm the order of the learned trial high court judge that the two NTHC properties namely; No.2 Palm Link Road, NTHC Estates, Nmai Djor and No.4 Palm Link Road, NTHC Estates, Nmai Djor be awarded and settled on both parties on 50:50 basis.

CONCLUSION

In conclusion, save for the variation we have made in respect of the award of GH¢150,000 by way of financial settlement in favour of the Petitioner, we dismiss the appeal in the following terms:

1. We hereby set aside the lump sum award of GH¢150,000 made by the trial judge in favor of the Petitioner by way of financial settlement and in its place, we make an award in the nature of financial settlement by way of variation in the sum of GH¢40,000 in favor of the petitioner.
2. The order settling the four (4) building plots at Odumase on both parties on 50:50 basis is hereby affirmed.
3. We affirm the order settling the HOUSE No.56 MARKET STREET OKPOI GONNO TESHIE, ACCRA, on the Appellant.
4. We affirm the order settling the two NTHC Estate houses namely; No.2 Palm Link Road, NTHC Estates, Nmai Djor and No.4 Palm Link Road, NTHC Estates, Nmai Djor jointly on both parties on 50:50 basis.
5. We affirm the order settling the CAL Bank Shares and the Benson Oil Palm Shares jointly on both parties on 50:50 basis.

   We must commend learned counsel for both parties for their industry in the prosecution of this appeal.

We make no order as to costs.

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JUSTICE OBENG-MANU JNR,

(JUSTICE OF THE COURT OF APPEAL)

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JUSTICE DENNIS ADJEI

(JUSTICE OF THE COURT OF APPEAL)

ERIC KYEI BAFFOUR J.A:

INTRODUCTION

The distribution of matrimonial properties after the break down of a marriage by the courts under the Marriage Ordinance, Cap 127 has received extensive authoritative pronouncements from the Supreme Court. Our path is now fully lit with ground breaking decisions to serve as a guide taking into consideration the special circumstances of each case. What still remains a murkier field in matrimonial property distribution and which this appeal raises is the nature and kind of formulae that ought to guide the court in the distribution of properties when the marriage was contracted under custom and remained a polygamous one at the time of the divorce.

The parties married under Ga customary law on the 25th of June, 2005 at Teshie, Accra. Whiles the Petitioner/Respondent (referred to as Petitioner in this judgment) at the time of the marriage was a divorcee with a daughter whiles the Appellant/Respondent (referred to as Appellant in this judgment) had come out of two previous failed marriages with two children. In the course of the marriage, the Appellant claim to have contracted another marriage by custom to one Deborah Hammond with whom he has sired two more children. With the benefit of their experience from their previous failed marriages, one would have thought that they

entered the marriage with lessons learnt over the years to endow them with a happy marriage. Unfortunately, having tasted a failed marriage is no guarantee that a new marriage would be a successful one. And the marriage between the parties proved so for them. Squabbling between them generated into intractable positions that eventually led to the Appellant abandoning the matrimonial home for which he only returned on Saturdays to attend church service on Sundays.

After a full blown open free for all fight that ensued in the matrimonial when the Appellant attempted to bring his second wife into the house, accusations and counter accusations of assault was lodged with the Police and the Petitioner eventually commenced divorce proceedings on the 16th of January, 2013 for the dissolution of the customary law marriage and distribution of the matrimonial properties as well as an order for the payment by the Appellant of an amount of Gh₵300,000.00 as financial provision. Among the properties that Petitioner demanded an equitable distribution by the court were:

a. The matrimonial home at Teshie Okpoi Gonno comprising a four bedroom with all the necessary amenities.
b. A house at Nmai Djor, Accra also comprising a two and three bedroom with all the amenities from NTHC properties where Petitioner's father was the then Managing Director and which properties are still rented out to tenants.
c. Four plots of land at Odumase near Dodowa

After a full trial, the learned trial Judge found, regarding the matrimonial home, that the Appellant built the matrimonial home before the marriage to the Petitioner/Respondent and that any preparation of architectural drawings and supervision of construction that Petitioner engaged was before the marriage and

could not be used as basis to enable her claim any part in the property. On the NTHC at Nmai Djor comprising a two and three bedroom house acquired in the course of the marriage and financed entirely by the Appellant from loan taken from his employers, the court found that to be a matrimonial property and ordered it to be distributed on a 50 to 50 basis. So also was it decreed that four plots of lands purchased by the Appellant at Odumase to be shared equally. Shares in Benso Oil Company Ltd, even though not specifically claimed in the petition, was also ordered to be shared equally between the parties on a 50/50 basis.

On financial provision for the Petitioner, the court at page 231 of the record of proceedings claim that it had taken into consideration the standard of living of the parties and their circumstances, the conduct of the parties, their position in life, ages and respective means, the existence of children and any other circumstances such as age and duration of the marriage. And it accordingly awarded a sum of Gh₵150.000.00 as financial provision to the Petitioner. In a way the trial Judge decided to award half of the amount the Petitioner had demanded as financial provision.

It is the distribution of the properties of the marriage as well as the order for the payment of the sum of Gh₵150.000.00 that has precipitated this appeal by the Appellant. The principles for distribution of properties upon the breakdown of a marriage appear now to be clear. And they have all revolved mainly round monogamous marriages under the Marriage Ordinance Cap 127 and the application of the Matrimonial Causes Act, 1991, Act 367. The marriage contracted being a customary one and which by virtue of section 41 of Act 367 granted the right to persons married under customary law or under the Mohammedan Ordinance, Cap 129, to present petition for divorce. The law recognizes that it "*shall apply to*

monogamous marriages" but that on an application by a party to a marriage other than a monogamous marriage, the court was enjoined to apply the provisions of Act 367 to that marriage subject to the principles of "*justice, equity and good conscience*".

These are wide concepts that sometimes tend to be vague and imprecise. As the cases *infra* will show that the courts have not been consistent in the application of these concepts to customary law marriages whenever a spouse tend to invoke the jurisdiction of the court for the dissolution of a customary law marriage or for any ancillary relief flowing from that. Part III of MCA specifically sections 19, 20, and 21 spells out financial provisions, property settlement and conveyance of title to a property in a matrimonial suit pending before the court. This seems fair and is done after the court has enquired into the financial circumstances of the party whom the order is being made against. Section 20 also grants the courts the power to order the conveyance of money or property, either movable or immovable as settlement of property rights, where the court also finds it "*just and equitable*" to do so. The use of the phrase "*just and equitable*" under sections 19 and 20 is an obligation on the part of the trial Judge to be fair and exercise the power in tandem with the principles of justice and equity on the facts of each case. Did that happen in this case?

The courts have come a long way from the customary law principles established in cases like **QUARTEY v MARTEY [1959] GLR 377 and ABEBRESE v KAAH [1976] GLR 46** that established among others that joint ownership of couple in a marriage and who are not related by blood was not a principle of customary law marriage and further that "*by customary law it is the duty of a man's wife and children to assist him in carrying out of the duties of his station in life. The proceeds of that joint effort, and any property which the man acquires with such proceeds, are by customary law the individual property of the man, not the joint effort of all*".

The scales began to tilt in the treatment of distribution of marital properties in customary law marriages in the case of **DWUMAH v ASARE BDMC 198/2012** (Unreported) where a property acquired during the subsistence of the customary law marriage was held by the court to be one having been acquired during the subsistence of the marriage, the wife was deemed to have had an interest in the property and was entitled to share it with the man.

The journey to the arrival of the ground breaking decision in **MENSAH v MENSAH [2012] 1 SCGLR 393** has been long and arduous. In the Mensah case the Supreme Court noted that:

> *"[i]t is our considered view that the time has indeed come for the integration of this principle of "Jurisprudence of Equality" into our rules of interpretation such that meaning will be given to the contents of the Constitution 1992, especially on the devolution of property to spouses after divorce… there should in all appropriate cases be sharing of property on equality basis"*

There has developed what has been termed a principle or a presumption in Ghanaian law in favour of the sharing of marital property on an equality basis. Taking a cue from article 22(3) of the Constitution the Supreme Court has taken the wind out of the sail of Parliament in the face of latter's foot dragging to come out with a law to regulate the property rights of spouses.

The Supreme Court clarified its own decision in the case of **QUARTSON v QUARTSON J4/8/2013** where the court said that the application of the decision in Mensah case will have to be shaped and defined to cater for the specifics of each case

and the ruling should be applied on a case by case basis with a view to achieving equality in the sharing of marital property.

And in the case of **ARTHUR v ARTHUR J4/19/2013** case, the Supreme Court noted that:

> *"joint acquisition of assets is not limited to property that has been acquired as joint or common tenants, but rather any property acquired by the spouses during the course of their marriage is to be presumed to be jointly acquired. In other words, property acquired by the spouses during marriage is presumed to be marital property"*

See also **FYNN v FYNN J4/28/2013**

This seems to be the present position of the law which fits more in a monogamous marriage. As to how properties acquired in a polygamous marriage during divorce between a man and one of the spouses should be shared has not directly been pronounced upon. Justice Dotse who delivered the *"equality is equity"* judgment in the MENSAH case gave a gist of the principle that ought to be applied by the courts in the distribution of properties when there is a divorce with at least one of the women. The learned Judge noted that the court was not unaware of complications that may arise in the application of the principle of equality in the context of polygamous marriages. And that the "*complications can be tackled on a case by case basis in subsequent law development, or by direct statutory intervention by the Legislature*".

Dealing with the distribution of properties during divorce in a polygamous marriage has not yet received the case-by-case attention that the Judge suggested and direct legislative intervention has not yet occurred. In my view, a court must always be mindful not to import wholesale the principles applicable to monogamous marriages to customary law marriages more especially when there are other women and her children also in the marriage at the time there is divorce by one of the women. Appropriately, the factors that I venture to propose in the distribution of the properties may be as follows, among others, the duration of the marriage being

dissolved, the ages of the spouses, the time of time the marriage lasted, the contribution of each spouse to the acquisition of the property, the economic circumstances of each spouse at the time of the distribution of the property, **the need to make reasonable provision for other spouses and their children as regards joint property after another marriage where the marriage is polygamous,** financial misconduct or the wasting of assets by one spouse and any other facts which in the view of the court is worth considering.

Developing further the factors above, I dare say that its application should be based on the fact that if the husband has more than one wife at the time of the dissolution and distribution of the properties of the customary marriage, then the just and equitable principles that ought to be drawn and applied by the courts should be the following: One, joint properties acquired in the first marriage and before the second marriage was contracted is owned by the husband and the first wife. Two, that any joint properties acquired after the second marriage is owned by the husband and the co-wives and the same principle is applicable to a subsequent marriage. Third, any order for the financial payment should be guided by the means of the parties, their station of life, their standard of life, ability of a spouse to afford that payment etc.

GROUND (b) OF THE GROUNDS OF APPEAL

Applying the above tests or factors set to the peculiar circumstances of this case, could one conclude that the distribution of the marital properties was unjust or unfair or against the weight of evidence? And what are the peculiar circumstances of this case? The parties were married in 2005. The marriage was formally dissolved by the court on 10th November, 2014. The marriage did not produce any issue. The Petitioner has a daughter from her first marriage whiles the Appellant has four children. Two produced from his previous marriages before meeting the marriage to the Petitioner and another two by his second customary law wife, Deborah

Hammond. The Appellant is gainfully employed as a banker with SG SSB whiles the Respondent is a professional architect with Architectural Engineering Services Ltd (AESL). She also undertakes private contracts and earns money.

As the parties moved into the matrimonial home upon the celebration of the marriage in 2005, the finding by the trial Judge that that property did not form part of the matrimonial properties at page 231 of the record of proceedings was right. Indeed, whatever contribution that the Petitioner made to the matrimonial home as an architect before the marriage could not be deemed as a contribution as a concubinage cannot be deemed to be a valid marriage. See **MARIAN OBENG MINTAH v FRANCIS AMPENYIN** J4/18/2013 dated 25th March, 2015. The further finding that the two and three bedroom house at NTCH, Nmai Djor was acquired during the marriage and ought to be shared equally will be affirmed. The fact that the property was offered to Appellant alone is of no moment as it is the period of acquisition which is material and it was at a time a second wife was not at the scene for any fractional distribution to encompass the second wife. This is in line with the principle drawn above that if property was acquired before the man met the second wife then the latter ought not to be considered in the sharing of that property. Having performed her wifely duties, there is no reason the Petitioner should be made to lose her share of the property. The order for the equal sharing of the shares at Benso Oil Ltd will also be affirmed as right. And the fifty percent share granted to the Petitioner of the four lands at Odumase is also affirmed. Ground b. of the grounds of appeal is accordingly dismissed.

GROUND (a) ON FINANCIAL PROVISION OF Gh₵150,000.00

This is captured in the ground (a) of the grounds of appeal. The factors the learned trial Judge took into consideration has been stated supra and I need not repeat it.

Even though she states the presence or absence of children, the age and duration of the marriage as well as the fact that the Petitioner is in gainful employment as some of the factors. Yet in the conclusion to award an amount of Ghc₵150,000.00 as financial provision, which was half of what the Petitioner had demanded, it does not seem to appear that a proper appraisal of the circumstances of the parties was done and applied. Appellant has four children he is taking care of and another woman who lawfully depends on him. The Petitioner is not impecunious as she is gainfully employed and is also into her own private consultancy as an architect. The Nmai Djor property was financed solely from loans Appellant took from the bank without any financial help from the Petitioner. Counsel for Petitioner even suggested that it was not out of place for the Appellant to take another loan to pay the financial provision. That flies in the face of the known principles for the award of financial provision for a spouse upon dissolution of a marriage. Dissolution of marriage is not supposed to render any of the parties indigent and the acknowledgement that Appellant has no money to pay the financial award but has to take a loan to pay, is a clear indication that all the necessary factors were not applied.

Any such order will impoverish the Appellant, he will be unable to live up to his responsibility of taking care of his four children and a wife. On the other hand, it will over enrich the Petitioner to the detriment of the Appellant. Applying all the necessary factors as I have done, I think the justice of this case demands that the award of Gh₵150,000 is deemed to be unreasonable, made without any known principles and the Appellant succeeds on this ground. The award is reviewed and instead an amount of Gh₵40,000.00 is substituted as a fair and just amount, from the circumstances of the parties for Appellant to pay as financial provision as the Appellant himself conceded in paragraph 19 (c) of his Answer at page 11 of the record of proceedings that he should be made to pay a reasonable amount as financial provision.

Save the review of the financial provision, the appeal is dismissed. Each party to bear its own cost.

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JUSTICE ERIC KYEI BAFFOUR

(JUSTICE OF THE COURT OF APPEAL)

COUNSEL:

Kenneth Kudjordjie, Esq for Respondent/Appellant

Juliette Aku-Sika Dadzie for Petitioner/Respondent