IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA, GHANA-A.D 2021

CORAM: PROF. SIR DENNIS ADJEI JA (PRESIDING)

A. A. GAISIE (MRS.) JA

G. KOOMSON, JA

SUIT NO. H1/148/2018

DATE: 15TH JULY, 2021

GLORIA ODARTEY LAMPTEY :: PETITIONER/APPELLANT

VERSUS

NII ODARTEY LAMPTEY :: RESPONDENT/RESPONDENT

JUDGMENT

AMMA A. GAISIE (MRS.) JA

This appeal is from the judgment of the High Court (Divorce Division) Accra, dated 14th June, 2017.

The Petitioner initiated divorce proceedings in the High Court against the Respondent by filing a Notice to Appear and a Petition for Divorce on 9th September, 2013.

In her amended petition filed on 9th December, 2015 the Petitioner stated that she was lawfully married under the Marriage Ordinance Cap 127 to the Respondent on 28th May, 1994 in Accra.

After the marriage, the couple cohabited in several places including Kumasi, Belgium, London, Italy and Holland. The Petitioner states further that the Respondent was a professional football player while the Petitioner was a housewife. The parties are both citizens of Ghana and currently domiciled in Ghana.

It is the Petitioner's case that the marriage had irreparably broken down due to the violent behavior of Respondent against the Petitioner and which had caused the Petitioner and her children grave emotional and psychological abuse. The Petitioner contends further that the Respondent had also engaged in various extramarital affairs and was currently residing with one Ruweida with whom he is intimately involved. The Petitioner avers that she was working at Golden Tulip when they first met, but the Respondent made her stop work so she could be by his side and take care of him. She therefore groomed the Respondent, providing emotional and psychological support to enable him embark on his career. She also avers that she was responsible for the acquisition of various properties that the Respondent acquired during the term of their marriage, with assistance from her mother and brother. The Petitioner concludes that she can no longer live with Respondent due to the anxiety, distress, insecurity and embarrassment she suffers from him as Respondent is constantly confronting Petitioner with false allegations of adultery and circulating same. The Petitioner therefore prayed for the following reliefs:

a. **An order dissolving the marriage.**

b. An order that the Respondent pays the Petitioner a total sum of GH¢114,096.00 (One Hundred and Fourteen Thousand and Ninety Six Ghana Cedis only) consisting of feeding allowance, utility bills, car maintenance and outstanding allowance from running Glow Lamp International School.

c. An order for the equitable distribution of the marital property granting the Petitioner Fifty percent (50%) share of each of the properties listed below:

i. Two plots of land located at Adjirigano (East Legon) Accra.

ii. House number 18 Dadekotopon Road, Bawaleshie Mpeasem, Accra.

iii. Residential property located at Dome, Accra.

iv. Five-acre land situated at Dodowa.

v. Shares in Glow-Lamp International School, 22 Hospital Lane Baatsona Accra.

vi. Cattle farm located at Somanya with an estimated herd of eight hundred (800).

vii. Cadillac Escalade vehicle with registration number GE6075 13.

viii. Toyota Tundra vehicle with registration number GE 7083 13.

ix. Toyota Venza vehicle with registration number GE 6455 12.

x. Toyota Yaris vehicle with registration number GT 2013 11.

xi. BMW 3 series with registration number GR 5322 T.

xii. Funds in Unibank Ghana Limited, Spintex Branch with account number 000965101011028019

xiii. Fund in Ecobank Ghana Limited, Sakumono Branch with account number 0000910134459873802.

xiv. Funds Barclays Bank Spintex Branch with account number 0893780000001002247

xv. Proceeds of tax refund from Belgium.

xvi. **Personal and household effects including but not limited to air conditioners, television sets, beds, mattresses, stove, microwave, furniture.**

d. **Lump sum settlement of five hundred thousand Ghana cedis (GH¢500,000) as alimony**

e. **Any further order or orders as this Honourable Court may deem fit.**

It is worth pointing out that in the amended petition, filed on 9th September, 2015 the Petitioner removed the names of the 3 children of the marriage which names she had earlier included in her petition filed on 9th September, 2013

The Respondent, in his amended answer to the Petitioner's amended petition, filed on 15th January, 2016 admitted that the marriage had broken down beyond reconciliation due to the Petitioner's infidelity which was manifested in a DNA Report on a paternity test that was conducted in 2013, which confirmed that the Respondent was not the biological father of all the three children of the marriage. He averred that he had fully provided for his wife and children regardless of where he lived thinking they were his children. He averred further that he had personally acquired all the properties from his own resources and the Petitioner was not entitled to her claim of 50% percent share in the properties acquired by the Respondent.

He cross petitioned for the dissolution of the marriage, stating that the Petitioner had committed adultery leading to the birth of Latifah, Kadija and Moesha, but through out their marriage the Petitioner had led him to believe that he was the biological father of these three children. He contended that due to Petitioner's behavior he could not be reasonably expected to live with her and cross-petitioned for:

"a) Dissolution of the marriage celebrated between the parties under the Marriage Ordinance on 28th May, 1994, in Accra.

b) A declaration that Latifah, Kadija and Moesha Odartey Lamptey are not the children of the Respondent.

c) A declaration that the Respondent being the only person who provided the purchase price for the purchase and construction of the matrimonial house situate at Bawaleshie Mpeasam in Accra and two plots of land at Adjirigano, also in Accra is the sole owner of the said properties.

d) That the Petitioner be ordered to pay the cost of these proceedings.

e) Any other order that the Court may deem fit in the interest of justice.

JUDGMENT

In the judgment delivered on 14th June, 2017 the learned trial Judge found that the marriage had broken down beyond reconciliation. She held as follows at page 240 of the Record:

> **"On the totality of the evidence and the conduct of the parties, I am satisfied that the marriage has broken down beyond reconciliation. I will grant the order for the dissolution of the parties marriage celebrated under the Marriage Ordinance (Cap 127) at the office of the Principal Registrar of Marriage, Accra on the 28th of May, 1994, not only on grounds of adultery of the Petitioner for which the Respondent finds it intolerable to live with the Petitioner, but also that there has been assault and threats of assault and an acrimonious atmosphere surrounding the matrimonial home such that it will be unreasonable to expect the Petitioner to live with the Respondent."**

She also declared that the three children of the marriage, Latifah, Kadija and Moesha Odartey Lamptey, were not the biological children of the Respondent based on the result of the deoxyribonucleic acid (DNA) test which indicated that the Respondent was not their biological father.

She awarded Petitioner the sum of GH¢10,000.00 for utility bills, servicing of vehicle and feeding till the date of judgment.

With regards to the Petitioner's claims of 50% share of the assets acquired during the marriage and other claims, the learned trial judge delivered as follows:

"1) I settle the Dome house on the Petitioner.

2) **I award her GH¢200,000.00 as financial settlement.**
3) **The Petitioner is to keep the Toyota Venza with registration number GE 6455-12 presently in her custody for her use. In addition, I make an order that the Toyota Yaris with registration number GT 2013-11 be added to this vehicle for her to own."**

The learned trial judge declined to make any orders with regard to Glow Lamp International School, it being a limited liability company, and also with regard to other properties acquired with resources from the said school.

She finally settled the following properties on the Respondent, "the matrimonial home, H/No.18 Dadekotopon Road, Mempeasem, Accra,…the Toyota Tundra with registration number, G-7083-13 and BMW 3 series with registration number, GR 5322 T."

APPEAL

Aggrieved by the decision of the High Court, the Petitioner filed a Notice of Appeal on 20th June, 2011, specifying the following grounds of appeal:

i) **That the judgment is against the weight of evidence.**
ii) **The judge erred when it failed to consider Petitioner's contribution towards the establishment of Glow Lamp International School.**
iii) **The Court erred when it concluded that the payment of director's allowance to the Petitioner by Glow-Lamp International School was for services provided for by the Petitioner.**

iv) **Court erred in holding that Glow-Lamp International School as a legal entity was separate from the parties and not a party to the divorce suit hence its assets could not be a subject of property settlement in a matrimonial suit.**

v) **That trial judge erred in holding that Petitioner had been engaged in adultery as per the DNA test.**

vi) **The learned judge erred when it failed to award the Petitioner 50% shares in the assets acquired by the parties during the marriage.**

vii) **Additional grounds of appeal to be filed upon receipt of a copy of judgment.**

We wish to place on record that at the hearing of this appeal, no additional grounds of appeal had been filed or argued.

The Reliefs sought by the Petitioner/Appellant are:

i. **That the judgment of the High Court be set aside and judgment entered in favour of Petitioner for 50% of the matrimonial properties.**
ii. **Finding of fact that Petitioner did not engage in adultery with regards to the conception of the children of the marriage and that the Respondent was aware the children of the marriage were not his biological children twenty one (21) years ago and not in 2013**

This appeal revolves primarily on the issue of the distribution of assets of marriage after a divorce. The Matrimonial Causes Act, 1971, Act 367 deals with divorce and other Matrimonial causes and states as follows in Section 19 and 20 of the Act.

> **"19. Financial provision for spouse.**
>
> **The Court may whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but an order for maintenance pending suit or financial provision shall not be made**

until the Court has considered the standard of living of the parties and their circumstances."

"20. Property settlement

(1) The Court may order either party to the marriage to pay to the other party a sum of 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 that the Court think just and equitable.

(2) Payments and conveyance under this Section may be ordered to be made in gross or by installments."

What the Courts have held to be **just and equitable** with regard to spousal property has gone through various phases from when Ollenu J (as he then was) in the case of **Quartey v Martey & Another (1959) GLR 378 r**easoned that property jointly acquired belongs to the man because the wife's customary duty was to support the husband and therefore on dissolution of marriage, the wife got nothing. Over time the principle of substantial contribution developed whereby a spouse who made substantial contribution to the acquisition of property during the subsistence of a marriage was entitled to an interest in the property. This principle was followed in deciding cases such as **Yeboah v Yeboah [1974] 2GLR 144, Ribero v Ribero [1989-1990] 2 GLR 109 SC. Reindorf v Reindorf [1974] 2 GLR 36. Berchie-Badu v Berchie-Badu [1987-1988] 2 GLR 260.** This position of the law prevailed until the Supreme Court developed the equality is equity principle of sharing marital property in the case of **Mensah v Mensah [1998-1999] SCGLR 350** and **Boafo v Boafo [2005-2006] SCGLR 705.** In the case of **Quartson v Quartson [2012] 2 SCGLR 1077** the Supreme Court stated at page 1085 that the **Mensah and Boafo** cases had held that **"the principle of "equality is equity"** is the preferred principle to be applied in the sharing of joint property, unless in the circumstances of a particular case, the equities of the case would demand otherwise"

The Supreme Court stated further that this **equality is equity** principle is backed by the 1992 Constitution, particularly Article 22(2) and (3) which state as follows:

> **"22. (2) Parliament shall as soon as practicable after the coming into force of this constitution, enact legislation regulating the property rights of spouses.**
>
> **(3) With a view to achieving the full realization of the rights referred to in Clause (2) of this article**
>
> **(a) Spouses shall have equal access to property jointly acquired during marriage;**
>
> **(b) Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage."**

These constitutional provisions provided the parameters for the Supreme Court's decisions in **Mensah v Mensah [2012] 1 SCGLR 350** which interpreted article 22(3) (b) of the 1992 Constitution "liberally and purposively" to mean that joint acquisition of assets was not limited to property that had been acquired as joint or as common tenants, but rather any property acquired by the spouses during the course of their marriage was to be presumed to be jointly acquired. In other words, property acquired by the spouses during marriage was presumed to be marital property. Thus marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition, per Date-Bah JSC in **Arthur (No1) v Arthur (No1) [2013-2014] 1SCGLR 543.**

We shall be guided by the statutory and constitutional provisions outlined above as well as the cases discussed, in deciding this appeal.

There is no dispute on the dissolution of the marriage between the parties. We shall therefore proceed to consider the distribution of marital properties as decided by the trial Judge, and deal with Ground 1 of the appeal last. Grounds 2, 3 and 4 of the Appeal will be dealt with

together as they all concern Glow-Lamp International School and as Counsel for the Respondent stated, they flow from each other,

2. **The learned trial judge erred when it failed to consider Petitioner's contribution in the establishment of Glow-Lamp International School.**

3. **The Court erred when it concluded that the payment of director's allowance to the Petitioners by Glow-Lamp International School was for services provided for by the Petitioner.**

4. **The Court erred in holding that Glow-Lamp International School as a separate legal Entity was separate from the parties and not a party to the divorce suit hence its assets could not be a subject of property settlement.**

Counsel for the Petitioner submits that the Court erred in disregarding the Petitioner's support and contribution towards the establishment of Glow-Lamp International School. He claims that the trial judge was dismissive of the Petitioners contribution towards the setting up of the school and concentrated on the financial input made by the Respondent. Counsel claims that the Petitioner originated the idea of setting up the school and engaged her brother to look for suitable land before the Respondent's advancement to purchase the said land. Counsel also avers that Petitioner was involved in the sale at Agbogloshie market of assorted items they imported from China, the proceeds of which were used to complete the construction of the school. Counsel also avers that the Petitioner was instrumental in designing the classrooms, the school uniform and recruitment of teachers. The Respondent denied these assertions of the Petitioner. The land document for the school was signed for by the Respondent and witnessed by the Petitioner and the Petitioner and Respondent were the first directors of the School.

Counsel for the Petitioner contends that the trial judge only considered the Petitioner's role as administrator of the school and disregarded all other contributions Petitioner had made

to the school and concluded that the Petitioner was paid director's fees for her services. Counsel concludes that this was unjust and a denial of the Petitioner's claim to 50% shares out of the 100% shares held by the Respondent.

Counsel submits that the services rendered by a spouse during the subsistence of a marriage cannot be valued or quantified but constitutes a spousal contribution towards the acquisition of matrimonial property during marriage and such property is deemed to be jointly acquired by the parties.

Counsel for the Petitioner finally argues that the claim by the Petitioner for 50% share in Glow-Lamp International School was not a claim for the Court to distribute the assets of the school. He concedes that the assets of the school would not fall within the purview of property settlement in divorce proceedings, and that the claim was for half of the shares of the Respondent in the school. Counsel for the Petitioner argues that shares of the Respondent are recognized as his personal asset and Petitioner's claim was for 50% share of the school and 50% of the other properties such as the cattle ranch and the football academy that were acquired through proceeds from the school. Counsel concludes that the Petitioner's claim was therefore possible without making the corporate entity of the school a party to the suit.

Counsel for the Respondent in his answer to these submissions by the Petitioner asserts that Petitioner failed to show which part of the judgment the learned trial judge was dismissive of Petitioner's contribution to the school. Counsel refers to the Petitioner's testimony at page 210 of the Record and contends that the Petitioner admitted during cross-examination that the 5-acre plot of land at Dodowa and the Bank Accounts she is claiming 50% of all balances, belong to the school. Counsel therefore concludes that the learned trial judge was right in holding at page 342 of the Record that the assets of the school could not be distributed and that there was no justification for lifting the corporate veil to settle on the Petitioner any portion of the assets of the school. He cites for our consideration the case of **Quartson v Quartson [2012] 2 SCGLR 1078** where the Supreme Court held:

" The Appellant (Petitioner) seeks a declaration from this Court that she is entitled to directors fees and dividends from Pious Trading and Construction Co. Ltd. The law on the separate legal personality of a limited liability company vis-à-vis the personality of the directors and shareholders, is trite. This Court would follow the reasoning of a long line of cases beginning with *Salomon v Salomon* [1897] AC 22, HL that a limited liability company has separate legal personality and unless certain exceptions can be shown, the Court is reluctant to lift the veil of incorporation: see *Morkor v Kuma (East Coast Fisheries)* [1998-1999] SCGLR 620; *sub nom Morkor v Kuma (No1)* [1999-2000] 1GLR 721, SC. The Appellant (Petitioner) here has not shown that this case can be brought under any of the allowed exceptions that warrant the lifting of the corporate veil. The proper person for an action for directors' fees and dividends would be the company, Pious Trading and Construction Co. Ltd. and not Pious Pope Quartson himself. In effect, grounds (vi) and (vii) would fail."

Counsel concludes that the learned trial judge rightly relied on the decisions in **Salomon v Salomon** (supra)**, Sooboon Seo v Gate Way Worship Center [2009] SCGLR 278** and **Quartson v Quartson** (supra) to decide that the school being a limited liability company, had a separate legal identity from the Respondent and its properties could not be a subject of Court orders when the claim is being made against the shares of the Respondent. Counsel concludes that the Respondent had denied throughout the proceedings that the Petitioner played any significant role in the establishment of the school and the Petitioner could not provide any proof of her assertions.

In setting out applicable guidelines on sharing of marital property jointly acquired, the Supreme Court, delivered itself thus in the case of **Mensah v Mensah (**supra)

"We believe that, common sense and principles of general fundamental human rights requires that a person who is married to another, and performs various

household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising the home such that the other partner, has a free hand to engage in economic activities must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved. This is so because, it can safely be argued that, the acquisition of the properties were facilitated by the massive assistance that the other spouse derived from the other. In such circumstances, it will not only be inequitable, but also unconstitutional (as we have just discussed) to state that because of the principle of substantial contribution, which had been the principle used to determine the distribution of marital property upon dissolution of marriage in the earlier cases decided by the law courts, the spouse would be denied any share in marital property, when it is ascertained that he or she did not make any substantial contributions thereof. It was inequities found in the older judicial decisions that we believe informed the Consultative Assembly to include article 22 in the Constitution of the Fourth Republic."

From the Record we do not find that the learned trial Judge was dismissive of the contributions of the Petitioner to the establishment of the school. She considered the evidence of the Petitioner on the role she played as well as that of her brother and other relatives in identifying the land on which the school is situated and supervised its construction. She even referred to the management course at GIMPA that the Petitioner undertook to enable her manage the school. She also noted that the Respondent had denied most of these averments. She however concluded as follows, at page 342 of the Record:

"**Unfortunately, the school being a limited liability company has a separate legal existence from the Respondent or any other persons and its properties cannot be**

subject of Court orders when the claim is being made against its shareholders or directors in their personal capacity, unless there are factual circumstances for which the veil of incorporation could be lifted to counter any fraud or wrongs done under cover of the company. I do not find any such circumstances in this case."

The legal position with regard to the shares and assets of a company is stated by **P. E. Bondzie Simpson** in his book **Company Law in Ghana,** at page 169 as follows:

"1. It is a personal estate ie a share is considered property of the shareholder but it belongs not to the class of real or immovable property like land or a building. Rather a share is an intangible species of movable property or chattel.

2. A share in a business company confers its holders with interest, rights and liabilities with respect to that company. But since a company is a distinct legal person from its members, a shareholder is not an owner of the company or any part of it. No one owns a company or its assets; just as no one owns any person or parts of a person. The company owns itself. In other words, one may own a share; but the person who owns the share does not own the company, the ownership of a share only confers interest, rights and liabilities to the company"

If the assets of a company belong to the company and not its shareholders then the Petitioner cannot lay claim to any of the assets of the school which by law belongs to the school. Therefore the proper party to sue in a claim for the assets of a company would be the school itself and not the shareholder who is the Respondent. It is in this regard that the Petitioner's claim for the Football Academy and the Cattle Ranch as well as the various bank accounts would also fail, all of them being assets of the school.

What about the shares in Glow Lamp International School for which Petitioner is claiming 50% share out of the 100% held by the Respondent? Petitioner claims that Respondent had

agreed to transfer 50% of the shares in the school to the Petitioner but this claim was denied by the Respondent.

Section 39(1) of the Companies Code, Act 179 which was the operative law at the time of the judgment provides that:

> **"The share of any member in a company shall be personal estate and shall not be in the nature of real estate or immovable property."**

This means that shares can be voluntarily transferred by the shareholder or devolve by operation of law.

From the evidence on Record the Petitioner admits that although her brother scouted for the land, it was the Respondent who paid for it and executed the lease document. The Petitioner witnessed the Respondent's signature on the lease document and both Petitioner and Respondent were the first directors of the school. The Petitioner was paid director's fees. She also claims she was the administrator for the school but this is denied by the Respondent. The question is whether she is entitled to a 50% share in the shares of the school and whether the school forms part of the matrimonial property jointly acquired.

The Petitioner has repeatedly asserted that the Respondent did not go far with his education and the Petitioner was the one who handled all his affairs for him. The question then is, why is it that from the inception of the school she was not made a shareholder or seek to become one, if as she asserts, she was responsible from the inception for starting the school and dealing with all documents on behalf of the Respondent. She must have known that the Respondent was a 100% shareholder. The Respondent has denied that she played any role in the acquisition of the school, she should therefore have provided further evidence of this fact and not merely rely on her statement. Mounting the box and repeating averments which have been denied does not qualify as proof.

We find that the school was the self-acquired property of the Respondent. The Petitioner was paid Directors fees and was therefore adequately remunerated for her role. Furthermore the Respondent has already expended huge sums of money on the Petitioners children, believing them to be his, which have enured to the benefit of the Petitioner. Due to these special circumstances the Petitioner is not entitled to any shares in the school or its other assets. See **Fynn v Fynn [2013-2014] 1 SCGLR 727, Quartson v Quartson** (supra) **Adjei v Adjei Civil Appeal No.J4/06/2021** 21st April, 2021.

Grounds 2, 3 and 4 are without merit and are dismissed.

Ground 5

The trial judge erred in holding that the Petitioner has been engaged in adultery as per the DNA test.

Counsel for the Petitioner contends that from the evidence the Respondent knew all along that he was not the biological father of the three children and that he had used the DNA test result as a charade when the divorce came up. Counsel also asserts that the Petitioner did not commit adultery to conceive the children and the Respondent has known all along that she became pregnant through a process known and consented to by the Respondent.

Counsel submits that the trial Judge erred when he did not subject the conflicting evidence of the Respondent to proof but relied on the case of **Adjetey vs Adjetey [1973] GLR 216** and **Hume vrs Hume & McAuliffe [1965] Times feb 25** where a finding of adultery was made against a wife when blood test of the child she gave birth to established that the husband could not be the father.

The Petitioner during cross examination (page 272 of the Record) insists that the children were conceived "by a process other than sexual intercourse by the Respondent." She

however refuses to answer any further questions on what this process is and claims she does not want to talk about the paternity of the children as it is a delicate topic. There is therefore no evidence on the record to contradict the fact that the children were conceived through adultery. Surely the Petitioner should have known the consequences of her stand not to talk about how the children were conceived, if in fact she did not commit adultery.

The DNA test results, Exhibit "1", is conclusive evidence that the three children are not the biological children of the Respondent. Counsel for the Respondent rightly argues that the balance tilted towards the Petitioner to disprove the evidence which she failed or refused to do. It does not avail Counsel for the Petitioner to contend that the learned trial judge should have determined the following issues which she claims arose from the evidence on record.

> **"Whether (a) The Respondent was misled into believing that the children were not his biological children and (b) Did the Respondent know all along that he was not the biological father of the children and simply used the DNA test as a charade to cover the realities of this case and (c) were the children conceived in an adulterous relationship or not."**

Counsel refers to the evidence of the Respondent during cross examination which he points out is conflicting. However, as the learned trial judge found, the Respondent's command of the English language may have contributed to the perception that he had known for 21 years that the children of the marriage were not his.

Sections 11, 12 and 14 of the Evidence Decree 1975 (NRCD) 323 state as follows:

"**11. Burden of producing evidence defined**

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.

12. Proof by a preponderance of the probabilities

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

14. Allocation of burden of persuasion

Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting."

The burden of proving she had not committed adultery lay on the Petitioner.

At page 301 of the Record, the Respondent states that, "she came to me in Holland and on her return to Ghana, she told me that she was pregnant. So that was when I ask of my parents to go and see her relative for the customary marriage in 1994." The Petitioner, during cross-examination by Respondent's Counsel, also assert that "…when I was in Holland with him I was already pregnant when I joined him." So was she pregnant before she went to visit the Respondent, or she became pregnant when she was in Holland? This is not clear. The Petitioner also states at page 272 of the Record that "I got pregnant by a process other than sexual intercourse by the Respondent." She refuses to give further details of the process. She states at page 271 of the Record that "the Respondent did not sleep with me or put his penis into me to make me pregnant, but he knows how I conceived with his consent."

The Petitioner having failed to provide evidence of the conception of the 3 children, if it was through means other than sexual intercourse, the learned trial judge was right in concluding that the Petitioner had committed adultery.

This ground of appeal has no merit and is dismissed.

Ground 6

The Court erred when it failed to award the Petitioner 50% shares in the assets acquired by the parties during the marriage.

The Petitioner is claiming 50% of the properties acquired during the marriage on the basis that she contributed towards their acquisition. Counsel for the Petitioner contends that the Petitioner is claiming 50% shares in the matrimonial property as joint owner because she made a substantial contribution to its acquisition and development through her wifely duties. Counsel contends further that the Respondents concedes that the Dome House, the two plots of land at Adjiriganor and the East Legon house were acquired in their joint names. Petitioner also claims 50% in Glow-Lamp School claiming that she "conceived the idea and nursed it to its existence", and vested so much of her personal time on the project. She is also claiming 50% of the assets that resources of the school were used to procure, such as the football academy and the cattle ranch. The Petitioner claims that the Respondent told her that he was establishing the football Academy and the cattle ranch for them jointly. Counsel refers to the cases of **Domfe v Adu [1984-86] 1GLR 653, Mensah v Mensah [2012]1 SCGLR 391, Boafo v Boafo [2005-2006] SCGLR 705** as well as Article 22 of the 1992 Constitution to expound the equality is equity principle that property acquired during marriage is joint property even if the other party did not make any contribution.

Counsel for the Petitioner answers that Courts have stated that joint property should be shared on 50-50 basis unless the equity of a particular case will make the equality is equity principle unfair. Counsel argues further that the Courts have held that if a wife takes care of

the children of the household, prepares food for the husband, does his laundry and takes care of the household, property acquired by the husband should be shared equally upon divorce unless it will be inequitable to do so. Counsel contends that the Petitioner in addition to her role as a wife had to groom the Respondent and work on him emotionally and psychologically to prepare him for the public. She also directed his investment and handled his letters and other documents as the Respondent did not have much of a basic education. She was therefore pivotal in all the investments the Respondent made.

In the case of **Boafo v Boafo [2005-2006] SCGLR 705,** the Supreme Court speaking through His Lordship Dr. Date-Bah JSC (as he then was), said with respect to Section 20(1) of Act 367 as follows:

> **"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."**

The Supreme court while discussing **Boafo v Boafo (supra)** in the later case of **Mensah v Mensah [2012] 1 SCGLR 391** held per Dotse JSC that:

> **"Therefore even though the Supreme Court in Boafo v Boafo affirmed the equality is equity principle as used in Mensah v Mensah [1998-99] SCGLR 350 it gave further meaning to Section 20(1) of the Matrimonial Causes Act 1971 (Act 367) and Article 22(3)(b) of the 1992 Constitution.**
>
> **Consequently, the issue of proportions are to be fixed in accordance with the equity of each case. The Supreme Court in Boafo v Boafo duly recognized the fact that an equal (half and half) distribution, though usually a suitable solution to correct imbalances in property rights against women, may not necessarily lead to a just and equitable distribution as the 1992 Constitution and Act 367 envisages. Thus, in our**

view, the Court made room for some flexibility in the application of the equality is equity principle by favouring a case by case approach as opposed to a whole sale application of the principle. The above notwithstanding it must also be noted that the paramount goal of the Court would be to achieve equality."

In the case of **Quartson v Quartson [2012] SCGLR 1077,** His Lordship Ansah JSC (as he then was) in discussing the decision in **Mensah v Mensah** also states:

"**The Supreme Court's previous decision in Mensah v Mensah (supra), is not to be taken as a blanket ruling that affords spouses unwarranted assets to property when it is clear on the evidence that they are not so entitled. Its application and effect will continue to be shaped and defined to cater for the specifics of each case. The decision 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 v Mensah (supra) applies."**

In the **Quartson v Quartson** case where the Petitioner, the wife was asking for the sale of the matrimonial home and the proceeds shared equally between them, the Supreme Court held further as follows:

"…This Court has taken into account the equality principle laid down in Mensah v Mensah and Boafo v Boafo (supra). However, as the Supreme Court (per Dr. Date-Bah JSC) held in Boafo v Boafo (supra), the equality is equity principle might be waived if in the circumstances of a particular case, the equities of the case would demand otherwise. We think that the equities of this particular case do not call for a half and half sharing of the matrimonial home."

The Supreme Court therefore disaffirmed the decision of both the trial Court and the Court of Appeal with regard to the wife's interest in the matrimonial home and held that:

> **"The Petitioners interest in the matrimonial home is adequately covered and reflected in the award of the double plot of land to her by the trial High Court as confirmed by the Court of Appeal."**

The Supreme Court held that the wife should be entitled to a share of the value of the matrimonial home as the evidence was clear that she supervised the construction of the home and performed her role as a housewife well, and even took charge of the household when the husband was incarcerated for many years in Liverpool.

However, in the case of **Arthur (No.1) v Arthur (No.1) [2013-2014] 1 SCGLR,** His Lordship Dr. Date-Bah JSC (as he then was) in his valedictory Judgment again endorsed the liberal and purposive approach of interpretation of marital properties in **Mensah v Mensah** in Article 22(3)(b) to mean that **"any property acquired by the spouses during the cause of their marriage was presumed to be jointly acquired and therefore presumed to be marital property irrespective of whether the other spouse had made a contribution to its acquisition."** The Supreme Court however held that this presumption could be rebutted under certain circumstances, for example where the other spouse acquired the property by gift or through succession.

In in the case of **Fynn v Fynn [2013-2014] 1 SCGLR 727,** the Supreme Court held that there were situations where a party may acquire property in their individual capacities and this position was buttressed by Article 18 of the 1992 constitution which states as follows:

> **"18. Every person has the right to own property either alone or in association with others."**

In the recent case on the distribution of marital property, **Adjei v Adjei, Civil Appeal No J4/06/2021 dated 21st April, 2021,** the Supreme Court in a majority decision of 3-2 discussed the **Mensah, Quartson and Arthur** cases and stated that **"it was no longer essential for a spouse to prove a direct, pecuniary or substantial contribution in any form to the**

acquisition of marital property to qualify for a share. It was sufficient if the property was acquired during the subsistence of the marriage." The Supreme Court stated further that the rationale behind this equity principle was that the duties performed by a wife in the home such as cooking for the family, cleaning and nurturing the children of the marriage goes a long way to create an enabling atmosphere for the other spouse to work in peace towards the acquisition of properties, and such contribution should merit the wife a share in the said properties.

The Supreme Court also noted that **"it is not every wife to a marriage who diligently performs this marital role that the Courts, since the days of Rimmer v Rimmer [1952] 1 QB 63 @ p 73, per Denning LJ. have talked so much about. It is therefore necessary that such a contribution or non-contribution must be demonstrated in the evidence adduced at the trial. It is for this reason that the authorities regard this general principle of 'joint-acquisition' as a presumption that could be rebutted by contrary evidence."**

In the **Adjei v Adjei** case (supra) the Court of Appeal had held that:

> **"Where a party or spouse takes an individual loan to develop his self-acquired plot during the subsistence of a marriage, the property so acquired shall not be considered a family property jointly acquired until the loan has been fully paid whilst the marriage subsists."**

The Supreme Court upheld the decision of the Court of Appeal as the Respondent, who was the wife, had not challenged the fact of the loan until belatedly, in her Written Statement of Case.

The minority decision, however, was that there was no evidence of the fact of the loan, nor how much of the loan was outstanding and therefore the majority should not have relied on that fact and not award the wife one of the 4 plots in Cantonments.

It is worthy of note that His Lordship Pwamang JSC in his concurring opinion stated thus:

"It is imperative to understand the commendable and progressive presumption that property acquired during a marriage is jointly acquired is not stated by the Constitutional Provisions in Article 22 which is abundantly clear."

After thoroughly discussing these cases, what are the equities in this case? The Petitioner admits that it was the Respondent who acquired all the properties out of his own resources. She however claims she is entitled to an equal share to all the properties, having performed her wifely duties as expected. Apart from taking care of the household and the children of the household, Petitioner avers that she had to groom the Respondent and help prepare him emotionally and psychologically for the public. She claims she directed his investments and handled his letters and e-mails as the Respondent did not have much of a basic education. The Petitioner was working at Golden Tulip Hotel when he met the Respondent who made her stop working to become a house wife and to support Respondent as he engaged in his professional football.

The learned trial judge noted rightly that from the evidence on the Record, it was the Respondent who had acquired all the properties from his own resources. She however did not discount the Petitioners contribution, her wifely duties, as she considered the distribution of the properties. She states as follows at page 343 of the Record;

"Now what is the nature of the wifely duties performed by the petitioner for which she is claiming a 50% share of the properties listed in her claim (ii) and (vi) to (xvi).

It does not appear in doubt that the petitioner before her marriage with the respondent was working with Golden Tulip Hotel. After the marriage, the parties cohabited in Kumasi, Belgium, London, Italy, Holland, Turkey and Argentina among other places where the respondent was in the trade of playing football.

The Respondent made her to stop work during the period that he was plying his trade as a professional footballer. She thus became a full time housewife who not

only managed the home but also fully supported him emotionally and psychologically both of which enabled him to perform well on the field. She added that she managed and groomed him which improved his manners and also boosted his self-confidence. I have no reason to doubt this evidence of the petitioner that she was the emotional and self-esteem building pillar behind the respondent, who from the evidence was not too comfortable in communicating the queen's language."

The learned trial Judge referred to Section 20(1) of Act 367 and stated that:

"In determining whether or not a property or financial settlement to a party within the contest of Section 20(1) of Act 367, the Court is enjoined to be just and equitable and in determining what is just and equitable, the Court is to take due regard of all the circumstances of the case. The income, future earning capacities of the parties, property and resources of the parties, their standard of living, ages of the parties and duration of the marriage, and contribution of each of the parties are some of the factors which are taken into consideration in determining what is just and equitable.

The trial judge also refers to the cases on equitable distribution of marital property on divorce, **Obeng v Obeng, Mensah v Mensah, Arthur (No.1) v Arthur (No.1) and Boafo v Boafo** and states that a Court should be guided by the equitable principles of distribution on a case by case basis.

Counsel for the Petitioner has alluded to the fact that the learned trial Judge failed to award the Petitioner the full entitlement of what was due her because of her adultery. But what did the trial Judge say about the issue of adultery at pages 346-347 of the Record?

"Let me dispose of this nagging issue that the respondent alluded to in his answer to the petition and in his counsel's address to the court. Their point is that the

offensive adulterous nature of the petitioner should benefit her not and that she should be denied any settlement, particularly, that the children of the petitioner have had the best education and maintenance offered by the respondent.

They are now an asset to the petitioner alone. I must admit that this is a very interesting issue. How does the adultery impact on the petitioner's share of the distribution? In the first place my thinking is that the property settlement to women is based on the works or contribution of the woman in the marriage. What has been the contribution, in whatever form, of the petitioner to the marriage? That should be the main consideration. That is not to say that infidelity is not a consideration at all. In this case that I have found that the petitioner performed her wifely duties as expected, with the exception of this negativity of having an affair, I am not in a position to accept the contention of the respondent that the petitioner be denied completely any settlement. I am not to be understood as lauding or condoning any adulterous relationships in marriage but what I am contending here is that the petitioner cannot be denied every contribution she made to the success of the respondent only because of this unfortunate affair. I have examined the evidence as best as I can and have made up my mind that the petitioner should have shelter over her head and should be mobile as she has always been.

She may have to start a job of her own and the seed money will have to be met by this suit. These are my main considerations in the award I have settled on. I have considered the claim for all the household effects, the vehicles, the cows and the two plots. I have mentioned the difficulty in locating and executing an order in respect of cows in the bush. I have considered the matrimonial home and the residential property at Dome. Also, I did not lose sight of the fact that the children of the petitioner have been cared for by the respondent prior to the commencement of this action."

We find no fault with this reasoning of the learned trial judge which was based on the evidence before her. We find that the trial Judge distributed the properties equitably. There were two houses and she settled one each on the Petitioner and the Respondent. There were two plots at Adjiriganor which could have been shared with one going to each party, but the Respondent's evidence was that one had been sold and this was not challenged. There were 4 vehicles and the trial Judge settled 2 each on each party. The Petitioner claimed GH¢500,000 as financial settlement but the trial Judge awarded GH¢200,000. We recognize that the Petitioner would need shelter, transportation and an income as she was starting out on a new life. We endorse the awards made by the trial Judge.

The Petitioner's adultery, real or perceived, is not a factor that should be taken into account in determining the equities in this case, however due regard must be given to the fact that the Respondent is not the biological father of the 3 children of the Petitioner and has expended huge sums of money on them over the 21 years of the marriage; providing food, shelter and education. They were with him as he worked and traveled to Holland, Belgium, Italy and the United Kingdom, attending private schools.

From the evidence on Record, the Petitioner did not provide evidence of the tax refund from Belgium, the figure or amount is not even stated. She also failed to provide cogent evidence on the various bank Accounts which Respondent claimed were bank accounts of the school, Glow-Lamp International School. With regard to the 5-acre land at Dodowa the Respondent claimed and the Petitioner admitted, belonged to the school. Ground 6 of the Appeal is without merit and is also dismissed.

Ground 1 of the Appeal

The judgment was against the weight of the evidence.

The Supreme Court has stated in a plethora of cases what consideration should weigh on a Court when it is alleged that the judgment is against the weight of the evidence on Record.

It was held in the off-cited case of **Tuakwa v Bosom [2001-2002] SCGLR 61** that when this ground of appeal is raised, the Court has to **"analyse the entire record of Appeal take into account the testimony of the witnesses and all the documentary evidence adduced to satisfy itself that on the preponderance of probabilities the conclusions of the trial Judge are reasonably or amply supported."**

See also the following cases: **Akufo Addo v Cathline [1992] GLR 322, SC Oppon v Anarfi [2011] SCGLR 556, Aryeh & Akakpo v Ayaa Iddrisu [2010] SCGLR…?**

> **"Where an Appellant complains that a judgment is against the weight of the evidence, he is implying that there were certain pieces of evidence on the record which, if applied in his favour, could have changed the decision in his favour or certain pieces of evidence have been wrongly applied against him. The onus is on such an Appellant to clearly and properly demonstrate to the Appellate Court the lapses in the judgment being appealed against."- Djin v Musa Baako [2007-2008] SCGLR 686**

Counsel for the Petitioner states that the Petitioner was married to and lived with the Respondent for 21 years and supported him while the Respondent plied his profession as an international footballer. The Petitioner states further that she carried out her wifely duties very well and sacrificed a great deal to ensure that the Respondent was emotionally, psychologically and physically fit to embark on his career. The Petitioner also states that her testimony shows that together with her mother and brother they helped the Respondent acquire the properties that she is claiming a 50% share of. She concedes that it was the Respondent who purchased the properties from his resources, but she performed her wifely duties and drew the Respondent's attention to the investments he made and even provided other services towards the realization of the properties. Counsel argues that the learned trial judge overlooked the fact that the Respondent had asked the Petitioner to stop working and

become a housewife and had downplayed the role the Petitioner played in the Respondent's life as he worked as a professional footballer and acquired the assets.

Counsel argues further that the learned trial judge also erred in placing a value on the wifely duties of the Petitioner and also by making a moral judgment on the Petitioner's perceived adultery as a criteria for the settlement of property in divorce proceedings and thereby not awarding the Petitioner her full entitlement.

In responding, Counsel for the Respondent contends that the Petitioner "has failed to show that on the totality of the evidence before the trial judge and applying the law the judgment in favour of the Respondent was in error."

Counsel for the Respondent argues further that the Petitioner is asking this Court to make different findings of fact from what the trial Court has made in order to allow the appeal.

Counsel for the Respondent draws our attention to the following cases which sets out the conditions under which an Appellate Court **could** interfere in the findings of fact of a trial Court. **Amoah v Lokko & Alfred Quartey [2011] 1 SCGLR 505," Agyenim Boateng v Ofori Yeboah [2010] SCGLR 861** and sets out these conditions

"a) The Court had taken into account matters which were irrelevant in law;

b) The Court had excluded matters which were critically necessary for consideration;

c) The Court had come to a conclusion which no Court could properly instructing itself would have reached and

d) The Court's finding were not proper inferences drawn from the facts.

In the case of **Arthur (No.1) v Arthur (No.1) [2013-2014] 1 SCGLR 543 at page 565** His Lordship Dr. Date-Bah referred to the United States case of **Letendre and Letendre [2002] 149 NH 31, 815 A.2d 938** stating that it was " Instructive on the approach a superior Court should adopt in relation to the exercise of discretion by a trial Court on the division of marital

property and in line with the general approach adopted by the Supreme Court in overriding decisions of the Court below:

> **"We sustain the findings and ruling of the trial Court unless they are lacking in evidential support or tainted by error of law. In the matter of Fowler v Fowler, 145 NH 516, 764 A.2d 916 (2000). The trial Court has broad discretion in determining matter of properties distribution and alimony in fashioning a trial divorce decree …Absent unsustainable exercise of discretion, we will not overturn its ruling or set aside its factual findings. In the matter of Telgener v Telgener 48 NH 190, 803 A.2d 1051 (2002)."**

We have evaluated the entire record and find no justification for interfering in the findings of fact by the trial Court. The trial judge took into consideration all the wifely duties of the Petitioner, the extra role she played in his life due to his level of education, the assistance from the Petitioner's mother and brother with regard to identifying the land for the marital property, which the trial judge considered to be duty expected of a wife and not meant to be paid for. She even declined to accept the Respondent's assertions that the Petitioner was not entitled to any property in view of her adultery. She did not make moral judgment a criteria for the settlement of the properties. The Petitioner herself was unable to prove her claims, for example with regard to the amount received as tax refund from Belgium the various Bank accounts and her role as administrator which the Respondent denied and enjoined the Petitioner to have taken steps to provide further evidence.

This ground of appeal is without merit and is dismissed.

In conclusion, the appeal is without merit and is dismissed in its entirety. The decision of the High Court dated the 14th day of June, 2017 is hereby affirmed.

There shall be no order as to cost.

AMMA A. GAISIE (MRS.)

(JUSTICE OF APPEAL)

I agree GEORGE KOOMSON

(JUSTICE OF APPEAL)

CONCURRING JUDGMENT

I had the benefit of reading through the draft judgment of my sister Amma Gaise JA and I have decided to add some few words to discuss some of the legal issues involved in this appeal. The Petitioner filed her petition to commence divorce proceedings with ancillary reliefs including joint custody of the three children to the marriage who bore the name of the Respondent. The ancillary reliefs included the award of a lump sum of five hundred thousand Ghana Cedis as alimony, maintenance allowance for providing the necessaries for the three children, and payment of school and medical bills of the children of the marriage. The reliefs claimed by the Petitioner on the original petition concerning the three children of the marriage were subsequently abandoned through an amendment.

The Petitioner in her amended petition amended some of the reliefs endorsed on the original petition and sought for , *inter alia*, an order dissolving the marriage; an order that the Respondent pays GHC 114,096.00 consisting of feeding allowance, utility bills, car maintenance and outstanding allowance from running Glow Lamp International School; and an order for equitable distribution of the marital property granting the petitioner fifty percent share of each of the properties listed in paragraph 14 of the amended petition.

The Respondent in his answer denied paternity of the children and averred that he thought they were his biological children and fully maintained them from part of his income from

professional football. The Respondent filed a cross petition for a dissolution of the marriage celebrated between the parties under the Marriage Ordinance on 28th May, 1994 in Accra, for a declaration that the three children were not his children, and a declaration that he provided the purchase money of the house at Bawaleshie Mpeasem and two plots of land at Adjiringano in Accra. The Respondent subsequently amended his answer and cross petition but maintained all the reliefs he sought under the original cross petition and maintained that a declaration be made by the Court that the three children of the Petitioner were not his children.

The Petitioner in her amended reply and answer to cross petition to the answer filed by the Respondent denied all the negative allegations made against her by the Respondent and further averred that the Respondent was not entitled to the reliefs contained in his cross petition.

The High Court took evidence and delivered its judgment on 14th June, 2017. Both parties in their respective pleadings and evidence were *ad idem* that the marriage should be dissolved except that each party proved against the other that they cannot be reasonably expected to live as a couple. The Petitioner in her pleadings and evidence in Court did not say that she made monetary contribution to the acquisition of the properties acquired by the Respondent during the subsistence of their marriage but she provided services as a wife to give the Respondent who was a professional footballer the peace of mind to work.

The trial High Court Judge in dissolving the marriage found as a fact that the Respondent did not assault the Petitioner as alleged by her and that fact remained unproven. On the other hand, the trial High Court Judge found that from exhibit "1" deoxyribonucleic acid (DNA) test , the Respondent was not the biological father of the three children to the marriage namely; Latifah Odartey Lamptey, Khadijah Odartey Lamptey and Moesha Odartey Lamptey who at the time the petition was filed in 2013 were nineteen, eighteen and seven years respectively. The Petitioner who got married to the Respondent before giving birth to

the three children procreated them from adulterous relationship and the marriage was dissolved on the evidence of the Respondent that the marriage had broken down beyond reconciliation.

The trial High Court further found that the Respondent acquired the properties, the subject matter of the dispute during the subsistence of their ordinance marriage celebrated in Accra on 28th May, 1994 and there was no evidence that the Petitioner substantially contributed to their acquisition. The High Court settled the Petitioner with the house at Dome, Accra; GHC 200,000.00 as financial settlement, Toyota Venza with registration number GE 6455-12 which was already in the custody of the Petitioner and Toyota Yaris with registration number GT 2013-11. The Petitioner dissatisfied with the judgment filed an appeal to this Court on 20th June, 2017. The grounds of appeal filed by the Petitioner are as follows:

> ***"i. that the judgment is against the weight of evidence.***
>
> ***ii. The Judge erred when it failed to consider Petitioner's contribution towards the establishment of Glow-Lamp International School.***
>
> ***iii. The Court erred when it concluded that the payment of director's allowance to the Petitioner by Glow-Lamp International School was for services provided for by Petitioner.***
>
> ***iv. Court erred in holding that Glow-Lamp International School as a legal entity was separate from the parties and not a party to the divorce suit hence its assets could not be a subject of property settlement in a matrimonial suit.***
>
> ***v. That trial judge erred in holding that Petitioner had been engaged in adultery as per the DNA test.***
>
> ***vi. The court erred when it failed to award the Petitioner 50% shares in the assets acquired by the parties during the marriage.***

Vii. Additional grounds of appeal to be filed upon receipt of copy of judgment".

My sister has discussed all the grounds and I will limit myself to areas of adultery and the distribution of the properties acquired during marriage. The general position of law is that it is not common to prove adultery by direct evidence as sex is not made in public by persons of sound mind. The few instances where people who engage in adultery may be found out include where they were caught in the act or where one of them confesses for having engaged in adulterous relationship during the subsistence of the marriage. Adultery against a married woman may be proved by indirect evidence including where the child born during marriage was not the child of the father and the mother failed to adduce evidence to prove that they were either procreated through surrogacy with the consent of the man or such other justifiable cause.

The Respondent proved his case by the preponderance of probabilities in accordance by tendering the DNA report on the three children which proved that he was not their biological father. The Ordinance marriage between the parties was celebrated on 28th May, 1994 in Accra. The pleadings and evidence of the parties, particularly exhibit "A" prove that the parties got married on 28th May, 1994. The Petitioner filed the petition in 2013 to dissolve their Ordinance Marriage celebrated in 1994 when the marriage was 19 years. The first child Latifah Odartey Lamptey was nineteen years, the second child Kadijah Odartey Lamptey was eighteen years and the third child Moesha Odartey Lamptey was seven years. The DNA report tendered in evidence as exhibit "1" and contained in pages 357 to 362 proved that the children were not the biological children of the Respondent. I am satisfied with the finding of fact made by the trial High Court that the Petitioner procreated the three children in adulterous relationship during the subsistence of her marriage with the Respondent.

The Respondent proved his case by preponderance of probabilities in accordance with sections 11 (4) and 12 of the Evidence Act, N.R.C.D. 323. The case of ***Adwubeng v Domfeh [1996-97] SCGLR 660*** determined in accordance with the Evidence Act, N.R.C.D. 323 held

that the standard burden of proof in all civil matters is proof by preponderance of probabilities and there is no exceptions to the rule. The Petitioner did not adduce evidence to satisfy the Court why the children were born during the subsistence of their marriage but the Respondent was not their biological father. The Petitioner failed to provide any evidence to the effect that the Respondent knew long ago that the three children were not his biological children and therefore not entitled to relief (ii) which is inviting this Court to hold that the Petitioner did not engage in adultery with regards to the conception of the children of the marriage. There are no justifiable grounds for me to interfere with the findings of fact made by the trial High Court Judge in accordance with law. In the case of ***Effisah v Ansah [2005-2006] SCGLR 943,*** the Supreme Court held that an appellate court may not interfere with findings of fact made by a court below unless it can be demonstrated that the findings made was not supported by the evidence on record. I dismiss ground v of the appeal as unmeritorious.

The Petitioner sought to suggest that properties acquired during subsistence of marriage shall be shared equally between the parties. There is evidence on record that the Petitioner was paid allowances for the services she rendered to the Glow Lamp International School and sued to recover the outstanding allowances. The Petitioner's relief (b) on her petition provides thus:

> ***"An order that the Respondent pays the Petitioner a total sum of GHC 114,096.00 consisting of feeding allowance, utility bills, car maintenance and outstanding allowance from running Glow Lamp International School."***

The trite position of law that a party is bound by its pleadings and the Petitioner is bound by its own pleadings that she was paid allowances in her capacity as the Director of the School. The case of ***Dam v Addo [1962] 2 GLR 200*** reaffirmed the trite position that a person is bound by its pleadings. The same position has been quoted with approval in recent decisions

including In re ***Kodie Stool; Adowaa v Osei [1998-99] SCGLR 23 and Antie & Adjuwaah v Ogbo [2005-2006] SCGLR 494.*** The Petitioner rendered services for allowances and cannot use the same services rendered to claim an interest in it. I cannot disturb the findings by the trial High Court Judge that the properties were acquired by the Respondent from income from his professional soccer career.

The Petitioner's position is that the properties were acquired during the subsistence of the marriage and she is therefore entitled to fifty percent share. Article 22 (3) of the Constitution of Ghana, 1992 has been applied in several cases and it is to the effect that property jointly acquired by parties during marriage shall be distributed equitably between the spouses upon the dissolution of the marriage. There is copious evidence on evidence that the Respondent acquired the properties from the income he earned as a professional footballer. In a case where a property was jointly acquired during marriage in different proportions, the sharing shall be deemed to be equitable when it is made in accordance with that proportion. In following the cases of ***Fynn v Fynn [2013- 2014] 1 SCGLR 727; Quartson v Quartson [2012] 2 SCGLR 1077*** and the recent case of ***Peter Adjei v Margaret Adjei , Civil Appeal No . J4/06/2021*** delivered by the Supreme Court on 21st April, 2021(unreported SC) which have clearly drawn a distinction between a property acquired by a spouse during marriage and a property jointly acquired during marriage. Equality is equity means getting a portion commensurate with contribution either in kind or services and not sharing it equally as being urged upon us by counsel for the Petitioner. Snell's Principles of Equity, (28th ed. 1982) explains the equitable maxim 'equality is equity' to mean that a person is entitled to his proportionate contribution and not automatic equal shares. However, where the parties cannot specify their proportionate contribution to the acquisition of a property it is presumed to be jointly acquired. Where the presumption arises that a property was jointly acquired during marriage, the presumption is equal contribution unless a party adduced evidence to prove a greater contribution than the other person.

The properties given to the Petitioner as her contribution to the marriage are substantial by the fact that the Respondent spent huge sums of money on maintenance, education and travels of the three children of the Petitioner under the erroneous impression that they were his children. From the evidence on record, I am satisfied that the Respondent spent huge sums of money on the three children of the petitioner thinking they were his children and that sums of money now enure to the benefit of the Petitioner who is their mother.

The Petitioner failed to demonstrate any error committed by the trial High Court in her evaluations of the evidence on record and cannot complain that the judgment is against the weight of evidence on record. In the case of ***Djin v Musah Baako [2007-2008] 1 SCGLR 686,*** the Supreme Court held that a party who alleges that a judgment is against the weight of evidence on record shall demonstrate the errors and satisfy the court that if the errors are corrected, the judgment should tilt to her favour. I have examined the findings of fact made by the trial High Court Judge and I am satisfied that this Court cannot fault her as the findings of fact made by her were supported by the evidence on record.

I find no merits in the appeal and grounds (i), (ii), (iii), (iv),(v) and (vi) of the appeal and I accordingly dismiss same . I affirm the judgment of the trial High Court delivered on 14th June, 2017.

DENNIS ADJEI

JUSTICE OF THE COURT OF APPEAL

Counsel:

Adrian Duke Amaning for the Petitioner/Appellant

Iris Aggrey-Orleans for the Respondent/Respondent