

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 13<sup>TH</sup> OCTOBER, 2022

SUIT NO. C5/68/20

GODFRED AWULEY ANKRAH - PETITIONER  
VRS

JOYCE GIDI - RESPONDENT

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**JUDGMENT**  
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On the 20<sup>th</sup> day of August, 2005, the parties to this proceedings, celebrated their marriage under the ordinance at the Church of Pentecost, Michel Camp, near Tema. There are three issues of the marriage aged between 20 and 12 years.

According to the petitioner, for the past five years, they have not lived together as husband and wife. Petitioner prayed the court to dissolve their marriage and also share the catering facility known as Joyce Kitchen equally among the parties.

In her answer, the respondent denied the claims of the petitioner and cross petitioned for the dissolution of the marriage, an order directed at petitioner to pay her fifty thousand Ghana cedis (Ghs 50,000) as financial settlement, an order that the matrimonial home and vehicles be shared equally amongst the parties. An order directed at petitioner to account for the commercial transport business and the proceeds shared equally between the parties, and custody of the children of the marriage to petitioner with reasonable access to the respondent.

In his reply and answer to the cross petition, petitioner disputed the claims of the respondent.

After having joined issues, the battle lines were spelt out in clear times and the parties had to produce evidence in proof of their claims.

### **THE CASE OF PETITIONER**

Petitioner tendered in evidence a copy their marriage certificate as EXHIBIT A. In his written evidence in chief, he said that the respondent has been engaging in adulterous affairs and admitted before their respective families and their church elders that she was involved in an amorous relationship with one Godsway Vuda. He tendered in evidence a picture of the said man as EXHIBIT B. He continued that respondent has a key to the said Vuda's house and goes there even in his absence and the two of them also travel frequently out of town.

That her relationship with the said Vuda was such that he paid her frequent visits at her workplace and even told the children that he wanted petitioner to be his mechanic. That a certain painter once confessed to being in an extra marital affair with the respondent after she had told him that her husband had travelled abroad and abandoned she and the children. Further that at all family meetings, the respondent would admit to the adultery and apologize since they were apparent. That although she would promise not to repeat same, she did not keep to her promise.

Further that since they do not engage in sexual intercourse, the respondent secretly undertook a pregnancy preventive procedure to prevent any pregnancy that may expose her. He tendered in evidence EXHIBIT C as a copy of the procedure

documentation process from Darbem clinic at Ashaiman. That respondent's adulterous nature is coupled with excessive drinking and this is known to their families, church and also their children. That respondent is aggressive and abrasive and would not talk to anyone in the household especially when she is drunk. That she also becomes aggressive.

Further that, he has set the respondent up in various businesses, including taking care of her through her dressmaking apprenticeship, establishing a shop for her dressmaking business after her training, providing funds for her to trade in goods which she purchased from Aflao and providing funds for her to trade in goods which she purchased from Accra. That the respondent could not manage all these businesses.

Also that upon the respondent's request, he put up a structure in front of their home for her to operate a chop bar. When the business was set to begin, the respondent for no apparent reason, said she did not like the place. That he later set up a catering facility for the respondent to operate a catering business in. That he footed all the bills in getting the land and putting up the container and generally making the place conducive for a catering business.

Respondent did not make any accounts and ironically when she run out of gas, she would rather take the one for the house to the shop rather than fill up. Also that she would leave the business for days and travel with the said Vuda and would not show any interest upon her return.

Again that the idea of putting respondent in a business is to enable her to contribute to the home but she has never contributed a dime and he has to foot all the bills at home and also cater for the respondent. The respondent has abandoned her wifely duties and

does not accord him respect. Also that she does not attend to the children of the household and all the responsibility is left to him.

Also that the petitioner has evinced an intention not to continue with the marriage as she has packed all her personal belongings from the matrimonial home into their daughters' room and also removed even cooking utensils from the kitchen. That meetings were convened and the parties have indicated their resolve not to continue with the marriage and all attempts by family, friends and church leaders to settle their differences have proved futile.

That it is the respondent's family who informed after several meetings where the respondent admitted adultery, that per their culture if a man continues to live with a wife who commits adultery, then he would die. That it was after that that he decided to obtain a divorce

According to petitioner, he is not in a relationship with anyone and one Vida whom the respondent mentioned in her answer as cooking for him and the children is a neighbor who lives with her husband and petitioner is very much aware of that. Petitioner again contended that the vehicles did not belong to him. That as a mechanic, he tests drives many vehicles after repairs, drives them home after work or sells them on behalf of the owners. That he sometimes purchases the cars for sometime and then resells. That he also bought the taxis for his boys on a work and pay basis. That he has no vehicle of his own save for a broken down sprinter.

He also contended that he purchased the land on which the matrimonial home sits in 1998, long before he married the respondent. He attached a receipt of purchase as EXHIBIT D. That he constructed a block tank into which water was stored for the

construction. That the respondent was not working and did not assist him in anyway to build the house. Also that due to his limited resources, he constructed the house gradually and until the house was complete, they lived in his father's house.

That the children are currently at high levels of education with high expenses and the respondent does not contribute to anything. That as maintenance is a shared responsibility, the respondent should be ordered to contribute to the upkeep of the children. Also that but for the respondent's behavior, he could have done far better in life and offered the children a better life.

#### **CASE OF THE RESPONDENT**

In evidence in chief, the respondent contended that at the time the petitioner acquired the land on which the matrimonial home is situated, he was living with her as husband and wife as he had performed the knocking rites. That they had two children before celebrating their marriage in 2005. That they used to visit the land and she was actively involved in the construction when it started. That she was working and used her own money to cook for the workers on site.

According to her, she was involved in a catering business which the petitioner assisted her with three hundred Ghana cedis (Ghs 300) to set up. That the business was thriving and she saved and handed the petitioner two thousand Ghana cedis (Ghs 2,000) to keep and maintain the home.

She admitted that their marriage has broken down beyond reconciliation and all attempts to reconcile them have failed. That at a meeting, petitioner's family asked him to divorce her.

She cross petitioned for a dissolution of the marriage on the grounds of unreasonable behavior of the petitioner. The particulars are that the petitioner abused her physically and verbally in the presence of the children. She further contended that petitioner never spent quality time with her as he left home early and returned late at night when she was asleep. That he used to tell her that he had another Ewe lady whom he intended to marry. That he always accused her of infidelity and has slapped her severally. That he also abuses her verbally in the presence of the children. Also that until her uncle intervened, petitioner was not maintaining her.

Moreover, during the subsistence of their marriage, they acquired an unregistered Pontiac vibe saloon car, a Pontiac vibe saloon car with registration number GT 1188-14, two sprinter bus for commercial purposes, two taxis for commercial purposes and a three bedroom house at Sakey which is their matrimonial home. That the petitioner used the sprinter buses for commercial purposes without accounting to her. That it was petitioner who also informed her that he had acquired the said taxis.

#### ***CONSIDERATION BY COURT***

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See *Section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)*. In the case of *Adwubeng v. Domfeh [1996-97] SCGLR 660, the Supreme Court held that "sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made"*.

It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him/her to lead cogent and positive evidence to establish the existence of his/her

claim in the mind of the court. See the case of *Abbey & Ors v. Antwi [2010] SCGLR*. Although the petitioner asserted, the respondent made a cross petition and so they both bore the burden of proving their respective claims. See the case of *Gregory v. Tandoh IV & Hanson [2010] SCGLR 971*.

In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing. The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*.

In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not the respondent is entitled to a lump sum payment of fifty thousand Ghana cedis (Ghs 50,000).
3. Whether or not the matrimonial home is a jointly acquired property and should be distributed equally between the parties

4. Whether or not the parties acquired two sprinter buses and two taxis in the course of their marriage and same should be shared equally amongst the parties
5. Whether or not the petitioner should be ordered to account for the commercial use of the vehicles.
1. *Whether or not the marriage between the parties has broken down beyond reconciliation*

The parties allege two grounds for this petition and cross petition. Whereas the petitioner alleges adultery and unreasonable behavior on the part of the respondent, the respondent alleges unreasonable behavior on the part of the petitioner as being the cause of the marriage breaking down beyond reconciliation. As any of these grounds when proven would lead to a conclusion that the marriage has broken down beyond reconciliation, I would deal with the claim of adultery. If it is established in my mind that the respondent committed adultery and the petitioner finds it intolerable to live with her by reason of the adultery, then there would be no need for me to continue to the ground of unreasonable behavior.

The first ground under which a spouse can mount a claim that a marriage has broken down beyond reconciliation is adultery. Adultery is defined by the *Blacks Law Dictionary (8<sup>th</sup> ed. 2004 at page 160)* as “voluntary sexual intercourse between a married person and someone other than the person's spouse”. *Section 43 of Act 367* also defines adultery in the same terms as “the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse”.



There is no better proof of a fact than an admission and it is elementary that where an admission is made by an opposing side, there is no need to call any evidence in proof of the claim. See the case of *In Re Asare Stool; Nikoi Olai Amontia IV v. Akortia Oworsika* [2005-6] SCGLR 637.

In the circumstances of this case, the petitioner alleges that the respondent committed adultery and had an affair with two other men one being a Godsway Vuda. That she confessed this adultery not only to him but also to their pastors and family members. Also that their children knew the man involved. The respondent admits same but says that she only admitted to the adultery at family meetings due to the pressure that was mounted on her. By her explanation, she was confessing and avoiding, thus the burden laid on her to prove that indeed she was placed under any form of duress to admit the adultery.

In respondent's evidence in chief, she failed to adduce a scintilla of evidence to the Court as proof that she was indeed pressurized to admit the said adultery. I thus find her claim in her answer of being placed under pressure to admit adultery not supported by her own evidence. Her admission of adultery would thus stand as evidence against her.

The adultery alone is not enough to prove that the marriage has broken down beyond reconciliation. A party relying on same must prove that by reason of the adultery, he finds it intolerable to live with the respondent. Petitioner in paragraph 14 of his own written evidence in chief says that it was the family of respondent, who being embarrassed at her constant adultery and considering him to be too tolerant, admonished him to end the marriage as per their custom, if a man continues to indulge a wife who commits adultery, it would end up in the death of the man.

From his own evidence, he had tolerated respondent's adultery and but for the admonishing of her own family, he may not have instituted this action. That shows that he did not find it intolerable to live with the respondent by virtue of her adultery. On that basis, I am unable to hold that the marriage has broken down beyond reconciliation due to the adultery committed by the respondent.

Both parties, however admit that several attempts made by their respective families and their pastors to resolve their differences over the course of time had failed. Indeed, according to petitioner, they have not lived as husband and wife for the past five years and they do not have sexual intercourse. The respondent does not deny this although she indicates that the petitioner still maintains her after the intervention of her uncle. Indeed, Tat page 41 of the record of proceedings, in the course of trial, petitioner indicated to the court that he had had to give money to the respondent to attend hospital as she was not well. As maintenance of a spouse is the responsibility of a spouse, it appears that there was some semblance of a marital union between them.

They both however admit that they do not share a matrimonial bed and it has been so for years. Both of them also petitioned for a dissolution of their marriage. That is an indication that their marriage has gone beyond the point of redemption.

They have both come to this Court with a common purpose; for the court to dissolve the remnants of their marital union which appears to have been in comatose for the past five years. To borrow the words of Amisah J.A in the case of *Knudsen v. Knudsen* [1976] 1 GLR 204, "if a man comes to court saying that his marriage has reached a stage that he "cannot reasonably be expected to live" with his wife any more, should a court say to him oh yes you can?". In the circumstances of this case, both the man and

woman are in court saying they cannot reasonably be expected to live with each other and all diligent attempts by their families to reconcile them have failed.

That is why *Section 2 (1) (f) of the Matrimonial Causes Act, 1971 (Act 367)* provides that; “For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts; that the parties to the marriage have, after diligent effort, been unable to reconcile their differences”.

To borrow the words of *Sarkodee J (as he then was)* in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* “For it is better: “When regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.”

On that basis, I hereby find that all diligent attempts to resolve the differences of the parties to this action and enable them continue their marriage have failed and as such their marriage has broken down beyond reconciliation. I hereby issue a decree of dissolution in respect of the ordinance marriage celebrated between them on the 20<sup>th</sup> day of August, 2005 at Church of Pentecost, Great Commission Assembly, Saki, Michel Camp District. Their marriage certificate is accordingly cancelled. The Registrar is to notify the administrator of the church of the dissolution to enable them to duly amend their records.

- 2. Whether or not the respondent is entitled to a lump sum payment of fifty thousand Ghana cedis (Ghs 50,000).*

The respondent prays for financial provision in the sum of fifty thousand Ghana cedis (Ghs 50,000). In analyzing this, I am mindful of the decision in the case of *Aikins v. Aikins [1979] GLR 223* holding 4 which is that “in considering the amount payable as lump sum, the court should not take into account the conduct of either the husband or the wife but it must look at the realities and take into account the standard of living to which the wife was accustomed during the marriage”.

In the case of *Oparebea v. Mensah [1993-94] 1 GLR 61*, the court held that in order to determine a claim made under *Section 20 (1) of the Matrimonial Causes Act*, the court must examine the needs of the party making the claim and not the contributions of the parties during the marriage.

Factors to be considered in arriving at an equitable decision include the earning capacity or income of the parties, property or other financial properties which each of the parties has or is likely to have in the foreseeable future, the financial needs, obligations and responsibilities of each of the parties and the standard of living enjoyed by the family before the breakdown of the marriage.

The respondent under cross examination by learned counsel for the petitioner, at page 54 of the record of proceedings answered;

Q: *From all that you have said from the box, you would agree with me that you are not entitled to your cross-petition except for the dissolution of your marriage.*

A: *My Lord, it is because I have lived with him all these while. Now that he says that he is divorcing me, I do not have anywhere to go. I suggested that he put up a wooden structure*

*on the land we have but he said he had sold it. Now, I do not have anywhere to go and I do not know his intentions as well.*

The parties celebrated their union in 2005. However, from the abundance of evidence on record, they began cohabiting about five or six years prior to that. That means the only home the respondent has had for more than twenty years, has been with the petitioner.

Again, from the evidence on record, even after they ceased cohabiting in the same room, enjoying each others companionship and performing expected duties of and for each other, the petitioner had to maintain the respondent. Now that I have placed the nails in the coffin of their marriage, it no longer behoves on the petitioner to provide for the respondent. From the evidence, she does not work to earn any income as well.

However, my order for financial settlement should also take into account the financial obligations of the petitioner. The respondent at page 49 and 53 of the record of proceedings, admitted that petitioner is solely responsible for the maintenance of the three issues who are all in school currently. She further admitted that the petitioner is in debt and has had to sell off his vehicle to help him pay off some of that debt.

*Q: And all those efforts by your husband to put you into trade, to build a business for you is for you to be independent and also assist in the upkeep of the house and the children. Is that so?*

*A: Yes please.*

*Q: However, despite all of these, petitioner maintains the house alone including feeding, clothing, educational needs, medicals of the children without any assistance from you?*

*A: Yes My Lord.*

Q: *You are aware that the petitioner has some debts that he is currently servicing.*

A: *It is his debts. He took money from someone to buy a vehicle for the person and the transaction did not go well. He had a car. When I asked him about it, he said he had sold it to offset a money or debt.*

Q: *Your children, can you tell the court what stages and which schools they are now?*

A: *The eldest is at University in Level 300. He is at Valley View University. The 2<sup>nd</sup> child has completed S.H.S. and is currently attending class at Community 12 and the 3<sup>rd</sup> child is in J.H.S. 2.*

Q: *And you are aware and agree with me that their future growth and maintenance would entail huge amount of money and that is a big burden on the petitioner.*

A: *Yes, My Lord. It is because I do not have the resources to help.*

After a consideration of the needs of the respondent and balancing it with the obligations of the petitioner, it is hereby ordered that the petitioner pay to the respondent the sum of twenty five thousand Ghana cedis (Ghs 25,000) as financial settlement. He is to pay the amount within ninety (90) days from the date of judgment. Failure of which the amount would attract interest at the prevailing commercial bank rate from the date of judgment till the date of final payment.

***3. Whether or not the matrimonial home is a jointly acquired property and should be distributed equally between the parties***

***4. Whether or not the parties acquired two sprinter buses and two taxis in the course of their marriage and same should be shared equally amongst the parties***

I would proceed to consider issues 3 and 4 together. The law as espoused by the Supreme Court is that any property acquired by spouses during the course of their

marriage is to be presumed (rebuttably) to be jointly acquired. In other words, property acquired by the spouses during marriage is presumed to be marital property unless contrary evidence is led. See the case of *Arthur (No 1 v. Arthur No 1)* [ 2013-2014] *SCGLR 543, Vol. 1* which re-affirmed the decision in the oft cited case of *Gladys Mensah v. Stephen Mensah* [2012] *1 SCGLR 391* in which the veritable Dotse JSC in delivering the judgment of the court, gave effect to the provision in Article 22 of the Constitution, 1992.

The principle to be applied in the distribution of marital property is that of equality is equity. See the majority decision in the Supreme Court decision of *Peter Adjei v. Margaret Adjei* [ *Civil Appeal No. J4/06/2021*) delivered on the 21<sup>st</sup> day of April, 2021. *Pwamang JSC* in reading the majority decision held that “property acquired by spouses during marriage is presumed to be marital property. Upon dissolution of the marriage, the property will be shared in accordance with the “equality is equity” principle except where the spouse who acquired the property can adduce evidence to rebut the presumption.”

The claim of the respondent is that the matrimonial home was acquired during their marriage and she contributed to it. In her cross petition, she averred that she played a critical role in the construction of the building by fetching water for the workers, cooking for them and ensuring that they worked well.

The petitioner denied this in his reply and answer to the cross petition and indicated that he acquired the land in 1998, long before his marriage to the respondent. That he constructed a block tank into which water was stored for the construction. That the respondent did not assist in anyway. That he impregnated the respondent and they

began living together in his father's house and during the period, he was still constructing the matrimonial home which they moved into even before its completion.

In her written evidence in chief, the respondent testified that the land was never acquired before she met the petitioner and that she was with the petitioner before the said land was acquired. That they lived as husband and wife because at the time, he had performed her knocking rites.

Undisputed evidence led at the trial indicates that although the parties celebrated their marriage in 2005, they had been in a courtship that resulted in pregnancy in 1999. That after the pregnancy, they had lived together and had two children before they celebrated their marriage.

Although the respondent indicated that knocking rites were performed, the petitioner's claim was that he went to perform the marriage rites when the respondent first took seed but was informed that he had to wait till she delivered. That he then presented a drink in acceptance of the pregnancy.

Learned counsel for the respondent in cross examining the petitioner had questioned him vigorously on this and put forth the case that the presentation of the drink constituted knocking rites which coupled with their living together and having another child would be deemed to constitute a marriage at the time.

Strangely, the respondent under cross examination, set to unravel her own case when she insisted that no drink had been presented to her family by the petitioner when she became pregnant. At page 46 -47 of the record of proceedings, she had answered;

*Q: Can you confirm to this court the date you got married?*



A: *My Lord, I have forgotten.*

Q: *Before you got married, you had given birth to your first child?*

A: *Yes, My Lord. We had our first child before we got married.*

Q: *Is what you are referring to as marriage the presentation of a bottle of drink to your family by the petitioner.*

A: *No please. The petitioner presented that drink to the family before our marriage.*

Q: *You see, when you got pregnant, the petitioner presented one bottle of drink to your family to signify acceptance of the pregnancy and not marriage.*

A: *When I got pregnant, I was already living with him and so he did not go to my family to present any one bottle of drink as acceptance of the pregnancy.*

Q: *Are you telling the court that the petitioner did not present any drink for your family to accept responsibility for the pregnancy before you moved in to stay with him.*

A: *No My Lord.*

Q: *So finally when you got married to the petitioner, the celebration took place at the church of Pentecost, Michel Camp.*

A: *Yes My Lord.*

Q: *Prior to that celebration at the church of Pentecost, you had the engagement two weeks prior to the marriage at Michel Camp.*

A: *Yes, My Lord. We had the engagement two weeks before the marriage.*

Respondent's own answers had unequivocally undone all that she sought to do in her evidence in chief and her cross examination of her petitioner. From her answers, she and the petitioner were simply living together as husband and wife without any semblance of a ceremony to or by their respective families, until they had the "engagement" two weeks before the ordinance marriage in 2005.

Petitioner tendered in evidence EXHIBIT D as a receipt evidencing his purchase of land in 1999. Although the date of the receipt is 18<sup>th</sup> June, 1999, he explained that he acquired the land in 1998 and further explained the circumstances leading to the delay in the issuance of the receipt. At pages 30, 31 and 32 of the record of proceedings, he answered under cross examination by learned counsel for the respondent;

Q: *From your Exhibit 'D', you finished paying for the land on the 18<sup>th</sup> June, 1999. Not so?*

A: *I had then concluded payment for the land already but it is in the course of issuing of the receipt that I was given that date.*

Q: *So you want this Honourable court to believe that you paid money and yet you were not receipted therein?*

A: *No. My Lord. When I paid the money, I was not given a receipt.*

Q: *And that your development of the land started after 18<sup>th</sup> June, 1999?*

A: *Not true.*

Q: *In paragraph 20 of your reply and answer to cross-petition, you also stated there that you acquired the land in 1998 and began the construction in 1999 January.*

A: *Yes, please.*

Q: *And per your evidence, it was only after the final payment that you commenced the construction of the house and so paragraph 20 of your reply to the answer and cross-petition paragraph 22 of your evidence in chief and summing that up with your Exhibit 'D' cannot be true.*

A: *My Lord, that is the truth.*

Q: *I put it to you that your evidence that you acquired the property before marrying the respondent is totally false and not borne out of your own evidence to the court and your pleadings.*

A: *I first bought the land in 1997 and there was an issue with that and so I lost it. I acquired the next one in 1998 and was issued with a receipt in 1999.*

Q: *What is the total cost of the land you purchased.*

A: *At the time, it was GHC200.*

Q: *your Exhibit 'D' and your evidence suggest that you paid for the said piece of land in bits. Is that not the case?*

A: *No please.*

Q: *I would again refer you to paragraph 22 of your evidence in chief you said you made the full payment in 1999. Is that not the case?*

A: *My Lord, that portion is not the truth.*

Q: *So you are again despairing from your paragraph 12 that you swore to on oath.*

A: *Yes, please.*

Q: *I put it to you that per your own averments, it suggests that the land was purchased and paid for in bits and that you only made the final payment in 1999?*

A: *No please. I paid for the land fully in cash and it was the issue of the receipt that delayed.*

Q: *I put it to you that your Exhibit 'D' cannot be believed by this court and that it is just a self-seeking document to aid your assertion that you acquired the property before marrying the respondent.*

A: *I bought the land before we got married. Please with the property, I had not completed it when we began to court but I completed it thereafter.*

I found the petitioner to be a credible witness. He appeared to be in Court to speak the truth rather than to say what was beneficial to his case only. Even in the absence of any ceremony, under cross examination, he admitted that;

Q: *So all these while, the respondent was living with you as husband and wife?*

A: *Yes please.*

Q: *And this representation was to the whole world both families acknowledged the fact that you are husband and wife.*

A: *Yes My Lord.*

The respondent appeared to corroborate the claim of the petitioner when she answered at page 49 of the record of proceedings;

*Q: You want to tell the court that before you married at the Michel Camp. Assemblies of God Church or whatever, the house at Sackey or Mataheko was not there?*

*A: No My Lord. The land was there but it was after the marriage that he put up the building and I had my 2<sup>nd</sup> child there.*

*Q: When did you have the 2<sup>nd</sup> child?*

*A: He was born on 1<sup>st</sup> February and he turned 18 years this year.*

*Q: And from your account, the marriage took place in 2005. Is that not so.*

*A: My Lord, we stayed for long before he married me so it is possible.*

*Q: And at the time the petitioner put up that building, it was all from his sweat and resources and there was no contribution from your end?*

*A: My Lord, at the time, I had finished my apprenticeship and given birth to our first child. When petitioner is not around, I take care of the workers and supervise their work.*

*Q: It was your husband who told you he had put up a house there and later took you there and you never undertook any work there?*

*A: My Lord, that is not so.*

*Q: In the course of the construction of the building, the first thing that was constructed was a big tank in which water for the construction was stored. No one fetched water for the construction. I put that to you.*

*A: My Lord, it was a reservoir tank and at the time, the place was bushy. The houses there were not even up to ten so to get water there was difficult so I had to stay for them to fill the tank. I never carried water on my head.*

From the evidence on record, I find that the petitioner acquired the land on which the matrimonial home is situated and commenced building on it before he and the respondent began to live together as husband and wife and long before they celebrated their marriage after the birth of their second child. That makes the equities unequal.

With regard to the contribution of the respondent, although her evidence is that she fetched water for the workers, cooked for them and also supervised their work, under cross examination by learned counsel for the petitioner, she denied ever fetching water for the workers. Again, contrary to her claim that she was working and she cooked for the workers, she had answered that she had completed her apprenticeship, had her first child and it was when the petitioner was not around that she supervised the workers.

From her own evidence, she had not made any substantial contribution towards the construction of the matrimonial home. The petitioner disputes that she supervised the workers in anyway and said the work was done on a gradual basis and during the time, they lived in his father's house. At page 50 of the record of proceedings, the respondent had answered under cross examination;

*Q: And by you saying you supervised the work, are you saying that when they were working you go to stay there?*

*A: My Lord, we had not finished the building before the petitioner's father said we should leave his house. The hall was not completed at that time so when they are working, I stay there to cook for them.*

*Q: So the building was not completed before you moved in?*

*A: That is so.*

I believe this evidence of the respondent. Between their evidence, it is evident that until they moved into the uncompleted house, the petitioner was in charge of the building and the workers, however, after they moved into same, it was only natural with the respondent being home and the petitioner being away most of the time in his work as a mechanic, that the respondent supervise the workers and cook for them. The respondent not being employed at the time, could have done this with the money of the petitioner but with her time and energy. That would mean she contributed in a way.

It however, still does not make the equities equal for the respondent admits that various businesses were set up for her by the petitioner including travelling to Togo to purchase goods. That means she was not a stay at home wife and mother who had to take care of the home and children and provide the petitioner with the peace of mind necessary to go about his work and earn an income for the family.

Upon these considerations, I hereby find that the respondent is not entitled to her claim for an equal share of the matrimonial home. She is entitled to a 10% share in the matrimonial home. Each party has the first option of refusal. In the alternative, the petitioner is to rent a one bedroom accommodation for her and pay the rent covering a period of three years.

With regard to respondent's claim for the vehicles and taxis, save for a Pontiac vibe with registration number GT 1188-14, she failed to provide any evidence of the particulars of the two sprinter buses or taxis by way of car numbers, make, model, colour etc.

As the petitioner had denied these, the legal burden of proof laid on the respondent. Her mere assertions were not enough to prove her claim. Once again, under cross

examination, respondent appeared to be pouring gallons of water into her own cooked soup. At page 52 and 53 of the record of proceedings, she had answered under cross examination;

*Q: You are aware that the petitioner has some debts that he is currently servicing.*

*A: It is his debts. He took money from someone to buy a vehicle for the person and the transaction did not go well. He had a car. When I asked him about it, he said he had sold it to offset that money or debt.*

Her answer corroborated the claim of the petitioner as to the fact that as it stands now, he no longer had any vehicle. On that basis, I hereby dismiss the claim of the respondent.

- 5. Whether or not the petitioner should be ordered to account for the commercial use of the vehicles*
- 6. Whether or not the catering facility known as Joyce Kitchen be shared equally among the parties.*

I would address these issues together. The petitioner admits that he had a taxi prior to their marriage and after their marriage, he sold it off and acquired one sprinter bus which was working for him. That currently, the said bus is not in a working condition and is at home. The respondent is praying that he accounts for the vehicle and same shared amongst them equally.

From the evidence, the respondent does not claim that she contributed anyway to the acquisition of the said vehicle. In the course of their marriage, she does not deny that several businesses were set up for her by the petitioner and save for the structure for a catering service, none of these businesses exist. At pages 48 -49 of the record of

proceedings, this is what transpired during cross examination by learned counsel for the petitioner;

Q: *After your apprenticeship, your husband paid for the cost of graduation?*

A: *No. My Lord. He paid part.*

Q: *And the petitioner gave you money to do some trading?*

A: *Yes please.*

Q: *And you squandered the money?*

A: *My Lord, I was trading between Togo and Ghana. My goods were seized by the customs people. That is why I lost the money.*

Q: *After that, you requested that, you want to do another trading within Ghana and petitioner mobilized funds for you?*

A: *Yes My Lord.*

Q: *And that fund was also squandered?*

A: *My Lord, when he gave me that money, he said I should maintain myself and so that was the money I used to take care of myself.*

Q: *But you requested and was given the money for business.*

A: *Yes My Lord.*

Q: *After that, you also requested that you want to do some selling in the house and so petitioner built a structure for that purpose?*

A: *That is so but he did not complete it. The sales there was very low so I asked that I get another place to sell.*

Q: *So you see, after petitioner spent so much money to build that place, you decided that you were not going to operate in that structure and not that it was not completed.*

A: *Yes, My Lord.*

Q: *After that, you said you wanted a different place around Community 25 and petitioner procured a land there and put up a nice catering facility there for you. Is that correct?*



A: *Yes, My Lord. It was a container and he did not do it alone.*

Q: *And all those efforts by your husband to put you into trade, to build a business for you is for you to be independent and also assist in the upkeep of the house and the children. Is that so?*

A: *Yes please.*

Q: *However, despite all of these, petitioner maintains the house alone including feeding, clothing, educational needs, medicals of the children without any assistance from you?*

A: *Yes, My Lord.*

The respondent's answers under cross examination, make it amply clear that the petitioner had set her up in business many times with his own finances without any contribution from her and in some instances, she had blatantly wasted the investments petitioner made. In the circumstances, it would be unfair to order the petitioner to account for the vehicle which is now in a decrepit situation to the respondent and share any proceeds thereof. Accordingly, I hereby dismiss the claim of respondent.

In the converse, the petitioner prayed that the catering facility known as Joyce Kitchen be shared equally among the parties. In this court, the respondent has admitted abandoning the said facility. At page 44 of the record of proceedings, respondent had answered under cross examination by astute counsel for the petitioner;

Q: *You said you were running a catering service but because of the lockdown, you are no more operating it. Is that correct.*

A: *Yes please.*

Q: *You see, one service that has been allowed to operate throughout the lockdown period is catering service*

A: *Yes please.*

In order to ensure that same does not go to a total waste, I hereby grant the relief of the petitioner. The said facility is to be shared equally amongst the parties. Each has the first option of refusal.

Each party is to bear their own costs in suit.

**(SGD)**

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

**GAD MORTEY FOR THE PETITIONER**

**DIVINE KAFUI AKPALU FOR THE RESPONDENT**