IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON FRIDAY, THE 2ND DAY OF JUNE, 2023 BEFORE HER LADYSHIP ROSEMARY BAAH TOSU (MRS) – HIGH COURT JUDGE SITTING AS AN ADDITIONAL CIRCUIT COURT JUDGE

SUIT NO: C5/272/2022

RHODA POKU DARKOH **===** **PETITIONER**
5 WANDERER ST, ADENTA
ACCRA

VS

BENJAMIN OPOKU ASARE **===** **RESPONDENT**
5 MR BROWN JUNCTION
TETEGU, ACCRA

==========

JUDGMENT

==========

Per the facts and evidence led at trial in this matter, three main issues stand out for determination and they are as follows:

a. **Whether or not the marriage celebrated by the parties is broken down beyond reconciliation.**

b. **Whether or not the five -bedroom property at Tetegu, Miami, Accra (5 Mr. Brown Junction-Tetegu) is a jointly acquired matrimonial property of the parties.**

c. **Whether or not the Petitioner is entitled to a lump sum financial settlement?**

FACTS

Petitioner prays this Honourable Court to dissolve her marriage to Respondent which was contracted on the 13th February, 2016 at the Holy Hill Assemblies of God Church in Accra.

Petitioner says she is unemployed whilst Respondent is a Public Health Officer at Korle Bu Teaching Hospital in Accra.

There are no issues between the parties.

The Petitioner says that Respondent has behaved in such a manner that she cannot reasonably be expected to live with him as man and wife. Petitioner says again that Respondent's attitude has caused her much anxiety, embarrassment and distress.

Petitioner comes under section 2(1)b of the ***Matrimonial Causes Act 1971(Act 367),*** which provides as follows

> ***(1). 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***

(b)That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent ..

Petitioner particularizes the unreasonable behaviour of Respondent as follows

a. That Respondent has on several occasions showed Petitioner his lack of interest in and commitment to the marriage

b. That the parties do not communicate and share no intimacy

c. Respondent is disrespectful of Petitioner and insults her as being infertile.

d. Respondent violates her privacy by recording their conversations and sharing them with third parties without her consent

e. Respondent subjects Petitioner to physical and verbal abuse

f. Despite reporting the said abuse, Respondent persisted with it and even threatened Petitioner's life.

Petitioner further pleads that as a result of such persistent threats to her life, she had to vacate the matrimonial home on or about 26th August, 2021 for fear of her life. Efforts by family members and counsellors to help resolve the issues have not been successful.

In Petitioner's estimation, the marriage is broken down beyond reconciliation and prays the Court to dissolve it.

Petitioner pleads that in the course of the marriage, she acquired single handedly a piece of land at Tetegu in Accra and built a five- bedroom house on it without any contribution from Respondent.

Petitioner prays for the following reliefs

a. ***That the marriage in fact celebrated between the parties be dissolved.***

b. ***That the five bedroom house located at Tetegu should be solely settled in her favour.***

c. ***The Respondent pays a lump sum of GHS200,000 to the Petitioner.***

d. ***Any other orders the Court may deem fit.***

Petitioner testified and in support of her case attached the following pieces of evidence

- Exhibit A- Copy of marriage ceremony
- Exhibit B- Receipt for purchase of land
- Exhibit C series- Remittances
- Exhibit D- Pictures of building
- Exhibit E- Medical report

Respondent entered appearance to the Petition, filed an Answer and Cross-Petition for dissolution of marriage. Respondent admits that the parties' marriage is broken down beyond reconciliation. However, Respondent says that it rather Petitioner's actions which have caused him embarrassment, pain and financial hardship.

According to Respondent, upon her return from Australia, Petitioner put up a strange attitude claiming she wanted to have fun and did not expect to be questioned. Respondent says at times Petitioner left home in inappropriate revealing clothes, returned home at night or didn't return home at all for days.

Respondent says when he complained about Petitioner's attitude and dressing Petitioner would insult him by using demeaning words such as 'gyimi fuo', impotent, orphan, low class man, most stupid man she ever met.

Respondent denies being physically abusive towards Petitioner, he explains that it is rather Petitioner who is physically and verbally abusive towards him, she has even threatened his life and he had to report it to DOVVSU at Kasoa. Respondent says the matter was resolved at DOVVSU.

However, he returned home that evening to find the matrimonial home ransacked, vandalized and completely emptied by Petitioner, who showed up the next day to finish what she had started.

In response to Petitioner's allegation of physical abuse, Respondent says he was only defending himself against Petitioner who had acted aggressively by smashing his official laptop admist insults like "useless and ugly man".

Respondent further says that Petitioner deserted the matrimonial home on her own and not as a result of any threats on her life.

Respondent further denies Petitioner's assertion that she single- handedly purchased the plot of land. He says the parties pooled resources together and bought the plots of land in the following manner:

- 1st half plot from David Brown Ahiable on 22/06/2018 @ GHS8000
- 2nd half plot from Gabriel Kofitse on 16/10/2018 @ GHS21,000
- 3rd half a quarter plot from Mawutor Aheto on 6/05/2020 @ GHS5000 making a total of GHS34,000

Respondent says parties paid this amount in equal shares. Respondent says he engaged an architect for the design of the house and supervised the building from the beginning to completion.

Respondent says unbeknownst to him, Petitioner, whilst in Australia contracted a second marriage with a Nigerian man for money and he found pictures of her kissing the said man on her phone. He contacted the said man who confirmed that they were indeed married but same had been dissolved.

Respondent says all efforts he made at finding a solution to the marital problems were rebuffed because Petitioner being a very dishonest person denied every statement she makes whenever there were attempts at

resolution .Respondent says this was the reason he had to record their conversations at times.

Respondent cross-petitions for dissolution of the marriage, a declaration that the matrimonial home is matrimonial property and must be shared equally and a prayer not to grant Petitioner's request for financial provision of GHS200,000 to be made to her.

In support of his case Respondent relied on the following documents

- Exhibit 1- Marriage certificate
- Exhibit 2 series- Receipts for purchase of land
- Exhibit 3 series- Site plan for the parties& Building plan
- Exhibit 4 series- letter from Weija Gbawe Municipal Assembly & receipt for payment of penalty
- Exhibit 5 series- Statement of Accounts of Respondent
- Exhibit 6 – receipt for payment of building materials
- Exhibit 7- pictures of building under construction
- Exhibit 8 series- Contract with Ecobank & Bui Authority
- Exhibit 9- Whats app conversations with Petitioner
- Exhibit 10- Audio recording
- Exhibit 11 series- Pictures of matrimonial home ransacked
- Exhibit 12- Conversation with Slim Olushola.

ANALYSIS

The first issue to consider is whether or not the marriage is broken down beyond reconciliation. It is clear that both parties are coming under section 2(1)b of the ***Matrimonial Causes Act 1971(Act 367),*** on unreasonable behaviour.

The general rule is that he who asserts must prove. A party in a civil matter must prove his case on the preponderance of probabilities which is the standard of proof in a civil matter.

Section ***12(2) of the Evidence Act, NRCD 323*** defines proof on the preponderance of probabilities to be

'The 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/likely than its nonexistence'.

In this case in which there is a Petition and a Cross- Petition for dissolution, I must say that the parties both bear the same burden which is to produce

sufficient evidence to avoid a ruling on the issues against them on their individual claims.

Petitioner alleges that Respondent has not shown commitment nor any interest in the marriage and that there is also no communication between the parties. She also alleges that Respondent insults her on several occasions that she is infertile and does not respect her.

It was held in the case of **Martin vs Barclays Bank (GH) Ltd (2017-2018) 1 SCGLR 800**

'The standard of proof in civil matters is for the person who assumes the burden of producing evidence to lead such evidence as to enable the trier of fact to determine that he has established his case on a preponderance of probabilities.'

With evidence being the name of the game, I must say that after combing through the evidence on the record, I do not find that Petitioner has led any believable evidence on these allegations against Respondent. There is no evidence to show that Respondent who singlehandedly supervised and built the matrimonial home whilst Respondent was away has not shown commitment to the marriage. There is no evidence of the insults and disrespect Petitioner alleges.

Somehow, it is rather Petitioner, who has proved to be disrespectful of Respondent and not shown commitment to the marriage. A case in point is Respondent's testimony of Petitioner's changed attitude and behaviour, which evidence was hardly challenged under cross-examination.

Exhibit 9, Whatsapp conversation between the parties also refers. This shows the total disrespectful attitude of Petitioner towards her husband. Excerpts of the chat

'You are very stupid"
'Don't fucking call me again"
'Don't you know Apple website"
'Aliexpress"
'Low man"
'Fool'
'Go find your type and class"
'Am officially done with you"
'Goodbye"
'I just gave you one more chance"

'It's over'

Petitioner further accuses Respondent of physical abuse as a result of which she had to report him to the Police and was given medical forms which were tendered in evidence.

Respondent has not denied this incident but what he denies is that it was a constant feature in the marriage. He explained himself thus at paragraph 19 of his witness statement

'I wish to reiterate that on one occasion the petitioner exhibited her aggressiveness towards me by slapping me and smashing my official laptop amidst insulting and demeaning words like 'useless and ugly man' and that she was doing me a favour by staying married to me'.

Under cross-examination by Counsel for Petitioner, Respondent explained the circumstance at page 6 of the record dated 2nd February, 2023.

Que: She left the matrimonial home because you were physically and verbally abusing her, I put that to you

Ans: That is not true. Throughout the marriage, we have had two physical abuse encounters and several abuse from her. The first physical abuse we had a confrontation in 2017, she slapped me but I walked away. The second time was when she smashed my laptop and I hit her in her face, this was what she reported at DOVVSU. Eventually, we were made to resolve it at home. It was resolved before she quit the matrimonial home'.

Even though I am not holding brief for Respondent nor supporting his lack of self-control in dealing with Petitioner, it is clear that the issue of physical abuse was not a frequent feature of the marriage but a one time occurrence. This is even borne out by Petitioner's own evidence.

It was held in the case of ***Knusden vrs. Knusden (1976) 1 GLR 204 CA*** on the test of unreasonable behaviour that

'The behavior of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity of a persistent course of conduct or series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so"

I do not find from the evidence that Petitioner has proved that Respondent acted unreasonably towards her. I therefore dismiss her petition for dissolution of marriage.

On the other hand, I would rather uphold and grant Respondent's cross-petition for dissolution because he has proved with cogent evidence that Petitioner has behaved in such a manner that he cannot reasonably be expected to live with her.

In his book, ***The Law on Family Relations in Ghana***, the learned author W. C. Ekow Daniels made the following statement on the test of unreasonable behaviour, he writes at page 308

'All that a Petitioner is required to do in this context is to give *particulars* (emphasis mine) or the extent of the behaviour of the Respondent which has necessitated the presentation of the petition. Thereafter he is required to establish that as a result of that particular behaviour he cannot reasonably be expected to live with the respondent.'

In the case of ***Hughes vs Hughes (1973) 2 GLR 342***, Sarkodee J in his judgment said

'To succeed the petitioner must show that the respondent's conduct reached a certain degree of severity. It must be such that no reasonable person would tolerate'.

I find that Respondent has proved sufficiently the unreasonable behaviour of Petitioner which would make it difficult for him to continue living with her. This he did through his mostly unchallenged evidence of her behaviour in the marriage, exhibit 9, whats app chats and exhibit 10, audio recording and even exhibit 11, which are pictures of the matrimonial home stripped bare by Petitioner.

I therefore conclude that Respondent has proved his cross-petition on the preponderance of the probabilities and I also find that the marriage is broken down beyond reconciliation and I accordingly dissolve it.

The next issue to consider is Whether or not the five -bedroom property at Tetegu, Miami, Accra (5 Mr. Brown Junction-Tetegu) is a jointly acquired matrimonial property of the parties.

Article 22(3)(b) of the 1992 Constitution provides as follows

'Assets which are jointly acquired during the marriage shall be distributed equally between the spouses upon the dissolution of the marriage."

The most recent pronouncement of the Supreme Court on the distribution of marital property can be found in the case of **Peter Adjei vs Margaret Adjei, Civil Appeal No: J4/06/2021**, 21st April, 2021. Appau JSC made the following observation.

'The combined effect of the decisions referred to supra is that; any property that is acquired during the subsistence of a marriage, be it customary or under the English or Mohammedan Ordinance is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on the equality is equity principle. What this means, in effect is that, it is not every property acquired single –handedly by any of the spouses during the subsistence of a marriage that can be termed as a 'jointly-acquired' property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial, to have been jointly acquired, irrespective of whether or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition. The operative term or phrase is 'property jointly acquired during the subsistence of the marriage'. So where a spouse is able to lead evidence in rebuttal or to the contrary, as was the case in Fynn vs. Fynn, the presumption theory of joint acquisition collapses.'

Firstly, this pronouncement shows that there is a presumption that all property acquired during the subsistence of a marriage is joint property, until the party claiming it to be his solely acquired personal property leads evidence to show otherwise.

This pronouncement also means that it is possible to find that property even though it is solely financed by one spouse without any pecuniary contribution from the other can qualify as jointly acquired property.

So, property number 5, Mr. Brown Junction, Tetegu, Accra falls squarely within what is described as jointly acquired property. This is due to the fact that it was acquired within the period of the marriage, presumably by both parties.

Petitioner, however, claims sole ownership, whilst Respondent is praying for the property to be shared equally between the two parties.

Petitioner testified that she bought and paid for the land on which the matrimonial home stands solely and attached exhibit B, a copy of the receipt.

However, Respondent testified otherwise and produced three receipts because the land was not purchased in one go. I conclude that Respondent's evidence on the purchase of the land is more believable and I accept his version.

Cross- examination of Petitioner by Counsel for Respondent pages 12 and 13 of the record of proceedings dated 15th November, 2022.

Que: You agree that during subsistence of the marriage you jointly acquired the property in Tetegu?

Ans: No ,I bought the land myself

Que: You agree with me that you and Respondent jointly developed the land that is the five bedroom property?

Ans: Monetary wise no, but supervisory wise, I was away so he did.

Que: You agree that sometime during the marriage and before departure to Australia specifically June 22nd, 2018, 16th October, 2018 and 6th May, 2020, you both pulled resources together and purchased the land on which the matrimonial property is built. You paid monies to three different vendors for the land on which the matrimonial property is situated?

Ans: That is not true, the first land, I took the money from my account and paid for the first half plot, the 2nd half plot, Respondent met the people who owed the land. He negotiated for the price and I single handedly gave Respondent the money to pay for it

Que: You agree that the total amount to the three different vendors amounted to GHS34,000

Ans: No, that is not so. It was two vendors, the first one was the one who owed the half plot the building is one and the other half was purchased between 6-8 months after the first plot was bought to a different vendor. The second plot the Respondent negotiated with the vendor but I provided the funds to pay.

Que: If you are suggesting that there are two different vendors why do you have one receipt for GHS28,000 (Exhibit B)?

Ans: The first vendor I bought it myself but Respondent communicated with the second vendor and led the whole process. I do not have a receipt

for the second one because Respondent was the one who knew them and negotiated even though I paid for it.

Cross-examination of Petitioner at page 16 of the record dated 17th November, 2022

Que: I put it to you that it is strange that the only receipt you have for the purchase of the land is in your sole name

Ans: It is not strange because I bought the land myself

Que: I put it to you that the receipt bearing your name only and dated 30th July, 2018 is an afterthought

Ans: Yes, because I bought the land myself and travelled frequently and things got lost and there is nothing wrong with going back for a receipt of things you purchased rightfully.

This revelation under cross-examination shows that exhibit B is not a true reflection of the transaction for the purchase of the land in question. I therefore reject it and accept Respondent's explanation of how the land was purchased. Consequently, I find that the parties jointly purchased the land on which the matrimonial home is built.

Next in proof of her evidence that she solely contributed funds to construct the matrimonial home, Petitioner tendered in evidence, exhibit C series, copies of monies sent by Petitioner to Respondent for the construction of the house.

Petitioner testified that she spent or sent almost GHS600,000 to Respondent through money transfer to construct the matrimonial home. However, exhibit C series, shows a deficit of almost GHS453,363.79 since the amounts in exhibit C totaled about GHS146, 636.00.

In response to a question under cross-examination, Petitioner claimed she gave all the receipts to her lawyer, who decided not to exhibit everything.

The case of ***Ackah vs. Pergah Transport Limited & Ors (2010) SCGLR 728*** held

…It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-

existence. This is a requirement of the law on evidence under sections 10(1) and (2) and (11)2 and (4) of the Evidence Act 1975. (NRCD323).

The Petitioner insists that Respondent was unemployed at the time the construction of the matrimonial home commenced he therefore could not have contributed financially to it. This is really neither here nor there since Respondent through exhibit 5 series has proved sufficiently that he was engaged in employment or business that brought him a steady flow of income even if the amounts were not particularly huge.

In the same way that Petitioner has not been saddled with the burden to prove the exact sums which she sent and for what purpose they were used from the exhibit C series, it would be unfair to place such a burden on Respondent.

Counsel for Petitioner also claims that she intended to own the property solely even when she was sending the amounts to Respondent, her husband to construct the matrimonial home.

He relies on Article **18(1) of the 1992 Constitution** which grants every individual the right to own property whether in association with others or as an individual. It provides as follows

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

From my reading it is clear that if there is no clarity as to which party is entitled to what property, there are a number of factors which the Courts may consider to settle such disagreements. The Court may make reference to an agreement between the parties, such as happened in the case of ***Achiampong vs Achiampong (1982-1983), GLR PTII 1017.***

The Court may also refer to a common intention, here where there is no express agreement, the court may infer from the conduct of the parties and surrounding circumstances in relation to the property what their common intention would have been before the matrimonial differences arose.

The Court may also refer to the contributions of the spouses and the conduct of the parties concerning that property.

Since there is no evidence of agreement between the parties on the property and also some form of evidence of contribution from both parties, I would have to consider the conduct of the parties and surrounding circumstances.

Apart from exhibit B, the receipt from Petitioner which has been impugned, all other documents on the property, receipts of payments, site plans etc, architectural designs are in the **joint names** of the parties.

I find it hard to believe that Petitioner did not know that all these documents were in their joint names. She has not complained about any of the documents being forged, and neither has she shown any surprise during proceedings when Respondent produced them.

I infer and find that until Petitioner decided to file for a dissolution for the marriage, the evidence points to one conclusion which is that she intended to own the property jointly with Respondent, her husband.

From the analysis made above, I find that Petitioner has been unable to rebut the presumption that the property was jointly acquired. Even if, Respondent did not contribute to its construction with his personal funds, the authorities are legion now that non monetary contribution also qualifies as contribution to the acquisition of matrimonial property. See the case of **Gladys Mensah vs Stephen Mensah (2012) 1 SCGLR 391.**

I therefore hold that the matrimonial home is jointly acquired and at the dissolution of the marriage must be shared on the equality is equity principle.

The final issue to consider is Whether or not the Petitioner is entitled to a lump sum financial settlement? Section 20(1) of the Matrimonial Causes Act 1971 (Act 367) provides

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 thinks just and equitable.

Alimony is loosely defined as financial support that a person is ordered by a Court to give to their spouse during separation or following divorce in order to allow the recipient to maintain the lifestyle they had during marriage.

Some of the factors a Court will usually take into consideration when deciding on an appropriate amount is the standard of living established during the marriage, duration of the marriage, financial resources of either party, contribution of each party to the marriage etc. The reason is for the Court to do equity and justice between the parties.

It is trite that in any lump sum payment a Court ought to consider the financial standing of each of the parties. I refer to the case of ***Obeng vs Obeng (2013) GMJ 158***.

'What is just and equitable may be determined by considering the following factors, income, earning capacity, property and any financial resources which each party has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage, the age of each party to the marriage and the duration of the marriage'

The evidence led appears to show that the Petitioner is the superior earner, at least looking at the amounts of remittances she made over the duration of the marriage. These amounts do not come from her popcorn business but whatever endeavours she is engaged in Australia.

The Respondent is a civil servant but has a few businesses on the side. Traditionally, it has been the responsibility of the man to take care of his wife, it appears from the evidence that unfortunately Respondent could not adequately live up to this standard. The reasons are many, however, what stands out the most is that the Respondent is a high standard and maintenance woman, and clearly, the Respondent could not live up to it.

Apart from the monies spent on the property, there is no evidence of the parties' standard of living in order to determine what would be an appropriate amount in this circumstance.

I have considered arguments made by Counsel for Petitioner and Respondent, the fact that Respondent has not maintained the Petitioner since she left the matrimonial home and I also refer to the case of ***Aikins vrs. Aikins (1979) GLR 223-233*** which held 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 to during the marriage'.***

I believe that an amount of GHS50,000 as alimony is fair and just in this matter.

DECISION

Having heard the parties and considered the evidence, it is clear that both parties have concluded that the marriage be dissolved.

It is hereby decreed that the ordinance marriage celebrated between the parties on the 13th February, 2016, at the Holy Hill Chapel Assemblies of God, Accra is dissolved on the grounds that the marriage is broken down beyond reconciliation. The Marriage Certificate No. HHC/AG/0015 with License number AMA 10260553/ 2016 is accordingly cancelled.

I further make the following orders on the facts of the instant case

a. Respondent is hereby ordered to make a lump sum payment of Fifty Thousand Ghana Cedis (GHS50,000) to Petitioner.

b. The parties are declared joint owners of five -bedroom property at Tetegu, Miami, Accra (5 Mr. Brown Junction-Tetegu) and it is to be distributed equally between them.

c. Parties are to bear their own costs

H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE

COUNSEL:

KWAME ASARE BEDIAKO FOR PETITIONER
JANE TACHIE MENSON FOR RESPONDENT