

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON 19TH DAY OF
OCTOBER, 2023 BEFORE HER HONOUR KIZITA NAA KOOWA QUARSHIE,
CIRCUIT COURT JUDGE

SUIT NO. C5/315/2023

FRANK OSEI AGYEKUM = PETITIONER
136 SOMERVILLE ROAD
ESSEX, ROMFORD
RMS 5AS
UNITED KINGDOM

VS

BEATRICE ACHEAMFOUR BOADU = RESPONDENT
UNNUMBERED HOUSE
ASOFAN – ACCRA

JUDGMENT

Petitioner absent

Respondent present

This is a judgment on whether or not the marriage celebrated between the parties herein has broken down beyond reconciliation and whether or not the parties are entitled to reliefs they prayed the Honourable Court for.

INTRODUCTION

By a petition filed on the 20th of June, 2022 the Petitioner herein Frank Osei Agyekum prayed the Honourable Court to dissolve the marriage celebrated between the parties on the 30th of July, 2011 and for an order that the parties pay their own legal cost.

On the 4th of July, 2022 the Respondent Beatrice Acheamfour Boadu filed Notice of Entry of Appearance and on the 2nd of August, 2022 an answer to the petition.

Respondent at paragraph 25 of her answer said that the couple have an uncompleted building on a plot of land at Edusah Quarters, Pokuase, Accra and at paragraph 27 stated that she is entitled by law to equal share with the Petitioner and prayed the Honourable Court for a financial settlement or alimony of GH¢200,000.00 should the Petitioner's prayer be granted by the Honourable Court.

Before the Honourable Court could proceed with the substantive matter, the Respondent filed an application on the 2nd of August 2022 for maintenance pending the determination of the substantive suit. In support of the application, Respondent said she is a petty trader and has been married for more than 10 years to the Petitioner but has spent less than ten years cumulatively living together with Petitioner as husband and wife.

She said she earns less than 500 Ghanaian cedis profit a month and stated that the Petitioner has deliberately refused and neglected to maintain her as his wife.

She prayed for a monthly maintenance of GH¢2,000 or payment of GHS GH¢20,000.00 to enable her defend the instant suit.

On the 18th of August, 2022, the Petitioner filed an Affidavit in Opposition and said at Paragraph 7 that he gave the Respondent Applicant GH¢30,000.00 to invest in car sales business soon after the marriage and regularly maintained the applicant with a monthly remittance of 100 pounds.

According to the Petitioner in 2019, when he visited Ghana, the applicant asked for a capital of GH¢25,000 to start her own business as her partnership with her brother in the car business was not yielding results. The Petitioner again gave the amount requested to the Respondent/Applicant and said he lost his job in 2020 during the COVID-19 pandemic and is still unemployed and not in a position to pay the amount asked for. He advised the applicant to find a Lawyer from Legal Aid to assist her with legal representation.

On the 24th of October, 2022, the Honourable Court after hearing the application, made an order for the Petitioner to maintain the Respondent with the sum of GH¢1,000 every month till the final determination of the petition. On the 10th of November, 2022 the Petitioner filed a reply to the answer of the Respondent stating that he had provided GH¢30,000.00 and GH¢25,000.00 to the Petitioner on separate occasions during the pendency of the marriage by way of financial contribution and is not in a position to pay the monies asked for by his wife.

The Court set the present matter down for trial and ordered the parties to file their respective witness statements and pre-trial checklists for the substantive case to proceed to trial.

The Respondent filed her witness statement on the 15th of December 2022 and the Petitioner on the 15th of December, 2022. The parties also filed their respective pre-trial checklists.

Case Management Conference was conducted and hearing in the matter commenced on the 13th of February, 2023 and ended on the 13th of July, 2023.

PETITIONER'S CASE

Learned Counsel for Petitioner filed a written address and submitted that the marriage between the parties has broken down beyond reconciliation on the basis

of the Respondent's unreasonable behaviour and failure of the couple to live together for a long period.

Again it was their case that the Respondent had not been able to establish that the Petitioner had acquired some properties during the subsistence of the marriage and also that she is entitled to payment of alimony (lump sum of GH¢200,000.00) to her and as such the court should dismiss her claim both to a share in the matrimonial property and payment for alimony. In support of his case, Petitioner attached Exhibits 'A' series which are payment receipts issued by World Remit to Petitioner for monies he used to send to the Respondent in Ghana.

Petitioner summarised the Respondent's case that according to her he had travelled to London UK in September 2011 after their marriage in the same year and returned in February, 2019. Respondent claimed that the Petitioner was sending her money regularly but stopped in the year 2020 and also stopped calling and his attitude towards her had changed drastically and they have not lived as man and wife for a very long time.

LEGAL ISSUES

In the Petitioner's opinion the following issues were to be set down for determination by the Honourable Court:

1. Whether or not the marriage celebrated between the parties on 30th of July, 2011 had broken down beyond reconciliation.
2. Whether or not the Respondent had led evidence to the claim that she acquired any landed property(ies) with the Petitioner during the subsistence of the marriage.
3. Whether or not the Respondent is entitled to any financial settlement (alimony) let alone the colossal sum of (GH¢200,000.00)

The court thus tasked to determine the present case set the following issues raised by the Petitioner down for determination:

1. Whether or not the marriage celebrated between the parties on 30th of July, 2011 had broken down beyond reconciliation.
2. Whether or not the Respondent has been able to establish the existence of marital property and as such is entitled to a share in same.
3. Whether or not the Respondent is entitled to alimony (lump payment) by the Petitioner.

BURDEN OF PROOF AND STANDARD OF PROOF

The Evidence Act 1975 (NRCD 323) At Section 10 states

(1) "For the purpose of Act, the burden of persuasion means obligation of a party to establish requisite degree of belief concerning a fact in the mind of the Tribunal of fact or the court".

Section 12 of NRCD 323 states further that

12(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

12(2) Preponderance of the probabilities means 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 than its non-existence.

In the case of **Majolagbe v Larbi & Ors. (1959) GLR 190** it was held

"Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way eg by production of documents, description of things, reference to other facts, instances or circumstances and his averment is denied,

he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true".

In **Ackah vrs Pergah Transport [2010] SCGLR 728 @ 736**, the Supreme Court per Adinyira JSC said

"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence"

See also the case of **Engman v Divine Word Missionaries 2014 68 GMJ 95**.

Issue 1:

Whether or not the marriage celebrated between the parties on 30th July 2011 has broken down beyond reconciliation?

Matrimonial Causes Act, 1971 Act 367 at section 1 states that the sole ground that the court must consider for dissolution of the marriage is that the marriage between the parties has broken down beyond reconciliation.

To determine the issue (1) the Court refers to Section 2 of Act 367 that provides the grounds which when proven would lead the Court to this conclusion. And it 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;
- (a) That the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent or;
 - (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent or
 - (c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition, or;
 - (d) That the parties to the marriage have not lived as man and wife for continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to the grant of a decree; provided that such consent shall not be unreasonably withheld, and where, the Court is satisfied that it has so been withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal or
 - (e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition, or
 - (f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

The Petitioner cited unreasonable behaviour of the Respondent
Particularly.

- i. That the Respondent for a long time has refused to have sex with him.
- ii. That the Respondent has been so disrespectful to the Petitioner on so many occasions and that she has turned her family members against the Petitioner.
- iii. And that the Respondent has for a long time failed to perform her functions as a wife.
- iv. The Respondent regularly verbally abuses the Petitioner causing him to lose self-confidence and feel degraded.

I surmise that the petition falls Under Section 2(1) b and f of Act 367.

Sarkodee J said *"Once the facts are proved to bring the case within any facts set out in section 2(1) a decree of dissolution should be pronounced"*.

In **Knusden vs Knusden** (1976) 1GLR 204 CA on the test of unreasonable behaviour it was held:

"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"

Again in the case of **Hughes v 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 that no reasonable person would tolerate"

At this juncture, the court will consider whether the evidence of the Petitioner has reached this threshold?

Petitioner who lives outside of the jurisdiction and comes to Ghana occasionally says Respondent has refused him sex.

In his book The Law on Family Relations in Ghana by Williams Ekow Williams @ page 166, the Learned Author talks about personal rights of parties arising from marriage.

“Under consortium at page 166 He writes “The second legal consequence which arises from marriage is the doctrine of consortium. It means the right of one spouse to the company, assistance, affection and fellowship of the other party.”

The Learned Author under what constitutes consortium, lists amongst others, mutual right of cohabitation, consummation and marital communications and protection of privacy of home:

Under consummation the author at page 168 second paragraph line three says *“The mutual right to sexual intercourse lasts throughout the marriage provided that it is reasonably exercised.*

See the case of **Best vs Samuel Fox and Company Limited 1952** A.C. 716 at 736.

The Petitioner under cross-examination on the 13th of February, 2023 had the following answers to give:

Q When you got married in 2011, you travelled to the UK in September, 2011, your first visit to Ghana was in January 2019 is that correct?

A Yes

Q So far about the first seven years of marriage you never lived with her the Respondent.

A Yes

Q And with this twenty one period you spent in Ghana, you spent about twenty one days and you went back to the UK is that correct?

A Yes

Q And with this twenty one period you spent in Ghana, the Respondent that all material times was with you? Is that true?

A No

Q Did you ever spend any time with the Respondent during your twenty-one days in Ghana?

A Yes

Q How much time did you spend with Respondent within the said period?

A I spent about eight days with the Respondent.

Q During your stay in Kumasi with the Respondent, you shared the same room is that correct?

A Yes

Q. I am suggesting to you that during your stay in Kumasi with Respondent, sharing the same room and bed with her and had sex with her

A. No

The Respondent on the 11th of May, 2023 had the following answer when cross-examined about Petitioner's assertion that there was no sex between the parties.

Q. You also stated in paragraph 19 that you never denied the Petitioner sex. How were you having sex while the man was in United Kingdom and you were in Ghana?

A. My Lady I did not deny the Petitioner sex because after our marriage he travelled about a month and a week thereafter and before the Petitioner travelled I did not deny him sex. My Lady, 2019 when Petitioner came to Ghana, I moved everywhere with him and did not deny him sex during that period. My Lady because before we married. I did not have a child, I did not deny him sex till he left Ghana subsequently when he came to Ghana in 2019 because I wanted to have a child with Petitioner, I did not deny him sex during the period he was in town.

Q. Can you tell the court the number of times you have had sex with the Petitioner.

A. No My Lady (Respondent sighed before answering the question)

The Law is that a wilful refusal of sexual intercourse amounts to unreasonable behaviour. See the cases of Arthur v Arthur {1964} 108 Sol Jo 317, CA and Sheldon v Sheldon {1966} 2All ER 357, CA.

In Opoku-Owusu v Opoku-Owusu (1973) 2 GLR 349 the Court held that

“a wilful refusal by one spousal to have sexual intercourse might entitle the party suffering to leave if in all the circumstance in the case it could properly regarded as grave and weighty and if it had an adverse of health of other spouse. Such conduct might also amount to just cause for leaving even though it lacked the element to injure”.

The Petitioner’s bear assertion that the Respondent refused to have sexual intercourse with him is not enough since the Respondent denied that material fact and as such the Petitioner who bears the burden of persuasion has a duty to prove.

In the Supreme Court of T.K. Sebah & Co Ltd. Vs Mensah (2005-2006) SCGLR 341 at 360 Date-Bah JSC stated:

“for however credible a witness may be, his bare assertions on oath or the repetition of averments in the witness box cannot constitute proof”

Petitioner’s claim that he travelled with the Respondent to Kumasi and that he shared the same room and bed but was denied sex by her is somewhat baffling

What is clear to the court is that a young promising woman had to endure a marriage that existed only in name since through Petitioner’s own admission he chose to live apart from his wife.

When he came to Ghana through his own admission again he chose to spend only 8 out of 21 days with wife. Considering the time spent apart any red-blooded male who had to endure celibacy particularly in a temperate region where a person ought to keep warm would have been engaging vigorous intimate sessions with his dearly beloved wife he missed. At best the above was a ploy by Petitioner to have necessary grounds for divorce which he had anticipated but did not know how to conscientiously proceed on.

Petitioner again said that Respondent was disrespectful towards him and his family but failed to show in any of his evidence before the court how and when this happened and how that led to a loss of his self-confidence and a feeling of degradation.

Petitioner yet again says that Respondent had for a long time failed to perform her functions a wife? The question begging for an answer is how Respondent was supposed to do so.

Unless she was given the opportunity to do so by Petitioner who failed to ensure that he brings her to join him (in the United Kingdom) or made regular visits to her to ensure she is able to do so, she would have been unable to do so.

I firmly believe that Petitioner's present petition is a desperate one to give the dog a bad name and hung him in this case hung her.

He has woefully failed to prove unreasonable behaviour by the Respondent towards him. The truth however is that the marriage between the parties has broken down due to Petitioner's unreasonable behaviour and despite attempts by the family of Respondent aimed at reconciliation same has failed.

Issue 2

1. Whether or not the Respondent has been able to establish the existence of marital property and as such is entitled to a share in same.

The issue for determination has two legs:

- a. Whether or not the Respondent can establish the existence of matrimonial properties acquired between the parties during the marriage.
- b. Whether or not the Respondent is entitled to a share in those properties.

The Respondent in her pleadings prayed the Honourable Court for a half share of the property acquired during her marriage with the Petitioner.

According to her the properties acquired are;

1. A parcel of land at Pokuase Mayera, Accra

2. A parcel of at Edusah Quarters, Pokuase, Accra with uncompleted building on it.

The Respondent attached Exhibit '2' which is the letter to one Anu Quayе Wontse (Chief Priestess) Mayera – Accra, dated 16th January, 2019 had the following content.

16th January, 2019

ANU QUAYE

WONTSE (Chief Priestess)

Mayera – Accra

DEMAND FOR THE REFUND OF THE SUM OF TWENTY-TWO THOUSAND AND FIVE HUNDRED GHANA CEDIS (GH¢22,500.00) BEING MONEY PAID BY FRANK OSEI AGYEKUM FOR THE PURCHASE OF LAND IN 2017 AT MAYERA, ACCRA

We act as Solicitors for and on behalf of FRANK OSEI AGYEKUM and hold his firm instructions to write to you in respect of the above subject matter:

Our instructions are that sometime in 2017 our Client showed interest in a piece of land, and on 11th June, 2017 you through the Head and Lawful Representative of Nii Okuley Family of Mayera entered into an agreement with him and sold to him two (2) plots of land situate lying and being Mayera, Accra for the sum of Twenty-Two Thousand, Five Hundred Ghana Cedis (GH¢22,500.00). The land in question in **ALL THAT PIECE OR PARCEL OF LAND** situate lying and being at Mayera-

Accra in the Region aforesaid containing an approximate Area of 0.12 to hold for Seventy (70) years.

Our client informs us that immediately after purchase, he went into possession by clearing the land. Compensated the caretaker who had cultivated cassava on the land. He then placed a trip of sand, chippings and blocks to start work but a man approached his caretaker and started claiming ownership of that piece of land.

We have our client's further instruction that this unknown person has consistently and continuously entered onto the land aforesaid and without our client's consent, permission or authority erected uncompleted single bedroom self-contain on one plot and has also dug foundation trenches on the other plot of land.

Our client reliably informs us that he informed you about the development and you indicated to him that the land in question has not been sold to the said claimant and practically told our Client to go and continue with his work, but they are always harassed anymore they go into the land to work.

It is our Client's information that you asked the claimant to produce his documents which he never did. The claimant then reported the matter to the Property Fraud Unit of CID Headquarters where our client was made to produce his documents for investigations but the case died naturally.

In client informs us that in an attempt to replace the lost land, you showed him another piece of land but that land too was not free from litigation, so as it stands now we have our client's firm instructions to inform you that he is no more interested in the land or any replacement and as such demand for refund of

Twenty-two thousand, Five Hundred Ghana Cedis (GH¢22,500.00) being the amount used in purchasing the land.

In the circumstances, we hold the instructions of our client, to demand which we hereby do, that you refund the sum of Twenty-Two Thousand, Five Hundred Ghana Cedis (GH¢22,500.00) being the amount owed to our Client for the purchase of the said land within seven (7) days of your receipt of this failing which we hold our Client's unequivocal instructions to commence legal proceedings against you for the recovery of the outstanding sum without further recourse to you.

Our Client has indicated the good relationship between you two and thus we implore you to make the payment to avoid needless litigation.

Should you provoke such needless recourse to litigation, we shall further recover from you the amount aforesaid, interest on the amount claimed, breach of contract and the cost of such litigation.

You may contact the undersigned should you required any further clarification and/or discussion on this matter.

Be accordingly advised.

For: AKUA SIKA SAFO, ESQ.
(0549210830)

Cc: Frank Osei Agyekum
Beatrice A. Boadu

Exhibit '2A' a also letter addressed to the same Chief Priestess dated February, 2019 is the final demand letter for refund of Twenty-Two Thousand, Five Hundred Ghana Cedis from the stool since the stool has failed to give the said land to the Petitioner.

In the case of **PATRICIA IVY SACKY V JAMES BOAKYE-MENSAH {2008} JELR 68392 (CA)** it was held:

“that the requirement of the law is that before a court find for a spouse who claims joint ownership held in the opposite spouse, the spouse who is making such claim must lead cogent evidence to support his or her claim of joint ownership. He can do so by establishing any of the following:

- (i) That there was an agreement between the couple that the property in dispute, belonged to both of them or to them jointly.*
- (ii) That they have evicted the intention, either by deed or by their conduct that they were acquiring the property in dispute as joint-owners eg. Like registered the documents covering the property in their joint names notwithstanding the fact that it was one of them who solely financed its acquisition.*
- (iii) That both couples contributed financially, either directly or indirectly in their effort to acquire the disputed property, like proving money purposely meant for construction or the purchase of building materials towards the construction, or where one of the spouses uses his/her earnings to provide for the household whiles the other uses his/her earnings to provide for the household whiles the other uses his/hers for the acquisition of the property in dispute whichever way it goes, Notwithstanding that the property is in the name of one spouse”.*

It is trite learning that he or she who alleges must prove his or her case and this can be done by leading cogent evidence to establish their case.

Respondent under cross-examination submitted the following:

Q. You stated in your witness statement paragraph 23 that you assisted the Petitioner to acquire a parcel of land at Pokuase Mayera is that correct?

A. That is so

Q. Madam Beatrice are you aware that the Pokuase Mayera land was subjected to litigation and the land was taken away from Petitioner?

A. No. My Lady because he was given another land by way of replacement to the land mentioned.

Counsel for Petitioner said Respondent should answer the question as to whether there was litigation on the Pokuase Mayera land.

A. Yes

Q. You then agree with me that if that land in question has been taken away then Petitioner is no longer the owner of that Pokuase Mayara land?

A. No My Lady

Q. Also in paragraph 26 of your witness statement you stated that 'we' impliedly you and the Petitioner acquired another land at Edusah quarters Pokuase is that correct.

A. Yes

Q. Where is the deed to the land you claim you and Petitioner purchased?

- A. The Petitioner asked someone to come for the land document in order for him to obtain a permit or so but the Site Plan is still with me.
- Q. Does your name appear as joint owners on the Indenture?
- A. No
- Q. Can you tell the court how much did you contribute to the purchase price of the land.
- A. I did not contribute financially to the purchase of that land.
- Q. Madam Beatrice per your testimony before this court it is stated that Petitioner asked someone to pick the Indenture for permit purpose and all you have is a Site Plan. Is that correct?
- A. That is so
- Q. Madam Beatrice I am putting it to you that are not being truthful to the court because we don't need an Indenture to acquire permit to build on a property. It is rather the Site Plan that is needed.
- A. My Lady, I am speaking the truth because what Petitioner asked me to give to the person he sent to me is what I gave to the person.
- Q. Madam Beatrice do you know the essence of a Site Plan?
- A. To know the dimension of the land is what is put on the Site Plan.
- Q. Madam Beatrice can you tell this Honourable Court within a person's name on a Site Plan shows any interest in the land to that person?
- Q. Take a look at exhibit '3' series (witness has had a look at the exhibits)

You rightly said before this court that Site Plan normally shows the dimension of a property can you tell this honorable court per the pictures whether the dimensions are the same as what is on the Site Plan?

A. What I answered in the earlier question was to show that the Site Plan shows the *"width and breadth of the land"*

Q. Madam Beatrice, I am putting it to you that mere exhibit of pictures which has no date and does not show exact location cannot be the property of the Petitioner?

A. Please the property is for the Petitioner I went to the land and took the pictures myself

Q. Madam Beatrice you told this Honourable Court that you did not financially contribute to the purchase of the Edusah quarters property?

A. That is so

Q. I am putting it to you that the Petitioner has no land at Edusah quarters and assuming without admitting that if he had any landed property anywhere you did not contribute financially or in kind to the purchase of that property.

A. That is not true because I took care of the workers, supervise them, bought food for them and water for the workers to construct that property.

What is clear from the Respondent's answer to question the Counsel asked that is.

Q. Madam Beatrice are you aware that the Pokuase Mayera land was subjected to litigation and the land was taken away from Petitioner?

A. No, My Lady because he was given another land by way of replacement to the land mentioned.

Is that the only viable land/property the couple had is the purported one at Edusah Quarters Pokuase – Accra. The Petitioner under cross-examination however had the following to say in respect of the properties mentioned by his wife.

Q. Per paragraph 15 of your witness statement you said you bought a plot of land at Pokuase Mayera is that the case

A. Yes

Q. By purchasing the said piece of land you were issued an indenture. Is that correct?

A. No. I was in the United Kingdom and sent the money to Respondent to purchase the land when we were ready to go to the land to work on it we sent our material there. Some soldier man came and said the land belongs to him when they went there our materials were captured because it does not belong to us. So I had asked her to follow to get our land or the money till I came on January, 2019 she could not do anything about it so I found a lawyer to write to those who sold the land to us to claim our land or money. I granted her power of attorney so she knows what happened to the land. I don't know anything about it.

Q. I put it to you that from buying the said parcel of land at Mayera you were issued with an indenture.

A. No. because I was not here. When she purchased that land if they gave her any indenture it did not reach my hand.

Q. Please have a look at exhibit '3' attached to Respondent's witness statement. Please identify what exhibit '3' is

A. Plan of land

Q. I am suggesting to you that during the subsistence of your marriage with Respondent another parcel of land located at Edusahh measuring 0.153 acre was purchased by you.

A. No

Q. I further put it to you that the said parcel of land located at Edusahh has been developed to lintel level.

A. No

What is clear from Exhibit '2' and '2a' is that the Petitioner was not able to acquire any of the stated properties. Respondent in her evidence before the court could not show correct title to any of the properties. Again though some work was started on some properties they were lost due to conflicting claims. (Exhibit '4' showed pictures of same)

From the foregoing the Court notes that the Respondent has not been able to clearly establish the properties acquired by the parties during the subsistence of the marriage. The court cannot therefore proceed to distribute, properties that do not exist.

Issue 3

Whether or not the Respondent is entitled to alimony (lump payment) by the Petitioner.

RELEVANT LAWS

BLACK'S LAW DICTIONARY 6TH EDITION defines alimony as *"substance or support of the wife by her divorced husband and stems from the common law right of the wife by court order pays to the other spouse for maintenance while they are separated or after they are divorced (permanent alimony)"*.

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

Under the heading property settlement states:

20(1) “the Court may order either party to marriage to pay a sum of money or convey to other party movable or immovable property as settlement of property right or lieu thereof or as part of financial provision that the Court thinks just and equitable”

Amua-Sakyi JSC in the case of **Ribeiro v Ribeiro** {1989-90} GLR 109 at 115 to 116 on financial provision stated as follows:

“It is clear that under Section 20(1) of Act 367, the court has power to grant financial provision where married couples are divorced and the basic consideration is the requirement for the court to examine the need of the parties”.

Also, in the case of **Eunice Nyarkoa Antwi vs Dr. John Antwi** {2016} JELR 107581 (HC) it was held thus;

“What is just and equitable is determined by the income earning capacity property and other financial resources which each of the parties 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 Respondent in her pleadings stated that she is a pretty trader who earns not more than GH¢500.00 a day as profit. Respondent has been married to Petitioner for about 12 years and was used to Petitioner remitting her to the tune of about GH¢1,000.00 a month regularly.

The Petitioner attached Exhibits ‘A’ series that shows that he was maintaining the Respondent every month as part of his responsibilities towards her till the ending of 2020 when he claimed his job became unstable due to COVID-19 pandemic and as such stopped paying the Respondent monthly maintenance.

The Court is guided by Section 20 of the Matrimonial Causes Act, 1971 (Act 367) (Supra) and other relevant case law. In consideration of the Respondent's request for alimony of GH¢200,000.00 to be paid her if the Petitioner's prayer for divorce is granted, and also as compensation for the fruitless years she stayed with Petitioner in a lonely marriage which neither yielded no children nor companionship. The court is minded to grant the Respondent alimony and will state same in its final orders.

RESPONDENT'S CASE

Respondent said she still loves the Petitioner but if the court is minded to dissolve the marriage then she should be given half share of matrimonial property and alimony of GH¢200,000.00.

Respondent restated both her case and that of the Petitioner. In her filed written address. Respondent attached the following exhibits:

Exhibit '1' series, letters from the Petitioner to Chief Priest of Anu Quaye, Mayera-Accra for refund of money for disputed land purchased.

Exhibit '2' A Site Plan of the land at Edusah Quarters, Pokuase – Accra

Exhibit '3' series Photographs of the said uncompleted building.

The learned counsel for Respondent in his written address prayed the Court to set the following issues down for trial.

The Legal Issues

1. Whether the marriage between the parties has broken down beyond reconciliation
2. Whether the Respondent is entitled to an equitable share of jointly acquired properties during the marriage

3. Whether or not Respondent is entitled to financial settlement or alimony of GH¢200,000.00 from Petitioner.
4. Whether the parties should pay their own costs.

Issue 1

Whether the marriage between the parties has broken down beyond reconciliation.

The court in its analysis of fact and evidence in support of the Petitioner's case aforementioned, concluded that the marriage between the parties had broken down beyond reconciliation though in an ironic twist the Petitioner who claimed that his wife's unreasonable behaviour coupled with their lack of living together, due to geographical separation was rather responsible for the collapse of the marriage.

See the following:

Matrimonial Causes Act 1971 Act 367. Sections 1(2) and 2(1)

Knusden vs Knusden (1976) 1GLR 204 CA

Hughes v Hughes (1973) 2 GLR 342

Best vs Samuel Fox and Company Limited 1952 A.C. 716 at 736.

Arthur v Arthur {1964} 108 Sol Jo 317, CA and Sheldon v Sheldon {1966} 2All ER 357, CA.

Opoku-Owusu v Opoku-Owusu (1973) 2 GLR 349

Issue 2

Whether or not the Respondent is entitled to an equitable share of jointly acquired marital property during their marriage?

Again, as earlier established by the Court the Respondent was unable to prove that the couple had acquired any joint property as a result the Court is not in a position to share any properties between them as same does not exist.

See the following:

1992 Constitution Article 22

Arthur v Arthur (No.1)2013-2014) SCGLR 543

Mensah v Mensah (2012) 1 SCGLR 391

Yeboah v Yeboah (1974) 2 GLR 144

Anang v Tagoe (1989-90) 2 GLR 8

Peter Adjei v Margaret Adjei (Civil Appeal No. J4/06/21, delivered on 21st April, 2021

Fynn v Fynn (2013-2014) 1SCGLR 727

Issue 3

Whether or not Respondent is entitled to financial settlement or alimony of GH¢200,000.00 from Petitioner.

In determination of the above issue, the Court found that the Respondent by law is entitled to payment of alimony which amount will be shortly stated.

See section 20 of the Matrimonial Causes Act, 1971 (Act 367)

Ribeiro v Ribeiro (1989-90) GLR 109 at 115 to 116

Eunice Nyarkoa Antwi v Dr. John Antwi (2016) JELR 107581 (HC)

Issue 4

Whether or not the parties are to bear their own costs?

Order 74 r1 of C.I 47 clearly says that the grant of cost in proceedings before the court is discretionary and the court shall have full power to grant costs to the party it determines.

The Respondent from the inception of this case prayed the Court for payment of GH¢20,000.00 to enable her to defend the current action as she is a petty trade with meager means and also as the Petitioner had stopped sending her monthly maintenance from the year 2020.

The Respondent maintained that irrespective of the differences between herself and her husband she still loves him and would not willingly submit to a grant of divorce between them.

From the above it will be both unfair and inappropriate for the Respondent to be saddled with the cost of litigation which she neither initiated nor wished for.

BY COURT: The court notes that the marriage celebrated between the parties on the 30th of July, 2011 at St. Stephen's Catholic Church, Darkuman, Accra has broken down beyond reconciliation and dissolves the marriage on this 11th day of October, 2023.

The court makes no orders for the equitable share of the properties purportedly acquired between the parties during the subsistence of the marriage.

The court awards the Respondent alimony of GH¢150,000.00 either to be paid in one lump sum, or by equal installments over a 3 year period commencing this year 2023 ie GH¢50,000.00 a year to be paid by December 31, 2023, 2nd by December 31, 2024 and 3rd by December 31, 2025.

The Respondent is awarded cost of GH¢10,000.00

**BRIDGET AMPADU WITH STEPHEN KINGSLEY BENNIEH AND
RAYMOND FELLI FOR YAW DANQUAH FOR PETITIONER**

**ROBERT NKANSAH BOATENG FOR ALFRED PAAPA DARKWAH FOR
RESPONDENT**

(SGD)

**H/H KIZITA NAA KOOWA QUARSHIE
CIRCUIT COURT JUDGE**