

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON FRIDAY THE 24TH
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO.C5/17/23

GODFRED APPIAH OBIRI ----- PETITIONER

VRS.

FELICIA ANDERSON ----- RESPONDENT

PARTIES

PRESENT

**CHRISTABLE AWO TEI SASRAKU, ESQ. HOLDING THE BRIEF OF
BERNARD OWIREDU, ESQ. FOR THE PETITIONER PRESENT**

JUDGMENT

FACTS:

The parties got married under **Part III of the Marriages Act, (1884-1985)** at the Church of Pentecost, Tema Community 4 Assembly on 29th December, 2012. Thereafter, the parties cohabited at Community 7, Tema. There are three children to the marriage namely; Ama Aseda Appiah Obiri aged 9 years, Kweku Akyedzi Appiah Obiri, aged 7 years and Kweku Adzipa Appiah Obiri, aged 5 at the time of filing the petition for divorce. There was a previous proceeding in respect of this marriage at the Registry of the Circuit Court, Tema in suit *number C5/9/23*, but the petitioner subsequently withdrew the petition with liberty to re-apply.

On 20th September, 2022, the petitioner filed the instant petition for divorce claiming that the marriage celebrated between the petitioner and the respondent had broken down beyond reconciliation and prayed the court for the following reliefs;

- a. Dissolution of the marriage contracted by the parties.
- b. The petitioner be granted custody of the three children with reasonable access granted to the respondent.

- c. That the petitioner be made to settle the respondent with an amount of Twenty Thousand Ghana Cedis (GH¢20,000) in the form of alimony.

The respondent filed an answer and cross-petition on 26th September, 2022 in which she cross-petitioned against the petitioner as follows;

- a. That the marriage celebrated between the respondent and the petitioner be dissolved.
- b. That the petitioner be granted custody of the children with reasonable access to the respondent.
- c. That the respondent be given a fair share of the matrimonial property.
- d. That the petitioner compensates the respondent with substantial amount than was stated in the petitioner's reliefs.
- e. That the petitioner pays the respondent's legal fees.
- f. Any other orders, relief this Honourable Court deems fit.

THE PETITIONER'S CASE

The case of the petitioner as gleaned from the petition and the reply and answer to the cross-petition is that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The petitioner states that the respondent has committed adultery severally with different men. The petitioner further states that once, when he searched through the respondent's phone, he found nude pictures exchanged between the respondent and the same Benjamin Ebo Sackey. Based on the adulterous relationship, the said man's wife went to the respondent's work place to embarrass her and further warned her to desist from her adulterous relationship with her husband. The petitioner states that this has caused serious embarrassment to him and has demeaned him in the eyes of the work colleagues.

Again, the petitioner states that once, he saw the respondent in a towel on a video call with one other Peter Osei, her male lecturer and he later discovered that the respondent was in an amorous relationship with the said lecturer. The respondent also committed adultery with one Martin Olu Davies who she had earlier introduced to him as a friend willing to help the petitioner secure another job. The respondent also committed adultery repeatedly with one policeman by the name Nana Yeboah. The petitioner claims that the respondent brings some of these men to their matrimonial home in his absence. The petitioner also states that he found a receipt of a hotel reservation in the name of the respondent which the petitioner retrieved from her car in an attempt to meet her lover by name Nana Yeboah. The petitioner says further that he found suspicious messages between the respondent and one Richard and upon further investigation, he found out that the respondent had committed adultery with the said man.

The petitioner states that the conduct of the respondent has embarrassed him and affected his output at work since he is being ridiculed as a result of the conduct of the respondent. The petitioner further states that he is saddled with treating sexually transmitted infections contracted from the respondent since the respondent was earlier hospitalised for contracting sexually transmitted infections. He states that elders of the Pentecost church and the Light House chapel have all attempted to settle their differences but all have proved futile.

Additionally, the petitioner states that on four different occasions, the respondent threatened to commit suicide when he caught her in adultery and on two occasions, the case was reported at the Tema Community 25 Police Station. The petitioner further states that the suicidal attempts have greatly affected the children, in particular, the eldest who the respondent manipulates into thinking that respondent might die and leave them. This has caused serious strain on the

mental stability of the children such that he sought the help of a psychologist to help the children. The petitioner further states that the respondent fails to take proper care of the children since she leaves the house and returns at will. At other times, her phone is unreachable for several hours. The respondent also behaves rudely and sacks house helps she believes are aware of her adulterous relationships and might divulge same to the petitioner. The respondent verbally abuses him when questioned about her whereabouts.

The petitioner avers that when he discovered the amorous relationships of the respondent, he first reported her to the family and then the church elders and lastly sought for the help of the therapist but the respondent did not mend her ways. The petitioner maintains that the treatment the respondent is receiving from the family and the church elders is as a result of her own admission before them that she had committed adultery. Also, the therapist was hired to provide counselling and psychological support for both parties but after one visit by the respondent for a service he had paid for, she refused to attend any more therapy sessions for fear of being confronted with the truth.

On the issue of access to the children, the petitioner, in answer to the cross-petition states that the petitioner has never denied the respondent access to the children until she started displaying suicidal tendencies. The family, police, psychologist and the church advised her to have monitored and restricted access to the children due to her mental instability.

Regarding property acquired during the subsistence of the marriage, the petitioner says he acquired a piece of land located at Community 26 in the year 2008 and that he started the construction of the current matrimonial home four years before he got married to the respondent. According to the petitioner, he was personally

overseeing the construction of the building with the assistance of his Foreman particularly because of his expertise as an engineer and when he was not around it was solely handled by his Foreman. The petitioner further states that the respondent has at no time paid for utility bills or house rent for any of the places they have cohabited. He further denies that the respondent financially contributed to the construction of the matrimonial home. The petitioner states further that he does not own any property at Afienya. Again, he avers that the property in their neighbourhood belongs to Rameg International Limited, a company incorporated under the laws of Ghana of which he is one of the directors and not a matrimonial property to be distributed upon the dissolution of the marriage.

The petitioner states that he solely financed the university education of the respondent including the payment of her hostel fees and her monthly maintenance when she was schooling since she was not earning income as a health assistant. The petitioner states that he has at every material time provided substantially for the house to the extent that, the respondent had enough foodstuff and she prepared food for her co-adulterers. Again, the petitioner states that there is only one car belonging to the family, which the respondent has always been using and the car remains in her possession whilst he drives a company car. He states that before the court action, he was fueling and maintaining the car for the use of the respondent.

THE RESPONDENT'S CASE

The respondent vehemently denies the allegation of unreasonable behaviour and states that apart from recent allegations made by the petitioner against her, there has never been any reason for family or church elders to have any discussion concerning their marriage. The respondent further says that in the petitioner's bid to leave the marriage, he has discredited her to their families and church elders,

which has caused them to treat her with disdain instead of counselling her, and that the psychologist, whose services the petitioner had procured for the respondent treated her despicably. The respondent admits they are currently not living together as husband and wife and explains that it is due to the fact that she was on campus writing her final exams when the petitioner told her not to return to their matrimonial home. She states that the petitioner has prevented her from entering the matrimonial home to see her children, or pick her clothes and upon advise from the church elders, the petitioner rented a single room for her in Tema.

Also, subsequent to that, the petitioner has always prevented her from seeing their children and has managed to discredit her to the police in the area, such that, anytime she tries to go to the house to see their children, he calls the police to come for her and instructs the house-help not to open the gate for her, even after she had notified the petitioner of her intention to visit the children. The respondent denies the allegation of adultery and states that prior to the said allegations, she had at all times been a supportive wife to the petitioner and caring mother to their children, although the petitioner always made her feel inadequate in the marriage.

Regarding properties acquired during the subsistence of the marriage, the respondent says that, within the ten years that they have been married, they acquired three properties consisting of a five-bedroom house located at Community 26, in the Kpone-Katamanso district, another plot of land in the same neighbourhood and a plot of land at Afienya. The respondent further avers that, during the construction of their matrimonial home, she was overseeing the project, since the petitioner was mostly out of Accra due to his work obligations. The respondent also says that she contributed financially to the construction of the matrimonial home since she believed that it was their joint property. She further states that although she works as a health assistant, she has always

engaged in petty trading to support the provisions the petitioner made for the family and also contributed towards the construction of the building.

The respondent says that, in January 2022, the petitioner bought another piece of land in their neighbourhood to build apartments for rent. The respondent also avers that when she had asked the petitioner to increase the house-keeping allowance, he mostly declined since he claimed he was using his income to acquire properties for the family and asked her to manage whatever he provides. This made the respondent to also make certain financial sacrifices to be able to support the family with her resources.

The respondent also states that the petitioner has put her in a difficult situation to the extent that when she had gone to the beach to clear her head, she suddenly passed out and when she regained consciousness, she found herself at the hospital. The respondent denies manipulating their children and that it is rather the petitioner who has been poisoning the minds of the children in his bid to separate her from the children. The respondent further says that, she has always given the children the best care any woman would give to her children. She also maintains that she had always treated the house helps with respect, for them to treat the children well but when they did wrong, the petitioner always sided with them creating the impression that she was a bad person. She again states that she has always been submissive to the petitioner except for occasional misunderstandings between them.

Based on the pleadings, the evidence led by the parties and the address filed by Counsel for the petitioner, the court set down the following issues for determination.

LEGAL ISSUES

1. Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether or not the respondent is entitled to access to the children.
3. Whether or not the parties jointly acquired properties during the pendency of the marriage.
4. Whether or not the respondent is entitled to substantial financial provision from the petitioner.

BURDEN OF PROOF

The principle of law is that he who asserts must prove. In the case of **Adwubeng v. Domfeh** [1996-97] SCGLR 660, the Supreme Court in holding 3 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 preponderance of probabilities. No exceptions were made.”* The standard of proof as stated applies to Petition for divorce.

Also, in the case of **Aryeh Akakpo v. Ayaa Iddrisu** [2010] SCGLR 891 @901, the Supreme Court per Brobbey JSC (as he then was) held as follows:

“A party who counterclaims bears the burden of proving his counterclaim on the preponderance of the probabilities and would not win on that issue only because the original claim has failed. The party wins on the counterclaim on the strength of his own case and not on the weakness of his opponent’s case.”

Thus, the burden is on the petitioner to prove the facts alleged to establish the breakdown of the marriage. Where, as in the instant case, the respondent has also cross-petitioned, she bears the burden to prove her cross-petition on a balance of probabilities.

ANALYSIS

ISSUE 1: Whether or not the marriage between the petitioner and the respondent has broken down beyond reconciliation.

Under the **Matrimonial Causes Act, 1971 (Act 367)**, the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts set out in **Section 2(1)** of Act 367, namely, adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of two years, failure to live as husband and wife for a continuous period of at least five years and irreconcilable difference.

Further, to promote reconciliation and in consonance with the policy of the Act, **Section 2(3)** of Act 367 provides that the court shall not grant a petition for divorce if there is a reasonable possibility for reconciliation notwithstanding the fact that a petitioner has established one of the facts contained in **Section 2(1)** of Act 367. Thus, **Section 8** enjoins the petitioner or his counsel to inform the court about all attempts made at reconciliation.

The petitioner in the instant petition set out to prove facts **2(1)(a), (b) namely;** adultery, unreasonable behaviour. To succeed under **Section 2(a) of Act 367**, the petitioner must prove two things; firstly, that the respondent has committed adultery and secondly, that as a result of the adultery he finds it intolerable to live with the respondent. Adultery is defined under **Section 43** of Act 367 as;

“the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse”

In the case of *Adjetey v. Adjetey*[1973] GLR 216-221, espousing on the standard

of proof of adultery held;

“Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability”.

Also, adultery may be proved either by direct or circumstantial evidence. In the **Adjetey v. Adjetey**, (supra), the court held that;

"Direct evidence of adultery is rare. In nearly every case the fact of adultery is inferred from circumstances, which by fair and necessary inference lead to that conclusion. There must be proof of disposition and opportunity for committing adultery; but the conjunction of strong inclination with evidence of opportunity does not lead to an irrebuttable presumption that adultery has been committed; and likewise the Court is not bound to infer adultery from evidence of opportunity alone."

The petitioner testified in line with his petition that the respondent has committed adultery with several men and has behaved unreasonably that he cannot be expected to live with her as husband and wife. In support of the allegation of adultery committed with one Benjamin Ebo Sackey, the petitioner tendered in evidence **Exhibit “A”** series, which are printouts of WhatsApp chats containing nude pictures exchanged between the respondent and the said Ebo Sackey. The petitioner further testified that he was informed by the respondent’s work colleagues that the said Ebo Sackey’s wife went to the work place of the respondent to embarrass her and warned her to stay away from her husband and same was confirmed by the respondent when he questioned her. Additionally, the petitioner testified that the respondent is sexually involved with one Martin Olu Davies who she had earlier introduced to him as her friend who was willing to help him secure another job and the respondent admitted same when confronted. Again, the petitioner contends that the respondent admitted committing adultery

with two policemen called Nana Yeboah and Bernard Dogbe and that she brings these men into the matrimonial home in his absence, a situation which caused him to report the conduct of the officers at the Tema Community One Police station. In support, the petitioner tendered in evidence **Exhibit “B”**, photographs of the two police officers. He also tendered in evidence **Exhibit “C”**, a receipt for hotel reservation he found in the respondent’s car which he believes that the respondent went to the hotel with one Nana Yeboah.

According to the petitioner, he has reported the various acts of infidelity committed by the respondent to her family members who tried to solve the issue between them but the respondent was unrepentant and continued in her adulterous acts. The petitioner states that he subsequently found some suspicious messages exchanged between the respondent and one Richard that the two were in an amorous relationship. In support, the petitioner tendered in evidence **Exhibit “D,”** a printout of WhatsApp Messages exchanged between the respondent and the said Richard. He also tendered in evidence without objection, an audio recording admitted and marked as **Exhibit “E”**, in which the respondent admitted having committed adultery. The petitioner further testified that once, he caught the respondent in a video call conversation with one Peter Osei, her male lecturer whilst she was in a towel and his investigations revealed that the respondent was sexually involved with the said lecturer. The petitioner says that the behaviour of the respondent has hurt him physically and emotionally since he is ridiculed in his area and among his peers which makes it difficult for him to sleep and to concentrate at work. Further to this, the petitioner states that he is currently undergoing treatment for genital warts, a sexually transmitted infection which he believes strongly to have contracted from the respondent who had earlier been hospitalised and treated for same.

Furthermore, petitioner testified that the respondent has on four occasions attempted to commit suicide when caught in adultery and on two occasions, he reported her suicidal attempts at the police station. In support, he tendered in evidence **Exhibit “G”** series, police report and pictures of the petitioner after such attempts. The petitioner maintains that the various suicidal attempts have greatly affected the children especially the eldest child who is manipulated by the respondent into believing that she might die and leave them. This, according to the petitioner, has caused serious strain on the mental stability of the children and himself such that he had to engage the services of a psychologist to help the children particularly the eldest child overcome the situation.

The petitioner further testified that the respondent also fails to take proper care of the children since she leaves the house and returns at will without contact. The respondent behaves rudely and sacks house helps she believes are aware of her adulterous behaviour and might divulge her infidelity to him. The respondent verbally and emotionally abuses him at the least opportunity particularly when she is questioned about her whereabouts.

In addition, the petitioner testified that the elders of the Church of Pentecost and Light House Chapel have attempted to settle the matter but their efforts have yielded no results since the respondent persisted in her acts. Based on that the respondent was advised by the church and the police to leave the matrimonial home pending the dissolution of the marriage. The petitioner maintains that the behaviour of the respondent has caused him much distress, anxiety and embarrassment such that he can no longer live with her as husband and wife.

The testimony of the petitioner that the respondent attempted suicide was corroborated by the testimony of PW1, Felix Doe Agbake who describes himself as a friend of the petitioner and that they have known each other since the year

2014. He testified that in June, 2022, the petitioner called him to rush to his house since the house help had informed him that the respondent had locked herself up in the room. He states that when he got to the house and forced the door open he found the respondent lying on the bed with tablets of medicine around her and unresponsive. This caused him to panic and he called his cousin who assisted him to rush the respondent to the hospital for medical treatment.

PW2, the house help of the parties, Mary Quansah testified that she was engaged by the parties somewhere in the year 2021 to assist with cleaning and cooking in the house and to also act as a nanny to the children of the marriage. She testified to the times that the respondent brought her lovers to the house in the absence of the petitioner and the times that she left home. She also confirmed the numerous attempts made by the respondent to commit suicide based on which she started recording her conversations with the respondent as evidence; the impact the conduct of the respondent has had on the children and how the respondent resorts to threats by accusing her of being responsible for the breakdown of her marriage to the petitioner.

PW3, Raymond Kweku Attah, also testified that aside his working relationship with the petitioner, he also has a personal relationship with him as a result of which the petitioner informed him about the tension in his home due to the respondent's infidelity and since he was giving her a cold treatment, she has resorted to suicidal attempts. Later, the respondent sent him a text message about her intention to commit suicide and that she was on her way to the Prampram beach to commit suicide. He immediately drove to their house and he went with the petitioner to report to the police since there had been an earlier attempt by the petitioner to commit suicide. When they finally got to the beach, they found the

respondent in the sea foaming from the mouth. Together with the police she was rescued and taken to the hospital where she received treatment and was discharged. According to him, the respondent is unstable and enjoys frustrating the petitioner in order to fulfil her desires whilst failing to perform her duties as a responsible wife.

The respondent on her part testified and called no witnesses. She denied the allegation and testified that in the petitioner's bid to leave the marriage, he discredited her to their family members and church elders with several allegations which has caused them to treat her with disdain. The petitioner contracted the services of a psychologist who decided to lambast her and did all sorts of despicable things to her. Despite the allegations against her, she was on campus writing her final examination when the petitioner asked her not to return to their matrimonial home again and he also prevented her from entering the matrimonial home to even see her own children. Upon the intervention from the church elders, the petitioner rented a single room in Tema for her where she has been living. The respondent further testified that whilst they were living together, she had at all times been a supportive wife to the petitioner and a caring mother to their children, although the petitioner always made her feel inadequate in the marriage. Additionally, the respondent states that the petitioner has put her in a distressed situation because of the numerous allegations against her and that she went to the beach to clear her head and she passed out in the process and when she regained consciousness, she was at the hospital receiving treatment. The petitioner states that she has never manipulated the children but rather, it is the petitioner who tries to demonise her to the children. The respondent states that she has always given the children the best care any mother would give to her children. The respondent further states that the petitioner has always created the impression to the house helps that live with them that she is a bad person and always sides with them

when she complains about their actions. The respondent maintains that she has always treated the house helps well for them to replicate that kind treatment to their children. She also states that she has always been a submissive wife to the petitioner except on a few occasions when there has been misunderstandings between them.

On the evidence led by the petitioner and his witnesses and the respondent, the fact that the respondent committed adultery and admitted same is not seriously challenged. In the face of the glaring exhibits of the chats between the respondent and the alleged co-adulterers, the respondent failed to cross-examine the petitioner on the serious allegations made against her by the petitioner. The effect of such failure to cross-examine is succinctly put by the Supreme Court decision in the case of **Ghana Ports & Harbours Authority v. Nova Complex Ltd.** [2007-2008] 2 SCGLR 806 in holding 3 as follows;

“The strict rule is that when a party had given evidence of a material fact and was not cross-examined upon, he need not call further of that fact...Indeed, from the present state of the law, it is now clear that the full repercussions that ordinarily ought to flow from a party’s failure to mechanically and dutifully cross-examine an opponent, has gradually been reduced by such factors or qualifications as illiteracy of a party not represented by counsel and against whom the fact is alleged in evidence; or even if so represented, by advance notice to the opponent that the allegation of fact would be strenuously resisted. The rule is therefore clearly subject to exceptions, one of them being, if the witness had had notice to the contrary beforehand. Thus if the pleadings are so comprehensively plain on the face of it that the alleged fact is not being admitted but challenged, and even more importantly, contrary evidence is subsequently led by the person against whom the fact is alleged clearly disputing the fact, as indeed, happened in this instant case, the strict reliance on or slavish application of such a technical rule must be rejected.”

The court, in the present case, painstakingly explained the import of cross-examination and the effect of her failure to cross-examine the petitioner and his witnesses on the allegation of adultery, but the respondent chose to waive her right to cross-examine the witnesses on the allegation of adultery. The respondent having admitted the allegation of adultery, the court may act upon it even without confirmatory proof provided the admission is unequivocal. See **Quartey v. Quartey [1972]** 1 GLR 6, the court per Kingley-Nyinah J. I therefore find that the petitioner proved on a preponderance of probabilities that the respondent committed adultery and by reason of the adultery, he finds it intolerable to live with her.

The petitioner, on the evidence also tried to make capital out of the numerous attempts by the respondent to commit suicide anytime he caught her in adultery and concludes that she has behaved unreasonably that he cannot be expected to live with her. With much deference, attempted suicide is a serious psychological disorder and a person who survives such experiences needs empathy rather than being victimised. The country as a whole, recognising that attempted suicide is a serious mental disorder deemed it fit to decriminalise it. Thus, at the time the respondent reported the issue of attempted suicide to the police, although it had not been decriminalised, it was evident that the respondent was going through serious psychological difficulties based on which a psychologist was recommended for her. The court also deemed it fit at the beginning of the trial based on the allegations of the respondent having attempted suicide four times, for the respondent to be evaluated by the experts to ensure that she was fit to go through the court proceedings. It will derail the gains made on mental health awareness to deem a person who had inclinations to take her own life's behaviour as unreasonable instead of seeking help for the respondent. The court observed the respondent and she is doing fine and has every reason to continue living for herself and for the sake of the beautiful children that the marriage has been

blessed with.

On the totality of the evidence led, I find that the respondent committed adultery and by reason of the adultery, the petitioner states that he finds it intolerable to live with her as husband and wife. The parties are also agreeable that various attempts made by themselves, their families and the church to reconcile their differences have proven futile based on which the petitioner was advised to find alternative accommodation for the respondent. The court also made various attempts in the hope of reconciling the parties during the proceedings but the parties agree that their marriage has come to an end and there is no possibility for reconciliation. On the totality of the evidence led, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and decree for the dissolution of the ordinance marriage contracted by the parties.

ISSUE 2: Whether or not the respondent is entitled to access to the children.

The respondent does not contest custody of the children of the marriage but prays the court to grant her access to the children. Accordingly, I grant custody of the three children of the marriage namely; Ama Aseda Appiah Obiri aged 9 years, Kweku Akyedzi Appiah Obiri, aged 7 years and Kweku Adzipa Appiah Obiri aged 5 years at the time of filing the petition for divorce to the petitioner.

The respondent, during the proceedings, bemoaned the fact that the petitioner has made a calculated attempt to deny her access to the three children of the marriage. Under **Section 5** of the Children's Act, 1998(Act 560), no person shall deny a child the right to live with his parents and family and grow up in a caring and

peaceful environment unless it is proved in court that living with the parents would lead to significant harm to the child, or subject the child to serious abuse or not be in the best interest of the child. Also, **Section 44 of Act 560** provides that a parent, family member or any person who has been caring for a child may apply for periodic access to the child.

The gravamen of the contention of the respondent is that whilst she was on campus, the petitioner informed her not to return to the matrimonial home and has since denied her access to the children. The respondent further states that the petitioner also uses the police to arrest her when she makes attempts to visit the children and instructs the house helps not to grant her access after giving the petitioner advance notice of her intended visit to the children in the house. According to her, she has at all times material to the marriage, been a caring mother to their children.

The petitioner, on his part, testified that he has never denied the respondent access to the children until she started acting suicidal such that the family, police, psychologist and their church advised her to have a monitored and restricted access to the children due to her mental instability. Based on that, the petitioner rented the respondent's current accommodation for her and has fully paid for the rent and has since been fully responsible for the upkeep of the children.

The court granted the respondent access to the children pending suit and it is obvious from the medical evidence that she is stable mentally and she poses no risk to the welfare of the children if granted access to the children. During cross-examination, Counsel for the petitioner raised issues about the respondent, who is now a nurse seeking treatment for the children when they are in her custody and they complain of ill-health without first communicating with the respondent who might not be aware that the respondent has administered drugs to the

children. In my view, this an issue that effective communication and cooperation among the parties can resolve. The children have insurance as a benefit of the petitioner's employment. Thus, the respondent shall not, when the children are in her custody, administer medication without first consulting a doctor at the hospital and once the children visit the hospital and are prescribed medication, the other parent must be notified immediately.

I will therefore grant the respondent reasonable access to the children. The children shall spend weekends with the respondent every fortnight and the parties shall alternate where the children shall spend holidays. The children shall also spend half of their vacation period with the respondent.

The petitioner shall continue to maintain the three children of the marriage. It is a settled principle of law that it is the joint responsibility of both parents to maintain the children and provide nurturing care for them. This principle was given judicial blessings in the case of **Donkor v. Ankrah** [2003-2005] 2 GLR 125, 140-141, where the Court underscored the need for parents to jointly contribute towards the maintenance of their children in the following terms:

“Where both parents of a child are earning income, it must be the joint responsibility of both parents to maintain the child. The tendency for women to look up to only men for the upkeep of children is gone: see section 47(1) & (2) of the Children’s Act 1998(Act 560). Once the plaintiff is also reputed to be working, she must also take part of the responsibility of the child’s maintenance”.

The evidence shows that the petitioner shouldered a bulk of the financial responsibilities towards the children and the respondent since she was a health assistant. She is now a graduate nurse and must contribute financially to the maintenance of the children especially since the petitioner has custody of the

children and she will have the free hand to work and earn income. I therefore order the respondent to be responsible for the clothing needs of the children.

ISSUE 3: Whether or not the parties jointly acquired properties during the pendency of the marriage.

Article 22 (2) & (3) (a) & (b) of the 1992 Constitution states that:

22(2) Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.

(3) With a view to achieving the full realization of the rights referred to in clause (2) of this article -

(a) Spouses shall have equal access to property jointly acquired during the marriage;

(b) Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage".

In the case of **Arthur (No 1) v. Arthur (No.1) [2013-2014] 1 SCGLR 543** held in holding 3 as follows;

"...Property acquired by the spouses during the marriage was presumed to be marital property. Thus, marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition."

In the Supreme Court's decision in **Peter Adjei v. Margaret Adjei** (unreported) [Suit No. J4 06/ 2021], delivered on 21st April, 2021, the Court per Appau, JSC reiterated the position of the law when His Lordship stated at page 10 as follows:

"...any property that is acquired during the subsistence of the marriage, be it customary or under English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on equality is equity principle. This presumption of joint ownership is,

however, rebuttable upon evidence to the contrary... 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 there was direct, pecuniary or substantial contribution from both spouses in the acquisition.”

The respondent testified that whilst during the 10 years that she lived together with the petitioner, they acquired three properties, namely; a five-bedroom house located at Community 26 in the Kpone Katamanso District to serve as their matrimonial home, a plot of land in the same neighbourhood and another plot of land at Afienya. It is therefore incumbent on the respondent to adduce sufficient evidence from which the court can conclude that the properties were jointly acquired during the subsistence of the marriage to raise the presumption of joint ownership. Thereafter, the burden would shift to the petitioner to rebut the presumption by showing that the properties were not jointly acquired during the subsistence of the marriage.

It is the case of the respondent that during the construction of the matrimonial home, the petitioner was mostly outside Accra on official duties and she supervised the construction of the building project. She states that since she considered the property to be their joint property, she contributed financially to the building project. The respondent states that in addition to working as a health assistant, she traded to supplement the money the petitioner gave for the home and the building project.

Again, she testified that sometime in January 2022, the petitioner bought another land in the neighbourhood for the purpose of building apartments to rent. She

states that anytime she asked the petitioner to increase the housekeeping money, he declined since he claimed he was using his income to acquire properties for the family. The respondent states again that because of that, she also made certain financial sacrifices to support the family. It can be gleaned from the testimony of the respondent regarding her contributions to the construction of the building that she repeated her averments on oath without substantiating these allegations of contributions to the acquisition of the project especially when the petitioner has denied same. In the case of **Sarpong (Decd) (Substituted by) Koduah v. Jantuah** [2017-2020] 1 SCGLR, the Supreme Court held in its holding 4 that:

“The principle enunciated in Majolagbe v. Larbi [1959] GLR 190, did not mean a party should not repeat what had been pleaded in evidence. What the principle meant was that, that party should lead such evidence as would constitute proof in law. Since a party was required to stick to his pleadings when giving evidence, there was nothing wrong where that party repeated on oath what had been pleaded; the only consideration of the court was to ascertain whether what the party had said on oath was sufficient to discharge the burden of persuasion that laid on him...”

The petitioner on his part testified that in the year 2008, he acquired a piece of land located Tema Community 26. According to his testimony, he started the construction of the matrimonial home four years prior to his marriage to the respondent in the year 2012. In support, he tendered in evidence a copy of the indenture in his sole name dated 24th June, 2009, admitted and marked as **Exhibit “H”**. According to his testimony, he was personally overseeing the construction of the building with the assistance of a Forman because of his expertise as an engineer. Also, when he was not around, the project was solely handled by the Foreman and that the respondent has at no point in time paid utility bills or house rent for any of the places they cohabited together. The respondent has also never

made any financial contribution towards the project or paid any money to any worker on site from her own resources.

The testimony of the petitioner was corroborated by PW4, Emmanuel Bortsie who described himself as a Forman and Mason by profession. He testified that somewhere in January 2011, the petitioner engaged him to construct a four-bedroom self-contained apartment at Tema Community 26. PW4 continues to testify that at the time he was engaged to do the work, there were building materials already on site and he together with his workers started with the foundation based on the architectural design the petitioner gave to them. According to his testimony, he was in charge of the building project which included the purchasing of building materials, paying of the workers on site and supervision of the work on site.

Additionally, PW4 testified that he had at all material times dealt directly with the petitioner with regard to purchasing building materials and paid workers at the construction site. According to him, work steadily progressed to the lintel level until there was litigation on the land which stalled the construction of the building around July 2012 pending the resolution of the dispute over the ownership of the land. The petitioner subsequently got married to the respondent in the year 2012 before he got to know her. PW4 further states that somewhere in the year 2014, the petitioner informed him that the land matter had been resolved paving the way for them to continue building on the land. They continued the project with building materials already on site but the work progressed slowly since the petitioner informed him that he had other family commitments to keep financially. According to him, at all times material to the construction, the petitioner was on site to supervise the construction and ensured that the building was constructed up to specification since he is an engineer.

Additionally, PW3 further testified that on one occasion, when the petitioner had travelled and he had to purchase building materials, he informed the respondent but she told him to inform the petitioner and since then, he never informed the respondent of anything he required to facilitate the project. The respondent however visits the site occasionally when the petitioner sends her to bring him money but she has never been there to supervise the work or ask questions regarding the progress of the building. The parties moved in to occupy the building when it was partly completed.

The respondent, throughout the trial failed to cross-examine the petitioner on her contributions to the acquisition of the matrimonial home. In the teeth of the cogent testimony by the petitioner and the Foreman that the respondent never supervised the construction of the building and did not financially contribute to the acquisition of the matrimonial home, she failed to test the veracity of their testimony through cross-examination. The evidence shows that the petitioner acquired the land on which the matrimonial home was built in the year 2009 and at the time of their marriage, the building was at the lintel level. The petitioner states that the respondent was a health assistant and he was rather sponsoring her education and maintaining her and the children which casts doubt on her financial contributions to the project. The respondent also did not make capital out of the contributions in kind she might have made in the face of the evidence of the petitioner that since the respondent was schooling, he always engaged house helps and nannies that he paid to assist with the upkeep of the home. On the totality the evidence led, I hold that the petitioner successfully rebutted the presumption of joint ownership and I hold that petitioner acquired the matrimonial home through his own efforts.

On the plot of land located at Afienya allegedly acquired by the parties during the pendency of the marriage, the petitioner denies owning a property at Afienya but

the respondent did not introduce any evidence in support of her allegation as to when the land was acquired and how it was acquired. I therefore dismiss the claim of the respondent to a share in a plot of land located at Afienya.

Again, the respondent states that the petitioner acquired a piece of land to put up apartments for rent in their neighbourhood. The petitioner maintains that he does not have any property in the neighbourhood as alleged by the respondent. According to him, the said property belongs to Remeg International Limited, a company incorporated under the laws of Ghana of which he is one of the directors. In support, he tendered in evidence the Certificate to Commence Business, Certificate of Incorporation, Registration document and a copy of the full payment receipt for the said piece of land admitted and marked as **Exhibit “J” series**.

PW3, Raymond Kwaku Atta also confirmed the testimony of the petitioner when he testified that somewhere in the year 2016, he had a discussion with the petitioner over a business he wanted to embark on and needed him to bring his expertise as an engineer to bear on the project. He states that they are both directors of Remeg International Limited, a company with a separate legal entity from its directors and duly registered under the laws of Ghana. The petitioner receives his monthly remuneration for his contribution as a result of his work done for the company and the petitioner is not a shareholder of the company. Again, somewhere in the year 2021, he had discussions with the petitioner on the need to expand their business. They then decided to get a place to use as a warehouse to keep the company’s machines. The petitioner informed him that there was a property located near his residence that was up for sale. He therefore gave the money to the petitioner to purchase the property after withdrawing same from the company’s account and after payment, a sale agreement was executed.

From the documents produced before the court, the land in dispute belongs to the company of which the petitioner is only a director but not a shareholder of the company. In the case of **Gilbert Anyetei v. Sussuana Anyetei (2023) JELR 110978 (SC)**, the Supreme Court, per Pwamang JSC held that since a company has a separate legal existence, its assets could not be treated as assets of the husband though he was the sole shareholder. The Supreme Court was further of the view that it is the shares of the company which would become the assets jointly acquired during the marriage that may be shared between the parties and not the properties of the company. The Supreme Court stated further that if a company was established in the course of a marriage and it was proved that the spouse whose name does not appear as a shareholder nevertheless contributed in its establishment, the spouse would be entitled to an equitable share of the shares of the company. An exception was however noted that where there was evidence to prove that a party to the divorce proceedings was using the corporate shield as an instrument of fraud, then in such a situation the properties of the company may be distributed between the parties to the divorce.

The respondent has not demonstrated that the property is the personal property of the petitioner or that the petitioner is a shareholder of the said company. From the documentary evidence on record, the property was purchased by a company which has a separate legal personality and as such, it cannot form part of property distribution in a matrimonial proceedings involving a director qua director. I therefore dismiss the claim of the respondent to a share in the property acquired.

ISSUE 4: Whether or not the respondent is entitled to substantial financial provision from the petitioner.

Section 20(1) of the Matrimonial Causes Act 1971 (Act 367) states that:

*"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.**"*

The award of lump sum financial payment under Act 367 is therefore need based and it is not intended to enrich one spouse at the expense of the other. It is also not intended to punish a party who is blameworthy for the breakdown of the marriage. In the case of **Barake v. Barake** [1993-1994] I GLR 635 at page 666, Brobbey J (as he then was) held that:

*"On such an application, **the court examines the needs of the parties** and makes reasonable provision for their satisfaction out of the money, goods or immovable property of his or her spouse."*

Also, in the case of **Aikins v. Aikins** (1979) GLR 233, Sarkodee J (as he then was) held in holding 4 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 determining what is "*just and equitable*", a court is enjoined to consider 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. See the case of **Obeng v. Obeng** [2013] 63 GMJ 158, CA.

The petitioner testified that he solely financed the university education of the respondent including the payment of her hostel fees and monthly maintenance since she was a health assistant earning meagre salary and she has now graduated as a degree nurse. He has at every material time provided substantially for the house financially. Also, although the respondent is gainfully employed, he has never asked her to pay any bill which includes her own medical bills which she accesses as a benefit of his employment. He has solely paid the school fees as well as catered for the feeding and other educational needs of the children. He also states that he has constantly provided house helps for the house and paid them since 2013, barely a year into the marriage. Again, he has also allowed the respondent to use the only family car which is still in her possession while he drives a company car. He buys fuel constantly for the respondent and also pays for the vehicle's insurance, road worthy as well as maintained the car for the respondent's safety. The petitioner therefore proposes to pay to the respondent an amount of GH¢20,000 as financial provision to the respondent.

Indeed, the respondent was candid enough to admit under cross-examination that she is a graduate nurse today due to the financial contribution of the petitioner. This confirms that the petitioner has assisted the respondent to gain employable skills to ensure her financial independence. She also concedes that the petitioner supported her brother's education, acquired the car to ease her movement, fuelled and maintained it albeit she states that she contributed sometimes. The respondent also admits that the petitioner has been responsible for the upkeep and educational expenses of the children of the marriage and the petitioner has not requested for her contributions towards the maintenance of the children. This means that with the breakdown of the marriage, the petitioner shall continue to be responsible for the upkeep of the children. The respondent is a graduate nurse and the petitioner is an engineer but the parties have not led evidence on their respective earning capacities. The parties have been married since the year 2012, and with the

breakdown of the marriage, the parties may re-marry. The petitioner, who has custody of the children has engaged a nanny that he pays to care for the children. Having regard to the circumstances and the responsibilities of the petitioner towards the children which will continue after the dissolution of the marriage and the fact that the respondent is a degree nurse, I deem the amount of Twenty Thousand Ghana Cedis (GH¢20,000) proposed by the petitioner to be just and equitable. Additionally, from the petitioner's own showing, the respondent has had the use of the car acquired by the parties during the subsistence of the marriage and even after they separated, she has still been in possession of same. Thus, as part of financial provision and settlement of property rights, I hereby settle the said car on the respondent.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation on account of adultery committed by the respondent. I accordingly grant the petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 29th December, 2012 at the Church of Pentecost Tema Community 4, Assembly.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the court.
3. I hereby grant custody of the three children of the marriage namely, Ama Aseda Appiah Obiri, aged 9 years, Kweku Akyedzi Appiah Obiri aged 7, and Kweku Adzipa Appiah Obiri aged 5 years to the petitioner with reasonable access to the respondent. The respondent shall spend weekends with the children every fortnight from Friday 5:00pm to Sunday 4:00pm.

The children shall spend half of their vacation period with the respondent and the parties shall alternate holidays.

4. The petitioner shall continue to bear the monthly maintenance, educational and medical expenses of the children and the respondent shall be responsible for the clothing needs of the three children of the marriage.
5. I hereby award to the respondent an amount of Twenty-Thousand Ghana Cedis (GH¢20,000) as lump sum financial provision, as proposed by the petitioner in favour of the respondent. In accordance with **Section 20(2)** of Act 367, which empowers the court to order the money to be paid in gross or by instalment, the petitioner shall pay the amount in gross or in the alternative, within two (2) months in two (2) equal monthly instalments from 1st December, 2023 to 1st January, 2024.
6. I hereby settle the car acquired by the parties and in the possession of the respondent on the respondent absolutely.
7. I hereby declare the matrimonial home located at Community 26, in the Kpone Katamanso District to be the self-acquired property of the petitioner and I accordingly settle the said house on the petitioner.
8. No order as to costs since the petitioner waives the award of costs.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**