

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON TUESDAY, 19<sup>TH</sup> DAY  
OF MARCH 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH,  
CIRCUIT COURT JUDGE.

SUIT No: C5/37/2024

LYDIA AMA NYARKOA QUAYE  
HOUSE NUMBER DR115  
MONTANA STREET GA WEST, KOTOKU

PETITIONER

V

SAMUEL ADAMA ARMAH  
C96/8 107 SCHOOL ROAD, ACCRA NEW TOWN  
ACCRA

RESPONDENT

---

JUDGEMENT

---

The Petitioner issued the Petition from the Registry of this Court seeking the dissolution of her marriage to the Respondent.

The Respondent cross petitioned and sought the following reliefs:

1. That the marriage be dissolved between the parties.
2. That the property situate at House Number DR 115, Montana Street, Kotoku in Ga West Municipal District be shared equally between the parties.

Then on the 19/09/2023, the Petitioner filed a Reply joining issues with the Respondent. After the close of pleadings, the Petition was set down for trial and parties were ordered

to file their witness statement as required by the law in addition to pretrial check list. Case Management was later conducted, and the case afterwards was ripped for hearing.

The Petitioner giving her evidence said the marriage was celebrated at the Registrar's Generals Office in Accra.

There are three issues of the marriage who are:

1. Dorcas Alberta Naa Dedei Armah,
2. Theophilus Nii Armah
3. Priscilla Naa Korkoi Armah and they are all adults.

Petitioner per her evidence indicated that the marriage has broken down beyond reconciliation as attempt by family and friends at reconciliation have proved futile. The Petitioner testified that when she became pregnant with the third child of the marriage the Respondent refused to provide for the basic needs such as food and others for her and she had to undertake petty trading as selling of drinks and sachet water to support herself. Petitioner also says the Respondent became irresponsible and in addition he started having extra marital affairs with various women of which any time she confronted him, he became so abusive verbally and physically. Petitioner says further that he started borrowing from her with the excuse to pay later which he never did.

Petitioner said parties contributed and built stores which she later found out that the respondent had rented it out to other people without her knowledge even though greater part of the contribution was from her. Petitioner also said parties also contributed to the purchase of car which the Respondent sold later without informing her. Petitioner stated further that due to various physical and verbal abuse she decided to save some money and with the support of her uncle purchased a land to build so she can have a place of her own for her and the children to leave the clutch of the Respondent.

She said the Respondent never contributed to the building of the house or purchasing of the land but subjected her to severe beatings when she informed him of the land and he called her names as well. Petitioner said even though the children are with the Respondent she still feed, clothe and pay for their necessities as the respondent give the excuse that he has no money. The Petitioner in conclusion said she does not owe the landed property alone but with her uncle and stated further that the parties have not had sexual relations for more than 6 years and he has refused her access to her children with warnings of varying degrees. Petitioner tendered exhibits A, series which were receipts to show prove that she paid for the land per the assistance of an uncle.

The petitioner said because of the beatings she was subjected to, the uncle became alarmed and that was when he intervened by supporting her with various sums to purchase the land and to build that house which she later moved in to avoid any more abuse.

The Respondent afterwards opened his case and said he is currently unemployed as he is on pension. Respondent said the parties got married on 8<sup>th</sup> June 1996 and gave the ages of the children as 27 years, 25 years and 22 years respectively. Respondent said the parties have lived together at the family house at Accra New Town throughout the pendency of the marriage till the Petitioner moved out in 2016. Respondent said until the Petitioner had work, in 2005, he was solely responsible for the maintenance of the household. Respondent said he noticed certain changes in behavior of the Petitioner since she started work. Respondent said on one occasion, the petitioner had serious quarrel with one of her best friend Gifty who alleged that the Petitioner was having affair with her boyfriend, one Jonathan Abbey who happens to be the Boss of the Petitioner at Accra Metropolitan Assembly.

The Respondent said the Petitioner has developed close relations with his boss, the said Jonathan Abbey and was seen frequently hanging out with her at odd hours at various places of entertainment which came to his attention and when he confronted her on the matter she denied. Respondent testified further of how this came to the attention of his siblings and other members of the household and it culminated into persistent family feuds between the Petitioner, himself and his siblings.

The Respondent also testified that, the Petitioner on or about 2012 secured employment with Zoomlion Ghana Ltd, and she was able to save some money and purchased a land at Kotoku of which he the Respondent assisted with the search and eventually the choice of that particular parcel of land. He went further to say that he did not provide direct financial contribution to the acquisition of the land due to the fact that he was not gainfully employed as at the time of the purchase of the land.

Respondent said he provided other resources such as the use of his vehicle to search for the said land, assisted in the resolution and settlement, provided storage place to house materials for the building at his family house, coordinated for the purchase of sand, cement stone and other building materials. The Respondent concluded by saying at all material times that the Petitioner was building he provided shelter for the petitioner at his family house until the place became habitable for her to move there and said further that the marriage has broken down beyond reconciliation from the day the Petitioner left the matrimonial home to the new place since 2016.

From the pleadings and the proceedings before the court, the parties agree to the dissolution of the marriage and that is not in dispute. In matrimonial causes, the duty of the Court is to find out if the marriage has broken down beyond reconciliation. And in determining that the law provides under section 2 of the **MATRIMONIAL CAUSES ACT, 1971 ACT 367 with the heading “proof of breakdown of marriage”** indicates the

various scenarios that when they happen, the court can conclude that the marriage has broken down beyond reconciliation.

From the pleadings and the proceedings before the court it is not in doubt that these scenarios have occurred, and marriage has broken down beyond reconciliation. The parties in their pleadings and their evidence before the court also agree to the dissolution of the marriage as the parties have been separated for a long time now and they are all living their separate lives now. The Petitioner during cross examination was asked:

Q14. When was the last time you lived as husband and wife?

A. 2015 January

Q15. How long did you stay as couples?

A. About 20 years.

Q16. When was the last time you had sex.

A. I cannot remember, more than 6 years.

Q17. During the period of separation has anyone tried to settle your differences?

A. Yes.

Q18. What was the outcome?

A. We were not successful.

It must be noted that Counsel did not challenge any of these evidence that was elicited from the Petitioner and Counsel also did not traversed any of these responses of the Petitioner. It is also clear from the evidence that the parties have not had sexual intercourse for the past 6 years. Therefore, the dissolution of the marriage is not in contention by the parties and also custody of the issues of the marriage is also not in

contention as the Petitioner in her reliefs did not ask for custody as well as the Respondent.

The Petitioner was asked this question during cross examination by counsel for the Respondent and this was the response of the Petitioner before the court.

Q30. Where are the three children staying currently?

A. Eldest is married, 2<sup>nd</sup> born and 3<sup>rd</sup> born are in New Town taking care of themselves.

The Respondent in his evidence before the court, paragraph 3 of his witness statement said the children are 27, 25 and 22 years respectively. Therefore from the evidence before the court, the children are adults now and indeed taking care of themselves.

#### **ANCILLARY RELIEFS**

**Article 22 clause 2 and 3 (a) and (b) of the 1992 Constitution** provides that: **2 Parliament shall, as soon as practicable after coming into force of this constitution, enact legislation regarding the property right of the spouses. 3. With a view achieving the full realization of the rights referred to in clause (2) of this article-**

**(a) Spouses shall have equal access to property jointly acquired during marriage.**

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

The Supreme Court in furtherance of these provisions held in **Mensah v Mensah (1997-98) 2 GLR 193**, that the property acquired during the subsistence of a marriage became joint property and upon dissolution is to be shared equally, as the ordinary incidence of commerce had no application in marital relationship where the parties jointly acquire property during marriage. The aforementioned clause 3 (b) enjoins the court to distribute jointly acquired properties equitably to the parties upon dissolution of the marriage.

This principle of equitable sharing of joint property on divorce had been given statutory expression as well in the provision of **section 20(1) of the Matrimonial Causes Act 1971 Act 367)** which empowered the court in a divorce case to settle proprietary right of the parties on just and equitable basis. **The section 20(1) provides: “The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable”.**

And it must be stated clearly that it is the property which is jointly acquired during the pendency of the marriage which becomes the subject of distribution and not any property acquired during the pendency of the marriage.

Being an evidential presumption, it is rebuttable by the spouse whose ostensible property is in question or any person challenging the presumption by adducing evidence to prove that the other spouse contributed nothing in the acquisition of the property. See **Fynn v Fynn & Osei [2013-2014] 1 SCGLR 727**. **Fynn v Fynn & Osei** makes it clear that parties in marriage can acquire their personal properties independent of each other even during the pendency of the marriage.

And as Counsel for the Respondent indicated and stated per section 12 (1) of NRCD 323, page 8 of his written submission, even though it is not numbered, parties in such situation are to discharge the burden of persuasion by a preponderance of probabilities. From the evidence before the court, the parties lived together as a couple for about 20 years before the Petitioner left the matrimonial home as the Respondent stated in paragraph 14 of his witness statement. The Respondent again in paragraph 10 of his witness statement stated that the Petitioner on or about 2012 after she secured employment she was able to save some money and purchased a land at Kotoku. From the evidence the Petitioner left the matrimonial home which the parties were living to the acquired property without any

challenge. From the pleadings, the Respondent in his answer stated that he contributed to the building of the house that the Petitioner currently lives in and the building was built during the subsistence of the marriage between the Petitioner and the Respondent.

The Petitioner in her Reply in paragraph 7 vehemently denied paragraph 11, 12, 13 and 14 of Respondent answer and stated further that the Respondent did not even know where the land was located and did not contribute a penny, not in cash or in kind. As required by law, once his assertion was challenged, the Respondent is required during the trial to prove same with evidence and corroborate his claim and not just to mount the witness box and repeat his allegation without proving same. The principle of law is that, a fundamental rule of evidential law, pounded into pulp in judicial pronouncements, is that the party who asserts, assumes the burden of proof, see- **Majolagbe v Larbi [1959] GLR 190; Zabrama v Segbedzi [1991] 2 GLR 223, CA.** Again the Court of Appeal said, *"Where a party makes an averment, and his averment is denied, he is unlikely to be held by the Court to have sufficiently proved that averment by his merely going into the witness-box, and repeating the averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist."*-**Zabrama v Segbedzi [1991] 2 GLR 223, CA.**

During the trial the Petitioner repeated her claim in her pleadings at paragraph 7 that parties contributed and built stores which she later found out that the Respondent had rented it out to other people without her knowledge even though the greater part of the contribution was from her.

During cross examination, the Petitioner was asked this question by Counsel:

Q8. Did you move from Kotobabi to Accra New Town.



A. Yes. The communication of the respondent told us to move to New Town because his grandfather has a piece of land there so we came to develop that land and stayed there.

Q9. Were both places a rented abode?

A. No. Kotobabi was a family house and a family land which we developed our property on same. That is where the respondent stays currently.

These responses during cross examination by Counsel for the Respondent was not denied by Counsel and again was not traversed by Counsel which means the evidence during the cross examination supports the case of the Petitioner that the parties jointly develop the said family land and lived there as the matrimonial home as the Respondent even admitted to same in paragraph 14 of his witness statement. This means that from the record before the court, this was the property the parties jointly acquired, as a matrimonial home where the Respondent currently lives as the evidence was not challenged by Counsel. The Petitioner later took steps to acquire the property she now lives in for herself and not a joint property.

The petitioner was further cross examined as below:

Q21. Was the Respondent aware when you were buying the land?

A. He was not aware.

Q22. Which land was the Respondent aware you were buying?

A. The one he followed me to go and buy. That particular land is at Kotoku but I lost it.

Q24. Did the Respondent make any input of the land you lost?

A. Yes.

From the evidence that was elicited before the court, it is obvious as the said evidence from the Petitioner was not challenged, that even the land the Respondent claims he assisted the Petitioner was not the land that the Petitioner eventually built her said property. From the record there is no evidence that the parties jointly acquired this property where the Petitioner now lives. The parties rather developed a family land jointly and in addition built stores there which they intended to jointly use and they were using same as a matrimonial home.

Later as the Petitioner testified, she decided to move out of the matrimonial home as a result of various challenges she was facing living in their property on a family land and decided to acquire a land and develop so that she can move out and occupy same. And in the answer of the Respondent to a question she was asked under cross examination, question 26, the said property is still not complete. From the record there is no evidence the respondent challenged the movement of the Petitioner to this house. There is no evidence that the Respondent has ever lived in this house or made attempt to move there or even visited or had anything to do with this property which is still not done.

I agree with Counsel when he stated in his written submission, at page 11, that, "The Supreme Court went on further to explain what constitute joint property in the following remarks; *"what this means, in effect is that, it is not every property acquired single handedly by any of the spouses during the subsistence of a marriage that can be termed as a 'jointly-acquired' property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial, to have been jointly acquired, irrespective of whether or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition"*. This position of the law is that since it is not every property acquired during the subsistence of the marriage that can be considered as 'jointly-

acquired', it means, that determination ought to be made first from the evidence before the court, after which contribution of parties will be considered and if it is non-financial as it is in this case as the Respondent himself indicated, then other methods of contribution can be considered, then Counsel can rely on the authority of **Mensah v Mensah** that he cited in the penultimate page of his written address.

From all the foregoing it is obvious that this property is not a jointly acquired property during the subsistence of the marriage and as the authority of **Fynn v Fynn and Another** established, parties in marriage can still own their individual properties which is the situation in this case before the court. I therefore come to the conclusion and make a finding of fact that, the said property, House Number DR115, Montana Street, Kotoku in the Ga West Municipal District is not a jointly acquired property for distribution at the dissolution of the marriage.

In conclusion the marriage of the parties is dissolved in favour of the Petitioner as same is broken down beyond reconciliation. There will be no order as to cost.