

IN THE DISTRICT COURT '1' BEFORE HIS HONOUR JAMES K.
BOTAH ESQ. SITTING ON THURSDAY THE 27TH OF APRIL 2023 AS
AN ADDITIONAL MAGISTRATE

SUIT NO. A4/3/2022

MARY ANNAN - PETITIONER

VRS

ISHMAEL SAM AGGREY - RESPONDENT

PARTIES - PRESENT

FELIX AWUAH FOR RESPONDENT

JUDGMENT

On 26th April 2022 the Petitioner filed a Petition for Divorce against the Respondent seeking the following reliefs;

- (1) That the marriage contracted between the parties be dissolved by the court for peace to prevail;
- (2) That Respondent be compelled to maintain Petitioner in the sum of GHC300.00 per month till the final dissolution of the case;
- (3) The Respondent be compelled to share equally the uncompleted 10 bedroom apartment situate at Mempeasem New Site which was acquired during the subsistence of the marriage;

- (4) That Respondent be compelled to share equally three (3) plots of land comprising 100 x 100 feet situate at Mempeasem;
- (5) That Respondent be ordered to stop threatening Petitioner to vacate from their self-acquired landed property till the final determination of the case.

On 30/8/2021 the Respondent filed his answer to the Petition for Divorce and cross-petitioned for:

- (1) That the land at Biriwa should be divided into two (2) and shared between the parties or in the alternative Petitioner should pay back to the Respondent the GH¢1,000.00 Respondent gave Petitioner for the acquisition of the said land with interest;
- (2) That the Petitioner be made to bear all the incidentals arising out of this suit; and
- (3) Any other orders as this Honourable Court may deem fit so to order.

THE PETITIONER'S CASE

The Petitioner complained in her Witness Statement that the Respondent does not maintain her as a wife and she is solely responsible with help from her siblings for catering for herself and her children. Petitioner said the Respondent insults her that she is a witch and a prostitute.

According to Petitioner, Respondent has threatened to drive her from the matrimonial home so that he can bring in another woman. Petitioner further complained to the court that in 2019 a misunderstanding ensued between the parties and then the Respondent hit her in her face and the matter ended up at the Circuit Court, Cape Coast.

Petitioner informed the court that the Respondent does not eat her food and has refused to have conjugal relations with her for the past three (3) years now. According to Petitioner attempts by their family members to reconcile their differences and the marriage has yielded no result due to the unco-operative attitude of the Respondent.

The Petitioner stated in her Witness Statement that the parties purchased the Mempeasem land which consisted of four (4) plots of land at the sum of Ten Cedis by then and that she contributed five cedis toward the purchase of the land. According to the Petitioner the Respondent registered the land in his name claiming that the property belongs to them as a couple. Petitioner said the parties built the house on the land together as their matrimonial home. According to the Petitioner she and her children carried water and also broke stones for the workers to use for the project. The building is at an uncompleted stage.

Petitioner called a witness, PW 1, Lord Sam Aggrey who largely corroborated her evidence.

THE RESPONDENT'S CASE

The Respondent stated in his Witness Statement that the Petitioner has failed for the past nine (9) years now to live with him as husband and wife. The Petitioner has also refused to cook for him, wash his clothing or have conjugal relations with him. Petitioner told the court that sometime in 2017 he came from work and saw his things thrown on the verandah and that ever since he has not stayed with the Petitioner in the same room. Respondent said he complained to the Petitioner's parents about her behavior and she was advised to change her ways but she did not.

The Respondent informed the court that he solely acquired the four (4) plots of land at Mempeasem, Cape Coast in 1990 and registered same in 1994 and that he acquired the land before co-habiting with the Petitioner. Respondent said in 2018 he sold three (3) plots of the land to a friend in order to raise money for his surgery and for the education of his children. Respondent attached Exhibit "B" to his Witness Statement in proof of his assertion.

Per paragraphs 27 and 28 of his Witness Statement, the Respondent consents that the marriage between the parties be dissolved.

ISSUES FOR DETERMINATION

- (1) Whether or not the marriage between the parties has broken down beyond reconciliation; and
- (2) Whether or not the Petitioner is entitled to an equal share of the uncompleted house at Mempeasem, Cape Coast;

Per section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) the main grounds upon which the court shall grant a Petition for Divorce shall be where the marriage between the parties has broken down beyond reconciliation. The Petitioner has the burden of proof to demonstrate that the marriage has broken down beyond reconciliation. Section 2 (1) (a) to (f) of Act 367 states the grounds for the dissolution of a marriage which includes unreasonable behavior, adultery, irreconcilable differences, desertion and failure by the parties to live together as husband and wife for a continuous period of two (2) to five (5) years preceding the filing of the Petition for Divorce. Mutual consent by the parties for the dissolution of the marriage is an additional grounds that the court takes into consideration.

Per the evidence on record, both parties have accused each other of unreasonable behavior in the course of the marriage. I also find that the parties have had a number of irreconcilable differences between them which they failed to resolve even with the help of their families.

Evaluating the evidence in totality, I am satisfied that the marriage celebrated between the parties on 14/10/2001 at the office of the Registrar of Marriages, Cape Coast has broken down beyond reconciliation and same is accordingly dissolved.

The Marriage Certificate which evidence the said marriage between the parties is hereby cancelled and declared null and void.

In respect of the second issue for determination, the Supreme Court in the case of Adjei v. Adjei Civil Appeal No. J4/06/2021 delivered on 21/4/2021 held that properties jointly acquired by spouses in the subsistence of the marriage is presumed to be spousal property and must be shared equally between the parties upon the dissolution of the marriage unless a party is able to lead evidence to rebut the presumption.

The Respondent rebutted the Petitioner's claim that the parties jointly acquired the Mempeasem land on which the property is being built. According to the Respondent he solely purchased the land at the time the parties were co-habiting. However, he failed to show any documentary proof of his sole ownership of the land or the property. The court believes the Petitioner's evidence that she and her children fetched water for the construction of the building and also crashed stones required for the project.

In the case of Quartson v. Quartson [2012] 2 SCGLR 1077 the Supreme Court held that where a person is married to another and performs various household chores for the other partner so that he can have a free hand to engage in economic activities she must not be discriminated against in the distribution of property acquired during the marriage when the marriage is being dissolved.

Accordingly, an order is hereby made for the Petitioner to have a half share of the ten (10) bedroom apartment situated at Mempeasem, Cape Coast. For the avoidance of doubt, the Petitioner is hereby given five (5) bedrooms of the ten (10) bedroom house whilst the Respondent is to retain five (5) bedrooms. Alternatively, an order is hereby made for the uncompleted house to be valued and the Respondent pays half of the monetary value of the property to the Petitioner for the retention of the entire property.

Per the evidence on record, the Respondent has already sold off three (3) of the plots of land according to him to meet his medical needs and the educational needs of the children. The Petitioner's relief 4 is therefore mute.

In respect of the Petitioner's relief 2, an order is hereby made for the Respondent to maintain the Petitioner in the sum of GH¢300.00 per month effective from August 2021 when the Petition for Divorce was filed to today 27/4/2023 being the date of judgment.

Again for the avoidance of doubt the Respondent is ordered to pay a total of GH¢6,300.00 as maintenance arrears the Petitioner is entitled to from him.

In respect of the Respondent's cross-petition for an equal share of the land at Biriwa, he stated at paragraph 14 and of his answer that he gave money to the Petitioner to acquire a plot of land at Biriwa and that the Biriwa land was jointly acquired by the parties. The Respondent did not lead evidence in his Witness Statement to support his claim.

His cross-petition gives a hint that he contributed by giving GH¢1,000.00 to the Petitioner to purchase the Biriwa land. On the matter of the Biriwa land, counsel for Respondent cross-examined the Petitioner as follows:

Q. In 2012 Respondent helped you to acquire land at Biriwa.

A. That is not true.

Q. You're not truthful to the court. The land was purchased.

A. It's not true.


Q. You have recently sold the land.

A. Respondent never gave me money.

Q. You're not truthful to the court.

A. I am speaking the truth.

The Petitioner failed to cross-examine the Respondent on his cross-petition for the Biriwa land which amounts to an admission of his claim. Besides, the Petitioner failed to provide evidence in her Witness Statement to show that the Biriwa land was solely her property. When counsel for Respondent sought to find out from the Petitioner whether or not she has sold off the Biriwa land, she failed to give a positive answer. Considering the evidence on record and the pleadings, I am convinced that the Respondent financially assisted the Petitioner to acquire the Biriwa land during the subsistence of the marriage. An order is hereby made for the Respondent to have a half ($\frac{1}{2}$) share of the Biriwa land or alternatively the Petitioner is ordered to refund the GH¢1,000.00 to the Respondent as his financial contribution towards the acquisition of the Biriwa land.


H/H JAMES K. BOTAH ESQ.
(CIRCUIT COURT JUDGE)