CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE, DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS' COLLEGE, ACCRA ON 22ND SEPTEMBER, 2023.

SUIT NO. A8/116/22

SALAMATU YAKUBU
TABORA :: PETITIONER

VRS.

PETER ASANTE
KANESHIE
ABOSSEY OKAI :: RESPONDENT

JUDGMENT

INTRODUCTION

The Petitioner herein instituted this action in this Honourable Court against the Respondent on 5th April 2022 praying for the following reliefs:

a. The marriage between Petitioner and Respondent be dissolved quickly as same is broken down beyond reconciliation.

b. That an order for the financial settlement of an amount of Fifty Thousand Ghana Cedis (GH¢ 50,000.00).

c. An order for the shop at Abossey Okai which the Respondent is operating to be shared equally.

The Respondent in his Answer to Petition and Cross Petition filed on 27th April 2022 also prayed for the following:

a. A declaration that the marriage between the parties has not broken down beyond reconciliation.
b. A declaration that the Petitioner is not entitled to her reliefs or any at all.
c. Any other relief as this Court may deem fit.

At the close of trial, Counsel for Respondent addressed the Court through a Written Submission filed on 12th July 2023., urging the Court not to grant the reliefs being sought by the Petitioner.

PETITIONER'S CASE

According to the Petitioner, the parties married on 7th February 2019 at the Accra Metropolitan Assembly, Accra and cohabited thereafter at Omanjor. The parties have no child together. The Petitioner averred that she was a seamstress and also hawked in second hand clothing prior to marriage but the Respondent asked her to stop the hawking so that he would put up a container for her for her business so that she would be stable. She stated that in the year 2019, the Respondent took GH¢ 3,900.00 from her from proceeds of her business to put up a container for her but it was after a year before he brought the container with no roofing so she decided to roof it but the Respondent prevented her, saying that it was for his brother. She stated that the Respondent sold the container without her knowledge and used the money taken from her to establish his shop at Abossey Okai.

The Petitioner averred that the Respondent had a plot of land at Liberia Camp (Big Apple) prior to their marriage, which land she assisted Respondent to build a two chamber and hall self-contained house thereon and they moved in after its completion as their

matrimonial home. She stated that the Respondent did not permit her to arrange her belongings in their room.

She stated that that the Respondent removed his ring the month after they married, spent nights outside home, was disrespectful to her, exhibited a cold attitude towards her, failed to eat her meals, refused to play his husbandly role, told her that he regretted marrying her, had failed to have sexual intercourse with her for over three years and had stopped remitting her since December 2021. She stated that she was informed by the Respondent that there was not going to be peace in the house since had not been able to conceive and he brought her a herbal medicine to take to conceive which almost caused her death.

The Petitioner averred that she was ordered by the Respondent to pack out of the matrimonial home because she had found another woman who could give him a child. She stated that she had to leave the matrimonial home due to Respondent's conduct and upon the advice of both families for peace to prevail. She further stated that she received a call from Respondent's father for her to go and pack her belongings from the matrimonial home to enable Respondent to marry.

RESPONDENT'S CASE

The Respondent averred that he had been doing everything with the Petitioners such as going to church with her and buying cloths for her every three days and that her absence had made it difficult for him to go to church since the church members often asked of her whereabout. He averred that he had a container in 2018 prior to marrying the Petitioner but he had to sell same to take care of the hospital expenses of the Petitioner and that the money from the sale was given to Petitioner. He further averred that due to the high cost of the hospital bills, he asked the Petitioner to use part of her savings of GH¢ 3,900.00 to pay off for him to refund and he had refunded with a balance of GH¢ 1,100.00. The

Respondent stated that the Petitioner was asked to stop work temporarily by her doctor since they were trying to conceive.

According to the Respondent, the Petitioner once left the house after an altercation, failing to return home until the next day and she refused to disclose to him where she went and consequently, he removed his ring and informed her that he would not put it on until she told him where she went, which she has still failed to do. He stated that there had been several attempts at reconciliation which had been made unsuccessful by Petitioner and that she insisted he rents an apartment for her which he had done but Petitioner had made it clear that she would not let him know its location and he should not come near the house. The Respondent stated that all the reasons advanced by the Petitioner for a divorce were untrue and that her action was rather premised on photographs she saw of him and a baby at Bawjiase orphanage which Petitioner thought was his child. He stated that he loved the Petitioner and wants her back home and as such, the Petitioner is not entitled to her reliefs.

The Respondent averred that he acquired a half plot of land in the year 2013 and started developing a three-bedroom self-contained house on it in 2014 and as at the time of marriage, the building had reached lintel level. He stated that upon the expiration of his rent, it was decided that he raises one of the rooms for them to move in, instead of renting a new place.

ISSUES

The main issues arising for determination are:

1. Whether or not the marriage between the parties has broken down beyond reconciliation.

2. Whether or not the shop operated by the Respondent at Abossey Okai ought to be shared equally between the parties.
3. Whether or not the Petitioner is entitled to receive financial settlement of Fifty Thousand Ghana Cedis (GH¢ 50,000.00).

EVALUATION OF EVIDENCE AND LEGAL ANALYSIS

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. The one who alleges, be (s)he a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when (s)he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be. See the following:

> **Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)**
> **Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900**
> **GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458**
> **Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C**

In the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003 – 2004] SCGLR 420** His Lordship Brobbey JSC on the burden of proof held as follows:

> *"The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the defendant... At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce*

the determination to be made in his favour…" See also **Tagoe v. Accra Brewery [2016] 93 GMJ 103 @ 123 S.C** per Benin, JSC.

In a case where a Cross Petition is filed by a Respondent, the Respondent assumes the position of a Petitioner as regards his or her Cross Petition and would therefore have to prove the cross petition. The Supreme Court speaking on the burden of proof on a Defendant who has a Counterclaim held in the case of **Nortey (No. 2) v African Institute of Journalism and Communication & Others (No. 2) [2013-2014] 1 SCGLR 703** as follows:

> *"Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323 the Evidence Act (1975)."*

The Court of Appeal also noted as follows on the same topic in the case **Alex Etoh Kwaku v Bridgette Ofosu Asabea [2014] 72 GMJ 68**:

> *"It is trite learning that in civil suits when the defendant counterclaims, for the purposes of the relief, that party becomes the plaintiff and bears the same burden of establishing that relief. The yardstick being the same as the plaintiff, on the preponderance of probabilities."*

Both the Petitioner and the Respondent herein therefore had the duty in the course of the suit to produce sufficient evidence in respect of their respective claims on a balance of probabilities for a determination to be made in their favour. See also the case of **In Re Krah (Decd.); Yankyeraah v Osei-Tutu & Another [1989] DLSC 601**.

Issue 1.

Section 1(1) of the Matrimonial Causes Act, 1971 (Act 367) allows either party to a marriage to present a petition to the Court for divorce. **Section 1(2)** of the Act further emphasizes that, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In order to prove that a marriage has broken down beyond reconciliation, a Petitioner has the duty of satisfying the Court of the existence of at least one of the following six facts specified in section 2(1)(a) - (f) of Act 367:

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 a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce; provided that such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal;
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.

It is trite that merely asserting that a marriage has broken down irretrievably would not suffice for the Court to grant a relief for dissolution of a marriage and that the evidence

before the Court should be the guiding light of the Court. See: **Charles Akpene Ameko v Saphira Kyerema Agbenu [2015] 91 G.M.J. 202 @ 221; Michael Kyei Baffour v Gloria Carlis Anaman [2018] 123 GMJ 95; Donkor v Donkor [1982-83] GLR 1158; Adjetey v Adjetey [1973] 1 GLR 216**).

Both parties testified and the Respondent in addition called two witnesses in support of his case. From the evidence-in-chief of the Petitioner, the parties married on 7th February 2019 at the Accra Metropolitan Assembly, Accra as evidenced by Exhibit 'A'. She testified that they stayed at Omanjor.

The parties held different opinions in respect of the status of their marriage; whilst the Petitioner's evidence was to the effect that the marriage had broken down beyond reconciliation, the Respondent held the stance that the marriage had not broken down. For him, the Petition was instituted by the Petitioner only because she saw photographs of him with a baby, and she thought that child was his, although the child was an inmate of an orphanage he only took pictures with. This transpired under cross examination of the Petitioner by Counsel for the Respondent:

> Q: I put it to you that the marriage has not broken down beyond reconciliation
> A: It has.
>
> Q: The only reason why you want a dissolution is because you saw a picture of your husband and a small girl who you thought was his child.
> A: That is not so. That is not even my problem at all that is why I did not add it to my case.
>
> Q: You instituted your petition immediately after you saw that picture
> A: That is not true. Even before I saw the picture, respondent had lodged a complaint with his parents and a third party had sat in the settlement attempt. I do not have an issue at all if he has a child.

Q: Is it not true that respondent directed you to the Bawjiase orphanage home where he took the picture with the child?

A: That is so. Before he showed me there, I had asked whose child it was because I thought the picture was even taken at the outdooring ceremony of his friend Richard's child. I even said the child was beautiful. It was then that he told me that the child is his child, his second born whom he wants to bring and he asked if I would look after her and I replied that I would.

Q: I put it to you that was not the case and that you insisted leaving the marriage after seeing the pictures?

A: That is not so and as I earlier said, before I saw that picture, he had lodged a complaint with his father and I had been called.

There was nothing in either the Petitioner's Petition or her evidence to even slightly suggest that her reason or one of her reasons for seeking dissolution of the marriage was due to any allegation of the Respondent having had a child outside marriage. The Petitioner was very clear from her responses that that was not an issue at all to her in instituting this Petition. The Respondent cannot force his own perception of things on the Petitioner, when she has not relied on that as her basis for her prayer for dissolution.

The Petitioner's evidence in respect of the alleged breakdown of the marriage was that the Respondent failed to eat her meals, beat her, was not returning home sometimes after work and got angry when she called him on phone. She stated that he stopped having sexual intercourse with her saying that it was a waste of his strength since she had not borne him a child. According to the Petitioner, she reported Respondent's conduct to his father and despite several talks from his father, Respondent insisted that he was not interested in the marriage. She stated that the Respondent was angry whenever he returned from work, his reason being that she had made him move to a faraway place, and this generated into quarrels. Under cross examination of the Respondent by the

Petitioner, she maintained that he had been assaulted by Respondent and the Respondent denied this:

> Q: I put it to you that if I remain in the marriage I will die because you have been assaulting me physically.
>
> A: That is not true.

The Respondent denied the allegations of the Petitioner. He denied shirking his responsibilities or ever saying that he regretted marrying Petitioner. Under cross examination of the Petitioner by Counsel for the Respondent, the case of the Respondent remained a denial of the Petitioner's assertions:

> Q: I put it to you that the respondent has never assaulted you before
>
> A: He has, he even started beating me at our rented apartment before we moved to our matrimonial home. He also insulted me.
>
> Q: I put it to you that it is not true
>
> A: It is not true. Even his father can corroborate it and said he will get into trouble if he talks about it.

The law is certain on who bears the duty to satisfy the Court in respect of assertions made. In this instance, the Petitioner had the responsibility of proving on the preponderance of probabilities, the allegations she made against the Respondent and not to merely repeat her averments which had already been denied, on oath. This Court found not to have been substantiated and as such, the Court cannot conclude that the Respondent has behaved unreasonably for which reason the Petitioner would not be expected to live with the Respondent.

Section 2(1) (f) of the Matrimonial Causes Act, 1971 (Act 367) is to the effect that, one of the facts for establishing that a marriage has broken down beyond reconciliation is to establish that the parties to the marriage have, after diligent efforts, been unable to reconcile their differences.

The Petitioner's case was that the parties had been unable to reconcile their differences and as such, they have been living apart for some time now. The Respondent himself corroborated the Petitioner's case in respect of their inability to reconcile their differences after diligent efforts. According to him, there had been at least six attempts made at settlement but they had all been unsuccessful, and that the Petitioner insisted on him renting accommodation for her, which he did. The following which also ensued under cross examination of the Petitioner by the Respondent's Counsel also affirms that diligent efforts had been made at settlement, which had proved futile:

> Q: Is it not true that there have been about 6 attempts at settlement?
> A: That is true. We have tried many times but settlement was unsuccessful
>
> Q: I put it to you that in furtherance to the settlement, you insisted to move out of the house for respondent to hire a place for you?
> A: That is so. He said he did not want me to stay with him so I told him that I did not have anywhere to stay since my parents are in the North so he would have to rent a place for me.
>
> Q: I put it to you that all the settlement efforts did not succeed because of you.
> A: It is not true because of the treatment I endured under him and there was no change in his behaviour. He had stopped me from working so I told him to be maintaining me. He used to give me Gh¢20.00 a day and it was for 2 months and he stopped. He was not calling me or communicating with me. Nothing showed he loved me or was interested in the marriage.

The Court finds as a fact that all the attempts at settlement of the parties' differences have not been successful despite steps taken by their family members in that respect. It is important to also note that the parties have been living apart from each other for some time now. It will therefore not be in the interest of the parties to order them to resume staying together to continue their lives as a married couple having regard to their

irreconcilable differences. Based on this fact, the Court finds that the marriage between the parties has indeed broken down beyond reconciliation.

Issue 2.

According to the Petitioner, she was engaged in selling second-hand clothing and working as a seamstress prior to their marriage but the Respondent informed her that he would put up a shop for her so that she stops selling the second-hand clothing, which he put up at Ablekuma Olebu but he sold the container without her knowledge. She stated that the Respondent sought for financial assistance from her to secure a job at Abossey Okai since the one he was working with could no longer work with him and she therefore gave him GH¢ 3,900.00. When she was subjected to cross examination, this ensued:

> Q: I put it to you that you never gave the respondent money to rent a store at Abossey Okai.
> A: Not true. I gave him the money and when he went for the shop, I went with him and a pastor on the Sunday to go and pray over it and the next day he started working. From that time, the respondent prevented me from coming to that shop so the day we went to serve him with the Writ of summons was the second time I stepped foot there. When I asked respondent why he was preventing me from stepping foot at the shop, he told me that if something was happening to him at the shop, they would not wait for me to come first before any action is taken.
>
> Q: I put it to you that your assertion that you contributed towards renting of the store at Abossey Okai is not true?
> A: What I said is true. I assisted him to get the shop and we went with the pastor to consecrate it.

The Respondent on the other hand testified that he had to sell his container which he acquired before marriage, due to the medical expenses incurred on Petitioner in a bid for her to conceive and that the money was handed over to Petitioner and a portion was used to pay for an electric sewing machine used by Petitioner. He stated that due to the huge cost involved in the medical treatment, he asked the Petitioner to use GH¢ 3,900.00 out of her savings to support in paying the medical bills, which amount he has refunded part and was left with a balance of GH¢ 1,100.00 to pay.

He stated that he worked with someone known as Aboagye for about seven years before marriage but at a point, the said Aboagye had need of his shop and he was therefore compelled to rent a store, which he had to pay goodwill of GH¢ 15,000.00 and rent of GH¢ 2,880.00 and he took GH¢ 4,000.00 from his friend known as Cee to support in paying. He stated that he rented the store and did not buy it and denied taking money from the Petitioner to rent it.

The evidence of DW1, Richard Tawiah, was that he was the one who recommended to Respondent, the renting of the store the latter currently operates, when he heard that the store was up for rent. He further stated that three weeks thereafter, the Respondent brought an amount of Fifteen Thousand Ghana Cedis and they both went to see the landlord to make payment. DW2, Amos Yanney (Cee) also testified that the Respondent informed him about three years ago that he was renting a store at Abossey Okai and needed Four Thousand Ghana Cedis to top up the rent which was Fifteen Thousand Ghana Cedis. He gave him the money in cash and the Respondent refunded the money about four months ago.

I find that the Petitioner's evidence as against her pleadings on the issue of the shop and container had some material inconsistencies. From her Petition, she loaned out the money to the Respondent to put up a container for her and it was after a year that the container was put up but it had no roofing, and the Respondent sold same without her knowledge.

In in her evidence however, she rather stated that she gave the money to him to rent a shop at Abossey Okai and he did and they went for its consecration. I find the evidence of the Respondent and his witnesses on the issue of the shop more compelling and prefer their version to Petitioner's. The Petitioner is not entitled to any share in the shop which is not owned by Respondent, but which has only been rented by him.

Issue 3.

The Petitioner as part of her reliefs prayed this Court for financial settlement on her of Fifty Thousand Ghana Cedis. Under **Section 20 of the Matrimonial Causes Act, 1971 (Act 367)**, the Court may amongst others, order either party to the marriage to pay to the other party such sum of money as part of financial provision as the Court thinks just and equitable.

In her Petition, the Petitioner had averred that she assisted the Respondent to build a two chamber and hall self-contained house which they moved into after its completion. The Petitioner's evidence was that when their tenancy expired, she prevailed on the Respondent for them to use the money they would use for rent in building on the land he had but he kicked against her suggestion, saying that the place was undeveloped and she therefore had to make his father intervene before he agreed. She testified that whenever the Respondent was going to work, he left money for the work at the building site and she would go there to work, fetching water for the masons. She added that during the lintel stage, she went in for wood for use and that although Respondent's father accompanied her, he could not assist with the manual work due to his advanced age. She stated that they were able to roof the house but the Respondent stated that he was financially constrained so she asked that they move in without tiling so that they lay a carpet, and it was after they moved in that the tiling was done.

According to the Respondent, he acquired a half plot of land in the year 2013 and at the time he married the Petitioner, he had reached the lintel level. He tendered in evidence photographs of the property as Exhibit 1 series. He testified that when the rent for the accommodation they occupied expired, they decided that he would raise one room for them to move in, without any louvre blades fixed.

Once it is established that certain properties are marital properties based on the facts before the Court, settlement would be made appropriately by the Court. Marital property has been defined to be property acquired by the spouses in the course of their marriage regardless of whether the other spouse has made a financial contribution or not (His Lordship Date-Bah JSC in **Arthur v Arthur (supra)**). See also the cases of **Peter Adjei v Margaret Adjei (Civil Appeal No. J4/06/2021 dated 21st April 2021), Mensah v Mensah [2012] 1 SCGLR 391** and **Arthur v Arthur [2013-2014] 1SCGLR 543**.

In **Quartson v Quartson [2012] 2 SCGLR 1077** His Lordship Ansah, JSC noted as follows:

> *"**The Supreme Court's previous decision in the Mensah v Mensah is not to be taken as a blanket ruling that affords spouses unwarranted access to property when it is clear on the evidence that they are not so entitled. Its application and effect will continue to be shaped and defined to cater for the specifics of each case**. The decision as we see it should be applied on a case by case basis, with the view to achieving equality in the sharing of marital property. Consequently, the facts of each case would determine the extent to which the decision in Mensah v Mensah applies."*

The Supreme Court affirmed its ratio in the Mensah v Mensah case in the case of **Arthur (No. 1) v Arthur (No.1) [2013-2014] SCGLR 543** and further held that properties acquired during the subsistence of marriage is presumed to be jointly acquired property. In **Fynn v Fynn & Osei [2013-2014] SCGLR 727**, the Court distinguished the right of an individual to acquire property from its earlier decisions in Mensah v Mensah and Quartson v Quartson and held that **there are situations where, within the union, parties may**

acquire property in their individual capacities and that position is envisaged by Article 18 of the 1992 Constitution (emphasis mine). Having considered all these decisions and others, His Lordship Appau, JSC, delivering the majority decision of the Court in the case of **Peter Adjei v Margaret Adjei (2021) JELR 109034 (SC)** made this profound statement which I find very useful to reproduce:

> *"The combined effect of the decisions referred to supra is that; any property that is acquired during the subsistence of a marriage… is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on the equality is equity principle. This presumption of joint acquisition 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 or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition. The operative term or phrase is; "property jointly acquired during the subsistence of the marriage". So where a spouse is able to lead evidence in rebuttal or to the contrary, as was the case in Fynn v. Fynn (supra), the presumption theory of joint acquisition collapses…*
>
> *With the decisions in the Mensah, Quartson and Arthur cases (supra), it was no longer essential for a spouse to prove a direct, pecuniary or substantial contribution in any form to the acquisition of marital property to qualify for a share. It was sufficient if the property was acquired during the subsistence of the marriage. However, where such evidence exists, it is necessary that a spouse alleging such a contribution must render or offer it to quantify his/her share or portion in the property so acquired on the equity principle. The rationale behind this position was that the duties performed by the wife in the home like cooking for the family, cleaning and nurturing the children of the marriage, etc. which go a long way to create an enabling atmosphere for the other spouse to work in peace towards the*

acquisition of the properties concerned, was enough contribution that should merit the wife a share in the said properties. It must be emphasized, however, that it is not every wife to a marriage who diligently performs this marital role that the courts, since the days of RIMMER v. RIMMER [1952] 1 QB 63 @ p 73, per Denning LJ, have talked so much about. It is therefore necessary that such a contribution or non-contribution must be demonstrated in the evidence adduced at the trial. It is for this reason that the authorities regard this general principle of 'joint acquisition' as a presumption that could be rebutted by contrary evidence… This Court held that there are situations where, within the marital union, parties may acquire property in their individual capacities as envisaged under article 18 of the 1992 Constitution."

It is a finding of fact from the evidence that the Respondent acquired the land on which the building has been raised before marriage and he started construction before marriage. The Respondent tendered in evidence photographs of the stage of the construction as at then. It is apparent from the evidence that the construction came to a standstill for some time until the tenancy of the parties' rented accommodation expired and it was at that point that it became imperative for the Respondent to quickly raise a room for them to move in, upon the good counsel of the Petitioner. It is also a finding of fact that the Petitioner made no financial contribution to the building, which is uncompleted. It is a finding of fact as well that she assisted the Respondent by going to the site and carrying water and wood for the construction. DW1 under cross examination even confirmed that the Petitioner went to his house for wood for the construction.

As at the time the parties moved into the property, only one room had been raised and even with that, some work still remained undone such as tiling and fixing of toilet facility inside and from the evidence on record, the entire structure is not yet completed. I find

from the evidence that the Respondent was exercising his right under Article 18 of the 1992 Constitution to acquire and own his property in his individual capacity. From the evidence, I do not consider the building which is still not finally completed, with two more rooms still to be raised, as being a marital property for which a portion ought to be settled on the Petitioner.

In considering financial settlement, some of the factors taken into consideration include the financial needs and resources of both parties, the standard of living enjoyed during the marriage and the parties' current circumstances, the duration of the marriage, and the contributions made by each party to the welfare of the family, the parties' conduct, station in life, age and means of the parties, any agreement, if any, made between the parties regarding alimony. It is necessary to state that there is no cut and dried rule but the peculiarities of each case inform the Court in making any decision in respect of financial provision or alimony, having regards to the specific facts and evidence adduced.

In the case of **Isaac Kwame Amoah Ahinful v Anne Marie Ahinful (2016) JELR 107733 (HC)**, the Court made reference to the 6th Edition of the Black's Law Dictionary in defining alimony as: "…sustenance or support of the wife by her divorced husband and stems from the common law right of the wife to support by her husband. Allowances which the husband or wife by court order pays to the other spouse for maintenance while they are separated or after they are divorced (permanent alimony) …" and the Court was unambiguous that the award of alimony or financial provision, does not automatically follow an order of dissolution of a marriage. Thus, it is dependent on the circumstances of each case and must be just and equitable.

In the case of **Aikins v. Aikins (1979) GLR 223**, the Court took into account factors such as the fact that the wife did not have any capital assets of her own, that for many years prior to the presentation of the Petition she had not worked, that she required some funds to rent a premises for herself and her children, and to set herself up in business, and

accordingly awarded her lump sum payment. The Supreme Court also granted the Petitioner in the case of **Quartson v. Quartson [2012] 2 SCGLR 1077** a lump sum financial provision on the basis of need; the necessity for her to have some funds to survive on whiles she re-organized her life. In **Beatrice Oye Plokhaar v Sterian Plokhaar (2016) JELR 108100 (HC)**, the Court also emphasized that the Court in deciding whether to grant financial provision to a party or not was to examine the need of the parties.

In the present circumstances of the case, the Petitioner is a seamstress whereas the Respondent is a spare parts dealer. The parties had been married for only three years when the Petition was instituted. The Petitioner has supported the Respondent in the course of their marriage as a wife. It is apparent from the evidence on record that the Respondent has also greatly assisted the Petitioner in their bid for her to conceive and as a result, she had to pay frequent visits to the hospital such as Lapaz Community Hospital, Ridge Hospital, Sam Jay Hospital and for all these, the Respondent had to bear the expenses involved. The Petitioner admits that the Respondent has also rented accommodation for her. Considering all these factors, I believe it would be fair in the circumstances for the Respondent to support the Petitioner with a sum of Five Thousand Ghana Cedis as financial provision.

CONCLUSION

From the totality of the evidence adduced in the trial by the parties and from all the foregoing, this Court is satisfied that the marriage between the parties has broken down beyond reconciliation. I therefore hold as follows:

a. That the marriage celebrated between the parties on 7th February 2019 at the Accra Metropolitan Assembly, Accra is hereby dissolved.

b. That the Petitioner is not entitled to a share in the shop at Abossey Okai.

c. That the Respondent is to pay to the Petitioner an amount of Five Thousand Ghana Cedis (GH¢ 5,000.00) as financial settlement.

d. There shall be no order as at cost.

[SGD]

AMA ADOMAKO-KWAKYE (MS.)

(MAGISTRATE)

Counsel

No legal representation for the Petitioner.

Richard Twumasi-Ankrah, Esq.for the Respondent.