CORAM: HER WORSHIP MRS. ANNETTE SOPHIA ESSEL, SITTING AS DISTRICT MAGISTRATE, AMASAMAN DISTRICT COURT "B" ON THE 26th DAY OF OCTOBER, 2023.

SUIT NUMBER: **A4/119/ 23**

PEPERTUAL AKWAA — **PETITIONER**
NO. 45 ADU GYAMFI STREET
TAIFA – ACCRA

VRS

AFARI VERONICA INKOOM — **RESPONDENT**
POKUASE, ACCRA

JUDGMENT

INTRODUCTION:

This is a wife's petition for the dissolution of her marriage to the respondent in this suit. The petitioner and respondent are Ghanaian citizens domiciled in Ghana. In 1994, parties were customarily married under the Akuapem custom. After the marriage, parties cohabited at Taifa Town in the Greater-Accra Region of the Republic of Ghana. The petitioner is a petty trader and the respondent is an ambulance driver by occupation. There are two issues in this marriage namely Rebecca Awuah Afari aged twenty-seven (27) years and Tiobea Awuah Afari Ansah aged twenty-four (24) years. There has been no previous court proceeding in respect of this marriage.

The petitioner prays the court for the dissolution of her marriage to the respondent on grounds that parties have not lived together as man and wife for a continuous period of thirteen (13) years thus all conjugal rights between parties have ceased, adultery and unreasonable behaviour.

CASE OF THE PETITIONER:

The petitioner averred that as at the commencement of this action, all communication between parties had ceased. She narrated that in the year 2003, the respondent travelled to the United Kingdom for employment purposes for a period of six years. During this period, he remitted funds for the upkeep of their home which then was populated with parties and their two female children.

She further narrated that upon the respondent's unceremonious return to Ghana, he preferred to live separately from them in a rented facility at Pokuase with explanation that the petitioner and their children were all female and teenagers therefore he needed his privacy. Secondly, he claimed that they all could not be housed in the single room they had all occupied for six years prior to his return, thus he had pre-arranged to rent that facility prior to his arrival in Ghana when actually he wanted to live separately elsewhere for his amorous activities to be concealed from the petitioner.

In this regard, she narrated that even though parties were not living together, she performed her duties as a wife running two homes at different locations, thus she spent every night with the respondent at Pokuase, did his laundry and prepared his meals and additionally performed all household chores at her home in Taifa Town also for a continuous period of eight years.

She recounted that the respondent upon his return to Ghana informed her that he was back in Ghana to formalize procedures for the relocation of himself together with their children to England. He explained to her that since same was an expensive and prolonged process, she keeps the home whilst he paid school fees for their children. In this regard she kept two homes and also assisted the respondent in the payment of school fees for the children.

She asserted that to ensure a bright future for their children, she hawked tirelessly as a trader to provide for the home to the extent that the academic affairs of their children were adversely affected as she was out of the home for the most part. She narrated that she was also assisted by a sibling, friends and relatives in the upkeep of their home. This state of affairs continued for eight continuous years till she realized that the relocation plan of the respondent was simply a hoax.

She recounted that during this period the respondent engaged in extra marital affairs with other women both single and married to the extent that one of such partners of the respondent jeopardized her marriage and another partner with a child was living with the respondent as man and wife. The petitioner lamented that for this reason, the respondent stopped

maintaining their issues in the year 2007, thus she lodged a formal complaint at the International Federation of Women Lawyers – Ghana office (FIDA – Ghana) and the Domestic Violence Support Unit of the Ghana Police Service (DOVVSU) where he was compelled to maintain each child with Fifty Cedis (GHC 50.00) only daily and to which he religiously complied with till parties settled their issues amicably.

The petitioner stated that on one occasion when she confronted the respondent about his adulterous conduct, he physically assaulted her with a stone and threated to divorce her, in this regard he actually sent customary drinks to her family which same was rejected by her relatives.

The petitioner narrated that whilst the respondent was overseas, he secured a parcel of land at Pokuase and thus he returned to Ghana to commence a building project and entertained himself with extra marital affairs. She narrated that even when the respondent moved into his sister's property which was a more spacious living area, he still refused to allow the petitioner and their children to join him under the pretext that he was only a caretaker at that property and assured them that they would come together to live as a family under one roof as soon as he completed his own property thus the petitioner and their children looked forward to this day. The petitioner asserted that they continued to live in a rented single room compound facility and sacrificed to support the respondent towards the achievement of this goal.

The pith of the petitioner's plaint is that when the building which is a jointly-acquired eight single room self-contained residential facility was completed and ready for occupation, the respondent informed her and their children that if they intended to occupy same, they would have to pay rent and has since denied them occupation of same.

She detailed that the respondent did not maintain her as a wife nor their children adequately and regularly and was delinquent in the funding of the educational bills of the children for thirteen (13) continuous years. This extreme hardship resulted in their eldest child's delinquency in school by her involvement in a teenage pregnancy and subsequent participation in several remedial examinations till she entered nursing school. Not to mention the respondent disowned their first child for this reason, she was compelled to single-

handedly bear all ante-natal bills of their child and grandchild. Additionally, she has suffered health challenges such as high blood pressure, a feeling of worthlessness and pain as she was overly disappointed at the respondent's lack of support in the care and upbringing of their children.

She concluded that for the entire twenty-eight years of their marriage, she never cheated on the respondent yet he was currently living with another woman as man and wife under one roof at Pokuase. All attempts at reconciliation by their respective families and loved ones had proven futile. She consequently prayed for the underlisted reliefs:

i. A dissolution of their customary marriage.
ii. A settlement of one half of their jointly acquired residential facility at Pokuase.
iii. A lump sum settlement of Fifty Thousand Cedis (GHC 50,000.00) only.
iv. Cost and legal fees.

In addition to her pleadings and evidence before the court, the petitioner tendered the following exhibits without objection during trial:

1. Exhibit A: A compilation of electricity bills paid for the premises she occupied with their children.
2. Exhibit B Series: Copies of receipts and other fees paid for the oldest child by the petitioner.
3. Exhibit C: Copy of receipt for the payment of rent for the premises occupied by the petitioner and children.
4. Exhibit D Series: Copies of receipt for school fees payment of the second child paid by the petitioner.
5. Exhibit E: Coloured image of the jointly acquired property of parties located at Pokuase.
6. Exhibit F: Valuation Report of properties jointly acquired by parties herein.

CASE OF THE RESPONDENT:

The respondent who was served with the Petition filed his Answer to the Petition on 14th February, 2023. He admitted that indeed parties had been living separate lives for over thirteen (13) years. He explained that this was so due to the unreasonable conduct of the petitioner which commenced upon his unceremonious return to Ghana from the United

Kingdom. He claimed that he returned to Ghana unceremoniously following a rumor that reached him that the petitioner was engaged in an extra-marital affair in his absence.

The respondent narrated that parties cohabited for eight (8) years and bore two (2) children prior to their customary marriage which took place whilst he sojourned in England. He narrated that he travelled out of Ghana in the year 2001 and in his absence maintained his home by remitting the petitioner. He claimed that he additionally set up the petitioner in cement sale business by opening a shop for her at Taifa Market. It was expected that proceeds from same would be used to cater for the provision of the children's necessaries of life.

He denied renting a facility and living in same elsewhere and stated that he returned to live in his brother's property. He admitted that he acquired a parcel of land whilst overseas and remitted his brother to build a five-bedroom house for him. He claimed that he kept this project a secret from the petitioner till he returned to Ghana and took her to view same.

He claimed that indeed he returned to Ghana to process a relocation permit to enable their children to join him in England. He narrated that this plan failed when following a misunderstanding with the petitioner, she called his sponsor and engaged with her leading to the curtailment of his travel plans. He asserted that that upon his return to Ghana, the petitioner remained a dutiful wife till he faced financial challenges which same the petitioner sought redress as above-mentioned. He denied engaging in any extra-marital affairs but admitted that when parties had issues in their marriage, same was amicably settled and the petitioner continued to serve as a dutiful wife.

He did not deny that their estranged period of marriage negatively affected the development of their children although he paid in full all their educational bills. He recounted that when their eldest child got pregnant midway through school, the petitioner expected him to antagonize whoever was responsible for the pregnancy to which he refused. He claimed that this lack of aggression on his part hurt the petitioner so bad that she vacated their matrimonial home and has since failed to returned to same.

He claimed that in January 2022, the petitioner summoned him at FIDA on grounds of adultery during the pendency of their marriage which same was false. He claimed that he was advised at FIDA to dissolve their union customarily if he was no longer interested in the marriage and also as the petitioner had willfully elected not to return to her matrimonial

home for a continuous period of five (5) years. In this regard their families met in September, 2022 and same was dissolved customarily, where he was compelled to pay alimony of Eight Thousand Cedis (GHC 8,000.00) only which same he paid over to the petitioner in installments. He stated that he did not hear from the petitioner till this action commenced.

With respect to their jointly acquired property, he stated in his pleadings that he took monies from other persons to complete the building with an agreement to let out same to them upon completion which he was abiding by, thus it was not so that he had denied the petitioner and their children a place in their matrimonial home. In his evidence before the court, he stated that he built the property in dispute for all his four children. In this project he took a loan of Ten Thousand Pounds Sterling (GBP 10,000.00) only from Theophilus Ohene which same he had not offset yet. In support of his averment, he tendered Exhibit 1 which is a statutory declaration by the respondent and Theophilus Ohene in respect of this loan and also Exhibit 2 series and 3 series which are copies of receipts of building materials purchased by the respondent.

To buttress his testimony under oath, he called one witness; Apasiwa Akuffo his niece who testified to the dissolution of the customary marriage between parties and the payment of Eight Thousand Cedis (GHC 8,000.00) only in two installments to the petitioner at a family gathering of both parties.

In conclusion he was not opposed to the dissolution of their marriage but was vehemently opposed to the payment of alimony on grounds that on an earlier occasion he had pacified he petitioner with Eight Thousand Cedis (GHc 8,000.00) only. He also strongly stated that the matrimonial home was solely acquired by him with no support from the petitioner.

PROCEDURE OF TRIAL:

The Court ensured that it had jurisdiction to entertain this matter before allowing parties to lead evidence as provided in **Section 31 and 32 of the Matrimonial Causes Act, 1971 (Act 367**) that:

31. *"The court shall have jurisdiction in any proceedings under this Act where either party to the marriage –*
    i. *is a citizen of Ghana; or*
    ii. *is domiciled in Ghana; or*

iii. *has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings.*

32. *For the sole purpose of determining jurisdiction under this Act, the domicile of a married woman shall be determined as if the woman was above the age of twenty-one and not married."*

In the case of **Happee v Happee and Another [1974] 2 GLR 186-192** Edusei J. held that:

"The court shall have jurisdiction in any proceedings under this Act whether either party to the marriage -

(a) *is a citizen of Ghana; or*

(b) *is domiciled in Ghana; or*

(c) *has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings."*

The petitioner was represented by counsel and the respondent was self-represented. They testified by themselves. Petitioner did not call any witness and the respondent called one witness. They both tendered their evidence and subsequently cross-examined each other on their testimonies before the court. Each party thereafter announced the closure of their respective cases.

ISSUES FOR DETERMINATION:

At the close of Hearing, the issues for determination were as follows:

i. Whether or not the marriage between parties had broken down beyond reconciliation.
ii. Whether or not the petitioner deserved to be paid alimony by the respondent.
iii. The determination of the ownership of the matrimonial home of parties herein and the equitable distribution of same if so determined to be jointly acquired property.

BURDEN OF PROOF:

In the case of **Mariam Partey v Williams Partey [2014] 71 GMJ 98 C.A at pages 119 – 120** the sapient words of Kusi Appiah JA. was that:

"The only procedure prescribed by law for the dissolution of marriages by the court is provided by Section 2(2) and (3) of Act 367, that the court must inquire into and satisfied on all the evidence led before it that indeed the marriage has broken down beyond reconciliation."

This being a civil suit, the standard of proof required of a party who makes assertions which are denied, is one on a balance of probabilities. It must be stated a party has the legal obligation to establish any positive averment of the allegation he makes in order to succeed on same. This remains the fundamental principle of our jurisprudence. That obligation is on both sides, if and on condition that they each made any allegation of fact capable of proof in law.

This therefore requires a party making assertions to adduce such evidence in proof of the assertions, such that the Court is convinced, that the existence of the facts he asserts are more probable than their non-existence and so no weakness in the case of either can be taken advantage of.

The defendants carry the burden of proving the facts alleged in their defence to the same degree as the burden the Plaintiff carries in proving his claim against the Respondent. This burden of producing evidence by both sides in the suit as well as the burden of persuasion is defined by **<u>Section 12 of the Evidence Act, 1975 (NRCD 323)</u>** which stipulates as follows:

Proof by a Preponderance of Probabilities

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

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case. as provided in **<u>Sections 10, 11(1) and (4), 14 and 17 of the Evidence Act, 1975 (NRCD. 323)</u>** which provides that:

"10. Burden of Persuasion Defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11. Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

14. Allocation of burden of persuasion

Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.

17. Allocation of burden of producing evidence

(1) Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;

(2) The burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.

In the case of **Dzaisu and Others v Ghana Breweries Limited [2007-2008] 1 SCGLR 539** at page 545, the Supreme Court per Her Ladyship Sophia Adinyira (Mrs.) JSC. stated as follows:

"It is a basic principle in the law of evidence that the burden of persuasion on proving all facts essential to any claim lies on whosoever is making the claim.

ANALYSIS:

The sole ground for the dissolution of a marriage in this jurisdiction, shall be that the marriage has broken down beyond reconciliation. This is provided in **Section 2(1) of the Matrimonial Causes Act, 1971 (Act 367)**. The facts required to prove that the marriage has broken down beyond reconciliation are set out in **Section 2(1) of the Matrimonial Causes Act, 1971 (Act 367)** as follows;

"Proof of breakdown of marriage.

For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the Court of one or more of the following facts; -

a. That the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; o

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 husband 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 the 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; or

e. That the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

f. That the parties to the marriage have, after diligent effort, been unable to reconcile their differences."

The general position of the law is that a court ought to inquire so far as is reasonable into all the facts alleged by the petitioner and respondent to satisfy itself on the totality of evidence adduced that indeed the marriage between the parties has broken down beyond reconciliation. This requirement is provided in **Section 2(2) and Section 2(3) of the Matrimonial Causes Act, 1971 (Act 367)** as follows;

2 (2) "on a petition for divorce, it shall be the duty of the court to inquire, so far as is reasonable into the facts alleged by the petitioner and the respondent.

(3) notwithstanding that the court finds the existence of one or more of the facts specified in subsection (1), the court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation."

The particulars of breakdown of the marriage which the petitioner stated mostly relate to the conduct or behaviour of the respondent. By virtue of Section 2(1)(e) of the Matrimonial Causes Act, 1971 (Act 367), where it is established that the behavior of either party is such that, the other cannot reasonably be expected to live with him or her, the court may proceed to dissolve the marriage.

The petitioner testified that the parties had not lived together as husband and wife for an extended period beyond five years. The plaintiff state that it had been fifteen years since she had ceased all conjugal rights with the respondent. She stated the grounds for this state of affairs being the unreasonable conduct of the respondent and his engagement in extra marital affairs which the petitioner found simply intolerable. She further narrated that the respondent did not seek to live with her and their dependents as man and wife with family but preferred to live elsewhere and live an independent life with an explanation of lack of adequate reasonable space to accommodate all of his family members under one roof and privacy among others. She further narrated that their families had made attempts at reconciliation which same had failed. The learned William Ekow Daniels in his book **"The Law on Family Relations in Ghana, 2019 @ page312** stated that:

"The test to determine whether or not the parties are not living as husband and wife has no relation to the physical state of things such as houses or households, but rather it is to be considered from the point of view of whether there is absence of consortium or cessation of cohabitation".

The respondent did not deny the fact that he was living an independent life elsewhere. He also added that it was the petitioner who left the home which he never provided for her and their dependents. In the case of **In Re Ashalley Botwe Lands; Adjetey Agbosu & Others v Kotey & Others [2003-2004] 1 SCGLR 420 @ 423** the court held that:

"the rule is that where an averment is made that is not challenged, the one making the averment needs not lead evidence in proof of it. The rationale for this is simply that, no one has an obligation to prove the obvious or what is not challenged"

He did not deny that attempts at reconciliation had failed and that he had subsequently taken steps to dissolve their customary marriage thus bringing their union to an abrupt end. What would a reasonable mind think if a man lived separately elsewhere whilst his wife and children lived under one roof with the explanation of privacy, indebtedness to a third person? In my opinion this is enough indication that the respondent does not intend to continue in the marriage to the petitioner. **Section 1 (2) (e) of the Matrimonial Causes Act 1971, Act 367** provides that:

"For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court: (only relevant section quoted)

"(e) that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition.

The court finds the conduct of the respondent repulsive. The court further finds that the respondent made it intolerable for the petitioner to live with him for the period as asserted by the petitioner. Based on the evidence before the court, the court holds that the parties should not be compelled to stay in the relationship. The petitioner has been able to satisfy one of the grounds for divorce under Section 2 (1) of the Matrimonial Causes Act, 1971 (Act 367). Having considered all the evidence and the authorities I therefore conclude that the marriage between the parties herein has indeed broken down beyond reconciliation. Both parties have prayed the court for the dissolution of the marriage.

The next issue for determination is whether or not the petitioner is entitled to the payment of alimony f Fifty Thousand Cedis (GHC 50,000.00) only. The petitioner prayed for this relief to assist her to transition to a separate life alone and also to assuage her for the pains suffered at the hands of the respondent during the pendency of the marriage. In granting financial settlement orders in matrimonial matters the courts apply **Section 19 and 20 of the Matrimonial Causes Act,1971 (Act 367)** which provides as follows:

19. *"The court may whenever it thinks just and equitable award maintenance pending suit or financial provision to either party to the marriage, but no order for maintenance pending suit or financial provision shall be made until the court has considered the standard of living of the parties and their circumstances"*

20 *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 moveable or immoveable property as settlement of property rights or in lieu thereof or as part of financial provision that the court thinks just and equitable."*

It is trite learning that the grant of alimony is not an automatic right afforded to a wife in a divorce petition neither is it a form of punishment to the husband. In the case of **Re marriage of Fleener 247 N.W 2d 219 (Nov 17 1976)** the court held that:

> *"Payment of alimony is not an absolute right. It depends upon the circumstances of each particular case."*

In determining whether or not to make a property or financial settlement to a party within the context of T**he Matrimonial Causes Act, 1971 (Act 367)**, the Court is enjoined to be just and equitable and in determining what is just and equitable, the court is to take due regard of all the circumstances of the case. What is just and equitable is explained in the case of **Boafo v Boafo [2005 – 2006] SCGLR 705 at 714** where the Supreme Court speaking through Dr. Date-Bah JSC held as follows:

> *"The question of what is "equitable", in essence, what is just, reasonable and accords with common sense and fair play, is a pure question of fact, dependent purely on the particular circumstances of each case".*

In view of the fact that the dissolution of the marriage was caused by the conduct of Respondent by his willful election to live a separate life elsewhere and his conduct during the pendency of the marriage The court has also not swept under the carpet the fact that it is the respondent who abruptly ended their union at his will I am of the firm conviction that alimony of Thirty Thousand Cedis (GHC 30,000) payable by Respondent to Petitioner is condign.

The final issue for determination to bring closure to this matter is with respect to the determination of the ownership of the matrimonial home of parties and its equitable distribution if so determined to be jointly acquired. Considering the current decisions of the Supreme Court on property settlement in matrimonial matters, the court would like to state that the court will first resort to the equality is equity principle however this principle is rebuttable presumption which will not apply in circumstances that a party is able to prove otherwise. Secondly parties have a right to own their individual property during the pendency of a marriage. Thirdly even though the court still considers domestic services rendered by a spouse as an essential contribution in a marriage, a party relying on such service as contribution must be able to provide evidence to prove same if rebutted by the other party. Fourthly it is erroneous to assume that every married woman is engaged n domestic activities to enable the husband the free hands to engage in economic activities.

Therefore, the current position of the law on ownership of property during the subsistence of a marriage is that, prima facie any property acquired during the subsistence of marriage is joint property, however a party to a marriage may establish that he or she acquired the property under his or her inherent right under Article 18 of the 1992 Constitution Ghana to establish that the property acquired is an individual property. Furthermore, once a property falls within a jointly acquired property then each party is entitled to deal with the property equally. However, upon the dissolution of the marriage there is a rebuttable presumption that each party has an equal share of ownership within the property, unless a party can establish that it would be unfair and unjust to apply the 50/50 ratio. Upon proof to the satisfaction of the court; then the court would then act in a manner which is just, conscionable, and equitable to apportion the right ownership ratio to each party.

The petitioner claimed that she together with Respondent had jointly acquired an eight single room self-contained building complex facility at Pokuase during the subsistence of their marriage. She maintained that she supported the home to enable the respondent to acquire funds to complete same. She claimed that for this reason she had to run two homes, hawk tirelessly to care for the children with the support of her friends and relatives. She narrated that she was assured by the respondent that they would move in to live in same someday thus she gave him the adequate peace of mind to support him in this regard and handled all

auxiliary bills that came with the provision of reasonable shelter for herself and their children. In support of her averment, she tendered receipts for the payment f the educational bills, rent, utility bills supplied t their home among others. In the case of **Lamptey alias Nkpa v Fanyie [1989-90] 1 GLR 286** the Supreme Court spoke through Adade JSC. and he had this to say about the burden of proof shifting:

> *"First on general principles it the duty of a plaintiff to prove his case; he must prove what he alleges. However, when on a particular issue he leads evidence, then the burden shifts to the defendant to lead sufficient evidence to tip the scales in his favour. If he is able to do this he wins; if not he loses on that issue."*

The respondent stoutly denied this testimony of Petitioner and asserted that he single-handedly acquired same. In one breathe he claimed that he completed the facility before his return to Ghana, then in another he stated that he had collected monies from third persons to pre-finance the completion of the building and thus had to release same to them, and also in another also he asserted that he contracted a loan from his in-law; Theophilus Ohene. In support of his averment, he tendered receipts for building materials purchased and also a statutory declaration for the loan from Theophilus Ohene. It is notable that none of these pre-financiers nor any workman were present in court to testify to same. Whatever agreement that stated that the property be released to them upon completion is not before the court. The only witness called by the respondent only testified to the dissolution of the customary marriage between parties and no more. In the case of **Comfort Ofori v Kwame Appenteng CA No. J4/17/2017 delivered on 6th December, 2017** Benin JSC. in his erudite judgement stated that:

> *"At the trial the defendant did not appear to be a witness of truth, a fact which should not have been glossed over by the court below. For the credibility of a witness is very critical in assessing and evaluating his evidence and what weight to attach thereto."*

Section 80 of the Evidence Act, 1971 (N.R.C.D 323) stipulates that:

(1) Except as otherwise provided by this Act, the Court or jury may, in determining the credibility of a witness, consider a matter which is relevant to prove or disapprove the truthfulness of the testimony of the witness at the trial.

(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to

(a) the demeanour of the witness;

(b) the substance of the testimony;

(c) the existence or non-existence of a fact testified to by the witness;

(d) the capacity and opportunity of the witness to perceive recollect or relate a matter about which the witness testifies;

(e) the existence or non-existence of bias, interest or any other motive;

(f) the character of the witness as to traits of honesty or truthfulness or their opposites;

(g) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;

(h) the statement of the witness admitting untruthfulness or asserting truthfulness.

On the totality of evidence before the Court, I find that as the property was acquired in the course of the marriage with the support of the petitioner, she can claim a share in it. In the case of **Peter Adjei v Margaret Adjei Civil Appeal No. J4/06/2021** supra the apex Court espoused the principle 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 to towards he acquisition of the properties concerned, was enough contribution that should merit the wife a share in the said properties upon dissolution of the marriage. In the respectful view of the court the exhibits filed by the respondent in support of his case all go to affirm the fact that the respondent only set out to bulldoze his way throughout trial to ensure that judgement was given in his favour with respect to the property in dispute and thus deprive Petitioner of her benefit of same. In the circumstances I find it just and equitable that the matrimonial home of parties at Pokuase in the Ga-East District of the Greater-Accra Region of the Republic of Ghana is shared by parties in the ration of 50:50 or in the alternative same is to be valued and sold for proceeds of same to be shared in the ratio as aforementioned.

DISPOSITION:

1. The marriage contracted between the parties herein has broken down beyond reconciliation and same is accordingly dissolved. Divorce Decree granted.

2. The relief of alimony as prayed by Petitioner is granted; accordingly, Respondent is to pay Petitioner Thirty Thousand Cedis (GHC 30,000.00) only in this regard.

3. On the totality of evidence thus far clearly the presumption of joint acquisition of the Akotoshie property has been rebutted. Consequently, I hold that Petitioner is entitled to a fifty percent (50%) share in the eight rooms' self-contained property which was jointly developed by parties in this suit during the pendency of their marriage. The Court further directs that either party may buy out the other upon a valuation properly prepared and submitted to this court for approval.

4. I should award cost against Respondent as a sign of opprobrium and rebuke for his conduct during the pendency of this marriage. Cost of Five Thousand Cedis (GHC 5,000.00) only is awarded against Respondent in favour of Petitioner.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE