

**IN THE DISTRICT COURT TDC TEMA HELD ON TUESDAY THE 27TH
DAY OF JUNE 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A4/34/22

VICTORIA MAAMLEY NARTEY PETITIONER

VRS

EMMANUEL KODJO QUAYE RESPONDENT

JUDGMENT

By a petition filed on the 6th June 2022, the petitioner sought against the respondent the following reliefs;

- a. That the marriage celebrated with the respondent on the 17th September 2006 at the Apostolic Church Ghana be dissolved.
- b. Any other relief that the court deems fit

The petitioner did not specify any ground under which she was seeking the divorce except to say that the respondent has gone back to his ex-wife and three children and is now living with them fully as a family in a house the respondent during the currency of the marriage with petitioner.

Respondent filed his answer to the petition on the 26th July 2022 in which he averred that the petitioner insults him and is fond of embarrassing him with accusations of sleeping with their house helps. He agreed with the petitioner that the marriage has broken down beyond reconciliation.

PETITIONER'S CASE

Petitioner has been married to the respondent for sixteen (16) years under part three of the marriages Act. the petitioner has one child prior to the marriage and the respondent also have three children form his previous marriage.

However the parties themselves have no children together. During the currency of the marriage the respondent was unemployed and lived in the house of the petitioner. She discovered after the celebration of the marriage that the respondent has a bare land at community 22. She states that after the respondent finished building on that land, his attitude towards the petitioner changed.

The respondent refused to eat her food and stopped having sex with her. The respondent later informed her that he and his ex-wife have mended their relationship and are back together. She took it upon herself to investigated this and found out that the respondent and his ex-wife together with their three children were now living in the house built on the community 22 plot. All efforts to reconcile the parties yielded no positive results.

On the 31st January 2023 the petitioner testified by relying on her witness statement filed on the 17th October 2022 as her evidence in chief. She repeated the averments in her petition and added that prior to the marriage, the respondent told her that he was a bachelor and that made the Apostolic church, where she worshiped accept the offer of marriage. She testified that when the respondent told her that he was no longer

interested in the marriage, she called one John, a brother of the respondent to settle the matter and the brother told her that the respondent is now living with his ex-wife and children.

The respondent later came for his television and belongings. She testified that throughout the nine (9) years that the respondent stayed with the petitioner, the matrimonial room has no ceiling. The only thing respondent did was to decorate the living room with a room divider. She believes that she is entitled to alimony and any property acquired in the course of the marriage is as part of property settlement.

The petitioner did not attach any exhibit to her witness statement and also did not call any witness. She was cross-examined by the respondent and thereafter closed her case.

RESPONDENT'S CASE

The respondent filed his answer to the petition on the 26th July 2022. He denied most of the averments in the petition and stated that he took a loan in addition to his pension salary, sold his father's store at tema market and used the proceeds to build the community 22 house and the rest for the upkeep of the petitioner.

He continues that it was rather the petitioner who ordered him out of the house amidst curses and insults. He prayed for the marriage to be dissolved and further prayed for an order directing the petitioner to allow him access into the house to pack his belongings.

On the 25th April 2023, the respondent gave evidence by relying on his witness statement filed on the 31st October 2022. He testified that at the time of the celebration of the marriage, he had already built a room and a hall with a caretaker living in it even though the structure was uncompleted.

He confirmed that the home they lived was for the petitioner and stated that the contrary to the petitioner's assertion that he never improved the home, he connected water and electricity to the house and also fixed some of the rooms and even gave his mother's unused freezer to the petitioner to use in her cold store.

He was cross-examined by the petitioner and thereafter closed his case without calling any witness.

Burden of Proof

In a petition for divorce the sole ground upon which the court will dissolve a marriage is that the marriage has broken down beyond reconciliation. This is provided for under sections 1(2) and section 2(3) of the Matrimonial Causes Act, 1971 Act 367. Section 2(3) of the Act provides as follows;

"although 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"

In proving that the marriage has broken down beyond reconciliation, the petitioner must satisfy the court that one or more of the facts under **section 2 (1) of Act 367** *supra* has occasioned and as a result the marriage has broken down beyond reconciliation.

It is also the law that the party who asserts usually has the burden of proving same on a preponderance of probabilities in accordance with **section 12(2)** of the Evidence Act **1975 (NRCD 323)**. Preponderance of probability according to this section 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 it's non-existence"

Where the petitioner has been able to lead sufficient evidence in support of its case then it behooves upon the respondent to lead sufficient evidence in rebuttal otherwise the respondent risks being ruled against on that issue.

Section 11 (4) of the Evidence Act, 1975 (Act 323) further provides that; **(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 none-existence.*

This provision has been given judicial blessing in a plethora of cases like **Odametey v. Clocuh [1989-90] 1 GLR, 14; Odonkor v. Amartei [1992-93] GBR 59, Tuakwa v. Bosom [2001-2002] SCGLR 61** which states that except otherwise specified by statute, the standard of

proof in all civil cases is by a preponderance of the probabilities based on a determination of whether or not the party with the burden of producing evidence on the issue has successfully convinced the court to grant the reliefs endorsed on his writ or petition.

The petitioner in a divorce proceeding must therefore lead sufficient evidence to satisfy the court that on a preponderance of probability the marriage has broken down beyond reconciliation.

Issues for Trial

At the end of trial, the issues that fell for determination are as follows;

- a) whether or not the marriage has broken down beyond reconciliation.
- b) Whether or not the community 22 house was acquired in the course of the marriage.

ANALYSIS

a) Whether or not the marriage has broken down beyond reconciliation

The sole ground for granting a petition for the dissolution of a marriage shall be that the marriage has broken down beyond reconciliation. This is the position of the law as provided in section 1(2) of the Matrimonial

causes Act, 1971 ACT 367. For the purposes of showing that the marriage has broken down beyond reconciliation, the petitioner shall satisfy the court of the existence of one or more of the grounds specified under section 2 of Act 367 *supra*.

From the pleadings presented to the court, the parties who are both self-represented did not specify any of the grounds provided under section 2 of the Act. What could be gleaned from their pleadings however was the fact that the parties no longer live as husband and wife and the respondent has already moved on to his ex-wife with whom he had three children. Both parties further consented to the dissolution of the marriage and only prayed for ancillary reliefs. Section 2(3) of Act 367 provides as follows;

"although 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."

This court finds from the totality of the evidence of both parties that the marriage has broken down beyond reconciliation as the parties no longer live together under the same roof.

b) Whether or not the community 22 house was acquired in the course of the marriage.

Article 22 of the Constitution which provides as follows;

22(3) With a view to achieving the full realisation 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. (Emphasis supplied)

The respondent tendered one **Exhibit "1"** titled as "**VOLUNTARY VACATION OF TENANCY**" as proof of his averment that he sold a store to raise money to build the house at community 22.

Exhibit "1" was executed on the 23rd December 2005 for the transfer of store no. 149/150 in favour of one DICKSON KOJO ASEIDU OKYERE the transferee. There is no consideration stated on this exhibit to enable the court determine how much money was received from this transaction and whether or not the said sum could put up a house. He testified that prior to 17th September 2006 when the marriage was contracted, he already had a structure on his land at community 22, Tema.

In this case since the petitioner claims that the house situate at community 22 was constructed in the course of the marriage, which assertion has been partly denied by the respondent his pleadings, she thus bore the burden of producing enough evidence to convince the court that the said property was constructed in the course of the marriage.

During the cross-examination of the petitioner the respondent asked the following:

Q: The community 22 land where I currently reside do you have an idea when it was bought.

A: I do not know the exact date but I have an idea around 10 – 15 years ago but the chiefs sold the land to a different person. I assisted you and the said land was given to you again and you were advised to start a project on it.

Q; I put it to you that what you are saying are lies.

A: It is true.

The respondent then focused more on the state of the matrimonial home they lived in and posed the following to her :

Q: what was the state of the house we are living in now when you first took me there.

A: it was uncompleted. Almost completed

Q: Tell the court the role I played in fully completing the house.

A: I did not see any role you played I worked at pioneer food canary as a factory hand. At that time I was able to complete the house before you

came in. you were staying at site 2. Then you came to live in my house and left to go and build another one at community 22.

Q: Who brought the tiler to fix the tiles at the hall and washrooms.

A: You. But it is my money we used.

Q: who brought the E.C.G worker to fix the electricity and meter in the house.

A: you did.

The petitioner further admitted under cross-examination that the respondent paid for some of the expenses incurred in bringing electricity and water supply to the house.

The respondent further supervised the tiling of the bathroom and fixing doors even though the petitioner insists she paid for these two projects.

She also maintained that the house where the couple lived during the currency of the marriage was part of property settlement from her previous marriage and was partly completed at the time the respondent moved in with her.

When it was the turn of the petitioner to cross-examine the respondent, she did not ask any question on the community 22 building. She focused on the assertion of the respondent that she moved her things to the

storeroom and was burnt on proving to the court that these statements were false.

Section 11(4) provides that 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.

The petitioner thus carried the burden of proving on a preponderance of probability that the community 22 house was built in the course of their marriage as the respondent testified in his evidence in chief that there were habitable structures on the land before the marriage. Respondent further attached exhibit "1" to show that he built the community 22 house with proceeds from a shop he claimed he sold.

The said exhibit "1" was executed on the 23rd day of December 2005. The marriage certificate shows that the parties were married on the 17th September 2006. If exhibit "1" is anything to go by, then the respondent voluntarily transferred the said shop before the marriage was celebrated between the parties without any consideration because the said exhibit does not show the amount of money respondent received for the transfer.

How then was he able to use the proceeds from the transaction to build the house at community 22? Respondent did not cross-petition and did seek any relief on the community 22 house. He only asked for an order to allow him to remove his things from the petitioner's house.

In any case, the petitioner maintained her position on the community 22 house and repeated same under cross-examination. Even though she could not produce any documentary evidence to buttress her claim, the court finds that the time within which the community 22 house was built was not disputed by both parties. What the respondent sought to challenge was that he built it with his own resources without the help and contribution of the petitioner.

The evidential burden therefore shifted on the respondent to prove his claim that petitioner made no contribution to the construction of the community 22 house.

In **Arthur (No 1) v Arthur (No 1) [2013-2014] 1 SCGLR 543**, Dr Date-Bah, JSC, delivering the unanimous judgment of the Supreme Court stated as follows at page 555;

*"From Mensah v Mensah, therefore, the principle that is to be distilled is that there is a presumption in Ghanaian law in favour of the sharing of marital property on an equality basis **in all appropriate cases** between spouses after divorce. What needs to be spelt out in subsequent case law is **the range of appropriate cases**. Comparative legal materials from other common law jurisdictions should be useful in helping this court to clarify this range."*

The petitioner or a party claiming part of marital property must therefore prove to the court that her claim falls within the range of "*appropriate cases*" mentioned in *Arthur v Arthur supra*.

The issue of “assets which are ***jointly acquired during marriage***” also fell for determination in the case of ***ANYETEI V SUSSANA ANYETEI (UNREPORTED) SUIT NO: CA/J4/67/2021*** the supreme court speaking through his lordship Pwamang JSC held as follows;

"The law no longer requires a spouse to prove direct pecuniary contribution in the form of paying part of the purchase price of the property from her own money or buying part of the building materials in the case of a house.

In this case, the wife testified that she was working and earning income, first as an employee and later as a business woman operating hairdressing saloons and importing goods from China for sale. From these earnings she said she maintained the home and though the husband countered that it was done for only a brief period, we are inclined to accept her testimony because if account is taken of the extra marital commitments of the husband, that would have shifted a lot of the domestic burden on the wife.

Emotional support and satisfactory matrimonial services by a spouse are also elements of contribution to the acquisition of assets during a marriage. *In this case, the documents filed on the properties by the husband show that he involved the wife to sign some of the documents and some of the properties were actually acquired in the joint names of husband and wife. This, for us, can only mean a recognition by the husband of the assistance, in whatever form, he got from the wife in the acquisition of the houses. We therefore disagree with the Court of*

Appeal's analysis of the evidence of the wife's overall contribution to the acquisition of the properties in question."

Both parties agree that the house they lived in during the currency of the marriage belongs to the petitioner who acquired same as part of property settlement from her previous marriage.

It is the wife's testimony that the respondent started the construction of the community 22 house after they were married. The respondent did not deny this by testified that he has a one room uncompleted structure on the land which was occupied by a caretaker.

Both parties did not provide any evidence as to the current state of the community 22 house to enable the court determine its present habitability; whether it is now fully completed or still uncompleted, neither did the respondent also provide any document as to the title and ownership of the land prior to the marriage. This would have enabled the court to ascertain the timelines of the acquisition of the land and the value to be placed on same.

However since the respondent confirmed to the court that he now lives in the community 22 house with his ex-wife and their three children, the court will presume that the community 22 house has now been improved to a comfortable space capable of accommodating respondent's present nuclear family.

Given the terse evidence on record surrounding the community 22 house and also considering that the respondent does not deny the fact that the building was constructed during the course of the marriage but rather states that only the land with a structure on it was in existence at the time of the marriage.

This court finds that the community 22 house was constructed in the course of the marriage between the parties and is therefore on the authority ANYETEI V ANYETEI (*supra*) part of marital property jointly acquired by the parties.

Section 20 of the Matrimonial Causes Act, (1971) ACT 367 provides;

"1) 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 a settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable.

2) Payments and conveyance under this section may be ordered to be made in gross or by instalments"

Having now made a finding that the community 22 house is marital property, I accordingly make an order that the respondent pays the sum of Thirty Thousand Cedis GH¢30.000 cedis to the petitioner in gross as settlement of property right in the community 22 house.

CONCLUSION AND FINAL ORDERS

Flowing from above the court makes the following findings; that the marriage celebrated between the parties on the 17th September 2006 has broken down beyond reconciliation and the house built in community 22 Tema which the respondent currently resides in with his first wife and three children was constructed during the currency of the marriage and is therefore marital property. The court accordingly makes the following orders;

- a) That the marriage celebrated between the parties on the 17th September 2006 be dissolved as the marriage has broken down beyond reconciliation.
- b) An order directing the respondent to pay the sum of thirty-thousand cedis Thirty Thousand cedis GH¢ (30,000) in gross in lieu of property settlement on the community 22 house.
- c) An order directing the respondent to pay the sum of Twenty Thousand Cedis GH¢ (20,000.00) as financial provision to the petitioner.
- d) An order directing the petitioner to allow the respondent access to the house to remove all his belongings.
- e) Each party to bear his/her own cost.

**[SGD]
BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE**

PARTIES:

**PETITIONERPRESENT
RESPONDENT.... PRESENT**