IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)

APPAU, JSC

PWAMANG, JSC

DORDZIE (MRS.), JSC

PROF. KOTEY, JSC

CIVIL APPEAL

NO. J4/06/2017

18TH NOVEMBER, 2020

NANA YAA KONADU ……. PETITIONER/RESPONDENT/APPELLANT

VRS

ALHAJI ABDUL RASHEED …….

RESPONDENT/APPELLANT/RESPONDENT

JUDGMENT

APPAU, JSC:-

My Lords, the appeal before us is the culmination of what, prima facie, appeared to be a simple matrimonial cause ignited by the woman in the marriage (as petitioner) against her husband (the respondent), for the dissolution of their ordinance marriage. The second and last relief the petitioner asked for, apart from the dissolution, was an order for the custody or maintenance (as she put it), of the two issues in the marriage. This second or last relief of the petitioner, which respondent also prayed for in respect of the younger child in his cross-petition, became redundant in the course of the trial, when all the two issues in the marriage attained adulthood. Petitioner did not seek any relief on property settlement, as her case was that she never acquired any property jointly with the respondent during the subsistence of the marriage, which needed to be shared. The only thing she said she had in common with respondent was a limited liability company called NAYAK COMPANY LTD which, according to her, the two of them established as the only shareholders and directors with fifty percent (50%) shares each.

However, as things turned out to be, the petition assumed a complex form resulting in its long journey to this apex Court, as a result of the respondent's answer or reaction to it. In this answer, the respondent did not challenge the petitioner's call for the dissolution of the marriage aside of the reasons behind the call. He however, denied petitioner's assertion that they never jointly acquired any properties during the subsistence of the marriage. He contended that apart from NAYAK CO. LTD and another company called RASHIDA LTD, which the two of them formed, they jointly acquired several other properties; some in his name, some in petitioner's name and others in their joint names. He mentioned fourteen (14) different properties, which he claimed the two acquired jointly in the course of their thirty-two (32) years of marriage, mainly through the operations of their two companies. He accordingly cross-petitioned for the dissolution of the marriage, an order for custody of their younger child who was then sixteen (16) years

old and then, an order for the distribution of all the properties jointly acquired by them as itemized under paragraph (3) of his answer to the petition. It was this answer and cross-petition by the respondent that jolted the petitioner to admit for the first time that she indeed acquired properties jointly with the respondent. She then went ahead to explain that some of the properties they acquired jointly, which the respondent had included in his list, were ceded to her by the respondent upon an agreement between them some years back so those properties belonged to her exclusively and could not be shared. The remaining properties belonged to their jointly-owned company NAYAK COMPANY LTD in which they held 50% shares each. This was what petitioner said under paragraphs 3 and 4 of her Reply to respondent's answer: -

"3. In further answer hereto, the petitioner says the properties specifically designated at paragraph 3 (a), (b), (c), (d), (h) & (j) and the titles vested therein are exclusively vested in the petitioner and this was even confirmed by the respondent in a document prepared and signed by the respondent.

4. The petitioner says that properties designated at paragraphs 3 (e), (g), (i), (k), (l), (m) & (n) all belong to NAYAK COMPANY LTD wherein company both the petitioner and respondent have 50% equal shares."

In our view, no issue concerning the distribution of properties owned by NAYAK COMPANY LTD or any other company belonging to the parties, did arise from the parties' pleadings. The petitioner never prayed for that neither did the respondent. In fact, the petitioner did not pray for the distribution of any property at all between her and the respondent. It was the respondent who prayed for the distribution of the properties he listed under paragraph 3 of his answer and in her reply, petitioner claimed exclusive ownership to some of those properties. It is this claim of exclusive ownership of some of the properties by the petitioner, but not the sharing of their jointly-owned

properties, which has been the bone of contention between the parties from the trial stage to this final stage of appeal. These properties were described as: ***"No. 233 Airport West, Accra; another building at Airport West (i.e. H/No. 21 Aviation Rd, Accra); one three-storey building at Adabraka Official Town (i.e. 29 Official Rd, Adabraka); the building in Kumasi (i.e. H/No. OTB 108 & 109 Adum, Kumasi); the buildings in Sekondi; all the lands at Elmina and New Ashongman in Accra."*** {Emphasis ours}

From the totality of the evidence on record, the petitioner did not deny the fact that the properties she claimed belonged to her exclusively, as scantly described above, were acquired by both of them; i.e. (petitioner and respondent) jointly during the subsistence of their marriage. Her case was that the said properties were ceded to her as exclusive owner by the respondent per a document she tendered in evidence as **Exhibit "E".** This means she became owner of what hitherto belonged to the two of them jointly, by virtue of **Exhibit "E".**

The respondent who did not deny the authorship of **Exhibit "E"** explained that he was compelled to execute the said document at midnight in their bedroom from harassments of the petitioner, in order to maintain peace in their relationship and that he did not intend it to have any legal binding force. He buttressed his point with the explanation that since he unilaterally executed the document in 2002, he had continued to exercise ownership and control over the said properties like the collection of rents from tenants, etc. to date without any challenge from petitioner. In fact, the petitioner admitted this fact in her evidence during cross-examination by counsel for the respondent. According to her, apart from the Kumasi, Adum House; i.e. OTB 108 & 109, which she possesses, the respondent has been in charge of the other properties since the execution of **Exhibit 'E'** in 2002. This was the dialogue that took place between petitioner and respondent's counsel on 17th June 2014 during cross-examination; i.e. twelve (12) years after the

authorship of **Exhibit 'E'**. It appears at page 397-398, Volume One of the record of appeal **(RoA)** and it is that cross-examination that brought to close the case of the petitioner:

"Q. Have a look at Exhibit 'E'. So, in spite of Exhibit E, the Respondent continues to be in charge of all your properties?

A. Not all because if you say them the Kumasi building is included.

Q. So it is only the Kumasi one that he was not in charge of?

A. Yes. This is because he was my husband so he could be in charge of any property. Now that I am not married to him he cannot be in charge of my properties.

Q. Since you divorced him in September 2009, the respondent has continued to collect rent on all the properties except the Kumasi one.

A. That is true, that is why I have brought the matter to court to collect my property for me. {Emphasis ours}

Q. All the properties that you have acquired either in the name of Nayak Limited, in your name, in the name of the respondent or in your joint names have been acquired during the subsistence of the marriage.

A. Yes, and it is because of the understanding between us that he has put it on paper and I have brought it to court. {Emphasis ours}

Q. I put it to you that you are not entitled to your reliefs.

A. That is not true."

We have to emphasize that the petitioner did not file this petition to claim any property from respondent contrary to her evidence in cross-examination as quoted above. Again, she neither prayed nor sought any relief for the enforcement of **Exhibit 'E'**. The trial High

court, having found as a fact that all the properties mentioned by the parties in their pleadings were acquired during the subsistence of their marriage, set out to determine the legal strength of **Exhibit 'E'**. The bone of contention in the whole trial was therefore on **Exhibit 'E',** which both the trial High Court and the Court of Appeal interpreted differently, culminating in the instant appeal before us. Whilst the petitioner contended that by executing **Exhibit 'E',** the respondent had ceded his interest in the properties mentioned therein to her, the respondent's case was that the mere execution of **Exhibit 'E'** did not transfer ownership of the properties mentioned therein to the petitioner.

The decision of the trial High Court

The trial High court, in the evaluation of the evidence before it, came to the conclusion that **Exhibit 'E'** was binding on the respondent, therefore the properties and businesses mentioned therein as having been ceded to the petitioner belonged exclusively to the petitioner. According to the trial court, **Exhibit 'E'** was an agreement between the respondent and the petitioner and since the respondent did not deny its voluntary authorship, he was bound by it. Again, respondent did not challenge the authenticity of **Exhibit 'E'** during cross-examination so there was no need for petitioner to call further evidence on same. The court said; ***"since the respondent has signed Exhibit E and the petitioner has approved of it, it implies that both of them have agreed that the document should be binding on them".*** In response to respondent's argument that **Exhibit 'E'** could not convey landed property, the trial court said ordinary incidences of commerce have no application in marital relationships so that argument was untenable. The trial court relied on the cases of **FORI v AYIREBI [1966] GLR 627 – SC; QUAGRAINE v ADAMS [1981] GLR 598 – CA** & **TAKORADI FLOUR MILLS v SAMIR FARIS [2005-2006] SCGLR 882**, to buttress its decision.

With regard to the other properties over which there was no dispute between the parties, the trial court said those properties must be shared equally on 50-50 basis. The court directed further that since some of the properties were not properly identified during the trial, thus making their distribution difficult, the Registrar of the trial court was to cause all the said properties to be valued before distribution.

Appeal to the Court of Appeal

The respondent was not pleased with the decision of the trial High court so he appealed against same to the Court of Appeal on seven grounds. Apart from ground 1, which was the usual omnibus ground that the judgment was against the weight of evidence, the remaining six grounds of appeal all centred on the legality or otherwise of **Exhibit 'E'** and its binding nature in the transfer of landed properties. In fact, the bone of contention in the appeal was purely a question of law as there were no serious factual differences between the parties with regard to the acquisition of the properties. This was; whether or not **Exhibit 'E',** without more, could validly convey the properties named therein to the petitioner as held by the trial court.

The Decision of the Court of Appeal

The Court of Appeal considered the submissions of both parties in the light of case law and statute; i.e. the Conveyancing Act, 1973 [NRCD 175] and the then Companies Act, 1963 [Act 179], (now amended and consolidated by the Companies Act, 2019 [Act 992]) and came to the conclusion that **Exhibit 'E'** per se, failed to qualify as a document or deed that could transfer the properties listed therein to the petitioner. The Court of Appeal therefore reversed the decision of the trial High court to the effect that the properties mentioned in **Exhibit 'E'** exclusively belonged to the petitioner. According to the Court of Appeal, apart from the Kumasi, Adum house numbered OTB 108 &109, all the properties mentioned in **Exhibit 'E'** belonged to the parties jointly and should be shared

equally on the *'equality is equity'* principle. The Court of Appeal again reversed the order of the trial High court which directed the registrar of the court to make certain enquiries about some of the properties to be distributed. This was what the Court of Appeal said at page 13 to 14 of its judgment:

"There is no doubt that Exhibit 'E' sought to convey landed properties to the petitioner. The question to ask is; did this document signed by the respondent, succeed in conveying the properties listed therein according to law? The answer is to be found by a perusal of the Conveyancing Act, NRCD 175 of 1973. Section 40 of the Conveyancing Act [NRCD 175] provides that: -

1. A conveyance shall be executed in the presence of and attested to by at least one witness.

2. Where an individual executes a conveyance that individual shall sign or place a mark of the individual on it, and sealing shall not be necessary.

3. Where a company to which the Companies Act, 1963 [Act 179] applies executes a conveyance, that conveyance shall be executed in accordance with the Companies Act, 1963.

In the case of Owusu-Asiedu vrs Adomako and Adomako [2007-2008] SCGLR 591, Date-Bah, JSC explained the position as; ***'An instrument that is sealed and delivered would be recognized as a binding deed. In addition, an instrument that is signed and attested would be recognized as a deed if it makes it clear on its face that it is intended to be a deed. Thus the formal requirement of deeds, as far as individuals are concerned are as follows: A deed need not be sealed but a deed that is not sealed must be signed and the signature must be witnessed and attested. The deed must also make it clear on its face that it is intended to be a deed. An attested and witnessed signature will be***

recognized by the courts as a substitute for the requirement for a seal.' **An examination of Exhibit 'E' reveals that the document is neither attested nor witnessed. It therefore fails in material particular to the Conveyancing Act, [NRCD 175]. The document referred to by the trial judge as having been signed by the respondent is not an ordinary document the authorship of which the respondent is denying but a document which the law (Conveyancing Act) requires to be made in a particular form (attested and witnessed). The purported conveyance to the petitioner therefore fails as Exhibit E is of no effect and does not transfer any property to the petitioner. Exhibit 'E' also sought to convey landed properties belonging to or registered in the name of Nayak Limited by the sole act of the respondent without a resolution of the board of directors. Any such conveyance is also void as not being in tandem with the provisions of the Companies Act, [Act 179]. In effect, the holding by the trial judge that Exhibit E is valid and binding on the respondent and that the properties ceded to the petitioner are effective, is wrong in law and are hereby dismissed notwithstanding that the parties are man and wife."**

The Court of Appeal, in ordering for the sharing of the properties on a 50-50 basis, left the sharing to the parties and their lawyers. The Court held, per Ofoe, J.A. at page 32 of its judgment as follows:

"A lot of inconvenience and at times confusion may arise from such court orders directing valuation and sale of jointly owned properties. It is legitimate to think of the parties and their lawyers more capable of effecting the distribution after they have got the court's order, simply ordering that the properties be distributed equally….In the case before us, there are no particulars at all of these several landed properties. All we have are their house numbers and location. I am of the view that this is a case where the parties should be given simply the order to distribute all the jointly owned properties in 50-50 proportions as found by the trial court and this court. Consequently the orders the

trial judge made engulfing the registrar in the distribution is hereby set aside." {See page 757 of the RoA}

Appeal and Cross-Appeal to the Supreme Court

My Lords, the petitioner has come before us with the judgment of the Court of Appeal to be impeached. Notwithstanding the grounds of Appeal filed, the main contention of the petitioner/appellant in her appeal was that the Court of Appeal erred in holding that **Exhibit E'** was not a valid legal document that could effectively transfer the properties mentioned therein to the petitioner. She again contended in her last ground of appeal that the Court of Appeal erred in distributing equally in a 50–50 proportion, the matrimonial home at Airport Residential Area when, as a matrimonial home, it should have been ceded to or settled on the female spouse. The petitioner submitted further, citing the case of **RAMIA v RAMIA [1981] GLR 275 - CA** that the age old position of the law was that where a husband makes a purchase or an investment in the name of his wife, there is the presumption of advancement of the property in favour of the wife. So therefore, the acquisition of the matrimonial home at Airport West, Accra by the respondent in the sole name of the petitioner, which pre-dated the incorporation of NAYAK COMPANY LTD, was a pointer to the fact that it was so done with the express intention of benefitting the petitioner. She however, did not appeal against the reversal of the trial court's order to the Registrar to investigate and evaluate certain properties before distribution.

The respondent has also cross-appealed against the Court of Appeal's decision, which declared petitioner the exclusive owner of the Kumasi, Adum House, i.e. OTB 108 & 109. According to the respondent, the Kumasi, Adum house was acquired by NAYAK COMPANY LTD but not by either the petitioner or Nayak Fisheries Limited as found by the Court of Appeal.

What is Exhibit 'E' which is the bone of contention in this case?

Exhibit 'E' which is dated 16/8/2002 is a unilateral document prepared by the respondent in his handwriting. It is headed: **"PROPERTY DECLARATION BY ALHAJI ABDUL RASHID"** and it reads as follows:

"I, Alhaji Abdul Rashid, wish to declare as follows:

1. *That I have ceded all ownership interest of building number 233 Airport West, another building at Airport West. One three- storey building at Adabraka official town, the building in Kumasi, the buildings in Sekondi, all the land at Elmina and New Ashongman in Accra to Nana Yaa Konadu.*
2. *Nayak Plaza, One building at Achimota. The Cold Store at Tema and the One storey building at New Town will be jointly owned.*
3. *All the businesses has (sic) been ceded to Nana Yaa Konadu with the exception of the Fabric business which will be jointly owned.*
4. *CARS – All the cars with the exception of the NISSAN Patrol and two Nissan Pick-ups has (sic) also been ceded to Nana Yaa Konadu.*

   KEEP THEM IN PEACE.

   ALHAJI ABDU RASH

   (Signed)"

Arguments by parties on the enforceability or otherwise of Exhibit 'E'

On the main ground of appeal, which is the enforceability or otherwise of **Exhibit 'E'**, the petitioner who is the appellant herein, contended that **Exhibit 'E'** must be seen as a declaration against interest by the respondent instead of as a deed or document conveying title in property within the meaning of section 40 of the Conveyancing Act, [NRCD 175], particularly because the parties to the document were married couple. She referred to the cases of **KUSI & KUSI v BONSU [2010] SCGLR 60, SC** and **AFRICAN DISTR. CO LTD v CEPS [2011] 2 SCGLR 955** to support her submissions. The

respondent, on the other hand, prayed for the dismissal of petitioner's appeal. According to the respondent, **Exhibit 'E'** is a document which purports to convey interest in landed property including properties owned by a limited liability company NAYAK COMPANY LTD, registered under the Companies Act, 1963 [Act 179]. It should therefore have been witnessed and attested to, notwithstanding the fact that it was a transaction between a man and wife, but it wasn't. He contended that notwithstanding the execution of **Exhibit 'E'** as far back as 2002, he continued to exercise control over all the properties mentioned therein as having been ceded to the petitioner. This means that the petitioner did not approve of **Exhibit 'E'** as she never took any steps to have the said properties properly transferred into her name if indeed, she knew the respondent intended **Exhibit 'E'** to assume a binding relationship between him and the petitioner.

Is Exhibit 'E' legally enforceable?

Clearly, the petitioner's argument in this appeal is buttressed erroneously on the standpoint that **Exhibit 'E'** is either an agreement or a contract between her and her husband the respondent. This was part of her testimony in-chief in respect of the Kumasi, Adum house when she was led to testify by her lawyer:

"Q. Do you have anything else to show the court that the property was solely acquired by you?

A. Yes. Apart from the exhibits tendered yesterday, in the course of the marriage there was agreement between us in respect of the properties those that are solely mine and those that are solely for the respondent and this was reduced into writing. I have the said document which I will want to tender in evidence…"

This document turned out to be **Exhibit 'E'**. The exhibits which petitioner was referring to in her testimony quoted above were Exhibits 'A', 'B', 'C' and 'D'. Exhibit 'A' is a copy

of the certificate of Incorporation of Nayak Fisheries; Exhibit B is a photocopy of part of the second schedule of the Companies Code, 1963 [Act 179] (now repealed); Exhibit 'C' is a copy of the certificate to commence business issued to Nayak Fisheries and Exhibit 'D' is a copy of a building permit application form in respect of the Airport West matrimonial house bearing the petitioner's name as applicant. These exhibits had nothing to do with the Kumasi, Adum House. So impliedly, petitioner's exclusive claim to the Kumasi, Adum house was hinged mainly on **Exhibit 'E'.**

The fact is that any document in writing by which an interest in land is transferred is a conveyance and must comply with the provisions of the Conveyancing Act, 1973 [Act 175]. It is immaterial whether or not it was a transaction between a man and a wife. The petitioner's argument that **Exhibit 'E'** should be examined under a different legal lens because it witnesses a document between a man and a wife is untenable. So far as **Exhibit 'E'** purported to transfer interest in land, it is a conveyance and must be subject to the provisions of the Conveyancing Act. *{See sections 1, 40 and 45 of the Conveyancing Act, 1973* ***[Act 175]****}.* To convey simply means to transfer or deliver something such as a right or property to another, especially by deed or other writing. A conveyance is therefore nothing more than a voluntary transfer of a right or any property to another– *{Page 383 of Black's Law Dictionary, Ninth Edition, edited by Bryan A. Garner}***. Exhibit 'E'** falls within the definition of 'other writing', as used above or 'other assurance', as used under section 45 of Act 175.

Though **Exhibit 'E'** is a declaration purporting to transfer to the petitioner ownership in some properties, mostly landed properties not properly identified, it was signed by only the declarant without any witness or attestation whatsoever, contrary to section 40 of Act 175. It was therefore neither a deed nor a document capable of transferring interest in land to another. At best, it was only a declaration of intent which, in the eye of the law, did not create any legal relations between the respondent and the petitioner. It is

unfortunate that the trial High court bought into the view that **Exhibit 'E'** was a document witnessing an agreement between the respondent and the petitioner so respondent was bound by his own words. This was what the trial judge said at page 16 of his judgment: ***"The respondent further says that Exhibit 'E' does not conform to any form of alienation of landed property known to law. It was not sworn to, there was no witness and some of the properties were company properties which cannot be transferred that way. That is some of the properties belong to Nayak Limited so they cannot be transferred in that manner. Exhibit 'E' therefore conveyed nothing legally. I wish to state that ordinary incidents of commerce have no application in marital relations between husband and wife. In marital relations, parties do not need witnesses to take certain decisions. When married couples are (sic) taken decisions in their bedrooms they do not need witnesses around. It will rather be the word of one party against the other. Also in the instant case the parties are the only shareholders and directors of Nayak Limited who are supposed to take decisions on behalf of the company. Since the Respondent has signed Exhibit 'E' and the Petitioner has approved it, it implies that both of them have agreed that the document should be binding on them".*** *{See p. 538 of Vol. One of RoA}.*

The above-quoted legal reasoning of the trial judge was seriously flawed apart from the factual errors contained therein. In the first place, there is nothing in **Exhibit 'E'** that shows that it was ever approved by the petitioner as the trial judge contended. The petitioner neither signed any portion, nor approved of it in any form. **Exhibit 'E'** was far from being an agreement or contract between the parties so the authorities cited by the trial court to support its reasoning, were inapplicable. If the respondent meant **Exhibit 'E'** to assume a binding nature, he would have taken the necessary steps to have the properties properly transferred into petitioner's name.

Again, the fact that the parties are the only shareholders and directors of their limited liability company does not mean they can handle the affairs of the company anyhow

without recourse to the company law under which the company was registered. The authorities are legion that shareholders of a limited liability company are not the employers of the staff of the company. The same applies to directors. The employer is the Company itself, which is distinct from the shareholders and directors. In this capacity, a company is a corporate being with an independent legal existence, which can do or may do everything that a natural person might do. It can sue and be sued, can own property, can owe and be owed. It is thus independent and totally distinct from the persons who constituted it – **SALOMON v SALOMON & CO. LTD [1897] A.C. 22; MORKOR v KUMA (East Coast Fisheries case) [1998-99] SCGLR 620.** The respondent therefore, could not divest properties of their company per **Exhibit 'E'** without complying with the provisions of the Companies Act. The fact is that, **Exhibit 'E'** cannot pass title in the properties mentioned therein to the petitioner as correctly explained by the Court of Appeal in its judgment of 8th June, 2016 as quoted supra. The appeal in respect of the validity or otherwise of **Exhibit 'E'** is accordingly dismissed.

Did the Court of Appeal err in ordering the 50-50 sharing of the Matrimonial Home?

On the last ground of appeal by the petitioner that the matrimonial home at Airport West should have been settled on her alone, the petitioner buttressed her arguments on two main points. The first was that since the property was acquired by the respondent in her name from day one, the respondent intended it to be her exclusive property. The second was that as the female spouse, the matrimonial house should have been ceded to her by the court as that is the legal norm.

On the first point, the petitioner based her arguments on the presumption of advancement, citing the authority of *Ramia v Ramia* (supra) which says that where property is acquired by a husband in the name of his wife it is presumed the husband intended the property to belong exclusively to the wife. See also **'GHANA LAND LAW**

AND CONVEYANCING' by B. J. da Rocha & CHK Lodoh, 2nd edition, page 113-114 and then Dennis Dominic Adjei's **'LAND LAW, PRACTICE AND CONVEYANCING IN GHANA,** 2nd edition, published by Adwinsa Publications. Dennis Dominic Adjei in his book referred to supra stated at page 246 thus: *"The law is settled that there is a presumption of advancement in favour of a wife in respect of a property bought in her name by the spouse".* This presumption, however, as rightly indicated by the author, is rebuttable.

We agree in principle that the pronouncement above used to be the common law position on the issue under consideration, i.e. *once property is purchased by a husband in the name of his wife it is presumed the husband intended the property to belong solely to his wife.* However, as Yaw D. Oppong rightly commented in his recent book, **'CONTEMPORARY TRENDS IN THE LAW OF IMMOVABLE PROPERTY'**, published in 2019 by Black Mask Publications Ltd at page 715, the applicability of this common law principle or concept of 'ADVANCEMENT' to married couples in modern day Ghana is now moribund, in view of the radical evolution of the law on property rights of spouses. As the author rightly stated, under the current state of the law, once property is acquired by a couple during the subsistence of their marriage, there is a presumption that the property was jointly acquired and therefore jointly owned, irrespective of the spouse in whose name it was acquired – {See Mensah v Mensah [1998-99] SCGLR 350; Boafo v. Boafo [2005-2006] SCGLR 705 and Mensah v Mensah (No. 2) cited infra and then article 22 (3)(b) of the Constitution, 1992.

In the instant case, a greater number of the properties acquired by the parties were acquired in the name of the respondent. Notwithstanding this fact, the respondent admitted that the properties belonged to him and the petitioner jointly since they were acquired during the subsistence of their marriage. Since the respondent who purchased the matrimonial house, has vigorously challenged or rebutted the petitioner's claim of exclusive ownership to same by virtue of it being purchased in her name, the same

principle on property rights of spouses must also apply to it so long as that one too was acquired during the subsistence of the marriage, unless there was a clear intention to the contrary, which is absent in this case.

On the second point that matrimonial homes are normally settled on female spouses during divorce and for that matter the Airport matrimonial home should have been ceded to her, the petitioner did not provide any authority to support that contention. Though the property stood in petitioner's name, she could not establish her exclusive ownership to same. Having found that the Airport West matrimonial home was also acquired by the parties jointly during the subsistence of the marriage, just like all the other properties mentioned in their pleadings, the Court of Appeal did not err in concluding that it belonged to them equally. As to how the properties were to be shared on a 50-50 basis, the Court of Appeal left that to the discretion of the parties and their lawyers as quoted above. That ground of appeal also fails.

The Cross-appeal

The cross-appeal was basically that the Court of Appeal erred in declaring the petitioner as the exclusive owner of the Kumasi, Adum House OTB 108 & 109. According to the respondent, apart from exhibits 3 and 3A which he tendered to establish that the said house was sold to NAYAK COMPANY LTD by Divestiture Implementation Committee (DIC) and therefore belonged to NAYAK COMPANY LTD but not to either petitioner or Nayak Fisheries, the petitioner did not tender anything to suggest in the least that she is the owner of the house. The Court of Appeal therefore erred in concluding that the Adum house belonged to the petitioner. The petitioner, on the other hand, contended that the Court of Appeal did not err when it affirmed the trial High court's finding that the Kumasi, Adum House belonged exclusively to the petitioner so this Court should not disturb that finding.

We have considered the statements made by the parties in the cross-appeal vis-à-vis the evidence on record and we are strongly of the view that the Court of Appeal's finding that the Kumasi, Adum house was acquired by Nayak Fisheries and therefore belonged exclusively to the petitioner was seriously flawed. In fact, that finding was not supported by the evidence on record. The petitioner did not tender in evidence any document of ownership either in her name or in the name of Nayak Fisheries Ltd throughout the trial. As stated by the trial High court in its judgment, Hse No. OTB 108 & 109, Adum, Kumasi was the subject-matter of a dispute between the parties before a High Court in Kumasi at the time this petition was before the trial court. The trial court therefore did not make any positive or specific pronouncement on that house. The trial High court did not make any finding that the Adum house was acquired exclusively by either the petitioner or Nayak Fisheries Ltd. The High court's decision was that since the respondent had ceded his interest in the Adum property together with the others mentioned in **Exhibit 'E'** to the petitioner, petitioner was the owner as respondent was bound by **Exhibit 'E'**.

After the Court of Appeal had concluded that **Exhibit 'E** had no binding effect on the respondent as it lacked the legal strength to convey the properties mentioned therein to the petitioner, there was nothing to support the Court of Appeal's finding that House No. OTB 108 & 109, Kumasi, Adum belonged exclusively to the petitioner. The High Court made no such finding so the Court of Appeal's finding cannot be a concurrent one to any finding by the trial High court on that issue as contended by the petitioner. Even if the Court of Appeal's finding were to be concurrent to that of the trial High court, this Court, as the second appellant Court, could still interfere with that finding where it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which the two lower courts had dealt with the facts. See the cases of **ACHORO and Another v AKANFELA and Another [1996-97] SCGLR**

209 and **KOGLEX LTD (No. 2) v FIELD [2000] SCGLR 175 @ 176-177; GREGORY v TANDOH IV & HANSON [2010] SCGLR 971@ 975.**

In fact, the respondent has demonstrated that there was a serious blunder in the conclusion of the Court of Appeal with regard to the Kumasi, Adum House. If **Exhibit 'E'** is discounted, there is nothing evidential that supports petitioner's exclusive claim to the OTB Adum, Kumasi house. If the petitioner's contention that the Kumasi house belonged to her exclusively was true, then she should have challenged its inclusion in **Exhibit 'E'** as one of the properties the respondent said he had ceded to her. This is because the respondent could not have ceded to her what did not actually belong to him. The only unchallenged evidence on record is that the said house was sold to NAYAK COMPANY LTD by D.I.C. Exhibits 3 and 3A bear testimony to this unchallenged fact. There was no contrary testimony that the said house was either sold to Nayak Fisheries or to the petitioner. There is also no evidence on record to suggest that the house was ever transferred to either the petitioner or Nayak Fisheries by NAYAK COMPANY LTD. The respondent's claim that the house belonged to NAYAK COMPANY LTD was therefore more probable than petitioners exclusive claim to it, and we so find. We therefore reverse the Court of Appeal's decision that the Kumasi, Adum house belonged exclusively to the petitioner as same was perverse. In our view, it is one of the properties acquired in the name of their jointly owned company NAYAK LTD and belongs to them equally. It must therefore be resolved in accordance with company law just like the other properties held in the names of their companies including NAYAK LTD and NAYAK FISHERIES LTD. We accordingly allow the respondent's cross-appeal.

Conclusion

This Court is *ad idem* with the Court of Appeal that all the properties acquired jointly by the parties during the subsistence of their marriage, which properties are either in the

individual names or the joint names of the parties, including those mentioned in **Exhibit 'E',** as having been ceded to the petitioner, belong to the parties equally and must be distributed on the equality principle as explained by our able and distinguished brother Dotse, JSC in **MENSAH v MENSAH [2012] 1 SCGLR 391 @ 394** in the following words: - ***"The time has come for this Court to institutionalize the principle of 'Jurisprudence of Equality' in the sharing of marital property by spouses, after divorce, of all properties acquired during the subsistence of a marriage in appropriate cases. This is based on the provisions in articles 22 (3) and 33 (5) of the 1992 Constitution, the principle of 'Jurisprudence of Equality' and the need to follow, apply and improve our previous decisions in Mensah v Mensah and Boafo v Boafo. The wife should be treated as an equal partner even after divorce in the devolution of the properties…"*** {See also Mensah v Mensah [1998-99] SCGLR 350 and Boafo v Boafo [2005-2006] SCGLR 705}.

We again endorse the Court of Appeal's directive that the sharing of the properties on 50-50 basis must be left to the parties and their lawyers to decide and that the registrar of the trial High court must not be involved in it. We find wisdom in that direction. We, however, regret the break down in what hitherto appeared to be a happy and blissful marriage, judging from the way and/or understanding with which the parties, as couple, jointly acquired all those several properties. Though it is said that love rejected leads to rancorous animosity, we admonish the parties to put aside any rancour, bitterness and/or differences between them and show once more love and maturity in the sharing of their marital properties, with the same zeal, understanding and courage that they mustered in acquiring all the properties during the subsistence of their marriage. Appeal dismissed; cross-appeal allowed.

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

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