**IN THE CIRCUIT COURT '1' SITTING IN ACCRA ON THE 17TH DAY OF MARCH 2023 BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS.) CIRCUIT COURT JUDGE**

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**SUIT NO. C11/84/2019**

**CHRISTIANA FOFIE** **PETTITONER**

**VRS:**

**MATHEW OWUSU** **RESPONDENT**

**JUDGMENT**

On the 24/9/2019, Petitioner herein caused the present petition to be issued against Respondent herein praying the court for the following reliefs;

i. that the said marriage be dissolved.

ii. That the Respondent be ordered to make to the Petitioner monthly maintenance of GHc1,000 for the last born Seth Frimpong (who is presently dependent on Petitioner) pending the determination of the suit.

iii. That the Respondent be ordered to pay to the Petitioner a lump sum of Fifty Thousand Ghana Cedis(GHC50,000).

iv. An order awarding the Petitioner 50% of the matrimonial home and the fifteen (single room) unit residential complex acquired during the subsistence of the marriage.

v. Any other relief that this honourable court may deem fit.

Per the Petition, parties had been marriage under customary law in 1990 at Kumasi in the Ashanti Region and cohabited at Pambros, Accra. There are three issues of this marriage namely Sara Nyantekyi, Abigail Frimpong and Samuel Frimpong then aged 28years, 26years and 19 years respectively. According to Pettiioner, Respondent had behaved in a manner that she could no longer be expected to live with him as husband and wife. She averred that Respondent stopped sleeping in the matrimonial bed and rejected any request for sex. Petitioner averred that arrangements were made by their respective families to dissolve the marriage subject to certain settlement conditions to be met by the Respondent but he failed to meet the said requirements. Petitioner therefore contends that although parties have separated, the marriage was never formally dissolved, Respondent allegedly forcefully ejected her from the matrimonial home and is currently living with another woman he calls his wife. In 2015, she instituted legal proceedings but same did not past pleadings stage and she discontinued same in 2017 due to inability to afford cost of litigation.

Respondent upon receipt of the Petition filed an answer and cross-Petition to same. In his answer to the petition, he vehemently contended that the marriage between the parties had been dissolved customarily since 6th January 2015 therefore no marriage exist for the court to dissolve. He however prayed the court for the following reliefs;

i. an order for the Petitioner to vacate and leave one of the one store room she is occupying which she pleaded with the elders to leave

ame and gave vacant possession thereof after 3 months grace period but which she failed to do same.

ii. Perpetual injunction to restrain the petitioner agents, servant, from interfering whatsoever with the one store built by the Respondent with his own resources which the Petitioner occupies and which she promised to vacate and gave vacant possession after the dissolution of the customary marriage by the marriage by the elders on 6th January 2015.

**The following issues beg for determination** per the case of the parties per their respective pleadings.

1. Whether or the marriage celebrated between the parties has been dissolved already.
2. If No, whether or not the marriage celebrated between the parties has broken down beyond reconciliation.
3. Whether or not Petitioner is entitled to 50% share of the matrimonial home and 15 single room unit residential complex acquired during the subsistence of the marriage.
4. Whether or not Respondent is entitled to financial settlement of GHc50,000
5. Whether or not Respondent is liable to pay monthly maintenance of GHc1000 for the last child of the marriage.

It is unchallenged that parties herein were married under Akan customary law. However, there is a dispute as to whether the said marriage was dissolved customarily in 2015 or still subsisting. Petitioner brings this action on the premise that the customary marriage between her and Respondent was not dissolved although attempt was made to dissolve same by their families. The court therefore has to determine firstly the issue of whether or not the customary marriage between the parties still subsist or has been dissolved customarily.

Petitioner testimony in respect of this issue is that parties herein got married in 1990 in Kumasi and there after cohabited at Panbros Accra. She stated that sometime between 2013 and 2015, Respondent sated acting hostile towards her and subsequently lodged a report with her family of his intentions to divorce her on the basis that she was not cooking or caring for him. According to Petitioner, Respondent later accused her of trying to kill him and repeated his intention to divorce her on this ground and also alleged that She had committed adultery with one Mr. Kwao. A family meeting was held where Respondent still insisted on divorcing her. Petitioner contends that it was agreed that Respondent could divorce her on the condition that he gave her an equitable share of the residential complex located at Panbros, which they had jointly acquired during the marriage. Respondent then offered her only two rooms out of the 15 rooms but she considered that inequitable considering the effort she had put into its acquisition. Respondent also refused to review his proposal thereby failing to meet the condition for the

resolution of the marriage. PW1, Mary Kwarteng corroborated Petitioner's evidence on oath to the effect that on the said date, the dissolution of the marriage could not materialize because of a misunderstanding that Respondent offered Petitioner two rooms out of fifteen rooms and same was rejected by Petitioner and her family. Counsel for petitioner in his written submission submits that what happened at Manso Atwedie on 5/1/2015 does not constitute a valid dissolution of a customary marriage. Counsel argues that the settlement matters regarding property acquired by the parties constitute an essential element of the customary dissolution process and same ought not be regarded as merely peripheral to the dissolution of the marriage. He cited the case of **ATTAH V ANNAN [1975]1 GLR 366-373** where it was held by Baidoo J that "Dissolution or divource is resorted to as a last measure when the circumstances of the case show a total breakdown of the marriage or warrant it. After the arbitrators have ruled that the situation calls for divource, the spouses must then be given an opportunity to show whether the other spouse owes any amount or has any property belonging to him or her. After settling all legitimate accounts between the spouses, the final act of divorce is then performed by the husband releasing her from conjugal obligations either by chalking her or saying so in the presence of the gathering."

Respondent on the other hand insisted that on the said 5/1/2015, in the presence of both family members of parties, the customary marriage between

them was dissolved and Petitioner chalked by her mother Maame Sumena and the issue of property brought up and settled. DW1 and DW2, Mr. Kofi Oppong and Mr. Kofi Yeboah also testified that they were present at the said meeting and that they formally dissolved the marriage. According to them, Respondent initially lodged a complaint of adultery against Petitioner but that matter was not terminated until two years later Petitioner called for the dissolution of the marriage saying Respondent had disgraced her and accused her of attempting to poison him. They both testified that the families confirmed from Respondent if they should accept the drink returned by Petitioner and Respondent yes and that settled the matter i.e the dissolution. They thereafter proceeded to share the property and it was agreed and accepted by Petitioner that Respondent gives her 4 rooms out of the 17 rooms they had put up at Panbros. According to both DW1 and DW2, Petitioner accepted the said rooms and thanked Respondent. She however afterwards demanded that an additional store should be given to her but same was refused by Respondent. Petitioner became angry then and left the meeting. Presently, there are two different versions of what transpired at

Manso Atwedie on 5/1/2015. Petitioner's version is to the effect that property matters were not settled whilst Respondent's case is that property matters were settled and "aseda" or thanksgiving performed by Petitioner upon being given some rooms in the house located at Dansoman. Respondent contend that it was after these that Petitioner brought up the store matter and he

refused. The evidence therefore boils down to oath of Petitioner and her witness against oath Respondent and his witnesses. Although Petitioner contends that the marriage was not dissolved on the 5/1/2015. Petitioner and witness PW1 have been inconsistent with their evidence to the court.

Petitioner in her evidence in chief at Paragraph 10 stated that during the meeting, Respondent offered her only 2 rooms out of 15 rooms but she refused same since she regarded the offer as unfair and inequitable considering the effort she had put in. Under cross-examination however, she stated that the rooms at the time of dissolution was 17 rooms and Respondent was asked to give her 7 out of the 17 rooms but he disagreed and said he would give her four rooms which her family convinced her to accept. Petitioner further stated the reason for abrupt ending f the meeting was the demand for GHC3,000 as Aseda by Respondents family. Petitioner again at her paragraph 7 stated that Respondent had accused and reported her to her family that she had put a poisonous substance into a water bottle with the intention of getting him to ingest it and get kill him. However under cross-examination on this issue, Petitioner stated that she had never heard Respondent saying that before. In respect of PW1, whilst Petitioner admitted that DW1 and DW2 were part of the relatives of Respondent who were in attendance of the meeting at Manso Atwedie and also stated that Maame Sumeena Maame Adwoa MAnso and Maame Yaaya were her mothers, PW1, who claims to be Petitioner's her sister and had attended the Twedie meeting save Maame Sumeena denied the other women being relatives of Petitioner.

PW1 at paragraph 9 of her evidence in chief stated "I last visited the residential complex during the period immediately before the lockdown when I was in Accra. I visited Petitioner as I always do when I am in Accra. I also observed that a story building had now been put up. Most of the rooms in the complex had been rented out and shops opened." I is general knowledge that the lockdown period was in 2020. It is also not in dispute that after the 5/1/2015 meeting Petitioner has not lived in the said residential complex. PW1 therefore appears to be a suborned witness and not credible.

Respondent also in his evidence in chief stated at paragraph 40 that he agreed to give Petitioner 2 rooms during the meeting but refused Petitioner's request for a shop. Under cross-examination Respondent stated that after the dissolution of the marriage, the families agreed that 5 bedroom be given to Petitioner out of the rooms. Both Petitioner and Respondent appears to be economical with the truth leading to unnecessary inconsistencies in their evidence thereby affecting their credibility.

DW1 and DW2 on the other hand were consistent with their evidence and appears to the court to be credible and truthful witnesses. They acknowledged facts they had no knowledge of but insisted on what they contend transpired at the meeting. Petitioner in exhibit 2b i.e the statement of claim attached to her writ of summons issued against Respondent herein at the Kaneshie District Court on 19/2/2015 at paragraph 1 averred that she and Respondent (Plaintiff and Defendant therein) were married under customary

law with three children but now divorced. At paragraph 10 also, Petitioner averred "Defendant went and dissolved the said marriage between them before both family members. At paragraph 11 and 12, Petitioner states that at the meeting Respondent was asked to give her 5 rooms including a store she had built but Respondent disagreed with the orders and insisted on giving heronly four rooms without the store. These statements corroborate the testimonies of DW1 and DW2. To the extend that Petitioner in exhibit 2b averred that the marriage had been dissolved and property shared between them by the family and Respondent ordered to give her 5 rooms including a store, coupled with DW1 and DW2's credible evidence, the court finds that on the said 6/1/2015, the families of the parties at the Meeting held at Manso Atwedie deliberated on both the marital issue and property issue and the customary marriage was indeed dissolved as claimed by Respondent. I accordingly find that their respective families in January 2015 dissolved the customary marriage celebrated between the parties in 1990. Accordingly there is no marriage subsisting between the parties to be dissolved by this court. Issue 2 therefore becomes mute and same shall not be considered by the court.

The court under **Section 41 (2) of the Matrimonial Causes Act 1967, Act 367** on application by a party to a marriage other than a monogamous marriage, the Court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the

Court may (*a*) consider the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

Therefore despite having found that the customary marriage between the parties has since 2015 been dissolved, and it been evident from the evidence on record that there remains unresolved dispute in respect of the property settlement, the court shall proceed to consider the remaining issues for effective determination of all matters in controversy surrounding this marriage.

**Issue 3 Whether or not Petitioner is entitled to 50% share of the matrimonial home and 15 single room unit residential complex acquired during the subsistence of the marriage.**

**Article 22 (2) of the 1992 constitution of the Republic of Ghana** provides "Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses." *With a view to achieving the full realization of the rights referred in article 22 clause (2)* of the 1992 constitution of Ghana which guarantees property rights of spouse, **article 22 (3)(b) provides *that Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.*** In ***Mensah v Mensah [1998-99] SCGLR 350,*** the court applied the equality is equity principle to determine which proportions the couple's joint property would be shared. Bamford-Addo JSC held at 355 thus:

*"… the principle that property jointly acquired during marriage becomes joint property of the parties applies and such property should be shared equally on* ***divorce;(emphasis mine)*** *because the ordinaryincidents of commerce has no application in marital relations between husband and wife who jointly acquired property during marriage."*

This position of the law was further modified in the case of **Mensah v Mensah (2012) SCGLR where Dotse JSC in** delivering the unanimous decision of Supreme Court held "Why did the framers of the Constitution envisage a situation where spouses shall have equal access to property jointly acquired during marriage and also the principle of equitable distribution of assets acquired during marriage upon the dissolution of the marriage? We believe that, common sense, and principles of general fundamental human rights requires that a person who is married to another, and performs various household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising the home such that the other partner, has a free hand to engage in economic activities must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved. This is so because, it can safely be argued that, the acquisition of the properties was facilitated by the massive assistance that the other spouse derived from the other.

In such circumstances, it will not only be inequitable, but also unconstitutional as we have just discussed to state that because of the principle of substantial contribution which had been the principle used to determine the distribution of marital property upon dissolution of marriage in the earlier cases decided by the law courts, then the spouse will be denied any share in marital property, when it is ascertained that he or she did not make any substantial contributions thereof."

Respondent and his witness admits that at the family meeting and upon dissolution of the marriage, it was agreed that 5 rooms in their 15 bedroom house acquired during the subsistence of the marriage be settled on the Petitioner in addition to a plot of land situate at Panbros on which laid an uncompleted building which Petitioner currently has completed the lives in and another land at Pokuase. Petitioner and her witnesses also testify that the family of Respondent demanded a sum of money for the settlement of the 5 rooms to her but her family disputed this request thereby resulting in the abrupt end of the meeting. Registrar of the court was ordered to visit the matrimonial house in dispute as well as the alleged other land situate at Panbros and the land situate at Pokuase to give the court a detailed report on the existence and state of the properties. Registrar filed his report on 19/1/2023. Petitioner and her counsel however wrote to the court describing as anomalous occurrence of the court ordered inspection. A perusal of the letter from counsel for Petitioner and report of the registrar revealed no anomalous occurrence as suggested by counsel for Petitioner. The court shall however

assign no weight to the said report and the inspection of the alleged properties situate at Panbros and Pokuase and limit itself to the only property in issue before the court. It is not in dispute that the matrimonial home comprised of 15 rooms as at the time the marriage was dissolved. Petitioner

at Paragraph 14 of her Amended petition, relief d of the petition and paragraph 10 of her witness statement reiterates this fact. Petitioner prays the court for 50% of this said property. Petitioner testified that she single handedly paid for the school fees of the children of the marriage for Respondent to use his resources for the acquisition of the matrimonial home. Petitioner tendered in evidence several school fees receipts and same are marked exhibits C, C1 to C47. Under cross-examination however, Petitioner contended that the school fees of the children save the last born was shared and paid for by both parties. Although Petitioner in her evidence in chief created a picture of having single handedly catered for the educational expenses of the children of the marriage, her answers under cross-examination and admissions to Respondent paying part of the expenses revealed that her evidence in respect of the educational expenses were untrue and appears to the court to be incredible as a witness.

Respondent has admitted under cross-examination that prior to coming to Accra, he was farming with Petitioner and had 48 other workers. He has further admitted that during the dissolution of the marriage, he consented to the settling of 5 of the said rooms to Petitioner. Exhibit B, the indenture of the

matrimonial house in dispute discloses that same is in the name of Respondent alone. Petitioner under cross-examination has discredited her own evidence that she was solely responsible for the educational expenses of the children whilst Respondent acquired the matrimonial home. Exhibits D, E F series are all receipts that were issued after the dissolution of the marriage in January 2015 and therefore does not have any probative weight to the determination of Petitioner's contribution to the matrimonial home.

In the latest Supreme Court case of **PETER ADJEI vs. MARGARET ADJEI [2021] DLSC 10156, His Lordship Justice Appau** delivering Majority decision held "We wish to emphasize that there is a reason behind the abandonment of the substantial contribution principle, which was hitherto used to determine the nature of property acquired during the subsistence of a marriage where it was established that only one spouse, particularly the male spouse, single-handedly did physically acquire the properties. It was buttressed on the understanding that the role of the wife in keeping the home by cooking for the family and preparing and performing other chores that enables the man to have a peace of mind to acquire the properties, is a form of contribution." This presupposes that evidence of the type of contribution i.e financial or the spouse making that assertion must establish whatever services and support he or she may have contributed i.e domestic contribution to aid the acquisition of the said property.

From the record, the matrimonial home comprising of 15 rooms was acquired during the subsistence of the marriage. Prior to it's acquisition, Petitioner worked with respondent together with 48 other persons on Respondent's farm. Petitioner's assertion of having funded solely the education expenses of the children prior to the dissolution of the marriage has been found by the court to be untrue and exhibit B the indenture of the land on which the house in dispute is situate is in the sole name of the Respondent. Taking all these into consideration, the court is of the opinion that the property acquired/ developed during the subsistence of the marriage ie the 15 bedroom house is a jointly acquired property of the marriage held equitable in the ratio of 1:2 by the Petitioner and the Respondent respectively.

**Issue 4 - Whether or not Respondent is entitled to financial settlement of GHc50,000**

Petitioner again prayed the court for Respondent to be ordered to pay to her a lump sum of GHC50,000. **Section 20 of Act 367,** provides that 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 as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable and such payment may be made in gross or by installments.

In the case of **OBENG V OBENG [2013] 63 GMJ 158,** the court of appeal held that "what is just and equitable may be determined by considering the

following factors; income, earning capacity, property and or financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the break down of the marriage, the age of each party to the marriage and the duration of the marriage."

From the record, the marriage between the parties was dissolved customarily in 2015. Parties have since then lived apart and independent of each other. Petitioner has failed lead evidence justifying the awarding of financial settlement unto her by the court. The evidence on record does not disclose any circumstance(s) required for the award of financial provision in favour of Petitioner against Respondent in the interest of justice and fairness and or to prevent any financial hardship on her. Accordingly Petitioner's claim for financial provision fails.

**Issue 5- Whether or not Respondent is liable to pay monthly maintenance of GHc1000 for the last child of the marriage.**

Petitioner as part of her reliefs prayed the court for an order for Respondent to pay monthly maintenance of GHC1000 for the upkeep of the last child of the marriage Seth Frimpong who presently is dependent on Petitioner pending the determination of the suit. This relief sought by the Petitioner is an interlocutory relief but she failed to make an interim application during the pendency of the suit for maintenance of this child. The court is mandated under section 22(2) of Act 367 either on its own initiative or on application by a party to proceedings under the Act, make an order concerning a child of the household, which it thinks reasonable, and for the benefit of the child. Under section 6 of the Children's Act, 2008, Act 560, it is the responsibility of parents of a child whether married at the time of the birth of the child or separated to provide the basic necessities of life for a child including protecting the child

from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression, provide good guidance, care, assistance and maintenance (Emphasis is mine) for the child and assurance of the child's survival and development. It is therefore the responsibility of both the mother and father of the child to ensure that a child is provided with all the necessities of life. A child under this Act is a person below the age of 18 years.

On 24/9/2019, the day the instant petition was issued, the last child of the marriage Seth Frimpong was said to be 19 years old. Currently this child would be about 22 years. He is obviously no more a child on who's behalf care and maintenance orders may be made by the court. He is currently considered an adult.

Under section 27 of Act 367, "An order for care, custody or support of a child shall automatically terminate when the child reaches the age of twenty-one years, unless the order provides otherwise with a view to making reasonable provision for the further education of such a child, or for the care, custody and support of such a child who is so incapacitated that he cannot be expected to care for himself." Education of a child is vital to securing the future of the said child. therefore it remains the responsibility of the parents of a child to ensure and secure the education of the child until completion of tertiary. It is unclear whether Seth Frimpong is still in school. In the likely event of the said child being in the tertiary, Respondent shall be fully responsible for his educational expenses whilst Petitioner takes responsibility of his maintenance.

**Conclusion**

The court finds that their respective families dissolved the customary marriage celebrated between the parties herein in 1990 customarily in 2015. However, the court orders in final determination of this suit as follows;

i. Declaration that there is no marriage subsisting between the parties to be dissolved by the court.

**ii.** That the 15 rooms developed on the said land situate at Panbros as at 2015, which constitute the property in dispute is a jointly acquired property of Petitioner and Respondent herein held in the ration 1:2 respectively.

**iii.** That the storey building and other 6 rooms developed by the Respondent after the dissolution of the marriage in 2015 is declared the sole property of the Respondent.

**iv.** Considering the nature of the 21 rooms comprising the 15 rooms jointly acquired by the parties and held in the ration of 1:2, the storey building and 6 other rooms having only one entrance, the court orders the valuation of the 15 rooms jointly acquired by the parties at the expenses of both parties equally by an independent/government valuer. Thereafter, Respondent shall buy out Petitioner by paying to Petitioner 1/3 entitlement within 6 months after the valuation report is released.

**v.** Respondent shall bear fully the educational expenses of the last child of the marriage until he completes tertiary.

**vi.** There shall be no order as to cost.

**PARTIES PRESENT**

**STACY NAA DODUA DARKO HOLDING THE BRIEF OF JEFFEREY OSIE MENSAH FOR PETITIONER PRESENT.**

**MR NTOW FIAKO FOR THE RESPONDENT PRESENT.**

**H/H AFIA OWUSUAA APPIAH (MRS)**
**(CIRCUIT COURT JUDGE)**