

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON
TUESDAY THE 25TH DAY OCTOBER, 2022 BEFORE HER HONOUR HATHIA AMA
MANU, ESQ., CIRCUIT COURT JUDGE

SUIT NO. C4/2/2021

BETWEEN:

EVELYN COBBINAH

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PETITIONER

AND

ALEX COBBINAH

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RESPONDENT

JUDGMENT

Petitioner – Present.

Respondent – Present.

Philip Fiifi Buckman for Petitioner.

The Petitioner and Respondent cohabited for five (5) years before being joined in holy matrimony on the 8th September, 1996. The petitioner commenced this suit praying the Court to grant the dissolution of their marriage on grounds that:

- That respondent is physically abusive.
- That respondent has committed adultery with many women and is currently living with one of such known as Pat.
- That respondent deserted the matrimonial home in March, 2020 when the rent advance expired.
- That the parties have not had conjugal relation for the past three (3) years.
- That the respondent has not maintained the respondent for the past three (3) years.
- That during the subsistence of the marriage the parties acquired their matrimonial home at Tarkwa-Akyem.

- That the respondent took all the electronic gadgets and utensils, furniture, fan, television when he deserted the matrimonial home.

On the above founded background the petitioner prays the Court as follows:

- (a) An order for the dissolution of the Ordinance Marriage between the parties.
- (b) An order directed at the respondent to pay a compensation of GHC150,000.00 to petitioner.
- (c) An order directed at the respondent to pay maintenance arrears of GHC700.00 a month for 3 years (Since April, 2018).
- (d) A declaration that the matrimonial home is a joint property of the parties and a further order directed at the respondent to assign petitioner's half share to her.
- (e) An order directed at the respondent to pay rent arrears of 2 years being GHC450.00 per month totaling GHC10,800.00.
- (f) Any other order this Honourable Court may deem fit.

This suit although matrimonial is civil in nature and hence all assertions made must be proved on a preponderance of probabilities. The issues for determination in this case are:

- Whether or not any of the parties committed adultery.
- Whether or not respondent acted unreasonably in the cause of their marriage.
- Whether or not the petitioner is entitled to an equal share of the respondent's property.
- Whether or not the petitioner is entitled to the alimony.
- Whether or not the Petitioner is entitled to other reliefs sought.

The petitioner as part of her claims has alleged that the respondent committed adultery in the course of their marriage and that he was currently staying with one lady called Pat. Petitioner however did not adduce any evidence by way of scenarios

that lead her to make these claims. Likewise the respondent also asserted that petitioner was engaged in adulterous acts without any evidence. In a claim of adultery short of catching the individual in the act or an issue being born of the adulterous relationship, it is prudent that instances or circumstances from which the allegation is based must be presented to enable the Court make its findings. I therefore find that none of the parties was able to justify their claims of adultery.

The Petitioner also prayed the Court to give her half of properties jointly acquired by the parties. The Respondent on his part informed the Court that the said property was sold as far back as 2018 and the proceeds used by both parties.

“In the case of Arthur vrs. Arthur 2013-14 ISCGLR 543 DATE-BAH JSC defined marital property as any property acquired by the spouse during marriage is presumed to be marital property irrespective of whether one spouse made a contribution or not”.

On the issue of matrimonial property there has been different positions of the law establish.

The era of matrimonial properties have developed immensely with the Supreme Court giving varied principles to guide the Court to make a fair determination.

In Bofo vrs. Bofo the Court equality principle slight modification thus whereas in Mensah vrs. Mensah, held that Dotse JSC affirmed held that – “Even if this Court had held that the Petitioner had not made any substantial contributions to the acquisition of the matrimonial properties. “It would still have come to the same conclusion that the Petitioner is entitled to an equal share in the properties so acquired during the subsistence of the marriage”.

In Bofo vrs. Bofo the Court added that, “equality principle is static unless one party could prove separate proprietorship. This is because this Court recognize the valuable contributions made by her in the marriage like the performance of household chores referred to supra and the maintenance of a congenial domestic environment for the

Respondent to operate and acquire properties. Besides the constitutional provisions in article 22(3) of the 1992 constitution must be construed to achieve the desired results which the framers of the constitution intended”.

Again, in the case of *QUARTSON VRS. QUARTSON* [2012] 2SCGLR 1077 the Supreme Court affirmed the equality principle and also cautioned that – The rule in *Mensah vrs. Mensah* is not to be taken as blanket ruling but must be shaped and defined based on the dynamics of each case to help achieve equality in matrimonial properties (Emphasis is mine).

See the case of *FYNN VRS. FYNN* 2013-14 1SCGR 727`

In the instant case, Petitioner was unable to prove that the property is still in existence. Neither was she able to establish any form of contribution towards the acquisition of the land and the building of same. The Petitioner never adduced evidence to prove that while Respondent was working/building the house she provided any contribution by way of maintaining the house. To this end the Court finds it difficult to make any orders pertaining to the said processes. As the house was the main property claimed and in the light of the lack of evidence presented by the Petitioner, I am unable to hold that she is entitled to half of Respondent’s property. On the other hand the evidence before the Court is that same has been sold.

The Court as of essence sought to determine if any of the parties acted unreasonably so as to justify the grant of dissolution of the marriage. The Respondent during cross-examination admitted that he had failed to maintain the Respondent because he gave her a livelihood and she does not render accounts of her business to him.

He was asked the following questions:

Q. Where your wife and children stay you have not paid rent for 3 years?

A. Yes I gave her a livelihood but she has not rendered any accounts to me. I handle all bills.

Q. You do not manage anything in the house, you have left them for 3 years.

A. It is true.

The Petitioner also alleged assault and tendered into evidence a photograph which showed blood oozing from her head. A clear sign of injury afflicted on her however as to when same was done by the Respondent in this case, it cannot be ascertained. The Court will therefore not conclude that the Respondent injured the Petitioner.

On the part of the Petitioner she is alleged to be involved in excessive drinking and exhibiting attitudes which depict immorality. However, these remained as allegations since the Respondent did not call a single person or adduce any evidence to prove same. Though both parties failed to satisfy the burden to prove most of their assertions, the Respondent admitted his failure to maintain the Petitioner and also not contributing to rent paid for her and their children. This act of the Respondent is unreasonable especially as the Respondent through his evidence has informed the Court that their children are dependents whose school fee (master's program) he still paid. To this end I find that by the admission it is clear the Respondent was unreasonable during the period leading to the dissolution of the marriage and it is probable that he was not maintaining the Petitioner prior to the filing of this petition.

Since the Respondent's justification is that he has set the Petitioner up and she does not account to him for it so he saw no reason to maintain her, I am inclined to ask whether that was a condition for the Respondent setting the Petitioner up in business? From the Petitioner's pleadings and claims she has been demanding maintenance and rent arrears so in the absence of evidence that suggested, Petitioner was aware that the Respondent will not be maintaining her I find that the Respondent was just being unreasonable.

Guided by Section 19 of the Matrimonial Causes Act, Act 367, I having considered the standard of living of the parties and found that it is just for the Petitioner to be awarded a lump sum as alimony in this suit.

Satisfied that the marriage between the parties has broken-down beyond reconciliation I hereby hold that marriage between the parties celebrated with certificate number 33/96 on 5/9/1996 is hereby dissolved. The Petitioner is entitled to the following maintenance arrears of GH¢700.00 to be calculated from April, 2018 to October, 2022, rent arrears for 2 years at GH¢450.00 totaling GH¢10,800.00 and subsequently he is to pay GH¢4,000.00 annually to the Petitioner as contribution to her rent. Respondent is also to pay alimony of GH¢60,000.00 to the Petitioner. All amounts due to the Petitioner are to be paid by 30th November, 2022. Effective this month October, 2022 the Respondent is to pay GH¢700.00 monthly to the Petitioner as her maintenance without prejudice to the arrears he owes.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)