CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 24TH NOVEMBER, 2022

SUIT NO. C5/90/16

DEBORA DEGRAFT AIKINS - PETITIONER

VRS

ERIC DEGRAFT AIKINS - RESPONDENT

JUDGMENT

On the 21st day of January, 2016, the petitioner presented the instant petition for a dissolution of her marriage to the respondent on the basis that same has broken down beyond reconciliation. Her contention is that the customary marriage celebrated between them on the **20th day of September, 1982** and which has one issue, cannot be sustained due to the fact that the respondent has behaved in such a manner that she cannot be expected to continue to live with him as husband and wife. That the respondent has deserted the matrimonial home and currently lives with another woman with whom he has had a child. She sought the reliefs of;

a) An order for the dissolution of their marriage contracted on the 20th day of September, 1982
b) Payment of monthly maintenance of one hundred and fifty Ghana cedis (Ghs 150) and arrears from February, 2014 to the date of final dissolution of their marriage and arrears of six hundred Ghana cedis (Ghs 600) school fees
c) House No. 643 N4C2 and petitioner's car that respondent took away be settled in the name of the petitioner and return of all items stated in paragraph (n) or pay their current value to the petitioner
d) Financial provision of twenty thousand Ghana cedis (Ghs 20,000).

JUDICIAL SERVICE

The respondent on his part filed an answer and cross petition on the 4th day of March, 2016. He averred that they celebrated their marriage customarily in Tema on the 19th day of July, 1996. He averred that sometime in the year 2000, he met a woman with whom he currently lives with. That he has three issues with the said woman. He cross petitioned for;

a) A dissolution of the marriage
b) Custody of the only child be granted to him with reasonable access to the petitioner
c) The store and drinking spot should be settled in favour of the petitioner as financial provision whilst the matrimonial home at community 2 H/NO. 642 N2C2 should be settled in favour of the respondent.

The petitioner filed an answer to the cross petition and conceded that they married in 1996 although they had been in a relationship since 1982. She denied the claims of the respondent. With regard to respondent's relief a and b, she averred that she had accepted same.

THE CASE OF THE PETITIONER

In her written evidence in chief, the petitioner testified that she and the respondent went into a relationship in 1982, started living together in 1992 and married customarily in July, 1996. Whereas she is a seamstress/trader, the respondent is a news presenter. The only issue of the marriage is a ten (10) year old male child.

She continued that the respondent has shown inconsiderate behavior towards her and has deserted the matrimonial home to now live with another woman. That since

JUDICIAL SERVICE

February, 2014, he has refused to maintain her. That before they got married, the respondent was unemployed and she provided for him until he gained employment at Joy FM and later at Peace FM. That she had theirs on eleven (11) years into their cohabitation after suffering numerous miscarriages.

That the respondent was not regular in coming home and blamed same on his work load. That he subsequently stopped coming home at all and has set up house with another woman at Adjei Kojo with whom he has a child. That the petitioner neglected to maintain she and the issue of the marriage and has completely neglected them since February, 2014.

That she informed respondent's family of his behavior and two meetings were convened but their marriage could not be reconciled. That they also ended up at DOVVSU. Respondent was made to take custody of the issue and the issue has since been in his custody.

Further that they acquired a house at community 2, Tema which they used as their matrimonial home. That they acquired a piece of land and later built another house at Ashaiman. Also that they acquired six vehicles one of which was sold to her brother and the other used as barter for a piece of land. That she was using one of the vehicles. That the respondent has recovered properties jointly acquired from the matrimonial home including a television set, microwave, sound system, toaster, curtains and petitioner's car.

Also that she set up a grocery shop with her own funds and a start up capital from her brother. That with the support of her brother, she also established a drinking spot. She denied that respondent had established such a shop or a drinking spot for her. That the

JUDICIAL SERVICE

shop collapsed due to the fact that she had to use the proceeds to maintain the issue of the marriage and herself.

That although the respondent indicated to her family that he was no longer interested in the marriage, he failed to take steps to dissolve it. That when the respondent was leaving the matrimonial home, he asked her to also vacate same as he was going to sell it. That he did not provide her with alternative accommodation and never asked her to join him at his current residence at Adjei kojo as that is where he lives with his second wife and children.

That the respondent has failed to maintain her despite being asked to so do by DOVVSU and respondent has no right to transfer the matrimonial home to his children without her consent and concurrence.

THE CASE OF THE RESPONDENT

According to the respondent, he has two children with another woman and the petitioner is well aware of same. That he acquired the matrimonial home in community two with a loan and in 2013, he transferred same into the names of his three children including the issue with the petitioner. He tendered in evidence EXHIBIT 1 as that statutory declaration. He further averred that he bought two cars and gave one to the petitioner to take the child to school.

That he established a grocery store and a drinking spot for the petitioner on her father's land and she was to render accounts to him but she refused and this created tension between them. Also that he has never deserted his responsibilities towards his family and it is rather the petitioner who has rented out the store and changing the school of the issue without his knowledge.

JUDICIAL SERVICE

He continued that the petitioner reported him to his employers, to the social welfare department, to the Commission on Human Rights and Administrative Justice and also to DOVVSU. That it was at DOVVSU that custody of the issue was granted to him. That their families met to reconcile them and the petitioner admitted that she has been having extra marital affairs. That at another family meeting, he asked that the petitioner move into the house where he lives in with the other woman but she has refused. That he currently lives with his three children and a househelp.

That the petitioner lives in the house at community two with persons whom he does not know.

Neither of the parties called any witnesses. Both parties agree to the dissolution of their marriage and the petitioner consents that custody of the only issue be granted to the respondent. As the respondent has claimed that as a relief and the petitioner agrees to same, there is no need to make it an issue for determination by the Court. From the evidence on record, the child should be seventeen years (17) years old now. The respondent is granted custody until the child turns twenty one (21) years when per ***Section 29 of Act 367***, the order automatically elapses. He can then decide which of his parents to live with.

Although the petitioner had also prayed for a refund of school fees which she paid for the issue of the marriage, she appeared to have abandoned that claim when at page 48 and 49 of the record of proceedings, under cross examination by learned counsel for the respondent, she had answered;

> *Question.* *Your assertion that rain destroyed the receipts and whatever is just to throw dust into the eyes of this court.*

JUDICIAL SERVICE

Answer. *Not correct. Besides I am not demanding that refund of the money. It is my own child.*

The issues for the court to determine are;

1. ***Whether or not their customary marriage has broken down beyond reconciliation.***
2. ***Whether or not the matrimonial home at community two should be settled on the petitioner or the respondent***
3. ***Whether or not a grocery store and drinking spot should be settled on the petitioner***
4. ***Whether or not the respondent should be ordered to return a car which was for the use of the petitioner during their period of cohabitation***
5. ***Whether or not the petitioner is entitled to maintenance arrears of one hundred and fifty Ghana cedis (Ghs 150) from February, 2014 till final date of dissolution and to an order for the respondent to return household chattels which he took out of the matrimonial home.***
6. ***Whether or not the petitioner is entitled to financial provision of twenty thousand Ghana cedis (Ghs 20,000)***

CONSIDERATION BY COURT

1. ***Whether or not the marriage has broken down beyond reconciliation***

The parties to this action were married under the customary law in July, 1996. As such this is an application grounded under ***Section 41 (2) of the Matrimonial Causes Act, 1971, Act 367***. ***Section 41 (2)*** provides that:

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

JUDICIAL SERVICE

a) *Consider the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements*
b) *Grant any form of relief recognized by the personal law of the parties to the proceedings, in addition to or in substitution for the matrimonial reliefs afforded by this Act.*

Both parties pray for a dissolution of their marriage. In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. The respected ***Benin JSC*** in the case of ***John Tagoe v. Accra Brewery Ltd. [2016] 93 G.M.J. 103 @*** 123 *was convicted that: "It is trite law that he who alleges, be he plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be*".

Thus the petitioner who is asserting the positive bears the burden of establishing her case on a balance of probabilities. The burden on her is akin to a double edged sword. Akamba JA (As he then was) in the case ***of Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11th March, 2005*** explained: *"What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section.* See **Section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)**.

Although the petitioner asserted, the respondent made a cross petition and so they both bore the burden of proving their respective claims. See the case of ***Gregory v. Tandoh IV & Hanson [2010] SCGLR 971.***

JUDICIAL SERVICE

Divorce is defined as "*the legal dissolution of a marriage by a Court*". See Blacks' law dictionary, (8th edition, 2004 p. 1449) The court must enquire as far as is reasonable into the reasons for the divorce and may either grant or refuse to decree a divorce after hearing. See the case of ***Ameko v. Agbenu [2015] 91 G.M.J.***

Although the petitioner had made a strong case that the respondent's attitude changed when he became employed and also involved with the mother of his first and last child, I would not place much stock on it. This is because customary marriage is potentially polygamous and the petitioner after getting to know that the respondent had had his first child by another woman in the course of their marriage, still stayed on in the marriage and went on to have the only issue of the marriage. Flowing from her own actions, I would not lay much stock on the presence of this second woman as the breakdown of their marriage.

The respondent had also tried to put across a case that the petitioner had confessed to having extra marital affairs when their families met to discuss their issues. Even if I am to believe him, he proceeds to say that at a second meeting between the families, he asked the petitioner to move into his new place of abode to live there with him and the children. Clearly, if there was indeed a confession of extra marital affairs on the part of the petitioner, he did not seem perturbed by it.

Although both parties assign differing reasons for the breakdown of their marriage beyond reconciliation, they both agree that they have not lived as husband and wife since 2014. The evidence on record also points to the fact that various attempts made by their families to resolve their differences have failed.

JUDICIAL SERVICE

This case has travelled through the social welfare department, the Commission on Human Rights and Administrative Justice, the Domestic Violence and Victim Support Unit of the Ghana Police Service and the families of the parties. Since January, 2016 when this application was presented, the parties have continued to live apart and their separation if at all has concretized over this time.

The petitioner at page 34 and 35 of the record of proceedings under cross examination by learned counsel for the respondent answered:

Question. *You took the respondent to Social Welfare Department. Is that not so?*

Answer. *Yes my lord.*

Question. *What year did you take him to the Social Welfare?*

Answer. *In 2014*

Also at page 38 and 39 of the record of proceedings, petitioner had answered under cross examination;

Question. *Two(2) years ago, were you still together or you had separated.*

Answer. *We were separated and he had come to live at Adjei Kojo.*

Question. *When exactly did the two (2) of you separate.*

Answer. *2014.*

The respondent at page 72 and 73 of the record of proceedings under cross examination by learned counsel for the petitioner answered;

Q: *Are you interested in the petitioner as a wife?*

A: *Since she said she is no longer interested, for the past 6 years, I have also lost interest.*

JUDICIAL SERVICE

Q: So based on your own instincts and sensibilities, on your own, you are not interested in this marriage.

A: No my lord. I am not interested.

What is evident per the evidence is that all attempts to reconcile the parties by their families have failed. Marriage in Ghana is regarded as a union of not only the individuals but their families as well. It is the family unit that is called upon most often to resolve any issues that the parties may have on their marital journey and to safely steer the marriage boat back on its course of eternal unity. When the family are unable to settle differences and give up on the marriage, it is seldom difficult if not impossible for there to be any reconciliation. The parties to this action can clearly not be reconciled even after diligent efforts and have for more than eight (8) years lived their separate lives. Respondent has gone on to have a second child with the mother of his first child during the course of these proceedings.

One of the basis for arriving at a conclusion that a marriage has broken down beyond reconciliation is inability to reconcile after diligent efforts, ***Section 2 (1) (f) of the Matrimonial Causes Act, 1971, (Act 367)*** *provides that;*

2. (1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts:

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

On the basis of the evidence, I hereby find after my enquiry that the marriage between the parties has broken down beyond reconciliation on the grounds all diligent efforts to

JUDICIAL SERVICE

reconcile them have failed. I duly issue a decree of dissolution to dissolve the customary marriage celebrated between them on the 19th day of July, 1996.

I would consider issues 2, 3 and 4 together.

2. ***Whether or not the matrimonial home at community two should be settled on the petitioner or the respondent***
3. ***Whether or not a grocery store and drinking spot should be settled on the petitioner***
4. ***Whether or not the respondent should be ordered to return a car which was for the use of the petitioner during their period of cohabitation.***

Prior to resolving these issues, the records must reflect that although the parties were married under customary law and the respondent had children with another woman, in this court, no claim has been made that he is married to the other woman as well. Indeed, he had indicated that the other woman was not even living with him and he lived with his three children and a houshelp. At page 60 of the record of proceedings, the respondent under cross examination had answered;

Q: Do you have any woman in your life apart from the petitioner?

A: No my lord.

Thus this is not a case of a man married to more than one woman under the customary law for which reason any consideration of property distribution should involve the interest of the other wife. The case of the petitioner is that in the course of their marriage, they acquired the matrimonial home at community, 2, Tema, a piece of land at Ashaiman on which the respondent has now built a three bedroom house which he resides in and about six vehicles.

JUDICIAL SERVICE

The respondent does not deny this. At page 62 and 63 of the record of proceedings, he answered under cross examination;

Q: I put it to you that petitioner and you bought a house at Community 2.

A: Yes my lord.

Q: It was bought from a certain Mr. Dadzie.

A: Yes my lord.

Q: And that house used to be your matrimonial home.

A: Yes my lord.

Q: You both contributed to buy a house at Ashaiman.

A: Yes my lord but that house does not belong to me alone.

It is a legal known that an admission by the opposing side is more than sufficient evidence in proof of a claim. In the case of ***Kwame Osei v. Mrs. Janet Darko & 2 Ors.; Civil App. No. J4/29/2017, dated 31st January 2018, S.C. (Unreported)***, the apex court in delivering its judgment through the considered Baffoe Bonnie JSC held that *"Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct".*

The respondent thus agrees that it the matrimonial home where the petitioner currently resides and the house in which he currently lives in at Asahiman were acquired in the course of the marriage. The respondent however tendered in evidence EXHIBIT 1 and contends that he has by a statutory declaration, gifted the house at community two to his three children including the issue of the marriage. That he did so in 2013 prior to the petitioner instituting this action.

JUDICIAL SERVICE

The petitioner denies this. At page 50 of the record of proceedings, the petitioner under cross examination by learned counsel for the respondent answered;

Question.	*You are very much aware that in 2016, the respondent with your support and coercion prepared a statutory declaration that he has gifted that house to your child and his sibling. Is that not so?*
Answer.	*That is not true.*
Question.	*So you are telling this Honorable court that you have never seen that declaration before which respondent has attached as Exhibit 1.*
Answer.	*That is so.*

EXHIBIT 1 itself is headed '***STATUTORY DECLARATION ACT NO 389 OF 1971, TEMA A.D. 2016***'. It was declared on the 21st day of September, 2013. Exhibit 1 on its face calls into question the claim of the respondent. Although the heading is 2016, the document was supposedly executed in 2013. The petitioner presented this application in January, 2016. The respondent filed his answer and cross petition in March, 2016. I have gone through his answer and cross petition with a fine comb and nowhere does he aver that the said house is the subject matter of a gift which he had made to his children as far back as 2013. Indeed, in his relief C, he prays the court to settle the said house on him and not even the issue of the marriage.

Then he filed his written evidence in chief in November, 2016 and makes reference to a deed of gift to his children and the existence of EXHIBIT 1. I find from his own pleadings that it is unlikely EXHIBIT 1 existed as at March, 2016 when he filed his answer and cross petition. This is strengthened by the heading of EXHIBIT 1 which although supposedly executed in September, 2013 has the heading of a statutory declaration prepared in 2016.

JUDICIAL SERVICE

Again, although EXHIBIT 1 in its paragraph 5 prays the Tema Development Corporation to cause a formal transfer of the property into the names of the said children, in the course of this trial, no other document was shown as proof that from the date of the supposed declaration in 2013 to the time the respondent was testifying in this court in late 2021, the TDC had done any act in compliance of EXHIBIT 1.

In the circumstances, I find EXHIBIT 1 to be a forged document meant to overreach this court and to defeat the provision for property settlement. As the matrimonial home was the subject matter of a dispute, it is covered by ***Section 26 Act 367. Section 26 of Act 367*** provides that:

> "the Court may by order restrain either party to the marriage, or any other person, from permitting the disposition of the assets or property of either party to the marriage, and the court may rescind a disposition of the property that has been made with the intention of defeating the financial provision or property settlement of the other party, except that a disposition for value to a purchaser in good faith may not be rescinded''.

I accordingly find that the matrimonial home and the house at Ashaiman were acquired jointly by the parties in the course of the marriage and same still remains as marital property.

The respondent urges the court to settle a grocery shop and drinking bar on the petitioner. His contention is that he established same for the petitioner and that the tension in their marriage started when the petitioner refused to account for same to him and also rented it out without his permission.

JUDICIAL SERVICE

The petitioner on her part testified that she established the business herself with the assistance of her brother. That at first, it was a grocery shop and she later turned it into a drinking spot. That the said shop which is located on her father's property has collapsed because she used the proceeds to maintain herself and the issue of the marriage when the respondent refused to maintain them.

From their evidence, the said shop is no longer being run by the petitioner and the respondent is well aware of same. Learned counsel for the respondent in cross examining the petitioner at page 48 of the record of proceedings has asked;

Question. *What is the state of all the business that you were doing?*

Answer. *I stopped operating the provision shop before I went into the drinking spot business. Currently, I am into sewing.*

Question. *I put it to you that all these business have collapsed now.*

Answer. *The two have collapsed but I am still sewing.*

As the shops are no longer in existence, it cannot be the subject matter of a property settlement dispute. What exists as matrimonial property is the matrimonial home and the house at Ashaiman.

The law as espoused by the Supreme Court in reliance on ***Article 22 of the 1992 Constitution*** is that any property acquired by spouses during the course of their marriage is to be presumed (rebuttably) to be jointly acquired. In other words, property acquired by the spouses during marriage is presumed to be marital property unless contrary evidence is led. See the case of ***Arthur (No 1 v. Arthur No 1) [2013-2014] SCGLR 543, Vol. 1*** **which re-affirmed the decision in the oft cited case of** ***Gladys Mensah v. Stephen Mensah [2012] 1 SCGLR 391*** in which the veritable Dotse JSC in

JUDICIAL SERVICE

delivering the judgment of the court, gave effect to the provision in ***Article 22 of the Constitution, 1992***.

The principle to be applied in the distribution of marital property is that of equality is equity. See the majority decision in the Supreme Court decision *of* ***Peter Adjei v. Margaret Adjei [Civil Appeal No.J4/06/2021) delivered on the 21st day of April, 2021***. *Pwamang JSC* in reading the majority decision held that "property acquired by spouses during marriage is presumed to be marital property. Upon dissolution of the marriage, the property will be shared in accordance with the "equality is equity'' principle except where the spouse who acquired the property can adduce evidence to rebut the presumption''. Interestingly, the Adjei case involved a couple married under the customary law.

The matrimonial home at community two, Tema is a single room self contained property whereas the house at Ashaiman is a three bedroom property. The petitioner prays that the court settles the single room matrimonial property on her. I find her claim to be fair. Consequently, on the basis of the equality is equity principle, I hereby settle the matrimonial home at community two, Tema on the petitioner. The respondent, at his own cost is to cause all documents bearing his name on the property to be transferred to the petitioner within sixty days from the date of judgment.

On the issue of the vehicle, the claim of the petitioner is that in the course of their marriage, they had six vehicles at home. That the respondent gave her a vehicle to use but she could use any other vehicle. At page 40 and 41 of the record of proceedings, this is what transpired;

Question. *You also alleged that you bought six (6) cars whilst you were in the relationship.*

JUDICIAL SERVICE

Answer. *That is so.*

Question. *Can you the registration numbers of these cars to the court?*

Answer. *No I cannot.*

Question. *So you cannot remember even one (1).*

Answer. *No my lord*

Question. *Can you tell the court the model of these cars?*

Answer. *Alfa Romeo, Eclipse, two Mercedes Benz, a Hyundai and a Suzuki.*

Question. *Did you contribute in the purchase of these cars?*

Answer. *No my lord.*

Question. *So all these cars. Was it for a purpose or a luxurious living?*

Answer. *They were all parked in the house.*

Question. *So did you know that you husband was doing buying and selling of cars.*

Answer. *No. He was not selling cars.*

Question. *So these cars that you see in the house, how long did they stay in the house.*

Answer. *They were in the house for a long while. When one gets faulty, he takes it to the mechanic and begins using another one.*

Question. *How many of the cars were you using?*

Answer. *Three(3) cars.*

Question. *And what were you using these three cars for.*

Answer. *I used it to the market, church.*

Question. *So where are these cars now?*

Answer. *I cannot tell now.*

Question. *And when did these cars vanish from the house.*

Answer. *It has been a long time and it is only one I see respondent currently using.*

JUDICIAL SERVICE

That after he left the matrimonial home, he has come for the said vehicle. She prays the court to order the respondent to return the vehicle. Under cross examination by learned counsel for the respondent at page 46 of the record of proceedings, petitioner had answered;

Question. *What is the registration number of that car?*

Answer. *GT 2163 - X*

Question. *What type of car was it?*

Answer. *Suzuki.*

Question. *And what was the purpose for the use of that car.*

Answer. *Respondent gave it to me to use in taking our son to school and I could also take it anywhere.*

Question. *So in a nutshell, the car had not been gifted to you. It was for you to take the child to school.*

Answer. *That is so. However, as he is my husband, whatever belongs to him belongs to me.*

Question. *Where is that car now?*

Answer. *With the Respondent.*

The respondent on his part admits that there were many vehicles in the house but denies that same belongs to him. According to him, he was into the sale of cars and so those vehicles were meant to be repaired, tested and then sold. Under cross examination by learned counsel for the petitioner at page 63 of the record of proceedings, he had answered;

Q: *You also bought 6 cars in the course of the marriage.*

JUDICIAL SERVICE

A: *No my lord. Because the 6 cars, I was doing buying and selling and so I buy and sell but not for my personal use.*

Q: *I put it to you that those were 6 cars registered in your name.*

A: *No my lord. The cars are not registered in my name.*

Q: *And the houses and the cars were bought in the course of your marriage to the petitioner.*

A: *No my lord.*

Q: *One of the cars the petitioner was using had registration number GT 2153 X.*

A: *No my lord. The car number is GT 2163 but not 53.*

Q: *And as we speak, you have forcibly taken over that car from the petitioner and removed it from the matrimonial home.*

A: *No my lord because that car was part of the cars that I was selling.*

Q: *It was the car petitioner was using.*

A: *Yes my lord. I gave it to her to take the child to school. It is like I repaired it, testing it before I sell and that is why I gave it to her to use it.*

Q: *I put it to you that petitioner was not your testing officer.*

A: *Yes my lord. I know she was not my testing officer but because she needs a car to pick the child to school, that is why I gave it to her.*

Q: *And I also put it to you that you did not give that car to petitioner to get her deliberately involved in an accident.*

A: *No my lord.*

Q: *So the car was in good repair.*

A: *Yes, my lord.*

Q: *And petitioner was not testing it.*

A: *My lord, I tested it and it was in a chain of the cars that I am selling and since the consumption is low that is why I gave it to her to use.*

JUDICIAL SERVICE

I have reproduced the cross examination on this issue in extenso because it speaks for itself. The respondent was not being truthful to the court. The respondent in his answer to the petition had averred that he bought two cars and gave one to the petitioner to use in taking the child to school. He did not speak about any car in his written evidence in chief. At all times in this court, by way of profession, he had held himself out as working with a radio station.

He had never made a claim that he was into the purchase and sale of vehicles. That he sought to mount this as part of his evidence during cross examination of petitioner by his learned counsel appears to be an afterthought. He had prevaricated under cross examination in his answers and generally did not give a good account of himself. I did not find him to be a credible witness on this.

In the case of ***Ntim v. Essien [2001-2002] SCGLR 451***, it was held that in determining the credibility of a witness, the court must take into account "*the demeanour of the witness, the substance of the testimony, the existence or non existence of any fact testified to by the witness, a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial, the statement of the witness admitting to untruthfulness or asserting truthfulness among others''.*

In the course of their marriage, the respondent introduced the petitioner to a lifestyle which involved the use of vehicles. He acquired those vehicles in the course of the marriage and even though the petitioner did not contribute to its acquisition financially, the respondent agrees that she was performing her duties as a wife to him and a mother to their son. In the circumstances, I find that settling one out of the six cars on the petitioner would be a fair and equitable decision.

JUDICIAL SERVICE

Accordingly, the respondent is hereby ordered to return the Suzuki vehicle with registration number GT 2163 X to the petitioner within thirty days from the date of judgment. The vehicle is to be in the state that it was in prior to the respondent taking it away. In the alternative, he is to settle her with a similar vehicle within thirty days from the date of judgment.

5. ***Whether or not the petitioner is entitled to maintenance arrears of one hundred and fifty Ghana cedis (Ghs 150) from February, 2014 till final date of dissolution and for an order for the respondent to return household chattels which he took out of the matrimonial home.***

On the issue of maintenance arrears, the law is settled that it is the duty of a spouse to provide for the necessaries of health and life to the other spouse based on who has the better financial position. According to the petitioner, the respondent has refused to maintain her since February, 2014. The petitioner in this court has put herself across as a woman who has always worked; sometimes doing several jobs including running a drinking spot. She currently sews. The respondent has been a radio presenter.

The case for the petitioner is that save for the sewing business, the other businesses she run collapsed because she had to use the moneys realized to maintain herself and the issue of the marriage. In this court, she had also answered that she has been renting out some containers and using same to maintain herself. Under cross examination by learned counsel for the respondent at pages 48 and 49 of the record of proceedings, she had answered;

Question. *I put it to you that all these business have collapsed now.*

Answer. *The two have collapsed but I am still sewing.*

JUDICIAL SERVICE

Question. *You have sold the containers that you were using for the business.*

Answer. *No. I have not.*

Question. *So who is operating these containers now?*

Answer. *I have given it to my friend to work in. It is located at Community 2 and behind our residence my friend is working in it so that it would not deteriorate.*

Question. *Have you rented it out or it is for free.*

Answer. *I rented it to her.*

Question. *So it means you are making money out of that business.*

Answer. *That is so. I use it for my upkeep.*

Question. *So we can infer….that you are not impecunious….*

Answer. *Not correct. I rent it out to her every year.*

The only issue of the marriage has been in the custody of the respondent even before the presentation of this application for dissolution of the marriage. No orders have been made for the petitioner to contribute to the maintenance of the issue even though she works and has a responsibility towards the issue as a parent. That means that the maintenance of the issue as well as the payment of school fees, medical bills, clothing and all other ancillary needs of the child have been borne by the respondent alone.

The petitioner thus has full use and control of whatever moneys she makes from her sewing business and her rental of the containers. It would be unfair to expect the respondent o maintain her in the circumstances, particularly after he took custody of the issue. If at all, the petitioner is entitled to maintenance arrears from February, 2014 to March, 2015 when the issue left her custody. Accordingly, the respondent is to pay her the sum of one hundred and fifty (Ghs 150) from 1st February, 2014 till 31st March,

JUDICIAL SERVICE

2015. That would be fourteen months arrears totaling two thousand, one hundred Ghana cedis (Ghs 2,100)

The petitioner prayed for the respondent to be ordered to return a microwave, television set, sound system, toasting machine and curtains which he took away from the matrimonial home. As I have already indicated, between the parties, I found the petitioner to be more credible than the respondent. I believe her claim that the respondent took away those items from the matrimonial home.

As the marriage had not been dissolved and properties distributed between them, the respondent had no basis for doing so. Accordingly, the respondent is to return the television set, microwave and toasting machine to the petitioner whilst he keeps the sound system and the curtains. As the items have been with him since 2014, and as household chattels they are goods in constant use, it is expected that they would have worn out. The respondent is hereby ordered to purchase the said items in new conditions and hand same to the petitioner within thirty days from the date of judgment.

6. ***Whether or not the petitioner is entitled to financial provision of twenty thousand Ghana cedis (Ghs 20,000)***

On the claim for financial provision of twenty thousand Ghana cedis (Ghs 20,000), in analyzing this, I am mindful of the decision in the case of ***Aikins v. Aikins [1979]GLR 223*** holding 4 which is that "in considering the amount payable as lump sum, the court should not take into account the conduct of either the husband or the wife but it must look at the realities and take into account the standard of living to which the wife was accustomed during the marriage".

JUDICIAL SERVICE

In the case of ***Oparebea v. Mensah [1993-94] 1 GLR 61***, the court held that in order to determine a claim made under ***Section 20 (1) of the Matrimonial Causes Act***, the court must examine the needs of the party making the claim and not the contributions of the parties during the marriage.

Factors to be considered in arriving at an equitable decision include the earning capacity or income of the parties, property or other financial properties which each of the parties has or is likely to have in the foreseeable future, the financial needs, obligations and responsibilities of each of the parties and the standard of living enjoyed by the family before the breakdown of the marriage.

There is no doubt that the respondent introduced the petitioner to a high standard of living in the course of their marriage. The fact that she had various cars to use at her disposal to church, the market and for the school run is ample evidence of same. The petitioner also performed her duties as a wife and this was acknowledged by the respondent. At page 59 of the record of proceedings, the respondent had under cross examination by learned counsel for the petitioner answered;

Q: You have a child with the petitioner.

A: Yes, my lord.

Q: As a wife, petitioner was cooking for you, doing your laundry and general housekeeping for you.

A: Yes, my lord.

After they ceased cohabitation, the petitioner has remained in the single room matrimonial home. She has also not had the use of a vehicle after the respondent took away the vehicles. Although they have been in court since 2016 and have been living

JUDICIAL SERVICE

apart since 2014, no evidence has been led that the petitioner is doing well for herself and is in the same condition if not better than when she and the respondent were together.

The respondent on the other hand does not deny that he has since then completed building on the land they acquired at Ashaiman and currently lives in same. it is a far more spacious building than the matrimonial home. He also continues to have the use of a vehicle or vehicles. Whereas the petitioner has moved from operating a grocery store and a sewing business to operating just a sewing business, the respondent has during the same period continued to live a reasonable luxurious life and made improvements to his standard of living.

Now that they are divorced, it is only fair that the respondent be made to settle the petitioner with a reasonable sum to enable her to get back on her feet. The petitioner prays for twenty thousand Ghana cedis (Ghs 20,000). In her learned counsel's address to the court, she urged the court to enhance the amount due to the fact that the claim was made as far back as 2016 when the petition was filed. She urged the court to take judicial notice of the rising price levels of food and clothing and inflation generally.

I agree with learned counsel. The Ghana Statistical Service has for this year alone, given an inflation rate for food as being about 50%.

That means that the value of twenty thousand Ghana cedis (Ghs 20,000) as at 2016 would not be the same as at 2022. However, the law is that a court awards reliefs based on a party's claim. The petitioner could have sought leave of the court to amend her relief for financial provision. She failed to. In the circumstances, I can only grant what she had prayed for. The petitioner is entitled to the sum of twenty thousand Ghana

JUDICIAL SERVICE

cedis (Ghs 20,000) as financial provision from the respondent. The respondent is to pay the said amount to her within forty five (45) days from the date of judgment. Failure of which would attract interest at the prevailing commercial bank rate from the date of judgment till the date of final payment.

Cost of fifteen thousand Ghana cedis (Ghs 15,000) is hereby awarded to the petitioner.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

AFFUM AGYAPONG FOR THE PETITIONER PRESENT

VINCENT AIKINS FOR THE RESPONDENT PRESENT

JUDICIAL SERVICE