

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 17TH NOVEMBER, 2022

SUIT NO. C5/58/18

LATIFATU AL RAZAK

-

PETITIONER

VRS

SAMUEL AIDOO

-

RESPONDENT

JUDGMENT

On the 25th day of October, 2008, the parties to this action, convinced of their love for each other and their desire to be together as man and wife to the exclusion of all others, solemnized their union by celebrating their marriage under the ordinance at the Tema Metropolitan Assembly.

Almost a decade thereafter, precisely on the 13th day of April, 2018, the petitioner herein having arrived at a decision that she could no longer live with the respondent as man and wife due to his unreasonable behavior, presented a petition to this court for the dissolution of their marriage. There is one issue of the marriage who as at the time of presentation of the petition was eight (8) years old.

The petitioner amended her petition on the 27th day of July, 2020. She maintained that their marriage had broken down beyond reconciliation due to the unreasonable behavior of the respondent. She sought the reliefs of:

- a) That the marriage celebrated between the parties be dissolved
- b) Custody of the child to petitioner with reasonable access to visitation by the respondent as the honourable court may deem fit

- c) Maintenance arrears since May, 2016 at Ghs 200 per month
- d) Monthly maintenance of Ghs 500, provision of accommodation and payment of rent for the next two years
- e) 50% share of the matrimonial home at Community 25 acquired during the existence of the marriage or alternatively, the respondent should be ordered to hold in trust my 50% share of the matrimonial home for the only issue in the marriage
- f) Ghs 50,000 as alimony
- g) Cost .

The respondent in his amended answer contended that it is rather the petitioner who has behaved unreasonably by her own attitude and inconsiderate behavior. That he acquired the land on which the matrimonial home sits in 2006 and started the building before contracting the marriage with the petitioner. He agreed to the petitioner's reliefs (a) and (b) and contended that the court should dismiss her other reliefs.

THE CASE OF THE PETITIONER

The case of the petitioner is that since the inception of their marriage, the respondent has consistently disrespected she and her family. That he began to show signs of a bossy and uncooperative spirit in the early stages of their marriage and would not consult her over important issues including those pertaining to the issue of the marriage. That he looked down on her as a woman and did not regard her as an equal partner in the marriage. That he also assaulted her sexually and would force his way with her even when she complained that she was not well on the basis that a woman was lower to a man and ought to do his bidding at all times.

She continued that the respondent was also physically and verbally abusive and would sometimes slap her even in the presence of the issue of the marriage. That she lost their second child after delivery in June, 2012 and the respondent in what had become his typical nature, took a picture of the dead baby and showed it to her whilst she was still recovering after having had a caesarean and told her to look at the baby that she has killed.

That the respondent also behaved in a dehumanizing manner and would sometimes assault the issue of the marriage just to get a reaction from her so he could vent his anger on her. That the only time there was peace in the house was when she chose to ignore his behavior which was meant to taunt, insinuate and ridicule her.

That the respondent subsequently stopped sleeping in the same bed with her and moved to their intended matrimonial home alone in November, 2015. That she refused to join the respondent to the said matrimonial home because she had become afraid of his abusive and intolerable conduct. That the respondent has since refused to maintain her and the issue and the last time he maintained the issue was in May, 2016. That it was during the pendency of this case that by order of the court, he started maintaining the issue.

That all efforts by well meaning persons to reconcile them have failed as the respondent refused to apologize for his behavior towards her and her parents. She tendered in evidence EXHIBIT A as proof of an invitation by the Registrar of Marriages and Divorce for a reconciliation meeting.

She continued that prior to their getting married, the respondent had a piece of land at Community, 25, Tema. It was during the subsistence of their marriage, particularly in

2011 that they began to build what was intended to be their matrimonial home on the said parcel of land. Further that she contributed immensely towards the construction of the matrimonial home by introducing the respondent to her cousin named Romeo Tetteh who gave the respondent freight forwarding businesses to undertake out of which she and the respondent initially started raising funds for the construction of the said matrimonial home.

That in September, 2012, she also got respondent a lucrative freight forwarding contract with one Dr. Sylvester Anemana, the then Chief Director of the Ministry of Health who was the owner of Vorodam Enterprise. She attached EXHIBIT B as a due diligence report submitted by Vorodam Enterprise which showed her name, respondents and some others as personnel associated with Voradam Enterprise.

That many times, payments from Voradam to the respondent were made through her as the general manager of the company or in her presence. That it was the income from this business that they used to put up their matrimonial home. That aside this, she has dutifully catered for the home by performing all household chores for the family.

That she has also paid for the hospital bills and clothing of the issue of the marriage as well as paying for the driver who picks the issue from school. That the completion of the matrimonial home coincided with the period when the respondent's bossy and abusive behavior was at its height and so she decided not to move in with him out of fear.

THE CASE OF THE RESPONDENT

In his evidence in chief, the respondent indicated that their marriage had broken down beyond reconciliation. That the petitioner once assaulted him on the face with a water

bottle belonging to the issue of the marriage and also used the same bottle to crack the windscreen of his car. That he involved the parents of the petitioner when she refused to go along with him to the matrimonial home and they rather supported the decision of the petitioner.

He continued that two years after he moved into the matrimonial home alone, the petitioner had still not joined him and so he reported the matter to a TMA lawyer for reconciliation. That the petitioner was advised to move into the home but she has since failed to join him. That the petitioner misused the money meant to pay the school fees of the issue for two terms and it was only after same was detected that she made payment.

That the breakdown of their marriage has been due to the petitioner's utterances, inconsiderate behavior, threats to him and her refusal to join him in the matrimonial home. That although he is not a salaried worker, he tried to always meet the needs of their child and the home to the best of his ability.

That at the time of their financial crisis, the petitioner led him to borrow five thousand Ghana cedis (Ghs 5,000) to pay their rent advance. That he could not pay on time and eventually had to pay twenty eight thousand Ghana cedis (Ghs 28,000). That he has never assaulted the petitioner or disrespected she or her tribe. It was rather the petitioner who cursed him that if he sleeps with her again, he would lose his job and so he decided not to sleep with her again. That ever since their marriage, the petitioner although a salaried worker, has never supported him to pay rent.

He continued that he acquired the land on which the matrimonial home sits in 2005 with one Ann Mortu. That documents covering the land were executed in 2009. He

attached the indenture as EXHIBIT 1 and a lands commission receipt as EXHIBIT 1a. That he developed the said land and it was almost completed in 2007 with only some furnishing left to be done. That he moved into the said house in 2015.

EVIDENCE OF RW1

According to RW1, she and the respondent purchased a tract of land in 2005 from one Martin Annan now deceased. That the land was divided between she and respondent. She tendered in evidence as EXHIBIT 2, a receipt of sale. That she developed hers and saw the respondent develop his and complete same in 2007. That the documents covering the said land were executed for them in 2009.

EVIDENCE OF RW2

2nd witness for the respondent was Dr. Sylvester Anemana. His evidence is that he knows both parties. He denied that it was the petitioner who introduced the respondent to him and said it was rather his driver who introduced both parties to him. That his first meeting was with the petitioner and her father and they promised to bring someone to better explain issues concerning a refund of container deposits. They later brought the respondent to make those explanations to him. That it was the respondent's honesty, in depth knowledge of the job and his successful operations that earned him the job and not through the petitioner.

The issues for the court to determine are;

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not custody of the issue of the marriage should be granted to the petitioner with visitation rights to the respondent
3. Whether or not the respondent should be ordered to pay maintenance arrears and also pay a monthly maintenance of Ghs 500 to the issue of the marriage

4. Whether or not the parties jointly acquired the intended matrimonial home at Community 25, Tema in the course of their marriage and same should be distributed equally among the parties
5. Whether or not the petitioner is entitled to a lump sum payment of Ghs 50,000 as financial provision.

CONSIDERATION BY COURT

In divorce just like in all civil cases, the degree of proof required by law is that of a balance or preponderance of probabilities. See *section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)*. In the case of *Adwubeng V. Domfeh [1996-97] SCGLR 660*, the Supreme Court held that “sections 11 (4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by a preponderance of probabilities – no exceptions were made”. It is he who asserts who bears the burden of proof and so the burden of persuasion lies on him/her to lead cogent and positive evidence to establish the existence of his/her claim in the mind of the court. See the case of *Takoradi Flour Mills v. Samir Paris [2005-6] SCGLR 882*.

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

In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. 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.*

The ground upon which a divorce can be obtained from the Courts is clearly stated under the *Matrimonial Causes Act, 1971 (Act 367)*. In *Section 1 (2) of Act 367*, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery which the offended party finds intolerable to live with; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner's basis of presenting this petition is that the respondent has behaved in such an unreasonable manner that she cannot be expected to live with him. The respondent denied this and said although the marriage has broken down beyond reconciliation, it is due to the attitude and inconsiderate nature of the petitioner.

Although the respondent challenges the claim of unreasonable behavior and the petitioner insists on same, what they both do not challenge is the fact that they ceased cohabitation in November, 2015 and had since then, not lived together as husband and wife. As not having lived as husband and wife for two years preceding the presentation of the petition with the other side consenting to the divorce falls in the latter, I would first deal with the available evidence on that ground.

It is my opinion that when parties have been married for a reasonably lengthy period and have issues of the marriage, when they seek to go their separate ways, a court of competent jurisdiction in making enquiries as to the breakdown of the marriage, must seek to promote cordiality and civility between the parties during and after the court

proceedings. That is healthy not only to the parties and their future relationship as co parents but to society as a whole.

To borrow the words of *Sarkodee J (as he then was)* in the case of *Addo v. Addo [1973] 2 GLR 103*, which he himself quoted from *The Law Commission Report; Reform of the Grounds of Divorce. The Field of Choice, para. 15. (Cmd. 3123)* “For it is better: “When regrettably, a marriage has irretrievably broken down to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.”

Section 2 (1) (d) 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:

(d) that the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce; provided that such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal;

Per the uncontroverted evidence, the respondent moved to their intended matrimonial home in November 2015 and the petitioner refused to go along with him due to their various issues. They thus lived separate lives and the respondent did not renew the rent of the petitioner and the issue upon its effluxion. According to the petitioner,

communication had also almost ceased between them as the respondent would not answer her calls or texts but preferred to go and speak to teachers of the issue.

The respondent on his part says he was speaking to the teachers because he and the petitioner were not communicating. There is also no dispute that per EXHIBIT A, which is a letter of invitation from the Tema Municipal Assembly Registrar/Solicitor of Marriages, the petitioner was invited for a reconciliation meeting on the 5th of June, 2017. Both parties agree albeit for varying reasons that the meeting did not yield the intended purpose of reconciliation and they continued staying apart and not living as a married couple until the petitioner presented this petition for dissolution of their marriage on the 13th day of April, 2018.

From the timelines, as at the time of presenting this petition, they had not lived as husband and wife for more than two years. Both of them have also made it abundantly clear that this court should dissolve their union. They do not only consent to the dissolution but have made it clear that there is no going back to their status as a happily married couple. The rancor and animosity between them is as thick as a knife and all attempts by this court to reduce same in the course of proceedings has not yielded any positive results.

I hereby find that the marriage between the parties has broken down beyond reconciliation on the grounds that for more than two years prior to the presentation of this petition, they have not lived together as husband and wife and both of them consent to the dissolution. I duly issue a decree of dissolution to dissolve the marriage celebrated between them on the 25th day of October, 2008. Their marriage certificate is accordingly cancelled. The Registrar is to notify the Registrar of Marriages at the Tema

Metropolitan Assembly of the cancellation to enable them amend their records accordingly.

2. Whether or not custody of the issue of the marriage should be granted to the petitioner with visitation rights to the respondent

3. Whether or not the respondent should be ordered to pay maintenance arrears and also pay a monthly maintenance of Ghs 500 to the issue of the marriage

I would now proceed to treat issues two and three together. On issue two, according to *Azu Crabbe CJ* in the case of *Braun V. Mallet [1975] 1 GLR 81-95* "in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration. In considering matters affecting the welfare of the infant, the court must look at the facts from every angle and give due weight to every relevant material". See also the case of *Gray v. Gray [1971] 1 GLR 422*.

The petitioner prays for custody of the only issue of the marriage with reasonable access to the respondent. The respondent contends that this relief be granted to the petitioner. The issue has lived with petitioner alone since November 2015. She is now twelve years old. As a girl child who would soon enter into her teenage years, she would require some guidance from a female whom she trusts and is comfortable with. The petitioner being her biological mother would fit that purpose.

The issue is also in a school that is closer to the petitioner than the respondent. Thus it would be in the best interest of the issue and in order to ensure the continuity of care, that she remains in the custody of the petitioner. Accordingly, custody is hereby granted to the petitioner with reasonable access to the respondent.

On the claim of maintenance, the duty to maintain a child according to *Section 47 of the Children's Act, 1998 (Act 560)* falls on the parents of that child. It is settled that it is the duty of parents, where they each earn an income to provide for their children. See *Section 49 of Act 560* and the decision of *Dotse JA (as he then was) in the case of Donkor v. Ankrah [2003-2005] GLR 125* where he stated "where both parents of a child are earning an income, it must be the joint responsibility of both parents to maintain the child. The tendency for women to look up to only men for the upkeep of children is gone".

The petitioner works as a consultant and earns a monthly income whilst the respondent works as a clearing agent. Although he does not earn a monthly income, he appears to be doing well for himself as he admits that he has in the course of these proceedings, precisely in 2021, acquired a new vehicle.

The petitioner prays for five hundred Ghana cedis (Ghs 500) a month as maintenance and the respondent says he can afford to pay three hundred Ghana cedis (Ghs 300) as month as maintenance for the children. He does not provide the court with any basis for that. In the course of these proceedings, the economic circumstances of this country has changed with regard to inflation such that for this year alone, the Ghana Statistical Service has pegged inflation almost at 40%. That means the value of five hundred Ghana cedis (Ghs 500) as at 2018 when the petition was issued is far less than its current value.

On that basis, the respondent is hereby ordered to pay an amount of five hundred Ghana cedis (Ghs 500) monthly to the petitioner as maintenance for the issue of the marriage commencing from the 30th of November, 2022 and payable every last working day of a month. The amount is to be increased by 20% every year until the child

completes her education at the tertiary level or learns a trade. When the child turns eighteen (18) years, subject to she operating a bank account, the amount is to be paid directly to her account by the respondent. The petitioner as an income earner is to contribute whatever is necessary to ensure that the child is adequately maintained.

The respondent indicates that he is responsible for the payment of school fees and other related school bills. He is to continue doing so and is hereby ordered to make payment directly to whichever school the issue is in at any given time. Both parties are to share on an equal basis, the medical bills of the issue as at when same arises.

This court in the course of proceedings ordered the respondent to provide accommodation for the petitioner and the issue of the marriage. The petitioner indicates that at the time, she was unemployed. She is now employed. After the expiration of the current rent which the respondent is solely responsible for providing, both parties are to pay an equal amount for the renewal of subsequent rents. This order is to remain in force until the petitioner remarries or the issue of the marriage attains adulthood and leaves the custody of the petitioner.

The court also ordered the respondent to pay for maintenance arrears and accommodation for the petitioner and the issue of the marriage in the course of proceedings. He is still in arrears of six thousand, one hundred and fifty two Ghana cedis (Ghs 6, 152) and has not paid for the renewal of the rent. He admitted under cross examination that he has now come into some money and would pay. To that extent, he is hereby ordered to pay the sum of six thousand, one hundred and fifty two Ghana cedis (Ghs 6,152) as maintenance arrears and the full sum of rent arrears.

In this court, the respondent has taken advantage of one excuse or the other to default in obeying the orders of the court as to payment of maintenance and rent. The real time value of money generally depreciates if it is not paid on time. To that extent, the respondent is hereby ordered to pay the arrears with a 20% interest calculated at the commercial bank rate if he pays within 60 days of this judgment. If he fails to, then the amount is to attract interest at 30% from the date of judgment till the date of final payment.

4. *Whether or not the parties jointly acquired the intended matrimonial home at Community 25, Tema in the course of their marriage and same should be distributed equally among the parties.*

The evidence of the petitioner on this issue is that prior to their marriage, the respondent had acquired a piece of land at Tema Community 25. The respondent on his part oscillates between having acquired the land in 2005 and in 2006. As there is no dispute that the land was acquired prior to their marriage in 2008, I would not belabor the point.

What is in contention is that whereas the petitioner's evidence is that it was in the course of their marriage, precisely after they had the issue of the marriage in 2010, that both of them began to build the house situate on the land, the respondent says that he had built the house to a complete stage save for furnishing, prior to their marriage in 2008. Under cross examination by learned counsel for the respondent at pages 38 and 39 of the record of proceedings, the petitioner had answered;

Q: *I am suggesting to you that the respondent personally bought the land at community 25 before contracting the said marriage with you.*

A: *Yes my Lord, it is true.*

Q: *I suggest to you that the respondent almost completed the house at community 25 and it was left with furnishing before contracting the marriage with you.*

A: *My Lord, that is false because I met the respondent in 2006. When I met him, he told me he had a land at community 25 so sometime in 2007, he took me to the place. My Lord, the whole place was bushy. There was not any building and there were land guards there and he even introduced me to one of them as his future wife. We married in 2008. As at that time, nothing happened on the land. My husband started doing something on the land after 2010 when our daughter was born.*

The respondent on his part at page 58 of the record of proceedings, under cross examination by learned counsel for the petitioner, respondent had answered;

Q: *You say in paragraph 26 of your evidence in chief that you had almost completed the matrimonial home by 2007 which means the house was habitable or very relatively habitable.*

A: *Yes. Some squatters were living in it and every month, I bought light for them so that people would not pull out the wires.*

Petitioner says she did not only perform household chores for the home during this period, but contributed to the building of the house by using her contacts to get the respondent contracts and jobs as a clearing agent and it is from the proceeds that they put up the house. She led copious evidence on how she had secured a job for the respondent as the clearing agent of Vorodam Enterprise by virtue of her association with the owner, one Dr. Anemana. She tendered in evidence EXHIBIT B, and C series which bear out her claim as to her involvement with the said company.

She maintained her claim under cross examination by learned counsel for the respondent at page 33 of the record of proceedings;

Q: *Take a look at your exhibit C series? It only shows your association with Vorodam Enterprise which is not in contention but not when in getting the respondent his job.*

A: *My Lord, it is not exactly so however it was through my efforts that my husband got those kinds of jobs from Dr. Anemana. When mails drop in, I receive the mails and then I do the printing and then I call my husband that where ever you are, we have a consignment to clear so he comes and then I hand over the document(s) to him. Then when we get home, the both of us would sit down and then I would ask him "my husband you work at the ports, how much do you think we would need. So he tells me that we would need this amount and then I would go with him to Dr. Anemana and then collectively we would tell the Doctor that this is what we need in order to execute the contract. When he is done with clearing of the containers, I am the same person who prepares the invoice. I am the one who does all the paperwork whilst my husband is at the port doing the fieldwork.*

The respondent disputed this and called the said Dr. Anemana as his witness. In a twist of affairs, his witness rather corroborated all the evidence of the petitioner on this matter. It is trite that where a witness for a party's testimony rather corroborates the case of the opponent, the court cannot gloss over such evidence. The court is mandated to accept the corroborated evidence. See the case of *Tornado Enterprises Ltd and Another v. Chou Sen lim [2007-8] SCGLR 125*.

On this basis, I hereby find that the petitioner used her contacts to secure contracts and particularly a job for the respondent in the course of their marriage.

As to whether or not the said house was built prior to the marriage in 2008, the evidence of the respondent is that he had completed the said house by 2007. He called one witness on this matter. In her evidence in chief, Rw2 said both she and the respondent acquired the land together in 2005 and the respondent built on his between 2006 and 2007. Under cross examination by learned counsel for the petitioner, this is what transpired at page 72 of the record of proceedings:

Q: So you are saying that you and respondent purchased the said tract of land in 2005 and the receipt you were given is what you have attached to your evidence in chief.

A: Yes. Respondent purchased his land before I purchased mine. It was through him that I was able to purchase mine.

Q: So just for clarity again, the receipt has nothing to do with the respondent?

A: Yes my Lord. It has nothing to do with him. He purchased his about 2 years before he even told me and led me to the man to purchase mine. The name on exhibit 2 is that of my boyfriend who I was to marry and who had provided me with the money for the land. I however signed. At the time the respondent told me, he had already begun his construction on the land.

Clearly, RW2 was approbating and reprobating. On one hand, they acquired the land together in 2005 and on another hand, the respondent acquired the land and about two years thereafter, led her to also purchase hers. If the respondent acquired his land in 2005 and led her to his vendor to purchase hers after two years, then it stands to say she purchased her land in 2007.

She tendered in evidence EXHIBIT 2 which she says is the receipt of payment issued to her in the name of her then boyfriend for the purchase of the land. The said receipt is dated the 3rd of July, 2007. At page 73 of the record of proceedings, she insisted that that was the receipt she was issued for the purchase of the land;

Q: I further put it to you that the said document cannot be a receipt for your purchase for a tract of land, supposedly in 2005.

A: That is not true. It is the receipt that I was given.

RW2 wants the court to believe that she was issued with a receipt for part payment in 2007 even though she acquired the land in 2005. She also wants this court to believe that even though she and the respondent acquired the land together, respondent acquired his in 2005 and later led her to acquire hers after two years. That even though she acquired hers two years after the respondent, she saw the respondent began to build his house on his portion of the land from 2006 to 2007.... at a time when the same respondent had not yet taken her to acquire her land. I have put her evidence into the maze that she herself put it in. It is an incredible piece of evidence which she herself must find difficult to believe.

From her EXHIBIT 2 and her convoluted evidence, the reasonable inference is that she indeed acquired the land by making part payment in 2007. That would mean that she was not in a capacity (as the owner of an adjoining land since she did not own any land at the time) to see the respondent building on the land between 2006 and 2007. The law does not side with a party who approbates and reprobates at the same time. See the case of *Apaade Lodge Ltd. v. A.G. & Anor. [2009] 5 G.M.J. 84 @ 90-91, C.A., per Gbadegbe J.A.* (as he then was).

Although the respondent wants the court to believe that the building was completed in 2005, at page 55 of the record of proceedings, I under cross examination by counsel for the petitioner, he had answered;

Q: You have stated in your paragraph 14 that at the time of your financial crisis, when your rent was due, petitioner wanted you to borrow. Can you tell the court at which period or year you refer to as the time of your financial crisis?

A: My Lord, about 2014. My rent was due at the time and since we married, there was no single day that she had given me one Ghana cedis (GH¢1.00) to support the rent. I told her and she took me to a friend of hers whom she said gives loans. I took a loan of five thousand Ghana cedis (GH¢5, 000) and because I defaulted, I ended up paying twenty eight thousand Ghana cedis (GH¢28, 000). I have the receipts here.

As counsel for the petitioner indicated in his written address, it is not reasonable for a man who has a house to not only continue to pay rent as a tenant, but to have to go to extreme lengths to borrow money to pay the said rent. What is reasonable, would be for the said man to move into his own house. To this, I would add that if for any reason, the man could not move into his own home, then reasonably, one would expect that he would rent same out and use the proceeds to pay off his own rent.

The respondent as a reasonable man is inviting this court to accept that although he had completed the house and same was habitable, for no reason he decided to leave it in the occupation of squatters and purchase electricity for them, whilst he borrowed at a cut throat interest rate to renew his own rent. I decline his invitation and find that he is not a credible witness. Clearly, the respondent was in court to throw dust into the eyes of the court on this issue. I found him and his 2nd witness to be serious liars on the issue of the building of the house.

I found the evidence of the petitioner on the building of the house to be credible. Her demeanour particularly under cross examination was that of a person who was out to tell the truth. She answered questions without prevarication or any form of evasion and

provided further and better details in proof of her claim. The substance of her evidence and the existence of the facts which she testified to were corroborated even by the witness for the respondent.

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”.

It is a legal known that evidence is weighed and not counted. The weight of the petitioner’s evidence is worth its weight per the standard of proof required in civil matters; balance of probabilities. Whereas, the respondent per his evidence was out to feed this court with a bucketful of salt. On the strength of my analysis of the evidence, I hereby find that the land on which the intended matrimonial home sits was acquired solely by the respondent prior to their marriage. However, the two bedroom house which currently sits on the land was built by the joint efforts of both parties in the course of their marriage.

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

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”.

On the basis of the equality is equity principle, I hereby hold that the petitioner is entitled to a 40% share in the intended matrimonial home located at Community 25, Tema and covered by EXHIBIT 1, an indenture. The respondent is entitled to a 60% share in the said house. Each party has the first option of refusal.

5. Whether or not the petitioner is entitled to a lump sum payment of Ghs 50,000 as financial provision

The respondent prays for financial provision in the sum of fifty thousand Ghana cedis (Ghs 50,000). 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”.

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.

The respondent did not challenge the claim of the petitioner that whilst they lived together, she performed her duties as a mother and wife by cleaning, cooking and maintaining the home. According to the respondent, he did his best to provide the needs of the home during their period of cohabitation. As they are now divorced, the petitioner can no longer rely on him providing for her needs. It is fair and just that she be provided with a lump sum to begin her life again.

Accordingly, to enable the petitioner start her life again as a single person, the respondent is hereby ordered to pay her the sum of thirty five thousand Ghana cedis (Ghs 35,000) as financial provision within sixty days (60 days) from the date of judgment. Failure of which the amount is to attract interest at the prevailing commercial bank rate from the date of judgment till the date of final payment.

Each party is to bear their own cost in suit to this action.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

OKYEAME S. YANKSON FOR THE PETITIONER PRESENT

KOFI SARFO KANTANKA FOR THE RESPONDENT PRESENT

JUDICIAL SERVICE