

**IN THE CIRCUIT COURT HELD AT DUNKWA-ON-OFFIN THIS WEDNESDAY THE 26<sup>TH</sup>  
DAY OF JULY, 2023 BEFORE HIS HONOUR FRANCIS A OBUAJO**

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**SUIT NO. CC/DK/CC/C4/13/2020**

**SOLOMON ANOMAH KOFI .....PETITIONER**

**VRS**

**FLORENCE WIREDU ..... RESPONDENT**

**PETITIONER PRESENT**

**RESPONDENT PRESENT**

### **JUDGMENT**

**Summary judgment was delivered in this case on the 27/9/2021 after full hearing and the marriage was dissolved on the cross petition of the respondent. Custody of the two issues of the marriage (both of whom are minors), granted to the respondent with liberty for them to visit the petitioner during vacations.**

**The petitioner filed this petition in this court praying for:**

- i) the dissolution of the marriage celebrated between the parties in May 2003;**
- ii) ii) custodies of the Two issues of the marriage Lordina Takyiwa Anomah 13 years and of age Benjamin Gyasi Awomah 7 years and**
- iii) an order compelling the respondent to release all the documents on the petitioners' house H/No. EMA/3/31 to petitioner.**

**The petitioner prayed that the marriage has broken down beyond reconciliation as the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her. At the pleading stage, it came out that landed properties were acquired during the subsistence of the marriage.**

On her part, the Respondent answered and cross petition that, the petitioner has committed adultery during the subsistence of this marriage with the evidence of having a child out of wedlock. And that the petitioner deserted her for over four years without performing his conjugal rights as the husband. Respondent therefore cross petition that;

- a). this marriage be dissolved on her petition,
- b). Custody of the two issues of the marriage be granted her and
- c). make any other orders the court deems necessary.

### **THE TRIABLE ISSUES**

The triable issues set down in this case are:

1. Whether or not this marriage is broken down beyond recanalization and same be dissolved on the grounds of the petitioner's petition.
2. Whether or not the petitioner should be granted custody of the two issues of the marriage.
3. Whether or not the respondent contributed to the acquisition of the property acquired by the petitioner during the subsistence of the marriage.

Both the petitioner and the respondent filed their witness statements and attached documents as exhibits in support of their evidence. At the hearing the petitioner called one witness in addition to himself while the respondent did not call any witnesses in her defense.

### **PETITIONER'S EVIDENCE**

The petitioner in his witness statement filed on the 24/7/2020 said he was a teacher and got married to the respondent under the ordinance at the District Court Dunkwa after which they went through wedding ceremony at the Church of Pentecost. They cohabited in a rented apartment at H/No. EMA3/31 Oforikrom Dunkwa-On-Offin.

Their marriage was blessed with two issues Lordina Takyiwa Anomah 13 years and Benjamin Gyasi Anomah age 7. Petitioner added that he got married to the respondent as at the time she was a seamstress but later set her in a textile store he opened for her at Pentecost Mission House at Dunkwa with a bank loan of GH¢1,500.00 from GCB Dunkwa-On-Offin branch. And that respondent changed the wares to general goods like wellington boots, gas cylinders, plastic chairs that led to her financial fortune to change for the better. Petitioner added that he had a challenge at his job sometime later and so could not adequately provide for the needs of his family and respondent's attitude towards him changed overnight for worse. Due to that the respondent was not respecting him anymore and would not welcome any member of his family including his mother into the house even though respondent's family members kept coming and going out of the same house. Respondent refused to cook for him and denied him sexual intercourse. He made several complaints to some elders in the community and the church (Pentecost) for respondent to amend her ways but she will not listen. Later the respondent told him that she wanted divorce and went ahead to seize the documents to the house he personally purchased as a condition for the divorce before she will return the documents to him.

Petitioner's further evidence was that the respondent summoned him before the District Court for the dissolution of the marriage but the court did not do so due to lack of jurisdiction but the District Court ordered him to pay monthly maintenance of GH¢350.00 for the upkeep of the home which he was complying with.

In 2010 the Landlord confided in him that he was selling the house. So he went for GH¢6,000.00 loan from Dunkwa Teachers Co-Operative Union. He also got GH¢10,000.00 financial help from the District Purchasing Officer of Adwumapa Cocoa buyers Dunkwa "B". Got proceeds of GH¢8,000.00 from his family cocoa farm from Dormaa Nkan Nkwanta, with Elder Evans Bukoro assisting him with GH¢2,000.00 which he added to his personal savings of GH¢4,500.00 totaling GH¢30,500.00 to buy H/No. EMA 3/31 at Oforikrom. It is his evidence that the respondent did not contribute any money towards the purchase of the said house. Petitioners further stated that respondent is preoccupied with her trading activities and had no time for the two issues of the marriage. He therefore prayed for the custody of the children so he can

see to their educational needs and general upbringing. Adding that he lost any interest in continuing to be married to the respondent and prays for the dissolution of the marriage. A declaration that the matrimonial home is his personally acquired one. The petitioner attached as exhibit **SAK "A"**, Letters of administration of the estate of Madam Aba Mensah. Exhibit **SAK "C"** search report from Lands Commission, Cape Coast he applied for prior to buying the said house. Exhibit **SAK "E"** transferee /Sale of the said building to the petition on 23/2/2011 of which the respondent endorsed as one of the witnesses for the petitioner. Also Exhibit **SAK "F"** receipt of final payment of GH¢11,500.00 of the total cost of GH¢30,500.00 on the 1/3/2011 and other receipt of payment of school fees for the two issues of the marriage.

Under cross examination from the respondent Petitioner told the court that he gave initial capital of GH¢1,500.00 to start the textile business which respondent admitted. In another question, petitioner admitted he has a child with another woman by name Akua Anin. In another question, the petitioner admitted he bought their home alone in December, 2021, making it Seven (7) years in to the marriage that was contracted in May, 2003. Petitioner in another answer to a question on the house denied the respondent assisted him with GH¢10,000.00 in paying for the said house.

The petitioner admitted that, the respondent built a store attached to the said house against his will. He also denied giving money to the respondent to buy ten (10) bags of cement to mold blocks to build the said store. In another question, the petitioner denied that he jointly acquired two cocoa farms one at **Esaase** and the other at **Emissah Onwien** with the respondent and that the cocoa farms are not his.

**Godfred Ening**, the District Officer of Adumapa Buyers Ltd. of Dunkwa-On-Offin gave evidence as PW1. He has known the petitioner for over fifteen years now as one of his faithful farmers. That in September, 2010, the petitioner came to him for financial assistance to enable him the house from his landlord who wanted to sell same out. He then gave GH¢10,000.00 for the petitioner to sell his cocoa beans to cover for the money. Later, the petitioner told him he

was able to buy the said house. He later went to the said house to confirm that the petitioner indeed bought it.

When confronted by the respondent during cross examination, PW1 said there was no receipts or document covering the said GH¢10,000.00 financial help he gave the petitioner and he could not tell whether the said money was actually used in buying the said house.

## **EVIDENCE OF THE RESPONDENT**

It is her evidence that she was married to the petitioner and they have two issues who have been under her custody from birth. At a point, the petitioner stopped taking care of her and the two issues and left the matrimonial home and deserted them. Due to that she instituted an action at the family tribunal against the petitioner for non-maintenance of the children. At the hearing of that case, petitioner was ordered to maintain the children but he refused to comply with the order thereof. It was her further evidence that she was a trader and owed a lot of people because she used her capital to maintain the children and so she has to go for loan to trade. That brought a lot of burden on her.

Respondent stated further that petitioner now work outside Dunkwa-On-Offin and has left the matrimonial home and not performed his conjugal rite with the respondent for over five years as he deserted her and the children. She stated further that the petitioner has gotten married to another woman at Wassa Dompoease with whom he has a child.

She stated also that the matrimonial home at Dunkwa-On-Offin where she lives with the children was jointly acquired by both of them during the pendency of the marriage. Adding that she contributed to the acquisition of that property and should be allowed to keep the house with the children there. She and the petitioner had acquired other properties such as cocoa farms at **Esaase** and **Amissah**. Respondent prays that she be given custody of the children as she is stable with them at one place for years even when the petitioner deserted them unlike the petitioner who is now living with the new wife at **Wassa Dompoease**. She stated also that the petitioner has never bought anything for the second issue of the marriage since he was born.

She added also that, the petitioner is ordered to pay monthly maintenance to the respondent for the upkeep of the petitioner. However when petitioner had an accident and was admitted at the Denkyira Domemase Hospital, she visited him, later brought him to the matrimonial home and cared for him. Petitioner rather left the matrimonial home without return for several months after recovery. She is not enthused on this dissolution but since the petitioner is pushing for it, the court should decide on it.

Exhibit FW the monthly maintenance suit filed against the petitioner at the District Court. Tendered in evidence.

Exhibit FW1 ten years agreement of rent paid over a single store room at **Ayanfuri** station.

Exhibits FW2 to FW4 series, being receipts of school fees and dues over the two children.

Exhibits FW5 series to FW8 series loans granted to the respondent from Upper Amenfi Rural Bank Ltd from June, 2015 to May, 2020

Exhibit FW9 series to FW11 series are documents from Dunkwa Area Teachers Co-Operative Credit Union of respondent's contribution to that fund.

Exhibit FW12, photograph of a boy child petitioner had with another woman.

Exhibit FW12A photograph of an area view of the matrimonial home

Exhibit FWC, photograph of a store respondent put up as part of the matrimonial home.

During cross examination from the petitioner Respondent maintained that she contributed **GH¢10, 000.00** to the petitioner in the purchase of their matrimonial home as their property. Notwithstanding that the documents of the said home was not in the joint name of both of them. The document bear the name of the petitioner as the head of that marriage and so Respondent endorsed the said Exhibit **SAK "E"**.

Respondent also maintained that she contributed to the cultivation of the two cocoa farms the petitioner bought both at Onwien Amissah and Esaase as she bought and sometimes cooked

food for those who worked on the farms variously with the believe she got from the petitioner that the farms were for them both.

**ISSUE 1: WHETHER OR NOT THIS MARRIAGE HAS BROKEN DOWN BEYOND RECONCILIATION FOR SAME TO BE DISSOLVED AT THE INSTANCE OF THE PETITIONER.**

Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367) states that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2(1) of Act 367 provides that:

*“2. Proof of breakdown of marriage*

*(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:*

- a) That the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or*
- b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or*
- c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or*
- 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 when the court is satisfied it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal; or*

- e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or*
- f) That the parties to the marriage have after diligent efforts, been unable to reconcile their differences.*

The petitioner's main ground for seeking divorce in this marriage as contained in his petition and evidence at the hearing, that the respondent changed her behaviour towards him. Respondent was not respecting him, refused to cook for him and denied him sexual intercourse that makes the marriage break down beyond reconciliation. The petitioner could not state how long this behaviour of the respondent lasted and did not also state the periods within which the respondent denied him sexual intercourse.

On her part cross petition, the respondent told the Court that the petitioner had committed adultery with the evidence of a child out of wedlock and attached the said child as exhibit FW12 and the mother of the child as exhibit FW12 B. These evidences were admitted by the petitioner during cross examined of the respondent.

Another ground for cross petition by the respondent for divorce was desertion. That the petitioner left the matrimonial home at Dunkwa-On-Offin after she had given birth to the second issue of the marriage and went to be with another woman with whom he had a child at Wassa Dompase for well over four years. That the petitioner during these periods failed to perform his conjugal rights and failed to maintain her and the children. Further evidence of the respondent was that due to the petitioner's failure to maintain her and the children, she was compelled by the hardship to bring an action to compel him to pay monthly maintenance for the children at the Family Tribunal at the Dunkwa-On-Offin District Court. To these grounds of evidence by the respondent, the petitioner admitted he was taken to the District Court and ordered to pay monthly maintenance for the up keep of the two issues of the marriage.



Another evidence of the respondent the petitioner did not deny or respond to was the fact that how the respondent after he had deserted them had an accident and was admitted at the hospital at Denkyira Domenase and she visited the petitioner and later brought him back to the matrimonial home and cared for him but left the home for several months after recovery.

Considering the evidence of both parties on the grounds on which they are seeking the dissolution of this marriage, it is my finding as a fact that rather than the respondent, it was the petitioner who deserted the matrimonial home and the respondent after the birth of the second issue of the marriage and therefore denied the respondent of her conjugal right, care and maintenance. Petitioner committed adultery with the evidence of a child out of wedlock. By these findings, it is my candid view that the respondent has satisfied this court of section 2 (1) (a) and (c) of Act 367 as he committed adultery and also deserted respondent.

It is my further finding of fact from the hearing that the parties have not lived together as man and wife for more than two years prior to the filing of this petition and the respondent consents to the grant of divorce and so on this grounds section 2 (1) (d) of Act 367 has been duly satisfied to my satisfaction of the fact that this marriage has broken down beyond reconciliation.

From the evidence of the parties, it shows that all efforts made by the elders of their church to reconcile the parties over their differences in this marriage could not help resolve their difference as required under section 2 (1) (f) Act 367.

On the basis of the foregoing findings and conclusions drawn on the law, I hereby state that the respondent rather than the petitioner, has satisfied this court with her evidence that this marriage has broken down beyond reconciliation on section 2(1a, b, c and d) of Act 367 as required to state the least. I hereby grant this divorce at the instance of the respondent's cross petition. I reject the petitioner's evidence of respondent at the hearing as same do not satisfy this court to ground the grant of divorce on his petition. That is so because petitioner had deserted respondent and was cohabiting with another woman over the period. Petitioner rather behaved in such a way that brought pain and stress to the respondent that she cannot reasonably be expected to live with the petitioner.

For the avoidance of doubt, this divorce is granted between the parties at the instance of respondent on the grounds that petitioner committed adultery, that the petitioner deserted the respondent for more than three years prior to this petition and the fact that the parties have not lived as man and wife for more than two years prior to this petition and both agreed to the dissolution of this marriage. Therefore the marriage celebrated between the parties on the 7<sup>th</sup> May, 2023, at the District Court is dissolved with the marriage certificate number 15/2003 cancelled on the day the summary judgment was given on the 27/9/2021.

**ISSUE 2: WHETHER OR NOT THE CUSTODY OF THE TWO ISSUES OF THE MARRIAGE BE GRANTED TO THE PETITIONER OR RESPONDENT.**

On the custody of the two issues of the marriage Lordina Takyiwa Anomah age 13 and Benjamin Gyasi Anomah age 7. The evidence of the petitioner for the custody of the children to be granted to him is that he will better cater for their training, education and general upbringing than the respondent who is preoccupied with her trading business who hardly finds time for them. While the evidence of the respondent on the other hand was that she has been taking care of them for all these years and she is more stable with the children unlike the petitioner who is now moved to be with another woman in another house far away at Wassa Dompase. And that she has always lived with the children when the petitioner deserted them and has always had custody of the children. Stating that granting custody of them to the petitioner will destabilize the children.

It is my finding from the hearing of this case that the petitioner has deserted the respondent and the matrimonial home for over three (3) years prior to filing the petition leaving the children with the respondent to take care of their education and welfare.

**Section 45 (1) of the children's Act, Act 560 provides:**

*"45 consideration for custody or access*

- 1) A family tribunal shall consider the best interest of the child and the importance of a young child being with the mother when making an order for custody or access."*

**Section 45 (2) (e) of Act 560 state that:**

*“(2) In addition to subsection (1), a family tribunal shall consider*

*(e) The need for continuity in the care and control of the child.”*

From the requirement of the law as to what the Court shall take into consideration in awarding custody of a child in a situation that has been brought out at the hearing, the best interest of the girl child Lordina Takyang Anomah of 13 years and that of Benjamin Gyasi of 7 years will be better served with their mother the respondent who has a fixed place where she has always lived with them than the petitioner. The best interest of the children with regard to continuity of their education and the environment where they live under the care of the respondent will not be destabilized when they are made to be with the respondent as compared to the petitioner.

The evidence of the petitioner that the respondent is preoccupied with her trading and hardly finds time to care for the children, in my candid view is not sufficient enough to warrant the custody of the children to be granted to him.

I hereby grant the custody of the two issues of this marriage to the respondent as prayed for the continuity of their care contract and education. **The petitioner is granted reasonable access to the children to spend some weekends and part of their vacations with him as and when he wishes. In doing so the petition must give notice to the respondent prior to going for the children at agreed place and time and return them in same manner.**

Petitioner is also ordered to pay a monthly maintenance of Seven Hundred Ghana cedis (GH¢700.00) to the respondent for the two issues of the marriage. Pay the school fees, medical bills when due and provide for their clothes.

**ISSUE 3: WHETHER OR NOT THE RESPONDENT CONTRIBUTED TO THE ACQUISITION OF THE PROPERTY ACQUIRED BY THE PETITIONER DURING THE SUBSISTENCE OF THE MARRIAGE.**

The evidence of the petitioner over the sole ownership of the matrimonial home H/No. EMA 3/31 Oforikrom in Dunkwa-On-Offin and attached Exhibit “SAK “E” a deed of transfer and sale of building between the transferor Jeff Kwamina Dennis and the petitioner on 23/2/2011, shows the respondent was one of the witnesses for the petitioner.

Petitioner also attached Exhibit “SAK F” as evidence for the final payment made to the transferor on the 1/3/2011. The petitioner told the court of how he raised the money to buy the house. He got GH¢6,000.00 from Dunkwa Teachers Cooperative Credit Union, got GH¢10,000.00 from Adwumapa Cocoa Buyers, went for GH¢8,000.00 from his family cocoa farm at Dormaa Nkan Nkwanta, Elder Evans Bukoro gave him GH¢4,500.00 to make the GH¢30,500.00 used to buy the said house.

The respondent denied that the petitioner solely bought the said house, and contended that same was a jointly acquired, as she contributed to the acquisition of the house. The petitioner made her understood that same was being acquired for them as the matrimonial home at the time. Respondent evidence was that she contributed GH¢10,000.00 which she gave to the petitioner to buy the said house. For saying she contributed GH¢10,000.00 out of the purchase sum of the house, the following exchanges took place on the 5-08-2021 when petitioner cross examined her:

Q. Where did you get the GH¢10,000.00 you said you assisted me with in the buying of the matrimonial home in 2010.

A. As petitioner was finding it difficult to raise the money, I went to my parents for the GH¢10,000.00 for the petitioner to pay for the house.

Q. Did you state that you went for the GH¢10,000.00 from your parents in your Evidence-in-chief.

A. I did not state it so because it was gifted to me as my money.

Q. I put it to you that your preceding answer is false otherwise you would have stated so in your witness statement.

A. I am telling the truth. You told me we should acquire that house and I also used my contribution of this money to help you in so doing. There was no need to mention to you that my parents gave me that money since it was not loaned or lend to me.

Q. What do you mean when you said we jointly acquired the building that I bought?

A. I mean we both agreed and pulled our moneys together in buying the said house as we were initially tenants in that house.

Q. I put it to you that the property is in my name and not in a joint name of the two of us. You may have interest in it.

A. Even though the property is in your name was an agreed and you used your name for the property and I should be your witness as the property was truly jointly acquired.

Respondent's further evidence was that they jointly acquired other properties such as cocoa farms; one at Esaase and the other at Esaase and the other cocoa farm at Amissah. Adding that she bought food and cooked for those who worked on the farm as the petitioner made her to so cook for the workmen and the petitioner carried the food to the workers as she went to her shop to trader. The respondent explained when she was cross examined that the documents of the cocoa farms were all in the Petitioner's name and that petitioner did not allow her to follow him to these two cocoa farms in spite of her several attempts for him to take her to the farms.

My finding of fact at this stage over the said house is that, the petitioner bought the said house from moneys he raised from diverse places to pay for the house. The house is the name of the petitioners per exhibits SAKE and SAKE and the Respondent was one of the witnesses in exhibit SAKE that transferred the house to the petitioner. It is also my finding that the house was purchased in February 2010 per exhibit SAKE when transferred the property to the petitioner. It is a fact that this property was bought during the pendency of this marriage where parties cohabited as man and wife initially as tenants.

It is my further finding that even though the petitioner mentioned the various sources from which he went for either a loan or financial assistance towards the purchase of this house, no single document by way of approved loan forms, receipts or any memorandum of understanding from these sources have been tendered in evidence to buttress his so doing. The farthest the petitioner went to show one of the sources where he got GH¢10,000.00 from the Adwumapa Buyers Ltd by calling PW1 the district officer of that entity who testified to that effect in court. However, when PW1 was confronted over the said money during cross examination from the respondent, PW1 admitted he cannot tell whether the petitioner actually used the said GH¢10,000.00 to pay for the said house.

This is what took place between the respondent and PW1 on the 10-05-2021 at the hearing:

Q. The said GH¢10,000.00 petitioner took from you is there anything you have to show to the court that the petitioner actually used the said money to pay for the house in issue.

A. There was nothing to show for that, just that later petitioner showed me the documents of the house that he was able to pay for it.

Q. I put it to you that the petitioner did not use the said money to pay for the said house issue.

A. That I cannot tell but petitioner later showed me documents of the house that he was able to buy same.

It was held in **T.K. SERBEH AND CO. LTD VRS MENSAH (2005-2006) SCGLR 341 at 360 - 361 per DR DATE-BAH TSC** that:

*“For however credible a witness may be, his bare affirmation on oath or the repetition of his averments in the witness box cannot constitute proof. This is trite law: See Majolagbe Vrs Larbi*

*[1959] GLR 190 especially at page 192. This proposition is applicable for even matters whose proof does not require corroboration as a matter of law...."*

The principle established in this case, in my view applied in this evidence of PW1 and by extension to the petitioner's evidence as he did not tender any evidence as to how he mobilized money from these sources to pay for the said matrimonial house. I am therefore unable to rely on the evidence of PW1 that he gave out the said GH¢10,000.00 were used in paying for the house in issue.

The evidence of the respondent over this house and the two cocoa farms she mentioned was that, all were acquired during the subsistence of this marriage. Adding that there was an agreement between her and the petitioner that they will jointly require these properties but the petitioner who is the head of the family should use his name in doing so. She went further to state that she gave GH¢10,000.00 to the petitioner towards the purchase of this house when he was looking for money to pay for same. Even though the petitioner vehemently denied this assertion from the respondent, same cannot be said to be a bare averment or repetition of same. This is so because the principle in marriage regulating this kind of giving and taking moneys from spouse is said not to come under such requirement. It was held in **TABURI VRS YEBOABA [2013] 59 GMJ 115 at 129- 130 per MARFUL SAU J.A** (as he then was) that

*"... This was a business operated by a wife and a husband and it was normal to expect that transactions between them would not be formalized as compared to other business settings.*

In **BALFOUR V. BALFOUR (1919)2K.B.571 ALKIN I.J** delivered at 579 as follow:

*"The common law does not regulate the form of agreements between spouses. Their promises are not sealed with seals and sealing wax. The consideration that really obtains for them is that natural love and affection which counts for so little in these cold court"*

*... The principle of law is that transactions between husband and wife are not to be treated in the same way as a commercial transactions affecting normal business. This is because most times*

*transactions between a husband and wife though commercial are treated very informal. As the evidence in this case show' the appellant as a wife was running errands for the husband's business without formally assessing the economic value of such errands... indeed good conscience and equity alone should not allow the respondent to claim absolute ownership of the properties so acquired ...The fact that the lease covering plot No.15 was in the name of the respondent alone, is no conclusion that the property was owned by the respondent.'*

In **GLADYS MENSAH VRS STEPHEN MENSAH [2012]1 SCGLR 391 at 405** the Supreme Court speaking through DOTSE JSC held that:

*"...the ordinary incidents of commerce had no application in the ordinary relations between husband and wife" and the wife's evidence as to the size of her contribution and her intention in so contribution would be accepted.*

*Further, in Anang v. Tagoe [1989-90]2 GLR 8, BROBBEY J (as he then was) held (at paragraph 11) that:*

*'...where a wife made contribution towards the requirement of a matrimonial home in the belief that the contribution was to assist in the joint acquisition of property, the court of equity would take steps to ensure that belief materialized and indeed if that were not so, husband's would unconscionably be made to unjustly enrich themselves at the expense of innocent wives. This is particularly the case where there is evidence of some semblance of agreement for joint acquisition of property.'*

From the principles established and clearly set out in these aforementioned cases thus ordinary incidents of commerce has no application in the ordinary relation between husband and wife. Where a wife made contributions towards the acquisition of matrimonial home in the belief that it's a joint property, the court of equity will take step to ensure that belief materialize and the fact that the lease or property acquired is in the name of one of the spouse. The petitioner could not discredit the respondent's evidence that she gave out the said money to him at the hearing. It is my finding therefore that the respondent in this case made contribution of the



GH¢10,000.00 to the petitioner towards the acquisition of the house in issue. The petitioner just as the respondent did not dispute the fact that the house was acquired during the substance of this marriage. It is therefore my further finding that even though exhibits SAKE and SAKF were in the name of the petitioner is no conclusion that the property belongs to him alone as he wants the court to belief.

I hereby agree with the respondent that the property of the house in issue is a joint property for both petitioner and the respondents as that was the belief the respondent had when she contributed the money towards the purchase of the said house. This belief of the respondent that the property was a joint one might have made her to put up additional structure on portion of the land as shown in exhibits FW12A and FW12C as storehouse for her trade.

On the same grounds as foregoing, my finding that the respondent equally contributed to the acquisition of the two cocoa farms mentioned that one located at Esaase and Amissah -Onwien. That is so because there appear a semblance of her contribution to the acquisition and further cultivation of these farms in the belief that they are joint properties. Respondent evidence that she cooked for the workers from the stuff petitioner provided for her and many a time used her own money to do so at the instance of the petitioner, cannot be glossed over notwithstanding the petitioner's denial at the hearing. It is in evidence that respondent answered the petitioner during cross examination that petitioner refused to take her to these farms in spite of her several request for the petitioner to do so. That denial or refusal of the petitioner to take her to these cocoa farms is indicative of the fact that the farms cannot conveniently be shared between the partners.

On the issue of respondent being set up in business by the petitioner with initial capital of GH¢1,500.00 in a textile store at the old Pentecost Mission House, Dunkwa cannot also be discounted. Even though the respondent told the court she spent the said money in taking care of herself and the children when petitioner failed to cater for the home after given birth to the 2<sup>nd</sup> child. The contribution of the petitioner in setting respondent up in the said trade is very evidence at the hearing notwithstanding the loans respondent took subsequently from the

various financial institutions as contained in exhibits FW5 series to up to FW11. It is my finding of fact that it was the petitioner who set up the respondent with an initial capital of GH¢1,500.00 which business failed. The business of the respondent as it stands during the hearing of this case is solely based on her own enterprise and fortitude from the loans contracted in sustaining herself this far as petitioner deserted her during that period.

From the foregoing findings as I have made with the conclusion thereto, it is my candid view that both parties have contributed significantly to the properties acquired during the pendency of the marriage. Notable properties so acquired by parties are the H\No. EMA 3/31 at Oforikrom as the matrimonial home and the two cocoa farms one of ESAASE and the other at AMISSAH ONWIEN. It is my further conclusion that it will be unconscionable for the petitioner directed to share these two cocoa farms with the respondent and she will actually benefit from these farms she does not even know where they are situated in the first place. I therefore make no orders for the cocoa farms in issue to be shared. It is my order that the petitioner shall continue to have these two cocoa farms.

However, it my order that the matrimonial home H/No. EMA 3/31 at Oforikrom which is a jointly acquired be shared between the parties with sixty percent (60%) share going to the respondent and forty percent (40%) share going to the petitioner. This will make for the share respondent could not get from the two cocoa farms in issue. It is my further directive that the respondent buys out the 40% share of the petitioner in the said matrimonial home.

For the avoidance of doubt in bringing this case to a conclusion, it is the order of this court that:

- 1).The marriage between the parties is hereby dissolved at the cross petition of the respondent as at 27/9/2021 with marriage certificate No.15/2003 cancelled
- 2) Custody of the two issue of the marriage granted to the respondent with reasonable access to the petitioner.
- 3) Petitioner shall continue to pay for the upkeep of the children of the marriage, their school and medical fees.

4) The matrimonial home of H/No. EMA 3/31 of OFORIKROM, DUNKWA-ON-OFFIN is share between parties with 60% share to the respondent and 40% share to the petitioner. Respondent to buy out the petitioner from the matrimonial home.

No cost awarded.

**SGD.**

**FRANCIS A. OBUAJO  
CIRCUIT COURT JUDGE**

**26/7/2023**