

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 3RD DAY
OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO.C5/50/19

FRANK HONEY TWUM ----- PETITIONER
VRS.
CYNTHIA OFORI APPIAH ----- RESPONDENT

PARTIES PRESENT
CROSSBY MOCHIA BLAY, ESQ. HOLDING THE BRIEF OF EDWARD
METTLE-NUNOO, ESQ. FOR THE PETITIONER PRESENT
GORDON AKPADIE, ESQ. FOR THE RESPONDENT PRESENT

JUDGMENT

FACTS:

The uncontroverted facts of this case are that the parties herein got married on 12th January, 2008 at the Metropolitan Assembly Tema, under **Part III of the Marriages Act**, (1884-1985), Cap 127. According to the parties, what necessitated their marriage was the fact that the respondent got pregnant whilst they were in a romantic relationship. The petitioner states that at the time, they had not known each other for long but due to the pregnancy, the respondent and her family insisted on marriage which he was not financially prepared for. Based on that, the marriage ceremony was organized and fully sponsored for by the respondent and her family without notice to his family. Thereafter, they cohabited and had three children namely; Denzil Twum aged 11 years, Perdita Twum aged 8 years and Adel Twum aged 6 years at the time of filing the petition for divorce.

On 11th April, 2019, the petitioner filed the instant petition for divorce alleging that the marriage between himself and the respondent has broken down beyond reconciliation and prayed the court for the sole relief of the dissolution of the marriage.

Upon service of the petition on the respondent, she entered appearance on 17th April, 2019. Per an amended answer to the petition filed on 14th February, 2020, the respondent cross-petitioned as follows;

- a. Dissolution of the marriage.
- b. GHC50,000 as financial provision.
- c. 50% share in the house built.
- d. Accommodation for her and the children.
- e. Custody of the children.
- f. Legal Costs and fees.
- g. An order that all the above claims of the respondent be implemented by the petitioner before the marriage is annulled and a divorce certificate issued.
- h. Any other order the court may deem fit.

The parties in their respective pleadings made accusations and counter accusations against each other. The petitioner blames the breakdown of the marriage on the respondent and likewise, the respondent blames the petitioner for the breakdown of the marriage. The main accusation of the petitioner against the respondent is that when they got married, because the respondent was pregnant, he was solely responsible for the upkeep of the home. However, after delivery and she started working, she failed to support him to maintain the home and this has continued throughout their married life. The petitioner further states that there is no effective communication between them since every conversation ends up in a disagreement and their conversation is centered on mundane issues regarding her demands for

money for maintenance. Additionally, the petitioner states that the respondent refused to live with him in the matrimonial home and always preferred to live with her mother to the neglect of his wifely duties. Again, the respondent moved all her things and that of the children from the matrimonial home to her mother's house which is a family house and when he requested that she returns the children for them to continue their schooling, the respondent refused to do so. Thus, he maintains that the respondent has behaved in such a way that he cannot reasonably be expected to live with her. The petitioner opposes the claim of the respondent to 50% share in a house built and maintains that the respondent never contributed to the matrimonial home and that he took a loan to build the said matrimonial home for the children of the marriage which he is still paying.

The respondent vehemently denies the allegation of unreasonable behaviour levelled against her by the petitioner. According to her, she always contributed to the upkeep of the home, provided for the children and bore her medical bills and that of the children. The respondent accuses the petitioner of being a "gold digger" who married her thinking she was wealthy. The respondent also accuses the petitioner of committing adultery with a married woman who lives in the United Kingdom and the uncle of the petitioner informed her that plans are far advanced for the petitioner to relocate to the United Kingdom upon the dissolution of their marriage. Also, during the pendency of the marriage, the petitioner would refuse to have sexual intercourse with her for as long as a whole year. According to her, she assisted the petitioner to rent accommodation but due to ill health during pregnancy, she would stay with her mother and return shortly after delivery. According to her, she has been a dutiful wife and it is rather the petitioner who has behaved unreasonably. According to her, since the institution of the

petition for divorce, she has moved out of the matrimonial home with the children.

Based on the pleadings, the evidence led and addresses filed by both Counsel for the petitioner and the respondent, the court set down the following issues for resolution.

LEGAL ISSUES

1. Whether or not the marriage between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether or not the respondent is entitled to custody of the children of the marriage and accommodation for herself and the children as well as maintenance for the children.
3. Whether or not the parties jointly acquired properties during the subsistence of the marriage and if so, whether the respondent is entitled to fifty percent share.
4. Whether or not the respondent is entitled to an amount of GH¢50,000 as lump sum financial provision from the petitioner.

BURDEN OF PROOF

It is trite learning that a party who asserts must prove that which he asserts on a balance of probabilities. In the case of **Bank of West Africa Ltd. V. Ackun** [1963] 1GLR 176, the Court held in its holding 2 that: *“the onus of proof in civil cases depended on the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof.”* In the case of **Adwubeng v. Domfeh** [1996-1997] SCGLR 660 the court stated that *“in assessing the balance of probabilities, all the evidence be it that of the plaintiff and that*

of the defendant must be considered and the party in whose favour the balance tilts is the person whose case is more probable than the rival version and is deserving of a favourable verdict. Therefore, both the petitioner and the respondent bear the burden to prove the allegations contained in the petition and the cross-petition for divorce on a preponderance of probabilities.

ANALYSIS

ISSUE 1: Whether or not the marriage between the petitioner and the respondent has broken down beyond reconciliation.

Section 1 of the **Matrimonial Causes Act, 1971 (Act 367)**, provides that the sole ground for granting a petition for divorce in Ghana is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the (6) facts set out in **section 2(1) of Act 367**, i.e., adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as husband and wife for five years and irreconcilable differences. Further to that, a court hearing a petition for divorce is enjoined to enquire into the facts alleged by the parties to establish the breakdown of the marriage. Additionally, a court shall refuse to grant a divorce petition where the circumstances disclose a reasonable possibility for reconciliation. In that regard, section 8 of Act 367 enjoins a petitioner or his counsel to inform the court about the various efforts made to reconcile the parties and the court may adjourn proceedings for the parties to attempt settlement of their differences. In the erudite judgment of Osei-Hwere J (as he then was) in the case of **Donkor v. Donkor** [1982-83] GLR 1158 High Court, Accra, the Court held that:

“... The petitioner must first satisfy the court of any one or more of those facts set out in section 2 (1) of the Act, not only by pleading them but also by proof for the purpose of showing that the marriage had broken down beyond reconciliation. Section 2 (3) of the Act, provided that even if the court found the existence of one or more of those facts it should not grant a petition for divorce unless it was satisfied that the marriage had broken down beyond reconciliation. Equally the court was under a statutory and positive duty to inquire so far as it reasonably could, into the charges and counter charges alleged...”

Here, the parties agree that the marriage has broken down beyond reconciliation but differ on whose actions have contributed to the breakdown of the marriage. The parties levelled mutual accusations against each other to establish the breakdown of the marriage. The petitioner pleaded unreasonable behaviour within the intendment of **section 2(1)(b)** of Act 367 and the respondent in her cross-petition relies on **section 2(1)(a)** alleging that the petitioner has committed adultery with a woman living in the United Kingdom the reason for him petitioning for divorce, as well as unreasonable behaviour.

To succeed under **section 2(1) (b)**, the petitioner must not only prove the conduct of the respondent constituting the behavior, but also, the fact that they cannot reasonably be expected to live together as man and wife as a result of the behaviour complained of. Thus, in the case of **Hughes v. Hughes [1973] 2 GLR 342 @ 345 Sarkodee J** held that;

“to succeed, the petitioner must show that the respondent’s conduct reached a certain degree of severity. Her conduct must be such that no reasonable person would tolerate or consider that the complainant should be called on to endure”.

The petitioner testified that he got married to the respondent on 12th January, 2008 at the Tema Metropolitan Assembly Marriage Registry, Tema. After the marriage, they cohabited in a rented one-bedroom house at Community 7, Tema for a period of two (2) years. According to him, during the time they stayed in the said house, the respondent never stayed for a long period. She would stay for a week, and then leave to her mother's house at Community 4, Tema. The petitioner further says he attributed the disappearing acts of the respondent from the matrimonial home to the nature of the accommodation. Consequently, he rented a chamber and hall apartment at Bediako, Community 25, Tema but this could not dissuade the respondent from going to live with her mother.

The petitioner testified that throughout the marriage, the respondent was working but failed to assist him in maintaining the home and he became solely responsible for the maintenance of the home and the upkeep of the children without any contribution from the respondent. According to his testimony, the respondent has demonstrated that she is not a responsible mother and would not assist him in maintaining the children. In support of his case that he has fully been responsible for the upkeep of the home and the maintenance of the children without contribution from the respondent, the petitioner tendered in evidence **Exhibit "A"** series, which are receipts on educational expenses spanning from 2017-2020.

The petitioner further says that the respondent does not even care for his physical and emotional needs. She does not cook for him nor wash his clothes and does deny him sexual intimacy since she is always in her mother's house. Further to that, there is no meaningful communication between them since any communication leads to a misunderstanding. He maintains that the marriage has indeed broken down beyond reconciliation. Consequently, since

the year 2019, they have been separated with the respondent living in her mother's house with the children whilst he provides money for their upkeep and maintenance.

The petitioner under cross-examination by counsel for the respondent testified that the respondent as a caterer was cooking for the children and takes care of them but since she refused to live with him, she did not provide him with his needs as her husband. The petitioner admitted that once when he was on admission at the hospital, the respondent visited him and brought him food. Again, he stated how when he had a case with the police, the respondent father stood as surety for him to be admitted to bail. The gravamen of his contention then is her failure to live with him in the matrimonial home as husband and wife but rather chose to live with her mother.

The respondent on her part testified that she married the petitioner out of love and gave him all her heart including her money because at the time of the marriage, the petitioner was not financially sound. She assisted the petitioner with payment of rent and further assisted him financially. According to her, she solely financed their marriage ceremony through loans from family and friends since the petitioner was at the time penniless but he has since failed to refund the money. The respondent further denies shirking her responsibilities as a wife and maintains that she has been a dutiful mother and wife who supported the petitioner in the maintenance of the home and the children.

Additionally, the respondent accuses the petitioner of committing adultery with a married woman who lives in the United Kingdom and that the plans of

the petitioner are far advanced for him to travel to the United Kingdom to live with his alleged paramour. Adultery is defined under **section 43** of Act 367 as follow:

“the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse.”

In the case of *Adjetey v. Adjetey [1973] GLR 216-221*; in holding 1, the court stated the standard of proof for adultery in the following terms:

“adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferred from circumstances which by fair and necessary inference would lead to that conclusion. There must be proof of disposition and opportunity for committing adultery, but the conjunction of strong inclination with evidence of opportunity would not lead to an irrebuttable presumption that adultery had been committed, and likewise the court was not bound to infer adultery from evidence of opportunity alone.”

According to the respondent, because of this woman, the petitioner has no respect for her as his married wife and has treated her unreasonably throughout the marriage. According to her, the petitioner would refuse to speak to her for months, and refuse to have sex with her sometimes for a whole year. The petitioner would constantly tell her he wants her out of his life and does not want to see her face. Through it all, she states, she diligently performed her duties as a wife as she continued to wash petitioner’s clothes, clean the house, cook for him and perform other wifely duties to make him comfortable.

The respondent further testified that due to ill health when she conceives, she would leave the matrimonial home to her mother’s place for her mother to

care for her until she delivers, and she would return to the matrimonial home after delivery. According to her, the petitioner never wanted her to return to the house, however, she would go back to him despite his objections. According to her, she has been a good wife wishing and praying that the petitioner would love her as his wife. When the petitioner served her with the petition for divorce, her heart was broken to the extent that her catering business completely collapsed.

From the evidence led by the petitioner and the defence put up by the respondent, the respondent admits that she vacates the matrimonial home to live with her mother but excused her behaviour on grounds of ill health when she conceives, which requires her to live with her mother until she delivers. However, there is no medical evidence to that effect and the conduct of the petitioner shows that he never consented to her leaving the matrimonial home all the time to live with her mother without just cause.

The respondent who also accused the petitioner of committing adultery did not lead evidence to establish that the petitioner had sexual intercourse with someone during the subsistence of the marriage apart from repeating her averments on oath that the petitioner committed adultery with a married woman living in the United Kingdom. Additionally, the uncle of the petitioner who allegedly informed her that the petitioner is feverishly preparing to join his paramour in the United Kingdom did not give evidence to be subjected to cross-examination on this averment.

From the matrimonial history of the parties, the marriage has not been without issues. It is characteristic of the fact that marriage is not a bed of roses. However, the parties could not manage the changing scenes of their married life which has created serious differences between them. The

differences are such that the parties have not been able to reconcile to live together as husband and wife. Consequently, since 2019, the parties have not lived as husband and wife. The respondent confirmed under cross-examination that since the petition for divorce was filed in the year 2019, they have been separated and have not lived as husband and wife. The parties have no intention of reconciling their differences to resume cohabitation as husband and wife and the various attempts made by the parties and their lawyers to reconcile their differences have proved futile.

I therefore hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce and decree for the dissolution of the marriage celebrated between the petitioner and the respondent on grounds that the marriage has broken down beyond reconciliation.

ISSUE 2: Whether or not the respondent is entitled to custody of the children of the marriage, accommodation for herself and the children as well as maintenance for the three children.

The petitioner does not contest custody of the children of the marriage. The petitioner testified that since their separation in the year 2019, the respondent has had custody of the children of the marriage whilst he maintains them. Learned Counsel for the petitioner in his written address respectfully concedes that custody of the children should be granted to the respondent with reasonable access to the petitioner for the petitioner to provide reasonable accommodation for her and the children of the marriage.

Accordingly, I hereby grant custody of the three children of the marriage to the respondent with reasonable access to the petitioner. The children shall spend weekends with the petitioner every fortnight and shall spend half of

their vacations with the petitioner. The petitioner shall rent a decent two-bedroom accommodation located close to the school of the children for the respondent and the three children of the marriage within two months from the date of judgment. The order to rent accommodation terminates upon the re-marriage of the respondent or until the three children attain the age of majority whichever occurs first.

The court having granted custody of the three children of the marriage to the respondent with reasonable access to the petitioner the next crucial consideration is the maintenance of the children. It is a settled principle of law that it is the joint responsibility of both parents to maintain the children and provide nurturing care for them. This principle was given judicial blessings in case of **Donkor v. Ankrah** [2003-2005] 2 GLR 125, 140-141, where the Court underscored the need for parents to jointly contribute towards the maintenance of their children in the following terms:

“Where both parents of a child are earning 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: see section 47(1) & (2) of the Children’s Act 1998(Act 560). Once the plaintiff is also reputed to be working, she must also take part of the responsibility of the child’s maintenance”.

In my respectful view, the duty of parents towards their children is not only legal but also sacred. As such, the parties in this case are under a duty to provide not only the physical needs of the children, but must be present in the lives of the children and should ensure the emotional and psychological well-being of the children as well as their moral upbringing to help raise well-rounded individuals. This duty continues even with the dissolution of the marriage. In this case, the respondent admitted under cross-examination that the petitioner has been responsible for the payment of the school fees of the

children and has provided a vehicle which conveys the children to and from school. The issue then is how much to award as the monthly maintenance allowance for the upkeep of the three children of the marriage with the breakdown of the marriage. **Section 22(3)(c)** of Act 367, which grants the courts power to award maintenance and provide for the education of a child out of the income or property of either or both parties, does not catalogue the factors the court must take into consideration. **Section 49** of the Children's Act, 1996 (Act 560), provides some useful guidance on the factors to consider when making an order for maintenance of a child. The primary consideration is the welfare of the child and a court is enjoined to consider factors such as the income and wealth of both parties, an impairment in the earning capacities of the parties, other children which the parties are legally liable to maintain, the cost of living in the area where the children reside.

In the instant case, the parties did not lead evidence on their income except to say that the petitioner is a clearing agent and the respondent is a self-employed caterer. Apart from the three children of the marriage, there is no evidence of any children who the parties are legally liable to maintain. The respondent says that her business has completely collapsed due to the Covid-19 pandemic and she is now renovating the shop to start trading. The children live within the Tema Metropolis where the court has taken judicial notice of the cost of living and the inflationary rate in the country which has exacerbated the cost-of-living situation. The court upon an application for maintenance pending suit filed by the respondent, the court on 15th May, 2020 awarded an amount of One Thousand Two Hundred Ghana Cedis (GH¢1,200) as monthly maintenance pending suit for the upkeep of the children. It has been almost three years since the order. I will therefore award an amount of One Thousand Five Hundred Ghana Cedis (GH¢1500) as monthly maintenance for the upkeep of the three children to be paid by the

petitioner on or before the 5th day of each month effective 5th February, 2023. This amount shall be increased by 10% every year. The petitioner shall continue to bear the educational and medical expenses of the three children. The respondent who is a caterer shall be responsible for providing snacks for the children and shall also be responsible for the clothing needs of the three children.

ISSUE 3: Whether or not the parties jointly acquired properties during the subsistence of the marriage and if so, whether the respondent is entitled to fifty percent share.

Article 22 (3) (b) of the 1992 Constitution provides that:

"Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage".

In the case of **Arthur (No 1) v. Arthur (No.1)** [2013-2014] 1 SCGLR 543 it was held in holding 3 as follows;

"...Property acquired by the spouses during the marriage was presumed to be marital property. Thus, marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition."

In the Supreme Court's decision in **Peter Adjei v. Margaret Adjei** (unreported) [Suit No. J4 06/ 2021] delivered on 21st day of April, 2021, the Court per Appau, JSC (as he then was) reiterated the position of the law on the presumption of joint ownership when His Lordship stated at page 10 as follows:

"...any property that is acquired during the subsistence of the marriage, be it customary or under English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on

equality is equity principle. This presumption of joint ownership is, however, rebuttable upon evidence to the contrary... What this means in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a "jointly-acquired" property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial to have been jointly acquired, irrespective of whether there was direct, pecuniary or substantial contribution from both spouses in the acquisition."

Therefore, marriage is not a weapon that gives spouses unwarranted access and share in properties acquired by the other spouse through their individual sweat and efforts. The onus is thus on the respondent in this case who is claiming 50% share in the house in issue to first lead cogent and admissible evidence to establish that the property in dispute was jointly acquired during the subsistence of the marriage. This is more so when the petitioner in his amended reply to the amended answer and cross-petition vehemently denied that the respondent contributed to the acquisition of the property. In the case of **Tetteh v. T Chandiram & Co Gh Ltd & Others** [2017-2020] 2 SCGLR 770, the Supreme Court affirmed the good old principle on what constitutes proof of an averment when it held in its holding 2 that where a party alleged a claim but was denied, it was the duty of that party to adduce credible evidence to prove the claim and not just mount the witness box and repeat her pleadings especially when the claim was capable of positive proof.

The respondent who claims joint ownership in the house in both her pleadings and evidence in-chief did not lead a scintilla of evidence on how the property in dispute was acquired. The respondent states that without her knowledge, the petitioner's business was flourishing and he was secretly acquiring properties. The respondent under rigorous cross-examination by

Counsel for the petitioner testified that the matrimonial home where they lived is different from the properties secretly acquired by the petitioner during the pendency of the marriage. Although she did not lead evidence on the form of her contribution in the acquisition of the property in issue, under cross-examination, she mentioned for the first time that she advanced money to pay the tiler and whenever the petitioner travelled, she supervised the work on the site. According to her, when the property was being roofed, the petitioner was not around and she was updating him on the progress of the work. Under cross-examination, the petitioner testified as follows;

Q: You never knew about the existence of this house until the petitioner took you there.

A: My Lord, I knew about the existence of the house because when the petitioner purchased the land, he went there with me.

Q: I am putting it to you that you went to the land with petitioner after he purchased.

A: My Lord, I went there with the petitioner at time I was pregnant with our third child.

Q: You never contributed to the procurement of the land the house was built on financially.

A: That is correct because he purchased the land before informing me. By then I had just given birth to my 2nd child.

Q: I am putting it to you that you also never contributed in any way towards the purchase of building materials for the construction of the said house.

A: My Lord, the petitioner collected some money from me and said that the tilers have not finished with their work so he went to give that money to them. As to whether he gave the money to them to buy more tiles or for payment of their work I cannot tell.

The petitioner on the other hand in his amended reply to the amended answer and cross-petition of the respondent, states that since the respondent did not live with him in the matrimonial home, she never contributed her

time and money to the acquisition of the property in dispute to make a claim of a share in it. The petitioner again testified that throughout the marriage, he never received any financial support from the respondent to put up the building. According to him, he solely acquired the land at the cost of GHC3,500 in the year 2011 and put up the building which is uncompleted without any contribution in cash or in kind from the respondent. In support, he tendered in evidence some receipts of building materials purchased for the construction of the building as **Exhibit "C" series**. The petitioner states that due to the fact that the support of the respondent was not forthcoming, he had to source loans from friends. According to him, on one occasion when he needed money to roof the building, he requested for support of GHC2,000 to add to his money to roof the house but the respondent informed him that she did not have money and that she would obtain a loan for him. Shortly after that, the respondent's mother sent the money through mobile money. However, after two weeks, the respondent demanded for the payment of the GHC2,000 advanced to him which he had to borrow money from a friend to repay the respondent's mother. The petitioner therefore contends that the building which is in an uncompleted state and presently being occupied by him, was solely financed by him without any contribution from the respondent. He tendered pictures showing the state of the building as **Exhibit "D" series**. According to him, in 2017, due to the high cost of rent, he moved into the uncompleted building and when he brought the children to live with him, the respondent followed the children to the house he built.

The petitioner's witness confirmed the testimony of the petitioner that the petitioner acquired the land without the assistance of the respondent. According to him, he led the petitioner to purchase the land on which the house is built in dispute in the year 2011. Subsequent to that, he supervised the construction at every stage of the project to its current state without any

financial commitment from the respondent and it was the petitioner who was solely responsible for the construction of the building he supervised.

Learned Counsel for the respondent contends in his written address that the petitioner claimed that his work schedule did not make him a busy person and if that evidence is credible, then it means that he could not be earning much at the beginning of the marriage and it was the respondent who took care of the bill of the home. Counsel further contends that it will amount to unjust enrichment for the court to discount contributions made by the respondent and relies on the case of **Anang v. Tagoe** [1989-90] 2 GLR 8-13 where Brobbey J (as he then was) stated as follows;

“where a wife made contributions towards the requirements 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 is materialized. That would prevent husbands from unjustly enriching themselves at the expense of innocent wives, particularly where there was evidence of some agreement for joint acquisition of property.”

From the authorities relied on by Counsel for the respondent, and the Peter Adjei case cited supra, contributions of a wife should not be assumed since it is not every spouse who diligently performs marital roles in a marriage but there must be evidence on record to show the contributions made. The petitioner having put the respondent’s contribution in kind in issue that she was always living in her mother’s house to his disapproval and to the neglect of her marital duties, it was incumbent on the respondent to lead evidence to show that from 2011 when the land was acquired and 2015 when the construction commenced, she was living with the respondent in the matrimonial home performing her duties as a wife to assist the court to make a determination in her favour. From the evidence led by the parties, the

respondent who for the first time under cross-examination states that she advanced money to pay tilers did not state how much she paid. Also, there is no evidence that she supervised the construction of the project since she states that the petitioner was secretly acquiring properties and her alleged supervision is watered down by the evidence of PW1.

The petitioner in his pleading and evidence in-chief stated without challenge that he took out loans from friends to construct the building which he was still paying. The respondent not having challenged the evidence of the petitioner that he constructed the building through loans, he had no burden to provide further proof. The evidence of the petitioner that when he requested for assistance to roof the storey building, the respondent told him she would take a loan for him which he has fully refunded remains unchallenged. This piece of evidence of the respondent having demanded for money she put into the roofing of the building at a time when she was working and earning income is inconsistent with the conduct of a party who deemed the property to be jointly owned.

On the totality of the evidence led, I find that the respondent failed to prove her contribution to the acquisition of the property in dispute. I therefore hold that the property in dispute was not jointly acquired during the subsistence of marriage and declare it to be the sole property of the petitioner.

ISSUE 4: Whether or not the respondent is entitled to an amount of GH¢50,000 as lump sum financial provision from the petitioner.

Section 20(1) of the Matrimonial Causes Act, 1971 (Act 367) states that:

"The court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the court thinks just and equitable."

In the case of **Aikins v. Aikins** (1979) GLR 233, Sarkodee J (as he then was) held in holding 4 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..."

The court further stated that the advantage of lump sum payment is to enable the payee to invest it and live on the income. It also has the purpose of enabling the wife to recoup expenses already incurred in maintaining herself or any child of the marriage and to remove bitterness associated with periodical payments. Thus, an order for financial provision under Act 367 is need-based and it is not intended to punish a party who is to be blamed for the breakdown of the marriage. It is also not intended to enrich one spouse at the expense of the other. In the case of **Barake v. Barake** [1993-1994] I GLR 635 at page 666, where Brobbey J (as he then was) stated that :*"On such an application, the court examines the needs of the parties and makes reasonable provision for their satisfaction out of the money, goods or immovable property of his or her spouse."*

The factors a court must consider in determining what is "just" and "equitable" under section 20 of Act 367 are; the income, earning capacity, property, and other financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage; the age of each party to the marriage and the

duration of the marriage. See the case of **Obeng v. Obeng** [2013] 63 GMJ 158, CA

Here, the parties have not led evidence on their earning capacities except to say that the petitioner is a clearing agent at the Tema Port and the respondent is a self-employed caterer. There is no evidence of the ages of the parties but the parties have been married for fifteen years now and looking at the parties, the prospect of each party finding love again and remarrying is high. There are three children to the marriage which the parties are legally liable to maintain with the petitioner bearing a bulk of the responsibilities including provision of shelter for the respondent and the three children. The respondent states that due to Covid, there is an impairment in her earning capacity since her business has collapsed and she is in the process of resuscitating same. The petitioner owns the uncompleted house in issue but there is no evidence on record of any property that the respondent is entitled to. Thus, the respondent has a genuine need which this court must consider. In awarding the lump sum financial contribution I am mindful of the case of **Gamble v. Gamble** [1963] 1GLR 416 where the court held in holding 2 that: *“the court will not look with sympathy upon a wife who makes no effort to secure employment but is content to subsist on an award of alimony.”* Thus, any lump sum awarded by the court should be such as would enable the respondent to resume her catering business since with such impeccable culinary skills and living in a bustling city like Tema, the respondent should not be content to subsist on financial provision. In my view, once the respondent has a thriving business, it will relieve the petitioner of some of the responsibilities since she will have the financial muscle to contribute towards the maintenance of the children. In the case of **Aikins v. Aikins** supra, the Court held in holding 3 as follows; *“The Court was entitled under Section 20 of Act 367 to order lump sum paymentThe husband’s ability to pay was not merely to have physical cash but it could*

also be determined by his ability to provide money by way of overdraft or loan and in the absence of full and frank information by the husband as to his financial position, the Court was entitled to draw inference adverse to the husband as to his capacity."

I therefore find it just and equitable to award an amount of GHC30,000 as financial provision to the respondent. **Section 20(2)** of Act 367, empowers the court to order the money to be paid in gross or installment. Accordingly, having regard to the responsibilities of the petitioner under this judgment, I will order the petitioner to pay the amount within three (3) months in three (3) equal monthly instalments from 1st March, 2023 to 1st May 2023.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce and enter judgment in the following terms;

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 12th January, 2008 at the Registry of the Tema Metropolitan Assembly.
2. The parties shall present the original copy of the marriage certificate for cancellation by the Registrar of the Court.
3. I hereby grant custody of the three children of the marriage namely Denzil Twum, Perdita Twum and Adel Twum currently aged 14 years, 11 years and 9 years respectively to the respondent with reasonable access to the petitioner. The children shall spend weekend with the petitioner every fortnight and half of their vacations with the petitioner.
4. The petitioner shall rent a two-bedroom accommodation for the respondent and the three children within two months from the date of

judgment. The order to rent accommodation terminates upon the remarriage of the respondent or until the children attain the age of majority whichever occurs first.

5. The petitioner shall pay a monthly maintenance allowance of GH¢1500 for the upkeep of the three children of the marriage. This amount shall be paid by the 5th day of each month effective 5th February, 2023. This amount shall be increased by 10% every year. Additionally, the petitioner shall be responsible for the educational and medical needs of the children. The respondent shall be responsible for the clothing needs and snacks for the three children.
6. I hereby declare the property located at Dawhenya which served as the matrimonial home of the parties from 2017 to have been solely acquired by the petitioner and he is entitled to the hundred percent (100%) interest in the property.
7. The petitioner shall pay an amount of GH¢30,000 as financial provision to the respondent. In accordance with **section 20(2)** of Act 367, which empowers the court to order the money to be paid in gross or installment, the petitioner shall pay the amount within three (3) months in three (3) equal monthly instalments from 1st March 2023 to 1st May 2023.
8. There shall be no order as to costs.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)

