

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 24<sup>th</sup> DAY  
OF FEBRUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE

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SUIT NO.C5/30/22

|                              |       |            |
|------------------------------|-------|------------|
| OLIVIA HOGGAR ASIMWOME OFORI | ----- | PETITIONER |
| VRS.                         |       |            |
| EBENEZER KWAME OFORI         | ----- | RESPONDENT |

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| PARTIES  | PRESENT |
| FRANCIS GARIBA APAM, ESQ. FOR THE PETITIONER PRESENT |         |

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JUDGMENT

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**FACTS:**

The petitioner, a business woman and the respondent, a commercial driver got married under **Part III of the Marriages Act (1884-1985)** Cap 127 at the office of the Principal Registrar of Marriages in Tema, on 3<sup>rd</sup> June, 2011. Subsequent to that, the parties cohabited at Ashaiman and later relocated to Dawhenya in the Greater Accra Region. There are two children to the marriage namely; Phoebe Nana Adjoa Ofori, aged 15 years; and Ofori Edwin Kobina Ofori, aged 8 years at the time of filing the divorce petition. On 8<sup>th</sup> December, 2021, the petitioner filed the instant petition for divorce alleging that the marriage celebrated between herself and the respondent has broken down beyond reconciliation and prayed the court for the following reliefs;

- a. An order dissolving the marriage celebrated between the petitioner and the respondent on the 3<sup>rd</sup> day of June, 2011.
- b. An order for the respondent to maintain the issues of the marriage and pay for their educational and medical bills.

- c. An order that the respondent vacates the matrimonial home which is the property of the petitioner, to enable the petitioner to occupy same with the issues of the marriage.
- d. The petitioner be given custody of the two issues of the marriage with reasonable access to the respondent.
- e. An order for the respondent to refund the sum of United States Dollars (\$5,000) or its cedi equivalent which the petitioner loaned to the respondent.
- f. Parties to bear their legal costs.
- g. Further or other reliefs as the Honourable Court may deem fit.

The respondent entered appearance, filed an answer to the petition and cross-petitioned as follows;

- a. Dissolution of the ordinance marriage celebrated between the parties.
- b. An order for custody of the two (2) children of the marriage with reasonable access to the petitioner.
- c. An Order for 50% share of the matrimonial home jointly acquired by the parties.

### **THE PETITIONER'S CASE**

The petitioner's case is that after the marriage, they lived in a rented apartment at Ashaiman for four years but the respondent never contributed to the payment of rent. The petitioner avers that in the year 2004, prior to the marriage, she purchased a car at the cost of GH¢3,500 for the respondent to use as a commercial vehicle for them to use the proceeds to maintain the home but the respondent sold the vehicle and refused to refund the proceeds from the sale to her and also failed to maintain her and the children of the marriage. Additionally, the respondent has also refused to refund an amount of US\$5000 given to the respondent as a loan in the year 2015 to enable him

secure travel documents which has plunged her business into financial crisis. The petitioner states that the respondent has unjustifiably accused her of poisoning him. The respondent also threatened to kill her which caused her to vacate the matrimonial home for fear of her life. She reported the matter to the police and the respondent was made to sign a bond and only returned to the matrimonial home after the families of the parties had met and the respondent had assured them of the safety of the petitioner.

Again, on numerous occasions, the respondent accused her of having sexual intercourse with her clients and business partners. The respondent has for many years been verbally abusing the petitioner without provocation. The respondent's continuous ill-treatment of the petitioner has caused her embarrassment, stress and general ill-health. The petitioner states that all attempts made by the family members of the petitioner and the respondent to reconcile the parties have not been successful. The petitioner therefore maintains that the marriage between the parties has broken down beyond reconciliation.

Regarding properties, the respondent avers that prior to their marriage, she acquired a plot of land at Dawhenya which she later developed into a dwelling house without any financial contribution from the respondent. The petitioner and the respondent have since the year 2015, used the petitioner's house as the matrimonial home.

#### **THE CASE OF THE RESPONDENT**

The respondent on his part denies the allegation of unreasonable behaviour levelled against him by the petitioner. According to the respondent, he has always maintained the family. In respect of the car sold, he states that after selling the car, he decided to use the proceeds to sell drinks but the petitioner

refused. Thereafter, he fell ill and used the money for his treatment. The respondent denies owing the petitioner an amount of US\$5,000 and states that there was an opportunity for him to travel to Canada but was denied the visa. The respondent states that the petitioner gave him an amount of GH¢15,000, equivalent of US\$2,500 at the time and not US\$5,000. According to him, the travel agent promised to refund the money which he has refused. The respondent accused the petitioner of engaging in extra-marital affairs as she was always seen in another man's car. The respondent also accused the petitioner of poisoning him.

The respondent admits assaulting the petitioner but states that the issue happened about 5 years ago which was settled by both families. As part of settlement, the petitioner's family asked him to sign a bond and he paid a fine of GH¢100, two bottles of schnapps and two crates of minerals. He states that the petitioner was advised to end her amorous relationship with the said man but she persisted. According to him, when the family members of the petitioner informed him about their decision to dissolve the customary marriage, his family refused since their marriage is one under the ordinance.

The respondent further contends that the matrimonial home was jointly acquired by the parties and he is entitled to fifty percent share in the property. The respondent states that, the property was purchased in the joint names of the parties but the petitioner has since taken the documents covering the land. According to him, apart from buying the plot, the petitioner did not even know where the land was so he bought sand and cement to cast 1,000 blocks to start with the building construction and requested for the petitioner's assistance to pay the labourers.

According to him, the petitioner has denied him access to their son. He therefore prayed the court to grant him custody of the two children of the marriage since the girl is living with him in the matrimonial home.

On the pleadings, the evidence led and the address filed by counsel for the petitioner, the court set down the following issues for consideration.

### **LEGAL ISSUES**

1. Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether or not the petitioner or the respondent is entitled to custody of the two children of the marriage.
3. Whether or not the petitioner is entitled to an award of maintenance for the children from the respondent.
4. Whether or not the respondent owes the petitioner an amount of \$ 5,000 or its cedi equivalent.
5. Whether or not the matrimonial home was jointly acquired during the subsistence of the marriage and whether the respondent is entitled to 50% share in the property.

### **BURDEN OF PROOF**

A petition for divorce being a civil case, like all civil suits, the petitioner bears the burden to prove her petition on a preponderance of probabilities only. See **sections 10, 11 and 12** of the Evidence Act, 1975(NRCD 323). In the case of **Adwubeng v. Domfeh [1996-97] SCGLR 660**, the Supreme Court held in its holding 3 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 preponderance of probabilities. No exceptions were made.”*

The court further stated:

*“in assessing the balance of probabilities, all the evidence be it that of the Plaintiff or 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”.*

The standard of proof as stated applies to a petition for divorce. Thus, the petitioner bears the burden to prove his petition on a balance of probabilities. Also, when, as in the instant case, a respondent cross-petitions, he bears the burden to prove his cross-petition on a balance of probabilities.

## **ANALYSIS**

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

Under **section 1** of the Matrimonial Causes Act, 1971 (Act 367), the sole ground for granting a petition for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner must plead and prove at least one of the six (6) facts set out in **section 2(1)** of Act 367, namely; adultery, unreasonable behaviour, desertion, failure to live as man and wife for two years, failure to live as man and wife for five years, irreconcilable differences.

To promote reconciliation, **section 8** mandates a petitioner or his counsel, to inform the court of all attempts made at reconciliation. Consequently, under **section 2(3)**, a court shall refuse to grant a petition for divorce if there is reasonable possibility of reconciliation although a petitioner has established

one of the facts contained in **section 2(1)** of Act 367. Thus, in the case of **Adjetey & Anor v. Adjetey** [1973] 1 GLR 216, the court held in holding 2 that:

*“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”*

The petitioner in the instant petition has set out to prove fact **2(1)(b)**, namely,

*“that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent”*. To succeed under **section 2(1) (b)**, the petitioner must prove the conduct of the respondent constituting unreasonable behaviour, and the fact that the petitioner cannot reasonably be expected to live with him. In the case of **Mensah v. Mensah** [1972] 2 GLR 198, the court held in its holding 3, that:

*“In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova’s Charter.”*

The Matrimonial Causes Act, 1971, (Act 367) does not define behaviour and the specific conducts that constitute unreasonable behaviour. Rayden on Divorce (14<sup>th</sup> ed., 1983) defines behaviour as follows;

*“Any conduct, active or passive, constitutes behaviour. The behaviour is not confined to the behaviour of the respondent. The behaviour may have reference to the marriage although it is to other members of the family or to outsiders. Any or all behaviour may be taken into account: The court must have regard to the whole history of the matrimonial relationship. But behaviour is something more than a mere state of*

*affairs or a state of mind: behaviour in this context is action or conduct by the one, which affects the other: It may be an act or omission or course of conduct; but it must have reference to the marriage..."*

To prove her allegation, the petitioner testified that after the celebration of the marriage, she cohabited with the respondent at Ashaiman for a period of 4 years during which period she paid the rent for the matrimonial home without any contribution from the respondent. According to her testimony, prior to the marriage, she set the respondent up in business by purchasing a taxi for him at the cost of GH¢3,500 for the respondent to use as a taxi in the year 2004. The purpose, she says was for the respondent to use the proceeds to maintain them but he sold the vehicle and refused to refund the money to her.

Additionally, she says that the respondent does not maintain her and the issues of the marriage and she has single-handedly maintained the family and paid school fees of the children and diligently performed her duties as a wife. The respondent does not cater for the health and educational needs of the children. In support, she tendered in evidence receipts of school fees for the issues of the marriage admitted and marked as **Exhibit "A"** series.

Furthermore, the petitioner testified that in the year 2020, the respondent accused her of poisoning him after he fell ill and was admitted at the hospital which compelled her to leave the matrimonial home for fear of her life. The respondent's allegation that she poisoned him caused her embarrassment, fear anxiety and stress which has caused her to live in constant fear of her life.

Sometime in April 2020, the respondent threatened to kill her which led her to report the matter to the police and the respondent was made to sign a bond. Subsequent to that, their families met the respondent over the issue, and after



deliberations, she returned to the matrimonial home after the respondent assured them of her safety in the matrimonial home. According to her testimony, she has rented a place where she currently occupies and pays a monthly rent of GHC1,000 and continues to be solely responsible for the upkeep of the children.

The petitioner further testified that the respondent persistently accuses her of adultery without justifiable cause. According to her, she is a trader in provisions for Indians and Ship Chandlers. She states that by the nature of her business, most of her customers are men. However, for years, the respondent has verbally abused her and persistently accused her of having sexual intercourse with her male customers. She denies taking her wedding band off to have sexual intercourse with other men and states that one morning, before taking her shower, she removed her wedding ring and placed it on a table but the respondent took the ring and refused to return it to her. The respondent further states that she has not built any house where she currently cohabits with another man as alleged by the respondent and does not drive in town in another man's car except her manager's car that she sometimes uses to run errands.

The petitioner testified that several attempts by their family members to reconcile them over the years have not been successful. That the marriage has broken down beyond reconciliation since the respondent has behaved in such a way that she cannot reasonably be expected to live with him since the respondent has caused her much embarrassment, anxiety and stress.

The respondent on his part accuses the petitioner of committing adultery with one Alex. According to his testimony, as a result of the extra marital affairs, the petitioner brought in another bed into the bedroom that she was sleeping

separately and sprinkling Ada Salt in the bedroom and on his bed. According to him, the petitioner was always seen in a man's car and when she is driving with him and she sees the man, she would stop him and join the man's car. When he complains, the petitioner rains insults on him. Once, when his friend saw the petitioner and confronted her over her conduct of refusing to behave like a married woman, the petitioner retorted that the respondent was not her class and that she feels ashamed to introduce him as his husband.

Additionally, in the year 2020, his food was poisoned in the house and after eating, he was vomiting blood till he was sent to the hospital where he was diagnosed with food poisoning. The respondent maintains that the petitioner wants him to die early for her to marry another man. According to him, the petitioner has built a house where he is occupying with the said man.

The respondent says that apart from their first settlement which they had with their families, they lived apart. According to him despite all these, he has consented to the dissolution of the marriage since he cannot reasonably be expected to live with the petitioner as a result of the adultery committed by the petitioner.

From the evidence led by the petitioner and the defence put up by the respondent, the respondent does not deny most of the allegations levelled against him by the petitioner. The respondent insists that the petitioner has had sexual intercourse with her client called Alex and under intense cross-examination, maintains that she has built a house with the said Alex and is currently cohabiting with him. However, the respondent, apart from repeating the allegation of adultery, failed to provide evidence whether direct or circumstantial from which the court can infer on a balance of probabilities that the petitioner, a married woman has had sexual intercourse with another man other than her spouse. See section 43 of Act 367. 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...”*

In the instant case, the respondent has not provided a shred of evidence or circumstances from which the court can infer that the petitioner has committed adultery. The account given by the respondent that once whilst driving with the petitioner to distribute hampers and she saw the said Alex, she alighted and joined him in his car is not enough to infer adultery from it in the light of the explanation by the petitioner that the said Alex is a business partner and he was assisting him to deliver the hampers to the customers. Also, apart from the mere assertion that someone told him that the petitioner has built a house with the said Alex and are living together, there is no other evidence to prove this fact and the alleged informant was not called as a witness to be subjected to cross-examination. The respondent therefore failed to prove that the petitioner has committed adultery and that his persistent allegation of adultery against the respondent constitutes unreasonable behaviour within the meaning and intendment of **section 2(1)(b)** of Act 367.

Additionally, the respondent repeated his averment that when he fell ill and was admitted at the hospital, the doctors diagnosed him with food poisoning but failed to tender any medical report to evidence this fact even when upon an application by counsel, the court adjourned proceedings for him to produce same. The allegation of poisoning is therefore unfounded. The

respondent has not denied the assault and threats on the petitioner and the fact that he was made to sign a bond and pay a fine of GH¢100 at a family meeting for the ill-treatment that he subjected the petitioner to.

On the totality of the evidence led by the petitioner and the defence put up by the respondent, I hold that the petitioner proved on a balance of probabilities that the respondent has behaved in such a way that she cannot reasonably be expected to live with him as a result of the behaviour. The evidence also shows that various attempts made by the parties themselves and their family members have proved futile. Also, since the year 2018, the parties have not lived together as husband and wife and they have not evinced an intention to resume cohabitation as husband and wife. I therefore hold that the marriage celebrated between the parties has broken down beyond reconciliation on account of the unreasonable behaviour of the respondent. I accordingly grant the petition for divorce and dismiss the cross-petition.

**ISSUE 2: Whether or not the petitioner or the respondent is entitled to custody of the two children of the marriage.**

Under **section 22(2)** of the Matrimonial Causes Act, 1971 (Act 367), a court in any proceedings under the Act, on its own motion or an application by a party, may make an order concerning an award of custody of a child to any person, regulate the right of access of any person to the child, provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage. However, the Act does not specify the factors a court must consider in awarding custody or access to a child. The Children's Act, 1998 (Act 560), provides useful guidance. The primary consideration is the welfare of the child as stated in **Section 2** of Act 560. Under **Section 45(1)**, a family tribunal making a custody order shall

consider the best interests of the child, and the importance of a young child being with the mother when making an order for custody and access to a child. Among the factors to consider are; the age of the child, the importance of a child to be with the parents unless the child is persistently abused, the need for continuity in the care and control of the child, the views of the child if independently given, the need to keep siblings together, and any other relevant matter.

In the case of **Opoku-Owusu v. Opoku-Owusu** (1973) 2 GLR 349, the Court held @ page 354 as follow: *"In such an application the paramount consideration is the welfare of the children. The court's duty is to protect the children irrespective of the wishes of the parents..."*

Thus, in the case of **Gray. v. Gray** [1971] 1 GLR 422, the paramount consideration of the court in awarding custody was the welfare of the children and the effect a change in environment will have on their progress in school as well as the emotional balance of the children. See also the case of **Beckley v. Beckley and Anor** [1974] 1 GLR 393-403.

The petitioner testified that the issues of the marriage have been living with her ever since she left the matrimonial home and their daughter does not live with the respondent. Sometime in the year 2018, she noticed that the academic performance of the issues of the marriage were not encouraging so she withdrew them from their school and enrolled them in a Montessori School in order to improve their academic performance. However, in December, 2021, the respondent came for their son and has refused to allow him to return to live with her. The child was recently sent home for non-payment of school fees and without her intervention the child could not have returned to school as the respondent is not capable of paying the child's school fees. According to her, she has been solely responsible for the maintenance of the home since

the inception of the marriage since the respondent is unemployed and his aim has always been to travel abroad for greener pastures which has not materialized. The petitioner states that the petitioner is a man of straw and cannot maintain the children if granted custody.

The respondent also, in his evidence in-chief, denies that the petitioner has been solely responsible for the upkeep of the children of the marriage. According to his evidence, until the petitioner forcefully took the children away to live with her brother and to their church pastor's house, he was responsible for the payment of school fees. In support, he tendered in evidence **Exhibit 1, 1A**, which are receipts of payment of school fees for Edwin Ofori. The receipts shows that the respondent made part-payment in 2022 at the time the suit was pending confirming the assertion of the petitioner that she had to go for the child and pay the school fees.

The evidence led by the parties show that, since the parties separated in the year 2018, the children have been living with the petitioner until the respondent went for the boy and refused to return him to the petitioner. Having regard to the welfare of the children and the need to ensure continuity in their care and control, I will award custody of the children to the petitioner with reasonable access to the respondent. The children shall spend half of their vacations period with the respondent and weekends with the respondent every fortnight.

**ISSUE 3: Whether or not the petitioner is entitled to the award of maintenance for the two children,**

This court having granted custody of the two children to the respondent with reasonable access to the petitioner, it is imperative for the court to consider the issue of maintenance of the children since every child has a right to be

maintained by the parents. In the case of **Donkor v. Ankrah** [2003-2005] 2 GLR 125, 140-141, the Court held that:

*“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”.*

**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 enumerate 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 the following factors; the income and wealth of both parents, any impairment in their earning capacities, the financial responsibility of the parties in respect of maintenance of other facts, the cost of living in the area where the children reside and the rights of the children under the Act.

In the present case, there is no evidence on record regarding the earning capacities of the parties. The petitioner says that the respondent is unemployed and has been unemployed throughout the marriage since he is bent on travelling outside the country to seek greener pastures. The petitioner, in opposing the claim of the respondent labelled him as a “*man of straw*” who cannot maintain the children when granted custody. The respondent under cross-examination admitted that for over two years, he has not maintained the children of the marriage. Meaning, the petitioner has been solely responsible for the upkeep of the children. Although the petitioner states that the respondent is unemployed and the law enjoins a court to take into consideration the earning capacities and any impairment in the earning

capacities of the parties, the court cannot allow a permit an able-bodied parent to escape his responsibility to maintain a child under the guise of unemployment especially when the unemployment status is self-imposed since the respondent sold a taxi meant for commercial purpose and has failed to account for sale.

Under the circumstances, having regard to the best interests of the children, their ages and the cost of living in the jurisdiction of this court where they reside, I will award an amount of GH¢1,000 for the monthly upkeep of the two children of the marriage to be paid by the 3<sup>rd</sup> day of each month effective 3<sup>rd</sup> March, 2023. The respondent shall be responsible for the educational expenses of the two children. The petitioner shall bear the medical expenses of the two children as well as the clothing needs of the children.

**ISSUE 4: Whether or not the respondent owes the petitioner an amount of USD\$ 5,000 or its cedi equivalent.**

The petitioner testified that in the year 2015, the respondent expressed a desire to travel to Germany to seek greener pastures. She loaned him the sum of \$5,000 United States Dollars to enable him procure a visa. The respondent was refused the visa and even though him the agent is refunding the money to the respondent in tranches, the respondent has refused to refund the money to him, and as a result her business has suffered severe cash flow crises over the years. She funded his visa application to travel to Saudi Arabia, which application was also refused.

The respondent on his part testified that prior to their marital issues, there was an opportunity for him to travel to Canada but he was refused the visa. The agent promised to refund the money which was not \$5,000 but \$2,500 has not been paid or refunded to him and the respondent is aware. Also, the



money she paid was GH¢15,000, which at the time the cedi equivalent was \$2,500. After the Canadian arrangement failed, there was another chance for him to travel to Saudi Arabia and the petitioner is aware that the money is with the agent and more so the money was given to his brother. The respondent under cross-examination by counsel for the respondent testified that the amount was not a loan but it was a financial assistance the petitioner gave him to travel. However, the respondent further testified under cross-examination that when the agent was not successful in securing the visa, he told him to refund the money received so that he can refund the petitioner's money to her which means that at all material times, the agreement of the parties was for the respondent to refund the money. According to him, he thought the money the petitioner gave him was a gift. Further to that, his brother sent him an amount of GH¢5,000 so the process is ongoing. In respect of the arrangement to Saudi Arabia, he states that the petitioner contributed an amount of GH¢1,000. This means that the money was not meant to be a gift but a financial assistance. The respondent having admitted receiving an amount of GH¢15,000 which he was required to refund to the petitioner, on his own admission, the respondent shall refund the amount of USD\$ 2,500 or its cedi equivalent to the petitioner.

**ISSUE 5: Whether or not the matrimonial home of the parties was jointly acquired during the subsistence of the marriage and whether the respondent is entitled to 50% share in the property.**

**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 21<sup>st</sup> 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, during the marital union, parties have the constitutional right to acquire their separate properties. 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 for the burden to shift to the respondent to rebut same.

The petitioner testified that prior to the marriage, she acquired a plot of land situate at Dawhenya which she later developed into a 2-bedroom dwelling house without any financial contribution from the respondent. According to her testimony, this property has served as their matrimonial home since the year 2015. The petitioner further testified at all material times, the indenture covering her land has been in the custody and possession of the respondent and she has never sighted the document. According to her testimony, the respondent never made any financial contributions to the purchase of the land and the construction of the matrimonial home but rather, he dishonestly spent money meant to pay workmen which substantially increased the cost of the project at her expense. She therefore prays the court to eject the respondent from the matrimonial home. Under cross-examination by the respondent, the following ensued;

*Q: You told this court that the matrimonial home, I did not contribute. Do you remember I am the one who bought the land?*

*A: Yes, my Lord. He came one morning and told me that his God Father said there is a land at Dawhenya so if he can tell me so that I give him money to buy the land. I asked for the price and he told me it was GH¢1,200 and the next day I counted the money for him and one of his friends was there when I paid from my personal finances.*

*Q: Are you aware that when you went onto the land, I had blocks on the land.*

*A: Yes my Lord. He molded the blocks with my money that I had saved in his account.*

*Q: Can you tell the court I did not contribute to the land from start to finish?*

*A: No please because by then I was saving all my money into his personal account at the Inter-Continental Bank....*

The respondent on his part testified that through his business, he bought a plot of land located at Dawhenya from one Kwao Crampah alias Paa Sammy at a cost of 8 million old Cedis. After the purchase of the land, he bought sand and cement bags for some masons and labourers to mold cement blocks for him. It was after this that he told the petitioner to support him with money for the masons to lay the blocks as they were doing everything in common as a couple. According to him, after payment for the land, he caused the documents to be made in their joint names and the site plan and the receipts have since been taken away by the petitioner and she did not return same until she deserted the matrimonial home. The respondent therefore maintains that the petitioner did not solely acquire the land in dispute since he bought the land, molded 1,000 cement blocks and paid labourers and masons.

In support, the respondent witness Sam Krampah testified that he knows the respondent in this case as a colleague taxi driver. According to him, he bought a plot of land and on the 5<sup>th</sup> May, 2002, he sold half plot which is situated and lying at New Dawhenya in the Greater Accra Region for the sum of Eight Million Cedis (GH¢8,000,000) at the time since he was in need of money. After that he took him to the site and demarcated same for him at Dawhenya a place now called Savanna Junction. According to him, after receiving payment, he has not visited the site anymore until he met the respondent who told him that they have built on the plot and they are living on it. According to him, at the time they were driving the taxi, the respondent was also having drinking spot where he visited sometimes. Under cross-examination by counsel for the petitioner, the following ensued;

*Q: You have just informed this court that you signed the signature on exhibit B 12 years ago but the date on Exhibit B shows that it was signed 20 years ago.*

*A: That is not correct my Lord. The 20 years counsel is talking about, at the time I had not acquired any land.*

*Q: Can you read the receipt again and tell the court the date it was issued?*

*A: It was issued on 5<sup>th</sup> May, 2002. From 2002 to 2022 is about twenty years but I did not sell it 20 years ago. 20 years ago, I had not acquired any land.*

The evidence of the petitioner's witness though inconsistent, is not material on the issue of the acquisition of the land since this fact is not in issue. On the evidence, the parties dated for 10 years prior to the marriage during which the land in dispute was purchased. The petitioner maintains that she was giving money for the respondent to save in his bank account on her behalf out of which the money for the land was paid for. However, apart from this assertion which is denied, there is no other evidence that she was saving money in the respondent's account. Further to this, she admits that the respondent had already molded blocks for construction when she visited the land but claims she gave him the money. The supervision of the respondent of the project is also not in dispute but the petitioner alleges without proof that the respondent spent money meant for the project.

On the totality of the evidence held, I hold that the parties jointly acquired the property in dispute prior to the marriage and the joint contribution continued during the subsistence of the marriage. The parties shall each have 50% share in the property in dispute. The parties may agree to partition the house or in the alternative, agree on a valuer to value the property and the property sold and the proceeds shared between the parties equally. In the absence of such an agreement, the court shall appoint a valuer. The petitioner who has custody of the two children of the marriage shall have the right of first refusal exercisable within three months from the date of receipt of the valuation. Upon payment of the 50% share of the respondent, the respondent shall give vacant possession of the matrimonial home for the occupation of the petitioner and the two children of the marriage.

## CONCLUSION

In conclusion, I hold that the marriage between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the 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 at the Principal Registrar of Marriages Tema in 3<sup>rd</sup> June, 2011.
2. The petitioner shall present the original copy of the marriage certificate No. *ROM/0465/2011* for cancellation by the Cancellation by the Registrar of the Court.
3. I hereby grant custody of the two children of the marriage namely; Phoebe Nana Adjoa Ofori aged 16 years and Edwin Kobina Ofori, aged 9 years to the petitioner with reasonable access to the respondent. The children shall spend weekends with the respondent every fortnight and half of their vacations with the respondent.
4. The respondent shall pay a monthly maintenance allowance of One Thousand Ghana Cedis (GH¢1,000) for the upkeep of the two children of the marriage to be paid by the 3<sup>rd</sup> day of each month effective 3<sup>rd</sup> March 2023. Additionally, the respondent shall be responsible for the educational expenses of the two children. The petitioner shall provide clothing for the two children and be responsible for their medical expenses.
5. I hereby declare the matrimonial home to have been jointly acquired by the parties and they are each entitled to equal share in the property. The parties may agree to partition the house or in the alternative, agree on a valuer to value the property for it to be sold and the proceeds shared between the parties equally. In the absence of such an

agreement, the court shall appoint a valuer. The petitioner who has custody of the two children of the marriage shall have the right of first refusal exercisable within three months from the date of receipt of the valuation report. The parties shall bear the costs of valuation equally.

6. Upon payment of the 50% share of the respondent, the respondent shall give vacant possession of the matrimonial home for the occupation of the petitioner and the two children of the marriage.
7. The petitioner shall recover from the respondent an amount of US\$2,500 or its cedi equivalent being the financial assistance the petitioner gave to the respondent secure a visa to travel to Germany.
8. No Order as to costs.

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

