

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 23RD DAY
OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C5/59/20

STELLA BOATENG ----- PETITIONER

VRS.

ALEX ODAMI BOATENG ----- RESPONDENT

PETITIONER

ABSENT

RESPONDENT

PRESENT

ADOMAKO-ACHEAMPONG, ESQ. FOR PETITIONER PRESENT

CHRISTIANA ACKOM-ASANTE, ESQ. FOR RESPONDENT

PRESENT

JUDGMENT

FACTS:

The petitioner and the respondent got married under **Part III of the Marriages Act (1884-1985) Cap 127**, at the Tema Metropolitan Assembly on 17th December, 2010 after being in concubinage for two years. After the celebration of the marriage, the parties cohabited at Mitchel Camp before moving into their matrimonial home located at Sebrepur which was then uncompleted. There are two children in the marriage aged 8 and 7 years respectively at the time of filing the instant petition for divorce. There was a previous proceeding in respect of the marriage when the petitioner, initiated divorce proceeding at the District but, Tema but same was discontinued with liberty to re-apply.

The petitioner filed the instant petition for divorce on 12th June, 2020 alleging that the marriage celebrated between herself and the respondent has broken down beyond reconciliation and prayed the court for the following reliefs;

- a. That the marriage celebrated between the petitioner and the respondent on 17th December, 2010 at the Tema Metropolitan Assembly be dissolved.
- b. Custody of the two children of the marriage be given to the petitioner with reasonable access to the respondent until they attain the age of 18 years.
- c. Adequate compensation to be settled on the petitioner for loss of her womb due to delivery of her second child.
- d. Respondent to provide alternative accommodation for the petitioner and the children and provide all their needs including school fees and hospital bills.
- e. Respondent to provide alternative accommodation for the petitioner and the children and provide all their needs including school fees and hospital bills when the need arises.
- f. Half share of the matrimonial home be settled on the petitioner as she contributed more than 50% of the completion of the said house.
- g. That adequate financial compensation may be settled on the petitioner.
- h. That the petitioner may be granted any other reliefs as this Honourable Court may deem fit to grant.

The respondent filed an answer and cross-petition and cross-petitioned as follows;

- a. Dissolution of the marriage celebrated on the 17th of December 2010 between the parties.

- b. An order granting custody of the issues of the marriage to the respondent.
- c. An order settling the matrimonial home situate at Afienya acquired by the respondent before the marriage on the respondent.
- d. An order settling the property consisting of a six-bedroom self-contained at Konongo acquired during the pendency of the marriage on the petitioner.
- e. An order settling the one plot of land at Afienya acquired by the petitioner in her maiden name "Stella Danquah" during the pendency of the marriage on the petitioner.

THE CASE OF THE PETITIONER

The petitioner avers that the respondent has behaved in such a way that she cannot reasonably be expected to live with him as man and wife. The petitioner says that the parties are incompatible and there has been petty squabbles between them orchestrated by the respondent because the petitioner has given birth to female children. The respondent has exhibited cruelty towards the petitioner and has on several occasions threatened the petitioner to pack out of the matrimonial home and threatened to kill her severally. The petitioner further accuses the respondent of being irresponsible and has refused to maintain the petitioner and the children of the marriage and when she complains, the respondent states that he would frustrate the petitioner till she leaves the matrimonial home. She states that the respondent and his family members attack her verbally and physically anytime she complains about the adulterous lifestyle of the respondent. The respondent informed her that he has lost interest in the marriage and that the petitioner is a curse in his life and asked her to move out of the matrimonial home she contributed more than 50% to complete which she has refused to move out.

Additionally, the petitioner states that the disrespectful and obnoxious behaviour of the respondent has drowned the love and trust that should exist between husband and wife and generated hatred, resentment and mistrust as couples and they live in separate rooms in their matrimonial home. The petitioner says that due to the irresponsibility on the part of the respondent, the petitioner has suffered mental distress, depression, anxiety and trauma such that the petitioner cannot cohabit with the respondent any longer. The petitioner says that during childbirth of the second child, she lost her womb through surgery and respondent has been insulting her with the marks on her stomach and says he cannot live in the same roof with the petitioner who the respondent claims is now a man and also not from his hometown.

THE CASE OF THE RESPONDENT

The respondent in his part denies the allegation of unreasonable behaviour levelled against him by the petitioner. He states that it is rather the petitioner who insults him that she has regretted marrying him and also mocks him with the medical condition of his mother who is deaf and dumb and that she has married into a family of "Mumu". The petitioner also accuses him of causing her to lose her womb, rains curses on him that he would die by accident and that she will make him a poor man and he will suffer and die a miserable man. The petitioner also tells him that she will soon be a graduate and cannot marry someone below her class. The respondent says that somewhere in the year 2020 the family of the petitioner brought a drink to his family to dissolve the customary marriage and when the family asked her to pack her things and leave the house, she refused to go with them. In further denial, he states that somewhere in 2014, the petitioner moved from the matrimonial bed to a single room in the house and whenever the respondent go to her room to have an affair with her, she will rain insult on him and refuse him sex. The

petitioner is also in the habit of physically assaulting him in the presence of the children. She also smashed and destroyed respondent's phones without any provocation but wickedness. He states that he solely provides all the needs of the family and is fully responsible for maintaining the home. The respondent accuses the petitioner of maltreating his family members and decided not to communicate with him and does not have sex with him. The respondent states that the petitioner has deserted the matrimonial home for more than three years and the respondent cannot continue to live with her as husband and wife. The petitioner has taken the children of the marriage elsewhere and he does not know her whereabouts and that of the children.

The respondent further states that he sponsored the petitioner to undertake remedial classes and sponsored her through nursing school for two years. The respondent also opened a water depot using one of the four stores on the ground floor of the house but the petitioner could not manage it so she stopped. The respondent also sponsored the petitioner to a beautician school and on completion set up a beauty salon at his own and sole expense for the petitioner who never accounted to him.

The respondent further states that during the pendency of the marriage, he contracted loans to construct a six-bedroom house on petitioner's land located at Konongo in the Ashanti Region which he is still paying and also owes the company which he contracted to roof the house at Konongo. Also, during the pendency of the marriage, the petitioner acquired a parcel of land at Afienya in her maiden name with the proceeds from the beauty salon. The respondent further states that he purchased the land on which the matrimonial home was built in the year 2006 long before the marriage of the parties. At the time of the marriage, he had completed the ground floor of the building. The petitioner only paid for the tiles and the labour for laying some of the top

floor of the matrimonial home which he asked her to bring the bill but the petitioner say the money was from the beauty salon and that is all that she did.

The petitioner in reply states that the respondent assisted petitioner's mother to complete her then ongoing project at Konongo in the Ashanti Region. The petitioner also states that she single-handedly acquired a land at Afiencya through her singular efforts. The petitioner further states that at the time of the marriage, the respondent had acquired the land on which the matrimonial home is situated and the building of the house is through the joint effort of the parties.

Based on the pleadings and the evidence led, the court set down the following issues for determination.

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, maintenance and accommodation for herself and the children.
3. Whether or not the parties acquired the properties during the pendency of the marriage and whether it should be distributed equitably.
4. Whether or not the petitioner is entitled to compensation from the respondent for the loss of her womb.
5. Whether or not the respondent is entitled to financial provision from the respondent.

ANALYSIS

BURDEN OF PROOF

A petition for divorce is a civil case and 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 **Aryee v. Shell Ghana Ltd.** [2017-2020] 1 SCGLR, 721-735, at page 733, the Supreme Court per Benin JSC stated as follows:

“It must be pointed out that in every civil trial all what the law required is proof by preponderance of probabilities: See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved. The law does not require that the court cannot rely on the evidence of a single witness in proof of a point in issue. The credibility of the witness and his knowledge of the subject-matter are the determinant factors...Indeed, even the failure by a party himself to give evidence cannot be used against him by the court in assessing his case.”

Also, in **Takoradi Flour Mills v Samir Faris** [2005-2006] SCGLR 882 holding (5) that: *“It is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of the Evidence Decree, 1975 (NRCD 323). 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 the more probable of the rival versions and is deserving of favourable verdict.”*

Thus, the petitioner bears the burden to lead cogent and admissible evidence to prove the allegations contained in her petition for divorce to ensure a favourable verdict. The respondent who has also cross-petitioned for divorce and other ancillary reliefs, is placed in the position of the petitioner to prove

the contents of the cross-petition for divorce so that on all the evidence, a reasonable mind would find the existence of the matters alleged

ANALYSIS

ISSUE 1: Whether the marriage between the parties 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 and irreconcilable differences on a balance of probabilities.

In accordance with the spirit of Act 367, which is to promote reconciliation, section 8 mandates a petitioner or counsel, to inform the court of all attempts made to effect 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.

The petitioner and the respondent in the instant petition set out to prove fact **2(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 behavior, and the fact that the petitioner cannot reasonably be expected to live with him as a result of the

behaviour. 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 amount to unreasonable behaviour. Rayden on Divorce (14th 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 the breakdown of the marriage, the parties made mutual accusations against each other. The parties per their accusations and counter accusations are agreeable that their marriage has broken down beyond reconciliation but whereas the petitioner blames the respondent for the breakdown of the marriage, the respondent also blames their marital woes on the attitude the petitioner exhibited in the marriage. The petitioner testifies that the parties are incompatible and states that the respondent is quarrelsome and picks quarrel with her for bearing only female children. Additionally, the petitioner states that the respondent has exhibited cruelty towards her and on several occasions, threatened to kill her if she failed to

leave the matrimonial home. The petitioner further accuses the respondent of being irresponsible for failing to maintain her and the children of the marriage. She states that the respondent and his family members attack her verbally and physically anytime she complains about the adulterous behaviour of the petitioner.

Additionally, the respondent informed her that he has lost interest in the marriage and that the petitioner is a curse in his life and asked her to move out of the matrimonial home she contributed more than 50% to complete which she declined. The petitioner testifies further that the disrespectful and obnoxious behaviour of the respondent has drowned the love and trust that should exist between husband and wife and generated hatred, resentment and mistrust between them as a couple and as a result, they live in separate room in their matrimonial home. The petitioner says that the respondent's behaviour has caused her mental distress, depression, anxiety and trauma such that she can no longer live with him as husband and wife. The petitioner says that she lost her womb during delivery of the second child of the marriage and the respondent callously mocks her with the issue and states that he now refers to her as a man that he cannot live under the same roof with.

The respondent on his part denies the allegation of unreasonable behaviour leveled against him by the petitioner. According to the respondent, every marriage has its problems but he tries as much as possible to bring peace to the marriage but the petitioner is not prepared to compromise to salvage the marriage. The respondent further testified that whenever there is a misunderstanding between them the petitioner will insult him and rain curses on him and his entire family. She also uses his mother's disability to mock him and calls him "*mumu asefo*" meaning, the offspring of a dumb woman.

The petitioner would always inform her family about their misunderstanding and on one occasion, her Auntie by name Kessiwa made an audio recording of insult and sent it to her sister Agyeiwa's phone to be sent to him on his phone. In support, he tendered the said audio recording admitted and marked as **Exhibit "12"** in which a woman is heard hurling insults at the respondent ostensibly in retaliation to an alleged insult rained on her by the respondent. The respondent also testified that sometimes the petitioner gets annoyed without any provocation and becomes violent and destructive. On one such occasion, whilst charging a new phone he had purchased, the petitioner smashed the phone and destroyed it without any provocation. In support, he tendered in evidence **Exhibit "13"** series, photographs of a smashed phone.

The respondent further testified that the petitioner always accuses him for being the cause of her losing her womb after the birth of their second child which he knows nothing about. According to the respondent, since they got married, he has never laid a finger on the petitioner neither has any of his family members insulted or physically assaulted her. It is rather the petitioner who maltreats his family members and calls them witches and mad people. The respondent further testified that the petitioner is selfish and sees him as below his class since she is in the University. According to the respondent, for the past two years, the petitioner leaves the house on Saturday dawn and returns on Sunday night for lectures but has refused to tell him where she stays or sleeps when she is out. The petitioner stopped communicating with him and cooking for him for two years. The petitioner also moved from the bedroom to sleep at the hall and later to a single room in the house and eventually packed out of the matrimonial home with the help of her mother and auntie without his knowledge. Subsequent to that, the petitioner and her family returned the head drink to dissolve the marriage. The respondent

therefore maintains that the marriage celebrated between himself and the petitioner has broken down beyond reconciliation and the court should grant his cross-petition since the petitioner has deserted the matrimonial home for more than three years and he cannot continue to live with her as husband and wife.

The evidence led by the parties is characterized by mutual accusations. The thrust of the issues is that the parties have both lost interest in the marriage and have evinced no intention to reconcile their differences to resume cohabitation as husband and wife. The evidence also shows that various attempts made by well-meaning people to reconcile the differences between the parties have proved futile and for more than three years now, the parties have not lived as husband and wife and they have since ceased to consider the marriage as subsisting. When the court adjourned proceedings for parties to attempt settlement with the help of their lawyers, the parties could not reconcile their differences to resume cohabitation. Under the circumstances, I hold that the Ordinance 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 ordinance marriage celebrated between the parties.

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

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..."*

The petitioner in her testimony before the court testified that custody of the two children of the marriage be granted to her with reasonable access to the respondent until they attain age of 18 years. The respondent also cross petitioned for custody of the two children of the marriage. The respondent in his testimony before the court states that the petitioner left the matrimonial home with the two children of the marriage Having regard to the ages of the children and the fact that they are both females, and the fact that since the parties separated, the children have been in the custody and care of the petitioner, and in order to ensure continuity in the care of the children, I will award custody of the two children of the marriage to the petitioner with reasonable access to the respondent. The children shall spend weekends with

the respondent every fortnight and shall spend half of their vacation period with the respondent.

The petitioner also prays the court to order the respondent to provide alternative accommodation for her and the children and provide all their needs including school fees and hospital bills when the needs arise. The respondent in his testimony before the court says that he is a responsible man who maintains the children and pay their school fees, studies fees, stationery, uniforms, shoes, school bags, feeding fees and transport to school. In support, the respondent tendered in evidence **Exhibit "9,"** which is a letter from the school of the children confirming that he has been responsible for the payment of school fees for the children. He also tendered in evidence, mobile money statement to indicate that he was maintaining the petitioner and the two children even after the petition for divorce was filed in court. Under cross-examination by Counsel for the petitioner, the respondent was insistent that he has been a responsible father who provides for the upkeep of the children of the marriage and their educational needs and their medical expenses.

It is the trite learning that it is the responsibility of both parents to contribute financially towards the upkeep of their children when they are both working. On record, the respondent is a Technician with the Electricity Company of Ghana and the petitioner describes herself as a Manageress of a hotel and a student. Pending the final determination of the petition for divorce, the court awarded an amount of GH¢600 for the upkeep of the two children of the marriage. Considering the rate of inflation in the country and its resultant price hikes, I will award an amount of GH¢800 as monthly maintenance allowance for the upkeep two children. This amount shall be paid by the 5th day of each month and shall be increased by 10% every year to cater for

inflation and increase in cost of living. The respondent shall be responsible for the educational and medical needs of the two children. The petitioner shall bear the clothing needs of the children. During the proceedings, the court ordered the respondent to provide accommodation for the petitioner and the two children of the marriage. This order shall continue and shall terminate upon the re-marriage of the petitioner.

ISSUE 3: Whether or not the parties acquired the properties during the pendency of the marriage and whether it should be distributed equitably.

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."

The Supreme Court in the case of 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 does not guarantee spouses unwarranted access and share in properties acquired by the other spouse through their individual sweat and efforts. The onus is thus on the petitioner 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 respondent in his amended reply to the amended answer and cross-petition vehemently denies that the petitioner 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 petitioner in the instant case maintains that she contributed more than 50% to the acquisition of the matrimonial home and as such she is entitled to a half share in the property. In support, she tendered in evidence **Exhibit "A"** series which are receipts of building materials to buttress her claim that she contributed financially to the acquisition of the matrimonial home. During cross-examination by counsel for the respondent, the petitioner testified

further that after her education, she was doing her National Service at Page Hotel and the respondent asked her to stop and manage the building of their matrimonial home. She also engaged the workers and purchased all the building materials since due to the tight schedule of the respondent. According to her, in buying the building materials, the respondent gave her money and at times, she took money from her mother and sometimes used her own money. On the source of the money, she allegedly invested in the building project, the petitioner testified under cross-examination that her father has a cocoa farm and the account is in her name and she used the proceeds from the cocoa farm to support the building of the matrimonial home.

Additionally, the petitioner testified that they also agreed to take a loan to support whilst she supported with money from the provision store. She also claims to have recovered monies from the respondent's debtors to support the project and she took loans from a cousin to support the respondent in putting up the building. At a point in her testimony, the petitioner who had earlier maintained that she took loans from a savings and loans company to purchase tiles for the building stated that she sold part of a plot of land she acquired at Afienva without the knowledge of the respondent and invested same in the building of the matrimonial home.

The respondent testified that he acquired the matrimonial home without any form of contribution from the petitioner. According to his testimony, when he met the petitioner, she had just completed Senior High School and he sponsored her to undertake remedial courses to better her grades, sponsored her through nursing school, opened water depot and a beauty salon for her and took her to a beautician school. The respondent further testified that

before he got married to the petitioner, he had acquired a half plot of land measuring 100ft x 35ft to build a single storey. In support, he tendered in evidence **Exhibit 1 and 1A**, a receipt from the land owner dated 8th July 2006 stating that in the year 2020, he received an amount of GH¢1,700 from the respondent for half plot of land located at Sabrepor and a site plan. By the year 2012, when the parties moved into the house, the ground floor which comprises four store rooms and two-bed room apartment was fully completed and that was where the parties stayed. The first floor had been flowed, walls plastered, windows, burglar proof fixed and sliding windows fixed later but there were no doors and the floor tiles were not fixed. Somewhere in the year 2012, he employed the services of a mason by name Kwasi who was also his caretaker to construct the fence wall and in the year 2013, he also constructed a manhole in the house which he paid for all the materials used in the workmanship. In the year 2013, he established a Beauty Salon for the petitioner which she was to render account to enable him repay the loan of GH¢7,000 which he used to establish the salon but she failed to render the accounts and told him that the salon was not doing well.

In the year 2018, he decided to tile the floor of the house and he enquired from one K.K. who directed him to Good Foundation Company Ltd to purchase the tiles. He informed the petitioner to refund the money used for setting up the salon for her to use the money for the purchase of the tiles. The petitioner went to Good Foundation and purchased the items for the tiling which amounted to twelve thousand six hundred cedis (GH¢12,600) but she only had Nine Thousand and Eight Hundred cedis (GH¢9,800) at hand and could not pay which he later paid the difference of GH¢2,800. He stated that he was present when they brought the tiles and not up to the quantity stated by the petitioner. According to him, he also paid the tiler for workmanship for an amount of GH¢2,500. Later, when he offered to refund the money for the

tiling, the petitioner refused to take the money. According to him, apart from tiles, and tiling materials, all other items he gave money to the petitioner to purchase and she took receipts in her name.

The respondent further testified that in the year 2017, the petitioner attended a funeral in her hometown Obogu near Konongo in the Ashanti Region and upon her return, she informed him that her mother had given her a piece of land as a gift so he should let them develop it together. The petitioner then put pressure on him for them to develop the land. According to his testimony, he initially gave the petitioner an amount of GH¢2,500 to purchase 1000 pieces of cement blocks and put them on the land. He asked the petitioner to accompany him to see her mother to confirm whether the land had been gifted to her but she refused to go with him and asked one Yirenkyi to accompany him to Konongo to see his mother in-law. When they visited the land, his mother in-law showed him the 1,000 blocks that the petitioner had purchased and also saw uncompleted footings on the land. She then told him that she had gifted the land to the petitioner so they can develop it. Based on that, his mother in-law introduced someone who could supply wood for the project. He and the petitioner agreed to build a guest house so they built a six bedroom each with toilet and bath, two big halls and a porch to the roofing stage. In support, he attached a photograph of the house admitted and marked as **Exhibit "4"**. He also tendered in evidence **Exhibit "5" series** which is mobile money statement evidencing monies sent to the petitioner's mother and receipts of payments in connection with the Konongo building. According to him, the petitioner did not contribute any money towards the building of the Konongo house and he obtained loans from his work place and friends to put up the said building. According to him, he spent about GH¢80,000 on the said project and every month an amount of GH¢1,288.89 is deducted from his salary and he has an outstanding balance of GH¢42,533.33

to pay. In support, he tendered in evidence his pay slip admitted and marked as **Exhibit "7"**. They both visited the site on three occasions to see how work was progressing. He therefore prays the court to settle the Konongo house and the piece of land acquired in the name of the petitioner on her.

DW1, Francis Yirenkyi corroborated the testimony of the respondent that the petitioner's mother informed him that the Konongo land was a gift when he testified that he visited the land in dispute with the respondent where they met the mother of the petitioner. When he enquired from the mother-in-law of the respondent who the owner of the land was, she responded that she had given the land to the petitioner as a gift so if the petitioner has given it to her husband to develop, she has no problem. She further added that all that she wished was for them to develop the land so that no one encroaches on the land. The mother of the petitioner also introduced a chain-saw operator as the one who could assist the respondent to buy wood at a relatively cheaper cost.

The petitioner throughout the trial did not challenge the substantial contribution made by the respondent towards the construction of the 6-bedroom house at Konongo but maintained that the property belongs to her mother and the respondent only assisted her mother to complete the building for their children to have a decent shelter when they were on holidays. The petitioner who claims that the property belongs to her mother did not call her as a witness to contradict the assertion of the respondent and the witness for the respondent. The evidence shows that indeed the respondent also substantially contributed to the putting up of the 6-bedroom house at Konongo which the petitioner admits was at the foundation level but the respondent built a six-bedroom house, roofed it and that is where the petitioner's mother currently resides. I will therefore settle the Konongo

house on the petitioner and settle the matrimonial home which was acquired before the marriage but completed during the marriage on the respondent.

Furthermore, the respondent's testimony that during the pendency of the marriage the petitioner acquired a plot of land at Afienya in her maiden name without his knowledge which is evidenced by **Exhibit "8"**, the indenture on the property is not challenged by the petitioner. The petitioner admits that indeed she surreptitiously acquired the land located at Afienya but explained that the land is left with a quarter plot since she sold part to purchase tiles for the putting up of the matrimonial home. There is no evidence of such sale. I will therefore settle the land at Afienya on the petitioner.

ISSUE 4: Whether or not the petitioner is entitled to compensation from the respondent for the loss of her womb.

The petitioner prays the court for adequate financial compensation to be settled on her for the loss of her womb during the delivery of the second child of the marriage. The respondent denies the claim of the petitioner and maintains that he is not liable for the loss of the womb of the petitioner. The petitioner under cross-examination testified that the basis for her claim is that when she was pregnant with the second child of the marriage, the respondent failed to maintain her and she had to sell "pure water" to survive. According to the petitioner, the doctors informed her that her body was not strong to go through that stress she was subjected to whilst pregnant. Also, at the hospital, it is the respondent who signed the consent form for her womb to be taken out since she was unconscious.

There is no medical evidence on record to show the reason for the removal of her womb by the doctors and whether the respondent had any role to play in

her medical condition leading to the expert advice on hysterectomy. In the absence of any overt and covert act by the respondent to contribute to the decision of the doctors to remove her womb, there is no basis for the court to hold one spouse liable when both parties desirous of having children end up with complications that they both do not have control over. Doctors, on a daily basis take decisions to save mother and child during delivery and if in the opinion of doctors, that would save the life of the petitioner, the respondent cannot be held liable. If in the opinion of the petitioner the doctors exercised poor judgment on her medical condition necessitating hysterectomy, she can take the necessary legal action to vindicate her rights. The claim for adequate compensation for the loss of her womb from the respondent is accordingly dismissed.

ISSUE 5: Whether or not the respondent is entitled to financial provision from the respondent.

The petitioner prays the court for an award of financial provision against the respondent and in her favour.

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 **Berchie-Badu v. Berchie-Badu** [1987-88] 2GLR 260, the court held in its holding 2 that:

"However, when the High Court assumed its divorce jurisdiction, it was under the provisions of section 20 of the Matrimonial Causes Act, 1971 (Act 367) armed with sufficient powers to make provision for the wife on the breakdown of the marriage. In

the exercise of the court's discretion to award ancillary relief under that section, the overriding consideration was that the order had to be "just and equitable."

The factors to consider in determining what is "just and equitable" are stated in the case of Kingsley **Offei-Nkansah v. Marina Offei-Nkansah [21/10/2011] Suit No. BDMC 226/2010**, the High Court presided over by Justice Patrick Baayeh as follows:

"In awarding a lump sum payment on the dissolution of a marriage the Court ought to take all the circumstances into consideration. The Court must look at the standard of living of the parties. Consideration must also be given to the welfare of any child (if any) who have not attained the age of 18 years. The Court should also take into account the duration of the marriage, the income earning capacities of the parties, their property and financial resources for the future, their obligations, the standard of living of the parties before the breakdown of the marriage etc."

The respondent in his evidence-in chief and under cross-examination emphasized and maintains that he has equipped the petitioner with employable skills to make her self-reliant after the dissolution of the marriage. The unchallenged evidence of the respondent is that he assisted the petitioner to better her grades and sponsored her education at a Nursing Training college. Again, he established a shop in the matrimonial home for her to run a water depot but the shop collapsed due to poor management by the petitioner. Also, he built a six-bedroom house on a land gifted to her by her mother. He opened a salon for her and took her to Super plus Beautician School at Afariwa to gain skills on how to operate a salon.

The petitioner, under cross-examination by counsel for the respondent testified that she is a Manageress at a hotel called Golden Touch Executive Hotel and she has not been receiving salary since she has not been formally given an appointment letter. The parties did not lead evidence on their

respective ages but looking at them they are still young and the prospects of remarriage is high. On record, the matrimonial home has been settled on the respondent and the petitioner owns a plot of land at Afienya Mateheko and the 6-bedroom house at Konongo has been settled on her. Apart from the children of the marriage, there are no other children which the parties are legally liable to maintain. Thus, having regard to the duration of the marriage, the responsibilities of the respondent towards the children of the marriage under this judgment, the resources available to the parties and their prospects in the foreseeable future, their earning capacities, I do not therefore find it just and equitable to award financial provision in favour of the petitioner.

CONCLUSION

In conclusion, I hold that the Ordinance 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 decree for the dissolution of the Ordinance Marriage celebrated between the petitioner and the respondent on 17th December, 2010 at 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 award custody of the two children of the marriage to the petitioner with reasonable access to the respondent. The children shall spend weekend with the respondent every fortnight and half of their vacation period with the respondent.
4. The respondent shall pay a monthly maintenance allowance of Eight Hundred Ghana Cedis (GH¢800) for the upkeep of the two children. This amount shall be paid by the 5th day of each month. This amount

shall be increased by 10% every year to cater for the rising cost of living. The respondent shall be responsible for the educational and medical needs of the two children. The petitioner shall be responsible for the clothing needs of the children.

5. The respondent shall continue to rent accommodation for the petitioner and the two children. The order to rent accommodation lapses upon the re-marriage of the petitioner.
6. I hereby settle the six-bedroom (Self-contained) house located at Konongo, the hometown of the petitioner and the plot of land located at Afienya acquired during the subsistence of the marriage by the parties on the petitioner absolutely.
7. I hereby settle the matrimonial home situate at Afienya acquired by the respondent before the marriage and completed during the marriage on the respondent.
8. The claim for compensation for the loss of womb is dismissed.
9. The claim for financial settlement is dismissed.
10. No order as to costs.

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

