

IN THE CIRCUIT COURT ONE HELD AT ACCRA ON FRIDAY, 19TH MAY 2023, BEFORE HER HONOUR AFIA OWUSUAA APPIAH (MRS), CIRCUIT COURT JUDGE

SUIT NO: C5/54/2021

EMELIA NKETIAH

PETITIONER

VRS

EBENZER ASHIANGBOR

RESPONDENT

JUDGMENT

On the 28th day of March in the year 2009 at Ntonsu in the Ashanti Region, parties herein contracted a customary marriage and cohabited at La and subsequently at Teshie- Tsei Bleoo. There are no issues of this marriage. Petitioner who has since 24/8/2019 moved out of the matrimonial home prays the court for the following reliefs per her petition filed on 22/9/2020;

- a. An order for the dissolution of the marriage celebrated between parties as the marriage has broken down beyond reconciliation.
- b. Lump sum financial settlement of GHC50,000.
- c. An order for the Respondent to pay Petitioner's shop and items therein which Respondent has taken.
- d. Any orders that the honourable court deem fit.

Petitioner's ground for seeking the dissolution of the marriage is that Respondent has behaved in such a way that she cannot reasonably be expected to live with him. She averred that Respondent verbally and physically abused her, refused to maintain the home, threatened to kill her if she does not leave the matrimonial home and pulled a knife on her on the said 24/8/2019. She further averred that she built a shop in front of Respondent's house and connected water supply to the house for commercial sale. Respondent has refused her entry into her shop and from selling the water and had taken all the provisions from the shop and kept her belongings in the shop.

Respondent in his answer to the petition denied the allegations of unreasonable behaviour contained in the petition and contended that their respective families had already dissolved the marriage between the parties. He further contended that parties during the subsistence of the marriage were in a joint business and acquired some the following properties together four polytanks, one fridge, one industrial overlock machine, one industrial knitting machine, 6 industrial fufu grinding machine, two piece industrial pepper grinding machine, three cars, 10 kente clothes meant for sale, provisions in a store, metal container. He averred that Petitioner had taken all these properties along without sharing same with him and caused the door, roof and windows of the shop to be destroyed by some young men.

In her reply to the answer of Respondent, Petitioner contended that she constructed the store from her life savings and therefore when Respondent demanded that she removes her shop from his land when she enquired about her provisions in the shop, she caused the windows and the doors and roof from her shop. In respect of the overlock and knitting machines, she owned it as a seamstress prior to her marriage to Respondent. She stated further that there are only two industrial fufu grinding machines which she took together with two industrial pepper grinding machine because she purchased them with her own hard earned money and owns same personally. She contended Respondent who was not gainfully employed during the subsistence of the marriage deceptively convinced her to buy him a Toyota and Opel cars under the pretence of going into the buying and selling of cars. She however realized Respondent was using the car for his personal use and frequently demanded money for fuel from her. Out of frustration, she sold the two cars. She contended further that the third car, a Volvo salon car was purchased by her for her personal use. Petitioner further contended that their customary marriage has not been dissolved and same till subsist.

The following issues beg for determination per the case of the parties per their respective pleadings. Whether or the marriage celebrated between the parties has been dissolved already.

- i. If No, whether or not the marriage celebrated between the parties has broken down beyond reconciliation.
- ii. Whether or not Respondent has taken items from the Petitioner's shop and liable to pay for same.
- iii. Whether or not Respondent is liable to pay the cost of Petitioner's shop.
- iv. Whether or not Petitioner is entitled to financial settlement of GHc50,000.

Issue i - Whether or the marriage celebrated between the parties has been dissolved already.

It is unchallenged that parties herein were married under Akan customary law. However, there is a dispute as to whether the said marriage was dissolved customarily in 2015 or still subsisting. Petitioner brings this action on the premise that the customary marriage between her and Respondent was not dissolved although attempt was made to dissolve same by their families. The court therefore has to determine firstly the issue of whether or not the customary marriage between the parties still subsist or has been dissolved customarily.

Respondent testified that due to quarrels and their inability to resolve their differences, the marriage was dissolved at Ntonsu by Petitioner's family members. Petitioner on the other hand vehemently denied the marriage having been dissolved and stated that 24th August 2019, she moved out of the matrimonial home after she was advised by the police to do so after several verbal and physical abuse by Respondent. According to Petitioner, Respondent went to her family to demand that she moves out of the shop. When attempts to reconcile them failed, her family initially demanded he pays GHc20,000 to cover the cost of the shop before the dissolution of the

marriage. Respondent agreed to pay GHC10,000 within a year but failed to make the said payment.

Petitioner expressly denied respondent's evidence on the dissolution of the marriage by family members of Petitioner in her reply and issue joined on same. PW1, Charles K Appiah, an uncle of Petitioner testified to the effect that he knew the parties as husband and wife who married at Ntonsu. He corroborated the evidence of Petitioner that the marriage was still subsisting and had not been dissolved by the families.

Respondent called the uncle of Petitioner, Owusu Achaw @ Papa Nkran whom the court was informed by relatives of his to be suffering from mental challenges as his witness by a subpoena issued by the court at his instance. DW1, upon a little interrogation by the court appeared to be stable to testify and gave oral evidence. DW1 during his evidence in chief gave contradictory testimony on the dissolution of the marriage or otherwise. In one breath he stated that the family dissolved the marriage and in another breath stated that the family demanded Respondent to pay some monies to Petitioner as alimony but Respondent failed to pay the said money and did not return to Ntonsu over the matter again. The evidence of DW1 was so distorted and incoherent that same lacks credibility. The court is therefore unable to attach any weight to his evidence.

The only evidence on record in proof of Respondent's claim of dissolution of the marriage remains his claim in his answer and his testimony on oath. In the case of **In re Wa Na; Issah Bukari [2013-2014] 2 SCGLR 1590**, the Supreme Court held in its holding 2 of the headnote that:

"The Evidence Act, 1975(NRCD 323), has prescribed the applicable procedure in every proceedings including enquiries, investigations and hearings etc thus a person was obliged under section 11(1) of NRCD 323 to introduce sufficient evidence to avoid a ruling against him on an issue... The burden was not discharged by

merely entering the witness box and repeating claims or averments, as by leading admissible and credible evidence from which the facts asserted by them could be properly and safely inferred."

Also, in the case of **Sarpong (Decd) (Substituted by) Koduah v. Jantuah** [2017-2020] 1 SCGLR 736 held in holding 4 as follows;

"(4) The principle enunciated in the Majolagbe v. Larbi [1959] GLR 190, did not mean a party should not or could not repeat what had been pleaded in evidence. What that principle mean was that, that party should lead such evidence as would constitute proof in law. Since a party was required to stick to his pleadings when giving evidence, there was nothing wrong where that party repeated on oath what had been pleaded; the only consideration of the court was to ascertain whether what the party had said on oath was sufficient to discharge the burden of persuasion that laid on him."

The disputed evidence of Respondent that the marriage has been dissolved juxtaposed with the corroborated evidence of Petitioner that there has been no dissolution is woefully insufficient to establish that the customary marriage between the parties has been dissolved already. The court therefore finds that the customary marriage celebrated between parties herein still subsists.

Issue ii - Whether or not the marriage celebrated between the parties has broken down beyond reconciliation.

Petitioner in her evidence stated that after the marriage, Respondent on several occasions verbally abused her, publicly assaulted her at the least provocation causing her great embarrassment. She stated that Respondent demanded she leaves the matrimonial home and threatened her and her niece and nephew living with her with knife on several occasions for failing to leave the matrimonial home. Petitioner stated that this forced her and her niece and nephew to sleep in her shop. She stated further that Respondent threw her personal belongings outside to the full glare of the public. On the

24th of August 2019, she finally left the matrimonial home when Respondent pulled a knife on her. Respondent in his evidence testified that due to the constant quarrels and their inability to reconcile their differences, Petitioner left the matrimonial home and the family subsequently dissolved the marriage. He stated that he went to the family of Petitioner to initiate the dissolution process. Ntonsu is a town in the Ashanti Region of Ghana and it can be inferred though not expressly stated by parties herein that the marriage was contracted under the Akan customary law. **Section 41 (2) of the Matrimonial Causes Act 1967, Act 367.** On application by a party to a marriage other than a monogamous marriage, the Court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may (a) consider the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

(b) grant any form of relief recognised by the personal law of the parties to the proceedings, in addition to or in substitution for the matrimonial reliefs afforded by this Act.

Per section 41 of Act 367 quoted supra, a party of a marriage other than a monogamous marriage i.e customary law or Mohammedan Law may institute proceedings for divorce before the court as seen in this case. In the determination divorce in marriages other than monogamous marriages, the courts are to “consider the facts recognised by the personal law of the parties as sufficient to justify a divorce”

J. B. DANQUAH in his book **AKAN LAWS AND CUSTOMS AND THE AKIM ABUAKWA CONSTITUTION** at page 156 stated thus about divorce under the Akan custom; “It cannot be exaggerated how easily and rapidly marriages may be dissolved with little trouble. Should a husband feel that he had been offended by the wife's conduct, he would summon her before friends for the settlement of differences... Therefore the aggrieved party will have to state his or her case before responsible men. The arbitrators deliver

their finding after hearing each party, and then an attempt is made to reconcile the couple. At this juncture there is no law to bind either husband or wife to the other consort. He or she may not take the representations of the arbitrators. If it is the husband who is pressing for divorce because of his wife's misconduct, the odds are that he would rather divorce and get his money to marry a better girl, than retain an unserviceable wife. If it is the wife who has applied for divorce, because of ill-treatment, there is not the least probability of her submitting again to the wild habits of an imprudent husband. The argument on either side strong and heated. The Arbitrators give in. The divorce is pronounced. They need not go to the Chief's Court, except for some special reason one of them wishes to do so. Any court of self constituted arbitrators can witness a divorce. **The fact is, it lies within nobody's power to declare married partners divorced. It rests with the will of the partners alone.**(emphasis mine)"

In the case of **ATTAH V ANNAN [1975]1 GLR 366-373** where it was held by Baidoo J that "Dissolution or divorce is resorted to as a last measure when the circumstances of the case show a total breakdown of the marriage or warrant it.."

In this present case, Petitioner herein has leveled several verbal abuse, assault, threat of death and forceful ejection by Respondent. Respondent allegations of infidelity and his claim of having gone to Ntonso to dissolve the marriage show his disinterest in the marriage. Parties especially Respondent during the hearing of this matter had shown severe hostility to each other. Exhibit C and D series reveals personal belongings of Petitioner lying messily in a room and on the compound of a house. This supports Petitioner's claim that the Respondent ejected her from the matrimonial home. Both parties have expressly declared their intentions of dissolving the marriage. The court from the evidence on record and the conduct of the parties finds that the customary marriage celebrated between parties herein has indeed broken down beyond reconciliation Accordingly Petition for dissolution of the customary marriage

celebrated between the parties at Ntonsu On 28/3/2009 is granted as pray by the Petitioner.

The court hereby decrees the said customary marriage to be and same is dissolved today, the 19th day of May, 2023 forthwith.

Issue (ii) Whether or not Respondent has taken items from the Petitioner's shop and liable to pay for same.

Petitioner prays the court to direct Respondent to pay the cost of the provisions in the shop. Respondent has denied taking these said items and contend that it was the Petitioner who took everything contained in the shop away along with four polytanks, one fridge, one industrial overlock machine, one industrial knitting machine, 6 industrial fufu grinding machine, two piece industrial pepper grinding machine, three cars, 10 kente clothes meant for sale.

The court has to determine which of these two versions of evidence to believe. **Section 11(4) of NRCD 323** also states that "the burden of producing evidence required a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence" **In Odametey vrs. Clouch [1989-1990] 1 GLR page 14**, the Supreme Court explained the principle in terms of Sections 11 and 12 of the Evidence Act as follows; "...If the plaintiff in a civil suit failed to discharge the onus on him and thus completely failed to make a case for the claim for which he sought relief, then he could not rely on the weakness in the defendant's case to ask for relief. If however, he made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant when he did give evidence disclosed any weakness which tended to support the plaintiff's claim, then in such a situation the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case. "Section 12(2)of the Evidence Act explains "preponderance of probabilities" to mean that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is

convinced that the existence of a fact is more probable than its non-existence. By this standard or degree, it is not required that the evidence must be unequivocal or remove all reasonable doubt. It means the preponderance of the evidence adduced by the proponent of an issue over that adduced by its opponent. What is required is evidence from which a reasonable man may conclude that upon the whole; it is more likely that what is alleged happened than that it did not. When the conclusion is a mere matter of speculation or a conjecture or where the evidence is at best evenly matched, then the burden has not been discharged."

On page 165-166, the Supreme Court through Taylor JSC explained balance of probabilities as follow; "Balance of probabilities conveys the idea that a party bearing a burden has to submit sufficient evidence so as to make it on the balance outweigh the other. In other words, a plaintiff is said to have proved his case on the preponderance of the probabilities if he produces evidence which, considered in the light of all the facts, lead a tribunal of fact to believe that what the plaintiff claims is more likely to be true than not. Put differently if a court was to put the plaintiff's and the defendant's evidence on the opposite sides of the scales, the plaintiff would have to make the scales tip somewhat on his side."

According to Petitioner, prior to the marriage she had saved money to purchase a metal container shop but was convinced after marriage by the Respondent to put up a concrete shop on his land. She contended that before she was driven out of the matrimonial home by Respondent's numerous death threats, she had stocked her shop with provisions. After she left, Respondent used all the provisions in the house and failed to account, replenish and reimburse her for her lost capital. Per her testimony when she enquired about her missing provisions from her shop from Respondent, he abused her severely and asked her to lift her shop from his land. Out of anger and frustration, she caused some young men to remove the door, windows

and roof of her shop as seen in exhibit E series. She stated that exhibit F is the current state of the shop.

Respondent testified that idea of building the shop and selling of water in the shop was jointly discussed and agreed upon by Petitioner and him. He contended that during the marriage, parties did everything jointly and not separately. Further, Respondent contended that Petitioner rather failed to account to him for the sale of items in the shop when he demanded so. Respondent contended again that Petitioner had taken away all they both acquired together during their stay and working together including the content of the shop and had destroyed the shop with the assistance of some young men she had engaged as seen in exhibit 2 series. Respondent per exhibit 1, a police report, lodged a complaint at the police station but they were asked to come to court.

Petitioner in her evidence admits taking one polytank, two industrial pepper grinding machine, industrial overlock and knitting machines a fridge with her when leaving the matrimonial home contending she purchased the knitting and overlock machines prior to her marriage, purchasing the polytank and two industrial pepper personally and the fridge being a gift to her by a church member. The items Petitioner admit taking with her because they are her personally acquired products are bulky in nature and requires assistance to remove. She was notwithstanding able to take these items with her. This makes her claim that she left the provisions she had stocked in the shop behind doubtful considering that the said provisions can be easily carried or moved as compared the items she admits taking along with her. Again, Petitioner however failed to testify and make known to the court the particular items there were in the shop which she claims Respondent has used without accounting to her or the value of the said items.

The court therefore is unable to find that Respondent used her provisions as claimed. Petitioner's prayer for an order for Respondent to pay for the said items is therefore refused and same dismissed.

Issue (iv) Whether or not Respondent is liable to pay the cost of Petitioner's shop and items therein to Petitioner.

Petitioner in her Petitioner averred that with the permission of Respondent, she constructed the shop on the land of Respondent during the subsistence of the marriage with her own money where she sewed clothes and provisions in same. Respondent did not expressly deny this averment but stated in his answer that the building of the shop and selling of water was discussed and agreed by Petitioner and himself. Petitioner on oath testified to the fact that prior to her marriage to Petitioner, she had saved towards the purchase of a metal container for her trade as a seamstress. She stated that Respondent convince her to put up a permanent concrete shop on his land which did with her savings. Respondent failed to cross-examine Petitioner on same. In law, failure to challenge evidence under cross-examination amounts to admission of the same. **See the case of Billa vs. Salifu [1971]2 GLR 87. In the case of Akuffo Addo, Bawumia & Obetsebi (no.4 v John Mahama, Electoral Commission & Ndc (2013- SCGLR) special edition page 425 Anin Yeboah JSC** (as he then was) held that the failure of a party to cross-examine the opponent on a fact amounts to an admission of that fact.

The court therefore finds that Petitioner did the construction of the shop with her savings on the land of Respondent with his permission for her trade as claimed by Petitioner. Interest in the shop is vested in Petitioner herein and Respondent having forcefully ejected Petitioner from her matrimonial home and prevented her rightful enjoyment of the shop, Petitioner is entitled to recover the value of the shop from Respondent.

From the evidence on record, it is not in dispute that the shop has been partially demolished by Petitioner. Per her own testimony, exhibit E and well as exhibit 2 series of Respondent, Petitioner caused some young men to rip off the roof of the shop, removed the doors and windows to the shop. The said shop's current state is as seen in exhibit F i.e concrete structure with roof ripped off and no door or windows fixed to same. Having caused damage to the shop by her own hands, Petitioner is only entitled to the present value of the shop as remaining after her demolishing attempt.

Issue (V) Whether or not Petitioner is entitled to financial settlement of GHc50,000.

Petitioner again prayed the court for Respondent to be ordered to pay to her a lump sum of GHc50,000. **Section 20 of Act 367**, provides 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 and such payment may be made in gross or by installments.

In the case of **OBENG V OBENG [2013] 63 GMJ 158**, the court of appeal held that "what is just and equitable may be determined by considering the following factors; income, earning capacity, property and or 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 break down of the marriage, the age of each party to the marriage and the duration of the marriage."

From the record, parties have since August 2019 lived apart and independent of each other. Petitioner is a seamstress whilst Respondent is a Pastor who claims to be unemployed currently. The income, earning capacity, property and or financial resources which each of the parties has or is likely to have in the foreseeable future is unknown to the court. From the evidence of

Petitioner, during the subsistence of the marriage, she was not maintained by Respondent and had to fend for herself through her trade and sale of water. Petitioner tendered in evidence exhibit A, B and C series which are several utility receipts she claim to have paid during her stay I the matrimonial home.

From the evidence of Petitioner, she was the financial back bone of the marriage and her standard of living has not been reduced negatively affected by the dissolution of the marriage to entitle her to financial compensation. The evidence on record does not disclose any circumstance(s) required for the award of financial provision in favour of Petitioner against Respondent in the interest of justice and fairness and or to prevent any financial hardship on her. Accordingly Petitioner's claim for financial provision fails.

Any other issue raised by the pleadings.

Respondent in response to the Petition of Petitioner only filed an answer without cross-petitioning the court for any reliefs. However Respondent averred in the answer and on oath that Petitioner had taken away four polytanks, one fridge, one industrial overlock machine, one industrial knitting machine, 6 industrial fufu grinding machine, two piece industrial pepper grinding machine, three cars, 10 kente clothes meant for sale and prayed the court for return of same. He contended that all these properties were acquired jointly by the parties and prayed the court on oath to order the return of the said items.

As mentioned supra, Petitioner challenged this evidence of Respondent contending that she had prior to the marriage acquired one industrial overlock machine and one industrial knitting machine for her trade as a seamstress. She claimed the fridge she took away was a gift to her from a church member and also that she took two pepper-grinding machines and one polytank as same were all acquired by her personally.

Article 22 (2) of the 1992 constitution of the Republic of Ghana provides "Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses." *With a view to achieving the full realization of the rights referred in article 22 clause (2) of the 1992 constitution of Ghana which guarantees*

property rights of spouse, **article 22 (3)(b)** provides *that Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.* In *Mensah v Mensah [1998-99] SCGLR 350*, the court applied the equality is equity principle to determine which proportions the couple's joint property would be shared. Bamford-Addo JSC held at 355 thus:

"... the principle that property jointly acquired during marriage becomes joint property of the parties applies and such property should be shared equally on divorce;(emphasis mine) because the ordinary incidents of commerce has no application in marital relations between husband and wife who jointly acquired property during marriage."

In the latest Supreme Court case of **PETER ADJEI vs. MARGARET ADJEI [2021] DLSC 10156**, His Lordship Justice Appau delivering Majority decision held "We wish to emphasize that there is a reason behind the abandonment of the substantial contribution principle, which was hitherto used to determine the nature of property acquired during the subsistence of a marriage where it was established that only one spouse, particularly the male spouse, single-handedly did physically acquire the properties. It was buttressed on the understanding that the role of the wife in keeping the home by cooking for the family and preparing and performing other chores that enables the man to have a peace of mind to acquire the properties, is a form of contribution."

This presupposes that evidence of the type of contribution i.e financial or the spouse making that assertion must establish whatever services and support he or she may have contributed i.e domestic contribution to aid the acquisition of the said property. Respondent failed to lead any evidence to establish how the properties he claim to be joint property were acquire, when they were acquired and whether they were acquired as a joint property or otherwise. The court is therefore unable to make any findings of number of

items claimed by Respondent to have been taken by Petitioner or the said items being jointly acquired by the parties.

Conclusion.

The court enters judgment in favour of Petitioner partially in respect of her reliefs claimed as follows;

1. the court hereby decrees the customary marriage celebrated between parties herein at Ntonsu on the 28/3/2009 dissolved today the 19th day of May 2023 forthwith.
2. That the current value of the structure of the shop situate in front of matrimonial home is vested the Petitioner herein.
3. That the said current structure/state of the shop is to be valued by an independent valuer to be appointed by the Registrar of the court within 3 months which said cost is to be born by the Respondent.
4. Respondent to pay the assessed value of the current structure of the shop to the Petitioner within 3 months from date of receipt of valuation report.
5. Structure and or interest in the shop to be owned and interest therein transferred to Respondent upon payment of the value of the structure to Petitioner.
6. Cost assessed at GHc3,000 in favour of Petitioner against Respondent.

PARTIES PRESENT

PATIENCE A. A. KONADU FOR PETITONER

PRESENT KOFI BUURAH FOR RESPONDENT

ABSENT

**H/H AFIA OWUSUAA APPIAH (MRS)
CIRCUIT COURT (1) JUDGE**

