CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 26TH JANUARY, 2023

SUIT NO. C5/100/21

GEORGE FORDJOUR - PETITIONER

VRS

MARY FORDJOUR - RESPONDENT

JUDGMENT

On the 4th day of September, 2010, the parties herein being of the conviction and resolve that they wanted to spend the remainder of their days on earth together and being mindful that certain ceremonies needed to be performed in order to manifest this conviction to the world and in the eyes of the law, proceeded to celebrate their union under the ordinance at the Good Shepherd Catholic Church, Community Two, Tema.

Prior to arriving at this decision, they had courted for ten (10) years. One would have expected that after a decade of getting to know each other before announcing to the whole world that they wanted to be a couple, their union would stand the test of time as their decision was based on a full knowledge and understanding of each other. By the presentation of this instant petition for dissolution of their marriage, this expectation is clearly not so.

It appears that the fact that of their ten (10) years of knowing each other prior to solemnizing their union, was not a sufficient anchor for keeping their marriage steadfast and so on the 16th day of July, 2021, the petitioner herein after a little more than a decade of manifesting his union with the respondent to the world, petitioned this

court for a decree to dissolve the said union on the basis that same has broken down beyond reconciliation.

His basis for arriving at that conclusion is that the respondent has behaved in such an unreasonable manner that he cannot be expected to continue to live with her as husband and wife. Both parties are employed and there are two issues of the marriage who are both minors. The parties have at all times cohabited in Tema after their marriage.

Amongst others, he averred that the respondent has put up such behavior which shows that she is no longer interested in the marriage and he has been compelled to vacate the matrimonial home since he could no longer take the disrespect of the respondent. That all attempts to reconcile them have failed.

He prayed the court to;

1. Dissolve their marriage
2. Grant him access to the issues of the marriage
3. Each party to bear their own cost in suit
4. Any other reliefs that seems just.

The respondent in her answer to the petition denied that she had shown by her actions that she was not interested in the marriage and said as a Roman Catholic, her church frowns on divorce and she is willing to do all that is necessary to make their marriage work.

She denied that all attempts made to reconcile them have failed and contended that save for a family meeting held on the 9th of May, 2021 at which the petitioner's uncle

asked him to move out of the matrimonial home, no further decisions were made and the settlement was not completed.

Further that the petitioner save for the payment of school fees of the children, has not been pulling his weight to support the home.

She prayed the court to;

i) Order the parties to settle their differences.

In the alternative, where the court finds that the marriage has broken down beyond reconciliation,

ii) Dissolve their marriage

iii) Grant her custody of their two sons

iii) Order the petitioner to pay maintenance pending suit for the children and thereafter such periodic payments as may be just

iv)Order the petitioner to pay to her a lump sum of over five hundred thousand Ghana cedis (Ghs 500,000) for over ten (10) years of marriage

v) Order the petitioner to pay to her the sum of ninety one thousand Ghana cedis (Ghs 91,000) being moneys owed to her

a) A cash sum of ten thousand Ghana cedis (Ghs 10,000) used for furnishing the house at Tema, community 25, Devtraco

b) Twenty seven thousand Ghana cedis (Ghs 27,000) being the price of respondent's Honda Air Wave car which was sold by the petitioner

c) Forty nine thousand Ghana cedis (Ghs 49,000) loan which the respondent services from her monthly salary

d) Five thousand Ghana cedis (Ghs 5,000) being the cost of sand, cement and stone purchased by the respondent in building a wall around the house

vii) That the following properties be determined in favour of the respondent

a) A 3 bedroom house at Tema Community 25, Devtraco
b) 2 vehicles including a Honda Accord
c) A piece of land at Prampram
d) A Chamber and hall at Tema Community, 9

viii) That the petitioner be made to bear the cost of the suit, including the respondent's legal fees.

The petitioner filed a reply and denied the claims of the respondent. He however admitted that there was a family meeting during which his uncle asked him to move out of the matrimonial home to calm tempers down. That they were also advised to try to resolve their issues themselves and if nothing changed, then they would reconvene after one year to customarily dissolve the marriage.

He indicated that he already maintains the children of the marriage with one thousand Ghana cedis (Ghs 1,000) every month. That he essentially bears all the financial

obligations of the family and so the respondent is not entitled to the sum of five hundred thousand Ghana cedis (Ghs 500,000) as financial provision.

That the respondent is only entitled to the sum of ten thousand Ghana cedis (Ghs 10,000) which she supported him with in furnishing the house and also to only sixteen thousand Ghana cedis (Ghs 16,000) out of the twenty seven thousand Ghana cedis (Ghs 27,000) that she is claiming.

The daggers having been drawn on all but the issue of the dissolution of the marriage, the payment of ten thousand Ghana cedis (Ghs 10,000) and sixteen thousand Ghana cedis (Ghs 16,000) to the respondent and the grant of custody of the issues to the respondent with reasonable access to the petitioner; the issues for the court to determine are;

1. Whether or not the marriage between the parties has broken down beyond reconciliation
2. Whether or not the 3 bedroom house at Tema Community 25, Devtraco, a chamber and hall at Tema, community 9, a piece of land at Prampram and two vehicles including a Honda Accord should be settled on the respondent
3. Whether or not the respondent is entitled to five hundred thousand Ghana cedis (Ghs 500,000) as financial settlement
4. Whether or not the petitioner should be ordered to maintain the issues of the marriage
5. Whether or not the respondent is entitled to the sum of ninety one thousand Ghana cedis (Ghs 91,000) being moneys owed her by the petitioner
6. Whether or not the respondent is entitled to costs of this action including legal costs.

THE CASE OF THE PETITIONER

In his evidence in chief, the petitioner testified that the respondent has consistently treated him with disrespect during the pendency of their marriage to the point that she totally ignored he and his friends when they travelled to attend her grandmother's funeral in the Western Region.

That currently, the respondent is at loggerheads with him and refuses to relate with him in anyway. That she will only cook for herself and the children and ignore him even though he has singlehandedly borne all the financial obligations of the family.

That respondent is unforgiving and does not compromise. That after their families met to resolve their issues, he was asked by his uncle to move out of the matrimonial home for tempers to cool down. That they were both asked to reconcile their differences on their own failure of which after one year, the families would meet to dissolve the customary marriage.

That after that meeting, he stayed in the house for three (3) days but the respondent's uncompromising attitude forced him to move out. He has since reached out to her twice to resolve their issues but all his efforts have been rebuffed.

That even after leaving the matrimonial home, he still picks the children up after school everyday and also spends time with them on weekends even though the respondent allows him access with restrictions. That the court should grant him access to the children including agreed periods of holidays and vacations.

Also that he maintains the children with one thousand Ghana cedis (Ghs 1,000) a month and he wishes to continue doing so.

That of the twenty seven thousand Ghana cedis (Ghs 27,000) respondent is claiming from him, she is only entitled to sixteen thousand Ghana cedis (Ghs 16,000) which is the amount she supported him with to buy her a car. That he topped up with nine thousand Ghana cedis (Ghs 9,000) to buy her a Honda civic. He later bought a Honda Airwave and handed same to the respondent when she expressed interest in same. He then sold off the Honda Civic to defray some of the costs incurred in purchasing the Honda Airwave.

That he is not responsible for the payment of the forty nine thousand Ghana cedis (Ghs 49,000) loan that the respondent is currently servicing on the basis that it was his Honda Accord that was used to secure the loan for both of them. The value of the Honda Accord is fifty one thousand Ghana cedis (Ghs 51,000) and same has been transferred into the name of the respondent and her bank. That respondent currently uses the said vehicle. He tendered in evidence EXHIBIT A as proof of transfer of the vehicle from his name to that of the respondent and the bank.

On the respondents' claim for the petitioner to be ordered to service a forty nine thousand Ghana cedis (Ghs 49,000) loan, the petitioner admits and avoids the claim. He admits that indeed such a loan amount was procured but says that he and the respondent both needed money and he used his Honda Accord as collateral and the said vehicle has since been transferred into the name of the respondent and the bank.

He tendered in evidence EXHIBIT A as proof of same. EXHIBIT A is of no evidential value for the purpose for which it was tendered. It is a DVLA FORM A with an

attached Ghana Revenue Authority Declaration Form which indicates that the petitioner imported the vehicle into the country and further registered it into his name by a DVLA FORM A.

It indicates the petitioner as an owner of a Honda Accord vehicle imported into the country in June, 2017. It does not in anyway indicate a transfer of the vehicle into the name of the respondent and a bank.

He denied that the respondent used five thousand Ghana cedis (Ghs 5,000) to erect a wall. For the immovable properties, he denied owning any piece of land at Prampram nor a chamber and hall at community 9, Tema. He also said that the house at Devtraco, Community 25, is a mortgaged facility which he is still paying off.

That the respondent is also not entitled to financial settlement of five hundred thousand Ghana cedis (Ghs 500,000) as he has a huge financial burden on him.

THE CASE OF THE RESPONDENT

In her evidence in chief, the respondent testified that since their marriage, the respondent has consistently treated her with disdain and never respected their marriage vows. That he failed to sleep in the matrimonial home especially during her pregnancy and after delivery.

That he preferred spending all weekends and hours with his friends playing video games and save for payment of school fees, never supported her in maintaining the home. That he also engages in extra marital affairs. Whenever she questions him about his conduct, he uses abusive words and threatens divorce. That he also stopped eating the food she cooks for the family.

That she has never disrespected the petitioner and allowed him to make decisions even when she disagreed with him. That attempts by their families to resolve their issues only resulted in petitioner's uncle ordering him to move out of the matrimonial home. That she would wish that amicable resolutions are found to their issues. However, if that cannot be, then the court should grant her cross petition.

CONSIDERATION BY THE COURT

Divorce is by means of enquiry and a court must satisfy itself by way of evidence that indeed the marriage has broken down beyond reconciliation. Thus although the respondent in her answer admits that the marriage has broken down beyond reconciliation and also alleges unreasonable behavior and adultery on the part of the petitioner, the Court through evidence must satisfy itself that the marriage has broken down beyond reconciliation. See the case of ***Ameko v. Agbenu [2015] 91 G.M.J.***

Blacks' law dictionary, (8th edition, 2004 p. 1449) defines divorce as "***the legal dissolution of a marriage by a Court***." In Ghana, when a couple decide to marry under the Ordinance, then they can only obtain a divorce through the Courts. The ground upon which a divorce can be obtained from the Courts is clearly stated under the ***Matrimonial Causes Act, 1971 (Act 367).***

In ***Section 1 (2)*** *of* ***Act 367***, the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation. In proving that the marriage has broken down beyond reconciliation, a petitioner must establish one of six causes i.e. adultery; unreasonable behavior; desertion for a period of two years; consent of both parties where they have not lived together as husband and wife for a period of two

years; not having lived together as husband and wife for a period of five years; and finally, inability to reconcile differences after diligent effort.

Petitioner's basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior. As the respondent has also cross petitioned, the burden of proof and persuasion laid on the each of them to establish their case. See the case of ***Gregory v. Tandoh IV & Hanson [2010] SCGLR 971.***

The respected ***Benin JSC*** in the case of ***John Tagoe v. Accra Brewery Ltd. [2016] 93 G.M.J. 103 @ 123*** *was* convicted that*: "It is trite law that he who alleges, be he plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be***."**

Thus both the petitioner and respondent who are asserting the positive bear the burden of establishing their respective cases on a balance of probabilities.

The burden is akin to a double edged sword. Akamba JA (As he then was) in the case of ***Kwaku Mensah Gyan & I Or. v. Madam Mary Armah Amangala Buzuma & 4 Ors. (Unreported) Suit No. LS: 794/92 dated 11th March, 2005*** explained: *"What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant sections stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of N.R.C.D. 323 are the relevant section.*

1. ***Whether or not the marriage has broken down beyond reconciliation.***

The petitioner's basis for arriving at the conclusion that his marriage to the respondent has broken down beyond reconciliation is that the respondent has behaved in such an unreasonable manner that he cannot be expected to continue to live with her as husband and wife.

Act 367 does not define what constitutes unreasonable behaviour. By virtue of the varied nature of mankind character and sensibilities, it may very well prove a herculean task if an attempt is made to set in stone what acts constitute unreasonable behaviour.

However, the test that is used is whether or not the act committed by one spouse is such that all right thinking men would hold that the act is unfair and unjust and the spouse who has been so offended, cannot be expected to continue to live with the other as husband and wife.

In determining what constitutes unreasonable behavior, the test to be applied is an objective one. Hayfron Benjamin J (as he then was) held in the case *of* ***Mensah v. Mensah (1972] 2 G.L.R. 198*** 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 test is objective".*

This test was relied on by the Court of Appeal in the case **of *Knusden v. Knusden [1976] 1 GLR 204-216*** where the court held that "*The cross-petition was based on* ***Act 367, Section 2 (1) (b)*** *under which the test to be applied in determining whether a particular petitioner could or could not reasonably be expected to live with the particular respondent was an objective one, and not a subjective assessment of the conduct and the reaction of the petitioner."*

In assessing such conduct, the court had to take into account the character, personality, disposition and behaviour of the petitioner as well as the behaviour of the respondent as alleged and established in the evidence. The conduct might consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so."

In the case ***of Ansah v. Ansah [1982-1983] GLR 1127, Owusu Addo J***. held that "the test under the section, was whether the petitioner could reasonably be expected to live with the respondent inspite of the latter's behavior. The test was therefore objective. But the answer obviously had to be related to the circumstances of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious since mere trivialities would not suffice".

The petitioner's basis for claiming that the respondent has behaved unreasonably is that she has mood swings and does not speak to him for weeks on end whenever they have any issues. That she is unforgiving and holds grudges for long periods and also disrespects him. That she also does not give him any food when she cooks even when he is at home.

He gives an instance of this disrespect as the respondent not attending to him and his friends when they drove all the way to the Western Region to attend her grandmother's funeral. Under cross examination by learned counsel, he answered that the respondent once apologized to him for her behavior and he in turn forgave her.

At page 20 of the record of proceedings, he had answered;

Q: In the 5th paragraph of your evidence in chief, you stated that the respondent constantly treated you with disrespect. May the court know whether there had been a time when the respondent apologized for showing disrespect to you or for any other thing?

A: My Lord, the only time I recollect she apologizing was when she packed all the food back into the fridge after serving herself and the kids without giving me some of the food.

Q: You accepted her apology and forgave her.

A: Yes, I did my Lord.

The respondent on her part says the petitioner likes to stay out for hours with his friends and also play video games in their one bedroom matrimonial home with his said friends. That he sometimes does not sleep at home at all. That anytime she brings this issue up, the petitioner verbally abuses her. She admits that she does not speak to him sometimes because according to her, it is the very same issues she complains about which he keeps engaging in.

In the case of ***Ntim v. Essien [2001-2002] SCGLR 451,*** it was held that in determining the credibility of a witness, the court must take into account "*the demeanour of the witness, the substance of the testimony, the existence or non existence of any fact testified to by the witness, a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial, the statement of the witness admitting to untruthfulness or asserting truthfulness among others''.*

As is usual with matrimonial proceedings, both parties testified alone on this and did not present any exhibit in proof of their claims. I find however, the claims of the respondent more probable than those of the petitioner.

This is because the respondent, unlike the petitioner had under cross examination by veritable counsel for the petitioner, not only repeated her claims, but testified of instances, facts and circumstances and referred to persons in relation to her claims from which the court could make an inference of the probability of her claim. At page 32 of the record of proceedings, she had answered;

Q: *Why were you called to the meeting? What reason was given to you before the meeting?*

A: *Sometime back, his uncle visited us in the house and told me that his son had asked for a divorce from me so he came to the house to ask that what is happening in the house. I told him that there were a lot of things that were going on but there were two things that I think is unacceptable, for him not sleeping at home and also inviting friends to the house to play video game that is P.S 4 now 5. He told me that he would talk to his son and that these were not acceptable behavior because we were living in a chamber and hall. He said he would get back to me. He called me three days after in the evening around 9pm and asked that he had been wanting to speak to the son for some time now but he is not picking up his phone. So I told him that he was in the hall playing games with some friends. I do not know what happened afterwards but then on the weekends of that week he came back to the house to ask if there had been any improvement. Unfortunately, that night, he did not spend the night at home. Later I had to go to my grandmother's funeral. Afterwards, we were called to a meeting where the petitioner mentioned that I did not pay him any attention at my grandmother's funeral, that I do not respect him and I do not give him food at home and when he comes in from outside, I do not give him the attention''.*

The petitioner although a married man of more than a decade with two male issues, does not deny "hanging out'' with his friends or coming home late as a result of same. His issue is the reaction of the respondent when he does this. Whereas "hanging out'' with ones' friends once a while is acceptable, doing so during weekdays and every

weekend over a consistent period of time cannot be considered as acceptable behavior of a married man.

To not only "hang out" but also come home with some of these friends to play video games in a matrimonial home that consists of one bedroom in which the petitioner, his wife and two children live would hardly be considered as a reasonable act.

Both parties agree that the petitioner attended the funeral of the respondent's grandmother in the Western Region in 2021. At the time, they had been married for over a decade and had the two issues. In this court, the petitioner's family members including his mother and uncle have been mentioned. Petitioner did not attend the funeral of the grandmother of his wife in the presence of any of his family members. He chose to do so with his friends.

The petitioner's claim that the respondent disrespected him by ignoring him and his friends at this funeral were denied by the respondent. Petitioner could have called any of his friends to testify as to this disrespect shown to them.

It appears that the petitioner although married, still prioritized the company and camaraderie of his friends above that of his family. His actions would fall into the second basis for determining unreasonable behavior of a spouse ; "a persistent course of conduct or series of acts of differing kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so."

Again, it is a legal known that marriage in Ghana is regarded as a union of not only the individuals but their families as well. It is the family unit that is called upon most often to resolve any issues that the parties may have on their marital journey and to safely

steer the marriage boat back on its course of eternal unity. When the family are unable to settle differences and give up on the marriage, it is seldom difficult if not impossible for there to be any reconciliation.

It is on this basis that the families of both parties met to attempt to resolve their disputes in May, 2021. The petitioner testifies that his own uncle asked him to move out of the matrimonial home for tempers to calm down. It was further agreed that he and respondent try to resolve their own issue failure of which after one year, the family would meet and dissolve the traditional marriage.

The petitioner filed the instant petition on the 16th day of July, 2021. That is about two months after the meeting with the family. Thus although he had agreed in the presence of his family and the respondent's family to try to resolve their issues for a full year before any dissolution would take place, he filed this petitioner about ten (10) months' shy of that collective decision and after only two attempts to resolve the issues with the respondent failed. It appears as the respondent says, that he had been waving the band of divorce over her head for quite sometime and appeared dead set on having their marriage dissolved.

I find after my enquiry that the marriage between the parties has broken down beyond reconciliation due to the unreasonable behavior of the petitioner. Accordingly, a decree of dissolution is issued to dissolve the marriage celebrated between them on the 4th day of September, 2010 at the Good Shepherd Catholic Church, Tema. Their marriage certificate is hereby cancelled. The Registrar is to notify the administrator of the church of the cancellation to enable them amend their records accordingly.

2. ***Whether or not the 3 bedroom house at Tema Community 25, Devtraco, a chamber and hall at Tema, community 9, a piece of land at Prampram and two vehicles including a Honda Accord should be settled on the respondent.***

On this issue, as it is the respondent who is claiming, the burden of proof laid on her to lead evidence to establish that they had acquired these properties in the course of their marriage and same should be declared as marital property. It is only after she had established these in the mind of the court, that the principle of equality is equity would be applied in the distribution of the matrimonial property.

The law as espoused by the Supreme Court in reliance on ***Article 22 of the 1992 Constitution*** is that any property acquired by spouses during the course of their marriage is to be presumed (rebuttably) to be jointly acquired. In other words, property acquired by the spouses during marriage is presumed to be marital property unless contrary evidence is led.

See the case of ***Arthur (No 1 vrs. Arthur No 1) [2013-2014] SCGLR 543, Vol. 1*** **which re-affirmed the decision in the oft cited case of** ***Gladys Mensah v. Stephen Mensah [2012] 1 SCGLR 391*** in which the veritable Dotse JSC in delivering the judgment of the court, gave effect to the provision in ***Article 22 of the Constitution, 1992.***

The principle to be applied in the distribution of marital property is that of equality is equity. See the majority decision in the Supreme Court decision *of* ***Peter Adjei v. Margaret Adjei [Civil Appeal No.J4/06/2021) delivered on the 21st day of April, 2021****. Pwamang JSC* in reading the majority decision held that *"property acquired by spouses during marriage is presumed to be marital property. Upon dissolution of the marriage, the*

property will be shared in accordance with the "equality is equity'' principle except where the spouse who acquired the property can adduce evidence to rebut the presumption''.

To begin with, both parties agree that the three (3) bedroom house at community 25, Tema is a mortgaged property. The petitioner says he is still paying off the mortgage. The mortgage facility is for fifteen (15) years and he has paid for only five (5) years. He tendered in evidence EXHIBIT B series which are the documents covering the said home. They bear out his claim. EXHIBIT B series include an offer letter from Devtraco Limited to the petitioner for the purchase of a three (3) bedroom house on 7th December, 2017.

EXHIBT B1 is in principle an agreement letter from Ghana Home Loans addressed to the petitioner dated the 1st February, 2018. It indicates that they would extend to him a mortgage facility to pay off the said house. The facility is for a fifteen (15) year term and is payable monthly for 180 months. That was in 2018. It stands to say that without any contrary evidence, the petitioner would pay off that facility up to 2033. Until then, it cannot be classified as matrimonial property. Consequently, I find that the respondent is not entitled to the house at community 25, Devtraco.

On the one (1) bedroom house at community 9, both parties agree that same has been their matrimonial home since they celebrated their marriage. The respondent currently lives there with the issues of the marriage even though the petitioner has moved out.

The respondent maintains that although same was rental property, the owner of the property offered it for sale and they purchased it. The petitioner on his part says although the owner offered it for sale and he made a down payment, he could not raise

the rest of the purchase price. That the amount he paid was commuted to rent and he currently continues to pay rent for the said house.

At page 25 of the record of proceedings, the petitioner had answered under cross examination by learned counsel for the respondent;

Q: Is it also true that at a point, the owner decided to sell the house because he is not returning to live in Ghana?

A: Yes my Lord. He intended selling the property but he did not say he would not return to live in Ghana.

Q: And they had the house valued for sale?

A: We did not do any valuation on same.

Q: But the landlord asked you to make a deposit. Is that right?

A: Yes my Lord. He agreed and I made a deposit.

Q: At a point, you asked your wife to sell the C.R.V to pay for the house. Is that right? It was a discussion between husband and wife.

A: Yes my Lord. That is true.

Q: Then you asked her to use your car in place of the C.R.V.

A: Yes my Lord. We swapped cars in order for me to sell the C.R.V but that was not my car as at then because I had already transferred the ownership of the Honda Accord into her name.

The respondent at page 35 and 36 of the record of proceedings, under cross examination by learned counsel for the petitioner had this to say;

Q: Now the petitioner pays the rent of the matrimonial home. Correct?

A: It used to be a rented apartment but not anymore.

Q: What is it now?

A: The house was being sold and so he called me that we need to make a down payment for the landlord. I had then acquired a loan for us to purchase a C.R.V 4 by 4 and so he asked me to sell it and make a down payment. So between me and him, I knew the money had been used to do the down payment for the house.

Q: So you bought the house.

A: After he told me that he had made the down payment, we were left with about 20% to be paid after he sold the C.R.V. He told me he would find money to pay the rest.

Q: I am suggesting to you that this story that you just told the court is untrue.

A: It is true. If not, then perhaps he also lied to me.

Q: Because you are aware that after the payment of the initial deposit towards the purchase of the house, the petitioner could not raise the rest of the money.

A: I am aware but he told me he has other businesses he is doing so he would raise the rest from those businesses.

Q: And you know that the initial deposit which was paid was used to offset rent.

A: Please, I am not aware.

Q: And this is why the property is still rented and you and the kids live in that property.

A: I am not aware unless he lied to me.

I have reproduced the evidence on record in extenso for one reason; it constitutes estoppel against the petitioner.

Section 26 of the Evidence Act, 1975 (Act 323) provides that:

"except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest''.

Again, the case of In ***Re Asare Stool; Nikoi Olai Amontia IV v. Akortia Oworsika [2005-6] SCGLR 637***, holds true the principle that "where a party has admitted a fact advantageous to the cause of a party, the party does not need to establish that fact than by relying on the admission.''

The petitioner admits in this Court that he caused the respondent to agree to a sale of her Honda CRV vehicle so the proceeds could be used to pay partly for the matrimonial home.

He led the respondent to believe that the matrimonial home had been purchased by them. She did not only believe this but contributed to the purchase by agreeing to sell off her car for the proceeds to be used in paying part of the house. The petitioner then assured her that about 80% of the purchase price had been paid and he would mobilize resources to pay the remaining 20%. The respondent had cause to believe that the petitioner had done this and until this court action, knew nothing about the claims of the petitioner that he could not pay off the remaining 20% and the deposit had been used to offset rent.

I do not believe the admission and avoidance of the petitioner. If his claim is true, then he could have at the least supported it with documentary evidence or called whomever he last paid the rent to on behalf of the owner of the house to testify in this Court in proof of his claim.

I find that the petitioner is estopped by his own words and conduct in making the respondent believe that the house which was hitherto rented, had been purchased by both of them in the course of the marriage. I accordingly find that the said matrimonial property is a jointly acquired property.

The respondent prays the court to settle same on her. She currently lives in the house with the two issues of the marriage. It is a one (1) bedroom house compared to the three (3) bedroom mortgage facility. That is the home that the children have known all their lives. From the evidence, they school here in Tema as well. Thus it would be in the best interest of the children for them to continue to live in the house. I hereby settle the said home on the respondent and the children. The petitioner at his own cost, is to cause the transfer of title in the property into the name of the petitioner and the children within ninety (90) days from the day of judgment.

On the claim for a piece of land at Prampram, the petitioner once again admits that he acquired same in the course of the marriage but avoids his confession by saying that he lost same and is yet to be re assigned with a new plot by his vendors. The respondent does not challenge him on same.

Her silence is deemed to be an admission. ***Vanguard Assurance Co. Ltd v. JM Addo & Sons Ltd [2016] 93 G.MJ. 160*** where the court held that "where a witness testified on oath on certain vital matters and the opposing side was silent in his cross examination of those matters, he would be taken to have admitted those matters.''

Consequently, her claim for the Prampram land to be settled on her is dismissed.

On the claim for the two vehicles, the petitioner maintains that the Honda Accord is currently in the use and custody of the respondent. She does not deny same. The respondent does not lead any evidence as to the number of vehicles that the petitioner has for which reason, she should be settled with another vehicle. Accordingly, the said Honda Accord is hereby settled on the respondent. Her claim for a second car is hereby dismissed.

3. ***Whether or not the respondent is entitled to five hundred thousand Ghana cedis (Ghs 500,000) as financial settlement.***

On issue three, the petitioner prays for financial provision in the sum of five hundred thousand Ghana cedis (Ghs 50,000). In the case of ***Oparebea v. Mensah [1993-94] 1 GLR 61,*** the court held that in order to determine a claim made under ***Section 20 (1) of the Matrimonial Causes Act***, the court must examine the needs of the party making the claim and not the contributions of the parties during the marriage.

The case of ***Riberiro v. Ribeiro [1989-1990] 2 GLR 109*** provides a good guidance to a court when making decisions on financial provision. My consideration should not only be based on the need of the respondent but also on the financial strength of the petitioner as well as the standard of living to which the other spouse was accustomed during to during the marriage. see the case of ***Aikins v. Aikins [1979] GLR 223***.

Factors to be considered in arriving at an equitable decision include the earning capacity or income of the parties, property or other financial properties which each of the parties has or is likely to have in the foreseeable future, the financial needs, obligations and responsibilities of each of the parties and the standard of living enjoyed by the family before the breakdown of the marriage.

Both parties to this action are employed. The petitioner is an IT specialist and the respondent is a banker. They are both gainfully employed. The respondent does not lead any evidence as to why she is entitled to the sum of five hundred thousand Ghana cedis (Ghs 500,000.00) as financial provision. She also does not lead any evidence of the

financial strength of the petitioner which would lead the court to arrive at a conclusion that he has the means to pay the said sum.

Financial provision is not compensation for marriage. The dissolution of a marriage does not impute an injury or damage to one party for which reason that party must be awarded money as compensation. Marriage is a union of two minds with the hope and belief that they would spend the rest of their lives together.

Where that belief does not withstand the test of time, the Courts should not be seen to be awarding "damages'' for as held in the case of ***Aikins v. Aikins [1979]GLR 223*** holding 4 "in considering the amount payable as lump sum, the court should not take into account the conduct of either the husband or the wife but it must look at the realities and take into account the standard of living to which the wife was accustomed during the marriage".

The petitioner in this court has gone to great lengths to testify that he has solely borne the burden of the home by not only providing shelter, school fees and maintenance, but also in providing things like fish and meat in bulk for the home as well as being responsible for the payment of utility bills. He has also led evidence of vehicles that he had purchased for the respondent albeit with her assistance.

Now that they are divorced, his obligation in providing these needs for the respondent no longer exists. His remaining obligations are towards his children alone. That means the respondent would not be able to maintain the standard of living to which she has been accustomed to for the past twelve (12) years.

In order to cushion her from this fall, the petitioner is hereby ordered to pay her the sum of fifty thousand Ghana cedis (Ghs 50,000) as financial provision. He is to pay that amount within sixty (60) days from the date of judgment. Failure of which would attract interest at the prevailing commercial bank rate from the date of judgment till the date of final payment.

4. ***Whether or not the petitioner should be ordered to maintain the issues of the marriage including provision of accommodation, visitation.***

The parties are agreeable on the issue of custody. They both agree that custody of the two issues be granted to the respondent. The petitioner seeks for specific rights of access on the basis that even though he currently has access, the petitioner places a lot of impediments in his way.

On this basis, I hereby order that the current practice of the petitioner picking the children up everyday after school and taking them to the respondent's mother be maintained. This would enable him to be in the lives of the children everyday as a father should be. Petitioner is also to have access to the children from Friday after close of school to 7:pm on Saturdays. He is to return the children to the petitioner so she can attend church with them as she has repeatedly indicated her strong Roman Catholic Faith. The children may determine their own religion when they are of age.

The children are to be with the respondent exclusively during mid terms save for circumstances in which she is not available within the jurisdiction and has given prior notice to the petitioner.

For school vacation, the children would remain with the respondent for the Christmas holidays. For the other vacations, they would be in the care of the petitioner from Monday to Friday afternoon. They would spend the weekends with the respondent. Each party must obtain the consent in writing of the other such consent not to be unreasonably withheld prior to travelling outside the jurisdiction with the children.

The respondent prays that the Court orders the petitioner to pay such maintenance towards the children as the court deems just. The respondent on his part indicates that he pays a current sum of one thousand Ghana cedis (Ghs 1,000) as maintenance for the children and he intends to continue doing so.

In as much as the petitioner's commitment towards maintenance of his children is laudable, I take judicial notice of the rising monthly inflation rate in the country which the Ghana Statistical Service has provided as being 54.1% for December, 2022. That means the value of the one thousand Ghana cedis (Ghs 1,000) he provides depreciated by more than 50% within one month.

Section 22 (2) and (3) of Act 367 provides that a court may on its own initiative make an order concerning a child of the household which it thinks reasonable and for the benefit of the child. Such orders include provision for the education and maintenance of the child out of the property or income of both parties to the marriage. The two issues of the marriage are both minors and the parties in their capacities as their parents have a statutory duty to provide for the necessaries of health and life of the issues.

The duty to maintain a child according to ***Section 47 of the Children's Act, 1998 (Act 560)*** falls on the parents of that child. It is settled that it is the duty of parents, where they each earn an income to provide for their children. See ***Section 49 of Act 560*** and the

decisi*on of* ***Dotse JA (as he then was) in the case of Donkor v. Ankrah [2003-2005] GLR 125*** where he stated "where both parents of a child are earning an 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".

Both parties work and earn an income. On the basis that it is the primary duty of parents to provide the necessaries of health and life of their children, I hereby make the following orders;

1. The petitioner is to pay an amount of two thousand Ghana cedis (Ghs 2,000) each month commencing from the last working day of February, 2023 towards the maintenance of the children (the one thousand Ghana cedis (Ghs 1,000) would remain for January,2023)
2. He is also to provide for the school fees, books and all other school related bills of the children.
3. The respondent is to provide for the clothing needs of the children.
4. Respondent is also to pay all utility bills and other related bills in respect of the matrimonial home
5. Both parties are to bear in equal proportion any medical bills of the children when same arise
6. Any other ancillary needs of the children are to be borne equally by the parties.

5. ***Whether or not the respondent is entitled to the total sum of Ghs 91,000.00 as moneys owed her by the petitioner.***

On this claim, the petitioner admits to owing the respondent the sum of ten thousand Ghana cedis (Ghs 10,000.00) being moneys she supported him with to furnish the house and also the sum of sixteen thousand Ghana cedis (Ghs 16,000) out of a claim for twenty

seven thousand Ghana cedis (Ghs 27,000). He denied owing her forty nine thousand Ghana cedis (Ghs 49,000) as a loan and also five thousand Ghana cedis (Ghs 5,000) as moneys the respondent expended to construct a fence wall.

The respondent's evidence is that she took out a loan for the petitioner at her bank and the Court should order the petitioner to pay same to her. Petitioner on his part says that he is not responsible for the payment of the forty nine thousand Ghana cedis (Ghs 49,000) loan that the respondent is currently servicing on the basis that it was his Honda Accord that was used to secure the loan for both of them. The value of the Honda Accord is fifty one thousand Ghana cedis (Ghs 51,000) and same has been transferred into the name of the respondent and her bank. That respondent currently uses the said vehicle. He tendered in evidence EXHIBIT A as proof of transfer of the vehicle from his name to that of the respondent and the bank.

On the respondents' claim for the petitioner to be ordered to service a forty nine thousand Ghana cedis (Ghs 49,000) loan, the petitioner admits and avoids the claim. He admits that indeed such a loan amount was procured but says that he and the respondent both needed money and he used his Honda accord as collateral and the said vehicle has since been transferred into the name of the respondent and the bank.

He tendered in evidence EXHIBIT A as proof of same. EXHIBIT A is of no evidential value for the purpose for which it was tendered. It is a DVLA FORM A with an attached Ghana Revenue Authority Declaration Form which indicates that the petitioner imported the vehicle into the country and further registered it into his name by DVLA FORM A. The contents show the petitioner as an owner of a Honda Accord vehicle imported into the country in June, 2017. It does not in anyway indicate a transfer of the vehicle into the name of the respondent and a bank.

The petitioner's own documents do not bear out his denial. As he has admitted the claim of the respondent as to the loan, I find that the respondent is entitled to her relief.

The petitioner is hereby ordered to pay to the respondent the sum of forty nine thousand Ghana cedis (Ghs 49,000) which she took as a loan from her bank on his behalf and which she is currently servicing.

On the claim of five thousand Ghana cedis (Ghs 5,000) being the cost of sand, cement and stone purchased by the respondent in building a wall around the house, the petitioner denied same and respondent was silent on this claim in her evidence in chief. She led no evidence on same even though the petitioner denied it.

In the case of ***Ofori Agyekum v. Madam Akua Bio (Dec'd) substituted by Agartha Amoah, Civil Appeal No. J4/59/2014, dated 13th April, 2016, (Unreported), Benin JSC*** speaking for the apex Court explained the principle better when he held: *"…Where no evidence is adduced on a fact that has been pleaded, it is treated as having been abandoned by the pleader, the court does not call it into question in its judgment. The court's only duty is to consider the evidence the party has profferred in determining whether or not he has met the right standard of proof"***.**

Accordingly, I find that she has failed to prove her claim and same is dismissed.

On her claim for twenty seven thousand Ghana cedis (Ghs 27,000) out of which the petitioner admitted sixteen thousand Ghana cedis (Ghs 16,000), she also led no evidence on the disputed amount of eleven thousand Ghana (Ghs 11,000). She appears by her silence to have agreed to the admission by the petitioner.

It is trite that pleadings do not constitute evidence and where a party fails to lead any evidence in support of a claim, she is deemed to have abandoned same.

In the case of ***Alex Boakye Agyekum v. Madam Akua Nsiah & Anor. [2014] 69 G.M.J. 65, the Court of Appeal (Kumasi)*** held that: "*It is trite law that pleadings per se are not evidence but material fact relied on by a party for his claim or defence. It is the evidence of fact adduced at the trial that would make the claim succeed or fail*."

As the respondent failed to adduce any evidence at the trial in proof of her claim for the remaining eleven thousand Ghana cedis (Ghs 11,000) and the five thousand Ghana cedis (Ghs 5,000), I find that her claim must succeed only in part.

Consequently, the petitioner is hereby ordered to pay to her the sum of ten thousand Ghana cedis (Ghs 10,000) and sixteen thousand Ghana cedis (Ghs 16,000) which he admits and the sum of forty nine thousand Ghana cedis (Ghs 49,000) which I have found that he is liable for. The total of these sums is seventy five thousand Ghana cedis (Ghs 75,000). The petitioner is to pay the amount to her within ninety (90) days from the date of judgment failure of which the amount would attract interest at the prevailing commercial bank interest rate from the date of judgment till the date of final payment.

6. ***Whether or not the respondent is entitled to costs of this action including legal costs.***

The principle of ordering a petitioner to pay the respondent's legal fees is usually premised amongst others on a fault basis. That is where the Court determines that the marriage has broken down beyond reconciliation due to the fault of one party, that

party may be ordered to pay the legal costs and all other incidental costs incurred by the other party in prosecuting the case.

Another consideration is the financial strength of both parties. In this court, the petitioner has made it abundantly clear in his evidence that he is the one that carried the purse in the family. That he carries on his shoulders all the financial needs of the family down to the nitty gritties of even providing meat and fish.

As I have determined that the breakdown of the marriage is due to the unreasonable behavior of the petitioner and also that on the evidence, he is stronger financially than the respondent, he is hereby ordered to pay the respondent's cost of litigation including her legal costs. This is fixed at ten thousand Ghana cedis (Ghs 10,000).

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

JOYCELYN AMARH FOR VIVIAN LAMPTEY FOR THE PETITIONER PRESENT

SALATHIEL D. AMEGAVIE FOR THE RESPONDENT PRESENT