CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 19TH JANUARY, 2023

SUIT NO. C5/65/15

OBENG MENSAH - PETITIONER

VRS

PATIENCE OBENG MENSAH - RESPONDENT

JUDGMENT

The life span of this petition for the dissolution of marriage between the parties is seven (7) years and (8) eight months. It was presented to this court on the 5th day of May, 2015. After almost eight (8) years in court, with the parties even having a second child in the course of proceedings, the day of judgment has arrived.

The petitioner in his petition averred that the marriage celebrated between him and the respondent on the 15th day of December, 2007 at the Corpus Christi Catholic Church, Sakumono has broken down beyond reconciliation. There was one issue of the marriage who was six (6) years old at the time of presentation of the petition. The petitioner had a son prior to his marriage to the respondent.

The grounds for this petition for dissolution according to the petitioner are that the respondent has behaved in such an unreasonable manner that he cannot be expected to live with her. That although the respondent showed him and his son affection and care before the marriage, she changed after the marriage and showed him great disrespect and also treated his son as a stranger. That his mother also visited them and the respondent showed her great disrespect.

He continued that since the marriage, respondent does not perform any wifely duties and he has to cook and wash his clothing. That communication between them has completely broken down. He prayed the court to dissolve their marriage.

The respondent in her answer to the petition filed on the 22nd day of May, 2015 admitted that the marriage has broken down beyond reconciliation but laid the blame at the unreasonable behavior of the petitioner.

She denied the averments of the petitioner and said that since November, 2008, the petitioner had failed to have sexual intercourse with her even though they shared the same bed. That the petitioner has been annoying, abusive and insulting to her. That he usually comes home drunk and very late and also bangs doors and receives calls from his mistresses at night.

She continued that the petitioner does not pay the school fees of the issue on time and this causes her much embarrassment. That in the course of their marriage, they jointly acquired a mortgage house, a plot of land at Mataheko, Afienya road near Tema, one Hyundai mini van, one taxi and one Toyota Corona. That she contributed significantly in cementing and painting the mortgaged house.

She cross petitioned for a dissolution of the marriage, custody of the only issue, that the petitioner financially settles her, that petitioner maintains the issue of the marriage, that the mortgaged house and the Hyundai mini van be granted to her and the rest of the properties granted to the petitioner.

The petitioner in his reply denied the claims of the respondent and said he acquired the house which is their matrimonial home prior to his marriage to the respondent. Further

that he acquired the plot at Mataheko in 2003 prior to their marriage in 2007. That he solely acquired the vehicles and the Toyota Corona was sent to him by his brother who is overseas.

In his answer to the cross petition, he contended that the court should grant custody of the issue to the respondent with reasonable access to him.

THE CASE OF THE PETITIONER

In his evidence in chief filed in October, 2019, petitioner repeated the claims in his petition and added that there was now a second issue of the marriage who was two (2) years old. He also added that when he launders his clothes, dries them and goes out, the respondent would leave the clothes out on the dry line until whenever he returns. That when he enlisted the assistance of a neighbor to remove the clothes from the dry line in his absence, the respondent warned the neighbor off.

Again that if he cooked and could not wash all the bowls, the respondent would leave them in the sink to abide his return even if he had travelled for days on end. That the respondent apart from not treating his mother well also blamed his mother for their marital issues on the basis his mother could be married to him spiritually.

That the respondent has not had a steady job since their marriage as she either resigns or would be dismissed from her jobs. That her reasons are not tangible and anytime he advises her to hold on to her jobs, she tells him that as the head of the family, he must be responsible for the family's maintenance. That her unbearable disrespect towards him made it difficult for him to condition his mind on intercourse between them.

That the respondent accused him falsely of infidelity which is not true and picks unnecessary quarrels with him. That after instituting this action, and before having their second child, the presiding judge advised them to see their reverend minister for reconciliation. That the respondent's conduct rather worsened.

He further testified that whereas he pays the fees of the first child, the respondent does so for the second child. That he comes home late to avoid the respondent's nagging and insults.

That he acquired the matrimonial home by a mortgage facility in November, 2007. That he paid for the initial deposit by selling his vehicle. He tendered in evidence Exhibit A as the deed of assignment which is dated 10th November, 2007. He also tendered in evidence EXHIBIT B as an indenture covering the plot of land at Mataheko which he says he acquired in 2003.

That although he bought the Nissan Urvan in 2008 and the taxi in 2004, he has sold all of them due to the fact that they were in a bad condition and he has used the proceeds to maintain the home. He tendered in evidence EXHIBIT C as a copy of the DVLA documents covering the taxi. He continued that it was only once that the respondent painted the house.

Also that during the pendency of the marriage, the respondent informed him that she had purchased a piece of land. That save for her reliefs (i) and (ii), the respondent is not entitled to her cross petition.

THE CASE OF THE RESPONDENT

In her evidence in chief, the respondent testified that their marriage has not broken down beyond reconciliation. That she has always shown affection to petitioner's son and shown respect to the petitioner and his family including his mother during her lifetime. That she has also been performing all her duties as a responsible wife.

That she has never had any issues with petitioner's mother during her lifetime and she performed her duties as an in - law when she passed on. It is only after her death that the petitioner is claiming that his mother reported her conduct to him.

That they still live in the same house and sleep on the same bed. That in the midst of all that the petitioner had said, they still had their second child during the pendency of this petition and that clearly shows that what the petitioner calls unreasonable behavior on her part is not unreasonable such that he cannot be expected to continue to live with her.

She tendered in evidence their marriage certificate and said the petitioner is not entitled to his reliefs.

The relevant issues for the court to determine are;

1. Whether or not the marriage has broken down beyond reconciliation.
2. Whether or not the matrimonial home and the Hyundai Nissan urvan bus should be settled on the respondent.
3. Whether or not the petitioner should be ordered to pay to the respondent a lump sum as alimony.
4. Whether or not custody of the issues of the marriage should be granted to the petitioner with reasonable access to the respondent

5. Whether or not the respondent should be ordered to pay the the school fees, and also provide maintenance for the children of the marriage,

CONSIDERATION BY COURT

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

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, 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.

The petitioner's basis for arriving at a conclusion that their marriage has broken down beyond reconciliation is the unreasonable behavior of the respondent. The respondent cross petitioned for dissolution also contends the same unreasonable behavior on the part of the petitioner as leading to a breakdown of their marriage.

Although both parties allege unreasonable behavior, in the course of the court's enquiry into whether or not their marriage has broken down beyond reconciliation, the abundant evidence on record is that they have been unable to reconcile their differences after several efforts.

As one of the basis for arriving at a conclusion that a marriage has broken down beyond reconciliation is inability to reconcile after diligent efforts, I would first deal with the available evidence on that ground. ***Section 2 (1) (f) of the Matrimonial Causes Act, 1971, (Act 367) provides that;***

2. (1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts:

> (F) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

The parties to this action are testimony that the best of efforts by all and sundry to salvage a marriage and keep it afloat would not yield the necessary results if both parties are unwilling to put in the efforts, love and diligence necessary to make their marriage work.

They both admit that after the birth of their first child, the petitioner's mother visited to assist in taking care of the child and she left sometime in November, 2008. Thereafter, their marriage has not known any peace and it has been one issue after the other. Since then, they have not had sex and neither has there been any communication between them as a couple.

Since they celebrated their marriage in December, 2007 and their issues started in November, 2008, it means that they have had less than one year of a peaceful and happy marriage. This is despite the fact that as at the time of the presentation of this petition in 2015, they had been married for almost eight years.

Various judges including myself who have presided over this case have had cause to advise the parties to attempt reconciliation. One of such attempts led to a long adjournment which saw the parties having their second child. One would have thought that after seven (7) years of living under one roof without any intercourse and almost two years in court, the parties finally having intercourse which produced a child would lead to a termination of this petition.

It turned out not to be the case with the parties herein. A D.N.A test had to be carried out to ascertain the paternity of the said issue and after confirmation that it was for the petitioner, he still refused to relent in his decision to petition for a divorce. The respondent on her part, although having initially pleaded that the marriage be dissolved, changed course in her witness statement and indicated that their marriage has not broken down beyond reconciliation.

I advised reconciliation severally and the final attempt was made with the intervention of a lawyer; Mr. Charles Walker Dafeamekpor who had many years of marriage under

his belt and who with the consent of the lawyers for the parties, graciously attempted to settle the issues and reconcile the parties. That attempt did not yield any results.

Clearly, all diligent attempts to reconcile the parties have failed and no useful purpose would be served by continuing to keep them together legally. The very issues which led them to court in May 2015 with a petition and cross petition for divorce still persists and not even the birth of their second child and the numerous interventions by the court would change their situation.

Consequently, I hereby find that all diligent efforts made to reconcile them have failed and their marriage has broken down beyond reconciliation. I hereby issue a decree of dissolution to dissolve the marriage celebrated between the parties on the 15th day of December, 2007 at the Corpus Christi Catholic Church, Sakumono. The marriage certificate number CCCC/23/2007 is cancelled and the Registrar is to notify the administrator of the Church of same to enable them amend their records accordingly.

2. ***Whether or not the matrimonial home and the Hyundai Nissan Urvan bus should be settled on the respondent.***

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''

In order for the court to apply the principle, a party who is making a claim must lead evidence to convince the court on a balance of probabilities, that the properties in issue are marital property. As is the respondent who made the claim by her cross petition and the respondent denied same in his reply and answer to cross petition, the burden of proof laid on her to lead cogent and credible evidence in proof of her claim.

In the case of ***Zabrama v. Segbedzi [1991] 2 GLR 221,*** Kpegah J.A (as he then was) held that "a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true…he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden''.

Although the respondent cross petitioned for the court to settle her with the matrimonial home on the basis that same was acquired in the course of the marriage and she made a contribution to same, she failed to lead a shred of evidence on this when she mounted the witness box. Indeed, but for counsel for the petitioner cross

examining her on this, there would have been no evidence on record for the court to consider.

The filing of pleadings and documents does not automatically metamorphose into evidence before the court. A party must testify under oath or affirmation in order for same to be regarded as evidence.

In the case of ***Adjetey Adjei & Ors. v. Nmai Boi & Ors. [2013-2014] 2 SCGLR 1474***, Adinyira JSC speaking for the apex court held that: "*It is trite law that pleadings would not constitute evidence. To hold otherwise would negate the requirements of proof as provided in the Evidence Act, 1975 (NRCD 323).*"

The Court of Appeal in the case of ***Alex Boakye Agyekum v. Madam Akua Nsiah & Anor. [2014] 69 G.M.J. 65*** held: "*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*."

The only evidence petitioner has on this claim are her answers under cross examination by learned counsel for the petitioner. Under cross examination, she insisted that although the petitioner had the house prior to their marriage and that has always been their matrimonial home, he was still paying the mortgage during the pendency of their marriage. She could not provide any evidence in support of this claim.

She also maintained that due to the fact that the petitioner kept saying he was paying the mortgage, he shirked his responsibilities to maintain the home and the child and this fell unto her shoulders. Here again, she failed to lead any evidence in proof of her claim.

With respect to the piece of land at Mataheko on the Afienya road, she did not lead any evidence at all in proof of same. As Ayebi JA succinctly summed it in the case of ***Fordjor v. Kaakyire [2015] 85 G.M.J 61 @ 93*** as follows: "*It has to be noted that the court determines the merits of every case based on legally proven evidence at the trial and not mere allegations and assertions in the pleadings. A bare assertion without adducing evidence in support of that assertion is not evidence to require denial in cross-examination by an opponent.*"

It is the petitioner who rather led evidence in proof of his denial that the matrimonial home and the land at Mataheko were not acquired in the course of the marriage. He tendered in evidence EXHIBIT A and B as proof of his acquisition of the said properties before marriage.

It is trite that the courts prefer documentary evidence which is authentic to oral and inconsistent evidence. In the case of ***Adei and Anor v. Robertson and Anor [2016] 101 GMJ 160 Pwamang JSC*** stated that *"the law is settled that unless a document in evidence is invalid on the grounds of breach of a statute or has been shown not to be authentic, a court of law would consider it favourably in preference to inconsistent oral testimony''*. See also the case of ***Hayford v. Egyir [1984-86] 1 GLR 68****2.*

EXHIBIT A is a deed of assignment between Coastal Industries Ltd as the Assignors on one hand and the petitioner as the assignee on the other hand. It is dated the 10th day of November, 2006. Paragraph 1 of the deed indicates that the petitioner has paid the full consideration of then two hundred and thirty million cedis and the assignor acknowledges same and consequently assigns the property known as plot no D64/ Kpone Sebrepor to the assignee therein.

From the documentary evidence, the petitioner acquired the house in November, 2006; a period of thirteen months prior to his marriage to the respondent in December, 2007. That means the house cannot save for some other evidence which is non existent before this court, be classified as matrimonial property.

EXHIBIT B is also an indenture dated the 11th day of April, 2003 between Martey Mar Nah, head of the Akobley family of Afienya Prampram on the one hand and the petitioner on the other hand. The contents of EXHIBIT B show clearly that the petitioner acquired the said land in April, 2003- more than four (4) years prior to his marriage to the respondent in December, 2007. The respondent did not offer any evidence to the contrary before this court.

With regard to the Hyundai Urvan bus, the evidence on record which both parties agree to is that same was acquired in the course of the marriage but has been sold off by the petitioner. The respondent says she does not know the details of the sale and the petitioner says he used the proceeds realized to maintain the home. Neither parties provided the court with any evidence as to how much was realized in the sale. No attempt was made in the course of the trial for the petitioner to also render accounts of same.

As already indicated, the respondent had shifted the goal post from her pleadings as at the time she was testifying and so appears to have seen no need to provide evidence in support of her claim.

Accordingly, on the basis that the respondent has failed to lead sufficient evidence in proof of her claim for matrimonial property, I hereby dismiss her claim for settlement of the matrimonial home and the Hyundai bus on her.

3. ***Whether or not the respondent should be ordered to pay to the petitioner a lump sum as alimony.***

Although the respondent had in her cross petition prayed for the petitioner to be ordered to pay her a lump sum as alimony, she failed to lead any evidence in this court as to that relief. She appeared to have abandoned the said relief as she was silent on same in her evidence in chief. In her evidence, she had said the marriage was not broken down beyond reconciliation and urged the court to dismiss the petition without claiming an alternative relief.

As pleadings do not constitute evidence, I find that the respondent had abandoned her cross petition for financial settlement. However, ***Section 19 and 20 (1) of Act 367***, provides that:

19. *"the court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage but an order for maintenance pending suit or financial provision shall not be made until the Court has considered the standard of living of the parties and their circumstances''.*

20 (1). 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 any property rights or in lieu thereof as part of financial provision that the Court thinks just and equitable''.

From the above provisions, on grounds of justice and equity, I may award financial provision to the respondent. In that stead, I will not be exceeding my jurisdiction by making an order for financial provision provided that I first consider the standard of living of the parties and their circumstances.

In ***Republic v. High Court, Kumasi, Ex parte Boateng [2007-2008] SCGLR 404 @ 408***, the Supreme Court held: *"… the courts in modern times administer justice not classically but functionally…….It is trite learning now that a court is not confined to only the specific reliefs claimed by the plaintiff and the court, if necessary can amend the claim to cover an appropriate relief though unclaimed*." See also the case of ***Hannah Asi (No. 2) v. GIHOC Refrigeration & Household Products Ltd. (No. 2) [2007-2008] SCGLR 16***.

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. Riberiro [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 respondent was accustomed to during the marriage.

Any order for financial provision must be based on equitable grounds. Factors to be considered in arriving at an equitable decision include the earning capacities 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.

The petitioner is an accountant and so is the respondent. However, whereas the petitioner works in line with his profession, the respondent does not. She is into millinery. In the course of their marriage for the past fifteen (15) years, she has had the right to rely on the support of the petitioner as a spouse. Now that they are no longer married, she cannot by right rely on him for such sustenance.

By way of housing, she has also been exposed to the lifestyle of a person who resides in an estate; a system of housing that is generally regarded as middle class. She would have to forfeit all these now that they are divorced.

Again, the respondent has performed her duties as a mother to the two
(2) issues of the marriage and by so doing, freed the petitioner to go about his work and also have a social life. As the petitioner himself admits, he spends very little time with the children as he usually comes home late on purpose and it is the respondent who rather spends time with them.

Caring and maintaining children is a shared responsibility and to the extent that the petitioner has shirked his part of the care unto the respondent, she must receive some form of monetary compensation.

Also, the fact that the Hyundai vehicle was acquired in the course of the marriage would mean that the decision to dispose of it be taken jointly together with the decision as to what to use the proceeds for. When the petitioner disposed of same, the respondent had a right to know how much he made and what the money was to be used for. Simply stating that it was used to maintain the house is not sufficient particularly so as there was nothing out of the ordinary which had come up by way of maintenance.

In the circumstances, I find that it is fair and equitable that the petitioner provides financial support to the respondent as financial provision. As to the means of the petitioner, although no affidavit of means was filed, I take note that in the course of the marriage, he had been able to buy not only the Hyundai van but also a Toyota Avensis vehicle. That shows that he is of adequate means and should be able to provide a reasonable sum to the respondent as financial settlement.

Accordingly, the petitioner is to pay to the respondent the amount of forty thousand Ghana cedis (Ghs 40,000) as financial provision within ninety (90) days from the date of judgment. Failure of which would attract interest at the prevailing commercial bank interest rate from the date of judgment till the date of final payment.

4. ***Whether or not custody of the issues of the marriage should be granted to the petitioner with periodic access to the respondent.***

Prior to dealing with the merits of this issue, it is worthy to note that at the time the respondent filed her answer and cross petition, there was only one issue of the marriage. Her reliefs as to custody and maintenance was in respect of only that issue.

However, as earlier noted, the parties had a second issue in the course of the marriage. The respondent did not amend her reliefs to cover this second child. indeed, as at the time of giving her testimony, she appeared to have abandoned her cross petition as she failed to lead any evidence on same and also indicated that the marriage has not broken down beyond reconciliation. I take note however, that I have jurisdiction to determine such issues suo motu even without an application or prayer by a party. ***Section 22(2) of Act 367*** provides that:

"The court may either on its own initiative or on an application by a party to proceedings under this Act, make an order concerning a child of the household which it thinks reasonable 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 (2) 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.

On the issue of custody, according to **Azu Crabbe CJ** in the case of ***Braun v. Mallet [1975] 1 GLR 81-95*** "in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration. In considering matters affecting the welfare of the infant, the court must look at the facts from every angle and give due weight to every relevant material''. See also the case of ***Gray v. Gray [1971] 1 GLR 422;***

This provision is referred to as the welfare principle and it has been concretized by Statute in ***section 2 of the Children's Act, 2008 (Act 560).***

Section 2—Welfare Principle.

(1) The best interest of the child shall be paramount in any matter concerning a child.

(2) The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

A court in arriving at decisions as to custody and access of a child is bound to consider the best interest of the child and the importance of a young child being with his mother. The court must also consider the age of the child; that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents; the views of the child if the views have been independently given; that it is desirable to keep siblings together and the the need for continuity in the care and control of the child.

In the case of ***Barake v. Barake [1993-94] 1 GLR 635 Brobbey J*** (as he then was) held that "*the welfare of the child was the primary consideration for the determination of the custody of a child. The welfare of the child however had to be considered in its largest sense. Although some of the factors taken into account in deciding on the welfare of the child were the positions of the parents, the position of the child and the happiness of the child, the first consideration should be who his parents were and whether they were ready to do their duty*''.

The children are between (as at August 2020 when respondent filed her witness statement) eleven (11) and three (3) years respectively. Almost three years later, the first born is a teenager and the second is still a young child. They are both females.

In this court, the respondent has averred and the petitioner has admitted that petitioner is seldom at home and always comes home late. From the abundant evidence on record, the arrangement in the house with regard to even food preparation appears to be the respondent with her (2) two children on one end and the petitioner on his own on the other end. That means that the primary carer of the children has been the respondent.

The petitioner consents to the court granting custody of the first issue to the respondent with reasonable access to him. Both children are female and whereas the eldest is in her

teenage years and needs the guidance and counsel of an adult female to navigate through her maturing years, the younger one needs the constant care and attention of an adult.

Since the respondent is her biological mother and has been the one providing her with such care and attention throughout her short years on earth, I see no reason why custody should not be granted to the respondent.

Both children have always lived together and so it is in their best interest as siblings to continue living and growing together under the same care and guidance.

Consequently, I hereby grant custody of the two (2) issues of the marriage to the respondent with reasonable access to the petitioner. Both children may decide which of the parents to live with when they reach the age of twenty one (21) years.

5. ***Whether or not the respondent should be ordered to pay the school fees, medical bills, accommodation and also provide a monthly maintenance for the children of the marriage***

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".

Maintenance of children involves providing them with the necessaries of health and life; shelter by means of accommodation, food, clothing, education and medical care being the basic needs of every child.

The petitioner and respondent are both accountants by profession. However, the respondent says she is currently out of a job in that capacity. She is however engaged in millinery actively and says she earns an income from same. As both parties are working and earn an income, it is their responsibility to provide for the necessaries of health and life for the children.

Consequently, the petitioner is to provide accommodation for the issues of the marriage. As the children have been used to living in an estate all their lives, the petitioner is to provide a one bedroom apartment accommodation in a similar environment until the last issue turns twenty one (21) or the respondent remarries; whichever is earliest in time.

The respondent and the issues of the marriage are only to vacate the matrimonial home thirty (30) days after the petitioner has provided the said accommodation. The respondent is to pay for the utility bills and all other ancillary bills in relation to the said accommodation.

Per the parties own arrangement, the petitioner pays the school fees of the eldest child whilst the respondent pays that of the last child. The respondent has not urged it upon this court to vary that arrangement. That arrangement is therefore to remain in place until the eldest child attains twenty one (21) years or completes her education after which the parties are to bear in equal proportion the school bills of the last child.

The petitioner is to be responsible for the payment of any medical bills of the issues. The petitioner is to ensure that they are signed on to the national health insurance scheme and is also responsible for any other medical bills when the children attend hospital or a herbal centre which is not covered by the National Health Insurance.

The petitioner is to pay the sum of one thousand two hundred Ghana cedis (Ghs 1,200) as maintenance for the two children commencing from the last working day of January, 2023 and every month thereafter until the last issue turns twenty one (21) years old. The amount is to be reviewed by 20% each year.

The respondent on her part is to provide for the clothing needs of the children and supplement the maintenance fee with whatever is necessary to ensure the children live a comfortable life.

Each party is to bear their own cost in suit.

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

GLORIA KANKO-ARTHUR FOR OSSEI AIDOO FOR THE PETITIONER

BRIGHT AKWANTEY FOR THE RESPONDENT