

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 20<sup>TH</sup> JULY, 2023

SUIT NO. C5/90/23

MRS VIDA GLATE - PETITIONER

VRS

MAWULI GLATE - RESPONDENT

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**JUDGMENT**  
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It is said that young love is often difficult to quench. It is described as a pretty flame which is very hot and fierce but light and flickering. The parties to this action are testament to the beauty of young love. The flames of their young love appeared to have withstood the winds of life that would ordinarily have quenched it. They started out very young in their teenage years and as at the date of presentation of this petition had a 29 year old child.

Unlike many young love affairs, theirs appeared to have withstood the test of time and transcended into a celebration of marriage under the ordinance on the 4<sup>th</sup> day of August, 2008 at the marriage registry of the Tema Municipal Assembly. Before the said celebration, they had cohabited together and been recognized as husband and wife with a child by many; including the respondent's own family whom they initially stayed with.

The seams of their love continued to hold strong until the 25<sup>th</sup> day of July, 2022 when the petitioner filed the instant petition for dissolution of their marriage on the grounds

that same has broken down beyond reconciliation due to the desertion, adultery and unreasonable behavior of the respondent.

She sought the reliefs of

- a) Dissolution of ordinance marriage contracted between the parties on the 4<sup>th</sup> day of August, 2008 at the Tema Municipal Assembly Marriage Registry
- b) The matrimonial house H/NO GB 007-6836 at Ashaiman-Lebanon to be settled for the petitioner
- c) Alimony of Ghs 50,000
- d) To maintain the petitioner for Ghs 1,500 per month pending the final dissolution of the marriage
- e) Any other orders as the court may deem fit.

The respondent filed an answer and cross petition and insisted that the breakdown of the marriage is not to be blamed on him. That he had tried to have the matter between them amicably settled after the petitioner informed him that she intended to file for a divorce. He cross petitioned for;

- a) Dissolution of the marriage celebrated between the parties
- b) The petitioner is not entitled to 50% share of the property she is asking for
- c) Any other further orders this honourable court may deem fit.

The battle lines having been firmly drawn, the issues for the court to determine are

1. Whether or not the marriage has broken down beyond reconciliation
2. Whether or not the petitioner is entitled to be settled with the matrimonial home
3. Whether or not the petitioner is entitled to Ghs 50,000 as financial settlement.

## **THE EVIDENCE OF PETITIONER**

Petitioner's case is that she and the respondent met as teenagers. That she became pregnant and had their child whilst both of them were still living with their parents. She later moved to live with the respondent in his family house. That she supported the respondent to build their four bedroom single storey matrimonial home as well as a 22 bedroom single storey which is half completed.

That they later celebrated their marriage under the ordinance. She tendered in evidence EXHIBIT A as a copy of their marriage certificate. That the respondent's attitude changed after they moved into their matrimonial home and anytime she complained, he would invite his mother and sisters to rain insults on her to allow respondent to go out and give birth as she was not giving birth.

She continued that the respondent had compelled her to have seven abortions and when she ceased getting pregnant, his family began to use same against her. That the respondent physically abuses her and one of such abuses led to her reporting the matter to DOVVSU. That the respondent was made to apologise to her and sign a bond to be of good behavior.

That the respondent has not had sexual intercourse with her for the past four years and does not provide her with money for her upkeep. That respondent once brought home a child he had with another woman and she took care of the child for some time until the respondent came for the child.

Further that the respondent has moved out of the matrimonial home to now set up home with another lady with whom he has three children. That when the respondent's

father died, he attended the funeral with the said lady. When she complained, the respondent told her he could marry as many women as he wished.

That she reported to the family for an amicable resolution and respondent was ordered to apologize to her. He has since then refused to come to the matrimonial home and only passed by once during the lock down.

That when she called the respondent to file a divorce petition for the marriage to be divorced, he asked her to go ahead and file one as he was not ready to do so. She prayed the court to dissolve their marriage and grant her the ancillary reliefs.

She tendered in evidence EXHIBIT B series as photographs of the injuries she sustained from the assault by the respondent and EXHIBIT C series as pictures of the 22 single bedroom house acquired in the course of the marriage which is still under construction.

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

In his evidence in chief, the respondent said he consents to the dissolution of their marriage as they have drifted apart.

That although he and the petitioner have a 29 year old son, prior to their marriage, they separated for sometime and he had another child with another woman. That the said child is fifteen years. That the relationship with the said woman did not end after he and the petitioner married.

That he had another child with the said woman after he and the petitioner failed to have other children. That the petitioner has always known about the other woman and children and they have lived peacefully until his father's funeral in March, 2019 when her attitude changed drastically.

That petitioner refused to perform her marital duties towards him and was violent. That for the past five years, she has refused to cook for him. That he on the other hand has always performed his duties as a husband. That the DOVVSU issue was an accident and they have since resolved same.

Further that his inability to frequent the matrimonial home for the past four years is due to the nature of the work and the fact that he is stationed in Koforidua. That petitioner also vacated the matrimonial home for fifteen months and even during those periods, he continued to provide her with upkeep money.

That he singlehandedly acquired the matrimonial home before the marriage with loans which he has still not completed payment of. That he does not own any 22 single bedroom house.

That he has made every attempt to ensure that the petitioner is in gainful employment but she has always failed to sustain same and so could not have assisted him in acquiring any property. That he recently had to settle her medical bills as she had no means of doing so.

He tendered in evidence EXHIBIT 1 series as MTN MOMO transactions which evidenced the fact that he was maintaining the petitioner closed his case after this. He also tendered in evidence EXHIBIT 2 series and 3 as proof that he pays for the utility

bills of the matrimonial home, EXHIBIT 4 series as evidence of his payment of the school fees of the issue of the marriage and EXHIBIT 5 and 6 series as the medical insurance card and medical bills of the petitioner.

### **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 vrs. Agbenu* [2015] 91 G.M.J.

*Blacks' law dictionary*, ((8<sup>th</sup> 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 adultery, unreasonable behavior, desertion and not having lived together as husband and wife for more than two years. The respondent cross petitioned for divorce on the basis that they have drifted apart over the years due to their differences.

As the respondent had also cross petitioned, the burden of proof and persuasion laid on the each of them to establish their case. 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."

The burden on both of them 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 11<sup>th</sup> 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 section.

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

The petitioner's basis for arriving at the conclusion that her 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 and further that all attempts made by their families, pastors and friends to reconcile them have failed.

The respondent cross petitions for a dissolution of the marriage on the grounds of adultery, unreasonable behavior and failure to reconcile their differences after diligent effort.

I will first deal with the ground of adultery. Adultery is defined by the *Blacks Law Dictionary (8<sup>th</sup> ed. 2004 at page 160)* as “voluntary sexual intercourse between a married person and someone other than the person's spouse”.

In order for adultery to be basis for holding that a marriage has broken down beyond reconciliation, a party relying on same must prove not only the adultery but the fact that he/she found it intolerable to continue to live with the offending spouse after the notice of adultery came to his/her attention.

In proof of her claim of adultery, she indicated that the respondent has had three children with another woman and currently lives with the said woman after having moved out from the matrimonial home.

The respondent does not deny having had children with another woman during the subsistence of their marriage. His evidence is that the petitioner has always known of the said woman and children and not had any issues with it. His admission offers the best form of truth and so petitioner's claim of adultery is established.

However, the evidence on record does not show that the petitioner was repulsed by that adultery and found it intolerable to live with the respondent after she became



aware of same. Her own evidence is to the contrary. She took in one of the children that the respondent had had outside the marriage to live with and take care of. She continued to live with the respondent as husband and wife whilst he was having children with the other woman.

Her own evidence does not in any way show that she was averse to the adultery committed and which the respondent is still committing. On the basis that she did not find it intolerable to live with the respondent by virtue of his adultery, I hereby find that she is not entitled to a finding that the marriage has broken down beyond reconciliation on that ground.

I would now proceed to the ground of unreasonable behavior. *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.”

Petitioner’s evidence as to the unreasonable behavior of the respondent is based on the fact that after compelling her to have seven abortions after the birth of their only issue, she could not conceive again. The petitioner decided to have children with another woman and his mother and sisters verbally assault her anytime she complains of this. Petitioner also spreads false news that she cannot have more children.

The respondent does not deny these abortions. He says in paragraph 12 of his answer and cross petition that it was an agreement between the two of them during their teenage years and it is not up to the number being claimed by the petitioner. He however fails to provide the court with a contrary number.

It is a legal known that an admission by one's opponent is one of the purest form of proof and one needs not lead any further evidence in proof of a claim admitted by the other side.

In the case of *Kwame Osei v. Mrs. Janet Darko & 2 Ors.; Civil App. No. J4/29/2017, dated 31<sup>st</sup> January 2018, S.C. (Unreported)*, the apex court in delivering its judgment through the erudite Baffoe Bonnie JSC held that *"Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct"*. See also the decision of the Supreme Court in the case of *In Re Asere Stool; Kotei v. Asere Stool [1961] GLR 493*

Per his own admission, the petitioner whilst they were together in their teenage years underwent several abortions after the birth of their only child. As earlier indicated, they began their love affair as teenagers living with their parents and have continued till now. If the petitioner can no longer conceive due to the very abortions that they had, then any reasonable man would consider the actions of the respondent in having three children with another woman and rubbing it in the face of the petitioner to be inconsiderate and unreasonable. Indeed, his actions bother on cruelty.

Again, the petitioner testifies of various assaults that the respondent has meted out to her in the course of the marriage; both physically and emotionally. That one of such assaults ended up at DOVVSU where the respondent was made to apologize to her and enter into a bond. The respondent once again does not deny this and only says that the said matter has long been settled.

Assault is not one of the incidences of marriage and so where as in the circumstances of this case, the respondent assaults the petitioner to the point where one of her eyes have to be heavily bandaged, any reasonable man would consider his actions as unreasonable.

Although the petitioner testifies of other grounds of unreasonable behavior by the respondent, I find that the two instances which I have analysed on their own are grave enough to warrant a finding of unreasonable behavior on the part of the respondent.

I find the respondent's claim that they had drifted apart not supported by his evidence. If at all, their drifting apart was due to his own unreasonable behavior and cruelty towards the petitioner in the course of their marriage.

Upon these basis, I hereby hold after my enquiry that the marriage of the parties has broken down beyond reconciliation due to the unreasonable behavior of the respondent. A decree of dissolution is hereby issued to dissolve the said marriage celebrated on the 4<sup>th</sup> day of August, 2008 at the Tema Metropolitan Assembly. Their marriage certificate evidencing the said marriage is hereby cancelled and the Registrar is to notify the Marriage Registry of the Tema Municipal Assembly of the said cancellation to enable them amend their records accordingly.

***1. Whether or not the petitioner is entitled to be settled with the matrimonial home***

The petitioner's evidence is that in the course of their marriage, they acquired a 4 bedroom matrimonial home at Ashaiman Lebanon and a 22 bedroom single storey building which is half completed. The respondent denies knowledge about any 22

bedroom house and says he acquired the matrimonial home before marriage via loans which he is still paying off.

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 and I can determine whether the matrimonial home should be settled on her.

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 (reputably) 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 vrs. Margaret Adjei [ Civil Appeal No.J4/06/2021) delivered on the 21<sup>st</sup> 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 proof of her claim that she assisted the respondent to acquire the matrimonial property, the petitioner answered under cross examination by learned counsel for the respondent at pages 14-16 of the record of proceedings that:

Q: *How did you support your husband in these 2 buildings?*

A: *My lord at that time we were living at Lebanon and my work was at Ashaimam new town and because I used to come home late the respondent asked me to stop the hairdressing work. MTN normally gives some contract but because he was a staff and cannot be awarded those contracts, he registered a company and I go for the contract. We had a private vehicle and so normally when I am going he would ask someone to assist me or go with me to direct me as to where to sign on the contract document. There were times we won 3 or 4 contracts and anytime I return home with the document I would had it to him. I asked him if he would pay me he said no because he was doing this so that we would be able to build and move in to our own place. At the time we were living in their family house and the maltreatment was too much. In performing the contract I would go with him to the site. I was at the site as the contractor*

Q: *The contract that you refer to that you said were awarded were the contract awarded during the subsistence of the marriage or before the marriage*

A: *My lord some of the contract were before we got married and after our marriage there were issues at his workplace so he withdrew himself from the contract*

Q: *So were you still going for the alleged contract even after he withdrew himself*

A: *No my lord because he said the white man got to know that the workers themselves go for contract so because of that he stopped*

Q: *So you are telling this court that the contract that you got together with your husband is what was used in building the 4 bedroom house which is the matrimonial home in contention. Is that what you are telling the court?*

A: *My lord I want to tell the court that it is also part of the resource we used in building the house.*

Q: *Are you also aware that the respondent started building the 4 bedroom house in issue before the marriage?*

A: *My lord that is not true*

Q: *Are you also aware that the respondent took loans from banks and from individuals to put up that house?*

A: *My lord that is not true*

Q: *You have answered that you built the 4 bedroom matrimonial home partly from the moneys you realized from the contract. Where did the rest of the money for the building come from?*

A: *My lord sometimes when I ask my husband for money he would say that he is using his salary to buy some of the building materials. Sometimes sand or stones and because he said he wants us to move out of the family house I should manage what I have so that he would use his salary to complete the building faster so that we can move in. So whatever I have I do manage it. I am aware that the rest of the money came from his salary*

Also at page 19 of the record of proceedings, the petitioner had answered under cross examination by learned counsel for the respondent

Q: *Now on the 22 bedroom house that you said you supported your husband to build, can you tell the court the nature of your contribution in the alleged 22 bedroom house?*

A: *My lord, my contribution as I said the other day is that whenever I asked him for money he would say he does not have so I should manage what I have and that he is using the money to put up the building for rent so that he can get money to take care of our son.*

Q: *Have you ever been to this 22 bedroom house?*

A: *Yes my lord. From the beginning till the time we completed the ground floor, I was going there with him right from construction until he completed and rented out the ground floor. Afterwards he collapsed the 1<sup>st</sup> floor and rebuilt it.*

Q: *I suggest to you that the respondent does not have a 22 bedroom house anywhere within the jurisdiction of this court.*

A: *My lord, that is not true. If the court permits me I can show evidence of the existence of the building on the land.*

As proof of her evidence about the said house, the petitioner when cross examining the respondent, at page 28 and 39 of the record of proceeding, tendered EXHIBIT C series through him. EXHIBIT C series are photographs of a partially completed storey building with many rooms. The ground floor appears to be completed whilst the first floor is not. Also apparent is the fact that the ground floor appears to have some form of human residence in same.

*Petitioner had proceeded to ask the respondent:*

Q: *Can you tell the court what you know about exhibit C series?*

A: *My lord it is a building which is being constructed and I am supervising for a cousin in America*

Q: *I put it to you that what you just told the court is not true*

A: *My lord it is the truth*



*Q: On the last adjourned date, you said you have not rented any room at Atadeka but there are tenants in the house of which two are nurses and one police officer*

*A: My Lord, Please I know of a nurse at Atadeka and know of another nurse but I do not know of a police at Atadeka. I know them based on since the building was constructed for my cousin and I was in charge, he gave me the mandate as well to be in charge of all rental issues in the house*

*Q: The place where we live at Lebanon, you indicated that you have not rented it out to anyone but I have documents to prove that you have rented it out*

*A: My lord, I did not rent the room out but I gave it to a friend based on my wife vacating the house around February 2021 to April 2022 which made the house vacant due to my job location being at koforidua and parts of eastern region. I asked a gentleman to come and occupy one of the rooms which was down stairs which is a single self-contained.*

I noted in the record book “ In answering the question as to the tenants in the house at Atadeka and Lebanon, the respondent appears quite squirmish and could not maintain eye contact with the court. He also appeared to be choosing his words carefully or as we say in local parlance – one by one.

Although a photograph does not prove ownership, the respondent’s demeanour when the photographs were shown to him was one of visible shock. He had initially denied having or knowing of any 22 bedroom storey building at Atadeka or renting same out to tenants, then when EXHIBIT C series were tendered, he proceeded to say the said building which according to the petitioner is the 22 bedroom property belonged to his cousin and he was managing it.

He had then suddenly remembered knowing some nurses even though he had earlier denied renting the place to some nurses and a police man. Respondent also suddenly

seemed to remember that he was managing the said building for his cousin and renting same out as part of his management. I found him to be an evasive witness at best and at worst, one who was out to throw dust into the eyes of the court. I did not find his evidence worthy of credit in this court.

With regard to the matrimonial home, the petitioner as earlier indicated, provided evidence by way of further details, facts and circumstances from which the court could infer the veracity of her evidence.

Although the respondent insists that he began building the matrimonial home before their marriage and is still paying off the loans he borrowed to build, he does not provide the court with any evidence of these loans. He simply maintained his assertion on oath.

Indeed, by way of oral evidence, he does not testify of events, circumstances or details from which the court could infer the existence of his claim. By way of documentary evidence, he could have provided evidence of documentation relating to the acquisition of the land as proof that same was acquired before their marriage. He failed to do this.

His mere denial in the face of the evidence of the petitioner in which she had provided the court with details of circumstances and events from which the court could ascertain the veracity of her claim, is not sufficient to avoid a ruling against him on the issue.

I cannot gloss over the fact that the parties started their journey whilst teenagers. Their son is thirty years old as at now. Although they celebrated their marital union in 2008, for many years before that, they held themselves out to the world as husband and wife and the petitioner, respondent and child were living in the respondent's family home.

Although the respondent says they were separated at a point prior to their marriage, the petitioner denies this and says it was only for four months and that was not even a separation. The respondent had asked her to return to her parents until he came to perform her marriage rites and so they lived apart for four months. That she saw him every day as he came to visit her.

That means the parties had held themselves out as a married couple even before the celebration of their union under the ordinance. As persons who had started life as teenagers, the evidence is that they had nothing by way of property and had acquired all these properties in the course of their being together; before and after officially getting married.

Based on the abundance of evidence on record which I have already elaborated on, it lies ill in the mouth of the respondent to claim that the petitioner did not assist him in anyway in the acquisition of the two landed properties.

Between the two of them, I found the petitioner to be more credible than the respondent. In the case of *Ntim vrs. 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*’.

The petitioner had maintained her claims and under cross examination, stood her grounds and provided further and better details and circumstances of events in their

marriage. The respondent on his part was not only evasive but kept approbating and reprobating at will. He appeared very uncomfortable whilst answering questions under cross examination and chose his words carefully and with time. He appeared to the court as someone who was trying to make up an answer rather than one who was answering based on what he knew.

**I find after an evaluation of the evidence that the 4 bedroom material home and the 22 bedroom storey building both of which lay within the jurisdiction of this court, were jointly acquired by the parties in the course of their marriage. The said properties are thus marital property.**

The petitioner prays this court to settle the matrimonial home on her. It is the 4 bedroom house in which she and child of the marriage live together with another person whom she describes as a tenant that the respondent has put into occupation and whom the respondent says is a licensee. She has lived in same as her matrimonial home and had to not only be physically present during its construction, but play a role in ensuring that the respondent was awarded contracts for them to use the profits in building same. She also had to forfeit maintenance from the respondent during this period.

To ensure that the building would be completed in good time, she took care of the maintenance of the home whilst the respondent used his salary to build the said house. The respondent has abandoned the said home since 2020 and I believe the evidence of the petitioner that he is currently co habiting with his paramour with whom he has three children.

Unlike the petitioner, the respondent has no need for that home. The 22 bedroom storey building would ordinarily be considered to be more valuable than the 4 bedroom house. The equities between the houses are not equal. The petitioner is praying for the 4 bedroom house which is the lesser of the equities, to be settled on her. I find in the circumstances that she is entitled to her claim.

I accordingly settle the 4 bedroom matrimonial home at Lebanon Ashaiman on the petitioner. The respondent is to transfer all the necessary documentation covering the said house into the name of the petitioner within one hundred and twenty days (120) from the date of judgment and at his own cost. He is to ensure that she has peaceful occupation of the said home and save for instances where she invites him or consents to his presence, he is restrained from entering the said matrimonial property.

**2. Whether or not the petitioner is entitled to the sum of fifty thousand Ghana cedis (Ghs 50,000) as financial settlement.**

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 respondent was accustomed to during the marriage.

In the case of *Obeng v. Obeng 2015 [GHASC 112]*, Akamba JSC in delivering the decision of the Supreme Court held that “ ordinarily, a court should only order a lump sum payment when the husband has capital assets out of which to pay without crippling his earning power. When he has available assets sufficient for the purpose, the courts should not hesitate to order him to pay a lump sum. The payment should be outright and not subject to conditions except where there are children when it may be desirable to make it the subject of a settlement. (see *Wachtel v. Wachtel (1973) 1 AER 829 at 830*”.

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 currently unemployed and says she sometimes does petty trading. In the course of these proceedings, the petitioner underwent surgery and the respondent tendered in evidence EXHIBIT 5 and 6 series as proof of the fact that the petitioner is of no pecuniary means and he had to foot the cost involved in the surgery.

The respondent on the other hand is employed and has been employed through out their marriage. In this court, his evidence is that he has always provided for the family and even though he no longer lives in the matrimonial home, he still pays the utility bills. He tendered in evidence EXHIBIT 2 series and EXHIBIT 3 as proof of various payments.

Although respondent insists that he has always maintained the petitioner and provided EXHIBIT 1 series as evidence of same, I find that on the face of (EXHIBIT 1, 1A and 1B, are the payments were made between September to November, 2020 ) that all the payments were in 2020. EXHIBIT 1C as rightly pointed out by the petitioner under cross examination is not and cannot be an official document from MTN. It appears to be a document collated together by someone other than MTN. I find it to be a self serving document.

Respondent's own documents do not bear out his claim that he has always maintained petitioner till present. If at all, his evidence rather bears out the claim of the petitioner that he stopped maintaining her in 2020.

I take note that EXHIBIT 5 series include a health insurance coverage which the petitioner enjoyed by virtue of her position as a spouse of the respondent. Now that they are no longer married, she would not be entitled to same and would have to foot her own medical bills.

They have been together for more than thirty years as a couple and for more than fifteen years as a married couple under the ordinance. It is the respondent who has always worked and held the purse of the family. He has introduced the petitioner to the lifestyle that she currently lives.

Now that they are no longer together, the petitioner would have to learn to rely on herself for all the needs. It is fair in the circumstances that he pays her a lump sum as financial settlement. I find in the circumstances that the sum of fifty thousand Ghana cedis (GHS 50,000) is adequate to enable the petitioner start life on her own and a reasonable figure that the respondent has the means of paying to her.

The respondent is hereby ordered to pay the sum of fifty thousand Ghana cedis (Ghs 50,000) to the petitioner within ninety 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 to the date of final payment.

Costs of this action is fixed at GHS 10,000 in favour of the petitioner.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

MISS MAVIS SERWAH ASIEMOAH MENSAH FOR THE RESPONDENT PRESENT.