

IN THE CIRCUIT COURT "A", TEMA, HELD ON FRIDAY THE 25TH DAY
OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO.C5/52/22

LILIAN HOMADZI DZIKUNU ----- PETITIONER

VRS.

ERNEST DZIKUNU ----- RESPONDENT

PARTIES PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The uncontroverted facts of this case are that the petitioner, a Banker/Trader and the respondent, a Military Officer with the Ghana Armed Forces got married under **Part III of the Marriages Act (1884-1985) Cap 127** on the 24th of September, 2011 at the Open Fountain Bible Church, Golf City, Tema. After the celebration of the marriage, the parties cohabited at Michel Camp, Tema. The marriage is blessed with two children namely, Jeremy aged 8 years and Selikem aged 4 years at the time of filing the instant petition for divorce. On 15th February, 2022, the petitioner filed the instant petition for divorce alleging that the marriage celebrated between herself and the respondent has broken down beyond reconciliation and prayed the court for the following reliefs;

1. The dissolution of the ordinance marriage celebrated between the parties on 24th September, 2011 at Open Fountain Bible Church at Golf City, Tema.

2. Custody of the children of the marriage be granted to the petitioner with reasonable access to the respondent and for an order directed at the respondent to pay a monthly maintenance allowance of GH¢1,000, pay school fees and medical bills as and when they fall due.
3. An order for 50% of the properties acquired during the course of the marriage to the petitioner.
4. An order for financial provision of GH¢50,000 to the petitioner.
5. Any other order as the court deems fit.

The respondent filed an answer and cross-petitioned for the following reliefs;

1. The dissolution of the ordinance marriage celebrated between the parties on 24th September, 2011 at Open Fountain Bible Church at Golf City, Tema as demanded by the petitioner.
2. Custody of the children of the marriage should be granted to the respondent with reasonable access to the petitioner.
3. The immediate return of the children to the respondent at Michel Camp, Tema during the pendency of this matter to enable them continue with their education in peace and harmony in the environment they are used to.
4. No financial compensation to the petitioner since he has heavily invested in her education and business.
5. Petitioner be ordered by the Court to pay an amount of Seventy Thousand Cedis (GH¢70,000) as compensation to the respondent.
6. Any other order(s) as the Court deems fit.

THE CASE OF THE PETITIONER

The petitioner's case is that the respondent has behaved in such a way that she cannot reasonably be expected to live with him. The petitioner claims that whilst cohabiting with the respondent, he was domineering and authoritative

and constantly assaulted her and even attempted to kill her by suffocating her. The petitioner further alleges that when she was pregnant with the first child of the marriage, the respondent assaulted her which caused her to fall into a coma. After that, the doctor gave her a report to serve on the employers of the respondent but she pleaded with the doctor to withhold the report. According to the petitioner, when she delivered their first child, the respondent suggested that his mother moves in with them to assist her but she refused since she is not on good terms with the respondent's mother. Based on that, the respondent became angry and asked her to go to her aunt's place to deliver and refused to name the child until nine (9) months after an arbitration held by their families.

The petitioner further states that when the respondent eventually named the child and took them home, he failed to maintain them adequately. When her family wanted to hold an arbitration to resolve the differences between them, the respondent refused to participate in it. According to the petitioner, once, when she refused to have sexual intercourse with the respondent due to tiredness, he became offended and assaulted her. She reported the respondent to his superior officers and he was arrested and detained in the guardroom for one day. Later, the respondent called her family head on phone and verbally abused him and when her uncle invited him to come over for the marital issues to be discussed, the respondent failed to honour the invitation until her uncle personally came to Tema on 15th December, 2021 and took him and his family to Officers Mess for the arbitration. According to the petitioner, at the arbitration, she accepted to live with the respondent subject to the respondent ceasing the assault on her and adequately maintaining her and the children. The respondent on the other hand stated that he was no longer interested in the marriage. The petitioner also states that the respondent falsely accused her of stealing his military uniform but she later found it in his

clothing and took a photograph of it as evidence to extricate herself from the unfounded allegation. This resulted in a misunderstanding which the respondent assaulted her and she reported him at the Domestic Violence and Victim Support Unit (DOVVSU) but the officials did not take the case seriously and asked the respondent to pay medical bills.

Additionally, the petitioner states that the family members of the respondent are urging him on for separation and the respondent has threatened to take custody of the children which she disagrees with because their first child is not healthy to be given to the respondent. According to her, due to the uncaring attitude and the constant assaults of the respondent, her life is in danger and that she has lost interest in the marriage for fear of her life. Again, the behaviour of the respondent has caused her lot of pains and suffering, emotional stress, trauma and anxiety leading to depression. The petitioner further states that during the marriage, they acquired a house at Gbetsile and the respondent has a "trotro" bus as well and she is entitled to 50% of the said properties acquired during the subsistence of the marriage.

THE CASE OF THE RESPONDENT

The respondent in his answer to the petition is agreeable that the marriage has broken down beyond reconciliation and ought to be dissolved but denies the allegation of assault and cruelty meted out to the petitioner by him. The respondent states that it is rather the petitioner who absconded from the matrimonial home with the children to an unknown location whilst he was on a military assignment in the Eastern Region. The respondent states that it is rather the petitioner who has been very rude, disrespectful, insulting and quarrelsome towards the respondent, military officers at Michel Camp, the families of the respondent, officers of the Military police and others who had tried to resolve issues regarding the marriage. The respondent says that the

petitioner has also threatened him on several occasions to instigate his dismissal from the military and also to make him a useless man in life.

The respondent also states that the petitioner took his naked pictures whilst he was in his bedroom, threatened to distribute it on social media and the petitioner refused to delete the photographs from her phone when he demanded her to do so. A physical struggle then ensued between them when he tried to take the phone from the petitioner to delete the photos. The petitioner reported him at DOVVSU but he was exonerated of all the charges. The respondent states that he duly performed naming ceremony for all his two children according to custom and tradition. Again, he has at all times provided housekeeping and medical fees for his family since 2011. According to his testimony, his military uniform got missing which he suspected that the petitioner might have stolen it to use it for a charm. Upon persistent pressure, the petitioner produced the uniform after several weeks. The respondent avers that no family member of his has urged him on to separate from the petitioner and that he has been a responsible father.

Furthermore, the respondent accuses the petitioner of being money conscious, disrespectful and also shirked her responsibilities as a wife in the marriage and that it is the petitioner who vacated the matrimonial home with the children without his consent. The respondent denies that there is a joint property to be shared between them and states that prior to the marriage in the year 2010, he acquired a piece of land with his twin sister jointly and that the said property cannot be termed marital property. The respondent also denies the claim of the petitioner for financial provision and maintains that he has heavily invested in the education of the petitioner and assisted her to establish a boutique. Additionally, the petitioner made withdrawals from his bank account without his authority all totaling GH¢70,000 and that the

petitioner is not entitled to her reliefs. The respondent therefore cross-petitions for the dissolution of the marriage and custody of the children of the marriage.

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

LEGAL ISSUES

1. Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.
2. Whether or not the petitioner or the respondent is entitled to custody of the children of the marriage.
3. Whether or not the petitioner is entitled to an award of GH¢1,000 for the upkeep of the two children of the marriage.
4. Whether or not the petitioner is entitled to 50% of all properties acquired during the subsistence of the marriage.
5. Whether or not the petitioner is entitled to an amount of GH¢50,000 as respondent is entitled to an amount of GH¢70,000 as financial provision.

BURDEN OF PROOF

The principle of law is that he who asserts must prove. In the case of **Adwubeng v. Domfeh** [1996-97] SCGLR 660, the Supreme Court in holding 3 held that "*sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323) have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities. No exceptions were made.*" The standard of proof as stated therefore applies to a petition for divorce. A cross-petition like a

counterclaim, is an independent and separate action by the respondent against the petitioner. See **Happpee v. Happee** [1971] 1 GLR 104, holding 5. Thus, the burden is on the petitioner to prove the facts alleged to establish the breakdown of the marriage. Where, as in the instant case, the respondent has also cross-petitioned, he bears the burden to prove his cross-petition on a balance of probabilities.

ANALYSIS

ISSUE 1: Whether or not the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation.

Section 1 of the Matrimonial Causes Act, 1971 (Act 367), provides that the sole ground for divorce is that the marriage has broken down beyond reconciliation. To prove that the marriage has broken down beyond reconciliation, the petitioner is required to establish at least one of the facts stipulated under **section 2(1)** of Act 367, namely; adultery, unreasonable behaviour, desertion, failure to live as husband and wife for a continuous period of at least 2 years immediately preceding the presentation of the petition, failure to live as man and wife for a continuous period of five years immediately preceding the presentation of the petition and lastly, irreconcilable differences. In the case of **Danquah v. Danquah** [1979] 1 GLR 371, the court held in its holding 1 that:

“the requirements in section 2 (1) of Act 367 that the petitioner must satisfy the court of one or more of those five facts therein specified to prove that the marriage had broken down beyond reconciliation would mean those facts the petitioner had both pleaded and proved. It would accordingly exclude facts pleaded but not proved or facts proved but not pleaded...”

Under **section 2(3)** of Act 367, the court is enjoined to inquire into the facts alleged in support of the dissolution. The court shall refuse to grant the dissolution of the marriage notwithstanding the fact that any of the facts are proved if there is a reasonable possibility for reconciliation. Thus, in the case of **Adjetey & Anor v. Adjetey** [1973] 1 GLR 216, the court held in holding 2 that:

“On a proper construction of section 2 (3) of the Matrimonial Causes Act, 1971 (Act 367), the court could still refuse to grant a decree even where one or more of the facts set out in section 2 (1) had been established. It was therefore incumbent upon a court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage had broken down beyond reconciliation would not be enough.”

Here, the parties made mutual allegations of unreasonable behaviour against each other within the meaning and intendment of **Section 2(1)(b)** of Act 367. To succeed under **section 2(1) (b)**, the petitioner must prove the conducts constituting unreasonable behavior, and the fact that she cannot reasonably be expected to live together as a result of the behaviours complained of.

The Matrimonial Causes Act, 1971, (Act 367) does not define behaviour and the specific conducts that amount to unreasonable behaviour. Rayden on Divorce (14th ed., 1983) defines behaviour as follows;

“Any conduct, active or passive, constitutes behaviour. The behaviour is not confined to the behaviour of the respondent. The behaviour may have reference to the marriage although it is to other members of the family or to outsiders. Any or all behaviour may be taken into account: The court must have regard to the whole history of the matrimonial relationship. But behaviour is something more than a mere state of affairs or a state of mind: behaviour in this context is action or conduct by the one,

which affects the other: It may be an act or omission or course of conduct; but it must have reference to the marriage..."

From case law, conducts such as assault of a partner, threat of death, writing damaging letters to a spouse's employers, causing the arrest of a spouse without just cause, denial of sex to a partner, failing to cooperate in finding solution to the couple's inability to have children and verbal abuse have all been held to constitute behaviour which, coupled with the inability of the parties to reconcile can lead to a dissolution of the marriage. See the case of **Hapee v. Hapee & Anor** [1974] 2 GLR 186. Also, in the case of **Mensah v. Mensah** [1972] 2 GLR 198, the court held in its holding 3, that:

"In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Cassanova's Charter."

The petitioner testified that the marriage celebrated between herself and the respondent has broken down beyond reconciliation due to the unreasonable behaviour exhibited by the respondent in the course of the marriage. The petitioner complains of constant assault on her by the respondent and lack of affection in the marriage. The petitioner says that whilst living with the respondent, he was domineering and authoritative and treated her in a military style and resorted to constantly assaulting her to the extent that the respondent attempted to strangle her in her sleep and when she woke up, he told her that she was lucky.

The petitioner continued to testify that whilst pregnant with the first child, the respondent assaulted her and she went into coma and was rushed to the hospital. When she regained consciousness, she fell sick for over a month and whilst at the hospital, the doctor looking at her condition wrote a report to be sent to his employers but she pleaded with the doctor and the report was withheld. Again, prior to the delivery of their first child, the respondent asked his mother to come and live with them and take care of her and the child to enable her recuperate but she refused since she was not on good terms with the respondent's mother. The respondent also failed to name the child until after the child was nine months old and had a rushed naming ceremony to name the child. The respondent also failed to maintain her and the child and only came for them from her aunt's place when the child started walking. When they returned to the matrimonial home, their maintenance became a problem since the respondent reluctantly gives her housekeeping money.

Furthermore, once when she complained of tiredness and was not ready for sex, the respondent beat her and forcibly had sex with her and she had to bite him to free herself from the grips of the respondent. She hurriedly ran to report the respondent to his superiors and he was arrested and taken to the guardroom and brought back the following day. The petitioner further testified that the respondent accused her of stealing his uniform but when she later found it in his clothes and took a picture of it as evidence that she did not steal the uniform, the respondent assaulted her mercilessly. In support, she tendered in evidence Exhibit 'B' series, a police medical report form of an alleged assault and a medical report dated 6th January, 2021 with a diagnosis of soft tissue contusions. According to her testimony, the assault led to the swelling of her right arm and right eye and she tendered in evidence Exhibit 'C' series also pictures of the petitioner which according to her depicts swollen eye and bruises on the arm. The petitioner further testified that she

reported the assault at DOVVSU but they did not take the case seriously and only asked the respondent to pay her medical bills of GH¢500.00.

Additionally, the petitioner testified that the respondent's constant assaults and uncaring attitude towards her when she was pregnant led to miscarriages. She tendered in evidence pregnancy scan and lab reports dated in 2020 and 2021 and admitted and marked as **Exhibits 'D' series**, a pelvic ultrasound showing that she had incomplete miscarriage and also Exhibits **'E'** and **'F' series**, medical reports on ultrasounds and receipts of medical expenses.

The petitioner further states that the respondent spurned every opportunity for her uncle to settle the differences between the parties. When the families finally sat on the issue on 15th December, 2021, whilst she accepted to remain in the marriage on condition that the respondent stops assaulting her and maintain her adequately rather than the amount of GH¢800 he was giving as maintenance, the respondent indicated that he was no longer interested in the marriage. The petitioner says that due to the fear for her life, she has lost interest in the marriage and the treatment meted out to her by the respondent has caused her a lot of pains and suffering, emotional stress, trauma, anxiety and depression and that the blissful marriage she envisaged has broken down beyond reconciliation.

The petitioner, under cross-examination by the respondent, the following exchanges took places;

Q: You allege that I have beaten you. Is that so?

A: Yes my Lord.

Q: Can you tell the court the exact date?

A: My Lord, 21st October, 2020.

Q: Can you tell the court where exactly the incident happened?

A: It happened in the bedroom

Again, under intense cross-examination attacking the medical reports and the credibility of the petitioner on the assaults, the petitioner testified that the dates on the police medical form and the medical report showing that she was assaulted in 2021 was a mistake from the officer in charge and that she did not prepare the report. Again, the respondent challenged her that the medical reports and the scans do not suggest that the miscarriage was a result of assault on her to which the petitioner answered that what the doctors were treating was bleeding and that she did not talk about assault. Thus, the petitioner could not establish any causal link between the medical reports and the assault that she is alleging. Also, she gave the date of the alleged assault under cross-examination as 21st October, 2020 but the police report is dated 6th January 2022 and a medical report purportedly made the same day is dated 6th January, 2021, which casts a slur on the authenticity of the documents tendered by the petitioner. Again, under cross-examination, she gave inconsistent account on what resulted in the alleged assault on her by the respondent.

The respondent on his part testified that after the celebration of the marriage, the marriage was rosy and they were living happily. However, the petitioner was not content and makes unnecessary financial demands on him and his failure to provide led to a change in the attitude of the petitioner. The respondent further avers that the petitioner flares up uncontrollably at the least provocation. The petitioner reported him to DOVVSU at Ashaiman claiming that he had assaulted her and that she was no longer interested in the marriage which he denied. The petitioner again reported him to the Military Police office at Michel Camp on the same issue and was however

exonerated and cleared of all allegations of assault against him. The petitioner on her own volition wrote a letter to the unit commander at DOVVSU Ashaiman to withdraw the case made against him wholly. In support, the respondent tendered in evidence **Exhibit "1" and "2"**, the withdrawal letter filed by the petitioner at DOVSSU praying the officials to discontinue the case and stop any further action taken against the respondent. This contradicts the assertion of the petitioner that when she reported the case of assault, the DOVVSU officials did not treat the case seriously since it is rather the petitioner who in writing discontinued the case.

The respondent testified further that the petitioner is disrespectful, insolent, very rude and a recalcitrant who refused to cook for him though he gives housekeeping money. That the petitioner does not wash his clothes and denies him sex. Also, when he was away on a military assignment in the Eastern Region when the petitioner to his utmost surprise, deserted the matrimonial home with the two children to an unknown destination and whose whereabouts cannot be located till date.

The respondent testified further that the petitioner is very quarrelsome to the extent of fighting the wives of other military officers at Michel camp and to his family members who tried to resolve the differences in respect of the marriage. The petitioner has threatened him on several occasions during the course of the marriage to instigate his dismissal from the military to make his life unbearable and miserable but all her attempts fell on rocks. And that the petitioner has put up an inconsiderate behavior to the extent of taking photograph of his nakedness whilst in the bedroom and threatened to share the pictures on social media without his consent which resulted in a fierce struggle between the two of them in a desperate attempt to collect the phone from her to delete the offensive photo.

The respondent continued to testify that on one occasion he could not find one of his military uniforms and upon diligent search for several weeks he strongly suspected the petitioner as the one who might have taken it to use it for either ritual purpose. Upon persistent pressure on the petitioner, she then claimed to have found the missing military uniform in the house when he had travelled which assertion came to him as a surprise. The respondent also, in his evidence makes these allegations of unreasonable behaviour which are challenged without proof.

The totality of the evidence led by the parties shows that the matrimonial history has been action-packed leading to deep cracks in the otherwise cordial relationship. The marital relationship has been marred by allegations and counter allegations of unreasonable behaviour which led to reports being made at DOVVSU, the military police and reports being made with other family members for their intervention. The happenings in the marriage also caused the petitioner to leave the matrimonial home with the children and she has since not returned. Though the petitioner could not establish the assaults based on the contradictory documentary evidence on record, the fact remains that the marriage between the parties has been hostile and there is no possibility of the parties living together as husband and wife harmoniously. When the court adjourned proceedings for the parties to attempt settlement at the Court Connected ADR, they were not able to reconcile their differences to resume cohabitation as husband and wife. On the totality of the evidence led by the parties, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition for divorce and decree for the dissolution of the marriage celebrated between the parties.

ISSUE 2: Whether or not the petitioner or the respondent is entitled to custody of the children of the marriage.

Under **section 22(2)** of the Matrimonial Causes Act, 1971 (Act 367), a court in any proceedings under the Act, on its own motion or an application by a party, may make an order concerning an award of custody of a child to any person, regulate the right of access of any person to the child, provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage. The Act however does not enumerate the factors a court must consider in awarding custody or access to a child. The Children's Act, 1998 (Act 560), provides useful guidance. The primary consideration is the welfare of the child as stated in **Section 2** of Act 560. Under **Section 45(1)**, a family tribunal making a custody order shall consider the best interests of the child, and the importance of a young child being with the mother when making an order for custody and access to a child. Among the factors to consider are; the age of the child, the importance of a child to be with the parents unless the child is persistently abused, the need for continuity in the care and control of the child, the views of the child if independently given, the need to keep siblings together, and any other relevant matter. In the case of **Opoku-Owusu v. Opoku-Owusu** (1973) 2 GLR 349, the Court held @ page 354 as follow: *"In such an application the paramount consideration is the welfare of the children. The court's duty is to protect the children irrespective of the wishes of the parents..."*

Thus, in the case of **Gray. v. Gray** [1971] 1 GLR 422, the consideration of the court in awarding custody was the welfare of the children and the effect a change in environment will have on their progress in school as well as the emotional balance of the children. In the case of **Beckley v. Beckley and Anor** [1974] 1 GLR 393-403, where the Court, held in its holding 1 as follows:

“in exercising power under section 16 of Act 372 the welfare of the child should be the primary consideration of the court in custody actions. Although a child of tender years should have been looked after by his mother there were circumstances which militated against granting her custody such as the fact that she was a stranger and had not established that her place of habitation was a fit one for bringing up an infant. Also, it was a possibility that the child would be cared for by an irresponsible maid when the wife was working. When the husband was away working, the child would be cared for by its paternal grandmother who was found to be a fit and proper person. Since the child had settled into that household it would have been injurious to his welfare to have taken him from it”

The petitioner prays the court to grant her custody of the two children of the marriage. The petitioner in her reply to the answer to the petition and the cross-petition evidence before the court states that custody of the children should not be granted to the respondent since the children are minors and the respondent as a military officer can travel anytime when duty calls and the children, under such circumstances cannot live on their own. The petitioner further testified that their first child, Jerome requires frequent medical attention due to his medical condition which the respondent is not able to provide. She testified that the children are still in the barracks school and their school bus picks them each day from their house to school and back without challenges. The respondent who also cross-petitioned did not lead evidence on his reason for praying the court for custody of the children of the marriage. The children have been in the care and control of the petitioner since they left the matrimonial home. The respondent is a military officer and the petitioner is a trader and as such, the petitioner is in a better position to provide a stable home for the children with the support of the respondent. Therefore, having regard to the ages of the children, the need to keep siblings together and the need to ensure continuity in the care and control of the children, I will award

custody of the two children of the marriage namely; Jeremy Nutifafa Dzikunu age 8 years and Jesse Selikem Dzikunu age 5 years to the petitioner with reasonable access to the respondent. The children shall spend weekends with the respondent every fortnight from Friday after school to 4:00pm on Sunday. The children shall also spend half of their vacation period with the respondent.

ISSUE 3: Whether or not the petitioner is entitled to an award of GH¢1,000 for the upkeep of the two children of the marriage.

It is trite learning that a person entitled to custody of children is also entitled to the award of maintenance allowance for the upkeep of the children. The petitioner prays the court to award an amount of GH¢1,000 as monthly maintenance allowance for the two children and a further order for the respondent to be responsible for the educational and health needs of the two children.

It is a settled law that it is the joint responsibility of both parents to maintain the children and provide nurturing care for them. This principle was given judicial blessings in case of **Donkor v. Ankrah** [2003-2005] 2 GLR 125, 140-141, where the Court underscored the need for parents to jointly contribute towards the maintenance of their children in the following terms:

“Where both parents of a child are earning 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: see section 47(1) & (2) of the Children’s Act 1998(Act 560). Once the plaintiff is also reputed to be working, she must also take part of the responsibility of the child’s maintenance”.

In my considered opinion the duty of parents towards their children is not only legal but also sacred. This duty continues even with the dissolution of

the marriage. **Section 22(3)(c)** of Act 367, which grants the courts power to award maintenance and provide for the education of a child out of the income or property of either or both parties, does not enumerate the factors the court must take into consideration. **Section 49** of the Children's Act, 1996 (Act 560), provides some useful guidance on the factors to consider when making an order for the maintenance of a child. The primary consideration is the welfare of the child and the following factors: the income and wealth of both parents of the child or of the person legally liable to maintain the child, any impairment of the earning capacity of the person who has a duty to maintain the child, the financial responsibility of the person with respect to the maintenance of other children, cost of living in the area where the child is resident, the rights of the child under this Act, and any other matter the court considers just.

The parties in the instant case have not led evidence on their respective incomes but the unchallenged evidence on record shows that the petitioner was formerly employed as a banker and currently works with the Kpone Katamanso District Assembly and is also a trader and the respondent is a military officer with the Ghana Armed Forces. Apart from the two children of the marriage, on record, there is no other child that the parties are legally liable to maintain. The parties have also not led evidence on any impairment in their earning capacity which is a clear indication that they are both in a position to contribute financially towards the upkeep of the two children of the marriage. The petitioner under cross-examination by the respondent conceded that it is the respondent who is responsible for paying the school fees, extra classes fees, bus fares and feeding fees for the kids in school. Having regard to the cost of living within Tema metropolis where the children reside, and the rights of the children to be adequately maintained, I

will award an amount of One Thousand Ghana Cedis (GH¢1,000) as monthly maintenance allowance for the upkeep of the two children. This amount shall be paid by the respondent to the petitioner's mobile money account by the 30th day of each month effective 30th August, 2023. The amount shall be increased by 10% every year to cater for inflation. The petitioner shall be responsible for the clothing needs of the two children and snacks for school.

Additionally, the respondent shall rent a two-bedroom accommodation for the petitioner and the two children of the marriage within two months from the date of this judgment. The order to rent accommodation terminates upon the remarriage of the petitioner or upon the children attaining the age of majority, whichever occurs first.

ISSUE 4: Whether or not the petitioner is entitled to 50% of all properties acquired during the subsistence of the marriage.

Article 22 (3) (b) of the 1992 Constitution provides that:

"Assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage".

In the case of **Arthur (No 1) v. Arthur (No.1)** [2013-2014] 1 SCGLR 543 it was held in holding 3 as follows;

"...Property acquired by the spouses during the marriage was presumed to be marital property. Thus, marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition."

Additionally, the Supreme Court in the **Peter Adjei v. Margaret Adjei** (unreported) [Suit No. J4 06/ 2021] delivered on 21st day of April, 2021, the

Court per Appau, JSC (as he then was) reiterated the position of the law on the presumption of joint ownership when His Lordship stated at page 10 as follows:

"...any property that is acquired during the subsistence of the marriage, be it customary or under English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on equality is equity principle. This presumption of joint ownership is, however, rebuttable upon evidence to the contrary... What this means in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a "jointly-acquired" property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial to have been jointly acquired, irrespective of whether there was direct, pecuniary or substantial contribution from both spouses in the acquisition."

Therefore, in a marital relationship, the parties reserve their constitutional right to acquire properties individually and marriage per se does not give spouses unwarranted access and share in properties acquired by the other spouse through their individual sweat and efforts. The onus is thus on the petitioner in this case who is claiming 50% share in all properties acquired during the subsistence of the marriage to first lead cogent and admissible evidence to establish that the property in dispute was jointly acquired during the subsistence of the marriage particularly when the claim is denied as in the instant case. In the case of **Tetteh v. T Chandiram & Co Gh. Ltd & Others** [2017-2020] 2 SCGLR 770, the Supreme Court affirmed the good old principle on what constitutes proof of an averment when it held in its holding 2 that where a party alleged a claim but was denied, it was the duty of that party to adduce credible evidence to prove the claim and not merely mount the

witness box and repeat her pleadings especially when the claim was capable of positive proof.

Here, the petitioner in her petition for divorce claims a 50% share of all properties acquired during the pendency of the marriage without disclosing the properties which she claims joint ownership to. The respondent in his answer to the petition states that prior to the marriage to the petitioner, he jointly acquired a piece of land jointly with his twin sister by name Ernestina Dzikunu. Also, there is a trotro bus which has broken down and at a mechanic shop and that there is no marital property to be shared by the parties. The petitioner in reply denies that the respondent acquired the land as a family property as she was living with him in 2011 and they paid for the land on 29th January, 2013 together with cement blocks. That she accompanied him to pay the block maker and she was the one cooking for the workmen from one Togbe from Dzodze as their foreman.

The petitioner testified that during the course of the marriage, they acquired a house at Gbetsile and the respondent has also bought a bus. According to her testimony, they bought a plot of land on 29th January, 2013 and also bought blocks on 11th February, 2013 and contracted one Togbe from Dzodze to construct a building on the land. According to her testimony, she was cooking for the workmen for whenever she was available during the construction of the building.

The respondent on his part testified that in the year 2010, he bought a piece of land at the cost Five Thousand Ghana Cedis (GH¢5,000) with his twin sister called Ernestina Dzikunu in their joint names when she was staying with him in Michel camp and the said land is situate at Gbetsile within the Kpone Katamanso District. That the said land was bought before he married the

petitioner in the year 2011 and therefore cannot be considered a marital property. The respondent further testified that during the pendency of the marriage he bought a trotro bus which had broken down beyond repairs and at the mechanic shop and contends that there is no marital property available to be shared in case of divorce. The respondent tendered in evidence **Exhibit "3"**, the site plan on the property dated 08th August, 2010 and **Exhibit "4"**, the receipt of payment of the land in the joint names of Ernest Dzikunu and Ernestina Dzikunu for an amount of GH¢5,000 as payment of full plot of land at Gbestile.

From the evidence led by the parties, the petitioner who alleges that they acquired properties during the subsistence of the marriage failed to give particulars of the properties. From the site plan and the receipts tendered by the respondent, the property was acquired in the year 2010. The receipts tendered by the petitioner as **Exhibit "G"** is also in the name of the respondent as having purchased a plot of land and blocks in the year 2013. The onus is therefore on the petitioner to show that the identity of the property she claims is the same as in the land tendered by her. Also, although the petitioner claims to have contributed in kind towards the construction of a building, there is no evidence of where the building is located, the number of rooms and the stage that the building has reached. The workers that she allegedly cooked for were not called to give evidence and during cross-examination, she failed to cross-examine on the issue of the property. I therefore hold that the petitioner failed to prove her claim that she jointly acquired a land with a house on it with the respondent.

The petitioner in her petition did not mention a car as one of the properties acquired but the respondent in answer stated that he acquired a bus for commercial purposes but it has broken down. During the trial, the respondent

filed a motion on notice for leave of the court to dispose off an unserviceable Hyundai Grace Vehicle with registration No. GR 2596-10 which was opposed by the petitioner and the court denied the application since the property was in issue in the case. I therefore declare the Hyundai Grace Vehicle with registration number GR 2596-10 to have been jointly acquired by the parties which must be valued, sold and the proceeds shared between the parties.

ISSUE 5: Whether or not the petitioner is entitled to an amount of GH¢50,000 and the respondent is also entitled to an amount of GH¢70,000 as financial provision.

Section 20(1) of the Act 367 in the following terms;

"The court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the court thinks just and equitable."

From the law, financial provision upon the dissolution of a marriage is not the exclusive preserve of women and that, the court, may, if the justice of the case demand, award financial provision for either the man or the woman. In the case of **Barake v. Barake** [1993-1994] I G.L.R 635 at page 666, where Brobbey J (as he then was) stated:

"On such an application, the court examines the needs of the parties and makes reasonable provision for their satisfaction out of the money, goods or immovable property of his or her spouse."

The award of lump sum financial provision under Act 367 is therefore need based and it is not intended to enrich one spouse at the expense of another or punish the one who is to be blamed for the breakdown of the marriage. In the case of **Obeng v. Obeng** [2013] 63 GMJ 158, the Court of Appeal held that

what is "just and equitable" may be determined by considering the following factors: the income, earning capacity, property, and other financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage; the age of each party to the marriage and the duration of the marriage."

The petitioner testified further that she was formally a Banker but now a petty Trader whilst the respondent is a Military Officer. The respondent on his part testified that he is a military officer with the Ghana Armed Forces stationed at Michel Camp, Tema and described the petitioner as a banker and currently an employee of Kpone Katamanso District Assembly and a trader. The respondent further testified that he sponsored the education of the petitioner at the Accra Polytechnic and also assisted her financially in setting up her boutique which the petitioner vehemently denied. The petitioner did not give a solid basis for the claim of financial provision and the respondent has also not made out a case for the award of financial provision in his favour. The parties are relatively young and the prospects of the parties finding love and remarrying is high. The parties also have some working years ahead and they have not afforded the court the opportunity to compare their earning capacities and the specific needs to assist the court to arrive at a fair and just determination. I therefore dismiss the petition for financial provision and the cross-petition for financial provision.

CONCLUSION

In conclusion, I hold that the marriage celebrated between the petitioner and the respondent has broken down beyond reconciliation. I accordingly grant the petition and the cross-petition for divorce and enter judgment in the following terms.

1. I hereby grant a decree for the dissolution of the ordinance marriage celebrated between the petitioner and the respondent on 24th September, 2011 at the Open Fountain Bible Church at Golf City, Tema.
2. The parties shall present the original copy of the marriage certificate number *TMA 0006770* for cancellation by the Registrar of the Court.
3. I hereby award custody of the two children of the marriage namely; namely Jeremy Nutifafa Dzikunu aged 8 years and Jesse Selikem Dzikunu aged 5 years to the petitioner with reasonable access to the respondent. The children shall spend weekends with the respondent every fortnight from Fridays after school to 4:00pm on Sundays. The children shall also spend half of their vacation period with the respondent.
4. The respondent shall rent a two-bedroom accommodation for the petitioner and the two children of the marriage within two months from the date of this judgment. The order to rent accommodation terminates upon the remarriage of the petitioner or upon the children attaining the age of majority, whichever occurs first.
5. An amount of One Thousand Ghana Cedis (GH¢1,000) is awarded as monthly maintenance allowance for the upkeep of the two children. This amount shall be paid to the petitioner's mobile money account by the 30th day of each month effective 30th August, 2023. This amount shall be increased by 10% every year to cater for inflation. The petitioner shall be responsible for the clothing needs of the two children and snacks for school.
6. The claim of 50% share of a land at Gbetsile is dismissed.
7. I hereby declare the Hyundai Grace Vehicle with registration number *GR 2596-10* to have been jointly acquired by the parties. The vehicle shall be valued, sold and the proceeds shared between the parties equally.

8. The claim of financial provision by both parties is dismissed.
9. No order as to costs.

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