

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 23RD MARCH, 2023

SUIT NO. C5/11/21

ELIZABETH NARH - PETITIONER

VRS

CEPHAS KOFI SAM - RESPONDENT

JUDGMENT

A decade after the celebration of their marriage under the ordinance at the Tema Municipal Assembly on the 8th of October, 2010, the petitioner herein presented the instant petition for the dissolution of their marriage on the grounds that same has broken down beyond reconciliation due to the unreasonable behavior of the respondent.

She prayed the court for the following reliefs;

- a) Dissolution of the ordinance marriage between the parties
- b) Custody of the issues of the marriage be granted to the petitioner with reasonable access to the respondent
- c) An order for the respondent to maintain the issues of the marriage with a monthly allowance of two thousand Ghana cedis (Ghs 2,000)
- d) An order for the respondent to pay for the school fees and medical bills of the issues when it falls due
- e) A declaration that all properties acquired during the subsistence of the marriage be shared equally and equitably among the parties

- f) Lump sum financial settlement of fifty thousand Ghana cedis (Ghs 50,000)
- g) Any order(s) as the Honourable Court may deem fit.

The respondent filed an answer and averred that the marriage has broken down beyond reconciliation due to the actions of the petitioner as she commits adultery and brings the men home. He prayed the court to grant custody of the issues to him since he can take better care of them.

The petitioner filed a reply and denied the claims of the respondent.

The issues for the court to determine are;

1. *Whether or not the marriage has broken down beyond reconciliation.*
2. *Whether or not custody of the three issues of the marriage should be granted to the petitioner or to the respondent*
3. *Whether or not the respondent should be ordered to pay the the school fees and medical bills, accommodation and also provide a monthly maintenance of two thousand Ghana cedis (Ghs 2,000) for the children of the marriage.*
4. *Whether or not the parties acquired any marital properties which should be shared equitably amongst them.*
5. *Whether or not the respondent should be ordered to pay to the petitioner Ghs 50,000 as alimony.*

THE CASE OF THE PETITIONER

In her evidence in chief, petitioner said she and respondent had three (3) issues after their marriage aged between ten (10) and five (5) years. That prior to their marriage, she

travelled to the UK for three years and sent down moneys to the respondent for the purposes of building their intended matrimonial home. That she also gave him money to buy a commercial vehicle which he used as a driver.

That after their marriage, the respondent has behaved unreasonably by subjecting her to physical and verbal abuse on many occasions. That she has had to report this to the Klagon police. That respondent refuses to eat food which she cooks with the claim that he had a dream that she had poisoned him.

Also that the respondent disrespects her publicly and also accuses her of committing adultery with every man who comes close to her including her pastors and the police men at the station where she reported his physical assaults on her to.

Further that when she became pregnant with their second child, respondent insisted that she aborts the foetus and when she refused, he refused to name the child when she was born. That respondent also denied paternity of the third child. On a number of occasions, he had packed her things out of the matrimonial home and demanded that she leaves the matrimonial home.

That respondent is adulterous and has had numerous relationships in the course of the marriage. That due to that, he denies her sex and when she requests for same, he reprimands her publicly. That he also abuses her sexually and she has had to report him to the police on a number of occasions. That he also sometimes verbally abuses the issues of the marriage.

She testified further that in the course of their marriage, they acquired a five bedroom house with five store rooms at Klagon, a two bedroom house at Kasoa, and a taxi cab

with registration number GE 2570W. That she contributed financially in acquiring these properties and also supervised and assisted the workers in the construction of the building.

That the respondent currently rents out bedrooms and stores and keeps all the proceeds. That he is in charge of all the family properties and proceeds from the taxi and can pay her the lump sum.

She finally said that all attempts by family elders to reconcile them has failed as the respondent keeps accusing her of flirting with family members.

THE CASE OF THE RESPONDENT

Respondent in his evidence in chief said it is the petitioner who has committed adultery with many pastors and even a policeman. That she does not sleep home and goes out at will to be with these men whom she sometimes cooks for.

He admitted that he denied paternity of the third (3) issue and said it is because the petitioner was having an affair with a pastor and only tricked him into having sexual intercourse with her three (3) days before announcing the pregnancy to him.

That prior to their marriage, it was through him that she went to the United Kingdom but their relationship became strained when petitioner began having an affair with a pastor. However, upon the return of the petitioner to Ghana and after several pleas from her and his father, he decided to marry her.

That he acquired the land at Klagon and had built three shops on same prior to the petitioner's return from the UK. That he sold building materials in the shops which he

gave to the petitioner to manage whilst he managed another shop of his at Kotobabi. That petitioner was always short of the sales made in the shop and also pilfered from him when he brought money home from his store.

That it was during this period that he decided to build the matrimonial home on the Klagon land. He denied committing adultery and said it was only once that he had to bring a baby whom he had fathered with another woman prior to his marriage to the respondent to the house.

That petitioner commits adultery and even cooks for the men. He tendered in evidence EXHIBIT 1 as a photograph of some of these meals. That whenever he confronts her, it turns into an altercation. He stopped eating any food that the petitioner cooks after he dreamt that she had poisoned him.

Further that he has heard the petitioner in various conversations with people bordering on adultery. That petitioner has indicated that she would no longer marry him and has taken off her ring. That she invoked curses on him when he asked her to leave the matrimonial home. He tendered a photograph of the said curse together with other spiritualities in evidence as EXHIBIT 2,3,and 4.

That the petitioner left the bedroom on her own accord to go and stay in the children's room. That the house at Kasoa belongs to his father and the house at Klagon was at its roofing stage before the petitioner became aware of its existence. That even though the petitioner assisted him with money upon her return from the UK, it was only four thousand Ghana cedis (Ghs 4,000) and he has since sold the taxi to pay her off.

That he is currently unemployed and cannot pay her the lump sum. With regard to the custody, he contended that custody of the three issues be granted to him rather than 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 v. Agbenu [2015] 91 G.M.J.*

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

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

Petitioner's basis for arriving at the conclusion that their marriage has broken down beyond reconciliation is unreasonable behavior. As the respondent 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."

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

Although the petitioner asserted, the respondent made a cross petition and so they both bore the burden of proving their respective claims. See the case of *Gregory v. Tandoh IV & Hanson [2010] SCGLR 971*.

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 she cannot be expected to continue to live with him as husband and wife.

Act 367 does not define what constitutes unreasonable behaviour. By virtue of the varied nature of mankind character and sensibilities, it may very well prove a herculean task if an attempt is made to set in stone what acts constitute unreasonable behaviour. However, the test that is used is whether or not the act committed by one spouse is such that all right thinking men would hold that the act is unfair and unjust and the spouse who has been so offended, cannot be expected to continue to live with the other as husband and wife.

In determining what constitutes unreasonable behavior, the test to be applied is an objective one. Hayfron Benjamin J (as he then was) held in the case of *Mensah v. Mensah* [1972] 2 G.L.R. 198 that “In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him, the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for *Act 367* is not a Cassanova's Charter. The test is objective”.

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

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

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

The petitioner's basis for claiming that the respondent has behaved unreasonably is that he accuses her of committing adultery with every man he sees her with. That he assaults her both physically, sexually and verbally and she had made numerous reports to the police at Klagon where they lived together.

Further that he refuses to eat any food that prepares on the basis that he had a dream in which she had poisoned him. That he also packed her personal belongings and asked her to leave the matrimonial home. That he also verbally abuses the children.

She also testified that the respondent commits adultery with several women and even brings some of them into the matrimonial home. That he also denied the paternity of their second and third children and refused to name them when she delivered. That she

had to organize the naming ceremony for the two issues with the father of the petitioner and petitioner refused to attend same.

Although the petitioner did not provide any documentary evidence in proof of her claim that she had made several complaints concerning the respondent's physical and sexual assaults on her to the Klagon police station, the respondent himself admits these reports in his evidence. His admission is sufficient proof and the petitioner need not call any other form of evidence in proof of her claim.

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

The respondent also admits verbal abuse on the petitioner although he appears to justify it on the basis that she had committed adultery with several men notable among whom are a policeman and a pastor.

Again, the respondent admits that he has refused to eat any food prepared by the petitioner. His evidence is that he dreamt that she had poisoned him. Under cross examination, he answered that he had not only dreamt it, but petitioner had gone ahead to poison him physically.

That although he made a complaint to the Klagon police station, by virtue of the fact that the petitioner is having an affair with one of the policemen at that station, the police did not take his complaint seriously. He did not tender in any medical report or

records indicating that he had been poisoned although he said he first went to the hospital before going to the police station.

The respondent denied committing adultery and said it was only once that he had to go and bring in a child of his who was then a baby to the matrimonial home in the absence of the petitioner after that child's mother abandoned the child and the said mother later on in the day came for the child.

Respondent in proof of his claim that the petitioner was committing adultery tendered in evidence EXHIBIT 2 series and EXHIBIT 4. According to him, it is evidence of meals that the petitioner cooked for her boyfriends and also of groceries that she returned home with after one of her nights out with her numerous boyfriends.

His evidence is that the petitioner committed adultery with a pastor whose whilst she was abroad and even though the two of them broke up, the petitioner upon her return to the country in 2010 came to plead with him for forgiveness and he had to abandon his then girlfriend who was pregnant for him and marry the petitioner.

That although petitioner had exhibited infidelity in the course of their courtship, he was hoping that she would change after marriage. She however did not change and had several affairs in the course of their marriage one of which resulted in she committing an abortion and leaving the foetus in their dustbin for him to see.

He also testified of seeing the petitioner in the vehicle of one of her boyfriends who is a policeman, following the petitioner to a hotel in which she had entered with a man as well as having a pastor's wife come to their house to take away a popcorn machine because the petitioner was having an affair with the said pastor.

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

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

Unlike the petitioner’s claims which were mostly admitted by the respondent, the petitioner denied the claims of respondent and he did not provide any proof. His EXHIBIT 2 series and EXHIBIT 4 is not dated and as learned counsel for the petitioner put it to him under cross examination, there is no indication that these were meals cooked for anyone. There is no indication that it is even the petitioner who cooked same.

Again, even though the respondent had claimed in his evidence in chief that they were meals cooked for a pastor boyfriend of the petitioner, under cross examination, he had claimed that it was rather for the policeman boyfriend of the petitioner. When his inconsistency was pointed out to him by learned counsel for the petitioner, he had then sought to explain it away by saying she cooks for both the policeman and the pastor.

Again, although he tried to offer an explanation as to how a woman and a baby had ended up in his matrimonial home in the absence of the petitioner, his explanation is

confusing at best and a clear afterthought at its worst. How would a mother abandon a child at home and when he is informed, even though he had the said mother's number, he never called her until he went for the baby, came home with the baby and later on in the day called the very mother who had abandoned the baby for her to now turn around and come to his house in the night, spend the night with him and then leave with the baby the next day?

Also, although the respondent denies that he and the petitioner were dating whilst she was in the UK and she had returned to Ghana for their marriage, his explanation appears quite fanciful. He wants the court to believe that even though he and the petitioner had broken up and he was not only dating but had impregnated another lady, he decided to leave that lady merely because the petitioner came to plead for forgiveness and despite his misgivings about her relationship with other men, he had gone ahead to marry her in the same year that she returned from the UK.

I do not believe his explanation because it is not reasonable. The respondent gave an account of himself as someone who was out to throw dust into the eyes of this court. He appeared to be making up stories along the way with a sole aim to tarnish the image of the petitioner without any proof.

It is trite learning that bare assertions repeated on oath does not constitute evidence. See the case of *Fordjor v. Kaakyire* [2015] 85 G.M.J 61 @ 93 where the Supreme Court held that *"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."*

Whereas the petitioner had given a good account of herself under cross examination by answering questions in a straightforward manner, the respondent had sought to give long winding answers and was unnecessarily vituperative. He was also evasive and appeared to consider every question as an opportunity to regurgitate his claims about the adulterous nature of the petitioner.

I find after my enquiry that the cumulative effect of the respondent's behavior is unreasonable. To not only accuse your wife incessantly of infidelity without any proof but to refuse to name two of your children without reasonable cause and refuse to be present at their naming ceremony even though your father is present is sufficient on its own for anyone to successfully mount a claim of unreasonable behavior.

For the respondent to further assault the petitioner both physically and verbally and refuse to eat food she cooks based on a dream, to accuse not only her but their children of poisoning his food without any proof, bring in unknown women to the matrimonial home and also drive the petitioner out of the matrimonial home would be considered unreasonable by the ordinarily reasonable man. The cumulative effect of respondent's actions are such that the petitioner cannot be expected to continue to live with him as husband and wife.

I find that the marriage between the parties has broken down beyond reconciliation due to the unreasonable behavior of the respondent. I hereby issue a decree of dissolution in respect of their marriage celebrated between them on the 8th day of October, 2010 at the Tema Municipal Assembly. Their marriage certificate is accordingly cancelled. The registrar is to notify the registrar of marriages at the Tema Municipal Assembly of the cancellation to enable them amend their records.

2. *Whether or not custody of the three issues of the marriage should be granted to the petitioner or to the respondent.*

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.

There are three (3) issues of the marriage who are all female. As at July, 2021 when the petitioner filed her witness statement, they were between the ages of ten (10) and five (5). They currently live with the petitioner at Kasoa and are in school at Kasoa as evidenced by EXHIBIT 1.

Both parties are seeking for custody. The basis of the respondent's claim is that the petitioner cannot take care of the children as she does not have time for them. I do not find his claim to be supported by the evidence.

The children have been with the petitioner alone even before the filing of this petition. In the course of proceedings and in his evidence in chief, the respondent does not even allege neglect of the said children on the part of the petitioner.

Petitioner under cross examination led evidence of the respondent's constant verbal abuse of the children particularly the eldest one to the extent that he calls her a witch and the child prefers walking to school rather than have the respondent who drops off other children in the same school in his capacity as a driver, drop her off.

Petitioner also testified of how the respondent would pick up other children from the said school as a driver but not pick up his own children. I believe her evidence because the respondent in this court has shown himself to be a person of very little restraint. He admitted verbally abusing the petitioner and the manner in which he carried himself out in court coupled with his admission of not naming the second and third children, hardly put him across as a fit father. He appears to associate the children and engulf them in whatever issues he has with the petitioner.

The children are all female and at their ages, it is best that they live with their biological mother. Again, before and throughout these proceedings, they have lived with their mother and have settled into a life at Kasoa as they are in school. They are used to the care, control and attention of the petitioner and I find no reason why she is not fit to continue providing them with that care. As all three (3) children live together with the petitioner and it is best to keep siblings together, I find that it would be best not to interfere with their current situation.

Accordingly, custody of the issues is granted to the petitioner. The respondent has reasonable access to visit the children during weekends and school holidays subject to his notifying the petitioner of his intended visit.

3. Whether or not the respondent should be ordered to pay the the school fees and medical bills, accommodation and also provide a monthly maintenance of Ghs 2,000 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 decision 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 necessities of health and life; shelter by means of accommodation, food, clothing, education and medical care being the basic needs of every child.

The petitioner is a seamstress and even though the respondent contends that he is currently unemployed, he admitted under cross examination that he is employed. At page 53 of the record of proceedings, he had answered;

Q: And you are currently into tailoring business. Correct?

A: Yes.

Q: You in fact, have a well-structured shop with modern machines for your business.

A: Yes, please.

Despite the fact that he is employed and the evidence on record also shows that he earns an income from some shops sited in front of the matrimonial home and also works as a driver, he has refused to maintain the children even upon the orders of this court. At page 52 and 53 of the record of proceedings, under cross examination, he had answered;

Q: You know also that the maintenance of the children go beyond just food.

A: Yes, please.

Q: It includes the provision of clothing, bathing materials, assisting them to bath, washing their clothes and others. Correct?

A: Yes, please.

Q: And you have left all of these on the petitioner.

A: Yes, please.

Q: I put it to you that you have refused to cater for your own children even upon the orders of this court.

A: That is not so.

This is despite the fact that he had admitted earlier on at page 51 of the record of proceedings that;

Q: How much were you ordered by the court to make available monthly for the maintenance of the children?

A: My Lady, GHC 1,000 and I said I was unemployed.

Q: Since the order was made, have you in a single month complied with the orders of the court?

A: No my lady.

It appears that the respondent is unwilling to provide for the children not because he does not have the means, but because he has embroiled them in his issues with the petitioner and appears to have little or no affection towards them. He has blunted sense of obligation to them as a father.

The duty to maintain children is not based on one's affection towards them or their mother. It is based on the fact that one fathered and mothered the children. As the respondent is the father of the issues, he has a legal duty to maintain them. I hereby order that he pays all arrears of maintenance on or before the 31st of March, 2023. Failure of which the amount would attract interest at 30% from the date of judgment till the date of final payment.

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

1. The respondent is to pay an amount of two thousand Ghana cedis (Ghs 2,000) each month commencing from the last working day of April 2023 towards the

maintenance of the children (the onw thousand Ghana cedis (Ghs 1,000) would remain for March,2023)

2. He is also to provide for the school fees, books and all other school related bills of the children
3. The respondent is to bear all medical bills in relation to the children
4. The petitioner is to provide for the clothing needs of the children.
5. She is also to pay all utility bills and other related bills in respect of the home
6. Any other ancillary needs of the children are to be borne equally by the parties.

I would deal with the issue of accommodation when resolving the issue of marital property.

4. Whether or not the parties acquired any marital properties which should be shared equitably amongst them.

The claim of petitioner is that in the course of their marriage, they acquired a five bedroom house with five stores thereon at klagon, a two bedroom house at Kasoa and a taxi cab. Her evidence is that she contributed to the acquisition of these properties both financially and by her deeds of cooking for the workers during the construction of the house.

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

The law as espoused by the Supreme Court in reliance on Article 22 of the 1992 Constitution is that any property acquired by spouses during the course of their marriage is to be presumed (rebuttably) to be jointly acquired. In other words, property acquired by the spouses during marriage is presumed to be marital property unless contrary evidence is led. See the case of *Arthur (No 1 vrs. Arthur No 1)* [2013-2014] *SCGLR 543, Vol. 1* which re-affirmed the decision in the oft cited case of *Gladys Mensah v. Stephen Mensah* [2012] 1 *SCGLR 391* in which the veritable Dotse JSC in delivering the judgment of the court, gave effect to the provision in Article 22 of the Constitution, 1992.

The principle to be applied in the distribution of marital property is that of equality is equity. See the majority decision in the Supreme Court case 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”.

Under cross examination by the respondent at page 14 of the record of proceedings, the petitioner had in her answer provided evidence of facts, circumstances and names from which the court could safely infer the existence of her claim. For instance, she had answered;

Q: *Your claim that we jointly acquired lands in Kasoa and Klagon is not true.*

A: *My Lord, please, we acquired it jointly. With the Kasoa land, respondent himself would bear me out that I was the one keeping the money. We would save and*

then when we get GHC50,000 he would take it from me and hand it to the chief of Kasoa. It was two plots but we lost one. At the time, one of the plots was 45 Million Cedis and the other was 6 Million Cedis. We lost one of them. We jointly acquired the land at Klagon and it was one aunty Lydia who first purchased it for us. The 1st land, that she bought for us, we lost it and so a new plot was reallocated to her and that is where we currently live. We had to pay twice for it.

Her answers under cross examination were replete with evidence of facts, circumstances and events which led me to believe her claim on a balance of probabilities. Again, she had been able to explain the source of income for the purchase of the lands and the building of the homes as being money which she and the respondent saved when they were together before she travelled abroad and monies which she sent to him by way of remittances when she was in the UK.

The respondent disputes the claims of the petitioner and testifies that he acquired the klagon house and stores on his own without any form of contribution from the petitioner and also that the house at Klagon belongs to his father and not to him.

Although the respondent at paragraph 53 of his evidence in chief had claimed that the property at Kasoa belongs to his father, he gave himself up when at page 16 of the record of proceedings, in cross examining petitioner, he had asked her;

Q: I suggest to you that I acquired the Klagon land in the year 2000 and the Kasoa one in 2005.

A: It is not correct. I recall that the respondent took me to the chief of Klagon and asked that the documentation on the land be changed.

Per his own line of cross examination, his claim that the property at Kasoa is for his father is not the truth.

On the Klagon property, the evidence of the respondent is that he acquired the land and built the stores even before he got married to the petitioner. However, it was in the course of the marriage that he decided to construct the matrimonial home on the land as the petitioner was pilfering from him. That he was selling building materials at the time.

He tendered in evidence EXHIBIT 7 and 8 as proof of his purchase of the said land at Klagon and explained that the land was purchased for him by his non biological mother called Aunty Lydia. That they lost the first land and had to be reallocated a different one. EXHIBIT 7 is dated the 26th day of September, 2000. It is a handwritten receipt from one Emmanuel Osabutey indicating receipt of an amount of money from Mrs. Lydia for part payment of a piece of land at Klagon. The amount paid is twenty thousand Ghana cedis (Ghs 20,000) and the remaining balance is fifty five thousand Ghana cedis (Ghs 55,000).

EXHIBIT 8 is dated 11th October, 2002 and is also a receipt from the same person to Mrs. Lydia Arthur. The amount paid is seventy thousand Ghana cedis (Ghs 70,000) with a remaining balance of five thousand Ghana cedis (Ghs 5,000). The petitioner had also testified that it was the very same Lydia who had fronted for them for the Klagon land.

I believe the claim of the petitioner that they met in 2002 through work and had since then worked and saved moneys together. That means that even though the process of acquiring the land began in the year 2000, the respondent through the said Lydia Marfo

had paid the consideration in instalments such that even as at October, 2002, there was still a balance of five thousand Ghana cedis (Ghs 5,000) to be paid.

Although the parties were not married, I find that they jointly acquired the lands together. I believe the evidence of the petitioner that whilst she was in the UK, she remitted the respondent severally for the building on the land because they were preparing towards their marriage which was celebrated in the same year she returned to Ghana.

They both admit that they lived at Adjei Kojo after their marriage before building and moving to the matrimonial at Klagon. The respondent had tried unsuccessfully to paint a picture of the petitioner to be a wife who was pilfering from him and who did not contribute a penny to the construction of the house. This is despite his own admission that the petitioner had given him four thousand Ghana cedis (Ghs 4,000) in 2010 to buy a car.

At page of the record of proceedings, he had answered under cross examination by learned counsel for the petitioner that:

Q: It is also correct that the petitioner sent GBP 2000 cash that you used to purchase a private car which was later converted to a taxi.

A: It is true that she gave me the money upon her return from the UK. She gave me GHC 4000 and it was before we got married. She gave it to me to add up to my money and buy a car before we even got married. This is because I told her that we would get married after I had bought a car and three days later, she called to give me the money. I have since repaid her that money with interest. I did not know it would end this way. I would have documented it.

Apart from the respondent's admission that the petitioner had indeed given him money, I found his explanation as to same to be in contradiction to his pleadings. In paragraph 29 of his answer to the petition, he had averred that petitioner gave him the money to buy a car to make it easy for him to visit her. I generally found him to be a most untruthful witness.

With regard to the vehicle, the respondent claimed that he had sold it and used the proceeds to pay off the petitioner. He did not provide any evidence in support of his assertion of having sold the vehicle I find his claims to be an after thought.

The totality of evidence on record points to the petitioner as a hardworking and industrious woman who had contributed in the acquisition of the matrimonial property. Also that she and the respondent began to acquire these properties jointly even before the celebration of their marriage under the ordinance.

Upon these findings, I hereby hold that the parties jointly acquired the five (5) bedroom house at Klagon with five stores thereon, the two bedroom house at Kasoa and the taxi cab as marital property. Upon the dissolution of their marriage, it is only fair and equitable that the properties be distributed equally among the parties.

The petitioner currently lives at Kasoa with the children in her sister's house. In order to ensure that the children are properly accommodated till such a time that they attain the age of majority and/or complete their education and or apprenticeship, the said house is hereby settled on the issues of the marriage. The petitioner is to hold it in trust for them.

The parties are to share the Klagon house and stores equitably in the proportion of 2:3. Two stores for the petitioner and three for the respondent. The respondent insisted

under cross examination that he is not a driver and is a tailor by profession who currently has a state of the art tailoring shop. That means that he does not require the taxi cab to work with. Accordingly, same is to be sold for the proceeds to be shared equally amongst the parties. Each party has the first option of sale.

5. *Whether or not the respondent should be ordered to pay to the petitioner fifty thousand Ghana cedis (Ghs 50,000) as alimony.*

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

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

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

Whereas the petitioner is a seamstress, the respondent is a tailor and a driver. Although the respondent indicated that he was unemployed, he admitted under cross examination that he has a well equipped tailoring shop. He has always had control of four out of the five shops in front of the matrimonial home which he has rented out. He has also had control of the taxi cab and the proceeds thereof.

In spite of all these, he has not provided for the children and insists that he does not have any money to do so. He insists on contributing whatever he deems fit to the maintenance of the children. It is the petitioner who has been maintaining the children and paying their school fees. According to the petitioner, that makes it difficult for her to save. At page 23 of the record of proceedings, she had answered under cross examination by learned counsel for the respondent:

Q: What work do you do?

A: I am a seamstress.

Q: For how many years?

A: Since 2002 when I began.

Q: So how much roughly do you earn in a month?

A: Sometimes I do not even get up to two hundred Ghana cedis (GHC 200) because what I earn is what I live on.

Q: So how do you feed the children?

A: What I earn is what I use to feed them and that is why I am unable to have money.

By virtue of she having to shoulder the responsibility of maintaining the children alone, she has not been able to save any moneys whereas the respondent has had the full resources of his income as well as the rent of the shops to himself. Now that they are divorced, it would be fair for the petitioner to have some amount of money to invest in

her sewing business in order to enable her to continue to perform her obligations towards the issues of the marriage.

The respondent is in a position to pay this lump sum as he has had the full benefit of the marital properties to himself for all these years until its distribution today. Accordingly, the respondent is hereby ordered to pay the sum of fifty thousand Ghana Cedis (Ghs 50,000) to the petitioner as financial settlement. He is to pay the amount within ninety (90) days from the date of judgment failure of which the amount would attract interest at the prevailing commercial bank rate from the date of judgment till the date of final payment.

Each party is to bear their own cost in suit.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

YVONNE AMEGASHIE (LEGAL AID) FOR THE PETITIONER

JSE DEGRAFT JOHNSON FOR THE RESPONDENT