

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON THURSDAY, 4TH MAY, 2023

SUIT NO. C5/70/20

BRIGHT KWAKU NORGBEY

- **PETITIONER**

VRS

MONICA ADWOA AMPONSAH

- **RESPONDENT**

JUDGMENT

On the 8th day of July, 2020, at 12:55pm, the Petitioner herein being of the conviction that the marriage celebrated between him and the Respondent on the 21st day of November, 1995 at the Tema Metropolitan Assembly and which had been blessed with three issues aged between 24 and 15 years, had broken down beyond reconciliation, filed the instant petition for dissolution of their marriage.

According to him, their marriage had broken down beyond reconciliation due to the unreasonable behavior of the Respondent. He claimed that he travelled out of the country in 2006 and returned in 2010 only to find out that the Respondent had deserted the matrimonial home and the children; that all attempts to have her return to the home failed and he later learnt that she was suffering from a mental derangement and was undergoing treatment. He prayed the court to dissolve their marriage.

The Respondent in her Answer and Cross-Petition, save for admitting that they were married and had three children, denied the claims of the Petitioner and averred that it is rather the Petitioner who had behaved in an unreasonable manner and deserted her. She said that she had to pay for the rent for their initial matrimonial home, and that

Respondent never adequately maintained the home. Even when he travelled abroad, she had to single handedly maintain the children as well as remit the Petitioner as he claimed he had not secured a job.

Respondent says that the stress of this situation caused her to have a mental breakdown. When the Petitioner returned from abroad, he failed to support her financially and emotionally during her mental sickness. He rather packed her belongings out of the matrimonial home and also assaulted her when she attempted to return to the matrimonial home.

Respondent said further that in the course of their marriage, she acquired a piece of land and began a five bedroom building on it in the absence of the Petitioner. Petitioner contributed to the completion of the building upon his return and that has been their matrimonial home.

She prayed the court as follows:

1. That the marriage celebrated between the parties dated the 21st day of November, 1995 be dissolved
2. That the Honourable Court settle one-half of the value of House No. A82 B, Mataheko near Afienya being the matrimonial home, in favour of the Respondent
3. That the court orders the Petitioner to pay to the Respondent the sum of one hundred thousand Ghana cedis (GH¢100,000.00) as financial settlement
4. That the Petitioner pays the Respondent's legal fees as well as the Respondent's costs.

The Petitioner filed a Reply to the Respondent's Answer and Cross-Petition. He admitted that the Respondent paid for their initial matrimonial home but said they had an agreement that whereas she would rent the matrimonial home, he would get her a shop to operate her business and also get a vehicle which she could use when he was at sea.

Petitioner said he solely bought the land on which the matrimonial home sits and also built the house, and that the only contribution the Respondent made was to buy some doors and window frames.

He contends that the house could be settled on the children of the marriage, as they were now adults. Petitioner claims he is not working and is surviving on the benevolence of friends and so cannot pay financial settlement of GH¢ 100,000.00 to the Respondent.

THE RELEVANT ISSUES FOR THE COURT TO DETERMINE ARE:

1. Whether or not the marriage between the parties has broken down beyond reconciliation.
2. Whether or not the parties jointly acquired a matrimonial home in the course of their marriage
3. Whether or not the Respondent is entitled to one hundred thousand Ghana cedis (GH¢100,000.00) as financial settlement from the petitioner
4. Whether or not the Respondent is entitled to full costs including legal fees against the petitioner.

THE CASE OF THE PETITIONER

Petitioner's evidence is that after their marriage in November, 1995, they cohabited at Bethlehem until 1994 when they moved into his self-acquired matrimonial home. He continued that in 1994, he and the Respondent agreed to acquire a residential plot to build a house and pursuant to that, he acquired a piece of land from the Prampram Traditional Council.

He tendered in evidence EXHIBIT A series as receipts and site plan covering the land. He says that he sold his taxi cab to start the building process and paid for the full cost of constructing the house. He tendered in evidence EXHIBIT B series as various receipts indicating the purchase of materials for the construction of the house.

He continued that he left for South Africa in 2006 and was regularly remitting the Respondent and the children. He however got to know that the Respondent had abandoned the children and the matrimonial home and the children had to be taken to his mother.

Petitioner says he returned in 2010 and contacted the Respondent for them to cohabit and take care of the children but she refused. He later got to know that she was suffering from a mental ailment. He visited the Respondent at the hospital and upon realizing that she was well, asked for her to be discharged to him but she refused.

Petitioner says further that Respondent later came to him in the company of two social welfare officers to say she was no longer interested in the marriage and demanded compensation, but that he could not provide her with the said compensation as he no longer works. He later went to the family of the Respondent to have the customary marriage dissolved but they insisted on seeing the Respondent first.

THE CASE OF PW1

PW1 testified as the cousin of the Petitioner. According to her, she lived in the same area with the parties. When the Petitioner travelled, she realized that the Respondent was starving the children and leaving them on their own for hours on end. She thus went to live with them.

She continued that she advised the Petitioner to send money to Respondent's mother to buy foodstuffs and send it to them so she could cook for the children, and Petitioner did so. She later realized a change in Respondent's character as she became aggressive. She thus sent the children to her aunt as Respondent was so aggressive and could do anything to harm the children.

EVIDENCE OF PW2

PW2 testified as a cousin of the Petitioner. Her evidence is that the parties first settled with her before renting their own room in the same neighbourhood, and that after their marriage, anytime the Petitioner travelled, he left the children and Respondent in her care. She says that she introduced the Respondent to several businesses, and the Petitioner later travelled to South Africa.

THE CASE OF THE RESPONDENT

In her Evidence-in-Chief, Respondent says that after their marriage, the Petitioner indicated that he had used all his money to purchase a car and he did not have money to rent a place for them to live. They lived for some time in his family house and she later rented a place for them to live as the matrimonial home from her savings. She also paid for the transfer of ownership of the vehicle the Petitioner bought.

Respondent says that she traded in all manner of items including building materials, utensils, clothing, fish and anything that could fetch her money to cater for the Petitioner. She paid for a course for the Petitioner at Nautical College as he was a sailor and also paid huge sums of money to facilitate contracts for him on ships. That most often, the Petitioner returned home before the expiration of his contracts after being sacked for misconduct.

She continued that they had three children in the course of the marriage and as the Petitioner was often penniless, the burden of maintaining the children and the Petitioner fell solely on her.

Respondent says that Petitioner constantly assaulted her and also had affairs with different women, and that six weeks after she had their last child, there was an altercation between her and a girlfriend of the Petitioner and the Petitioner caused her to be locked up at the police station.

Respondent says that in 1999, she bought two plots of land from the Prampram Traditional Council and had to sell one to enable Petitioner to travel. She started building on the other plot and the Respondent only returned when the house was at lentil level. Petitioner invested a small amount of money into the house and she ended up completing it. She contends that she funded the greater part of the building and she supervised the construction.

Respondent says further that she later acquired another piece of land but had to sell same to facilitate the Petitioner's travel to sea. She also assisted the Petitioner to travel to South Africa by paying for everything including his plane fare because she thought he would work there to support her. Petitioner upon getting to South Africa however

kept insisting that she remits him because he was stranded. She says that she was doing this and also maintaining their home as well as providing for all the needs of the children. This placed her under so much stress that she woke up one day to find herself at the Pantang hospital.

Respondent says that she returned from the hospital to realize that Petitioner's sister had taken the children away, and she went for the children. PW1 who was then living with her together with her boyfriend maltreated her during her mental illness and assaulted her. So did PW2. Respondent says that this worsened her illness. She ended up back at a prayer camp. She recovered and upon receiving information that Petitioner had returned to Ghana, came to him, but he sacked her out of the matrimonial home.

Respondent says that Petitioner did not show her any love or attempt to take her home. He rather came to visit her in the hospital to confront her as to whether she had placed a curse on him since nothing was going on well for him after his return from South Africa.

Respondent says that when she recovered, she went to the matrimonial home but the Petitioner pushed her out. She returned again and he assaulted her and drove her away. She denied ever asking Petitioner to compensate her.

Respondent says that Petitioner has converted the matrimonial home into a seven-bedroom house and rents out five of them, that he has been enjoying the proceeds solely for the past ten years. Respondent says that she spent most of her life savings on the Petitioner thinking that she was building a bright future with him, but he has rejected her in her sickness and she has now become a burden on her aged mother and relatives. She prayed the court to grant her her reliefs.

CONSIDERATION BY COURT

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

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

Blacks' law dictionary, (8th edition, 2004 p. 1449) defines divorce as “*the legal dissolution of a marriage by a Court.*” In Ghana, when a couple decide to marry under the Ordinance, 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, that is, 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.

Both parties allege desertion against each other. *Section 2 (1) (c) of the Matrimonial Causes Act, 1971 (Act 367) provides that;*

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

(c) that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition

Desertion in law as explained in *Rayden on Divorce (9th ed.), p. 165*, para. 120, reads, “the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases. But in its essence desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party. Desertion is not a withdrawal from a place, but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state.”

Djabanor J (as he then was) adopted this definition in the case of *Arku v. Arku and Abraham [1965] 2 GLR 265*

Again, Sarkodee J (as he then was) in the case of *Hughes v. Hughes [1973] 2 GLR 342* stated that “for the conduct [of the wife] to amount to desertion, the court had to be satisfied that it was an unjustifiable withdrawal from cohabitation and that she had the intention of remaining separated permanently from him. But where a spouse had agreed to the other departing, he could not then complain that the other was guilty of desertion as separation was by consent.”

The evidence of the Petitioner is that he travelled to South Africa with the consent of the Respondent to seek greener pastures. However, while he was there, he had information that the Respondent had deserted the matrimonial home and the children. That upon his return to Ghana, he confirmed this to be true. He found the Respondent's whereabouts and tried to convince her to return to the matrimonial home but she refused.

The Petitioner says that he later visited her at the hospital upon learning that she was suffering from mental illness and she still refused to return to the matrimonial home with him, that she later came to the house with some social welfare officers and demanded compensation from him as she was no longer interested in the marriage.

The Respondent disputes this narration and states that it was rather the Petitioner who abandoned her when she needed him most in her state of mental derangement, that she began to suffer from mental derangement during his absence due to the stress involved in maintaining the home and the children as well as remitting the Petitioner who was abroad.

Respondent says that she was receiving treatment when she had information that the Petitioner had returned. She visited him twice. The first time he left her waiting for him for hours and the second time, he asked her to leave and assaulted her.

Respondent says that her family then rented a place for her close to the matrimonial home and upon getting to know the place, the Petitioner returned all her personal belongings that were still in the matrimonial home. She says that he only came to visit her in the hospital to confront her about whether or not she had placed a curse on him

and not to take her back home as he claims, and further that when she became well, she asked to return to the matrimonial home but the Petitioner refused to accept her.

I find the evidence of the Respondent more preferable to the evidence of the Petitioner on this matter. This is because contrary to the Petitioner's claim that the Respondent abandoned the matrimonial home and the children in his absence, PW1, who is his cousin and who lived with the Respondent in Petitioner's absence testified that the Respondent's attitude changed and she became aggressive, and in order to protect the children, she decided to send them away from the Respondent to Petitioner's own mother.

PW1's evidence does not show that the Respondent abandoned the children. It rather goes to confirm the claim of the Respondent that while she was not well, the children were taken away in her absence. Even though PW1 tried to deny any knowledge of Respondent's mental illness, her claim that she took the children away to protect them from the aggressive nature of the Respondent which hitherto was not her behavior goes to confirm Respondent's claim that she was suffering from the mental ailment even before the Petitioner returned from South Africa.

Again, between the Petitioner and the Respondent, the Respondent testified of events and provided petty details of how the events had happened and the circumstances surrounding same such that I found her story more probable than the Petitioner. She could not remember specific dates, but remembered events that happened; for instance, the birth of each of their children, persons she had approached for assistance, the gender of the social welfare officers who had accompanied her home, where the Petitioner was first staying when she visited him upon learning that he had returned to Ghana, etc.

The Petitioner returned to Ghana in 2010. At the time, the Respondent was suffering from mental derangement and receiving treatment for same. By his actions of resisting her return to the matrimonial home, he manifested that he was no longer interested in the marriage with the Respondent. He resisted all attempts made by the Respondent to return to the matrimonial home anytime she became better. In this court, he has admitted to currently living in the matrimonial home with the said girlfriend.

His actions have brought their cohabitation permanently to an end without reasonable cause and without the consent of the Respondent. He has also shown a clear intention not to return to the marital state he was in with the Respondent. It has been more than a decade since he brought their cohabitation to an end. I find that it is the Petitioner who deserted the Respondent and rather cruelly at her time of need.

On that basis, I hereby hold that their marriage has broken down beyond reconciliation due to the Petitioner deserting the Respondent. A decree of dissolution is hereby issued to dissolve their marriage celebrated on the 21st day of November, 1995 at the Tema Metropolitan Assembly. Their marriage certificate is consequently cancelled.

2. Whether or not the parties jointly acquired a matrimonial home in the course of their marriage.

On the second issue, the claim of the Respondent is that their matrimonial home at Mataheko near Afienu is a matrimonial property. According to her, it is a jointly acquired property and she provided a greater part of the money expended in constructing the said home. As she was asserting, she bore the burden of proof.

She did not tender any document in evidence or call any witness. However, she testified of events, circumstances and details from which the court could infer the truthfulness of her claims. Most importantly, the Petitioner corroborated a majority of her claims.

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”

Her evidence is that after the celebration of their marriage, they had to live with the family of Petitioner as he said he did not have money to rent. After sometime, she rented a place that served as their matrimonial home until they moved to the disputed house in 2004.

Respondent says that they acquired the land upon which the matrimonial home sits after the birth of their first child and she paid for same, and that while the Petitioner was at sea, she began construction on the said land and it reached lenti level before the Petitioner returned and contributed to it.

The Petitioner on his part disputed this and testified that although they were together at the time, he solely built the house without any form of assistance from the Respondent. He oscillated between the land being purchased before their marriage and after the birth of their first son after their marriage. Under cross-examination by Respondent herself, he answered;

Q *The land which belongs to both of us, how did we acquire it?*

A: Respondent was with me when I bought the land but all the payment was made by me. She was only my wife. I applied to the Prampram Traditional Counsel for the land.

Q: I put it to you that it was as a result of me being your helper that you acquired the land.

A: I agree.

He again answered under cross-examination from counsel for the Respondent;

Q: At the time when the said land on which the matrimonial house was situated was acquired, the Respondent had given birth to your first son?

A: Yes. He was born in 1996.

Q: Which would mean that at the time when that land was acquired, you had married the Respondent .

A: Yes.

Q: And again just for emphasis, you married the Respondent in the year 1995.

A: Yes.

Q: Even as the Respondent was trading and had some money, she gave you funds to buy the said land.

A: No. At that time, I was working in Seychelles.

Q: When were you in Seychelles?

A: 1993 to 1994.

Q: And when did you come back from Ecuador?

A: 1995

Q: And you married the Respondent in 1995?

A: Yes.

Q: And the land was acquired after your marriage?

A: Yes.

Since there is no dispute that the parties married under the ordinance in November, 1995, and the Petitioner admits that the land was acquired after their marriage and after the birth of their first son, his claim that the land was acquired in 1994 when he was in Seychelles becomes difficult to believe.

Petitioner tendered in evidence EXHIBIT A series as receipt of purchase of the land. They are dated 1994. To the extent that his own answers are that the land was acquired after their marriage in November, 1995 and after the birth of their first son in 1996, I find the authenticity of the said receipts to be in issue and attach no weight to same.

The Petitioner admits that the Respondent was working throughout their marriage, that she paid for the rent of their first matrimonial home because he had no money at the time. Also, that she paid for him to undergo training at the Regional Maritime institute to facilitate his work as a sailor, and also paid huge sums of money to some people to obtain sailing contracts for him. He further admits that she paid for all expenses involved in his travel to South Africa and maintained the children in all aspects in his absence.

Yet, he wants the court to believe that when it came to the acquisition of the matrimonial home, he was solely responsible without any input from the Respondent. I do not find this probable. I hereby find that the matrimonial home is a jointly acquired property and as such constitutes marital property.

Again, even if the Petitioner acquired the matrimonial home by himself, which I doubt, the fact that by his own admission the Respondent expended various amounts for him to obtain shipping jobs to Iran and other countries, paid huge sums of money from visa acquisition to the purchase of plane tickets to enable him travel to South Africa, as well

as maintained the home and paid for the medical, school and other related bills of the three children in his absence would be considered as substantial contribution by the Respondent.

The Petitioner readily admits to his insolvency anytime he was home from sea, and the fact that for many years while in South Africa, he did not remit the Respondent or the children. He also admits that it is the Respondent who paid for their rented matrimonial premises right from the inception of their marriage until they built the matrimonial home. PW1, the cousin of Petitioner admits that the Respondent was responsible for maintaining not only the children of the marriage but she herself when she lived with them.

The duties the Respondent performed as a wife and mother were far in excess of simply maintaining the home. She carried the financial burdens of the Petitioner and the children as well as some of his family members on her back alone and it lies ill in the mouth of the Petitioner to claim that she made no contribution to the acquisition of the matrimonial home.

She provided him with not only the peace of mind to sail around the world to work but also supported him to obtain the contracts that enabled him to sail around the world. She also wholly took care of the children by providing all their needs in his absence. That more than qualifies her to be entitled to a fair and equitable share of any marital properties.

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 v. 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”.

Having found that the matrimonial home is a jointly acquired property, I hereby apply the equality is equity principle and hold that the Respondent is entitled to her claim. The property is distributed in equal proportions of 50:50. Each party has the first option of refusal.

3. Whether or not the Respondent is entitled to one hundred thousand Ghana cedis (GH¢ 100,000.00) as financial settlement from the petitioner

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 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*”.

The Petitioner does not challenge the claim of the Respondent that she is currently not working and still suffers occasionally from mental derangement. The Petitioner on his part says he does not work and now does petty menial jobs in order to survive. He also provides for the two children who are in his custody. Although those issues per their ages have reached majority, Respondent agrees that one of them is in tertiary school.

Although the Petitioner does not currently have any gainful employment, he admits that he has rented out some rooms in the matrimonial home. The proceeds have been enjoyed solely by him for the past twelve years.

It is fair to order that he pay to the Respondent a part of those proceeds as financial settlement. This is because the medical condition of the Respondent is such that she is likely not able to engage in any jobs even menial ones for the remainder of her life. Apart from her mental issues, she walks with the aid of crutches and manifestly appears to have medical issues with her waist and legs. She would need some financial settlement to be able to lead a reasonably meaningful life.

Accordingly, the Petitioner is hereby ordered to pay to her the sum of fifty thousand Ghana cedis (GH¢50,000.00) as financial settlement. The amount is to be paid within one hundred and twenty 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 until the date of final payment.

4. Whether or not the Respondent is entitled to full costs including legal fees against the petitioner.

The principle of ordering a Petitioner to pay the Respondent's legal fees is usually premised among others on a fault basis, that is, where the Court determines that the marriage has broken down beyond reconciliation due to the fault of one party, that party may be ordered to pay the legal costs and all other incidental costs incurred by the other party in prosecuting the case.

To begin with, although the Petitioner in his Petition indicated that the Respondent lives within the jurisdiction of the court, precisely in Community 4, Tema which is a few minutes away from this court, the Respondent in her answer made it clear that she lives in Suhum with her mother and not at Community 4, Tema. Suhum is in the Eastern

Region of Ghana and I take judicial notice that it is almost a three-hour journey from Tema. In the course of the trial, it became abundantly clear that the Respondent indeed lives with her mother. Petitioner did not lead any evidence of the Respondent ever living in Tema Community 4.

The Petitioner lives in Mataheko within the jurisdiction of the court and rather than issue the Petition where the Respondent lives, he elected to issue it here in Tema. That was more convenient to him than the Respondent. I have also found that the breakdown of the marriage was due to the fault of the Petitioner as he deserted the Respondent in a rather cruel manner.

Ordinarily, the fact that the Respondent has cross-petitioned would mean that she was responsible for prosecuting her own case. However, she would not have had to travel all the way to Tema to do so if the Petitioner had presented his Petition in Suhum rather than at his convenience in Tema.

Upon these findings, it is fair that the Petitioner be ordered to bear reasonable costs incurred by the Respondent in prosecuting this case. Accordingly, costs of ten thousand Ghana cedis (GH¢10,000.00) is hereby awarded to the Respondent against the petitioner.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

OKYEAME YANKSON FOR THE RESPONDENT PRESENT