

IN THE CIRCUIT COURT HELD AT KINTAMPO, ON TUESDAY, THE 21ST DAY OF NOVEMBER, 2023, BEFORE HER HONOUR, LILY AMOAH- KANKAM, CIRCUIT COURT JUDGE.

SUIT NO. C4/1/2023

AGNES SERWAA
H/No: D161/2 TAFO
KINTAMPO



PETITIONER

VRS

KENNEDY BAFFO
OF KINTAMPO



RESPONDENT

JUDGEMENT

The parties got married sometime in 2007 at the Roman Catholic Church, Kintampo. The wife herein referred as the petitioner then a spinster was described as unemployed and resides at Tafo, Kintampo and the husband herein referred as the respondent was described as a driver and resides at Kintampo. There are two issues of the marriage, Felix Baffoe, aged sixteen years and Eric Baffoe aged 13 years.

The husband and the wife lived together at the respondent's family house for six months, moved to a rented single room for about a year and later moved to live in the petitioner's sister's house at Tafo-Kintampo. Subsequently, the husband and the wife lived in an atmosphere of mistrust and suspicion which resulted in distress, trauma,

psychological and emotional abuse against the petitioner by the respondent. Her present petition is dated 27th March, 2023, alleging the respondent's engagement in extra marital affairs, unreasonable behaviour and not living as husband and wife for more than two years prior to bringing the petition before this court, culminating in breakdown of their marriage beyond reconciliation. She prayed as follows;

- a. A dissolution of the ordinance marriage contracted and/or celebrated sometime in 2007.
- b. Custody of the two children in the marriage namely; Felix Baffo and Eric Baffo with reasonable access to the respondent.
- c. A fair and equitable share of property acquired during the subsistence of the marriage.
 - i. A five (5) bedroom uncompleted house at Kintampo.
 - ii. A building plot situate, lying and being at Zongo, Kintampo.
 - iii. Daewoo Matiz with registration number BA 2566-16.
- d. Monthly payment of six Hundred Ghana Cedis (GH¢600.00) as maintenance for the children.
- e. An order directed at the respondent to return the items (electric sewing machine bought for the petitioner by her sister, fridge, matrimonial mattress, a big size polytank for water storage, the petitioner's Samsung phone and a special container meant for sale of rice that the respondent took along with in deserting their matrimonial home.
- f. An interim order directed at the respondent to pay a monthly maintenance fee of Six Hundred Ghana Cedis (GH¢ 600.00).
- g. An order directed at the respondent to pay maintenance arrears of Fifteen Thousand Ghana Cedis (GH¢15,000.00) to the petitioner herein.

h. An order directed at the respondent to pay a reasonable alimony to the petitioner.

The respondent in filing his answer to the petition prayed the court for custody of the two children in the marriage, namely Felix Baffoe 17 years and Eric Baffoe 14 years with reasonable access to the petitioner.

PETITIONER'S CASE

According to her, she and the respondent got married customarily according to the dictates of the Akan tradition and custom and converted same to ordinance at the Catholic church, Kintampo in 2007.

In her evidence to the court, she stated that, during the pendency and subsistence of the marriage, she and the respondent jointly acquired a five (5) bedroom uncompleted house at Kintampo, a building plot situate, lying and being at Zongo, Kintampo and a Daewoo Matiz with registration number BA 2566-16.

She added that she prepared meals with her own resources for the labourers during the constructional stages of the five (5) bedrooms uncompleted house, and also that the respondent is currently using the Daewoo for commercial purposes. She also sedulously acquitted herself as a wife and manageress of the matrimonial home; she efficiently managed the home, took adequate care of the children as well as respondent's meals, laundry and eagerly warmed the matrimonial bed.

She also averred that, about Four (4) years ago, the respondent compromise the fidelity and solemnity of the marriage when he (respondent) engaged in extra-marital affairs. she added that she has been medically declared as a high-risk patient and for this reason, everywhere she goes, she carries her folder along. The petitioner asserted that, the respondent has denied her of sex for three years, has behaved unreasonably

towards her, and has also failed to maintain her and the children for the past three years and has also deserted the matrimonial home for the past three years.

He concluded by saying that, the respondent in deserting their matrimonial home took along the following items; electric sewing machine bought for her by her sister, fridge, matrimonial mattress, a big size polytank for water storage, her Samsung phone and a special Coleman meant for sale of rice was taken away by the respondent, and several attempts made by the family of both parties to resolve their marital impasse amicably has proven futile.

RESPONDENT CASE

According to the respondent, Sometime in the course of the marriage, he requested for a loan facility of Eight Thousand Ghana Cedis (GH¢8,000.00) from Abosomakotere cooperative credit union, and the credit union told him to bring a property to be used as guarantee for the loan, he informed the petitioner and she allowed him to use her sister's house to guarantee for the loan, so the petitioner gave the documents covering the said house to the credit union and they gave him the loan and he used the money to buy the Daewoo Matiz 2 Taxi. He avered that he gave the Daewoo Matiz 2 Taxi to his nephew who used it for commercial purpose and out of which he was able to settle the loan at the credit union. Once again, he requested for another credit facility of Fifteen Thousand Ghana Cedis (GH¢15,000.00) at the credit union with the house of the petitioner's sister's as guarantee and the loan was granted to him. He said he used the loan amount to purchase Daewoo Matiz 3 Taxi and worked with the car from which he generated income to settle the loan until the outstanding balance became One Thousand and Three Hundred (GH¢1,300.00) when the engine of the car got damaged.

Again he avered that he decided to go for another loan of One Thousand Seven Hundred Ghana Cedis (GH¢1,700.00) to buy a anew engine to maintain the car and start

work again, and his wife pleaded with him to request for credit facility more than the amount he intended to take so that he would give her the additional money to invest in her business. So he requested for credit facility of Nine Thousand Ghana Cedis (GH¢9,000.00) and out of it, he gave the petitioner an amount of Seven Thousand Three Hundred Ghana Cedis (GH¢7,300.00), which Petitioner invested into her trading business.

According to him after sometime they agreed to sell the Daewoo Matiz 3 to raise funds and settle the outstanding loan at the credit union, so they sold the car for GH¢8,900.00, and used it to settle the loan. The respondent also stated that they never acquired any 5 bedroom house at Kintampo in the course of the marriage.

The respondent said that, in the year 2021, he had an affair with another woman while he was still married to the petitioner and out of anger and pains, petitioner decided to leave the matrimonial home. He said again that, one of his family members and himself approached petitioner to apologise but the apology was not accepted in good faith, since the Petitioner always engages him with unreasonable quarrels, insults and fights which he never minded. He added that Later in the year 2022, petitioner requested for the dissolution of their customary marriage on grounds that he was having sexual relation with another woman so she sent dissolution drinks to his family, and the family accepted the drinks in good faith and the marriage was customarily dissolved completely.

Issues:

These are the key issues outlined below for consideration and they are as follows:

- a. Whether or not the marriage has broken down beyond reconciliation?*

- b. Whether or not the Petitioner or the respondent should be granted custody of the children of the marriage?*
- c. Whether or not the petitioner is entitled to six hundred Ghana cedis monthly maintenance, and maintenance arrears of fifteen thousand Ghana Cedis*
- d. Whether or not the respondent should be ordered to make a lump sum payment or pay alimony*
- e. Whether or not the properties acquired during the marriage should be distributed equally/fairly?*
- f. Whether or not the petitioner is entitled to maintenance arrears of fifteen thousand Ghana cedis 15000*

ISSUE A

- a. WHETHER OR NOT THE MARRIAGE HAS BROKEN DOWN BEYOND RECONCILIATION?*

It is important to point out that the sole grounds under which a marriage can be dissolved is when the marriage has broken down beyond reconciliation and this is in accordance with **Section 2** of the **Matrimonial Causes, Act, 971(Act 367)**. In proof that the marriage has broken down beyond reconciliation, the Petitioner has the burden to satisfy the court on one or the following facts: -

(a) That the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or

(b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

(c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) That the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce;

(e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

(f) That the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

It is material to point out that although the court may find the existence of one or more of the facts specified above, the law does not require the court to decree divorce unless it was satisfied, on all the evidence that the marriage has indeed broken down beyond reconciliation as was indicated in the case of **MARIAN PARTEY V. WILLIAMS PARTEY [2014] 71 GMJ 98 CA** which states that:

'the position of the law is that even though the parties might want dissolution of the marriage, the court or judge must nevertheless examine the evidence in order to find out whether there exists such substantial difference or differences between the parties to demand or impel dissolution of the marriage.

From the evidence adduced in court by the Petitioner, she seeks to rely on the provisions under section 2(a, b,c,and f) of the matrimonial causes Act on the part of the Respondent to prove that the marriage has broken down beyond reconciliation. Thus the burden of proof and persuasion is on the part of the Petitioner to adduce sufficient, cogent and reliable evidence to support the allegations contained in her petition for the court to arrive at the decision that the acts alleged exist rather than their non-existence.

In the case of **Kotei v. Kotei [1974] 2 GLR 172**, Sarkodee J stated that:

'there is a burden to prove separately that the marriage has broken down and even when it is proved that it has broken down, there should be a further proof that it is beyond reconciliation. It is accepted that proof of one or more of the facts set out in section 2 (1) is essential and that proof of one of them shows the marriage has broken down beyond reconciliation'.

The law is also trite that a party who asserts a fact assumes the responsibility of proving same and the burden of producing evidence as well as the burden of persuasion is therefore cast on that party and the standard required is provided by virtue of **Sections 10,11 and 12 of the Evidence Act, 1975(Act 323)**The case of **Ababio v. Akwasi IV[1994-1995]** has also recieved this judicial blessing and in that case Aikins JSC expounded the position as follows:

'The general principle in law is that it is the duty of a Plaintiff to prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the Plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this, he wins, if not, he loses on that particular issue'.

The respondent in his answer to the petition denied all the averments relied on by the petitioner, save section 2(a) in seeking for the dissolution of their marriage. Based upon the legal issue raised, I shall proceed to discuss the issue outlined and the applicable principles of law.

THAT THE RESPONDENT HAS COMMITTED ADULTERY section 2 (1)(a) of Act 367

Having heard both parties, it is apparent that it is only the petitioner who wants the dissolution of the marriage and it is on record that the respondent committed adultery sometime in the course of the marriage, this they both stated in their evidence, and the respondent pleaded for the petitioner to forgive him but he did not accept his plea . The petitioner has therefore been able to prove section 21a of act 367 (MCA)

UNREASONABLE BEHAVIOUR(section 2(b))

Behaviour implies some form of conduct and not merely a state of mind. **Baker P in Katz v Katz [1972] 3 All ER 219** , put it as follows: *“behaviour is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband’s love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage.”*

Consequently, the respondent’s behaviour must be looked at not in isolation but in relation to all the relevant circumstances.

In the case of **Knudsen v Knudsen [1976] 1 GLR 204**, the court went on to state as follows:

The behaviour of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of a persistent

course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.

In **Mensah v Mensah** [1972] 2 GLR 198, the court further stated 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 the 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 Casanova's Charter. The test is objective'.

From the testimony of the petitioner herein, she avers that due to the unreasonable behavior of the respondent, she cannot be reasonably expected to live with him.

In dealing with behaviour, the court needs to find out whether or not the Petitioner can reasonably live with the Respondent and vice versa and this is an objective test. The test generally accepted is the one formulated by **Dunn J in the case of Livingstone-Stallard v Livingstone-Stallard** as follows:

"would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties?"

The test was even more fully spelt out in the case of **Ash v Ash** [1972] 1 All ER 582, **Bagnall J**:

“I have to consider not only the behaviour of the respondent but the character disposition and behaviour of the petitioner. The general question may be expanded thus: can this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this respondent?”

From the testimony of the Petitioner, I do not see issues of bad character which are so grave that she cannot reasonably be expected to live with the Respondent because the behaviour of the Respondent as narrated by her are acts which could easily have been resolved if parties understood each other, insults and quarrels to me are normal in relationships, except to say that Respondent has physically assaulted or abused her as narrated by the Petitioner. Given these circumstances, I am satisfied with the acts of unreasonable behaviour stated by the Petitioner since a husband is not supposed under any circumstance to abuse his wife and or to raise a hand at his wife. The petitioner has also stated in her evidence that she reported the respondent to the police, she also behaved unreasonably towards him, by reporting the matter to the police. I am of the view that the petitioner is fed up with the marriage. I will conclude that both parties have behaved unreasonably towards each other.

Section 2(1) (c) and (f) of Act 367 states that:

‘For the purpose of showing that the marriage has broken down beyond reconciliation, that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; and that the parties to the marriage have, after diligent effort, been unable to reconcile their differences’.

According to W. E Offei at page 241 of his book “Family Law in Ghana “states that:

“Desertion is not the 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”.

To expound on the point made above, per section 2 (1) (c) of the MCA, one must prove to the satisfaction of the court that the parties have for more than a period of two years not lived together as husband and wife, and it is on that basis that the court will arrive at a conclusion that the marriage has broken down beyond reconciliation. per the evidence before this court, this court is not able to come to a conclusion as to when the respondent deserted the petitioner. The petitioner said in her evidence that the respondent left the matrimonial home in 2020, the respondent on the other hand said he left the matrimonial home in January, 2022. This transpired during cross examination on the petitioner by the respondent.

Q. when did I leave the matrimonial home

A. 3 years ago

Q. when exactly did I leave the matrimonial home

A. Dec, 2021

Q. Do you recall that I left the matrimonial home on 24th dec,2022.

A. That’s incorrect

From this dialogue it can be deduced that, the petitioner doesn’t know the exact time the respondent left the matrimonial home or deserted her or probably that she is not being truthful to the court.

Given the circumstances of this case the petitioner have not successfully proved the fact under Section 2(1)(c) of the MCA.

Furthermore, Petitioner is also to prove per Section 2(1) (f) that attempts have been made at reconciliation but all has proved futile. The case of **Knudsen v. Knudsen [1976] 1 GLR 204-216** states that:

'In a state of affairs where the duty is placed upon the Petitioner to show that the marriage has broken down beyond reconciliation, common prudence indicates that attempts at reconciliation be made whenever possible and that such attempts have been made without success, evidence of these be given to help the court arrive at the desired conclusion'.

Both parties have indicated that attempts have been made at reconciliation by their families but same has not been successful. Accordingly section 2(1) (f) of Act 367 has also been proved. Furthermore, respondent says that the petitioner sometime in 2022, sent drinks to his family for a dissolution of the marriage, and the family accepted it in good faith, this means that he is no more customarily married to the Respondent, since the customarily marriage has been dissolved, though the respondent is not interested in the dissolution of the marriage, I am satisfied that nothing can salvage the marriage again, since the petitioner has made up her mind to end this marriage, the court cannot compel her to be in it and suffer same.

The marriage between the parties has broken down beyond reconciliation and the court has a duty to dissolve the marriage to enable the parties go their separate ways as the petitioner desires so that they can move on with their lives.

In the circumstance it is hereby decreed that the marriage between the parties contracted sometime in 2007, at Kintampo Roman Catholic Church is hereby dissolved as having broken down beyond reconciliation and the marriage certificate is accordingly cancelled.

ISSUES B AND C

WHETHER OR NOT THE PETITIONER SHOULD BE GRANTED SOLE CUSTODY OF THE CHILDREN OF THE MARRIAGE? AND WHETHER OR NOT THE PETITIONER IS ENTITLED TO 600 CEDIS MONTHLY MAINTENANCE AND MAINTENANCE ARREARS OF 15, 000

There are two issues of the marriage namely Felix BAFFO and Eric Baffo, 16 and 13 years respectively. **Section 22 of Act 367** gives the court the mandate to make custody and financial provision orders for such children upon the dissolution of the marriage and the law requires the court to make any order concerning any child of the household that appears reasonable and for the benefit of the child. Petitioner prayed for the custody of the children with reasonable access to the Respondent. Respondent on the other hand also prayed for same.

Section 1 of the Children's' Act, 1998(Act 560) defines a child as '*a person below the age of eighteen years.*

Section 47 of Act 560 states that:

(1) A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessaries of health, life, education and reasonable shelter for the child.

(2) For the purpose of this section, education means basic education.

This court cannot grant joint custody to both parents since our laws does not allow same.

It is trite law that one gets custody and the other gets access to the children considering the ages of the children and the fact that they are all staying with the mother, and the provisions in section 45 subsections 1 and 2c, of Act 560, I will order that the Petitioner is granted sole custody of the children of the marriage with reasonable access to the

Respondent when they are on vacations, and fortnightly during weekends, until they attain the age of 18 years.

Petitioner further stated that she is unemployed, and the Respondent is a driver, Impliedly, only the respondent is capable of looking after the children of the marriage. The duty to educate and maintain a child is a shared responsibility of both parents and not solely the responsibility of only one of the parents. I am of the opinion that since educating and maintaining a child is a shared responsibility the petitioner though a high risk patient should find some job that will not affect her health to do to assist the respondent in taking care of the children. Before, the court can grant such a relief, it needs to take a lot of factors into consideration and this includes the standard of living of the parties, their financial circumstances and conduct before and after the marriage. The respondent being a driver, his income or source of livelihood is nothing to write home about.

In view of that, I will order that the Respondent maintains the children of the marriage with GH¢400 a month and pays for their education, with the Petitioner taking care of their clothing, Medical bills is to be shared by both parties.

From the evidence before this court, The petitioner did not lead any evidence to the effect that the respondent has not maintain the children for the past three years and for which reason he should be ordered to pay maintenance arrears of 15, 000 cedis.

This ensued during cross examination on the petitioner.

Q. Who has been paying the school fees of the children

A. Both of us.

Q. who paid for Felix's BECE registration fees.

A. I paid hundred cedis and the respondent paid the rest

Q. when was the last time the respondent gave you money for the upkeep of the children.

A. Monday

This also ensued during cross examination by the petitioner's lawyer on the respondent.

Q. You failed to maintain the petitioner and the children

A. That is not correct.

I am convinced by this dialogue that at all material times the respondent has been taking care of the children. The petitioner accordingly is not entitled to her relief G

ISSUES D AND E

WHETHER OR NOT PETITIONER SHOULD BE ORDERED TO MAKE A LUMP SUM PAYMENT AND PROPERTIES ACQUIRED DURING THE MARRIAGE SHOULD BE DISTRIBUTED FAIRLY?

Petitioner per her reliefs in court asked for a lump sum payment as financial settlement, and properties acquired during the marriage should be distributed fairly among them. Respondent on the other hand is saying that the petitioner is not entitled to the relief.

The **Matrimonial Causes Act, 1971 (Act 367), s. 20** provides that:

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

Abban JA in Achiampong v. Achiampong (1982-83) GLR 1017 @ 1039 (as he then was) that runs as follows:

'I understand S.20 (1) of Act 367 to mean that the court may order either party to the marriage (after a decree for divorce) to pay settlement such sum of money as the court thinks just and equitable as financial provision. And if a party has no such sum of money, then the court may convey movable or immovable property as a charge for the financial provision. The court may also, if the party has funds but not sufficient to meet the financial provision, in lieu thereof, order the party to convey movable or immovable property that will be charged for the financial provision'.

In considering the amount to be paid by way of lump sum, the court must look at the realities and to take into account the standard of living to which the parties were accustomed to during the marriage. The husband's ability to pay is not merely to have physical cash but it has been interpreted to mean ability to provide money by way of overdraft or loan and in the absence of full and frank information by the husband as to his financial position, the court is entitled to draw inferences adverse to the husband as to his capacity: see the case of *Ette v. Ette* [1965] 1 All E.R. 341.

Petitioner said that she is unemployed and the Respondent stated that he is driver. Per the law as stated, it is at the discretion of this court to either award a lump sum payment or not, and not based on who instituted the divorce. Unfortunately, it was not easy to get facts relating to the income of the Respondent since his answer to the petition as to his financial capabilities was not outlined. I am of the considered opinion that it is prudent to order a lump sum payment to be made to the Petitioner, since she is not in a gainful employment and financially sound, and also not healthy, this will also enable her get some resources or a source of livelihood that will assist her to contribute in providing for the needs of the children. Furthermore, Respondent has been ordered to maintain the children and provide for their educational needs and therefore I will not

burden him too much, I will order that he pays a lump sum of Fifteen Thousand Ghana Cedis 15,000 Ghana Cedis to the petitioner.

Also, the Petitioner asked the court to settle her with a fair share of all the properties acquired in the course of the marriage, in determining that the court needs to find out whether or not the properties as listed in the petitioners relief c were jointly acquired in the course of the marriage or not.

The petitioner in her petition stated that they acquired a 5 bedroom house at Kintampo, a building plot at zongo and a Daewoo matiz car during the subsistence of the marriage, these were denied by the respondent. The respondent said they never acquired a 5 bedroom house during the subsistence of the marriage at Kintampo. He added that they never acquired any plot at zongo and the Daewoo matiz was sold sometime ago to offset a loan he took for the petitioner, this pieces of evidence was never challenged by the petitioner. He who asserts must prove, when these were denied by the respondent the onus was on the petitioner to prove with cogent evidence that indeed they acquired those properties in the course of the marriage and the properties are in existence.

To me the petitioner should have even called witnesses to testify to the effect that the respondent is still using the vehicle for commercial purposes, the petitioner never called any witness to corroborate her story that the matiz is not sold, and that it is being used by the respondent, no documents and photographs of the said vehicle was tendered, I am not able to comprehend this. With the 5 bedroom house and a building plot at zongo, she didn't call any witnesses as well, no documents and or even photographs were provided to the court to prove to the fact that these properties exist. The petitioner did not lead any evidence to the satisfaction of this court that there exist a Daewoo

matiz, a five bedroom house at Kintampo and a building plot at Kintampo zongo that were jointly acquired by the parties in the course of their marriage.

This ensued during cross examination on the respondent by the accused lawyer.

Q. You will agree with me that in the course of the marriage, you and the petitioner hereby jointly acquired a 5 bedroom house at Kintampo

A. That is not true, there is no 5 bedroom house at Kintampo, I only acquired a three bedroom house at Apaaso for my children, the time we separated

Q. you also acquired a building plot at Kintampo zongo

A. That is not correct.

From this dialogue it can be deduced that all the properties listed in the petitioner's reliefs C were never acquired during the subsistence of the marriage, with the exception of the Daewoo matiz which same was sold to offset a loan they took from the bank which the greatest portion was given to the petitioner to put into her business.

Article 22(2) and (3) of the 1992 Constitution reads:

(2) Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.

(3) With a view to achieving the full realisation of the rights referred to in clause (2) of this article -

(a) Spouses shall have equal access to property jointly acquired during marriage;

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

It is pertinent to note that while Act 367 gives the court discretion to settle properties on spouses on equitable basis, it is a fundamental human right of a spouse to have equal share of property jointly acquired during marriage under the 1992 Constitution. When there is proof that the properties were jointly acquired, the court will lean more on granting an equal share to each party following the principle of equality is equity.

properties acquired during the subsistence of a marriage is presumed to be jointly acquired, it doesn't matter whether they both contributed financially or not. See the case of **Mensah v. Mensah [1998-99] SCGLR 350 and Boafo v. Boafo [2005-2006] SCGLR 505 and the current case of PETER ADJEI VRS MARGARET ADJEI CIVIL APPEAL NO. J4/06/ 2021**

Flowing from the above, and on the totality of the evidence before the court, I am of the candid opinion that, the parties does not have any matrimonial property, since same was not proved so there is no property to be shared by the parties. The petitioner is therefore not entitled to her relief C.

The petitioner also prayed that the court should order the respondent to return the items listed under her relief E. surprisingly, from the evidence before the court the court doesn't even know if those items are matrimonial properties or they are properties that were acquired by the petitioner before the marriage and or same was gifted to her, no evidence was led to that effect, except the sewing machine and the Samsung phone. furthermore, the petitioner didn't lead any evidence before this court, to the effect that the respondent carried those items away when he was leaving the matrimonial home, the petitioner just repeated her averment on oath in her evidence, The court therefore does not have any basis to grant the petitioner her relief E, accordingly her relief E is dismissed.

There will be no order as to cost.

.....*SGD*.....
H/H LILY AMOAH- KANKAM
CIRCUIT COURT JUDGE