IN THE TDC DISTRICT COURT HELD AT TEMA ON MONDAY THE 12TH DAY OF FEBRUARY 2024 BEFORE HER HONOUR AKOSUA ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. A4/04/18

BENEDICTA KHAYAT ASHAIMAN ---------- **PETITIONER**

VRS

LAWRENCE KHAYAT KPONE ---------- **RESPONDENT**

PARTIES: PRESENT

COUNSEL: NO LEGAL REPRESENTATION FOR PETITIONER
PHILIP EDEM KUTSIENYO, ESQ. FOR RESPONDENT ABSENT

JUDGMENT

The Petitioner prays for dissolution of her marriage with the Respondent on the grounds that their marriage has broken down beyond reconciliation. She prays for the following reliefs:

1. Dissolution of the marriage.
2. Custody of the children and order for maintenance.
3. Declaration of parties as joint owners of the marital home.
4. Alimony
5. Any other orders the Honourable Court may deem fit.

The Respondent in his response opposed the dissolution of the marriage and stated that the marriage has not broken down beyond reconciliation; and prayed the Court to resolve it. The Respondent however further prayed for the following:

a. Custody of all the four children of the marriage.
b. That the Petitioner is not entitled to a share in his semi-completed house since he bought the land before the marriage.
c. The Petitioner is also not entitled to alimony.

THE CASE OF THE PETITIONER

The Petitioner's case is that she is a housekeeper and the Respondent is a clearing agent. That the marriage of the parties was under both custom and marriage ordinance; and they have been married for seven years under ordinance but have cohabited for eighteen years. That there are four issues to the marriage namely Yayra Khayat, Makafui Khayat, Emefa Khayat and Dziwornu Khayat aged 15, 10, 7 and 4 years respectively at the time the petition was filed.

According to the Petitioner, she has no say in the marital home which they both contributed to put up as the Respondent brings in other women indiscriminately without any due respect to her as the wife and she has no right to comment. She continued that the Respondent shot a gun and thereafter pointed same at her amidst threats to kill her so she had to run out of the marital home which paved the way for the Respondent to settle with another woman whilst she rented a place. That family members, their church elders and her employers have done everything within their means on several occasions to resolve the impasse between them but to no avail.

THE CASE OF THE RESPONDENT

The Respondent in his response to the petition denied the claims of the Petitioner and stated that he has never molested the Petitioner but has rather been the one who has suffered several assaults from her. That he reported two of the Petitioner's assault on him to the police. That he has not restrained his wife from meddling with the affairs of their home and has not brought any woman to the house apart from his house help who is helping with the children and other house activities. He further denied that the house belongs to him and the Petitioner. The Respondent stated that he did not point a gun at the Petitioner and did not threaten her since there were no quarrels prior to the gun incident. He also stated that the Petitioner does not have time for the children. That family members from both sides and church elders tried on many occasions to resolve the issue but his wife's estranged position did not make it work.

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

LEGAL ISSUES

1. *Whether or not the marriage celebrated between the Petitioner and the Respondent has broken down beyond reconciliation.*
2. *Whether or not the Petitioner is entitled to the award of custody of the children or custody of the children should be granted to the Respondent.*
3. *Whether or not the Petitioner is entitled to an award of maintenance for the children of the marriage.*
4. *Whether or not the marital home of the parties is the joint property of the parties.*

5. *Whether or not the Petitioner is entitled to an alimony or financial provision.*

BURDEN AND STANDARD OF PROOF

In every civil case, the general rule is that the burden of proof rests upon the party, whether Petitioner or Respondent, who substantially asserts the affirmative of his or her case.

Section 11(4) of the Evidence Act explains the burden of proof in civil cases as follows:

> *"In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence*".

In the case of ***Memuna Amoudi v. Kofi Antwi*, Part 3, [2006] MLRG, 183 at 195,** the Supreme Court per Wood, JSC (as she then was) stated:

> "*A cardinal principle of law on proof … is that a person who makes an averment or assertion … has the burden to establish that his averment or assertion is true. He does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred*."

Section 12(1) of the Evidence Act, 1975 (NRCD 323), provides that:

> *"except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities."*

In the case of ***Adwubeng v. Domfe [1996-97] SCGLR 660,*** the Supreme Court held thus:

> **"***Sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323)… have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities – no exceptions were made.*

It is trite learning that in civil cases, the standard of proof is on the preponderance of probabilities. Thus, the Court determines whose case is more probable than not.

Section 12(2) of the Evidence Act, N.R.C.D 323 states:

> *"Preponderance of the probabilities means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence."*

The standard of proof as stated therefore applies to a petition for divorce. A cross-petition like a counterclaim, is an independent and separate action by the Respondent against the Petitioner. See ***Happee v. Happee [1971] 1 GLR 104***. Thus, from the respective cases of the parties herein, the burden is on both parties to prove the facts alleged to establish the breakdown of the marriage on a balance of probabilities.

ANALYSIS

I shall now analyse and evaluate the evidence adduced by the parties in support of their respective cases within the context of their corresponding burdens and the prescribed standard of proof as provided under *the Evidence Act, 1975 (NRCD 323)* to resolve the above issues.

1. ***Whether or not the marriage celebrated between the Petitioner and the Respondent has broken down beyond reconciliation.***

Sections 1(2), 2(1) and ***(3)*** of the ***Matrimonial Causes Act, 1971 (Act 367)*** provide as follows:

> *"1(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.*
>
> *2(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:- ...*
>
> *(a) that the Respondent has committed adultery and that by reason of the adultery the Petitioner finds it intolerable to live with the Respondent;*
>
> *(b) that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent;*
>
> *(c) that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;*
>
> *(d) that the parties to the marriage have not lived as husband 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, provided that the consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal;*
>
> *(e) that the parties to the marriage have not lived as husband 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.*

(3) notwithstanding that the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence that the marriage has broken down beyond reconciliation."

Section 2(1)(a) of Act 367 provides that a Petitioner may rely on the fact that Respondent has committed adultery and the fact that as a result of the adultery he or she finds it intolerable to live with the Respondent, to prove that the marriage has broken down beyond reconciliation. This means that the Petitioner must prove two things. Firstly, that adultery has been committed and secondly that the Petitioner as a result of the adultery, finds it intolerable to live with the Respondent. Proof of the adultery alone is not enough. Intolerability on the part of the Petitioner must also be established.

A Petitioner may rely on the fact that Respondent has committed adultery and the fact that as a result of the adultery he or she finds it intolerable to live with the Respondent. ***Section 43 of Act 367*** defines adultery as voluntary sexual intercourse with one of the opposite sex other than his or her spouse. Thus, for adultery to succeed as a fact showing that a marriage has broken down beyond reconciliation, the Petitioner must establish firstly that voluntary sexual intercourse with another woman other than her took place and secondly that she finds it intolerable to live with the Respondent.

By ***section 2(1)(b) of Act 367***, a Petitioner may rely on the fact that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent to prove that the marriage has broken down beyond reconciliation.

The section implies that the Petitioner must prove that the conduct of the Respondent constituted unreasonable behavior on the part of the Respondent; and that by reason of this conduct, the Petitioner cannot reasonably be expected to live with the Respondent as a result of the unreasonable behavior.

The test for unreasonable behavior is an objective one. 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.

Applying the principles enunciated above to the facts of the instant case, the Petitioner stated in her evidence that during the subsistence of the marriage the Respondent indiscriminately brought other women to the matrimonial home and did as he pleased with the women in the house and she could not question him. That she was treated with scorn and disdain in the matrimonial home and one of such women is called Beatrice Lotsu who has given birth for the Respondent and the child's name is Xornam Rachel Khayat who currently lives with the Respondent since her departure from the house.

The Respondent in his answer to the petition and evidence denied this assertion by the Petitioner. The Respondent stated in his evidence that he has no other woman besides his wife and has no other child besides the four issues to the marriage.

However, under cross examination of the Respondent by the Petitioner, the following is what transpired:

"Q: Do you know a lady called Beatrice Lotsu?

A: Yes my lord.

Q: How are you related to Beatrice Lotsu and the baby Xonam Khayat?

A: Beatrice Lotsu came in as a caretaker six months after the Petitioner left me and the child Xonam Khayat is my daughter.

Q: Who is the mother of Xonam Khayat?

A: The mother is Beatrice Lotsu."

The Respondent further testified under cross examination that he was lonely and pressure was rising every day, that he needed a caretaker to take care of him and the children. That the Petitioner came to pack the bed and everything in their room so he had to share the bed Beatrice was sleeping on with her.

From the above pieces of evidence, the evidence in chief of the Respondent that he has no child besides the four children of the marriage is a total untruth as his own evidence under cross examination indicates that he had an affair with his care taker and subsequently had a child with her. It is therefore indisputable that the Respondent committed adultery because although the parties had separated, their marriage had not been dissolved for him to have had an affair with his caretaker which resulted in a child named Xonam Khayat. It is only when a Court has granted a dissolution of an ordinance marriage that a person will be legally and properly divorced.

In the case of ***Quartey v. Quartey & Anor*** **[1972] 1 GLR 6**, it was held by Kingsley-Nyinah J.A. that:

> *"a Court may act upon an admission of adultery even though there be no confirmatory proof of it, if the Court is satisfied that the evidence as to the admission is trustworthy and if the evidence amounts to a clear, distinct and unequivocal admission of adultery."*

From the evidence on record, I find that the Respondent committed adultery.

The Petitioner also stated that the Respondent pointed a gun at her amidst threats to kill her so she had to run out of the marital home. The Respondent denied this allegation therefore the Petitioner had a burden to prove her assertion.

In her evidence the Petitioner told the Court that the Respondent beats her physically in the full glare of neighbours, children and passersby leading to physical injuries and

emotional scars. That the Respondent brought a gun home, indiscriminately fired outside and also threatened her with the gun, so she called the Police Patrol who arrested him and took the gun away from him after detaining him.

In the face of the Respondent's vehement denial of the said assertion, the Petitioner had a legal burden to substantiate her allegation but she could not discharge the burden of proof on her. This is because there is not sufficient evidence on record to establish the assertion by the Petitioner that the Respondent threatened her with gun that he will kill her. Accordingly the said assertion is dismissed as unsubstantiated. Likewise there is not adequate evidence on record to substantiate the Petitioner's allegation of the smoking of Indian hemp by the Respondent in their matrimonial home in the full glare of the children after same was denied by the Respondent, therefore the said assertion without satisfactory evidence to support same cannot be accepted by the Court when same has been denied by the Respondent.

The Petitioner tendered exhibits 'A1', 'A2', 'A3' and 'A4' to support her assertion that the Respondent physically assaulted her. The Respondent denied this allegation and stated that it is rather the Petitioner that physically assaulted him. He also tendered exhibits to support his assertion. It can be gleaned from the evidence on record that both parties to the marriage have been physically assaulting each other during the subsistence of their marriage and the Court finds as a fact that the parties had not lived peacefully as husband and wife from a point in time of their marriage and it resulted in their separation prior to the presentation of the instant petition.

Furthermore it can be gathered from the evidence on record that the parties have lived apart for more than five years and that is a ground for divorce as provided under ***section 2(1) of Act 367***. Both parties indicate that their family members and church elders have made several attempts at reconciliation but all have proved futile. Having regard to the

evidence on record and the above findings as well as the fact that the parties have irreconcilable differences and as a result have not lived as husband and wife for over five years now, I find and hold that the marriage between the Petitioner and the Respondent has broken down beyond reconciliation; and same is accordingly dissolved.

2. ***Whether or not the Petitioner is entitled to the award of custody of the children or custody of the children should be granted to the Respondent.***

By ***section 22 of Act 367,*** where there is a proceeding under the said Act, the Court must enquire whether or not there are children in the marriage, then the Court may, either on its own initiative or on application by a party to proceedings under this Act, make an order concerning the child of the household which it thinks reasonable and for the benefit of the child**.** ***Section 2(1) of the Children's Act, 1998 (Act 560)*** provides that the best interest of the child shall be paramount in any matter concerning a child.

Section 2(2) of Act 560 lends support to the above stated law by specifying that 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. The welfare principle is restated in ***section 18(2) of the Courts Act, Act 459 as amended by Act 620.*** It is to the effect that the welfare of the infant shall be the primary consideration of the Court in the exercise of its powers under this section.

The best interest welfare principle was applied by the Court in ***Bentsi-Enchill v. Bentsi-Enchill [1976] 2 G.L.R 303.*** In that case, the marriage of the parties had been dissolved by the Court and custody of the child had been granted to the wife. On the issue of child custody, the husband prayed that if his former wife had no roof over her head the Court

may vary the custody order and grant him custody of the child of the marriage with reasonable access to his former wife if she so desired. Sarkodee J stated the rule succinctly thus: *the primary concern of the Court is to ensure that there are appropriate safeguards for a child's general welfare, irrespective of the interests of the parents.*

In Braun v. Mallet [1975] 1 G.L.R 81, Azu-Crabbe noted that:

> *"The Court cannot put on blinkers, when it is considering matters affecting the welfare of an infant— it must look at all the facts from every angle and give due weight to every relevant material"***.**

In ***In re McGrath (infants) [1893] 1 Ch. 143, C.A***., the Court intimated that the welfare of the child is not measured by money or, nor physical comfort only. The Court advised that the welfare principle should be taken in its widest sense. It was stated that the moral and religious welfare of the child must be considered as well as the physical well-being and the ties of affection.

The law enumerates the conditions that must be taken into account in making an order for custody or access. ***Section 45(1) of Act 560*** stipulates that a Family Tribunal shall consider the *best interest of the child* and *the importance of a young child being with his mother* when making an order for custody or access. In the case of ***Bentsi-Enchill v. Bentsi-Enchill*** [supra], Sarkodee J held that normally the mother should have the care and control of young or sickly children (particularly girls) or those who for some other reason need a mother's care. ***Section 45(2) of Act 560*** states that, subject to **section 45(1),** a Family Tribunal shall also consider:

a. the age of the child;
b. that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;

c. the views of the child if the views have been independently given;
d. that it is desirable to keep siblings together;
e. the need for continuity in the care and control of the child; and
f. any other matter that the Family Tribunal may consider relevant.

In the case of ***Opoku-Owusu v. Opoku-Owusu (1973) 2 GLR 349***, the Court held as follow:

> *"In such an application the paramount consideration is the welfare of the children. The Court's duty is to protect the children irrespective of the wishes of the parents." In the normal course, the mother should have the care and control of very young children, particularly girls or those who for some special reason need a mother's care; and older boys to have the influence of their father… there is no principle in custody cases that a boy of eight should other things being equal, be with his father; in all cases the paramount consideration is the welfare of the infant and the Court must look at the whole background of the infant's life and at all the circumstances of the case.*

In the instant petition, the Petitioner prays for custody of the children of the marriage. The Respondent objects to it and also prays for custody of the said children. The Petitioner stated that she wants custody of the children to enable her raise and educate them responsibly. That the safety of the children of the marriage cannot be guaranteed with the Respondent as he leaves and returns home late and is not capable of raising the young girls with his lover Beatrice Lotsu.

However, the Respondent states that the Petitioner abandoned the matrimonial home for about two years or more. That in the two years, she did not care about who was taking care of the children or what the state of the children were. That he single handedly took care of all the children in the period she was away. That the Petitioner is not a fit and proper person to have custody of the children. That when this Honourable Court granted

her custody of the children pending the determination of the matter, she went and dumped the children onto her grandmother in Akatsi and enrolled them in a school there. That some of the children could not live under the conditions there and ran away from Akatsi to come and stay with him. That this Honourable Court took evidence from one of the children, Makafui Nadekh Khayat, to this effect and the Court can bear with him. He therefore prays that the Petitioner should not be given custody of the children because she has proven that she cannot take care of the children.

On the above issue the Court gave an interim custody of the children to the Petitioner pending the final determination of the matter, when it adopted the recommendation of the Social Enquiry Report. However the Respondent subsequently reported to the Court that the Petitioner had taken the children to Akatsi to live with their great grandmother who is very old. The Petitioner denied the said assertion therefore the Court listened to the child in question who had run away from Akatsi to Tema. The said child who gave her name as Makafui; and was 11 years at that time on 6th November 2018 told the Court that, she visited her mother but she was not there so she slept with her friend. That her mother upon her return took her to Akatsi to attend school there and she had actually started school in Ami Preparatory School in Akatsi. That she did not want to stay in Akatsi because she did not like the school so she called her father for money to buy something and she used the said money to come to Tema. She also indicated that she does not want to stay in her mother's place because she always says she is going to visit her friend, and that she is comfortable at her father's place. She concluded that her other two siblings were staying with her grandmother at Akatsi and not with her mother.

From the entire evidence on record it is not in doubt that the Respondent is unable to take care of the children alone that is why he went for a care taker to help take care of himself

and the children which resulted in him having a child with the said care taker, Beatrice Lotsu. On the other hand, the evidence on record also indicates that the Petitioner does not also have time for her own children as she actually took them to Akatsi to stay with their old grandmother and enrolled them in school over there which made their second child run away from Akatsi back to Tema.

The Court when faced with issues relating to the custody of children is first and foremost guided by the welfare principle which is to the effect that the welfare and interest of the child remain supreme. The Court must also ensure as much as possible, to maintain the status quo for the child so that he or she is not adversely affected after the dissolution of the marriage. Therefore the Court in the circumstances would consider what is in the best interest of the children of the marriage applying the above authorities and principles to the circumstances of the instant case.

Given the ages of the children of the marriage at the time the petition was filed on 25th October 2017 which were 15, 10, 7 and 4 years respectively; and considering that we are only in the second month of 2024, the said children are likely to be at least 21, 16, 13 and 10 years. Thus, having regard to the ages of the children of the marriage and in the instant circumstances, the Court will not make any order as to custody with respect to the first child as she is no more a minor at the time of the judgment. See ***section 1 of the Act 560***. Since custody orders are in respect of children, the Court cannot validly award custody of the first child of the marriage to any of the parties. She may choose which of the parties to live with. In relation to the second child, she earlier in the proceedings of the instant case made the Court know that based on her mother not having time for her when she visited her, she is comfortable staying with her father. In view of that the Respondent shall have custody of the second child, Makafui Khayat with reasonable access to the

Petitioner. **The Court would like to find out if the last two children are still with their grandmother at Akatsi, then the Respondent shall have custody of them but if they are in the custody of the Petitioner, then the Petitioner shall keep having custody of them considering and the need to ensure continuity in the control and care of the child.**

3. ***Whether or not the Petitioner is entitled to an award of maintenance for the children of the marriage.***

It is trite learning that it is the responsibility of both parents to cater for their infant children. ***Section 22(3)(c) of Act 367***, grants the Courts power to award maintenance and provide for the education of a child out of the income or property of either or both parties. ***Section 47(1) of Act 560*** specifies that 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.

According to ***section 48(1) of Act 560***, the following persons who have custody of a child may apply to a Family Tribunal for a maintenance order for the child: a parent of the child; the guardian of the child; or any other person. ***Section 48(3) of Act 560*** provides that the application for maintenance may be made against any person who is liable to maintain the child or contribute towards the maintenance of the child.

Section 49 of Act 560 is to the effect that a Family Tribunal shall consider certain things when making a maintenance order. They are:

a. the income and wealth of both parents of the child or of the person legally liable to maintain the child;
b. any impairment of the earning capacity of the person with a duty to maintain the child;

c. the financial responsibility of the person with respect to the maintenance of other children;
d. the cost of living in the area where the child is resident;
e. the rights of the child under this Act; and
f. any other matter which the Family Tribunal considers relevant.

According to ***section 51(2) of Act 560,*** a Family Tribunal may order a periodic payment or lump sum payment for the maintenance of a child and the earnings or property of the person liable may be attached. Pursuant to ***section 51(4) of Act 560,*** when considering an application for maintenance, a Family Tribunal may make a maintenance order which it considers reasonable for any child in the household. See also: ***Section 16 of Act 367***.

From the evidence on record, the Petitioner is a housekeeper at the Church of Latter Day Saints West Africa Headquarters, Accra; and the Respondent is a clearing agent. The parties did not lead evidence on their income and any impairment in their earning capacities. It can be gathered from the evidence on record that the Respondent has been discharging his obligations towards the children and continued to provide nurturing care for the children when circumstances compelled the parties to separate.

If the two children are with the Petitioner, the Respondent shall maintain them with a monthly maintenance of GH¢600.00, pay their school fees and educational bills; and the Petitioner shall provide clothing for the children including the one in custody of the Respondent. The Respondent shall continue to maintain the children in his custody (if the first child is still in school she is to be maintained) and bear their educational expenses. On the evidence, the employers of the Petitioner cater for the medical needs of the children as a benefit of her employment. I therefore make no order regarding medical care for the children.

Whether or not the marital home of the parties is the joint property of the parties.

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

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

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

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

In the recent Supreme Court case of ***Peter Adjei v. Margaret Adjei (unreported) [Suit No. J4 06/ 2021] delivered on 21st day of April, 2021***, the Court per Appau, JSC reiterated the position of the law on the presumption of joint ownership when His Lordship stated at page 10 as follows:

> *"…any property that is acquired during the subsistence of the marriage, be it customary or under English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on equality is equity principle. This presumption of joint ownership is, however, rebuttable upon evidence to the contrary… What this means in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a "jointly-acquired" property to be distributed at all cost on this equality is equity*

principle. Rather, it is property that has been shown from the evidence adduced during the trial to have been jointly acquired, irrespective of whether there was direct, pecuniary or substantial contribution from both spouses in the acquisition... so where a spouse is able to lead evidence in rebuttal or to the contrary ... the presumption theory of joint acquisition collapses."

Flowing from the above authorities, in a marital relationship, the parties reserve their constitutional right to acquire properties individually and marriage per se does not give spouses unwarranted access and share in properties acquired by the other spouse through their individual sweat and efforts.

The Petitioner prayed the Court to declare the matrimonial home as joint property and grant her equal share in the property. The Respondent stated that he solely acquired their matrimonial home.

From the recent authority above, the presumption is that the marital property which was acquired during the subsistence of their marriage is presumed to have been jointly acquired by the parties and upon divorce, should be shared between them on equality is equity principle however, this presumption of joint ownership is rebuttable upon evidence to the contrary. Given that the evidence on record suggests that the said marital property was acquired during the subsistence of the marriage, with the Petitioner testifying that she supported with the construction of the building by assisting with the necessary logistics, the onus was on the Respondent to lead credible and admissible evidence to rebut the said presumption of joint ownership. Thus the Respondent had a legal burden to adduce evidence in rebuttal or to the contrary to prove that he solely acquired the said property and the Petitioner did not make any direct, pecuniary or

substantial contribution to the acquisition of the property that was acquired during the subsistence of their marriage.

From the evidence on record the Respondent told the Court that the Petitioner did not contribute to the acquisition of their matrimonial home, which was vehemently denied by the Petitioner. The Respondent also told the Court that the Petitioner does not deserve half of his property. That he bought the land in the year 2006, a long time before he got married in the year 2011. That he bought the land with his own resources and absolutely built the house with his own resources as well and that the Petitioner never contributed a pesewa to the building of the semi-completed house so she is not entitled to a share in his semi-completed house since he bought the land before the marriage but there is not sufficient evidence on record to buttress the assertions of the Respondent that he solely acquired the said property.

The Respondent could not adduce cogent evidence to rebut the above presumption. He only repeated his averments in his pleading that the said property solely belongs to him, when he was given the opportunity to adduce satisfactory evidence to rebut the presumption of joint ownership.

The Supreme Court has held that the principle of equitable sharing of property jointly acquired by a married couple will ordinarily entail the equality principle, unless one spouse could prove separate proprietorship or agreement or a different proportion of ownership.

Considering the evidence on record and the presumption of joint acquisition, and the fact the said matrimonial home being an unnumbered house at Kpone was acquired during the subsistence of the marriage between the parties, and given that there is not sufficient evidence rebutting the said presumption, I hereby find that the marital home of the parties at Kpone is a joint property of the parties. Accordingly, I declare the Petitioner a

joint owner of the matrimonial home, unnumbered house at Kpone. She is entitled to equal share in the property upon the dissolution of the marriage.

The parties may agree to partition the house equally or in the alternative, engage a valuer to determine the value, sell the property, share the proceeds equally and bear incidental cost of the sale equally. Given that the Respondent currently lives in the matrimonial home with two of the children of the marriage, he shall have the right of first refusal and may exercise that right within six (6) months from the date of the valuation of the property if the parties elect to sell the property.

5. Whether or not the Petitioner is entitled to an alimony or financial provision.

Section 20 (1) of Act 367 provides that:

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

In the case of ***Aikins v. Aikins (1979) GLR 233***, Sarkodee J (as he then was) held in holding 4 that:

> *"In considering the amount payable as lump sum, the Court should not take into account the conduct of either the husband or the wife but it must look at the realities and take into account the standard of living to which the wife was accustomed during the marriage…"*

In the case of ***Barake v. Barake [1993-1994] I G.L.R 635 at page 666***, where Brobbey J (as he then was) stated:

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

From the law, financial provision upon the dissolution of a marriage is not the exclusive preserve of women and that, the Court, may, if the justice of the case demands, award financial provision for either the man or the woman.

The award of lump sum financial provision under ***Act 367*** is therefore need based and it is not intended to enrich one spouse at the expense of another or punish the one who is to be blamed for the breakdown of the marriage.

The essence of financial provision is not to enrich one spouse at the expense of the other but to cater for a genuine financial need of a spouse upon dissolution of the marriage. Thus, in the case of ***Gamble v. Gamble [1963] 1GLR 416*** the Court held in holding 2 that: *"the Court will not look with sympathy upon a wife who makes no effort to secure employment but is content to subsist on an award of alimony."*

In the case of ***Obeng v. Obeng [2013] 63 GMJ 158***, the Court of Appeal held that what is *"just and equitable" may be determined by considering the following factors: the income, earning capacity, property, and other financial resources which each of the parties has or is likely to have in the foreseeable future, the standard of living enjoyed by the parties before the breakdown of the marriage; the age of each party to the marriage and the duration of the marriage."*

The Petitioner prays the Court to award her an alimony but did not state any amount as lump sum financial provision against the Respondent. The Respondent denied this claim and stated that he helped the Petitioner to get a job and instead of assisting him to care for the family, so that together they could improve their lives, she decided to abandon the family because she now has earning power. That he has taken care of her all through

the marriage, and she has never supported him with a dime. That the Petitioner is gainfully employed now, and thinks he is not befitting of her new status in life. According to the Respondent, he therefore does not have to pay the Petitioner alimony as she is gainfully employed and can take care of herself so she is not entitled to alimony.

The Respondent has described himself as a clearing agent whilst the Petitioner has described herself as a house keeper at the Church of Latter Day Saints West Africa Headquarters in Accra. The Petitioner did not give a solid basis for the claim of financial provision and has not afforded the Court the opportunity to peruse her earning capacities and specific needs to assist the Court to arrive at a fair and just determination. The ages of the parties are not in evidence but it can be gathered from their ages on their marriage certificate dated 29th January 2011 that the Petitioner is about 45 years old whilst the Respondent is likely to be 49 years old. This implies that both parties are relatively young as they have more working years ahead of them. Also, on the evidence, the Petitioner is financially independent and does not necessarily depend on the Respondent for her upkeep. Consequently, based on the circumstances, I do not consider it just and equitable to order the Respondent to pay an alimony to the Petitioner. I accordingly dismiss the claim for an alimony.

CONCLUSION

From the foregoing, I conclude that the marriage between the parties has broken down beyond reconciliation and I hereby grant the Petitioner's prayer for dissolution of the marriage in the following terms;

1. I hereby grant a decree for the dissolution of the marriage celebrated between the parties on 29th January 2011, at the Church of Jesus Christ Latter-Day Saints at Ashaiman, thus the marriage is hereby dissolved.
2. The marriage certificate with Certificate No. LDS/ASH/02/30 and License No. TMA/RM/0003/2011 is accordingly cancelled.
3. Custody of the second child of the marriage, Makafui Khayat, who was 10 years at the time the petition was filed, is granted to the Respondent with reasonable access to the Petitioner. Yayra Khayat who is currently over 18 years may decide which of the parents to live with.

   Custody of the third and fourth children of the marriage, Emefa Khayat and Dziwornu Khayat who were 7 and 4 years respectively at the time the petition was filed, is granted to the Petitioner with reasonable access to the Respondent.
4. The Respondent shall pay an amount of GH¢600.00 as monthly maintenance allowance for the upkeep of the last two children of the marriage; and shall also be responsible for the school fees and educational bills of the children of the marriage. The Respondent shall continue to maintain the children in his custody where necessary, and bear their educational expenses. The Petitioner shall provide clothing for the children including the one in custody of the Respondent, and also provide for the children's health needs, which is a benefit of her employment. The monthly maintenance allowance of GH¢600.00 shall be paid on the 2nd day of each month effective March 2024.
5. I hereby declare the matrimonial home being an unnumbered house at Kpone to be jointly acquired by the parties during the subsistence of the marriage and they are each entitled to equal share. The parties may agree to partition the house equally or in the alternative, engage a valuer to determine the value, sell the property, share the proceeds equally and bear incidental cost of the sale equally.

Given that the Respondent currently lives in the matrimonial home with two of the children of the marriage, he shall have the right of first refusal and may exercise that right within six (6) months from the date of the valuation of the property if the parties elect to sell the property.

6. There will be no order as to financial provision to either party to the marriage considering the circumstances of the parties, thus the Petitioner's relief of an alimony is hereby dismissed.
7. Considering the circumstances of the instant case, the parties shall bear their own cost of the suit.

[SGD.]

H/H AKOSUA A. ADJEPONG (MRS)

(CIRCUIT COURT JUDGE)