IN THE DISTRICT MAGISTRATE COURT CENTRAL REGION, DIASO, HELD ON TUESDAY 16TH DAY OF DECEMBER, 2022 BEFORE HIS WORSHIP BERNARD DEBRAH BINEY ESQ. - MAGISTRATE

SUIT NO. A11/01/23

AKOSUA ADDAI **.....** **PLAINTIFF**

AMENASE, DIASO

VRS

OWUSU PREMPEH **....** **DEFENDANT**

AMENASE, DIASO

JUDGMENT

By her writ of summons issued out on 02/08/22 and filed in the registry of this court on 10/08/2022 the Plaintiff is praying this honorable to grant the reliefs endorsed as follows;

(1) Fair share of a three (3) bedroom and a hall house at Amenase.

(2) Fair share of a cocoa farm at Comfort.

(3) Recovery of cash the sum of GHC 1,800.00 being debt.

On their appearance day in court, the Defendant pleaded not liable to all the reliefs and this being proceedings touching on property jointly acquired during marriage which has been dissolved and being mindful of requirement of written statements as per Order 18 rule 3 of C.I. 59, the court ordered parties to file their written statements. Parties complied and accordingly filed their written statements so on their next day of appearance in court

and the court seized the opportunity and introduced the concept of Court Connected ADR to them and admonished them to take advantage of same and submit their dispute for amicable settlement due to the relationship and the fact that parties have a child between them but they declined.

Parties were further ordered and they accordingly filed their witness statement and served copies on each other to set the stage for trial to start.

At the close of pleadings, the court set the following issues for determination;

1. Whether or not parties jointly acquired the properties in relief (1) and (2) during their marriage.
2. Whether or not Plaintiff is entitled to a fair share of same.
3. Whether or not plaintiff is entitled to her relief.

The case of the Plaintiff is simply that she got married to the Defendant on 17th December, 2016 at Wassa Nananko. After the marriage parties cohabited at Amenase for six years out of which they brought forth one child. According to the Plaintiff they jointly cultivated a cocoa farm at an area called Comfort off Abenase-Asenso road which Defendant later used part of that farm for galamsay activities. Plaintiff continued that they in addition jointly put up a three bedroom house which was uncompleted at the time of their dissolution. The marriage between the parties has been customarily dissolved during which defendant agreed to buy a plot of land and put up a house for plaintiff but same has not been done. The Plaintiff further told the court that Defendant through the representatives at the meeting for the dissolution of marriage pleaded with Plaintiff to accept GHC1800.00 as part payment of GHC 3600 owed her by the Defendant with the understanding that the remainder of the Ghc 1800.00 would be paid later but same has not been paid. The Plaintiff therefore prayed the court to grant her reliefs by

compelling the defendant to give her fair share of those joint properties. The Plaintiff called one witness namely Susuana Mansah to proof her case.

The following cross examination ensued from the Plaintiff's testimony by the defendant on 14-10-22 at the end of her evidence-in- chief;

Q. *What was your contribution on that building from foundation to the present stage?*

A. I didn't know the marriage was going to be dissolved so I did not calculate my contribution, but I fetched water for you in the molding of blocks, I carried blocks during foundation, carried mortar and cooked for you and the workers.

Q. Did you come to meet cocoa on the land or we planted the cocoa on the land together?

A. The cocoa on the land had withered, but we cut it and re-planted or re-cultivated same.

Q. Have you planted cocoa on the said land with me?

A. where we replanted is where you have used for galamsey.

It is important to observe here that, contribution to the acquisition of spousal asset must not necessarily always be by way of direct financial contribution and that a spouse's indirect physical support and moral encouragement such as that recounted by the Plaintiff in the instant case may be construed to be enough contribution to warrant entitlement of part ownership during dissolution of marriage.

.

In the case of **In re Ashaley Botwe Lands : Adjetey Agbosu & ors v Kotey & ors (2003-2004) SCGLR 420 at 425,** it was held that" ***A litigant who is a defendant in a civil case does not need to prove anything, the plaintiff who took the defendant to court has to prove what he claims to be entitled from the Defendant. At the same time, if the court has to make determination of a fact or of an issue, and that determination depends on***

evaluation of facts and evidence, the defendant must realize, that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favor, then he has the duty to help his own cause or case by adducing before the court such fact or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis on the evidence before the court, which may turn out to be only evidence of the Plaintiff. If the court chooses to believe the only evidence on record, the Plaintiff may win, the defendant may loose. Such loss may be brought about by default on the part of the defendant"

It is on the basis of the afore-mention authority that I proceed to decide the instant case. In his testimony before the court, the Defendant line up three witnesses to file witness statement in support of his defence to the action against him by the Plaintiff.

The Defendant gave his evidence-in- chief and called three witnesses namely James Acquah (DW3) Nana Addae (DW2) and Kwame Panin (DW1) to end his case. In his testimony Defendant said that Plaintiff is his ex-wife. According to the Defendant, he got married to the Plaintiff customarily in the year 2015 following which they had one issue namely Angela Owusu aged 3 years 11 months. The customary marriage between the parties was dissolved about three months ago. During the dissolution of marriage an issue of sharing of properties did not occur as parties never acquire any property jointly as plaintiff wants to portray to the court. That during the sustenance of marriage plaintiff started putting up a three bedroom house on a land at Amenase and it was at a lintel stage when the marriage was dissolved but the plaintiff did not contribute to the building of the said house as she wants the court to believe. That though we cultivated the cocoa farm which lies at a place called comfort together, the land was an inheritance from my father Kwadwo Asante with my siblings and I was singled out to harvest and used the proceeds to feed as it had withered away. That few weeks after the dissolution of the

marriage, plaintiff summoned the defendant before elders of Amenase claiming defendant was owing her GHC 3600,00 which the defendant admitted GHC800.00 during which the elders prevailed on defendant should add GHC 1000 to avoid any further disturbances which defendant agreed and all summed up to Ghc 1800.00 of which same was paid to plaintiff through Okyeame Addae.

It would be observed that plaintiff's relief is about spousal property jointly acquired by the parties during their short stay in customary marriage which lasted or span from 2015-2022 when their marital relationship was dissolved. Though Defendant denies that he jointly acquired any property with the Plaintiff, he admits that he built a three bedroom house up to lintel level whiles staying with the plaintiff on a land belonging to his uncle, except that plaintiff did not contribute anything financially towards the said project. The Defendant, in his testimony further admitted that he cultivated cocoa together with the Plaintiff at a place called comfort, but the said cultivation was made on he Defendant's deceased father's old cocoa farm which defendant inherited with his siblings. Defendant further admitted under cross examination from Plaintiff that the said farm in which they cultivated cocoa together with vegetables, plantain, and cocoyam is currently being harvested by defendant's present wife. The reason being that after their dissolution of marriage, defendant's brother one Teacher John told Plaintiff to go and remove her crops on the land which Plaintiff refused and insulted the said Teacher John brother of defendant.

The following is an excerpt of relevant portion of Plaintiff's cross examination on defendant's evidence-in-chief on 17-10-22.

Q. You said the land on which the cocoa farm is located belonged to your father, why did you take your portion from your siblings for me and you to cultivate?

A. The cocoa farm was in two parts, but there was misunderstanding whenever we harvested and same had to be shared among six siblings to avoid recurrent misunderstandings during harvest that was why I asked for my portion to be given to me.

Q. Where you are now harvesting plantain, cassava, kontomire, pepper and other vegetables at comfort now with your new wife, who cultivated it?

A. It was me and you who cultivated that farm, but after the dissolution of our marriage, my brother Teacher John informed you that you should go and take whatever you had on the land and you insulted him.

Though defendant contended that he did not cultivate any cocoa farm with the plaintiff and even the cocoa farm they worked on it belonged to his late father, yet he himself through the foregoing cross examination conceded that he took his share of the farm and cultivated it with the plaintiff.

Now, beside the clear admissions of the defendant himself to the facts as stated above on their joint assets, defendant's own witnesses Nana Addae (DW2) and Kwame Panin (DW1) testified in support of plaintiff's claim to the effect that "parties jointly put up a three bedroom house which was at lintel level during the dissolution of marriage

From the above cross examination, the defendant admitted and corroborated Plaintiff's evidence that he defendant has taken over the spousal property party's acquired during marital relationship and Plaintiff has been deprived of same.

It is trite that when an adversary corroborate an issue advantageous to plaintiff's case, as in the instant case, same is deemed to be a proof which relieves the burden on the claimant to further proof his assertions. In all civil cases, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof. The same principle applies if the Defendant makes counterclaim. The failure of the Defendant to plead such a vital piece of evidence to convince the court to

tilt the scale of justice in his favor spells doom for the success of his case and would have a difficult task carrying the day in court.

The **Evidence Act, 1975 (NRCD 323)** uses the expression "**burden of persuasion**" to describe the duty imposed on a party who makes an assertion to prove his case ,and in section 14 of the Evidence Act supra, that expression has been defined as relating to

"Each fact the existence or non-existence of which is essential to the claim or defence he is asserting"

The onus of proof in a civil case is that the Plaintiff is to prove his case on a balance of probabilities within the meaning of the law.

As stated in this quotation by Ollenu in the case of **Majolagbe v Larbi [1959] GLR 190** and re-echoed in the case of: **Klah .v. Phoenix Insurance Company Ltd. [2012] 2 SGCLR page 1139 at page 1151**; it was held that:

"Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to some facts. Instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true"

The Plaintiff in this case is therefore required to prove sufficiently her averment against the Defendant to succeed in this action on balance of probabilities.

It is now undisputed that parties in their cohabitation jointly acquired the property ie the three bedroom uncompleted house and the cocoa plantation at comfort in dispute.

Section 26 of the **Evidence Decree NRCD 323 OF 1975** provides;

"***except as otherwise provided by law, including a rule of equity, when a party has by his own statement, act, or omission intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest".***

This position has clearly been stated by the Superior Courts in a plethora of cases and one of such cases is the case of **Akotia Oworsika III (substituted by Laryea AyikuIII v. Nikoi Okai Amontia IV Substituted by Tafo Amon II) Chieftanicy Appeal No. 1/2003 delivered on 26th January, 2005 unreported where the Supreme Court** per Dr. Twum JSC held that

"In my view this type of proof is a salutary rule of evidence based on common sense and expediency. Where an adversary has admitted fact advantageous to your cause, what better evidence do you need to establish that fact than by relying on his own admission. This is really an example of estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some state of facts which he had formerly asserted"

Again, at page 376 of the book **Practise & Procedure of Trial Courts & Tribunals In Ghana,** authored by retired Supreme Court Judge **His Lordship Justice S.A. Brobbey**, he opined thus;

"Where evidence of the opponent or opponent's witness supports that of the party. In such a case the rule is that where the evidence of one party on an issue is corroborated by the evidence of the opponent or opponent's witness, while that of the opponent on the same issue stands uncorroborated, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some reason (which must appear on the face of the record) the court finds the corroborated one incredible or impossible.

This was first enunciated in the dictum of Ollenu J (as he then was) in Tsirifo V v Dua VIII [1959] GLR 63 a 64-65 which was approved in Osei Yaw v Domfeh [1965] GLR 418, SC."

In the instant case, the Defendant himself admitted under cross examination that there were times Plaintiff fetched water for defendant in the molding of blocks, carried blocks during foundation, carried mortar and cooked for defendant and the workers during the construction of the said house. This pieces of evidence from Defendant corroborates Plaintiff's evidence or tends to show that the evidence led by the Plaintiff was true, therefore the Plaintiff's testimony which has been corroborated by the Defendant himself both in pleadings and cross examination, ought to be accepted and preferred against the uncorroborated version of the Defendants as per the authority above cited.

Accordingly, it is the view of this court that Plaintiff has been able to prove her case on the balance of probabilities and she must be entitled to fair share of the uncompleted three bedroom house located at Amenase and the cocoa farm she jointly cultivated with the Defendant at Comfort.

Article 22 (3) of the 1992 Constitution provides:

(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 marriage"***

By the constitutional provision hereinabove quoted, Plaintiff being married to the defendant, and the parties having jointly acquired the assets mentioned supra during their marriage, Plaintiff should have equal access to same and equitable share, now that their marriage is dissolved. Therefore it would be a breach of the 1992 Constitution, unfair and inequitable, if the Defendant is allowed to deprive the Plaintiff from their jointly acquired asset.

In the case of **Berchie Badu v. Berchie Badu [1987-88] 2 GLR 260-268,** the court was confronted with a similar issue where a wife bought a land and the had title in her name and on that land the husband spent and invested more resources to develop same as their matrimonial home, in divorce, the trial court declared the wife sole owner of the property but on appeal, the Court of Appeal per **Osei- Hwere JA** held, allowing the appeal**:**

"The trial court erred in decreeing title in the petitioner simply because the land was in her name. The doctrine of quicquid plantatur solo solo cedit had never found a niche in matrimonial relations particularly in the acquisition of matrimonial home. Where spouses jointly acquired property but the legal estate was vested solely in one spouse, the amount of share of the other spouse in the beneficial interest in cases where he had made a direct or identifiable contributions to the acquisition, had to be proportionate to the payment made. But where the contributing spouse made indirect or unidentifiable contributions, although his share then would be less easy to evaluate, the difficulty in the evaluation did not in itself justify the application of the maxim "equality is equity" if the fair estimate of the intended share might be of some fraction other than one half. Since, on the evidence, the petitioner was only able to prove that she paid for the plot , her beneficial interest in the matrimonial home should be the proportion that c150 bore to the total cost of construction, ie c65,000 or c 80,000, and it would consequently be negligible."

Therefore, even if, the contestations of the defendant, which the court has rejected though, that the land on which the farm and the house are situated belonged to his late father and uncle respectively were true, same could still not be used to deprive or deny the plaintiff from having her fair and equitable share in these assets.

I find as fact that plaintiff variously contributed directly and indirectly to the acquisition of the uncompleted three bedroom house situated and located at Amenase as well as the

farm at Comfort and should have beneficial interest in them and be entitled to a fair share thereof.

Section 41 (3) of The Matrimonial Causes Act of 1971(Act 367) provides:

In the application of section 2 (1) of this Act to a marriage other than a monogamous marriage, the court shall have regard to any facts recognized by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage

Accordingly, this court is empowered to apply the provisions of the MCA in the instant case, it being customary marriage notwithstanding, and make any awards I find necessary given the circumstance of the case.

Section 20 (1) of MCA supra provides:

" 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".

The above provision has received judicial blessing in a number of cases and one of such case is **Verdoes v. Koranchie [2016] 94 G.M.J** in which **Kusi – Appiah JA**, stated:

*"**Under section 20(1) of Act 367, the court may order either party to the marriage, after a decree of divorce, to pay as settlement such sum of money as the court thinks just and equitable as financial provision. Should a party not have such sum of money, then the court may order a party to convey movable or immovable as a charge for the financial provision. The Court may also, if the party has fund but not sufficient to meet the financial provision, in lieu thereof order the party to convey movable or immovable property that will be charged with for the financial provision. The practice is to order a***

lumpsum of money to be paid especially where the husband has sufficient assets out of which lumpsum can be paid. The wife will then be able to invest it and use the income to live on or buy her own house. But the provision, that is, section 20(1) of Act 367 being disjunctive, the court cannot award both financial provision and property settlement at the same time, since that will amount to double compensation"

Applying the reasoning in the case cited supra, the entitlement of the plaintiff in the instant case can be converted into payment of cash as financial provision to the plaintiff to compensate for her fair and equitable share in the asset they jointly acquired during their marriage. By this payment of financial provision, the court will avoid the likely confusion that may erupt between the parties in the sharing of the property in future in execution of the judgment.

Consequently, upon critical analysis the entire evidence before the court, I am convinced that, the Plaintiff has been able to proof part of her case on balance of probabilities against the defendant and must succeed on that.

Unfortunately, however, the Plaintiff could not proof her case against the Plaintiff in relief (3), which is recovery of GHC 1,800.00 being debt owed her by the defendant by providing cogent and convincing evidence to support it, and same is accordingly dismissed

Having found Defendant liable for reliefs (1) and (2) being sought against him from the Plaintiff, and taking a cue from the above authority as well **Berchie Badu v. Berchie Badu** case supra, the court hereby orders as follows:

1. Defendant shall commute Plaintiff's equitable share in three uncompleted bedroom house parties jointly built at "Amenase" as financial provision of GHC 12,000.00 and pay same to Plaintiff.

2. Defendant shall commute Plaintiff's equitable share in the cocoa farm parties jointly cultivated at "comfort" as financial provision of GHC 3,000.00 and pay same to Plaintiff.
3. Cost of GHC 500.00 assessed in favor of Plaintiff.

.

……

Bernard D. Biney

(Magistrate)