IN THE DISTRICT MAGISTRATE COURT HELD AT NSAWAM N.A.MA. ON 31ST MARCH, 2023 BEFORE HER WORSHIP SARAH NYARKOA NKANSAH MAGISTRATE

SUIT NO. A4/09/19

SUSANA ACQUAH ------- PETITIONER
OF H/NO. H16/D1-DJANKROM
NSAWAM

VRS

ALBERT ACQUAH ------ RESPONDENT
ALSO OF DJANKROM
NSAWAM

PARTIES: PARTIES PRESENT

COUNSEL: GEORGE AHADZIE FOR PETITIONER PRESENT. LEONARD SEDZRO FOR RESPONDENT ABSENT.

JUDGMENT

The Petitioner commenced the present action in this Court praying for the following reliefs:

a. An order of the Honorable Court dissolving the ordinance marriage contracted between the Petitioner and Respondent.

b. An order compelling Respondent to pay an amount of GH¢20,000.00 as alimony.
c. An order compelling Respondent to pay an amount of GH¢500.00 each being maintenance fee for the upkeep of the children.

d. Any other reliefs or cost the Honorable Court may deem fit.

The Respondent also cross-petitioned per his amended Answer and cross Petition filed pursuant to leave granted by the Court on 11/03/2020 for the following reliefs:

a. A dissolution of the ordinance marriage contracted between the Petitioner and Respondent.

b. Equal distribution of House No. H 29 J 1 Djankrom-Nsawam.

c. Equal distribution of an adjoining plot of land acquired during the pendency of the marriage.

PETITIONER'S CASE

It is the case of the Petitioner that, although she is married to the Respondent and they have five (5) issues from the marriage, the Respondent has moved in with another woman whom the Respondent has had one (1) issue with. The Petitioner continued that, the Respondent has been physically and verbally abusing her anytime the Petitioner speaks about the other woman and that, all efforts to get the Respondent to end his affair with the other woman have proved futile. The Petitioner added that, the Respondent neither maintains the five (5) children nor does he support the home. The Petitioner further averred that, the three (3) bedroom self-contained with boys room located at Djankrom is her bonafide property and the Respondent did not contribute to building the house. The Petitioner concluded that, the marriage has broken down beyond reconciliation. The Petitioner called two (2) witnesses to testify for her.

PW 1

PW 1 testified that, she overheard the Respondent telling his relatives that the land was bought by the Petitioner and the house was also built by the Petitioner. That Respondent had not contributed to the buying of the land or to the building of the house.

PW 2

PW 2 testified that, the Petitioner and the Respondent had been living happily until the Respondent started to physically assault the Petitioner because of another woman. PW 2 added that, all efforts made by the families and the Church to settle the matter have proved futile. PW 2 concluded that, the house the parties live in belongs to the Petitioner. Petitioner closed her case thereafter.

RESPONDENT'S CASE

It is the Respondent's case that, he and the Petitioner have been married since 1987 and they got into a joint fish-frying business from which they bought a plot of land and built three (3) single rooms with two (2) boys rooms and a store. The Respondent continued that, the Petitioner started spending a lot of time at the Church Mission House since a Reverend was posted to Nsawam in 2012. The Respondent averred that, the Petitioner has denied him his conjugal rights since 2016, has refused to cook and wash his clothes. According to Respondent, all efforts to get the Petitioner to change have proved futile. The Respondent added that, he informed the Petitioner about his intention to go for another woman and that the unfortunate happenings were caused by the behaviour of the Petitioner. Respondent closed his case thereafter.

The legal issues that fall for determination are:

i. ***Whether or not the marriage has broken down beyond reconciliation.***

ii. ***Whether or not the Petitioner is entitled to a lump sum financial settlement.***

iii. ***Whether or not there is matrimonial property to be distributed***

Section 14 of the Evidence Act, 1975 (NRCD 323) which regulates the reception and evaluation of evidence provides as follows:

"Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim or defence he is asserting".

In ***Mensah v. Mensah [1972] 2 GLR 198, Hayfron-Benjamin J.*** (as he then was) held that:

"… it is therefore incumbent upon a Court hearing a divorce petition to carefully consider all the evidence before it; for a mere assertion by one of the parties that the marriage has broken down will not be enough…"

The Petitioner commenced the present action for divorce on grounds that, the marriage has broken down beyond reconciliation. The Respondent on his part also stated that, the marriage has broken down and cross- petitioned for the dissolution of the marriage in his Amended Answer and Cross-Petition. Both parties subsequently led evidence to support their averments. At paragraph 19 of his Witness Statement the Respondent states as follows:

"Recently, after she had brought this matter to Court, we tried to patch things up, but she was not co-operating. She even asked me to leave the house. She would not wash my cloths nor cook for me"

At paragraph 9 of Petitioner's Witness Statement she states as follows:

"That our marriage still exists but the Respondent has gone to marry another woman with one issue for the past two (2) years and our marriage had broken beyond reconciliation"

It is the opinion of this Court that the marriage contracted by the parties has indeed broken down beyond reconciliation as evidenced by the evidence led by the parties themselves.

Again, it is apparent on the face of the record that the issue of adultery that was raised by Petitioner was not denied by the Respondent and so no issue was joined on that fact. Since no issue was joined the Court did not find it necessary to discuss same; save to add that, the Petitioner obviously found it intolerable to continue to live with the Respondent as husband and wife by reason of the adultery as demonstrated in paragraph 9 of her Witness Statement reproduced supra.

In the course of the trial, parties made reference to some properties, which according to them were acquired during the pendency of the marriage. These are;

i. *Land at Anomabo*

ii. *House at Aduakrom*

iii. *House at Djankrom*

In determining whether or not any property is subject to distribution upon the dissolution of the marriage, the Court ought to consider whether the said property was jointly acquired by the parties. Where the Court found the property in question to be the self-acquired property of a party, that property shall not form part of the marital property to be distributed.

The supreme Court has clarified the position of the law on jointly acquired marital properties.

In the case of ***Adjei Vrs Adjei (J4 6 of 2021) [2021] GHASC 5 (21 April 2021)***; the Court held as follows:

"With regard to the distribution of jointly acquired properties during marriage upon divorce, this Court, in a plethora of decisions, has outlined and refined the principles that should guide the Courts in their determinations. The decisions of this Court, dating back to the case of ***MENSAH v MENSAH [1998-1999] SCGLR 350****, per Bamford-Addo, JSC, which we shall term the first Mensah case, then to Boafo v Boafo (supra); then the second Mensah v Mensah, (supra) per Dotse, JSC; Quartson v Quartson (supra); Arthur v Arthur (supra) and Fynn v Fynn (supra), have set out the parameters for determining which properties could be termed as 'jointly-acquired marital properties' and the criteria for the distribution of such properties. All these decisions were influenced by the provisions of the 1992 Constitution under articles 22(2) & (3) on* ***'Property rights of spouses'****; 33 (5) on '****Protection of rights by Courts'*** *and the provisions of section 20 of the* ***Matrimonial Causes Act, 1971 [Act 367].*** *Articles 22(2) & (3) and 33(5) of the 1992 Constitution particularly, read: -*

"22 (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 realization 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."

The combined effect of the decisions referred to supra is that; any property that is acquired during the subsistence of a marriage, be it customary or under the English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple *and upon divorce, should be shared between them on the equality is equity principle. This presumption of joint acquisition is, however, rebuttable upon evidence to the contrary – {See the* Arthur case *supra, holding (3) at page 546}. 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 or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition. The operative term or phrase is;* **"property jointly acquired during the subsistence of the marriage"**. *So where a spouse is able to lead evidence in rebuttal or to the contrary, as was the case in* Fynn v Fynn *(supra), the presumption theory of joint acquisition collapses."*

In view of the foregoing authority, I shall now proceed to examine the status of the properties listed supra.

It is without doubt that these properties do exist and that, they were all acquired during the subsistence of the marriage. What remains disputed is the ownership of these

properties. According to the Petitioner, the house at Djankrom was solely acquired by her and that the Respondent acquired the house at Aduakrom and the land at Anomabo. The Respondent on his part has told the Court that, he jointly acquired the house at Djankrom with the Petitioner, he jointly owns the land at Anomabo with his brothers and also that the House at Aduakrom belongs to his supposed second wife, Maame Kokor.

Should the Court choose to accept Respondent' s version, the conclusion should then be that both the Anomabo land and the Aduakrom house are not marital properties. However, in the opinion of the Court the Respondent should have provided more by way of proof to establish his version. The Respondent could have produced title documents to substantiate his claim that he bought the Anomabo land together with his brothers; or he could have called any of his co-owners to testify. Respondent could not produce any document to show Maame Kokor as the owner of the Aduakrom House neither did he call her to testify. The Respondent had the opportunity to do so as he lives with Maame Korkor as his supposed second wife. The present case is one of the circumstances under which the burden of proof had properly shifted to the Respondent. The onus now lay on the Respondent to prove the facts that, he claimed otherwise a ruling could be made against him.

In the case of ***Lamptey alias Nkpa v. Fanyie & Others [1989-90] 1 GLR pg 286***, the Supreme Court held that;

"*On general principles, it was the duty of a plaintiff to prove his case. However, when on a particular issue he had led some evidence, then the burden will shift to the defendant to lead sufficient evidence to tip the scale in his favour*"

In the case of ***Ababio V Akwasi IV [1994-1995] GBR 774,*** *Aikins JSC* delivered himself thus;

"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."

Section 14 of the Evidence Act, 1975 (NRCD 323) which regulates the reception and evaluation of evidence provides as follows:

"Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim or defence he is asserting."

The Court concluded that the burden had shifted upon the establishment of the following facts on record:

a. *That the Respondent has admitted to advancing GH¢500.00 as payment for the land at Anomabo.*

b. *That Respondent lives in the house at Aduakrom.*

c. *That Respondent lives in the house with Maame Korkor as his wife.*
d. *That Respondent has admitted on record that Maame Korkor was his farm labourer.*

In consideration of these facts, the Court is inclined in the absence of more to assume that, the land at Anomabo belongs to the Respondent. There is no evidence on record indicating any other person's contribution in terms of the amount besides the GH¢500.00 advanced by the Respondent. In respect of the Aduakrom house, the Court is minded to

assume that, the Respondent is better placed to put up the building rather than his supposed second wife whom he admits was his own farmhand. Between the two of them, Respondent is more likely to have put up the building. In view of same, the Respondent should have discharged the burden of proof that had shifted to him by calling material witnesses or producing supporting documents. In the absence of same, I am afraid to say that, the Court shall disbelieve his version. I accordingly find that, the said properties, being the land at Anomabo and the Aduakrom house were acquired by the Respondent during the pendency of the marriage.

Concerning the ownership of the Djankrom House, the Respondent has maintained that, the parties acquired it jointly, the Petitioner also insists that she acquired same from her own resources. Under cross-examination by the Respondent, the Petitioner gave the following answer:

Q. Do you know the house we built I did all the carpentry work on it?

A. You did all the wooden work, but I did not build the house with you. I built the house with my own money, but because you are my husband you did the carpentry job without a fee. But I bought every single material for the job.

In view of the answer given by the Petitioner under cross-examination; which answer was not challenged by the Respondent; the Court is of the opinion that, the Petitioner is more likely to have acquired the Djankrom house from her own resources alone than not. I accordingly find that, the Djankrom house was acquired by the Petitioner during the subsistence of the marriage.

As noted in the Supreme Court decision cited supra, irrespective who may have acquired the property, once it was acquired during the pendency of the marriage, the property is

presumed to have been jointly acquired. However, it is possible to rebut this presumption with contrary evidence.

With the exception of the Petitioner who sought to rebut the presumption against the Respondent regarding the Djankrom house, no such rebuttal has been raised in respect of the other properties. Even in the case of the Djankrom house although the Petitioner succeeded in convincing the Court that she built the house with her own resources she has also admitted that the Respondent did the carpentry works on the house without a charge. As insignificant as it may seem it amounts to some form of contribution although it may not result in equal interest.

I accordingly hold that the land at Anomabo, the House at Aduakrom and the House at Djankrom all form part of the marital properties and therefore subject to distribution.

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 determining whether or not to make a property or financial settlement to a party within the context of Section 20 (1) of Act 367, the Court is enjoined to be just and equitable and in determining what is just and equitable, the Court is to take due regard of all the circumstances of the case. The income, future earning capacities of the parties, property and resources of the parties, their standard of living, ages of the parties and duration of the marriage, and contribution of each of the parties are some of the factors which are taken into consideration in determining what is just and equitable.

I have examined the evidence as best as I can and I have made up my mind that, this is a proper case in which to make a financial settlement in favour of the Petitioner.

On the totality of the evidence and the conduct of the parties, I am satisfied that the marriage has broken down beyond reconciliation.

For the foregoing reasons, judgement is hereby entered as follows:

i. The marriage celebrated between the parties on the 30th September, 1995 is hereby dissolved.
ii. The Respondent shall maintain the Children of the marriage by paying GH₵500 per month.
iii. The Respondent shall pay the school fees, other educational expenses and medical bills of the children of the marriage aforementioned.
iv. Petitioner to pay the school fees of the child schooling in China until date of completion.
v. Respondent to pay the school fees for the child schooling at the University of Ghana until date of completion.
vi. I settle the Anomabo land on the Respondent.
vii. I settle the Aduamoa House on the Respondent
viii. I settle the Djankrom house and its adjoining land on the Petitioner
ix. The Respondent to pay the sum of GH₵15,000.00 as financial settlement to the Petitioner.
x. No order as to costs.

(SGD)
H/W SARAH NYARKOA NKANSAH
MAGISTRATE

31/03/2023