THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 19TH JANUARY 2023 CORAM: HIS HONOUR YAW POKU ACHAMPONG

SUIT NO.: C11/18/2021

CECELIA MENSAH ***…….*** ***PETITIONER***

VS

KWAME GYAMFI ***……..*** ***RESPONDENT***

PARTIES PRESENT

JUDGMENT

Plaintiff filed a writ of summons claiming the following reliefs:

1. an order of the court dissolving the customary marriage between the parties herein.
2. an order of the court compelling the respondent herein to pay fair and adequate compensation to the petitioner as push off.
3. an order of the court dividing the three (3) acre cocoa farm cultivated by the parties herein into two(2) equal halves among them.

4. an order of the court compelling the respondent to build one (1) bedroom for the petitioner in her hometown of Denkyira Asikuma.

5. any futher order or orders that the honouable court may deem it fit.

According to Plaintiff, she got married to Defendant in the year 2006 and joined him to live with him at his hometown of Betenase. They lived together until June 2021. Some years into the marriage, Plaintiff discovered that Defendant was having an amorous relationship with a certain lady called Esi Maanan alias Mary. This woman happened to be to the ex-girl-friend of Defendant. Defendant had the penchant of visiting of the said Mary. Defendant's affair with Mary brought problems in the marriage between the parties. In a quarrel between the parties on one occasion, defendant told Plaintiff that Esi Maanan was better than her and so he would divorce Plaintiff and and marry Esi Maanan. Defendant consequently brought Esi to live in the matrimonial house. Defendant initially put Esi in a certain room in that house and he went to her from time to time. Eventually, Defendant moved Esi into the main house.

Defendant subsequently went to Plaintiff's hometown and informed Plaintiff's relatives and he would no longer marry her. Since then Defendant kept saying that he had divorced Plaintiff. It is the case of Plaintiff that throughout the period she lived with as her husband, she assisted him immensely in acquiring landed properties. They cultivated a three (3) cocoa farm at Betenase and also built a two (2) bedroom house also at Betenase that served as their matrimonial home. It is the case of Plaintiff that Defendant virtually turned her into his labourer. She worked so hard on the farm and so much so that as at the time she filed her witness statement she had suffered from severe waist pains and found it difficult to straighten up when walking. Plaintiff submitted Defendant had refused to appear before the elders of her family to have the challenges to the married discussed and resolved. Defendant had told Plaintiff and others on several occasions that he hhad taken Plaintiff to her people and that he would not appear before them as he considered their marriage dissolved. Plaintiff, for the avoidance of doubt has come before the court praying to dissolve the customary marriage between the parties. Plaintiff is of the view that in the event of the dissolution of the marriage, she is entitled to a share of the landed properties the couple

acquired. She is therefore praying the court to divide into two (2) equal parts the three (3) acre cocoa farm they parties cultivated and share it between them. Plaintiff submitted the she could not live in the same house with Defendant and Esi Maanan as that would jeopardize her life. Plaintiff is therefore praying the court for an order on defendant to build one bedroom flat for her in her hometown of Denkyira Asikuma. Lastly, Plaintiff is praying the court that she should be paid fair and adequate compensation [by Defendant] as push off.

Plaintiff called one witness hereinafter referre to as PW1.

PW1 stated that Plaintiff was his younger sister and that a couple of months prior to he filing his witness statement, his (PW1's) family was having a meeting over the death of his(PW1's) mother and Defendant came there. Defendant told the gathering he was no longer interested in marrying Plaintiff. When the elders asked Defendant for his reasons, he said Plaintiff had disgraced him. Defendant gave the explanation that Plaintiff always complained of the GH¢5.00 housekeeping money per day that he (defendant) gave her pursuant to which she had made a complaint to the Ankobeahene of Esaase over that. The elders then told the defendant that the reasons he had given were not good enough for divorce to be effected but defefendant insisted that he would not marry Plaintiff. The elders advised Defendant to go back and come again with his people if he really meant what he had said. At the request of the elders, the defefendant provided to Plaintiff an amount of GH¢300.00 as her housekeeping money. Defendant promised to come back with his people within one (1) month but he never shoewd up again. All invitations on defendant by the elders of Plaintiff's family were never honoured by him. PW1alluded that Plaintiff helped Defendant to cultivated a three (3) acre cocoa farm at defendant's hometown ie Betenase. PW1 also alluded that Plaintiff assisted Defendant to build a two-bedroom house at Betenase. PW1 concluded that since the elders of Plaintiff's family could not compel Defendant to appear before them at Denkyira Asikuma to customarily free Plaintiff from the marriage, Plaintiff's family advised Plaintiff to seek redress in Court.

I must say that the witness statement of Defendant was not well written. It has too much grammatical and logical issues. I will therefore not take the risk of paraphrasing same. I hereby produce same:

"1. My name is Kwame Gyamfi, I am a farmer and lives[sic] at Betenase via Dunkwa-On-Offin

2. I have been sued by the Plaintiff herein claiming the Reliefs endorsed on her Writ of Summons.

3. My Lord, Plaintiff herein was my lawful wife and whenever parties herein went to farm parties complement each other in farming activities and that Plaintiff was used as farm labourer.

4. My Lord, for 5 years running cocoa farm I and Plaintiff attempted to cultivate cocoa farm but all fall[sic] into ruins that is when we plant the cocoa after germination the plant did not do were[sic] and died in the process.

5. My Lord, because the cocoa did not do well, Plaintiff stop[sic] going to farm with explanation that she cannot[sic] work in vain since there is[sic] no good result out of farming activities because almost all the cocoa planted have died.

6. My Lord, I managed to maintain about 1acre of the land into cocoa while Plaintiff has[sic] taken into[sic] trading activities.

7. My Lord, before Plaintiff came to the marriage, I have[sic] purchased most of building materials including 5 packet[sic] of roofing sheets, woods, 2 doors and have[sic] paid for 20 bags of cement for construction of a building on the portion of my house.

8. That after I married Plaintiff traditionally in 2012, I gave GH¢500.00 as her capital and there after I used the building materials to build | 2 bed rooms in my house.

9. My Lord, I have married Esi Maanan @ Mary, and that when I was marrying Esi Maana @ Mary I informed Plaintiff and compensated Plaintiff to the tune of GH¢600.00.
10. My Lord, ever since I married the said Mary traditionally, my attitude toward[sic] Plaintiff never changed, whenever it's Plaintiff[sic] turn, I sleep[sic] in the same room with Plaintiff and have[sic] amorous affairs with Plaintiff.
11. My Lord, on 7th June 2021 the marriage between my good self and Plaintiff was formally dissolved traditionally and I was ordered to pay alimony of GH¢2,000.00 to Plaintiff of which I accepted same and have made part payment of GH¢300.00 as

well as I performed the necessary rites before the panel that sat for dissolution of the marriage and I promised to pay the remaining balance of GH¢1,700.00 in two weeks' time.

12. My Lord, in[sic] 2 occasions that I sent the said GH¢1,700.00 to Plaintiff's father Opaini Kofi Duku who was one of the member of the panel and superintendent[sic] the dissolution of the marriage, but Opanin Kofi Duku denied[sic] to receive the money with explanation that Plaintiff has[sic] told him she is in preparation to sue me before the court and that I should keep the money for a while.
13. My Lord, adequate compensation have[sic] been determined by the panel superintendent{sic] by Plaintiff's father Opanin Kofi Duku who dissolved the married[sic] Traditionally of which I Have paid GH¢300.00 remaining GH¢1,700.00"

I find it appropriate to produce the salient portions of the witness statement of Kofi Duku – Defendant's only witness in this matter:

...

"3. That I am given[sic] to support the case of the defendant.

…

5. That the defendant once brought the plaintiff that he was no longer interested in the marriage and that that he was ready for the desolution of the marriage.

6. That at the desolation[sic] the panel of which I was one of them suggested that the defendant should pay some compensation to plaintiff because they have been in the marriage for long and plaintiff has served defendant so much.

7. The plaintiff[sic] agreed to pay compensation of GH¢2000.00 which the plaintiff disagreed to it but defendant insisted that, that would be the only amount he could pay to plaintiff as compensation.

8. The plaintiff thereafter threatened that if defendant insisted to compensate her with only GH2000.00 which is inadequate then she would send the defendant to court for adequate compensation.

9. That in my opinion the marriage has not customary[sic] dissolved as the meeting ended abruptly and that no better conclusion was reached."

The issues for determination are:

1. Whether or not the marriage herein has been dissolved.

2. Whether or not Plaintiff deserves to be paid more compensation than 2000.00 by Defendant.

3. Whether or not defendant should be made to build a house for plaintiff.

4. Whether or not plaintiff is entitled to a share of the cocoa farm.

Upon the back and forth on the matter, Defendant's own witness settled the dust as regards the first issue supra. I need not belabour the point, the marriage has not been dissolved. Defendant's own witness – one and only, lends credence to the testiomny of Plaintiff that the

marriage has not been dissolved. The corroborative effect of DW1's evidence on Plaintiff's evidence in that regard is conclusive and apt.

Section 7(1) of the Evidence Act states:

> *Corroboration consists of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence.*

In *Barimah Gyamfi v. Ama Badu* [1963] 2GLR 596 @ 598 Ollennu JSC stated:

> "*It must be observed from the outset that there is no onus upon the defendant to disprove a claim made by a plaintiff, so that, however, conflicting or unsatisfactory his evidence may be, the same cannot avail the plaintiff; evidence given by the defence only becomes important in a case either where it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour, or where it tends to corroborate[emphasis] evidence of the plaintiff, or tends to show that evidence led on behalf of the plaintiff is true[emphasis].*"

Having established that the marriage herein has not been dissolved, I proceed now to make a determination on whether the marriage should be dissolved or not. I will mince no words. The evidence show clearly that the marriage has fallen on the rocks and that even an attempt was made to dissolve same but the issue of alimony could not be settled. I hereby dissolve the marriage herein. It is decreed that the parties herein are as from today 19th January 2023 no longer husband and wife.

I now turn my attention to property distribution. Neither party applied to the court to have the *Matrimonial Causes Act*, 1971(Act 367) applied to the matter herein. See section 41(2) of Act 367. Therefore, the court did not apply the provisions of act 367 to the conduct of this case.

As Article 22(3) of the Constitution *infra* applies to all marriages, I will respectfully apply some principles espoused in the case *Mensah v Mensah*(J4/20/2011) [2012] GHASC 8 (22 February 2012) and some other decided cases as persuasive authorities to make the analysis on property distribution in this matter.

In *Mensah v Mensah*(J4/20/2011) [2012] GHASC 8 (22 February 2012), Dotse JSC whilst analyzing spousal property distribution made reference to another case of *Mensah v. Mensah* [1998-99] SCGLR 350 where the Court applied the equality is equity principle to determine how the couple's jointly acquired properties would be dealt with in terms of distribution upon dissolution of the marriage.

Dotse JSC felt in the latter *Mensah v Mensah* that it appeared that the Supreme Court took a position in the earlier *Mensah v Mensah* that favoured equal sharing of joint property in all circumstances. Dotse JSC, however, continued to say that the above position in the earlier *Mensah v Mensah* had been modified and clarified in another case – *Boafo v Boafo*[2005-2006] SCGLR 705.

In that case, the man petitioned for divorce and the woman cross-petitioned. The court dissolved the marriage. On the issue of the distribution of properties, the trial judge found that the properties had been jointly acquired; that the parties had operated their finances jointly, but the degree of financial contribution of the wife to the acquisition of the properties was not clear to the court. The trial judge then made distribution which was not based on half and half(equal) basis. The wife appealed to the Court of Appeal on the grounds, *inter alia*, that the trial judge failed to distribute the properties in accordance with Article 22(3) of the Constitution.

Article 22(3) of the Constitution states:

> *"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."

The Court of Appeal held that the properties ought to have been distributed on half and half(equal) basis.

On further appeal to the Supreme Court, the Highest Court of the land held @ 711 per Date-Bah JSC who referred to *Mensah v Mensah*[1998-99] SCGLR 350 and gave further explanations that:

> "On the facts of Mensah v. Mensah (supra), the Supreme Court (per Bamford-Addo JSC) held that equal sharing was what would amount to a "just and equitable" sharing. The view of Denning LJ (as he then was), in Rimmer v. Rimmer [1952] 1 QB 63 at 73 that on the facts of that case equality is equity seems to have inspired the learned Supreme Court Judge's approach. … Denning LJ's view was that where it is clear that the matrimonial home or furniture common use belongs to one or the other of the married couple, then the courts would respect the proprietary rights of the particular spouse. But where it is not clear as to whom the beneficial interest belongs or in what proportions, then the equitable maxim of equality is equity would be applied. The spirit of Bamford-Addo JSC's judgment in Mensah v. Mensah appears to be that the principle of the equitable sharing of joint property would ordinarily entail applying the equitable principle, unless one spouse can prove separate proprietorship or agreement or a different proportion of ownership.
>
> This interpretation of Mensah v. Mensah as laying down the principle of equitable sharing of joint property, accords with my perception of the contemporary social mores …"

Date-Bah JSC continued at 713:

> "… Thus article 22 firmly places within the domain of social human rights the distribution of the property of spouses, on divorce… It was meant to right the imbalance that women[emph] have historically suffered in the distribution of assets jointly acquired during marriage. An equal division will often, though not invariably, be a solution to this imbalance."

According to Dotse JSC in his judgment in the latter *Mensah v Mensah*, Date-Bah JSC by the assertion above underscored the essence of section 20(1) of the *Matrimonial Causes Act*, 1971 Act 367 and article 22(3) (b) of the Constitution.

Section 20(1) of Act 367 states:

> *(1) 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.*

Thus Dotse JSC made further reference to Date-Bah JSC's judgment in *Mensah v Mensah*(first in time) at 714, where the learned Date-Bah JSC said of section 20(1) of Act 367 that:

> "The question of what is "equitable", in essence, what is just, reasonable and accords with common sense and fair play, is a pure question of fact, dependent purely on the particular circumstances of each case. The proportions are, therefore, fixed in accordance with the equities of any given case."

Dotse JSC observed as follows:

> "Therefore even though *Boafo v. Boafo* affirmed the equality is equity principle as used in *Mensah v. Mensah*, it gave further meaning to section 20(1) of Act 367 and article 22(3)(b) of the 1992 Constitution. Consequently, the issue of proportions are to be fixed in accordance with the equities of each case.

> The court duly recognized the fact that an equal (half and half) distribution, though usually a suitable solution to correct imbalances in property rights against women, may not necessarily lead to a just and equitable distribution as the Constitution and Act 367 envisages. It is submitted that the court made room for some flexibility in the application of the equality is equity principle by favouring a case by case approach as opposed to a wholesale application of the principle.
>
> The above notwithstanding, it must be noted that the paramount goal of the court would be to achieve equality."

In *Mensah v Mensah*(first in time), the Supreme Court endorsed the Court of Appeal's position to the effect that an inability or difficulty to identify clearly distinct contributions in the acquisition of the joint property would not in itself preclude a half and half sharing.

At 716 Date Bah JSC quoted with approval a passage from the judgment of Wood JA (as she then was):

> " …Indeed in cases where the evidence clearly points to a joint ownership, I found no inflexible rule stipulating that a spouse's inability to identify clearly contribution automatically disentitles him or her from a half share. To the contrary, it does appear that the courts have been quick to apply the equality is equity rule, and so lean towards a half and half share, if from all the circumstances, such an approach would be justifiable."…

Date-Bah JSC then pronounced as follows:

> "Again, we consider this passage a sound statement of the law…
>
> Where there is substantial contribution by both spouses, the respective shares of the spouses will not be delineated proportionally like a shareholding in a company. For, the marriage relationship is not a commercial relationship… equality is equity will usually be an equitable solution to the distribution issue. The Court of Appeal was therefore within its rights in intervening to achieve equality."

Dotse JSC then concluded in *Mensah v Mensah*(the latter) that:

> "It is therefore apparent that the Ghanaian Courts have accepted this equality is equity principle in the sharing of marital properties upon divorce. We believe that the death knell has been sung to the substantial contribution principle, making way for the equitable distribution as provided for under article 22 (3) of the Constitution 1992."

for clarity of article 22(3) of the constitution, clause 2 of that article states:

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

Section 10(1) of NRCD 323 defines "Burden of Persuasion" and it states:

> *For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.*

Section 10(2) of the Evidence Act adds that:

> *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 11 of NRCD 323 defines "Burden of Producing Evidence"; subsections 1 and 4 state:

> *(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*

(4) 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 *Ackah v. Pergah Transport Limited and Others* [2010] SCGLR 728; Sophia Adinyira JSC stated at page 736 that:

It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things(often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree.

Section 80 of NRCD 323 states**:**

(1) Except as otherwise provided by this Decree, the court or jury may, in determining the credibility of a witness, consider any matter that is relevant to prove or disprove the truthfulness of his testimony at the trial.
(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to the following:(a) the demeanour of the witness;
(b) the substance of the testimony;
(c) the existence or non-existence of any fact testified to by the witness;
(d) the capacity and opportunity of the witness to perceive, recollect or relate any matter about which he testifies;
(e) the existence or non-existence of bias, interest or other motive;

(f) the character of the witness as to traits of honesty or truthfulness or their opposites;
(g) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;
(h) the statement of the witness admitting untruthfulness or asserting truthfulness.

In *Ntiri* v. *Essien* [2001-2002] SCGLR 451, it was held by the court that the trial judge has the duty to ascertain credibility of a witness. Plaintiff, PW1 and DW1 appear credible to me.

I find from the evidence that the two bedroom house is a jointly acquired property of the parties herein; so is the said cocoa farm. But I do not find that it will be practicable to let Defendant build a house for Plaintiff as she is praying for. Also there could be practical challenges dividing the cocoa farm and sharing it between the parties in the circumstances.

I will hereby take a cue from section 20 of Act 367(supra).
I order Defendant to pay fair and adequate financial provision in the form of a lump sum to Plaintiff as regards the loss of her share in the properties acquired during the marriage, as the parties go separate ways and as regards compensation(push-off) for her. I make this order with due regard to Defendant's claim that he had married one Esi Maanan; a claim Plaintiff did not deny. I take cognissance of the fact that from the time of the inception of this case to now, prices of buidling materials have gone up high; some have doubled, if not trippled. I therefore order Defendant to pay GH¢150000.00 to Plaintiff in respect of the building being requested for by Plaintiff. In respect of the cocoa farm, I order Defendant to pay GH¢50000 to Plaintiff. I further order Defendant to pay GH¢50000.00 to Plaintiff as compensation(push off). Defendant is ordered to pay the total of GH¢250000.00 to Plaintiff within three months from today 19th January 2023. Failure of Defendant to pay by the stipulated time, Defendant would pay interest on any money he pays after the expiration of the time given him supra at the prevailing bank rate from the date of the expiration of the time given him. Defendant can only hold himself out as the owner of the said two bed room house and cocoa farm with

whichever wife he has, only after paying the total amount of GH¢250000.00 to Plaintiff. This means that Defendant cannot sell the said house and the said farm, cannot use same as a collateral and cannot deal with same in the capacity of an owner until he has finished paying the GH¢250000.00

(SGD)

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

19/01/2023