IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON TUESDAY THE 27TH DAY OF JUNE, 2023 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS), DISTRICT MAGISTRATE.

SUIT NO. G/WJ/DG/A4/18/22

GLADYS YECHIBIL **PETITIONER**

VRS

EMMANUEL DEBE **RESPONDENT**

PETITIONER IS PRESENT AND REPRESENTED BY PAUL ATIEMO ESQ.

RESPONDENT IS PRESENT AND REPRESENTED BY MICHAEL YOURI ESQ.

JUDGMENT

Brief facts

Petitioner and Respondent are both Ghanaians and currently domiciled in Ghana. Petitioner is a teacher whilst respondent is self-employed and engaged in the business of software development and IT consultancy services.

Parties were lawfully married under the Marriages Ordinance 1951 Rev (Cap 127) on 27th June 2003 at the Registry of the Tamale District Court in Tamale.

After the marriage, parties lived in a rented house at Adabraka in Accra and later moved into their matrimonial home at Gbawe. Parties have five children between them namely Badakabin Debe, Supielie Debe, Putison Debe, Yelsoma Debe and Tisani Debe.

On 1st December, 2021 petitioner filed a petition for divorce at the Registry of this court against the respondent for the following reliefs:

i. That the marriage in fact celebrated between the parties be dissolved.

ii. That the petitioner be granted sole custody of the children of the marriage with reasonable access to the respondent.
iii. That the respondent be ordered to make to the petitioner such maintenance pending suit and thereafter such periodic payments as may be just.
iv. That the following properties be settled in favour of the petitioner

    a. The matrimonial home situate at Gbawe in the Greater Accra Region of the Republic of Ghana be settled in favour of the petitioner.
    b. 50% of the shares of the company called Norbus Company Limited of which respondent is the Chief Executive Officer
    c. One half of the animal farm(pigs and birds) situate at Kumasi in the Ashanti Region
    d. That the respondent be ordered to pay in the alternative to reliefs (iv) (b) and iv(c) above, a lump sum of GHC500,000.00

v. That the respondent be ordered to pay the legal fees of the petitioner.

The respondent entered appearance on 16th December 2021 and filed his answer to the petition on 28th January 2022 and cross petitioned for the following reliefs;

1. An order for the dissolution of the marriage
2. An order for the continuous custody of the children
3. An order denying petitioner's reliefs (iii),(iv) and (v)

Petitioner filed a reply on 2nd February 2022 and generally joined issues with respondent.

CASE OF THE PETITIONER

The ground upon which petitioner pleaded for the dissolution of the marriage was that the marriage between the parties has broken down beyond reconciliation due to the fact

that the respondent has behaved in such a way that she cannot reasonably be expected to live with him as a wife.

She particularised the unreasonable behaviour of the respondent to the extent that respondent has not shared the same room with her for the past five years and has not communicated with her during the said period even though they live under the same roof. She averred that Respondent does not eat her food, travels for days without notice to her, takes decisions affecting their children without her input, takes the children on a visit to their grandparents in the northern part of Ghana during Christmas festivity without notice to her.

She added that respondent has committed adultery and continues to flirt with a lady by name Stephanie who repeatedly texts and calls him at night and on weekends and when she confronted the respondent about the said Stephanie, he ignored her.

She prayed the court to dissolve the parties' marriage as same has broken down beyond reconciliation. She added that respondent has caused her much anxiety, distress and embarrassment.

RESPONDENT'S CASE IN ANSWER

The respondent in his answer to the petition generally denied the petitioner's allegations of unreasonable behaviour but conceded that the marriage had broken down beyond reconciliation due to the unreasonable behaviour of the petitioner. It is his case that the marriage has deteriorated to the extent that parties are not on talking terms to each other. He added that petitioner is very abusive and disrespects him. According to him, petitioner is harsh, hostile and violent and even denies him food as a medium to punish him.

He averred that petitioner was well informed about his travels. He averred further that he takes care of his family, supervises the homework of the children, attends their open day and purchased not less than three vehicles for the petitioner even though she is gainfully employed.

He added that he bought the land on which the matrimonial home is situate in 2001, started construction of the matrimonial home in 2002 and completed the building in 2003. According to him, the only reason why he did not marry the petitioner into the matrimonial home was because he had not extended electricity and water into the building at the time of the marriage. Respondent added that he encouraged the petitioner to pursue a degree and paid her school fees from 2003 to 2007 and that after school petitioner was posted to Senya Breku and only moved into the matrimonial home in 2009.

Respondent prayed for the dissolution of the parties' marriage and custody of the issues of the marriage.

ISSUES SET DOWN FOR DETERMINATION

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

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

ii. Whether or not custody of the five issues of the marriage should be granted to the petitioner with reasonable access to the respondent

iii. Whether or not the matrimonial home, Norbus Company Limited and the animal farm situate at Kumasi are properties jointly acquired during the

subsistence of the marriage and if so whether or not same should be shared equitably between the parties

iv. Whether or not petitioner is entitled to financial settlement.

BURDEN OF PROOF

It is trite that sections 12(1) and (2) of the Evidence Act, 1975 (NRCD 323) provide that the standard in all civil action is by a preponderance of probabilities.

In **ACKAH V PERGAH TRANSPORT LTD & OTHERS [2010] SCGLR 728 AT 736**, Sophia Adinyira JSC held as follows;

"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(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)"

EVIDENCE ADDUCED DURING TRIAL BY THE PARTIES

The evidence adduced at the trial consisted of the testimonies of the parties themselves without either of them calling any witness.

In support of her claim, Petitioner tendered in evidence marriage certificate with licence number 38/2003 as proof of the parties' marriage, birth certificates of the children of the marriage, images of the demolished portions of the garage and a search results from the Registrar General's Department. Same were admitted and marked as Exhibits A, B series, C series and D respectively.

In support of his case, respondent sought to tender an indenture filed on 5th May 2022 as Exhibit 2 however counsel for the petitioner forcefully objected to the admission of the said exhibit on the ground that same had not been stamped in accordance with section 32(6) of the Stamp Duty Act 2005 (Act 689).

Counsel for the petitioner again objected to the tendering of Exhibits 4 series which are purported to be some attendance records of school open days attended by respondent and copies of homework that had been signed by the respondent. He contended that the tendering of the said exhibits infringes on sections 174 and 175 of the Evidence Act 1975 (NRCD323) on the ground that same were not certified true copies of documents emanating from the said school.

He again objected to the tendering of Exhibit 1 which purports to be an architectural drawing on the ground of authenticity of the duplicate of the said architectural drawing pursuant to section 166 of NRCD 323.

He also objected to the tendering of Exhibit 5 series on the ground that the said exhibits bears different signatures even though respondent contends that same comes from him.

On the basis of the objections raised, counsel prayed the court to reject the said exhibits and strike out paragraphs 15, 20, 22, 23 24 and 25 of respondent's witness statement.

Counsel for the respondent prayed the court for leave to put his house in order however as at the date of writing this judgment, counsel had failed to get Exhibit 2 stamped. He had also failed to tender the original copy of Exhibit 1 (the architectural design) in lieu of the duplicate or lead evidence to show that the original was lost or had been destroyed. He again failed to tender certified true copies of Exhibit 4 series. Accordingly I have rejected the said exhibits in my judgment.

WRITTEN ADDRESSES FILED BY THE PARTIES

On the orders of the court, counsel for the Respondent filed his written address on 27th March 2023 and counsel for the petitioner filed his address on 28th March 2023. Both addresses have been considered in the judgment of this court.

THE COURT'S ANALYSIS AND OPINION

Issue one

Whether or not the marriage between the parties has broken down beyond reconciliation.

Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that the sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 (1) of Act 367 explains that 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 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

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

Section 2(2) of Act 367 imposes a duty on the court to enquire into the facts alleged by the petitioner and the respondent. Section 2(3) also provides that although 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.

In **GILBERT ANYETEI V SUSANNA ANYETEI CA/J4/67/2021** dated 2/3/2023, Pwamang JSC held as follows;

"Secondly, the law is that the only ground on which a court would order the dissolution of a marriage is that the marriage has broken down beyond reconciliation particulars of which are required to be specifically pleaded and proved by evidence adduced in court. It is therefore not sufficient for a judge to grant a divorce just because both parties endorsed that relief on their pleadings."

From the evidence, the Petitioner based her allegations for the breakdown of the marriage on the unreasonable behaviour of the Respondent and the fact that he had committed adultery.

To succeed under the fact of unreasonable behaviour, the petitioner must first establish unreasonable conduct on the part of the Respondent and secondly, she must establish that as a result of the bad conduct, she cannot reasonably be expected to live with him.

At page 123 of the book, "At a glance! The Marriages Act and the Matrimonial Causes Act Dissected by Mrs Frederica Ahwireng-Obeng, the learned writer on unreasonable behaviour stated;
"Unreasonable behaviour has been defined in English law as conduct that gives rise to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger". The above statement was reiterated in **GOLLINS V GOLLINS [1964] A.C 644**

She added that the principle of law is that, the bad conduct complained of must be grave and weighty and must make living together impossible. It must also be serious and higher than the normal wear and tear of married life.

Petitioner also accused respondent of adultery.

Section 43 of the Matrimonial Causes Act supra defines adultery as follows;

"adultery" means the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse;"

To succeed under this fact, the petitioner must first prove adultery on the part of the respondent and also that she finds it intolerable to live with him by reason of his adultery.

At page 119 of Frederica Ahwireng Obeng's book cited supra on adultery the learned writer stated;
"because it is difficult to catch offenders in the act, adultery may also be inferred from circumstantial evidence. The circumstantial evidence must be strong for the courts to infer adultery."

In **ADJETEY AND ANOTHER V ADJETEY [1973] 1 GLR 216-221**, Sarkodee J delivered himself as follows;

"Direct evidence of adultery is rare. In nearly every case, the fact of adultery is inferred from circumstances which by fair and necessary inference led to that conclusion. There must be proof of disposition and opportunity for committing adultery but the conjunction of strong inclination with evidence of opportunity does not lead to an irrebuttable presumption that adultery has been committed and likewise the court is not bound to infer adultery from opportunity alone."

From the evidence, respondent denied petitioner's assertions that he had committed adultery and stated that the name "Stephanie" was a figment of petitioner's imagination. Petitioner was unable to lead any evidence to prove her assertion that respondent had committed adultery and that she finds it intolerable to live with him. Her claim of adultery therefore fails.

On petitioner's allegation of unreasonable behaviour on the part of the respondent, respondent admits that parties have lived under the same roof for five years without communicating with each other. He also admits that parties have slept in separate rooms throughout the said period and that he does not eat food cooked by the petitioner with

the explanation that petitioner uses food as a medium to punish him which assertion petitioner denied.

Petitioner in her defence admitted that she was the first to move out of the matrimonial bedroom in protest of respondent's amorous relationship with one Stephanie and that when she moved back into the bedroom, respondent refused to join her in same and has continued to sleep in another room.

On the totality of the evidence before me, I find from the conduct of the parties that even though parties live under the same roof, they have continuously lived physically and emotionally apart and have ceased to recognise the marriage as subsisting for the past five years.

I am satisfied therefore that the parties' marriage has indeed broken down beyond reconciliation due to the fact that parties have not lived as husband and wife for five long years and besides it will be unreasonable to expect the petitioner to live in an acrimonious environment.

I therefore proceed under Section 47 (1) (f) of the Courts Act 1993, (Act 459) to decree that the Ordinance Marriage between Gladys Yechibil and Emmanuel Debe celebrated at the Tamale District Court on 27th June, 2003 is hereby dissolved.

I hereby order the cancellation of the marriage certificate issued. A certificate of divorce is to be issued accordingly.

Issue 2

Whether or not custody of the five issues of the marriage should be granted to the petitioner with reasonable access to the respondent.

Section 22(2) and (3) of Act 367 provides;

2. The court may either on its own initiative or on an application by a party to proceedings under this Act, make an order concerning a child of the household which it thinks reasonable and for the benefit of the child.

3. Without any prejudice to the generality of sub section (2), an order under that subsection may

(a) Award custody of the child to any person;
(b) Regulate the right of access of any person to the child;
(c) Provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage.

The courts have consistently held that on the award of custody of a child, the welfare of the child must be the paramount determining factor. This principle has been given statutory force by section 2 of the Children's Act, 1998 (Act 560) which states:

"The best interest of the child shall be paramount in any matter concerning a child."

The considerations for custody or access have been provided in section 45 of Act 560 as follows;

A family tribunal shall consider the best interest of a child and the importance of a young child being with his mother when making an order for custody or access. Subject to subsection (1), the tribunal shall consider

(a) the age of the child

(b) that it is preferable for the child to be with his parents except where his rights are persistently 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
(f) Any other matter that the Family tribunal finds relevant.

In **OPOKU-OWUSU V OPOKU-OWUSU [1973] 2 GLR 349-354, it was held as follows**;
"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."

Counsel for the petitioner submits that none of the five issues of the marriage has attained the age of majority. He submits further that they are of ages 8, 11, 12, 14 and 16 and as a result petitioner should be granted custody of them unless respondent leads sufficient evidence to persuade the court that the petitioner is unfit to mother them. In support of his submission, he cited the cases of Braun v Mallet [1975] 1 GLR 81, In re Barnardo Jones's (1891) 1 QB 194 and Opoku Owusu v Opoku Owusu cited supra.

Counsel submits further that the petitioner is a teacher by profession who has worked with the Ghana Education Service for years and as a result she has the skills to mentor and positively influence the upbringing of the children under her care. He also makes the case that it will be prudent to keep the children together.

He adds that the busy schedule of the respondent will not permit him to give the children the required attention in their upbringing as respondent stated under cross examination that he leaves home between 7am or 9 am and returns as late as 9pm or 10pm.

Counsel for the respondent on the other hand contends that petitioner did not lead any evidence to show why she should be granted custody of the children and that there must be a justification for the grant of custody based on fact and law. He submits that the only time petitioner comments on the children in her pleadings and witness statement was not about custody of the children but the fact that respondent takes decisions affecting the children without recourse to her and that respondent travelled with the children without informing her.

He submits further that the respondent indicated in his witness statement that the petitioner does not show the children the requisite level of care, attention and responsiveness a parent especially a mother should give her children. He added that respondent pays all the school fees of the children as well as their hospital charges which assertions were corroborated by the petitioner under cross examination. He contends that respondent has always borne the burden of finding schools for the children, attending open days and assisting with the homework of the children. He contends further that the petitioner who is a teacher shows no initiative whatsoever only to complain that she has not been consulted or reported to.

Counsel adds that the children have lived in the matrimonial home virtually all their lives and have lived together as siblings. According to him, under the frafra customary law, children belong with their father and any grant of custody to the petitioner may deprive the innocent children of their due inheritance.

According to Counsel, petitioner is a teacher and can be transferred by the Ghana Education Service at any time whilst the respondent on the other hand is self-employed and currently works a lot from home and as a result is more stable.

He submits that petitioner is emotionally unstable and has uncontrolled mood swings and as a result care of the five children should not be left to her alone. He adds that petitioner is not on talking terms with her mother and will not get the necessary external family support that would be due her as a now single woman with five children.

On an application by the respondent and pursuant to an order of the court, a social enquiry report was filed at the registry of this court on 15th February 2023 by the probation officer attached to the court.

In my considered view, the recommendations outlined in the social enquiry report did nothing to resolve the issue of custody before the court as same was full of unsubstantiated information and recommendations.

In any case, the court is not bound to accept any expert opinion as demonstrated in the case cited below;

In **BRONI AND ANOTHER V KWAKYE AND OTHERS (J4 19 OF 2016) [2017] GHASC 9** dated 22nd February 2017, Dotse JSC on expert opinion held as follows;

"indeed the learned trial judge was not bound to accept any of the expert opinions that had been led before him. Those pieces of evidence did not relieve him of his duty of the trier of facts before him. The legal authorities are quite certain and clear on this."

The court therefore proceeded to form its own opinion based on the evidence before it as a whole.

In considering the issue of custody, the court interviewed the issues of the marriage on 3rd of March 2023. From Exhibit B series, Badakabin Debe was born on 11th April 2005 which indicates that he is presently 18 years of age. He informed the court that he was presently in boarding house and only comes home on vacations.

Supielim Debe was born on 16th May 2008 which indicates that she is 15 years of age. She also informed the court that she is in boarding school and only comes home on vacations.

Putisom Debe born on 20th November 2009 will turn 14 years on his birthday this year. Yelsoma Debe born on 27th August 2011 will turn 12 on her birthday in August this year and Tisani Debe will also turn 10 on her birthday this year.

The children informed the court that their mother cooks their meals and ensures that they have food at home when they get back from school.

The court being guided by the principle that the welfare of the child is paramount in decisions affecting children, made findings of fact with regards to the work schedule of the parties from the evidence.

At paragraph 6 of respondent's answer to the petition, he stated as follows;

"In further answer to paragraph 9, respondent says the doors are always secured and that he has always informed the petitioner **whenever he had to travel**. **The exigencies of his job require him at times to stay till late**. (My emphasis)

During cross examination of the respondent, the following information was elicited;
Q: can you tell the court what time you leave home for work?

A: I leave home usually between the hours of 7am and 9am

Q: Kindly tell the court what time you often return home from work

A: My lady, **there is no specific time. Sometimes I get home at 3pm, 9pm or 10 pm depending on what I am doing at the office**. (My emphasis)

Q: In respect of the same comment, were you referring to the instance where petitioner woke up early, cooked and prepared lunch for you, you took it to work, you brought it back home untouched and same was thrown away. Is it in one such instance that petitioner made a comment?

A: No my lady. There is an occasion where she prepared food for me, I couldn't eat it and brought it back. **The nature of my job is such that I get so busy I am unable to eat. There was a time I got a call from a client and my system was not working. I drove to the client and stayed there the whole day**. I lost appetite and could not eat (my emphasis)

At paragraph 32 of respondent's witness statement, he states;

"**The petitioner only at times drops and picks our children from school** and that was a bait for me to purchase not less than three cars for her."(Emphasis)

During cross examination of the petitioner, the following information was also elicited;

Q: The vehicle you have used all through, was it purchased for you by the respondent?

A: No my lady. These were cars that respondent bought for his personal use and each time he wants to get a new one, **he gives me the old one to enable me pick the children to and from school.**

I find from the evidence that the exigencies of respondent's work requires him to travel and sometimes stay at work till late whilst petitioner is able to drop the children in school and pick them up after school and ensure that they are well fed.

It is uncontroverted from the evidence that respondent provides the needs of the children financially however considering the fact that the children especially the last three are quite young, I agree with counsel for the petitioner that given the busy work schedule of respondent, it is in the best interest of the children that custody is granted to the petitioner with reasonable access to the respondent.

Accordingly, custody of the last three children of the marriage namely Putisom Debe aged 13 years, Yelsoma Debe aged 11 years and Tisani Debe aged 9 years is granted to the petitioner with reasonable access to the respondent.

Due to the fact that the first two issues namely Badakabin Debe aged 18years and Supielim Debe aged 15 years are in boarding school, their school vacations shall be shared equally between the parties.

With regards to the maintenance of the children, section 47 of Act 560 provides as follows;
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.

Section 49 of Act 560 provides considerations for maintenance orders as follows;

(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.

Having considered the affidavit of means of the parties, respondent is ordered to pay the school fees and all expenses relating to the education of the children.

He is again ordered to pay the medical bills of the children as and when payments fall due.

Respondent is ordered to maintain the children with the sum of GHC3, 000.00 per month.

Respondent is ordered to provide a three bedroom accommodation for the children until they attain the ages of majority or the petitioner remarries whichever event occurs earlier.

Issue three

Whether or not the matrimonial home, Norbus Company limited and the animal farm situate at Kumasi are property jointly acquired during the subsistence of the marriage.

It is provided by article 22(2) and (3) of the constitution1992 that:

22(2) Parliament shall as soon as practicable after the coming into force of this constitution, enact legislation regulating the property.

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

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

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

It is also provided by section 20(1) of Act 367 that:

20(1)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 **MENSAH V MENSAH [2012] 1 SCGLR 391**, the Supreme Court set out the applicable guidelines on sharing of marital properties jointly acquired during the subsistence of the marriage as follows;

"we believe that common sense and principles of general fundamental human rights require that a person who is married to another and performs various household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising the home such that the other partner has a free hand to engage in economic activities must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved. This is so because it can safely be argued that the acquisition of the properties were facilitated by the massive assistance that the other spouse derived from the other."

In **PETER ADJEI V MARGARET ADJEI SUIT NO. J4/06/2021** dated 21 April 2021, his lordship Apau JSC delivering the majority decision of the court held as follows;

"…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. What this means in effect is that it is not every property acquired single handedly by any of the spouses during the subsistence of the 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 in the case of Fynn v Fynn supra, the presumption theory of joint acquisition collapses…"

In **GILBERT ANYETEI v SUSANNA ANYETEI** cited supra, Pwamang JSC held as follows;

"Thirdly evidence of the conduct of the parties during the marriage in most cases is relevant for deciding how any property acquired during the marriage is to be dealt with on its dissolution. Where one spouse claims that she contributed to the acquisition of property standing in the name of the other spouse, the contribution the spouse relies on may be satisfactory matrimonial services offered to the other spouse during the marriage. In such a case, the conduct of the parties in the course of the marriage and what caused the breakdown become relevant for a determination of ancillary relief relating to property distribution."

Counsel for the Petitioner argued that from the evidence on record, the matrimonial home was partially built at the time the parties moved into same and from 2005 to date, the building underwent renovation and is now a seven bedroom house and most importantly parties got married sometime in 2003. Respondent on the other hand contended that he personally

acquired the matrimonial home from his personal resources and that at the time he married the petitioner, he had bought the land and built the matrimonial home however the only reason why he did not marry her into the matrimonial home was because he had not connected electricity and water into same. He added that he had been solely responsible for putting up the matrimonial home because when he married the petitioner, she gained admission the same year into the University of Cape Coast and studied for four years and was transferred to Senya Breku after school and only returned to the matrimonial home in the year 2009.

Petitioner admitted that she went to school on study leave for four years and was transferred to Senya Breku save that she commuted from home to Senya Breku for a year and decided to stay there when she got pregnant with the second child and even then she stayed there for only six months.

Respondent admitted that the matrimonial home was expanded to a seven bedroom house during the subsistence of the marriage.

Under cross examination, respondent stated;

Q: Mr. Debe, kindly describe to the court the current state of the house as at today

A: It is a 7 bedroom house. The top floor has a study room and 2 bedrooms and the down floor has five bedrooms, a kitchen, a storeroom, another kitchen and a sitting room.

Q: Can you describe to this court, at the time you moved in, what was the state of the house?

A: At the time I moved in, I had done the decking of the top floor so I had covered all the rooms under the deck. My target was to move into the two rooms to avoid any rent. At the time I moved in the house was not a 7 bedroom house.

Petitioner claimed that she used her salary to buy foodstuffs for the family, tiled the floor and built the burglar proof and supervised the construction of the matrimonial home which

assertion was vehemently denied by the respondent. She did not however offer any evidence by way of receipts of the monies spent on the tiling of the floor and the burglar proof.

I find however from the evidence that because of the busy schedule of the respondent, a lot of the domestic burden was shifted onto the petitioner during the subsistence of the marriage.

Respondent recognises the contribution of the petitioner as he had this to say during cross examination;
Q: So the maintenance you provide, does it factor into it the efforts, the services of petitioner in going to the market to buy goods, cooking for the children, washing their clothes bathing them and putting them to bed?
A: My lady she is a parent and I have not hired her to render these services so she also has a responsibility to cook for them and run other chores. I do what I can to make them comfortable. Basically they eat only diner at home and breakfast.

From the totality of the evidence before this court, I find that respondent was able to expand the matrimonial home to a seven bedroom house due to the satisfactory matrimonial services offered by the petitioner during the subsistence of the marriage.

It is my considered view therefore that the matrimonial home is a property jointly acquired by the parties during the subsistence of the marriage and therefore same should be shared equitably between the parties.

Accordingly, I do hereby order that the petitioner is entitled to 20% share of the value of the matrimonial home.

The Court appoints Architectural Engineering Services Limited (AESL) as an independent valuer to conduct a valuation of the matrimonial home to ascertain the market value of same for ease of sharing.

Having considered the affidavit of means of the parties, it is ordered that the cost of the said valuation shall be borne by the respondent and the petitioner on a 60:40 basis respectively. The respondent shall exercise the option to buy out the petitioner.

The next question to consider is whether or not Norbus Company Limited and the animal farm situate in Kumasi are properties jointly acquired during the subsistence of the parties' marriage? And whether or not petitioner is entitled to 50% share of same.

Respondent has stated that he personally acquired Norbus Company limited and the animal farm situate in Kumasi from his own resources. He added that the company received its certificate of incorporation and commencement in October 2003 which is only three months after he got married to the respondent and that the petitioner has not made any contribution whether directly or indirectly to the sustenance of the business. He again stated that he started the animal farm in 2013 and has struggled to maintain it let alone make profit from same.

From the evidence, the petitioner did not lead any evidence to show any role she played in the acquisition of Norbus Company Limited and the animal farm situate in Kumasi be it in cash or in kind. Indeed the following information was elicited during the cross examination of the petitioner;

Q: Your husband's company that he works for, do you know where it is located?

A: My lady no. I even requested that at least he should let me know where he works and he told me that he will not show me where he works so I don't know where he works.

A: The farm is an 8 acre land. We have pigs and poultry of about 1000 birds

Q: Have you been to the farm before?

A: No my lady. Respondent has refused to take me there.

I find from the totality of the evidence that petitioner did not make any contribution be it in cash or in kind to the acquisition of Norbus Company Limited and the animal farm situate in Kumasi. Indeed as shown from the evidence, she did not even know the location of these properties.

It is my considered view therefore that Norbus Company Limited and the animal farm situate in Kumasi are the self-acquired properties of the respondent and as a result the petitioner is not entitled to any share of same. See Fynn v Fynn [2013-2013] 1SCGLR 727 and Quartson v Quartson [2012] 2 SCGLR 1078.

Issue four

Whether or not the petitioner is entitled to financial settlement.

Section 20 of Act 367 allows the court to grant financial settlement to a party upon dissolution of a marriage. The court in doing so has to take into consideration certain factors such as the economic conditions of the parties.

In the case of **BARAKE V BARAKE [1993-1994] 1 GLR 635**, the court held as follows;

"Under section 20(1) of Act 367, the court had power to grant financial provision where married couples are divorced. The basic consideration was not based on proof of ownership or contribution towards acquisition of properties to be owned but on the needs of the parties."

The court can order a lump sum payment to be made to a spouse in addition to property settlement depending on the circumstances of the case. See Riebeiro v Riebeiro [1989-1990] GLR 109 at 115 to 116.

It was held by Lord Denning M.R in **WATCHEL V WATCHEL (1973) 1 ALLER 829 at 840** that in every case the court had to consider whether to order a husband to pay a lump sum to his wife and that the circumstances are so various that few general principles can be stated. One thing is however obvious. No order shall be made as lump sum unless the husband has capital assets out of which to pay it without crippling his earning power.

I have considered the affidavit of means of the parties and the assets of the respondent and having considered the economic circumstances of the parties and satisfactory matrimonial services provided by the petitioner for the most part of the 20 years of marriage, I do hereby hold that petitioner is entitled to financial settlement.

Accordingly, respondent is ordered to pay the sum of GHC80, 000.00 as financial settlement to the petitioner.

DECISION

I find that the marriage between the parties has broken down beyond reconciliation and a decree of divorce is to be granted;

Custody of the three younger children is granted to the petitioner with reasonable access to the respondent. The holidays of the first and second issues of the marriage who are presently in Senior High School are to be shared equally between the parties.

Respondent is ordered to provide a three bedroom accommodation for the three issues of the marriage until they attain the ages of majority or the petitioner remarries whichever event occurs earlier.

Respondent is ordered to maintain the issues with the sum of GHC3, 000.00 per month and pay their school fees and medical bills as and when payments fall due.

The Petitioner is entitled to 20% share of the value of the matrimonial home. The Court appoints Architectural Engineering Services Limited (AESL) as an independent valuer to value the matrimonial properties to ascertain the market value of same for ease of sharing.

The court having taken into consideration the affidavit of means of the parties, orders that respondent shall pay 60% whilst petitioner pays 40% of the cost of the valuation.

The respondent shall exercise the option of buying out the petitioner.

I find from the evidence that the animal farm situate at Kumasi and Norbus Company Limited are self-acquired properties of the respondent.

Petitioner is awarded the sum of GHC80, 000.00 as financial settlement.

Parties are to bear their own legal costs.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)