

CORAM: HIS WORSHIP MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON WEDNESDAY, THE 22ND DAY OF NOVEMBER, 2023.

SUIT NO: UE/BG/DC/A4/1/2023

**MARTHA ABBEY TENG
TANZUI NEAR GLO POLE
BOLGATANGA**

PETITIONER

VRS.

**CHARLES BUGBILA
BEHIND SKY COMPEX SCHOOL
ZUARUNGU**

RESPONDENT

TIME: 10:25AM

PARTIES PRESENT

NO LEGAL REPRESENTATION FOR THE PETITIONER

ALBERT ZOOGAH, ESQ. FOR THE RESPONDENT PRESENT

JUDGMENT

Introduction

1. The Roman poet Virgil in his Eclogues asserts that “*Omnia vincit Amor*” which means love conquers all things. Unfortunately, the empirical evidence from divorce litigation disproves this assertion. This judgment is in respect of a love affair gone sour, on which shoulders the Petitioner has importuned the court to sort out of the messy consequences of their marriage which has unravelled.
2. The undisputed facts of this case are that the Petitioner, a Nurse and the Respondent, a Teacher/Business Man got married customarily in 2014 and thereafter celebrated their marriage on the 7th day of September, 2014 at the Word in Prayer Evangelistic Ministry, Bolgatanga. After the celebration of

the marriage, the parties cohabited at the Respondent's family house at Agric-Zuarungu and subsequently behind Sky Complex School, Zuarungu-Asonge. The marriage is blessed with two children namely, Delyin Yvette aged 6 years and Yinmalya Jayden aged 4 years at the time of filing the instant petition for divorce.

3. The Petitioner per her amended petition for divorce filed on the 28th day of February, 2023, claims against the Respondent for the following reliefs:
 - a. An order that the marriage between the Petitioner and the Respondent be dissolved.
 - b. An order that all the properties the parties jointly acquired be shared equally.
 - c. An order granting custody of children of the marriage namely Delyin Yvette and Yinmalya Jayden is granted to the Petitioner.
 - d. An order for the respondent to pay maintenance of an amount of GHC1,000.00 every month for the up keep of the children as well as takes care of the school fees and health needs.
 - e. An order for the respondent to pay an amount of GHC300,000.00 and Damage the petitioner.
 - f. Any other reliefs this Honorable court may deem fit.
4. The Respondent also filed his amended answer to the petition on 13th day of March 2023 and cross petition for the following reliefs:
 - a. Custody of the two (2) children of the marriage with reasonable access to the Petitioner.
 - b. Compensation of GHC350,000.00 in favor of the Respondent

- c. An order of equal share of the two (2) building plots acquired by the Petitioner at Bost area and Yorogo within the municipality.
- d. The cost of maintenance for Respondent and children is GHC1,500.00 plus a month.

Case of the Petitioner

5. The petitioner says she is a Nurse by profession and that respondent and she met on 31/12/12 when she was a final year student in Bolgatanga Nurses Training College and the respondent was managing an internet Café called Kelcom opposite the Ghana National Fire Service. Petitioner says they got married under customary law in 2014 at Zuo in the Talensi District and later did the church wedding at the Word in Prayer Evangelism Ministry, Bolgatanga on 7/9/14. Petitioner says after the marriage they lived in the respondent's family house in Agric, Zuarungu from the period of 2014 to 2018 and subsequently behind Sky Complex School, Zuarungu-Asonge. It is the Petitioner's case that the respondent and her lived in a single room and had one and half size old mattress, Television, fridge, furniture, computer set, ceiling fan, kitchen cabinet with (3) doors, two (2) motor bikes and curtains that partitioned the room into two parts.
6. Petitioner says as a responsible wife she supported the Respondent both financially and in kind; and that during the pendency of the marriage, they jointly acquired several properties which include the following:
 - a) Mitsubishi outlander 2015 model with registration No. UE277-20
 - b) A trailer or truck
 - c) Two (2) plots of land behind Ultima Platz Hospital, Zuarungu.
 - d) A 22-bedroom compound house (11 rooms' completed and 11 rooms uncompleted) behind Sky Complex School, Zuarungu-Asonge.

- e) One (1) plot of land besides the house we live in.
 - f) A printing press with a large format printer opposite the national fire Bolgatanga, named Ma17 I.T services.
 - g) A fully stocked internet café with four (4) giant photocopies, three (3) color printers, one (1) black and white printer, laptops, adaptors and accessories located opposite the National Fire Service, Bolgatanga namely Ma17 I.T Services.
 - h) Internet café near Jubilee Park named big bro internet cafe, Bolgatanga.
 - i) A warehouse consisting home used computers, giant photocopyers, color and black and white printers, laptops, system units, monitors of all sizes LED TVs, scanners, toners, officer chairs and tables, projectors, SOP machines, office cabinets, accessories etc.
7. The Petitioner avers that the marriage between the respondent and her has broken down beyond reconciliation as the respondent has behaved in a manner that she cannot reasonably be expected to live with him. She particularized unreasonable behaviours as follows that:
- a. The respondent banned or stopped her and the children from attending church activities except Sundays morning as well as stopped her from paying tithes.
 - b. The Respondent threatened to return her back to her father's house if she further her education and that he has to decide how much she should give her mother monthly form her own salary.
 - c. He also denied her right of travelling to Kumasi for her Diploma certificate after completion till date.

- d. The respondent said she has to bring the whole sum of her salary to him to decide what it should be used for. He also presented to her a loan form in 2020 and insisted she append her signature and details on it so he can go for the money which she refused.
 - e. The respondent abused her mentally, psychologically, physically and verbally in front of their children, his mother and siblings and even in public.
 - f. Upon all the advices her family, Pastor and some elders gave to them, the respondent refused and still abused her. She had no other choice than to report the matter to DOVSU in February, 2022.
 - g. The Respondent specifically assaulted her on 14/8/22, at around 8:30-9.00pm. He slapped her twice, choked her throat and dragged her from the bedroom to outside the house into the car with her children and drove them to her father's house with the escort of his brothers Alexander and Peter on their motor bikes. On 15/08/2022, she went to DOVSU and complained about what happened the previous night. Respondent is currently facing criminal proceedings before this Honorable Court.
 - h. Respondent refused to give the upkeep money; he stopped eating her food from December, 2021 till 14/08/22 when he returned her and the children to her father's house.
 - i. The respondent has girl lovers outside and she has seen them hugging and kissing publicly severally and he forced her to be friends with his girl lovers if she wants peace.
8. Petitioner further avers that she is the biological mother of the children of the marriage, healthy and of sound mind, more capable and therefore in the best position to take care of the children than any other person. Petitioner says that ever since she completed Nurses Training College in August 2013,

she has never run night shifts. She therefore prays with this court to grant her custody of their two (2) children including the above-mentioned reliefs.

Case of the Respondent

9. Respondent says he knows the Petitioner to be his wife and a nurse and not a business woman; and that he is a teacher and operates IT services. He admitted that they got married in 2014 and thereafter cohabited at Agric-Zuarungu and behind Sky Complex School, Zuarungu-Asonge. He also admitted that he and the Petitioner lived in a single room and had one and half size old mattress, Television, fridge, furniture, computer set, ceiling fan, kitchen cabinet with (3) doors, two (2) motor bikes and curtains that partitioned the room into two parts. He also admitted that he was managing an internet Café called Kelcom opposite the Ghana National Fire Service.
10. The Respondent denies that he has behaved unreasonably towards the Petitioner and he rather complained about the lack of sex by the Petitioner. It is the Respondent's case that the Petitioner lives in a different room from that of his and for the past five (5) years he has been sleeping alone. Respondent says when he asked her to join him in his room so that they could live under the same roof, she refused and he has to beg her each time he needed sex; and that she denies her sex and food all this while. Respondent states that he does not want a divorce, and that they can live as husband and wife and take good care of their children.
11. Respondent says that he and Petitioner have not acquired any property jointly nor have they established any business together. Respondent says in December, 2021, he got to know that the Petitioner had bought two (2) building plots without informing him and when he questioned her she did not take kindly and this brought about a misunderstanding. A search conducted at the land Commission in Bolga confirmed that the Petitioner had bought the said two (2) building plots and registered them in her name.

12. Respondent says he is rather in a good position to take very good care of the children and prays that the court grants him custody of the two (2) children of the marriage since they are used to him and that he has been paying the school fees of the children and their health needs among others. It is Respondent's case that the money he gave to the Petitioner for housekeeping that the Petitioner used in buying the two (2) building plots aforementioned and it is rather the Petitioner who is to compensate him. Respondent says Petitioner is not entitled to her reliefs and he therefore cross petition for the above-mentioned reliefs.

Issues for determination

13. The main issue for determination in this case is whether or not the marriage between the Petitioner and the Respondent herein has broken down beyond reconciliation. In addressing this main issue, the following issues will be determined:

- a) Whether or not the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- b) Whether or not the parties have been unable to reconcile their differences after diligent efforts.
- c) How the properties acquired during the subsistence of the marriage are to be shared?
- d) Whether or not the Petitioner or Respondent be granted custody of the children of the marriage.
- e) How much should be awarded as maintenance allowance.

Evaluation of Evidence/Legal analysis and finding of facts

14. It is trite law that the sole ground for granting a petition for divorce is that a marriage has broken down beyond reconciliation. **Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367)** states that:

The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

The law under **Section 2(1) of Act 367** makes provision for six facts to prove the ground that the marriage has broken down beyond reconciliation. Thus, the Petitioner has the burden to satisfy the court on one or more of the following facts: -

(a) That the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent; or

(b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent; or

(c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) That the parties to the marriage have not lived as man 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 such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal; or

(e) That the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

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

15. Although it is the duty of the court to inquire, so far as it reasonably can, into the facts alleged by both parties as stated in section 2(2), in practical terms the burden on the Petitioner is solely to establish one of the facts and it is for the Respondent in a defended suit to show, if he wishes, that the marriage has not broken down irretrievably as stated in the case of **Ash v**

Ash (1972) 1 All ER 582; Pheasant v Pheasant (1972) 1 All ER 587. In the case of **Kotei v. Kotei [1974] 2 GLR 172,** Sarkodee J stated that:

‘Notwithstanding proof of one of the facts showing that the marriage has broken down the court has a discretion to refuse to grant the decree of dissolution on the ground that the marriage has not in fact broken down beyond reconciliation. The discretion given to the court is not a discretion to grant but a discretion to refuse a decree of dissolution. The burden is not on the petitioner to show that special facts or grounds existed justifying the exercise of the court’s discretion; once he or she comes within any one of the provisions specified in section 2 (1) (e) and (f) of Act 367 the presumption is in his or her favour’.

16. Hence proof of any of the facts raises a presumption of breakdown. If any of the facts is made out, the court must grant the dissolution unless it is satisfied that the marriage has not broken down irretrievably. The burden of proof and persuasion is on the part of the person making the averments to adduce sufficient, cogent and reliable evidence to support the allegations contained in the petition or cross-petition for the court to arrive at the decision that the acts alleged exist rather than their non-existence as stated thereunder. From the pleadings and evidence adduced in court, the Petitioner seeks to rely on sections 2(b) and 2(f) of Act 367. I will now proceed to examine the issues one by one.

Issue One: Whether or not the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the respondent.

17. A Petitioner may satisfy the court that a marriage has broken down beyond reconciliation by adducing evidence that are in tandem with **section 2(b) of Act 367.** This section is to the effect that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him or her. The Cambridge Advanced Learner’s Dictionary (4th Edition) has defined behaviour generally as “the way that a person behaves in a particular situation or under particular conditions. **Baker P in Katz v Katz [1972] 3 All ER 219** put it as follows:

“Behaviour is something more than a mere state of affairs or state of mind, such as for example a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband’s love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage.”

18. Unreasonable behaviour in marriage can also take the form of cruelty, nagging, drunkenness, threats or violence. In dealing with behaviour, the question is whether the Petitioner can reasonably be expected to live with the Respondent. In **Knudsen v Knudsen [1976] 1 GLR 204**, the court stated as follows:

The behaviour of a party which will lead to this conclusion would range over a wide variety of acts. It may consist of one act if it is of sufficient gravity or of a persistent course of conduct or of a series of acts of differing kinds none of which by itself may justify a conclusion that the person seeking the divorce cannot reasonably be expected to live with the spouse, but the cumulative effect of all taken together would do so.

In **Mensah v Mensah [1972] 2 GLR 198**, the court further stated that:

In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him the court must consider all the circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice...

19. In the instant case, the Petitioner claims that the Respondent has behaved in a manner in which he cannot reasonably be expected to live with her. According to the Petitioner the respondent banned or stopped her and the children from attending church activities except Sundays morning as well as stopped her from paying tithes. The Respondent threatened to return her

back to her father's house if she further her education and that he has to decide how much she should give her mother monthly from her own salary. He also denied her right of travelling to Kumasi for her Diploma certificate after completion till date. The respondent said she has to bring the whole sum of her salary to him to decide what it should be used for. He also presented to her a loan form in 2020 and insisted she append her signature and details on it so he can go for the money which she refused. The respondent abused her mentally, psychologically, physically and verbally in front of their children, his mother and siblings and even in public. She had no other choice than to report the matter to DOVSU in February, 2022. The Respondent specifically assaulted her on 14/8/22, at around 8:30-9.00pm. He slapped her twice, choked her throat and dragged her from the bedroom to outside the house into the car with her children and drove them to her father's house. Respondent refused to give them upkeep money; he stopped eating her food from December, 2021 till 14/08/22 when he returned her and the children to her father's house. The respondent has girl lovers outside and she has seen them hugging and kissing publicly severally and he forced her to be friends with his girl lovers if she wants peace.

20. The Respondent denied all these allegations and is it the duty of Petitioner to prove all these allegations. The Petitioner repeated most of these allegations on oath without more. It is trite that a bare assertion or merely repeating a party's pleadings in the witness box without more does not constitute proof. It has been held in the case of **Majolagbe v Larbi & Anor [1959] GLR 190 @ 192** that

“Where a party makes an averment capable of proof in some positive way, eg. by producing documents, description of things, reference to other 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.”

21. The Petitioner has therefore failed to lead any evidence in support of most these allegations of unreasonable behaviours except assault. This court has

taking judicial notice of the fact that the Respondent was found guilty of assaulting the Petitioner on 27th October, 2023, convicted and sentenced accordingly. This Court therefore find as a fact that the Petitioner has satisfied the court to some extent that Respondent has behaved unreasonably towards her by abusing her mentally, psychologically, physically and verbally in front of their children, his mother and siblings and even in public; and therefore made it intolerable to live in his company.

Issue Two: Whether or not the parties have been unable to reconcile their differences after diligent efforts.

22. **Section 2(1) (f) of the Matrimonial Causes Act, ACT 367** is to the effect that, one of the facts for establishing that a marriage has broken down beyond reconciliation is to establish that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

Section 8 of the Matrimonial Causes Act, ACT 367 states:

(1) On the hearing of a petition for divorce, the petitioner or his counsel shall inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings, to effect a reconciliation.

23. In her evidence, the Petitioner testified that there were several unresolved matrimonial issues between her and the Respondent and all attempt to reconcile them by relatives and friends had come to naught. According to the Respondent also family members had tried to intervene to resolve their misunderstandings without success. Indeed, in the course this case, the court gave several opportunities to the parties to reconcile but could not do so. It is also noteworthy that there is no regular or proper communication between Petitioner and the Respondent which confirms the fact that they were unable to settle their matrimonial issues. This court therefore finds as a fact that the parties have been unable to reconcile their differences after diligent efforts. Accordingly, the court is satisfied that the marriage has broken down beyond reconciliation.

Issue Three: How the properties acquired in the course of the marriage are to be shared?

24. The law is well settled that a property acquired by spouses during marriage is presumed to be a marital property. This presumption is however rebuttable. Assets or properties which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage. Thus, article 22(3)(a)(b) of the 1992 Constitution of Ghana provides that:

(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.”

Also, in **Peter Adjei Vrs Margaret Adjei, Civil Appeal No. J4/06/2021, delivered on 21ST April, 2021,** the Supreme Court per APPAU, JSC stated as follows:

*“It is trite law that no two cases are alike and that every case is fact-sensitive, for that matter, each case must be determined on its peculiarities. However, this apex Court has, by its decisions, laid down general principles that guide the Courts in their application of the laws to peculiar circumstances. 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]. ... 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.”*

See also Mensah v. Mensah [2012] 1 SCGLR 391; Quartson v. Quartson [2012] 2 SCGLR 1077, Arthur (No.1) v. Arthur (No. 1) [2013-2014] SCGLR 543 and Fynn v. Fynn & Osei [2013-2014] 1 SCGLR 727.

25. In the instant case, petitioner says as a responsible wife she supported the Respondent both financially and in kind; and that during the pendency of the marriage, they jointly acquired several properties which include the following:

- j) Mitsubishi outlander 2015 model with registration No. UE277-20
- k) A trailer or truck
- l) Two (2) plots of land behind Ultima Platz Hospital, Zuarungu.
- m) A 22-bedroom compound house (11 rooms’ completed and 11 rooms uncompleted) behind Sky Complex School, Zuarungu-Asonge.

- n) One (1) plot of land besides the house we live in.
- o) A printing press with a large format printer opposite the national fire Bolgatanga, named Ma17 IT services.
- p) A fully stocked internet café with four (4) giant photocopies, three (3) color printers, one (1) black and white printer, laptops, adaptors and accessories located opposite the National Fire Service, Bolgatanga namely MA17 IT Services.
- q) Internet café near Jubilee Park named big bro internet cafe, Bolgatanga.
- r) A warehouse consisting home used computers, giant photocopies, color and black and white printers, laptops, system units, monitors of all sizes LED TVs, scanners, toners, officer chairs and tables, projectors, SOP machines, office cabinets, accessories etc.

From the evidence, the Petitioner testified that she advised the respondent and they acquired two (2) plots of land in Asonge behind sky complex school at Zuarungu. She stated the she personally bargained with the farm owner and they settled at GHC2,200 each amounting to GHC4,400 and that they made a partial payment of GHC3,000.00 and the balance of GHC1,400 was paid later; and that she appended her signature on the documents as the witness to the respondent. She testified that as a responsible wife, she contributed GHC510.00 being cost of 15 bags of cement as at that time every month towards the project from her NSS allowance. She stated she went with Respondent to her bank and withdrew GHC500, bought gravel and filled up the rooms. In September, 2018, he took a loan of GHC15,000.00 from the then Barclays bank and supported in the completion of the first phase of the house. And she also gave Respondent GHC1,000 to add up and buy polytank for the house. She testified that when they were living at aged she was cooking and serving the respondent and his

younger siblings and whenever his mother pays them a visit from the village. She stated further that on 11/11/2018, the respondent and she moved into their new house with his two (2) younger brothers, and she was still cooking and serving them. In June, 2019, the respondent's mother and younger sister joined them permanently from the village till date. She tendered in evidence her Pay slip for March 2017 at **Exhibit A**, A letter for National Service as **Exhibit B**, Pay slip for July 2014 as **Exhibit C** and Statements of Account from Barclays bank as **Exhibits D and D1**.

26. The Respondent on the other hand testified that his mother was selling 'Pito' a local brew, which was a striving business and she used the proceeds and bought the two (2) plots of land behind sky Complex School at Zuarungu when he was in school. He stated that it was the late Daamere Bubgbila, his uncle who witnessed the purchase of the land for his mother. That his mother built a 22-bedroom compound house (11 rooms completed and 11 rooms uncompleted) on the said land leaving one plot which is yet to be developed, and that the said house and the one plot are not for him. He stated that as at 2015, the Petitioner was doing her National Service; a service person was earning GHC350.00. It is therefore not true that the Petitioner helped him with money to build the house. He testified that the Petitioner never withdrew GHC500.00 from her bank and bought gravel to fill rooms and no loan was procured from the then Barclays bank to support in the completion of the house. He stated he also did not receive GHC1,000.00 from the Petitioner to buy polytank for the house. Respondent testified further that they never moved into the said house on 11/11/2018. However, **with cooking for the entire family it is normal that his wife does that**. It is never true that her mother and siblings joined the parties' permanently in June, 2019 since they were already living in the house of their mother. He tendered in a Lease purportedly prepared in 2011 and made in the name of his mother as **Exhibit 3**.

27. Examination of the said **Exhibit 3** reveals that the addressed used was "Boabil Daa-Nimaha, Mal7 I.T Services, P. O. Box 367, Bolgatanga" Respondent admitted that when he met the Petitioner he was managing an

internet café called Kelcom opposite the Ghana National Fire Service and that he registered the said business in 2012 as Mal7 I.T Services. Petitioner however challenged the fact the Mal7 I.T Services was registered in 2012 and but rather it was registered in 2016 after Respondent was sacked from Kelcom Internet Café. She produced the certificate issued in 2016 to the court as **Exhibit “E”** which is different from what the Respondent tendered in evidence as **Exhibit 1**. And the Respondent eventually admitted that Mal7 I.T Services was registered in 2016. The question to ask is how a document can prepared in 2011 bears an address of a business registered in 2016? This is certainly impossible. This court finds the evidence of the Respondent to be unreliable and that the Respondent intentionally prepared or procured **Exhibits 3 and 1** to deceive this court. The court therefore attaches no weight to **Exhibits 1 and 3** but find the evidence of the Petitioner to be more probable than that of the Respondent. The court holds that the two (2) plots of land behind Sky Complex School at Zuarungu with 22-bedroom compound house (11 rooms completed and 11 rooms uncompleted) and the remaining one plot which is yet to be developed was acquired during the pendency of the marriage between the parties with the support of the Petitioner and that the said house does not belong to the Respondent’s mother. Petitioner therefore has a share in the said house.

28. Moreover, Petitioner testified that in December, 2015, the respondent’s Uncle sacked him from the Kelcom Internet Cafe and that was when she got to know the business did not belong to the respondent. She stated that the only things they were able to pick from the uncle’s store were the photocopier she gave him 3000 to buy in 2013 and some few computers sets she gave him money from her student allowance monthly to buy. She testified that they jointly established Mal7 1.T services in 2016, her native name is Malba and that of the respondent is Malbahaya, so they used the three (3) first letters of their names. That is how come they named the business Mal7 1.T Services. She testified that the respondent told her to assist him in that the feeding so that he can invest into the business because they spent a lot of the business money on the house which she agreed

alongside with their children's school fees she was already paying and also the loan deduction which was GHC814.

29. On the other hand, the respondent testified that no uncle of his sacked him from the shop and that the Petitioner never gave him GHC3,000.00 to buy photocopier. Respondent says Ma17 IT Services was established in 2011 and registered in 2012 and not 2016; and that the name Ma17 IT services has nothing to do with the first three letters of the parties' respective native names. He stated he never started any business with the Petitioner since the business was already in existence before the parties married in 2014. That he never told the Petitioner to assist him in the feeding and payment of school fees. Rather, it was the house keeping money given to the Petitioner by him that she gathered and bought two (2) plots of land without informing him. And that the school fees have always been paid by him. Respondent says Mitsubishi Outlander and the two plots behind Ultima Platz Hospital, Zuarungu are for his IT Company. The trailer or truck is for a friend collected to attach to my company vehicle to sell accessories. He tendered the Business Certificate in evidence as **Exhibit 1** and a Lease executed in favour of Mal7 I.T Services as **Exhibit 2**.

30. Respondent testified further that the large format printer is not for him but rather a friend who has attached it with his business and the proceeds go to him though he gets commission. He testified and denied that the said internet café is fully stocked with 4 giant photocopiers and that two (2) of the photocopiers are just for decorative purposes because they have been in used of a very long time and are not functional. Also, in respect of the three (3) colour printers, only one is working and it is an A4 printer. The one (1) black and white is part of the four (4) printers of which two (2) are functional. He stated that he is a hardware and software technician, so the laptops being referred to by the Petitioner are for his customers who brought them for repairs but have not come for them yet and that the adapters go with the said laptops. He stated that the internet café near the Jubilee Park is for his brother Alexander Bugbila who is a nurse by profession.

31. It is noteworthy that before the parties separated, the Petitioner did what is expected of her as a wife by performing various household chores for the Respondent like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the Respondent's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere, among others. Indeed, Respondent testified that "**with cooking for the entire family it is normal that my wife does that.**" Thus, the Petitioner took care of the household as well as paid the children school fees. All these put together confirm the Petitioner's case that she supported the Respondent to establish Mal7 I.T Services as well as in the acquisition of the properties. This court therefore found as a fact the Petitioner supported the Respondent in putting up or establishing the Mal7 I.T Services.

32. From the evidence the court found as a fact that Mal7 I.T Services is not a limited liability company but a sole proprietorship. The registration of a business name does not make it a separate legal entity. A business name registered under the Registration of Business Names Act, 1962 (Act 151), did not by the act of registration acquire any legal personality distinct from the person registering it. A registration of business name merely protected the exclusive use and the right of the person registering the name. In **Barclays Bank of Ghana Ltd. V. Lartey & Others [1978] GLR 282-289** the court per Edward Wiredu J. stated as follows:

"Unlike Act 179, the Registration of Business Names Act, 1962 (Act 151), was not intended to confer any distinct legal personality on any business name registered under it. The provisions of the Act are a clear pointer to this. Whilst the provisions of Act 179 refer to the company, those of Act 151 refer to the individuals registering their business names. The fact that registration under Act 151 does not confer perpetual succession on business names registered under it is borne out by section 10 (1) of the Act. Act 151 protects the exclusive use and right of the person registering the business name. It is also clear from the provisions of Act 151 that the registrar deals solely with the person registering the business name, and this is understandable because it is only the "business name" which is registered and someone must be responsible for such registration. I

therefore hold in my ruling that Scarts as registered under Act 151 did not acquire any legal personality distinct from the person of Emmanuel Kotoku Lartey who carried on business under that name. I also reject as untenable the submission that Scarts enjoyed a perpetual succession under Act 151.”

From the above authority, Mal7 I.T Services is the same as the Respondent or the persons who registered it. Respondent claims the Mitsubishi Outlander and the two plots behind Ultima Platz Hospital, Zuarungu belong to Mal7 I.T Services. But this court found that the said properties were acquired in the pendency of the marriage. They are hereby declared marital properties and the Petitioner has a share or interest in them.

33. Also, the court is empowered upon dissolution of marriage to order either party to the marriage to pay to the other a sum of money as part of financial provision or convey to the other party such movable or immovable property as settlement of property rights. Thus, **sections 20 and 21 of the Matrimonial Causes Act, 1971 (Act 367)** on property settlement and Conveyance of title provide as follows:

20 (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.

(2) Payments and conveyances under this section may be ordered to be made in gross or by instalments.

21 (1) When a decree of divorce or nullity is granted, if the Court is satisfied that either party to the marriage holds title to movable or immovable property part or all of which rightfully belongs to the other, the Court shall order transfer or conveyance of the interest to the party entitled to it on the terms that the Court thinks just and equitable.

(2) When a transfer or conveyance of movable or immovable property is ordered by the Court and the party ordered to make the transfer or conveyance is either unable or unwilling to do so, the Court may order the registrar of the Court to execute the appropriate transfer or conveyance on the part of that party.

Accordingly, having found that the Petitioner performed her duties as a wife or supported the Respondent in one way or the other till they separated and therefore has interest in the 22 bedroom, Mal7 I.T Services and the properties in the names of Mal7 I.T Services (the Vehicle and the two plots of land), it will be improper to let her go without any financial provision or compensation. This court will therefore award the sum of Sixty Thousand Ghana Cedis (**GHC60,000.00**) in favour of the Petitioner as financial settlement or alimony against the Respondent. It is also ordered that the Respondent shall convey the two plots of land located at Ultimate Plaza to the Petitioner within two months from the day of this judgment (thus, by 28th January 2024).

34. Moreover, the court find as a fact from the evidence on record that the Petitioner personally acquired two (2) plots of land in the course of the marriage. The law is that a spouse has the right to acquire property exclusively during the subsistence of a marriage. In the case of **Fynn v Fynn & Osei [2013-2014] 1 SCGLR 727**, the Supreme Court held that there are situations where, within the marital union, parties may acquire property in their individual capacities as envisaged under article 18 of the 1992 Constitution, which provides under clause (1) as follows: ***“Every person has the right to own property either alone or in association with others”***. In the instant case, the Respondent failed to convince this court with credible evidence why he should be given a share in the two (2) plots of land acquired by the Petitioner alone during the subsistence of the marriage. Accordingly, the said plot of land is settled in favour of the Petitioner.

Issue Four: Whether or not the Petitioner or Respondent be granted custody of the Children of the marriage; and how much should be awarded as maintenance allowance.

35. Before I proceed to deal with this issue, it bears reminding that regarding issues concerning children, the Court must seek solely what is in the paramount interest of the child. Section 2 of the Children's Act, 1998 (Act 560) provides that:

[t]he best interest of the child shall be paramount in any matter concerning a child. The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child.

Section 2 of the Children's Act is based on Article 3(1) of the **Convention on the Rights of the Child (adopted by the General Assembly Resolution 44/25 of 20th November, 1989 and entry into force on 2nd September 1990)** which provides that,

[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Also, section 22 of the **Matrimonial Causes Act, 1971 (Act 367) on Custody and financial provision for children** provides as follows:

(1) In proceedings under this Act, the Court shall inquire whether there are any children of the household.

(2) The Court may, either on its own initiative or on 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 prejudice to the generality of subsection (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.*

36. Being guided by the authorities above, the question for this court is whether it would be in the best interest of the child to grant custody of the child to the Petitioner. To resolve this issue, the court is mandated by section 45 of the Children’s Act, 1998 (Act 560), to—as a matter of paramount importance—consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access. To achieve this end the panel is mandated to also consider –

“(a) the age of the child; (b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents; (c) the views of the child if the views have been independently given; (d) that it is desirable to keep siblings together; (e) the need for continuity in the care and control of the child; and (f) any other matter that the Family Tribunal may consider relevant.”

37. The starting point according to section 45 above is that considering the ages of the children in issue, ordinarily, they ought to be with the Petitioner. However, that is a prima facie conclusion sustainable only when the other factors or parameters contained in section 45 inure to the presumption in favour of Petitioner. The assessment of all the factors to determine what would be in the paramount interest of a child involves the exercise of judicial discretion after all the relevant factors have been considered: see: *Re F (an infant) [1969] 2 All ER 766; Attu v Attu [1984-86] 2 GLR 743; and Young v Young [1993] 4 S.C.R 3 at para 71 per L’Heureux-Dubé J*

38. The determination as to who should have custody of a child is merely an answer to the question: “what should be the best interest of the child”? It does not in any way terminate parental duties owed by the parent against whom the order is made: see *Re W (Minors) (Residence Order) [1992] 2 F.C.R 461 at 465 per Butler-Sloss LJ.*

39. In the instant case, Petitioner testified that she is the biological mother of the children of the marriage, healthy and of sound mind, more capable and therefore in the best position to take care of the children than any other person. Petitioner says that ever since she completed Nurses Training College in August 2013, she has never run night shifts. On the other hand Respondent says he is rather in a good position to take very good care of the children and prays that the court grants him custody of the two (2) children of the marriage since they are used to him and that he has been paying the school fees of the children and their health needs among others. Analyzing the evidence in accordance with the best interest of the children as well as the authorities mentioned *supra*, this court is of the view that the best interest of the children in issue in the instant case are for them to live with their mother or Petitioner subject to the right of the Respondent to have access to them.

40. Furthermore, this court found as a fact that both parties are working or employed. Thus, the Petitioner is a Nurse and the respondent is a Teacher with Ghana Education Service, Bolgatanga as well as a Business man. They have two children who are in school. And since both parties are working it is their responsibility to take care of the children together. Accordingly, the Respondent as the man shall be responsible for paying of the Educational Expenses and Medical Expenses of the children while the Petitioner as the woman shall support the Respondent as much as she can in paying those expenses. The petitioner shall be responsible for the clothing needs of the two children and snacks for school. The Respondent shall in addition pay an amount of Seven Hundred Ghana Cedis (**GHC700.00**) to the Petitioner every month as maintenance allowance for the upkeep of the children of the marriage. The Petitioner and the Respondent are advised not to influence the children of the marriage against each other. The parties are also encouraged to communicate in order to enable them take good care of the children together.

Conclusion

41. Having examined the facts as alleged by the Petitioner and the Respondent as well as the totality of the evidence adduced in the trial by the parties in accordance with the above-mentioned authorities, this court is of the considered opinion that the marriage between the parties herein has broken down beyond reconciliation. Accordingly, the court holds that:

- a. The marriage celebrated between Petitioner and the Respondent on the 7th day of September, 2014 at the Word in Prayer Evangelistic Ministry, Bolgatanga is hereby dissolved.
- b. Custody of the children is granted to the Petitioner subject to the right of the Respondent to have reasonable access to them. Thus, to ensure compliance with the dictates of section 5 of the Children's Act, 1998 (Act 560) which grants children the right to grow with their natural parents, the court hereby grants access to the children of the marriage to the Respondent who shall accordingly have the right to live with the children. The children shall spend weekends with the Respondent every fortnight from Fridays after school to 4:00pm on Sundays. The children shall also spend half of their vacation period with the Respondent.
- c. The Respondent shall pay maintenance allowance of Seven Hundred Ghana Cedis (**GHC700.00**) a month to the Petitioner effective from 30th November, 2023 for the upkeep of the two (2) children of the marriage. This amount shall be paid to the Petitioner's mobile money account by the 30th day of each month except in February it shall be on the 28th or 29th as the case may be. This amount shall be increased by 10% every year to cater for inflation.
- d. The Respondent shall be responsible for educational expenses and medical expenses of the two (2) children of the marriage. The Petitioner shall be responsible for the clothing needs of the two children and snacks for school. Petitioner shall also support the Respondent in paying the educational and medical expenses as much as she can.

- e. That the 22 bedroom house with 11 completed rooms built by the parties and the remaining portion of the land which is vacant is settled in favour of the Respondent.
- f. The two (2) plots of land behind Ultima Platz Hospital, Zuarungu is settled in favour of the Petitioner. The Respondent shall convey his interest in the plots to the Petitioner within two months from the date of this judgment (thus, by 28th January 2024).
- g. The two (2) plots of land acquired by Petitioner personally is settled in favour of the Petitioner.
- h. The vehicle (Mitsubishi outlander 2015 model with registration No. UE277-20) is settled in favour of the Respondent.
- i. Petitioner's claim for a share in the trailer or truck is dismissed.
- j. The Respondent shall pay the Petitioner the sum of Sixty Thousand Ghana Cedis (**GHC60,000.00**) as financial settlement/provision or alimony.
- k. Respondent's claim for GHC350,000.00 as compensation is dismissed.
- l. The Petitioner and the Respondent are advised not to influence the children of the marriage against each other. The parties are also encouraged to communicate in order to enable them take good care of the children together.
- m. There will be no order as to costs. The parties are to bear their respective costs incurred in pursuing this matter.

(SGD.)

**H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)**