

IN THE DISTRICT COURT 2, TAMALE HELD ON FRIDAY 19TH JANUARY, 2024
BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A4/03/23

BETWEEN

THEODORA PUNAMANI

- PETITIONER

AND

SAMUEL BABA ABIKO

- RESPONDENT

JUDGMENT

INTRODUCTION

1. This judgment relates to dissolution of marriage.
2. Before instituting this action, the petitioner instituted a land action claiming properties acquired during her marriage with the Respondent. Respondent contended that the marriage with the Petitioner had been dissolved and therefore disputed the claim. On 23/9/23 the petitioner was put to an election on either instituting this present action or maintaining the earlier one.

3. From the above, the petitioner instituted this present action pursuant to that election. The parties herein married under Talensi Custom in May 2012. The petitioner is the second wife of the Respondent. After marriage, the parties cohabited in Accra and then moved to Tamale. At Tamale, they lived at H/No. 63, West Gurugu Block B as their matrimonial home. Both parties are Ghanaian citizens. The Petitioner is a businesswoman while the Respondent is senior staff of University for Development Studies (UDS). There is only one issue of the marriage, Joycelyn Awinongma Abiko, 10yrs.
4. Petitioner is seeking against the Respondent the following reliefs:
 - a. That the customary law marriage celebrated between the parties be dissolved.
 - b. That the Respondent be granted custody of the only issue of the marriage.
 - c. That the properties acquired during the pendency of the marriage, namely eleven (11) plots of land and H/No. 63 be shared equally between the parties.
 - d. Lump sum compensation as maintenance arrears in favour of the petitioner.
5. The Respondent on 6/4/23 filed an answer and cross-petition to the Petitioner's petition. To him, the marriage between the parties has been dissolved customarily in April 2018. In his cross-petition, he prayed for the following reliefs:
 - a. Recovery of possession of H/No. 63 West Gurugu Block B, Tamale from the Petitioner in a tenantable condition.
 - b. An order for the Petitioner to render accounts of the rent received in respect of H/No. 63 West Gurugu Block B, Tamale for the period 2018 to date and same paid to the Respondent.
 - c. An order of perpetual injunction restraining the Petitioner, her successors in title, agents, servants, assigns and workmen from further interfering with H/No. 63 West Gurugu Block B, Tamale.

6. The Petitioner filed a Reply to the Respondent's Answer and Cross-Petition disputing the assertions of the Respondent. The respective cases of the parties are detailed below.

PETITIONER'S CASE

7. Before I proceed to narrate the evidence of the Petitioner, it is important to mention that paragraphs 9-14 of the Petitioner's witness statement were struck out, since the Family Tribunal had determined the relief regarding custody of the child, Joycelyn Awinngma Abiko.
8. Now, the grounds for the Petitioner's petition are that the Respondent has deserted the marriage and has behaved unreasonably such that she cannot reasonably be expected to live with the Respondent as wife. According to her, the Respondent had divorced the first wife before marrying her. She averred that the first wife had been settled with a two-bedroom house. She argued that the Respondent has not divorced her as required by Talensi custom which required the presentation of a hoe or wooden club.
9. Regarding desertion, Petitioner contended that the Respondent since 2018 had vacated the matrimonial home with intention of bring cohabitation to an end. On the ground of unreasonable behaviour, the Petitioner submitted that the Respondent has shirked his responsibilities towards her. Also, Respondent is attempting to sell the matrimonial home, i.e. H/No. 63 West Gurugu Block B, Tamale, without her consent. To her, the marriage between the parties has broken down beyond reconciliation and that same be dissolved.

10. In respect of the other reliefs, Petitioner stated she has been granted custody of the child. She, however, indicated that H/No. 63 West Gurugu Block B and the 11plots (4plots situate at Kpalsi behind the Bible School, 3plots at the next land of the Bible School and 4plots around Bi-Water) be shared equally. Reason being that she contributed to buying H/No. 63 and the 11plots were acquired during the pendency of the marriage. Regarding a shop located at Gurugu, on the Tamale-Kumbungu Road near 1st November School, that was raised by the Respondent in his Answer and Cross-Petition, Petitioner averred that the said shop has not been settled on her as part of the marital properties. She indicated that she rented it and used the proceeds therein to cater for the Respondent when Respondent suffered stroke.

11. She tendered in evidence:

- Exhibit A: Pen drive containing pictures of H/No. 63.
- Exhibit B: Picture of H/No. 63 with the old painting.
- Exhibits C, C1-C3: Pictures of doors changed by the Petitioner.
- Exhibits D-D1: Pictures of H/No. 63 with the new painting.

Petitioner's Witness

12. Petitioner called one Yin Punamani (PW1). PW1 stated that Respondent sent one Malik and Abu to bring a calabash for the dissolution of marriage between the parties. However, he and the family informed the Respondent's representatives that they could not dissolve the marriage without hearing from the Petitioner and more so a calabash was not the required item for the dissolution of the marriage, rather a hoe or wooden club. He added that the representatives of the Respondent never returned, after that meeting.

RESPONDENT'S CASE

13. Respondent, on his part, contended in his answer and cross-petition that marriage between the parties has been dissolved when he caused to be presented a calabash to the Petitioner's family in April 2018. Nonetheless, he stated that the petitioner has behaved unreasonably during the marriage. He averred that the Petitioner would not allow any of his family members to visit the matrimonial home and that Petitioner is very quarrelsome with his sisters and first wife. He added that the Petitioner refused to provide him food, despite providing money for feeding. Also, Petitioner subjected her to degrading and dehumanizing treatments when he suffered stroke in January 2016.
14. Regarding the acquired properties, Respondent averred that he took a loan from Agricultural Development Bank in 2014 to pay for the matrimonial home and that Petitioner never contributed, either in kind or cash. He explained he paid GHS70,000.00 for the matrimonial home: the initial payment of GHS20,000.00 on 14/7/14 and final payment of GHS50,000.00 in August 2014. He explained that before acquiring the matrimonial home, he was offered accommodation by his employer, UDS, in July 2013. He subsequently rented an apartment from August 2013 to July 2015 and so had to apply for monthly allowance in lieu of the said accommodation. With the shop, he stated that he gave the Petitioner a seed capital of GHS5,000.00. Also, he gave GHS10,000.00 (on 15/12/16) and other monies on different occasions to Petitioner to re-stock the shop. He added he was solely responsible for the maintenance and upkeep of the Petitioner and the matrimonial home. He stated that from 2014 to 2017, when both matrimonial home and shop were being acquired, Petitioner was pursuing her HND programme in Hospitality Management at Tamale Technical University and therefore (Petitioner) had no money. He averred that since 2018 that Petitioner has rented part of the matrimonial home but has failed to account

for the said rent. He, therefore, caused his lawyers to write to Petitioner but Petitioner would not yield. He added that Petitioner took GHS5,000.00 on 19/10/20 to find alternative accommodation, but has failed to move out.

15. He tendered in evidence the following exhibits in support of his case:

- Exhibit 1: Copy of Application for monthly allowance in lieu of accommodation.
- Exhibit 2: Part payment agreement with the vendor of H/No. 63.
- Exhibit 3: Copy of the Statutory Declaration transferring H/No. 63 to Respondent
- Exhibit 4: Copy of the GHS10,000.00 paid via GN Bank
- Exhibit 5: Copy of Notice to Tenant to vacate H/No. 63.

Respondent's witnesses

16. The Respondent called two witnesses, Abu Salifu (RW1) and Evans Abolga Asunluya (RW2). RW1 stated that he and one Malik Abiko went to the Petitioner's family with a calabash to dissolve the marriage between the parties. He admitted that the Petitioner's family requested to inform the Petitioner before the acceptance of the calabash. Yet to hear from the Petitioner's family, RW1 averred that Petitioner went to the Respondent's house in Bolgatanga and rained insults on everyone and stated openly that she wanted to leave the marriage "long ago". Later they returned to the Petitioner's family and the calabash was accepted to signify the dissolution of the marriage.

17. Evans Abolga Asunluya (RW2) added that Petitioner on 17/10/20 requested for GHS5,000.00 to secure an alternative accommodation. He explained that he took the said GHS5,000.00 from the Respondent and same was paid into Petitioner's Calbank's

account on 19/10/20. Yet, some weeks later, the Respondent would not leave the matrimonial home.

THE EVIDENCE AND THE LAW

BURDEN OF PROOF

18. In civil cases, like this petition, the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. The Evidence Act, 1975 (NRCD 323) uses the expression 'burden of persuasion' and in section 14 that expression has been defined as relating to, 'each fact the existence or non-existence of which is essential to the claim or defence he is asserting.' See also ss. 11(4) and 12(1) and (2) of NRCD 323. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420** emphasizing the above.

19. It is when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him, see the cases of **Ababio v Akwasi III [1995-1996] GBR 774** and **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) [2012] 2 SCGLR 845**.

Dissolution of the Customary Marriage

20. It is important to mention here that the Marriages Act 1884-1985 (CAP 127) governs the (a) Customary, (b) Mohammedans and (c) Christian and Other marriages.

21. Section 41(3) of the Matrimonial Causes Act, 1971 (Act 367) deals with dissolution of customary marriages. It provides that:

“In the application of section 2(1) to a marriage other than a monogamous marriage, *the Court shall consider the facts recognised by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage*, but without prejudice to the foregoing, the following: (a) willful neglect to maintain a wife or child; (b) impotence; (c) barrenness or sterility; (d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship; and (e) persistent false allegations of infidelity by one spouse against another.”

22. Further to the above, section 1(2) of Act 367 provides that a decree for divorce shall be granted only on the ground that the marriage between the parties has broken down beyond reconciliation. Section 2(1) of the Act specifies the conditions to be proved that the marriage has broken down beyond reconciliation to include:

- a. that the *Respondent has committed adultery* and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent;
- b. that the Respondent has *behaved in such 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 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;
- 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.*"

23. The law, therefore, enjoins either party to satisfy the court on one or more of the aforementioned grounds for a dissolution of the marriage, see the cases of **Ansah v. Ansah [1982-83] 2 GLR 1127** and **Akoto v. Akoto [2011] 1 SCGLR 533**. Section 2(3) of Act 367 further 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."

24. In the instant case, all that the court is to satisfy itself, on the balance of probabilities, is that one of the grounds is proven and that the marriage has broken down beyond reconciliation, in accordance with section 41(3) of Act 367.

25. According to the Petitioner, the Respondent has deserted the marriage since 2018 and has behaved in such a manner that she cannot reasonably be expected to live with the Respondent. She disputed that the Respondent is yet to divorce her customarily under the Talensi custom. She argued that hailing from Talensi, the custom demands a presentation of a hoe or club for the dissolution of marriage. More so, her consent is needed before the dissolution. The Respondent, on his part, contended that it is only a calabash that is presented for the dissolution of marriage. To him, he has presented the calabash signifying that he is no longer married to the Petitioner.

26. During cross-examination of the Petitioner, below is what ensued:

"Q: Are you aware that the Respondent sent one Malik Abiko and Abu Salifu to your family for the purpose of dissolving the marriage between you and the Respondent?

A: No. I was invited to the village because they went to the house with a complaint.

Q: Are you saying that your family never informed you that the Respondent wanted to divorce you?

A: No. They were expecting that we meet and discuss about the complaint they brought."

27. When PW1, Yin Punamani, was cross-examined, he admitted that he informed the Petitioner about Respondent's intention to divorce her, but he was not in support of it. This is what happened:

"Q: So it will not be true if the Petitioner says that you did not inform her that the Respondent wanted to divorce her?

A: I told her. But I did not want to agree because of the children, but the Respondent insisted for the divorce."

28. On the Respondent's part, this is what ensued when being cross-examined:

"Q: Are you aware that Malik Abiko and Abu Salifu went to the family of the Petitioner to inform them about your intention to dissolve the marriage?

A: Yes, I asked them to.

Q: Are you aware when they visited the family, the elders told them they would need to sit with you and the petitioner before the dissolution of the marriage?

A: No. I am not aware. The information I got from Abu and Malik was that the family will call their daughter (Petitioner) and which they called her and they came to my house and poured water in a tank and Petitioner said she was not even interested in the marriage.

Q: You agree with me that word of mouth does not dissolve customary marriage?

A: I am aware and that is why we took calabash to dissolve the marriage.

Q: Are you aware that under Talensi Custom it is a club and not a calabash that is used in the dissolution of customary law marriage?

A: No. I am aware of the calabash.

Q: I am putting it to you that under the Talensi custom it is a club that is presented to the family of the woman for the dissolution of a customary law marriage?

A: No. Because the calabash is what we use. And when we went, we were not told something different."

29. Mr. Abu Salifu (RW1) during his cross-examination answered that:

“Q: You agree with me that the Petitioner is a member of the Talensi ethnic group?

A: Yes. She is from Gorogo.

Q: You agree with me that consent just as it is needed in marriage by both parties, it is also needed during the dissolution of the marriage?

A: Yes, in a sense that the Petitioner started certain behaviour that the Respondent reported to the family.

Q: I am putting it to you that it rather a club that is presented to the family of the woman during the dissolution of marriage under the Talensi custom?

A: Per the tradition I know as the Frafra’s, it is a calabash.”

30. It is interesting to state that when the Petitioner also referred to the Frafra’s, she mentioned that it was a calabash that is presented:

“Q: On one hand you told this court that the Respondent had divorced his first wife, Harriet, and on the other hand you said the Respondent and Harriet were separated?

A: Yes, under the Frafra tradition a woman does not completely divorce the husband even if you have moved to your parents’ house, *till a calabash is returned according to the custom.*”

31. From the foregoing, it is obvious that neither party is interested in the marriage. Whereas Petitioner supported here case with desertion and unreasonable behaviour, the Respondent argued unreasonable behaviour on the part of the Petitioner. At least, both parties admitted that the marriage has broken down beyond reconciliation. The only issue had to do with whether or not the marriage has been dissolved under the Talensi custom. Having considered the evidence so far, I hold that the Respondent presented the calabash, as required through RW1 and Malik Abiko for the dissolution of marriage. Also, Petitioner was informed to which she communicated that she was no longer interested in the marriage or now communicating that she does not want this marriage. This court cannot force either party to be married. I, therefore, come to the conclusion that this marriage has broken down beyond reconciliation and I hereby decree that the marriage celebrated between the parties herein under the Talensi custom on May 2012 as dissolved.

Custody of the Child/Issue

32. Regarding the issue of custody and maintenance of the child, the parties informed the court that the Family Tribunal has made a determination to that effect. According to them, the Petitioner was given custody of the child, Joycelyn Awinongma Abiko. In effect, the relief for custody and maintenance of the child before this court is moot.

Distribution of Spousal Properties

33. The law regarding properties acquired during the subsistence of a marriage is that such properties are presumed to be jointly acquired, unless evidence is led to the contrary, see the recent case of **Peter Adjei v Magaret Adjei [2021] DLSC 10156** per His Lordship Appau JSC (delivering the majority decision) where he recounted in detail this position as well as the exceptions thereof. He stated:

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

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

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

(a) spouses shall have equal access to property jointly acquired during marriage;

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

The combined effect of the decisions referred to supra is that; any property that is acquired during the subsistence of a marriage, be it customary or under the English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and ...should be shared between them on the equality is equity principle. This presumption of joint acquisition is, however, rebuttable upon evidence to the contrary – see the *Arthur case* supra, holding (3) at page 546. What this means, in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a ‘jointly-acquired’ property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial, to have been jointly acquired, irrespective of whether or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition. The operative term or phrase is; *‘property jointly acquired during the subsistence of the marriage’*. So where a spouse is able to lead evidence in rebuttal or to the contrary, as was the case in *Fynn v Fynn* (supra), the presumption theory of joint acquisition collapses.

In the 1998 *Mensah case* (supra) per Bamford-Addo, JSC, this Court held that; *‘property jointly acquired during marriage would become joint property of the parties and such property should be shared equally on divorce, because the ordinary incidents of commerce had no application in marital relations between husband and wife who had jointly acquired property during marriage’*. Notwithstanding this decision, there was still a little bit of confusion as to which property could be described as jointly acquired marital property when spouses in such litigations, lay exclusive proprietary rights or ownership over some of the properties disputed as joint properties. It was this confusion that prompted this Court in the second *Mensah case* (supra) per Dotse, JSC, to introduce the

'presumptive ownership' principle, which was affirmed and became rooted in *Arthur v Arthur* (supra) per Date-Bah, JSC. In the Arthur case, the Court held at holding (3) as follows:

'The Supreme Court in Mensah v Mensah had interpreted the provision in article 22(3)(b) of the 1992 Constitution liberally and purposively to mean that joint acquisition of assets was not limited to property that had been acquired as joint or as common tenants; but rather any property acquired by the spouses during marriage was presumed to be marital property. Thus marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition. The Supreme Court would affirm that concept of marital property. However, consideration of cases and statutes in the United States would suggest that property acquired by gift during the marriage should be excluded from the concept of marital property. That exception seemed sound in principle. Indeed, other exceptions might need to be carved out to the broad definition of marital property'.

With the decisions in the *Mensah, Quartson and Arthur cases* (supra), it was no longer essential for a spouse to prove a direct, pecuniary or substantial contribution in any form to the acquisition of marital property to qualify for a share. It was sufficient if the property was acquired during the subsistence of the marriage. However, where such evidence exists, it is necessary that a spouse alleging such a contribution must render or offer it to quantify his/her share or portion in the property so acquired on the equity principle. *The rationale behind this position was that the duties performed by the wife in the home like cooking for the family, cleaning and nurturing the children of the marriage, etc. which go a long way to create an enabling atmosphere for the other spouse to work in peace*

towards the acquisition of the properties concerned, was enough contribution that should merit the wife a share in the said properties.

It must be emphasized, however, that it is not every wife to a marriage who diligently performs this marital role that the courts, since the days of **Rimmer v Rimmer** [1952] 1 QB 63 @ p 73, per Denning LJ, have talked so much about. It is therefore necessary that such a contribution or non-contribution must be demonstrated in the evidence adduced at the trial. It is for this reason that the authorities regard this general principle of 'joint-acquisition' as a presumption that could be rebutted by contrary evidence. Thus, in the *Fynn case* (supra), this Court distinguished the right of an individual to acquire property exclusively during the subsistence of a marriage, from its earlier decisions in the *Mensah and Quartson cases* (supra). This 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."*

34. The law is that the party who in his pleadings raises issues essential to the success of his case assumes the onus of proof on the balance of probabilities. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampsey (No. 2)** [supra], the Supreme Court in dealing with the onus of proof of an allegation held at page 867 as follows: *"...What this rule literally means is that if a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish."* See also the often cited case of **Majolagbe**

v. Larbi [1959] GLR 190 per Ollennu J (as he then was) where the court held that, *"...He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true"*. In light of this, the Petitioner is to prove that she is indeed entitled to an equal share of the properties acquired during the marriage, less an unfavourable ruling shall be entered against her.

35. The Petitioner contended that she is entitled to an equal share of H/No. 63 West Gurugu Block B, Tamale being the matrimonial home. She explained that she sold her plot in Gurugu for GHS4,500.00 and added cash of GHS500.00 as her contribution to buying the matrimonial home. She added that the 11plots (4plots situate at Kpalsi behind the Bible School, 3plots at the next land of the Bible School and 4plots around Bi-Water) be shared equally, because same were acquired during the pendency of the marriage. Regarding a shop located at Gurugu, on the Tamale-Kumbungu Road near 1st November School, she averred that the said shop has not been settled on her. She indicated that she rented it and used the proceeds therein to cater for the Respondent when Respondent suffered stroke. In all, she contended that in addition to providing GHS5,000.00 in buying the matrimonial home, she contributed in kind by way of her duties as wife like cooking for the family, cleaning and nurturing the child of the marriage, caring for the Respondent when he suffer stroke, etc and that she is entitled to her reliefs.

36. Below is what ensued regarding the matrimonial home, the shop and the 11 plots when Petitioner was under cross-examination.

"Q: You testified that in 2014 when you were doing the fabric business, you earned an average of about GHS500.00 per month?

A: Yes.

Q: So if you couldn't pay the whole of your school fees, your earnings about GHS500.00 then you could not have contributed in cash for the purchase of the material home in 2014?

A: It was a plot of mine I sold at Vittin Barrier to one Dabokpa Naa at GHS4,500.00. That is what I used.

...

Q: So you testified that you sold your land for GHS4,500.00 and gave the amount to the Respondent for the purchase of the matrimonial home, is that not so?

A: I topped it up to GHS5,000.00.

...

Q: I am putting it to you that on 19/10/20 an amount of GHS5,000.00 was paid into your Calbank account by Mr. Bawa?

A: Yes.

Q: This amount was paid to you to enable you find an alternative accommodation as you had informed Mr. Evans?

A: No. I went to the Respondent's office at UDS to ask about my daughter, he walked to the security gate to ask the security to throw me out. He further said I was smelling. It attracted attention that I had to leave to protect him. That same week Evans came and told me to be patient, he will go for my daughter. That was during the covid. Mr. Evans knew my goods at the shop

were almost empty. So during the conversation, he said he would support me with money since the Respondent was not supporting me financially.”

37. Further on the shop, this is what ensued

“Q: You operate a shop?

A: Yes.

Q: When was the shop acquired?

A: I started my business in 2015 with the help of a Nigerian man in his shop. Then after a year, after making profit I rented a shop nearby which was paid yearly.

...

Q: The Nigerian did not give you money to start your business, is that not so?

A: Yes, but my savings from work I was doing at Coconut Grove Regency, Accra.

...

Q: So you started the business during the subsistence of your marriage to the Respondent?

A: Yes.

Q: Do you have an account at GN Bank?

A: Yes.

...

Q: Kindly take a look at this document, our proposed Exhibit 4, is that your name and account number at GN Bank?

A: Yes

Q: I am putting to you that on 15/12/16 the Respondent sent you an amount of GHS10,000.00 through your GN Bank?

A: No.

Q: I am further putting it to you that this amount was for the purpose of your business?

A: No. My business started in 2015. The Respondent suffered stroke. By then I was in my second year at Tamale Poly.

[Petitioner later admitted that Respondent suffered stroke in 2016]

Q: Is it your testimony that Respondent never gave you financial assistance to carry out your business?

A: No. He suffered stroke that time. He couldn't sign or go to the bank to withdraw money at that time. So I had to put up a shop to help me cater for the house.

...

Q: I am putting it to you that it cannot be the case that you were using the proceeds of your business to take care of the house including the Respondent when the Respondent was still earning his salary?

A: Respondent was half paralyzed and couldn't withdraw money from his bank and I never used his ATM card hoping when he recovers he would start taking up his responsibilities.

...

Q: So are you saying that throughout the marriage the Respondent has been the one taking care and maintaining the house?

A: Both of us.

...

Q: Is it not true that at one time you took Respondent to the ATM to withdraw money?

A: That was when he had recovered."

38. Regarding the 11 plots, below is what happened when Petitioner was cross-examined:

"Q: You testified at paragraph 21 of your witness statement that you jointly acquired 11 plots of land with the Respondent?

A: Yes.

Q: What were your contributions for the acquisition of the alleged 11 plots?

A: With regards to the plots, I contributed by taking care of the household expenses so he could purchase them.

...

Q: It is true that you have not provided any document to this court concerning the supposed 11plots?

A: Yes.

...

Q: I am putting it to you that the 11plots of land do not exist?

A: They exist. I have given location to where they are.

...

Q: You are asking this court to divide 11plots of land which do not exist between you and the Respondent?

A: All the properties, but not only the land."

39. The Respondent, on his part, disputed the above and stated that he solely paid for the matrimonial home. Respondent averred that he took a loan in 2014 to pay for the matrimonial home and that Petitioner never contributed, either in kind or cash. He explained he paid GHS70,000.00 for the matrimonial home, the initial payment of GHS20,000.00 on 14/7/14 and final payment of GHS50,000.00 in August 2014. He explained that before acquiring the matrimonial home, he was offered accommodation by his employer, UDS, in July 2013. He subsequently rented an apartment from August 2013 to July 2015 and so had to apply for monthly allowance in lieu of the said accommodation. With the shop, he stated that he gave the Petitioner a seed capital of GHS5,000.00. Also, he gave GHS10,000.00 and other monies to

Petitioner to re-stock the shop. He added he was solely responsible for the maintenance and upkeep of the Petitioner and the matrimonial home. He stated that from 2014 to 2017, when both matrimonial home and shop were being acquired, Petitioner was pursuing her HND programme in Hospitality Management at Tamale Technical University and therefore had no money. He averred since 2018 that Petitioner has rented part of the matrimonial home but has failed to account for the said rent. He therefore caused his lawyers to write to Petitioner but Petitioner would not yield. He added that Petitioner took GHS5,000.00 on 19/10/20 to find alternative accommodation, but failed to move out.

40. Below is what transpired when he was also under cross-examination:

“Q: You agree with me that 4 plots at Kpalsi behind Bible School was acquired after your marriage with the Respondent?

A: I have no knowledge of those 4 plots.

...

Q: You agree with me that 4 plots at Bi-Water, a suburb of Tamale close to UDS Staff residence were acquired after your marriage with the petitioner?

A: I have no plots there.

...

Q: You agree with me that H/No. 63 Block B, West Gurugu was bought with the aim of giving it to the Petitioner and the daughter you had with her?

A: No. Because, I was already married with children and I could not only buy a house for her.

Q: You agree with me that since you got married to Petitioner you and the Petitioner and your daughter exclusively lived in that house without any other family member?

A: Yes. Because she wouldn't allow any family member to live with us.

...

Q: Are you aware that there has been renovations of the matrimonial home like replastering, painting and change of doors?

A: No. I am not aware. The only thing I am aware of is that she has been sharing half of the house as rent. *The only time I talked about that building was when she partitioned the building and my daughter did not have access to the hall and I cautioned Petitioner.*

Q: You are aware that before you left the matrimonial home, it was painted ash?

A: Yes.

Q: Take a look at this picture, Exhibit D, is that the building of your matrimonial home?

A: Yes.

Q: What is the colour of the building?

A: Blue. Blue colour or painting is not actually maintenance and without my consent. Petitioner painted it blue.

...

Q: You agree with me that when you purportedly dissolved the customary law marriage, the Petitioner was given the rented shop which was paid for yearly as her share, is that correct?

A: That is not correct. I paid for the shop. It was in 2016. I did not buy it. I rented it.

...

Q: I am putting it to you that even if she requested for money from Evans, that was not from you the Respondent?

A: That is true, but it was during her finding of alternative accommodation that she asked Evans and Evans discussed with me.

41. On the alternative accommodation, below is what ensued when RW2, Evans Abolga Asunluya, was under cross-examination:

“Q: You agree with me that you gave an amount of GHS5,000.00 to one Bawa Kelvin Khamar-Deen to be paid into Petitioner’s Calbank account?

A: That is correct. It was after I had a discussion with the Petitioner and she agreed that if she get GHS5,000.00 she could get an alternative accommodation to relocate. So the money actually came from the Respondent.

...

Q: You also do not have any evidence showing that the GHS5,000.00 was given to you by the Respondent?

A: The money came from him. It was not my own money.”

42. From the above, I find that the Respondent failed to demonstrate that he solely financed or purchased H/No. 63, West Gurugu Block B, being the matrimonial home. He failed to file copy of the loan document or bank statement from Agricultural Development Bank in financing same, hence an unfavourable ruling is entered against him, see **Ababio v Akwasi III [supra]** and **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) [supra]**. It is rather clear that the Petitioner contributed cash of GHS5,000.00 in buying same. It is also undoubtedly clear that the Petitioner supported the Respondent in kind, by way of catering for him when he suffered stroke, supporting the household, among others, which qualify as contribution of the Petitioner to a share in the matrimonial home. Moreso, she has made renovations to the said house, to which the Respondent was well aware, see Exhibits C and D series. In effect, I hold that the Petitioner is entitled an equal share in H/No. 63, West Gurugu Block B, being the matrimonial home, see **Peter Adjei v Magaret Adjei [supra]**.

43. The Respondent in his cross-petition prayed for an order for the Petitioner to render account of the rent received in respect of H/No. 63 from 2018 to date and same paid to him. From the evidence, Respondent left the matrimonial home in 2018. He left the Petitioner to cater for herself, thereafter. It was alleged that Respondent intends to sell the house. It is, however, not in doubt that the house has been renovated by the Petitioner and portion was rented out at a monthly rent of GHS150.00. Even with that, it was the Respondent who caused the tenancy to be terminated. There is no evidence

as to when the tenancy was terminated. Assuming that the rental can be estimated, I am also at a lost at paying the said money to the Respondent. How about the cost of the renovations? I have earlier held that the Petitioner is entitled to an equal share of the matrimonial home, therefore since Respondent had left the Petitioner to cater for herself and the household, all by herself since April 2018, I hold that same cannot be paid to the Respondent as he claims. His prayer, therefore, fails.

44. With the shop at Gurugu, on the Tamale-Kumbungu Road near 1st November School, it is also evidently clear that Respondent contributed to the running of the shop. Example, from Exhibit 4, he gave out GHS10,000.00 to revamp the business. However, the Respondent does not claim any part of the shop. Hence, I will settle same on the Petitioner, being mindful of section 20(1) of Act 367 regarding other financial claims.

45. Now, regarding the 11plots, since the Petitioner was disputing the existence of the said plots, the onus was on the Petitioner to prove by producing other evidence of facts and circumstances, from which the Court can be satisfied that what she avers is true, *see Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampitey (No. 2) [supra]* and *Majolagbe v. Larbi [supra]*.

46. In the recent case of **Asamoah Gyan v Gifty Gyan [2023] DLHC 16615**, Her Ladyship Justice Hafisata Amaleboba (Mrs.) stated at page 40 that:

“The Respondent who claims a share in these properties listed above, must first establish the Petitioner's ownership in them and that same were acquired in the course

of the marriage. It is only then, that the Respondent can proceed to establish her contribution to their acquisition, to entitle her to a share in same. From the evidence on record, House Number 15, Oleander Street, East Legon, Accra, was

acquired by the Petitioner in the year 2011, prior to the marriage between the parties in 2013. This fact has been admitted by the Respondent, under cross-examination. Therefore, she cannot claim a share in it. The Petitioner has denied ownership of the house popularly known as Baby Jet Heights, situate at East Legon. The testimony of the Petitioner's Attorney was that the Petitioner has a fuel service station next to the said property and the name may have been given to the house, due to its proximity to the Petitioner's fuel service station. The Respondent has not established that the Petitioner owns that property and cannot be entitled to a share in it. *Similarly, the Respondent was unable to adduce credible evidence to establish the Petitioner's ownership of the properties at West Adenta in Accra, Michelle Camp, Tema and a printing press in Dubai, among others. She therefore cannot be entitled to a share in any of them."*

47. The onus was on the Petitioner to point out how the 11 plots were acquired, when it was acquired or filed a search report from the Lands Registry in further proof of her claim, etc since her assertion was denied. To the extent that Petitioner was unable to support her claim, aside repeating same under cross-examination, I am unable to make a determination as per her claim. Her prayer for an equal share thereof, therefore, fails.

Lumpsum Compensation/Maintenance

48. Finally, Petitioner in her petition stated at relief d, "Lump sum compensation as maintenance arrears in favour of the petitioner."

49. Section 20(1) of Act 367 provides that, "The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or

as part of financial provision that the Court thinks just and equitable.” I am unclear if the said relief regards the maintenance arrears for the child or a lumpsum. If maintenance arrears for the child, that has been or has to be determined by the Family Tribunal. If a lumpsum, there was no evidence to that effect. Petitioner did not mention any amount, let alone adduced any evidence for that claim.

50. In effect, having settled properties on the Petitioner, particularly the shop, in accordance with s. 20(1) of Act 367, I am of the view that she can use the said shop for her upkeep. She has also benefited GHS15,000.00 along the way, for the said shop, as she alleged. In that sense, I make no further award of financial provision.

CONCLUSION

51. In sum:

- a. The marriage between the parties is hereby dissolved.
- b. I make no determination with regards to custody of the child, Joycelyn Awinngma Abiko, since the matter has been determined by the Family Tribunal.
- c. That Petitioner is entitled to an equal share of the matrimonial home, i.e. H/No. 63 West Gurugu Block B, Tamale. Petitioner is also entitled to the shop at Gurugu, on the Tamale-Kumbungu Road near 1st November School, Tamale. The Petitioner’s prayer for an equal share in the alleged 11plots, fails.
- d. I make no award of financial provision or lumpsum as compensation.
- e. The Respondent’s cross-petition fails.
- f. No order as to costs.

H/W D. ANNAN ESQ.

[MAGISTRATE]

LAMBON B. SAMPSON ESQ. WITH ALIU M. NURUDEEN ESQ. HOLDING THE BRIEF
OF SYLVESTER ISANG ESQ. FOR THE PETITIONER
ANGELA ABUGRI ESQ. HOLDING THE BRIEF OF PAUL K. CHINATRA ESQ. FOR
THE RESPONDENT

References

1. *Articles 22(2) & (3) and 33(5) of the 1992 Constitution*
2. *ss. 1(2), 2(1), 2(3), 20(2) and 41(3) of the Matrimonial Causes Act, 1971 (Act 367)*
3. *Marriages Act 1884-1985 (CAP 127)*
4. *ss. 11(4), 12(1) and (2), and 14 of Evidence Act, 1975 (NRCD 323)*
5. *Faibi v State Hotels Corporation [1968] GLR 471*
6. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420*
7. *Ababio v Akwasi III [1995-1996] GBR 774*
8. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2) [2012] 2 SCGLR 845*
9. *Ansah v. Ansah [1982-83] 2 GLR 1127*
10. *Akoto v. Akoto [2011] 1 SCGLR 533*
11. *Peter Adjei v Magaret Adjei [2021] DLSC 10156*
12. *Mensah v Mensah [1998-1999] SCGLR 350*
13. *Rimmer v Rimmer [1952] 1 QB 63 @ p 73*
14. *Majolagbe v. Larbi [1959] GLR 190*

15. *Asamoah Gyan v Gifty Gyan* [2023] DLHC 16615