

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION COURT 5) HELD IN ACCRA ON THURSDAY THE 17TH DAY OF NOVEMBER, 2022 BEFORE HIS LORDSHIP JUSTICE WILLIAM BOAMPONG, HIGH COURT JUDGE

SUIT N^o: GJ/388/2017

MARY ADJEI

25 POLICE POST STREET

OFF FERTILIZER ROAD

TESHIE-NUNGUA ESTATES

PLAINTIFF

VS

PETER MILLS

25 POLICE POST STREET

OFF FERTILIZER ROAD

TESHIE-NUNGUA ESTATES

DEFENDANT

J U D G M E N T

The Plaintiff herein issued out her Writ of Summons against the Defendant claiming as follows:-

- a) A declaration that the Teshie property, located at 25 Police Post Street, off Fertilizer Road, Teshie Nungua Estate is the marital property of Mary Adjei and Peter Mills
- b) A distribution of the Teshie property in accordance with the principles of equitable distribution of assets enshrined in the constitution, 1992.
- c) Cost of litigation, including legal fees.
- d) Any further order as this Honourable Court may deem fit to make.

Counter-claim in his statement of Defence against the Plaintiff as follows:-

- a) The equitable distribution of the said property.
- b) Each Party bears his/her own cost.

PLAINTIFF'S CASE:

According to the Plaintiff, the Parties were married in 1978 under the Akan customary law. During the marriage, the Parties resided in Accra and London.

This customary marriage was dissolved in August 2016 and this dissolution was confirmed by this Court on November 2017 per Exhibit 'A'.

The Plaintiff averred that throughout the subsistence of the marriage, she was the primary caregiver for the two children of the marriage Meryl Mills and Madeline Mills.

Plaintiff states that at a time when the Defendant had been involved in a motor traffic accident that rendered him incapable of using one of his arms, he stayed in Accra and left her alone to cater for the children in London.

Plaintiff further imported items into Ghana for the sole purpose of being sold and the proceeds used either to buy a house or construct one.

According to the Plaintiff, considering the quantity and variety of items she exported to Ghana from London, it was sad indeed that when she finally relocated to Ghana with their two daughters, the Defendant had not bought the house and indeed the one they eventually moved into was the uncompleted one that said house is even still uncompleted.

Plaintiff states that based on her substantial contributions made toward the disputed house the Court should make an order for her equitable share of the disputed house.

DEFENDANT'S CASE:

The Defendant also counter-claim for his equitable share of the disputed property. Defendant also states that his contribution to the acquisition of the disputed house far outweighs that of the Plaintiff. Defendant avers that when the property was purchased it was his money that was used to

1. Connect water to the house from a distance of half a mile.
2. Connect Electricity
3. The POP ceiling
4. Built the walls of the house.
5. Do the terrazzo floor of the house
6. Do the Landscape

The Defendant also deny the Plaintiff's assertion that she was the primary caregiver to the children and also avers that to the fact that there was enough money in their joint accounts which was used to cater for the children.

ISSUES:

At the close of pleadings the following issues were set down for trial.

1. Whether or not the present matrimonial house of the Parties can appropriately be described as marital property.
2. What share of the property is each Party entitled to?

Determination of Issues:

Is the disputed house a marital property?

Generally as long as the property was acquired after the marriage occurred, the Court will presume that the said property is a marital property.

In the case of **Adjei v Adjei**

Civil Appeal No. J4/06/2021 unreported the Supreme Court described marital property as a property acquired during the pendency of the marriage.

This same description was given in the case of **Mensah v Mensah.**

The Parties in this case do not dispute that the disputed property was acquired during the pendency of the marriage.

I hold therefore that the disputed property in this suit is a marital property.

From the pleadings and Witness Statements filed by both Parties, the Parties in this suit had demonstrated that there is no serious issue between them. Each Party agrees that the other has a share in the disputed property.

Their issue is only as to the exact share of the property each of them is entitled to the disputed property.

The Plaintiff's writ is therefore for her equitable share in the disputed property and the Defendant had also counter-claimed for the equitable distribution of the disputed property between the two.

In **Mensah v Mensah** [2012] 1SCGLR 391

The Supreme Court held that once a property is acquired during the pendency of a marriage even if it was so acquired by one of the Parties, same should be considered as a joint property and same should be shared equally on the dissolution of the marriage.

If I am to go by the decision of **Mensah v Mensah**, I would have simply applied that decision and order that the Parties should share the disputed property equally since both Parties agree that same was acquired during the marriage.

I would however go beyond the case of **Mensah v Mensah** and rely on another Supreme Court case which considered substantial contribution in property sharing during the dissolution of marriage.

That is the case of:-

Peter Adjei v Mary Adjei

In that case the Supreme Court held that it is imperative to understand the commendable and presumption that property acquired during a marriage is jointly acquired is not stated by the constitutional provisions in Article 22 of the 1992 constitutional is abundantly clear.

I am therefore inclined towards the decision in **Peter Adjei v Mary Adjei** that a property acquired during a marriage does not automatically make same as a joint property of the couples. A spouse share must therefore be made based upon his/her contribution made in acquiring the property.

In concluding his addresses, Counsel for the Defendant stated that the contribution of the Defendant towards the acquisition of the disputed property far outweigh that of the Plaintiff, he does submitted that the Defendant should be given 70% of the value of the property, while 30% goes to the Plaintiff.

In the Witness Statement of the Defendant, he avers that his contribution in acquiring the property outweigh that of the Plaintiff because when the property in dispute was purchased, it was his money which was used to connect water, electricity, do the POP ceiling, built walls of the house, do the terrazzo floor of the house and do the landscape.

Under Cross-examination, the Defendant indicated his contribution towards the acquisition of the disputed property as follows:-

Q. Please show the Court the evidence of these monies that you claimed you contributed.

A. "I have to go back a bit. I started doing business in the 80's bringing in imports of wild steel plates into the country and I used the proceeds from the money to buy property. Somewhere along the line, I bought the first property at Awoshie. Later on, I bought the Kaneshie property and I remembered there was a big rain on the 8th June and most of our things were spoilt. The receipts were also damaged so I only have up to today nothing to show but I started trading again and that is how I bought the properties at Kaneshie, Dansman and the current one at Teshie."

In prove of her contribution to the acquisition of the property, the Plaintiff also led evidence that she and the Defendant shipped items to Ghana from the U.K including a fishing trailer corn mill, Dutch wax prints, an automobile and household items as indicated in Exhibit "E".

According to the Plaintiff it was the Defendant who sold all these items, excluding the corn-mill, which was operated from the residence of the Defendant's father, for the use and benefit of the Defendant as evidenced by Exhibit 'F'.

When the Defendant relocated in Ghana the Plaintiff also made constant remittances to the Defendant. Plaintiff further single handedly provided for the upkeep of their two children.

Plaintiff states that it was from the proceeds of the fishing trawler, Dutch prints, household items, as well as the Plaintiff's remittances that financed the purchase of the Kaneshie house per Exhibit 'G'.

Exhibit 'G' indicates that the Kaneshie house was purchased by Mr. and Mrs. Mills Mary (i.e. the Parties herein). It was from the sale of the Kaneshie house that the disputed property was purchased.

The Defendant agreed that per Exhibits D), E, and F, the Plaintiff, over a period of time, consistently complained of her ill health but still had to single handedly cater for the two children of the Parties.

There is clear and ample evidence on the records that when the Defendant came to Ghana on or around January 1985, the Defendant did not send any money to the Plaintiff for the maintenance of the two children.

The Plaintiff alone had to cater for the children from the beginning of 1985 – 1990 when Plaintiff and the children came to Ghana.

The answers given by the Defendant under Cross-examination indicates clearly that the Defendant skirted his responsibility towards his wife and children when he located in Ghana.

This is a discourse of the Cross-examination of the Defendant.

Q. Please take a look at the Plaintiff's Exhibit 'D1' attached to the Plaintiff's Witness Statement. This is a letter written by your brother, is that correct?

- A. Yes.
- Q. You have told this Court in paragraph 8 and 9 of your Witness Statement that you were providing for the upkeep of your wife and children in the U.K, do you stand by that?
- A. I do My Lord.
- Q. In Exhibit 'D1', your brother Sammy is chastising you for your repeated and continuous failure to take care of your wife and kids, I am putting it to you?
- A. This letter was written on 2nd December 1989. Later on, he apologized because he did not know about the conditions I was in Ghana.
- Q. I am putting it to you that Sammy never apologized for this letter and you also continued in your failure to take care of your wife and children even after Sammy wrote to you?
- A. My Lord that was not the situation on the ground. Besides he was not complaining that I have neglected my family but rather, he was complaining because she was not well.
- Q. By she you mean the Plaintiff?
- A. Yes.
- Q. I am putting it to you further that, if it were the case, Sammy would not have ended the letter by saying "you reap what you sow" and also "the evil that men do lives after them"
- A. He was complaining that the Plaintiff had an ailment of which she would need assistance from me at all times.
- Q. You are aware that the Plaintiff was at a point very sick in London?
- A. I did not know the extent of the sickness because the telephone system was not like we have it now.
- Q. But you are aware that she was ill?
- A. She complained before I left.

- Q. In Exhibit D, E, and F, the Plaintiff over a period of time, consistently complained to you that her health was failing and that she was having difficulty combining child care and work?
- A. Yes, but in that same letter, she asked me to stay in to make sure and finish what I was here for.
- Q. The Plaintiff did not have money to take care of your daughter and pay the bills too and that was the reason why in Exhibit 'D' she had to apply for a job at Tesco which she had previously left?
- A. I don't see how I can be blamed for this. We all go back to our job especially if you happen to be a good employee.

What we can simply draw from this Cross-examination of the Defendant is that:-

1. When the Defendant relocated in Ghana the health of the Plaintiff deteriorated.
2. In the mist of even that the Defendant could not send remittances towards his wife and children.
3. The Plaintiff had to single handedly cater for herself and the two children. Thus the Plaintiff had to carry the financial burden for the Defendant for about 1985 – 2000. This can be in turned in monetary terms to constitute a substantial contribution by the Plaintiff in acquiring the disputed property.

The Defendants suggestion that the Plaintiff paid some of these bills from the rents the Parties got from one Mina could not suffice because it is not disputed from the records that Mina was no sooner had the Defendant left U.K thrown out of the house by Defendant's own brother Sammy because of Mina unruly behavior.

There is also no evidence of Mina's replacement. Nothing more therefore came from the said rents.

With the pieces of evidence adduced on the records, I have no doubt in my mind that both Parties as marriage couples pulled out their resources to purchase the house in dispute.

It is also accepted by this Court that after the acquisition of the disputed house, the Defendant used his money to connect electricity, do the POP ceiling, do the terrazzo floor and the landscape. However if these expenses is measured against the amount the Plaintiff also single handedly used to cater for herself, and the children, and pay all the utility bills in the house that sum would also be substantial.

For the Plaintiff's single handedly suffering the said bills also amount to substantial contribution for the acquisition of the house. This is so because she shouldered the expenses at least half of which should have been borne by the Defendant.

For all these factors put into consideration, I have come into the conclusion that each of the Parties contributed to the acquisition of the disputed house.

As an answer to the reliefs as endorsed on the Plaintiff's writ of summons and the reliefs set forth in the Defendant's counterclaim, I order that the disputed house be shared equally between the Parties.

My coming into this decision is not based on the decision in Mensah v Mensah which ruled that a property acquired during the pendency of a marriage is a joint property. It is rather based on the decision in the other Supreme Court case of Adjei vrs Adjei (J.46 of 2021) GHASC5 (21/42021) which based a joint property of couple on the contribution made by each Party.

Having held that each of the Parties contributed substantially to the acquisition of the disputed property, I make an order that same be shared equally among the Parties.

Each Party to bear her/his own Court.

(SGD)

WILLIAM BOAMPONG

(JUSTICE OF THE HIGH COURT)

COUNSEL:

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