

**IN THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON MONDAY THE 19<sup>TH</sup>  
DAY OF DECEMBER, 2022 BEFORE HER LADYSHIP JUSTICE DOREEN G.  
BOAKYE-AGYEI (MRS.) JUSTICE OF THE HIGH COURT**

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**SUIT NO: E5/04/2021**

**KALEDZI ETORNAM ERNESTINA - PLAINTIFF**

**VS.**

**GEORGE KOGBE - DEFENDANT**

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**PARTIES: - PRESENT**

**COUNSEL:**

**NO LEGAL REPRESENTATION**

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**JUDGMENT**

**INTRODUCTION**

From the facts, the Petitioner formerly a spinster called KALEDDZI ETORNAM ERNESTINA was lawfully married under the Marriage Ordinance (CAP. 127) to the Respondent on the 31<sup>st</sup> December, 2011 at Global Evangelical Church, Sogakope. The parties are both citizens of Ghana and are domiciled in Ghana. The Petitioner is a public servant, a nurse working at South Tongu District Hospital, Sogakope, Volta Region, whilst Respondent works for SIC and resides in Akim Oda in the Eastern Region. The Respondent had one child prior to the marriage and the marriage between parties produced one child (- Deladen Valeri Kogbe 7 ½ years of age at the time). After the marriage the parties cohabited in Akim Oda for three (3) months when according to

Petitioner, she had to relocate to Sogakope due to her work as a nurse stationed in Sogakope.

Petitioner's case is that as a result of living in two different places, parties visited each other and spent weekends, holidays and annual leaves. That parties have constantly and persistently been quarreling on almost every issue and that the marriage between the parties has broken down beyond reconciliation. Petitioner also makes the case that on one of her visits to Respondent at his place at Akim Oda, Respondent said during one of their quarrels that Petitioner is not different from a prostitute, without any reason for saying so, just to provoke and demean her. That Petitioner retorted to Respondent that sometimes he speaks like a person who is not correct as a result of which Respondent assaulted Petitioner with slaps and finally pushed her, she fell on a chair leading to dislocation of her fingers.

According to Applicant, Respondent stopped picking her phone calls from May, 2017 which issue was reported to Respondent's parents, Pastors and even his best man who all advised him but he would not respond to Applicant's call. That Respondent categorically told Petitioner that he cannot love her any longer and instructed her to inform her parents that he is no longer interested in the marriage. Petitioner states that she reported the conduct of the Respondent to his parents and the two families sat on the matters and settled all matters and Respondent went back to Akim Oda and came to Petitioner on a visit, stayed for a day and when he was leaving for Akim Oda, Respondent told Petitioner that he was not safe staying with Petitioner so he would not come to Petitioner again and Petitioner should not also come to him the Respondent again. It is also Applicant's case that parties have not lived together as husband and wife for the past three (3) years and that Respondent has not provided anything for the maintenance of Petitioner and the child of the marriage for the past three (3) years.

Petitioner says she had to make a complaint to DOVVSU, Sogakope and when Respondent came down to Sogakope upon his invitation by DOVVSU he claimed That Applicant told him not to be paying the child's school fees and maintenance. That Sogakope DOVVSU asked Respondent to pay the maintenance and school fees arrears but he failed or refused to pay. Respondent was also asked to start paying for their maintenance from December, 2020, which he started paying. That due to the Respondent's attitude towards the Petitioner, she realized that she was just wasting her time with the Respondent. That the Respondent has on several occasions, by his words and deeds, demonstrated clearly that he is not interested in the marriage. Wherefore, Petitioner prays as follows:

- a. That the marriage between parties should be dissolved.
- b. Maintenance arrears from April, 2018 to November, 2020, amounting to GH ₵6,600.00.
- c. School fees arrears of GH ₵4,400.00.
- d. Compensation for wasting Petitioner's time and opportunities.
- e. Order for Custody of the child be granted to the Petitioner.
- f. Cost.

The Respondent in answer to the Petition admit paragraphs 1 to 7 but denies paragraphs 8 stating that it was Respondent who took it upon himself to visit the Petitioner regularly and on his annual leave and Petitioner even denied him sex on several occasions. That the Petitioner would visit the Respondent for at least three days and returned to her station. The Respondent agrees that in actual fact their marriage has really broken down beyond reconciliation to some extent. That from the word go, the Petitioner was not on speaking terms with his mother and sister and as a result the Respondent started to create avenue to stop it but the Petitioner refused to listen. That at a point in time, he told the Petitioner that the bad blood between her and his family will not bring any meaningful

progress in their marital affairs but the Petitioner would not listen. The Respondent however denied calling his wife the Petitioner a prostitute and when advising the Petitioner to desist from always saying bad things of his family members, she became offended rushed towards him to finger him in the eyes but he was quick to act to save the situation. That the Petitioner became ashamed of herself and stopped ringing or replying to his phone calls.

The Respondent says that at a point in time he advised the Petitioner on many issues affecting the progress of their marriage but she was not prepared to change. That he advised her against going out with men as a married woman but Petitioner became offended and told the Respondent that “she has a right to live her life to the fullest”. The Respondent says marriage nowadays is expensive and denied ever telling the Petitioner that he is no longer interested in the marriage. That after the reconciliation he visited the Petitioner on one occasion without informing her and on that occasion the Petitioner came home around 11:00 pm. That he went to the Petitioner’s end the second time and the Petitioner cooked for an unknown person and this time came home around 11:00 pm of which he questioned her, but the Petitioner told him that, “it was her own business” therefore if the Respondent felt the heat, then he should advise himself.

The Respondent’s case is that at that time he discovered that his life was in danger as the Petitioner could betray him at any time. That it was from June, 2018 that he advised himself from visiting the Petitioner all due to the happenings on his last visit. The Respondent says it was not his making for not maintaining his own biological daughter but is was the Petitioner preventing him citing that there are maintenance arrears to be settled and if he failed to pay, there is no way for her to accept any money. The Respondent states that it was the Petitioner who told him that she is capable of maintaining the child alone and even with that he on several occasions worked through his brother Isaac Wormadey to talk to the Petitioner to assume the maintenance and

school fees but she insisted if arrears are not paid, she is not ready to accept any maintenance. Respondent states that he went ahead to pay GH¢200.00 as maintenance through Mobile money (MOMO) to the Petitioner but it was Isaac Wormadey who had to intervene once again before the Petitioner accepted the maintenance fee.

The Respondent says, “he was advised at the Social Welfare Office to pay for the child’s school fees and to maintain the Petitioner and the child from December, 2020. That at the Social Welfare Office, he was advised to pay maintenance arrears of GH¢2,200.00 and was asked to pay all on or before the 30<sup>th</sup> day April, 2021 of which he states he attached a receipt. That the onus does not lie on him alone as a father of the child to provide the child’s needs in life as the Petitioner is also a nurse and earning monthly salary. The Respondent further says at the Social Welfare Office at Sogakope, a family member of the Petitioner told the officer that they have given the Petitioner’s hand in marriage to another man. The Respondent also says on the 7<sup>th</sup> day of February, 2021, he sent School fees of GH¢635.00 whereof the Petitioner was advised to see the School authorities and provide receipts but she is yet to do so.

According to Respondent, it is the Petitioner who has “divorced” him from her heart long ago, in that, in March 2018 and December 2020, the Petitioner brought her family to Respondent’s family house without the consent of the Respondent with Schnapps seeking for divorce without a reasonable course. Respondent posits that whilst there is no understanding in the Petitioner’s petition for the dissolution of the marriage, if really the dissolution of the marriage will allow her to do whatever she wants to do, then the Honourable Court should grant her request. The Respondent further says the Petitioner is not entitled to any compensation as she really came to destroy his life.

The Respondent contends that they purchased one building plot at Sogakope but the Petitioner has taken full custody of same therefore the Petitioner does not need any further monetary compensation. The Respondent further avers that Petitioner is not a

faithful wife despite the fact that the Respondent took care of her during the latter part of her education at the Nursing School at Akim Oda. The Respondent further says that when things broke loose, without any reasonable or justifiable cause the Petitioner burned all the Wedding accessories and other items bought for her during and after the wedding time. The Respondent says the current lifestyles of the Petitioner will not help the child therefore prays the Honorable Court to rather grant him custody of the child. The Respondent says in actual fact he has been stressed greatly in the marriage by the Petitioner and he ought to be compensated but will forgo all since it is clear that the Petitioner will not marry him again. Respondent herein counterclaimed against the Petitioner as follows:

- (a) An order of the Court compelling the Petitioner to return the following, 24 Inches Coloured T.V. Set, T.V. Stand, Set of Stuffing Chairs, Documents (Police Accident Report in the name of Philip Agboba and Elizabeth Aku Kodze) Personal Belongings (attire) in the Petitioner's room.
- (b) Custody of the Child – Valerie Deladem Kogbe – 7 years 8 months.

Petitioner in response to the answer says she spent all her leaves and holidays with Respondent. That she even paid Respondent's mother's medical bill and that of the brother Philip Agboba who had an accident and were treated both at Sogakope and Dzodze. That it was based on messages sent to her by Respondent through her mobile phone that made her to take that step, long after he had taken the wedding ring from her in December, 2017 when she went to him in Akim Oda. Petitioner says she plays her role as a responsible mother in providing dress, footwear, feeding, hospital bills and health insurance, psychological upbringing and emotional needs etc. to their child. That she rather made Respondent better than the SSS graduate she married. Petitioner says that apart from the GH¢200.00 Respondent paid up to April, 2018 he bears no additional responsibilities towards the marriage and home. That Respondent's purchase of the

home furniture is in their joint names. Petitioner says she had become very vulnerable at a point and had to burn her wedding gown and shoes based on the advice of a Pastor both parties visited in 2012, February, but which she later regretted. In defence to the counterclaim she says that Respondent is not entitled to same.

The Respondent again filed a Statement of Defence where he made more claims and Petitioner filed a Reply. **In this regard, the Respondent is praying for the following;**

1. Compensation from the petitioner for breaking her own vows on numerous occasions and wasting the time of Respondent, his resources, his hard earned monies during and after Petitioner's school, violating his rights and in all created a situation to jeopardize the life of the Respondent.
2. An order of the Court compelling the petitioner to bring the papers of the Sogakope plot for the Court's perusal and necessary actions for equal and equitable right accrued to both of us to prevail. If nothing I pray for equitable right as it was done in Supreme Court presided over by Akuffo (Ms) JSC between **Mensah vrs Mensah** by Jones Dotse JSC on 22 February, 2012.
3. Pray for the court to grant both the Petitioner and Respondent to take financial responsibilities of Valerie Deladem Kogbe since the Respondent is already paying GH¢200.00 monthly toward her maintenance, paying her school fees and medical expenses if the need arises.
4. That Valerie Deladem Kogbe be placed in a school the Respondent can be in a position to afford most especially any government school but not a very exorbitant privately owned school.
5. That the court to caution the Petitioner to stop restricting the Respondent from having access to Valerie Deladem Kogbe either to visit her at home, school and to

take her during some vacations which will encourage the development of fatherly love in her until the Respondent takes full custody of her in November 2022.

6. That the Court to grant the Respondent up to November, 2022 to fully take custody of Valerie Deladem Kogbe after which the Respondent would have finished his National Service Scheme during 2021/22 service year.
7. For the equal and equitable distribution and share of the plot sold by family elder popularly called **Togodoe** near Hlevi, refer to **EXHIBIT 1 & 2** which receipt is in custody of the Petitioner.

Petitioner in her Reply denied that Respondent was entitled to his claims and indeed they both gave further particulars on a plot of land both at Akim Oda and Sogakope.

The issues to be determined by the Court are as follows:

1. Whether or not the marriage has broken down beyond reconciliation.
2. Whether or not the Petitioner is entitled to her ancillary reliefs.
3. Whether or not the Respondent is entitled to his counterclaim.

At the trial, the Petitioner relied on her witness statement filed on the 21/06/2021 with attached Exhibit A series and she later gave a Power of Attorney Exhibit B to her brother to continue the case on her behalf on account of ill-health to which no medical report was ever produced. Respondent also relied on a witness statement and a supplementary witness statement with an attached Exhibit 1, supposed to be documents covering the land at Sogakope which was produced by the Lawful Attorney of Petitioner and which was subsequently tendered through him by Respondent. These were adopted as their respective evidence-in-chief.



Under Section 1 (2) of the Matrimonial Causes Act, 1971 (Act 367), the sole ground for the grant of a decree of divorce is that the marriage has broken down beyond reconciliation. Section 2 (1) of Act 367 prescribes facts, one or more of which a Petitioner must establish for the purposes of showing that the marriage has broken down beyond reconciliation as follows:

- “(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.”

Section 2 (3) of Act 367 provides:

“Notwithstanding that 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.”

It is trite that he who asserts must prove. See **ABABIO V. AKWASI III (1994-1995) 2 GBR, 774**, where the Court held that “The general position of the law is that it is the duty of the Plaintiff to prove what he alleges, in other words, it is the party who raises in his pleadings, an issue essential to the success of his case who assumes the burden of proving it.”

This principle of law has been given statutory expression in the Evidence Act, 1975, NRCD 323 as follows:

Section 10 (1):

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

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.”

Section 11(1):

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

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.”

#### Section 12:

“1. Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

2. “Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.”

#### Section 14:

Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

Besides, in civil actions, the burden of proof is on the preponderance of probabilities as provided in Section 12 (2) of the Evidence Act, 1975 (NRCD 323), supra. As Petitioner, the party is to adduce sufficient evidence so that on the totality of the evidence, the Court will find her version of the facts as more probable than the Respondent's. Then again Respondent also put in a counterclaim along the line to which he was the Petitioner or Plaintiff. This has been aptly captured in the case of **TAKORADI FLOUR MILLS LIMITED V. SAMIR FARIS [2005-6] SCGLR 882**, where the Supreme Court stated at (holding 5) that:

“It is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12 (2) of the Evidence Decree, 1975 (NRCD 323). In assessing the balance of probabilities, all the evidence be it that of the plaintiff or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival versions and is deserving of a favourable verdict.”

From the facts, it is the Petitioner’s case that the Respondent has behaved in such a manner that she cannot reasonably be expected to live with him. In the case of **KNUDSEN V. KNUDSEN [1976] 1 GLR 204, CA**, the Court held that the test for unreasonable behaviour: “was an objective one, and not a subjective assessment of the conduct and the reaction of the Petitioner. In assessing such conduct, the Court had to take into account the character, personality, disposition and behaviour of the Petitioner as well as the behavior of the Respondent as alleged and established in the evidence. The conduct might consist of one act if of sufficient gravity or of a persistent course of conduct or series of acts of differing kinds, none of which by itself might be sufficient but the cumulative effect of all taken together would be so.... Some of the incidents if they stood alone might be dismissed as annoying incidents of marriage; others consisting of violence and hounding, were more than could be tolerated”.

Similarly, in the case of **MENSAH V. MENSAH (1972) 2 GLR 198**, the Court in determining whether the Petitioner could not reasonably be expected to live with the Respondent, held that “the test is an objective one and it is entirely a question of fact in each case”. It was further held that “... the conduct complained of must be sufficiently grave and weighty to justify a finding that the Petitioner cannot reasonably be expected to live with the Respondent. Mere trivialities will not suffice. The Parties must be

expected to put up with what has been described as the reasonable wear and tear of married life”.

As part of the particulars listed by the Petitioner, she averred that almost from the get go of the marriage, they quarreled over every issue. They were living apart in Akim Oda and Sogakope where they spent time with each other but on one of the visits Respondent compared her to a prostitute and when she responded that he was not correct, he assaulted her and pushed her such that she hurt her arm. After her return, they did not speak to each other for a while and Respondent told her he did not love her anymore so she should tell her family. Respondent put forward another version that it was Petitioner who rather insulted his family which she did often. That he cautioned her to stop and she tried to finger him in the eye but he acted to avert the situation. That she Petitioner was ashamed of herself and refused to pick his calls.

Having denied the material particulars, the onus is on the Petitioner to lead cogent and positive evidence to establish her assertions. See **ZABRAMA V. SEGBEDZI [1991] 2GLR, 221**, where the Court of Appeal per Kpega JA (as he then was) held that: “a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And, he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden”.

The Petitioner attached her Exhibit A series which were text messages full of insults from each side to the other. It was demoralizing to read said messages and it seems as if each side was equal to the task of insults on the other side.

Be that as it may, the parties are ad idem that they have been unable to reconcile their differences in spite of attempts by their respective family members to do so and I so find

in terms of Section 2(1) (f) of Act 367, supra. This is buttressed by the fact that the Petitioner vacated the matrimonial home in Akim Oda to work in Sogakope and their visits to each other ceased since at least 2018.

From the totality of the evidence and the conduct of the parties, I find that the marriage has broken down beyond reconciliation. Accordingly, I decree the marriage celebrated between the parties under Part Three of the Marriages Act on the 31<sup>st</sup> December, 2011 at Global Evangelical Church, Sogakope with certificate number....., per license number ....., dissolved. The said marriage certificate is hereby cancelled. A copy of the divorce certificate is to be served on the Registrar of Marriages for the amendment of the records hereof.

In the Petition, the Answer, Statement of Defence and Reply, both Petitioner and Respondent contest custody of the issue of the marriage. Nonetheless, in matters concerning children, the Court is enjoined to consider the best interest of the children as paramount. Thus, whether or not custody was pleaded, it is the duty of the Court to consider the best interest of the child in line with relevant Statutes including section 2 (1) and (2) of the Children's Act, 1998 (Act 560), Section 22 of Act 367 and Section 18 (2) of the Court's Act, 1993 (Act 459).

Per Section 43 of Act 560, "A parent, family member or a person who is raising a child may apply to a family tribunal for custody of the child." Thus, either parent may apply for custody of the issues of the marriage. The Court is however, enjoined, besides the best interest of the children, to consider, per Section 45 (1), the importance of young children being with their mother when making an order for custody or access. Other factors include the ages of the children; the views of the children if given independently; continuity of care and control and the desirability to keep siblings together. That notwithstanding, the Court is enjoined to consider the best interest of the children irrespective of the wishes of the parents. See **OPOKU OWUSU V. OPOKU OWUSU**

(1973) 2 GLR 349. Indeed, the best interest of a child has been interpreted in the case of **BECKLEY V. BECKLEY & ANO (1974) GLR 393** as matters that safeguard and/or promote the welfare of a child and that must be the paramount consideration of the Court.

In the instant case, it is worthy of note that the Petitioner herein prays for an Order for Custody of the child to be granted to her. The Respondent also says the current lifestyles of the Petitioner will not help the child therefore prays the Honorable Court to rather grant him custody of the child Valerie Deladem Kogbe – 7 years 8 months.

In the opinion of the Court, children are better off living with their own biological mother than they would with a possible stepmother. In his application for custody, Respondent has not told the Court how he intends to take care of the adolescent girl. In the case of **BECKLEY V. BECKLEY & ANO**, supra, the Court stated that “the welfare of the child should be the primary consideration in custody actions”

On the totality of the evidence, taking the schooling and work schedule of the Respondent into account where he says he will be finishing National Service this past November in his Pleadings but never actually talking about it again in Court even in passing, coupled with her best interest, the female child is to continue to live with her mother with unlimited access to the Respondent. The Respondent is at liberty to apply to Court should circumstances change. See **ASEM V. ASEM [1968] GLR 1146**. I grant the Petitioner custody of the child Valerie Deladem Kogbe with reasonable access to the Respondent.

On issues of maintenance, it is not in doubt that there were periods of time Respondent did not maintain his child whether it was because as Petitioner said Respondent was transferring his hatred of her unto the child or as Respondent put it, Petitioner prevented him from maintaining his child, having access to her and also refusing money he sent. It

is not in doubt that Social Welfare had to be resorted to and interim orders of maintenance was made by them. Petitioner is claiming maintenance arrears from April, 2018 to November, 2020, amounting to GH ₵6,600.00, School fees arrears GH ₵4,400.00 and compensation for wasting Petitioner's time and opportunities.

This Court is mandated to also make orders for maintenance. As part of the consequential orders and in line with the Respondents own reliefs, he is to pay for the educational and medical expenses as well as maintenance of the Child at GH₵500.00 per month starting from December 2022. Respondent is to clear any arrears as per the social Welfare orders till November 2022. Petitioner is to also take care of the clothing, footwear and other incidentals of their child as indeed maintenance is their joint responsibility both of them being gainfully employed. Rent is to be contributed equally by both parties.

Respondent prayed for an order of the Court compelling the Petitioner to return the following, 24 Inches Coloured T.V. Set, T.V. Stand, Set of Stuffing Chairs, Documents (Police Accident Report in the name of Philip Agboba and Elizabeth Aku Kodze) Personal Belongings (attire) in the Petitioner's room. Apart from this appearing in the Counterclaim, Respondent did not give any testimony pertaining to this thus the Court cannot find that that claim was proved and considers same abandoned.

Petitioner prays for compensation from Respondent for wasting Petitioner's time and opportunities. Respondent also prays for compensation from the Petitioner for breaking her own vows on numerous occasions and wasting his time, resources, his hard earned monies during and after Petitioner's school, violating his rights and in all created a situation to jeopardize the life of the Respondent. In the answer to the Petition paragraph 30 thereof, Respondent pleaded that they purchased one plot of land together at Sogakope for which Petitioner had taken custody of same so she was not entitled to any other compensation. He also alleged that Petitioner was not a faithful wife. Indeed in his supplementary witness statement, he testified that Petitioner got pregnant for another



man whilst they were still married and during the divorce proceedings and she gave birth that was why she no longer came to Court and gave a Power of Attorney to her brother to continue the case for her. The said Attorney in answer to questions under cross examination had to answer in the affirmative. Petitioner in the opinion of the Court is not entitled to compensation and she even opened herself up to another civil action but that is not the focus of the case. In any case, Respondent also initially never set down compensation as one of his reliefs in the counterclaim. In his Statement of Defence however, he pleaded for compensation. In the candid and considered opinion of the Court, Respondent is rather entitled to compensation for the demonstrated infidelity of Petitioner in the face of the Court. The Court will grant him a compensation of GHC3000.00 accordingly.

The Respondent is also praying the Court for the equal distribution of a plot of land acquired by the parties in the course of the marriage at Sogakope. Respondent's case as per his witness statement is that he together with the Petitioner purchased the plot of land at Sogakope, from the proceeds of the land they initially acquired together at Akim Oda. From the Statement of Defence he pleaded that few months after marriage, both the Petitioner and Respondent decided to settle at Akim Oda and therefore decided to purchase a plot of land. Both decided to contribute for the purchase of the land and both decided to access a loan to that effect. According to Respondent, Petitioner first took a loan and gave GH¢2,500.00 for the purchase of land and GH¢800.00 to the Respondent's personal use. They both purchased the land for **GH¢3,000.00** and the Deed of Transfer of outright sale of the plot was given in the name of Mr. George Kogbe and Mrs. Etorname Kaledzi Kogbe of Akim Oda. The Respondent states he also took a loan and also gave the Petitioner GH¢800.00 for her personal use and both decided to use the fund for profitable venture to help the family so they used GH¢10,500.00 to purchase two (2) tricycles which was helping them manage the family until they became useless and was disposed of

eventually. He pleaded that later the Petitioner mounted pressure on him to sell the plot of land at Akim Oda because she had decided in her mind not to settle at Akim Oda again so he sold the plot and they both decided to use the proceeds to purchase another plot at Sogakope-Hlevi near the hospital as per the (Exhibit 1 and 2 he attached to his Statement of Defence).

The Respondent says he therefore used the proceed of GH¢4,800.00 being the proceeds of plot sold from Akim Oda and used GH¢500.00 for paper work on the transfer and the GH¢4,300.00 and added up to make GH¢5,000.00 to pay for the first installment of GH¢7,400.00 of the new plot at Sogakope near the Hlevi from a landlord popularly known as **Togodoe**. That since the Respondent was still a student at University of Ghana, he then asked the Petitioner to assist him with GH¢1,500.00 which he added up to make GH¢2,400.00 for the second installment and final payment of the plot at Sogakope which the Petitioner agreed to loan to him. That the Petitioner having deceived Respondent to sell the plot at Akim Oda mounted pressure on him until the he was fed up and released the paper on the plot to her for peace to prevail. In all the Respondent says he used GH¢8,000.00 with intermediary assistance to secure the plot bought.

In reply to Respondent's Defence, Petitioner mounted a spirited defence. She says that the parties herein dated and/or engaged themselves in a relationship for six (6) months before they got married, from June, 2011 to December, 2011. That the Petitioner completed her school that very June, 2011 thus the Respondent does not know anything about her let alone her education coupled with her financial issues. Petitioner says that the Respondent was then a Senior High School (S.H.S.) candidate and it was through her encouragement that made the Respondent to pursue further studies, and that all his Certificates and/or credentials can attest to that fact. Petitioner also says that, aside her nursing profession, she also engages herself in a business to supplement her efforts and that the Respondent got married to her because of her money. That, indeed the parties

agreed to initially settle at Akim-Oda for the first year of their marriage, but did not agree to contribute financially or jointly in their financial affairs. The Petitioner reiterated that, at a point in time, when the Respondent lost his grandmother and after the funeral rites, the Respondent had no dime on him to support his sister in her S.H.S. education, and as a result, Petitioner was compelled by circumstances to support her said sister-in-law financially which the Respondent woefully failed to appreciate.

Petitioner says that at a stage, the Respondent asked her to go for a loan to enable them buy a plot of land, that was in the year 2012, and thereafter, Respondent will also take a loan and build on same for the parties to live in. In agreeing to the Respondent's said request, between July, 2012 to September, 2012, she states that she withdrew Two Thousand Ghana Cedis (GH¢2,000.00) from her account and gave same to Respondent as part-payment for the piece or parcel of land in question before she sojourned to Sogakope to apply for a loan out of which she gave Two Thousand Ghana Cedis (GH¢2,000.00) from her account, One Thousand Ghana Cedis (GH¢1,000.00) for personal use, another One Thousand Ghana (GH¢1,000.00) for the payment of the land, and another (GH¢500.00) to be used to settle a debt. That the said loan was to be deducted from her monthly salaries until it is fully liquidated. That after effecting full payment for the land, the Respondent woefully failed to show her where the site is, for a period of three (3) years. That when she insisted on seeing the land at all cost, the end result was a severe assault meted out to her by the Respondent who even threatened to destroy her life if she keeps on pressing him over that issue.

That when Petitioner persistently demanded for the refund of her monies from the Respondent because of his refusal to show her the land she had paid for, on which he was to build as promised, the Respondent at a stage erroneously sold part of the land to a man measuring ten (10) feet square who built on it at the cost of One Thousand Ghana Cedis (GH¢1,000.00) secretly, even though and according to reliable sources, the land cost

Four Thousand Eight Hundred Ghana Cedis (GH¢4,800.00), which facts were later made known to her upon enquiries from other sources. Petitioner further contends that at a stage, Respondent promised to add the One Thousand Ghana Cedis (GH¢1,000.00) when he sold the plot, because the man threatened his life. Respondent then asked her as to how much to sell the plot in question and she replied Five Thousand Ghana Cedis (GH¢5,000) but he sold same for GH¢4800 of which he said he used GH¢5000 to prepare the documents thereon, and as a result it was left with Four Thousand Three Hundred Ghana Cedis (GH¢4,300.00). That the Four Thousand Three Hundred Ghana Cedis (GH¢4,300.00) plus the earlier One Thousand Ghana Cedis (GH¢1,000.00) thus making it a total of (GH¢5,300.00) Five Thousand Three Hundred Ghana Cedis, was the exact amount that Petitioner took from the Respondent as her own money.

Petitioner states that the Respondent later asked her what she used the money for and she replied him that she had used the money to purchase another piece or parcel of land in Sogakope. The Respondent demanded to know where the land is situated and to know her said Vendor(s), and she exactly did that. That she showed the Respondent the purchase receipt which he later on stole away to Akim Oda. That she went for it when he decided and/or threatened and subsequently stopped communications between them for four (4) months from May, 2017 to August, 2017. In the process, the Respondent asked the Petitioner what she intended to do with the receipt and she replied that she was selling to pay for her admission fees.

The Respondent as part of his pleadings prayed the Court to order the Petitioner to bring said land documents for perusal which document was filed by Petitioner per her Lawful Attorney. The Court admitted an indenture dated 13<sup>th</sup> August 2021 from its recital in evidence as Exhibit "1". Under cross-examination, the Petitioner testified that she bought that plot alone with her money she collected back from Respondent from the sale of the earlier land in Akim Oda she had paid for.

In the case of **DZAISU V. GHANA BREWERIES LTD [2007-8] SCGLR 539** the court held that:

“It is a basic principle in the law of evidence that the burden of persuasion on proving all facts essential to any claim lies on whosoever is making the claim”. The court also held that “It is trite law that a bare assertion by a party of his pleadings in the witness box without proof did not shift the evidential burden onto the other party”.

See also **ZABRAMA V. SEGBEDZI [1991] 2GLR, 221**, supra.

Thus, the onus is on the Respondent to adduce cogent and credible evidence to support his assertion.

He had produced Exhibit “1” from the side of Petitioner which is an indenture in respect of the said plot of land. On close examination, Exhibit “1” bears the name of only Petitioner as the purchaser and although under cross examination he pointed out all the faults on the said document and even said he could call the vendor who was prepared to give him the real document but at a fee, he did not call him and also did not produce any contrary document. This means that the Petitioner having produced Exhibit “1”, documentary evidence in support of her case that the plot of land was not purchased by the parties together, the onus shifted to the Respondent to establish that the reverse was true.

Per Section 11(4) of NRCD 323, supra, the burden of producing evidence requires a party to produce sufficient evidence such that on the totality of the evidence, a reasonable mind can conclude that the existence of the fact was more probable than its non-existence.

In the case of **FOSUA & ADU POKU V. ADU POKU MENSAH (2009) SC GLR 310**, the Court held that “it is settled law that documentary evidence should prevail over oral evidence. Thus, where documents supported one party’s case as against the other, the Court should consider whether the latter party was truthful but not faulty recollection”.

It is trite that in marital affairs, transactions between a man and his wife cannot be subjected to the same scrutiny associated with commercial transactions pertaining to normal business practices such that purchases, payments would be formally documented including the issuing of receipts. See **ANANG V. TAGOE (1989-90) 2 GLR 8 and MENSAH V. MENSAH [1998-1999] SC GLR**.

However, from comparing the two versions what is clear is that Petitioner had a higher monetary value for the land at Akim Oda which was sold and which she collected the sale price and her loan to Respondent. Apart from Respondent saying he added monies to purchase the land in Sogakope, he did not produce any evidence but his testimony rather corroborated Petitioner on the loans she collected to purchase the first land, how much he says he sold it for and how she got the money whether through her incessant pressure she mounted on him and he giving her either money or the document for peace. He could have made a photocopy of the said document before giving same out knowing their penchant for quarreling on minor issues and insults on each other which are documented. The Court has to prefer the version of Petitioner that she purchased the land in Sogakope alone for herself even though the purchase was done during the subsistence of the marriage. Is the Respondent entitled to a share of the said property?

The distribution of Spousal property is governed by Article 22(3) (b) of the 1992 Constitution which provides as follows:

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

- (a) a spouse 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”.

Section 20 of Act 367 provides:

“1. The Court may order either party to the marriage to pay to the other party such sum or money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof 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”.

The underlying consideration is that any such award has to be equitable and just. In the case of **BOAFO V. BOAFO [2005-6] SCGLR, 705**, the Supreme Court held that “the equitable sharing of property jointly acquired by a married couple would ordinarily entail the equality principle unless one spouse could prove separate proprietorship or agreement or a different proportion of ownership” The Court further held that “what was equitable” in essence is what was just, reasonable and accorded with common sense and fair play and was a pure question of fact, dependent purely on the particular circumstances of each case. The proportions would therefore be fixed in accordance with the equities of each given case”.

Similarly, in the case of **OBENG V. OBENG [2016] 63 G.M.J 158**, the Court stated that several factors will be taken into consideration in the determination of what is just and equitable. These factors include the age of each party, the duration of the marriage, the standard of living enjoyed by the parties before the breakdown of the marriage, the

income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future.

In the candid and considered opinion of the Court, the Petitioner has been able to prove separate proprietorship or agreement or a different proportion of ownership. The Court deems it appropriate that Respondent's contribution to the acquisition of the plot in Sogakope was minimal and a tenth portion of the land is what the Court deems that he can be entitled to. The land value as at today, Respondent is entitled to one-fifths.

Having regard to the circumstances of the case, I Order as follows:

1. The marriage celebrated between the parties under Part Three of the Marriages Act on the 31<sup>st</sup> December, 2011 at Global Evangelical Church, Sogakope with certificate number and license number not stated thereon, dissolved.
2. The said marriage certificate is hereby cancelled. A copy of the divorce certificate is to be served on the Registrar of Marriages for the amendment of the records hereof.
3. The Applicant is granted custody of the child of the marriage Valerie Deladem Kogbe with reasonable access to the Respondent. Reasonable access includes Respondents spending some school vacations with Respondent as agreed by parties
4. The Respondent is to pay for the arrears of maintenance and school fees as ordered by Social Welfare Sogakope as calculated from the date of the Order and deducting what he has paid for from reconciliation with receipts he has.
5. The Court grants Respondent compensation of GHC3000 for the demonstrated infidelity of Petitioner.
6. The Respondent is to pay for the educational and medical expenses of the said issue as well as maintenance of GH¢500.00 per month. He is to also pay for the arrears of Maintenance and school fees as ordered by Social welfare.



7. Both parties to ensure that the child is put on the National Health Insurance Scheme and ensure same is always up to date.
8. Petitioner is to also take care of the clothing, footwear and other incidentals of their child as indeed maintenance is their joint responsibility both of them being gainfully employed. Rent is to be contributed equally by both parties. Petitioner is to pay for utilities of the premises where the child stays.
9. The one plot at Sogakope acquired with a little/minimal contribution from Respondent is to be shared pro rata on a one-tenth basis, the Petitioner is to buy out the Respondent's share of the land.
10. Each party to bear their own cost of the proceedings.

**(SGD.)**

**H/L JUSTICE DOREEN G. BOAKYE-AGYEI MRS. ESQ.**

**JUSTICE OF THE HIGH COURT**

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