IN THE HIGH COURT HELD IN CAPE COAST ON WEDNESDAY, 25TH DAY OF JANUARY, 2023, BEFORE HER LADYSHIP MALIKE AWO WOANYAH DEY (HIGH COURT JUDGE)

SUIT NO: E6/02/2022

KENNETH KOJO BAIDEN ----------------- PETITIONER

VS.

MRS AGATHA BAIDEN ----------------- RESPONDENT

PETITIONER PRESENT
RESPONDENT PRESENT
EUNICE FRIMPONG FOR THE PETITIONER
MAAME ABENA DARTEY-LARTEY FOR THE RESPONDENT

JUDGMENT

The parties to this action married under the Marriages Act 1884 Cap 127 on 3rd April 2006 at the District Court in Cape Coast. Both parties work as officers in one of the state Security Agencies. After their marriage ceremony, they lived separately. one person at Takoradi, Kumasi Tamale and Accra. After some time, the respondent was transferred to Accra and later to Cape Coast, where she currently lives, whilst the respondent still lives in Accra. There are three issues of the marriage, namely, Gifford Kofi Baiden, aged 21 years, the respondent's son from a previous marriage, Hannah Asemanuah Baiden, aged 15 years and Godfrey Adjei Baiden, aged 13 years.

On 20th October 2021, the petitioner, the husband of the marriage, filed a petition for divorce in the registry of this court.

The basis upon which he filed the petition is that marriage has broken down beyond reconciliation. According to the petitioner, the respondent has behaved in such a way that he cannot be expected to live with her as a husband. He also avers that she has caused him much anxiety, distress and embarrassment. It is his case that since the inception of the marriage, the parties have never settled to live together continuously as husband and wife.

He states that in 2010, whilst the petitioner and respondent were living at Dansoman, Accra, a misunderstanding ensued between the respondent and her younger sister living with them, which family members resolved. Hereafter, the respondent requested for a transfer to Kumasi without his consent which was granted. Thereafter, it became difficult for the petitioner to take care of the children of the marriage. Thus the respondent asked her junior sister to stay with the petitioner to care for the children. All that while, the petitioner sponsored the respondent's junior sister's fashion course. Despite that, her junior sister was not helpful because she occupied herself with her schooling and was always unavailable. Thus the petitioner had to pick the children up from school and stay with them at home most of the time.

The petitioner states that he pleaded with the respondent to relocate the children to Kumasi, but the respondent was generally unwilling, and it was not until 2013 that she agreed. When the children joined her, she enrolled them in schools beyond his means but insisted on them remaining in those schools. Thus, he had to raise loans to keep them in school. The petitioner was transferred to Kumasi immediately after the children were enrolled in school, but 3 hours after the letter came, it was changed to Tamale. He states that he believes the respondent had a hand in the change due to her lifestyle in Kumasi, as she saw the petitioner's presence could disrupt same.

When he assumed duty in Tamale, communication between him and the respondent became a challenge due to the failure of the respondent to pick up or return his calls. On some occasions, the petitioner had to contact a neighbour to alert the respondent, only for him to be informed that the respondent had not come home. On some occasions, she travelled outside Kumasi without informing the petitioner, jeopardising the children's well-being and safety.

The petitioner states that in 2013 the respondent informed him about her intention to end the marriage, so he suspected foul play. He states that he lost all interest in the marriage when he visited the petitioner and the children in Kumasi and discovered stark naked pictures and videos of the respondent recorded and sent by her to another male via Whatsapp.

Later, both parties were transferred from their various stations to Accra to salvage the marriage, but she continued with her unreasonable behaviour, which became aggravated in nature, thus denying him peace.

According to him, the respondent resorted to soliciting and sampling views and solutions on her Facebook page anytime they had a minor disagreement and posted cooked-up stories about the marriage there. This behaviour put up by the respondent caused his family members and friends to call to ascertain the rationale behind the respondent's conduct. He states that the respondent's conduct has brought him untold public shame.

During their stay in Accra, the respondent arranged and was transferred to Cape Coast. He avers that the respondent has been quarrelsome and, on one occasion, threatened him with his pistol, and he had to disarm her skilfully. He also avers that owing to the comments and innuendos of the respondent, he has been compelled not to eat her food because of fear of being poisoned.

He also states that in the course of the marriage, he had to always literally beg the respondent for sex; thus, he longer has any sexual desire for the respondent. He also states that the respondent is full of herself, selfish and emotionally manipulative and not content with the hard support that he has given her. He states that he singlehandedly set her up in business and bought a car for her, but she has been unappreciative of his efforts.

It is his case that they have pursued the acquisition of properties separately.

He finally stated that they had made several attempts to resolve their differences but to no avail. He prayed for a dissolution of the marriage and custody of their two biological children.

In her answer to the petition filed on 1st March 2022, the respondent states that their inability to live together has been due to the nature of their work at BNI because couples cannot work in the same region hence the constant transfers. It is her case that the marriage has not broken down beyond reconciliation, and same can be resolved. She avers that she was transferred in the middle of the children's academic year, and to prevent any disruption, they both agreed for them to finish with that year before relocating to Kumasi. Thus she agreed with the petitioner to have her junior sister move in to take care of the children. She states further that whilst in Kumasi, she searched for a good school for the children and duly informed the petitioner, and he went to the school and had full knowledge of the fees before they enrolled the children. As agreed, immediately after the academic year ended, the children moved to Kumasi to join her, and they agreed to pay the children's fees on an investment belonging to the petitioner.

She further denied a hand in the change in the notice of transfer of the petitioner since it is impossible for a middle-level officer like her to influence the transfer of a senior officer. She also averred that contrary to the petitioner's assertion, she has constantly picked up his calls, and it was only on one occasion that she travelled to Tamale upon hearing about the numerous amorous relationships engaged in by the petitioner.

She vehemently denied the allegation that she had sent her stark naked pictures to another male and required the strictest proof from the petitioner. She states that she is the one who has rather not known any peace in the marriage and feels unappreciated most of the time. She also denied posting anything about their marriage on Facebook.

With respect to her transfer to Cape Coast, she states that they both lobbied for her transfer because she had to oversee the commencement of a 21-bedroom hostel at Kwaprow at the University of Cape Coast.

She also stated that it is rather the respondent who has denied her sex and the necessary consortium as a wife and states further that the petitioner had sex with her a week before throwing her out of the matrimonial home in Accra and sometime in June 2020 and warned her never to step foot in his house again. As part of his unreasonable behaviour, the respondent has been abusing her emotionally by insulting her in public, and he has not supported her personal career development and would not hesitate to pass derogatory remarks at her. She alleged that the respondent refused her access to the matrimonial home in Accra and her belongings. However, he packed some of her belongings, left them with another person, and asked her to go for them. He also has the habit of discussing their marital issues with co-workers; thus, she has become a source of mockery at the workplace.

She further alleges that the petitioner has committed adultery with numerous women and does so in the full glare of the children of the marriage. He has also hanged the picture of one of his paramours in their hall even without dissolving the marriage.

It is her case that she went for a loan to set up the business, but it collapsed when she left it in the hands of another person, after which the petitioner decided to invest in it but left it in the care of her sister, which collapsed again.

Significantly, she avers that there has never been any agreement to acquire properties separately because she had to put her life on hold on several occasions and took loans to take care of the home to enable her to acquire properties for the children. Thus, it shocked her that the petitioner used only his name on the property documents contrary to their agreement to have both their names on them. When she confronted him, he decided to change the names on the documents to the names of his family members and relatives, and when she confronted him, he decided to hide the documents.

She also averred that the respondent should not be granted custody of the children since he cannot cater to their emotional and psychological needs. According to her, he cannot live with the children continuously for two weeks and always sends them off to live with relatives, especially because of his adulterous behaviour. She avers that the petitioner allows their youngest child to stay on the computer and TV as late as midnight. Thus, the child is battling with screen addiction which has affected his academic work. Thus she had to take herculean steps to bring the child under care and supervision, which has led to some improvements in his academics.

She also alleged that in the course of the marriage, they jointly acquired a twenty-one (21) bedroom hostel located at Kwaprow, a four-bedroom house at Abura, four bedroom uncompleted house at Ankaful Prison, two plots of land at Amosima and a plot of land at Accra.

She cross-petitioned for

i) custody of the issues of the marriage,

ii) ii) monthly maintenance of 1200 for the issues of the marriage,

iii) iii) a fair share of their matrimonial property acquired in the course of the marriage,

iv) iv) alimony of GHC70,000,00 and

v) any other order as the court deems fit to grant.

ISSUES

1. Whether or not the respondent has behaved unreasonably, making it intolerable for the petitioner to live with her as a wife.
2. Whether or not any of the parties has committed adultery.
3. Whether or not the marriage has broken down beyond reconciliation.
4. Whether or not the petitioner is entitled to custody of the children

5. Whether or not the respondent is entitled to alimony of GHC70,000.00
6. Whether the respondent is entitled to a share of the properties listed

In determining the issues before this court, I have critically examined the address of counsel for the petitioner and considered them in writing this judgment.

EVALUATION OF THE EVIDENCE AND THE APPLICABLE LAW

In determining the issues at stake, I would like to refer to the Matrimonial Causes Act, Act 367, which is the legislation applicable to the dissolution of a monogamous marriage, such as the parties contracted under the Marriages Act mentioned supra. Section 1(2) of the Act states that the sole ground upon which a court shall dissolve a marriage is that the marriage has broken down beyond reconciliation. In the case of **Mariam Partey v Williams Partey [2014] 71GMJ 98 CA**, the Court of Appeal stated thus; "…***the position of the law is that even though the parties might want dissolution of the marriage, the court or judge must nevertheless examine the evidence in order to find out whether there exists such substantial difference or differences between the parties to demand or impel dissolution of the marriage***."

A further reading of the Act reveals that for the court to hold that the marriage has broken down beyond reconciliation, the party must establish one of the grounds listed under section 2 (1), which include adultery, unreasonable behaviour, desertion, not living as husband and wife for two years or more or five years or more or that the parties have not been able to reconcile their differences.

From the petitioner's pleadings, he seeks to rely on unreasonable behaviour and adultery to prove that the marriage has broken down beyond reconciliation.

Thus, the burden of proof or persuasion is on the petitioner to adduce sufficient cogent and reliable evidence to support the allegations contained in her petition in order for the court to arrive at the decision that the alleged facts exist rather than their non-existence. I am fortified to say so because of sections 11(4) and 12 of the Evidence Act, 1975 NRCD 323.

Section 12 states as follows;

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 the 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.

In the case of ***GIHOC Refrigeration and Household Products Ltd v. Hanna Assi [2005-2006] 458,*** it was stated that

"since the enactment of NRCD 323, therefore, except otherwise specified by statute, the standard of proof (the burden of persuasion) in all civil matters is by a preponderance of the probabilities based on a determination of whether or not the party with the burden of producing evidence on the issue has, on all the evidence, satisfied the judge of the probable existence of the fact in issue."

Furthermore, it has also been held that proof by a preponderance of probabilities within the context of the burden of proof, as stated in section 12 (2) of the Evidence Act, 1975 NRCD 323, simply means weightier evidence. **See the case of Sagoe and others vs Social Security and National Insurance Trust. [2012] 2 SCGLR 1093.**

Whether or not the respondent has behaved in an unreasonable manner, making it intolerable for the petitioner to live with her.

Unreasonable behaviour has been defined as conduct that gives rise to injury to life, limb or health or conduct that gives rise to a reasonable apprehension of such danger. Thus actual injury need not be established, but mere apprehension of such injury is enough so far as it has led to the breakdown of the marriage. In **Gollins vs Gollins, [1964**] A.C. 644, the House of Lords stated as follows;

"**If the conduct can be called cruel it does not matter whether it springs from a desire to hurt or selfishness or sheer indifference."**

In order to succeed on the ground of the alleged unreasonable behaviour, it must be shown that the conduct reached a certain degree of severity. The conduct must be such that no reasonable person would tolerate such conduct or consider that the petitioner should be called on to endure: see **HUGHES v. HUGHES [1973] 2 GLR 342 and Gollins v. Gollins [1963] 3 All E.R. 966, H.L.**

In the case of **Mensah v Mensah [1972] 2 GLR 198**, it was stated that

"In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him the court must consider all the circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Casanova's Charter".

The complaint against the respondent is that she requested for transfer to Kumasi without his consent, thus leaving the children behind for the petitioner to take care of and being reluctant to relocate the children to live with her. He also complained about the respondent refusing to pick up his calls and sharing their marital issues on social media, causing him so much embarrassment and shame. Another complaint of the petitioner is that the respondent shared her naked pictures with another man, which she vehemently denied and requested strict proof from the petitioner.

Under cross-examination, however, the respondent admitted having an affair with another man at a party but explained that it was not consensual due to the circumstances she found herself in, so she explained the situation to her husband, after which they even lived together as husband and wife. On the other hand, the respondent has also accused the petitioner of adultery with the picture of one of the women hanging in their living room in Accra. He also threw her out of the matrimonial home and prevented her from entering the house to take her belongings. He rather packed some of her belongings, left them with a neighbour, and asked the respondent to go for the same.

It is clear to the court that there have been accusations and counteraccusations from the parties against each other. However, it is evident that the alleged unreasonable behaviour of the respondent complaint began, as stated by the petitioner himself, when a misunderstanding ensued between the respondent and her sister, which her family members had to resolve and which caused her to seek a transfer away from the family. This evidence by the petitioner gives the impression that whatever issue it was, it touched on the relationship between the parties, thus leading to the respondent's decision to request the said transfer from Accra to Kumasi. Besides, I also find as a fact from paragraph (1) of the petitioner's reply that though the parties can work in the same region, they cannot work in the same office. Therefore, I do not think the breakdown of the marriage can be laid at the doorstep of only one party to the marriage.

From the evidence led before me, it is evident that the parties have not been living with each other for the past one or so years, and the petitioner has not evinced any desire to have the respondent back into the matrimonial home. It is also evident from the evidence of both parties that the relationship between them has turned sour, and all attempts to resolve their differences have proved futile, not to mention the allegations and counter-allegations before this court. It is indeed apparent that the parties have not found any common ground to reconcile, not even the existence of children in the marriage. In such a circumstance, this court cannot exercise its powers under the law to assist the parties in reconciling their differences nor order them to return to their families to be reconciled.

On the totality of the evidence placed before the court by the parties, the court finds that the marriage has broken down beyond reconciliation. In view of the breakdown of the marriage, this court hereby decrees that the marriage contracted between the parties on 3rd April 2006 at the District Court, Cape Coast, as depicted in Exhibit … is decreed as dissolved per the Matrimonial Causes Act.

CUSTODY OF THE CHILDREN OF THE MARRIAGE

Both parties have prayed for custody of the children of the marriage. Throughout his petition, the petitioner made it clear that the respondent's sister had to step in to take care of the children when she was transferred to Kumasi. In Kumasi, the petitioner, from the evidence, wanted the children to move to Kumasi, but according to the petitioner, the respondent was reluctant to relocate to Kumasi but later agreed to have them over. The respondent, on the other hand, told the court that it was because they agreed for them to finish the academic year. Whichever way one looks at it, the evidence reveals that when the children were with the petitioner, the respondent had to cook and send it to them and her sister also had to step in to take care of the children to enable the petitioner to work in his position as a senior officer. His evidence makes it clear that he had to sacrifice some time to pick them up from school and even stay with them.

Under cross-examination, the petitioner answered questions thus,

Q: Do you stand by the statement in paragraph 11 of your petition?

A: Yes, my lady, because at that time, taking care of the children who were toddlers was difficult as a senior officer.

Q: And you are still a senior officer?

A: Yes my Lady.

Q: And as it stands now, you have moved to a rank which has more responsibilities.

A: Yes my Lady.

From this discourse, it is clear that the respondent, as a senior officer found it quite difficult to take care of the children when they were with him due to their young age, which also affected his work as a senior officer.

It is provided under the Children's Act that the mother of a young child has priority in respect of the grant of custody over any other person. In the court's opinion, that includes the child's father, except in extreme cases where it has been shown that the mother is incapable of giving the child the requisite care expected of her as a mother. In this case, though the evidence shows that the petitioner used to take care of the children, they have now moved to live with the respondent in Cape Coast and are schooling here. Per the evidence, the children have been moved up and down for quite some time, and I believe they need physical and psychological stability. I also believe that the three children must live together as siblings to foster some kind of unity amongst them though the 1st child, i.e. the eldest, has attained the age of 21. Under the law, he still needs some care and protection since he is in school and under the control of his parents. It is on record that the petitioner is only seeking the custody of his two biological children with the respondent and has stopped taking care of his adopted son. In these circumstances, it is the opinion of the court that it would be in the children's best interest to be where they are now and live together as siblings. See section 2 of the Children's Act.

In the circumstances, custody of the children of the marriage is hereby awarded to the respondent with reasonable access to the petitioner. Though it is clear from the evidence produced before the court that the respondent has been the one who provides financial support for his children, I deem it fit to make orders in respect of the needs of the children since parental responsibility must be shared between the parties. Under cross-examination, the petitioner informed the court that he would be able to pay at least 2000 Ghana cedis as a monthly maintenance fee for the children of the marriage. Hence this court hereby orders that he pays an amount of GHC1500.00 monthly towards maintenance of the children.

It is also on record that the petitioner has been up to his responsibilities as a father providing the children with their fees, extra classes' fees, bus fees, and School uniforms of all categories, and I am sure he bears their medical costs as well. Thus he should continue with same. However, I hereby also order that the petitioner also provides the children with their clothing since she also works.

It should be noted that custody of the children is awarded to the respondent with reasonable access to the petitioner. He is entitled to have the children spend half their vacation with him, at weekends and any other time they may agree on.

PROPERTY SETTLEMENT BETWEEN THE PARTIES

In her address to the court, counsel for the petitioner addressed the court on the properties listed by the respondent in her answer to the petition. The court shall therefore follow the format adopted by counsel for the petitioner and discuss the properties individually.

The first one is whether the parties jointly acquired the Kwaprow property.

Per various judicial pronouncements by the courts, it is now a settled principle of law that properties acquired in the course of marriage are presumed to be jointly acquired. This is based on the Constitutional provisions Article 22 (2) and (3), which states as follows;

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

(3) to achieve the full realisation of the rights referred to in clause 2 of this article

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

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

Thus in the case of Adjei v Adjei J4/06/2021 dated 21st April 2021 SC and reported at 2021 JELR 109034 SC Appau JSC stated, ***"with regard to the distribution of jointly acquired properties during marriage upon divorce, this court, in a plethora of decisions, has outlined and refined the principles that should guide the courts in their determinations. The decisions of this court dating back to the case of Mensah v Mensah 1998-1999 SCGLR 350, per Bamford Addo JSC which we shall term the first Mensah case, then Boafo V Boafo (supra), then the second Mensah v Mensah supra per Dotse JSC; Quartson vs Quartson (supra); Arthur v Arthur (supra) and Fynn vs Fynn (supra) have set out the parameters for determining which properties could be termed as jointly acquired marital 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 the Protection of rights by Courts, and the provisions of section 20 of the Matrimonial Causes Act 1971 [Act 367] … the combined effect of the decisions referred to supra is that; any property that is acquired during the subsistence of the marriage, be it customary or under the English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and upon divorce, should be shared between them on the equality is equity principle. However, this presumption of joint acquisition is rebuttable upon evidence to the contrary. See the Arthur case supra holding 3 at page 546. What this means is that, in effect is that, it is not every property acquired singlehandedly by any of the spouses during the subsistence of a marriage that can be termed as jointly acquired property to be distributed at all costs on the 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."***

Thus though the law presumes property acquired during the course of a marriage to be joint, evidence could be led to rebut the said presumption. There is no quibble per the evidence on record that the property was acquired in the course of the marriage by the petitioner (see exhibit C) dated 9th September 2019 and witnessed by the respondent herein. Thus the presumption of it being joint has been raised in favour of the respondent. However, since the petitioner has challenged that assertion, it, therefore, behoves the petitioner to lead evidence to rebut that presumption. Did he lead any such evidence?

This court finds as a fact that the petitioner took a loan to purchase the said property. See also exhibit B and C series attached to the witness statement of the petitioner.

It is also not in doubt that after paying a greater part of the amount involved, the property was renovated. There is ample evidence on the record which established that the respondent played some crucial role when the petitioner decided to renovate the property after its purchase. Thus though the respondent did not contribute financially towards the purchase of the Kwaprow property, there is evidence that she was the one who saw to the renovation of the property and invested her time and liaised with the seller every step of the way in terms of the receipts to be issued, picking them up, receiving money from the petitioner to pay workers to get the property renovated signing as a witness.

The petitioner has admitted this fact by explaining that the respondent is his wife and he need not hide anything from her. That in itself is, in the court's opinion, some contribution though not pecuniary, towards the acquisition of the property. Thus the fact that a loan was taken to purchase the property does not take away the intention of the parties, as revealed by the evidence on record, to purchase the property for the benefit of the family. It is the opinion of the court that the respondent was deeply involved in the acquisition and renovation of the said property. If the evidence produced by the petitioner is anything to go by, then he has sold the property at a profit, irrespective of the fact that he has not finished paying the said loan, which means that the property has not been used as collateral for the repayment of the loan. I believe the property did not have any encumbrance on it, which is why the petitioner was able to dispose of it. This case, in my opinion, can be distinguished, and the general proposition that once a loan was taken to purchase the property, it cannot be declared as family property until the loan is paid will not apply, especially when there is evidence that the petitioner has sold the said property. That principle was laid down to cater for situations where another person has a legal interest over the property, for example, where the property has been used as collateral to secure the loan, and the property could be taken over in case of default, not when the party is free to dispose of the property. Since the property has been sold, the respondent can only be paid an amount of money to cover the interest that she would have had in the said property.

The other properties listed by the respondent include

- a four-bedroom house at Abura
- Four-bedroom uncompleted house at Ankaful prison
- Two plots of land at Amosima
- A plot of land in Accra.

The petitioner denied that the four-bedroom house at Abura was acquired as joint property. He produced evidence to show that that property does not belong to them. Under cross-examination, the respondent told the court that the said land was purchased in 2006, but at that time, the respondent had done her knocking ceremony. That evidence clearly shows that, per the law, the land was not purchased in the course of the marriage. Nevertheless, the evidence shows that the building was built when the parties were married. However, there is evidence on the record to show that the said property has the name of the petitioner's mother as the owner of the property. As depicted in Exhibit A. The respondent has not been able to lead any evidence to the contrary. The only thing she said was that the petitioner's mother told them it should be acquired so they would have a place to live when they came to Cape Coast. That could be true, but this court cannot accept the oral evidence of the respondent in light of the documentary evidence produced by the petitioner. This court cannot declare same as a joint property of the parties.

In respect of the four-bedroom uncompleted property at Ankaful. I must say that he who asserts must prove. Thus a party who makes an averment cannot enter the witness box and repeat the same averment where positive evidence is required to be led. Under cross-examination, the petitioner denied any knowledge of the Ankaful property. No document was produced, and no pictures of the uncompleted building were at least put before the court. I am of the opinion that the respondent failed to produce evidence to substantiate her claim, especially when the petitioner denied same, which required the strictest proof from the respondent. Thus she could not produce any cogent and reliable evidence to the contrary.

In respect of the two plots of land at Amosima, the petitioner has informed the court that it could be given to the respondent. Thus, I find that it exists, and same would be settled on the respondent.

Furthermore, with regards to the land in Accra, under cross-examination, the respondent told the court that when the respondent visited the land, there were land guards on same, but she later met the person working on the registration of the documents, and he told her that the petitioner had asked him to work on the land, but she has not heard anything from him again.

She answered questions thus;

Q: I am suggesting to you that after the threat on the petitioner's life by the land guards, he abandoned the land and never went there again, and you are aware of it?

A: That is true. He said that it was a family conflict so he was going to see the family for settlement. After that he was only engaging the families.

Q: I put it to you that the statement you just gave is false

A: My statement is true

Q: Thus, you can have the land if you so wish because petitioner is not ready to risk his life, although he purchased it

A: I cannot go for it because I do not even know the families, and I cannot go for the land that has a dispute hanging over it.

From this discourse between counsel for the petitioner and the respondent, it is clear that the petitioner actually purchased the said land; nevertheless, title in the said land has not been perfected because, according to the respondent herself, there is a dispute hanging over the property and so she cannot go for it. In one breath, she tells the court that there is a dispute hanging over the land, and in another breath, it cannot be in their names as couples because the registration has not been completed. This property, though acquired in the course of the marriage, does not seem to be in the hands of the parties. The land is under contention; thus, it cannot be registered. Whether it will eventually be given to the petitioner is unknown; thus, this court cannot hold that the property even belongs to the parties since there is a dispute hanging over it. There is no evidence before the court to show that the only problem is the lack of registration. The respondent does not even know the families from whom the petitioner purchased the land. Therefore, it cannot be the subject of distribution by the court.

The Anum property was not listed, and the one purchased by the respondent only came up under cross-examination. The respondent has not led any satisfactory evidence on the said property thus, this court cannot declare same as jointly acquired property. As to whether the property has been sold or not, she is also not aware of same.

The last issue to be dealt with is whether the respondent is entitled to financial provision as prayed.

The respondent has prayed the court to order the petitioner to pay her an amount of 70,000.00 as alimony.

It is provided under section 20(1) thus Act 367 "***the court may order either party to the marriage to pay to the other party such sum of money or to convey to the other***

party such immovable property as settlement of property rights or in lieu thereof as part of financial provision as the court thinks just and equitable."

In this case, there is evidence that though the Kwaprow property was purchased with a loan, the respondent also expended time and energy to ensure that it was renovated; thus, in the opinion of the court intention of it being held as family property is evident on the record and as stated supra, the general rule in the Adjei case cannot apply thus I hold that she had an interest of the case. However, since the petitioner has agreed that she should have the land at Amosima, I believe that is sufficient in terms of property settlement. The evidence reveals that though the respondent is also working, the petitioner had a monthly standing order on his account for her and has lived up to his financial responsibilities towards his children and the respondent. However, I do not think the respondent, as a mother, does not also use her money to cater for the family on some occasions.

In the case of ***Obeng vs Obeng [2013] 63 MLR 158,*** the Court of Appeal reiterated that what is just and equitable may be determined by considering the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future including the standard of living of the parties before the breakdown of the marriage, the age of the parties and the length of the marriage. Taking the financial situation of the petitioner into account, the earning capacity of the parties into account, the fact that the respondent also works and also got promoted recently and their current standard of living, which I describe as average, I shall order an amount of GHC40,000.00 to be paid to the respondent in addition to the Amosima land. There is evidence that the petitioner bought her a vehicle and set her up in business. The respondent also has land that the petitioner has not requested to be shared between them; this court cannot award the amount of 70,000.00.