

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE
HIGH COURT OF JUSTICE, HELD IN SEKONDI
ON WEDNESDAY, THE 8TH DAY OF FEBRUARY, 2023**

**CORAM: G. K GYAN-KONTOH 'J'
JUSTICE OF THE HIGH COURT**

SUIT NO. E1/110/22

BETWEEN:

**EUNICE TETTEH
H/NO. 11, ANAJI WEST
TAKORADI.**

::: PETITIONER

vs

**JAMES PARKER
H/NO. 11, ANAJI WEST
TAKORADI.**

::: RESPONDENT

JUDGMENT:

The Petitioner herein on 20/12/2017 filed the instant proceedings at the divorce registry for the following reliefs:

- (a) The dissolution of their marriage
- (b) The settlement of the building acquired by the parties in the subsistence of the marriage
- (c) The return of vehicle Respondent bought for the Petitioner.

The Petition included a 22 paragraph which detailed the relation between the parties from 1987 when they married customarily at Odumasi Krobo and lived in a rented premise at Amanful in Takoradi.

Upon the service of the Petition on the Respondent he responded by entering appearance and answered the petition and the matter was set down for trial.

BACKGROUND:

The parties got married at Odumasi Krobo. After the marriage, the parties, who were then a seamstress and a sales Assistant in the Respondent's sister's shop at Takoradi, cohabited in a rented premise and had three (3) issues two of whom are demised leaving only one by name Adelaide Parker who as at today will be 32 and 27 years at the time that the Petition commenced.

In 1989, the Respondent travelled to the United Kingdom but returned shortly thereafter by which time the Petitioner had been deployed in the Respondent's sister's shop as a sales person to assist her.

In 1996, the Respondent travelled again to the United Kingdom and returned in 2012 but she had to leave the shop at the behest of the Respondent's sister. The marriage, according to both parties have broken down beyond reconciliation. The parties had differences on housekeeping and property acquisition in so far as the Petition is concerned.

THE PETITIONER'S CASE:

The Petitioner stated that the parties married in 1987 at Odumasi Krobo under customary law after which they cohabited in Takoradi. Prior to the marriage, according to the Petitioner she was a seamstress and the Respondent was a sales Assistant in his sister's shop. They had three (3) issues but only one (1) is alive and now aged 27 years as at the date of the petition in 2017 and called Adelaide Parker. That marriage has broken down beyond reconciliation. The Petitioner gave some of the reasons and factors leading to the breakdown of the marriage. They included assault and on the person of the Petitioner and also threatening the Petitioner with death which eventually resulted in the complaint to DOVVSU on threat of death and throwing the Petitioner's chattels out of the matrimonial home and blocking the Petitioner an access to her room. The Petitioner also stated some of the factors included lack of maintenance on the return of the Respondent and that the Respondent had behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent as a spouse.

That after the marriage, the Respondent went to the United Kingdom in 1989 and 1996 and returned for good in 2012. That due to the sojourn in the United Kingdom, the Petitioner was redeployed to the Respondent's sister's shop to assist as a sales person but eventually, at the behest of the Respondent's sister, the Petitioner returned to her seamstress job and also catering and used the proceeds for herself and the child. That during the marriage, both acquired a house and moved into same in 2002 when the Respondent was still in the United Kingdom. The Petitioner said the Respondent started building the house and completed it and also bought a Nissan premiere for the Petitioner in 2007 but only used to beat her on his eventual return to Ghana to settle.

The Petitioner therefore prays for equitable share to these properties:

- (1) Nissan priemera
- (2) House – as matrimonial home.

RESPONDENT'S CASE:

In his response to the Petition the Respondent admitted that indeed the marriage has broken down beyond reconciliation. The Respondent also admitted acquiring the house and constructing same through his brother. The Respondent generally admitted and corroborated the Petitioner's position on marriage, cohabitation, work after the marriage, issues in the marriage, property acquired and his sojourn to the United Kingdom. The Respondent however denied the lack of maintenance as contended by the Petitioner and also denied any hostility to the Petitioner on his return from the United Kingdom.

The Respondent admitted that upon the completion of the house, he directed the Petitioner to move into same to live therein but denied giving the Nissan Primera to her in appreciation of her maintenance of the children and the house even though he brought the Nissan to her for her use. The Respondent also denied throwing the Petitioner's things out of the matrimonial home and also denied any complaint by the Petitioner to DOVVSU on any threat of death and locking her things out of the matrimonial home. The Respondent maintained that he set the Petitioner up in trade but which the Petitioner never accounted to him.

As a factor for agreeing to Divorce in this Petition, the Respondent stated that the Petitioner denied him sex and stopped performing her marital duties as a wife. The Respondent went further to state that the Petitioner was involved in Adultery with one Solomon for two (2) years in the matrimonial home and she also rented some of the flats in the house out to tenants and pocketed the proceeds even though the Respondent, in spite of all the above denied the grounds of breakdown of the marriage and also denied any attempt at reconciliation failed. The Respondent also stated that the Petitioner sold vehicle No. WR 2698 – 11 and pocketed the proceeds. Apart from agreeing to divorce, the Respondent stated that the Petitioner was not entitled to any other reliefs.

Both parties filed their respective witness statements and Pre-Trial check lists.

The two parties testified and were both cross-examined by the Counsel involved but none called any witness. When the Petitioner testified, the summary of her evidence is as follows:

That she is unemployed; and the parties married under custom in 1987 in Odumasi Krobo and both cohabited at a rented premise in Takoradi. Whilst she was seamstress, the Respondent was a sales Assistant in his sister's shop in Takoradi. That the couple had three issues and one is alive now aged 27 years and named Adelaide Parker. That the marriage has broken down beyond reconciliation, that the Respondent after the marriage travelled to United Kingdom. She stated that she entered into catering services and used the proceeds to maintain herself and the issue in the marriage. That during the substance of the marriage, both acquired a dwelling home and moved into it in 2002 whilst the Respondent was still in the U. K as the construction was started and completed by the Petitioner.

She stated that on the final return from the U. K the Respondent's attitude changed and they had no sex, threatened her and locked her things out which ended at DOVVSU and also failed to maintain her and the child and threw her things out too. She said that the Respondent has behaved very unreasonably to the extent that she cannot live with him as a spouse. Petitioner stated that whilst in the U. K, the Respondent bought a Nissan Primera in 2007 in appreciation of her hard work in maintaining the matrimonial home but which the Respondent seized from her.

Admittedly, the Petitioner in cross-examination stated that she had refused to perform her wifely duties because the Respondent refused to give "chop money" and there was no sex, refusal to maintain the home.

When the Petitioner closed her case, the Respondent opened his defence and called no witness. The Respondent's summary of evidence is as follows:

That he is unemployed, that they lived in concubinage in 1987, and they married in 1995 after which he travelled to the U. K. The Respondent denied the Petitioner's occupation and work

and that the Petitioner learnt pastries only on the return of the Respondent from the U. K. The Respondent stated that he alone acquired the land and directed his brother to construct the matrimonial home after which he directed the Petitioner to go and live in same.

The Respondent stated that the Petitioner was not entitled to the settling of the building acquired in the cause of the marriage and also not entitled to the return of the Nissan Primera as he bought it for himself. The Respondent admitted that there are two flats in the matrimonial home one of which was rented out to tenants by the Petitioner. As to the contribution of the Petitioner towards the construction of the building, the Respondent claimed that he was then not in Ghana and so would not know but his brother constructed same. The Respondent conceded that he did not know where the Petitioner presently resides and that since 2017, she has left the matrimonial home. The Respondent admitted that he bought the Nissan car to the Petitioner for her use but did not gift it to her.

The Respondent admitted in cross-examination that he had been summoned by the Petitioner to DOVVSU and also admitted that from 2013 up to the present, both parties had not lived as married couple.

During the trial, both parties tendered no documents as Exhibits. And at the close of the case, Counsel in the case were directed by the court to file their respective written addresses. And very sadly as at the time of the delivering of this judgment, Counsel have not filed same. This is in spite of having to adjourn the matter to enable Counsel comply with the court's order particularly making very sure that proceedings in the matter had always been ready for collection upon the payment of the requisite fees at the registry of the court. Also, it must be pointed out that this petition has passed through the hands of our justices including the author of this judgment.

From the records and the evidence, it is clear that the marriage was contracted under customary law.

One may argue whether a marriage contracted under customary law can be dissolved by the filing of a Petition for dissolution under the Matrimonial Causes Act, (1971), Act 367 (hereafter called Act 367).

S. 41(2), (3), (4) and (5) of Act 367 provides as follows:

“S. 41(2) on application by a party other than a monogamous marriage, the court shall apply the provision of this Act to the marriage, and in so doing, subject to the requirements of the justice, equity and good conscience, the court may;

(a) Consider the peculiar incidents of that marriage in determining the appropriate relief, financial provision and child custody arrangements.

(b) Grant any form of relief recognised by the personal law of the parties to the proceedings, in addition to or in substitution of the matrimonial reliefs afforded by this Act.

“(3) In application of S.2(1) of this Act to a marriage other than a monogamous marriage, the court shall consider the facts recognised by the personal law of the parties

as sufficient to justify a divorce including in the case of a customary law marriage but without prejudice to the following:

- (a) Wilful neglect to maintain a wife or child**
- (b) Impotence**
- (c) Barrenness or sterility**
- (d) Intercourse prohibited under that personal law on account of consanguinity affinity or other relationship; and**
- (e) Persistent false allegations of infidelity by one spouse against the other.**

By the above provisions of Act 367, the only ground for the dissolution of a marriage under the Act is that the Petitioner must prove that the marriage has broken down beyond reconciliation. And to prove that the marriage has broken down beyond reconciliation, S. 2(1) of Act 367 requires the Petitioner to prove at least one of the facts stated thereunder. And these are:

- (a) That the Respondent has committed adultery and by that reason of the adultery the Petitioner finds it intolerable to live with the Respondent
- (b) That the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the presentation of the petition.
- (d) That the parties to the marriage have not lived as husband and wife for a continuous period of at two (2) years immediately preceding the presentation of the Petitioner and the Respondent consents to the grant of the decree of divorce, provided that the consent shall not be unreasonably withheld...
- (e) That the parties to the marriage have not lived as husband and wife for a continuous period of at least five (5) 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.

It is trite law that in civil cases, the party which bears the burden of proof must produce the required evidence of the facts in issue which has the quality of credibility, falling short of which the party's claim must fail. The ways of producing such credible evidence are diverse and may include testimonies of the party, material witness, admissible hearsay evidence, documentary and others without which the party might not succeed in establishing the required degree of credibility concerning a fact in the mind of the court. This is supported by the Supreme Court cases of **ACKAH v. PERGAH TRANSPORT LIMITED & ORS [2010] SCGLR 720** and also **TAKORADI FLOUR MILLS v. SAMIRA FARIS [2005 – 2006] SCGLR 882.**

And also, the Court of Appeal case of AMEKO v. AGBENU [2015] 91 GMJ 202 C. A.

By the above, the standard required in proof in civil cases such as the one in point is proof by the preponderance of probabilities.

See also Ss. 11, 12 and 13 of NRCD 322.

In this judgment, I intend to deal with it in the following manner.

- (a) Whether or not the marriage between the parties has broken down beyond reconciliation
- (b) Whether or not the parties jointly acquired the property in issue and how same ought to be settled
- (c) Whether or not there is any need for financial provision to be made in any way.

On issue (a) which is whether or not the marriage has broken down beyond reconciliation, both parties pleaded and led evidence to the effect that the marriage has indeed broken down beyond reconciliation. The Petitioner stated that on the Respondent's return from the United Kingdom, he used to beat her and treated her so badly and threatened her with death resulting eventually in a complaint to DOVVSU before she could have access to her room in the matrimonial home as the Respondent, according to the Petitioner locked her out and threw her chattels too out. She also pleaded and led evidence to the effect that since the Respondent's return from the United Kingdom, he did not provide maintenance and concluded that indeed, the Respondent had behaved in such a way that the Petitioner cannot reasonably live with him as a spouse. Even though the Respondent in his pleadings denied some of these pleadings and evidence, the Respondent's evidence and cross-examination indeed confirmed that the marriage between the parties had broken down beyond reconciliation.

This is what happened during the cross-examination of the Petitioner by the Respondent's Counsel:

Q: At page 13 of your witness statement you said upon the return of the Respondent from the United Kingdom, he became very hostile to you and beat you without any provocation?

A: He returns home drunk and then he will be insulting me in front of people. I could no longer take it so I went to see my lawyer. I have a shop at home.

Q: It is not correct that the Respondent had indicated to you that he is not interested in the marriage?

A: He has not said it but he is not performing his husbanding duties.

Q: In paragraph 13 of your witness statement, you said the Respondent upon his return became very hostile to you and beats you without provocation?

A: It is correct, he does not maintain the house and also said the house belongs to him alone so we should leave the house. The Respondent sacked my daughter from the house.

Counsel for the Respondent during cross-examination also asked the following question:

Q: You have not lived as couples because you have refused to perform your wifely duties?

A: He refused to give us chop money.

Q: You have refused your husband sexual intimacy?

A: Yes, because he does not love me.

Q: This attitude of abuse of sexual intimacy has been there for more than four (4) years?

A: He does not pay bills, maintain us, why should I sleep with you?

Counsel for the Petitioner in cross-examining, the Respondent also asked the following:

Q: Have you ever been to DOVVSU with the Petitioner before?

A: Yes, my Lord.

Q: What was the nature of the report?

A: At DOVVSU, they told me that ...her belongings were in my room. Eventually, DOVVSU joined me to my room to take the Petitioner's items which were some petty items and the Petitioner picked them up in the presence of the police.

Q: From 2013 until date, you have also not maintained the Petitioner?

A: True.

I have taken my time to list the cross-examination above on the positions taken by the parties in the marriage in addition to the happening in the matrimonial home. From the above, it is very clear that the parties have behave in such a manner that the parties cannot reasonably live together as couple.

From the evidence, it is clear that the Respondent used to drinking. And from the manner in which the answer was provided, one could reasonably say that the Respondent was not used to drinking to the extent of being drunk as the Petitioner was not used to that. Again, it is clear that the Petitioner was insulted and assaulted, a piece of evidence never denied by the Respondent. It is also in evidence that the parties have not lived as couples for years and also sexual intimacy was completely lacking from 2012 (just after the return of the Respondent from the United Kingdom in 2012).

As a result of the lack of sexual intimacy and the refusal to perform wifely duties, the Respondent conceded that indeed from 2013 until date, he had not provided maintenance. The relationship between the parties got to the lowest ebb, from the evidence, which resulted in a complaint to DOVVSU on threats of death, locking the Petitioner out of the house and access to her clothes and room. It was through the intervention of DOVVSU officials who facilitated and directed the Respondent to lead the DOVVSU officials to the matrimonial home in order for the Petitioner to have access to her room and clothes according to the evidence of the Respondent in cross-examination.

In the case of **Mensah v. Mensah [1972] 2 GLR 19**, the court held amongst others as follows:

“In considering 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”.

Again, on ground for divorce, and detailing the applicable sections of the matrimonial causes Act 1971 (Act 367), which are Sections 1, 2(1), (2) and (3) thereof, Justice Hayfron Benjamin in **Mensah v. Mensah (supra)** stated thus:

“Our legislation seems to state that proof of one of the facts show that, the marriage has broken down beyond reconciliation, and yet the court can decline to grant the decree because it is not satisfied that the marriage has broken down beyond reconciliation. The Act seems to draw a distinction between appearance and reality. The Petitioner after proving one of the enunciated facts would be held to have shown that, the marriage has broken down beyond reconciliation. The court is then to find out whether in truth it has done so. Here, the court is directed to conduct an inquiry as far as reasonable into the facts relied on by the parties. The court is then to consider all the evidence that is, including what it has found on its inquiry, and if satisfied that the marriage really has broken down beyond reconciliation, decree a divorce”.

See also on the same principle, the cases of:

1. **KNUDSEN v. KNUDSEN [1976] 1 GLR 204, C.A**
2. **DARKO v. DARKO [2011] 29 GMJ 121**

Thus, in assessing unreasonable behaviour of a party in a matrimonial and divorce cause, the court must take into account the character, personality, disposition and behaviour of the Petitioner as well as the behaviour of the Respondent as alleged and established in the evidence. The conduct complained of might consist of one act if of sufficient gravity or of a persistent course of conduct or series of facts none of which by itself might be sufficient but the cumulative effect of all taken together would be so.

The above, in my view from the pleadings and the evidence of both parties are what actually took place. It is therefore not surprising that both parties in their pleadings and evidence consented to divorce. From the above evidence each of the parties wants some form of freedom from an ordeal being suffered at the hand of the other even though the evidence clearly shows that the Petitioner suffered more of the ordeal. S. 2 of Act 367 does not require the court to decree divorce unless it was satisfied that on all of the evidence the marriage has broken down beyond reconciliation. The test therefore in S.2 of Act 367 is an objective one and a question of fact that does not admit any trivialities. This means that the difference between the parties ought to be grave and beyond human endurance.

So therefore, on the pleadings, the facts and the evidence adduced, I conclude on Issue one (1) that the marriage contracted between the parties under customary law in Odumasi Krobo has broken down beyond reconciliation and I hold that the marriage between the parties has broken down beyond reconciliation. And I hereby dissolve the marriage contracted between the parties FORTHWITH.

I now proceed to deal with the issues of property rights and financial provisions (if any) Often called alimony or push off. In dealing with the above, I wish to state the positions of S. 20(1) of the Matrimonial Causes Act, 1971 (Act 376) as follows:

“S. 21(1) The court may order either party to the marriage to pay to the other party sum of money or to convey to the other party such movable and immovable property a settlement of property rights or in lieu thereof or as part of financial provisions, as the court think just and equitable.

Also, the current position of the law, and as stated in the Supreme Court case of **PETER ADJEI v. MARGARET ADJEI [2021] 172 GMJ SC.** is that a spouse must proof his or her case to the satisfaction of the court to qualify him or her for a half a share of the jointly acquired property. In this case in issue, the Evidence was that the parties married in 1987 and in 1996, the Respondent went to the United Kingdom. In the cause of the marriage the Respondent acquired the matrimonial home and it was the Respondent who constructed same through his brother with support from the Petitioner. The Respondent also whilst in the United Kingdom brought a Nissan Primera and other cars some of which are not presently available. But the Nissan Primera is available.

The following cross-examination will help in this consideration.

Q: Whilst in the United Kingdom, the Respondent brought certain vehicles, not so?

A: That is correct.

Q: How many were they?

A: Three (3)

Q: Where are these vehicles?

A: He made me sell one; one was used for taxi; the taxi was faulty and we had to repair it. I told him I could get someone to repair so we could sell. After the repair we could not get anyone to buy and the repairer wanted his money. He demanded for his money and he reported me to the Sekondi Police. So, I went to the police station to be given time to sell it... I do not know the whereabouts of the car now. One of the cars is at the garage.

Q: When was the building plot acquired?

A: Some where in 1995 because he travelled around 1996.

Q: As we speak there is a home which is now your matrimonial home?

A: I do not live there.

Q: You and your child were living there?

A: Yes, my Lord.

Q: The construction of the building was done by the Respondent's elder brother?

A: Yes. They did not complete the work. I finished it.

Q: It is not correct that the Respondent sacked you from the house but your daughter got married and you joined her in her matrimonial home?

A: He brought the police from Anaji to sack her. Later her employers gave her access and later she moved out. I still have my belongings in my matrimonial home and sometimes I go there.

The following are also the answers of the Respondent on the property:

Q: Do you have two (2) flats with the Petitioner?

A: Correct, my Lord.

Q: At the time that you left the country in 1996 to the United Kingdom, you were already married to the Petitioner?

A: True.

Q: In your absence, it was the Petitioner who supervised the construction of the house?

A: My brother told me that he built the house.

Q: The Petitioner also cooked for the workers?

A: I was not here. It was my brother who constructed it.

Q: The Petitioner also ensured the completion of the second flat of the house?

A: I have no idea about it. My brother informed me that he built it.

Q: All the electricity and the pipes, plumbing works, were all connected to the house by the Petitioner?

A: I have no idea. This is because my brother told me that he built the house.

Q: After the completion of the house, the Petitioner moved into the house with the child in the marriage?

A: Yes, my Lord.

Q: There is a Nissan Primera which you bought and brought it to the Petitioner?

A: Yes, I brought it to her. But I did not gift it to her.

Q: Whilst in the United Kingdom, the Petitioner sent you videos of the progress of work on the house?

A: True. I directed Petitioner to take photographs of the construction as my brother was not ready to do it.

Q: Where is the Nissan Primera now?

A: At the garage in the matrimonial home.

Q: The second flat was rented out by you?

A: Yes, she rented it first until 2015 when I took over.

The evidence is that at the time of marriage the Petitioner was a seamstress whilst the Respondent was then a sales Assistant in his sister's shop in Takoradi i.e. evidence is that the plot on which the matrimonial home is situate was acquired around 1995 before the Respondent left Ghana for the United Kingdom. The evidence is that when the couple married they lived in a rented premises until after the completion of the matrimonial home when the Petitioner and her daughter moved into settle there even in the absence of the Respondent until he returned to Ghana in 2012 and joined the Petitioner and the child in 2012 in the matrimonial home.

I therefore find as a fact that the property which is the matrimonial home was a jointly acquired property as same was acquired during the subsistence of the marriage. Again, the Respondent never denied that the property was acquired during the subsistence of the marriage. As to the contribution of the Petitioner to the construction of the matrimonial home, the above cross-examination clearly supports the evidence that indeed the Petitioner contributed substantially to the construction and completion of the property.

From the evidence, it was the Petitioner who supervised the construction of the second flat, she cooked for the workers during the project, did the electrical and all plumbing works and

sent videos to the Respondent whilst in the United Kingdom. The Respondent answers to questions on the contribution of the Petitioner on the project seemed terse and detached in that he was not very forthcoming with the answers only to answer that he was not in the country or was not aware of the contribution of the Petitioner towards the construction and completion of the project. In the absence of the Respondent, after the completion of the project, the Petitioner and the child moved to settle in as owners. The Petitioner also rented one of the two flats out to the tenants. They are all evidence of ownership which the Respondent never opposed or denied.

The above, coming from the Respondent amounts to Admission. And the law is settled that where an adversary admits a fact in issue, no further or better evidence is needed to prove same. This is supported by the case of **IN RE ASERE STOOL; NIKOI AMONTIA IV (SUBSTITUTED) V. AKOTI OWORSIKA II (SUBSTITUTED) [2005 - 2006] SCGLR 637.**

On the contribution of the Petitioner towards the construction of the matrimonial home, the law favours the Petitioner in the circumstances of the contribution of the Petitioner. However, in this court's view, the Respondent could have brought in his brother Ebo Parker, the contractor, who built the matrimonial home to ascertain the position of the Respondent. Respondent's failure to have produced him to testify in this court's view is fatal to the Respondent's case. This is supported by the case of **OWUSU v. TABIRI & ANR [1987 - 88] 1 GLR 287.**

Also, I am convinced from the evidence and also through the cross-examination listed above that the Nissan Primera which the Respondent sent to the Petitioner for her use forms part of the jointly acquired property during the subsistence of the marriage. The evidence has been clear on the contribution of the Petitioner on the construction of the matrimonial home. Therefore, on the matrimonial home I am inclined to hold that same was jointly acquired by the parties and each party is entitled to a fifty per centum share of the same. There are two (2) flats. Each party is to take a flat in the matrimonial home.

Indeed, having found as a fact that the matrimonial home and the Nissan Primera were jointly acquired and during the subsistence of the marriage, I am further, aside the above decided cases also fortified by the Supreme court case of **BOAFO v. BOAFO [2005 - 2006] SCGLR 705** which held thus:

- (1) The provision in Article 22(3) (b) of the 1992 constitution and Section 20(1) of the Matrimonial Causes Act, 1971 (Act 367) only made provision for the equitable distribution of property jointly acquired without laying down the proportion in which such property might be distributed. The reason for that omission was that the question of what was "equitable", in essence, what was just, reasonable and accorded with common sense and fair play was pure question of fact, depended purely on the particular circumstances at each case. The proportions would be fixed in accordance with the equities of a given case".**

In the case at hand, whereas the Petitioner's evidence was that she contributed substantially by completing the project, cooking for the workers, fixing electricals and plumbing and also completing the second flat, all that the Respondent could say was that he was not in the country and his brother told him otherwise.

I would also settle the Nissan Primera in favour of the Respondent.

The evidence on record is that the Nissan Primera was bought and sent to the Petitioner to use it around 2008. The Respondent, on his return, will also naturally, as a man need to use it for some time. It will only be fair for the court to settle same in favour of the Respondent.

In respect of the other vehicles which were raised during the trial in cross-examination, it is not so clear that the vehicles are available, at least from the evidence. I therefore decline to make any order in respect of those. Moreover, these properties have not been in issue in this case.

Now, on financial provision often called alimony or push off, I wish to revisit the provisions under S. 20 (1) and (2) of Act 367 as stated earlier in this judgment.

The evidence on record is that both parties claim to be unemployed. And neither party denied each other's position. In the instant case, the parties met around 1985 whereupon they married eventually, cohabited in Takoradi before the Respondent travelled to the United Kingdom. Just before the marriage or at the time of marriage both parties were seamstress and sales Assistant respectively. The evidence is the Petitioner later on leant catering and used to do pastries in the matrimonial home but she has stopped. The only remaining child in the marriage is now married and has left the matrimonial home. The Petitioner looks quite aged and just like the Respondent. The evidence is that on the return of the Respondents to Ghana in 2012, up to 2017 when the Petitioner left the matrimonial home to the present, it has been the Petitioner who has been taking care of herself. Again, since the Respondent returned to Ghana, it was the Petitioner who was providing housekeeping until she stopped as the Respondent refused to eat the Petitioner's food.

The following cross-examination may be of help on this issue.

Q: You have not lived as couple because you have refused to perform your wifely duties?

A: He refused to give us chop money.

Q: This attitude of absence of sexual intimacy has been there for more than four years?

A: He does not pay bills; maintain us why should I sleep with him.

The Respondent's answer in cross-examination also went thus:

Q: From 2013 until now, you and the Petitioner have not lived as married couples?

A: True.

Q: From 2013 until date, you have also not maintained the Petitioner?

A: True.

In the case of **AIKINS V. AIKINS [1975] GLR 223**, the court held thus:

“In considering the amount payable as lump sum the court should not take into account the conduct of either the husband or the wife but it must look at the realities and take into account the standard of living which the wife was accustomed during the marriage.”

From the evidence, and particularly from the above cross-examination, it is clear that the parties have not treated each other well but the more vulnerable one is the Petitioner who has had a raw deal from the Respondent. From the Petition, the Petitioner did not claim for compensation or alimony or push off. The evidence clearly shows that from 2013 up to the time that the Petitioner left the matrimonial home, she was not maintained by the Respondent. This is supported by the above cross-examination. At custom and under the Matrimonial Causes Act, (Act 367) the Petitioner is still a wife until this court decrees divorce. Both parties, from the evidence are unemployed. Even though the Petitioner never put in a claim for compensation, alimony or push off, I am of the humble opinion, from the totality of the evidence that an allocation of small amount of money to the Petitioner to start menial job for her living will not be an unfair decision.

It is on record that in spite of the evidence that both parties are presently unemployed, there is a shop in the matrimonial home which the Petitioner used to sell drinks in. The Respondent could conveniently trade in same, or at least rent it out for his living. What about the Petitioner?

In my view, even though the Petitioner did not claim for compensation, I think a lot of disservice and injustice will be occasioned if this court, being a court of justice, equity and fair play closes its eyes on such need in the circumstance of this Divorce matter and makes no provision for the vulnerable victim of the situation.

Taking solace from the decision of **GIHOC v. HANNA ASI [2005 - 2006] SCGLR 450 @ 492 per MODIBO OCRAN, JSC** in recognition of the flexible approach adopted by the courts stated thus:

“At any rate even at the Trial level, the High Court rules have maintained sufficient flexibility both in the old and the new rules of procedure to allow courts to make such orders dealing with the proceedings as it considers just, or necessary for doing justice to the case”.

Also, in the case of in **RE GOMOA AJUMAKO PARAMOUNT STOOL, ACQUAH V. APAA & ANR [1998 - 1999] SCGLR 312**, the court held that

“In appropriate circumstances a court of law can grant a relief not sought for by a party. However, any such relief must be supported by the evidence on record and secondly, not in consistent with the stand and the claim of the party in whose favour the relief is granted”.

In the interest of substantial justice, it is important for this court to do justice and put in a claim for the Petitioner for small compensation/alimony for her.

In the circumstance therefore, this court will award an amount of Gh¢10,000.00 by way of compensation to the Petitioner. This will support her to restart petty trading or her catering services as the records go. From the evidence, from the return of the Respondent up to the

time that the Petitioner left the matrimonial home, she was providing the house keeping works and also maintaining the Respondent and which the Respondent never made provision for housekeeping resulting in the Petitioner not sleeping with the Respondent eventually.

The following cross-examination of the Respondent also influenced this court's decision and reasoning on the award of a partly sum of Gh¢100,000.00 to the Petitioner to restart the catering services as she is unemployed now.

Q: From 2013 until now, you and the Petitioner have not lived as a married couple?

A: True.

Q: From 2013 until date, you have also not maintained the Petitioner?

A: True.

I am convinced that the above cross-examination of the Respondent about his affairs, treatment and handling of his relations with the Petitioner as a wife will put to rest any possible controversies and arguments about the court's decision to award an amount of 10,000.00 as a push off for the Petitioner.

I make no further orders as to costs.

SGD
G.K. GYAN-KONTOH 'J'
JUSTICE OF THE HIGH COURT

COUNSEL:

- 1. G. KESSE FOR S. K KESSE FOR THE PETITIONER**
- 2. D. ACQUAH ARHIN FOR THE RESPONDENT**

a.m.