

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF  
JUSTICE HELD AT TEMA ON MONDAY THE 31<sup>ST</sup> DAY OF JULY 2023 BEFORE  
HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

Time:9: 55 am

SUIT NO: E5/16/2014

DZIFA MADUGU BOYE ... PETITIONER

VRS

EDWARD BOYE ... RESPONDENT

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PARTIES

Petitioner- Present.

Respondent – Absent

LEGAL REPRESENTATION

Mr. Edmund Amako holding brief of Mrs. Irene Aborchie Nyahé for the Petitioner - Present.

Ms. Nana Aferba Ahlija holding brief for Mr. Ashiaa Baffour Gyau for the Respondent -Absent

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**JUDGMENT**

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Petitioner herein Dzifa Madugu Boye filed this instant Petition on 20<sup>th</sup> February, 2014 against Respondent Edward Boye seeking the following reliefs:

- a) That *the marriage celebrated between the parties on 29<sup>th</sup> May, 2004 be dissolved.*

- b) *That the Petitioner be granted custody of the children of the marriage Quincy Boye and Jeremy Boye.*
- c) *That the Respondent be ordered to pay a lump sum of Thirty Thousand Ghana Cedis (GH¢30,000.00) to the Petitioner as her alimony.*
- d) *That the Respondent be ordered to pay Five Hundred Ghana Cedis (GH¢500.00) as maintenance for the children.*
- e) *That the Matrimonial House No. G76 located at Community 19 be settled on the Petitioner.*
- f) *That the properties jointly acquired by the parties be settled in favour of the Petitioner.*
- g) *Any other orders that this Court may deem fit.*

Respondent Edward Boye on the 6<sup>th</sup> of February, 2015 filed an Answer to the Petition and Cross-petitioned as follows:

- 1) *Unrestricted access to the children of the marriage.*
- 2) *An order of accounts for the sale of items listed in Paragraphs 24 and 25.*
- 3) *Willingness to pay reasonable maintenance for the children as well as their school fees and other related matters.*
- 4) *Willingness to provide alternative accommodation from Paragraphs 31 save item (b) of her Petition.*

Petitioner further amended her reliefs 6 and 7 of her Petition pursuant to leave of Court as follows:

#### **Relief 6**

*That the Matrimonial House numbered G76 located at Community 19 be settled on the two issues of the marriage or the Petitioner and the children.*

#### **Relief 7**

*That the new property which the Respondent admitted in Court is settled on the children of the marriage and the rest of the properties settled on the Respondent.*

It must be noted that parties filed an amicable partial Terms of Settlement in this Court but left the property settlement for the Court to pronounce on.

The following are the partial Terms of Settlement:

- 1) That the marriage between the parties be dissolved.*
- 2) That the Petitioner be granted custody of the two (2) issues of the marriage namely Quincy Boye, Eight (8) years (as he then was) and Jeremy Boye (as he then was) with reasonable access to the Respondent.*
- 3) That the Respondent shall maintain two (2) issues of the marriage by paying into Petitioner's account an amount of Seven Hundred Ghana Cedis (GH¢700.00) per month payable at the end of every month.*
- 4) That the Respondent shall pay all school fees, medical bills as well as other educational expenses for the issues as and when they fall due.*
- 5) That the Respondent shall pay to the Petitioner an amount of Twenty Two Thousand Ghana Cedis (GH¢22,000.00) being lump sum settlement.*
- 6) That the parties have agreed to leave the issues of settling properties acquired during the marriage for the Honourable Court to determine.*

Outstanding issues for determination;

- 1. Whether or not the Customary marriage between the parties has broken down beyond reconciliation and should be dissolved.*
- 2. Whether or not the Petitioner is a joint owner of the Matrimonial properties acquired during the marriage and whether she is entitled to her reliefs.*

Petitioner avers that she got married to the Respondent.

Under the **customary law (part 1 of the Marriages Act (1984))** and Respondent is not asserting this fact.

Per their pleadings, both parties have consented to the dissolution of their marriage and **Section 2(1)d** of the **Matrimonial Causes Act** provides:

*“that the parties to the marriage have not lived as husband and wife for a continuous period of at least two (2) years immediately preceding the presentation of the Petition and the Respondent contends to the grant of a decree of divorce provided that the consent shall not be unreasonably withheld and where the Court is satisfied that it has been so withheld, Court may grant a Petition for divorce under this paragraph despite the refusal”.*

Both parties have led evidence to the fact that the marriage between them has broken down beyond reconciliation.

Both parties consented to the dissolution of their marriage and so fortified with this provision, I hereby declare that the customary marriage between parties herein, Petitioner, Dzifa Madugu Boye and Respondent, Edward Boye on 29th May, 2004 in Tsrukpe-Tota in the Volta Region as dissolved.

My decision is also based on the provision of **Section 41(3) of Act 367 supra** which states:

*“In the Application of Section 2(1) to a marriage other than a monogamous marriage, the Court shall consider the facts recognized by the personal law of the parties as sufficient to justify a divorce, including in the case of customary law marriages, but without prejudice to the following: a wilful neglect to maintain a wife or child etc”.*

Petitioner has averred in her Witness Statement that Respondent has totally neglected to provide regular maintenance for her and the two (2) children of the marriage.

From the evidence adduced, there is no iota of doubt in my mind that Respondent has wilfully neglected to maintain Petitioner and the children of the marriage.

I therefore make a finding that this is another instrument which Petitioner has satisfied for the dissolution of the marriage between the parties, hence my granting of the dissolution of the marriage.

Having determined the issue of the dissolution of the customary marriage, I will address the issue of whether or not the Petitioner is a joint owner of the Matrimonial properties acquired during the subsistence of the marriage. It is Petitioner's case that during the subsistence of their marriage that they acquired.

Petitioner filed some photographs in this Court which are photographs she intends to rely on as her evidence of Matrimonial properties acquired during the subsistence of the marriage and states as follows:

- a) A photograph of a three-bedroom which house is at Abokobi which is a property jointly acquired by the parties.*
- b) A photograph of a piggery business by the lefties which is located near the three-bedroom house at Abokobi which was acquired by the parties.*
- c) A photograph of the two plots of land at Brekusu on which parties constructed a security post and same was acquired during the marriage.*
- d) A photograph of the two-bedroom Matrimonial home, where the Petitioner and the children of the marriage currently reside.*

Respondent is not disputing the existence of these properties but questioning Petitioner's assertion that she is a joint owner of the sod property which Petitioner has exhibited Photograph.

Counsel for Respondent has listed these properties in his address as follows;

- a) A three-bedroom house at Abokobi.*
- b) An estate house in Community 19, Lashibi.*
- c) A plot of land at Abokobi.*
- d) A plot of land at Agboba on which a security post was constructed as well as an uncompleted single room.*
- e) Two (2) plots of land at Brekusu where Petitioner built a security post.*
- f) Four (4) plots of land at Dodowa.*
- g) A piggery at Abokobi where the Petitioner always buys feed, fuel among others to maintain.*

During this trial, it came out that the Matrimonial home was acquired by both parties, this assertion made by Petitioner was denied by Respondent who says the said property was acquired by his Dutch wife and himself before he got married to the Petitioner.

Petitioner is however saying that she supported the Respondent and used her own resources to renovate the Matrimonial home at Community 19 (which was bought from Regimanuel Gray Estate Limited). She says she assisted by increasing the height of the fence wall, by building the boys quarters from foundation to its complete date, by improving the compound of the Matrimonial home with pavement blocks, changed the doors and windows to modern glass doors and windows and fixed all the wardrobes in the house.

It is Petitioner's case that Respondent attempted to throw the Petitioner and the children onto the street so that he sells the house but that attempt failed.

It is Petitioner's assertion that in the course of the marriage, she supported the Respondent.

Article 22(2) and 3(a) &(b) of the 1992 constitution provides as follows:

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

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

*a) Spouses shall have equal access to property acquired during marriage.*

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

The spouses shall have equal access to property acquired during the marriage.

Assets which are jointly acquired during the marriage shall be distributed equitably between the parties upon the dissolution of the marriage.

On the basis of these constitutional provisions, I will go ahead and make an order in ....

After analyzing all the evidence adduced in this Court, I make a finding that the Customary marriage which was celebrated between Petitioner Dzifa Madugu and Respondent Edward Boye has broken down beyond reconciliation. I therefore pronounce the said marriage dissolved.

In respect of the other ancillary reliefs sought by Petitioner as well as the Respondent's Cross-Petition, though there is a partial Settlement put in place by parties which I will adopt same and also add some modification.

- 1) *Custody of the two (2) children of the marriage is granted to Petitioner (Quincy Boye now seventeen (17) years and Jeremy Boye now ten (10) years with reasonable access to the Respondent.*
- 2) *The Respondent shall maintain the children of the marriage with Three Thousand Ghana Cedis (GH¢3,000.00) a month which must be payable at the beginning of every month.*
- 3) *The Respondent shall pay the School fees of the Children, Medical bills as well as other educational expenses of the Children as and when they fall due.*
- 4) *The Respondent shall pay to the Petitioner an amount of Thirty Thousand Ghana Cedis (GH¢30,000.00) as a lump sum settlement.*
- 5) *The Matrimonial home G76 located at Community 19 be settled on the Petitioner.*

In lieu of the other properties listed by Petitioner as Marital properties which I find as a fact from the evidence that same were acquired during the subsistence of the marriage per **Section 20(1) of the Matrimonial Causes Act**, I will order that Respondent pays to the Petitioner an amount of Two Hundred Thousand Ghana Cedis as settlement of the property rights in lieu therefore as part of financial provision.

I will also award cost of **Twenty Thousand Ghana Cedis (GH¢20,000.00)** in favour of the Petitioner.

**H/L: JUSTICE RITA AGYEMAN-BUDU (MRS)  
(JUSTICE OF THE HIGH COURT)**



