

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD IN TEMA ON WEDNESDAY 5<sup>TH</sup> DAY OF JULY 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

Time: 9: 45am

SUIT NO: E5/29/2020

HELENA APPIAH ANFO ..... PETITIONER

VRS

ANDREWS KOFI HANSON ..... RESPONDENT

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**PARTIES**

Petitioner – Absent.

Respondent - Present.

**LEGAL REPRESENTATION**

Mr. Nii Adjei Charway holding brief of Mr. Richmond Numbo Saaka for the Petitioner -Present.

Mr. Edward Mettle Nunoo for the Respondent - Present.

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**JUDGMENT**

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Petitioner herein Helena Appiah Anfo filed this Petition on the 5<sup>th</sup> of March, 2020 praying for the following reliefs:

- i. A declaration that the Customary marriage contracted between Petitioner and Respondent on 11<sup>th</sup> March, 1995 and subsequently their Ordinance Marriage on 6<sup>th</sup> May, 1995 has broken down beyond reconciliation.*
- ii. An Order dissolving the marriage contracted between Petitioner and Respondent herein.*
- iii. A declaration that the Matrimonial home described as Unnumbered House Opposite HFC Flat Community 25, Tema is a jointly owned property between Petitioner and Respondent.*
- iv. An order directed at Respondent to settle Petitioner with the Matrimonial home described as Unnumbered House Opposite HFC Flat Community 25, Tema as part of the dissolution process.*
- v. An order directed at the Respondent to pay alimony to Petitioner in the sum of One Hundred Thousand Ghana Cedis (GH¢100,000.00).*
- vi. An order directed at Respondent to pay all cost associated with the prosecution of the present Petition.*
- vii. Such further order/orders as the Honourable Court may deem fit.*

Respondent Andrews Kofi Hanson also filed an Answer to the Petition and cross-petitioned on the 4<sup>th</sup> of May, 2020.

He cross-petitioned as follows:

- a) An order for the dissolution of the marriage contracted and celebrated between the parties on 5<sup>th</sup> of May, 1995.*
- b) A declaration that the Unnumbered House Opposite HFC Flat Community 25, Tema was solely financed by the Respondent without any contribution from the Petitioner.*
- c) A declaration that the Petitioner during the marriage constructed and acquired a Storey-building on a half plot of land after Community 25, Tema.*

- d) An order granting custody of Kelvin Kojo Hanson, sixteen (16) years and Andy Fiifi Brefor Hanson, fourteen (14) years to the Respondent with reasonable access to the Petitioner.*
- e) An order directed at Petitioner to return Respondent's passport, University Certificates/Transcript taken from the Matrimonial home.*
- f) That each party be made to bear their own costs.*

### **Petitioner's case**

Petitioner Helena Appiah Anfo filed instant Petition in this Court, the averments of which were stated in her Witness Statement. It is Petitioner's case that the marriage between her and the Respondent has broken down beyond reconciliation.

Petitioner avers that Respondent has been accusing her of indulging in extra marital affairs without justification. Again, Respondent is insisting that Petitioner leaves the Matrimonial home and has threatened to kill her if she does not leave with the children.

Petitioner contends that she has contributed substantially to the construction of the Matrimonial home.

Petitioner further contends that through a joint contribution of financial resources they both acquired a land at Community 25, Tema and that for over six (6) months during the construction of the Matrimonial home, Respondent did not contribute towards the upkeep of the family with the excuse that all his salary had been locked up in the construction of their matrimonial home. Petitioner further contends that Respondent has behaved unreasonably in that he tore their marriage certificate into

pieces and subsequently presented drinks to her family to dissolve their customary marriage which her family refused.

That all attempts by her family to reconcile their differences have proved futile as respondent is very adamant about ending their marriage.

### **Respondent's Case**

It is Respondent's case that he is challenging the said contribution of the Petitioner to the acquisition of the matrimonial home.

Respondent contends that the matrimonial home was purchased through loans and his personal savings at a cost of Thirteen Million old cedis, Two Million Cedis of which was a personal loan from a friend by name Albert Owusu Afari and not Fourteen Million Cedis as alleged by the Petitioner.

Respondent also contends that during his period of incarceration at Slovenia, the Petitioner was remitted by the Tema Lube Oil Company Limited and its local union of behalf of the Respondent.

Respondent contends further that Petitioner does not perform her marital duties and deprives him of sex even though she was always in possession of sexual enhancement drugs in her handbag anytime she returned from official duty outside Accra.

It is Respondent's contention that Petitioner though has moved out of the matrimonial home has stolen his university transcripts , passports and other essential documents and that all attempts at retrieving same have proved futile.

That the customary marriage between parties was dissolved at Afransi, Breman Asikuma the hometown of the Petitioner.

Respondent further contends that Petitioner had during the tendency of the marriage built a storey-building on a half plot of land the parties acquired sometime in the year 2010.

Again it is his contention that Petitioner had earlier unilaterally sold four (4) plots of land at Dawhenya acquired by parties and pocketed the proceeds.

At the close of pleadings, the issues that came up for determination were;

- 1) *Whether or not the marriage between the parties has broken down beyond reconciliation.*
- 2) *Whether or not the parties have jointly acquired property and if so the manner in which such property should be distributed.*
- 3) *Whether custody of the issues of the marriage should be granted to the Petitioner or to Respondent.*

I will address the issues as follows;

- 1) *Dissolution of marriage: The dissolution of marriage contracted under marriages act or the ordinance is governed by the Matrimonial Causes Act, 1971 (Act 367). Section 1 (2) of Act 367 states that; “ The sole ground for granting Petition for divorce shall be that the marriage has broken down beyond reconciliation. To determine the issue whether or not ordinance marriage between the parties herein which was celebrated on the 5<sup>th</sup> of May, 1995 at the Tema Metropolitan assembly subsequent to their customary marriage celebrated on the 11<sup>th</sup> March, 1995 has broken down beyond reconciliation.*

I will refer to **Section 2(1) of the Act 367** which states;

*2(1) For the purpose of showing that the marriage has broken down beyond reconciliation the Petitioner shall satisfy the court of one or more of the following facts;*

- (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 be 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 (2) years immediately preceding the presentation of the Petition*
- (d) That the parties to the marriage have not lived as man and wife for a continuous period of at least two (2) years immediately preceding the presentation of the Petition and the Respondent consent to the grant of a decree of Divorce, provided that such concerns 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.*
- (e) That the parties to the marriage have not lived as man and wife for a continuous period of at least 5 years immediately preceding the presentation of the Petition*
- (f) That the parties to the marriage have after diligent effort been able to reconcile their differences.*

In the instant the Petition both Petitioner and Respondent want their marriage dissolved. None of them is contesting the dissolution. Whereas Petitioner has based a grounds for diverse mainly on unreasonable behavior on the part of the respondent as according to her the Respondent has driven her out of the matrimonial home and has threatened to kill her.

Though Respondent has denied this assertion, on his part Respondent is also contending that Petitioner denies him sex.

When under cross-examination Petitioner was asked:

*“Q: Can you tell this Court for how long you have not had sexual relationship with the Respondent?”*

*Her answer was:*

*A: To the best of my knowledge, it is about two (2) years now”.*

Counsel for Respondent in his address makes the assertion that the persistent and perpetual denial of sexual intercourse by one party to a marriage without proper justification is unreasonable behaviour within the meaning of Section 1(b) of Act 367 (supra).

He supports this with Holding 1 of the case of *Opoku Owusu* (1973)2 GLR 349-359 which states:

- 1) *“ a willful refusal of one spouse to have sexual intercourse might enable the party suffering to leave if in all the circumstances of the case it could properly be regarded as grave and weighty and if it have an adverse effect on the health of the other spouses such conduct might also amount to just cause for leaving even though it lacked the element of intent to injure. Whether in a given case the requirement was fulfilled was a given fact”.*

Thus both parties are making assertions of unreasonable behaviour.

Again on the issue of parties not having sexual intercourse for a period of two (2) years, is not in dispute as same has not been denied by either party.

In the instant Petition, the case of the Petitioner and Respondent herein stated, the dissolution of the marriage between parties is based on unreasonable behaviour.

Both parties have also consented to the dissolution of the marriage.

**Section 2(1)b of Act 367** applies in this. In this case, both Petitioner and Respondent from the evidence adduced have both behaved unreasonable at a point in **time**.

**Section 21(d)** which provides that parties have not lived together as husband and wife for a continuous period of two (2) years also suffice.

Again **Section 21(f)** which is that parties to the marriage have after diligent effort, been unable to reconcile their differences also applies in this instant Petition.

It is my considered opinion that Petitioner has satisfied the conditions of **Section 1(2) of Act 367**.

On whether or not the Matrimonial home is a jointly acquired property of parties, Petitioner is asserting that she has contributed substantially towards the said acquisition.

I will refer to the following statutes and case laws;

On the issue of distribution of spousal property upon the dissolution of marriage, the Supreme Court by plethora of decisions over the years has outlined and refined the principles that should guide the courts in their determination of what a spouse should be entitled to when it comes to the distribution of properties acquired during



the subsistence of a marriage. Some of the cases that serve as the guiding authorities of the distribution of spousal property are **Mensah vs Mensah (1998-1999) SCGLR 350, Boafo v Boafo (2005-2006) SCGLR 705, Fynn vrs Fynn (2013-2014)SCGLR 727, Arthur vrs Arthur (2013-2014) SCGLR 543 and Mensah vrs Mensah (2012) 1 SCGLR 391, Quartson vrs Quartson (2012) 2 SCGLR 1077.**

These principles laid down by the Supreme Court were largely influenced by the provisions on spousal rights to property in the 1992 Constitution.

For instance, **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 in clause (2) of this article-*

*(a) spouses 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.”*

The combined effect of the provisions in the Constitution quoted above and the decisions of the Supreme Court in the cases outlined above is that any property that is acquired during the subsistence of a marriage 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, as was held by the Supreme Court at holding 3 (page 546) of the Arthur case cited above, this presumption of joint ownership is rebuttable upon the adduction of evidence to the contrary by one of the spouses.

Furthermore, in the recent **case of Peter Adjei vrs Margaret Adjei (2021)**

**DLSC 10156, the Supreme Court per Appau JSC** further clarified the position of the law on the issue of joint ownership and held that:

*"What this means in effect is that it is not every property acquired singlehandedly by any of the spouses during the subsistence of the marriage that can be termed as "joint 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."*

In the **Adjei case** cited above, His Lordship went further to clarify that:

*"it is sufficient if the property was acquired during the subsistence of the marriage. However, where such evidence exists, it is necessary that a spouse alleging such contribution must render or offer it to quantify his/her share or portion in the property so acquired on the equity principle."*

From the evidence on record, it is my opinion that the Baatsonaa property was jointly acquired by the parties during the subsistence of the marriage. It is not in dispute by the parties that the marriage between them was contracted sometime in 2004

Respondent is also contending that he solely funded the acquisition of same with loans and also his savings.

Respondent is however not denying the fact that Petitioner was maintaining the matrimonial house was being constructed.

Also the fact that while Respondent was incarcerated; Petitioner did the finishing of the house by tiling the living room from her own resources. Though from the evidence adduced, Petitioner has seemingly contributed to the construction of the Matrimonial home, I do not agree that her contribution was substantial. At least she has not adduced any documentary evidence in this respect.

I however hold from the evidence adduced that in as much as the said Matrimonial home was acquired during the subsistence of the marriage and also the undisputed fact the Respondent made some contribution towards its completion.

I am of the opinion that it is a jointly acquired property of the parties.

In respect of whether or not Petitioner is entitled to 50% share of the Matrimonial property, I have referred to some relevant statutes and case laws.

In the instant Petition, can we say that the principle of equality is equity apply in this instant case. I do not think that this principle is applicable here. It is not as if once the property is declared as jointly owned it becomes automatic that it is 50-50 shares.

In *Adjei vrs. Adjei* (Supra);

*"it is sufficient if the property was acquired during the subsistence of the marriage. However, where such evidence exists, it is necessary that a spouse alleging such contribution must render or offer it to quantify his/her share or portion in the property so acquired on the equity principle."*

I am not overlooking the fact that Respondent secured a loan and also use his salary for the project.

Respondent is not denying the fact that Petitioner did the tiling of the living room with her own resources.

Though Petitioner seemingly contributed to this, I will not say that the principle of equality is equity applies.

I will however order that the Matrimonial house be valued and 10 % of the value be given to Petitioner. I have taken cognizant of the fact that the other property which Petitioner claims was solely acquired her has not been in contention here though it was acquired during subsistence of the marriage.

Respondent has not proved his contribution to same. I will not determine on that.

Petitioner has also not been able to prove to this Court convincing the substantial contribution she made toward the acquisition of the Matrimonial home.

On the issue of custody of Kelvin Hanson and Andy Fiiifi Brefor Hanson, I will grant custody to the Petitioner with uninhibited access to the Petitioner. This is because he is a minor and it seems to me that it is best for custody to be granted to the Petitioner.

Now I will go through Petitioner's reliefs. Petitioner's reliefs are:

- a) A declaration that the Customary marriage contracted between Petitioner and Respondent on 11<sup>th</sup> March, 1995 and subsequently their Ordinance Marriage on 6<sup>th</sup> May, 1995 has broken down beyond reconciliation is granted.*

- b) An Order dissolving the marriage contracted between Petitioner and Respondent herein is granted.*
- c) A declaration that the Matrimonial home described as Unnumbered House Opposite HFC Flat Community 25, Tema is a jointly owned property between Petitioner and Respondent is granted.*
- d) An order directed at Respondent to settle Petitioner with the Matrimonial home described as Unnumbered House Opposite HFC Flat Community 25, Tema as part of the dissolution process is refused.*
- e) An order directed at the Respondent to pay alimony to Petitioner in the sum of One Hundred Thousand Ghana Cedis (GH¢100,000.00) is refused.*
- f) An order directed at Respondent to pay all cost associated with the prosecution of the present Petition is also dismissed.*

Each party must bear their own cost. I will address Respondents reliefs in his cross-petition which are:

- a) Marriage be dissolved is granted.*
- b) The Matrimonial house cannot be declared that Respondent solely contributed. It is jointly acquired even though from the evidence adduced. Petitioner's contribution to that is not substantial.*

Custody of Kelvin Kojo Hanson and Andy Fiiifi Brefore Hanson granted to Petitioner to uninhibited access to the Respondent.

- e) Petitioner is ordered to return Respondent's passport, University Certificate/transcript to him.*

I award no order as to cost.

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

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