IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING)
KULENDI JSC
ACKAH-YENSU (MS.) JSC
KWOFIE JSC
DARKO ASARE JSC

CIVIL APPEAL

NO. J4/48/2023

4TH DECEMBER, 2024

AUGUSTINA ABENA BOAMAH …………….. PETITIONER/RESPONDENT

VERSUS

YAW AMPADU …………….. RESPONDENT/APPELLANT

JUDGMENT

LOVELACE-JOHNSON, JSC:

The designation of the parties at the High Court will be maintained in this appeal. On 19th march 2018, the High Court granted the petitioner herein the reliefs sought in her petition in the following terms:

The dissolution of the customary marriage between the parties, the settlement of the matrimonial house at Taifa on her, an order that the respondent continue to maintain the children who are still in school or learning a trade and a lump sum of twenty thousand cedis (GHC 20,000.00) as 'settlement'(alimony). The Court refused the petitioner's claim for six shops and a bar at Taifa.

Being dissatisfied with this judgment, the Respondent appealed to the Court of Appeal. The impugned judgment was affirmed. The Respondent has launched a further appeal to this Court on the following grounds.

a. The judgment was against the weight of evidence adduced at the trial
b. The Court erred when it held that the marriage between the parties had not been dissolved prior to the institution of the divorce
c. The Court erred when it awarded the matrimonial house to the Petitioner/Respondent
d. Further grounds may be filed upon receipt of the record of proceedings.

The relief sought is a setting aside of the judgment in issue by this Court.

In relation to ground (d) no such were filed.

The brief background to this matter is that the Respondent started dating the Petitioner when she was in school in 1984 or so and they got married immediately she completed school in 1985 under Kwahu custom. They have four children. While the Respondent contended that their marriage had already been dissolved, the Petitioner contended otherwise and sought the said dissolution in her petition

We shall begin with an evaluation of the Court of Appeal's finding that the customary marriage between the parties had not been dissolved prior to the institution of the divorce (proceedings?) i.e ground (b) of the grounds of appeal.

The Court of Appeal admitted that the trial court did not assign any reasons for accepting the Petitioner's position that the marriage between her and the Respondent was subsisting but did not dispute or set it aside.

The summary of the said Court's reasons for accepting the finding are that (a) the Respondent's evidence in cross examination that **a** drink was presented for the dissolution of the marriage was at variance with his evidence in chief that the father of the petitioner had refused to accept liquor for the dissolution on religious grounds. (b) the Respondent provided the trial court with corroborative evidence of her position that what took place at Palladium was not a dissolution of their marriage (c) the Respondent's evidence that the marriage was dissolved in the year 2004 was at variance with his pleadings that it was dissolved in the year 2000. The court was of the view the evidence on record supported the finding of the trial court that there was a subsisting marriage between the parties.

The Court of Appeal was satisfied that, in the light of the above, the failure to give reasons by the trial court did not lead to any miscarriage of justice since the evidence supported the trial court's finding. The judge could therefore not be faulted for accepting the position of the Petitioner on this issue.

It is trite that the Respondent, who is appealing the judgment of the Court of Appeal carries the onus of pointing out the lapses in the said court's findings e.g. that they are not borne out by the evidence on record or sin again the law.

The case of **Djin v Musa Baako [2007-2008] SCGLR refers**

What are counsel for the Respondent's complaints regarding the issue under discussion? The relevant submissions are that the parties had been separated for fifteen or thirteen years. That the Petitioner had left the matrimonial home since year 2020 to live with her parents at Anyaa and that the court placed undue weight on the evidence of the Petitioner's uterine brother.

There is a short answer to these submissions. A long separation does not amount to a divorce in law until the proper processes for dissolution are gone through. This was a marriage under customary law. The Respondent who is alleging that there had been a divorce had to prove the elements of a customary divorce under Kwahu custom which is admitted to be the custom under which they got married in 1985. The Respondent might learn a lesson from the case of **Humphrey-Bonsu and Anor v. Quaynor and Ors {1999-2000} 2 GLR 781**, where it was observed that

> *"The testator erroneously thought that the plaintiff was no longer his wife because of the long period of separation by his family proved him wrong by allowing the woman to perform customary rite assigned to widows. In my view, the testator was rather guilty of constructive desertion. The learned judge therefore correctly applied the case of Hughes v. Hughes [1973] 2 GLR 342 and Re Caveat by Clara Sackitey (supra) on the legal effect of separation, that it does not constitute dissolution though it may be a prelude to it"*

Secondly, while it is not in dispute that the Petitioner's witness who provided corroborative evidence of her version of events is her brother, the question to be answered is whether the Respondent provided any such. Despite his own evidence at page 31 of

the Record of Appeal that his grandfather, his landlord and tenants were present at the events that took place at Palladium, he did not call any of them to corroborate his evidence that what happened there were divorce proceedings and the court was not given any good reason for the failure to do so.

We are satisfied that the Respondent has not given us good reason to disturb the finding of the Court of Appeal on this issue and accordingly dismiss this ground of appeal as lacking merit.

On ground (c) of the grounds of appeal which states that the Court of Appeal erred in awarding the matrimonial home to the Petitioner, counsel for the Respondent submits that the matrimonial home was purchased by the Respondent in 1982 before his marriage to the Petitioner in 1985 and her allegation that she made contributions towards the completion of the said house was not proved by any evidence. He contends that the other house owned by the Respondent was inherited from his mother. Counsel further contends that both houses were not properties acquired during the subsistence of the marriage. It seems to be counsel for the Respondent's position that the Petitioner having completed school in 1984 and marrying the Respondent in 1985 was not entitled to be settled with the matrimonial home because she had not proved her contribution to its acquisition as she alleged.

This is what the trial High Court said at page 95 before making the order granting the matrimonial home to the Petitioner

> *"The parties have confirmed that the matrimonial home was bought a year before they married. It was however, an uncompleted building and the parties had to live elsewhere for several years whiles (sic) they finished it. There is also evidence to show that two bedrooms in the Taifa house was rented out to build all commercial property in Taifa.*

The Petitioner's contribution may not have been substantial but it was still contribution.

I have also adverted my mind to the fact that the parties got married right after she left school, she has spent her adult life with the Respondent and has four children for him.

I have also considered household chores and other economic activities. I also recognize the valuable contribution made to the marriage for several years of her adult life and the maintenance of a congenial environment for the Respondent to operate and acquire properties.

Judgment is entered for the Petitioner. The matrimonial home in Taifa is settled on the Petitioner and the shops in Taifa are settled on the Respondent"

In refusing to interfere with the High Court's award, the Court of appeal noted that while the Petitioner had called her brother as a witness to corroborate her testimony that they had put up two other houses while living in the matrimonial home, the Respondent failed to do same. He provided no evidence that the property at Taifa Burkina was indeed bequeathed to him by his late mother.

The Court of Appeal after considering the evidence of the parties before the High Court and more particularly that relating to the matrimonial home and how the rent accruing from renting a portion of it was used to put up a commercial property, concluded that the Respondent, who carried the onus of proving that the trial court's distribution of the property was unjust, had not been able to discharge this onus and so had failed to prove that there was sufficient reason to interfere with the trial court's finding. The Court further stated that considering the extent of properties listed, the Respondent's assertion that settling the matrimonial home on the Petitioner was unjust was not maintainable.

In paragraph 8 of the Petitioner's petition, she listed the following properties as those acquired during the subsistence of the marriage

a. A four-bedroom self-contained apartment at Taifa
b. A commercial property comprising six shops and a bar at the top of the shops at Taifa Burkina
c. A commercial property comprising six shops and an uncompleted house on top of the shops at Taifa Burkina
d. A three single rooms self-contained apartments at Taifa Burkina
e. Various plots of land at Pokuase

In paragraph 4 of his Response the Respondent denied paragraph 8 of the petition but stated in paragraph 5 that the commercial property in question was bequeathed to him by his mother.

According to the Respondent he married the Petitioner in 1985 after she finished school in 1984. He had already acquired the completed matrimonial home at his young age of about 21 years and yet they lived at different places at Accra New Town and Kaneshie before they moved into it in 1990. He admitted that portions of the matrimonial home were rented out.

Article 22(3)(b) states categorically that assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

Counsel for the Respondent states that no shred of evidence was led by the Petitioner to show that she made any contribution towards the acquisition of the matrimonial home. That may very well be so but as stated by this Court in **Arthur (No 2) v Arthur (No2)** per Dotse JSC (as he then was)

"What should be noted is that, the courts in Ghana have for some time now started whittling down the over reliance on the contribution or substantial contribution principle to qualify for a share in property acquired during marriage upon the dissolution of the said marriage"

The learned Judge described the insistence of counsel in that matter for evidence of joint acquisition by the divorcing couple as *"ancient, archaic and backward proposition of law"*.

In **Arthur (N0 1)** it was clearly stated that property acquired during the course of a marriage is to be presumed to be marital property. Granted that the matrimonial home was acquired by the Respondent before he married the Petitioner, she contended that it was incomplete and was completed during their marriage and portions rented out, which rent went towards putting up the commercial property. it is also uncontroverted that the commercial property with shops became the Respondent's property during the course of the marriage. As stated by the Court of Appeal, the Respondent led no evidence that he inherited it from his mother. They obviously did not consider exhibit 5 as sufficient evidence of a gift of property from his mother as alleged. We, not being the trial court and in the face of concurrent findings of fact from the two lower courts do not consider the said exhibit sufficient reason to interfere with their apparent findings on this issue.

While it may be reasonable in certain circumstances to exclude gifts acquired during marriage from marital property, both the High Court and Court of Appeal did not find such a gift proved and there was no evidence on record that the Respondent intended to own this property exclusively. See the cases of

Mensah v Mensah [2012] 1 SCGLR 391

Quartson v Quartson [2013-2014] SCGLR

Arthur v Arthur (supra)

Fynn v Fynn & Osei [2013-2014] 1 SCGLR 727

The trial court was satisfied that the matrimonial home was incomplete at the time it was purchased. This was corroborated by PW1, the Petitioner's brother. The court was also satisfied that the parties lived elsewhere for several years, as admitted by the Respondent. The trial Judge concluded that this was to enable them complete the matrimonial home. The Court was further satisfied that the rent from the two bedrooms in the Taifa house went towards the building of the commercial property as stated by the Petitioner.

As stated earlier, it is not the duty of an appellate court to disturb the position of a trial court on findings of fact without good reason. The Court of Appeal found no such good reason. We also find none. See the case of

Obeng v Assemblies of God Church, Ghana [201] SCGLR 300 where the court stated as follows

> *"Where findings of fact had been made by the trial court and concurred in by the first appellate court (as in the instant case)* ***the second appellate court must be slow in coming to a different conclusion unless it was satisfied that there were strong pieces of evidence on record which were manifestly clear that the findings of the trial court and first appellate court were perverse. It was only in such cases that the findings of fact could be altered thereby disregarding the advantages enjoyed by the trial court in assessing the credibility and demeanour of witnesses"***

We do not find the present case to be one such.

The duty of a Court in divorce cases has been described as doing what is equitable. In **Boafo v Boafo [2005-2006] SCGLR 705,** this Court stated that what is fair and just would depend on the circumstances of each case. The Court put it this way

> *"The question of what is "equitable", in essence, what is just, reasonable and accords with common sense and fair play, is a pure question of fact, dependent purely on the circumstances of each case. The proportions are, therefore, fixed in accordance with the equities of any given case"*

We are satisfied that the trial judge's decision to award the matrimonial home to the Petitioner who had married the Respondent as young girl right after school for 15 years, had four children with her was equitable, in the circumstances of this case, especially in the light of the fact that he got to keep the commercial property with shops.

The Court of Appeal was satisfied that the trial court properly applied the law. Indeed under section 20 of The Matrimonial Causes Act, 1971(Act367) a Court can, where it thinks it just and equitable, convey immovable property as part of financial provision whether it was acquired before the marriage or solely by one party. The said section states as follows

> ***Property settlement.*** *(1) The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof* ***or as part of financial provision as the court thinks just and*** *equitable"*

The trial court's settling of the matrimonial property on the Petitioner whether or not it was completed during the sustenance of the marriage was, as stated earlier just and equitable and can further be justified under section 20. This strengthens our decision not to interfere with this award. This ground of appeal lacks merit and is dismissed.

The first ground of appeal is that the judgment is against the weight of evidence. A look at counsel's submissions on this ground is a mere recounting of the evidence led and a submission that the Petitioner was not able to prove that she contributed towards the purchase of the matrimonial home. Counsel implies that if indeed the Petitioner had still been married to the Respondent at the time she commenced this action she would have asked for the cancellation of the Respondent's marriage to another woman. Counsel also says Petitioner had been ill advised by her previous counsel to "try" her luck because of the "prevailing legal climate on the distribution of spousal property'.

Counsel further submits that the parties were divorced in the year 2000 on the balance of probabilities.

It is trite that such a ground of appeal calls for the court going through all the evidence on record to satisfy itself that the findings of the trial court are borne out by such evidence.

The first thing to be admitted is that the Petitioner did not prove financial contribution towards the purchase of the matrimonial home, on the balance of probabilities. She did not even sufficiently prove the financial ability to make such a contribution. However, from the authorities, proof of contribution, substantial or otherwise is no longer required for a spouse to benefit from marital property.

As stated earlier, Counsel for the Respondent offered no other basis for his position that the judgment is against the weight of evidence other than the absence of financial contribution on the part of the Petitioner. He has not been able to pinpoint any evidence which the trial court failed to apply or was wrongly applied against the Respondent.

For this reason, this ground of appeal also fails as being without merit.

In conclusion we find that the appeal fails in its entirety and is dismissed. The judgment of the Court of Appeal dated 29th April 2021 is accordingly affirmed

(SGD.) **A. LOVELACE-JOHNSON (MS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. YONNY KULENDI**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **B. F. ACKAH-YENSU (MS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **H. KWOFIE**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **Y. DARKO ASARE**
(JUSTICE OF THE SUPREME COURT)

<u>COUNSEL</u>

ALEXANDER QUARTEY ESQ. FOR THE PETITIONER/RESPONDENT

JOSEPH KAPONDE ESQ. FOR THE RESPONDENT/APPELLANT