

GHANA / JUDGMENT

KYEREMAH VRS ARHIN (C4/01/2015) [2024] GHACC 103 (27 February 2024)

COURT
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IN THE CIRCUIT COURT HELD AT TECHIMAN ON TUESDAY 27TH FEBRUARY, 2024 BEFORE H/H SAMUEL DJANIE KOTEY ESQ. SITTING AS A CIRCUIT COURT JUDGE REGINA AFIA KYEREMAH SN: C4/01/2015 VRS ARHIN DENIS

JUDGMENT

The petition for divorce was presented and filed before this court some nine (9) years ago. The journey to knowing whether the cause of action will succeed or not is going to be witnessed today. The parties have been married under the laws and customs of their people (safe to say akan custom as the petitioner is an akan woman) since 2005. The petitioner says that her marriage to the respondent has failed and wants the court to decree dissolution. She stated the grounds upon which she relies to claim that her marriage has broken down beyond reconciliation. Among others, the petitioner says that the respondent has failed to maintain her although he is in a position to do so. She also laments that the respondent has refused to have sex with her. Although the respondent initially answered the petition to say that he still loves the petitioner and wants her back, he later joined issues with the petitioner to say that the marriage has indeed broken down beyond reconciliation. Despite joining issues on the breakdown of the marriage beyond reconciliation, the respondent insisted that he wants the marriage to work as a result of which he says in his amended answer that he even pleaded through the Takofianohene and the Nyame Tease Sofo to intervene in the impasse and help reconcile them. He then accused the petitioner as one who is desirous of making money out of the marriage but failed to offer further particulars on that accusation. The respondent refuted the allegation by the petitioner that he has not been maintaining her. He averred in his answer to the petition that he struggles to maintain the petitioner from his irregular income source. As earlier said, the parties joined issues that the marriage has broken down beyond reconciliation. Apart from the issue of whether or not the marriage has broken down beyond reconciliation, the parties also joined issues that house numbered H 88/6 Brigade Techiman is jointly owned by the parties. On this issue also, the petitioner in her petition contended strongly, that the property in dispute was jointly acquired by the parties. According to the material facts pleaded by her in her amended petition, the land on which the building was put up, was gifted to the respondent by her (petitioner's) father at the time she was in a concubinage relationship with the respondent before they later got married.

She further alleged that she assisted the respondent to put up the disputed house on the said land. The respondent on the other hand says that he bought and paid for the said land out of his own pocket and built the disputed house from his own resources long before he married the petitioner. He claims that the disputed property is his absolute property and says that the petitioner has no share in that house. The petition before me turns on two main things: the dissolution of the marriage and if granted, the sharing of what the petitioner claims but respondent refutes as being the property acquired during the subsistence of the marriage. In the petition, the petitioner wants the court to share the said property identified as H/No. H88/6 Brigade-Techiman. In the cross petition by the respondent, the petitioner should be ordered to return foam mattress, sony television, television stand, video deck and two digital cameras. Given the issues for determination as outlined above, the court will first attempt to resolve the dispute regarding whether or not the marriage has broken down beyond reconciliation. If the court makes a determination that the said marriage has failed, then the next issue regarding the interest of the petitioner in the disputed property, if any, will also be resolved. In all petitions for divorce or dissolution of marriage which is accompanied by ancillary reliefs, the court must first make a determination as to the subsistence of the marriage and whether the determination of that will necessarily pave the way to determine the rights of the parties to the ancillary reliefs. The status of the marriage between the parties As earlier said, petitioner says that the marriage has broken down beyond reconciliation. The respondent argues to the contrary. The court will evaluate the evidence presented by both parties on the issue of the pendency of the marriage to determine whether or not on the preponderance of the probabilities, the marriage can be said to have indeed broken down beyond reconciliation. Despite the fact that the marriage between the parties is a customary marriage, the test of whether or not it subsists or pends is the same for marriage under the ordinance. Section 41(3) of the MATRIMONIAL CAUSES ACT, 1971 (Act 367) provides that section 2(1) of the same Act can be applied to a marriage other than monogamous marriage. In determining whether or not the marriage other than the monogamous marriage has broken down beyond reconciliation however, the court shall consider the following in the case of customary marriage:

- a. Willful neglect to maintain a wife or child;
- b. Impotence;
- c. Bareness or sterility;
- d. Intercourse prohibited under the personal law on account of consanguinity, affinity or other relationship;
- e. Persistent false allegations of infidelity by one spouse against another. The learned author William E. Offei in his book FAMILY LAW IN GHANA 5th edition wrote at page 188 that the above list is not exhaustive and that they are supplementary to other ground that the customary law of the parties may permit. In resolving this dispute, I hold that the list provided by section 41 of Act 367 is sufficient for the purpose for which the petition is to be determined. The petitioner in her evidence to the court first testified that the respondent

has married another woman from Wenchi and has even fathered a child with the said woman. She had sought to rely on her testimony and claim that the respondent has had a child by another woman as the basis among others for saying that the marriage has broken down beyond reconciliation. The respondent also denied this claim vehemently as though he has committed an unforgiveable sin and his life depended on it. Counsel for the petitioner did not only question the respondent about this when he was cross examining him, he also bombarded the witness of the respondent with several questions on this claim. Though both the respondent and his witness both denied the claim, if they had even admitted it, given that the parties were married under customary law, it was no sin for either parties to marry more than one. The marriage arrangement under customary law is potentially polygamous and can admit more than one spouse. Infact, I dare say that the potential to marry more than one spouse permissible under customary marriage is even wider than the scope admitted under Mohammedans marriage. So, if the petitioner was even able to prove on the preponderance of the probabilities that the respondent was married to another woman, it would not have been a basis under customary law to conclude that the customary marriage has broken down beyond reconciliation. The claim that the respondent has married another woman and has fathered a child with that said woman is therefore not a basis for finding that the marriage between the parties has broken down beyond reconciliation. Next, the petitioner says that the respondent has failed to maintain her. She testified that when the respondent said he will no longer continue the marriage relationship with her, he also stopped giving her house keeping money or allowance for her maintenance. None of the witnesses of the petitioner testified to this claim. The respondent also disputed this assertion but did not offer evidence to support it. The court nonetheless finds insufficient evidence on this claim of lack of maintenance of the petitioner by the respondent. The available evidence does not move the court to find the existence of that fact on the preponderance of probabilities. I am unable to hold that the marriage suffered as a result of lack of maintenance of the petitioner by the respondent. The petitioner further says that the marriage has failed because the respondent has refused to have sexual intercourse with her. In her testimony to the court, the petitioner testified that owing to the respondent allegedly having found another woman, he refused to have sex with her. She told the court that she reported the refusal by the respondent to have sex with her to one Mama Cynthia. She repeated her testimony under cross examination when it was suggested to her by counsel for the respondent that the respondent made efforts to have sexual intercourse with her. She also rebuffed a suggestion to her under cross examination that she has been refusing respondent sex with the excuse that she is having back pains. On this claim also, the witnesses for the petitioner did not testify to it. The respondent on his part did not testify in response to this claim. He however disputed it in his amended answer to the petition. Having put the matter in issue, the duty on the petitioner by law is to prove that assertion so that in the mind of the court, the claim will have a more probable occurrence than not. In the estimation of the court, from the evidence presented, the petitioner's claim that the respondent denied her sex has a less probable occurrence than not. The petitioner was very clear in her evidence that she reported the conduct of the respondent to Mama

Cynthia and some elders of their church. She did not invite any of those persons as witnesses of that fact. Her testimony alone on that claim was not sufficient to lead the court to make a definite finding that the respondent denied her sex. I know that issues of marital sex is a very sensitive issue to mention to persons outside of the marriage. It takes a lot of courage to be able to inform others of such matters. So, if the petitioner says that she mustered such courage to tell it to more than one person then if she invited just one of such person to testify, at the trial and that evidence is corroborated, it would have proved beyond doubt that there was such denial by the respondent. If such a third party was invited at the trial to testify to such claim of denial of sexual intercourse by the respondent, that would have established first of all that the issue was pervasive and also that it was true. Giving the sensitive nature of such issues, unless the matter or problem has persisted for a long time and has become a huge challenge to the petitioner, she will readily not open up to a third person. Therefore, if as she says she opened up to Mama Cynthia and she had come to court to testify to that disclosure, it would have proved to the court that the issue did persist and may have contributed to the failure of the marriage between the parties. In the absence of such evidence, this court cannot hold that the marriage between the parties has failed for willful refusal of the respondent to have sexual intercourse with the petitioner. There was then the claim by the petitioner that several attempts by prominent persons to resolve the parties differences affecting their marriage did not yield any positive results. From the provisions of the law on the grounds constituting breakdown of customary marriage given under section 41 of Act 367, although not specifically mentioned, failure by the parties to reconcile their differences may also be considered as a basis for concluding that the marriage of those parties has failed beyond reconciliation. First of all, to achieve dissolution of a marriage celebrated under either the ordinance law or customary law, the parties to that marriage must show that the marriage has broken down to the point where it was impossible to reconcile them or their differences. Thus, if evidence is offered to show that several attempts have been made to settle their differences but they all ended in a stalemate, then the marriage will be declared as having failed. In fact, the grounds provided under section 41 of Act 367 for customary marriage dissolution and under section 2 of the same Act 367 for ordinance marriage dissolution are all grounds that must result in breakdown of the marriage union to the point where it becomes irreconcilable. The marriage union must have broken down beyond reconciliation. The breakdown of the marriage under ordinance beyond reconciliation, as said under section 2 of Act 367 may be because of adultery by the respondent and the petitioner finding it intolerable to live with the respondent; or that it is because the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition, etc. Under section 41, the breakdown of the customary marriage beyond reconciliation may be due to willful neglect to maintain a wife or child; impotence; bareness etc. I hold that the fact that the parties have irreconcilable differences which affects the marriage can be a basis upon which the marriage can be found to have failed or broken down beyond reconciliation. The irreconcilable difference between the parties to the

marriage can first break the marriage and further, do so beyond reconciliation. The parties in this case both admit that their marriage has gained the attention of many prominent persons in their lives. One of them was Petitioner's witness three (3) Nana Mohammed Brempong Twi II. They also inform the court that the pastor of the church that petitioner's mother attends was also involved in an attempt to reconcile the parties. The father of the petitioner also told the court in his evidence that he has made several attempts to reconcile the parties but has failed to achieve that result. The respondent's father who testified as his witness also told the court of his attempt to reconcile the parties which also failed to achieve any result. The petitioner testified that she left the matrimonial home because of the conduct of the respondent. The petitioner's father also testified that when her daughter left the matrimonial home the first time, he sought the intervention of the third witness for the petitioner and he intervened and petitioner went back to the matrimonial home. I am told that not long thereafter, a fight ensued between the parties and the petitioner left the matrimonial home again. The petitioner has since the second time she left the matrimonial home has been staying with her parents in their house. The chief of Takofiano who was invited by the petitioner's father to try and settle the dispute reported to the court in his testimony that when he invited the respondent to his home to talk to him about the situation in his marriage, the respondent shrug off with the excuse that he had not come to see him for him to settle the dispute. Whatever those differences between the parties, given the number of person who have been involved in trying to reconcile the parties, I come to the conclusion that they were quite serious. The parties clearly have some irreconcilable differences between them. The parties have permitted those differences to separate them from each other from the early stages of the marriage till now. The parties have enjoyed their separate lives at least till the presentation of the petition. It does not appear to the court that the parties will be able to go back to each other and remain married. No matter how many times they are made to go back and live with each other, they will not be able stay together as couple until those barriers have been removed. Given the caliber of eminent persons who have attempted to reconcile the parties and have failed, I shudder to think that there will ever be any intervention by any person or group of persons that can achieve the objective of reconciling the parties. Marriage under our custom is one that merges the families of both parties. Consequently, the interest of families of the parties in the success of the marriage cannot be over emphasized. I gather from the evidence before me that the families of both parties have also made several unfruitful attempts to reconcile the parties. Their failure is not isolated. They have failed because the parties are not ready to come together as one. The respondent was waxing lyrical about being interested in the marriage, yet he contributes little to nothing to achieve that dream. He was only paying lip service in court. His conduct was inconsistent with what his lips proclaimed. From the totality of the evidence adduced before me, I hold that the marriage between the parties has failed due to their irreconcilable differences. The court now proceeds to determine the claim by the petitioner for property settlement. The subject of the plaintiff's claim is H 88/6 Brigade Techiman. The petitioner says that the land was a gift from his father to the respondent at the time she was in a concubinage relationship with the respondent. She also says that she

offered substantial contribution towards the acquisition of the said property. As a consequence of the above, she prays the court to hold that she jointly owns the property with the respondent. The respondent also disputes the plaintiff's claim for a joint share in the dispute property. He says that he acquired the land with his own money at a time he had not married the petitioner. He also continues that he completed building the disputed house before marrying the petitioner. As a consequence also, he says that the petitioner has no interest in the disputed property. Petitioner's claim to the disputed property is based on substantial contribution and the alleged gift of the plot of land to the respondent. The petitioner's evidence of substantial contribution was offered by herself and her father as her first witness. Her evidence of gift of the land to her and the respondent by her father was offered by herself, her father as her first witness and her second witness who happens to be the chief of Hansua where the subject property is located. Evidence of contribution by the petitioner. The petitioner testified that the house was built at the time that she was not married to the respondent but was being courted by the respondent. She said that she was in a courtship leading to marriage with the respondent from 2003 until they got married in

2005. The petitioner revealed under cross examination that she actually moved in with the respondent in the latter's father's house in the year 2002 before the respondent went to perform the knocking ceremony for her hand in marriage in 2003. According to the testimony of the petitioner, it was during this period that the property was acquired. She told the court that she was working as a hairdresser at the time the property was acquired and contributed towards the acquisition of the property with monies she made from her work as hairdresser. She also testified that she later rented the shop she was operating from and used the proceeds from the rent to support the respondent to put up the house. The second witness for the petitioner also testified that the respondent came to perform the knocking ceremony for the petitioner's hand in marriage in 2003. He testified that the petitioner moved in with the respondent to live with him after the knocking ceremony in
2003. In the testimony of this witness, the petitioner was operating a susu banking and when she went for the money, he advised her to give the money to the respondent to support the putting up of the building in dispute. He further testified that the petitioner fetched water for the labourers when they were putting up the subject property. Apart from the claim that she contributed financially and in other ways towards the construction of the disputed house, the petitioner also makes a strong case for a joint interest in the property based on her claim that the land was gifted to her and the respondent by her father. She testified that at the time that the land was gifted to her and the respondent, they were engaged to each other to be married. The petitioner's father testified that the land belonged to him after it had been given to him by the Chief of Hansua. He told the court that when the petitioner told him that the respondent needed a plot of land, he went to see the Chief of Hansua who represented his family for some plots to be allocated to him. He told the court that he was given four plots of land by the Chief of Hansua and signed allocation chits for him covering those lands. He said that he then gave the respondent one plot and wrote his name on the allocation chit already signed by the Hansuahene. He said that he kept the original

allocation chit for the plot he had given to the respondent and gave him a photocopy of the said allocation chit. He tendered the said chit in evidence as exhibit A. The Hansuahene was also invited as a witness in this action by the petitioner. His evidence before the court corroborated what the father of the petitioner had earlier testified to regarding how he was given the land by the Hansuahene. He testified that he gave the plot to the petitioner's father as a member of his family. He further testified that he never sold the present land to the respondent and that he did not know the respondent as the one who was in occupation of the land until he met the petitioner in the house on the land and upon his inquiries, the petitioner told him that the plot was given to them by PW2. On the part of the respondent, he testified that he acquired the property in dispute before he got married to the petitioner. He testified that even at the time he married the petitioner, she was a mere apprentice who was not earning any money so she could not have been able to provide financial assistance towards the building of the disputed property. On why he did not have the documents to the land, he testified that when the petitioner was leaving the house, she took away the allocation chit and suspects that is what she gave to her father to tender in evidence before the court. He testified that he acquired the plot in 2001 and the allocation chit for the land issued to him was also dated

2001. When exhibit A was showed to him, he confirmed it was the allocation chit issued for the land to him but said that the date on it was rather 2001 and says the date has been changed to 2003. The respondent's father also testified for the respondent. In his evidence on this issue, he told the court that the respondent acquired the land in 2001 and started to put up the disputed house in 2002. He testified that he assisted the respondent to acquire the land on which the disputed building was put up. The court preponderates towards the evidence presented by the petitioner more than it does towards the respondent's on the acquisition of the land on which the building has been put up. The story of the grantor of the land supports the evidence of the petitioner as against the respondent. In the case of *BAMFO V. SINTIM* (J4/26/2011)[2011]GHASC 32 (30 NOVEMBER, 2011) the Supreme Court speaking through Rose Owusu JSC held that in a dispute over title to the same land, the failure by a party to invite his grantor to come and confirm his grant is fatal. The court advised that the court should favour the party who invites the common grantor to come and testify in support of his or her case. The grantor to the land is the chief of Hansua who was in court to testify for the petitioner. He testified that he gave the land to the petitioner's father. This lends credence to the story that the petitioner's father told the court that he gave the land to the respondent. The petitioner's father also testified that he gave the land to the respondent and he did so in the year 2003. The giving of the land to the respondent by the petitioner's father is significant for the date it was given. It is not very significant for the fact that it was made. The fact of the gift of the land to the respondent by the petitioner's father is not conclusive evidence that the petitioner shared in the interest of the said land. It is important to determine when the land was acquired and whether it was done before the parties got married or after. Before I come to this important reason for exhibit A and the fact of the making of the gift, let me address the tangential claim by the petitioner to the

disputed land. The petitioner told the court that the gift of the land was made to both herself and the respondent. The evidence rather shows that the gift of the land was made to the respondent alone as evidenced by petitioner's own exhibit A. If the land was gifted to both parties, then exhibit A would have been made in their joint names especially since it was prepared by the petitioner's own father. It was only the petitioner who told the court that the land was gifted to both of them. Her own father's testimony contradicts this claim by the petitioner. To that extent therefore, I am unable to hold that the land was gifted to both parties jointly. However, as I noted earlier, exhibit A confirms that the land was given to the respondent in the year 2003. The defendant's claim that he purchased the land in 2001 was not backed by the facts established from the evidence in this case. The reason the date on which the land was given to the respondent is important is because of the claim by the petitioner that she contributed towards the acquisition of the property because she was in courtship with the respondent. The evidence before the court shows that the parties were in a relationship with intent to married as far back as 2003 before the gift of the land was made to the respondent by the father of the petitioner. According to the accounts of the petitioner's father, the respondent came in the company of another person in 2003 to present drinks and money to inform him that he was in a relationship with the petitioner and that if he was looking for his daughter, he will find her with him. He said the respondent promised to return to perform the marital rites for the petitioner's hand in marriage which he did subsequently in 2005. From the evidence led on this issue about the date of their courtship, I accept the evidence of the petitioner over the respondent's evidence. The respondent testified to the fact about the date of the marriage and denied that there was ever a relationship between them. Meanwhile, his own father testified that he saw the petitioner in his house before the marriage. When asked what the petitioner was doing in the house when he saw her, he responded that she had come to sleep there. In the evidence of this same witness under cross examination, he told the court that the petitioner visited the respondent in his house before they got married. He said he saw the petitioner in the house each time he visited the place for about a year before the marriage. This piece of evidence from the respondent's own witness confirms the testimony of the petitioner on the same issue. In the case of *OSEI YAW AND ANO V. DOMFEH* [1965] GLR 418, where the Supreme Court held that:- "Where the evidence of one party on an issue in a suit corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one, unless for some good reason (which must appear on the face of the judgment) the court finds the corroborated version incredible or impossible." On the authority of the Supreme Court decision in the above case, I accept the evidence by the petitioner that she was in a relationship with the respondent leading to marriage before 2005 when they got married. This ties in nicely with the petitioner's contention that during the time she was in the relationship with the respondent awaiting marriage, she contributed towards the acquisition of the disputed property. She testifies to fetching water for the workers who put up the building. She also testified to contributing financially towards the acquisition of the property. The petitioner's

testimony was corroborated by the father of the petitioner. The respondent's witness who testified for the respondent on this issue, said that the petitioner did not assist with the putting up of the house. He testified that he was going to the site during the construction of the house with his son (respondent). When asked whether he ever saw the petitioner at the site of the construction, he said no. When asked to name the mason and carpenter who worked on the building, he could not provide their names. Meanwhile, in some few sentences earlier, he had stated that his son went the same mason who put up the house to pay for the land in dispute. This was quite intriguing to listen to. The story of the respondent's witness on the issue fails to impress the court. The accounts of the respondent on this issue as well as his witness fails to prove on the preponderance of the probabilities that the petitioner did not offer the contribution she claims to have offered. I find the evidence presented by the petitioner and her witness more convincing than that presented by the respondent and his witness. I hold therefore that the petitioner provided sufficient evidence that she contributed towards the acquisition of the property in dispute. But, aside the evidence of contribution towards the acquisition of the house, can the petitioner be made to benefit from the presumption of joint ownership under Article 22 of the Constitution? It has been stated by the Supreme Court in the case of *MINTAH V. AMPENYIN* (J4/18/2013) [2015] GHASC 10 delivered on 25th March, 2015 that to invite the court to apply the equality is equity principle to a relationship other than monogamous marriage is ambitious. The court delivered itself through Justice Akamba JSC now retired. The court in the above case held that the scope of the equality is equity principle is limited to spousal relationship which creates a status that goes with certain rights and duties. The learned Justice had the following to say: "The invitation by appellant counsel to bring this case under the spectrum of *Mensah v Mensah* (1998-1990) SCGLR 350 and *Boafo v Boafo* (2005-2006) SCGLR 705 is to say the least most ambitious. I will add to counsel's list of the above cases the most recent case of *Mensah v Mensah*

- (2012) 1 SCGLR 391 on the same subject matter and to state that the principle of equality is equity that runs through those lines of cases applies in an environment of spousal relationship which creates a status that goes with certain rights and duties which are fixed by law and custom, but the same cannot be said of concubinage relationship." It is a known fact the equality is equity principle developed by the Supreme court was based on the provisions of Article 22 of the Constitution. Article 22 of the Constitution is headed 'Property rights of spouses'. There is no denying of the fact that the provisions of Article 22 are applicable to spouses. Thus, for any relationship other than marriage, the court cannot make reasonable provision (otherwise resolved by the Supreme Court as being equal provision) for a partner acting on the basis of the presumption of joint ownership in the property acquired during the marriage. The presumption was an invention of the Supreme court to achieve the aim of Article 22 until the parliament of Ghana passes the legislation on the distribution of matrimonial properties as admonished by the Constitution. Before the presumption was pronounced by the Supreme court, what operated was the substantial contribution doctrine. The substantial contribution doctrine required that a spouse can

only benefit from the property acquired during the marriage after demonstrating to the court that she contributed substantially towards the acquisition of the property. See cases such as *ACHEAMPONG V ACHEAMPONG* [1982- 83] GLR 1017-1039 where the Court of Appeal held thus: "... in exercising the discretion, ... the court in the absence of agreement, must also take into consideration the financial contribution which the applicant made towards the acquisition of the property or properties in question. The contribution may be direct or indirect; and once it is regarded as substantial contribution, it cannot be ignored" The substantial contribution doctrine was ideal for situations outside of marriage where the parties who have contributed towards the acquisition of properties seek the intervention of the court in sharing the properties in the absence of any agreement by the parties. Thus, in an arrangement where parties contributed jointly towards the acquisition of a property, the court in sharing such property between such parties in the absence of any agreement by the parties as to how the property is to be shared, will consider the contribution by each party in determining their respective shares in the property. The interest of each party in the property will be based usually on the ration of contribution towards the acquisition of the property. This is what is known as pro rata in law. In this sense therefore, for a relationship which did not travel to the stage of marriage, the court will have to apply the substantial contribution to share the property acquired by the parties pro rata. In the case of the one before me, the property was acquired by the parties before the marriage. They subsequently married each other. It has not been established that the property has been improved or repaired during the period of the marriage of the parties. There is however some evidence from the respondent that after the marriage, he extended electricity to the house after his marriage to the petitioner. The court therefore will proceed on the assumption that the property as was put up before the parties got married has not changed in its nature. Thus, the substantial contribution principle ought to be applied to share the property in dispute. In this sense, the court will have to assess the contribution by the petitioner to the acquisition of the property as well as that of the respondent. Petitioner provides evidence that she fetched water which was used for the construction of the house. She also provided evidence that she provided financial assistance to the respondent to use in putting up the house. As established by evidence before this court, the land was a gift to the respondent by the petitioner's father. The petitioner does not share in that gift. There was no evidence that the land was given to both parties jointly. In the absence of such evidence, the land will be considered as the respondent's contribution to the property. Since the respondent contributed the land and other financial contribution towards the acquisition of the property in dispute, I hold that his interest in the house must not be equal to that of the petitioner. The justice of the case will advise that the respondent's interest in the house should not be less than 60 percent with the remaining 40 percent going to the petitioner. In the circumstance of the case and taking into account the evidence that electricity was extended to the house after the marriage and the contribution of the petitioner to the acquisition of the property before marriage, I find it just to award the petitioner 40% interest in the disputed property taking into account her evidence of contribution towards the acquisition of the property before

the court. The petitioner also prays for alimony of Ghc 10,000.00 from the respondent. The respondent says that the petitioner is not entitled to the said claim. In Ofei's book, at page 151, he wrote on such claims as follows: "The amount of maintenance payable by a husband to a wife must depend, however, on the respective incomes of the parties. The wife must also work. She cannot be idle, remain unemployed and expect the husband always to maintain her; depending of course on the circumstances of each case" From the evidence before me, the petitioner is a trader and seamstress. The respondent is also a carpenter. There was no evidence that since the marriage of the parties, the petitioner had been exposed to a lifestyle that will require sustenance for some time as a justification for the claim of alimony. I am unable to find evidence to justify the claim of Ghc 10,000.00 by the petitioner against the respondent. The claim for the payment of Ghc 10,000.00 by the petitioner against respondent is accordingly dismissed. The respondent in his cross petition also sought an order of the court directed at the petitioner to return some items respondent claims she took from the house when she was leaving the house. There is evidence that the petitioner has moved out of the matrimonial home. The respondent testified in his evidence that the petitioner carried those items with her when she was leaving the house. The petitioner in her evidence to the court denied taking those items. There was no further evidence from the respondent to prove that indeed those items are now with the petitioner. The respondent has also not provided evidence that he acquired the said properties and that he owned them. I am not satisfied by the evidence presented by the respondent on this claim. Accordingly, I am unable to find for him on this claim. The claim by the respondent for an order directed at the petitioner to return some items to him is accordingly dismissed. I also dismiss the claim by the respondent for the award of Ghc 12,000.00 to him against the petitioner for want of evidence. In conclusion therefore, the petition is granted. The customary marriage between the parties is hereby dissolved. The court holds that the petitioner has an interest in H 88/6 Brigade Hansua Techiman up to 40% with the remaining 60% declared as owned by the respondent. The claim for Gh 10,000.00 alimony is dismissed. The respondent's cross petition is dismissed in its entirety. SGD HH SAMUEL KOTey Legal representation Nana Sekyere Boateng for Petitioner present Kwasi Opoku for Respondent present

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