

GHANA / JUDGMENT

Lekuu Vrs Ekaa [2023]

GHADC 460 (6 February 2023)

[2023] GHADC 460

COURT

District Court

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IN THE DISTRICT COURT 2, TAMALE HELD ON MONDAY 6TH FEBRUARY, 2023 BEFORE HIS WORSHIP D. ANNAN ESQ. BETWEEN SUIT NO. A4/5/22 AGARTHA LEKUU - PETITIONER AND EMMANUEL SEGLAARO EKAA - RESPONDENT

JUDGMENT

INTRODUCTION

1. This judgment relates to dissolution of marriage.
2. The parties herein married under the Marriage Ordinance, 1951 Rev. (CAP 127) on 17th October, 2015 at the Saints Peter & Paul Parish, Tamale in the Northern Region of Ghana. The parties are Ghanaian citizens. The Petitioner described herself as a Principal Enrolled Nurse while the Respondent is a Nursing Officer, both with the Ghana Health Service. There are two issues of the marriage: Shadrack Normu
 - 1 - Seglaaroo, 8yrs and Ephraim Azaviel Seglaaro, 6years. There are listed properties to which I shall consider later in this judgment.
3. On 4th April, 2022 the Petitioner filed this petition against the Respondent for the following reliefs:
 - a. Dissolution of the marriage between the parties herein.
 - b. Custody of the issues of the marriage: Shadrack Normu Seglaaroo, 8yrs and Ephraim Azaviel Seglaaro, 6years.
 - c. Maintenance of the issues for life, until they attain maturity.
 - d. An equal share of the matrimonial properties.

- e. Lumpsum compensation for emotional stress, pain and suffering caused by the actions and inactions of the Respondent, waste of the Petitioner's time and loss of amenity or in the alternative such period alimony as the court deems fit.
 - f. That the Respondent be ordered to pay the costs of the suit.
4. The Respondent on 5th May, 2022 filed an answer to the petition basically praying the court for a dissolution of the marriage, custody of the issues of the marriage and reasonable access to be given to the Petitioner, and that each party bears his/her own costs. The Petitioner on 25th May, 2022 filed a reply to Respondent's answer.
5. The court in its ruling dated on 20th July, 2022 made interim orders based on compromises by the parties herein. Subsequently, this case was set down for trial. The respective cases of the parties are detailed below. PETITIONER'S CASE
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6. The Petitioner's case is that the Respondent has committed adultery, deserted the marriage and behaved in such a way that she cannot reasonably be expected to live with the Respondent as a wife.
7. According to Petitioner, Respondent has been in an affair one after the other. She indicated that she found condoms in Respondent's clothes when washing and when she confronted Respondent, Respondent would physically assault her. She averred that the Respondent is cohabiting with one Bernice. Also, Respondent is consulting with his ex-girlfriend, Fransica Nyaaba, for a US Diversity Green Card Lottery. She further averred that she overheard Respondent in an amorous conversation with one Paulina.
8. Regarding desertion, the Petitioner stated that the Respondent had packed bag and baggage and left the matrimonial home on 24th January, 2022 without her consent.
9. Paragraph 16(a)-(z) of the Petitioner's petition detailed the grounds of unreasonable behaviour. According to the Petitioner, the Respondent assaulted her physically and verbally, both at home and in public. She stated that Respondent beats her in the presence of the children at home. And in public, Respondent in one occasion physically assaulted her to the extent that she lost a tooth. In another occasion, at which time she was pregnant, Respondent beat her till she was unconscious. She added that the Respondent has neglected his responsibilities towards the upkeep of the family. According to Petitioner, Respondent does not maintain the home, pay for the children's school fees, rent, medical expenses and utilities. She stated that the Respondent abandoned her and the children on the expiration of their rent in December, 2021 and has failed to pay for the rent thereof. Petitioner stated further that in 2013 Respondent informed her that his salary had ceased because his name had

- 3 - been deleted from the Controller and Accountant General's payroll, so she solely maintained the family until 2015. She, however, found out later that Respondent had been restored as far back as 2013 and when she confronted him, Respondent could not utter a word. Also, Respondent frustrated her efforts to advance her nursing education.
- 10. On custody of the issues, Petitioner asserted that the Respondent is a habitual drunk who returns home at night or the morning thereof. In addition to Respondent's unreasonable behaviour, Petitioner averred that Respondent has been irresponsible towards the upkeep of the children such that he cannot be trusted to care for the little children.
- 11. Regarding the properties, the following properties/assets were acquired during the marriage:
 - a. Eight (8) plots of land at Yilonaayili Residential Area Extension, Tamale.
 - b. Plot No. 10, Block A Tempe Kukuo Residential Area, Tamale.
 - c. A plot of land at Manshegu to which Respondent took an amount of GHS1,500.00 from Petitioner in 2014 to start construction of the matrimonial home.
 - d. Business presently known as Agawood (previously known as Family Health Promoters and Edmack Independent Distributors).
- 12. Petitioner tendered in evidence the following exhibits:
 - a. Exhibit A –Marriage Certificate dated 17/10/15
 - b. Exhibits B and B1 – Medical Reports on Petitioner's antenatal visit
 - c. Exhibit C – Copy of Admission Letter into Catholic University College of Ghana
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 - d. Exhibits D-D4 – Copies of receipts of the children's school fees
 - e. Exhibit E – Letter Restoring Respondent's salary in 2013
 - f. Exhibit F – Photograph of foodstuff
 - g. Exhibit G – Extract of Sales Records of the business
 - h. Exhibit H – Copy of Investment of the eight plots of land at Yilnaayili, Tamale
 - i. Exhibit J – Copy of receipt of rent paid by the Petitioner RESPONDENT'S CASE
- 13. Respondent, on his part, stated that after marriage the Petitioner was at Bole and later joined him in Tamale in 2015. However, upon joining him there have been numerous disputes between them. Hence, parties agreed to live separately. So he packed out of the matrimonial home. Respondent indicated that before the separation, he had been paying the rent, school fees of the children and maintaining the home, save that the Petitioner is unappreciative. He contended that the Petitioner in 2021 changed the school of the children

without notice to him. He disputed that he had committed adultery, desertion or behaved unreasonably. He indicated that the Petitioner rather behaved unreasonably such that the he cannot be expected to live with her as a husband, see paragraph 14(a)-(m) of his witness statement. According to Respondent, Petitioner does not respect him and abuses him verbally and physically in public, thereby hurting his ego and self-esteem. Also, Petitioner denies him sex, but would falsely accuse him of infidelity with one Paulina, Francisca Nyaaba and Bernice. Respondent added that although he provides money for feeding, Petitioner would refuse to give him food such that he had to eat outside. He stated that Petitioner in September 2021 indicated that it was not prudent for both parties to live together, else one may end up dead. As a result he, Respondent, has lived in constant fear of his life. He added that in January 2022 Petitioner threatened his life with a knife. In effect, he

- 5 - does not dispute the dissolution of the marriage, but prays for custody of the children and the Petitioner given reasonable access. Also, parties to bear their respective costs.

14. Respondent tendered in evidence:

- a. Exhibit 1 – copies of rent receipts
- b. Exhibits 2-2E - copies of receipts of the children's school fees. THE EVIDENCE AND THE LAW

15. At this moment, I will first determine whether or not the marriage has broken down beyond reconciliation. Thereafter, I shall proceed to determine whether or not the parties are entitled to their ancillary reliefs. It is important to mention here that a matrimonial cause, being a civil case, the burden of persuasion is that of the preponderance of probabilities, see ss. 11(4), 12(1) & (2) and 14 of the Evidence Act, 1975 (NRCD 323). Dissolution of the Marriage

16. Section 1(2) of the Matrimonial Causes Act, 1971 (Act 367) provides that a decree for divorce shall be granted only on the ground that the marriage between the parties has broken down beyond reconciliation. Section 2(1) of the Act 367 specifies the conditions to prove that the marriage has broken down beyond reconciliation as follows:

- a. that the Respondent has committed adultery and that by reason of such adultery the Petitioner finds it intolerable to live with the Respondent;
- b. that the Respondent has behaved in such 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 preceding the presentation of the petition;

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- d. that the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to the grant of a decree of divorce; provided that such consent 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 five 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.
17. The law, therefore, enjoins either party to satisfy the court on one or more of the aforementioned grounds for a dissolution of the marriage, see also the cases of *Ansah*
- v. *Ansah* [1982-83] 2 GLR 1127 and *Akoto v. Akoto* [2011] 1 SCGLR 533 Section 2(3) of Act 367 further provides that: “Although the Court finds the existence of one or more of the facts specified in subsection 1, the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.”
18. From the evidence, I find that Petitioner failed to lead sufficient evidence in proof of adultery and desertion. However, she was able to provide sufficient evidence in support of unreasonable behaviour.
19. According to the Petitioner, the Respondent has behaved in such a manner that she cannot reasonably be expected to live with him as a wife. She averred that the Respondent assaulted her physically and verbally, both at home and in public. She stated that Respondent beats her in the presence of the children at home. And in
- 7 - public, Respondent beat her to the extent that she lost a tooth. She added that the Respondent neglected his responsibilities towards the upkeep of the family. For instance, Petitioner averred that Respondent indicated his salary had ceased because his name had gone off the Controller and Accountant General’s payroll in 2013 and so she had to maintain the house, only to find out in 2015 that Respondent had been restored in 2013. She added that the Respondent abandoned her and the children on expiration of their rent in December, 2021 and has failed to pay for the rent thereof. The Respondent also indicated that there have been several disputes between them to which both agreed to separate. Both parties admitted that all attempts at reconciling their differences have proved futile.
20. On the totality of the evidence, I have no hesitation in concluding that the marriage has broken down beyond reconciliation. In effect, I, therefore, decree that the marriage between the Petitioner and the Respondent herein, celebrated 17th October, 2015 at Saints Peter and Paul Parish, Tamale with certificate number 2015/83 and licence number TR/11/0011 be and is hereby dissolved. Divorce certificate to issue. Distribution of Spousal Properties

21. The law regarding properties acquired during the subsistence of a marriage is that such properties are presumed to be jointly acquired, unless evidence is led to the contrary, see the recent case of *Peter Adjei v Magaret Adjei* [2021] DLSC 10156 per His Lordship Appau JSC (delivering the majority decision) where he recounted in detail this position as well as the exceptions thereof. He stated: “It is trite law that no two cases are alike and that every case is fact-sensitive, for that matter, each case must be determined on its peculiarities. However, this apex Court has, by its decisions, laid down general principles that guide the Courts in their application of the laws to peculiar circumstances. With regard to the
- 8 - distribution of jointly acquired properties ..., this Court, in a plethora of decisions, has outlined and refined the principles that should guide the courts in their determinations. The decisions of this Court, dating back to the case of *Mensah v Mensah* [1998-1999] SCGLR 350, per Bamford-Addo, JSC, which we shall term the first *Mensah* case, then to *Boafo v Boafo* (supra); then the second *Mensah v Mensah*, (supra) per Dotse, JSC; *Quartson v Quartson* (supra); *Arthur v Arthur* (supra) and *Fynn v Fynn* (supra), have set out the parameters for determining which properties could be termed as ‘jointly-acquired marital properties’ and the criteria for the distribution of such properties. All these decisions were influenced by the provisions of the 1992 Constitution under articles 22(2) & (3) on ‘Property rights of spouses’; 33 (5) on ‘Protection of rights by Courts’ and the provisions of section 20 of the Matrimonial Causes Act, 1971 [Act 367]. Articles 22(2) & (3) and 33(5) of the 1992 Constitution particularly, read: - ‘22 (2) Parliament shall, as soon as practicable after 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 decisions referred to supra is that; any property that is acquired during the subsistence of a marriage, be it customary or under the English or Mohammedan Ordinance, is presumed to have been jointly acquired by the couple and ...should be shared between them on the equality is equity principle.
 - 9 - This presumption of joint acquisition is, however, rebuttable upon evidence to the contrary – see the *Arthur* case supra, holding (3) at page 546. What this means, in effect is that, it is not every property acquired single-handedly by any of the spouses during the subsistence of a marriage that can be termed as a ‘jointly- acquired’ property to be distributed at all cost on this equality is equity principle. Rather, it is property that has been shown from the evidence adduced during the trial, to have been jointly acquired, irrespective of whether or not there was direct, pecuniary or substantial contribution from both spouses in the acquisition. The operative term or phrase is; ‘property jointly acquired during the subsistence of the marriage’. So where a spouse is able to lead evidence in

rebuttal or to the contrary, as was the case in *Fynn v Fynn* (supra), the presumption theory of joint acquisition collapses. In the 1998 *Mensah* case (supra) per Bamford-Addo, JSC, this Court held that; ‘property jointly acquired during marriage would become joint property of the parties and such property should be shared equally on divorce, because the ordinary incidents of commerce had no application in marital relations between husband and wife who had jointly acquired property during marriage’. Notwithstanding this decision, there was still a little bit of confusion as to which property could be described as jointly acquired marital property when spouses in such litigations, lay exclusive proprietary rights or ownership over some of the properties disputed as joint properties. It was this confusion that prompted this Court in the second *Mensah* case (supra) per Dotse, JSC, to introduce the ‘presumptive ownership’ principle, which was affirmed and became rooted in *Arthur v Arthur* (supra) per Date-Bah, JSC. In the *Arthur* case, the Court held at holding (3) as follows:

- 10 - ‘The Supreme Court in *Mensah v Mensah* had interpreted the provision in article 22(3) (b) of the 1992 Constitution liberally and purposively to mean that joint acquisition of assets was not limited to property that had been acquired as joint or as common tenants; but rather any property acquired by the spouses during marriage was presumed to be marital property. Thus marital property was to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse had made a contribution to its acquisition. The Supreme Court would affirm that concept of marital property. However, consideration of cases and statutes in the United States would suggest that property acquired by gift during the marriage should be excluded from the concept of marital property. That exception seemed sound in principle. Indeed, other exceptions might need to be carved out to the broad definition of marital property’. With the decisions in the *Mensah*, *Quartson* and *Arthur* cases (supra), it was no longer essential for a spouse to prove a direct, pecuniary or substantial contribution in any form to the acquisition of marital property to qualify for a share. It was 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 a contribution must render or offer it to quantify his/her share or portion in the property so acquired on the equity principle. The rationale behind this position was that the duties performed by the wife in the home like cooking for the family, cleaning and nurturing the children of the marriage, etc. which go a long way to create an enabling atmosphere for the other spouse to work in peace towards the acquisition of the properties concerned, was enough contribution that should merit the wife a share in the said properties.
- 11 - It must be emphasized, however, that it is not every wife to a marriage who diligently performs this marital role that the courts, since the days of *Rimmer v Rimmer* [1952] 1 QB 63 @ p 73, per Denning LJ, have talked so much about. It is therefore necessary that such a contribution or non-contribution must be demonstrated in the evidence adduced at the trial. It is for this reason that the authorities regard this general principle of ‘joint-acquisition’ as a presumption that could be rebutted by contrary evidence. Thus, in the *Fynn* case (supra), this Court distinguished the right of an individual to acquire property exclusively during the subsistence of a marriage, from its earlier decisions in the *Mensah* and *Quartson* cases

(supra). This Court held that there are situations where, within the marital union, parties may acquire property in their individual capacities as envisaged under article 18 of the 1992 Constitution, which provides under clause (1) as follows: “Every person has the right to own property either alone or in association with others.”

22. With the above, it is clear that properties acquired during the subsistence of a marriage are presumed to be jointly acquired, unless evidence is led to the contrary. In our instant case, Petitioner indicated that the following assets/properties were acquired during the marriage:

- a. Eight (8) plots of land at Yilonaayili Residential Area Extension, Tamale.
- b. Plot No. 10, Block A Tempe Kukuo Residential Area, Tamale.
- c. A plot of land at Manshegu to which Respondent took an amount of GHS1,500.00 from Petitioner in 2014 to start construction of matrimonial home.
- d. Business presently known as Agawood (previously known as Family Health Promoters and Edmack Independent Distributors).

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23. From the evidence, Respondent disputed the Manshegu land saying that that was acquired before the marriage. Petitioner did not lead any further evidence when Respondent disputed this claim under cross examination. In light of s. 14 of NRCD 323 and *Fynn v Fynn* (supra), the Petitioner therefore does not benefit from the Manshegu land. However, with the other properties Petitioner was able to lead sufficient evidence to the effect that the eight (8) plots of land at Yilonaayili Residential Area Extension and plot no. 10, Block A Tempe Kukuo Residential Area were all acquired during the marriage. She added that she had been to plot no. 10 Block A Tempe Kukuo Residential Area, several times. Regarding the business, Respondent contended that it is a franchise. Petitioner, on her part, averred that she supported the business as well as worked on the sales. Despite not having extensive knowledge about the company/business, there is sufficient evidence to the effect that she contributed to the operations or growth of the business in its life span, i.e. from Family Health Promoters to Edmack Independent Distributors and now Agawood. In effect, Petitioner is entitled to an equal share in the eight (8) plots of land at Yilonaayili Residential Area Extension and plot no. 10, Block A Tempe Kukuo Residential Area, both in Tamale. Also, I will award Petitioner a 30% share/interest in Agawood. Respondent gets nothing in the Manshegu land. Custody of the Children and Maintenance

24. Section 2 (1) of the Children’s Act 1998 (Act 560) captioned, Welfare Principle of a Child provides that: “The best interest of the child shall be paramount in any matter concerning a child, and it shall be the primary consideration of any court, person, institution or other body in any matter concerned with a child”.

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25. In considering what constitutes the benefit of the child, Owusu-Addo J in *Ansah v Ansah* (supra) held in holding 3 that: "... the Court's duty was to make an order which was reasonable for the benefit of the children. In deciding what was in the best interest of the children, the conduct of the parents, ... the pattern of life set up for the children since cohabitation ceased between the husband and wife were important matters to be taken into consideration"
26. On the claim of maintenance, section 47 (1) of Act 560 stipulates that: "A parent or a person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, basic education and reasonable shelter for the child."
27. From the evidence, Respondent contended that both parties are of the Dagara custom which is patrilineal in nature and that if the man is alive but divorced, then the father has the right of custody to the children, but not the woman. I find this argument as misplaced. First this case is not about inheritance. Second, the law regards the best interest of the children, not even of the parties. The Respondent even admitted that it is possible for a foster parent to take care or have custody of the children.
28. Also from the evidence, I find that the Respondent has not been performing his duties as father to the children. He stated under cross-examination that he knows the friends of the children. When asked to mention one of the friends, he could say, even after a long wait for his answer. I, therefore, give custody of the children to the Petitioner with the Respondent given reasonable access. For emphasis, the Respondent to pick up the children on vacations and public holidays. Also he is to pick up the children every 2 weeks for the weekends.
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29. Regarding the monthly allowance, below is what ensued when Respondent was under cross-examination: "Q: I am suggesting to you that it is only fair that you pay maintenance of at least GHS750.00 monthly to be able to take care of the feeding and clothing. A: It is fair."
30. With the above, I hereby order that the Respondent pays monthly maintenance of GHS750.00. In addition, the Respondent to pay for the school fees and medical bills of the children. Respondent to also provide one year rent for the Petitioner and the children, in addition to the rent earlier granted as an interim order by this court.

CONCLUSION

31. In sum:
- a. The marriage celebrated between the parties is hereby dissolved. Divorce certificate to issue.

- b. Custody of the children of the marriage: Shadrack Normu Selgaaro (9yrs) and Ephraim Azaviel Selgaaro (6yrs), is granted to the Petitioner, with the Respondent given reasonable access. For emphasis, the Respondent to pick up the children on vacations and public holidays. Also he is to pick up the children every 2weeks for the weekends.
- c. Respondent to pay monthly maintenance of GHS750.00. In addition, the Respondent to pay for the school fees and medical bills of the children.
- d. Respondent to also provide one year rent for the Petitioner and the children, in addition to the rent earlier granted as an interim order by this court.
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- e. Regarding distribution of the properties: i. ii. The petition is entitled to an equal share in the 8 pieces of plots at Yilonaayili Residential Area Extension, Tamale. Petitioner is entitled to an equal share of plot no. 10 Block A, Tampe Kukuo, Tamale. iii. Petitioner is entitled to 30% share in the business known as Agawood (previously known as Family Health Promoters and Edmack Independent Distributors)
- f. No order as to costs. H/W D. ANNAN [MAGISTRATE] ESTHER YIRIBOM ESQ. FOR THE PETITIONER PAUL K. A. CHINATRA ESQ. FOR THE RESPONDENT References:
 - 1. Articles 22(2) & (3) and 33(5) of the 1992 Constitution
 - 2. ss. 11(4), 12(1) & (2) and 14 of the Evidence Act, 1975 (NRCD 323)
 - 3. ss. 1(2), 2(1) and 2(3) of the Matrimonial Causes Act, 1971 (Act 367)
 - 4. ss. 2(1) and 47(1) of the Children's Act 1998 (Act 560)
 - 5. Ansah v Ansah [1982-83] 2 GLR 1127
 - 6. Akoto v. Akoto [2011] 1 SCGLR 533
 - 7. Peter Adjei v Magaret Adjei [2021] DLSC 10156
 - 8. Mensah v Mensah [1998-1999] SCGLR 350
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 - 9. Quartson v Quartson [2012] 2 SCGLR 1077
 - 10. Arthur (No.1) v Arthur (No. 1) [2013-2014] SCGLR 543
 - 11. Fynn v Fynn & Osei [2013-2014] 1 SCGLR 727
 - 12. Rimmer v Rimmer [1952] 1 QB 63 @ p 73
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Prepared on 25 October 2026 · Esheria