

**IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD IN TEMA ON FRIDAY THE 15TH DAY OF MARCH, 2024
BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)**

SUIT NO: E5/35/2019

AGNES AMOAH

... PETITIONER

VRS

EAMMANUEL NORTEY LARBI

... RESPONDENT

Petitioner present.

Respondent present.

Mss. Sarah Coleman for the Petitioner Present.

Mrs. Celestina Yanney for the Respondent present.

**CERTIFIED TRUE COPY
LAND DIVISION**

**REGISTRAR
HIGH COURT**

JUDGMENT

Petitioner herein Agnes Amoah on the 21st of December, 2018 filed this Divorce Petition against Respondent Emmanuel Nortey Larbi, who also filed his answer to the Petition on 30th January, 2019.

This petition was set down for hearing and parties were directed by this court to file their respective witness statements. Parties duly complied with this court direction, thus on the 3rd of December, 2019 Petitioner filed her witness statement and also applied to this court for an order to subpoena two (2) witness: PW1 Rahina Adams and PW2 Rejoice Nana Yaa Atsuvi.

Respondent, Emmanuel Nortey Larbi filed his witness statement on 12th March, 2020 and subsequently filed a supplementary witness statement on 2nd November, 2022. Respondent called one witness Eric Asiedu (DW1) on 12th March, 2020.

In the petition, the following are the reliefs being sought by Petitioner

- i. *That the marriage celebrated between the parties be dissolved.*

- ii. *That the Petitioner be settled with an equal share of the properties including the business acquired during the subsistence of their marriage.*
- iii. *Financial settlement of Fifty Thousand Ghana Cedis (GH50,000.00).*
- iv. *That custody be granted to the Petitioner with reasonable access to the Respondent.*
- v. *Respondent be ordered to provide accommodation maintenance, school fees and medical bills of child.*

In his answer to the Petition filed on the 30th of January, 2019, Respondent did not cross petition.

Petitioner's Case:

Petitioner, Agnes' Amoah in her witness statement filed on the 3rd of December, 2019 states that she got married to the Respondent under the ordinance on 3rd of January, 2009 at the Marriage Registry of the Tema Metropolitan Assembly. She has attached the marriage certificate which is marked exhibit A.

Petitioner describes herself as a Teacher and Respondent a businessman.

Petitioner states that after their marriage they cohabited at Lashibi - Community 18, Tema for 3 years and then Community 2 Tema for 6 years. It is Petitioner's case that the marriage between her and the Respondent has broken down beyond reconciliation.

In her particulars of unreasonable behaviour, Petitioner states that Respondent has been physically and emotionally abusing her and does not give her any attention or affection and has told her that he finds it embarrassing to be seen in her company and for that matter refuses to take her along when attending functions. According to Petitioner, Respondent refuses to have sexual intercourse with her and further states that, Respondent has been having amorous relationship with other women and she even chanced upon Respondent and one of his paramours on their matrimonial bed.

Petitioner again states that she left the matrimonial home because of the Respondent's behavior. She again contends that, it was not Respondent who funded her education as he is alleging.

She states in paragraphs 13 and 19 of her witness statement as follows:

Paragraph 13

"My Lord, Respondent did not pay my school fees as he is alleging. I personally funded my education and got myself accommodation on campus. Respondent gave me monthly allowance for my upkeep and I always showed appreciation. However, the money he gave me was from the profits gained from the parties' business venture. Attached is a letter from my employers granting me study leave with pay and same is marked as exhibit B"

Petitioner contend further that the vehicle she used in the course of her schooling was from the business and not as a favour from Respondent that the cost of maintaining the vehicle was borne out of the proceeds from the business as per the agreement of parties.

Paragraph 19

After the parties established the business, we agreed to share profit in the ratio of 40% - 60% by the Petitioner and Respondent respectively. When we decided to purchase the house at Community three (3) Tema, the parties agreed to use the profit from the business to pay part of the purchase price. The rest of the money was gotten from a refund from one Veronica Kingston at community 1 who owes the parties at the time.

It is Petitioner's contention that during that period Respondent paid an amount of GH4,500.00 to her as her share of the profit from the business after she (Petitioner) threatened to go to the business premises to tow some the cars away. Petitioner further states that during the subsistence of the marriage parties acquired the following properties.

- a. House No. E Jogis Estate Community 3, Tema. This property was acquired by both parties from our business. At the time of purchase, Petitioner says that when the parties decided to purchase the house at Community 3, Tema the parties agreed to use the profit from the business to pay part of the purchase price. The rest of the money was gotten from a refund from one Madam Veronica Kingston at Community 1 who owed the parties at the time. Attached is the receipt for full payment for the said house and same is marked as Exhibit C.

- b. 3 bedroom house at Zenu, Ashiaman near the night market. We brought this property from a customer at Tema New Town who rented a vehicle from our business and was unable to pay so she sold her house to us and we paid the difference. After the purchase, we renovated the property and gave it out for rent. Attached is a copy of the tenancy agreement and same is marked as Exhibit D.
- c. One plot of land with a chamber and hall self-contained. Thereon situate at Ashiaman Aviation (Zenu-Washington). Attached is the receipt of payment for the said property and same is marked as Exhibit E.
- d. 4 plots of land near Central University and same is fenced. Attached is the indenture and site plan and same is marked as exhibit F.
- e. Plots of land situate off the Dawhenya – Prampram road.
- f. A 3 bedroom house behind Pentecost Secondary School Koforidua.
- g. A business venture known and called EMCO Ventures with over 20 vehicles. Attached are some of the receipts of purchase and particulars of some of the vehicles marked as Exhibit G.

Petitioner prays for grant of reliefs stated in the petition which same have been produced above. Petitioner applied to the court to subpoena the witnesses namely;

1. Miss Rejoice Atsupui (Head of Sales Department Toyota Ghana Ltd.)
2. Miss Rahima Adams (Head of Sales Department Hyundai Ghana Ltd.)

These two witnesses were to come to court to testify in court with documents in their possession in respect of EMCO Ventures. I will refer to their testimonies in the course of this judgment.

Petitioner's witness statement was duly adopted by this court as her evidence-in-chief in this trial and all the exhibits tendered by her were also admitted in evidence. Thereafter, Petitioner was cross-examined extensively by counsel for respondent.

Respondent's Case:

Emmanuel Nortey Larbi Respondent herein on the 19 of November 2019 filed an amended witness statement in this court.

He states that, he and Petitioner were married on the 3rd of January, 2009 at Tema and they have one issue; Monica Asabea Larbi – 10years.

It is his contention that in 2011, Petitioner began her tertiary education at Winneba and had to relocate to Winneba with the child and so he had to rent an apartment for her and also purchase a vehicle for her use.

It is Respondent's assertion that he solely financed Petitioner's tertiary education by paying school fees, maintaining her regularly with adequate funds, maintaining her vehicle among other needs. Respondent also cited in the paragraphs certain conducts of Petitioner which he deems unreasonable. He states in paragraphs 12, 13, 14, 15, 16 and 17. Thus

Paragraph 12

"That after obtaining her degree, her attitude towards me worsened and I was compelled to report her conduct to her family. That was why I was not interested when she asked me to finance her Master's Degree.

Paragraph 13

That at all times that the family met to determine the reason for her behaviour, she was disrespectful thus rendering all such meetings useless.

Paragraph 14

That she would visit various prayer camps and invite pastors to the house to pray and perform all sorts of rituals in the house all in the name of having another child, much to my dismay.

Paragraph 15

That the Petitioner will insult me at the least provocation and thereafter pretend she has done nothing wrong.

Paragraph 16

That I found this behaviour extremely disturbing, as she would frequently insult me in one breath and in the same breath try to sweet talk me.

Paragraph 17

That this behaviour is clearly unreasonable and has affected my health greatly. Respondent contends further that Petitioner played no role in the business and

only visits the office when she needed a vehicle to use or when her vehicle needed repairs.

Respondent states in paragraph 21 thus:

"That with the assistance of business partners who offer me their vehicles to rent on their behalf through which I am paid a commission. I managed to obtain a banking facility to purchase a house at community 3, Tema.

Paragraph 22

That I do not own (29) vehicles as the Petitioner claims.

In respect of the property settlement, Respondent states in paragraph 31 and 32 as follows:

Paragraph 31

That regarding the claim of properties alleged by the Petitioner, I wish to repeat as follows:

- The house at community 3 was purchased by a loan from Stanbic Bank and I have not completed payment.
- The house at Zenu belongs to a woman who owes me.
- The plots at Ashiaman and near Central University were acquired by my own efforts whilst Petitioner was schooling in Winneba.
- I do not own any land at Dawhenya Prampram.
- The property at Koforidua belongs to my father and brothers which I have interest in.

Paragraph 32

That I have made certain counter proposals to the Petitioner after her proposal which are as follows:

- I wish to give to the Petitioner the land with building there on at Ashaiman, Aviation.
- An amount of GH30,000.00 (Thirty Thousand) as financial provision.
- One plot of land opposite the Central University.
- 100% payment of school fees and all school related fees for our child.
- Maintenance of GH600.00 monthly.

Respondent's Witness Statement together with the exhibits tendered in evidence were adopted as his evidence in the trial.

He was duly cross-examined by Counsel for Petitioner.

Respondent called DW1 Eric Asicdu to testify on his behalf. He also filed his witness statement which was duly adopted by this Court as his evidence in chief in the trial. He was cross-examined by Counsel for Petitioner and his evidence was basically to corroborate Respondent's evidence.

Respondent thereafter sought permission of court to withdraw the witness statement of DW2 Sampson Adumoah. The case of Respondent duly closed, brought this trial to an end.

At the end of the trial the main issues which were identified for determination were:

- a. Whether or not the marriage between parties has broken down beyond reconciliation and same ought to be dissolved.
- b. Whether or not the Petitioner is entitled to the reliefs sought.
- c. The issue of property settlement.

On the issue of the dissolution of the marriage the guidelines for the courts to follow when confronted with the issue of dissolution of marriage are provided in section 1(2) and 2 of the matrimonial causes Act 1971 (Act 367).

Section 1(2) provides; "The sole ground for granting a Petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2 of this Act sets out proof of breakdown of marriage as follows:

Section 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:

- a. That the Respondent has committed adultery and that by reason of the adultery the Petitioner finds it intolerable to live with the Respondent.
- b. That the Respondent has behaved in 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 2 years immediately preceding the presentation of the Petition.
- d. That the parties to the marriage have not lived as husband 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 the 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 despite the refusal.
- e. The parties have not lived together as husband 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 efforts been unable to reconcile their differences.

Petitioner's main ground for dissolution of marriage is unreasonable behaviour and also adultery which petitioner did not give any cogent evidence to substantiate same. Petitioner contends that Respondent denies her sex and she does not remember the last time they had intimacy. She states that, she left the matrimonial home on the 16th of August, 2018 after Respondent told her that he does not require her presence in the matrimonial home.

In the instant Petition the main ground for dissolution of the marriage is adultery and unreasonable behaviour.

Sarkodee J in *Adjetei and Another VRS. Adjetei* (1973) 1 GLR 216-221 held in holding 1 as follows:

"Adultery must be proved to the satisfaction of the court and even though the evidence need not reach certainty as required in criminal proceedings, it must carry a high degree of probability. Direct evidence of adultery was rare. In nearly every case the fact of adultery was inferring from circumstances which by fair and necessary inference would lead to that conclusion".

Respondent herein has not admitted to having committed adultery as Petitioner contends. Petitioner has also not given sufficient evidence to substantiate this.

In this regard, I am of the view that since there is no cogent evidence adduced in this court to prove adultery, then adultery as a ground for dissolution of marriage provided in section 2(1) of Act 367 will not suffice.

Petitioner herein has also cited unreasonable behaviour as ground for dissolution of her marriage with Respondent. She has stated that Respondent has willfully denied Petitioner of sex.

In Addo VRS Addo (1993) 2 GLR 103, the court took the view that a willful refusal to have intercourse at all will entitle the party suffering as a result of it to leave the other.

In the case of Ansah VRS Ansah (1983) GLR 1127 – 1133. Owusu Addo J held that "The test under this section was whether the Petitioner could reasonably be expected to live with the Respondent in spite of the latter's behaviour. The test was therefore objective. But the answer obviously had to be related to the circumstance of the petition in question. That had to be a question of fact in each case. It followed that the conduct complained of must be sufficiently serious, since mere trivialities would not suffice.

In Mensah VRS Mensah (1972) 2 GLR 198, Hayfron – Benjamin define what amounts to unreasonable behaviour thus:

"In determining whether a husband has behaved in such a way as to make it unreasonable to expect a wife to live with him the court must consider all circumstances constituting such behaviour including the history of the marriage. It is always a question of fact. The conduct complained of must be grave and weighty and mere trivialities will not suffice for Act 367 is not a Casanova's charter".

The test of objective

Petitioner contends that Respondent abuses her verbally and leaves the matrimonial home for weeks without telling her his whereabouts which conduct she deems as unreasonable.

Respondent, per his answer to petition filed on 30th January, 2019 did not cross-petition. He also did not contest the dissolution of the marriage.

Section 2(1)(d) of Act 367 provides "That the parties to the marriage have not lived as husband 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 or divorce provided that the 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 despite the refusal."

Considering the circumstance of this petition and fortified by section 2(1) d of Act 367 supra, and also making a finding of unreasonable behaviour on the part of Respondent, for which reason Petitioner cannot reasonably be expected to live with him. It is therefore my considered opinion that the marriage between parties herein Agnes Amoah and Emmanuel Nortey Larbi has broken down beyond reconciliation and therefore decree that the said marriage is dissolved. I will now address the issue of whether or not the Petitioner is entitled to the reliefs sought and also the property settlement. Petitioner in her relief (b) is praying the court that she be settled with an equal share of all the properties including the business acquired by the parties during the subsistence of their marriage and also financial settlement of Fifty Thousand Ghana Cedis (GH50,000.00).

Petitioner makes the assertion that the business venture, EMCO Ventures was established in the course of the marriage and therefore it is jointly owned.

I will produce an excerpt of what ensued during cross examination of Respondent in respect of EMCO Ventures.

Q: Do you agree with me that of the time the two of you got married the business EMCO Ventures was not in existence.

- A: I do not agree with you. I had then registered Emma & Co and later I was told the name was already in the system so I had to change it to EMCO.
- Q: Tell the court which year did you register Emma & Co?
- A: Emma & Co was registered in the 2008
- Q: So, given the opportunity can you bring the registration documents of the said Emma & Co. to this court?
- A: No because the name was not accepted so it was not registered.

There is no registration document before this court to substantiate Respondent's assertion that, there was indeed a business registered as Emma and Co. in existence before EMCO Ventures was registered. Exhibit 2 tendered by Respondent is a Certificate of Registration which bears the name EMCO VENTURES and it is dated 4th of September, 2014.

The registration number is BN76852014. Attached to this is a Form 'A' stated on it as Sole Proprietorship Profile with the name of Respondent given as Emmanuel Nortey Larbi.

Old Business Details are given as follows; Old owner's name is Emmanuel Nortey. Old name with registration is given as EMCO VENTURES old Registration date is given as 7th January 2011. New Business Details; Business Name: EMCO Ventures.

Date of Commencement 13th December, 2010. Date of Registration 4th September, 2014.

With these details there is no doubt in my mind that EMCO Ventures was registered after the subsistence of the marriage albeit sole proprietorship. Black Law Dictionary defined Sole Proprietorship as:

1. A business in which one person owns all the assets all the assets, owns all the liabilities and operates in his or her personal capacity.
2. Ownership of such a business – Also termed individual proprietorship.

Petitioner however is contending that she made substantial contribution to the acquisition of the properties during the course of the marriage.

Petitioner also claims that she also made contribution to the business, EMCO Ventures. I will reproduce some excerpts of cross-examination of Petitioner in this regard.

Q: You stated that your husband was accountable to you regarding his business.

A: Yes, because we all established the business with the monies I earned. Even before marriage from my teaching and a part time job I did with NIA (National Identification Authority)

Q: What was the first car that was used for the business.

A: We have used so many cars so I cannot remember. We had a Toyota Corolla.

Q: When was it purchased?

A: Before we met as husband and wife, he had a car he was driving on his own before we established the business. That was the Toyota Carina

Q: The Toyota Carina was bought before the marriage and the Toyota Corolla was after the marriage.

A: Yes

Q: When was the Toyota Corolla bought?

A: 2009 after the marriage

Q: How much was it.

A: GH11,000,000.00 (now)

Q: Did you alone pay for it?

A: No. But I had gone in for liquidation of fixed assets from Intercontinental Bank then and had given all the money to my husband

Q: The fixed asset was before 2009 and was liquidated before then?

A: The first part of the question is yes. It was liquidated in 2009 after the marriage

Q: How do you operate the business? How do you run the business?

A: We rent out cars to companies and private individuals and we also do tourisms and sales of cars. Before he goes to the company workplace, I do most of the paper work indoors, work out and interpret most of the things he encounter in the office. I do the annual calculation and cost for

the workers every year ending and also develop good business plans for upcoming years.

This also ensued;

Q: What is the weekly expenditure for the business?

A: I do not know because I am only given run down of happenings and end of year. I am told of what we have gotten, what should be spent on the workers, what should be spent on our children's education and upkeep.

For the purpose of clarity, I will again reproduce some excerpts of what ensued during cross-examination in respect of Exhibit G1;

Q: I want you to look at Exhibit G1. I am putting it to you that this vehicle was bought with a loan and your husband has not completed payment of the loan.

A: It is not true. Because we buy cars from Stallion Motors twice every year (beginning and middle. We pay 40% to Stallion Motors and the 60% is spread for us over a period of 6months. The new car and our old cars worked together and the amount realized is used to settle the new cars. After 6 months we go for another set of cars. So, the car has been paid for.

Still on the issue of ownership of the vehicles purchased by EMCO, the court subpoenaed witness Rahina Adams who came to testify that EMCO Ventures purchased six (6) vehicles from Hyundai Ghana Ltd. And they were registered in the name of EMCO Ventures. The witness during cross-examination insisted that vehicle No. GX1744-19 belongs to one Mr. Charles Adams, though registered in the name of EMCO Ventures. She however failed to produce any documentary evidence in support of this assertion.

In Fosua and Adu-Poku VRS Dufie (Deceased) and Adu – Poku Mensah (2009) SCGLB 310. It was opined that "It was settled law that documentary evidence should prevail over oral evidence. The second subpoenaed witness (Rejoice Nana Yaa Atsuvi) from Toyota Ghana also came to court to testify and tendered

exhibits C1, C2, C3 and C4 and C4 which clearly show that vehicle number GN-3207-19 is registered in the of Stanbic Bank/EMCO Ventures though she initially testified during cross-examination that the said vehicle was registered in the name of EMCO Rentals and not EMCO Ventures.

In her address, counsel for Respondent argues that Petitioner cannot be said to be a joint owner of EMCO Ventures and also the fact that the said business concern is a Sole Proprietorship.

The undisputed fact is that EMCO Ventures came into being after the two parties go married. I also tend to believe the Petitioner's evidence that she used to help in the running of the said business. From the evidence adduced, the business is registered as a Sole Proprietorship. Now, the question that begs for answer is that will be just and fair to send Petitioner off empty handed because the business that was registered after she married Respondent and has also shown keen interest in same and has helped nurture the business in giving a helping hand whenever she can make time from keeping the home and also furthering her education for a better future for their relatively young family?

I do not think so. She is asking for 40% of the business. Petitioner is in addition claiming an equal share in every property acquired during the subsistence of the marriage which she has listed in paragraph D of her reliefs sought.

- a. She describes the landed properties as House No. ElJoggis Estate, community. House at Zone Ashaiman near night market.
- b. One plot of land with a building thereon situate at Ashaiman Aviation.
- c. Plots of land near Central University
- d. Plots of land situate off the Dawhenya – Prampram Road
- e. A 3 bedroom house behind Pentecost Secondary School Koforidua
- f. She is also asking for equal share in (EMCO Ventures) including 16 vehicles which she has listed as owned by EMCO Ventures.

In *Opaebca VRS Mensah* 1993 – 1994 1 GLR 61 – 75, the court pronounced upon the scope of section 20(1) of Act 367. Lutterodt JA (as she then) was held that:

“Section 20(1) of the Matrimonial Causes Act 1971 (Act 367) empowered a Judge to make an order either for:

Settlement of property rights arising from claims of substantive contribution. Respondent in his witness statement is proposing to give Petitioner the following;

- Land with building thereon at Ashiaman Aviation.
- An amount of GH30,000.00 as financial provision.
- One plot of land opposite Central University
- 100% payment of school fees and all related fees for the children of the marriage.
- Maintenance of GH600.00 monthly

The question is, is it fair and equitable to send off the Petitioner after many years of marriage with what Respondent has proposed?

I will separate the maintenance and the school fees and make specific orders subsequently.

In respect of the matrimonial home at community 3, Tema which Petitioner is claiming 50% share, Respondent states in paragraph 21 of his witness statement that he managed to obtain a banking facility to purchase that house. He contends that, that house was purchased by a loan from Stanbic Bank and he had not yet finished payment. In the course of the trial, it came to light that the said loan was obtained from Stanbic Bank purposely for purchase of vehicles. **Exhibit CY** describes the assets for the loan as one (1) Toyota Bus and one (1) Toyota Hilux. The documents from Stanbic Bank clearly indicate that the purpose for obtaining that loan was to purchase vehicles.

For Respondent to testify in court that though he obtained that loan ostensibly to purchase vehicles, he diverted it to purchase the Community 3 house is not acceptable. Petitioner has disputed this.

It seems to me that there is some deception and untruths regarding the fact that the said house was financed by a loan from Stanbic Bank purposely for the purchase of vehicle. I find this untenable. It seems to me that Respondent is making this assertion that the house was purchased through a loan which he is still servicing though there is no evidential proof that the house was purchased by the same loan specifically obtained from Stanbic Bank. Thus, I deem this as a way to deprive Petitioner of a share in the matrimonial home.

I make a finding that the said matrimonial home at Community 3 is jointly owned by both parties. Even if Petitioner may not have substantially contributed financially in the acquisition of the said property, the court cannot overlook the role she played as a wife in supporting Respondent and taking care of the child of the marriage even at the time that she was pursuing higher education.

I must add that if there had been evidential proof that Respondent obtained a loan from Stanbic Bank purposely for the purchase of the Community 3 house then I would have made a finding that the loan ought to be serviced first and for that reason it will not be deemed as jointly acquired.

The court cannot condone what is deemed as not appropriate and bordering on deception. If Respondent secured the loan from Stanbic Bank purposely to purchase a vehicle, then the court will not take his word that though the loan was for a vehicle he diverted it to purchase the said house.

In respect of custody of the child of the marriage, Respondent is not contesting same and since in making an order regarding the custody of a child the court is guided by what is in the best interest of the child, custody of the child of the said child of the marriage is granted to Petitioner.

Section 2(2) of the Children's Act, 1998 (Act 560) states that the best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerning a child.

In Braun Vs Mallet (1975) 1 GLR 81-95, it was held that "in questions of custody it was well-settled that the welfare and happiness of the infant was the paramount consideration".

It was also held in Braun Vs. Mallet (supra) that:

"The mother of a young child has a prima facie right to the custody of the child in preference to the reputed father or any other person unless the characters of the mother of the child is impeachable".

In the instant petition, the character of Petitioner has not been deemed as impeachable.

I will now address the issue of the rest of the properties in contention.

Petitioner claims that the house in Zenu is a jointly acquired matrimonial property and so she is entitled to 50% share of it.

She is also claiming the following:

- 1 plot of land with building thereon situate at Ashiaman Aviation.
- Plots of land near Central University.
- Plots of land situate at Dawhenya - Prampram Road
- A three bedroom house behind Pentecost Secondary School - Koforidua and also a 50% share in EMCO Ventures

I must state that of all the properties listed here, Petitioner apart from leading very cogent evidence that House No. E1 Joggis Estate at Community 3, Tema which is the matrimonial home is jointly owned by parties because of her making substantial contribution not necessarily financially but has also made immense contribution by keeping the home and playing her role as a wife

before the acquisition of same and also during its acquisition and it became the dwelling house of parties.

I will cite the case of Peter Adjei VRS Margaret Adjei Civil Appeal No. 34/06/2011, 21st April, 2021 held as follows: "the decisions of this court, dating back to the case of Mensah Boafo VRS Boafo, Quartson VRS Quartson, Arthur VRS Arthur and Fynn VRS Fynn 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 The Supreme Court went ahead to state that..... " the presumption of joint acquisition is however rebuttable upon evidence to the contrary what it means in effect is that, it is not every property acquired single - handedly by any of the spouses during the subsistence of the marriage that can be termed as a jointly acquired property and is to be distributed at all cost on this equality is equity principle. Rather it is property that has been shown from 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.

In the instant petition, Petitioner has proved to the court that it is a jointly acquired property based on all the evidence adduced herein.

However, in respect of all the other reliefs excluding the business concern EMCO Ventures, she did not lead any cogent evidence that they were jointly acquired or her contribution towards same, albeit they were acquired during the subsistence of the marriage.

In addressing the reliefs of Petitioner, I will make an order that the matrimonial house H/No. E1 Joggis Estate at Community 3 is a jointly owned marital property and Petitioner is entitled to 50% share of same.

The house is to be valued by the court appointed valuer and 50% of the value is to be paid by Respondent to Petitioner within 12months of this order.

In respect of the 3bedroom house at Zenu, I am unable to make an order that Petitioner is entitled to 50% share because of lack of cogent evidence.

In respect of the 1 plot of land with building thereon at Ashaiman Aviation, I order that Respondent transfers same into Petitioner's name as he has already offered.

In respect of 4 plots of land near Central University, Respondent has offered to give Petitioner one which the court will order that he transfers the title thereon to Petitioner's name but before then Petitioner should be given the opportunity to make her own choice.

In respect of Financial Settlement, I will refer to the case of *Opaebear v Mensah* (1993 - 1994) 1 GLR 61-75 when the court pronounced upon the scope of section 20(1) of Act 367, Lutterodt JA stated that: "Section 20 (1) of the matrimonial causes Act, 1971 (Act 367) empowered a Judge to make an order either for;

- a. Settlement of Property rights arising from claim of substantial contribution either in money or money's worth, or
- b. Financial provision or for both where the spouse was not merely praying for financial provision but was also alleging interest in the property.

Section 20(1) of Act 367 provides; "The court may order either party to the marriage to pay to the other party such sum of money or immovable property as settlement rights or in lieu thereof or as part of financial provision as the court thinks just and equitable.

Fortified with this provision, I make an order that in lieu of the rest of the properties which Petitioner is laying claim to Respondent is to settle Petitioner with an amount of GH200,000.00 (Two Hundred Thousand Ghana Cedis).

In respect of EMCO Ventures though the undisputed fact is that Petitioner helped immensely in same, it is a sole proprietorship and thus the court will not make an order that Petitioner is a joint owner of same.

Thus, this particular relief of Petitioner fails.

Having already determined that the marriage between parties has broken down beyond reconciliation. I hereby declare and decree that the Ordinance Marriage contracted between Petitioner herein Agnes Amoah and Respondent Emmanuel Norte Larbi on 3rd January, 2009 at the Marriage Registry of the Tema Metropolitan Assembly as dissolved because of irreconcilable differences among others.

I hereby order that Respondent is to pay monthly maintenance of One Thousand, Two Hundred Ghana Cedis (GH1,200.00) for the upkeep of the child of the marriage namely Monica Asabca Larbi.

Respondent is to be totally responsible of school fees and medical needs of the child as and when the need arises.

I make no order as to cost.

(SGD)

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

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