IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2025

CORAM: LOVELACE-JOHNSON (MS) JSC (PRESIDING)

AMADU, JSC

ASIEDU, JSC

KWOFIE, JSC

DARKO ASARE, JSC

12TH MARCH, 2025

CIVIL APPEAL
J4/36/2024

AYISHETU ABDUL KADIRI … PETITIONER/RESPONDENT/APPELLANT

VRS.

ABDUL DWAMENAH … RESPONDENT/APPELLANT/RESPONDENT

JUDGMENT

TANKO AMADU, JSC

INTRODUCTION

(1) My lords, the only key issue for determination in the instant appeal is not novel to our jurisprudence. Apart from the constitutional and statutory provisions relevant to the distribution of marital property upon dissolution of marriage, our case law jurisprudence is replete with a rich line of decided cases on the

subject to guide us in the determination of this appeal. In doing so, this court is required to apply the relevant law after our own evaluation of the peculiar facts and evidence on record before we arrive at any determination of which of the two lower courts had properly apprehended the facts and evaluated the evidence within the context of the statutory evidential burdens carried by the parties before arriving at their respective findings and conclusion.

(2) The right of a person to solely acquire and own property and for protection against any interference with a person's property is a constitutionally guaranteed right. Article 18 of the 1992 Constitution provides as follows:

1. ***"Every person has the right to own property either alone or in association with others.***

2. ***No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others."***

(3) This constitutional guarantee of ownership of property during marriage has received further constitutional support under Article 22 of the 1992 Constitution as follows:

1. *"A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.*

2. *Parliament shall, as practical be 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." [Emphasis added]

(4) **Section 20 of the Matrimonial Causes Act, 1971 (Act 367)** also provides on property settlement as follows:

(1) "The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provisions that the Court thinks just and equitable.

(2) Payments and conveyances under this section may be ordered to be made in gross or by instalments."

(5) The instant appeal arises from the dissolution of the customary marriage of the parties both of whom are Muslims and adherents to the Islamic faith. Following the dissolution of the marriage, the trial court and indeed, the Court of Appeal

from which this appeal emanates, had to determine the equitable entitlements of the parties in respect of the marital properties acquired. The Petitioner/Appellant before us, does not dispute the dissolution of the marriage, but contests the appropriateness of the distribution of the matrimonial properties. For the Petitioner, the Learned Justices of the Court of Appeal misapplied the law on distribution of marital properties, and the same has occasioned her a miscarriage of justice.

THE LAW ON THE DISTRIBUTION OF MARITAL PROPERTIES UPON DIVORCE

(6) Clearly, thereafter as earlier observed, the issue for the determination in this action, bothering on the proper evaluation of the law and evidence relative to the distribution of marital properties is not novel to our jurisprudence. This court has undertaken a valuable jurisprudential trajectory and has navigated different factual circumstance in defining and refining the appropriate principles that should regulate the distribution of marital properties upon dissolution of marriage.

(7) Recognising the legislative default in complying with the constitutional dictate for a law to be promulgated to regulate the distribution of marital properties, we have adopted the ***political process theory of interpretation*** by directing a formula in the hope that, the same will influence the policy of the state in respect of the subject. The decisions of this court on the point are replete cases such as **BOAFO VS. BOAFO [2005-2006] SCGLR 705 MENSAH VS. MENSAH [1998-99] SCGLR 350,; QUARTSON VS. QUARTSON [2012] 2 SCGLR 1077; ARTHUR VS. ARTHUR [2013-2014] 1 SCGLR 543 FYNN VS. FYNN [2013-2014] 1 SCGLR 727; ADJEI VS. ADJEI SUIT NO.J4/06/2021**

DATED 21ST APRIL 2021; LITHUR VS. LITHUR CIVIL APPEAL NO. J4/01/2021 DATED 21ST APRIL 2021; ANYETEI VS. ANYETEI CIVIL APPEAL NO. J4/67/2021 JUDGMENT DELIVERED ON 2ND MARCH 2023.

(8) In **LITHUR VS. LITHUR (supra),** this Court reaffirmed its interpretation of *"**marital property**"* under Article 22(3) of the 1992 Constitution as follows:

> *"**Marital property is thus to be understood as property acquired by the spouses during the marriage, irrespective of whether the other spouse has made a contribution to its acquisition. .."***

(9) From the above decision, the determinant on whether or not a property can be classified as a marital property is not contingent on the determination of whether the property was solely acquired by one of the spouses to the marriage. Rather, it speaks to the interrogatory, whether the property was acquired during the subsistence of the marriage, the contribution of either spouse notwithstanding.

(10) In seeking to adopt a pragmatic approach to the distribution of marital properties', this Court in navigating a road map adopted an equality is equity approach in **GLADYS MENSAH VS. STEPHEN MENSAH [2012] 1 SCGLR 391.** The court reasoned that, the distribution should proceed on a presumption of equality, for equality is equity. This court however recognised that; the presumption is not applicable in every case. The court explained the constitutional rational as follows:

> *"**Why did the framers of the Constitution envisage a situation where spouses shall have equal access to property jointly acquired during marriage and also the principle of equitable distribution of assets***

acquired during marriage upon the dissolution of the marriage? We believe that common sense, and principles of general fundamental human rights require that a person who is married to another, and performs various household chores… must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved."

(11) This Court further highlighted that, the non-financial contributions of a spouse, such as homemaking and childcare, should be recognized as a significant factor in property distribution. It concluded that:

"The Petitioner should be treated as an equal partner even after divorce in the devolution of the properties. The Petitioner must not be bruised by the conduct of the Respondent and made to be in a worse situation than she would have been had the divorce not been granted."

(12) Following this decision, there was a supposition in misreading the judgment of this court that once there is a dissolution of a marriage, then, every marital property is to be distributed equally. The court thus, took the opportunity to clarify the position of the formula in **QUARTSON VS. QUARTSON [2012] 2 SCGLR 1077** as follows:

"The Supreme Court's previous decision in MENSAH V MENSAH…, is not to be taken as a blanket ruling that affords spouses unwarranted access to property when it is clear on the evidence that they are not so entitled. Its application and effect will continue to be shaped and defined to cater for the specifics of each case."

(13) In the case of **FYNN VS. FYNN (supra)** the Supreme Court reiterated the point per Wood CJ as follows:

> ***"…the decided cases envisage situations where within the unition parties may still acquire property in their individual capacities as indeed is their guaranteed fundamental right as clearly enshrined under Article 18 of the 1992 Constitution, in which case they would also have the legal capacity to validly dispose of same by way of sale, for example, as happened in this instant case."***

(14) Clearly therefore, the incident of marriage cannot operate to prohibit either spouse from solely acquiring and owning property. In **AMOAKOHENE VS. AMOAKOHENE CIVL APPEAL NO. J4/02/2019 DATED 13TH MAY, 2020** while this Court recognised the presumption of equality, the court was quick to admonish against a *carte blanche* application. In the words of Dordzie JSC,

> ***"The consistent trend in recent decisions of this court has been the application of the 'equality is equity' principle which means marital properties acquired during marriage are presumed to be jointly acquired and should be shared equally. The emphasis in this jurisdiction however has been that, this principle ought to be applied on 'case to case' basis. In other words, the facts and circumstances of each case determine how the principle is applied. Ultimately, the objective is to do a just and equitable distribution in the circumstances of each case."***

(15) In a recent decision, this Court speaking through Appau JSC re-iterated the exception to the presumption of equality as regards the distribution of marital properties in **PETER ADJEI VS. MARGARET ADJEI CIVIL. APPEAL NO. J4/06/2021 DATED 21ST APRIL 2021** as follows:

"This presumption of joint acquisition is, however, rebuttable upon evidence to the contrary…What this means, is 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 VS. FYNN, the presumption of joint acquisition collapses."

(16) In further articulating on the principle, Pwamang JSC bemoaned the misapplication of the Article 22 principles when he observed in **ANYETEI VS. ANYETEI (supra)** as follows:

"In MENSAH VS. MENSAH (NO.2), the Court stated that, depending on the situation, equitable distribution may result in a 50-50 ratio in some cases but, in other cases, it might result in a 60-40 or other proportion. Or, to put in another way, a 50/50 split might be fair in certain situations but unfair in others. Inequitable property distribution following a divorce would be against the explicit terms of Article '2's Clause 3(b). As a result, the distributional proportions will vary depending on the circumstances. Despite being clarified by the statement from MENSAH VS. MENSAH (NO.2) (supra), this straightforward clause of Article 22 of the Constitution has been the

subject of endless litigation, primarily because the attorneys for some litigants- mostly women-usually submit and urge our courts to substitute the word "<u>equally</u>" for the word "<u>equitably</u>," which the framers of the Constitution used in Clause 3(b) of Article 22…Therefore, the Supreme Court has always employed careful wording when it comes to the proportions for sharing assets earned during a marriage on its dissolution, despite the persistent requests for our courts to replace "<u>equitably</u>" with "<u>equally</u>".

(17) The Court reaffirmed that, financial contribution alone should not be the determining factor for ownership. Instead, it recognized the broader scope of contributions, including inferred intentions and indirect assistance from spouses. The court then explained the rationale in the following words which is reproduced in *extenso* as follows: -

"It is also clear from judicial precedent that what amounts to substantial contribution by a spouse is usually gleaned from the facts of each case. Where the court makes an inference that there is an intention or agreement that the contribution made would entitle each spouse to a share of the property, the court would not deny one spouse ownership of the property over the other. The courts were then left to decide, with their discretion and on the facts of the case, in which proportion the joint property would be shared. This would be without prejudice to the fact there might not have been any hard evidence of the exact amount of financial contribution made or in which mathematic proportions the contributions were made. After all, the institution of marriage is not one to which the ordinary incidents of commerce would apply. See ABEBRESE VS. KAAH AND ANANG VS. TAGOE (supra).

Indeed this position of the law prevailed until this court held in MENSAH VS. MENSAH [1998-99] SCGLR 350 and subsequently in BOAFO VS. BOAFO [2005-2006] SCGLR 705 that the principle of "equality is equity" is the preferred principle to be applied in the sharing of joint property, unless in the circumstances of a particular case, the equities of the case would demand otherwise. The decisions in MENSAH VS. MENSAH AND BOAFO VS. BOAFO (supra) enjoy constitutional backing for Article 22(3) states thus:"(3) With the view to achieving the full realisation 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."

(18) Another groundbreaking decision by this court in the case of **ARTHUR VS. ARTHUR [2013-2014] 1 SCGLR 543** has also contributed to the discourse by rejecting the sole reliance on the *"**substantial contribution**"* principle. The court held that:

" What should be noted is that, the Courts in Ghana have for some time now started whittling down the over reliance on the contribution/substantial contribution principle as a basis for the sharing of properties acquired during marriage upon dissolution of the marriage. Cases like CLERK VS. CLERK [1981] GLR 583, BOAFO VS. BOAFO [2005-2006] SCLGR 705 and the very recent decision of this Court in MENSAH VS. MENSAH [2012] 1 SCGLR 391 just to mention a few, show the gradual shift in the decisions of this Court which culminated in the ordinary bench decision in ARTHUR VS. ARTHUR

which is now on review in this application. The Supreme Court has now endorsed the 'Jurisprudence of Equality' principle in the sharing of marital property upon divorce."

(19) From the above discourse, we take the opportunity to re-state the discernable principles from these inexhaustive list of cases as pertains to the distribution of marital property as follows:

a. *"Any property acquired by a spouse or the spouses in the* ***course or life of a marriage****, whether customary, Mohammedan or Ordinance is a matrimonial/or marital property.*

b. *A property acquired by any of the spouses before the marriage does not qualify as a marital property.*

c. *Acquisition can be sole (that is by one of the spouses alone) or joint.*

d. *The constitutional formula for the distribution of properties acquired in the life of a marriage applies only in relation to* ***jointly*** *acquired properties.*

e. *Where the property is* ***jointly*** *acquired by the parties to the marriage, the same must be* ***equitably*** *distributed, upon the dissolution of the marriage****.*** *In certain situations, equality will be equitable, and in other situations equality will not be equitable. Each case must be treated differently.*

f. *Where the acquisition is supposed to be a joint acquisition, the fact of the property being jointly owned is not contingent solely on financial contribution,*

but other means of contributions whether in kind, material or otherwise, but for which the other spouse could not have solely acquired the property.

g. *Whether or not an acquisition is joint is dependent on the special and peculiar facts of the marriage, and the circumstances leading to the acquisition.*

h. *The settlement of an interest in a jointly acquired marital property can be converted in monetary terms where the special circumstances of the case warrants, and as sanctioned under Section 20(1) of the Matrimonial Causes Act, 1971 (Act 367).*

i. *Despite being a marital property, the property may, upon the dissolution of the marriage be settled on only one of the spouses as being the sole owner of the same."*

(20) Factors which the court may take into account in deciding on such settlement include but not limited to:

(i) *"Where the spouse solely financed or acquired the property with no contribution, whether in kind or cash from the other spouse and at all times, the same has been recognised as belonging to only that spouse.*

(ii) *Where the property was gifted to only one spouse, albeit during the subsistence of the marriage and not to both spouses of which the same was also acknowledged and recognised as such.*

(iii) *Where a spouse decides to acquire and advance the same to the other spouse absolutely.*

(iv) Where despite being under the contract of marriage, both spouses by their deeds, or conducts have carefully designed and defined independent courses in the acquisition of marital properties such that, the spouses understand each other, that they hold not any property jointly."

(21) The above situations are not inexhaustible. At all times, the material consideration must be that, no two marriage circumstances are the same. Hence, when a court is called upon to distribute properties upon the dissolution of the marriage, the court must have regard to peculiar factual circumstances, or other considerations surrounding the marriage and the acquisition.

BACKGROUND

(22) In her petition dated 6th January 2009, the Petitioner claimed against the Respondent as follows:

a. ***"That the said marriage be dissolved.***

b. ***That Petitioner be given the 2nd Plot of land and al the structures on it.***

c. ***That the Petitioner be given her interest by way of contribution in the first house that is the matrimonial home.***

d. ***Any other order as the Court may deem fit."***

(23) In his answer and cross-petition dated the 13th of February 2009, the Respondent also sought for the dissolution of the marriage and contended that, the petitioner was not entitled to financial settlement because she is the cause of the break-down of the marriage.

(24) More specifically, the cross-petition stated as follows:

1. ***"The Respondent repeats all the averments in the answer***

2. ***The Respondent cross petition for the dissolution of the marriage and says the petitioner is not entitled to financial settlement because she is the cause of the break-down of the marriage."***

(25) The pleadings of the parties were never amended. However, from the cross-petition, it appears, that the Respondent misapprehended the ancillary reliefs being sought by the Petitioner. The Petitioner did not directly pray for financial settlement. What the Petitioner prayed for was first, to be given the second plot of land and all the structures thereon, and secondly, that she be given her interest in the first house *(the matrimonial home)* by virtue of her contribution therein.

(26) It will thus appear that, there was no cross-petition against the grant of the reliefs in the petition as prayed for. This however, did not absolve the Petitioner from discharging the evidential obligation to prove her claims especially when her material averments in the petition were denied by the Respondent.

(27) The uncontested facts are that, the parties celebrated a customary marriage on the 6th of September 1987 under the Customary Marriage and Divorce (Registration) Law (1985) at the Accra Metropolitan Assembly. As rightly observed by the Court of Appeal, even though the Petitioner had contended in the petition that, the parties were married under the ***"Marriage of Mohammedans Ordinance"***, Cap 129 (1951 Rev), the record does not reveal compliance with the *sine qua non* of that marriage under Cap 129. Be that as it may, the marriage being a customary marriage, like any marriage in accordance with Islamic rites is potentially polygamous. As observed by Chief Justice Apaloo *(as he was then)* in **APOMASU VS. BREMAWUO [1980] GLR 278 at 280** "a ***number of decided cases show that there are, broadly speaking two types of marriage recognized by law in this country. They are the pure customary union and the monogamous one."***

(28) It is not disputed that; the Respondent has two other wives apart from the Petitioner. Again, while the Respondent has one child with Petitioner, the Respondent has five (5) other children with the other two wives.

(29) Both parties, per their pleadings before the trial court alleged unreasonable, adulterous and inappropriate conduct against each other as founding the breakdown of the marriage.

(30) In her petition, the Petitioner contended that, she took a loan from SSB Bank to commence the construction of their matrimonial property. Further that, she paid for a plot of land adjoining the land on which their matrimonial building is situate.

(31) The Petitioner further alleged that, in order to claim ownership of the second plot of land, as soon as the Petitioner put up a two bedroom and a hall apartment on the second parcel of land she has purchased, the Respondent also put up a two chamber and hall on the same plot of land.

(32) The Respondent denied the claims of the Petitioner in respect of the property acquisitions. He claimed that, the same is his self-acquired property of which he single handedly financed when he was working in Nigeria and sending various amounts of money to the Petitioner. The Respondent claimed exclusive ownership of the matrimonial property including the second plot and all the structures thereon. The Respondent further asserted that, in the year 1991, during the subsistence of the marriage, the Petitioner stole his money and used it to secretly acquire a parcel of land at Ashalley Botwe and built on same; an allegation which was not proved. The Respondent conceded however that, he would not contest the settlement of the said property on the Petitioner, the same being marital property having been acquired during the subsistence of the marriage, when he had invested in the Petitioner's career development.

(33) The Respondent further contended that, he had financed the education of the Petitioner and supported her education at all levels through training college and university at his own expense and yet the Petitioner has rather chosen to pay him back by claiming interest in every property after cheating on him during the subsistence of the marriage.

JUDGMENT OF THE TRIAL COURT

(34) On 26th November 2010, the trial court made an order for dissolution of the marriage. The court then adjourned the matter for the ancillary reliefs to be determined after a full trial on 15th December 2010. On 30th October 2012 the trial court delivered itself and pronounced as follows:

> ***"A mere(sic) realistic and practical approach would be to order the Respondent to continue to hold on the matrimonial home and convey the second house to the Petitioner. Accordingly, I will order that Respondent should convey all his interest in the second house to the frontage of the property to the Petitioner who shall thereafter exercise control as sole and exclusive owner***
>
> ***In view of the position, I have taken that both parties have equal shares int the two houses and the practicality of swapping their interest in the two properties, the Petitioner's claim for an interest in the matrimonial home will be rejected."***

APPEAL TO THE COURT OF APPEAL AND JUDGMENT OF THE COURT OF APPEAL

(35) Dissatisfied with the decision of the trial court afore-stated, the Respondent appealed against the same to the Court of Appeal on the following grounds:

a. ***"The judgment is against the weight of evidence adduced at the trial***

b. ***The Learned Trial Judge erred in law when he applied the Supreme Court decision in GLADYS MENSAH VS. STEPHEN MENSAH Civil Appeal No.***

J4/20/2011 in the instant case by failing to take into account the polygamous nature of the marriage between the Respondent/Appellant and other wives.

c. The Learned Trial Judge erred by failing to include the Petitioner/Respondent's house in the matrimonial properties before purporting to sharing same"

(36) In a judgment delivered on the 26th day of November 2021, the Court of Appeal upheld the appeal. The court set aside the order of distribution of the property as contained in the judgment of the trial court of 30th October 2012. In substitution thereof, and pursuant to Section 20(1) of Act 367, the court ordered the Respondent to pay to the Petitioner a lump sum of GH¢50,000.00 as financial provision.

(37) In arriving at this conclusion, the court reasoned that, the trial court was in total error in failing to treat the Petitioner's property as a marital property, and thus failing to include the same in the distribution. The court further observed the fact of the Respondent still married to other two women, a fact known to the Petitioner and of which he has five other children with them. In the words of Ackah-Yensu JA *(as she then was)* speaking on behalf of the Court of Appeal:

"…we are of the position that, the formula applied by the trial court in terms of the distribution of property upon the dissolution of the marriage between the Parties is demonstrably erroneous and inequitable. This is by reason of the polygamous circumstances of the Respondent who has two wives and children apart from the child of the

marriage between him and the Petitioner, while the Petitioner keeps the Ashalley Botwe Property she acquired exclusively during the subsistence of the marriage between the Parties. To award her 50% of the Respondent's property when he currently has two other wives and other children is, in our view, inequitable and a slavish application of the old principle in MENSAH VS. MENSAH (supra).

As aforesaid, Section 20 of Act 367 gives the courts the power to order the payment of money or the conveyance of property as the court finds it "just and equitable" to do. This is an obligation on the part of the Court to be fair and exercise the power in tandem with the principles of justice and equity on the facts of each case. This is why we shall uphold grounds (a) and (c) set out in the Notice of Appeal and allow the appeal."

APPEAL TO THE SUPREME COURT

(38) Being dissatisfied with the judgment of the Court of Appeal, the Petitioner has appealed to this court per Notice of Appeal dated 25th January 2021 upon the following grounds

a. ***"The judgment is against the weight of evidence.***

b. ***The court erred by setting aside the Order of distribution of property by the trial court.***

c. ***The court erred when it failed to find that Exhibit A1, A2, B1, and C1 were tendered to prove ownership of the 2nd plot by the Petitioner and not the Ashalley Botwe land.***

d. The court erred by granting the 2nd plot adjoining the matrimonial land to Respondent on grounds of polygamy when the 2nd plot was exclusively acquired by the Petitioner without Respondent's contribution.

e. The court erred in law by applying Article 22 of the constitution 1992 to the 2nd plot which is not jointly acquired but exclusively acquired by the petitioner.

f. The court erred by not finding as a fact and taking into consideration in it(sic) decision of the cost of building put up by the petitioner on the 2nd plot situate and adjoining the matrimonial house at Adenta, Accra."

(39) As can be observed from the grounds of appeal, save the omnibus ground, the Petitioner alleges errors against the judgment of the Court of Appeal. Yet, the Petitioner fails to give the necessary particulars of the said errors. In fact, those grounds are also argumentative, while others are vague, all of which in contravention of the Rules of this Court as regards the proper formulation of grounds of appeal. See **Rules 6(4) and (5) of the Supreme Court Rules, 1996 (C.I. 16).**

(40) Be that as it may, since an appeal is by way of re-hearing, especially when the Appellant has alleged the omnibus ground of appeal that the judgment is against the weight of evidence on record, this court is enjoined to carefully review the entire evidence, and assess their evaluation relative to the applicable laws to decide whether the judgment of Court of Appeal can be

sustained. Recognising that the appeal has to do more with an evaluation of the evidence, we shall proceed to determine the appeal based on the omnibus ground of appeal. In fact, the issues provoked by the other grounds can all be conveniently determined under the omnibus ground.

EVALUATION

(41) Going by the test of what constitutes a marital property, it cannot be disputed that, the three properties, the subject of the present dispute are all marital properties. They are:

a. ***The Ashalley Botwe Property***

b. ***The Matrimonial Home, and***

c. ***The Adjoining Land to the Matrimonial Home***

(42) At the trial court, the Learned Trial Judge disregarded the Ashalley Botwe Property totally, despite the evidence before the court affirming the fact of it being a marital property having been acquired by the Petitioner during the subsistence of the marriage not solely by the Petitioner by reason of the contribution of the Respondent in the maintenance and education of the Petitioner. Indeed, the case of the Respondent has been that, the Petitioner utilised his monies towards the acquisition of the said property and kept the same secretly from him for a long time. The Respondent challenges the Petitioner's ability to solely acquire the said property, especially when the Petitioner was said to be a trainee teacher and subsequently a qualified teacher

whose salary was not up to the quantum to have acquired the property from her own resources.

(43) The Petitioner however contends that, she solely acquired that property exclusively with no contribution whatsoever from the Respondent. As evidence of her sole acquisition, the Petitioner relied on the title documents which were all in her name. That alone in our view cannot grant exclusive ownership of the property in the Petitioner since, the evidence on record reveals that, the Petitioner was placed in a secured position in life by the Respondent which facilitated her acquisition of the property.

(44) This observation notwithstanding, the Learned Justices of the Court of Appeal found it appropriate to settle the Ashalley Botwe property on the Petitioner while they, settle the matrimonial property and the adjoining land on the Respondent. It should be noted that, the Learned Justices of the Court of Appeal still recognised the Petitioner's contribution to the matrimonial property but assessed the same in monetary terms pursuant to Section 20(1) of Act 367 by awarding the Petitioner a lump sum of GH¢50,000.00.

(45) From the peculiar facts of this dispute, we do not think, that the award of monetary payment as against a property settlement sins against the law on the distribution of marital properties upon divorce. What is pivotal, is that, there should be a justifiable basis in law, grounded upon the special circumstances of the case before such an option is applied. At all times, in exercising the discretion, the same must be fair, reasonable and neither arbitrary nor capricious and must take into consideration the particular matrix of facts before the court. As observed in the case of **OGYEEDOM OBRANU KWESI ATTA VI VS. GHANA TELECOMMUNICATIONS CO. LTD. AND**

ANOR. CIVIL MOTION NO. J8/37/2021 DATED 31ST MARCH, 2021. per Tanko Amadu JSC

"…Judicial decisions are made to resolve particular disputes. A decision derives it's quality of justice, soundness and profoundness from the peculiar surrounding circumstance of the dispute it is presumed to adjudicate within the context of the relevant applicable law".

(46) Section 20 of Act 367 dealing with property settlement provides as follows:

(1) The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable.

(2) Payments and conveyances under this section may be ordered to be made in gross or by instalments.

(47) Clearly, by proceeding under Section 20 of Act 367, the Court of Appeal recognised the Petitioner's interest in the matrimonial property and the land adjoining the said property. It appears however that, the Court of Appeal was swayed by the fact of the Respondent being married to other two wives with five other children aside the Petitioner and their child who were also living in the matrimonial property. Thus, the Court of Appeal to deemed it prudent to settle the said property for the Respondent. At the risk of sounding repetitive, this is what the Learned Justices of the Court of Appeal said:

"We are of the position that, the formula applied by the trial court in terms of the distribution of property upon the dissolution of the marriage between the Parties is demonstrably erroneous and inequitable. This is by reason of the polygamous circumstances of the Respondent who has two wives and children apart from the child of the marriage between him and the Petitioner, while the Petitioner keeps the Ashalley Botwe property she acquired exclusively during the subsistence of the marriage between the Parties. To award her 50% of the Respondent's property when he currently has two other wives and other children is, in our view, inequitable and a slavish application of the old principle in Mensah Vs. Mensah."

(48) While we agree in principle with the conclusion that it is inequitable, having regard to the special circumstances of the case, and in particular the evidence on record, to allow the Petitioner keep the Ashalley Botwe Property exclusively to herself, and fifty percent of the matrimonial property in dispute, we should not be understood as endorsing a general proposition that, dissolution in respect of polygamous marriages cannot result to a fifty percent share of the marital property on a divorced spouse, In other words, the fact that a person is in a polygamous marriage does not absolve him from being responsible to either of the wives who jointly hold or own a property with him, by recognising their equitable interest in same even if the interest warrants an equal distribution upon dissolution of any of the marriages.

(49) The reason is not farfetched because, the test or formula as settled in Article 22 of the 1992 Constitution is one of **joint acquisition being equitably distributed.** Therefore, once a claimant is able to prove that, first, the property was jointly acquired, then it follows that, the same must be equitably

distributed. Therefore, what informs this distribution even under a polygamous marriage situation should not in my humble view, be contingent on the male spouse having multiple wives and several children apart from the divorcing wife.

(50) That said, upon our careful review of the entire evidence on record, we find that, the matrimonial property was sufficiently funded and acquired by the Respondent. We do acknowledge that, the Petitioner played a role in the construction through supervising same at the initial stages when the Respondent was sojourning in Nigeria. When the Respondent contended that, the Petitioner's role was only at the foundational stages, the Petitioner could not lead convincing evidence to rebut same.

(51) Consequently, it is our considered view that, the GH¢50,000.00 awarded in favour of the Petitioner together with the Ashalley Botwe property as her property settlement in the marriage, is equitable and within the combined effect of Article 22 of the 1992 Constitution and Section 20 of the Matrimonial Causes Act, 1971 (Act 367).

(52) In conclusion, save the different reasoning set out above as against the reasoning informing the conclusion of the judgment of the Court of Appeal, we do not find any basis to disturb the conclusion reached by the Court of Appeal. The result is that, the appeal fails, and the same is hereby accordingly dismissed.

(SGD.) I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

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

(SGD.) **S. K. A. ASIEDU**
(JUSTICE OF THE SUPREME COURT)

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

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

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