IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG JSC
AMEGATCHER JSC
HONYENUGA JSC
KULENDI JSC

CIVIL APPEAL
NO. J4/54/2020

15TH JUNE, 2022

GIFTY ESINAM ADJEI ..... PETITIONER/RESPONDENT/RESPONDENT

VRS

DANIEL AKPOR ADJEI ..... RESPONDENT/APPELLANT/APPELLANT

JUDGMENT

HONYENUGA JSC:-

This is an appeal from the judgment of the Court of Appeal dated the 11th day of July, 2019 which affirmed the judgment of the High Court dated the 31st day of October 2016.

A perusal of the record of appeal reveals clearly that the appeal is essentially premised on the distribution of property rights between the parties. Therefore the issue arising in this appeal is whether or not the Petitioner/Respondent is entitled to fifty percent (50%) of the matrimonial house in issue as held by the High Court and the first appellate court.

In this judgment, the Respondent/Appellant/Appellant would hereinafter be referred to as the husband and the Petitioner/Respondent/Respondent as the wife.

BACKGROUND FACTS

This is a unanimous judgment of the Court of Appeal and the final orders made by the Court of Appeal after its Judgment were as follows:-

> "The orders made by the court below are valid and should be carried out. The appeal by all indication lack merit and should be dismissed. It is hereby dismissed. We affirm the decision of the High Court and dismiss the appeal."

What were the orders made by the High Court which were affirmed by the Court of Appeal. They were:-

> "1. The said marriage is decreed to be dissolved.
>
> 2. The petitioner is entitled to 50% of the properties acquired in the course of the marriage. The building is to be valued and she given her one half share.
>
> 3. It is my considered opinion that it will be fair and just if she is awarded financial provision of five thousand Ghana Cedis (GH¢5,000.00).
>
> 4. The petitioner did not lead any evidence on the fact that the Respondent owes her seven thousand Ghana cedis (GH¢7,000.00). Her claim for the said amount of money fails.
>
> 5. Costs of three thousand Ghana cedis (GH¢3,000.00) is awarded to the petitioner."

The facts were that the parties were customarily married for sixteen years and on the 24th July 2012 they converted the said marriage into an ordinance marriage which was celebrated at Ledzokuku Krowor Municipal Assembly at Nungua. The marriage was later

blessed at the Christ Inventors Mission at Tsui Bleoo Teshie. There were no issues during the marriage. The husband was a mason and the wife a seamstress. The wife averred that prior to the marriage the husband had four children whom he brought to the matrimonial home and it was the wife who cared for them from infancy and treated them as her own children. She further averred that the husband behaved in unreasonable manner that she could not be expected to ever live with him as a wife. She particularized the unreasonable behavior or conduct of the husband to the extent that the husband insults and assaults her physically and accused her of being a prostitute and being in adulterous relationship which she denied. The wife also accused the husband of committing adultery with other women. She stated that on one occasion, the husband assaulted her in public when she was talking to the husband of a lady pastor because he claimed she was having an affair with the said pastor. She also averred that that the husband was extremely cruel and jealous and assaulted her mercilessly at the sight of her talk or greet any male member of the community. The husband also threw her out of the matrimonial bedroom and denied her access to her clothes and other personal effects the husband lived there alone. She averred that the husband did not show any love or affection for her which conduct had affected her psychologically and all attempts at settlement by her uncle failed.

During the marriage, the matrimonial home was constructed. The wife has asserted that she also contributed money and that she carried mortar and blocks towards the construction and cooked for the labourers while the husband was responsible for the construction. However, the husband resisted these claims of the wife and insisted that the land was a gift to him and he solely built the matrimonial home before the marriage.

The wife then filed a petition for divorce claiming the following reliefs:-

> "(a)An order for the dissolution of the Ordinance Marriage contracted between the parties on the grounds that same had broken down beyond reconciliation.

(b) An order directed at Respondent to settle on the Petitioner one half of the parties' matrimonial home located at Tebibiano, Teshie near Accra or to pay to the petitioner one half of the monetary value of the same.

(c) An order directed at the Respondent to settle on the petitioner one half share of all other properties acquired by the parties or by the Respondent during the subsistence of the marriage or pays one half of the monetary value of same to the petitioner.

(d) An order that Respondent pays to the petitioner a lump sum of GH¢25,000.00 as an alimony. An order directed at the Respondent to refund to the petitioner the sum of GH¢7,000.00 used by the petitioner to settle a debt in favour of the Respondent to enable time to be released from custody.

(f)Any other consequential relief(s) this Honourable Court deems just and appropriate.

(g)Costs of this litigation including lawyers fees"

The husband resisted the wife's claim and filed an answer to the petition. The husband admitted that the marriage had broken down beyond reconciliation and there is no likelihood that the parties will ever reconcile. He also admitted that he had four issues prior to the marriage and brought them into the matrimonial home where the wife treated them as her own from their infancy. He denied assaulting the wife but admitted that the wife was always behaving as a prostitute. The husband averred that he built the matrimonial home about twenty years before the marriage. He prayed that the petition be dismissed as unmeritorious and an abuse of the legal process.

At the close of the trial and after hearing the parties and their witnesses, the learned trial judge found that the parties marriage had broken down beyond reconciliation and dissolved same.

On property settlement, the trial Judge found as a fact that since the property was acquired in the course of the marriage and having found that the customary marriage was

about sixteen years earlier than the Ordinance Marriage and since contribution is no longer essential to constitute marital property, the wife was entitled to fifty percent (50%) of the properties. She therefore concluded that the building be valued and the wife be given one half share. On financial provision the learned trial judge awarded five thousand Ghana Cedis (GH¢5,000.00) to the wife and accordingly entered judgment in favour of the wife.

APPEAL TO THE COURT OF APPEAL

Aggrieved by the judgment of the learned trial Judge, the husband filed an appeal to the Court of Appeal. The Court of Appeal dismissed the appeal and concluded that the trial High Court was right in concluding that the marriage had broken down beyond reconciliation and also that the wife was entitled to fifty per cent (50%) share of the properties acquired during the marriage.

APPEAL TO THE SUPREME COURT

The husband felt dissatisfied with the decision of the Court of Appeal and prayed that the Judgment of the Court of Appeal dated the 11 July 2019 be set aside based on the following grounds:-

> "(a) The judgment is against the weight of evidence.
>
> (b)The Court of Appeal misdirected itself in holding that the case of **Mensah v Mensah** applied in this case without due regards to the facts and evidence of this case, a misdirection which has occasioned grave injustice."

PROPRIETY OF GROUND (b) OF THE GROUNDS OF APPEAL

Before we consider the grounds of appeal, as filed and argued by counsel for the parties to this appeal, we would deal with a preliminary matter concerning ground (b) of the appeal. This court has time and again emphasized that where grounds of appeal are formulated contrary to the mandatory rules of court, they will be considered inadmissible

and unarguable because they are incompetent. They would in the circumstances be struck out. Numerous admonition to counsel and parties to appeals before this court had one such admonition to obey procedural rules was stated by Akamba JSC in **F.K.A Company Ltd v Nii Feiko Okine** (substituted by Nii Tackie Tawiah VI) Civil Appeal No. J4/1/201 dated 13/4/2016 as follows:-

> "It is important to state that the adjudication process thrives upon law which defines its scope of operation. It is trite to state for instance that, nobody has an inherent right of appeal. Any initiative within the context of the adjudication process must be guided by the appropriate, relevant provision be it substantive law or procedure law. As courts, if we fail to enforce compliance with the rules of court, we would by the lapse be enforcing the failure of the adjudication process which we have sworn by our Judicial Oaths to uphold. Since appeals are a creature of law the power of the court to adjudicate on appeals, whether to allow or dismiss are based on the statutory or procedural (law) which must be adhered to otherwise we would be failing to enforce compliance with the rules of court."

It is provided by Rule 6 (2) (f) of the Supreme Court Rules, 1996 (C. I. 16) as amended as follows:

> "(2) A notice of a civil appeal shall set the grounds of appeal and shall state
>
> (f) the particulars of any misdirection or an error in a law, if so alleged."

A perusal of the grounds of appeal, ground (b) allege misdirection by the Court of Appeal without stating the particulars of the misdirection as required by Rule 6 (2) (f) of C.I. 16. Any ground of appeal alleging misdirection without stating particulars except an omnibus ground is defective, incompetent, inadmissible and liable to be struck out as unarguable. Accordingly, having breached the rule of procedure in Rule 6 (2) (f) of C.I. 16, the ground (b) of the grounds of appeal is hereby struck out leaving the omnibus ground to be argued.

ISSUE FOR DETERMINATION

As earlier stated, the only issue in the appeal is whether the equality principle used by both the trial and the first appellate courts in property distribution following the dissolution of the marriage between the parties is worth affirming in the light of the evidence on record.

SUBMISSIONS OF COUNSEL FOR THE HUSBAND

In arguing the appeal counsel for the husband contends that there is no dispute that the ceremony took place but what is in contention is whether the marriage ceremony took place 16 years ago. Counsel submitted that the Court of Appeal affirmed the judgment of the High Court's findings of fact that the marriage had subsisted for 16 years during which the land was acquired and developed and that the real reason to contest the Court of Appeal zoomed on the decision to settle 50% of the Husband's house unto the wife. Counsel further contends that the Court of Appeal relied on Article 22 of the 1992 Constitution and section 20 of the Matrimonial causes Act, Act 367. Counsel prays that the appeal be allowed and the award of one half of the husband's house or its value to the wife be set aside.

SUBMISSIONS OF COUNSEL FOR THE WIFE

Counsel for the wife submitted that this court sitting as a second appellate court should affirm the findings of fact and the holding by the trial court to the extent that he wife is entitled to the reliefs granted her or concurs with same. Counsel contends that there is no basis to warrant this court to disturb the said finding of fact and holding.

DETERMINATION OF THE APPEAL

Before we consider the sole ground of appeal being that the "Judgment is against the weight of evidence, we would reproduce the relevant legislation which governs the distribution of property upon dissolution of marriage. Section 20 of the Matrimonial Causes Act, 197, Act367 provides:-

"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 in settlement of property rights or in lieu thereof or as part of financial provision that the Court, thinks fit, just and equitable."

Article 22 (2) and (3) of the Constitution, 1992 provides:-

"(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 distribution of the marriage."

It is trite that a ground of appeal which states the omnibus ground of appeal that the Judgment is against the weight of evidence was explained and decided by this Court in **Republic v Conduah Ex parte Aaba** (substituted by) Asmah [2013-2014] 2 SCGLR 1032 (holding 2) and other respectable authorities that:-

"the Judgment is against the weight of evidence" was to give jurisdiction to the appellate court to examine the totality of the evidence before it and come to its own decision on the admitted and undisputed facts. By that ground of appeal, the appellants was implying that there were pieces of evidence on record which if applied properly and correctly, could have changed the decision in his favour, or that certain in pieces of evidence had been wrongly applied against him. The onus is on such appellant to clearly and properly demonstrate to the appellate court, the lapses in the Judgment being appealed against." See **Tuakwa v Bosom** [2001-2002] SCGLR 61, **Bonney v Bonney** [1992-93] 2 SCGLR 779, **Djin v Musah Baako** [2007-2008] 1SCGLR 686 at 687, **Abbey &Ors v Antwi** [2010] SCGLR 17.

In the instant case, an appeal is a re-hearing we shall examine the totality of the evidence in the record of appeal and come to our own decision on the disputed and undisputed facts based on the lapses in the judgment pointed out by the appellant.

Before we proceed, we would state that both the trial court and the Court of Appeal came to the same conclusion that there was a marriage between the parties and that marriage has broken down beyond reconciliation. There is therefore no iota of doubt that the learned trial judge granted the divorce which was affirmed by the Court of Appeal.

Now, we would address the issue whether based on the equality principle by the trial and the 1st appellate court in the distribution of the marital property following the dissolution of the marriage between the parties is based on the evidence in the record of appeal. The husband has invited us by his appeal to set aside the judgment of the High Court and the Court of Appeal because it is against the weight of evidence.

The Supreme Court has in a plethora of decisions succinctly stated our jurisdiction in appeals dealing with concurrent findings by the trial court and affirmed by the first appellate court. In **Achoro v. Akanfela** [1996-97] SCGLR 209,this court detailed what would amount to interfere in holding (2) as follows:-

> "(2) an appeal against findings of facts to a second appellate court like… [Supreme Court], where the lower appellate court had concurred in the findings of the trial court especially in a dispute, the subject matter of which was peculiar within the bosom of the two lower courts or tribunals this court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which the lower tribunals had dealt with the facts. It must be established, e.g. That the lower courts had clearly erred in the face of a crucial documentary evidence or that a principle of evidence had not been properly applied; or, that the finding was so based on erroneous proposition of the law that if that proposition be corrected, the finding would disappear. It must be demonstrated that the judgments of the courts below were clearly wrong."

Further, Dotse JSC in **Gregory v Tandoh IV and Hanson** [2010] SCGLR 971 at 955 re-stated the settled practice as follows:-

> "We have noted that he Court of Appeal in the judgment concurred in the findings of fact made by the learned trial judge. There is this general principle of law which has been stated and re-stated in several decisions of this court, namely: that where findings of fact (such as this Supreme Court) must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record of appeal which make it manifestly clear that the findings of the trial court and the first appellate court are perverse."

Moreover, the same principles were emphasized by this court in **Fynn v Fynn and Osei** [2013-2014] 1 SCGLR 727 at 732- 734.

What were the findings of fact, by both the trial High Court and the first appellate court? The learned trial Judge made findings of fact and conclusions on page 166H of the record of appeal as follows:-

> "Since this property was acquired in the course of the marriage having found that the customary marriage was about sixteen years earlier than the ordinance marriage and since contribution of the spouse is no longer essential to constitute marital property, the petitioner is entitled to 50% of the properties acquired in the course of the marriage. The building is to be valued and she given her one half share."

The Court of Appeal affirmed the findings of fact and the conclusion by the High Court at pages 344 to 345 of the record of appeal thus:-

> "The evidence led by the petitioner and her witnesses including a close friend of the respondent demonstrates that the marriage was in existence as a customary marriage but later converted into an ordinance marriage. It was also shown that it was during the period that the disputed house (sic) was put up and the parties lived there before the ordinance marriage was entered into … the learned trial Judge

was not in error when she made this consequential order and we are unable to set it aside."

Were the findings of facts supported by the evidence on the record? In the instant case, we have found no reason to depart from the concurrent findings of facts by the trial High Court and the Court of Appeal as they are supported by the evidence on record. It is trite law that it is the trial court that determines matters of credibility of witnesses and these factors include the demeanour of the witness, the substance of the testimony, the existence or non-existence of any fact testified to by the witness. See **Ntiri & Anor v Essien & Anor** [2001-2002] and also section 80 of NRCD 323.

In this instance, it was the trial judge who perceived the witnesses and was in a better position to assess their credibility and the substance of their testimony. The trial Judge's assessment can only be set aside if it was contrary to law and procedure or established error which resulted into a miscarriage of justice. Indeed the main pliant of the husband is the photographs which were tendered by him in Exhibits 1, 2, 3, 4, 6, 8, 8A, 8B, 8C, 8D, 8E, 8F and 8G to depict the celebration of the customary marriage which has 8th September 2012 shown on some of them. Further, the photographs tendered as Exhibits 7, 7A, 7B, 7C, 7D, 7E, 7F, 7G which indicated the Ordinance Marriage ceremony with some of the exhibits depicting 24th July, 2012 as the dates they were taken with a camera. What is amazing is the fact that if these exhibits were accepted, it means that the ordinance marriage preceded the customary marriage. We take judicial notice of the fact that it is not normal for an ordinance marriage to be held before the celebration of the customary marriage. Further, the digital camera depicts the said dates on some of the exhibits can be manipulated to reflect the said dates. We reject the reliance on the dates on the said exhibits as unreliable and therefore the learned trial judge was right in not putting any weight on the said dates. It was also incumbent upon the husband to have called witnesses to prove that the ordinance marriage was celebrated before the customary marriage but was woefully found wanting.

In any case, the exhibit 'A' the marriage certificate and the evidence on record clearly depicts the date of the ordinance marriage. Section 17 (1) of the Evidence Act, 1975 NRCD 323 provides;

> "(1)Except as otherwise provided by law the burden or producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof."

See **Fosua & Adu Poku v Dufie (Decd) & Adu Poku-Mensah** [2009] SCGLR 310 and **Enekwa & ors v KNUST** [2009] SCGLR 242 at 348 which held that a person who asserts carries the burden of proof. The husband led no evidence to prove his assertion that the ordinance marriage was celebrated before the customary marriage. The learned trial judge after assessing the evidence made findings and concluded at page 175 of the record of appeal as follows:-

> "As already stated, the Respondent did not call any witnesses in support of this assertion that the customarily marriage was celebrated after the ordinance marriage. It is undisputed that PW2 who is a close friend of the Respondent has known him for a long time… PW 2 insists that he was part of the delegation that accompanied the Respondent to Somanya for performance of the customary marriage. What is an issue is when the said ceremony was performed. I had no course to doubt the credibility of the petitioner and her witness…. I accept their evidence that the customary marriage was performed long before the ordinance marriage. I therefore find that the customary marriage of the parties was performed about sixteen years before the ordinance marriage."

This finding is wholly supported by the evidence on record and we adopt same. Now, it the wife entitled to a half share of the matrimonial home?

Article 22(3) of the Constitution, 1992 (supra) has given effect and force to the principle of equitable sharing of joint property or divorce which provides that assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage. See **Mensah v Mensah** [1998-99] SCGLR 350 at 354. See

also Boafo v Boafo [2005-2006] SCGLR 705. Section 20 of the Matrimonial Causes Act, 1971 Act 367 (supra) is also applicable that upon a dissolution of marriage, either party may be ordered by the court to pay to the other party a sum of money or property as settlement of property rights or in lieu of or as part of financial provision that the court thinks just and equitable. In a commentary by the learned Author, Yaw D. Oppong in his book 'Contemporary Trends in the Law of Immovable Property in Ghana' Second Edition at page 431-432, he contends that if the courts find it just and equitable to apply section 20 of Act 367, it should be restricted to property, assets or wealth howsoever described, which has been acquired during the subsistence of the marriage sought to be dissolved but should not include property acquired prior to the commencement of marriage relationship. At page 432, the learned author holds the view that in view of Article 22(3) of the Constitution, 1992, section 20 of the Matrimonial Causes Act is rendered otiose or anachronistic if not unconstitutional. He explains that even if Act 367 was to be applied to property acquired during the subsistence of the marriage, the same cannot be applied in addition to Article 22(3) of the Constitution because Act 367 is an Act of parliament and a provision of the Constitution, it will have to give way or serve as a supplement to the Constitution. This statement by the learned author has generated some debate and we hope an opportunity would arise for this court as the apex court to make a final pronouncement on the issue. In the instant case, the learned trial judge has found and concluded that the wife could not prove her contribution to the acquisition of the matrimonial home but she is entitled to a fifty percent share of the properties acquired in the course of the marriage about sixteen year ago. The husband in his testimony denied that the house was built during the subsistence of the marriage and he tendered exhibit 9 an unregistered Indenture which indicates that he bought the land in 1997. He also tendered Exhibit 10 to 11 series which represents the bill and the meter readings of electricity which are in his name. The husband further testified that at the time he married the wife in 2012, he had already built his house. He called Dw1 who testified that it was his family that gave the land to the husband and issued a receipt exhibit 12 to him.

It is on record that the husband was unable to prove when the customary marriage took place in which Pw1 and Pw2 corroborate the evidence of the wife on the date of the performance of the customary marriage.

Indeed the earlier case law in the distribution of marital property after divorce was determined by the substantial financial contribution by a spouse to the acquisition of property. **See Reindorf v Reindorf [1974] 2 GLR 36, Abebrese v Kaa [1976] 2 GLR 46 and Anang v Tagoe [1989-90] 2 GLR 8.**

However, the current state of the law on the distribution of marital property acquired by the spouse during marriage after divorce was stated by this court speaking through Dotse JSC, in **Gladys Mensah v Stephen Mensah** [2013] SCGCR 391. The facts of this case were that the parties were first married under customary law which was later converted into an ordinance marriage which lasted for thirteen years. During the marriage, the parties acquired fourteen itemized properties including landed properties, shares in companies, cars and joint bank accounts. Later cracks appeared in the marriage and the husband left the matrimonial home and moved into the couple's jointly acquired residential property. After diligent efforts at reconciliation had failed the wife petitioned for divorce.

The trial judge decided that the properties had been jointly acquired during the subsistence of the marriage including numerous residential properties and ordered that the marital properties be distributed on equal basis. The husband appealed to the Court of Appeal and lost and he subsequently appealed to the Supreme Court. The Supreme Court unanimously dismissed the appeal and held:

(1) It was quite clear that the provisions in Article 22(3) (a) and (b) of the 1992 Constitution had espoused the principle of having access to property jointly acquired during marriage and that of equitable distribution of such property upon divorce.

(2) Common sense and principles of general fundamental human rights would require that a person who was married to another, and had performed various household

chores for the other partner like keeping the home, washing and keeping dirty laundry generally clean, cooking and taking care of the partners catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising home such that the other partner had a free hand to engage in economic activities must not be discriminated against in the distribution of properties during the marriage and on the evidence, the wife had made substantial contribution to the acquisition of the matrimonial properties and was therefore entitled to equal share.

This Court per Dotse JSC, in conclusion at pages 415 to 416 determined the issue whether the equality principle used by the trial and the first appellate court in the distribution of the marital property acquired during the marriage following the dissolution of the marriage between the parties is sustainable under the current state laws as follows:

> "We are therefore of the considered view that the time has come for this court to institutionalise the principles of equality in the sharing of marital property by spouses, after divorce, of all properties acquired during the subsistence of a marriage in appropriate cases. This is based on the provisions in articles 22(3) and 33(5) of the Constitution. The principle of "Jurisprudence of Equality" and the need to follow, apply and improve our previous decision in **Mensah v Mensah** and **Boafo v Boafo** (supra). The wife should be treated as an equal partner even after divorce in the devolution of the properties. The wife must not be bruised by the conduct of the husband and made to be in a worse situation than she would have been had the divorce not been granted. The tendency to consider women (spouses) in particular as appendages to the marriage relationship, used and dumped at will by their male spouses must cease. Divorce as Lord Denning stated long ago should not be considered as a stigma."

Furthermore, the decision in **Arthur (No 1) v Arthur (No 1)** [2013-2014] 1 SCGLR 543 had expatiated the decision in **Mensah v Mensah** (supra) in view of Article 22(3) of the Constitution, 1992 and to emphasise that the decision in **Mensah v Mensah** (supra) had interpreted Article 22(3) of the Constitution, 1992 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. It is sufficient if the property acquired by the spouses during the marriage irrespective of whether the other spouse had made a contribution to its acquisition. Holding (3) of said decision of this court states:

> "(3) The Supreme Court in **Mensah v Mensah** had interpreted the provision in Article 22(3) 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 common tenants but rather any property that had been acquired. In other words, 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."

Indeed, as regards Parliament's failure to enact legislation to implement the principles embodied in Article 22(3) of the Constitution, 1992, this Court in holding (1) in **Arthur v Arthur** (supra) succinctly stated that the Supreme Court had sought to implement same through constitutional interpretation and that the principles distilled from the decision in **Mensah v Mensah** was that there was a presumption in Ghanaian law in favour of the sharing of marital property on an equality basis in all appropriate cases between spouses after divorce.

Moreover, we are not unmindful of the decision of this court in **Quartson v Quartson** [2012] SCGLR 1077 at 1090 which followed the decision of Mensah v Mensah (supra) where this court affirmed the decision relating to joint property but refused to apply the equality is equity principle 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 entitled and that it should be applied on a case by case basis, with a view to achieving equality in the sharing of marital

property. Consequently, the facts of each case will determine the extent to which the ruling applies."

In the instant appeal, the learned trial Judge after considering it just and equitable in the settlement of property between the spouses made findings of fact and concluded at page 178 of the record of appeal which we repeat thus:

> "Since this property was acquired in the course of the marriage having found that the customary marriage was about sixteen years earlier than the ordinance marriage and since contribution of the spouse is no longer essential to constitute marital property, the petitioner is entitled to 50% of the properties acquired in the course of the marriage. The building is to be valued and she be given one half share".

What is "equitable" in the distribution of matrimonial property was determined by this court in **Boafo v Boafo** [2005-2006] SCGLR 705 Holding (2) speaking through the respected Date-Bah JSC (as he then was):

> "The provision in Article 22(3)(b) of the 1992 Constitution and section 20(1) of the Matrimonial Causes Act, 1971 (Act 367), only made provision for the equitable distribution of property jointly acquired without laying down the proportions in which such property might be distributed. The reason for that omission was that the question of what was "equitable" in essence what was just, reasonable and accorded with common sense and fair play, was a pure question of fact dependent purely on the particular circumstances of each case" (emphasis mine).

After a perusal of the record of appeal including the evidence and the findings of the trial court, the judgment of the Court of Appeal, its findings as well as the submissions by counsel canvassed before us, we have come to the conclusion that the evaluation and the findings of fact and the conclusion of the Court of Appeal were not perverse. However, since the equitable distribution of marital property is on a case by case basis and upon a consideration of the particular or the appropriate nature and the circumstances of this case, we think that it would be just, reasonable and fair to vary the property settlement as

ordered by the trial High Court and the first Appellate court and in their place award the wife three (3)self-contained rooms or their value for the husband to buy them out.

On financial provision, we have no cause to disturb the amount of Five (5) Thousand Ghana Cedis (GH¢5,000.00) awarded to the wife by the trial and the 1st appellate courts.

Save the variation of the award on property settlement, the appeal is dismissed.

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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