IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA – GHANA, AD. 2017

CORAM: ANIN YEBOAH, JSC [PRESIDING]

BAFFOE-BONNIE, JSC.

BENIN, JSC.

APPAU, JSC.

PWAMANG, JSC.

CIVIL APPEAL

NO. J4/45/2016

25TH JANUARY, 2017

MARTIN J. VERDOSE : PETITIONER/RESPONDENT

/RESPONDENT

VRS

PATRICIA ABENA VERDOSE-KURANCHIE : RESPONDENT

/APPELLANT

/APPELLANT

JUDGMENT

PWAMANG, JSC.

The facts giving rise to this appeal are fairly simple. The petitioner/respondent/respondent, hereafter referred to in this judgment as the petitioner, is a Dutch national while the respondent/appellant/appellant, to be referred to as the respondent, is a Ghanaian lady. They got married in Holland in 1984 and after a brief sojourn in Libya they moved to live in Ghana. They were living together at McCarthy Hill, Accra, but problems later developed in the marriage and petitioner moved out of the matrimonial home. The parties have two adopted female children aged 16 and 9 years as at 2007. He subsequently filed a petition for divorce and ancillary reliefs. Respondent also crossed petitioned and prayed for a dissolution of the marriage and ancillary reliefs. After a trial at which only the parties testified without calling witnesses the High Court gave judgment on 11th May,2009 and made orders dissolving the marriage and for custody and maintenance of the children. However, whereas in the ancillary reliefs the petitioner prayed the court to make orders for settlement of properties acquired during the marriage the court did not make any such orders but rather held that the properties, including the McCarthy Hill house which is registered in the name of respondent alone, were jointly owned by the parties.

The respondent appealed against the judgment and the Court of Appeal in its judgment dated 28th May, 2015 dismissed the appeal but set aside the part of the judgment of the High Court where it held that the properties were jointly owned. The Court of Appeal then proceeded, after reviewing the evidence led, to declare that the

petitioner was the absolute owner of the McCarthy Hill house and settled it in his favour. The court made a further order directed at the respondent to transfer it to the petitioner. The court settled the rest of the properties being; a six bedroom house with boys quarters at Nsuta, a plot of land also at McCarthy Hill, all the assets of Verdark Company established by the parties, Toyota Land Cruiser and Volvo Station Wagon, on the respondent and the children.

The respondent is dissatisfied with the decision of the Court of Appeal and has appealed to this court on the following grounds;

a. The learned justices of the Court of Appeal erred when they (sic) settled the matrimonial house property at McCarthy Hill, a freehold property, on the Petitioner/Respondent/respondent, a foreigner contrary to Article 266 of the 1992 Constitution.
b. The settlement of the matrimonial property by the learned judges of the Court of Appeal in violation of the 1992 Constitution in favour of Petitioner/Respondent/Respondent is null and void and cannot pass any interest in the property to the Petitioner/Respondent/Respondent.

c. The learned judges of the Court of Appeal misconceived the import of the phrase "jointly acquired" under Article 22(3) of the 1992 Constitution when it settled the whole matrimonial home property on the Petitioner/Respondent/Respondent on the basis that he alone financed the acquisition of that property.

d. The learned judges of the Court of Appeal failed to observe that the land on which the matrimonial home property was erected was a gift by the Respondent/Appellant/Appellant grantor under exhibit 1 for which the Respondent/appellant/appellant was entitled to the interest, right and or title therein.

e. The judgment is against the weight of the (sic) evidence.

At the hearing of this appeal the respondent relied on her statement of case filed on 26/7/16. In that statement of case she abandoned grounds (c) and (e) of the appeal and did not argue them so they are hereby struck out. That leaves grounds (a), (b) and (d) which respondent argued together. The point raised by respondent on these grounds is that the title deed of the McCarthy Hill house is a freehold and by the provisions of Article 266 of the 1992 Constitution the petitioner, being a non-citizen of Ghana, cannot be granted a freehold interest in land. Article 266 (1) and (2) of the 1992 Constitution relied on by Counsel for respondent are as follows;

'266(1). No interest in, or right over, any land in Ghana shall be created which vests in a person who is not a citizen of Ghana a freehold interest in any land in Ghana.

(2). An agreement, deed, or conveyance of whatever nature, which seeks, contrary to clause (1) of this article, to confer on a person who is not a citizen of Ghana any freehold interest in, or right over, any land is void.'

Basing on the above provisions the respondent has argued as follows in her statement of case;

> 'Article 266 (2) is clear that a conveyance of whatever nature, that is even if it is (sic) through a judicial decision as per that of the Court of Appeal under consideration that SEEKS, contrary to clause (1) of Article 266, to confer on a person, and in this case the Respondent herein, who is not a citizen of Ghana, any freehold interest in, or right over any land is VOID.'

However, the order of the Court of Appeal made to be found at page 255 of the ROA is;

> 'That the respondent transfers the McCarthy Hill house, Accra, to the petitioner herein forthwith.'

The court did not order that a conveyance of freehold interest should be made in favour of the petitioner so that order cannot be said to be void. In our understanding, when courts make orders it is presumed that they will be carried out within the framework of the law. So the order of the Court of Appeal for respondent to convey the McCarthy Hill property to petitioner will have to be done in compliance with Article 266, particularly clause (4) thereof which limits the interest that a non-citizen can hold in land in Ghana to fifty years. It is further our view of all the evidence that limiting the interest of the petitioner to fifty years with a reversion to the respondent and the children will achieve the ends of fairness and justice in this case.

In the circumstances we shall substitute the following order for that made by the Court of Appeal as regards the McCarthy Hill

house; The respondent is ordered to grant a lease of fifty years certain in the McCarthy Hill house to the petitioner with a reversion to the respondent and the two adopted children of the parties.

Subject to the above order, the appeal is dismissed.

(SGD) G. PWAMANG
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE - BONNIE
JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

(SGD) YAW APPAU
JUSTICE OF THE SUPREME COURT

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PETER ASANTE ACQUAH FOR THE PETITIONER/RESPONDENT /RESPONDENT.