IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2013

CORAM: DR. DATE BAHJSC (PRESIDING)
ANIN-YEBOAH JSC
P. BAFFOE-BONNIE JSC
A. A. BENIN JSC
J. B. AKAMBA JSC

CIVIL APPEAL.
No J4/19/2013

26TH JULY, 2013

PATIENCE ARTHUR **PETITIONER/RESPONDENT/APPELLANT**

VRS.

MOSES ARTHUR **RESPONDENT/APPELLANT/RESPONDENT**

JUDGMENT

DR. DATE-BAH JSC:

The Roman poet Virgil in his *Eclogues* asserts that "*Omnia vincit Amor"*, meaning that love conquers all things. Alas, the empirical evidence from divorce litigation belies this assertion. It is one of the responsibilities of the courts to sort out the messy consequences of love stories that have unravelled. This case falls into this category of love stories gone sour.

In its effort to put order into the messy consequences of the breakdown of the marriage of the parties to this suit, the Court of Appeal gave a judgment which constitutes a derogation from the advance subsequently made in the equal protection of spouses' interests in marital property, in *Mensah v Mensah* (unreported judgment of this Court, Suit No.J4/20/2011, delivered on 22nd February 2012). The Court of Appeal's decision therefore deserves careful scrutiny.

The Facts

This is an appeal from a unanimous judgment of the Court of Appeal. The orders made by the Court after its judgment were as follows:

i. "The dissolved marriage is affirmed.
ii. The Appellant is given reasonable access to the children in the U.K. and in Ghana.
iii. Respondent is restrained from intermeddling with the assets of the dissolved marriage without the Appellant's consent and approval.
iv. Respondent is ordered to render accounts of the GH₵30,000 given her to buy treasury bills without (*sic)* 30 days hereof, failing that she shall refund the money to Appellant after the due date."

The facts which led to the delivery of these orders and the judgment on which they were based were that the petitioner and the respondent entered into a customary marriage which was later converted into an Ordinance marriage, which was celebrated on 24th December, 1998 at the Emmanuel Presbyterian Church in Dansoman, Accra. The couple have three children.Both parties are citizens of Ghana and France, domiciled in Ghana. The respondent was a professional footballer who practised his profession in Nigeria, Germany,France and Dubai. While the petitioner lived with the respondent in France, she served as his driver, since he could not drive. She averred that, apart from the normal household work, she drove the respondent on all his rounds throughout the day and also drove the children to school and back for the entire duration of their stay in France. It was part of her case that the respondent

refused to allow her to look for work because of this driving responsibility. She further averred that it was the understanding between the parties that because the petitioner was prevented from working and by virtue of her role as a driver, any and all money that the respondent earned from his football career was to be for the parties jointly and any property that the parties acquired or purchased was to be owned by both parties.

During the marriage, the parties constructed a matrimonial home and a storey building at Weija in Accra. The petitioner has asserted part-ownership of these properties on the basis of her housekeeping, her role as a driver, as explained above, and her supervision of the construction of the buildings.

The respondent has resisted these claims of the petitioner and has insisted that the properties at Weija are his and that he financed their acquisition through his income from his football career.

The petitioner filed a petition for divorce on 4th June 2008, in which she asked for the following reliefs:

a. "Dissolution of the marriage.

b. Sole custody of the children be granted to Petitioner.
c. An order that the Respondent pays a reasonable sum monthly towards the maintenance of the children.

d. An order that the Respondent pays the school fees and medical expenses of the children.

e. An order for financial provisions in favour of the Petitioner.

f. A declaration that the parties jointly own the matrimonial home at Weija, STC, Accra.

g. A declaration that the Parties jointly own the storey building at Weija, STC, Accra.

h. A declaration that any purported sale of the said properties together with their fixtures and fittings and movables is null and void at law and until this Honourable Court determines as such the status quo ante must be preserved.

i. An order of interlocutory injunction restraining the Respondent by himself, his assigns, agents, representatives from dealing with the matrimonial home and the storey building at Weija, STC Accra pending the final determination of this Honourable Court.

j. An order of interlocutory injunction restraining the Respondent by himself, his assigns, agents, representatives from removing the fixtures and fittings, movables, equipment from the saloon at Weija, STC, Accra pending the final determination of this Honourable Court.

k. An order for the sharing of the matrimonial home as well as the storey building at Weija, STC, Accra between the Parties.

l. An order directed against the Respondent to account for all the items and equipment seized by the Respondent in the saloon as well as the matrimonial home.

m. An order directed against the Respondent to open the saloon.

n. A restraining order against the Respondent, his relations, assigns, agents and representatives from harassing, assaulting, interfering with the rights, interest of the Petitoner pending the final determination of this Honourable Court.

o. Costs

p. The Petitioner be granted any further beliefs(s)*(sic)* that this Honourable Court may deem fit."

The respondent filed an answer to the petition and cross-petitioned for divorce. He averred that the petitioner had deserted him and was living in adultery with a person in London. In his cross-petition, in addition to seeking the dissolution of the parties' marriage, the cross-petitioner sought an order giving him reasonable access to the children and an order restraining the cross-respondent from meddling with assets of the marriage without the cross-petitioner's consent and also an order for an account of the monies drawn from the joint account owned by the parties and GH₵30,000 that the cross-petitioner had given to the cross-respondent to buy treasury bills, which money had been squandered and not been accounted for.

After a full trial, the learned trial judge, Mrs. Elizabeth Ankumah J found that the parties' marriage had broken down beyond reconciliation and dissolved it. She awarded custody of the 3 children to the petitioner and gave access to the respondent. Regarding the maintenance of the children, she ordered that the respondent should pay GH₵100 per month per child with effect from February 2008. He was also to be responsible for half of the school fees and medical bills.

With regard to the property of the spouses,she found as a fact that the respondent had bought a house at the Old Police Barrier, Accra, for the petitioner and contributed to the purchase of a house for the petitioner's mother. The respondent also bought a house for his own mother in Cape Coast. In relation to the petitioner's claim for a declaration that she was a joint owner of the two properties acquired at Weija in the course of her marriage with the respondent, the learned trial judge held as a fact that though the petitioner did not contribute money to the acquisition of the properties, she helped in the acquisition and development of the two properties. She also found as a fact that the petitioner operated two saloons and a supermarket to cater for the needs of the family, when the respondent retired from his footballing career.

In the light of these findings of fact, the learned trial judge reached the following conclusion (at p. 157 of the Record):

> "In view of the fact that the respondent purchased a house for the petitioner and contributed to the purchase of a house for petitioner's mother he should be entitled to the matrimonial home where he currently resides and hairdressing saloon in the house. The court rules that the petitioner be given half share of the storey building and the equipments, the appliances in the second saloon (Abeka Lapaz)."

The learned trial judge declared that the petitioner was to have the house purchased for her at the Old Police Barrier, Kasoa, Accra. She also found that the cross-petitioner's averment that the petitioner had received GH₵ 30,000 from him to buy treasury bills had not been proven. She accordingly entered judgment for the petitioner against the respondent along the lines outlined above.

Dissatisfied with this judgment, the respondent appealed to the Court of Appeal, which reversed the decision of the learned trial judge on the issue of the division of the marital property. Counsel had argued before the Court that the learned trial judge had failed to give effect to the mandatory provision of section 19 of the Matrimonial Causes Act, 1971 (Act 367), which is to the following effect:

> **"Section 19—Financial Provision for Spouse.**
>
> The court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but an order for maintenance pending suit or financial provision shall not be made until the court has considered the standard of living of the parties and their circumstances."

Counsel's argument was that the learned trial judge had not investigated the standard of living of the parties and their circumstances, as required by the above provision. This failure by the learned trial judge was claimed to have occasioned a substantial miscarriage of justice. Counsel

contended that non-compliance by the learned trial judge with this mandatory statutory requirement went to the jurisdiction of the court and therefore the orders she had made giving part of the storey building and the shop to the petitioner were null and void. This argument persuaded the Court which held that the orders she had made were null and void. It is from this judgment of the Court of Appeal that the petitioner has brought an appeal to this Court. Her grounds of appeal are as follows:

1. "That the Judgment is against the weight of the evidence.
2. That the learned Appeal Judges erred in law in setting aside the Judgment of the High Court dated the 26th day of May, 2010.
3. That Order 3 of the Judgment is ambiguous and in precise (*sic)* when it stated thus "The Respondent (Applicant is hereby restrained from intermeddling with the assets of the dissolved marriage without the Applicant consent and approval. *(sic)*
4. That order 4 of the judgment which ordered the Petitioner/Applicant to render accounts of an alleged (GH₵30,000) given her to buy Treasury Bills is not supported by evidence."

The Law

In delivering the judgment of this court in *Mensah v Mensah (supra)*, my brother Dotse JSC pointed out that the Court's treatment of the division of marital property was an aspect of the application of a jurisprudence of equality. The Supreme Court, through the learned judge, there said:

> "Let us now go on our historical journey on the development of case law on the distribution of marital property acquired during marriage upon divorce. This exercise is important as it will enable us to explain the rationale for the improvements being made and the introduction of the *"principles of jurisprudence of equality."*

Further in the judgment, Dotse JSC explains that:

> "The Jurisprudence of Equality Principle, has been defined by the International Association of Women Judges in their November, 2006 USAID Rule of Law Project in

Jordan as *"the application of international human rights treaties and laws to national and local domestic cases alleging discrimination and violence against women."* Such that the rights of women will no longer be discriminated against and there will be equal application of laws to the determination of women issues in all aspects of social, legal, economic and cultural affairs."

He then concludes as follows:

"On the basis of the above conventions and treaties and drawing a linkage between them and the Constitution 1992, it is our considered view that the time has indeed come for the integration of this principle of *"Jurisprudence of Equality"* into our rules of interpretation such that meaning will be given to the contents of the Constitution 1992, especially on the devolution of property to spouses after divorce.

Using this principle as a guide we are of the view that it is unconstitutional for the courts in Ghana to discriminate against women in particular whenever issues pertaining to distribution of property acquired during marriage come up during divorce. There should in all appropriate cases be sharing of property on equality basis."

From *Mensah v Mensah,* therefore, the principle that is to be distilled is that there is 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. What needs to be spelt out in subsequent case law is the range of appropriate cases. Comparative legal materials from other common law jurisdictions should be useful in helping this court to clarify this range.

It should be stressed that the preferable route to giving effect to article 22(3) of the 1992 Constitution is for Parliament to discharge its obligation under article 22(2) to enact legislation that provides for the courts a comprehensive framework that guides their decisions on the property rights of spouses. Article 22 provides 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 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 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".

It is in the absence of Parliament's implementation of the principles embodied in article 22(3) that this Court has sought to implement them through constitutional interpretation in *Mensah v Mensah (supra).* In that task of interpretation, analogies from other jurisdictions can be helpful.

For instance, the USA provides interesting comparative legal materials. Of the fifty states in the United States, the District of Columbia and Puerto Rico, there are nine community property states and forty-three equitable distribution states. Each of the states follows individual and nuanced rules governing property distribution in the event of marriage dissolution which often lead to the creation of hybrid systems that rely on unique mixtures of community property and equitable distribution principles. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and the Commonwealth of Puerto Rico. Wisconsinis often characterized as having a hybrid system, and is sometimes classified as a community property state. Historically, there have been three systems used in the United States, the separate property system, the equitable distribution system, and a system of fixed rule (community property). Community property jurisdictions differentiate between the

“community” and “separate” property while equitable distribution states differentiate between “marital” and “non-marital” property.

All jurisdictions allow their courts to award to parties to a divorce property that has been characterized as joint, maritalor community property. While the various states have their respective laws governing divorce, several states have adopted uniform laws to govern their proceedings. One such law is the Uniform Marriage and Divorce Act (UMDA) which has been adopted by Arizona, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana and Washington. [http://www.uniformdivorce.com/UMDA.pdf]

As the Commissioners' introductory note to the UMDA states, "the distribution of property upon the termination of marriage should be treated as nearly as possible like the distribution of assets incident to the dissolution of a partnership." In a partnership dissolution, the court disposes of the partnership assets; in a marital dissolution, all courts are empowered to dispose of assets which have been identified as joint, marital, or community assets.

A typical example of the authority of the court to allocate assets is provided by *Ayers v. Ayers* [1978] 61 Ill. App. 3d 936. The court there explained that:

> “Most property acquired by either marital partner during the marriage is marital property. However, if the property is acquired by a partner as a result of a gift or before marriage or after a judgment of legal separation, the property is non-marital as is property acquired in exchange for property acquired by gift or property acquired before marriage (Ill.Rev.Stat.1977, ch. 40, par. 503(a)).
>
> Section 503(c) of the new Act (Ill.Rev.Stat.1977, ch. 40, par. 503(c)) states that in dividing marital property, the court shall disregard the fault of the parties and consider “all relevant factors” including “(1) the contribution or dissipation of each party in the acquisition, preservation, or depreciation or appreciation in value, of the marital and non-marital property, including the contribution of a spouse as a homemaker or to the family unit; (2) the value of the property set apart to each spouse; * * * (4) the relevant economic circumstances of each

spouse when the division of property is to become effective, * * * (7) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; * * * (9) whether the apportionment is in lieu of or in addition to maintenance; and (10) the reasonable opportunity of each spouse for future acquisition of capital assets and income."

The divorce and division of marital property laws of the United States present challenges in their respective nuances and idiosyncrasies. However, there are several common themes and consideration that each court must address subject to its own interpretation. The more modern trend, even among the non-community property states, seems to be a movement toward the equal division of property among the parties to a divorce without regard to fault or conduct during the marriage. In these cases, proper division relies upon the proper valuation of each of the parties' debts and assets. However, many jurisdictions continue to weigh several factors in their determinations of equitability. Among these factors are the abilities of each of the spouses to earn income, the length of the marriage and the respective contributions of the parties.

Proposals made by the Scottish Law Commission in 1981, entitled *Aliment and Financial Provision*, provide further illumination on the principle emerging from *Mensah v Mensah.* Although Scotland is not strictly speaking a common law jurisdiction, the Commission's views are nevertheless instructive. They said:

"**The norm of equal sharing**

3.66 It would be too vague to empower the courts to award simply a 'fair share' of matrimonial property. One of the major criticisms of the present law is that it provides no guidance on the amount of a capital sum which can be expected on divorce. It would, on the other hand, be too rigid to lay down a fixed rule of apportionment for all cases. We think that the best solution is to provide that matrimonial property should normally be divided equally between the parties but that the court should be able to depart from this norm of equal sharing in special circumstances … [We] can see no good

reason for giving either spouse, whether legal owner or not, whether wife or husband, less than half of the matrimonial property. The underlying idea is that of partnership in marriage and the only fair solution seems to us to be an equal division of the 'partnership' assets as the norm. We are confirmed in this conclusion by the fact that no system of matrimonial property of which we are aware provides for a division of such property in any fixed proportions other than equal shares.

3.68 Where there are special circumstances justifying a departure from equal sharing … we think that the court should be directed to share the matrimonial property in such proportions as may be fair in those circumstances. It would be impossible to provide with precision for the infinite variety of special circumstances which may arise. We therefore recommend:

> 32. (a) The principle of fair sharing of matrimonial property is that the net value of the matrimonial property should be shared equally or, if there are special circumstances justifying a departure from equal sharing, in such other proportions as may be fair in those circumstances…".

This broad norm of equal sharing articulated by the Scottish Law Commission is in consonance with the principle laid down in *Mensah v Mensah* and can equally serve as the underlying idea for the marital or matrimonial property sharing regime that this court is evolving, in the absence of action by Parliament.

This limited excursus into comparative law does not relieve this court of its responsibility for determining what Ghanaian law is on the issue under consideration. But it does provide a fertile context for interpreting what Ghanaian law is. That law is to be distilled from article22(3)(b) which declares that:

> "(b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage".

In effect, *Mensah v Mensah (supra)* interprets this provision liberally and purposively to mean that joint acquisition of assets is not limited to property that has been acquired as joint or common tenants, but rather any property acquired by the spouses during the course of their marriage is to be presumed to be jointly acquired. In other words, property acquired by the spouses during marriage is presumed to be marital property. Thus the Court (*per* Dotse JSC) had this to say on this issue:

> "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 requires that a person who is married to another, **and performs various household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising the home such that the other partner, has a free hand to engage in economic activities must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved.**
>
> This is so because, it can safely be argued that, the acquisition of the properties were facilitated by the massive assistance that the other spouse derived from the other.
>
> In such circumstances, it will not only be inequitable, but also unconstitutional as we have just discussed to state that because of the principle of substantial contribution which had been the principle used to determine the distribution of marital property upon dissolution of marriage in the earlier cases decided by the law courts, then the spouse will be denied any share in marital property, when it is ascertained that he or she did not make any substantial contributions thereof."

We are bound to follow this holding of the Supreme Court in *Mensah v Mensah (supra).* 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. We re-affirm this concept of marital property. However, consideration of US cases and statutes suggests that that property acquired by gift during the marriage should be excluded from the concept of marital property. This exception seems sound in principle.

Indeed, other exceptions may need to be carved out to the broad definition set out above. A consideration of the Canadian Matrimonial Property Act (Chapter 275 of the Revised Statutes, 1989) indicates that principle may dictate the need for further exceptions. In the evolution of Ghanaian case law on this issue, this Court may find that the detailed issues addressed in the Canadian statute may lead it to the formulation of further exceptions on a case by case basis. Alternatively, and preferably, Parliament should step in to lay down a statutory definition with appropriate exceptions.

In the Canadian Act, “matrimonial assets” is defined as follows:

> **“matrimonial assets"defined**
>
> **4 (1)** In this Act, "matrimonial assets" means the matrimonial home or homes and all other real and personal property acquired by either or both spouses before or during their marriage, with the exception of
>
> (a) gifts, inheritances, trusts or settlements received by one spouse from a person other than the other spouse except to the extent to which they are used for the benefit of both spouses or their children;
>
> (b) an award or settlement of damages in court in favour of one spouse;
>
> (c) money paid or payable to one spouse under an insurance policy;
>
> (d) reasonable personal effects of one spouse;

(e) business assets;

(f) property exempted under a marriage contract or separation agreement;

(g) real and personal property acquired after separation unless the spouses resume cohabitation."

Moreover, in Canada, though the division of matrimonial assets is generally on the basis of equal shares, the court is authorized to depart from equality in order to achieve equity. Thus sections 12 and 13 of the Nova Scotia version of the Act provide as follows:

"Application for division of matrimonial assets

12 (1) Where

(a) a petition for divorce is filed;

(b) an application is filed for a declaration of nullity;

(c) the spouses have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation; or

(d) one of the spouses has died,

either spouse is entitled to apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.

Limitation period for surviving spouse

(2) An application for the division of matrimonial assets shall be made by a surviving spouse within six months after probate or administration of the estate of the deceased spouse is granted by a court of probate and not thereafter.

Extension of time

(3) Notwithstanding subsection (2), where the court is satisfied that the surviving spouse did not know of the grant of probate or administration or did not have an adequate opportunity to make such an application, the court may extend the time for making the application but such an application shall relate only to matrimonial assets remaining undistributed at the date of the application.

Rightof surviving spouse as additional right

(4) Any right that the surviving spouse has to ownership or division of property under this Act is in addition to the rights that the surviving spouse has as a result of the death of the other spouse, whether these rights arise on intestacy or by will. R.S., c. 275, s. 12.

Factors considered on division

13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

(a) the unreasonable impoverishment by either spouse of the matrimonial assets;

(b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;

(c) a marriage contract or separation agreement between the spouses;

(d) the length of time that the spouses have cohabited with each other during their marriage;

(e) the date and manner of acquisition of the assets;

(f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;

(g) the contribution by one spouse to the education or career potential of the other spouse;

(h) the needs of a child who has not attained the age of majority;

(i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;

(j) whether the value of the assets substantially appreciated during the marriage;

(k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;

(l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

(m) all taxation consequences of the division of matrimonial assets. R.S., c. 275, s. 13; revision corrected."

Even taking account of these comparative legal materials from Canada, the property that the learned trial judge distributed between the parties by her orders were marital property. The principle embodied in *Mensah v Mensah (supra)* would override the Court of Appeal's conclusion that the learned trial judge's orders on the division of marital property were null and void, even if section 19 of the Matrimonial Causes Act, 1971 were the correct applicable provision. The duty to apply the constitutional presumption of equal division would apply, even if there were a mandatory obligation to investigate the standard of living of the parties. In fact, the Court of Appeal, with respect, was misled into relying on the wrong section of the

Matrimonial Causes Act, 1971. Since what the orders of the learned trial judge,on the division of the marital property, aimed to do was not financial provision pending the determination of the suit, but rather final financial provision, the relevant provision that the Court should have relied on was section 20, which reads as follows:

> **"Section 20—Property Settlement.**
>
> (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."

Section 20 does not contain the statutory precondition relied on by the Court of Appeal. In any case, during the trial, evidence was adduced before the learned trial judge on the standard of living and circumstances of the parties such that even if she were applying section 19 she would be within her rights to make the orders on division of marital property that she made. The Court of Appeal was thus in error in reversing the learned trial judge's division of the parties marital property on the ground that the orders she had made were null and void.

The Court of Appeal also reversed the learned trial judge on her finding that the petitioner had contributed towards the acquisition of their marital property. They accordingly awarded the marital property to the respondent. It should be emphasized that, in the light of the *ratio decidendi* in *Mensah v Mensah*, it is no longer essential for a spouse to prove a contribution to the acquisition of marital property. It is sufficient if the property was acquired during the subsistence of the marriage. The Court of Appeal's reversal of the learned trial judge on this issue was also erroneous.

In sum, the Court of Appeal erred in allowing the appeal against the learned trial judge's judgment and orders. The said orders deserve to be restored and the appeal against the

judgment of the Court of Appeal allowed. In researching United States case law for comparative material, we came across the following passage from the judgment of Broderick J of the Supreme Court of New Hampshire in *In the Matter of Peter Letendre and Linda Letendre* (2002) 149 N.H. 31; 815 A2d 938. It is instructive on the approach a superior court should adopt in relation to the exercise of discretion by a trial court in the division of marital property and in tune with the general approach adopted by this court in overriding the decisions of the court below:

> "We sustain the findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law. *In the Matter of Fowler and Fowler,* 145 N.H. 516, 519, 764 A.2d 916 (2000). The trial court has broad discretion in determining matters of property distribution and alimony in fashioning a final divorce decree. *Id.* Absent an unsustainable exercise of discretion, we will not overturn its ruling or set aside its factual findings. *In the Matter of Telgener & Telgener,* 148 N.H. 190, 191, 803 A.2d 1051 (2002)"

This Court equally considers that there was no justification for the Court of Appeal to reverse the findings of fact and the discretion exercised by the learned trial judge. Although both the judgments of the learned trial judge (dated 26th May 2010) and of the Court of Appeal (dated 24th November 2011) were delivered before the judgment in *Mensah v Mensah (supra),* the judgment of the trial court better reflects the spirit and *ratio decidendi* of *Mensah v Mensah.* Indeed, Ankumah J. expressly referred to article 22 of the 1992 Constitution in the following passage from her judgment (at p. 156-7 of the Record):

> "The court holds as a fact that even though the petitioner did not contribute money to the acquisition of the properties she helped in the acquisition and development of the 2 properties. She later on operated the two saloons and the supermarket to cater for the needs of the family, when the respondent had retired from playing football. Articles 22(3)(a) and (b) of the 1992 Constitution provides as follows:
>
> "(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."

It was in the light of these provisions from the Constitution that the learned trial judge then went on to make the following pronouncement, earlier quoted but repeated here for ease of reference:

> "In view of the fact that the respondent purchased a house for the petitioner and contributed to the purchase of a house for petitioner's mother he should be entitled to the matrimonial home where he currently resides and hairdressing saloon in the house. The court rules that the petitioner be given half share of the storey building and the equipments, the appliances in the second saloon (Abeka Lapaz)."

The appeal is accordingly unanimously allowed and the judgment of the learned trial judge restored in its entirety. This judgment has endeavoured to maintain the gains made by Ghanaian law in the direction of the realization of the vision contained in article 16(1) of the Universal Declaration of Human Rights 1948 to the effect that:

"Article 16.

> (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

We are convinced that this principle of universal human rights deserves implementation in Ghanaian law.

This has been my valedictory delivery of a judgment of this court. I have no further judgments to deliver before my retirement in August this year. I must place on record that it has been a rare and fruitful privilege to have served on the Supreme Court of Ghana, a Supreme Court like no other, given the multiplicity of its jurisdictions. I am done.

(SGD) DR. S. K. DATE BAH

JUSTICE OF THE SUPREME COURT

AKAMBA J.S.C:

I have had the priviledge of reading the valedatory decision by my respected and able brother Dr Kofi Date Bah.

I agree entirely with the decision and outcome and have nothing useful to add.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

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