IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2012

CORAM: ATUGUBA, J.S.C. (PRESIDING)
ANSAH, J.S.C.
OWUSU (MS.), J.S.C.
ANIN-YEBOAH, J.S.C.
GBADEGBE, J.S.C.

CIVIL APPEAL
No. J4/8/ 2012

31ST OCTOBER, 2012

CHRISTIANA QUARTSON - - - PETITIONER/APPELLANT/APPELLANT

VRS

PIOUS POPE QUARTSON - - - RESPONDENT/RESPONDENT/RESPONDENT

J U D G M E N T

ANSAH, J.S.C.

The Petitioner and the Respondent lived together as husband and wife for 25 years. The petitioner petitioned for divorce, citing unreasonable behaviour and adultery and sought the following reliefs:

i. That the said marriage be dissolved.
ii. That the petitioner be granted custody of Perry, the minor child of the marriage
iii. That the respondent be ordered to vacate the matrimonial home

iv. That the Petitioner be paid a lump sum of ¢500, 000, 000 (Five Hundred Million cedis) as dissolution settlement

v. That the Petitioner be given all her director's fees and allowances as a director of Pious Trading and Construction Company Limited of which the Respondent has coveted as "his" company.

vi. That the Petition's [SIC] 40 percentum shares in Pious Trading And Construction Company Limited be quantified and paid to her as part of the marriage settlement.

vii. That the Respondent be condemned in costs

viii. That the Petitioner may have such further reliefs as this Honourable Court may deem fit having regard to property rights.

The respondent cross petitioned and sought the following reliefs:

(a) That the marriage be dissolved

(b) That the Respondent be given custody of all the children of the marriage

(c) That an order be directed to petitioner to vacate from matrimonial house when put up solely from the sweat of Respondent.

The trial judge dissolved the marriage, but dismissed the Petitioner's prayer that the Respondent be ordered to vacate the matrimonial home. The court awarded a lump sum of GH¢35,000 (Thirty-five ThousandGhana Cedis) instead of the Petitioner's prayer of GH¢50,000. In addition the court awarded the appellant one double plot of land either at the North of Kwesimintsim or Anaji and a Nissan Pathfinder with registration number WR 4141 T. The petitioner was further ordered to vacate the matrimonial home within 30 days.

The petitioner appealed against the trial court's decision. In the Court of Appeal, the petitioner's grounds of appeal were thus,

a) The trial judge erred in ordering the petitioner to vacate the matrimonial home within 30 days;
b) The trial judge erred in not vesting the matrimonial home in the petitioner;
c) The trial judge erred in not ordering the respondent to vacate the matrimonial home;
d) The amount of GH¢35,000 awarded to the petitioner as financial settlement was woefully inadequate considering the circumstances of the marriage and the evidence on record;
e) The trial judge erred in refusing to entertain reliefs (v) and (vi) of the amended petition.

The Court of Appeal dismissed the appeal, save for awarding an enhanced financial settlement of GH¢50,000 (Fifty Thousand Ghana Cedis). The Petitioner therefore filed the present action on the following grounds:

1. The Court of Appeal erred in law and occasioned a grave miscarriage of justice when it held that the matrimonial property was not jointly acquired because the contribution of the Appellant in the form of purchasing building materials and supervising the construction of the Matrimonial property from the foundation level to completion did not constitute substantial contribution.
2. The Court of Appeal erred and occasioned a grave miscarriage of justice when it held that the Appellant's contribution to the acquisition of the matrimonial home constituted only domestic chores of a wife and cannot entitle her to an interest in the property.

3. The Court of Appeal erred and occasioned a grievous miscarriage of justice when it held that domestic chores and supervision of the construction of the matrimonial home by the Appellant cannot be qualified in monetary terms or value.
4. The Court of Appeal erred and occasioned a grave miscarriage of justice when having found that the Appellant was entitled to be settled with a house, nevertheless made an award of GH¢15,000.00 which is woefully inadequate to purchase a house befitting the status of the Appellant.
5. The Court of Appeal erred and occasioned a grave miscarriage of justice when it held that because the Constitution mandated Parliament to legislate a law to regulate the distribution of jointly acquired matrimonial property and Parliament has to date failed to pass such a law the Appellant should bear the brunt of the inaction of Parliament.
6. The Court of Appeal erred and occasioned a miscarriage of justice when it held that the Respondent was not obligated to transfer to the Appellant the monetary value of 40% of the 100% shares of the Respondent held as part of financial provision.
7. The Court of Appeal erred and occasioned a miscarriage of justice when it failed to lift the veil of incorporation and found that even though the Appellant was a Director of Pious Trading and Construction Company Limited the Court nevertheless held the Respondent was not under any obligation to pay to the Appellant Directors fees which she is entitled.
8. Any further grounds of appeal shall be filed upon receipt of the record of appeal.

Substantial Contribution to Acquisition of Property Acquired During Marriage

Grounds 1 to 5 bring to the fore the issue of what amounts to substantial contribution to the acquisition of property acquired during marriage. It would be worthwhile at this stage to mention that Parliament has till this day, not enacted legislation to regulate the distribution of jointly acquired property of spouse upon divorce, as the Constitution mandate. This fact will be revisited later, but for now it would suffice to mention that due to Parliament's inaction the courts have, over the years, carved out the principle of substantial contribution as the litmus test for determining whether or not a case can be made for joint ownership of property. The courts have therefore held in several cases that substantial financial contribution of a spouse to the acquisition of property during the subsistence of the marriage would entitle that spouse to a share in the property. For example, in *Yeboah v. Yeboah* (1974) 2 GLR 114, H.C. a husband and wife were married under the Marriage Ordinance, Cap. 127. Before the marriage, the wife had applied for a house from the Housing Corporation. She was allocated a plot of land for which she paid a deposit. After the marriage, she had the plot of land transferred into the name of her husband and the deposit was refunded to her by the corporation. The husband then took a loan from his employers to put up a house on the plot. Just as he was about to start constructing the building, the husband was transferred to London where he was later joined by the wife. The construction of the building started while the couple were resident in London. According to the wife, during the construction of the house she flew to Ghana at the request of her husband to supervise the construction. She stated that she paid the fare herself. She alleged that she made several structural

alterations to the building with the knowledge and consent of her husband. The parties returned to Ghana and thereafter the marriage broke down. The husband then served a notice on the wife to quit the matrimonial home on the ground that he required the premises for his own occupation. When the wife failed to quit the premises, the husband then brought an action to eject the wife from the house. Headnote 3 of the court's holding, per Hayfron-Benjamin J (as he then was) stated thus:

> "The wife was a joint owner of the house with the husband because *judging from the factors attending the acquisition of the house and the conduct of the parties subsequent to the acquisition, it was clear that they intended to own jointly the matrimonial home."* (e.s.) See also *Rimmer v. Rimmer* [1959] 1 Q.B. 63 and subsequent cases like *Abebrese v. Kaah* [1976] 2 GLR 46 H.C., *Anang v. Tagoe* [1989-90] 2 GLR 8 H.C., and *Achiampong v. Achiampong* [1982-83] G.L.R. 1017 C.A.

It follows that where a spouse makes substantial financial contribution to the acquisition pursuant to an agreement or inferred intention by the couple that the property acquired should be owned jointly, the court will hold the property to be jointly owned. 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 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 v. Kaah* and *Anang v. Tagoe* supra.

Indeed this position of the law prevailed until this court held in ***Mensah v. Mensah*** [1998-99] SCGLR 350 and subsequently in ***Boafo v. 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 v. Mensah* and *Boafo v. 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." (e.s.)*

Evidently, the framers of the Constitution intended that there should be no discrimination (particularly against women) in the sharing of joint property.

All this apart, the jury was still out on the issue whether the satisfactory performance of wifely duties would entitle her to a share in property acquired during marriage, particularly the matrimonial home. Would the performance of these duties amount to substantial contribution albeit in kind, or would they be disregarded? Article 22 (2) enjoins Parliament to *"as soon as practicable after the coming into force of this Constitution, enact legislation regulating the*

property rights of spouses." (e.s.) It would be useful to reiterate again the regrettable fact that 20 years after the coming into force of the 1992 Constitution, Parliament is yet to give this constitutional requirement the legislative teeth it needs to bite. In the absence of legislative guidelines, the courts have followed the principle laid down in *Quartey v. Martey & Anor.* (1959) GLR 377, HC per Ollennu J. (as he then was) at 380 thus:

> "… by customary law it is a domestic responsibility of a man's wife and children to assist him in the carrying out of the duties of his station in life, e.g. farming or business. The proceeds of this joint effort of a man and his wife and/or children, and any property which the man acquires with such proceeds, are by customary law the individual property of the man. It is not the joint property of the man and the wife and/or the children. The right of the wife and the children is a right to maintenance and support from the husband and father."

This principle was clearly behind the reasoning of the trial judge when he held at 248 of the record of appeal as follows:

> "There is abundant evidence that indicates that the house was acquired by respondent. *He solely contributed all the finances that went into the construction of the building. That is not to say Petitioner did not do anything. She did what any dutiful wife would do. Essentially respondent was outside the Country at the initial sates of the construction of the house and there is abundant evidence to show that he sent down all the money needed for the construction.* The Petitioner as a dutiful and responsible wife was responsible for supervision and purchasing of the building materials. She recommendably did what any good wife would do

under the circumstance. However, to the extend [SIC], that she did not contribute financially in any way towards the acquisition; I will state that this house was acquired by respondent. *It must be pointed out that the fact that a wife has served her husband dutifully, faithfully and responsibly during marriage does not by itself entitle her to a share in the property acquired by the husband. Conversely, the fact that a husband has performed satisfactorily the duties of a husband does not entitle him to a share in the property acquired by the wife during the marriage.*

In the case of **Quartey vrs. Martey & Another (1959) GLR 377, Ollenu J** said in the course of his judgment. " … I must hold that in the absence of strong evidence to the contrary, any property a man acquires with the assistance or joint effort of his wife is the individual property of the husband and not the joint property of the husband and the wife." …" (e.s.)

It is the view of the court that the principle laid down in *Quartey v. Martey, supra* cannot be allowed to stand, in this twenty-first century world. Times have changed and society has evolved since 1959. The world is waking up to the fact that women play an all important role in the development of society and this role cannot be whittled away by the inability or difficulty to quantify in financial terms their contribution in the creation of a healthy stable family environment. The respondent in his statement of case invites this court to hold that the appellant has no share in the matrimonial home, in the absence of legislative guidelines. In addressing the court on Ground 5, the respondent argued, inter alia, as follows:

> "It is our contention that the provisions of Article 22(2) of the 1992 Constitution are mandatory. If the framers of the Constitution had intended that the judiciary should take up that responsibility by way of judicial law making they would have stated so expressly. Short of that we would be stretching the judicial law making function to the limits if one wants the judiciary to outstep its bounds and assume legislature functions."

The respondent's line of reasoning in this appeal appears to be in consonance with the reasoning behind the Court of Appeal's decision. The Court of Appeal speaking through Marful-Sau J.A. refused to recognize the appellant's contribution to the construction of the matrimonial home. At 358 of the record of appeal he said as follows:

> " … In the instant case the appellant from the record did not contribute financially towards the acquisition of the property. The contribution she relied upon is the services she rendered as a wife during the construction of the house. The question I ask again is this; does it amount to a substantial contribution? *In other words, what price or commercial value do we ascribe to domestic services rendered by wives in Ghana, like cooking for workmen and supervising workers constructing a house solely funded by a husband?* In Ghana this issue, particularly upon dissolution of marriage is still at large in the sense that no legislation has been enacted to commercialise domestic services rendered by wives." (e.s.)

At 360 the learned Justice of the Court of Appeal continued:

> " … In the absence of such legislation in Ghana, I am of the considered opinion that *domestic services rendered, however important they may be, for now, cannot amount to a contribution by a spouse in a property acquired through the financial resources of the other spouse. I am of the view that if the courts are left on its own to quantify such domestic services without legislative guidance, the result will be judicial chaos in matrimonial suits."* (e.s.)

In view of the changing times, it would defy common sense for this court to attempt to wait for Parliament to awaken from its slumber and pass a law regulating the sharing of joint property. As society evolves, a country's democratic development and the realization of the rights of the citizenry cannot be stunted by the inaction of Parliament. We do not think that this court is usurping the role of Parliament, especially in cases where the inaction of Parliament results in the denial of justice and delay in the realization of constitutional rights. As the appellant put it in ground 4 of her grounds of appeal, the appellant should not be made to bear the brunt of Parliament's failure to pass a law to regulate distribution of joint matrimonial property. Happily, this court has taken a progressive step and put the matter to rest in *Gladys Mensah v. Stephen Mensah*, Unreported Suit No: J4/20/2011, dated 15th February, 2012. The court speaking unanimously through my learned brother Dotse J.S.C. held that thus:

> "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 martial property when it is ascertained that he or she did not make any substantial contributions thereof. It was because of the inequalities in the older judicial decisions that we believe informed the Consultative Assembly to include article 22 in the Constitution of the 4th Republic." (e.s.)

We do not think that this position has the potential of causing judicial chaos on the scale that the learned Justice of the Court of Appeal envisages.

The decision in *Gladys Mensah v. Stephen Mensah*, *supra* 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. The ruling, as we see it, should be applied on a case by case basis, with the view to achieving equality in the sharing of marital property. Consequently, the facts of each case would determine the extent to which the judgment applies.

What are the facts of the present case? The respondent made a living as a seafarer. His job took him away from home for many years. During these years, the respondent remitted several sums of money for the construction of the matrimonial house. It was the petitioner who solely supervised the construction of the house from the foundation level until the house was completely and satisfactorily built. The evidence also shows that when the respondent was incarcerated in Liverpool, the petitioner took on the responsibility of taking care of their three children. The appellant does not dispute that the house was constructed solely from the funds of the respondents. That notwithstanding, she invites this court to hold that her contributions in kind, namely her diligent supervision of the construction of the matrimonial home entitle her at least, to an equal share of the matrimonial home. The respondent on his part claims sole ownership of the matrimonial home as his self acquired property. We must point out at this point that the respondent contented in the courts below that he intended to make anadvancement to his son. Even though this claim does not form part of the grounds of this appeal, it must be stated that the respondent's claim of advancement cannot hold water in view of the evidence on the record. The presumption of advancement is itself capable of rebuttal if the evidence shows that the person paying the money did not intend to forgo his beneficial

interest. In this case, the circumstances of the respondent's posturing leading to the acquisition of the house did support an intention to forgo his interest in the house. The respondent clearly showed by his conduct anterior to the so-called advancement that he was building the house to his taste and for his own purposes and the involvement of his children was based on what should happen after and not before his death.

It is our opinion that on the strength of *Gladys Mensah v. Stephen Mensah supra*, the wife would be entitled on a share of the value of the matrimonial home. The evidence is abundantly clear that she performed her supervisory tasks over the building of the house satisfactorily. Even though she was a housewife, she single-handedly took charge of the household when her husband, the appellant, was incarcerated for years in Liverpool. We would agree with the reasoning in *Gladys Mensah v. Stephen Mensah supra,* that the inability to adequately quantify the appellant's wifely assistance towards the construction and upkeep of the matrimonial home does not in itself bar her from an equitable sharing of the matrimonial property.

In view of our conclusion above, it is our view that the appellant's property rights were not adequately considered by the Court of Appeal. We would disagree with the Court of Appeal in so far as it held that the appellant had no interest at all in the matrimonial property. It must be noted that this court has taken into account the equality principle laid down in *Mensah v. Mensah* and *Boafo v. Boafo*, supra. However, as Date-Bah JSC held in *Boafo v. Boafo supra*, the equality principle may be waived if in the circumstances of a particular case, the equities of the case would demand otherwise. We think that the equities of this particular case do not call for a half and half sharing of the marital home. Grounds 1 to 5 are therefore upheld.

Grounds 6 and 7

The appellant seeks a declaration from this court that she is entitled to directors' fees and dividends from Pious Trading and Construction Company Limited. The law on the separate legal personality of companies vis-à-vis the personality of the directors and shareholders, is trite. This court would follow the reasoning of a long line of cases beginning with Salomon v. Salomon [1897] A.C. 22, H.L. that a company has separate legal personality and unless certain exceptions can be shown, the court is reluctant to lift that veil of incorporation, see *Morkor v. Kuma (East Coast Fisheries Case)* [1998-99] SCGLR 620. The appellant here has not shown that this case can be brought under any of the allowed exceptions that warrant the lifting of the corporate veil. The proper person for an action for directors' fees and dividends would be the company, Pious Trading and Construction Company Ltd and not Pious Pope Quartson himself. In effect, grounds 6 and 7 would fail.

We therefore disaffirm the holding of the courts below regarding the wife's interest in the matrimonial home. The award of GH¢50,000.00 was meant to enable her build a house but the petitioner must have some money to live on whilst she reorganizes her life. We therefore award a further financial settlement of GH¢15, 000.00 in addition to the award of the Court of Appeal's GH¢50, 000.00, thus making a total of GH¢65, 000.00, for the appellant. The petitioner's claim is hereby amended accordingly. The petitioner's interest in the matrimonial home is adequately covered and reflected in the award of the double plot of land to her by the courts below.

The appeal is therefore allowed in part, to the extent of this court's holding.

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

[SGD] W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

[SGD] R. C. OWUSU [MS.]
JUSTICE OF THE SUPREME COURT

[SGD] ANIN YEBOAH
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