



An Overview of the Principles Guiding The Distribution of Matrimonial Property in Ghana

Newsletter

Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, our Practice has introduced the publication of newsletters on legal and economic issues that would be of interest to its clients and equally affect their transactions. This is our tenth edition.

Research has shown that one of the effects of the COVID 19 pandemic is the rise in divorce cases. This Newsletter gives a general overview of the

principles guiding the distribution of matrimonial property in Ghana in the event of dissolution of marriage.

We hope you find it informative and educative. Your feedback is welcome.

We wish you a fruitful year 2021.

Be safe!

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**AN OVERVIEW OF THE PRICIPLES GUIDING THE
DISTRIBUTION OF MATRIMONIAL PROPERTY IN
GHANA**

Matrimonial property are assets that are acquired either jointly by spouses or by either spouse during the subsistence of a marriage. In **Arthur (No.1) v. Arthur (No.1) [2013-2014] 1 SCGLR 543-568**, the court held that, “...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”.

In the early 1950’s, property acquired either jointly by spouses or by either of the spouses during the subsistence of a marriage were deemed to be the individual property of the man/husband. Women/wives had no share in such property. This is evident in cases such as: **Quartey v. Martey [1959] GLR 377-383** and **Bentsi-Enchill v. Bentsi-Enchill [1976] 2 GLR 303-309**.

In the case of **Quartey v. Martey**, the court held that, “under customary law, it is the duty of a man’s wife and children to assist him in the carrying out of the duties of his station in life. The proceeds of that joint effort and any property which the man acquires

with such proceeds, are by customary law the individual property of the man, not the joint property of all”.

Also, in **Bentsi-Enchill v. Bentsi-Enchill** it was held that, “a property purchased by a spouse with his own money belonged to that spouse to the exclusion of the other. Therefore, if a house was purchased out of the husband’s earnings, the whole beneficial interest in the house vested in him and the wife would have no interest in it in the absence of express agreement”.

Over the years, this position of the law shifted to what was known as “the substantial contribution principle”. As pr this a spouse could only have a beneficial interest in the estate of the other spouse, if the spouse made a substantial contribution in the acquisition of any property. As to whether or not a spouse had made such a contribution was determined by the circumstances of each case. In the case of **Abebreseh v. Kaah and Others [1976] 2 GLR 46-62**, it was held that “although ‘W’ could not state in terms of cash how much her contribution towards the building was, it was clearly substantial”.

The Supreme Court subsequently moved away from the substantial contribution principle and propounded “the equality is equity principle”. The basis of this principle is Article 22 of the 1992

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Constitution of Ghana. **Article 22(1)** of the 1992 constitution provides that,

“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”.

It is further provided under **Article 22(3)(a)** that, *“spouses shall have equal access to property jointly acquired during marriage”* and under **Article 22(3)(b)** that, *“assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage”.*

In the case of **Mensah v. Mensah [2012], 1 SCGLR 391** the Supreme court held that, *“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...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”.*

The distribution of property under this principle is again dependent on the circumstances of every case.

In the case of **Quartson v. Quartson [2012] SCGLR 1077**, the Supreme court held that, *“the decision in*

Gladys Mensah v. Stephen Mensah, is not to be taken as a blanket ruling that affords spouses unwarranted access to property when it is clear on the evidence that they are not so entitled. Its application and effect will continue to be shaped and defined to cater for the specifics of each case”. Per the facts of this case, property was distributed on an equitable basis between the parties.

In conclusion, it must be noted, that property individually acquired by either of the spouses before marriage remains the individual property of the spouse who acquired it. However, if during the course of the marriage, the other spouse adds substantial value to the property, the character of the property changes and becomes jointly owned by the parties. Also, property received as a gift during the subsistence of marriage remains the individual property of the spouse who received the gift.

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If you require any legal assistance Ghana kindly send an email to ilc@integratedlegalconsultants.com