

Commonwealth jurisdictions

Executive Summary:

Most courts in Commonwealth jurisdictions have embedded the express and implied requirement in practice that unless a woman shows proof of participation in acquisition of marital property, she will not be entitled to commensurate compensation upon an auxiliary application for property settlement.

In Nigeria, Section 72 of Matrimonial Causes Act 1970 provides that

“The Court may, in proceeding under this Decree, by order require the parties to the marriage, or either of them, to make for the benefit of all or any of the parties to, and the children of the marriage, such a settlement of property to which the parties are or either of them is entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case”.

What currently agitates the minds of right thinking persons is how JUST APPORTIONMENT of assets could be achieved in line with the just and equitable limb of Section 72 of Matrimonial Causes Act 1970. In trying to justify this issue “INVISIBLE CONTRIBUTIONS of WOMEN” have come into focus and while they are taken into account during settlement in developed countries, developing countries such as Nigeria still require proof of contribution to acquisition before equitable share is awarded the woman. This is clearly observable in decided cases like *Nwanya Vs Nwanya*¹, *Sodipo Vs Sodipo*², *Egunjobi Vs Egunjobi*³ to mention but a few.

This position, *Ipaye*⁴ stated is an unacceptable position for unless the female is a versatile accountant, she cannot hope for a share in the marital property. The writer is in perfect agreement with *Ipaye* and states that the position is mundane, negative and more grievously discriminatory as it is against matrimonial current that a spouse should begin right from inception of the marriage to establish or assert where title lies in family assets as clearly stated in *Petitt Vs Petitt*⁵ where Lord *Morris of Borth-y-Gest* held thus -

“That when two people are about to be married and when they are arranging to have a home in which to live they do not make their arrangement in the contemplation of future discord or separation. As a married couple, they do not, when a house is being acquired contemplate that a time might come when decisions would have to be made as to who owned what. It would be unnatural if at the time of acquisition, there was always precise statement or understanding as to where ownership lies”.

This is an acceptable natural position because marriage, contrary to other forms of business partnership where at the termination, the parties are required to give account in a business or commercial sense, is a unique community of life and purpose, an enduring association of man and woman, marked by a sharing of fortune and adversity by love or constructive co-operation.⁶

Finally, equality is equity as held by Lord Denning in *Watchtel Vs Watchtel*⁷ when he stated thus:

“The wife who looks after the home and family contributes as much to the family assets as the one who goes out to work. The one contributes in kind, the other in money or money’s worth. If the court comes to the conclusion that the home has been acquired and maintained by the joint efforts of both, then, when the marriage breaks down, it should be regarded as joint property of both of them, no matter in whose name it stands. Just as the wife who makes substantial money contributions usually gets a share, so should the wife who looks after the family for twenty years or more”.

There are International standard setting instruments below which a country cannot fall without being termed barbaric. These include CEDAW⁸, UDHR⁹ and others. Nigeria and other countries have ratified CEDAW without reservations and our courts should take steps to energize CEDAW by their pronouncements, in order to flush out discrimination, and underdevelopment of women globally. It is possible.

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1. (1987) 3 NWLR 699
 2. (1990) 5 WRN 98
 3. (1976) Vol. 2, FNCR 787. (1973) Fam 72 93 - 94
 4. Ipaye O. A. “Some Aspects of Women and the Law: The Nigerian Experience” in *Journal of Human Rights Law and Practice*, Vol.5, No. 1, January 1995, page 80.
 5. (1969) 2 AER 385 at 396
 6. Ipaye, O. A. Op cit.
 7. (1973) Fam 72 93 - 94
 8. Convention on Elimination of All Forms of Discrimination Against Women.

9. Universal Declaration of Human Right