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A WOLF IN SHEEP'S CLOTHING: SECTION 47 OF GHANA'S LAND ACT, 2020 (ACT 1036)

Maame Yaa Akyiaa Mensa-Bonsu[1*]

Abstract

Section 47 of the Land Act, 2020 (Act 1036) was enacted to protect the rights of spouses by requiring the written consent of one spouse before the other may dispose of land acquired during marriage. This paper argues that the provision transforms a moral expectation of spousal consultation into a legal obligation that puts women at a severe disadvantage within patriarchal social structures characterised by unequal bargaining power, economic dependence, and gendered decision-making. The analysis further shows that section 47 exceeds the judicial principles established in Fynn, conflicts with the constitutional right to individual property ownership, and fails to account for practical realities such as domestic violence, child marriages, customary land practices, and polygamous marriages. Ultimately, the paper argues that section 47 is well-intentioned but flawed and reinforces existing gender inequalities under the guise of empowerment.

1 *BA (Ghana), LLB (Ghana), LLM (LSE), QCL (Ghana). Lecturer, University of Ghana, Doctoral Student, University of New South Wales, Australia.

Introduction

The Land Act, 2020 (Act 1036) was enacted to harmonise the different laws (including customary law) on land acquisition, registration, ownership and use. Prior to this Act, the law on land was found in various pieces of legislation and in judicial pronouncements on customary law.

In the face of Parliament's inexplicable inertia in regulating property matters between spouses, as required by article 22 of the Constitution of the Republic of Ghana, 1992,[2] the Supreme Court (SC) has had to fill in the very obvious gaps in determining rights to property claimed to be jointly owned by married parties. In *Boafo v Boafo,*[3] the SC set out its understanding of the "equitable" distribution of the property jointly acquired during marriage, in *Arthur (No 1) v Arthur (No 1)*[4] (hereinafter *Arthur No 1*), it established the rebuttable presumption of joint ownership of property bought during the subsistence of the marriage, and in the landmark case of *Mensah (Gladys) v Mensah (Stephen),*[5] the SC provided that contribution, which would entitle a wife to proprietary rights in property acquired during the subsistence of the marriage, no longer needed to be pecuniary only; it would consider domestic services, including childbearing and raising, among others, as sufficient evidence of contribution to the acquisition of marital property.

2 (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.

3 *Boafo v Boafo* [2005–06] SCGLR 705.

4 *Arthur (No 1) v Arthur (No 1)* [2013–2014] 1SCGLR 543.

5 *Mensah (Gladys) v Mensah (Stephen)* [2012] 1SCGLR 391.

Of all the cases that have influenced the development of property law in Ghana, the one with perhaps the least expected consequences is *Fynn v Fynn & Osei*[6] (hereinafter *Fynn*). This case is, in large part, the reason for the enactment of section 47 of Act 1036, which mandates the written consent of a spouse to any transaction in respect of the other spouse's self-acquired property. It is this provision that I argue creates challenges for women's property rights in Ghana.

The paper is divided into three parts. In Section One, I discuss the socio-cultural context, highlighting the strict gender roles typically found in the family space and the customary code of conduct regulating the position of wives in the Ghanaian home. This sets the scene for the analysis in Part Three.

In Section Two, I set out the facts of *Fynn*, highlighting the judges' reasoning and the relevant discussions there. I also set out sections 38 and 47 of the Land Act, 2020 (Act 1036), and the discussions in the Memorandum to the Act, regarding the rationale underpinning those sections.

Secion Three is the critique, where I point out the problems of section 47 for women, within Ghana's socio-cultural environment. I discuss the value of the section, highlighting how it may serve a purpose (albeit a limited one). More relevantly, I demonstrate how, in using a single case as the principal factor for making a law, the lawmaker failed to appreciate the challenges it would create for women.

The socio-cultural context

The socio-cultural environment of Ghana is complex and diverse, but there are several key areas of convergence among the different communities that make up the people. For the purposes of this paper, the main areas that will be briefly highlighted are with respect

6 *Fynn v. Fynn and Another* [2013–2014) 1SCGLR 727.

to marriage, the gendered family roles and power dynamics within a marriage, the economic disparities between men and women, and the gendered ownership of property.[7]

Marriage is of fundamental importance in Ghana. In most societies, marriage entails status and respect[8] and provides financial security for the woman by way of land acquisition,[9] and the duty, by custom, of maintenance by the husband, which duty is passed on to his customary successor on his death.[10] There are broadly two types of marriage in Ghana: monogamous marriages and polygamous marriages,[11] specifically polygynous unions. There are three systems under which a person may be married: Customary Law, Islamic Law, and Christian and Civil marriages.[12] Unlike marriages celebrated under Part Three of the Marriages Act,[13] Ghanaian couples do not sign any documents when they get married by custom. Registration of such marriages is not compulsory, so it is very possible for there to be no documentary evidence of a marriage validly celebrated by custom. Customary law marriages (which constitute the majority of marriages in Ghana) are described as "potentially polygamous".[14] There is no limit to how many wives a man may marry by custom.[15] Islamic marriages are also potentially polygamous as a man is allowed to have up to four wives, subject to some conditions.[16]

7 At this time, the Ghanaian legal framework only expressly recognises men and women as the two forms of gender; hence, the paper will only focus on these two categories.

8 B Ahonsi & Others, Child marriage in Ghana: Evidence from a multi-method study. *BMC Women's Health*, 19(126), 1–15 (2019).

9 M Awumbila, "*Gender equality and poverty in Ghana: implications for poverty reduction strategies*". GeoJournal Vol. 67, No. 2 (2006), pp. 149–161.

10 Manu v Kuma [1963] 1 GLR 464.

11 *Appomasuo v Bremawuo* (1980) GLR 278.

12 These are regulated under Part I, Part II and Part III of the Marriages Act 1884–1985 respectively.

13 [1884–1985], formerly referred to as "Ordinance marriages".

14 MYA Mensa-Bonsu, Customary Marriage in Ghana, *JCL 18:1* (2023).

15 *Graham v Graham* [1965] GLR 407 (HC).

16 C Dowuona-Hammond, AB Aziz-Bamba & MA Mahamah, *The Regulation of Islamic Marriage and Divorce in Ghana: An inquiry into the legislative and policy roots of discrimination in an African polity in AF Hammond, FR Adegbite, MYA Mensa-Bonsu & P Batariwah (eds). Comparative Studies in Family Law: Marriage Systems in Selected African Countries*. Talbot Publishers, (2023).

Within the marriage setting, there are specific, gendered roles for the parties to play. There is asexual or gender division of labour,[17] whereby women play a bigger role in the domestic setting. It has been estimated that on average, women spend quadruple the time men spend on domestic care.[18] This has implications for their ability to work outside the home and to be paid for the work,[19] which then directly affects their economic standing relative to their husbands'. Largely, as a result of the financial inequalities, there are equally gendered power dynamics, and research confirms that men have decision-making power, while women generally are required to obey.[20] While these dynamics are generally applicable across the country, some societies have more inequalities than others. Women in patrilineal societies are noted to have less autonomy and decision-making power than their matrilineal counterparts.[21] Men's income is typically higher, therefore directly contributing to the subjugation of many wives in Ghana.

A curious thing about the gender dynamics in Ghana, at least, as observed from the case law, is that it is not only when the man has

17 R Atta-Ankomah, NA Asante-Poku, A Agyei-Holmes A. *"Gender and labour market transitions in a structurally changing economy: Empirical evidence from Ghana"* (2025). STEG Project Policy Brief available at <https://steg.cepr.org/publications/gender-and-labour-market-transitions-structurally-changing-economy-empirical-evidence> accessed 26 May 2025.

18 NS Owoo, MP Lambon-Quayefio. Mixed methods exploration of Ghanaian women's domestic work, childcare and effects on their mental health. PLoS One. 2021 Feb 2;16(2):e0245059. doi: 10.1371/journal.pone.0245059. PMID: 33529183; PMCID: PMC7853525.

19 Atta- Ankomah (n16), JE Yavorsky, CM Dush, SJ Schoppe-Sullivan. The Production of Inequality: The Gender Division of Labor Across the Transition to Parenthood. J Marriage Fam. 2015 Jun;77(3):662-679. doi: 10.1111/jomf.12189. Epub 28 April 2015. PMID: 26430282; PMCID: PMC4584401.

20 M Dako-Gyeke, & P Owusu. A Qualitative study exploring factors contributing to gender inequality in rural Ghana. *Mediterranean Journal of Social Sciences*, 4(1), 481–489 (2013).

21 E.g. JK Teye and Others, Negotiating Gender Roles and Power Relations Through the Management of International Migrant Remittances in a Patriarchal Community in Ghana. *Journal of Asian and African Studies*, *60*(1), 36-50 (2023). https://doi.org/10.1177/00219096231160695, JK Ganle and Others, How intra-familial decision-making affects women's access to, and use of maternal healthcare services in Ghana: a qualitative study. BMC Pregnancy & Childbirth, 15, 173. doi:10.1186/s12884-015-0590-4 (2015). BK Takyi, F Nii-Amoo Dodoo, Gender, Lineage, and Fertility-Related Outcomes in Ghana. *Journal of Marriage and Family*, 67(1), 251–257 (2005).

greater financial strength that they have greater decision-making powers about property acquired during the marriage. Culturally, women are socialised to depend on their husbands and to submit to them.[22] The pressures of the Ghanaian society often coerce women into rather unfortunate situations. For instance, it is reported that some women pay their salaries to their husbands for their husbands to determine how much "allowance" the wife can get.[23] As such, many wives, even when they are stronger financially, have registered their properties in the joint names of the couple, even where they are the owners, or worse, in the sole names of their husbands. Similarly, jointly acquired property is often registered in the names of the husbands alone.[24] This has far-reaching consequences as the woman, at the end of the marriage, must establish her entitlement to the property, with far more difficulty than the man typically has.

In respect of access to property, customary law does not know the community of property. By custom, marriage does not entail property.[25] Whether one belongs to a patrilineal society or to a matrilineal one, in neither society does marriage include, as part of the incidents thereof, proprietary interests in real property. In the past, the woman could work with her husband for forty years and, upon his death, be told that all that she did was what a "good wife" would do[26] or that it was her duty, by custom, to work with or for the man in his station in life. All properties that were acquired by the man from the proceeds of the couple's joint work were the man's self-acquired property.[27] Even when the courts were moved to be sympathetic, the

22 S Kyei, B Agorkpa, B Benewaa, NSN Sadique, *Marital power play in patriarchal society, a qualitative study of Ghanaian religious wives' perspectives*. *Discov glob soc* 2, 84 (2024). https://doi.org/10.1007/s44282-024-00110-3.

23 See e.g. *Anyetei v Anyetei* [2023] DLSC 16110, where she paid her salaries and pensions to her husband.

24 E.g. the wife in *Mensah (Gladys) v Mensah (Stephen),* registered all the properties in the joint names of the couple, rather than in her name, although it was she who acquired them.

25 Jeanmarie Fenrich and Tracy E Higgins, 'Promise Unfulfilled: Law, Culture, and Women's Inheritance Rights in Ghana' (2001) 25(2) *Fordham International Law Journal* 259, 261.

26 *Clerk v Clerk* [1981] GLR 583.

27 *Quartey v Martey* [1959] GLR 377–383, *Owusu v Nyarko* [1980] 1 GLR 428.

most they were willing to do was to give her a life interest,[28] even in her matrimonial home, which, of course, could not be passed down to her children or to her family. The only exception was where the wife could prove that she had contributed money, or something in money's worth by agreement of the parties, to the acquisition of the property.[29] Fortunately, the Supreme Court of Ghana has, in the last 25 years, made progressive strides away from the strict requirement of financial contribution as the basis of a wife's entitlement to a proprietary interest in the disputed property.[30] In the case where the husband predeceases the wife and dies intestate, the Intestate Succession Act, 1985 (PNDCL 111) has made substantial statutory incursions into the customary law framework, providing the spouse and children of the deceased the lion's share of the deceased's estate.

The quick overview shows that the Ghanaian society is not an egalitarian one, in that there is an imbalance of power between men and women, especially within the context of marriage. This disequilibrium is maintained by patriarchal structures that promote dominance by men in the form of gendered roles and the disproportionately held care burden, unequal access to well-remunerated work, and a general positioning of men as superior to women.

Legal framework and judicial analysis

This section sets out the case of *Fynn v Fynn & Osei* (hereinafter *Fynn*), and the statutory provision to be evaluated. A discussion of the case is important to ground the context and the basis for section

28 *In Re Kofi Antubam, (Decd). Quaico v Fosu* [1965] GLR 138–145, *Amissah-Abadoo v Abadoo* [1973] 1 GLR 490.

29 For a deeper and recent discussion of the development of the law on marital property, see MYA Barnes, Equality is Equity...or is it? A Critical Examination of the Equality Principle the Distribution of Marital Property, in C Dowuona-Hammond, A Hammond & R Atuguba, (eds), Ghana @ 60: Mobilising the Law for Ghana's Future, Wildy, Simmonds and Hill, (2020), and MYA Mensa-Bonsu & MAS Mensa-Bonsu, To win the Battle and the War, in J Jarpa Dawuni, *Gender, Judging and the Courts in Africa, Routledge*, (2021).

30 Ibid.

47 of the Land Act, 2020 (Act 1036). In *Fynn*, the 1st defendant (the husband) had been married to the appellant (the wife) for the sum of thirty years. The 1st defendant sold a store to the respondent. A couple of months thereafter, the appellant, claiming to be a joint owner of the store, sued to have the sale set aside and to repossess the property on the grounds that her consent and concurrence had not been secured before the sale. The 1st defendant admitted these facts, but the respondent challenged, among others, the claim of joint ownership and asserted that due diligence searches she had conducted prior to the purchase showed that the property was the exclusive property of the 1st defendant. She therefore pleaded in her defence that she was a bona fide purchaser for value without notice of the appellant's legal interest.

The case travelled from the High Court to the Supreme Court. All three courts held in favour of the respondent due to insufficient proof that the appellant was truly a joint owner, despite her husband, the 1st defendant, admitting as much. The SC held that, under the rules of procedure, having sued her husband, rather than calling him as a witness in proof of her claim of joint ownership, rendered his admission as binding only on him. The admission, however, could not be used as evidence in support of the claim against the respondent. The appellant lost the case due to poor lawyering, rather than judicial determination of her proprietary interest in the subject matter of the dispute, as she failed to adduce evidence in support of her claim of joint ownership to rebut the respondent's plea.

The SC further stated, *obiter,* that during the existence of the marriage, it was "most desirable that the couple pool their resources together to jointly acquire property for the full enjoyment of all members of the nuclear family in particular". However, the SC also reminded itself, that contrary to the assertion of the appellant, the decided cases on marital property "envisage situations where, within the union, parties

may still acquire property in their individual capacities, as indeed is their guaranteed fundamental rights, as clearly enshrined under article 18 of the Constitution of the Republic of Ghana, 1992, in which case they would also have the legal capacity to validly dispose of same by way of sale…"

The Court went on to sound a caution, at the end of the judgment, which appears to be what inspired the lawmakers and led to the creation of section 47.

Since the peace, tranquillity, harmony, stability and indeed the health and general wellbeing of any marriage union thrives best in the environment of mutual affection, trust and respect for each other as well as transparency; we think a spouse in such a case is under a moral obligation at any given time, (indeed it is most expedient and fair) to apprise the other spouse of the intention to acquire and dispose of self-acquired properties at all material times.[31]

In terms of the case itself, the SC stayed within the parameters it set for itself in *Arthur (No 1),* that it was only a presumption that property acquired during the subsistence of the marriage was marital property, which must be distributed equitably between the parties as required by article 22 of the Constitution of the Republic of Ghana, 1992. More relevantly, the SC was very clear that neither *Arthur (No 1)* nor *Fynn* was to be interpreted as having sought to override article 18, which guarantees an individual's right to own property by themselves, or together with others. The SC, aware that marriage did not exclude a person from owning property as an individual and therefore having the right to dispose of the same, only emphasised that this was a moral obligation, in the spirit of fairness. It did not purport to lay down a rule of law requiring spouses to seek the consent of the other for transactions involving properties that are individually owned.

31 Ibid, 10.

The Law

The Memorandum to the Land Act states, as the motivation and justification for sections 38 and 47, thus:

> In pursuance of article 22 of the Constitution of the Republic of Ghana, 1992, and international best practice, the Bill provides that property acquired for valuable consideration by spouses during marriage is presumed to be owned by the spouses as tenants in common, unless a contrary intention is expressed. The Bill also provides that property acquired in marriage is to be registered in the names of the spouses unless a contrary intention is expressed. The Bill further provides for the consent of the spouses in the disposition of such property. These provisions mainly reflect recent decisions of the Supreme Court, including *Boafo v Boafo* [2005–2006] SCGLR 705, *Mensah v Mensah* [2012] 1SCGLR 391, *Quartson v Quartson* [2012] SCGLR 1077; *Arthur (No 1) v Arthur (No 1)* [2013–2014] 1SCGLR 543 and *Fynn v Fynn & Anor* [2013–2014] 1SCGLR 727.

The Memorandum further states:

> Subclause (3) of clause 38 provides for gender empowerment by requiring that a conveyance of property for valuable consideration during marriage should be in the name of the spouses, unless a contrary intention is expressed. Furthermore, subclause (4) of clause 38 provides that where property is conveyed to only one spouse, that spouse should be presumed to be holding it in trust for the spouses, unless a contrary intention is expressed.

> …. The rights of spouses are further enhanced by clause 47, which prohibits the transfer of land or interest in land acquired for valuable consideration during marriage without the written consent of the other spouse, unless a contrary intention is expressed.

The overarching intention of the legislature is thus fairly clear: to ensure that one party to the marriage does not appropriate to themselves alone property that can properly be described as jointly acquired property, to the detriment (and on the blindside) of the other party.

On the back of this, as the Memorandum states, the Legislature framed section 47 of the Land Act, 2020 (Act 1036) as follows:

Restrictions on transfer of land by spouse

> 47. Except as provided in subsections (3) and (4) of section 38, in the absence of a written agreement to the contrary by the spouses in a marriage, a spouse shall not, in respect of land, right or interest in land acquired for valuable consideration during marriage,
>
> (a) sell, exchange, transfer, mortgage or lease the land, right or interest in the land,
>
> (b) enter into a contract for the sale, exchange, transfer, mortgage or lease of the land, right or interest in the land,
>
> (c) give away the land, right or interest in the land *inter vivos*, or
>
> (d) enter into any other transaction in relation to the land, right or interest in the land without

> the written consent of the other spouse, which consent shall not be unreasonably withheld.
>
> Section 38 (3) and (4), on which section 47 is built, provide:
>
> (3) In a conveyance for valuable consideration of an interest in land **that is jointly acquired during the marriage**, the spouses shall be deemed to be parties to the conveyance, unless a contrary intention is expressed in the conveyance.
>
> (4) Where, contrary to subsection (3), a conveyance is made to only one spouse, that spouse shall be presumed to be holding the land or interest in the land in trust for the spouses, unless a contrary intention is expressed in the conveyance.

What is wrong with section 47?

It must be stated at this point that the subsequent discussion does not focus on section 38 at all, although it has its own problems, especially as regards how it would operate in polygamous unions. The relevant sections reproduced above are only to show how the case law to which the Memorandum refers has been translated into legislation, and also because section 47 expressly refers to Section 38 (3) and (4) as the exceptions to the rule section 47 establishes.

Although a full discussion on the constitutional implications of section 47 as it engages with article 18 is beyond the scope of this paper, the general objection to section 47 is that it sits ill with article 18, which guarantees the right to own property individually or jointly with others. It is argued that in requiring that a party obtain the consent of the spouse before gifting, conveying, or otherwise

transferring their own self-acquired property, acquired during the subsistence of the marriage, section 47 is difficult to reconcile with the constitutional right of women to own property by themselves. Among the major incidents of ownership is the right to transfer, convey or otherwise dispose of the property as the owner wishes.[32] If one must seek the consent of another before disposing of their property, then one is not the owner of the property.

Section 47 does not reflect the decision in *Fynn*, contrary to the assertion in the Memorandum to the Act but exceeds it with far-reaching consequences. As aforementioned, *Arthur (No 1)* established the presumption that property acquired during the marriage is marital property jointly acquired by both parties, and therefore to be distributed equitably between them. The party asserting individual ownership must provide evidence to show that they are the sole owners of the property. In *Fynn*, the SC was careful to stress that the judicial intention was not to remove the individual right of ownership of property, as indeed it could not have done, being that it would have been in violation of article 18.[33] One of the key ways to rebut the presumption of marital property established by *Arthur (No1)* is to show that one exercised exclusive rights of an owner over the property, and the other party was deliberately excluded from, or participating in matters relating to the property (both in respect of obligations and benefits). Thus, if both parties must now mandatorily participate in the decision-making in respect of the property in such a material way as its disposition, transfer, gifting or other form of conveyance or dealing therein, it makes it nigh impossible to rebut the presumption of joint ownership. The conclusion is that section 47 raises the presumption from rebuttable to irrebuttable, such that once a person is married, they are unable to buy and hold property

32 *Awadali Iv Vrs Ghadawu Iv* [2018] GHASC 1 (24 January 2018), *Amodu Tijani v The Secretary,* Southern Nigeria [1921] 2 AC 399.

33 Constitution of the Republic of Ghana, 1992, art 18 (1): *Every person has the right to own property either alone or in association with others.*

in their own right. Section 47 has therefore unreasonably extended *Fynn*, thereby practically emptying the constitutional guarantee of individual ownership of property of its content, as relates to married persons acquiring property.

A second general observation is that section 47 is inconsistent even with expectations by custom. As aforementioned, one does not acquire an interest in property only because of one's marriage. This creation of joint property by reason of marriage is random and is discordant in those places where this customary law rule governs.[34] It is also problematic because the law is in conflict with the customary intelligence of the people whom this law is meant to govern, and who are intended to be the beneficiaries thereof. This provision is an example of some of the challenges of normative pluralism in Ghana, whereby the statutory framework introduces rules that are not only alien to the territory but also in direct conflict with the traditional norms and practices of the people.[35] The consequences of this conflict are that section 47 is purporting to create rights that do not exist, and encumber rights that should be freely exercised as protected by the Constitution of the Republic of Ghana, 1992. Hampering the full enjoyment of the right to individual ownership of property does not always work to the advantage of women, as the subsequent discussions seek to establish.

Section 47 has turned what the SC said was a moral obligation into a legal one with repercussions for many women. While it would certainly avoid the *Fynn* situation, it also creates complications for women in different ways. Section 47 always assumes that, wives would be the ones who need the protection it purports to offer, and the

34 This is a significant number of places, as most people are largely governed by customary law.

35 For a fuller discussion of the nature of legal pluralism in Ghana and its challenges. See AF Hammond, *Towards an inclusive vision of law reform and legal pluralism in Ghana* (T). University of British Columbia. (2016). Retrieved from <https://open.library.ubc.ca/collections/ubctheses/24/items/1.0308602 > accessed 25 May 2025, AF Hammond, FR Adegbite, MYA Mensa-Bonsu & P Batariwah (eds). *Comparative Studies in Family Law: Marriage Systems in Selected African Countries*. Talbot Publishers, (2023).

husbands would be the ones who would quietly sell their properties to the wife's detriment. It is true that in the Ghanaian environment, more men than women own properties.[36] It is also true that not as many women are represented in the registration of land data, because, as noted in Part 1, it is common practice for husbands to put the property exclusively in their names[37] and sometimes women are pressured to put their properties in the men's names,[38] so it is likely that it would be a husband rather than a wife doing things in secret with their properties. I concede that some women will benefit from section 47. The section is, however, not without its problems.

The rule is premised on the economic parity that would allow both partners to choose whether to give or withhold consent to transactions in respect of landed property acquired during marriage. As the socio-cultural dynamics play out, there is a gender division of labour and household roles[39] by which men provide financially and materially, and women provide care. As noted in Part I, men often have greater participation in the labour market, because of their light to non-existent domestic chore burden in the gendered societies of Ghana. This leads to men often having higher-income jobs, and more women taking more flexible (and often lower-paying) jobs[40] (where they do work outside the home), which allows them to combine that work with their caregiving duties. In this scenario of dependency, the women are unlikely to be able to refuse to sign the documents.

36 CD Deere & Others, "Property Rights and the Gender Distribution of Wealth in Ecuador, Ghana and India" J Econ Inequal (2013).

37 E.g. *Quartson v Quartson* [2012] SCGLR 1077], in *Domfe v Adu,* [1984–86] GLR 653, the woman was obviously the party who had put in the greater effort, but the man registered the business in his name alone.

38 In *Reindorf alias Sacker v Reindorf* [1974] 2 GLR 38–46, the properties were acquired exclusively by the woman, but she had it registered in the joint names of the couple.

39 R Abukari, RO & Odai, Gender and the Labour Market in Ghana: *The Relationship in Terms of the Family, the Market and the State.* Advances in Applied Sociology, 8, 285-294. (2018). https://doi.org/10.4236/aasoci.2018.84015

40 Owoo (n17), M Danquah, AM Iddrisu, EO Boakye, S Owusu, Do gender wage differences within households influence women's empowerment and welfare? Evidence from Ghana, *Journal of Economic Behaviour & Organisation*, Volume 188, 2021,916-932, https://doi.org/10.1016/j.jebo.2021.06.014.

This is because the threat of the husband withdrawing the financial provision is real for many wives who depend on their husbands for survival. Having significantly less finances than the husband directly impacts the decision-making capacity of the wife. The requirement of section 47 leaves women in those situations easily coerced by threats of withdrawing the financial provision both for her and the children. In an environment where fathers often neglect to maintain their families[41] and the larger part of the caseload of the Domestic Violence and Victims Support Unit (DOVVSU) and Department of Social Welfare are maintenance claims,[42] this fear is not fanciful. Men, on the other hand, would have more freedom to refuse consent, and the woman would be unable to do much about that for the same reason of financial inequality between the parties.

Even where there is no economic dependency of the kind and consequence described above, there remain socio-cultural obstacles to a power equilibrium in a marriage. As the socio-cultural milieu is patriarchal, there is an imbalance of power for women, and therefore far less room for autonomy for wives than there is for husbands.[43] The law presumes, contrary to the lived reality, that men and women are equal in marriage, and so each can require the other to consent in writing. This premise is palpably false. Given that decision-making within the marriage space is gendered, a husband can get his wife to consent in writing to the disposal of the property in the way the husband wishes, but this is not the same for a wife seeking her husband's consent for the same purpose. The gross power imbalance means that she cannot get her husband to consent to her dealing in the property she owns by herself, in the way she wishes

41 V Awortwe, H Bentum, E Cudjoe, and A Abdullah, A reason for the unmet needs of children in contact with social services? Non-resident fathers' perspectives on delinquent child maintenance claims, *Children and Youth Services Review, Volume 117*, 2020,105298, ISSN 0190-7409, available at https://doi.org/10.1016/j.childyouth.2020.105298.

42 Government of Ghana, Justice for Children Policy November 2015 at 5, available at <https://www.mogcsp.gov.gh/mdocs-posts/justice-for-children-policy/> accessed 13 May 2025.

43 Kyei (n20).

to.[44] Although some research has shown that wives use other means, like sex, exaggerated demonstrations of humility or submission, to get some power in their marriages, it remains true that culturally, men are positioned more powerfully in marriage than women are, and the efficacy of these inventive approaches is doubted. Ultimately, the imbalance is indelibly etched in Ghanaian society on account of widespread normalisation.

The problem is further exacerbated by the fact of important statistics about child marriages in Ghana. It is estimated that "4.4 and 5.8% of women aged 15–49 were married by exact age 15 in 2006 and 2011, respectively. In addition, among women aged 20–24, the proportion who married before exact age 18 was 22% in 2006 and 21% in 2011."[45] The husbands of these young girls are significantly older, contributing to the imbalance of power and lack of autonomy of women in marriages. Child marriages have been linked to domestic violence,[46] and lack of sexual and physical autonomy,[47] as well as less participation in socio-economic life.[48] The Parliament of Ghana, through section 47, has thus simultaneously provided husbands with an extra level of state-sanctioned participation in the economic assets of marriage, while denying wives that same benefit.

Closely related to this is the issue of the relative levels of education between men and women in Ghana. Statistics show that early

44 . S Kyei, B Agorkpa, B Benewaa, NSN Sadique, Marital power play in patriarchal society, a qualitative study of Ghanaian religious wives' perspectives. *Discov glob soc* 2, 84 (2024). https://doi.org/10.1007/s44282-024-00110-3.

45 Ahonsi (n 13).

46 E Tenkorang, Explaining the links between child marriage and intimate partner violence: Evidence from Ghana *Child Abuse & Neglect* Vol 89, 48-57, March 2019

47 E Budu and Others, Child Marriage and Sexual Autonomy among Women in Sub-Saharan Africa: Evidence from 31 Demographic and Health Surveys. Int J Environ Res Public Health. 2021 Apr 3;18(7):3754. doi: 10.3390/ijerph18073754. PMID: 33916845; PMCID.

48 MN Khan and Others, Exploring the impact of perceived early marriage on women's education and employment in Bangladesh through a mixed-methods study. Sci Rep. 2024 Sep 17;14(1):21683. doi: 10.1038/s41598-024-73137-w. PMID: 39289504; PMCID: PMC11408660.

marriage significantly interferes with the education of females.[49] Additionally, more boys than girls are educated, especially in areas and within families where resources are limited,[50] because boys are given priority over girls in respect of formal education.[51] While this may change with the provision of free education up to senior high school,[52] as it stands now, it is more likely that men will be better able to understand the legal implications of the document they are signing than women are.[53] The consequence of this is that the husband, more than the wife, is likely to understand better the documents evidencing the proposed transaction and the consequences thereof prior to giving consent. This means more women than men will have to go through litigation to prove that they had not understood the document purporting to evidence her consent for the disputed transaction, where, for example, contrary to the law, there had been no interpretation in a language she understood, and the document was written in English.

If one considers that men have more income-disposing power than women, the issue of wives having to engage more frequently in litigation to nullify a purported consent from them is more concerning. The requirement of written consent of a spouse would mean that it would be easier for the husband, who has more money, to hire lawyers and engage in litigation to have the conveyance nullified

49 JG Ampiah, C Adu-Yeboah. Mapping the incidence of school dropouts: a case study of communities in northern Ghana. Comp Educ. 2009; 45:219–32.

50 Ahonsi & Others, (26).

51 J Nordensvard, Gender and education policy in Ghana: The impact of informal citizenship and informal labour markets on the formal education of girls, Women's Studies International Forum, Volume 47, Part B, 2014, 278-286, ISSN 0277-5395, https://doi.org/10.1016/j.wsif.2013.12.010.

52 A study has shown this to be too optimistic, as girl-children's education is still being subordinated to the education boys. See P Nartey, OS Bahar, P Nabunya, A Review of the Cultural Gender Norms Contributing to Gender Inequality in Ghana: An Ecological Systems Perspective. J Int Womens Stud. 2023 Oct;25(7):14. PMID: 38736590; PMCID: PMC11086636.

53 In *Domfe v Adu* for example, due to illiteracy, the wife had no way of knowing the nature of a document her husband brought for her to thumbprint. She believed him when he said it was for a joint account. She also found that he had registered the business for which she solely provided the initial capital, and which they jointly run, in his name only. But for the clear evidence that the husband had been indigent and the woman a successful trader when they first met, he may have succeeded in cheating her out of her rightful share of the property.

(assuming that is the consequence of not obtaining his consent as the spouse), than it would be for a wife to do. The effect of this, then, is to create greater statutory protections for men than for men, contrary to the stated intentions of the legislature in the Memorandum to the Land Act.

Another important issue that the lawmakers failed to consider is the prevalence of domestic violence and how crucial it is that women have the ability to easily access funds with which they can escape an abusive marriage. The statistics about the number of women living in abusive conditions are alarming, with some estimating it to be as high as 1 in 3 Ghanaian women having experienced some form of domestic violence.[54] The socio-cultural structures provide support to and condone domestic violence against women in marriage.[55] For a woman in an abusive marriage, the ability to freely (and secretly) dispose of an asset enables her to be financially capable of removing herself from the abusive home environment. This ability has now become encumbered by this requirement to seek the consent of the spouse, who is the very person from whose clutches she is trying to escape. Where the domestic violence is economic, she should have as many options as possible, to be able to be more financially independent, including the option to sell her property that was acquired during the subsistence of the marriage, without having to request the consent of the abusive husband. A man who deliberately withholds financial support as a means of ensuring control and dominance[56] is not one who is likely to support his wife to become financially independent of him.

54 N Cantalupo, S Shin, K Park, LV Martin, Domestic Violence in Ghana: The Open Secret, *The Georgetown Journal of Gender and the Law* Vol. VII: 531, 535.

55 Research shows that it is not only tolerated that a man beat his wife, but considered a socially acceptable practice, as a way of disciplining the woman. See KS Dickson, EK Ameyaw, EKM Darteh. *Understanding the endorsement of wife beating in Ghana: evidence of the 2014 Ghana demographic and health survey. BMC Women's Health* 20, 25 (2020). https://doi.org/10.1186/s12905-020-00897-8.

56 Some researchers on IPV in Ghana have observed that at the core of domestic violence is power and control. See Owusu DA *Mute in Pain: The power of Silence in triggering Domestic violence in Ghana.* Social Alternatives Vol. 35 No 1, 2016 https://socialalternatives.com/wp-content/uploads/2021/02/Owusu-SOC_ALT_Vol-35_1.pdf

Again, if the woman cannot part with possession of the property by any means without the consent of the husband, while she is alive, can she devise that property in a will? If the woman cannot dispose of the property by way of a gift *inter vivos*, without her husband's written consent, does it not a fortiori apply to gifting it by testamentary disposition? It is inconsistent with the law on wills and ownership of property that before a person can will what they own, they must seek the consent of their husband. This creates more problems for women, as intergenerational wealth creation by women in Ghana has historically been a challenge. As mentioned in Part 1, customary law, as declared by the courts, had the effect of creating a "feudal" system within the marriage whereby the wife laboured all her life, and the husband enjoyed the benefits of said labour exclusively, as she acquired no interest in any property bought by her husband through their combined efforts. This position contributed to the poverty of women, as they acquired nothing by their labour. They were also not able to pass anything down to their children either. This is particularly problematic in the matrilineal societies, as children belong to their mother's line, and can only inherit from their mother and her brothers. If the mother had nothing, then she could also pass nothing on to her children. While things have improved for women, and by extension, their children, Section 47 is an unnecessary fetter on her testamentary right to dispose of her property as she sees fit.

Relatedly, patrilineal women generally must have a male reference before they can access land—that is, they can access land only through either a male relation or through a husband.[57] Even among matrilineal societies, land is still heavily concentrated in the hands of the males.[58] Discriminatory practices in respect of land acquisition in Ghana are well-documented.[59] For this reason, the Land Act expressly prohibits discriminatory attitudes and practices in respect

57 Fenrich and Higgins (n 123) 261.
58 Ibid
59 Ibid

of women's ownership of land.[60] It is argued that the requirement for a spouse's consent is a subtle way of reinforcing and perpetuating the fact that men are constantly in control of women's access to land. Section 47 puts yet another male referent to women's right of control of their land. In effect, there are male-referent barriers to women's participation at every point in the process of ownership, access to, and disposition of land.

Another observation is with respect to polygamous unions, which, as stated above, are legal in Ghana. As the society is polygynous, it is clear that it is the man whose consent is required when it is a wife seeking to undertake one of the stated transactions in respect of her property. It is, however, not clear when it is a husband who is selling or in some way conveying his property, whether each wife has to consent before he can dispose of the property, whether one wife's consent suffices, and if so, which wife would have the priority in this regard. The rules on the place of wives in polygamous unions differ from society to society. If each wife must consent to the conveyance of the property, what are the implications, if, for example, the property is being sold to care for one wife's children or her cancer treatment? Given the amount of competition (often unhealthy) and rivalry that exists in polygamous unions, among the wives, there is no reason not to imagine that some wives may not be willing to consent to such a transaction.

Further, Customary law does not know writing.[61] The law's requirement for consent to be in writing is yet another consequence

60 Land Act, 2020 (Act 1036), s 11 provides as follows:

A decision or practice in respect of land under customary tenure, whether the land is individually or communally held shall be in accordance with the customs, traditions and practices of the community concerned but a decision or practice which discriminates on grounds of:

(a) place of origin, ethnic origin, political opinions, colour, gender, occupation, religion or creed,

(b) disability, or

(c) social or economic status, is void.

61 *FKA Company Ltd v. Effah Sarkodie* [2008] DLSC2457.

of legal pluralism, which conflicts with the realities of the people. More crucially, the courts have consistently held that the ordinary incidents of commerce do not apply to marriage.[62] As a result, wives have been able to successfully maintain an action for equitable distribution of property, and prove, in the absence of documentary evidence or evidence of mathematical exactness, that the disputed property was jointly acquired.[63] It is thus hard to see, assuming (without admitting) that it was not objectionable to require consent by the husband, for the wife to transact in respect of her own property, why such consent must be in writing. In the absence of written consent, it should be possible to establish that the woman's interest was not catered for in the disposition of the property, or that the consent was not given at all. It is unusual for couples to keep written records of transactions and agreements between them, as the courts have repeatedly acknowledged.[64] As outlined in Part 1, customary marriages are not evidenced by any form of writing. Even for such an important event, with a complex framework like marriage, writing is not required. Why should a couple be able to enter into a marriage union, with all its implications and complexities, orally, but not be able to agree to sell property orally?

Finally, although the consent for the sale or other form of conveyance is not to be unreasonably withheld, there is no guidance as to what amounts to consent being "unreasonably withheld" within the meaning of the Land Act.[65] There is also no indication as to what must be done if the consent is, in fact, unreasonably withheld. Many questions arise from this lack of clarity. Can a wife go ahead and override her husband's disapproval to dispose of the property? If she does, what are the consequences for her as regards the proceeds

62 *Abebreseh v Kaah* [1976]2 GLR 46–62, *Mensah v Mensah*, [1998–99] SCGLR 350.

63 Ibid.

64 See e.g. *Quartson v Quartson*.

65 In the Children's Act, 1998 (Act 560), s 68(3), consent to adoption is deemed unreasonably withheld if the consent is withdrawn only on the grounds that the intended adopter's identity is not known.

of the sale or other benefit of the transaction? If the consent is not found to be unreasonably withheld, does it entitle the husband to any part of the profits from the transaction? Does the absence of consent make the sale void or voidable? Will she require a court declaration that the consent being withheld is unreasonable?[66] If so, what would the implications be for her marriage if she were to sue for such a declaration? These are questions that the law does not answer, but which are likely to weigh on the woman's mind and dissuade her from pursuing a transaction over which her husband has denied consent. This inevitably leads to men dominating decision-making in this area even more.

Conclusion

Section 47 does not solve the problem it purported to; it actually complicates the situation more. By enacting a law based on a heavy reliance on one case, the law has developed a framework that identifies only one kind of woman, excluding others to their detriment. Section 47 does not consider the broader implications of restricting the right to dispose of one's self-acquired property, as it does, looking only very narrowly at the particular case on which it was built. It did not consider how many women would be excluded by the writing requirement, or how more men than women would get the benefit of the provision. Section 47 proceeds from the very false premise of an egalitarian society, which Ghana is not. It therefore ignores the very real challenges of the average wife, privileging highly educated, financially well-positioned women over the average woman in decision-making over the woman's own properties.

Section 47 presents a challenge to the constitutional guarantee in article 18 of the Constitution of the Republic of Ghana, 1992. It

66 In the Matrimonial Causes Act, 1971 (Act 367), the Court can override a spouse's refusal to consent to divorce where they have lived apart and not in amity for a continuous period of two years.

does not even accurately reflect the cases on which the legislature purportedly based the law. It gives statutory backing to male dominance in decision-making within the family in respect of property, a dominance which hitherto existed only by reason of the socio-cultural norms.

All the above point to the fact that section 47 of the Land Act, 2020 (Act 1036) is a patriarchy-supporting structure that is masked under the rhetoric of gender empowerment. Had the language of section 47 been limited to jointly acquired property, as registration of property under section 38 is so limited, there would be no problem with requiring the other party's consent before disposing of the property. Such a requirement is in line with all rules on jointly acquired property. However, as it is not so narrow, section 47 impinges on women's rights, allowing the dominance of men in property matters (even in respect of properties the men do not own), yet is disguised in justifications that purport to be in support of women's rights.