

**CORAM: HER WORSHIP NANA ABENA ASOH OWUSU-OMENYO (MS.),
MAGISTRATE, DISTRICT COURT '1', KANESHIE, SITTING AT THE FORMER STOOL
LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON 24TH NOVEMBER 2023**

SUIT NO: A8/37/23

**FLORENCE QUANSAH } PETITIONER
ACCRA**

VRS

**GIDEON ACQUAYE } RESPONDENT
ACCRA**

JUDGMENT

On the 21st day of June, 2014 at the Church of Christ, Dansoman the petitioner and the respondent were joined together in holy matrimony. Their union is produced three children by name Mariam Acquaye, 7 years, Jacqueline and Joseph Acquaye all 4 years.

The petitioner brings the instant petition against the respondent on grounds essentially of unreasonable behaviour. She particularizes the unreasonable behaviour as physical and psychological, which physical abuse as led to a coma and hospitalization.

She also states that the respondent has mentioned over the course of their marriage that he wishes to divorce her and is currently not interested in the marriage. She makes further assertions of adultery. She thus prays the court to dissolve her marriage to the respondent.

The respondent in his response essentially denied all the allegations levelled against him by the petitioner except to say he physically assaulted the petitioner on only one occasion.

His action which landed the parties at the Dansoman Domestic Violence and Victims Support unit. He says that even after various pleas from the commander in charge the petitioner has refused to return to the matrimonial home after she left. He also makes other assertions in support of his case.

This case is a grim representation of the reality of many in our society. It a reminder that abuse can come from those we are most intimate with and those who have sworn on the God they serve to cherish and love their spouses forever.

I pondered long and hard where to begin this judgment from, but I will begin with the pictorial evidence presented by the petitioner as attached to her witness statement. The pictures show a brutally battered petitioner with her fair skin showing blood clogged bruises all over. It shows very large patches of red bruises on her hands and her face. It shows a woman who was badly beaten, being short of looking like she was lynched by a mob.

The pictures are indeed no sight to behold and I keep wondering to myself what the mental state of the respondent was to have done this to his very beautiful wife.

I dare say this divorce petition is the best course of action for both parties. Why should such young children have to witness such brutality meted out to their mother by their own father.

Section 1(2) of the Matrimonial Causes Act, 1971 (ACT 367). states that the sole ground for the dissolution of a marriage shall be that the marriage between the parties has broken down beyond reconciliation. ACT 367, goes ahead in section 2(1)(b) to state that a petitioner shall be entitled to a decree for dissolution where the respondent has behaved in a way such that the petitioner cannot reasonably be expected to live with him.

The most important question is, can the petitioner be expected to ever be in the same room with the respondent who has been this cruel to her? my answer to this is in the negative. In the case of **Addo v Addo (1973) 2 GLR**, the court in quoting the case of *Sheldon v. Sheldon [1966] 2 All E.R. 257, C.A.*, observed that *any conduct that affects the health of a spouse, be it physical or mental health can be construed as unreasonable behaviour and will entitle to party suffering to leave*

On this basis, I find that the petitioner has been able to show that her marriage to the respondent has broken down beyond reconciliation.

The petitioner made allegations of adultery against the respondent which she was unable to substantiate after the respondent denied same. The position of the law as observed in the case

of *KLAH v. PHOENIX INSURANCE CO. LTD* [2012] 2 SCGLR 1139, is that; *“Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can satisfy itself that what he avers is true.* The petitioner was unable to show any evidence of adultery and this ground must fail. In the case of *QUARTEY V. QUARTEY AND ANOTHER* (1972) JELR 66265 (HC), *the court stated that to establish adultery there must be evidence to a certain degree of certainty which the court through various circumstances surrounding the case must satisfy it through the circumstances.*

CUSTODY AND MAINTENANCE

Section 22(1) of Act 367, states *“in any proceedings under the ACT, whether for divorce or nullity it is the duty of the court to inquire if there are any children of the house hold and the court may on its own initiative or on the application by any of the parties to the proceedings make an order concerning the children of the household which it thinks reasonable for the benefit of the child. Such orders may include inter alia custody awards”*

In making custody order the Children’s Act 1998, Act 560 enjoins the court to as a matter of importance consider the best interest of the child. Both parties have prayed this court for an award of custody, I however grant custody of the children to the petitioner taking into consideration their ages and also their best interest, seeing as the respondent seems predisposed to violence. The respondent is to have reasonable access to the children.

The petitioner is to be responsible for the educational and other living expenses of the children as she currently is. The respondent is to maintain the children with an amount of One Thousand Five Hundred Ghana Cedis a month at a rate of five hundred Ghana Cedis per child. He is also to register them on the national health insurance scheme if they are not already registered and ensure that he caters for all medical expenses that will not be covered by the health insurance scheme.

ALIMONY

I have considered the pain and trauma the petitioner has gone through and award her ten thousand Ghana Cedis, alimony to help cover the cost she incurred in the hospital. In accordance with section **Section 20 of Act 367**.

FINAL ORDERS

1. The marriage between the parties celebrated on the 21st June 2012 at the Church of Christ Dansoman has broken down beyond reconciliation and is hereby declared dissolved.
2. Custody of the three children of the marriage is hereby granted to the petitioner with reasonable access to the respondent. he is to have them every other weekend, (i.e. two weekends every month).
3. Respondent is to be responsible for all expenses consequential to the education of the children.
4. Respondent is to be responsible for all medical expenses of the children.
5. Respondent is to provide accommodation for the children till they are of legal age.
6. Respondent is to maintain the children with an amount of One Thousand Two Hundred Ghana cedis a month (GH¢1,200) (Four Hundred Ghana Cedis per child); to be reviewed at a rate of 10% every year.
7. Considering the circumstances that led to the breakdown of the marriage, respondent is to pay the petitioner alimony of Ten Thousand Ghana Cedis (GH¢10,000)
8. Each Party is to bear their cost.

**NANA A.A. OWUSU-OMENYO (MS.),
(MAGISTRATE)**

