

**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: A8/109/23

**MABEL KORANTENG ANIM } PETITIONER
ACCRA**

VRS

**SAMUEL BOADIE } RESPONDENT
ACCRA**

JUDGMENT

INTRODUCTION

The parties to the instant petition were married at the Kingdom Hall of the Jehovah's Witness on the 1st March 2014. They share two issues.

CASE OF THE PETITIONER

The petitioner's case is that the respondent has behaved unreasonable towards her. She starts by saying that the respondent after the birth of their first child became aggressive and hostile towards her when she complained about his family members visiting their tiny one-bedroom apartment. That although efforts were made to resolve these issues, they became worse after the birth of their second child when the respondent became physically, verbally and emotionally abusive at any given time. Petitioner claims a myriad of issues but what broke the camel's back was when the respondent took her phones and shared nude photos of her with friends and family. That this act of the respondent brought her great humiliation.

She says she cannot continue living with the respondent as her husband. She says based on the actions of the respondent she has moved out of the matrimonial home as she cannot stand to be in the same room with him. She thus prays for the following reliefs:

- a. The marriage celebrated between the parties on the 1st March 2012 be dissolved.
- b. Custody of the two children
- c. Respondent to maintain the children with Six hundred Ghana Cedis (GH¢600) per month.
- d. Respondent to pay rent of Two Hundred and Fifty Ghana Cedis (GH¢250) per month.
- e. To pay school fees and medical bills of the children.

THE CASE OF THE RESPONDENT

The respondent in his answer and cross-petition to the petition denied all allegations of verbal, emotional and physical abuse except to say that the video and pictures he circulated of the petitioner were of a pornographic nature. That the petitioner together with her adulterous partner had made videos of themselves and he sent it out as a means to show that petitioner was indeed an adulteress.

He says that the petitioner left the matrimonial home on her own accord and has refused to return. That even through all the adultery, he still wants to court to resolve the misunderstanding between the parties and prays the following reliefs:

- a. An order to resolve the misunderstanding between the parties from the continuation of the marriage.
- b. Where the petitioner is adamant in her plea to dissolve the marriage, the court may dissolve the marriage and give total custody of the issues of the marriage to the respondent.
- c. General damages against the adultery partner of the petitioner for degrading the matrimonial bed of the respondent.
- d. Any other orders the court may deem fit.

LEGAL ANALYSIS

I have read both the petition and the answer and cross petition and before I can even take the time to analyze the issues, I must certainly comment on what will make a husband share his wife's nude pictures to family and friends. I will however settle my misunderstanding of this anomaly with a quote from *Ralph Waldo* "No man is quite sane. Each has a vein of folly in his composition...."-

The issue for determination in the instant suit, is whether or not the marriage between the parties has broken down beyond reconciliation as in accordance with **section 1(2) of the Matrimonial Causes Act, 1960 (ACT 367)**.

In order to establish this, the petitioner by her petition and evidence must show that the respondent has behaved in a way that she cannot reasonably be expected to live with him as husband and wife. This requirement is per section **2(1) (b)** of the **Matrimonial Causes Act, 1960 (ACT 367)**.

The respondent also carries this burden with his cross petition. Especially with respect to his allegations of adultery and prayer for damages from the supposed adulterer his wife had relations with.

The petitioner made a lot of allegations against the respondent. All which allegation she sought to substantiate through her evidence. The respondent however denied most of them except the fact that he shared her nudes with her friends and family on WhatsApp. The petitioner however did not call any other witnesses, neither did she bring any other evidence to substantiate her claims of abuse especially the physical abuse.

Once the respondent had denied all these allegations, she was under an obligation to prove in a positive way that her assertions were true, unfortunately she failed to do this. *Air Namibia (Pty) Ltd v Micon Travel and Tours & Others [2015] 91 G.M.J. 173 @ 194*.

The second and maybe most important leg of her allegations which was confirmed by the respondent was the sharing of her nudes. The respondent claims he did this to prove that the petitioner was committing adultery. But my only question to the respondent is why he would seek to dehumanize a wife he does not wish to divorce in such a humiliating manner.

This behavior of the respondent is nothing short of unreasonable. In the case of *ANSAH V. ANSAH [1982-83] GLR 1127* the court stated the test for unreasonable behavior as *“whether the petitioner could reasonably be expected to live with the respondent in spite of the latter’s behavior.* Will it be fair to let the petitioner continue living with a husband who has treated her in such a manner? My answer to this question is certainly in the negative.

I also refer to the case of **Mensah v. Mensah (1972) 2 GLR 198**, the Court, where the court observed that *“ One point is clear and it is that the conduct complained of must be sufficiently grave and weighty to justify a finding that the Petitioner cannot reasonably be expected to live with the Respondent; mere trivialities would not suffice”*. The offence of the respondent is grave and very weighty and I dare say he deserves to have been in jail for committing such a criminal act.

I am convinced that the parties cannot remain married and the petitioner’s prayer for dissolution must succeed.

I will now turn my attention to the cross-petition of the respondent. I will not waste much time here because, his first relief of salvaging the marriage has failed.

The other reliefs, relate to adultery, for which he provided no proof or evidence to substantiate his claim. **In the case of ADJETEY v. ADJETEY (1973) 1GLR 216**, the Court held that *“Direct evidence of adultery is rare. In nearly every case the fact of adultery is inferred from circumstances which by fair and necessary inference lead to*

that conclusion." The respondent in this matter was unable to provide direct evidence neither was he able to provide circumstantial evidence to support his claim. I also refer to the case of GLORIA ASSAN ARHIN V EUGUEN KOFI BENTUM ARHIM DM/0244/2021 where the court said" *"The Respondent having denied this, the onus is on the Petitioner to lead cogent and credible evidence of her assertion"*.

The respondent was unable to discharge the burden of proof in relation to any of his claims. His cross- petition must thus fail.

CUSTODY

On the issue of custody, Section 22(1)of the matrimonial causes states that 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 custody of the children of the marriage. Considering the age of the children I believe that the best interest of the children of the household will be served if custody is given to the petitioner. I thus grant custody of the two issues of the marriage to the petitioner.

CONCLUSION

I am of the avid opinion based on the evidence before me that the marriage between the parties has broken down beyond reconciliation.

FINAL ORDERS

1. The marriage celebrated between the parties at the Kingdom Hall of the Jehovah's witnesses on the 1st March 2014 has broken down beyond reconciliation and is hereby declared dissolved.
2. Marriage certificate with number DEKH 01/2-14 is hereby cancelled.
3. Custody of the two children of the marriage is hereby awarded to the petitioner with reasonable access to the respondent. He is to have them every other weekend. (Twice a month on weekends).
4. The respondent is to maintain the children with an amount of Six Hundred Ghana Cedis (GH¢600) a month, being Three Hundred Cedis per child (GH¢300), to be reviewed at a rate of 10% annually.
5. Respondent is to pay for all expenses consequential to the education of the children.
6. Respondent is to bear all medical expenses.
7. Respondent is to rent suitable accommodation for the children until their reach an age of majority. Parties are to share the cost of accommodation equally.
8. Each party is to bear their own cost.

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