

IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU

Case No. 24/ 1906 MC/ MTRM

(Matrimonial Jurisdiction)

BETWEEN: ALICE DANIEL

Petitioner

AND: MACKLIN DANIEL

Respondent

AND: ESTHER RORY

Co – Respondent

Date of trial: July 17, 2025

Date of Judgement: August 8, 2025

Before: Magistrate Toaliu

Appearance: Tokon. I of the Vanuatu Women's Centre for the Petitioner.

Malites. P of the Public Solicitor's office for the respondents

JUDGMENT

Introduction

1. This is a matrimonial claim for damages filed by the Petitioner against the Co-Respondent on the grounds that the Co-Respondent was responsible for the breakdown of her marriage to the Respondent.
2. The Petitioner alleges that the Co-Respondent entered into an Intimate relationship with the Respondent while the marriage between the Petitioner and the Respondent was still intact, and that this relationship ultimately led to the collapse of the marital union.

3. As a result, she claims damages in the sum of VT200,000 against the co-respondent for the collapse of her marriage.

Issues

3. The Court is required to determine the following issues:
 - (i) Whether the Petitioner's marriage to the Respondent had broken down before the Co-Respondent's involvement.
 - (ii) Whether the Co-Respondent's involvement with the Respondent was the cause of the breakdown of the marriage.
 - (iii) Whether damages are payable to the Petitioner as a result.

Evidence

4. The Petitioner and Respondent married on 4 November 2005 and had five children.
5. The Petitioner claimed the Respondent had multiple affairs after their marriage.
6. The respondent admitted to having multiple extra marital affairs after their marriage in 2005 but said the Petitioner has had her share of affairs as well. This included affairs with a man from Tanna in 2016, with the husband of Jeanette Nimbwen and with a man from Tongoa they referred to as Amos.
7. When questioned, the Petitioner admitted to an affair in 2016 with a married man from Tanna.
8. The respondent further stated that he still has doubts about the paternity of their youngest child as his conception dates do not align with his return from overseas at that time.
9. Up until 2018, the petitioner was still living together with the respondent until she landed a job as a teacher at Matarisu school at North Efate. She had to move there with her kids but would drop them off during the weekends with the respondent at the matrimonial home at Freshwota in Port Vila. It was then that her children would tell her about the pregnant co-respondent being at their home. As such, she stopped living together with the respondent since then.
10. She stated that she approached the co-respondent at her workplace at Sharper Image in 2016 and asked her about her affair with the respondent to which the co-respondent denied.
11. The co-respondent admitted that the petitioner did approach her at her former workplace at Sharper Image in 2016 in an aggressive manner. She came to fight and as such they never conversed, and she never answered the petitioner at that time.
12. Following the petitioner's affair with the man from Tanna, a customary meeting led by chiefs in 2018 ordered the affair to end and a compensation ceremony was held the following week.
13. After that first meeting, the Petitioner did not return to the respondent at their matrimonial home. Instead, she returned to Matarisu where she worked as a teacher.

14. She later stated that after the meeting, she had to return to Matarisu at North Efate where she was working as a teacher, or she would miss her classes.
15. She did not attend the compensation ceremony the following week, stating she was not required to and did not feel the need to attend, as the fine was only imposed on the man from Tanna.
16. When asked if she felt the need to return home after the ceremony to mend things with the respondent, she responded saying that she had to go back to Matarisu school or she would miss her classes.
17. She further stated that the respondent's family resented her and preferred the co-respondent over her. The Respondent's brother had also written her a letter to stay away from the respondent.
18. When asked if she contributed to the marriage breakdown, she replied, "*Mi no save ansarem question ya*,".
19. Given the continued absence from home by the petitioner, the Respondent's brother helped the Co-Respondent move in with the respondent following the respondent's request as the co-respondent was with child.
20. The Co-Respondent stated their relationship began in 2016 despite having knowledge of the respondent's marital status but only moved in with him in 2018 upon his request following the petitioner's continued absence from the respondent.

Consideration

10. Section 8 and 17 of the Matrimonial Causes Act [CAP 192] are relevant as they allow the petitioner to claim damages for adultery in addition to any other relief if she elects to.
11. Section 8 states:-

"8. Provision as to making adulterer co-respondent

Where adultery is alleged in a petition or by a respondent, the petitioner or respondent as the case may be shall make the alleged adulterer a co-respondent unless he or she is excused by the Court on special grounds from doing so."

And section 17 provides:-

"17. Damages for adultery

(1) A petitioner may on a petition for divorce claim damages from any person on the ground of adultery with the respondent.

(2) The Court may direct in what manner the damages recovered on any such petition are to be paid or applied."

12. The basis upon which damages can be awarded have been discussed extensively by this court in **Banga v. Waiwo** and **Nguyen v. Nguyen**. In brief the court must take into account the conduct of all the parties concerned.
13. Despite the petitioner's evidence saying that the respondent had multiple affairs following their marriage in 2005, it was the affair with the co-respondent that she says had broken down her marriage and this may be largely because the respondent had physically moved in and co-habited with the respondent in the respondent's matrimonial home.
14. The pair (respondent & co-respondent) met 2016 in Australia as Seasonal Employees where the respondent confided in the co-respondent about the petitioner's affairs including the one with the man from Tanna in the same year. Both were married but looked out for each other until they started their intimate relationship. The co-respondent knew that the respondent and the petitioner were married.
15. The court finds that the petitioner's affair with the married man from Tanna had worsened an already strained marriage. This affair caused the respondent to confide in the co-respondent and they eventually developed an intimate relationship.
16. Despite evidence presented by the respondent and co-respondent concerning the petitioner's affairs with Jeanette Nimbwen's husband and Amos from Tongoa, the petitioner maintained her innocence.
17. The respondent also questioned the paternity of their youngest child (13 years old) saying that the child is not his as the dates of conception do not align with his return from overseas. These are already indication that the marriage was already significantly stained with distrust.
18. I find that the marriage was already at the verge of breaking down before the co-respondent's involvement.
19. As a result of the petitioner's affair in 2016 with a man from Tanna, a meeting was held in 2018. During the meeting, the chiefs ordered that the relationship be severed immediately. I am intrigued that the meeting must happen two years after the affair in 2016. This may only mean that the affair was on going until 2018 when the chiefs ordered the petitioner and the man from Tanna to sever their relationship.
20. The man from Tanna was ordered to pay a compensation to the respondent while no fines were placed on the petitioner. A compensation ceremony to this effect was held the following week.
21. The Petitioner's absence from the matrimonial home after the first meeting in 2018 did not aid the already delicate situation.
22. Her voluntary absence from matrimonial home demonstrates that fixing the marriage was not a priority to her. Her job was and this proved to be the final blow in their marriage.
23. Despite evidence suggesting that the respondent's family resented her, it was her choice to leave the respondent immediately after the first meeting concerning her affair and go back to

her teaching duties at Matarisu without a word to the respondent during a critical period in their relationship.

24. Because of that continued absence after the second meeting, the respondent invited the co-respondent to live with him rather than the co-respondent forcing herself into his life.
25. As to the question of whether it was the co-respondent's involvement with the respondent that caused the breakdown in the marriage, i find that it did not. The marriage was already strained before the co-respondent's involvement with the respondent. The petitioner's affairs including the one with the man from Tanna led the respondent to confide in the co-respondent during their together time in Australia. This eventually led to their intimate relationship.
26. Although the petitioner insists that he and the respondent were still living together from 2016 up until 2018 when the co-respondent moved in with the respondent, evidence shows that their marital union was already broken down.
27. The co respondent begun co-habituating with the responded at a time when the marriage has already broken down. Eventually, the compensation ceremony did not mend this.
28. On the question of whether the Petitioner is entitled to damages from the Co-Respondent as a result of the breakdown of her marriage, I find that she is not. I accept the Respondent's submission that the Petitioner seeks relief with unclean hands. Based on the evidence, it is clear that the Petitioner has not approached this matter with clean hands. Her extramarital affair with the man from Tanna had a ripple effect on an already strained marriage, placing further pressure on the relationship and ultimately contributing to the Respondent forming an intimate relationship with the Co-Respondent. The Petitioner's continued absence from the matrimonial home following the 2018 meeting and customary compensation ceremony regarding her affair effectively marked the end of the relationship. It was only after this that the Respondent invited the Co-Respondent to live with him.

Orders

19. The claim for damages of VT300,000 by the Petitioner against the Co-Respondent is hereby dismissed.
20. The respondent and co-respondent are entitled to costs agreed or taxed.

DATED at Port Vila this 8th day of August 2025.



**Philip Toaliu
MAGISTRATE**