

IN THE SUPREME COURT )  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA. )

CORAM : MANN C.J.

Monday,  
7th October, 1968.

BETWEEN :

PAULINE PENELOPE HARDING  
Petitioner

AND

CLIFFORD GORDON HARDING  
Respondent

AND

ELIZABETH ANN BETHEL  
Co-Respondent.

JUDGMENT

1968  
September  
19 and  
October  
7.  
Pt Moresby  
MANN C.J.

This is a petition for dissolution of marriage on the ground of adultery. There is no dispute as to any of the main issues, and the facts are plain. I am satisfied that the petitioner is entitled to a decree for dissolution of her marriage on the ground stated and that I should find on the uncontested facts alleged in the petition that the petitioner and the respondent are domiciled in the Territory of Papua and New Guinea.

There are two children of the marriage whose maintenance and education have been the concern of the respondent and the petitioner does not ask for custody but does seek reasonable access. The respondent has agreed to assume full responsibility for the welfare, education and maintenance of both children until they complete their secondary education.

The only questions at issue are :

- (a) the amount that the respondent should pay for maintenance for the petitioner;
- (b) the claim against the co-respondent for damages.

As to the first matter of maintenance, all three parties to this suit are in much the same position. Each is an Education Officer of the Department of Education. There is not much difference between the

Harding and  
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Bethel.  
Mann C.J.

salaries of the petitioner and the respondent and their prospects are much the same. Whilst living together and jointly contributing to household expenses they were in a reasonably secure and comfortable position.

The normal net salary of the respondent comes to about \$144 per fortnight, but he has five more increments in expectation at a rate ranging from \$200 to \$250 per annum, so that his position is variable. This factor may be the occasion of repeated applications to this Court for variations of whatever Order I may now make.

In the light of this, I suggested to the parties that since there was not much in dispute and since they were apparently all prepared to accept the facts as they stood, it would be in the interests of all concerned if I were to make an Order by way of settlement giving the petitioner a percentage of the net salary of the respondent so long as her capacity to earn remained the same, with a higher or lower percentage to meet contingencies which might arise in the future affecting her needs or capacity. Both parties seemed to react somewhat suspiciously to such a proposal and I do not feel that in the circumstances I should force such an Order upon them. All that I can do therefore is to make an Order which seems to me to be appropriate for the present circumstances as they exist and leave it to the parties to arrange, or to seek from the Court, variations as may be appropriate from time to time.

The petitioner, in the position in which she now finds herself, has suffered little financial loss, apart from the question of security in respect of which she is certainly more in jeopardy now than she has been during her somewhat unsatisfactory marriage. She has had in the past to come to the aid of the family and provide money from her own earnings when the respondent appeared not to be a highly inspired breadwinner. Nevertheless, she had a real security during the marriage on account of his earning potential and a few assets which were of some value. She had to rely on her marriage as her security in life because as

a temporary officer she had no security of employment.

The petitioner feels a sense of insecurity at the moment largely because she is uncertain of her future and whether she will stay in the Territory or go back to Malaysia and what particular career she may follow. I think that all this uncertainty is directly attributable to the breaking up of the marriage, however unsatisfactory it might have been in some respects.

I think that the breaking up of the marriage was directly caused by the respondent and co-respondent seeking the solace of each other's company.

The respondent is now 40, the petitioner is now aged 43 and the co-respondent aged 23. The co-respondent knew that the respondent was a married man when her intimate relations with him commenced. Their present intention would appear to be to marry when these proceedings are concluded. Their association commenced while the petitioner and respondent were living together as husband and wife and the respondent's nocturnal visits elsewhere caused the petitioner to become suspicious. The respondent denied that he was associating with another woman, but when challenged moved his bed to another room, whereafter the parties to the marriage slept in different parts of the house and the respondent continued to go out alone at night.

The petitioner felt constrained to continue to live in the house under these unnatural and unsatisfactory conditions because of the shortage of official housing in Port Moresby and because she, as a married woman, was not entitled to separate accommodation in the ordinary way.

The petitioner hopes that when a decree absolute is pronounced in these proceedings she will then become eligible to become a Contract Officer, entitled to separate accommodation, and that some of her immediate problems will be resolved.

Having regard to all the variables that now exist in this case, it is very difficult for me to make an Order for maintenance which will really meet

the position once and for all. It appears that the petitioner's position will shortly change for the better, provided that her health remains good and she is not burdened with the responsibilities involved in the upkeep of the children. The respondent proposes to give her a Fiat car free of debt, in which she regards herself as having at present a half interest. The car will be worth something like \$1,000 to her by the time this transaction is completed.

I think that under the circumstances existing at the present time, an Order for maintenance from the respondent to the petitioner in the sum of \$15 per week would be sufficient for her needs, but this amount ought to be re-considered by the parties and, in default of agreement, by the Court, in the light of the circumstances existing when all the parties concerned have settled down in their intended new way of life and know precisely what their respective entitlements are going to be.

So far as the claim for damages against the co-respondent is concerned, I think that she is liable to pay and that the damages should be assessed to represent the actual loss sustained by reason of her invasion of the petitioner's matrimonial rights.

The co-respondent does not appear to have gone out of her way deliberately to injure the petitioner, on the other hand, there is nothing to indicate that she thought very much about the consequences of her actions at all. She should have realised that in entering into competition with a woman nearly twice her age, she was following a path likely to prove unrewarding to herself and decidedly damaging to the petitioner. I allow for the fact that the respondent had shown himself to be not entirely an ideal husband, so that the petitioner cannot hope for a very substantial award in damages for his loss. I think that the award that I should make is for a lump sum figure, to be regarded as something in the nature of nominal damages because the amount involved must be necessarily at large, and there are advantages and disadvantages to be taken into account on both sides.

Having regard to the provisions of Section 37(4) of the Matrimonial Causes Ordinance, 1964, I think that I should award the petitioner a sum of \$500 against the co-respondent and direct that it should be paid by her at the rate of \$10 per fortnight commencing at the beginning of the next pay period after the decree nisi is drawn up and issued from the Court.

On the question of costs, I think that the respondent and co-respondent should bear equal responsibility, since the petitioner was plainly entitled to seek the relief which was actually sought by her. Accordingly, I order that the taxed costs of the petitioner be paid as to one half by the respondent and as to the other half by the co-respondent.

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Solicitor for the petitioner : Norman White and Reitano.

Solicitor for the respondent  
and co-respondent : Craig Kirke and Co.

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