SILOKO -v- HAKA

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 53 of 1991
Hearing: 26 April 1991
Judgment: 3 May 1991

A. Radclyffe for the petitioner
J. Muria for the respondent

WARD CJ: The petitioner in this case seeks a decree that his marriage to the respondent is null and void.

He and the respondent had been living together for 6 years and had two children (born in 1982 and 1984) when, in 1987, they decided to marry. A marriage ceremony was conducted on 25th July 1987 and that ceremony forms the basis of the petitioner's action. He claims, and it is not disputed, that some provisions of the Islanders Marriage Act were not observed, namely, that no notice was posted as required by section 5(1)(a) and the ceremony was not in church as required by section 8.

The service was performed by a pastor of the Seventh Day Adventist Church according to their normal rites but at the parties' home in White River. The respondent admits the facts but says that holding the ceremony there was in compliance with the SDA tradition.

The pastor who officiated at the ceremony gave evidence and explained that when the couple to be married have been living, as he put it, in adultery, his Church cannot marry them in church but they do hold the same ceremony in their homes as a method of helping the couple to continue living together and to come back to the Church. In his Church, he said, that is a good marriage.

In such cases, it is normal to exhibit a notice in accordance with section 5 but as he was asked in to perform this wedding late, he did not know if one was posted.

The Islanders Marriage Act states that no marriage between islanders, with one exception that is not relevant here, shall be valid unless celebrated -

"*(a) before a minister of religion; or*
(b) before a district registrar."

Section 5(1) provides:

> *"5(1)(a) Before a marriage may be celebrated by a minister of religion, written notice of the intended marriage, and of the date of such intended marriage, in the language spoken by the parties thereto, and signed by the minister in charge of the church in which such marriage is to be celebrated, shall be posted prominently on a notice board set aside for the purpose in such church. Such notice shall be posted at least three weeks before the date of such intended marriage, and shall remain on the notice board until the celebration of the marriage or until the expiration of three months from the date of notice, whichever shall first happen."*

Section 8 reads:-

> *"A marriage by a minister of religion shall be celebrated in the church in which notice of the intended marriage was given, and shall be celebrated between the hours of 6 o'clock in the forenoon and 6.30 o'clock in the afternoon."*

By section 12 of the Islanders Divorce Act, a marriage is null and void and the Court shall pronounce a decree of nullity in respect thereof if it is proved that, subject to the provision of section 8 of the Births, Marriages and Deaths Regulations Act, the marriage was not celebrated in due form.

I feel the exception referred to there is of some relevance because it appears to provide the only exception to the rule.

> *"8 No marriage, in fact, shall be avoided by reason only of the same having been celebrated by a person not being a duly registered minister, if either of the parties to the marriage* ***bona fide*** *believes at the time that he was duly registered minister."*

The petitioner argues that this is a clear case of failure to use the due form. The respondent suggests that, although the words appear mandatory, the court may take them here as directory.

There is no authority on this point in Solomon Islands and authorities from abroad are frequently based on laws different from ours.

I cannot accept the respondent's argument that the words in the sections I have

quoted give the court a discretion. If the marriage was not celebrated in due form, the Court must pronounce a decree of nullity. A failure to comply with section 5 or 8 of the Act is a failure to follow the due form. However, the respondent argues that there is a strong presumption in favour of a valid marriage and the Court should be slow to declare such a marriage void. I agree with that.

In this case, there is no suggestion the parties did anything but accept this as a valid marriage. They both wanted to be married and they arranged to be married by a minister of religion and, after the marriage, they continued to cohabit as man and wife. To all intents and purposes it was a valid marriage and there is a certificate of marriage relating to it.

In such circumstances the presumption is omnia praesumuntur rite esse acta regarding the form of the marriage. Having cohabited the presumption is stronger omnia praesumuntur pro matrimonio. Such a presumption must be displaced by the petitioner and I accept the authority of *Piers v. Piers* (1849) 2 HL Cas 331 that the presumption will only be displaced by strong evidence to the contrary. In *Pier's case*, the House adopted the words used in an earlier case *Morris v. Dennis*:-

> "*The presumption of law is not lightly to be repelled. It is not to be broken in upon or shaken by a mere balance of probability. The evidence for the purpose of repelling it must be strong, distinct, satisfactory and conclusive.*"

These are very old cases but I accept them as the law. In *Hill v. Hill* (1959) 1 All E.R. 281 it was pointed out that the evidence of rebuttal must be firm and clear and that a balance of probabilities is insufficient to rebut the presumption. It must be decisive. They were more recently confirmed in the case of *Mahadwan -v- Mahadwan* (1962) 2 All E.R. 1108.

The bond of marriage is a very important one. Those who enter it in good faith and cohabit following it, should be protected from cases such as this where it is convenient to one party now to try and avoid the consequences.

The only evidence the Court has is that of the pastor and the marriage certificate. As regards the notice, the pastor could not help. The certificate describes the marriage having been at Independence Valley, Honiara "due notice having been given in accordance with the Native Marriage Ordinance". There is nothing to defeat the presumption that due notice was given.

The evidence of the failure to fulfil the requirements of section 8 is different. The certificate itself provides prima facie evidence of a valid marriage. The testimony

of the pastor is clear evidence of celebration of an otherwise valid service in a place other than the church in which notice was given. I must accept that was a failure to celebrate the marriage in due form.

The exception I have referred to under the Births, Marriages and Deaths Regulation Act is clear and leads one to conclude that no other exception were intended.

It was originally stated by counsel for the petitioner that he intended simply to argue this case on the law basing his case on the averments in the pleadings. Had he done so he would have failed. A matter such as this must be proved. No admission in the pleadings is sufficient and in this case the admission in the wife's answer was, in any event, qualified. However, there is evidence now. The pastor has given clear and credible evidence of a ceremony that failed to comply with the requirements of section 8 and I must, therefore, pronounce a decree of nullity.

My sympathies are entirely with the wife. She had no reason to doubt the validity of her marriage to the petitioner. It is now convenient for him to see it ended and it is unfortunate that he can use the strictness of the law to avoid his obligations.

(F.G.R. Ward)
CHIEF JUSTICE