

JANET MAOMAIASI -v- GORDON OLISUKULU and ROISI LANGLEY

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 19 of 1991

Hearing: 21 June 1991

Judgment: 25 June 1991

J. Muria for the Petitioner

C. Tagaraniana for the Respondent

WARD CJ: The parties in this case were married on 16 June 1978 and a decree nisi was granted on 15 March 1991 on the grounds of the husband's adultery. At that time there were eight children of the marriage - five born to the parties and three adopted by custom. The questions of custody and maintenance were adjourned to chambers and affidavits of means and social welfare reports prepared.

At the hearing in chambers it became clear that the wife, who gives the impression of being a domineering and vindictive woman, was vehemently antagonistic to the co-respondent with whom the husband still lives. When she talked of him seeing the children, she clearly felt she was entitled to decide whether and how he should see the children and was able to attach whatever terms she wanted. It is a credit to the husband that he has, to some extent, accepted it and I believe he has done that for the sake of the children rather than through disinterest as the wife stridently claims.

As a result of what I heard, I decided to see the four oldest children and I spoke to each separately in my chambers in the presence only of my court associate. The sad fact that comes out of those interviews is that all four children are adamant that they do not want to see the father if he is with the "other woman". All spoke in consistent terms about their views of the situation and all denied the mother had spoken to them about it.

It was absolutely clear that the direct opposite was the truth. The mother has used the time that she had the children in her custody to turn them against their father.

It is appalling that a mother can let her bitterness with the father who betrayed their marriage possess her to the extent that she can turn her own children away from their father. It is an action of the most extreme selfishness and is sufficiently serious to make me question whether she should be allowed to keep the children at all. If that were the only matter to consider and bearing in mind the court's duty to keep the

interest of the children paramount, I would have had little hesitation in taking the children out of her custody and placing them in the custody of the father. However, it is in the interests of the children to have an order made that can work.

The degree of influence is such that I do not believe the children would now go to the father if I made such an order. The sad situation is that, although the mother has acted disgracefully, the effect on the children is such that the only practical order at this stage is to give custody of them all to her.

I feel there is a high chance the influence she has already placed on her children will have caused them considerable emotional turmoil and may even result in permanent disturbance. The mother's selfishness is such that I do not feel confident she will, even now, desist from exposing her children further to the effects of her bitterness to the father's new woman.

The only order I can now make is custody of all children to the mother with reasonable access to the father. I hope, as time passes, the children will be able to see him and realise they have no right to judge him forever for his misdeeds. They are too young and too blinded by the mother's hate to be able to assess the many complex factors that can lead to a divorce.

It is important the mother understands that she is not entitled to add unreasonable conditions to the father's rights of access. She has in the past insisted he come to the house to see them and that he never sees them in company with the other woman. Those are all unreasonable conditions. The father may well find it sensible and practical at first to see them without his new "wife" being present. But that is his decision. If he wishes to see the children at a proper time, for example, at weekends or in school holidays, the mother is not entitled to say where he sees them or in whose company. She only has a right to object to suggestions that are unreasonable or made for the wrong motives.

At some time in the future, the father may feel he will be able to have the children to stay with him and his new wife. I hope he does but whether he decides to try or not is his decision alone and not the decision of the mother.

I pass now to maintenance.

The mother works and earns a nett income of approximately \$280 per fortnight. The father has a nett income of \$284.

In her affidavit of means the mother again showed her attitude. She stated that

she required \$180 p.f. and would also claim school fees and medical expenses.

The father's attitude, on the other hand, was shown by the fact that, although he is living out at Balasuna and working in Honiara, he has left the family car with the mother for the children's benefit. The mother states in her affidavit of means that the family vehicle is currently with her and adds "I intend to keep it for the children's use and benefit."

Her attitude when giving evidence to me was clear. She had no real interest in the father's claims at all. She was determined to keep all the children and take as much as she could from the father to pay for them. In return she did not feel she needed to concede anything.

The fact is that the husband has a number of commitments. He is paying off substantial debts at two stores with the result that for some time his disposable income is \$209. He hopes to move about this time to Honiara and will thus save the heavy cost of commuting from Balasuna but will have water and electricity bills to meet and he has a new 'wife' to support. He also has to pay off substantial debts to two stores. Those are not the mother's responsibility but they are commitments for his money and must be borne in mind in considering a realistic amount to pay.

On the other hand, the wife should not be left to support the children on her own. She has a clear right to maintenance for the children. In view of her income, I do not consider it necessary or appropriate to order the father to pay maintenance for her.

In all the circumstances, I feel an appropriate order is that the husband should pay \$12.50 per fortnight for each of the eight children. In addition he must pay half of any school fees but not of other school expenses. That will add an effective further \$35 per fortnight which is the maximum I can expect him to pay from his income.

No order for costs.

(F.G.R. Ward)
CHIEF JUSTICE