

JOHN FO'OGAU -V-. ISABELLA HILLY

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 240 of 2002

Date of Hearing: 15th July 2003

Date of Judgment: 21st July 2003

Mr I. Kako for the Petitioner

No appearance for the Respondent

JUDGMENT

Kabui, J. This is a Petition for divorce filed by the Petitioner on 14th October 2002. Attempts by the Petitioner and his Solicitor to effect service of the Petition on the Respondent had proved difficult because the Respondent lives on Kolombangara in the Western Province and the Petitioner lives in Honiara. This difficulty had resulted in the Petitioner applying for an order for substituted service and thus effecting service by pre-paid mail by post. Later on the Petitioner visited Gizo and spoke directly with the Respondent about the hearing date for the Petition. At that meeting, the Respondent told the Petitioner that she would not bother to come to Honiara to be in Court for the hearing of the Petition. On this basis, Counsel for the Petitioner said that the Respondent had been duly served and wished to proceed in the absence of the Respondent. I accordingly granted the request.

The Facts.

The parties were married at the Gizo Magistrate Court. The Petitioner had had possession of a copy of the marriage certificate until it was destroyed in his workshop in Gizo. The parties had lived together for sometime before they separated. The Petitioner decided to live away from the Respondent because he had heard from his sister that the Respondent was going around with an expatriate male in Gizo on his return from Honiara in September, 1999. The parties have not ever lived together again as man and wife. No attempt has taken place to effect reconciliation between the parties. There is unlikely to be any. The Petitioner now lives with another woman whom he wishes to marry at a later date.

The ground of divorce.

The ground of divorce as stated in the Petition is '**desertion**' by the Respondent as a result of which the marriage has broken down. That is, desertion by the Respondent without cause for at least 3 years preceding the date of the Petition. I think the cause of the separation in this case was the association of the Respondent with the expatriate male in Gizo in 1999. According to the Petitioner, it was his sister who told him of the Respondent's conduct and on that basis his sister did not want him to associate himself again with the Respondent. He since has lived apart from the Respondent. It is obvious that the Petitioner suspected adultery on the part of the Respondent by her association with that expatriate male in Gizo. He should be seeking to prove adultery and obtain the dissolution of the marriage on that basis. By deciding to live separately borders on mutual desertion if there is such a thing as mutual desertion in law. The Petitioner may well be himself guilty of desertion because there is no evidence to show that he had given to the Respondent the opportunity to explain the alleged misconduct on her part. The Petitioner simply based his decision

to live apart from the Respondent on the information given to him by his sister who had earlier been told by another woman of the same. That is the only evidence against her and is hearsay in essence. The Respondent may, on the other hand, find it difficult to allege desertion against the Petitioner because his going away was due to her suspected adultery with the expatriate in Gizo. The fact however is that she does not bother to do anything in this regard and it appears she will never do so. The initiative was obviously taken up by the Petitioner but on the ground of desertion. The Petitioner has not produced any evidence to show that the Respondent has deserted him other than his own unwillingness to return to her due to her association with the expatriate in Gizo. As I have said, she was never asked to explain her position regarding the information connecting her with the expatriate male in Gizo. There is no evidence to show that the Respondent did intend to live apart permanently and left the matrimonial home with that intention. She might have been of the view that because of her alleged misconduct, the Petitioner might not be willing to accept her again into his home and so she simply stayed away for that reason. The fact the Petitioner decided to live apart simply fortifies her view of her situation. I am not satisfied for the reason that the Petitioner has not proved desertion against the Respondent in this Petition. His best hope is proving adultery against the Respondent or to wait a few years more and prove that the parties have lived apart for 5 years or more and that the marriage has irretrievably broken down and on that basis seeks its dissolution. I therefore dismiss the Petition filed by the Petitioner.

I was supposed to have delivered this judgment on 17th July 2003 at 10:30 am that day. I was not able to do so because Counsel for the Petitioner, Mr. Kako did not turn up in Court without any explanation. Counsel, Mr. Kako, might have been conducting another case in the Magistrate Court that same morning and so he was not able to come to the High Court. I fixed the date and time for the delivery of my judgment with his agreement that he would attend Court at 10:30 am on 17th July 2003. This is not the first time that Counsel has done this sort of thing. Counsel does not seem to care about High Court hearings taking priority over hearings in the Magistrate Court. If a hearing in the Magistrate Court should overlap with a hearing in the High Court, and Counsel is in the Magistrate Court, Counsel simply continues in the Magistrate Court and abandons the hearing in the High Court without notice. Such a practice is contrary to the one I was taught to know in the early days of my professional career. The practice, as I know it, is that High Court matters always take priority over matters in the Magistrate Court and that Counsel's commitments in the Magistrate Court are always arranged with that firmly in mind. The practice is based on the understanding of the hierarchy of the Court system and the respect that goes with seniority within that hierarchy. The legal profession is one that is attired with decorum and self-discipline. This is the beauty of this honourable profession.

F.O. Kabui
Judge