

**HARRIET ASA –V- JOHN PETER METOLA**

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

Civil Case No. 135 of 2001

Date of Hearing: 13<sup>th</sup> March 2003

Date of Judgment: 18<sup>th</sup> March 2003

*Mr I. Kako for the Petitioner*

*Mrs M. Samuel for the Respondent*

**JUDGMENT**

**F.O. Kabui, J:** The Petitioner obtained a decree nisi on 17<sup>th</sup> October 2000. A decree absolute is due but has yet to be issued. I do not see a copy of it in the Court File. It should now be issued. It is long overdue. The Petitioner has now come to the Court seeking ancillary relief. By a Summons filed on 26<sup>th</sup> August 2002 the Petitioner seeks the following orders-

1. **That the custody of the children of the marriage namely Stacy Asa and Delsy Asa be awarded to the Petitioner.**
2. **That the Respondent be ordered to pay maintenance in respect of the two children of the marriage.**
3. **That the Petitioner be entitled to get and possess the materials that she had purchased during the subsistence of her marriage to the Respondent to build their matrimonial house.**
4. **That the Respondent be ordered to repay the Petitioner's NPF Contributions to the value of \$6,728.33 and her redundancy payment from the Solomon Islands Government to the value of \$4,327.96 that he had obtained and used for his own purpose and benefit.**
5. **That the Respondent to pay for the costs of the above proceedings.**

**The Issues**

There are basically three issues to be determined by the Court. They are custody and access regarding the children of the marriage, maintenance of them and settlement of property acquired during the marriage.

**Custody of and access to the children**

There are four children to the marriage. They are Stacy Asa, Daisy Asa, Delsy Asa and Nancy Asa. In her Summons, the Petitioner wanted the custody of Stacy Asa and Delsy Asa leaving out Daisy Asa and Nancy Asa. At the first hearing on 19<sup>th</sup> November 2002, Counsel for the Petitioner told me that she wanted custody of all the children but would not object to access being given to the Respondent. This is consistent with her view expressed in the Social Welfare Report on her dated 6<sup>th</sup> March 2002. At that same hearing Counsel for the Respondent told me that the Respondent wanted

only the custody of Daisy, being his first daughter, leaving the rest of the children in the custody of the Petitioner. This is again consistent with his view expressed in the Social Welfare Report on him dated 25<sup>th</sup> February 2002. Both parties come from the same village in Santa Cruz, Temotu Province. The children are currently living with the parents of the Petitioner at Venga village. The oldest is 11 years whilst the youngest is only 4 years old. Three of the children are attending the same school in the village. They have been living with the Petitioner's parents since 2000. The Petitioner says that accommodation for the children presents no problem. She says she will have the support of her parents and brothers in caring for the welfare of the children. I think it is better for the children to be together with the Petitioner and her parents. Whilst the Respondent equally loves his children, his wife to be may not be in the same position towards the children. There is this risk looming in the horizon as far as the children are concerned. I award custody of all the children to the Petitioner. The Respondent will have access to the children. After all, both parties are from the same village. The terms of access are to be agreed by both parties, if not, either party is at liberty to come back to Court for a formal order in that regard.

### **Maintenance**

Maintenance has been agreed at \$120.00 per fortnight. This is a lump sum for all the children. The manner of payment is to be agreed by the parties.

### **Building materials purchased to build the matrimonial home**

In her affidavit filed on 10<sup>th</sup> October 2001, the Petitioner said she purchased the roofing iron for the semi-permanent house built at Nela Settlement at Lata. She said whilst the Petitioner's family provided the timber, she paid for the petrol for the chainsaw used to cut the timber for the house. She said she needed the roofing iron from the semi-permanent house to be used for a new house to be built on her parents' land as the timberwork of the semi-permanent house had rotted due to attack by the white ants. The Respondent, in his affidavit filed on 16<sup>th</sup> November 2001, disputes the Petitioner's version of facts. He said he bought the roofing iron and paid for fuel as well and provided most of the timber for that house. He said their intention was to relocate the semi-permanent building and put up a new permanent house. He said they had acquired building materials for this purpose since year 2000. He said the building materials were 500 or more pieces of timber plus 24 roofing iron pieces. He said he would retain the semi-permanent house and release all the building materials for the new house to the Petitioner. However, she now says that the 24 pieces of iron roofing had been a gift to them by her brother and that her brother had reclaimed them after they were divorced. Also, she says that she had been able to retain 150 pieces of the timber for the new house and the rest of the timber had been removed by the relatives of the Respondent. The Respondent now admits that he was not aware of the removal of the timber by his relatives. However, he still disputes the fact that the Petitioner's brother, Norman Bade, had reclaimed his 24 pieces of iron roofing. By affidavit sworn by Norman Bade on 26<sup>th</sup> March 2002 and admitted in Court at the hearing, Norman Bade did confirm that he had taken back 20 pieces of iron roofing because his sister's marriage had got into trouble. He also confirmed in that affidavit that the Petitioner's contribution towards the cutting of the timber for the new house were \$2,200.00 plus free transport provided by him which would have been \$900.00. He said labour was free as being provided by both parties. In his affidavit filed on 27<sup>th</sup> January 2003, the Respondent said his relatives had given him 6 pieces of roofing iron plus one piece from the Petitioner's brother.

### **The 20 pieces of roofing iron on the semi-permanent building at Nela Settlement**

These pieces of roofing iron were purchased in 1993. They were purchased in Honiara by Patterson Oti and transported to Lata by ship. The price money was the sum of \$2,500.00 given to Patterson Oti by Norman Bade, the brother of the Petitioner. The Petitioner said she had given the money to her brother to purchase the roofing iron. By affidavit filed on 17<sup>th</sup> February 2003, the

Respondent said that he had asked the Petitioner to ask her brother to tell Patterson Oti to purchase 20 pieces of roofing iron and he would reimburse the money, which, he said, he did. I do not believe the Respondent's story. The fact is that the sum of \$2,500.00 was not Patterson Oti's money nor Norman Bade's money. The money belonged to the Petitioner. The 20 pieces of roofing iron being the roof of the semi-permanent building are therefore her property. She is entitled to remove them and do whatever she likes with them.

### **The 500 or so pieces of timber and 24 pieces of roofing iron**

The Petitioner has taken possession of 150 pieces of timber whilst the rest of the timber had been taken by the Respondent's brothers without his knowledge. The Respondent does not dispute the Petitioner's right to keep the 150 pieces of timber now in her possession nor does the Petitioner call for the return of the rest of the timber. The 24 pieces of roofing iron are the property of Norman Bade. The result is that the Petitioner keeps the 150 pieces of timber as her property. The Respondent may wish to claim the rest of the timbers but that is a matter between him and his brothers.

### **8 drums of Petrol**

The evidence shows that the parties had pledged their respective NPF contributions as security for a loan from the DBSI to purchase the drums for sale at Lata. The repayment of that loan was done by the Petitioner and not the Respondent. The Respondent claims that the value of 2 drums should be his share of whatever revenue was obtained from the 8 drums of petrol. There is no evidence showing any profit being made on the sale of petrol from the 8 drums. The fact the Petitioner had paid off the loan clearly explains where the money had gone. There might have been no profit to share with the Respondent. There is no evidence before me to enable me to make any sensible decision on this issue. I reject the Respondent's claim.

### **Sale of bottles**

The Petitioner sold the bottles and the proceeds thereof were shared between herself and George, the Respondent's cousin. The proceeds of the sale has not been disclosed nor is the proportion of each share. I make no order as to this as the Respondent does not specifically claim the value of the bottles.

### **The Petitioner's NPF Money**

It is not disputed that the Respondent had transferred the sum of \$6,728.33 to his Account on 7<sup>th</sup> December 1999. It is also not disputed that the Respondent had used it. However, he explained that he and the Petitioner had agreed that he should come to Honiara to collect the Petitioner's NPF money, deposit it in his Account and to use it for their shopping. He said he did exactly that which had been agreed. The Respondent had made ten (10) withdrawals from his Account between 7<sup>th</sup> December 1999 and 31<sup>st</sup> December 1999 amounting to \$6,661.20. His salary for that period totalled \$807.14. He made a deposit of \$900.00 cash on 13<sup>th</sup> December 1999. The balance as at 1<sup>st</sup> January 2000 stood at \$1,678.41. By 31<sup>st</sup> January 2000, the balance stood at \$10.55 credit. His salary was the sum \$807.14 for the month of January 2000.

### **The Petitioner's Redundancy Payment**

Again, the Respondent does not dispute that he transferred \$3,220.96 to his Account on 7<sup>th</sup> February 2000, nor did he dispute that he had used it. Again, the Respondent explained that the deposit of the money into his Account had been agreed by the Petitioner and that he used the money

for family needs. By 29<sup>th</sup> March 2001 only \$10.09 was the credit balance left. On 23<sup>rd</sup> March 2000, he deposited the sum of \$6,250.00 in his Account. This deposit was by cheque.

**Who was telling me the truth?**

The evidence produced by each side was affidavit evidence without cross-examination being requested by any side. I was therefore unable to observe the demeanour of both the Petitioner and Respondent in the witness-box. Each of them was equally adamant that the version of facts produced by each of them was the truth. The Petitioner filed an affidavit on 12<sup>th</sup> March 2003 and attached to it three declarations made in support of her case by Messrs Bade, Meaio and Lemuba all of Venga village. I do not accept these declarations because they were not in affidavit form and therefore were hearsay evidence, though Counsel for the Respondent, Mr Kako, did not oppose them. It is against this background that I have to decide which of the parties told me the truth.

The Respondent did admit that he got involved with Elsie only on 21<sup>st</sup> March 2000 and committed adultery with her on 29<sup>th</sup> March 2000. He said all was well in 1999 with his marriage. They separated in June 2000 as a direct result of the Respondent's behaviour. This is disputed by the Petitioner, who said they separated since November 1999. I think it is more likely that they separated in June 2000 otherwise it would have been difficult for the Petitioner to speak to the Respondent about the withdrawal of the Petitioner's NPF and Redundancy monies in late November 1999.

As to the Petitioner's NPF money, the arrangement according to her evidence was that after obtaining the money from the NPF, the Respondent should deposit it into her Account at the NBSI and for that purpose she gave him her Passbook. When the Respondent got back to Lata, he told the Petitioner there was no money. When she asked about her Passbook that she had given him to take with him to Honiara, the Respondent got it out and tore it up in her presence. She denied receiving the items listed as Exhibit "B" attached to the Respondent's affidavit filed on 27<sup>th</sup> January 2003, although some of them had been used by them. She however said that this was not the point. The point, she said, was that she had not received her NPF money.

As to her Redundancy money, she said this. The Respondent had told her that the money had been paid into her Passbook and had made arrangement to close that Account. He told her that he had deposited \$1,500.00 into her Passbook and persuaded her to withdraw that sum to give to him, which she did. They both went to the NBSI agency at Lata and the Respondent gave her a form to sign. She did so and the Respondent then returned the form to the bank agent. The form was in fact an application for the issue of a new Passbook upon notice of a lost Passbook.

I believe the story told by the Petitioner. The Respondent had earlier told her that he had heard rumours that there would be computer blackout in 2000 and she would lose her NPF money. He advised her to write a letter of authorization for him to present to the NPF Office, which she did on 30<sup>th</sup> November 1999. It is Exhibit "A A4" attached to her affidavit filed on 8<sup>th</sup> August 2002. Nowhere in her evidence did she say that she had authorised the Respondent to put her NPF money into his personal Account and to spend it, as he liked. I do not believe the Respondent when he said in paragraph 24 of his affidavit filed on 27<sup>th</sup> January 2003 that they concluded that the Respondent should go to Honiara, withdrew the money, put it into his Account and spend it on family needs. That is too easy and simplistic a thing to say. I do take into account that the parties were still husband and wife at the relevant time. It would have been different if they had a joint account into which the Petitioner's monies went as her contribution to the joint account. Clearly, this was not the case. As I have said, I do not believe what the Respondent said in paragraph 24 above of his affidavit. I do not believe that the Petitioner could part with her NPF money that easily to the Respondent to spend, as he liked.

The Respondent also took hold of the Petitioner's Redundancy money and spent it. The amount was \$4,372.96 payable to Account No. 01-078607-0201-1. The Account Number the Respondent presented on 7<sup>th</sup> February 2000 to the NBSI agent at Lata was 01-078607-33010 something. She signed the form and the Respondent and the agent filled in the details. The balance as put in that form was \$4,307.96 plus. There was also a withdrawal of a certain sum. She said the sum withdrawn was \$1,500.00. She said the Respondent took that money as demanded by him. The Respondent's version however is that the sum was \$1,100.00. He said she gave him \$100.00 and she retained \$1,000.00. My observation of Exhibit "HA3" being a photocopy of the Bank form attached to the Petitioner's affidavit filed on 8<sup>th</sup> August 2002, is that the sum withdrawn appeared to be \$1,050.00. The outstanding balance was therefore \$3,220.96. The sum of \$1,500.00 said to be deposited by the Respondent was just a reason to get to the Lata Agency to get some money and deposit the balance of \$4,372.96 in the Respondent's Account. There was however a hand written note authorising the transfer of the balance in Account No. 01-078607-33010 something to Account No. 0411465402013 being the Respondent's Account Number. This was the authorization for the transfer of the redundancy money to the Respondent's Account. The authorization however was not by the Petitioner because she did not know at that time the Respondent's Account Number nor the fact that the redundancy money had gone into her Account. Whereas, the Respondent knew the Petitioner's Account Number because he had possession of the Petitioner's Passbook when he went to Honiara and had subsequently torn it up. How else would he have known? The Bank subsequently entered the balance in her Passbook in the Respondent's Account in accordance with the hand written instruction in the Bank form completed at the Lata Bank Agency. Although the Respondent had torn up the Petitioner's Passbook, he must have known already her Passbook Account Number and her balance before they visited the Lata Agency. However, the Account Number presented at the Lata Bank Agency appears to be different from the Petitioner's Account Number known by the Office of the Accountant-General. Did the Petitioner have two Passbook Accounts? Clearly, the Account Number presented at the Lata Agency was indeed a Passbook Account but the Number given was different from the Petitioner's Passbook Account at the NBSI. Was this an error or a fraud? The Respondent had deliberately set out to steal the Petitioner's NPF money and the redundancy money both of which were the property of the Petitioner. Stealing is a criminal offence under the Penal Code Act of this country. I do not believe his explanation in paragraphs 12-20 of his affidavit filed on 27<sup>th</sup> January 2003. The Respondent's idea was to close the Petitioner's Passbook Account and create an Ezy Account for the family. This was nothing more than a ploy to persuade the Petitioner to accept his idea so that he could transfer the Petitioner's money into his Account. He himself admitted that he had used the money for family needs. No Ezy Account was ever opened in anybody's name. It is interesting to note that after the \$3,220.96 had been exhausted, the Respondent paid into his Account the sum of \$6,250.00. Where did that money come from? Is it not the remaining part of the Petitioner's NPF contribution? May be not, I do not know. There is no evidence to show that there has been a joint Account in joint names. Both the NPF money and the redundancy payment were the personal and separate property of the Petitioner. The Respondent will have to refund the sums to the Petitioner. The application by the Petitioner is therefore granted. I therefore order that-

1. **The Petitioner have custody of the three children of the marriage namely, Daisy Inesa Metoloa, Delsy Melemani Metola and Nancy Itaka Metola;**
2. **The Respondent would have reasonable access to the children on terms to be mutually agreed by the parties, failing that the aggrieved party may apply to the Court for direction;**
3. **The Petitioner is entitled to remove and use the roofing iron of the semi-permanent building at Nela Settlement plus the retention of 150 pieces of timber already in her possession;**

4. The Respondent will pay the sum of \$120.00 per fortnight to the children for their maintenance, the manner of payment to be mutually agreed by the parties;
5. The Respondent shall pay to the Petitioner, the sums of \$6,728.33 and \$4,327.96 as reimbursement for his unauthorised use of these sums being the Petitioner's NPF contribution and her redundancy payment respectively;
6. The parties will pay their own costs.

F.O. Kabui  
Judge