

MELE TUPOU (Appellant, petitioner)
v.
SEMISI TAUMOEPEAU (Respondent, respondent)

This is an appeal from the Divorce Court (Hunter J.) The wife brought a petition for the dissolution of the marriage on the ground that the parties had been separated for more than five years S. 2 (vi) Cap. 21 (1928 Edition of the Law)

The evidence showed that in 1914 the wife left the husband and had been living with another man up to the date of the hearing (19. 8. 54). The Court refused to grant a decree holding that as the separation had been caused by the petitioner (the wife) she, as the party solely responsible for the separation, was not entitled to a decree. The petitioner appealed.

On the 23rd October, 1954 the Privy Council (Carew C.J.) upheld the appeal and granted a decree nisi. The judgment of the Privy Council is as follows :

The petitioner wife deserted the respondent husband, and they have lived apart for fourteen years.

The respondent did not give evidence, but he informed the Court through his counsel that he was opposed to the petition and that he wished his wife to return to him.

Sub-section (6) of Section 2 of Chapter 21 allows divorce on evidence that the respondent and the petitioner have been separated for five years or more without both of them maintaining or intending to maintain or renew normal marital relations or cohabitation with each other.

There is evidence that the parties have been separated for over five years without both of them maintaining normal marital relations or cohabiting with each other. On this evidence the petitioner is entitled to succeed. Furthermore, it is clear that both of the parties do not intend to maintain or renew marital relations or cohabitation.

It is not enough merely for the respondent to oppose the proceedings.

In the opinion of this Council, on the evidence before the Court, the appellant (petitioner in the suit) is entitled to succeed. The judgment of the trial Judge dismissing the petition is set aside; and it is ordered that a decree nisi be entered in favour of the appellant (the petitioner in the suit).

With cost to the appellant.