

BETWEEN : *SIONE MAPA HA'ANGANA LITILI* -

Petitioner:

2/12/002

AND : *VIKA PALAPU FIFITA* -

Respondent.

Mr 'Etika for Petitioner
Mr Tu'utafaiva for Respondent

Hearing on 28th June, 2000
Judgment on 29th June, 2000

Judgment

The parties were married on the 5 November 1996 in Vava'u and there are two children of the marriage; a daughter Lorendanna Sharon born on 26 July 1997 and a son Sione Mapa Ha'angana born on 22 July 1999.

The husband petitions for divorce on the ground that his wife has behaved in such a way that he cannot be expected to live with her. He has filed an affidavit of the incidents that he seeks to put forward to support his claim of unreasonable conduct and the wife has filed one in reply. Counsel have agreed that they should be produced and the parties then cross-examined on them.

At the time of the marriage, the petitioner was 49 years of age and the respondent 29. The petitioner had been married and divorced previously. His first wife had died in 1996 leaving him with two daughters aged, at the time of the present marriage, 22 and 17 years. The respondent had not been married but had an illegitimate child by another man.

There was clearly some discussion before the marriage about the position of the relatives of the parties but there is dispute over what was, in fact, agreed as regards the respondent's brothers and mother. The respondent says that they agreed before the marriage that the petitioner would love her family by which she says she meant they should be able to live with them. Both parties agree it was known that the petitioner had

two daughters who were still dependent on him and that the respondent's illegitimate child should be accepted by the petitioner.

Whatever the state of their knowledge and agreement, it is clear that the parties lived with the petitioner's two daughters in their home at Popua. However, there was discord as a result and this strained the relationship between the petitioner and the respondent leading, in late 1997, to the respondent leaving the petitioner and returning to Vava'u. Three months later she returned and sought to apologise and reconcile with her husband.

The petitioner told the court that it was apparent that his daughters would need to leave the home and, although he was unhappy at the prospect, he agreed and they moved to another house. By that time, his eldest daughter had married and the husband had also been living with them.

Once that had occurred the wife's mother moved into the home at Popua. According to the petitioner, the brothers did also but the wife suggests they were living at Fasi and only came occasionally.

During this time, the petitioner told the court that the marriage deteriorated to an intolerable level. His affidavit deals with this in the following way:

- “11. In 1998 after my first children moved out, Vika started to invite her relatives and immediate family to come and stay with us at home which I had also to swallow this hard move to keep up our warm relationship.
12. I had to strive to support these other people but at the same time I took it as an opportunity to show my wife the warm love and affection I hold for her and her family which I had hoped she will return the same good deeds to me.
13. But during this time I noticed that Vika is not reviving our relationship but started not appreciating anything from myself, any assistance, words and even our sexual life had become rarely occurred between us.
14. She started to shape up herself with make-ups and other decorative manners which was not her normal lifestyle when we first met at marriage.
15. Our relationship gets worse with time as her manners become so rude and dominating over me, at home and a time together for us is no peace but insulting for her to see me at home and no better words to greet me with but swearing and scolding when I return after work.
16. It became her habit to swear at me and our children of the marriage when she is not happy with anything at home or myself.
17. I had some time thought that there is no other better word in her dictionary but indecent language mainly.

18. She would even tell me off in the home if I do not like to live with her but all these things I had to absorb for the betterment of our home and relationship, although life is as bitter as anything to me everyday."

He then goes on to describe how, when his wife was heavily pregnant with their second child, he heard her talking in her sleep and saying: "As if I like to walk together with him. Soon after I have born this out for the dog to eat, I will go and have sex with another man."

In his evidence he was able to give the date of this incident as 24 June 1999 and he said that he questioned her about it that night. He insisted that she was asleep when she said it although she did not often speak in her sleep. The respondent says that she was awake and said it intending him to hear because she was unhappy with his attitude and behaviour towards her pregnancy.

On Sunday 11 July 1999, he had been to work and had also prepared and cooked the meal in the umu. When he asked her to come and eat she refused and he found her making up and doing her hair. He was so angry that he decided to leave home quietly rather than lose his temper and touch her.

He left and has not returned.

In cross-examination, the picture was not so clear. When questioned about the reduction in sexual intercourse, he agreed that his wife had had a miscarriage during that time. It was put to him that the doctor had suggested a reduction in the frequency of sexual intercourse but he said that he did not know because he had not heard the doctor say it. However, it appeared that his wife had told him that was the doctor's advice and he simply ignored it and made no attempt to verify it with the doctor. He also said he could see no reason why sexual intercourse should not continue throughout pregnancy at the same frequency. There was no suggestion in his evidence on this that he might have considered his wife's views.

It was a significant point in his evidence. I considered he was generally a truthful witness but on more than one occasion he revealed himself as self centred and arrogant. He was quick to place blame on others including, notably, his wife.

Despite the passages quoted above from his affidavit, he agreed in evidence that the first time his wife swore at him was after he had left her in July 1999. The problem of the make up had no greater significance than that he did not like her making up her eyebrows and it was a reversion to that to which he objected. When it was put to him that he was often home late from work, he agreed this was frequently the case but seemed not to think it reasonable that he should telephone his wife and tell her. He objected to his wife's mother being in their home up to the time he left but agreed it was because of his wife's pregnancy.

What is clear is that, after he left his wife in July 1999, she became abusive and difficult. However, in cross-examination he conceded that on at least two occasions she had tried to resolve the matter but he agreed with counsel's suggestion that he had decided by then that he would not go back.

The wife opposes the petition because she says he is the father of her children and the marriage agreement was until death.

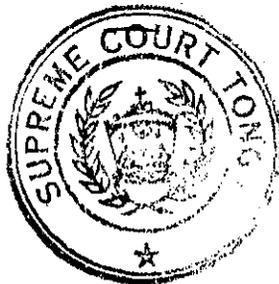
Whilst many people enter marriage with such views, the court does not accept the marriage bond is so absolute. The law allows a marriage to be dissolved in a number of circumstances but it should be remembered that the court's duty is principally to uphold the bond. The divorce laws are not to be used simply as a way of avoiding something that has become difficult or inconvenient.

In the present case, it is clear that the marriage was not running smoothly for some time before the petitioner left his wife. There is no doubt that the wife was to blame for much of the difficulty. I have no doubt that she demonstrates her own share of vindictiveness. It may be that the petitioner felt she was being unreasonable in many ways but I am far from satisfied on the evidence that her conduct was such that he could not reasonably be expected to live with her.

The worst conduct occurred after he had made the unilateral decision that he no longer wanted to continue with the relationship. At that time, on the evidence I have heard, the marriage was far from being finished. His wife's conduct following his departure in July 1999 does not affect the issue. He had simply left her. He had decided he was no longer willing to make the effort to make his marriage work and he rebuffed her advances. Her abuse was unpleasant and offensive but, in the circumstances of his departure, anger and abuse are understandable. As he had already left the matrimonial home, they were not a factor in his decision to leave and it was that move that put him in the wrong.

The petitioner has failed to discharge the burden of proving the conduct was unreasonable to the extent required by section 3(1)(g).

The petition is dismissed with costs to the respondent.



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NUKU'ALOFA: 29th June, 2000

CHIEF JUSTICE