IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

MATRIMONIAL CASE No. 9 OF 1996

(Matrimonial Jurisdiction)

IN THE MATTER OF THE DISSOLUTION OF MARRIAGE:
Property Settlement

BETWEEN : ROSELA NIKO
Petitioner

AND: SHEDDRACK NIKO
Respondent

CORAM: Mr Justice Lunabek
Mrs Merrin Mason for the Petitioner/wife
Respondent in person (not represented).

JUDGEMENT

Husband and wife were married in October 1989. They have no children. One child died in infancy. The Petitioner looked after one customary adopted child, Brenga, who is still living with her.
This case has now reached the stage when the Court is called on to decide on the issues of matrimonial property settlement, following on the dissolution of the marriage by a decree nisi which I granted on the 21st June 1996. The following properties were disputed by the parties:

1- Household goods as set out in their respective claims.

2- Matrimonial home.

3- Kitchen.

4- A house in which the Petitioner's mother lives in.

I. Preliminary Points.

The preliminary points to be determined by this Court are whether or not the house in which the Petitioner's mother lives in and the kitchen are forming part of the matrimonial property. For the sake of simplicity I will call the house in which the Petitioner's mother lives in

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as" House 1" and the kitchen as "House 2". I will deal with them in turn.

1- The house in which the Petitioner's mother lives in ("House 1").

"House 1" was the former matrimonial home. Both parties agreed in their evidence that the house "House 1" was given to the Petitioner's mother to live in, in 1993 when they moved into their new matrimonial home.

The intention of the respondent is to remove the materials rather than the house itself.

The Petitioner gave evidence that this was a gift to her mother. She also gave evidence that since the house was given to her mother, she has three times had to substantially repair and rebuild it at her own expense. Her evidence shows that she repaired and rebuilt "House 1" twice because of damage from cyclones, and once because the Respondent and his family seriously damaged the house. The Respondent did not deny this last incident which involved him and a number of members of his family taking the cover off the roof and walls (thus damaging the cover), breaking the internal masonite walls, breaking doors and louvres and destroying personal property of the Petitioner's mother inside the "House 1". The evidence shows that at that time, the Respondent in an angry mood with several members of his family, armed themselves with bush knives and hammers and seriously damaged the "House 1" when the police intervened.

The Petitioner's evidence was corroborated by the evidence of Chief Lui Kokari who is a member of the Petitioner's family and a Tanna chief responsible for the Vila Tannese population. He gave evidence that the house had been a gift to the Petitioner's mother and that she had three times rebuilt and repaired the house at her own expense. He expressed the view that in custom once a thing is given it cannot later be repossessed.

I do accept the submission that the evidence shows that "House 1" was in fact given as a gift to the Petitioner's mother who immediately became the owner of it. That is the reason she used her own money to rebuild and repair it. As chief Kokari's evidence shows, he witnessed the destruction of the "House 1" by the Respondent and his family, almost all the cover and also some other wood had been replaced by the Petitioner's mother. I am, thus, satisfied that it is more probable than not that "House 1" was given as a gift to the Petitioner's mother who immediately become the owner of it.

This is a custom gift and as expressed by chief Kokari, in custom once a thing is given it cannot later be repossessed save the customary land ownership. (See Article 92 - 93 of the Constitution (Vanuatu)). It is common ground that there are no legal formalities relating to custom

gift. However, a custom gift can be treated as an imperfect gift and thus valid.
In this case, it is my view that "House 1" is not part of the matrimonial property, thus, will be excluded from it and I so hold.

2- The Kitchen "House 2"

The evidence shows that prior to her move in "House 1", the Petitioner's mother lived in her house in Agathis area. So when she moved to "House 1", she brought with her the cover from her previous house in Agathis. At this time, the Petitioner's sister was building a house. The Petitioner's mother's cover was swapped with some cover owned by the sister. This was done because the cover owned by the mother was in better condition and it was thought that it was more important to use this for the house, rather than for the kitchen, therefore, as the Petitioner said in her evidence, the kitchen is built with cover owned by her sister and brother -in -law, Tom Nalai.

Tom Nalai confirmed this evidence saying that he owned the cover used for the kitchen. He further gave evidence that he may now need to take this cover as a recent fire has burnt his house and he must rebuild.

The respondent claimed that he paid for the Petitioner's mother's cover. However, he did not provide evidence to support his claim.

In this case, it is my view that the kitchen "House 2" is not part of the matrimonial property, thus, it is to be excluded also from it and I so rule.

II Matrimonial Property

In this case, the matrimonial property is composed of:

1- The Household goods;

2- The Matrimonial Home; and

3- The Public Vehicle Transport. TAXI.

I will again here deal with each of them in turn.

1- Household goods.

The Court has heard evidence from both parties as to the goods listed in each of their respective claims (which are set out in their respective affidavits).
I do agree with the Petitioner's counsel when commenting generally on the Respondent's claim that he did in fact claim for almost everything for himself. His claim for property in fact includes the proposition that because the Petitioner is seeking the divorce she is not entitled to

anything from the matrimonial home. Rather than an honest reflection of who bought what goods, the Respondent seemed to be giving evidence about what he thought he was entitled to.

I note that this is understandable on the basis that the Respondent is a lay person and he elected to argue his case without being legally represented. The Petitioner's claim for the goods are set out in paragraph 34 of her affidavit at sub paragraph (a), (b), (c), (d), (e) and (f).

I consider the evidence of both parties, their demaenour and their respective claims. I am therefore satisfied and accept the submissions for the Petitioner that she spoke forthrightly and confidently about the purchase of various goods and showed herself willing to honestly advise the Court of those items which the respondent paid for as well as those which she alone had paid for or which had been purchased jointly. I therefore order the followings:

(a) The Petitioner keeps those items in her possession which are her personal property as listed in paragraph 14 of her affidavit:

- Her personal clothes
- Married box
- sewing machine
- a large table
- a large bed
- shelf

(b) The Respondent keeps those items in his possession which are his alone as listed in paragraph 21 of the Petitioner's Affidavit:

- his personal clothes
- 4 floor mats
- 2 bed covers
- 1 blanket
- 5 empty drums (for catching water).

(c) The Respondent returns to the Petitioner's possession those items which are now in his possession, which are the Petitioner's personal property, as listed in paragraph 19 of her affidavit, or refund to her the value of this property estimated at 85, 300 vatu. Those items are listed as follows:

- lawn mower
- TV antenna
- 2 floor mats
- 1 bed cover

In the cause of evidence for the Petitioner, the Court was asked to make a decision on who between the two parties will keep the birth certificate of a child, Brenga who lives with the couple before the divorce. The Respondent contended that as the Petitioner did not have the custody of the child she was not entitled to his birth certificate. It is put for the Petitioner that Brenga is in the Petitioner's custody with the consent of the natural mother. I accept the submission that the respondent has even less claim to it. Therefore, the birth certificate of the child, Brenga, must immediately be returned to the Petitioner, and I so rule.

(d) The Petitioner retains those items of joint property which are in her possession as listed at paragraph 17 of her affidavit:

- 1 small table - 4 chairs - 1 armchair - large mattress	)	The value of these items is approximately 55, 000 vatu

(e) That the items of joint property which the Respondent has in his possession as listed at paragraph 20 of the Petitioner's Affidavit, the Respondent retain the video recorder and generator a valued together at 157, 000 vatu, and five (5) of the sets of married glasses.

(f) That of the items of joint property which the respondent has in possession as listed at paragraph 20, the respondent return to the Petitioner 1 double and 2 single chairs valued at 70, 000 vatu and five sets of married glasses. (This would make a total value of jointly owned items in the Petitioner's possession of 125, 000 vatu and in the Respondent's possession, 137, 000 vatu).

2. Matrimonial Home.

The parties moved in their new matrimonial home in 1993 in Ohlen area. they lived there until separated. There was evidence that both contributed to some extent to the purchase of materials and that both parties families contributed to the building of the house. The house is in the same yard as other houses occupied by the Petitioner's family. the Respondent has admitted that he wishes to remove her materials from the land where the house is built rather than occupying the house.

The main agreement related to who purchased the materials for the house. The materials in the house were valued at about 200, 000 vatu by the Petitioner and about 300, 000 vatu by the respondent during evidence at the hearing. Both parties agreed that the house was built in two parts.

The Petitioner gave evidence that she purchased about half of the material for the first stage of the house and almost all of the materials for the second stage of the house. This evidence was partly corroborated by the evidence of the Third witness for the Petitioner, Tom Nalai, who gave evidence that building often had to wait until the Petitioner got her wages so that more materials could be purchased.

The Petitioner also gave evidence that she is living in the house at present with her adopted child Brenga. She wishes to remain in the house which is close to her family and asks that the Court give the house to her as part of the property settlement.
It is submitted for the Petitioner that as the house is currently being used, and will continue to be used by the Petitioner in the future if the Court finds in her favour, it would be a wasted effort to allow the respondent to pull down the house and remove the materials. It is also submitted for the Petitioner that it would be more appropriate for the Respondent's interest in the matrimonial home to be recognised as a money value and this be taken into account in the overall settlement.

The Respondent's evidence showed that he paid for the cement for the floor and this is not disputed by the Petitioner and he said he paid for most of the materials for the house and set the figure at Vatu 300, 000 vatu. The Petitioner's evidence was that she contributed three quarters of the cost of materials for the house and set at closer to 200, 000 vatu.

It is finally put for the Petitioner that her final claim if she were asking for a monetary share would be, from her evidence, for something between a three quarter and half of the value of the materials of the house.

Having considered all the evidence of both parties I must confess that it is not easy for me to assess the overall value of the house since there is not details evidence of who bought what and to what costs. The findings that I am arrived at are just an overall evidence in Court, and I am satisfied on balance that the figure of vatu 200, 000 is the correct one. I am further satisfied on balance that the matrimonial home will be divided between the two parties in equal shares of vatu 100, 000 each.

3- TAXI

Both parties agreed that the taxi was purchased in 1994 with a Bank loan. Both agreed that the initial deposit for the loan was 465, 000 vatu which was paid entirely by the Petitioner. Both parties agreed that the loan was in the Respondent's name alone and the Taxi was registered in his name alone.

The Petitioner gave evidence that the Taxi was bought for 1.8 million vatu and that the loan also covered money for expenses such as a taxi licence, insurance etc... The Petitioner also gave evidence that she

often contributed to the maintenance of the taxi and in particular she gave the Respondent 50, 000 vatu in September 1995 towards paying off the loan or for repairs to the taxi.

The Respondent gave evidence that the loan for the taxi was paid off completely some time in 1995 but then he decided to take out a personal loan of 200, 000 vatu for which he used the taxi as guarantee. It was for this loan that he asked the Petitioner for 50, 000 vatu. He says the loan was to pay for school fees and airfares for one of their children. This loan was not repaid. It seemed he blamed this on the Petitioner.

It is argued for the Petitioner that the respondent first claimed that he could not drive the taxi because the Petitioner had broken the window.
However in cross-examination he agreed it was the front side window on the driver's side and that this did not inconvenience passengers or prevent him from operating his taxi. He then claimed he could not carry on his business because he was so worried about what was happening to his marriage. The loan was actually taken out after the couple had separated and at the time when the Respondent was already experiencing the difficulties he has spoken about. Then, it was further argued, in October 1995 he spent two weeks in prison because of a serious breach of the restraining order which his wife had against him.

It was submitted for the Petitioner that none of the matters raised by the respondent adequately explain his failure to pay his loan. It was further submitted that his wish to blame everything on the Petitioner does not take into account his own actions which are the real cause of his problems.

The Respondent claimed that the Bank then repossessed the car and sold it to cover the debt. He further claimed he received nothing from the sale of the car and that it was sold for about 150, 000 vatu. It, thus, was submitted for the Petitioner that the Respondent offers no documentary or other evidence to support these claims, therefore, this is a claim which the Court would find difficult to believe. It was also said for the Petitioner that the Respondent was then asked about the taxi which he is now operating. In his evidence, he claimed he did not own it. Yet, he admitted he has told several people that he does own the taxi. He claimed he did this because he was tired of explaining who owned the taxi.

The Petitioner submitted the respondent's claims are difficult to accept and a more likely explanation is that the Respondent used the proceeds from the sale of the first taxi to buy a second taxi.

It was put for the Petitioner that she does not claim ownership of either taxi. Instead she wishes to have her contribution to the taxi refunded and to receive some compensation for the failure of the

respondent to share the profits of the taxi with her. Her evidence show that although she made it possible for the Respondent to buy the taxi she gave evidence that she did not benefit from its income. She gave evidence that the Respondent always told her he was putting the proceeds in a Bank account for the family but the Petitioner now believes that this was never the case but instead the money was being used by the Respondent at the Casino.

It was finally submitted that the Petitioner claims a refund of her 465, 000 vatu deposit plus the 50, 000 vatu contribution made in September 1995 making a total of 515, 000 vatu. She also claims amount of compensation for the Respondent's failure to share the profits of the taxi with her (either because he now holds them in a Bank account or because he was lying about this and instead spent them at the Casino). It was advanced for the Petitioner that the amount claimed is equal to the amount of the Respondent's share in the monetary value of the matrimonial home. In effect the Petitioner is asking that she be given the matrimonial home, plus the return of her money contributed to the taxi. The respondent then keep the proceeds of the taxi remaining in his possession and the second taxi.

I accept the Petitioner's claim that the Respondent's refund to her 465, 000 vatu deposit plus the 50, 000 vatu contribution made in September 1995 making a total of 515, 000 vatu.

I accept further the Petitioner's claim that she was jointly entitled with the husband to a share in the profits of the taxi.

Now comes the question: in what shares do they hold? In most of the cases the Court divides it half and half. But in this case there is a special favour. The amount claimed is equal to the amount of the Respondent's share in the monetary value of the matrimonial home which is 100, 000 vatu. Since the respondent said he has no savings, this amount be set-off against the Respondent's monetary interest in the matrimonial home. I am, therefore, satisfied that the Petitioner be given the matrimonial home, plus the return of her money contributed to the taxi (which is totalling 515, 000 vatu). The Respondent, then keep the proceeds of the taxi remaining in his possession and the second taxi and I so rule. I make no order as to costs.

DATED AT PORT VILA this, 3rd Day of October 1996.

VINCENT LUNABEK
Judge.

REPUBLIC OF VANUATU
COUR SUPREME COURT
REPUBLIQUE DE VANUATU

SUPREME COURT REPUBLIC OF VANUATU

Civil Case N° 69 of 1996
Matrimonial Case 9/96

MATRIMONIAL CAUSES ACT CAP 192
SECTION 12

MATRIMONIAL JURISDICTION

NOTICE OF DISSOLUTION OF MARRIAGE

In the Supreme Court of the Republic of Vanuatu
Held at Port Vila

TO : ROSELA NIKO
PETITIONER

AND : SHEDRAK NIKO
RESPONDENT

Notice is hereby given to you and each of you that no appeal having been lodged against the decree of this Court pronounced on the 21st June 1996, the marriage solemnised in the Seven Day Adventist church at Nambatu, Port Vila, Vanuatu on 22nd October 1989 between Rosela NIKO the abovenamed Petitioner and Shedrack NIKO the abovenamed Respondent is declared by this Court to be, and is hereby absolutely dissolved.

Dated at Port Vila this 21st day of November 1996

By Order of the Court

LUNABEK VINCENT J.
ACTING CHIEF JUSTICE

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COUR SUPREME COURT
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