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**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

*(Civil Jurisdiction)*

Matrimonial Case No .293 of 2016

**BETWEEN: AMY TIOPANG**

*Petitioner*

**AND: JEAN PIERRE TIOPANG**

*Respondent*

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Tata Vola Matas for the Petitioner  
Respondent in person*

**Date of Hearing:** *26<sup>th</sup> April 2017*

**Date of Judgment:** *3<sup>rd</sup> May 2017*

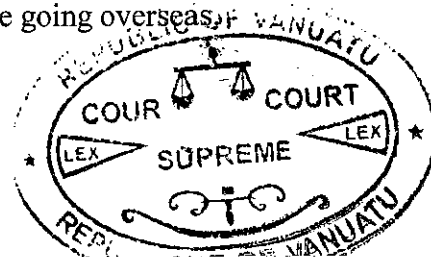
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**JUDGMENT**

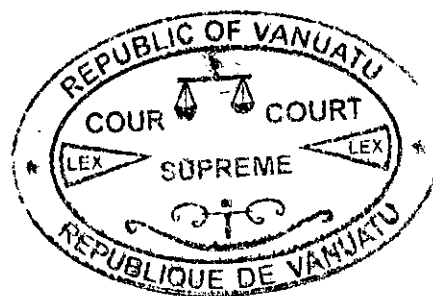
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**Introduction and Background**

1. Amy Tiopang the Petitioner initially filed a petition for dissolution of her marriage to the respondent Jean Pierre Tiopang in the Magistrate's Court on 8<sup>th</sup> July 2017.
2. The petition was contested by the respondent and therefore on 14<sup>th</sup> October 2014 the Chief Magistrate transferred the case to the Supreme Court for trial.
3. On 21<sup>st</sup> June 2016 a notice of conference was issued by the Chief Registrar returnable on 29<sup>th</sup> June 2016 at 11:00am. On that date no parties attended and the Court issued a Minute pointing out that since it was 1 year and 9 months since its filing, the proceeding was at risk of being struck out. It appeared then the petition had not been served. The Court directed service having adjourned the case for one final time to 28<sup>th</sup> July 2016.
4. On 28<sup>th</sup> July 2016 the Respondent did not attend. He had not yet been served as directed on 29<sup>th</sup> June. The case was further adjourned to 7<sup>th</sup> September 2016.
5. The respondent was finally served by Deputy Sheriff on 2<sup>nd</sup> September. However the conference fixed for 7<sup>th</sup> September was vacated due to the judge going overseas.



6. On 3<sup>rd</sup> November 2016 a notice of hearing was issued returnable on 23 November 2016. The hearing was actually held on 24<sup>th</sup> November. The respondent was not present and Ms Matas requested a formal proof hearing. And the Court fixed the hearing for 12 December 2016.
7. On 12 December 2016 neither the petitioner and/or her counsel nor the respondent attended Court. The matter was adjourned to 31<sup>st</sup> March 2017 with directions that the petitioner file an amended petition and sworn statement in support (by 23<sup>rd</sup> January 2017) and that the respondent was to file and serve responses and sworn statement (s) by 24<sup>th</sup> February 2017. The Court directed the parties also to pay hearing fees of VT 15.000 each.
8. On 23<sup>rd</sup> February 2017 the Court issued Invoices for payment of hearing fees to the petitioner at VT 15.000 and also to the respondent for the balance of VT 15.000.
9. On 31<sup>st</sup> March 2017 only Ms Matas attended Court and apologized that the amended petition was only filed on 30<sup>th</sup> March 2017 and that the petitioner had not paid her hearing fees as directed on 12<sup>th</sup> December 2016. The Court noted that the respondent had paid his hearing fees on 28<sup>th</sup> March 2017, but no response and/or sworn statements. The Court adjourned the hearing to 26<sup>th</sup> April 2017.
10. On 30<sup>th</sup> March 2017 the petitioner filed her amended petition together with a declaration and a sworn statement in support.
11. The notice of hearing issued on 31<sup>st</sup> March 2017 returnable on 26<sup>th</sup> April 2017 was served by the Deputy Sheriff on both the petitioner's counsel on 31<sup>st</sup> March and the respondent on 6<sup>th</sup> April.
12. On 25<sup>th</sup> April the respondent filed a sworn statement.

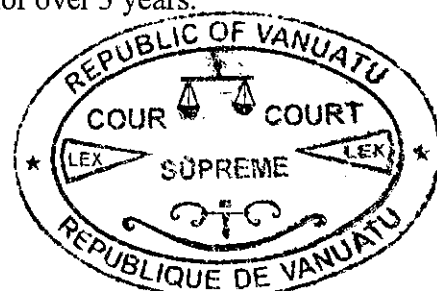


## The Hearing

13. The hearing was held in chambers. The respondent was unrepresented. It was a submissions hearing as facts appeared to have been agreed. Ms Matas obviously had not had time to take instructions to respond to the respondent's sworn statement due to late service, but she did not request any adjournment. Ms Matas spoke to the pleadings in the amended petition and relied on the sworn statement filed in support thereof by the petitioner on 30<sup>th</sup> March 2017. Ms Matas conceded that the grounds in section 5 of the Matrimonial Causes Act [ CAP 192] were not made out by the petitioner, however submitted that the Court should grant divorce to the petitioner on grounds of substantial justice on the basis the marriage has irretrievably broken down.
14. The respondent responded only very briefly on two points (a) for counsel to define what a "separation" means? And (b) that the petitioner's father had advised him against signing any divorce documents. He submitted that the child of the marriage would be the innocent victim of the divorce proceeding and as such he was opposed to it.
15. Ms Matas in response submitted that "separation" means living apart and not consummating the marriage.
16. The petitioner made some verbal responses to what the respondent had said but these fell outside the perimeters of her sworn evidence and were not admissible. Even the respondent's"-final replies were inadmissible statements, not made under oath.

## Facts

17. The petitioner and the respondent were married at the NTM Church, Pango on 8<sup>th</sup> December 2007. They have a daughter by the marriage by name of Toniella Tiopang who is 8 years old. Since February 2014 the petitioner moved out from the matrimonial home and have been living separately for over 3 years.



**Claims**

18. The petitioner claims the marriage has irretrievably broken down and that they have been living apart for some three years, and that she has no intention of reconciling the marriage. She asks for custody of her daughter with access to the respondent.

19. The respondent on the other hand alleges in his sworn statement that since February 2014 the petitioner had moved out of the matrimonial home after having an affair with another man. He claims they have had meetings whereby he has told the petitioner he has forgiven her and that he opposes the dissolution of marriage to protect the welfare of their daughter. He claims compensation in the sum of VT 2 million against the petitioner and her partner if the Court was mindful to grant an order of dissolution of marriage, and for custody of their daughter.

**The Law**

20. Section 5 of the Matrimonial Causes Act [ CAP.192] ( the Act) provides for grounds for petitions for divorce as follows:-

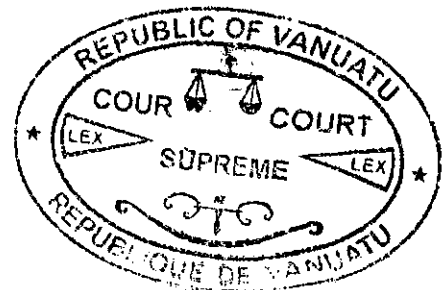
*“ Subject to section 6, a petition for divorce may be presented to the Court either by the husband or the wife-*

*a) On the ground that the respondent-*

- I. Has since the celebration of the marriage committed adultery, or*
- II. Has deserted the petitioner without just cause for a period of at least 3 years immediately preceding the presentation of the petition, or*
- III. Has since the celebration of the marriage treated the petitioner with persistent cruelty, or*
- IV. ....N/A*

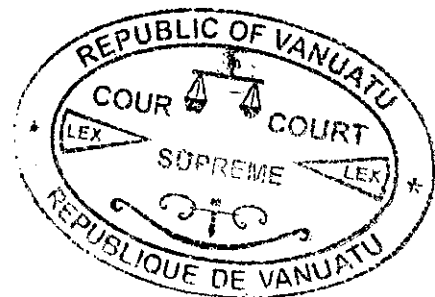
*b) ..... N/A*

*And by the wife on the ground that her husband has, since the celebration of the marriage, been convicted of rape....” ... N/A*



## Consideration

21. For the petitioner to succeed, she had to show by admissible evidence that-
- a) Since their marriage in 2007 the respondent committed adultery,
  - b) The respondent had deserted her for at least 3 years prior to filing her petition,  
and
  - c) The respondent had persistently been cruel to her during the duration of the marriage.
22. If the Court is not satisfied on the evidence that those grounds were made out, the Court shall dismiss the petition. Section 9 of the Act gives the Court this duty and power.
23. At the hearing Counsel for the petitioner conceded that the grounds in section 5 were not made out. That is sufficient to dispose of this petition.
24. Ms Matas however submitted the Court should grant a decree of dissolution of marriage based on substantial justice. But Justice requires that whoever seeks it must come to Court with clean hands. In this case the respondent claims the petitioner left the family home after committing adultery with another man. The Petitioner admits in her statement she left the family home but does not say for what reason. It is therefore probable that the respondent's assertion is the truth. But there is another reason why Counsel's request must be declined. The Court can only go by what is pleaded in the petition. Substantial justice is not specifically pleaded in the petition.
25. As for the respondent, he claims the sum of VT 2 million as compensation. This claim is declined and rejected. There is no proper defence or counter-claim filed by the respondent. And he has not named any co-defendant to be made jointly liable with the petitioner.

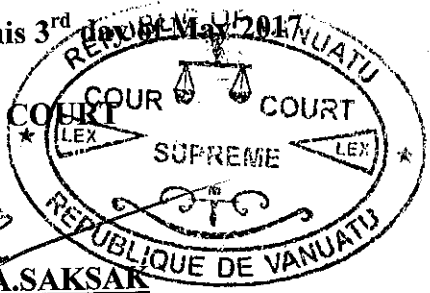


**The Result**

26. The petition is therefore dismissed. There will be no order for costs. Each party is to bear its own costs.

DATED at Port Vila this 3<sup>rd</sup> day of May 2017

BY THE COURT



OLIVER.A.SAKSAK

Judge