

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC. 15914

IN THE MATTER of The Divorce and  
Matrimonial Causes  
Ordinance 1961

BETWEEN: TOVIA LAUOFO of Palisi in  
Apia, Western Samoa, Public  
Servant

PETITIONER

A N D: RITA CROKER of Suva, Fiji  
but now of Apia,  
Western Samoa, Public  
Servant

RESPONDENT

Counsel: Mr T. Malifa for Petitioner  
Mr P. Fepuleai for Respondent

Dates of Hearing: 4, 10, 12, 16, 24 November 1993

Date of Decision: 29 November 1993

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DECISION OF SAPOLU, CJ

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The petitioner and the respondent were married on 10 September 1990 at Suva, Fiji. The petitioner is a Western Samoan national and the respondent is a Rotuman and a citizen of Fiji. They first met at the Catholic Pacific Seminary in Suva in 1987 and were finally married in September 1990. In October 1990 they came to Western Samoa to live with the petitioner sponsoring the respondent. Like most newly married couples, the initial period of the marriage was one of love and happiness. But then things started to go wrong with the marriage and each blames the other as the cause.

The petitioner says the happy and loving period of the marriage lasted for four months when he discovered the true personality of the respondent. He seems to say the respondent is a strong willed woman. The respondent says the happy and loving period of the marriage lasted for one year when the petitioner started to drink excessively. So each of the parties has his and her own opinion of the duration of the happy days of their marriage. Even though the happy days of this marriage did not last for too long, the parties continued to live together at the petitioner's house at Palisi. At first, both were unemployed and they lived on savings the petitioner had and money and sometimes food given to them by the petitioner's family. The petitioner was also operating a taxi driven by a relative. So these appeared to have been the parties sources of money at the time they were both unemployed. During this time the petitioner was paying for all the household expenses and the respondent was doing the usual household work with the petitioner also helping out at times. The petitioner being a keen golf player also attended to the golf course just about every day.

Around the beginning of 1991, the respondent found a casual job at Morris Hedstrom (Samoa) Ltd. The wages she earned from that job was spend in helping out with their family. Then in October 1991 the respondent found a job as a senior shorthand typist at the Office of the Public Service Commission. Part of her wages was spent in helping the family. At this time the petitioner was still unemployed and continued to play golf. He still seems to be paying most of the household expenses. The respondent also did not mind the petitioner going to play golf. They were still doing things together like doing work around the house, watching television, playing cards and going for a walk mostly to Mulinuu.

Then things started to turn bitter and sour in 1992 and the respondent says that it was because the petitioner started to drink excessively. She also says that 1992 was an unhappy year for their marriage. The petitioner

says he went quite often to play golf after a game of golf in the afternoon he had two or three beer before he went home. Normally he arrived home at about 7.00pm. Sometimes he went out at night but he always made sure there was someone to stay at home with the respondent. The latest that he would be away from home at night would be 10.00pm. He also says that sometimes he drank at home when they had visitors.

Fights and quarrels also started to develop between the petitioner and the respondent. A woman who is a neighbour of the parties says that the respondent came to her house several times and complained about being beaten up by the petitioner. The respondent also says that when the petitioner drinks with a certain friend at home, he sometimes tells her, bitch get us some beer. The petitioner says that he did that in a joking fashion. I do not think that it is a joke to the wife to be called a bitch by her husband. So the marriage was turning from a happy one to an unhappy one. The respondent also says that when the petitioner becomes drunk he becomes violent and abusive. He hits her and throws her head against the wall of the house.

Then the respondent says that she learnt from members of the petitioner's family that the petitioner was having an affair with one of his nieces. When the respondent actually heard of that information is not clear. But she says that when she raised the matter with the petitioner he became angry and violent. The petitioner says that when he tried to explain to the respondent that the accusation was not true she refused to listen as she is a strong willed woman. Then on New Year's Eve 1992, the petitioner's niece came from New Zealand and spent the evening with the petitioner and the respondent. According to the respondent she went to bed early that night and left only the petitioner and his niece drinking on the balcony of their house. When she woke up later that night, she found the petitioner and his niece having a kiss. The petitioner was very drunk and was rubbing his hand all over his niece's body. The petitioner denies this. He also says that

the respondent is very jealous of his niece and that his niece is an open person who often gives a kiss or a hug to his uncles or members of the family. The niece was also called to give evidence and she denies this incident although she says that sometimes she gives the petitioner a kiss or a hug as he is her uncle. She also says that the respondent had spread rumours with her family that she had an affair with the petitioner. A cousin of the petitioner who was called by the petitioner to give evidence denies that the respondent ever spread rumours with the petitioner's family that he was having an affair with his niece. She also says that she did not tell the petitioner's niece that the respondent had spread rumours with their family about the petitioner having an affair with his niece. Having observed the demeanours of the niece and her cousin, I find the cousin's evidence believable and that of the niece unbelievable. It is also somewhat strange that the niece who came from overseas to this case decided to stay with her uncle who was living with another woman not a relative instead of staying with her own family.

Be that as it may, the petitioner says that the respondent's allegation that he was having an affair with his own niece is an act of cruelty. And the petitioner says he bases his motion for judicial separation on this act of cruelty. His reason being that the allegation is incestuous in meaning and in Samoan custom it is most disgraceful and repugnant for someone to be accused of incest. He says he felt it was best for him to die because of this allegation by the respondent. He also says that the respondent had spread rumours with his family at Matautu-uta and his brother in New Zealand that he was having an affair with his niece and his brother in New Zealand told him that he knew about this rumour from the respondent.

I have given due consideration to this aspect of the evidence and I have decided to accept the respondent's evidence that she heard the rumour about the petitioner having an affair from the petitioner's own family. The

evidence of the petitioner's cousin called by the petitioner also contradicts the petitioner's evidence about the respondent spreading such rumour amongst his family. In raising the matter with the petitioner, I think the respondent was quite entitled to ask the petitioner as her husband if he was having an affair with his niece. And if the respondent had also raised the matter with the petitioner's brother, she was raising it with her brother in law and not with someone outside of the family.

It appears that as a result of this incestuous rumour, the petitioner became very angry. He removed the leg of a coffee table and beat up the respondent causing a swelling on her head and severe bruises to her arm, leg, back and buttocks. The respondent left the house for two(2) weeks and lived with the family of a friend at Moataa. The mother of that family who is a registered nurse gave evidence that when the respondent came to their house she was really crying. That witness described the injuries I have just mentioned and says that the respondent was in pain and she could not lie on her back because of the pain. She gave the respondent three doses of panadols at intervals to try and ease the pain. All this happened about February this year. The petitioner says that during the respondent's absence, he went out once with his niece and the woman he was living with at the time of his giving evidence in this case to a restaurant.

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Around Easter in April this year, the petitioner's brother in New Zealand came to Samoa. At a family meeting at Matautu-uta, an argument developed between the petitioner and his brother. The argument started off because of some family land but then it also touched on this rumour about the petitioner having an affair with his niece. A fight eventually took place between the petitioner and his brother and when it was difficult to stop the fight, the respondent called the Police for help. It would appear that it was during this incident that the petitioner's brother told the petitioner about the

incestuous rumour and mentioned the respondent's name as the source of his information.

After this incident, the petitioner no longer slept in the same room with the respondent. He did not want to have any more to do with the respondent. On 6 May 1993 he left the respondent and lived in the house of another woman he is acquainted with. Eventually he had sexual relations with that woman. The respondent says that this is the same woman the petitioner's family had warned her about when they first came to Samoa. She says the petitioner's family had told her that this woman always hangs around the petitioner.

Now the house the petitioner and the respondent have been living in was built by the petitioner in 1983 on land that the petitioner bought from the Catholic Mission in 1981 when he was a priest. And the petitioner and the respondent had been living in that house since early 1991. The respondent still lives in the house. She now has people living with her as she says she is very fearful of the petitioner. There were accusations and counter-accusations from both parties about the house not being kept in a proper condition. There is also evidence from the petitioner about the house having been used as a church by women of the Catholic rosary group. A member of that group who is now living in the house with the respondent says that their rosary group put up a statue of Lady Mary in the house and said prayers in the house because the respondent had sought the assistance of their rosary group. So the rosary group decided to bring the statue of Mary to the house and had nine(9) days of prayers in the house for God's assistance for the respondent's problem. The respondent apparently is a devout catholic.

One night after the petitioner had moved out, he came to the house whilst the statue of Mary was still there and the member of the rosary group who is now staying with the respondent was present. He asked why the statue of Mary was still in the house. He was displeased with the statue of Mary

being in the house and several times he had told the respondent that he would throw out the statue. It seems the petitioner was displeased with so many people coming to the house and used it as a church. He might not have been aware of the reason why the statue was in the house and members of the rosary group were saying prayers in the house since he left. But on this particular night another fight took place between the petitioner and the respondent. The petitioner tried to put a chord around the respondent's neck. He says it was to frighten the respondent who was swearing. The evidence of the respondent and another eye witness is that both the petitioner and the respondent were swearing and abusing one another. I accept this evidence.

Then there is the occasion when the petitioner again visited the house and the respondent struck her several times with a tennis racket. He sustained bleeding on the nose and scratches on his arm. The petitioner however says that he does not base his petition on this incident but on the allegation of incest.

At present the parties are still living apart. The petitioner has cancelled his sponsorship of the respondent. The petitioner is also now being employed in the civil service earning what his counsel has told the Court is a small salary. The respondent earns \$240 a fortnight from her job at the Office of the Public Service Commission.

Now the petition seeks two things: a decree of judicial separation on the ground of cruelty, and vacant possession of the house occupied by the respondent.

Under section 4 of the Divorce and Matrimonial Causes Ordinance 1961 there are three grounds for a decree of judicial separation. These are cruelty, adultery and desertion without just cause. It appears from the authorities that there is no exhaustive definition of cruelty applicable to every case. Acts of cruelty are so infinite and varying that it must be a

question of fact in each case whether a particular act or series of acts amounts to legal cruelty. Thus an act or conduct which may amount to cruelty in one case may not amount to cruelty in another case.

Turning now to the main basis of the petition that the respondent was acting with cruelty by spreading rumours with the petitioner's family that the petitioner was having an affair with his niece, I must say that I accept the respondent's evidence that it was the petitioner's own family who told her that the petitioner was having an affair with his niece. The petitioner's cousin who was called by the petitioner himself to give evidence also denies that the respondent ever spread rumours with their family that the petitioner was having an affair with his niece. The same cousin of the petitioner also denies the evidence of the niece that her cousin called as a witness had told her that the respondent had said to this cousin of the petitioner that the petitioner was having an affair with his niece. As I have indicated before, I do not believe the evidence of the niece. Also even if it is true that the petitioner's brother had said to the petitioner that the respondent had told him that the petitioner was having an affair with his niece, the context in which that was said appears to have been during an argument and a fight between the petitioner and his brother. It was also to the petitioner's own brother and not a stranger to the family that the respondent had spoken to.

I accept that an allegation of an incestuous nature is a very disgraceful matter in Samoan custom. But the conduct of the petitioner did not help to remove any suspicion on the respondent's part. The respondent says that on New Year's Eve 1992 she found the petitioner whilst very drunk having a kiss with his niece on the balcony of their house and the petitioner was rubbing his hand all over his niece's body. I disbelieve the petitioner's evidence that he did no such thing. I also disbelieve the evidence of the niece that the petitioner did not kiss her or rub his hand all over her



body. I also disbelieve the petitioner's evidence and that of his niece that the niece is an open person and habitually gives his uncle a kiss and a hug because the petitioner is her uncle. The niece did not impress me as an open but an aggressive person. Then there is also the petitioner's evidence that when the respondent left the house for two weeks he took his niece and the woman whose house he moved to after he left the respondent out to a restaurant. He eventually had sexual relations with that woman after he moved into her house. It should also be remembered that as his married wife, the respondent had every right to ask the petitioner about the rumours she heard from the petitioner's own family about the petitioner having an affair with his niece. Not to do so will be strange for a wife. There is also no evidence that the respondent spread the rumour outside of the family circle except to her brother in law.

As to the incident about the respondent striking the petitioner with a tennis racket, the history of this marriage is that after four months the petitioner says the marriage turned sour as he discovered the true personality of the respondent as a strong-willed woman. The respondent says the marriage started to go wrong after one year when the petitioner took to excessive drinking. There is also the petitioner's evidence that he very often went out to play golf and sometimes went out until 10.00pm at night leaving the respondent at home. Then there is the evidence of a female neighbour that the respondent came to her several times and complained about being beaten up by the petitioner. Then there is the incestuous rumour related by the respondent to the petitioner's brother about the petitioner and his niece having an affair and the respondent finding the petitioner having a kiss with his niece and the petitioner rubbing his hand all over her body. Then there was also the severe beating which resulted in the respondent having a swelling on her head and severe bruises on several parts of her body and the respondent, a foreigner, having to live with non-relatives. Then there were the several

threats to throw the statue of Mary out of the house when the petitioner knew well that the respondent is a devout Catholic and whilst the petitioner was having sexual relations with another woman. Then came the incident regarding the respondent striking the petitioner several times with a tennis racket. And this was followed by the petitioner revoking his sponsorship for the respondent staying in this country. In my view, the striking with the tennis racket is only a trifle compared to what the respondent has had to tolerate from the petitioner.

In all, I am not satisfied that the petitioner has made out the ground of cruelty alleged against the respondent on the balance of probabilities. Accordingly the petition for a decree of judicial separation is dismissed.

This brings me to the application for vacant possession of the house occupied by the respondent. Counsel for the petitioner raised the question whether the house which the parties have been living in at Palisi can be truly described as a matrimonial home. I know in New Zealand, matrimonial home has been for a number of years defined by statute: see the New Zealand Matrimonial Proceedings Act 1963 and Matrimonial Property Act 1976. But in Western Samoa there is no statute which defines what is a matrimonial home. Be that as it may, a matrimonial home must be the dwelling house together with its surrounding land, if any, which is habitually or from time to time used by a husband and wife or one of them as their residence. In this case, the parties since early 1991 up to 6 May 1993 have always been living in the house at Palisi as their family residence. The respondent is still living there but the petitioner has moved out although he still has some of his belongings inside the house and he visits the house occasionally. I have therefore no difficulty in deciding that the house at Palisi is the parties' matrimonial home.

That leads me to the important question whether the respondent should be ordered to vacate the house so that the petitioner may move back into the

house. Counsel in this case both recognise that there is no Western Samoan legislation on this point and therefore the point has to be decided based on common law. So we look at the English common law as a starting point of this inquiry. In 19 Halsbury's Laws of England, 3rd edition, para. 1838 it is stated :

"A deserted wife in occupation of the matrimonial home has,  
"notwithstanding her husband's ownership thereof, a special  
"right to remain in such occupation. This right, which is  
"referred to sometimes as a licence, sometimes as an equity,  
"results from the fact that the husband can obtain possession  
"of the premises only by obtaining an order of the court,  
"and that, while the marriage endures, the court will refuse  
"such an order for such time as is reasonable. The right may  
"extend to a dwelling house of which the husband is a statutory  
"tenant.

"On an application by the wife for the protection of her right  
"the court may order the husband to permit the wife and her  
"children to reside in the matrimonial home unless and until  
"he provides reasonably suitable alternative accommodation as  
"a matrimonial home for them.... Once the marriage has been  
"dissolved, the special right of a deserted wife is at an end,  
"and her position in the matrimonial home is that of a bare  
"licensee, so that she may be made to go, so long as she is  
"given a reasonable time in which to remove herself and her  
"belongings from the premises, unless the circumstances are  
"such that she is able to set up some sort of contractual  
"licence to remain".

Now in so far as English law is concerned, the above passage from Halsbury's  
3rd edition will now have to be read in the light of subsequent developments

in English law: see 22 Halsbury's Laws of England 4th edition, paras 1046 - 1057. In particular the doctrine that a deserted wife has an equity in the matrimonial home has been rejected by the House of Lords in National Provincial Bank Ltd v Ainsworth [1965] A.C 1175; [1965] 2 All E.R 472. The question about a deserted wife's occupation of the matrimonial home being based on a license was also considered in National Provincial Bank Ltd v Hastings Car Mart Ltd [1965] 2 All E.R and In Re D (A Debtor) [1967] NZLR 828. It appears from these two later decisions that a deserted wife's occupation of a matrimonial home is not based on a licence. Questions regarding the wife's right of occupation of the matrimonial home/<sup>as</sup> against third parties are also mentioned in the two decisions just cited, but I do not have to decide those questions in this case as they do not arise here. The position in relation to occupation of a matrimonial home now seems to be governed by the English Matrimonial Homes Act 1967.

The English Matrimonial Homes Act 1967 is not available in this country but it is clear from 22 Halsbury's Laws of England, 4th edition, paras 1047 and 1048, that a spouse who is not entitled by virtue of any estate or interest or contract or statute to occupy the matrimonial home is given certain "rights of occupation" by the Matrimonial Homes Act. Those rights of occupation are; if such spouse is in occupation of the matrimonial home, he or she has a right not to be evicted or excluded from the matrimonial home except with the leave of the court given by an order; and if such spouse is not in occupation of the matrimonial home, he or she has a right with the leave of the court to enter and occupy the matrimonial home. These rights of occupation are to continue only so long as the marriage subsists. To enforce these rights of occupation under the Act the party concerned has to apply to the Court and para 1048 of Halsbury's, 4th edition says this about such an application :

"On an application under section 1 of the Matrimonial Homes

"Act 1967, the court may make such order as it thinks just

"and reasonable having regard to the conduct of the spouses  
"in relation to each other and otherwise, to their respective  
"needs and financial resources, to the needs of any children  
"and to all the circumstances of the case, and, without  
"prejudice to the generality of this the court may (1) except  
"part of the dwelling house from a spouse's rights of occupa-  
"tion (and in particular a part used wholly or mainly for or  
"in connection with the trade, business or profession of the  
"other spouse), (2) order a spouse occupying the dwelling  
"house or any part of it by virtue of that section to make  
"periodical payments to the other in respect of the occupation;  
"(3) impose on either spouse obligations as to the repair and  
"maintenance of the dwelling house or the discharge of any  
"liabilities in respect of the dwelling house. Insofar as  
"they have a continuing effect, orders may be limited so as  
"to have effect".

I will refer to two English decisions because they relate to the issue the Court has to deal with in this case and because they reflect English common law. The first is the decision of Denning J in the case of Hutchison v Hutchison [1947] 2 All E.R 792, 793 where he says :

"At common law the husband had no right to turn his wife out  
"of the house. He could not sue her for ejection or trespass  
"or any other tort. His only rights are under section 17 of  
"the Married Women's Property Act 1882, which does not give  
"him the right he is now claiming, but leaves it open to the  
"court to make such order as it thinks fit. The court has a  
"discretion which, of course, must be exercised judicially.  
"The wife has behaved quite properly, and, if there had been  
"no order for judicial separation, the husband clearly could

"not turn the wife out. Does the decree of judicial separation  
"make any difference? In my opinion it does not. The parties  
"still remain husband and wife. In making an order for perma-  
"nent alimony the court will take into account the fact that  
"she is still in the house, but it cannot order her out except  
"section 17. The discretion remains with me, and I am quite  
"satisfied that it would be unjust to turn the wife and the  
"son out of their home".

The second English decision I refer to is another decision of Lord Denning MR  
in the English Court of Appeal. That is the case of Holden v Holden [1966]

3 All E.R 412. There Lord Denning MR says :

"Whatever the position may be as to a subsequent purchaser, it  
"seems to me quite plain that as between husband and wife, if  
"the husband deserts his wife, leaving her in the house, she  
"has not to show a legal or equitable interest in herself.  
"It is sufficient for her to say : "I am his wife and I am  
"under the roof which he provided'. He is not entitled to  
"turn her out except by order of the court; and that will not  
"be given in the ordinary way unless he provides alternative  
"accommodation for her".

It appears then that under English common law a deserted wife has a  
right to remain in occupation of the matrimonial home. That right continues  
so long as the marriage subsists. And the husband cannot turn the wife out  
of the matrimonial home while the marriage subsists except by order of the  
Court under section 17 of the Married Women's Property Act 1882.

When the wife applies to the Court for protection of her right of  
occupation of the matrimonial home, the Court may order the husband to permit

the wife to remain in the matrimonial home until he provides her with reasonably suitable accommodation. But once the marriage is dissolved the deserted wife's special right is at an end.

The position at English common law has now been replaced by the Matrimonial Homes Act 1967. An application by a husband to terminate his wife's right of occupation of the matrimonial home or an application by a wife to enforce her right of occupation of the matrimonial home will now have to be made under the Matrimonial Homes Act. The statutory position is set out in the paragraphs 1047 and 1048 of 22 Halsbury's Laws of England, 4th edition which has already been referred to.

I have referred to the common law and statutory position in England not because English law is binding on our Courts but in order to find some guideline of high authority for what should be the legal position here. In my opinion based on English law, a spouse who is not entitled to occupy the matrimonial home by virtue of any estate, interest, contract or statute has the following rights of occupation of the matrimonial home. Firstly if such spouse is in occupation of the matrimonial home, he or she cannot be evicted or excluded from the matrimonial home by the other spouse without an order of this Court. Secondly, if such spouse is not in occupation of the matrimonial home, he or she may occupy the matrimonial home by order of this Court. These rights of occupation continue and may be exercised while the marriage still subsists. And they are to be enforced or terminated by making application to this Court. In deciding such an application the Court will of course be guided by what is just and reasonable having regard to the conduct of the spouses, their respective needs and financial resources, the needs of any children and all the relevant circumstances of the case. In making a just and reasonable order the Court may also order the spouse who is given occupation of the matrimonial home or any part thereof to make periodical payments to the other spouse in respect of the accommodation, or

impose on either spouse obligations as to the repair and maintenance of the matrimonial home or the discharge of any liabilities in respect of the matrimonial home, or any other order which in the circumstances is just and reasonable. It will be seen that the position I have adopted is essentially and really the modern English position instead of the old English common law position. We have already followed the English law in numerous other respects so the course taken here is not unprecedented.

I should also refer briefly to the position in New Zealand. It appears that the English common law on the question of occupation of the matrimonial home had also been applied for some years in New Zealand: see 2 Bromley and Webb Family Law, volume 2, pp 804 - 810; Re D (A Debtor) [1967] NZLR 826. However the question of occupation of the matrimonial home also came to be regulated under Part VIII of the New Zealand Matrimonial Proceedings Act 1963. Part VIII of the New Zealand Matrimonial Proceedings Act was repealed by the New Zealand Matrimonial Property Act 1976. Under the New Zealand Matrimonial Property Act 1976 the Court is given discretionary power to make an order as between husband and wife for occupation of the matrimonial home as the Court thinks fit. I have referred to the New Zealand position mainly to show that in that country the sort of issue that we are dealing with in this case is very much in the discretion of the Court as it is also in England. But of course the discretion must be exercised judicially.

Given the fact that the circumstances in real life of cases of this kind are so varying and infinite, and different from one case to another, it will be wise for the Western Samoan Courts to have a wide discretion to deal with these cases. To lay down <sup>now</sup> fixed principles may not attain the ends of justice in every case.



In this case, the petitioner is not seeking a division of the matrimonial properties but is really asking the Court to terminate the respondent's right of occupation of the matrimonial home as the respondent is still residing there and the petitioner who is residing elsewhere wants to move back into the matrimonial home. As to the conduct of the parties that has already been dealt with in relation to the petition for a decree of judicial separation which has been dismissed. As to their respective needs, they both need the matrimonial home. As to their financial resources, both are now employed in the public service and the petitioner also operates a taxi. There are no children of the marriage so that consideration does not apply. As for any other relevant circumstances, I think the fact that the respondent is a foreigner in this country without relatives and that she came here because she married the petitioner is a factor that counts in favour of the respondent. There is also the evidence of the petitioner that he cannot afford to provide suitable alternative accommodation for the respondent but the respondent can stay with his family at Matautu-uta who do not speak English. I do not accept this because the respondent speaks only a little bit of Samoan and so it will very difficult for her to communicate with the petitioner's family. There is also no evidence as to the suitability or otherwise of the house of the petitioner's family for the respondent to live in, especially as the petitioner's family live in the same house. Family in the Samoan sense is more extensive than family in the European sense and includes brothers, sisters, their children and so on. The evidence by the respondent is also that the rent for houses at the Palisi area is about \$1,000 a month and for the house she is now occupying she estimates the rent to be around \$800 a month. With her present salary of \$240 a fortnight she cannot afford to rent in another house like her present house. Even if the lowest rent for a suitable house in the Apia area is say \$500 a month, that will still be beyond the respondent's present means. The petitioner on the other hand since he left the matrimonial home has been

staying with a female friend. Counsel for the petitioner told the Court at the conclusion of the evidence that the petitioner is now living in the house of a male friend. As a local, I think it will be much easier for the petitioner to find alternative accomodation with friends of relatives compared to the respondent who is a foreigner in this country. Weighing all these matters, I am of the view that an order should be made dismissing the petitioner's application but the precise terms of that order will await written submissions or consent of counsel as to the question of any periodical payments made by the respondent to the petitioner for her occupation of the matrimonial home as well as the question of repair and maintenance of the matrimonial home or any other relevant matter. Counsel are allowed seven(7) days to file written submissions or their written consent as to the form of the order in respect of these matters.

Finally I would add that even if I were to decide this case on the basis of the old English common law, I would still have found against the petitioner.

As this is in a real sense a test case in this area of our law, I make no order as to costs.

*J. F. M. Supala*  
.....  
CHIEF JUSTICE