

DIVC 102/2016

2016

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NO2

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN;

ARNOLD YANNIE

PETITIONER

AND

VAIA OLADUNI YANNIE

RESPONDENT

**BEFORE THE HONOURABLE MR. JUSTICE ERNEST GOODING J.**

COUNSEL

YADA WILLIAMS FOR THE PETITIONER

JAMES FORNAH SESAY FOR THE RESPONDENT

*Exh* JUDGEMENT DATED THE 4 <sup>th</sup> DAY OF MAY 2017

Before proceeding may I thank both Counsels for their professionalism in the conduct of this cause. I hope others will follow your footsteps.

- Exh*
1. This is a husband's petition against his wife for the dissolution of their marriage celebrated at the Christ Church, Pademba Road, Freetown according to the Christian Marriage Act Cap96 of the Laws of Sierra Leone 1960 on the 27<sup>th</sup> December 2008.
  2. However on the 27<sup>th</sup> March 2017 the Petitioner abandoned his Petition. The consequence of this Action is that the answer to the Petition filed by the Respondent on the 29<sup>th</sup> September 2016 is now Academic.
  3. On the 27<sup>th</sup> March 2017 during the trial of this cause the Respondent produced and tendered a copy of the Marriage Certificate. Marked Exhibit A.

4. Prior to the trial the Respondent entered an Appearance dated 5<sup>th</sup> day of August 2016.
  5. On the 29<sup>th</sup> day of September 2016 the Respondent filed an Answer and Cross- Petition.
  6. The Cross-Petition avers that the Petitioner has treated the Respondent with cruelty since the celebration of the marriage and has committed adultery on the Respondent.
7. The Particulars are numerous and include the following:
- A. The petitioner is unfaithful towards the Respondent and has extra marital affairs with both single and married women including a Hawanatou Rahman who insulted the Respondent on the Phone.
  - B. The Petitioner has a child outside wedlock namely Alfreda Yannie born on the 17<sup>th</sup> December 2010 by Gloria Lefevre. The Petitioner according to Respondent acknowledge having this child. This incident caused her pain, migraine and sleepless night. Petitioner refused to end relationship with Gloria Lefevre.
  - C. Petitioner refused to include Respondents name in a house he was building in Regent despite Respondents contributions towards Building costs. Respondent gave Le.12 Million lump sum together with monthly contribution of Le.3 Million.

- D. Petitioner did not believe Respondent when she told him about IVF Procedure in the USA as they were trying to have a child. Petitioner was mad and told the Respondent she did not do any investigation in the USA sometime in 2010
- E. In December 2012 the Petitioner told the Respondent that he was no longer interested in having a child though she saw a Gynecologist in Ghana in this regard.
- F. In June 2013 though the Respondent purchased an Air ticket for the Petitioner to accompany her to Ghana to see a Gynecologist regarding her IVF treatment the Petitioner refused to go. The Respondent was emotionally broken down as a result.
- G. In April 2014 when the Petitioner turned forty the Respondent hosted a party for him. Two weeks later watsapp messages came into the Petitioners phone displaying pictures of Gloria, the petitioners' mother and other people at a party. This was at a party at Gloria's house. The Respondent complained to their God Parents. At a meeting in which the Petitioner attended he said thus: "Duni (Respondent) how would you feel if it were you and you had a child with a man and after that the man leaves you" the Respondent interpreted this statement to mean that the Petitioner does not intend to end the relationship with Gloria Lefevre.
- H. On the 25<sup>th</sup> December 2014 the Petitioner barely ate anything at home, the Respondent suspecting he'd ate somewhere else. Again on the same day the Respondent asked the Petitioner what she was supposed to do to make things work. The Petitioner did not answer and stopped sleeping in their bedroom but did in the guest room.

- ~~120A~~
- I. The Petitioner would insult the Respondent's mum and siblings at the slightest opportunity and would call the Respondent's mum a prostitute and responsible for her daughter not giving birth.

~~120B~~

  - J. The Respondent gave monthly allowance to the Petitioner's parents.

~~120C~~

  - K. The Petitioner had locked the Respondent out of the matrimonial home twice. Once when she went to her godchild's birthday party and the other when she went to a week revival at church. The Respondent had to sleep at her sister's Festina's house and again out of the house on the other occasion.

~~120D~~

  - L. The Petitioner refused to pay N.P.A. bills saying he was not living in the house and the Respondent had to pay the bills and also the DSTV bill.

~~120E~~

  - M. In April 2015 three months after the Petitioner moved out of the house, the Respondent completed the house they were building and moved in as that was their wish. After the Respondent moved out of the Petitioner's family house the Petitioner stopped sending her monthly maintenance saying that she was no longer his responsibility.

~~120F~~

  - N. On more than one occasion apart from the incident when he hurt the Respondent's eye and the other when he dragged her out of the bed room the Petitioner would insult the Respondent's family and hit her finger on the glass top table. The Respondent suffered broken finger and was attended by Dr. Ford.

~~10.~~ O. Apart from the physical abuse the Respondent also underwent mental torture as the Petitioner would speak to his girlfriend in the presence of the Respondent.

~~11.~~ 8. The Respondent avers that she has not condoned the Petitioner's cruelty neither has she in her cross-petition prosecuted or present the cross-petition in collusion with the Petitioner

9. The Respondent finally says that the Petitioner by his conduct has made up his mind to bring cohabitation between them to an end.

The Respondent Prays:

- ❖ That the Marriage be dissolved.
- ❖ That she be given one of the two properties.
- ❖ That the Petitioner provides her Alimony
- ❖ Any other orders
- ❖ The costs of the suit.

10. On the 29<sup>th</sup> September 2016 the Respondent filed Affidavit verifying facts in the Petition.

~~11.~~ On the 8<sup>th</sup> February the Petitioner's Solicitors filed and served answer to the Cross-Petition.

A. Paragraph two (2) of the answer to cross-petition admits that the petitioner committed adultery with A woman named GLORIA LEFEVRE.

B. The petitioner avers that the two houses in Regent were built exclusively from the resources of the Petitioner but that the Petitioner is

not averse to giving or conveying the property situate at Rita Street, Regent Village, Freetown to the Respondent.

C. On the 10<sup>th</sup> February 2017 the Respondent filed application for Registrar's Certificate saying in effect that the cause is fit to be set for hearing.

12. On the 16<sup>th</sup> day of February 2017 the Registrar issues its certificate that the cause is correct and is fit to be set down for trial.

13. On the 27<sup>th</sup> March 2017 led by her counsel, James Fornah Sesay the Respondent took the Witness stand.

In her evidence in chief this was what the Respondent said.

Her full names are Vania Oladuni Estherleen Yannie. She resides at 7 Rita Street in Regent but presently is at R2 Regional Maritime University, Campus, Accra, Ghana. She acknowledges knowing the Petitioner and states that he is her husband. She further went on to say that they were married on the 27<sup>th</sup> December 2008 at Christ Church, Pademba Road, Freetown.

She confirmed that she signed the Marriage Certificate together with others. She produced and tendered A copy of their marriage certificate marked "A". Immediately after the marriage the Petitioner and the Respondent cohabited at 32D Off Main Motor Road, Wilberforce, Freetown.

The marriage was consummated though there are no issue.

The marriage started going bad on or about two years after the celebration.

I suspected the Petitioner of having adulterous relationships she said.

There were instances when there was communications between the Petitioner and ladies on the phone.

The name of the ladies are Hawanatou Rahman, Gloria Leferve and Vickling Cleverland.

I was later informed by Janet Mcfoy that the Petitioner had a love child with Gloria Leferve. The name of the child is Alfreda Yanni. I spoke to the Petitioner and he confirmed he had a child with Gloria Leferve. I was shocked and devastated when I heard the news. The Respondent said she explained everything to their god parents at a meeting in which the Petitioner was present.

The Petitioner was asked to end the relationship with Gloria but he said no. There were also constant issues with the Petitioner going out on Saturdays.

~~Exhibit~~ The Respondent also said a week after the Petitioner's 40<sup>th</sup> birthday he had a party at Gloria's house. The Respondent produced and tendered four Photographs in respect of this party marked exhibits B1-4.

A meeting was called with our godparents but the Petitioner said he was continuing his relationship with Gloria.

I felt indifferent after this because I got used to the situation. After the issue with the child and the party the Respondent said "our sex life became irregular". Sometimes I go without sex for over a month she said.

~~Exhibit~~ The Respondent further said that despite the Petitioner's behavior she did not refuse him sex. She also said she requested sex from the Petitioner but he would usually say he was tired. The Respondent said that despite the Petitioner's behavior she did not deny him sex, and continued to take care of the Petitioner.

The Respondent said they own a Property jointly at 7 Rita Street, Regent, Freetown.

Both of us purchased the land and built the property she said.

I also contributed to the building of a property at Elizabeth Street in Regent. This property is in the sole name of my husband. On the 3<sup>rd</sup> January 2015 the Petitioner and I stopped cohabiting . The Petitioner left the house saying he would no longer stay with me.

I want the court to dissolve our marriage.

14. During cross-examination by Yada Williams Esq for the Petitioner the Respondent said apart from the property at 7 Rita Street she was not making claim to any other property. She continued saying that she is currently in possession and control of 7 Rita Street, Regent. The Respondent further said she wanted this court to convey 7 Rita Street to her. The Respondent also confirmed that she was not making any claim in respect of any other property in the name of the Petitioner.

Finally the Respondent admitted that she got the Photographs which she exhibited from her husband's mobile phone.

She also said "I was having irregular sex, my expectation was at least twice a week."

There was no re-examination. At this stage the Respondent closed her case.

Yada Willaims of Counsel for the Petitioner informed me that the Petitioner was not calling any witness and that they are abandoning their Petiton. He also advised the court to pronounce Judgment based on the Respondent's cross-petition.

Counsel was however concerned about the several grounds on the cross petition and asked that the marriage be dissolved only on grounds of Adultery. He confirmed that the Petitioners share in 7 Rita Street will be conveyed to the Respondent.

Finally he asked that each party bears its costs.

15. It was rather disappointing that Counsels did not address me on the facts and the law, be that as It may the grounds relied on by the Respondent in her cross petition are Adultery and Cruelty. Adultery and Cruelty are two of the three grounds available to us to proceed on a dissolution of marriage. The other remaining ground is Desertion. I will not comment further on desertion as it was <sup>not</sup> pleaded.

16. Incidentally Marriage was described in Hyde v Hyde ( 1865), 4 Sw & Tr. 80 as the voluntary union between one man and one woman for life to the exclusion of all others.

17. I will now turn to Adultery, Tejan J in George v George (1970-71) AR L SL at page 2 ll 37-41 said "Adultery is the consensual sexual intercourse between a married man and a person of the opposite sex, not the spouse, during the subsistence of the marriage. Although a divorce proceeding is a civil suit, strict proof of adultery is necessary and the proof must at all events be higher than the proof necessary in civil suit. At page 3LL10-12 the learned judge said "In Adultery cases, the evidence of the Petitioner is seldom accepted without corroboration either by a witness or at least by strong surrounding circumstance." In this case I am aware that the Petitioner has admitted Adultery but I have heard evidence in this regard and I have to rule on it.

This is what the Respondent said:

~~EDM~~ "I suspected the Petitioner of having an adulterous relationships."

"The Petitioner denied my suspicions"

"I was later informed by Janet Mcfoy that the Petitioner had a love child with Gloria Leferve"

"The name of the child is Alfreda Yanni"

"I spoke to the Petitioner and he confirmed he had a child with Gloria Leferve"

"I was shocked and devastated when I heard the news"

During cross examination the Respondent said thus:

"I got the photographs form my husband's mobile phone I was having irregular sex, my expectation was at least twice a week"

Though the photographs were obtained in a dubious manner nonetheless they are relevant and thereby admissible (R V Sang)

*Part*

18. In this cause irrespective of the Petitioner's admission of Adultery, the Respondent has adduced more than sufficient evidence before me proving that the Petitioner did commit Adultery with the named woman Gloria Leferve. The birth of a child by a husband outside marriage namely Alfreda Yanni which is not challenged amounts to Adultery. You do not need to be a brain surgeon to understand that usually a child is the product of Sexual Intercourse, in this case between a man and a woman not married to each other, i.e. the Petitioner Arnold Yannie and Gloria Leferve.

The Respondent tainted the Petitioner a Sexual Philanderer but I find no corroborative evidence in this regard.

19. In respect of the grounds of cruelty pleaded as well by the Respondent, Yada Williams of counsel for the Petitioner expressed his concern about the several grounds and asked that this marriage be dissolved on the Petitioner's Adultery and nothing else. Mr. Williams also informed the court that the house at 7 Rita Street, Regent, Freetown will be conveyed to the sole name of the Respondent.

20. After careful consideration I succumb to counsel's request not to proceed with the allegations of Cruelty but to dissolve the marriage based on the Petitioner's adulterous behavior. Frankly should I proceed with the allegations of cruelty I will let loose can of worms which in my opinion will be detrimental to all parties. After all borrowing the concept introduced by the English/ Welsh Divorce Reform Act 1969, the marriage has broken down irretrievably and neither party is interested in keeping it going.

21. I find that the Cross petition was presented after three years have passed since the date of the marriage in accordance with section 4 of the Matrimonial Causes Act, Chapter 102 of the Laws of Sierra Leone.

22. I have inquired into the facts and find that there has been no connivance or condonation on the part of the Respondent. I also find that the Respondent has not in any manner been an accessory to, or connived at or condoned the Adultery by the Petitioner, neither is the cross petition presented in collusion with the Petitioner (see section 7 (1) of the Act)

23. On the evidence before me I am satisfied that all the Requirements of the Matrimonial Causes Act, Chapter 102 of the Laws of Sierra Leone have been met.

24. I am also satisfied that the Strict proof of Adultery that is necessary, and the proof which must at all events be higher than the proof necessary in civil suit have been met (see George v George 1970-71 ALR SL)

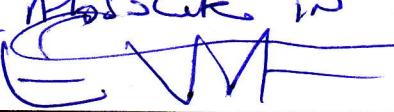
25. I find that the Respondent has proved the content of her cross petition in respect of the petitioner's adultery and that the Petitioner has since the celebration of the marriage committed adultery. I therefore pronounce a Decree Nisi in her favour.

The petitioner's petition though abandoned is still on file and is hereby dismissed.

I order that the Petitioner conveys the property at 7 Rita Street, Regent, Freetown to the Respondent.

No orders for cost.

9 further order that the parties are at liberty  
to apply for a decree Absolute in fourteen days

  
HON MR. JUSTICE ERNEST GOODING J.