

MAGARET TAKAOHU -v- JOHN WAIHOU AND ELIZABETH OIHANARU

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 215 of 1990

Hearing: 25 April 1991

Judgment: 26 April 1991

T. Kama for the Petitioner

A. Radclyffe for the Respondent

WARD CJ: This is an application for a division of matrimonial property. It started as an application to freeze the assets of a business in which the respondent has an interest but has since become a simple action for matrimonial relief.

A decree nisi was ordered on 30th November 1990 the marriage having subsisted a little over 4 years. There are no children. When they separated, the wife took with her certain items of property without, it appears, any assent from the husband. However, she now claims a share in the assets of a business in which he has capital.

I accept the business was started to provide financial assistance to the husband's village and, as such, would not be available in a division of matrimonial property. However, it appears the husband has capital in the company that was, in 1989, worth \$3,049.74. He was entitled to draw on that capital and, in 1989 - 1990, withdrew and spent \$2,105.80.

Without going into the details of the evidence, I accept that capital accrued during the marriage and that the contribution of both parties to the marriage were involved. I am satisfied it should be regarded as a joint asset. Indeed the respondent effectively demonstrated that fact when he pointed out in evidence that he spent almost half of the \$2,105 on his wife's expenses.

The husband now has conceded that point but reasonably enough says that, in that case, the court should look at the other property. I agree.

On the evidence I accept the wife's account that her father paid \$100 towards the radio and her husband \$200. However, the radio was clearly joint property. I am sure the father intended that as a gift to them both in order jointly to buy the radio. The shell money was described as dance costume and I accept the wife's account that it

was really personal to her. Even when given to her husband it was given for her. The remaining items are clearly joint property.

When dealing with joint property of such a personal nature, it is reasonable for each party to the marriage to have equal shares. I include the money in the company as it was in the nature of a family investment.

I order the wife is entitled to a half share in the radio and the pots, glasses and plates, etc. referred to in the husband's affidavit of 27th December. She has the items and so \$250 must be deducted from her share in the capital in the business.

Therefore she is entitled to half of the capital of \$978.31 less \$250 for the husband's share of the items she has taken.

978.31 divide by 2	=	489.15
less		250.00
		<u>239.15</u>

I appreciate the husband will have difficulty finding such a sum on his present income. The capital in the company has been frozen from further withdrawal.

If I order the wife should have that much of the capital registered in her name, the company may incur liabilities that will result in a call on the capital and leave her with financial obligations she will be unable to meet. At the same time, the husband's share is also speculative in the same way. I think the wife must take it as she finds it.

I order that \$239.15 of the husband's capital in the company shall be placed in the wife's name.

Costs to the wife.

(F.G.R. Ward)
CHIEF JUSTICE