CHEROLYN TIMOTHY -v- EDDIE PONISI

High Court of Solomon Islands
(Muria ACJ)
Civil Case No. 163 of 1991
Hearing: 29 May 1992
Judgment: 9 June 1992

C. Tagaraniana for the Petitioner
Mrs S. B. Samuel for the Respondent

MURIA ACJ: The Petitioner seeks a decree of nullity in respect of her marriage to the Respondent.

Although the petition is not disputed by the Respondent, evidence has been adduced on behalf of the Petitioner. The Petitioner gave evidence on 24 April 1992 that the requirements of section 5 of the Islanders Marriage Act had were not complied with, namely, no written Notice of Intended Marriage had been put up. She stated that on 5 September 1985, the Respondent's parents asked her to marry their son, the Respondent and on 6 September 1985 she was asked to go to the Chief's house where she was asked to sign a paper. Despite her protest, she and the Respondent were married on 9 September 1985 in a Church before a United Church Minister. A feast followed.

The Petitioner further stated that her parents never agreed to her marrying the Respondent. She also stated that the Respondent and herself were separated on 19 September 1985, a week after the marriage ceremony, and have not come together until the presentation of this Petition.

Despite the Petitioner's uncontradicted evidence, the Court required further evidence on the actual ceremony of the marriage since in nullity proceedings the actual ceremony of marriage must be strictly proved. Admission by the Respondent of the contents of the petition is not in itself sufficient. As Ward CJ stated in a nullity proceeding in ***Siloko -V-Haka*** *Civil Case No. 53 of 1991*:

> *"A matter such as this, must be proved. No admission in the pleadings is sufficient".*

As a result a witness, Mr Ben Lomulo was called and after an adjourned hearing, Mr Lomulo gave evidence on 29/5/92 in support of the petition.

Mr Lomulo said in his evidence that he and his wife accompanied the Petitioner into the Church on the day of the ceremony. They entered the Church and presented the Petitioner to the Respondent before a United Church Minister Reverend Luke Pitu who conducted the marriage ceremony. Mr Lomulo said that he and a woman named, Dori witnessed the signing of the marriage papers in the Church. After the ceremony in the church, about one hundred people retired to a feast to mark the occasion.

On the question of notice, Mr Lomulo could not help much. He stated that there was on the church notice board a paper which looked like the one normally used for Notices of Marriage. He did not observe it nor read it. He did not know, if it was a Notice of Marriage, whether it was for the Petitioner's marriage.

Mr Lomulo further stated that nobody from the Petitioner's village attended the marriage ceremony or the feast. The Petitioner's parents also did not attend either the marriage ceremony or the feast. Mr Lomulo said that he was not in a position to know whether all the necessary formalities and arrangements were done. He was only involved with presenting the Petitioner in church to the Respondent.

The petition was brought on the ground that the marriage was not celebrated in due form as required by section 5(1)(a) of the Islanders Marriage Act (Cap 47). That provision states:

> *"5(1)(a) Before a marriage may be celebrated by a minister of religion, written notice of the intended marriage, in the language spoken by the parties thereto, and signed by the minister in charge of the church in which such marriage is to be celebrated, shall be posted prominently on a notice board set aside for the purpose in such church. Such notice shall be posted at least three weeks before the date of such intended marriage, and shall remain on the notice board until the celebration of the marriage or until the expiration of three months from the date of the notice, whichever shall first happen."*

The Petitioner now comes to this Court and asks for a decree of nullity which by virtue of section 12 of the Islanders Divorce Act (Cap 48) should be granted where it is proved that the marriage was not celebrated in due form. Section 12 (e) of the Islanders Divorce Act provides:

> *"12. A marriage is void and the Court shall pronounce a decree of nullity in respect thereof if it is proved -*
>
> .....
>
> *(e) that subject to the provisions of Section 8 of the Births, Marriages and Deaths Registration Act, the marriage was not celebrated in due form."*

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The evidence which has not been disputed in this case clearly shows that the statutory requirement regarding the publication of the Notice of the Intended Marriage as required by section 5(1)(a) of the Islanders Marriage Act had not been complied with. There was no written notice put up or even if there was any such notice, it was probably only put up for about one week and was done so in complete disregard for the provisions of the Act. I am satisfied on the evidence that section 5 of the Islanders Marriage Act had not been complied with.

The words used in section 5(1)(a) of the Islanders Marriage Act and section 12(e) of the Islanders Divorce Act are mandatory. They do not give the Court a discretion. In ***Siloko -v- Haka*** *(above)* Ward CJ rejected the argument that the language in the sections, I mentioned earlier, are directory only and as such give the court discretion, and said:

> *"I cannot accept the respondent's argument that the words in the sections I have quoted give the Court a discretion. If the marriage was not celebrated in due form, the Court must pronounce a decree of nullity. A failure to comply with sections 5 or 8 of the Act is a failure to follow the due form."*

The failure to comply with section 5 of the Islanders Marriage Act, as I have said, is clearly proved in this case. As to the presumption as to the validity of the marriage, I think that has very little effect in this case. The presumption of omnia praesumuntur pro matrimonio is stronger where the parties cohabited. The onus is on the Petitioner to displace the presumption and it can only be done by firm and clear evidence. See ***Piers -v- Piers****(1849) 2 H.L. Cas. 331;* ***Hill -v- Hill*** *[1959] All E.R. 281;* ***Mahadwan -v- Mahadwan*** *[1962] 2 All E.R. 1108* which are referred to in ***Siloko -v- Haka*** *(above).*

In the present case, the evidence is firm, clear and uncontradicted that the marriage took place under protest both by the Petitioner and her parents. Despite such a protest and disagreement the Respondent and his people proceeded with the marriage in a manner that resulted in non-compliance with section 5(1)(a) of the Islanders Marriage Act. Following the marriage ceremony, the Petitioner left the Respondent on 19 September 1985 which is one week after the marriage was celebrated. The Petitioner and the Respondent have not cohabited since then until the presentation of the petition. The evidence is therefore strong and conclusive and in my judgement sufficient to rebut the presumption.

However the evidence is clear in this case of non-compliance with the mandatory requirement of the law. Such a failure does not give the Court a discretion and so pursuant to section 12 (e) of the Islanders Divorce Act, I must pronounce a decree of nullity.

(G.J.B. Muria)
ACTING CHIEF JUSTICE