IN THE SENIOR MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU

CIVIL CASE N° 324 OF 1995

(Matrimonial Jurisdiction)

BETWEEN : EMILY WAIWO

Petitioner

AND : WILLIE WAIWO

Respondent

AND : MARIE ROSE BANGA

Co-Respondent

Coram : Senior Magistrate,
LUNABEK Vincent

Mrs Mason for the Petitioner
The Respondent in person
Ms Stacey Cowell for the Co-Respondent

IN THE MATTER OF THE PETITION OF MRS EMILY WAIWO FOR A DECREE OF DISSOLUTION OF MARRIAGE AND DAMAGES CLAIMED AGAINST THE CO-RESPONDENT.

(Matrimonial Causes Act CAP 192)

REASONS FOR JUDGMENT

This is a Petition for a Decree of Dissolution of Marriage. The petition was not disputed by the Respondent. On 6 December 1995, the Petitioner-Wife filed a petition for divorce against the Respondent-Husband at Port-Vila Magistrate's Court Registry. The ground for petition is that the Respondent had committed adultery with the above named Co-Respondent. The Petitioner-Wife and the Respondent-Husband have reached agreement in order to settle the dissolution of their Marriage (see Order made on 12th February 1996).

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The adultery between the Respondent and the Co-Respondent is not denied. The only point in issue in this case is about the nature of damages claimed by the Petitioner against the Co-Respondent as to whether damages claimed in such a petition is of punitive or compensatory nature.

The Petitioner, Emilie Waiwo, gave evidence on oath and said that she is from Isangel, Tanna. So are the Respondent and the Co-Respondent. She further said in effect that after she discovered that her husband committed adultery with the Co-Respondent, she and her husband started to quarrel. They both came to Port-Vila but they never stopped disputing one another.
The Chiefs in Tanna residing in Vila held customary meetings into Nakamal ' in order to solve her problem with the husband. She said the chiefs decided that the Respondent-Husband will pay an amount of Vatu 20,000 to the Co-Respondent's husband and that the Co-Respondent will pay her 5,000 Vatu and 2 pieces of calico. Further the Chiefs said that she (the Petitioner) will pay an amount of Vatu 5,000 to the Co-Respondent because she insulted, at some stage, the Co-Respondent. She said she refused to accede to the custom Chiefs' decision because she felt that it is not fair to her and she refused to accept money offered by the Co-Respondent. She, then decided to file her Petition for Divorce and claimed Vatu 100,000 damages against the Co-Respondent because it is no longer possible for her to reconcile with her husband.

Section 17 (1) of the Matrimonial Causes Act CAP 192 provides that :

> ***" A Petitioner may on a Petition for divorce claim damages from any person on the ground of adultery with the respondent. "***

Ms Cowell, on behalf of the Co-Respondent disputed the amount of Vatu 100,000 for damages as being too excessive and corresponding to an award of punitive damages claimed against her client. She said that when Vanuatu Matrimonial Causes Act was passed by Parliament, it (the Act) was based on the United Kingdom Matrimonial Causes Act of 1965. And under the said U.K. Act (1965) punitive damages were not awarded against Co-respondents but that damages were awarded on compensatory basis only. She, thus, submitted that the Court must look at the U.K. Act (1965) in order to interpret section 17 (1) of the Vanuatu Matrimonial Causes Act. She further submitted that in this case, the Petitioner would be compensated for the loss of the Husband in Vatu 5,000 as it has been attempted to be done by custom chiefs into Nakamal.

Mrs Mason on behalf of the Petitioner argued that Vanuatu Matrimonial Causes Act was passed by Vanuatu Parliament in 1986 and that at that time the U.K. Act (1965) was then repealed. She said

further that section 17 (1) of the Vanuatu (Act) constituted the basis of the claim of damages against Co-respondents. That section 17 (1) is a general provision and as such should be interpreted according to the intention of Vanuatu National Parliament. She said also that adultery is a serious offence in Vanuatu communities and that punitive damages are often given for adultery which show clearly that Vanuatu local circumstances are different from those of the United Kingdom.

It is important, if we may turn again to section 17 of the Matrimonial Causes Act which says :

> ***" 1. A Petitioner may on a petition for divorce claim damages from any person on the ground of adultery with the Respondent.***
>
> ***2. The Court may direct in what manner the damages recovered on any such petition are to be paid or applied. "***

It has to be noted that section 17 (1) constitutes the basis of the claim of damages against the Co-Respondent. Section 17 (2) provides for the Court to direct in what manner the damages recovered ... are to be paid or applied. No more no less. Thus, section 17 does not expressly say whether damages claimed against the Co-Respondent will be of punitive or compensatory nature.

This Court must, therefore, interpret the said section 17 of the Vanuatu Matrimonial Causes Act CAP 192 in that respect.

In order to properly do so, reference should be had to the rules in Meydon's case (1584) (see CRAIES ON STATUES LAW Six Ed. 1963 at p.96). In Re Macmillan v Dent (1907) 1 Ch. 120, Fletcher Moulton L. J., restating the rules in Meydon's case, said this :

> ***" In interpreting an Act of Parliament you are entitled, and in many cases, bound to look to the state of the law at the date of the passing of the Act ; not only the common law but the law as it then stood under previous statutes, in order properly to interpret the statute in question. "***

As Ms Cowell rightly pointed out, when the Vanuatu Matrimonial Causes Act was passed by Vanuatu National Parliament in 1986, it was based on the United Kingdom Matrimonial Causes Act of 1965. Under the United Kingdom's Act of 1965, damages can be claimed by the Petitioner against the Co-Respondent(s). However, the right to recover damages against Co-Respondent(s) was limited to Petitioner-Husband only. The Petitioner-Wife could not recover damages against the Co-Respondent-male. Further, under the said U.K. Act of 1965, damages claimed and awarded, were compensatory damages only. Damages were recovered by the Petitioner-Husband in order to be

compensated for the loss of his wife. Punitive damages were not awarded under the said U.K. Act of 1965. She, therefore, submitted that section 17 (1) of the Matrimonial Causes Act should be interpreted in accordance with U.K. (Matrimonial Causes) Act of 1965.

It must be emphasised that it is primarily the duty of the Court to interpret an Act of Parliament in such a reasonable manner so as not to defeat the intention of Parliament and the purpose for which the Act was enacted. It would be absurd to presume that, when section 17 (1) of the Matrimonial Causes Act was enacted by Parliament, the provisions thereof were intended to apply to damages claimed by the Petitioner against the Co-Respondents on the ground of adultery as applied in the United Kingdom, that is for compensatory damages only, having regard to the fact that to the knowledge of members of Vanuatu Parliament, Vanuatu circumstances are different from those of the United Kingdom in that, in Vanuatu, the law recognises various forms of Marriages (see Marriage Act CAP 60. Civil Marriage which is celebrated before a District Registrar (s.1 (a)); Religious Marriage which is celebrated before a minister for celebrating Marriages (s.1 (b)) ; or custom Marriage which is celebrated in accordance with custom (s.1 (c))), and that adultery is considered in Vanuatu as a serious offence most importantly on the basis of custom. This knowledge must be presumed. In any case, if it is the intention of Parliament to interpret section 17 on the basis of the United Kingdom Matrimonial Causes (1965) Act, it should have said so. The intention of Parliament can only be gathered from the Act itself.

The Vanuatu Matrimonial Causes (1986) Act CAP 192 contains provisions which are specific and particular to Vanuatu, such as the dissolution of customary Marriage. Section 4 of the said (Vanuatu) Act says that when two persons have been married according to custom, that Marriage may be dissolved, ... only in accordance with custom. The United Kingdom Matrimonial Causes (1965) Act did not have similar provisions relating to dissolution of customary Marriage in the United Kingdom and the reason might be that no customary Marriage were recognised there.
As to the dissolution of civil and religious Marriages, it is common ground in Vanuatu communities that customary and/or local usages (practices) play an important role and thus customary practices constitute the ' leitmotive ' of these Marriages. An example of common element of custom to be taken into account in relation to civil, religious and custom marriages, is the bride price
(bearing in mind that in Vanuatu society, bride price is commonly known as ' *the payment of the spouse-wife* ' and it is the man who pays the wife. Whereas in U.K., the bride price come from the spouse-wife ie, a sum of money or valued properties taken by the wife into the husband's home).

Thus, any damages claimed by the Petitioner against the Co-Respondent should be awarded in accordance with customary law.

Furthermore, section 17 (1) of the Vanuatu Matrimonial Causes Act says that :

> ***" A petitioner may ... claim damages from any person on the ground of adultery with the respondent. "***

Section 17 (1) speaks of " *a petitioner* " which means either a Petitioner-Husband or a Petitioner-Wife. Therefore, a Petitioner-Husband and/or a Petitioner-Wife can claim damages against Co-Respondents in a petition for dissolution of Marriage. The right to claim damages is not limited only to the Petitioner-Husband as it was the case under the United Kingdom Matrimonial Causes (1965) Act.

As it is mentioned earlier, if it is correct to say that Vanuatu Matrimonial Causes Act was based or structured on the U.K.'s (1965) Act, it is not necessarily true to say that strict interpretation of the Vanuatu Act would be based on the U.K. (1965) Act.

Section 8 of the Vanuatu Interpretation Act CAP 132 provides that :

> ***" An act shall be considered to be remedial and shall receive such fair and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit. "***

In this respect, as Sir John Michell M.R. said in Brett v Brett (1826) 2 D. & cl. 480 - 500. See CRAIES ON STATUES LAW Six Ed. 1963 at p. 99:

> ***" The key to the opening of every law is the reason and spirit of the law ; it is the 'animus imponentis', the intention of the law-maker expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context, meaning by this as well the title and preamble as the purview or enacting part of the statute. "***

In this case, we therefore accept the submissions made by counsel for the Petitioner, that Vanuatu Matrimonial Causes (1986) Act was passed by Vanuatu Parliament and thus, must be interpreted on the basis of Vanuatu circumstances which reflect the intention of Vanuatu Parliament. Further, that adultery is considered in Vanuatu Society ' *founded on traditional Melanesian values ...* ' as being a serious offence on the bases of Custom, and that, subsequently, any

damages claimed therefrom against Co-respondents were customary punitive damages.

It must be remembered that the legal system of Vanuatu is derived as it is described in C. G. Powles & M. Pulea, Ed. Pacific Courts & Legal Systems. Suva : University of the South Pacific, 1988 (at p.357)from:

- Since 1980, the Constitution and the Statutes of the Parliament of Vanuatu.

- The laws of England [including statutes of general application in force in England on the 1st day of January 1976 were to be applied as well as the principles of Common Law and Equity ... in so far as circumstances admit. (See the High Court of the New-Hebrides Regulation 1976] and the laws of France as applied to, or made for, the Condominium of New-Hebrides prior to 1980, to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom (Constitution 1980, s.95 (2)).

- Decisions of the New-Hebrides legislature brought into operation by joint regulation prior to 1980.

- The customary law of the people of Vanuatu and, in particular, custom in relation to the ownership and use of land and to institutions and procedures for resolving disputes concerning ownership. (Constitution 1980, ss.73-74-75-78-79)

- Substantial justice, which shall apply, wherever possible, in conformity with custom, if there is no rule of law applicable to a matter (Constitution 1980, s.47).

In the light of what it is said above, few observations are needed to be made. As Professor D. Paterson, in his book *"Vanuatu"*, in Michael Ntumy Eds., South Pacific islands Legal System : University of Hawaii Press, 1993, mentioned (at p. 368):

> ***" ... The Anglo - French Protocol of 1914, which came into force in 1922 and regulated the Government of the New Hebrides, provided that the laws of Britain and France were to apply to the nationals of each country and also to nationals of other countries who chose, or opted, to be subject to such laws ..."(sic)***

It follows then that, clearly, under the said Anglo-French Protocol of 1914, British and French laws were not applied to the indigenous inhabitants of this country. Therefore, when the Constitution of the independent Republic of Vanuatu provides, at Article 95 (2) that the British and French laws in force or applied in New Hebrides immediately before independence continue to apply to the extent that they are neither expressly revoked by parliament nor incompatible with the independent status of Vanuatu, we do agree with the observations made by Professor Paterson (in his book referred to above) that much of French law was applied to French nationals and optants. The British laws (including statutes of general application in force in England on the 1st day of January, 1976, the substance of English Common law and Equity (so far as appropriate to the circumstances of the country)) were applied to British nationals and optants. It should be noted that many areas and/or subjects are not covered by Vanuatu laws, such as intestacies of the estate, contracts, donations inter vivos, adoptions, succession, guardianship of minors etc. Thus, where British or French nationals or their respective *'optants'* are involved, there being no Vanuatu laws covering those subjects, the Courts of Vanuatu would be bound to apply the British laws and/or French laws that existed prior to independence. (See the judgement of the Honourable Chief Justice Charles Vaudin d'Imécourt in Re Daniel Mouton -V- Selb Pacific Limited - Civil Case No. 42 of 1994 at p. 10).

It seems that British and French laws referred to in Article 95 (2) of the Constitution would not be applied to the indigenous citizen of this country. Therefore, the question arises as to which law is applicable to the indigenous ni-Vanuatu, when there being no Vanuatu laws covering their situations in a particular given case? The answer to this question is that there is a law: **Customary Law of Vanuatu** must be applied.
Because the Parliament of this country has, so far, failed to perform its duties as given to it by the Constitution (see Article 51), the Courts have a Constitutional duty to administer justice throughout the Republic of Vanuatu by upholding the Constitution and the laws of Vanuatu and laws of Vanuatu include custom.

Thus, custom must be discovered, adopted and enforced as law. This case is the testing point of this process bearing in mind of the fact that Vanuatu jurisprudence is in its infancy and that we have to develop our own jurisprudence.

Thus, where indigenous ni-Vanuatu are involved in a case where no Vanuatu laws covered the subjects, three situations arise:

i) if they come from the same custom area, island and under the same customary law, the law applicable to their case should be their customary law. This is exactly the situation in this case;

ii) if they come from the same Island or different Island but under different customary law, then the Court should look at the common basis or foundation of the customary law applicable. This will consist for the Court to obtain evidence on the customary law applicable and it should then weigh up the evidence on custom stating which witness the Court believes or does not believe and resolving any conflicts of custom. The Court should state the customary law which he/she intends to apply. the reasons for decision should state the findings of facts, the law the Court considers applicable (its common basis) and the Court should then apply the law to the facts to get the result.

iii) if an indigenous citizen and a non-citizen are involved in a case when there being no Vanuatu laws covering the subjects, the Court would consider British or French laws applicable in Vanuatu, depending on the choice of the non - citizen as to the law to be applied and at the same time, the Court would consider the customary law of Vanuatu (if there is any) and would apply the law relevant to the case.

There is no doubt that custom is part of the laws of the Republic of Vanuatu. Article 95 (3) of the Constitution provides in general terms that ***" customary law shall continue to have effect as part of the law of the Republic "*** Article 45 directs the judiciary ***" to resolve proceedings according to law "***, and law, according to Article 95 (3) includes custom. And custom would mean the rules of conduct which govern legal relationship as established by custom and usage and not forming part of the common law nor formally enacted by Parliament.

Yet, difficulties arise as to the implementation of the customary law by the law Courts. The first difficulty is that in spite of the fact that Article 51 of the Constitution authorises Parliament to ***" provide for the manner of the ascertainment of relevant rules of custom "***, which, obviously, would assist the Courts in applying custom, no such relevant Rules of custom have yet been made by Parliament so far. The second difficulty that arises is that the indigenous inhabitants of this Country have different customs applying in various matters. Where parties come from the same custom area there is no difficulty

as the custom would apply to both. However there is a difficulty when the parties before the Courts are from different custom areas or where the subject-matter before the Court is a National matter or a National issue. The question then arises as to what is the custom applicable.

However, customary law when it is seen by the Courts should instantly be adopted and enforced as part of the law.
Section 29 of the Courts Act CAP 122 provides that :

> ***" 1. Subject to the Constitution, any written law and the limits of its jurisdiction a Court shall have such inherent powers as shall be necessary for it to carry out its functions.***
>
> ***2. For the purpose of facilitating the application of any written law or custom any provision may be construed or used with such alterations and adaptations as may be necessary and every Court shall have inherent and incidental powers as may be reasonably required in order properly to apply such written law or custom. "***

It must also be noted that the difficulties which arise as to the recognition and thus development of custom in Vanuatu mean that in practical terms, a comprehensive inquiry is to be made into all possibly relevant custom throughout this country. Parliament has the duty to do something about it, if not, this would place a burden upon judges, Magistrates, and lawyers which in the light of their present training and experience (in this field) would be difficult to discharge.

In the case before this Court, all the parties come from the same custom area. All parties are from Tanna Island (Lenakel Area) and they are subject to the same customary law. As the petitioner said in her evidence on oath, customary meetings were held by their respective chiefs in Nakamal in order to resolve their problem. She said the Respondent-Husband did pay 20,000 Vatu to the Co-Respondent's husband and that the chiefs decided that the Co-Respondent would pay Vatu 5,000 to the Petitioner plus 2 pieces of calico. At the same time, the chiefs decided the Petitioner would pay to the Co-Respondent Vatu 5,000 because she insulted her. The Petitioner said she refused the offer of Vatu 5,000 plus the two (2) pieces of calico from the Co-Respondent because she felt it is not fair. She said she was not the guilty party, she was the victim so she did not know why she would pay Vatu 5,000 to the Co-Respondent.

It follows from what it is said above that in custom adultery is seen as a serious offence. The adulterers are held to be responsible and would be punished from their wrongdoings. This is not only true for the Tanna people as in this case, but it is also the case through out Vanuatu. Thus, the punishment or penalties imposed upon the

adulterers may be consisted of payment in cash money, customary mats (mats made up of Pandanus leaf), calico, payment in pigs with rounded tusks ... (which represent 10 hard working years to breed them). The nature of the penalties will differ from areas, or island and/or group of islands. But the fundamental point is that there is a common basis through out Vanuatu that adulterers must be customarily penalised from their wrongdoing. It is not just compensatory measures. Furthermore, the adulterers not only must "do good" or restore their respective homes (ie, Respondent and Petitioner's couple, and the Co-Respondent's couple), but they must also fined customarily to the chiefs.
This is a sort of fine paid to the chiefs in order to seek for protection and thus asking for the peace and order within the families and communities under the chiefs' customarily jurisdiction.
Thus damages claimed in respect of adultery in Tanna and through out Vanuatu as a whole should be considered as punitive damages on the basis of custom. The main reason behind is that dissolution of Marriage or divorce is a new concept which is alien to custom. It seems that in custom, when A marries to B, they marry once and for (all) ever. So if A commits adultery with C- they (A and C) must be customarily responsible for their wrongdoing towards their respective homes and the community through their respective chiefs.
In this case, it is established that Tanna people, recognises customary damages paid by the adulterers toward their respective homes and also toward the chiefs.

As to the general application of the rules in the whole country, as it is also suggested in this case, it must be established that there is a custom which is common to all societies or islands throughout the country.
This would mean that on comparative basis, customary fine or payment would differ in nature and/or amount from areas and/or islands from the others. Nonetheless, the most important point to establish is that for a custom to be recognised and enforced throughout the whole country, it must have common basis or common foundation throughout the country.
Adultery is a serious offence in custom throughout Vanuatu and as such it is customarily punishable and punitive damages were awarded against the adulterers. The nature and amount of penalties imposed upon the adulterers may differ from an area, Island or group of Islands to others. This is not relevant.
It is now discovered as a matter of fact, it has then to be adopted as law. It is not in conflict with any written law and it is not contrary to justice, morality and good order and/or rather it is not repugnant to the general principles of humanity.

As to proof of custom, a Court should not be bound to observe strict legal procedure or apply technical rules of evidence, but shall admit and consider such relevant evidence as is available (including hearsay

evidence and expressions of opinion), and the Court shall otherwise inform itself as it sees fit.
This is a very liberal view as to the admissibility of evidence relating to custom. The most common means of ascertaining and proving customary law is by oral testimony of expert witnesses or by witnesses who are not experts in customary law that is, witnesses of fact. The difference being that the latter are not qualified to give opinions on what customary laws are, but are limited to testifying as to certain historical events from which a Court may reach a decision as to law.

In this case, the Petitioner gave evidence on oath to the effect that custom chiefs from Tanna Island who reside in Port-Vila held meetings in Nakamal in order to solve her problem with the Respondent-Husband. She is considered to be a witness of fact. The existence of that customary law is not disputed. The fact that all parties concerned in these proceedings come from Tanna Island and are under one customary law, do assist the Court not to call upon expert witnesses on the existence of the customary law.

In addition, in Tanna like other Islands of the Archipelago, custom plays an important role in day to day life of their inhabitants. One very common example to the knowledge of the Courts and in particular Magistrates is that when the Courts hear criminal cases on Tanna, very often, the Magistrate will not be surprised to see appearing before the Court into the Accused box, next to the Accused, his custom chief. The chief pays respect to the bench and informs the Court that they have already dealt with the matter in custom and the Defendant or Accused is already punished for his wrongdoing. As far as they are relevant to this case, the Defendants were charged for committing assault offences- Some of these assault cases arise out of adultery affairs. The Court explained to the chief concerned the position within the criminal law, the Accused was dealt with accordingly and the Court then invites the chiefs to explain the custom. Obviously the Court did take into account the customary settlement, compensation and punishment etc. as a mitigating factor when considering the sentencing of the Accused. At this stage, the Court is informed about the existence of those customary practices (usages). The information dispatched to the knowledge of the Courts in this respect, would imply that, if they were accepted by the Courts, Judicial notice may be taken of them.
As a matter of comparison, and if we can draw an analogy with the Vanuatu Island Courts, it can be stated that an Island Court is competent to find and apply a rule of customary law without having evidence to prove it (see Island Courts Act CAP 167, s. 10) because an Island Court is constituted of three justices knowledgeable in custom and at least one of them shall be a custom chief residing within the territorial jurisdiction of the Court (see S. 3(1) (3) of the Island Courts Act referred to above). On the same line of thought, one can maintain that justice is administered by Judicial officers (Judges & Magistrates)

and chiefs (appointed as Justices of the Island Court) and if they are themselves familiar with the customs of the people of this country and generally speaking require no evidence to inform them what those customs are. In the great majority of cases in their courts turning upon customs it would be unreasonable to expect evidence as to custom. In a few cases where there might be doubt as to what the custom actually is it might be desirable or even necessary that evidence be adduced on the point. It would be dangerous to lay down any hard and fast rule. Each case must be considered on its own facts.

Further, it is common ground throughout the archipelago of Vanuatu that adultery is considered to be a serious offence in custom that adulterers are customarily punished for their wrongdoings. This is fundamentally a customary law and it has become of such general notoriety that judicial notice may be taken of it. This is the case here because it is not disputed. But if the customary law is disputed, it must be proved by the person invoking it in precisely the same way that a person invoking customary rights has to prove the custom as in the cases of customary land ownership rights disputes. As to these land cases, Article 73 of the Constitution says that all land in the Republic of Vanuatu belongs to indigenous custom owners and their descendants and when the customary land ownership is disputed, Article 74 says that the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu. Thus, these rules of customs must be proved by the persons invoking them before the Court. So are customary laws which are disputed in different areas than customary land ownership disputes.

Before we take leave of this case, it is our view that it is the intention of Vanuatu Parliament to deal with dissolution of Marriages in Vanuatu and within Vanuatu circumstances. When Vanuatu Matrimonial Causes Act was enacted by Vanuatu Parliament in 1986, it has, in effect, automatically repealed the United Kingdom Matrimonial Causes Act of 1965 (which applied only to British nationals and optants). Therefore, it has to be understood that whether the customary punishment imposed on the adulterers are in certain amount of cash money, calico, mats or pigs etc..., depending on the area/island. However, the fundamental basis is that throughout Vanuatu there is a common basis, adultery is a serious offence in custom and thus, customarily punishable so that damages claimed in that respect are punitive but not compensatory.

In this case, the Petitioner claimed Vatu 100,000 against the Co-Respondent. The adultery occurred one time only. This is immaterial. The consequence of such adultery is that it constitutes the breakdown of the marriage between the Petitioner and the Respondent. At the time of occurrence of the adultery, the Co-Respondent knew that the

Respondent was a married man. (This is not disputed). This is an element of aggravation in assessing the amount of damages.

It is put before the Court that the Co-Respondent is a married woman. She has no job. She has children. The Court has no concern with the means of the Co-Respondent, except in so far as they were of assistance to her in seducing the husband (this is not the case here).

In any event, in view of what it is said above, 100,000 Vatu damages claimed against the Co-Respondent is not excessive and it should accordingly be awarded to the Petitioner in accordance with customary law.

(See the order made on 12 February 1996 herewith attached).

Dated at Port-Vila this 28th day of February 1996.

VINCENT LUNABEK
SENIOR MAGISTRATE

MAGISTRATE COURT

IN THE SENIOR MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU

Civil Case No. 324 of 1995

(Civil jurisdiction)

BETWEEN: EMILY WAIWO

Petitioner

AND: WILLIE WAIWO

Respondent

AND: MARIE ROSE BANGA

Co Respondent

IN THE MATTER OF THE PETITION OF MRS EMILY WAIWO FOR A DECREE OF DISSOLUTION OF MARRIAGE.
(Matrimonial Causes Act CAP 192)

ORDER

Upon hearing Mrs Mason, Counsel for the Petitioner and having heard the Respondent and being satisfied that the parties hereto have reached agreement on the matters herein,

IT IS HEREBY ORDERED as follows:

1- That the marriage between the Petitioner and the respondent celebrated on the 31st day of January 1992 at the Tafea Local Government Office, Tanna, Vanuatu be dissolved.

2- That the Petitioner shall have the sole custody of the child of the marriage, Rick Clifford Waiwo, aged 3 years, with reasonable access to the child by the Respondent to be allowed by the Petitioner.

3- That I hereby certify, pursuant to section 16 of the Matrimonial Causes Act CAP 192, that the arrangements made for the care and upbringing of the child of the Marriage are satisfactory.

4- That, the property of the parties now in their possession remain the property of that party which currently holds it.

5- That these orders constitute the final orders in relation to custody and property settlement between the parties and the matter of the civil case No. 324 of 1995 is hereby concluded and withdrawn.

6- That, a Decree Absolute be issued after a period of three months commencing from today the 12th day of February 1996.

AND IT IS FURTHER ORDERED AND DIRECTED:

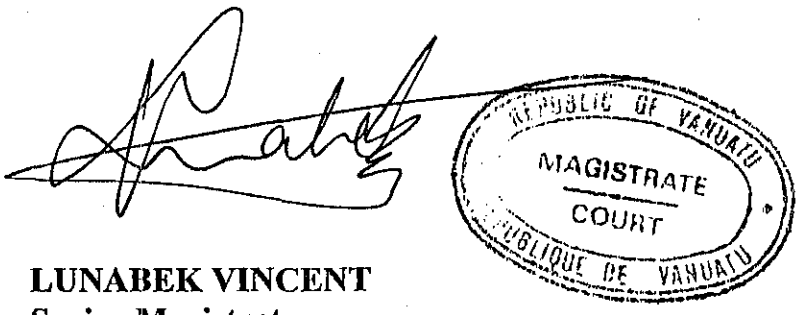
7- That the Co-Respondent Marie rose Banga, do pay the Petitioner the sum of vatu 100, 000 damages in respect of her adultery with the Respondent.

8- That, with the consent of the Petitioner, the payment of vatu 100, 000 by the Co-Respondent will be made by instalment of vatu 5, 000 per month commencing as from today until final satisfaction of the payment of damages.

9- No order as to costs.

10- 21 days to appeal.

GIVEN UNDER MY HANDS this 12th day of February 1996 at Port Vila.



LUNABEK VINCENT
Senior Magistrate.