

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

Civil Case No. 4 of 1996

(Civil jurisdiction)

BETWEEN: JENNY LIGO

Petitioner

AND: JOE LIGO

Respondent

**AND: JEANETTE TARI AND
VERONCIA BULE**

Co-Respondents

Stephen Joel for the Petitioner
Mary Maison for the Co-respondent

Nature of Complaint

The Petitioner Jenny Ligo filed a divorce Petition against Joe and also filed damages claim against the Co-respondents Jeanette Tari and Veronica Bule for adultery.

Claims

The claim against the Respondent are as follows ;

- a) That the marriage between the Petitioner and the Respondent be dissolved
- b) That the Petitioner may have custody of the children
- c) That the Respondent pays weekly family maintenance of 5,000 VT.

Claims against the Co-respondents are as follows ;

- a) That the first Co-respondent Jeanette Tari pays the Petitioner the sum of Vt 200.000 damages in respect of adultery and
- b) That the second Co-Respondent Veronica Bule pays the Petitioner the sum of VT 200.000 damages in respect of act of adultery.

Admission

The Respondent and both Co-respondents made no denial for having sexual relationship. However, the two Co-respondent dispute the claim for damages.

Proceeding

The Respondent on the 17/05/96 made no denial for the marriage to be dissolve. By consent by both parties the court made the following orders as to maintenance and custody of children ;

1. That the Respondent shall pay to the Petitioner the sum of 10.000 Vt per month for the maintenance and education and other general expenses for the children .
2. The amount of 10.000 vt can be reduced from time to time depending on the general expenses on education and maintenance of the children.
3. That the custody of the children shall be with the mother and the Respondent shall have access to the children.
4. The orders can be varied at any time by either parties.

On issuing of the maintenance and custody orders the court then adjourned to issue an order for dissolution. When this was brought to both parties for their consent, they both agreed not to be executed as yet. The court then proceeded to the claim, against the Co-respondents with the view that such order will be issued at a later date.

Issue ;

The only issue for the court to decide is whether damages for adultery be allowed or not, and if allowed them how much.

Law

Section 17 (1) of the Matrimonial Causes Act reads ;

A petitioner may on application for divorce claim damages from any person on the ground of adultery with the Respondent.

Damages under the Matrimonial causes Act has not been expressly define. Because of this the only available law relevant to this case is the rule as laid

down in *Banga -V- Emile Waiwo Appeal No. 1 of 1996*. His honour refer to damages in Matrimonial cases as;

- a) Compensatory damages and
- b) exemplary damages

Compensatory damages he refer to two types of damages;

1. **General damage** - which those kind of damages award for compensation for the general damage caused and which the law presumed to have occurred when a contract is broken or a tort is committed to flow from the wrong complained off and to be its natural or probable consequences.

2. **Special damages** - This is the actual and particular losses sustained. This type of damage must be claimed specifically and proved strictly. It falls generally in the law of liquidation damages.

In exemplary damages- He refer to this type of damage as damages awarded by the court against a wilful wrong doer rather than an innocent wrong doer. Such type of damages are as large and use to be ordered as vindictive, penal, punitive aggravated or retributory. Such damages normally do not rise in contract but commonly accorded in tortious actions. In qualifying for such amount His honour says and I quote ;

But in order to justify and amount of exemplary damage, it is not sufficient to show merely that the defendant has committed a wrongful act. The conduct of the defendant must be high handed, insolvent, vindictive, or malicious, showing contempt of the plaintiff right or disregarding every principle which activate the conduct of common decency in particular the defendants persistence in the act with the knowledge and the language a company it, as well as his conduct at the trial of the action itself are element to be considered.

I quoted this as this is the best explanation as I accept in this case in consideration whether exemplary damages can be awarded.

In this case both Co-respondents knew that the Respondent was married but with degree of coming to know. Firstly Jeanette ; Jeanette come from Ambae and Jeanette knew very well that Joe was a married man. Even Joe told her that by the end of 1995 he will divorced Jenny and he will marry her. Also Jenny rang her and asked her of her affair with Joe which she denied.

I do not accept that by September Jeanette knew of Joe as married to Jenny. I accept that she knew all a long that Joe was married to Jenny. In the relationship with Joe she admitted having sex with Joe more then once. Joe also refer to this as incidents there after. She even made bites mark on Joes' body which she denied that for Jenny to see when she come back. She even informed karol Garae, a close relative of Jenny, of her relationship with Joe. Even in her evidence in court she express that she loves Joe very much that time and that she can even drink his sperms in a cup. I view this type of statement as statement of very strong expression of love for Joe Ligo. She also stated, which I accept, Joe acted positively too by saying to Jeanette that he will divorced his wife and will get her as his wife.

I am satisfied that the relationship between Jeanette and Ligo was firm and was quite for sometimes, referring back to September 1995.

Veronica who comes from Pentecost knew that Joe Ligo comes from Pentecost too. Her relationship started from some typing for Joe given to her and later on an arranged kava night between Veronica and Joe Ligo. This relationship begin sometimes in November. Jenny came back from Australia in December the same year. Veronica admitted having sexual intercourse with Joe once about the 24/12/96, when the Petition was already in Vila. She knew that Joe was staying together with Jenny and one time she asked if they were married in church. Joe, asked her why she wants to know. Joe even told her that Jenny chased him out of their home in Australia and she told him to find another girl.

Joe also made no denial of having sex with Veronica and Jeanette but said they also volunteered to have sex. I accept on both relationship with both Co-respondents, that Joe did suggest to them both that he will divorce his wife, in the relationship with Jeanette, and will marry Jeanette, and in the relationship with Veronica he will marry Veronica.

The matter was brought to the parties respective chief by the Petitioner. In the meeting with the chief to settle this matter I find no convincing evidence to say that Veronica forced herself to marry Joe Ligo, even though there was some evidence to that extent, but was of very little value to say that Veronica has forced herself to marry Joe.

Elsie Morris who Veronica was staying with came with Veronica to the meeting with the chief, but she did not go for that meeting to give Veronica away to Joe.

Both Co-respondents had a general knowledge that Joe was married. Jeanette was more aware of Joe as being married to Jenny. She even had more relationship with Joe than Veronica. And further more, that relationship occurred and continued at Ambae Island where the Petitioner comes from. Veronica knew that Jenny was leaving together with Joe Ligo as husband and wife, but at least, she tried her best to get some explanation from Joe whether they were married or not. She fail to discharged what a reasonable woman should do, that is, to inquire whether Joe was married or not. It is not sufficient just to ask Joe Ligo whether he was married or not.

I find that both Co-respondents conducted themselves as showing no respect to the marriage life of the Petitioner and the Respondent. There was a total disregard to the right of the marriage between the Petitioner and the Respondent.

Adultery is a ground for divorce under s. 5 of Matrimonial Causes Acts which give rises to claim for damages and damages if awarded can be enforced under s20 of the Matrimonial Causes Acts by a fine or imprisonment.

Fundamental Duties

Under article 8 of the constitution, Fundamental Duties are non justiciable, nevertheless the call under article 8 of the constitution is to encourage any

Public Authorities to encourage compliance with article 7 (f) &(h) in their decision making.

On Fundamental Duties under Article 7 (f) and (h) is quite relevant for the court to observe and take into consideration.

On Fundamental Duties, Article 7 reads ;

Every person have the following fundamental duties to himself and his descendants and others.

f) *To respects the right and freedom of others and to co-operate fully with others in the interest of interdependence and solidarity and*

h) *In the case of parent, to support and educate all the children...*

In this country as far as I know there are no such law on adultery and enticement and as such this court is called upon under article 7 (f) and (h) as an authority to encourage compliance with article 7 (f)& (h) of the constitution. By compliance ,the court must discourage the acts of adultery. Adultery under the Concise Law Dictionary refer to adultery *as voluntary sexual intercourse within persons of the opposite sex one of whom is married to a third party.* This best explain the relationship and inter- relationship of all parties in this matter as referred to under the Matrimonial Courses Act. Under section 20 of the said Act adultery is a ground for divorce and a Petitioner can claim damages in conjunction with a petition for divorce. In this case the act of adultery was not only an act of immorality but also it was unlawful

In this case both Co-respondents had no respect over the marriage between the Respondent and the Petitioner and what more they had total disregard to the marriage unity between the Petitioner, Respondent and their children.

Damages

Customary Settlement

The matter was brought before the chief for settlement and the chief ordered the Respondent to pay 2.000 vt to the chief and 12.000 Vt to the Petitioner. Veronica was ordered to pay 8.000 Vt fine to the Petitioner. No orders made against Jeanette as she did not attend. The Petitioner refuse to accept such payment and brought her claims before the Senior Magistrate Court. The Court then granted and order for dissolution of marriage and also custody and maintenance.

Claim for damages in the Magistrate Court

The Petitioner filed her claim for damages in conjunction with the Divorce Petition.

The Petitioner was in Australia on study when she heard that her husband, the respondent, was going around with another woman Jeanette in Vanuatu.

She made a few calls to Vanuatu which was an expense on her. She was worried and she was not concentrating on her studies. This affected her studies very much. Margaret Gray a social worker with Aus Aid explain in her letter of the 4 June 1997 of the situation the Petitioner was facing at that time. She did not complete her courses due to the problem and she came back to Vanuatu.

The Petitioner has suffered a lot due to the act of adultery by the Co-respondent with her husband. So in actual fact the act of adultery between the Co-respondents and the respondent has torn apart her family relationship. If that is so then she must be compensated for the losses expenses and the suffering and therefore I make the following orders against the Co-respondent to pay as compensatory Damages to the petitioner as follow ;

1. Jeanette Tari is ordered to pay as compensation the sum of 30,000 vt to the Petitioner within 3 months in default be imprisonment under section 20 for the Matrimonial Causes Act for a period of one month.
2. Veronica Bule - is ordered to pay as compensation the sum of Vt 30.000 to the Petitioner within 3 months in default be imprisonment under section 20 of the Matrimonial Causes Acts for a period of one month.

Exemplary Damage

Both the Co-respondents and the Respondent has committed an unlawful act. The wrongful act is having sexual intercourse with a married person which gives rises to a claim for damages in conjunction with a Divorce Petition and further they both had no respect in the family unity of the Petitioner, Respondent and their children which now they have separated as a result of such unlawful act. Therefore this court consider as appropriate to impose exemplary damages against the Co-respondents as a form of punishment and therefore make the following exemplary damage orders ;

1. Jeanette is ordered to pay 30.000 vt to the Petitioner within 3 month in default be imprisonment under section 20 of the Matrimonial Causes Act for the period of one month to be serve concurrently.
2. Veronica is ordered to pay 10.000 to the Petitioner within 3 months in default be imprisonment under section 20 of Matrimonial Causes Act for a period of one month and to be serve concurrently.

Dated at Port Vila this 21st day of June 1997....



~~REGGETT MARUM~~
Senior Magistrate