

(Matrimonial Jurisdiction)

BETWEEN: JOHN JOLAME SHING
Petitioner

AND: MARIE ROSE SHING
Respondent

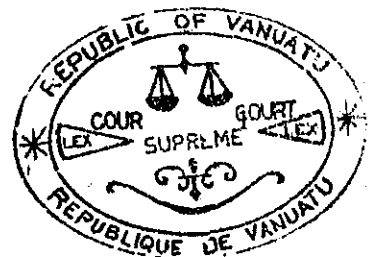
Mr. Edward Nalial for the Petitioner
Mr. Stephen Joel for the Respondent
Glerk Mrs. Veronique Teitoka

JUDGMENT

On 20th November 1982 John Shing and Marie Rose Shing were married. They now have four children Rozanne aged 18 years, Jozianne 15 years, Kami 12 years and Yoshua 7 years.

In October 1998 Mr. Shing left the matrimonial home. In evidence he said, "we were two professional people living together, minding our own business, we drifted apart until we had not got a relationship". The petitioner, Mr. Shing, is a political adviser in a government ministry; the respondent, Mrs. Shing, is the Principal of a Christian College in Port Vila and runs a small tourist boutique.

Mr. Shing said we quarrelled, and then there was forgiveness and then we quarrelled again. There was plenty of trouble. By October 1998 he had met Sera Tomaki. A relationship was starting and after he moved out of the matrimonial home they set up house together and a baby girl was born to them in September 1999. Mr. Shing was asked 'You left because of the



affair with this woman?”. He replied “This contributed, but it was not the only reason”.

Mrs. Shing says she was very upset. She cried, lost weight, did not want her marriage to break up and even today says she wants the petitioner to return to her. She also objects on religious grounds to divorce. She says in February 1999 a colleague from work came round to fix the cyclone shutters on her home. She had sexual intercourse with him that evening. She says it was a “one nightstand, I didn’t want a relationship with him”. It is upon this adultery that the petitioner, Mr. Shing, brings this case.

I accept the evidence of Mrs. Shing when she says there was only this one night stand. She regrets it, and says the petitioner told her, when leaving, “to find herself another man”.

In evidence Mr. Shing said he told her he did not intend to return and it was in her best interests to find another husband. His real concern was that any new husband treated the children properly. “It does not concern me if she sleeps with another man. This is her concern”.

It is also agreed by the petitioner and respondent that they had sexual intercourse together two or three times after the split up, Mr. Shing says in February 1999 and Mrs. Shing says twice in September 1999, and once in February 2000.

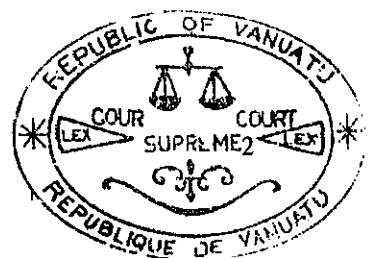
The respondent’s position is simple. She accepts the adultery, but says the petitioner connived at it and has condoned it. She wants the petitioner back and also on religious grounds objects to divorce.

Mr. Shing’s position is the marriage is over. That is the reality. He wishes to marry Serah Tomaki, he would like joint custody of the children of the marriage with reasonable access and is willing to pay maintenance.

I must, of course, apply the law.

Section 9 (3) of the Matrimonial Causes Act says

- “If the Court is satisfied on the evidence that –*
- (b) *where the ground of the petition is adultery, the petitioner has not in any manner ... connived at ... the adultery...*

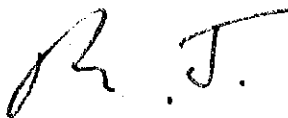


the Court shall pronounce a decree of divorce, but if the Court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition”.

I cannot be satisfied the petitioner has not connived at the adultery. In these circumstances I must dismiss the petition.

DATED at Port Vila, this 17th Day of April 2001

BY THE COURT



R. J. COVENTRY

Judge

