

BETWEEN: **MARIE JOSEPH BULE**
Petitioner

AND: **MORRISON BULE**
Respondent

AND: **MEREAMA TARI**
Co-Respondent

Coram: **Justice Oliver.A.Saksak**

Counsel: **Vola Matas for the Petitioner**
No appearances for or by the Respondent and Co-Respondent

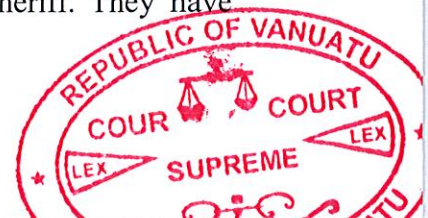
Date of Hearing: **3rd March 2015**

Date of Judgment: **6th November 2015**

JUDGMENT

Background

1. The Petitioner petitioned for divorce on grounds of adultery in the Magistrates Court. On 19th May 2013 the Magistrates Court issued a Decree Absolute declaring that the marriage between the petitioner and the respondent was and is absolutely dissolved.
2. Thereafter the Petitioner claimed VT 700.000 each in damages for breakdown of marriage against the respondent and the co-respondent. The total amount of damages exceeded the jurisdiction of the Magistrates Court therefore this part of the claim was transferred into the Supreme Court for determination.
3. The Court issued its first notice on 23rd June 2014 for conference hearing on 30th June 2014. There was no hearing on that date but the matter was adjourned to 1st July 2014. Only Counsel for the petitioner was present in Court on that date. The respondent and co-respondent were not present.
4. In subsequent hearings from 7th July 2014 the respondent and co-respondent appear to have evaded service of notices and orders of the Court by the Sheriff. They have



given their addresses as Seven Star, Fresh Water 1 and Erakor Half-Road but have never been found at any of those places. The handwritten note of the Sheriff dated 3rd March 2015 confirms this.

5. On 15th September 2014 directions were issued requiring the petitioner to file and serve sworn statement in response to the respondent's unsworn statement dated 8th October 2012 and to file written submissions within 21 days.
6. The petitioner did not file any sworn statement as directed but filed written submissions on 15th April 2015.

The Issues

7. There are two issues: First, whether or not the petitioner is entitled to claim damages against the respondent and co-respondent for their adulterous acts which caused the breakdown of their marriage? And second, if so, what is the appropriate damage and quantum of damages?

8. Discussions

8.1. At the outset I wish to make some preliminary observatory remarks in the following manner before moving on to discuss and consider the two issues identified-

- a) The respondent and co-respondent are unrepresented. Mr Bule explained this in his final paragraph on page 7 of his "**Sworn In Statement Against Marie Joseph Bule**" dated 8th October 2012. The respondent sought an adjournment in the Magistrates Court on 21st June 2012 for the purposes of finding a lawyer. By 15th August 2012 the respondent wrote to the Court to seek further adjournment for reasons he was on official tour on Pentecost, and that he had not found a lawyer and needed more time. On 12th September 2012 the respondent was personally in Court. He did not dispute the petition but he disputed the claim for damages and claim for alimony and family maintenance. The Magistrates Court granted a decree nisi for a period of 3 months and gave 14 days to them to file defences and a further



14 days to the petitioner for replies. Pre-trial conference was fixed for 12th October 2012.

b) As a result of those directions the respondent lodged the document entitled *“Sworn In Statement Against Marie Joseph Bule”* (the Document) on 8th October 2012 some 4 days prior to the pre-trial conference fixed for 12th October 2012. Why the Document was not stamped to indicate that it was filed and why it was accepted by the Registry and kept on file is something that someone from the Court’s Registry should have explained. In any event, the Document is on file and having been lodged or should I say prepared and filed by a non-lawyer. The Document is a mixture of (i) a sworn statement, (ii) a defence, (iii) a response and (iv) a written submission, and having been accepted by the Court Registry, the Document must now be deemed as such, on behalf of the respondent and the co-respondent.

c) The Document contains matters which the Court directed the petitioner on 15th September 2014 to file responses to.

The petitioner however failed to do so. The effect of that failure is that the matters raised by the respondent stand unchallenged and undisputed. These include the fact that the respondent has made alimony to the petitioner by transferring his Leasehold Title 11/0122/055 situate at Ohlen to her together with-

- a) A main house with 4 bedrooms, kitchen and lounge with all furniture and household items.
- b) A newly built Kitchen with iron roofing.
- c) A tool shed being converted into a rent room by the petitioner to collect rentals.
- d) All working tools and other properties on the land.

The respondent has attached documents and receipts showing payments of appropriate fees in relation to the transfer. In all probability, it must be inferred there has been a transfer to the petitioner.



- d) Having done the transfer, for the respondent and the co-respondent that settled the alimony and the maintenance aspect of this claim. And for the respondent, there is nothing left to be concerned with. The respondent did request in his Document at page 7 and in his second to last paragraph that the case be dropped as there is no basis and if there was any avenue of settling the matter out of Court. It may explain why the respondent and the co-respondent have not taken any keen interest in the case or proceeding.
- e) The respondent raises allegation of extra-marital affairs of the petitioner in 2009 and 2010 in his statement dated 8th October 2012. Further the respondent raises domination and cruelty by the petitioner in early 1980, 1990 and 2000. The petitioner has not filed any responses to these allegations as directed by the Court. The failure implies that the allegations are correct. Further, those allegations were the very basis and result of the respondent's going off to Fiji in 2011 to find the co-respondent.
- f) The party at fault in this case was the petitioner. First in time in 2009 and 2010, committing extra-marital affairs in New Zealand. The respondent was at fault as well but his actions were provoked or resultant from the petitioner's actions.

8.2. Coming now to the main issue: Whether the petitioner is entitled to damages? The law as to damages for adultery resulting in divorce or separation or dissolution of marriages is not in doubt. **Section 17 of the Matrimonial Cases Act** [CAP.192] entitles the aggrieved party to a divorce proceeding to damages for adultery. The case authorities of **Banga.v. Waiwo** [1996] VUSC 5 and **Maltok.v. Maltok** [2002] VUSC 70 lay down the clear principles of damages.

8.3. However the facts and circumstances of this case differ substantially from the facts and circumstances of **Waiwo** and **Maltok cases** and such, damages must be refused to the petitioner.



8.4. The Co-respondent lodged her “*Sworn In Statement Against Marie Joseph Bule*” also on 8th October 2012. From her statement, all responsibility lies with the respondent. And the Court accepts that.

9. The Petitioner claims for child maintenance in respect of Catherine Bule, born July 1995. By proper calculation this daughter is now 20 years of age. There is now no obligation on the respondent to maintain her as she has gone passed the age of 18 years.

10. Conclusions

10.1. The respondent has provided sufficient alimony for the maintenance of the petitioner by the transfer of his Leasehold Title and House and household effects and he is not required to do anymore than that.

10.2. The Petitioner’s claim for damages are rejected and are dismissed.

10.3. The petitioner’s claim for child maintenance has no foundation and is dismissed.

10.4. The whole claim of the petitioner is dismissed.

10.5. There be no order as to costs. Each party will pay their own costs.

DATED at Port Vila this 6th day of November, 2015

BY THE COURT


OLIVER.A.SAKSAK

Judge

