

BETWEEN: JOHN PRESLEY GARAE
Claimant

AND: MOANA KORIKALO
Defendant

Date of Hearing: 16th October 2023
Date of Judgment: 7th February 2024

Before: Justice Oliver Saksak

Counsel: Mr James Tari for the Claimant
Mrs So' Oletaua Motuliki for the Defendant

JUDGMENT

Introduction

1. This is a claim filed on 17th November 2021 by the claimant claiming for refunds of monies and compensation for his contributions to their defacto relationship

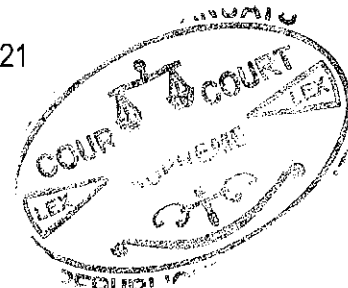
Background and Facts and Claims

2. They performed a custom marriage on or about 23 August 2009 and have had three children namely Taylor Korikalo, Davida Korikalo and Jefferson Garae.
3. The Claimant claims that during the course of their co-habitation together he contributed-
 - a) To the Sandalwood garden and fence in the sum of VT 2, 070,000
 - b) Cash in sum of VT 4, 158, 000
 - c) Transferred cash through Kwik Cash- VT 1,09,736

Total- VT 7,320,726
4. He further claims interest at 5% per annum from the date of filing together with costs.

Defence

5. The defendant filed a defence on 22nd December 2021



6. While she accepts paragraphs 1, 4 and 21 of the claims and accepts in part paragraphs 2, 5, 7,10,11, 14, 16,17, 18, and 19, she denies all the other claims.
7. In relation to the claim in paragraph 5 the defendant states in her defence that it was the claimant who ended their relationship when she refused to do so.

Evidence and Submissions

8. I heard the claimant's oral evidence at trial on 16th October. I also heard the defendant give evidence in her defence. Both of them were cross-examined on oath on their evidence.
9. I allowed time to counsel for filing of written submissions. I received one set of written submissions filed on 23rd October 2023. I received the defendant written submissions filed on 14th November 2023.
10. The claimant raised one issue namely whether the claimant is entitled to the distribution of customary marriage property?
11. The claimant relies on the Matrimonial Causes Act 1973 (UK), and the case laws of Joli v Joli [2003] VUCA 26 and Bradford v Bradford [2014] VUSC 135 to submit that the claimant entitled to half of the marital properties.
12. The defendant argued and submitted that the UK 1973 Act is silent on customary marriages therefore there were no matrimonial properties. Further that the case of Joli v Joli was not the most relevant precedent to assist the claimant.
13. The defendant submitted the relevant cases were Gilles v Keongh [1999] 2NZLR 327 and Mariango v Nalau [2007 VUCA 15 were to be relevantly be dismissed with indemnity costs.
14. Base on the cases submitted the defendant submitted there was no verifiable evidence by the claimant to support his claims and therefore the claims should be dismissed with indemnity costs.



Discussion

15. Counsel for the parties have not made any references to the Vanuatu Legislation which is the Matrimonial Causes Act [CAP 192] and in particular Section 4 which states:

"Dissolution of Custom Marriage when two persons have been married according to custom, the marriage may be dissolved, annulled or separation ordered only in accordance with custom:

Provided that notification of such dissolution or annulment of the marriage shall be made to the District Registrar in accordance with the provisions of the Civil Status (Registration) Act [CAP 61] as amended." (My underlining for emphasis)

16. What the claimant has done to initiate proceeding claiming for his contributions to the relationship without first of all taking steps in accordance with section 4 of the Matrimonial Causes Act [CAP 192] to have the relationship annulled, and notified to the Registrar

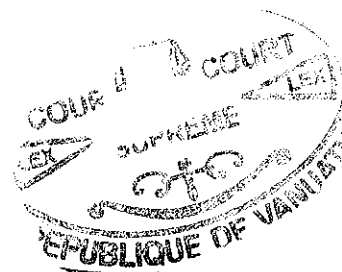
17. That failure alone is enough for the Court to conclude that there is no legal basis for the claimant's claims.

18. But I go a step further. The claims in cases of this nature appear to me to be equitable remedy. And to claim an equitable remedy requires that a party claiming it must come to Court with clean hands.

19. In the defendant and the evidence by sworn statement of the defendant there is clear evidence of cruelty by the claimant which led to her applying for a protection order in the Magistrate Court in April 2021. These documents are annexed as "SSMK2" to the further sworn statement of the defendant dated 25 September 2023.

20. Under Section 5 (a)(iii) of the Matrimonial Causes Act [Cap 192] persistent cruelty is one of the grounds for seeking a dissolution of marriages, which includes a custom marriage.

21. The evidence of that fault on the claimant's part adversely effect his claims to contributions in this case because it is a claim in equity.



22. Having so found, I answer the issue whether the claimant is entitled to distribution in this case as "NO".
23. I therefore dismiss the claimant's claims in their entirety.
24. I accept that the defendant is entitled to her costs on an indemnity basis, to be taxed if not agreed.

**DATED at Port Vila this 7th day of February 2024
BY THE COURT**


.....
**Hon. Oliver Saksak
Judge**

