

IN THE SUPREME COURT OF TONGA  
FAMILY JURISDICTION  
NUKU'ALOFA REGISTRY

Solicitor General  
Scan & file  
FD 59 of 2013  
18/06/14

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BETWEEN: PO'ULI KAE'EVA KI MAMANA HAVILI  
- Petitioner

AND : MOREEN KHAN HAFOKA  
- Respondent

'O. Pouono for the Petitioner  
L.M. Niu S.C. for the Respondent

JUDGMENT

[1] The Petitioner (husband) seeks a decree nisi on the ground that the Respondent has:

“behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent” (Divorce Act–Section 3(1)(g).

[2] The particulars of the behaviour are set out in paragraph 7 of the petition. The principal matters complained of are arguments, a period of separation, a dispute about the Respondent's right to draw on the Petitioner's bank account and a complaint by the Respondent that her husband had assaulted her.

- [3] That the Respondent's complaint was in fact true becomes clear from the Answer and from the Respondent's evidence which I accept. The Petitioner was found guilty in the Magistrate's Court of assaulting his wife and was ordered to pay her \$100 by way of compensation.
- [4] In his evidence the Petitioner referred to several other matters of complaint which had not been pleaded. The most serious of these was that the Respondent had been in touch by mobile phone with the father of a child she had borne before her marriage. This, the Petitioner alleged, was in breach of an agreement that he and his wife had reached.
- [5] The Respondent agreed that she and her husband often argued. She described her husband as unreasonably jealous. She denied that anything improper between herself and the father of her elder child or indeed anyone else had ever occurred. The child's father merely wished to know if his son was well. She agreed that she and the Petitioner had argued about the bank account but denied doing anything improper.
- [6] The Petitioner told the Court that the parties were no longer living together. After previous separations they finally separated in February 2013. The Respondent agreed that they were not presently living together but denied that they had finally separated in 2013. According to her evidence, they spent Easter 2014 together and they have since frequently spent the night together. The Petitioner admitted sleeping in the same bed as his wife on the night before the hearing in a room behind his parent's house, but denied that sexual intercourse had occurred. The Petitioner's evidence was that since 2013 she and her husband had sexual intercourse "hundreds of times".

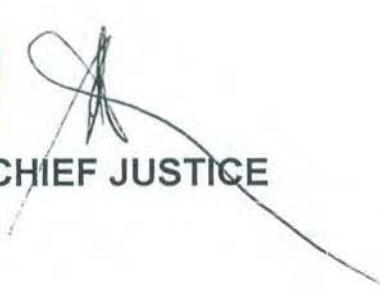
- [7] Where a petition is based on Section 3(1)(g) the question is whether it has been proved that “any right thinking person would conclude that the (wife) has behaved in such a way that the (husband) could no longer be expected to live with her, taking into account the whole of the circumstances and the character and personality of the parties” (see *O’Neill v O’Neill* [1975] 3 All ER 289, 295).
- [8] In the present case I am not satisfied that this burden of proof has been discharged. Having heard the parties I am satisfied that the main reasons for the difficulties being faced by them are first, the Petitioner’s mother and her disapproval of her son’s marriage and secondly, the consequential financial difficulties facing the parties. I accept the Respondent’s evidence that she and her husband are still intimate. I do not find that this marriage has irretrievably broken down. With family goodwill and support I believe the marriage can be saved, to the advantage not only of the parties but also to the benefit of their two young children.

Result: The Petition is dismissed.  
There will be no order as to costs.

NUKU’ALOFA: 13 June 2014.

N.Tu’uholoaki  
13/6/2014.



  
CHIEF JUSTICE