

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

Solicitor General  
Forward #11  
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11/07/14  
11/07/14

FD 47 of 2014

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**BETWEEN:      RONIKA SINGH SHARMA                      -      Petitioner**

**AND:              ATLESH KUMAR SHARMA                      -      Respondent**

**AND:              CASSANDRA TUKU' AHO                      -      Co-Respondent**

**T. Fakahua for the Petitioner**  
**Ms L. Tonga for the Respondents**

**DECISION**

[1] On 1 April 2014 the Petition was filed. It is on the grounds of adultery. In addition to a decree nisi the Petitioner seeks custody of the child of the family, damages from the Co-Respondent, division of the matrimonial property, accommodation to be provided for her and the child of the family and maintenance at the rate of \$6000 per month.

- [2] Both Respondents filed Answers to the Petition denying adultery and seeking dismissal of the Petition.
- [3] From affidavits filed by the Petitioner and Respondent it emerges that they came to Tonga in September 2010 after the Respondent was appointed on contract by Digicel Tonga Limited.
- [4] The child of the family, the Petitioner and the Respondent were all born in Fiji and are Fiji citizens. Prior to coming to Fiji, the Petitioner and the Respondent lived in Fiji with their daughter.
- [5] In May 2014 the Respondent's employment with Digicel was terminated. Shortly thereafter the family returned to Fiji where they are now living, though separated.
- [6] On 30 May the matter came before me for directions. I pointed out that paragraph 7 of the Petition lacked particulars and gave leave to amend. I also raised the question of the Petitioner's domicile and referred counsel to the first sentence of Section 3(1) of the Act.
- [7] On 27 June when the matter was again mentioned the question of domicile was again raised and the case was adjourned for submissions.
- [8] On 2 July Mr Fakahua filed very helpful written submissions. He referred to Section 20(1)(c) of the Act which is as follows:

“Without prejudice to any jurisdiction exercisable by the Court apart from this Section, the Court has jurisdiction to entertain proceedings by a wife notwithstanding that the husband is not domiciled in the Kingdom, in the case of any proceedings under this Act if:

(c) the wife is resident in the Kingdom and has been ordinarily resident there for a period of two years immediately preceding the commencement of the proceedings and the husband is not domiciled in any part of the Kingdom.”

[9] From a review of the authorities (see e.g. *Rayden on Divorce* 17<sup>th</sup> Edn. Paras 4.4. et. seq.) I am satisfied that the Petitioner was not, at the time that the petition was presented, domiciled in Tonga. The first question therefore is whether Section 20(1)(c) applies and if so whether it requires the Court to assume jurisdiction. If the Court is not required to assume jurisdiction then the question is whether it should do so.

[10] Mr Fakahua told the Court that the Petitioner had come to Tonga for the hearing. He pointed out that it was not in dispute that she was living in Tonga when the petition was presented and that she had lived in Tonga for well over the two years required by Section 20(1)(c) prior to the presentation.

- [11] Ms Tonga, in reply, stated out that the Petitioner has no residence in Tonga nor a residency visa, she is merely a visitor. She also referred to the fact that the Respondent has returned permanently to Fiji. She suggested that Fiji was the obvious jurisdiction in which to proceed.
- [12] In my opinion, Section 20(1) is permissive, not mandatory; the Court may entertain jurisdiction but is not compelled to do so. In the present case it is clear that the Petitioner, at the time that the petition was presented complied with the requirements of the Section. It is equally clear however that she is no longer resident in Tonga, merely a visitor. Her domicile and the domicile of the Respondent and the child of the family is Fiji.
- [13] The fundamental principles governing venue where a choice is available were explained in *Spiliada Maritime Corp. v Consulex Ltd* [1987] AC 460, 474. Applying those principles to the facts of this case, I conclude that the appropriate forum is the Family Court of Fiji. In arriving at this conclusion I have particularly taken into account the wide ranging applications for ancillary relief. These cannot, in my opinion, be satisfactorily dealt with in Tonga when the child is living in Fiji, when the matrimonial property is there located, where the Respondent is employed and where maintenance, if awarded would be paid and where custody and access orders would have to be enforced.

Result: These proceedings are permanently stayed.  
There will be no order as to costs.

Dated: 3 July, 2014.  
N. Tu'uholoaki  
3/7/2014.



  
CHIEF JUSTICE