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**IN THE SUPREME COURT OF TONGA  
DIVORCE JURISDICTION  
NUKU'ALOFA REGISTRY**

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**FD 146 of 2013**

**BETWEEN: Fehoko Foliaki Palu**

**- Petitioner**

**AND: Semisi Fakatete-'I-Koloa Palu**

**- Respondent**

**BEFORE THE LORD CHIEF JUSTICE**

**Heard: 12 March 2015**

**Appearances: Mr D Corbett for the petitioner  
Mr 'O Pouono for the respondent**

**REASONS FOR RULING**

[1] This is a wife's application for divorce brought under Section 3(1)(g) of the Divorce Act. The section provides that the Court may dissolve the marriage if satisfied:

that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent

[2] The respondent filed an answer to the petition disputing most of the allegations made against him but did not oppose the dissolution of the marriage. He did not file a cross-petition.

- [3] At the conclusion of the hearing I dismissed the petition and advised that parties that I would give my reasons later. I now do that but I state my reasons briefly. The parties have three children and the custody and access arrangements for them have been, and continue to be, contentious. I do not wish to prejudice progress by an unnecessary analysis of what I find to be unproven allegations.
- [4] The parties were married on 2 May 2007 at Tongatapu. There is a significant age difference between the parties. At the date of their marriage the respondent was 43 years old and the petitioner was just 16 years old. The petitioner married the respondent because this was expected of her by her mother who appears to have had a dominating influence over her. For some years the marriage was satisfactory but in time it soured. The parties have different opinions as to why this souring occurred. The respondent says that the petitioner started to go out drinking and partying and then got herself a boyfriend. He says she gave him a sexually transmitted disease. The petitioner blames the unreasonable behaviour of the respondent.
- [5] The parties have now been living apart since August 2013. Their marriage has irreconcilably broken down. That in itself is not a basis upon which I can grant them a divorce. It gives the Court no satisfaction to sustain a marriage that is clearly over but before dissolving it I must be satisfied that the statutory grounds relied upon are proven.
- [6] I take guidance as to the meaning of s3(1)(g) of the Act from the decisions of Ford J in *Pulini v Masunu* [2001] TOSC 6 and *Fe'ao v Fe'ao* [2001] Tonga LawRp 44. I must decide whether the cumulative

conduct of the respondent was sufficiently serious in all the circumstances of the case that judged from a reasonable person's point of view the petitioner cannot reasonably be except to live with the respondent.

[7] I heard evidence from the petitioner and the respondent. The petitioner in her evidence made many allegations against the respondent that ranged from the serious to the trivial. Almost all of the allegations were denied by the respondent.

[8] I did not find the petitioner to be a reliable witness. She refused to answer questions that did not suit her. There was no corroboration of the allegations when this could reasonably be expected. Her conduct during the marriage and at the hearing was inconsistent with her allegations. For example, she alleged that the respondent had put the children at risk and had acted inappropriately towards them at bath times yet at the hearing she was happy for him to be granted custody of them. She alleged that the respondent had forced her to give away their youngest child yet she had sworn an affidavit giving her consent to that. She is clearly confused about some matters and in a changeable state of mind.

[9] On the other hand, the respondent's evidence was logical, he was willing to accept fault when it was due and I found him credible.

[10] I was not satisfied that any of serious allegations made by the petitioner, that the respondent had chased her away from the home, had forced her to give away their youngest child, had engaged in marijuana cultivation, had failed to respond to a sexual attack upon

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her by one of his friends and that he acted inappropriately towards the children were proven on the balance of probabilities.

[11] Other complaints that the petitioner made, such as, that the respondent spent too much time drinking with his friends, required her to talk to his friends and did not pick her up from the airport on one occasion are examples of what has been described as part of the ordinary wear and tear of married life and are not grounds for divorce.

**The result**

[12] I find that the petitioner has not discharged the burden upon her to prove that the respondent has behaved in such a way that she cannot reasonably be expected to live with him and the petition for divorce is dismissed.

**NUKU'ALOFA: 17 March 2015.**



A handwritten signature in black ink, appearing to read "O. G. Paulsen".

O. G. Paulsen

**Lord Chief Justice**