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IN THE SUPREME COURT OF TONGA

DIVORCE JURISDICTION

NUKU'ALOFA REGISTRY

FD 115 of 2020

BETWEEN : SEMISI POHAHAU

- Petitioner

AND : SESILIA LAVEMAI POHAHAU (nee FUAVAI)

- Respondent

BEFORE HON. JUSTICE NIU

Counsel : Mrs S. Ebrahim for petitioner

Hearing : 20 August 2020

Ruling : 20 August 2020

RULING

[1] I made my ruling and gave my reasons orally on this petition in Court this morning refusing the grant of a decree nisi in respect of this marriage. I now give my reasons in writing.

Evidence

[2] The parties were married on 26 January 2017, both at the age of 55 years, the petitioner being a bachelor and the respondent having been married twice before, and she having children from those marriages who lived with the parties at a home of the petitioner's sister at Longolongo. The petitioner has his own town and tax allotment at Vava'u. This is what he told me when I questioned him in Court.

[3] He said that in early this year, one of the respondent's daughters with whom they were living gave birth to an illegitimate baby girl, and the respondent suggested to him that they adopt the child as their child but he did not agree and suggested to her that they would just continue to care for the mother and the child as they were doing. He said that the respondent was upset with him for refusing to adopt the child and she and her children left.

24 AUG 2020



- [4] He said that after 2 weeks, the respondent and the children returned and they continued cohabitation and that on 23 March 2020, his sister spoke to them to treat her house properly, to which the respondent said to her: "Is your house be-decked with gold? If I say house, house! If I say money, money!" He said that she also said to his mother, "My children are more important to me than my husband".
- [5] He said that she then left with her children, and that as she was leaving, she said to him, "As soon as possible file our divorce". He said that they have been separated since.

Ground of petition

- [6] The ground of the petition is that contained in S.3(g) of the Divorce Act, namely:

"(g) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent".

- [7] No particulars of the unreasonable conduct of the respondent is stated in the petition, and I tend to think that counsel had thought that she did not need to state them because she was informed that the respondent would not oppose the petition. She was wrong. The particulars must be stated in the petition, not only so that the respondent is fully informed, but more importantly so that the Court is informed in order that it can consider whether or not such conduct is so unreasonable that the marriage be dissolved.

Consideration

- [8] I find that the only conduct upon which this petition is based is when she spoke those said words to the petitioner's mother and sister. I find that her conduct of leaving the petitioner for 2 weeks cannot be relied upon because the petitioner had already accepted her back after that and they continued to cohabit.
- [9] As for the said words spoken to the mother and sister, after 3 years of marriage, I consider that it was an isolated incident where the words were spoken in a moment of annoyance and even anger, but were not such the petitioner can thereby treat her as no longer fit to continue to be his wife.
- [10] I am satisfied that had the respondent not left him that day, he would not have come to this Court to divorce her for saying those words to his mother and sister. I believe he has only come to divorce her today because she has not returned to him. This petition was not filed until 9 July 2020, nearly 3

months after said the words. I believe he has only filed the petition because she has not returned to him.

- [11] I also believe that the petitioner may now be fearful that he may die before he can divorce the respondent, and that the respondent would claim his town and tax allotments as his widow, and has therefore brought this petition now instead of waiting for completion of 2 years separation on 23 March 2022.

Conclusion

- [12] Being satisfied that the words spoken were not so unreasonable as I have said, I conclude that the respondent has not behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. Accordingly, I dismiss this petition.



A handwritten signature in blue ink, appearing to be "Niu J", is written over the seal.

Niu J

J U D G E

Nuku'alofa: 20 August 2020