



he had a child. After Dawn Gibson he had another relationship with Rebecca Corn Ward of New Zealand, they have an off spring a baby girl **ADI LITIA VUIKABA TUIBURELEVU**. He continued to say that most nights he stayed at Ms Gibson's home ate with her and would only come in the early morning to change his clothes and returned to work. When he stayed at home he would return home late at night from work or a function, had his dinner alone and went to sleep. The Petitioner said that he did not ask for divorce to get married but his intention to divorce was because there is no love to Taraivosa the Respondent. He admitted that he continued to supply the family on \$50.00 groceries every week, house keeping, clothings for the children and all other necessary items that a father would do for the family because of the sons, mother and house keepers.

The Petitioner continue to answer when cross examined that they did not go together, nor sitting together when invited to attend functions as President of the Senate. She was only invited as a ~~mother~~ of Protocol.

The Petitioner's witness 1 also gave evidence on oath and alleged that they were residing together at Caubati Home since 1982. They were brought up together with Petitioner through out their life time at their Chiefly home in Bau "**NAISOGOLACA**".

He was with Petitioner as a House keeper from 1982. The household members were, the Petitioner, Respondent and their two children. His wife their two children and him.

From 1992 the Petitioner and the Respondent had nothing to do together. The Petitioner called P.W.1 (Petitioner's witness 1) and his wife and told them that they should look after their children because he will have nothing to do with Respondent. The P.W.1 continued to say that they lived and slept on separate bedroom. Their clothings were separately washed. They were not having their meals together. They were not in a talking terms. They never went together on big gatherings. They never watch television together. They never sat together with children.

When the Petitioner's witness 1 was cross examined by the Respondent's counsel, he said that they did not discuss with Petitioner what to say in Court. Traditionally as a House keeper, he is almost responsible for everything in the household for the Petitioner who is a High Chief in Bau and Fiji as a whole.

The Petitioner's witness 1 continued to reply by saying that they had good relationship with Respondent. That the Respondent and the Petitioner's mother were in good terms. That the Petitioner completely moved out of the house in 1995.

The Respondent also gave evidence on oath and alleged that they were not living separately from 1992. The Petitioner continued to reside in the matrimonial home in 1992 and than moved out of the matrimonial home in July, 1995. She continued to say that she began to experience problem at home before Easter in 1992. She found out that

the Petitioner was having an affair with one Dawn Gibson that was when she was two and half months pregnant to their second child.

When she found out the Petitioner's affair with Miss Gibson, they argued and she threw her wedding ring to him after the Petitioner admitted his affair with Miss Gibson. She tried to reconcile several times but to no avail. The relationship continued to get worst in 1992.

In 1993 the Petitioner had another relationship with New Zealand girl Rebecca Ward. The Petitioner made frequent visit to New Zealand because of the second relationship. The relationship continued to get tougher, rougher and difficult between the two parties.

The Respondent continued to say that during the difficult time from 1992 to 1995 the Petitioner continued to supply the family with:

1. Groceries
2. Electricity Bill
3. Water bill
4. Land rate
5. Money given to the House keeper for the family.

From 1992 to 1995 the Respondent said that they would have their breakfast together. Lunch take separately because she was at school. For dinner at times they would eat together, at times not. For household things, she did her own washing. The housegirl would do the children and the Petitioner.

The photographs exhibited in court as exhibits 1 and 2 taken in October and November, 1993 showed that the family were all attending the function of baptism of Ratu Jone and the birthday of Ratu Kadavulevu at Naisogolaca in Bau on a Sunday.

The Respondent recalled that they attended two parties together in 1993.

1. The grandmother of the elder son. They picked her up at the Berjaya Inn and had dinner together at the New Pecking Restaurant.
2. They were invited by the Korean Ambassador for Dinner.

From 1993 to 1995 she continued to try her best to make the marriage work on reconciliation but the Petitioner never allowed to happen. The children are the ones that suffered the most.

When the Respondent was cross examined by the Petitioner she said that she would do anything now to make the marriage work through reconciliation. The Petitioner refused to communicate with Respondent directly but he would communicate through the House keeper Mr. Vakauru. She continued to answer by saying that they

drove in separately and sat separately at the opening of the Senate. They went and sat together at the Korean Ambassador's dinner. She admitted that they were having problems at home from 1992 to 1995, but outside the family home she tried to behave normally and friendly.

With Respondent's submissions the case of **Sharp v Sharp (1961) 2 F.L.R. 435** the Supreme Court of Western Australia held that

***"to establish the ground of separation....., a Petitioner must prove not only a destruction of the matrimonial relationship but also a physical separation"***

In his judgment Jackson S.P.J referred to the Judgement of **Main v Main (1949) C.L.R 636** wherein it stated:

***.....to require not only a separation in the sense of the destruction of the consortium vitae or matrimonial relationship but also a physical separation. It follows that where a husband and wife continued to live in a matrimonial Home, it could not be said for the purpose of the 1945 Act that they are living "apart" even if they were living separately.***

With Petitioner's closing submissions he quoted that separation will still be found to exist as a matter of fact even if the couple continue to live under the same roof. **"Mouncer v Mouncer (1972) 1 WLR 321**. The matters relevant to such a finding will be sleeping in separate rooms, not sharing domestic life (**Santos v Santos (1972) Fam 247**) and not having intercourse (**Weatherly v Weatherly (1947) AG 268**). In the end, what is required is a separation of households, not houses. Desertion, for which a higher requisite decree of proof is needed, also allows for a situation where the couple live under the same roof: (**Smith v Smith (1940) P.49, Hopes v Hopes (1949) P.227**).

The practical test applied cases to answer this question is usually whether one party continue to provide matrimonial services for the other, and whether is any sharing of domestic life: (Cretney and Masson, **Principles of Family Law, 5<sup>th</sup> Edition 1990** at p. 124). Thus if a husband shuts himself up in two rooms of a house and ceases to have anything to do with wife, there will be a sufficient separation of households. (**Hopes v Hopes (1949) P. 227, 235**) Therefore, if the parties share the same living room, eat at the

same table, sit by the same fire or watch television together, they are not to be regarded as living apart.

The Respondent alleged that they continue to live together from 1992 to 1995. They were living together under the same roof at their Caubati Home. According to Denning L.J said in **Batrom v Batrom** (1949) 2 all E.R.

Desertion or Separation was found where the parties had lived together in a five roomed bungalow under the same roof and the wife had abandoned all her duties as wife for three years where the parties had lived in the same households, but the wife refused to have marital intercourse or to perform any household tasks to her husband, this was granted a decree.

The Petitioner in this case had abandoned all his duties to the Respondent as husband. They were sleeping in two separate bedrooms from 1992 to 1995 in their Caubati Home, before the Petitioner completely left the matrimonial home about July, 1995. They were not having their meals together. Their clothings were separately washed. They were not in a talking terms. They never went together on big gatherings. On the few occasions they went together as mentioned above, they drove in separately, not sitting together and drove home separately, or on a few occasions they went together it was just a show and a matter of Protocol to the general public that they were there together as husband and wife in actual fact not as indicated by the Respondent that at home the Petitioner was hostile but at function he behaved normally. Before the case was heard for separation the parties had consented to the following:

1. That the custody of the children be granted to the Respondent with reasonable access to the Petitioner
2. That the Petitioner to pay \$100.00 maintenance for the children, school fees and pay for the Household, Bills for the family.
3. That the Respondent and the children to continue to live in the Matrimonial Home at Caubati Road.

This shows that the marriage had irretrievably broken down and there is no way of reconciliation.

On the cases quoted by the Petitioner on his submissions, the Petitioner had satisfied the law comprehensively on each and every element required to amount to separation.

After carefully assessing the evidence adduced by both parties the court beyond the balance of probabilities has proved that the marriage has irretrievably broken down. Though the Respondent was all along saying that the marriage was not broken down. Several attempts had been made on mediation and reconciliation but to no avail. The five years separation is proved.

The Court therefore ordered the following:

1. Decree Nisi granted and to become absolute at the expiry of 40 days from today.

**By consent:**

2. That the custody of the children be granted to the Respondent with reasonable access to the Petitioner.
3. That the Petitioner to pay \$50.00 maintenance per child x 2 total of \$100.00 maintenance per week with effect from today till the children are 18 years of age.
4. That Petitioner to pay for
  - (a) School fees
  - (b) School stationeries
  - (c) School uniforms for the children
5. That the Respondent and the children to continue to live in the Matrimonial home
6. That the Petitioner to pay for the Household Bills:
  - (a) Electricity
  - (b) Water

*20 days to appeal to  
the High  
Court*



**Eroni Sauvakacolo**  
**Resident Magistrate**

