

LING -v- LOY

High Court of Solomon Islands
(Palmer J.)

Civil Case No. 254 of 1989

Hearing: 25 September 1992

Judgment: 1 October 1992

A. H. Nari for the Petitioner

Respondent appeared in person and was not represented

PALMER J: This is a petition for divorce under the Matrimonial Causes Act of 1950 on the grounds of cruelty.

The parties were married in Mainland China on the 28th of July 1982. After their marriage they came to Solomon Islands in 1983. They have 3 children of the marriage, namely, Ivy Fung born on the 22nd of August 1984, Tim Fung born on the 18th of July 1985, and Wella Fung born on the 11st of November 1986.

It is clear that since their arrival in Solomon Islands both parties have not gotten on well with each other. There appear to be a lot of misunderstandings and conflict between the parties.

The Petitioner has given evidence of certain incidents which have resulted in some sort of domestic row between them.

She gave an instance of an unhygienic practice of the Respondent which she did not like. This consisted of the washing of food bowls of pets together with the family's food bowls. When she mentioned it to the Respondent they had a row.

She also complained of the sexual demands of the Respondent, which at times she felt were very unreasonable and inconsiderate. She stated that at times he would be demanding to have sex at very late hours, even

at 2:00 a.m. in the morning. There were times when she was sick, and yet he would insist on having sex together. All of these taken together, would drive her crazy or mental, she says.

She stated that the Respondent would try to use his kung fu techniques on her many times. He would throw plates and dishes at her.

In August of 1989 at Auki, as a result of a row, the Respondent, she says threw a chair at her leg.

The Respondent on the other hand denied all that the Petitioner has stated. He stated instead that it was the Petitioner who would start all their rows and fights. She would accuse him of spending money on ladies, prostitutes, and that he could not cook and could not look after the children. He stated that it was the Petitioner who would throw plates and dishes and become violent.

He denied having slept with another local woman despite a letter written by him admitting such an affair was produced to the Court. He explained that he was pestered and nagged into writing it and that its contents were not true.

He produced a witness, a shop-keeper who had worked with both couples whilst at Auki and now works for the Respondent at his shop at MEkonavera.

This witness, Susan Kokoff stated how, in 1989 at Auki, she observed the Petitioner would always seek to check on the Respondent and if things do not go according to her wishes, she would pick a fight on him. She stated that when the Respondent goes to the market, she would always check on what and how he had spent the money. She stated too that when food was not cooked according to her tastes she would throw the food away and fight the Respondent.

In assessing whether cruelty has been proven, the Court is obliged to look at the totality of the facts before it. *Rayden on Divorce 5th Edition*, page 122, paragraph 11.

"The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, and that rule is of special value when the cruelty consists not of violent acts, but of injurious reproaches, complaints, accusations or taunts. In determining what constitutes cruelty, regard must be had to the circumstances of each particular case, keeping always in view the physical and mental condition of the parties and their character and social status."

I have had the opportunity to observe the parties giving evidence. It is clear without being judgmental that the Respondent is much older and not as attractive as the Petitioner, who is much younger.

The real roots of the arguing, bickering and fighting between the parties is not clear. Their differences in appearance and attitudes and tastes may have contributed to these. It may be that they got married to each other out of convenience.

What is clear to me however, is that their marriage has broken down irreversibly. Both have lived separate lives since 1990 it seems.

The petition for divorce in essence is not disputed per se. It appears to have been disputed due to some wrangling and disagreements over property and the business shares of the parties.

What is apparent is that either party has sought to prove cruelty in the hope that favour will be given to that party in their matrimonial property claims and custody claims of the children.

These matters will be treated separately by this Court and the granting of the petition or the cross-petition will have no bearing on those claims whatsoever.

Both parties have deep-rooted problems which both have not really addressed, and even if they have addressed them it seems that neither party is prepared to correct or change them. I do not find that one party is solely to be blamed. In fact in such relationships it would be such an unwise thing as to attach blame solely to one partner. There are explanations and reasons for people's behaviour even if such behaviour and conduct seem so irrational or ridiculous at times.

Both parties have been guilty of cruelty. Cruelty through lack of understanding, an unwillingness to understand each other and to pursue common goals. As a result of this, rows or quarrels are common, leading to physical violence at times, but there has been a lot of mental stress and strains caused upon themselves.

Cruelty is not restricted solely to physical violence. *Kelly -v- Kelly* [1970] L.R. 2 P.D.69, the Court stated:

"Physique, temperament, standard of culture, habits of verbal expression and of action, and the interaction of the spouses in their daily life".

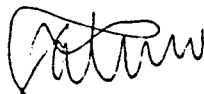
are relevant considerations: see also *Watt -v- Thomas* [1947] A.C. 434, 456.

The communication lines have broken down between the parties. There is very little affection and a lot of dislike and what may once have been love between the parties, has now turned to hatred.

I would have granted both the petition and cross-petition if that could be done. However, it would not make much difference here if I grant the petition for divorce, if anything, but that because the Petitioner initiated it.

Petition for divorce on the grounds of cruelty is granted and I decree that the marriage solemnised between the parties on the 28th of July 1962 is dissolved forthwith unless sufficient cause be shown to the Court within 8 months from the making of this decree why such decree should not be made absolute and condemned.

Costs to be borne by each party.



(A. R. Palmer)

JUDGE