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DUDDLEY KIRIAU -v- ELAM BUBU

High Court of Solomon Islands
(Palmer J.)

Civil Case No. 48 of 1994

Hearing: 19 May 1995
Judgment: 9 June 1995

C. Tagaranianal for Petitioner
M.B. Samuels for Respondent

PALMER J. This is a petition by Duddley Kiriau, for a decree of nullity of marriage, made pursuant to section 5(1)(a) of the Islanders Marriage Act, on the grounds that the marriage was not celebrated in due form.

The parties were married at St. Peter's Anglican Church, at Lilifia Village, North Malaita, on the 24th of June 1969, before a Minister of Religion; who happened to be the father of the Petitioner. Thereafter the parties cohabited for some ten years and had seven children. The Petitioner says that they had only six children and denies being the father of the seventh child. The Respondent says however, that she did not see any other man apart from the Petitioner, and says that he was the father of the seventh child, although she accepts that the act of intercourse took place when they had separated.

The parties were separated since 1979 and have not resumed cohabitation.

Section 5(1)(a) of the Islanders Marriage Act states:

"Before a marriage may be celebrated by a minister of religion, written notice of the intended marriage, and of the date of such intended marriage in the language spoken by the parties thereto, and signed by the minister in charge of

the church in which such marriage is to be celebrated, shall be posted prominently on a notice board set aside for the purpose in such church. Such nôtice shall be posted at least three weeks before the date of such intended marriage, and shall remain on the notice board until the celebration of the marriage or until the expiration of three months from the date of the notice, whichever shall first happen."

The Petitioner claims that no written notice of the intended marriage was posted on any notice board for a period of at least three weeks. On that basis, he says that the marriage was not celebrated in due form and should be declared a nullity. Unfortunately, why it has taken him 25 years to come to this realisation and then to lodge this petition, is a matter which cannot be brushed aside lightly. Why, if it was true that he knew that the marriage celebrated on the 24th June, 1969 had not been celebrated in due form, did he not take immediate steps to have the marriage declared a nullity straight away? Instead, he had cohabited with the Respondent, not for a couple of years, but solidly for at least ten years, and had seven children with her.

The presumption in this instance as to the validity of marriage from the cohabitation
of the parties, in my view is virtually unimpeachable. There must be decisive or compelling evidence adduced to rebut such a presumption.

The only evidence however adduced in support of the petition for the nullity of the marriage is provided by the Petitioner himself. He says under oath that no notices were put out, although he concedes that there was a ceremony of marriage celebrated in a church and officiated over by a duly certified Minister of Religion, who happened to be his father.

The evidence of the respondent too is not enlightening. She says that during those days she thought that no notices were put out, although she says that she was aware that announcements were usually made in church on three consecutive Sundays.

The Respondent also called her brother, Jack Inifiri, as a witness. Mr Inifiri says that he was present during the wedding. He also says that when marriages were arranged and agreed upon, they would then put up notices in the church, even though in those days not many people would know how to read and write, and so understand what those notices were about. He also says that announcements would also be made in church about the intended marriage of the parties. This was the usual way of publicising the intended marriage of the parties and the usual medium through which the Local Community is informed. He says that this was definitely done in this case. He says that everybody in the village knew about the intended marriage of the parties, and attended their wedding, followed by a feast. Thereafter, the parties cohabited together as husband and wife and were so known in the local community.

The crucial question is whether the onus of proof has been established? With the greatest of respect to the evidence of the Petitioner, I am unable to find that his evidence alone could be regarded as decisive or compelling in the circumstances of this case. One of the key witnesses to this case would have been the officiating minister of religion at the wedding ceremony. Unfortunately, the Petitioner had to wait until the death of that Minister, who also happened to be his father, before deciding to bring this action. In the absence of that key witness and other direct witnesses, who would have been in a position to say whether or not notices were put out, this court is very hesitant, and is not prepared, to accept the word of this Petitioner alone, especially after 25 years. It is a real possibility that this Petitioner may not be speaking the truth, because of his vested interest in having the marriage annulled after so many years of cohabitation with the Respondent, or that he may simply be assuming that no notices were actually put out. The onus of proof is heavily weighted against him, and he must be prepared to show firm and clear evidence that indeed no notices were put out *(see Cherolyn Timothy -v- Eddie Ponisi, civil case 163 of 1991, per judgment of Muria ACJ., as he then was, judgment delivered on the 9th June, 1992).* He has not done that to my satisfaction, and accordingly, the petition must be dismissed, with costs if any.

ALBERT R. PALMER

(ALBERT R. PALMER)
JUDGE