SAPPINGTON ~V~ SAPPINGTON

High Court of Solomon Islands
(Palmer J.)

Civil Case No.184 of 2002

Hearing: 16th September 2002
Judgment: 17th September 2002

A. Radclyffe for the Plaintiff
M. Ipo and D. Hou for the Defendant

Palmer J.: The parties (hereinafter referred to as "the Plaintiff" and "the Defendant" respectively) were married on 15th January 1993 at Port, Vila, Vanuatu. The Plaintiff hails from the United States of America ("the States") whilst the Defendant comes from Ughele, Rendova Island, Solomon Islands. They have four children of the marriage; Teresa Mary Sappington born on 12th October 1992, Stephanie Kay Sappington born on 11th February 1995, Kyllie Lynn Sappington born on 16th April 2000 and Kyle Dale Sappington born on 7th February 2001.

The parties were divorced on 4th April 2001. A copy of the decree of divorce issued by the Sixth Judicial District Court of the State of Nevada, United States of America (hereinafter referred to as "the Original Court") is annexed to the affidavit of Stephen Sappington filed on 24th July 2002 and marked as "SS1". I quote the relevant part:

> *'Now, therefore, final judgment is entered and it is hereby ordered, adjudged and decreed:*
>
> *FIRST: Upon the grounds of incompatibility, the bounds of matrimony heretofore and now existing between the parties, ONNIE QULA SAPPINGTON and STEPHEN D. SAPPINGTON, be, and the same are, hereby wholly dissolved and an absolute Decree of Divorce is hereby granted to the parties and that the parties are hereby restored to the status of single, unmarried persons and they are hereby free and released of the bonds of matrimony and the all the duties and obligations thereof."*

Part of that decree of divorce granted joint legal custody of the children to the parties with the Defendant having physical care, custody and control of the children. I quote:

> *'THIRD: That the parties shall share the joint legal custody of the minor children with the Wife having physical care, custody and control of the minor children of the parties, ... Husband is hereby ordered visitation with the minor children as specifically set forth in the finding of fact above."*

The Plaintiff was ordered by the Original Court inter alia to pay child and spousal support (maintenance) at $1,322-00 for the month of December 2000 and $1,505-00 per month thereafter.

On 30th November 2001, the Plaintiff obtained orders ex parte from the Original Court prohibiting the Defendant from taking the children out of the jurisdiction of the said Court. I quote:

> *'This court having received the Motion of the Defendant, STEPHEN D. SAPPINGTON, in this matter and finding good cause therefore,*
>
> *IT IS HEREBY ORDERED that the Plaintiff, ONNIE QULA SAPPINGTON, is prohibited from international travel with the parties minor child, until further ORDER of the Court."* (A copy of said order is annexed as "SS2" to the same affidavit of Stephen Sappington.)

On 20th December 2001 however, the said order was varied and the Defendant permitted to travel to the Solomon Islands for the Christmas 2001 holidays with the children. I quote:

> *'IT IS HEREBY ORDERED THAT:*
>
> 1. *The Plaintiff, ONNIE QULA SAPPINGTON, shall be allowed to travel to the Solomon Islands with the four minor children during the Christmas 2001 holidays.*
> 2. *The Defendant, STEPHEN D. SAPPINGTON, will lose some of his holiday time this holiday, and shall be entitled to visitation next Christmas (2002) equal to the Plaintiff's visitation this year."*
>
> (Copy of the order is annexed as "SS3" to the same affidavit of Stephen Sappington)

It was agreed between the parties that the Defendant would leave with the children on 24th December 2001 and return in January 2002. Defendant has not returned with the children hence this application before this court by the Plaintiff for orders:

> *"1. that the children of the parties . . . be immediately returned to the custody, care and control of the Plaintiff;*
>
> *2. that the plaintiff be at liberty to remove the said children from the jurisdiction and return with them to USA being their usual country of residence;"*

The Plaintiff applies by Originating Summons pursuant to Order 58 Rule 1 of the High Court (Civil Procedure) Rules, 1964 (hereinafter referred to as "the Rules") for the above orders. No issue has been taken regarding this approach.

Order 58 Rule 1 provides:

> *"Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested."*

I have cited this rule in full because it is crucial to the issue that is before the court. It is important to appreciate at the outset the angle at which the Plaintiff has come to court for relief. The issue before this court thus is not the question of custody, which has sought to be argued at great length by the parties. The issue rather is the rights of the Plaintiff pursuant to the written instrument that he has presented to this court by way of court orders from the Original Court in his favour. He has come to this court for declarations by way of originating summons pursuant to the written instruments, for determination of the effect of those orders and declaration of his rights.

I am satisfied Plaintiff is entitled to come to court by this route for relief. I am satisfied the orders of the Original Court which he seeks to rely on fall within the ambit of "written instrument".

The issue before this court therefore turns on the construction of those orders and their effects. It must be borne in mind that the parties did not come to this court for divorce and did not obtain decree of divorce from this court. They were divorced before the Original Court. Issues of custody of the children and other related matrimonial issues, were also determined before that court. It would be grossly unfair therefore for this court to usurp the functions of that court by taking on board issues of custody without all relevant material before it. That must necessarily include taking cognizance of evidence adduced in the proceedings before the Original Court and having those matters re-agitated before this court.

It is important to appreciate this case has come about not as a result of an unresolved custody dispute, but rather of a blatant breach of the orders of the Original Court amounting to a contempt of the orders of the said court, a very grave matter. The documents speak for themselves. The Defendant has not at any time sought to dispute those orders, and rightly so. The Original Court gave her the benefit of a doubt and varied its own orders pursuant to her statement that she had no intention of remaining in the Solomon Islands apart from her

Christmas vacation with the children. She had thereby perjured herself, a very serious matter, which any court would not take lightly.

Extensive submissions and authorities have been cited, regarding the welfare of the children as being the paramount consideration this court should take into account (see In re Adoption (1963) CH. 315 per Darkwert L.J at 329, J. v. C. (1970) A.C. 668 per MacDermot L.J. at 710-711, In re Grath (1893) Ch. 142 per Lindley L.J. at 148, and Sukutaona v. Houahihou (1982) SILR 12).

Learned Counsels agree that that is the appropriate approach to be taken by any court, including the courts in Solomon Islands regarding custody issues. But that issue is not a material concern before this court. That issue had been considered and determined before the Original Court and final orders issued on 4th April 2001 comprising the decree of divorce, orders of 30th November 2001 comprising the ex parte prohibitory orders for travel, and orders of variation dated 20th December 2001, enabling the Defendant to travel to the Solomon Islands for the Christmas vacation only and return. The parties have voluntarily submitted themselves to the jurisdiction of that court and therefore it is only fair and just that for any variations of the court orders that the same court must be given the opportunity to consider the application of the Defendant.

What the Defendant wants, which I am not prepared to do, although I do concede this court can of its own motion take carriage of this matter and consider the merits of the custody issues before this court afresh, is to vary the orders of the Original Court whereby she can take the children out of the jurisdiction of the said court and for the Plaintiff to be given access rights as, and when he can see the children. Respectfully, that can only be done and should be done before the court that made those orders. And before that can be done, the original position would first have to be restored before an appropriate application can be made. It is not the case where the Defendant is not able to return to the States to do this. She had been given I believe or had in her possession a return ticket to the States. No suggestion has been made that she could not return to the States because of travel difficulties. No evidence as well has been adduced before me to show and convince me why her return to the States in January 2002 could not be undertaken and thus resulting in her remaining in the Solomon Islands since. Neither is it a case where she had no access to a lawyer to make such application for variation of orders. The evidence adduced indicated very clearly that she was legally represented throughout the matrimonial proceedings. It wasn't the case where she had no means or was unable to take up such application or instruct legal counsel to make such application. The orders "SS1" (annexed to the same affidavit of Stephen Sappington) showed that maintenance was being paid towards her support and upkeep apart from that of the children. There is simply no evidence before me to suggest or indicate that this Defendant could not have made such application before the said court prior to her departure from the States or on her return.

Secondly, the welfare of the children must be held at the forefront at all relevant times, not the individual wishes, interests and desires of the parties. This simply means in practice that the wishes and interests of the parties must be **subordinate** to the welfare of the children (see In re Adoption Application (1963) CH. 315 at 329). That is what love in practice for the children means. If the parties say that they love their children and which this court has no doubt in its mind that the parties in this court have amply demonstrated that they have, they must be prepared to make individual, personal, cultural and family sacrifices for the sake of the children. That is easy to say but hard to do, because there is a cost to be paid. The ideal of course is for the children to be raised by their own parents, but the parties in this case have chosen to cut the bonds of holy matrimony. They must be prepared to face up to the realities of raising their children and bring to subjection their personal interests, wishes and desires. The parties must not forget that the children are the products of a union of a US citizen and a Solomon Islands citizen. The parties therefore must not allow their differences to come in the way of achieving what is best for the children. I appreciate this is not easy as it entails a careful balancing of the wishes, interests, desires and circumstances of the parties, including job availability, ability to support the children, health and medical support, education etc. In my respectful view, the Original Court had performed that task to a certain extent and made appropriate orders.

The actions of the Defendant cannot by any standards be regarded as having been done or taken in the best interests of the children. If anything, they can best be described as actions taken in her own interest as against the interest of the Plaintiff but not with due regards to the welfare of the children.

In my respectful view, this a fairly straightforward case, the parties must be restored to the original position and if the Defendant feels so strongly that the children must move to the Solomon Islands to reside with her, whilst the Plaintiff resides in the States, then she should make the application before the appropriate court. She has a lawyer representing her and so there is no or little prejudice to such an application being done.

But even if custody should be an issue before me, the Defendant has an insurmountable hurdle before this court. She comes to court with tainted hands. She had defied and thereby committed contempt of the orders of the Original Court. There is a warrant of attachment already issued by the said court. I quote paragraph 4 of the Orders of the said Court filed 21st February 2002:

> *"The Court finds that the Plaintiff has committed a contempt of court by perjuring herself in the hearing on December 12, 2001, when she falsely testified that she had no intention of refusing to return to the United States after a short, three week stay in the Solomon Islands. A warrant of attachment shall issue whereby law enforcement is directed to arrest ONNIE QULA SAPPINGTON and place her in jail with a no bail hold."*

This is a very serious matter and no court, which exercises similar comparative jurisdictions, would so easily brush this type of breach aside. No evidence or attempt has been made to offer satisfactory explanation that would even go as near as purging such contempt.

I am not satisfied in the circumstances, even if there may be some merit in the submissions of the Defendant that would warrant refusal of the orders sought before me, I would still decline to do so. I grant the orders sought in the originating summons. The effect of these orders simply mean that the Defendant is obliged to accompany the children back to the States and to make such application she wishes for variation of the original orders, unless of-course the parties should somehow come up with some other consent order as an alternative. Learned Counsels should take time to explain fully to the parties the effects of the courts orders.

ORDERS OF THE COURT:

1. **Order that the children of the parties namely Teresa Mary Sappington born on 12th October 1992, Stephanie Kay Sappington born on 11th February 1995, Kyllie Lynn Sappington born on 16th April 2000 and Kyle Dale Sappington born on 7th February 2001 be immediately returned to the custody, care and control of the Plaintiff;**

2. **Order that the Plaintiff be at liberty to remove the said children from the jurisdiction and return with them to the States being their usual country of residence;**

3. **Each party to bear their own costs.**

THE COURT.