

**SIOSAIA MATAELE v. TU'IPULOTU TONGA AND
FAKALOLOMA MATAELE.**

(Divorce. Hunter J. Nuku'alofa, 7th June, 1954).

Adultery — Damages — Principles on which damages should be assessed. The Petitioner brought a suit for the dissolution of his marriage on the ground of adultery. The corespondent was the Petitioner's son, the Respondent's step son. The charge of adultery was not seriously opposed, the real contest being on the question of damages. The facts appear in the judgment.

Finau appeared for the Petitioner.

Kioa appeared for the Respondent and Corespondent.

HUNTER J. : In this case the Petitioner, Siosaia Mataele is seeking a dissolution of his marriage on the ground that his wife, Tu'ipulotu Tonga has committed adultery with Fakaloloma Mataele who has been joined as corespondent. The Corespondent is the Petitioner's son by a former marriage. The adultery is alleged in the petition to have taken place from the 10th January to the 15th October, 1953. Finau appeared for the Petitioner and Kioa for both the Respondent and Corespondent. The Petitioner also asks for £200 damages and costs.

The counsel for the Respondent and Corespondent called no evidence and in his address virtually admitted the adultery, confining himself to the question of damages.

The Corespondent at the relevant times was living with the Petitioner (his father) and the Respondent and I have no doubt that adultery was committed as alleged in the Petition.

This leaves the question of damages.

At one time the Petitioner was a wealthy man and a prominent citizen having been a lawyer and a member of parliament. I am satisfied that until her illicit association with the Corespondent the Respondent was a good wife, although much younger than the Petitioner.

In 1947 the Petitioner transferred all his property to his wife. This property consisted of a valuable leasehold (the lease does not expire until 1992) together with improvements thereon including a store in which at that time a lucrative business was conducted. The Respondent apparently assisted the Petitioner, in the conduct of this business.

It may be that legally the Respondent only holds this property as trustee for the Petitioner but this point was not raised before me and in any case I need not concern myself with it here.

Unfortunately in 1952 all the improvements on the property, which were not insured, were destroyed by fire. Since then a brick building has been built on the land the cost of this being born by either the Respondent or the Corespondent or both. This

building is now let in apartments and on the only evidence before me returns an income of approximately £20 per month, whether gross or net is not clear.

In his address Kioa stressed that for about the last four years the Corespondent has supported the Petitioner and his six children but as the Corespondent was then living with the Respondent (for some of the time at least as man and wife) and as the money no doubt came from the Petitioner's assets which had been transferred to the wife not much weight can be attached to this.

Damages in divorce are not awarded to punish the Corespondent, but to compensate the husband for the loss of his wife, the injury to his feelings, the blow to his honour, and the hurt to his family life.

After considering all the circumstances in this case I feel that the Petitioner is entitled to substantial damages.

I find marriage and domicile I find that the Respondent committed adultery with the Corespondent (and the Corespondent committed adultery with the Respondent) between the dates alleged in the Petition and I pronounce a Decree Nisi not to be made absolute for six weeks.

I order the Corespondent to pay £150 damages : This amount to be paid to the Registrar of the Court in twelve equal monthly payments on or before the first day of each month, the first of such payments to be made on the 1st day of July next. The money so paid into Court to be paid out to the Petitioner. I order the Respondent to pay the Petitioner's court costs and also lawyer's fees which I asses at £3/3/0. The said costs and fees to be paid within 14 days.

I make no order as to custody but reserve liberty to either party to apply.