

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Matrimonial Jurisdiction)

CIVIL CASE No. 130 OF 1996  
Matrimonial Case No.2 of 1996

Family  
Case

Between: Patricia Molu

Petitioner

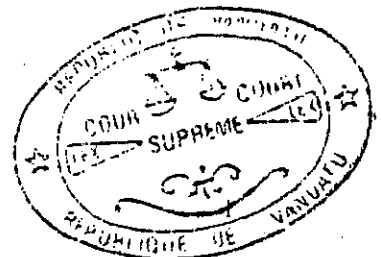
And: Cidie Molu

Respondent

**Coram :** Mr Justice Vincent Lunabek, Acting Chief Justice  
Mrs Merin Mason for the Petitioner/Wife  
The Respondent in person (not represented)

**JUDGMENT**

This is an Amended Petition, dated 22nd day of May 1996. Mrs Mason, Counsel for the Petitioner/wife herein, sought a decree nisi for the dissolution of the Marriage between the Petitioner/wife and the Respondent/husband. The Petitioner seeks also custody of the three (3) children of the Marriage. The Petition was first listed before the Magistrate's Court on 14 June 1996. The Petition was then disputed by the Respondent. The matter was then referred to the Supreme Court under Section 1(c) of the Magistrate's Court (Civil Jurisdiction) Act 1981 CAP 130. On 19 July 1996, the matter was listed before the Supreme Court for hearing. The parties were then directed to prepare their case and ready with their witnesses (if any). The Respondent is advised and informed to get a lawyer (preferably to see the Public Solicitor's Office for assistance).



Both parties were further directed to file and serve on the other party a list of property within the matrimonial property they claim to be theirs. The matter was adjourned to 21st August 1996 for hearing at 9.00am.

The Petition was filed on the ground of

- Adultery under section 5(a)(i) of the Matrimonial Causes Act CAP 192.

On 21 August 1996, Mrs Mason, on behalf of the Petitioner informed the Court that the witness for the Petitioner in relation to adultery is unwilling to appear. That witness was contacted by the respondent family and was told not to give evidence in Court for the Petitioner. She then requested for the Petitioner that the grounds of the Petition be amended so to include both Adultery and Persistent cruelty under section 5(a)(iii) of the Act. The application was then granted and the ground for the Petition of divorce was thus amended to that effect.

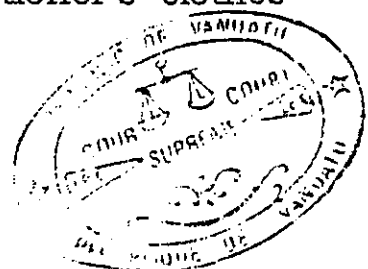
APPLICATION FOR DISSOLUTION OF MARRIAGE UNDER SECTION 5(a)(i) & (iii) OF THE MATRIMONIAL CAUSES ACT CAP 192

The Petitioner was, on the 16th day of August 1992 at Port-Vila, lawfully married to Cidie Molu, the Respondent. They lived and cohabited together at Port-Vila and they have three children, namely :

- (a) Yannick Molu, a male, born on 5 August 1988
- (b) Annie-Rose Molu, a female, born on 8 November 1992
- (c) Ian Molu, a male, born on 28 March 1994.

The parties are both Ni-Vanuatu, and domiciled in Vanuatu.

The Petitioner, Patricia Molu gave evidence to the following effect. She gave evidence about continued series of assaults perpetrated on her by the Respondent/husband. She said every time the Respondent went out, he came back home drunk, and assaulted her, threw the Petitioner's clothes outside and he never stayed at home.

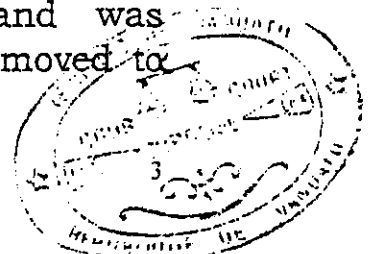


She gave evidence that the Respondent assaulted her before and after they were married.

She gave evidence about an assault on her by the Respondent and she appeared before the Efate Island Court for that. She could not remember the date. On November 1994, the Respondent assaulted the Petitioner/Wife. The Respondent came home drunk. The Petitioner was scared and took the children and spent the night with her relatives. When she came back home, on the next morning, she discovered that all of her clothing were disappeared. She asked the Respondent and he denied he took them. On one occasion, the Petitioner and the Respondent walked in Port-Vila cemetery, the Respondent assaulted her. Her face was swollen up. She could not see. She was powerless. She went to F.O.L. the Respondent was behind her and hit her on her face. Her eyes were closed. He assaulted her when she was lying on the grass. He threw her on the grass like a pig. The Respondent was drunk. She got then admitted for 2 weeks in hospital. She then applied and got restraining orders from the Magistrate's Court on November 1994.

She gave evidence also that on February 1995, she was then assaulted by the Respondent. She was not admitted to hospital. On July 1995, she was again assaulted by the Respondent. She said the Respondent came home drunk and was angry because there was no food. So he hit the Petitioner's head with the neck of his guitar. She testified that the Respondent did not care about going to prison. She also said the Respondent did not want the Petitioner to come home late after working hours. Sometimes, the Respondent assaulted her after she came off the bus after work.

She testified further that on 9 September 1995, the Magistrate's Court in Port-Vila granted a restraining Order against the Respondent which prevented him from having any contact with her, from assaulting or threatening her or from going to her house or work place. The Respondent breached the Order. She reported the breach. On 1st December 1995, the Respondent was found guilty in the Magistrate's Court of breaching the Order and was imprisoned for two (2) weeks. The Petitioner then moved to

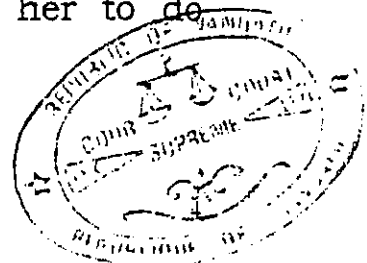


another house at Agathis. She said after the Respondent spent 2 weeks in jail, he forced the Petitioner to withdraw the restraining Order. She then reported the matter and on 8 January 1996, the Respondent was again found guilty of breaching the Order and was sentenced to one (1) week imprisonment by the Magistrate's Court.

She further testified that on 18 February, 1996 the Respondent while in a taxi, saw the Petitioner with her sister and other people walking at night at Namburu. He stopped the taxi. She was very frightened and tried to resist but he pulled her inside. The Respondent then told the taxi driver to go and find a place to buy some alcohol. It was too late and the driver could not find any place that was open.

She gave evidence that the Respondent told the driver to go to Nambatu Lagoon. She said she knew when the Respondent said this he was lying and that he was really going to take her out of town. She started to cry and pleaded the taxi driver not to continue driving as she believed that the Respondent would stab her with a knife if they went out of Vila.

She said the Respondent told the driver that she was joking and that he was paying the taxi and the taxi must go where he said, The taxi driver continued out of town. The taxi drove past White Sands Country Club and then a few more kilometres. The Respondent then told the driver to drive down to the beach. The Respondent and the Petitioner got out and the taxi left. She said this was about 1 o'clock in the morning. She gave evidence that the Respondent pulled her behind a small bush and pulled off all her clothes. He then forced her to have sex with him. The respondent then pulled her out into the beach and forced her to have sex with him again. She said the Respondent then pushed her into the sea and forced her to stay there for a short time. Then he pulled her onto the beach and took out a small knife from the pocket of his shirt. She said he put the knife against her neck and told her that she had to withdraw the restraining Order against him and go back to live with him at Fresh Water. She agreed to do whatever he wanted her to do because she was so scared.



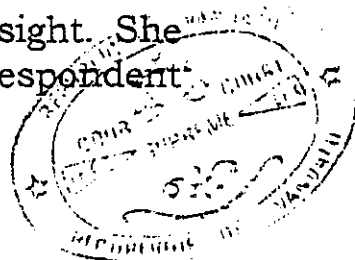
After this, she said the Respondent decided they should start walking back to Vila. This was about 3.00am. She further said that as they were walking he continued to talk to her and was still angry. He threatened to hit her and then put his hands around her throat. She said she stayed very still and he let go again.

After a while, a taxi came past and the Respondent stopped it. The taxi took them to the Respondent's house at Fresh Wota and there the Respondent locked her in a room of the house. He then left and returned a short time later with a public transport. she said he then forced her to go with him to bring all her clothes and possessions from the house where she was living at Agathis. He told her that if she told anyone about what he had done he would cut her throat with a knife. She said he left the knife in the room and it is still there as a threat to her. She gave evidence also that since the time the Respondent forced her to return to live with him, he has threatened and assaulted her many times. He has told her that she is lucky that her father is still alive because if he wasn't the Respondent would have used a knife on her already. He also stays close to her all the time and waits on the road each afternoon to make sure she came straight from work. At one occasion, she said her boss (employer) should live next day for Australia, she stayed late in the office. It is over 6 o'clock pm. And she went back home. There the Respondent waited on the road with a knife.

On 17 May 1996, she said the Respondent assaulted her again and she reported the matter to the police. The police came and arrested him and he was held in custody until 18 May and then was released. She said after that assault on her, the Respondent threatened her. He wanted her to go back and stay with him.

She testified she drunk panadol tablets because she said she wanted to die. She was very angry about what the Respondent had done to her.

Finally, she said she had enough. She lost her sight. She had headaches because every time the Respondent



assaulted her, on her head. She said her life was destroyed. She said the Respondent did not work. She said she is now happy because she lives away from the Respondent.

### CROSS-EXAMINATION OF THE PETITIONER BY THE RESPONDENT

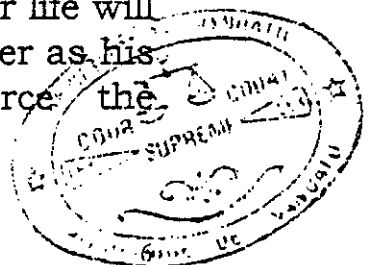
Under cross-examination, she confirmed various assaults on her by the Respondent. When she was asked by the Respondent as to why he assaulted her, she said if there are reasons, assaulting her is not the appropriate way of solving the problem inside their couple life. She said the Respondent should call on her in the house instead she said he burnt her clothes. He assaulted her.

As to the incident which took place at Rentabao, she said the period of the restraining Order were terminated, the Respondent should not brought her to Rentabao, he should bring her back home.

It was put on the Petitioner that she had sex with a man. The Petitioner said there is no need for the Respondent to assault her. It was the Respondent who started to have sex with a woman from Ambae. Further she said he caused problems at home with the children and what she did was then after. She was also questioned about a piece of land at Fresh Wota and she said they got the land from a deposit they both made out of the sale of a taxi.

She said she wanted to divorce the Respondent. She was fed up. Her home was broken. Her clothes were burnt. She was ready to divorce. She is a human being. She is not an animal. She said she got fed up of what the Respondent did to her.

She was asked about her religious marriage's promise and obligations she made during the wedding day. She said she knew about that. She had tried her best. She could not work out. There is no forgiveness. He never said sorry. Her life will never be as before. She said the Respondent used her as his play-tool. She repeated she wanted to divorce the Respondent.



EVIDENCE IN CHIEF OF THE RESPONDENT/HUSBAND

The Respondent gave evidence to the effect that he assaulted the Petitioner because he has reasons. He said on one occasion while he had driven a taxi - the Respondent came home after work - had gone out without telling anything. He said she had switched on the light, took a piece of tissue and fastened the electric bulb while their two children were sleeping. The tissue started to burn, the two kids were already slept. So he said he was very angry. He waited for her at home and when she returned, he assaulted her.

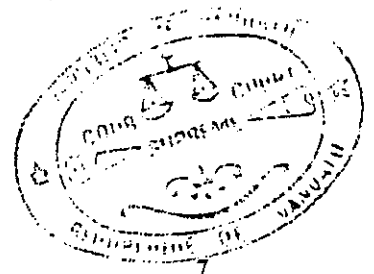
He testified that the Petitioner was admitted at the hospital. He said she had swollen eyes.

The Respondent admitted also he assaulted the Petitioner on July 1994 with the neck of his guitar because he told her to bring some food for him and his friend with whom they spent the night selling food in the stoles. The Petitioner did not bring any food. So he said he hit the Petitioner's head with the neck of his guitar. He denied using knife or threatened the Petitioner with the knife. He denied waited for her every afternoon after working hours. He said he swore at her one or twice.

He said the Petitioner did not want to listen to him. She is a person of very hard character. He said in his opinion it is the man who had authority over the wife at home. He said the Petitioner told her that she is better educated than him so when he talked to her she could not listen to him.

He said, he had tried his best to solve their problems but she refused to listen to him. He said he was the only one who looks after the children. He said she refused to help.

He further said he was trying to pay a piece of land at Fresh Wota. He asked for her help, she refused. He said he is working very hard. He is still continue to complete the payment of that land.



## CROSS-EXAMINATION OF THE RESPONDENT

The Respondent admitted he assaulted the Petitioner in July 1994. She was admitted to hospital. He assaulted her when he was drunk. He took a taxi and brought her to the hospital. She was admitted for 2 weeks in hospital. He admitted the Petitioner/wife had serious injuries.

He also admitted he assaulted her at White Sands (Rentabao). He said he knew she was frightened. He forced her to have sex with him. He admitted everything the Petitioner said is true.

He admitted also he threatened the Petitioner with the knife at home but he said he never used it on her. He admitted he used the knife on the Petitioner at Rentabao (White Sands). He said he put the knife at home after the incident at Rentabao.

He also admitted he told Patricia she was lucky he was not drunk otherwise he will kill her. He said he said so to frighten her but he could not do it.

He admitted he had breached the Restraining Orders on three (3) separate occasions.

He admitted he had broken their marriage.

## FINDING OF FACTS

The Petition was sought on the basis of two (2) distinct grounds :

- Adultery contrary to section 5(a)(i) CAP 192 ;
- and/or
- Persistent cruelty under section 5(a)(iii) of the same Act.

There is no sufficient evidence before the Court about adultery. That ground was thus withdrawn by the Petitioner's Counsel.





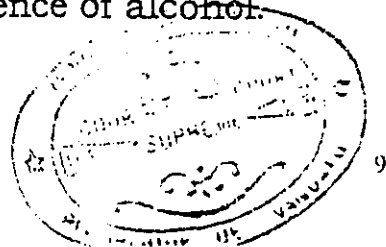
As to the cruelty alleged, the evidence show a series of physical assaults on the Petitioner by the Respondent. The Respondent admitted he assaulted the Petitioner :

- (1) On 30 July 1994 with the neck of his guitar ;
- (2) On November 1994 the Respondent admitted he did assault the Petitioner. She spent 2 weeks in hospital. Her face was swollen she could not see ;
- (3) In early 1996, the Respondent admitted fact alleged by the Petitioner to the effect that she was abducted by the Respondent. He forced her to go into a taxi with him. She was taken away some distance far from Port-Vila - towards White Sands (Rentabao). There the Respondent forced her to have sexual intercourse with him. He threatened her with a knife.
- (4) The Petitioner alleged less serious assaults through her marriage life with the Respondent. The evidence is that in September 1995, she sought a restraining order which was granted against the Respondent. This restraining order was breached 3 times by the Respondent.

The first breach occurred on 1st December 1995 as a result of which the Respondent did spend 2 weeks in prison. The second breach was on 8 January 1996 as a result he was imprisoned for one (1) week. The third breach was on 14 June 1996. The Respondent did spend one (1) month in prison. It is not disputed the restraining order and the breaches were admitted by the Respondent. He admitted also on occasions he threatened his wife.

The Petitioner admitted she had sexual intercourse with a man after that the Respondent had sex with a woman from Ambae. The Respondent said he assaulted the Petitioner because he has good reasons to do so which resulted from provocation on the part of the Petitioner.

On more than two occasions, the Respondent assaulted the Petitioner when he was under the influence of alcohol.





## SUBMISSIONS OF BOTH PARTIES

It is submitted for the Petitioner/Wife that the Petition for divorce is presented to the Court on 2 grounds : Adultery and Persistent cruelty. The ground of Adultery has been withdrawn and the Petition was amended to include also the ground of Persistent cruelty under section 5(a)(iii) of the Matrimonial Causes Act CAP 192.

The cruelty alleged is based on series of physical assaults against the Respondent.

- Assault occurred on November 1994 as a result of which the Petitioner spent 2 weeks in hospital. Her face was swollen. She could not see. The Respondent/husband admitted he assaulted the Petitioner as alleged.

- Assault in early 1996

the Petitioner was abducted by the Respondent. He forced her to go in a taxi with him some distance far away from Vila towards White Sands (Rentabao). He forced her to have sexual intercourse with him. He threatened her with a pocket knife. The Respondent admitted the facts alleged by the Petitioner.

It is also submitted for the Petitioner that she experienced various less serious assaults through her marriage life with the Respondent. The evidence is that in September 1995, the Petitioner sought restraining order in the Magistrate's Court, which was granted to her against the Respondent. This restraining order were breached 3 times by the Respondent/husband. The Respondent admitted the restraining order and the breaches which were occurred respectively on the 1st December 1995 [he spent 2 weeks in prison], on the 8 January 1996 [he was imprisoned for 1 week], on the 14 June 1996 [he was imprisoned for 1 month].

The Respondent admitted he threatened on occasion his wife/Petitioner.

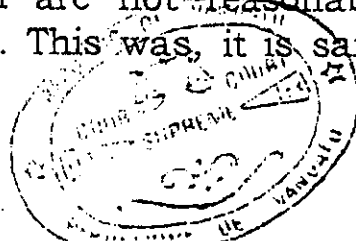
It is further put for the Petitioner that in this case there is no need for corroboration since the Respondent corroborated himself. The allegations of cruelty which constitute the facts alleged in this case were not disputed.

It is also contended for the Petitioner that in her evidence in chief she said on one occasion she had overdosed on panadol to commit suicide. She was desperate about her life situation. Further under cross-examination, she said she tried her best in the marriage but the marriage is now in her opinion destroyed. It is not possible for her to reconcile with the Respondent/husband in order to recover their marriage. It was said on her behalf, the Respondent had never apologised to her or admitted he was wrong. The Petitioner felt that the divorce is the only way for her to go on with her life. Her marriage with the Respondent became intolerable.

It is also put for the Petitioner that this case is similar to the case of Niko v. Niko in Civil Case No.69 of 1996 dated 21st June 1996 (unreported) where the divorce was granted on the grounds of cruelty based on series of serious threats, assaults and humiliation of the Petitioner/wife by the Respondent/husband. In Niko v. Niko (1996) the points of law which were discussed there were again referred here in this case by the Petitioner's Counsel who appeared on behalf of the Petitioner/wife in that case (Mrs Niko).

There is no need for me to go through these points of law again here, save that in the present case, the point of provocation has been raised by the Respondent/husband (Mr Cidie Molu). In that respect, it is then argued for the Petitioner that provocation may be a defence to a spouse committing the acts alleged as cruelty. However, the reaction to the provocation must not be unreasonable. [see paragraph 532 of the Halbury's Law of England, Third Edition, Volume 12].

It is therefore submitted for the Petitioner that the provocation by the Respondent, if there are any, did not justify the Respondent's late actions which are not reasonable response to the issues that he raised. This was, it is said,



born out in the first assault occurring in July 1994. The evidence show high degree of assault. Further the Respondent took the Petitioner/wife away from home and assaulted her there. It is contended that the Respondent's behaviour is sufficient to grant the divorce under section 5(a)(iii) of the Matrimonial Causes Act CAP 192.

It is further said for the Petitioner that there is no condonation. The most recent assaults of November 1996 including abduction of the Petitioner/wife by the husband/Respondent could very likely amount to a rape.

It is finally contended for the wife/Petitioner that the Respondent breached the Court Restraining Order on 3 separate occasions. The Respondent did not respect the law. He will continue if the divorce is not granted to the wife/Petitioner. Therefore, it is submitted that the divorce is the only option for the Petitioner in this case.

The Respondent/husband, on his own behalf said he had made lots of wrong things. He assaulted, swore at the Petitioner/wife. But he had already received punishment for his wrongdoings. He said he wanted his wife and children to come back home. He said he disagrees that the divorce be granted to his wife. He said he was sorry and apologised to his wife/Petitioner for what he had done to her in the past.

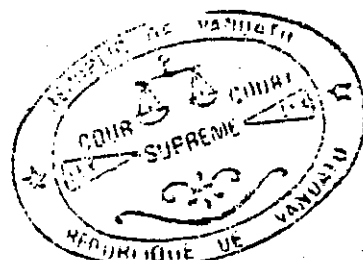
In Court, the Petitioner/wife standing beside her legal Counsel told the Court :

"Mi no mo wantem live wetem hem (Respondent/husband). Mi finish." This can best be translated this way : "I do not want to live with him (Respondent/husband) anymore. I finish."

### THE LAW AND ITS APPLICATION TO THE FACTS

The relevant provisions of the Matrimonial Causes Act CAP 192 to be considered by this Court are sections 5(a)(iii) and section 9(2); (3)(a)(b)(c).

Section 5 provides :



*"... a petition for a divorce may be presented to the Court either by the husband or the wife ;*

*(a) on the ground that the Respondent -*

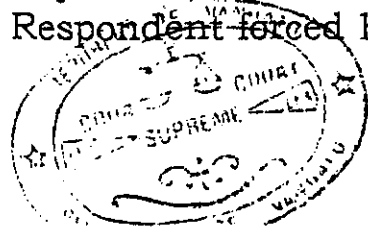
*(iii) has since the celebration of the marriage threatened the Petitioner with persistent cruelty ;..."*

This section is a governing section applying to all facts alleged as grounds for a Petition for divorce, cruelty, adultery, desertion, etc...

It is important to note that the legal concept of cruelty is not defined by Statute [Matrimonial Causes Act CAP 192]. The Court is assisted by the definition given in Halsbury's Law of England, 3rd Edition Volume 12 [at pp. 269-70 and seq.]. Cruelty is generally described as such character as to have caused danger to life, limb, or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger. To be a ground of divorce the treatment with cruelty must be treatment since the celebration of the marriage, but revelation after marriage of deception before it may be cruelty where it is aggravated by circumstances. There is nothing in the authorities to justify the proposition that a decree based on cruelty is a remedy given, not for a wrong inflicted, but solely as a protection for the victim.

In this case, the Petitioner's evidence establishes that there are assaults perpetrated on her by the Respondent/husband. In effect, there are two (2) serious assaults with other minor assaults accompanied with threat of serious assaults.

The Respondent admitted all of them. The evidence shows that the Respondent assaulted the Petitioner on 30 July 1994 with the neck of his guitar on her head. The second time he assaulted the Petitioner was in November 1994 as a result of which the Petitioner had swollen eyes and got admitted to hospital for two(2) weeks. In early 1996, the Respondent abducted the Petitioner by forcing her to go into a taxi. She was taken some distance away far from Port-Vila, towards White Sands (Rentabao). The Respondent forced her



to have sexual intercourse with him. He then threatened her with a knife.

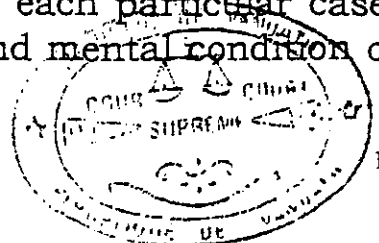
The evidence establishes also that there are less serious assaults through her marriage life with the Respondent. In September 1995, she obtained a restraining Order from the Magistrate's Court against the Respondent. The restraining Order was breached on 3 different occasions by the Respondent and as a consequence of such breaches, he did serve imprisonment sentences respectively on December 1995, January 1996 and June 1996.

The evidence established also that the conduct of the Respondent destroys the Petitioner's life and it is affecting her mental health. [She had always headaches].

In the 3rd Edition of Halsbury's Laws of England Vol. 12, it is emphasised that to find cruelty it is not necessary to find physical violence.

It is doubtful whether any definition of cruelty applies equally well to cases where there has been physical violence and to cases of nagging, or to cases where there has been a deliberate intention to hurt and to cases where temperament and unfortunate circumstances have caused much of the trouble. It is undesirable, if not impossible, by judicial pronouncements, to create certain categories of acts or conducts as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty in cases where no physical violence is averred. [see paragraph 515 at p.270].

The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, and the rule is of special value when the cruelty consists not of violent acts, but of injurious reproaches, complaints, accusations or taunts. Before coming to a conclusion, the judge must consider the impact of the personality and conduct of one spouse on the mind of the other, and all incidents and quarrels between the spouses must be weighed from that point of view. 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. [Halsbury's Laws of England, referred to above para.516 at p.270].

Section 9(2) of the Matrimonial Causes Act provides that :

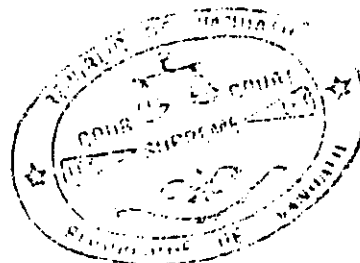
*"Before hearing any petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties, and also to inquire into any countercharge which is made against the petitioner."*

In this case, condonation is not pleaded. In *Niko v. Niko* , I indicated that it is not necessary that condonation should always be pleaded but failure to plead it (condonation) does not relieve the judge of the duty of investigating that question if there is any material indicating the possibility of the existence of condonation.

In the present case, I am satisfied that there are no such materials showing the existence of condonation of the alleged cruelty. There is a matter which is an issue of provocation raised by the Respondent, I will deal with it later on.

### STANDARD OF PROOF

In *Niko v. Niko* referred to earlier, I expressed the view that the Matrimonial Causes (Vanuatu) Act of 1986 CAP 192 gives a right to obtain the dissolution of a marriage for persistent cruelty by the decree of the Courts of law of this country, and from its provisions alone we must learn the conditions upon which the jurisdiction is to be exercised. Accordingly, in order to determine the principles regulating the standard of proof in the divorce court, it is necessary to go to the provision of the Statute, which is the Matrimonial Causes Act 1986 CAP 192. The relevant sections in this case, are sections 5, and 9. Section 5 as I have indicated earlier, is a governing section applying to all facts alleged as grounds for a petition for divorce, cruelty, adultery, dissension, etc...



Section 9(3) of the Act says simply :

*"If the Court is satisfied on the evidence that*

*(a) the case for the Petitioner has been proved and*

*(b) ... the grounds of the petition is, cruelty, the Petitioner has not in any manner condoned the cruelty ; ...the Court shall pronounce a decree of divorce."*

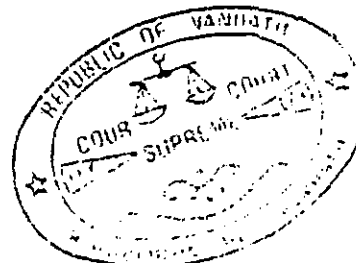
Having regard to the language of section 9(3) of the Act, I am of opinion that the ordinary standard of proof in civil matters must be applied to the proof of persistent cruelty in divorce proceedings, subject only to the rule of prudence that any tribunal must act with much care and caution before finding that a serious allegation such as that of persistent cruelty is established. [see Loveden v. Loveden(1810), 2 Hag. Con.3 ; 161E.R. 648].

### CORROBORATION

The requirement by the Court of corroboration where cruelty is alleged is merely a matter of practice, and not a rule of law, and it has never been decided that the Court is not entitled in a proper case, where it is in no doubt where the truth lies, to act on the uncorroborated testimony of the Petitioner. [see Kafton v. Kafton All E.L.R. Vol.1 KB D.435].

If corroboration were required of all facts of cruelty, it would mean that many petitioners (wives or husbands) would be unable to prove their cases because it often happens the cruelty is committed in the privacy of the matrimonial home. The injuries caused by the acts are often the subject of corroboration, but not the act themselves.

In this case, the question of corroboration is not an issue since the Respondent/husband had corroborated himself. He had admitted all the allegations of cruelty pleaded by the Petitioner/wife. There is no dispute about the facts alleged by the Petitioner at all.





The Respondent said in his evidence in Chief that, he assaulted the Petitioner on November 1994 and she got admitted for 2 weeks in hospital because the Petitioner went out, after she fastened a tissue on the light bulb while their 2 children were sleeping and the tissue had started to burn endangering the life of their 2 kids. He was too angry at that time. As he said, he has reason to do so.

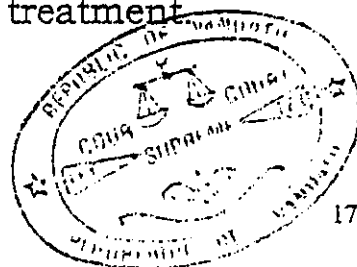
The Respondent is a lay person who argued his case in Court. He expressed his opinion and he said he is the boss in their couple/marital life. He said he has authorities over her wife/Petitioner. He said the Petitioner told her that she is better educated than him and when he talked to her, she refused to listen to him.

I treat this as a defence of provocation of the Respondent/husband by the wife/Petitioner.

Before I come to a conclusion, I must consider the impact of the personality and alleged conduct of the Petitioner/wife on the mind of the Respondent/husband and I keep in mind the physical and mental condition of both parties, their character and social status. Having considered the alleged conduct of the Petitioner, in the light of the evidence I have heard, I found that, in the mind of the Respondent/husband, such a conduct can amount to a provocation. However, there is no evidence before the Court that the Petitioner/wife is a violent wife.

It is only in cases where the other spouse (the Petitioner) is violent that the Respondent spouse can be justified to use such a force in self-defence as it might be necessary for restraint. Further the reaction to provocation must not be unreasonable.

In this case, I found that the reaction of the Respondent/husband to the conduct of his wife which he considered to be a provocation, is unreasonable and does not justify such a physical force which resulted in her spending 2 weeks in hospital for medical treatment.



Assuming further just for argument sake that the assault of November 1994 is a reasonable reaction of the Respondent to the conduct of her wife/Petitioner which in his mind amount to provocation, and assuming that that reaction he considered to be a reasonable reaction to his wife conduct, and as such the force he used on her is justified, I accept the Petitioner's submission that the provocation by the Petitioner, did not justify the Respondent's late actions which are not reasonable response to the issues that he raised. This was born out in the first assault on July 1994.

Having considered all the evidence in this case, I come to the conclusion that the evidence show high degree of assaults : 2 serious assaults, threat of serious assault on her life, series of minor assaults perpetrated on their marriage in 1992. The conduct as shown in the evidence which is not disputed but admitted as alleged by the Petitioner amount to cruelty.

I am, therefore, satisfied on the evidence that -

- the case for the Petitioner has been proved ; and
- the Petitioner has not in any manner condoned the cruelty ; and
- the petition is not presented or prosecuted in collusion with the Respondent.

This Court will, therefore, pronounce a decree of divorce.

On 26 September 1996, at the end of the hearing, I was requested by both parties to give an indication as to whether or not the Court is prepared to grant divorce so that the remaining issues including -

- (1) the custody of the 3 children,
- (2) family maintenance, and
- (3) Matrimonial Property settlement could be subsequently listed for hearing by the Court.



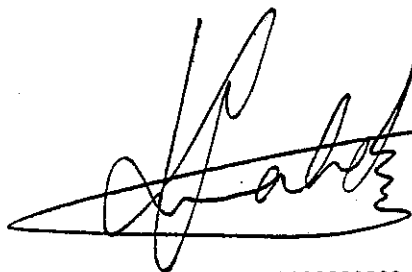
I then indicated to the parties that, since the allegations of cruelty are all admitted by the Respondent, it is more likely that the divorce will be granted and the judgment will take some time to be delivered since I am the only Judge of the Supreme Court in this jurisdiction at that time. The divorce was orally then granted on 26 September 1996 after I am satisfied that the circumstances of this case make it desirable that the decree of divorce be granted [see section 16(1) (2) of the Matrimonial Causes Act CAP 192.

I now make the following Orders :

1. That the marriage between the Petitioner and the Respondent celebrated on 10 August 1992 at the Catholic Cathedral of Port-Vila, Vanuatu, be dissolved ; and
2. That, a Decree Absolute be issued after a period of three (3) months commencing from 21st day of April 1998 ; and
3. That there is no order as to costs.

**DATED AT PORT-VILA, this 21st DAY of APRIL, 1998**

**BY THE COURT**



.....  
**Vincent Lunabek, J.**  
**Acting Chief Justice**

