

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Matrimonial
Case No. 21/151 SC/CIVL**

BETWEEN: Jean Paul Morelli
Petitioner

AND: Florence Vebang
Respondent

Date: 15 March 2022
Before: Justice V.M. Trief
Counsel: Petitioner – Mr J. Vohor
Respondent – Mr G. Takau

JUDGMENT

A. Introduction

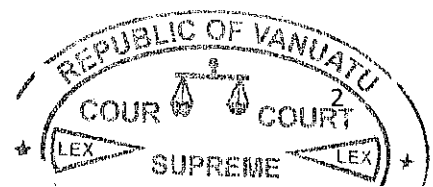
1. By the Petition filed on 27 January 2021, the Petitioner Mr Jean Paul Morelli sought dissolution of marriage, custody of the parties' two children, access orders, permanent restraint of the Respondent Ms Florence Vebang from molesting, harassing, assaulting or abusing him, and an order that she vacate the matrimonial home.
2. The Petition is disputed.
3. Counsel agreed that this matter proceed by way of written submissions and then the Court make its decision on the papers. The Petitioner filed written submissions. The Respondent failed to.
4. Having considered the submissions and the evidence, I now set out my decision.

B. Discussion

5. The grounds for seeking dissolution of marriage are adultery and persistent cruelty.
6. Ms Vebang denied the allegation of adultery in her Defence filed on 19 March 2021. However, she has not filed any evidence to rebut the following evidence:
 - a. Mr Morelli evidenced that Ms Vebang had an affair with Harry Vanua from Paama and has since 2013 with Vano Henrick. His neighbours and family at Lamap can confirm seeing them together. He evidenced that Ms Vebang cried one time, telling him the reason that she cried was because she was jealous that he had found out about her affair with Mr Henrick;



- b. Melewan Alexis evidenced that Ms Vebang had an extra-marital affair with a man from Paama known as Henrick Vano who is a cousin to Ms Vebang and he saw them together on the MV Big Sista travelling to Lamap, Malekula and again on Mr Morelli's truck in Port Vila when Mr Morelli was overseas at Noumea, New Caledonia. He evidenced that Ms Vebang and Mr Vano acted as if they were married; and
 - c. Abong Marcelin evidenced that Ms Vebang had a sexual affair with Vano Henrick from Paama who is her cousin. Their affair began in 2013 and in 2015, he saw them when they travelled together to Lamap for Ms Vebang's father's funeral.
7. There being no evidence to the contrary, I accept the evidence of Mr Morelli, Mr Alexis and Mr Marcellin that after the celebration of the parties' marriage, Ms Vebang committed adultery.
8. As to the ground that Ms Vebang treated Mr Morelli with persistent cruelty, the evidence of Mr Morelli, Charlette Narguet and Marie Ada dove-tail in describing an attempt by Ms Vebang on 14 September 2020 to suffocate Mr Morelli with a pillow. After that, Mr Morelli fled to Santo on the MV Vanuatu Ferry. The sole reason he went to Santo is because he did not feel safe to stay in Port Vila after what Ms Vebang did to him. Mr Morelli further evidenced that he has obtained protection orders against Ms Vebang and described violent incidents including cutting his left hand with a knife and thrown punches, and Ms Vebang's abusive language to him as he is now impotent (he is aged 78). There being no evidence to counter this evidence, I accept that since the celebration of the parties' marriage, Ms Vebang treated Mr Morelli with persistent cruelty.
9. The case for the Petitioner under paras 5(a)(i) and (iii) of the *Matrimonial Causes Act* [CAP. 192] has therefore been proved. I will order dissolution of the marriage.
10. Mr Morelli seeks custody of the parties' two children, who reside with Ms Vebang at the parties' matrimonial home at Fresh Water 1 area in Port Vila:
 - i. Stanley Jean Paul Morelli born on 16 October 2007; and
 - ii. Stephen Morelli born on 4 December 2011.
11. Mr Morelli evidenced that while a protection order was in force, he travelled to Port Vila in March 2021 to see the children but could not. In April 2021, Ms Vebang chased him and tried to rip away his wallet and phone. He has not seen the two children nor had access to the house since September 2020. He bought the house with his retirement pension after working for over 40 years at the nickel mine at Noumea, New Caledonia. He also bought the whiteware goods and appliances in the house such as stove and washing machine using his retirement pension. He wants to have custody of the children and to live with them in the house.
12. He pays the electricity, water and telephone bills for the house as Ms Vebang is unemployed. He has regularly deposited money into the parties' joint account that Ms Vebang has withdrawn to support her and the children.



13. Despite invitation by the Court, Ms Vebang has not filed any evidence to contest the custody, access, permanent restraining order and vacation of property sought. In the circumstances, there is no question as to Mr Morelli's willingness and ability to support the children's welfare and to take care of them.
14. It is in the best interests of the children that both parents have access to the children. Mr Morelli has proved his ability to support their welfare and his desire to live with the children. It is also in the children's best interest that there is continuity in their place of residence therefore I will order that Mr Morelli be given custody of the children and that he reside with them at the house. Ms Vebang will have to vacate the house and refrain from threatening or abusing Mr Morelli. An order will be made granting her access to the children.

C. Result and Decision

15. The Petition is **granted**.
16. A decree of divorce (**decree nisi**) is pronounced in relation to the parties' marriage celebrated on 17 July 2009.
17. The Petitioner is granted custody of the parties' two children Stanley Jean Paul Morelli and Stephen Morelli.
18. The Respondent is granted access to the two children during school holidays and otherwise with the prior, written agreement of the Petitioner.
19. A permanent restraining order is made against the Respondent from molesting, harassing, assaulting or abusing the Petitioner.
20. The Respondent is to vacate the property at leasehold title no. 11/OE31/07 at Fresh Water 1 area, Port Vila within 30 days from the date of service of this decision.
21. Costs follow the event. The Respondent is to pay the Petitioner's costs which I fix at VT75,000. The costs are to be paid by the Respondent within 28 days.

D. Enforcement

22. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, I now schedule an Enforcement Conference **at 8.30am on 14 April 2022**, including by phone or video link, to ensure the judgment has been executed or for the Respondent to explain how it is intended to comply with this judgment. For that purpose, this judgment must be personally served on the Respondent.

DATED at Port Vila this 15th day of March 2022

BY THE COURT


Justice Viran Molisa Trief

