

IN THE SUPREME COURT OF SEYCHELLES

JWH
VERSUS
RH NEE C

PETITIONER

RESPONDENT

Divorce Side No 2 of 2005

Miss L. Pool for the Petitioner
Mr. F. Bonte for the Respondent

JUDGMENT

Perera J

The Petitioner seeks a dissolution of his marriage to the Respondent under Section 4(1) (b) of the Matrimonial Causes Act (Cap 124), which is as follows_

- “4(1) a party to a marriage may petition the Court for divorce on the ground that the marriage has irretrievably broken down because –
- (a)
- (b) *The Respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the Respondent;*”

The parties who are British Nationals, were “*habitually resident*” in Seychelles throughout a period of one year immediately preceding the presentation of the petition, as required by Section 3(1) (b) of the said Act. The Respondent, who was duly served with notice of the petition was absent and unrepresented on 22nd March 2005 when the case was called for defence. It has been submitted that she had left Seychelles with the minor child of the marriage, Jason Robert Hancock (born on 7th November 1999). Accordingly the case was fixed for ex parte hearing as an undefended divorce case.

On the day fixed for the *ex parte* hearing, the Respondent was represented by Mr. France Bonte, Attorney at Law, who moved that the divorce proceedings be stayed under the principle of *forum non convenience*. This Court, by a Ruling dated 1st July 2005 refused the application.

On 27th July 2005, Learned Counsel for the Respondent informed Court that the Respondent consents to the granting of the petition for divorce, but that ancillary issues of care, custody and maintenance of the minor child, and property adjustment proceedings should be held in Guernsey. Upon the Petitioner consenting thereto, the petition for divorce was heard *ex parte*.

The Petitioner testified upon oath that he married the Respondent on 11th April 2000 in the Registrar General's Office in the Parish of Saint Peter Port in the Island of Guernsey. He is employed with Air Seychelles as an aircraft engineer. He produced a copy of his marriage certificate and a copy of the birth certificate of the said minor child who was born in the Republic of Philippines, before the promulgation of the marriage.

The Petitioner further testified that the marriage has irretrievably broken down as the Respondent consistently argued with him over money matters; was a spendthrift and generally made life unbearable for him to live with her. He also stated that attempts made to reconcile proved futile.

The Court is satisfied on the basis of this evidence that the marriage has broken down irretrievably and that there is now no hope of reconciliation. Accordingly a conditional order of divorce is entered pursuant to Section 6(1) of the said Act. Section 6(6) provides that-

“(6) Where there is a relevant child, the Court shall not make a conditional order of divorce absolute unless the Court is satisfied that arrangement, to the satisfaction of the Court, relating to the access, custody, maintenance and education of the child has been made by the parties and that the arrangement is in the best interest of the welfare of the child or an order under Section 18 has been made relating to the child.”

As the Magistrate's Court of Guernsey has made an *ex-parte* interim order regarding the said child of the family, the Court is also satisfied that there is sufficient compliance with the spirit of Section 6(6), and hence order that the conditional order be made absolute after the expiry of six weeks from today. As agreed by the parties the issues of care, custody and maintenance of the minor child, and property adjustment matters may proceed before the appropriate Courts in the Island of Guernsey.

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A.R. PERERA

JUDGE OF THE SUPREME COURT OF SEYCHELLES

Dated this 1st day of August 2005