

**IN THE SUPREME COURT OF SEYCHELLES**

**L P**

**Petitioner**

**Versus**

**A P**

**Respondent**

Divorce Side No.80 of 2010

Mrs.K. Domingue for the Petitioner

Mr.B. Georges for the Respondent

**JUDGMENT**

***Burhan J***

The petitioner in this case L P, filed a petition dated 21<sup>st</sup> October 2010 in terms of section 4(1) (b) of the Matrimonial Causes Act 1992, seeking a divorce from the respondent A P. The petition was based on the ground that the said marriage had irretrievably broken down as the respondent, had behaved in a way that the petitioner could not reasonably be expected to continue live with him.

The respondent denied the allegation set out in the petition and the main contention

of the respondent was that the petitioner's case should be dismissed as she had failed to establish the fact that the marriage had irretrievably broken down, as the behavior of the respondent was such, that she could not be expected to continue to live with him.

During the trial, both parties in their evidence admitted that there was no chance of reconciliation between them. Both parties also admitted the fact that they were married on the 18<sup>th</sup> of April 1995 and both were domiciled and resident in the Seychelles. It was not disputed that the child S P was born of the said marriage on the 26<sup>th</sup> of July 1995.

In her evidence the petitioner testified that the respondent had continuously insulted her and had called her a prostitute and a pig in the presence of her daughter. He had also come to her workplace and insulted her and had come home on occasions and threatened to set her on fire and kill her and her daughter. She testified that he had cut the electricity to her house and she had not had any relationship with the respondent for the past two and a half years and since the last 4 months was living in a separated section of the house. She admitted that there was no love, communication or trust existing between them and categorically stated that she could not be with a person who insults her, calls her a pig and asks her to sell her body and moved court to grant her a divorce as requested in her petition. Under cross examination she admitted knowing a person by the name of Martin Belairy but denied she was in love with him or that this was the reason she did not wish to go back to her husband.

The respondent in his evidence denied he had insulted her in public. He however

admitted that after seeing some documents, he did not want to get back to her. He alleged that while he was in Madagascar, she had cheated on him with his brother in law Martin Belairy and further stated that the relationship between her and his brother in law was still continuing. He denied being arrested by the police on a complaint made by the petitioner but subsequently accepted being kept in police custody for a few hours but stated he was innocent. He further stated in his evidence that as the petitioner had wanted to increase the maintenance for the child to Rs 1000, he was taken to the Family Tribunal.

He too admitted that at present there was no love, communication and affection between them and in his view the marriage had broken down since April. He admitted that reconciliation would not work. He further admitted that he had not filed a cross petition even though he knew of his wife's relationship with Martin Belairy.

While learned counsel for the respondent admitted in his submissions, "this marriage is dead as a dodo" his main contention was that it was still the duty of the petitioner to establish her case.

When one considers the evidence in this case, the petitioner categorically states that the respondent had continuously verbally abused her and threatened to kill her and had done so even in public. She states that she had to complain to the police. The respondent admits that he was locked up in a police cell for a few hours as a result of the petitioner's complaint. It is apparent from the evidence given by the petitioner that this behavior of the respondent was of a continuing nature which had resulted in him being arrested by the police and being detained and the

petitioner living separately from the respondent, a fact admitted by the respondent himself. Both parties admit that the love communication and affection is non-existent in their marriage. The respondent alleges that the motive for the petitioner to file the said action is because she is having an extra marital affair with his brother in law Martin Belairy. However in the pleadings filed by the respondent, no such averment has been made to this effect. For the aforementioned reasons this court proceeds to accept the evidence of the petitioner and is satisfied that the petitioner has established her case on a balance of probabilities.

The evidence of the petitioner clearly establishes the fact that the respondent's behavior was such that it cannot be reasonably expected that she could continue to live with him and thus this court is satisfied that the said marriage has irretrievably broken down with absolutely no hope of reconciliation.

Therefore an order for the dissolution of the said marriage is made and a conditional order for divorce is granted to the petitioner which is to be made absolute on her application six weeks from the date hereof.

**M.N BURHAN**

**JUDGE**

Dated this 10<sup>th</sup> day of January 2011