

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: DC 09/2014**

**[2015] SCSC 133**

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**MARGUERITE MARTH MORADA BELLE**

Petitioner

versus

**WILL ANTONIO JOUBERT**

Respondent

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Heard: 7 May 2015

Counsel: Mr. W. Herminie for petitioner

Mr. B. Georges for respondent

Delivered: 7 May 2015

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**JUDGMENT**

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**D. Karunakaran, Acting Chief Justice**

**[1]** This is a petition for divorce. The Petitioner, the wife, has applied to this Court for a dissolution of her marriage on the ground that the marriage has irretrievably broken down since;-

**(i)** the respondent has committed adultery;

- (ii) the respondent has deserted the Petitioner for a continuous period of about four years;
  - (iii) the parties do not share the same religion and the Respondent is opposing to the Petitioner practicing her religion; and
  - (iv) the Respondent treated her with mental cruelty in that he used to persecute, insult and criticise the Petitioner regarding her religious beliefs.
- [2] The Respondent on the other side fervently contested this matter stating that the Petitioner has no valid grounds to seek dissolution of the marriage.
- [3] With the intention of giving a chance to the parties to sustain the marriage, the Court referred the case to the Social Services for a possible reconciliation between the parties. However, that attempt at reconciliation proved futile. In the circumstances, the Court had no other option but to hear the matter on the merits.
- [4] In a nutshell the Petitioner testified that she was lawfully married to the Respondent in Seychelles on the 24<sup>th</sup> December 2003, and the Petitioner is working as a Lecturer, whereas the Respondent is a Teacher. Both parties are Seychellois nationals, domiciled and resident in Seychelles. She also testified there has been no previous Court proceeding in respect of this marriage. The Petitioner categorically testified that her marriage with the Respondent has irretrievably broken down because he committed adultery with a known person and the Respondent has not been faithful to her and he deserted her for a continuous period of more than four years, since 2010. Moreover, the Petitioner testified that the Respondent does not share her religious belief and always used to insult, persecute and criticise her religious beliefs. Also, the Petitioner testified that all attempts at reconciliation have failed and there is no possibility for their reunion.
- [5] However, the Respondent did not adduce any evidence to substantiate his defence. The learned counsel for the Respondent, Mr. Georges submitted that although the Matrimonial Causes Act states that a marriage could be dissolved when there is an irretrievably breakdown, the Court should follow the jurisprudence based on the Old Matrimonial Causes Act in which the Court may grant divorce only on defined grounds

such as cruelty, adultery, desertion, if the Petitioner fails to adduce evidence to prove any of those factors then the ground of irretrievable breakdown of the marriage is not established to the required decree in matters of this nature. Therefore, Mr. Georges submitted that there is no evidence before this Court to dissolve this marriage.

[6] Mr. William Herminie, learned counsel for the Petitioner, testified that in modern times we cannot apply the old Jurisprudence regarding the traditional grounds such as adultery, cruelty and desertion, what is important is if the Petitioner could establish that the marriage has irretrievably broken down then the Court ought to grant divorce.

[7] I meticulously considered the submissions made by both counsel in this matter. I quite agree with the submission made by Mr. Herminie the days are different, we live in a different era, we cannot apply the old Jurisprudence on Matrimonial Causes based on our old Act. Now the very purpose of enacting the new Matrimonial Causes Act is to do away with such traditional grounds. In my view that is the main reason why we have replaced all the old grounds, the traditional grounds and have replaced only one ground that is irretrievable breakdown of the marriage in the new Matrimonial Causes Act. In this particular case on the evidence available on record, I am satisfied that the marriage between the parties has irretrievably broken down. I am equally satisfied there is no possibility of reconciliation. In the circumstances, justice demands that the marriage ought to be dissolved. I do so accordingly.

[8] WHEREFORE, I hereby dissolve the marriage of the parties and grant a conditional order of divorce, which may be made absolute after the expiry of six weeks from the date hereof.

[9] The petition is granted accordingly.

Signed, dated and delivered at Ile du Port on 7 May 2015

D Karunakaran  
**Acting Chief Justice**