

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: DS 163/2016

[2017] SCSC 17

DL

Petitioner

versus

EL

Respondent

Heard: 18th January, 2017

Counsel: Mrs L. Alcindor Valabhji for petitioner

Absent/ Unrepresented for respondent

Delivered: 18th January, 2017

RULING

Carolus Master

[1] This is a petition for Divorce made under the provisions of the Matrimonial Causes Act. The Petition is supported by an affidavit sworn by the Petitioner, and was filed on 14th November, 2016.

[2] The ground on which divorce is being sought as appears from paragraphs 4 and 5 respectively of the Petition is as follows:

“4. That the marriage has irretrievably broken down on the ground that the parties stopped living together as husband and wife since February, 2012.

Particulars of Separation

5. For the last few years the parties faced certain irreconcilable differences and in February, 2012, the parties separated.”

[3] Section 4(1) of the Matrimonial Causes Act sets out the grounds on which a party to a marriage may petition for divorce. It provides as follows:

“4. (1) Subject to this Act, a party to a marriage may petition the court for divorce on the ground that the marriage has irretrievably broken down because-

(a) the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) the respondent has deserted the petitioner for a continuous period of at least 2 years immediately preceding the presentation of the petition; or

(d) the petitioner and the respondent have lived apart for a continuous period of at least 1 year immediately preceding the presentation of the petition and the respondent consents to the grant of the divorce.”

[4] In my view the Petition does not disclose any of the grounds for divorce as provided for in section 4(1) of the Matrimonial Causes Act. As such I find that the Petition discloses

no cause of action and must be dismissed in accordance with section 92 of the Seychelles Code of Civil Procedure.

- [5] I note further that the Affidavit in support of the Petition is sworn by the Petitioner before the attorney for the Petitioner. It is settled law that a party cannot swear an affidavit before Counsel acting for that party. The affidavit in support of the Petition being defective, I find that the Petition is not supported by a valid affidavit and consequently does not comply with 3(9)(a) of the Matrimonial Causes Rules.
- [6] For the reasons given above, I dismiss the Petition.
- [7] I also wish draw Counsel’s attention to a further irregularity in respect of this Petition in that although the address of the Respondent in the caption of the Petition is stated to be “ [the specifics of the international address have been removed to protect the identify of the party]”, the return of summons shows that the Petition was served at the Chambers of Counsel for the Petitioner and that Counsel accepted such service on behalf of the Respondent. Counsel cannot act for both the Petitioner and the Respondent as this presents a conflict of interest. The proper course in this case would have been for Counsel for the Petitioner to file a notice of motion for service of the Petition on the Respondent out of the jurisdiction at her address in [foreign country].

Signed, dated and delivered at Ile du Port on 18th January. 2017.

E. Carolus
Master of the Supreme Court