

IN THE SUPREME COURT OF SEYCHELLES

AGNES NICHOLE SERAPHINE NEE YOUNA

PETITIONER

VERSUS

GERALD MASON SERAPHINE

RESPONDENT

Divorce Side No 47 of 2004

Mr. W. Lucas for the petitioner
Respondent in person

JUDGMENT

B. Renaud

The Petitioner is seeking the dissolution of her marriage and an order of divorce alleging that her marriage has irretrievably broken down, because of the way that the Respondent has behaved it is not reasonably possible for her to live with the Respondent any longer.

The Respondent was duly served with the Petition and Notice to Appear and he appeared in Court in person on the date fixed, and informed the Court that he wanted a reconciliation, whereupon, the Court referred the matter to the Probation Services. The Probation Officer reported that reconciliation attempt has not been successful. The Respondent was given time to answer the Petition but he failed to file an answer by the due date. The Court, upon the application of the Petitioner, granted leave for the matter to be heard *ex-parte* with notice to the Respondent.

The Petitioner, Mrs. Agnes Nichole Seraphine born Youpa of English River, Mahe, testified that she was married to the Respondent Mr. Gerald

Mason Seraphine of English River, Mahe on the 5th day of November, 1992, at the Central Civil Status Office, Mahe. She produced the marriage certificate and that was admitted as Exhibit P1. She deposed that after the marriage the parties lived and cohabited at English River, Mahe and that there are two children that were born of this marriage, namely, Velma Anifa Seraphine born on 1st May, 1993 and Amisha Shelly Gilliane Seraphine born on 4th September, 1997. She produced their respective birth certificates and that were admitted and marked as Exhibit P2 and P3. Both parties are Seychellois nationals and are domiciled and resident in Seychelles. At the time of filing the Petition, there has been no previous proceeding in any Court affecting the said marriage. The Petitioner further testified that the marriage has now irretrievably broken down because of the way the Respondent has behaved, it is not reasonably possible for her to live with him any longer. Her first reason for wanting her divorce, she stated, is because she felt that the behaviour of the Respondent was totally wrong against her and that the way the Respondent reacted against her brought a lot of aggressiveness. When asked to give examples of such behaviour, the Petitioner said that when she walked on the road she encountered a lot of harassment and that the Respondent harassed her even when she slept at night. She added that the Respondent even came to her place of work where she is a Supervisor at the Habib Bank, sat in a chair and stared at her and that made her colleagues to ask as to what was the problem. She also deposed that the Respondent would come to her at the Counter asking her if she still loved him. When asked by the Petitioner why he acted like that, the Respondent said that because of his love that he has for her. The Petitioner further testified that she has been having an extra marital affair with one Fernand Laporte whom she stated, she first met in September, 2004. She still lives with her husband and her two children in the same house at English River, but said that her husband occupies a separate room. The Petitioner also testified that there was a matter before the Family Tribunal in May 2005 but that was after the Petition was filed.

The Petitioner did not tender any other witness in support of her Petition.

This Petition is grounded under Section 3 (1) (b) of the Matrimonial Causes Act, 1992 (Act 3 of 1992), - *“the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent.”*

I find that, in her Petition, the Petitioner did not sufficiently set out the material facts which are necessary to sustain the grounds for the relief sought, as required by Rule 3(2)(i) of the Matrimonial Causes Rules 1993 (*S.I. 19 of 1973*). She failed to specify when or during what period the Respondent harassed her, or what form such harassment took place.

Regrettably, I find that the report of the Probation Officer is not helpful in the sense that this Court is not informed as to whether reconciliation really took place or there was only an attempt and that such attempt did not lead, for example, to the meeting of the parties to try and reconcile them. This is a requirement under Section 5 (1) (a) of the Matrimonial Causes Act, 1992 which states -

“Subject to this Act, the court shall not grant divorce on a petition under section 3(1) unless it is satisfied that -

(a) attempt has been made to reconcile the petitioner and the respondent;”

It is now becoming apparent to this Court that petition for divorce is being taken too lightly. It is high time that a clear message is sent out that the Court is there, to bury dead marriage, so to speak, and not to assist in killing it specially when there are minor children involved. So often, a party seeking divorce would simply stay away from the other for one year and thereafter seek a divorce. It is to be reiterated, that the granting of divorce is conditioned on the parties having tried to reconcile themselves in the first instance. I believe that such reconciliation process should be undertaken by professional

person or institution proficient in such matters, and, such person or institution will have to report to the Court fully on the process undertaken.

In this case I have observed the demeanour of the Petitioner when she was testifying and I find that she had not been forthright and truthful to the Court. She is living with her husband and their children in her parent's house up to now. Had her parents find the Respondent to be what the Petitioner wanted this Court to believe, they would have at least not tolerated his presence in their home up to now and moreover they would have at least come forward to testify about the misbehaviour of the Respondent. If indeed the Respondent really misbehaved at the Petitioner's place of work, the least that was expected of her was to support her testimony by at least one of her work colleagues. Had the Respondent misbehaved to the point that the Petitioner invited Police to her home, the Police would have at least taken certain measures against the Respondent.

It is only after questioned by the Court that the Petitioner admitted that she had been having extra-marital affairs with one Fernand Laporte. I believe that this is the principal reason why this marriage is in peril and this is being caused by the marital misbehaviour of the Petitioner who is now only seeking the stamp of approval of this Court for her to deal the final blow to this marriage so that she would be at liberty to pursue her chosen course much to the detriment of her family and her children.

This Court being one of the pillars of State is bound to uphold the constitutional provision enshrined in Article 32 of our Constitution, hence it recognizes that the family is the natural and fundamental element of our society and as such the Court should be promoting and protecting the family and not to so lightly approve its break up, unless for proven and serious reasons.

It is incumbent upon the Petitioner to adduce sufficient evidence to satisfy the Court that such harassment was unbearable in the circumstances. In the present case the Petitioner complained of harassment by the Respondent, but I find that she did not adduce sufficient evidence to prove such harassment to the satisfaction of this Court. This I find lacking in the present matter where such proof is required even the case was being heard *ex-parte*.

As stated earlier, I find that on the basis of the evidence adduced by the Petitioner, this Court is not inclined to believe that the marriage in issue has irretrievably broken down, hence this Petition is hereby dismissed, but without cost.

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B.RENAUD

JUDGE

Dated this 6th day of July 2005