

DIV. C. 136/16

2016

S.

NO. 13

**IN THE HIGH COURT OF SIERRA LEONE**  
**(FAMILY AND PROBATE DIVISION)**

**BETWEEN:**

**DR. ALIE AMIN SESAY                      - PETITIONER**

**AND**

**CHRISTIANA M. SESAY                      - RESPONDENT**

Counsel:-

H. Dabor Esq.                                      – Petitioner

G.B. Kanneh Esq. &                                      -- Respondent  
M. Charley Esq.

**BEFORE THE HONOURABLE MS. JUSTICE F. BINTU ALHADI J.**

**JUDGMENT DELIVERED ON THE 27<sup>TH</sup> DAY OF JUNE 2018**

## **JUDGMENT**

The Petitioner's action commenced by a Petition for the dissolution of the marriage between him and the Respondent solemnized on the 14<sup>th</sup> day of October 2006. It was filed on the 26<sup>th</sup> day of October 2016 praying for the following reliefs:

1. that the said marriage between the Petitioner and the Respondent solemnized on the 14<sup>th</sup> day of October 2006 be dissolved;
2. that the Respondent continue to have custody of the child of the marriage with reasonable access granted to the Petitioner;
3. that the Petitioner shall give a monthly maintenance of Le1,000,000 (One Million Leones) for the Respondent and the said child;
4. that the Respondent to surrender to the Petitioner the original of the title deed to the matrimonial property that is in the joint names of the Petitioner and Respondent situate lying and being at Mark Street, Hastings, Freetown. That the Respondent continues to dwell in the apartment of the said property with the child and the Petitioner to be in control of the shops at the frontal portion of same;
5. any further Order that the Court deem fit and just in the circumstances;
6. that the costs of this application be borne by the Respondent.

On the 9<sup>th</sup> day of November 2016 the Respondent filed an answer to the petition and a Cross-Petition on the ground of cruelty; and thus for the following reliefs:

1. that the marriage solemnized on the 14<sup>th</sup> day of October 2006 be dissolved;
2. that the Respondent be granted custody of the child of the marriage;
3. that the Petitioner be ordered to maintain the Respondent and the child with the sum of Le 5,000,000 (Five Million Leones) per month excluding school charges and medical;
4. that both the Petitioner and the Respondent make a Deed of Gift (Settlement) of their matrimonial property situate at Mark Street, Hastings in Freetown in favour of the only surviving child Esther Harrison Michael Sesay;
5. that the Petitioner give one of the cars to ease transportation of their child to school at Allen Town;
6. that the Petitioner be ordered to pay adequate compensation to the Respondent for the misery and suffering she went through of surgery;
7. that the Petitioner be ordered to provide the Respondent with alimony;
8. any other ancillary reliefs the court may deem fit and just;
9. that the Petitioner be ordered to pay costs.

On the 5<sup>th</sup> day of January 2017 the Petitioner filed an answer to the cross-petition praying that the cross-petition be rejected as a mere fabrication.

On the 25<sup>th</sup> day of May 2017 the Court granted the Petitioner a Decree Nisi after the Respondent failed to attend court on numerous occasions to testify viva voce. It was later discovered that the Respondent was not receiving notices from the Court as expected from the bailiff's office. It was decided later that the Decree Nisi ordered by this Court be set aside on grounds of irregularity and the Respondent testified viva voce on the 23<sup>rd</sup> of October 2017 and on the 2<sup>nd</sup> of November 2017 respectively.

#### SUBMISSIONS BY COUNSEL FOR THE PETITIONER - H. DABOR ESQ.

Mr. Dabor informed the court that the petitioner, Dr. Amin Sesay, had experienced cruelty in the hands of the Respondent and was therefore seeking a divorce on this ground. He explained how the behaviour of the Respondent caused the Petitioner to abandon his mother and his relatives. He argued that the respondent caused stress and undue anxiety to the petitioner that affected his health.

Counsel for the petitioner opined that the respondent's case was baseless, that her experience of undergoing three caesarean surgeries and losing all three children made her paranoid, unstable, superstitious and dogmatic. He maintained that the petitioner's late nights were as a result of his work, in order to fend for his family and not desertion as claimed by the respondent.

#### SUBMISSIONS BY COUNSEL FOR THE RESPONDENT - M. CHARLEY ESQ.

In his submissions to the court, Mr. Charley pleaded with the court to uphold the prayers of the respondent in her cross-petition. He asserted that the respondent was treated with cruelty and was deserted by the petitioner.

#### **DECISION OF THE COURT**

I have carefully considered the matter before me and these are my findings:

The petitioner, Dr Alie Sesay, has complained about his wife's behaviour. He told the Court that she has been cruel to him and he finds her conduct reprehensible. He has asked that the court dissolve his marriage to the Respondent, Mrs Christiana Sesay on the ground of cruelty. In law, cruelty/the respondent's behaviour is defined as : the cumulative effect of a series of acts which might well amount to behaviour which the Petitioner cannot reasonably

be expected to put up with, even though each of them taken separately might be too trivial; Stevens v Stevens [1979] 1 WLR 885.

The questions that arise therefore are: whether Mrs Sesay's behaviour has been such that Dr Sesay can no longer be expected to live with her? Or whether the petitioner, Dr Sesay, finds it intolerable to live with the Respondent, Mrs Sesay?

In responding to these questions, the court must have regard to the personalities of the individuals before it; and must assess the impact of the respondent's conduct on the particular petitioner in the light of the whole history of the marriage and their relationship; Livingstone – Stallard v Livingstone – Stallard [1974] Fam 47, 54; [1974] 2 All ER 766, 771.

Spelled out more fully in: Ash v Ash [1972] Fam 135, 140, [1972] 1 All ER 582, 585 one has to consider not only the behaviour of the respondent .....but the character, personality, disposition and behaviour of the petitioner. The general question may be expanded thus: can this petitioner, with his character and personality with his faults and other attributes, good and bad, and having regard to his behaviour during the marriage, reasonably be expected to live with this respondent?

In my opinion and when one considers the history of this marriage, the main challenge has been coping with the death of three (3) children, all dying within a short space of time between each other. I think that these events took a huge psychological toll on the health of the marriage; and both parties have suffered as a result of these unfortunate and tragic events.

The aspect of the petitioner not being expected to reasonably live with the respondent or finds her intolerable to live with, has been (or would have been) triggered by the beliefs, suspicions and utterances of Mrs Sesay; that is, that the deaths were caused by the witchcraft of her mother-in-law. That her behaviour, belief and suspicion caused Dr. Sesay to cast aside his own mother and even stopped speaking to her. I think that when you add up all these events in the life of the marriage, they together as a series of events, destroyed the soul of the marriage and eventually the compatibility of the couple.

I am therefore satisfied that the psychological state of both parties is such that they cannot be reasonably expected to live together in harmony. I do not however think that the respondent has been cruel to the petitioner and on that ground the petitioner has failed.

The respondent filed a reply and also cross-petitioned. She explained the types of medical interventions she underwent in order to have children and the devastating effects of losing three (3) children. Both parties were so concerned

that they enlisted traditional and religious interventions. Then ultimately, the petitioner told her that they should adopt a child and when that fell through, he canvassed contracting a second marriage to another woman. This contributed in buttressing the Court's view that, both parties have been psychologically scarred by the tragic incidents that occurred in their home and has irretrievably broken up their marriage.

In her cross petition, the respondent also complained about the petitioner's behaviour towards her. She saw a change in him after he qualified as a medical doctor. She stated that he became "pompous", "harsh", "nagging" and demeaning of her and dismissive. This catalogue of behaviour in law constitutes cruelty; Gollins v Gollins [1964] AC 644.

She explained the events surrounding the death of their children in the marriage. That there was a lack of conjugal relationship and to compound that, he expressed a desire to contract a second marriage with another woman, since he needed more than one child. When she refused to entertain the idea, his behaviour towards her worsened and he deserted the home for long period in time; and would make calls to other women in her presence.

I find the respondent's explanation of events more compelling and persuasive; and this would have certainly compounded her psychological stress and health. I am of the view that a woman who has experienced multiple child deaths is entitled to more considerate treatment from her husband. I am in no doubt that the impact of the petitioner's conduct on the respondent, would have had an adverse effect on her psychological and emotional state of mind. The petitioner's temperament, behaviour and disposition cannot therefore be ignored.

I therefore do not think that the respondent, from all that she has told the court in evidence, can endure the petitioner's behaviour nor has she the capacity any more. I am satisfied that the respondent has proven the ground of cruelty and I shall grant her the divorce. I think that Dr. Sesay's behaviour to his wife has been such that Mrs Sesay can no longer be reasonably expected to live with him.

#### Custody of the child

Custody of a child determines where the child is to live. It settles the arrangements as to the person with whom the child is to live. It is based on the fundamental principle that changes in the child's residence should interfere as little as possible with his/her relationship with both parents; that each parent retains full parental responsibility; Bromley and Lowe (supra) at p 351.

The argument that a child needs a single settled home is a strong one in most cases. From the facts of the case, the child of the marriage lives with her mother and has always been. This in the estimation of the court will continue to give the child a settled base. Furthermore, this view is buttressed by the application of the petitioner/father which states that the child should remain with its mother.

On the other hand, the court cannot consider the custody/residence of the child of the marriage, without considering access to the child by the absent parent. Access to the child of the marriage or contact entails, the person with whom the child lives, to allow the child to visit or stay with the person named in the Order or for that person and the child otherwise to have contact with each other.

It must be appreciated that while the child is with the parent, that parent may exercise her/his parental responsibility subject to not acting incompatibly with the Order of the Court.

The Court is of the view that the child, Esther Alison Michael Sesay is to continue to remain in the custody of the Respondent, Mrs Christiana Sesay. However, Dr Alim Sesay, the Petitioner is permitted to have the child, Esther Alison Michael Sesay to spend some weekends and holidays with the Petitioner as and when it is convenient or an agreement is reached by the parties. The agreement must not be unreasonably withheld by the parent with custody. Where this happens, the Petitioner will be at liberty to apply to the court for a variation of the Order.

### The Matrimonial Home

The critical importance of the home requires that it be given separate treatment. This is because it may have two functions: primary purpose is to provide shelter for the parties and their family. At the same time, if it is held in freehold, it will constitute the most valuable asset that most couples own and is thus an extremely valuable investment.

The general principles to be applied when making an order for financial provisions or the adjustment of property rights on divorce, the courts are directed to exercise their powers as : giving priority to the welfare of any child of the family. It tends to have regard to all the circumstances of the case, with first consideration being given to the welfare, while a minor, of any child of the family who has not attained the age of eighteen; Bromley & Lowe (supra) at 758. This means that the child's welfare is not the overriding consideration, though of course it is an important one; Suter v Suter and Jones [1987] Fam 111, [1987] 2 All ER 336, CA. This reflects the well established principle that orders for children should be related to their dependency and should not in the absence of special needs such as mental or physical handicap, provide for continuing

support during adulthood; Lilford v Glynn [1979] 1 All ER 441, CA; Chamberlain v Chamberlain [1974] 1 All ER 33, CA.

As such, in dealing with the matrimonial home, the court has options to make several orders. From the facts of the case, the property is jointly owned by the parties utilized as a home and the shops at the front as investment. The matrimonial home is therefore settled on the spouses as a trust for sale for themselves as beneficial tenants in common; Martin v Martin [1978] Fam 12, [1977] 3 All ER 762, CA.

Considering the circumstances of the case, both spouses shall keep or acquire an interest in the house as equitable tenants in common, which will involve settling it on them as a trust for sale; only that the sale is deferred until the child of the marriage attains eighteen (18) years old. After that stage, the parties have an option on whether to sell or not or whether one party decides to buy another out or not. In the meantime, the Respondent is given exclusive possession.

### **CONCLUSION**

In view of the above, I make the following Orders:

1. That the marriage solemnized between the Petitioner and the Respondent on the 14<sup>th</sup> day of October 2006 is dissolved forthwith.
2. That the Respondent is to have custody of the child of the marriage; with reasonable access being given to the Petitioner and to take the child to spend some weekends and holidays with same as and when possible.
3. That the Petitioner do pay monthly maintenance of Le 2,500,000 (Two Million Five Hundred Thousand Leones) monthly to the Respondent for her upkeep and that of the child and transportation. School fees and medical expenses excluded.
4. That the Respondent and the child do live in the matrimonial home until the child is 18 years old. After which the Petitioner and the Respondent are at liberty to decide whether they want to sell the property and share the proceeds of sale equally or not.
5. The monthly or yearly rent from the shops at the front of the property to be shared equally. The Petitioner and Respondent to have equal control.
6. Costs to be borne by the Petitioner; to be taxed if not agreed upon.
7. Liberty to apply.

  
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**Hon. Justice F. Bintu Alhadi J.**  
**Judge of the High Court**

**Dated:** 27<sup>th</sup> June 2018