

**Between : Carmen Lawac**

Petitioner

**And : Basil Lawac**

Respondent

Counsel : *Joel* for petitioner  
*Stephens* for respondent

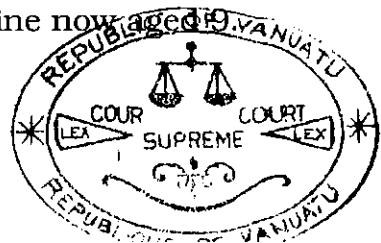
Hearing: 3 and 4 September 1998

Judgment: 4 September 1998

ORAL JUDGMENT OF TOMPKINS J.

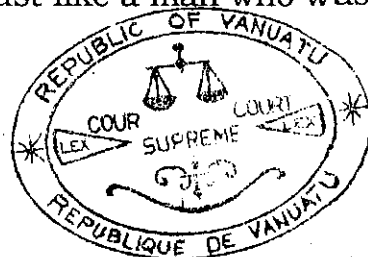
The petitioner, Mrs Lawac, has petitioned for divorce from her husband, Mr Lawac, on the ground that, since the celebration of their marriage, the respondent has treated the petitioner with persistent cruelty. On the morning of the hearing, the respondent filed a cross petition seeking a divorce on the ground of the petitioner's adultery. I declined an application that the hearing of this petition should be adjourned to enable both petitions to be heard together.

The petitioner and the respondent were married on 23 December 1981 at Atchin Village, Malekula. They have 3 children. Bastien now aged 17, Amelia now aged 14 and Rosine now aged 13.



Section 9(1) of the Matrimonial Causes Act [CAP 192] requires the Court to make such inquiries as it thinks fit to determine whether the parties may be reconciled, and shall not proceed with the hearing unless and until the Court is satisfied that reconciliation is impossible. The petitioner has described to the Court the several occasions that, in the context of the petition coming before the Magistrate Court and in the context of the church, where reconciliation possibilities have been explored. I am satisfied from that evidence, which is not contested by the respondent, that there have been extensive efforts at reconciliation, that they have failed, and that now reconciliation is impossible.

The petitioner's evidence concerning cruelty falls into two broad areas. The first relates to oral comments she says were made to her by the respondent. The second she claims to have been physical acts of cruelty. As to the former she said that, starting from 1986, the respondent frequently made highly offensive, personal comments concerning parts of her body. She said what these comments were. I need not repeat them in this judgment. She also claimed that he told her on many occasions that she smelt of tinned fish. The comments, particularly those related to her body, she said occurred mostly when they were having sex. She said that this behaviour continued from 1986 to 1995, although there was a period between 1989 and 1995 when the respondent was in New Caledonia. It is common ground that he went there because he was able to earn more than he could in Vanuatu. There were occasions while he was there when he returned to Vanuatu and some occasions when she and the children went to New Caledonia. She described one occasion in 1992 when he made personal highly offensive comments about her, and in particular about parts of her body. She claimed that on one occasion she was forced to have sex against her will, which she said was just like a man who was raping a woman.

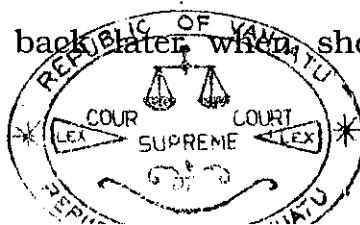


As to the second category of allegations, she described an occasion in January 1995 when they had a fight.. When she was bent down, he bit her on the back of the neck. He stayed biting her. She asked her sister to give her a knife. When she took the knife from her sister the respondent ran outside. She chased him, he fell down, she turned the knife using the back and put it on his bottom. She told him to leave but he did not. A few days later, on 25 January 1995, she left and rented another house. She said she wanted six months to think it over.

She described an occasion in 1996 when she said the petitioner tried to run her down with a car. This occurred at a playing field. The respondent had their daughter and another girl with him. They came to her. She said that the respondent turned the vehicle, which was a landrover type, at the corner of the netball court and was driving fast towards them. She pushed the little girl to one side and she ran to the other. She claimed that later he chased her with the vehicle. She went to the Police station. He arrived there too. She said he wanted to hit her. He took a stone, wanted to throw the stone at her and told he was going to hang her neck. The stone was taken from him by the Police.

She described an occasion in June 1997 when he was telling her off because of the children. They argued, he threw a coffee cup at her, he beat her, she fell down, he kicked her, he pulled her and they went through a door. There was another occasion that she said was also in June of last year, when he punched her, she wanted to punch him, he tore off her clothes.

The last occasion was in December of last year when he came to the house where she was living at 1 o'clock in the morning with two men. Maurice, the man with whom she was living, was assaulted by one of the men and she said the petitioner beat Maurice. Maurice ran away. Then she said that they came back later when she was



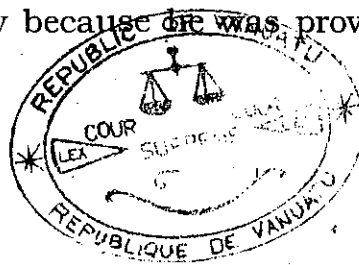
assaulted by one of the other men and also punched by the respondent. She said she would never live with him again.

The respondent categorically denies that he ever used the offensive words she described to the petitioner. He said that her evidence that he had done so was no more than an excuse to spoil his name. At one time they were living in a camp. If he had been treating her badly she would have been able to report him to his superior. She did not do so. He said that during their married life he never punched her or touched her until 1986.

As to the event concerning the alleged running down at the playground, he accepted that he was there in a vehicle with their daughter and another girl, that it was raining, that he wanted to tell the petitioner about some food for the daughter, that he turned the car in order to do so and braked, but because the wheel was bald the car slid and banged into a fence. He did not mean to roll over her. Later in cross-examination he said that the brakes on the car were not very good, that he had to pump them, and that that caused the car to slide one or two metres. He accepted that after playing field incident he went to the Police station, that he intended to slap her, but the Police stopped him, and also that he had picked up a stone.

He acknowledged that in April or May 1997 he went to the house where the petitioner was, found Maurice on the bed, she was sitting on the bed and he punched her.

As to the incident involving the knife, he gives a completely different account. He said that they had had a fight, that she took the knife and cut him and then the knife hit a table. He denied that he had assaulted her before she assaulted him with the knife. He accepted that he had bitten her, but only because he was provoked and she had the knife.

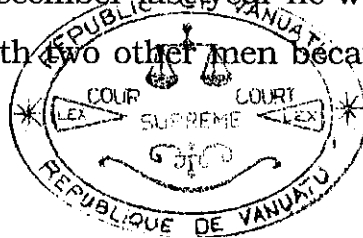


As to the occasion last December, he acknowledged that he and two other men went to the house at 1.00am when the respondent slapped Maurice. It was not true that he had assaulted her. She had already had a black eye which he believes was caused by Maurice. He said he went to ask for the little girl. He came back at 6.00am and then took the little girl with him because he wanted to go to an island for a ceremony for Bastien.

He considered that the petitioner had broken a rule of the marriage by having a boyfriend, bringing him home, and sleeping with him. He made it clear that he relied very much on tradition in married life and pointed out that in the traditional way he had bought her with a pig with rounded tusks and 140,000VT paid to her father. That was why he struggled to settle their differences in the traditional way, but she refused.

There is, therefore, a head on conflict between the petitioner and respondent concerning whether the respondent had been guilty of persistent cruelty. Neither party called other witnesses to confirm or deny any of the evidence that had been given. It was therefore essentially an issue of credibility which, I have to determine on my view of the witnesses.

I have reached the conclusion that where there is a significant difference in the evidence of the petitioner and the respondent, I prefer the evidence of the petitioner. I have reached this conclusion having regard to my assessment of the parties as I saw them in the witness box. But I also find two important parts of his evidence to be inherently improbable. First, his claim that the events at the playing field were due to the car slipping in the manner and for the reasons he described, is in my view highly unlikely. Secondly, I find completely unconvincing his claim that on 16 December last year he went to her house at 1 o'clock in the morning with two other men because of his




daughter. I do not believe him. I am satisfied that he and the others went to the house to confront the petitioner and Maurice as indeed they did. There is a further aspects that goes to credibility. He described an occasion when he and the petitioner were at the Police station. This was in November of last year. He then declared that he would not go and see her again. Yet it was only the following month that he and the two men confronted her at 1.00am in the morning and again at 6.00am in the manner I have described. It is likely that he was then intoxicated. He acknowledged that he had been drinking kava and had also had some beer.

It is for these reasons that I largely prefer the account of the petitioner. As her evidence clearly establishes that the respondent had treated her with persistent cruelty, both physically and mentally, I find that this ground of divorce is made out.

I make a decree nisi to be made absolute after three months. There will be interim orders granting custody of Bastien to the respondent and of Amelia and Rosine to the petitioner, each party to have reasonable access to the child or children in the custody of the other. I anticipate that final orders as to custody and access will be made at the time of the granting of the decree absolute. There will no order for costs.

DATED AT PORT-VILA, this 4<sup>th</sup> DAY of SEPTEMBER, 1998

BY THE COURT



.....  
TOMPKINS J.

