

The proceedings were commenced in the Magistrates' Court. The Petition was disputed. It was transferred to the Supreme Court for hearing. Reconciliation being impossible, the matter was set down for trial. The parties were directed to file evidence by way of sworn statements intended to be relied upon by each of them. There was no cross-examination of any of the parties nor their witnesses as the Respondent admitted the acts he committed against the Petitioner.

The First issue in the Petition is whether or not the acts of the Petitioner and other sworn statements in support of the Petition amount to cruelty.

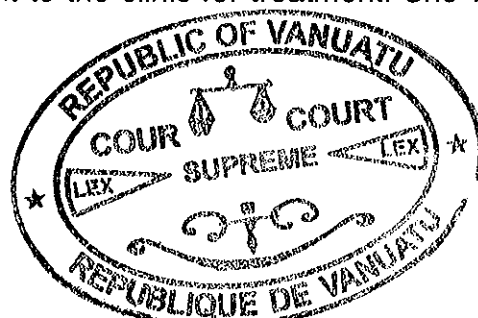
EVIDENCE OF THE PETITIONER

The Petitioner filed two sworn statements respectively on 19 April 2011 and 29 August 2011, the contents of which show the following:

She is lawfully married to the Respondent, Warren Arnold on 9 November 2003. They have three children from their marriage: Alick Sulu Warren born on 9 January 2003; Meriel Viki Warren born on 27 June 2004 and Melinda Warren born in 2005. They are both from Linbul village, North Ambrym. On one occasion when Warren Arnold had travelled to Luganville, Santo to purchase cargoes for their shop, Tony who is Warren Arnold's younger brother came into the bedroom of Nelly and Warren and forced Nelly to have sexual intercourse with her. When Warren returned from Luganville, Santo, Nelly felt bad about the adulterous intercourse she had with Tony and admitted it to her husband Warren. The Chief of the village resolved the matter and she paid customary fine or compensation to the chief and her husband Warren.

After the custom court settlement, Warren had started to commit certain acts on Nelly. Every single day Warren assaulted her. Warren assaulted her by pouncing her with his hands, kicking her with his legs, threw stones at her and whipped her with wooden stick.

Warren used the bush knife by sticking her body with the knife. This caused serious injuries on her body. On one occasion Warren stucked the bottom part of her backside (ass) with the bush knife. She went to the clinic for treatment. She went to



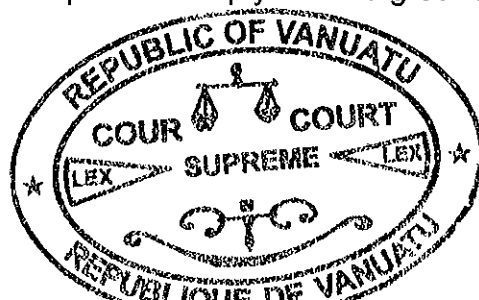
receive treatments at the clinic on many times. Nelly attached a copy of a letter of the nurse (Rose Jacob) who worked at the clinic of the area, which confirmed the treatments Nelly received at the clinic resulting from the injuries caused by Mr Warren on the body of Nelly.

On two different occasions, in the presence of their children, Warren removed Nelly's cloths of her leaving her with a panty and bra and assaulted Nelly in front of their children. The children were crying and frightened and the two older children ran away outside the couple's house.

On some other occasions, when Nelly had menstruated or she felt bad, Warren forced her to have sexual intercourse without her consent. Nelly submitted herself to Warren because of the fear of being beaten or assaulted by Mr Warren. In some instances, in the presence of the children, Mr Warren forced Nelly to have sexual intercourse in their bedroom. She gave account of an instance when the younger of their children, Melinda, of 2 years of age came into the bedroom when Warren forced her to have sexual intercourse in the room, Mr Warren refused to stop his sexual intercourse with Mrs Nelly despite Nelly asking him to stop it because Melinda watched them.

On different occasions, Mr Warren used violence or demanded forcefully to have sexual intercourse with Nelly in the garden or if they were in the garden with the children, Warren would force her and the children to return home so that he could have sex with Nelly. Nelly would force her way out of Warren during the sexual activities. She would be crying because she felt pain on her body. This happened on some occasions when Mr Warren had introduced his finger into her vagina resulting in Mr Warren's finger nail scratched inside of her.

On one particular occasion in June 2007, the Petitioner and the Respondent went to the garden with their children. Nelly was planting manioc. Warren wanted to have sex with Nelly. Nelly refused to have sex with him in the garden. Mr Warren threw his bush knife at Mrs Nelly to assault her with the knife but he missed her. Nelly could see the knife shaking forcefully near her while it speared deeply into the ground.



Mr Warren was dealt with by the Chief of his village on four (4) times because of his numerous acts on the body of Nelly. Nelly was having a hard life because of the numerous acts and ways she was treated by Mr Warren. So in March 2008, Nelly decided to go back to her parents.

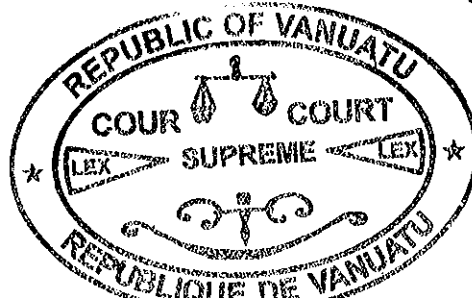
She took Melinda with her. She wanted to take her two other children but their paternal grand parents told her to leave the two other children with them. In January 2011, Warren's mother took Melinda away from her mother Nelly and she told Nelly that she had no right over her children because she left Warrant Arnold.

Nelly stated she left Warren because of the numerous acts he perpetrated on her body and against her and she had seriously suffered.

On 27 February 2011, when Nelly went to take Melinda back, Warren's father (Arnold Lowet) and Warren's brother (Samsam) assaulted Nelly seriously and told her that she had no right over her children.

Mrs Nelly decided to come to Port-Vila to seek legal assistance to lodge a Petition for dissolution of her marriage with Warren Arnold and seek the custody of her children.

Mr Tommy Renold filed a sworn statement to the effect that he was living in the same village with Nelly and Warren at Linbul village, North Ambrym. He was a neighbour of the Petitioner and the Respondent. He now lives at Pango Hald Road, Port-Vila, Vanuatu. He confirmed the numerous acts that Mr Warren Arnold committed on the body of Mrs Nelly. He stated that after the chiefs settled the matter of adultery of the Petitioner (Nelly) with the younger brother of the Respondent (one Tony), Mr Warren started to commit certain acts on the body of Mrs Nelly. He saw what Mr Warren was doing to Mrs Nelly. He described that Warren assaulted Nelly and used his hands to pounce her and when Nelly was lying on the ground, Warren would kick her with his bare foot. Warren assaulted Nelly inside and outside of their house. Sometimes Nelly sought refuge to Tommy's house for her security from the acts of Warren. Sometimes Tommy and other young men would stop Warren while Warren was assaulting Nelly.



Warren's family tried to sort out Warren's conducts towards Nelly on numerous occasions. This included the chiefs of the village who attempted to sort out Mr Warren's acts of violence against his wife, Mrs Nelly.

EVIDENCE OF THE RESPONDENT

Mr Warren Arnold filed a sworn statement in response to the Petitioner on 19 August 2011. In his sworn statement, he confirmed and admitted his numerous acts on the body of Mrs Nelly as stated by Nelly. Mr Warren seemed to justify his actions and the sort of treatments he gave to his wife by the adulterous relation Mrs Nelly had with Warren's younger brother and his belief that Nelly has continued with extra-marital intercourse with his young brother Tony.

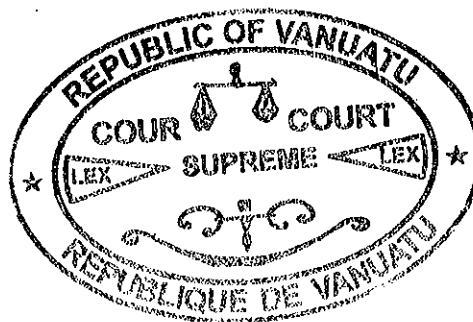
FINDINGS AND APPLICATION OF LAW

Mr Warren Arnold admitted numerous acts of violence against his wife Mrs Nelly and acts perpetrated on the body of his wife despite the fact that Mr Warren stated that he had forgiven his wife from her adulterous relation with Warren's younger brother in March 2007.

The evidence which is accepted by the Court coupled with the admission of the Respondent Mr Warren is that, Warren had assaulted his wife every single day between April 2007 and March 2008. These assaults also included the used of weapons such as bush knife, stones, stick and wood. The assaults were also sexual in nature. The petitioner went to the clinic on a number of times to be treated by the nurse for the injuries sustained by her, as a result of the assaults on her.

In the present case, the numerous acts described satisfy the requirement of section 5(a)(iii) of the Matrimonial Causes Act [CAP.192] of proof of "persistent cruelty". **Kong v. Kong** [2000] VUCA 8; Civil Appeal Case No.10 of 1999 (6 December 2000) is the case authority on the point when it was held:

"Persistent cruelty normally requires a course of cruel conduct which is persisted in by the Defendant, not a single isolated act of cruelty..."



The Court of Appeal decision in **Kong v. Kong** (2000) followed and applied the Australian case of **Ainsworth v. Ainsworth** (1967) 10 FLR 396 setting out the relevant criteria in this way:

"In matrimonial causes, before a spouse can be found guilty of cruelty, certain elements must be present... 1. The conduct must cause injury or reasonable apprehension of injury to the health of the other party irrespective of whether such result was intended. 2. Conduct which is alleged to constitute a cruelty must be grave and weighty. 3. The conduct viewed as a whole in the light of all relevant circumstances, must be capable of bearing the description of cruelty in the generally accepted use of that word."

These elements are satisfied in this case. The conduct or series of acts of Mr Warren Arnold on the body of the Mrs Nelly and against her amount to persistent cruelty. An order will be issued to dissolve the marriage of the Petitioner and the Respondent.

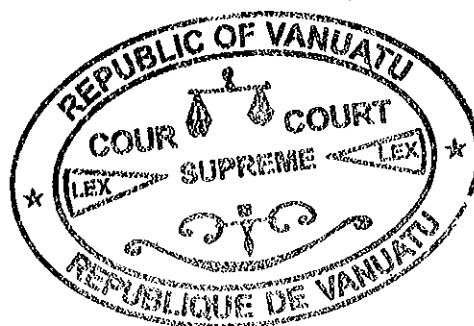
In the cause of the hearing and submissions, the Petitioner abandons her application for alimony and maintenance.

What remain are the custody, access and maintenance of the children to be determined.

CUSTODY, ACCESS AND MAINTENANCE OF THE CHILDREN

The Petitioner and the Respondent have each filed a sworn statement respectively on 27 and 28 October 2011 in respect to the custody, access and maintenance of their children. They have the following three children during their marriage: Alick Sulu, Meriel Viki and Melinda aged 8, 7 and 6 years respectively.

The Petitioner seems to limit the extent of her application for custody and maintenance to the youngest of her children – Melinda and she seemed to have accepted that the custody of the two eldest children would be given to the Respondent Warren Arnold. Mr Warren Arnold seemed to have accepted the custody



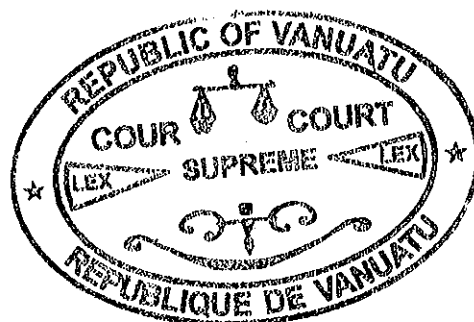
and maintenance of their two eldest children to be granted to him and that of Melinda to the Petitioner.

The Petitioner and the Respondent have comparable situations. They both come from same village area or island (Ambrym). The Petitioner and the Respondent have no permanent employments. They both do little jobs on occasion to sustain themselves. They are both assisted by their respective parents and extended members of their family. The two eldest children of the marriage (Alick & Meriel) reside and stay with the Respondent's parents after the couple separation in March 2008. The Respondent's parents look after them daily and pay for their school fees. Until February 2011, Melinda was living with her mother, the Petitioner. Since February 2011, Melinda was removed from her mother by the actions of the parents and members of the family of the Respondent. The best interest of the child must be the primary consideration. The Petitioner and the Respondent have jointly assisted the Court with the resolution of the custody issue. They have also indicated their intention as to the maintenance of the children. It is hoped that access and maintenance of the children will be arranged with the understanding that what is important is the best interest of each of the children of the couple. Orders will be made to reflect those understandings.

In conclusion, the Court makes the following Orders:

ORDERS

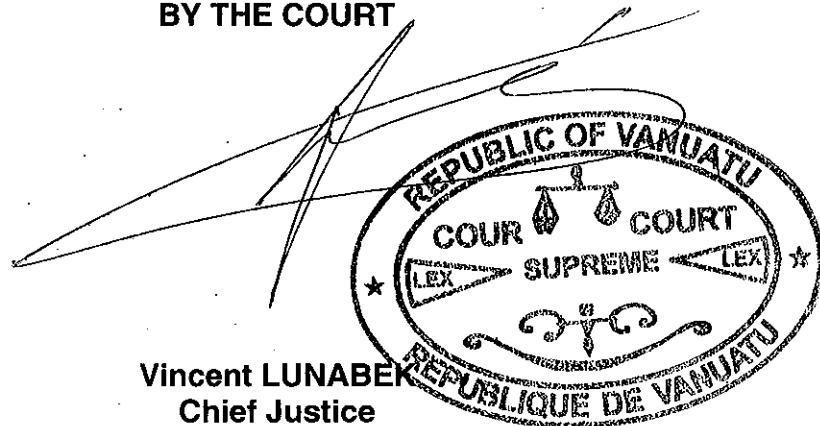
1. That, the marriage between the Petitioner Mrs Nelly Lissing Willie and the Respondent Warren Arnold celebrated on 9 November 2003 at Linbul SDA Church, North Ambrym, is hereby dissolved.
- 2.(a) That, the Petitioner shall have the custody of the child Melinda Warren; and
(b) That, the Respondent shall have the custody of the children Alick Sulu Warren and Meriel Viki Warren.
- 3.(a) That, the Petitioner shall be responsible for the maintenance and education of the child Melinda.



- (b) That, the Respondent shall be responsible for the maintenance and education of the children Alick Sulu Warren and Meriel Warren.
4. That, the Petitioner shall have reasonable access to the children Alick Sulu Warren and Meriel Warren during weekends and public holidays or school holidays or subject to arrangements to be made by the Petitioner and the Respondent based on what is best and suitable for each of the 2 children and all children together.
 5. That the Respondent shall have reasonable access to the child Melinda Warren during weekends and public holidays or school holidays or subject to arrangements to be made by the Respondent and the Petitioner based on the best interest of that child and together with the 2 other children.
 6. The Petitioner and the Respondent have liberty to apply within 48 hours notice if there is any issue with the custody, access and maintenance of the children of the marriage of the Petitioner and the Respondent.
 7. Parties to pay their own costs.
 8. Decree Nisi Absolute shall be issued 3 months after the order for dissolution of the marriage of the Petitioner and the Respondent. (Section 12 – Notice of Dissolution of Marriage Form G [CAP.192]).

DATED at Port-Vila this 28th day of October 2011

BY THE COURT



Vincent LUNABEK
Chief Justice