

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

MATRIMONIAL CASE No.11 OF 2013

BETWEEN: LINDA YAGEN JOHN
 Petitioner

AND: YAGEN JOHN FRED
 Respondent

Coram: V. Lunabek –Chief Justice

Counsels: *Ms Pauline Kalwatman and Harrison Rantes for Petitioner*
Mr Avock Godden for Respondent

JUDGMENT

1. The Petitioner filed a petition for divorce on the ground of adultery. The Petitioner also seeks for custody of the child of the marriage, Curtis Timothy. She seeks maintenance orders for the both children of the marriage. She also seeks an order in relation to land at Erakor Half Road.

Decree Absolute

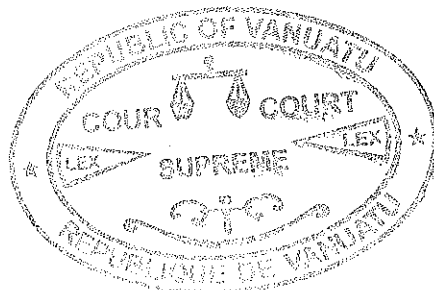
2. On 4 March 2014 the Court issue a Decree Nisi and on 10 June 2014, the Court absolutely dissolved the marriage solemnized between the Petitioner and the Respondent on 15 July, 1999.

Interim Orders

3. On 4 March 2014, the Court issued interim orders between the Petitioner and the Respondent confirming the status quo in that the children Sylvie Rose Sonia of 19 years and Curtis Pascal Timothy 11 years were to reside with the mother (Petitioner) at Sea-side Pamma.
4. Access was given to the Respondent. Both the Petitioner and the Respondent were to pay 50% for the School fees.

Issues

5. The issues before the Court are custody and access of Curtis Timothy, the maintenance of the Children and the division of the unregistered land at Erakor Half Road.

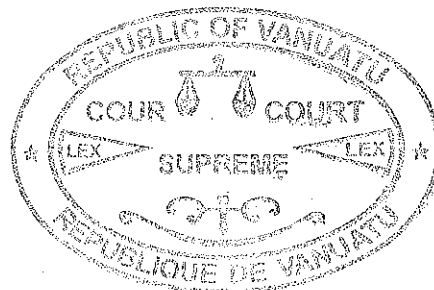


Background

6. It was accepted that in relation to Sylvie Rose Sonia, she is now an adult person and there is no need to make a custody order in relation to her. She resides and lives with her mother (Petitioner).
7. It is common ground that the Petitioner and Respondent were married on 15 July 1999 at Port-Vila. The Petitioner and the Respondent had Sylvie rose Sonia prior to the marriage on 3rd July 1995. They then adopted Curtis Pascal Timothy who was born on 28th 2003.
8. On 21st January 2013, the Respondent fled from the matrimonial home and later cohabited with his new partner. They have a new born baby.
9. The child Curtis was 11 years in 2014 and was attending grade 4 at Vila East Primary School at Independence Park, Port-Vila. Sylvie Rose was 19 years old in 2014 and attending then year 13 Tertiary studies at Malapoa College.
10. The Petitioner and the Respondent has cohabited for almost 15 years. During the marriage, they jointly purchased an unregistered land at Erakor Half Road. The land becomes part of the Matrimonial property.

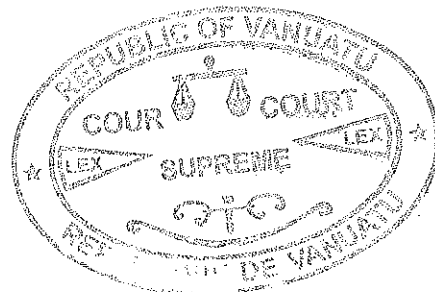
Custody of child Curtis Pascal Timothy

11. The Respondent disputed the custody of the child Curtis Timothy to her mother. He tried to demonstrate through the evidence that she was not and would not be a good and careful mother for the child Curtis. The Respondent attempted to show through the evidence that the Petitioner was a violent mother toward the child Curtis.
12. I find and accept that the Petitioner has disciplined the child Curtis at times when Curtis was naughty. I sense this as part of parental discipline to Curtis from doing wrong. It is appropriate and normal for a parent to enforce boundaries by imposing reasonable discipline to his or her child.
13. Curtis and Sylvie have been in the custody of the Petitioner since the Respondent left the matrimonial home on 21 January 2013.
14. The Petitioner has provided suitable shelter for Curtis by way of a rent consisting of one bed room and a salon at Seaside Area, Port-Vila. The rent house is adjacent to the Petitioner's father and siblings.



A handwritten signature in black ink, consisting of a stylized, cursive script.

15. The Petitioner ensures there is breakfast on the table, monies for lunch during school days, and meals during weekend and holidays. The children are clothed daily with clean clothes.
 16. The Petitioner attends church with Curtis during Sundays and at times during mid-week fellowship. She attends school activities should her presence is required.
 17. The Petitioner provides a healthy environment for the children to study. Sylvie was given a space at Malapoa College.
 18. The Petitioner does not drink Kava or alcohol. She does not gamble. She is a single. She is responsible and a mature adult person.
 19. The Petitioner does not attend night club, only once at the new year festivity but had left Curtis in the carriage of her father and neighbour.
-
20. The Petitioner attends home on time, prepares dinner on time and assists Curtis with his homework.
 21. On the evidence, the Respondent confirmed to be a Kava drinker and drink Tusker beer at times. He confirmed cohabiting with a new partner and has a child with her. They reside at a rent house at ohlen area, Port-Vila. The home is a one bedroom and a salon.
 22. There is no evidence on the character or qualities of his new partner. There is no evidence about her capacity to look after Curtis as a step mother.
 23. It is in the best interests of the child Curtis that he continues living with his mother and elder sister. I find and accept that the interim arrangement have been working well and there is no reason why they should not be continued. I accept that stability and continuity are vey important to the life of a child.
 24. Curtis has lived his whole life with his mother and it would be detrimental and disruptive to his welfare to force him to live elsewhere. He is still a young child and he needs the care and support of his mother. The Petitioner has made a tremendous effort in raising him and can be trusted to take proper care of him.
 25. I am satisfied that the custody of the child Curtis be given to his mother (Petitioner) based on the evidence before the Court as reflecting his best interests.



Maintenance of the two children of the marriage: Curtis Timothy and Sylvie Rose Sonia.

26. The Petitioner seeks that the Respondent pays an amount of VT15,500 fortnightly as maintenance for the children.
27. The Petitioner is employed as a cashier and earns 29,000VT fortnightly. She pays for rental at a price of 13,500 VT per month.
28. She pays for the school fees and electricity bill. She pays for food and daily expenses for the two children at school. She testified she is not able to pay for all expenses relating to the welfare of the children. She says she needs maintenance from the Respondent to support her. In 2014, she had equally assisted the Respondent in paying for Sylvie second term. She had paid VT68,000 in full in the first term. The Respondent had only assist in VT7,000 for the second term fees the Petitioner had paid half of the VT21,000.
29. She said with references to Curtis' school fees, the Respondent failed to settle the VT5,800 of 2013 outstanding. There was an outstanding balance of VT4,200.
30. The evidence show that the Respondent has failed to pay his share of the school fees of the children.
31. The Petitioner sworn statement dated 12 September 2014 shows the following expenses per child.

Sylvie Rose Sonia:

VT 200 bus fare (per day)

VT 200 for her lunch (per day)

VT 4000 x 5 days as week = VT2000

VT 2000 x 4 weeks = VT8,000

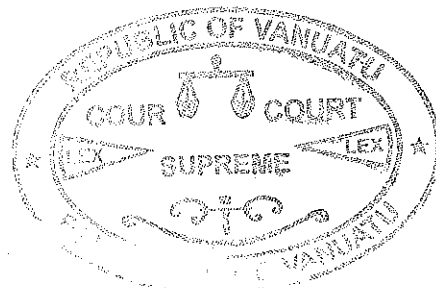
Curtis Pascal Timothy

VT 100 for lunch (per day)

VT 100 x 5 days = VT1,500

VT 1,500 x 4 weeks = VT 2,000

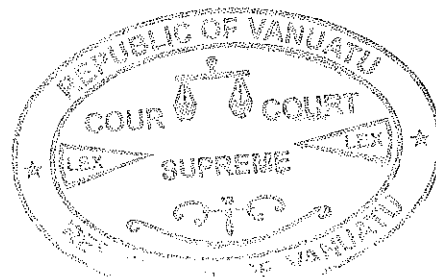
32. The above is common ground. The Respondent did not dispute this evidence.



33. The Respondent, on the other hand is a Policeman. He earns a salary of VT 76,980 per month. He obtained a loan and deducted VT 7,334 fortnightly from his account to repay his loan. He further stated he has another loan with Molul Lending Scheme. He did not give details of this later loan.
34. He pays for sent at VT 18,500 per month. His partner is unemployed.
35. I am satisfied that the Respondent shall pay an amount of money per month to maintain the 2 children of the marriage. I assess an amount of 15,000 Vatu be appropriate.
36. The Petitioner and the Respondent agree that they should share equality the school fees of the 2 children of the marriage. I will issue an order to this effect.

Matrimonial property – unregistered land at Erakor Half Road

37. During marriage, the Petitioner and the Respondent purchased a piece of land at Erakor Half Road. It was an unregistered land. The total cost was 800,000 Vatu. The Respondent used to go and pay the custom owner directly every fortnight.
38. The Petitioner paid VT5,000 fortnightly for the land. She gave the money to the Respondent for her contribution towards the purchase of the land. Every fortnight she gave 5,000 Vatu making a total of 10,000 VT that she paid each month until the total purchase of the land.
39. The Respondent also paid his contribution toward the purchase of the land. The Respondent said he paid more than the Petitioner toward the land. The Petitioner disputed that. There is no need to resolve that difference as it is a difference of degree.
40. As a matter of fact in the circumstance of this case, the land as a matrimonial property should be divided in roughly equal share based on Joli –v- Joli [2003] VUCA 27.
41. As both parties dispute the distribution of the said land, I decide to make an order that the said land be registered in both the names of the Petitioner and the Respondent as trustees for the children of the marriage.



A handwritten signature in black ink, consisting of a stylized, cursive script.

42. In the alternative, that the land be registered in both the names of the Petitioner and Respondent and be sold and the proceeds of sale are to be placed in trust in the names of both the Petitioner and Respondent for the benefit of the children of the marriage.
43. On the basis of the above, the Court makes the following orders:-

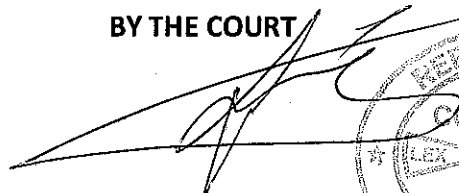
ORDERS

1. That Petitioner has the custody of the child Curtis Pascal Timothy
 2. That the Respondent has reasonable access to the child Curtis Pascal Timothy.
 3. That the Respondent pays an amount of Vatu 15,000 fortnightly for the maintenance of the children of the marriage: Sylvie Rose Sonia and Curtis Pascal Timothy.
-
4. That the Petitioner and the Respondent shall contribute equally to the school fees of Sylvie Rose Sonia and Curtis Pascal Timothy.
 5. a) That the unregistered land purchased at Erakor Half Road shall be registered in both the names of the Petitioner and the Respondent as trustees for the children of the marriage.

b) In the alternative, that the land at Erakor Half Road, be registered in both the names of the Petitioner and the Respondent and be sold and the proceeds of sale are to be placed in trust in the names of the Petitioner and Respondent for the benefit of the children of the marriage.
 6. That each party to bear his/her costs.

Dated at Port-Vila, this 15th day of February 2017

BY THE COURT



**Vincent LUNABEK
Chief Justice**

