

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

**Matrimonial
Case No. 18/2361 SC/CIVL**

BETWEEN: **Albert Carlo**
Petitioner

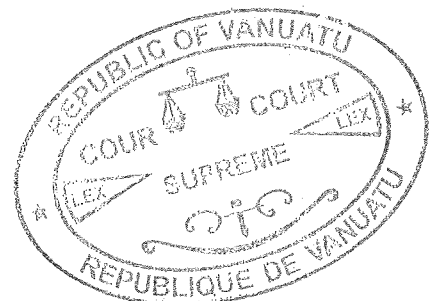
AND: **Kaltack Litong**
Respondent

Date of HEARING: 25th April 2019
Date of Judgment: 26th April 2019
Before: Justice Oliver Saksak
In Attendance: Less Napuati for the Petitioner
No appearance for the Respondent

JUDGMENT

Background

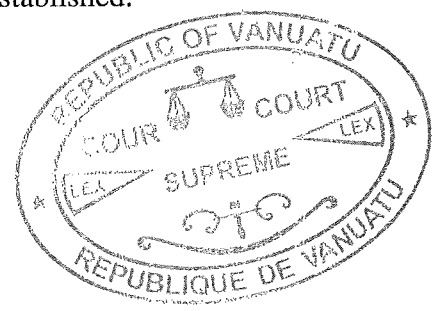
1. The Petitioner Albert Carlo filed his petition in the Magistrate Court on 6th April 2016 seeking three reliefs-
 - a) That his marriage with the respondent celebrated on 19th July 1991 be dissolved.
 - b) That the respondent has custody of the children.
 - c) That the respondent continue to manage the four vehicles in order to maintain herself and the children.
2. The Deputy Master noted on 18th October 2018 that the Petition was contested therefore ordered its transfer to this Court.
3. Earlier before the Chief Magistrate on 20th April 2016, it was ordered that the petitioner file and serve an amended petition on the respondent. The petitioner filed another petition on 28th June 2016 which is an amended petition.



4. The respondent did not file any response or defence to the petition. The petitioner therefore applied for default judgment on 4th April 2019. Counsel filed proof of service showing the claim was served on the respondent on 28th June 2016.

Discussion

5. Mr Napuati submitted the reliefs sought should be granted by the Court in the absence of the respondent's response and/or defence. Counsel referred the Court to the judgment of the Court in Matrimonial Case No. 7 of 2013 where Sey J dismissed the petitioner's case on the basis he had not established desertion.
6. Mr Napuati submitted the amended petition is based on Article 47(1) of the Constitution.
7. The petition was filed on April 2016 about 1 ½ years when the Court had dismissed the petition on 17th December 2014. The petitioner did not appeal that judgment. Instead he chose to file another petition alleging the same grounds but pleading Article 47 (1) of the Constitution in paragraph 9, instead of filing a separate Constitutional application.
8. My considered view is that this petition is misconceived and is an abuse of process. This matter is now res judicata.
9. Article 47 (1) provides an avenue for substantial justice to be applied but only in a case where there is no rule of law applicable. Here, that is not the case, but is a case where the petitioner had his first go and failed, and is now trying to get a second bite at the same cherry by invoking Article 47 . He cannot be allowed to do that. Further to seek justice, one must come to justice with clean hands. Dissolution of marriage is not an absolute right. Fault must first be established by the petitioner that the respondent committed adultery, has deserted for at least 3 years, been of persistent cruelty to the petitioner or has been of unsound mind. In this case, the only ground is desertion. But the Court has already found in 2016 that desertion was not established.



10. The other factor establishing fault is adultery. In paragraph 5 of the Judgment dated 17th December 2014 the Court stated-

“ the Petitioner further alleges that he left the Solomon Islands in 2004 and took up employment in Port Moresby, PNG. He then went to the Federated States of Micronesia where he says he had moved on with his life with another woman and now wants to divorce the Respondent.” (My underlining for emphasis)

11. The underlined statement is quite telling about the Petitioner’s fault showing he has not come to Court with clean hands.

12. There is no evidence by the petitioner in support of his petition.

The Result

13. For the reasons given, the request for default judgment is declined and the petition of the petitioner is dismissed. There shall be no order as to costs.

DATED at Port Vila this 26th day of April 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

