

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

**Civil Case No. 20/2051  
SC/CIVL**

**BETWEEN:** **Manoa Toa**  
*Petitioner*

**AND:** **Clera Simon**  
*Respondent*

**Date of HEARING:** *20<sup>th</sup> July 2021*  
**Date of Decision:** *7<sup>th</sup> December 2021*  
**Before:** *Justice Oliver Saksak*  
**In Attendance:** *Mr Henzler Vira for the Petitioner*  
*Ms Tatavola Matas for the Respondent*

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**JUDGMENT**

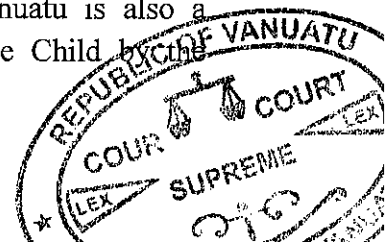
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**Introduction and Background**

1. This claim was initially filed in the Magistrates Court on 16<sup>th</sup> March 2020. The Petitioner sought for an order of dissolution of marriage and for the cost of the proceeding.
2. The matter was referred to this Court on the basis that it was a contested case, making it fall outside the jurisdiction of the Magistrates Court.
3. During the management processes Counsel had agreed the Court would hear only submissions and deal with the matter on the papers.
4. The Petitioner filed written submissions on 6<sup>th</sup> July 2021 and the respondent filed written submissions on 20<sup>th</sup> July 2021.
5. At the chambers hearing on 20<sup>th</sup> July 2021 Mr Vira informed the Court he was relying on those submissions.
6. Ms Matas was not available on 20<sup>th</sup> July 2021 but Ms Nolen was and informed they would file written submissions. Those written submissions were filed at 3:29pm on 20<sup>th</sup> July 2021. They are extensive and I am grateful to counsel for their assistance.

**Discussion**

7. The Republic of Vanuatu has a Marriage Act, a Maintenance of Family Act, a Matrimonial Cases Act and the Family Protection Act 2008. Vanuatu is also a signatory to and has ratified the Convention on the Rights of the Child by



Ratification Act No.26 of 1992. Then there is the Constitution and case authorities such as Molu v Molu No. 2 [1998] VUSC 15, which place the obligation on the Courts, administration authorities and legislative bodies to take into account as a primary consideration the best interest of the child.

8. In proceedings seeking for dissolution of marriages or divorce, the Matrimonial Causes Act 1992 sets out the grounds for seeking divorce.
9. In the amended petition of the petitioner filed on 16<sup>th</sup> March 2020 no grounds for divorce was pleaded. And further, although the 3 children of the marriage are pleaded in paragraph 3, there are no reliefs sought in respect of custody, maintenance or access of, to or by the petitioner.
10. Theses absences render the petition an abuse of process and that is sufficient to dismiss the petition.
11. Accordingly the petition is dismissed. I make no order as to costs.

**DATED at Port Vila this 7<sup>th</sup> day of December 2021**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

