

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

Matrimonial Case No. 23/2414

BETWEEN: ALEXANDRINE ROY
Petitioner

AND: KALO ROY
Respondent

Coram: Justice Oliver A. Saksak

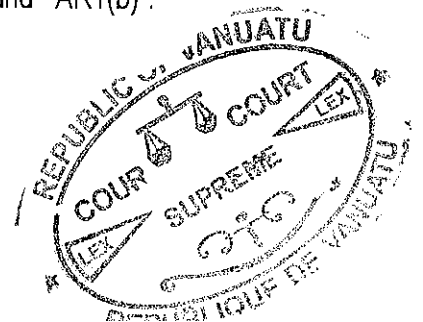
Counsel: Ms R Banimataki and Ms T Matas for the Petitioner
No appearance for the Respondent

Date of Hearing: 14th February 2024

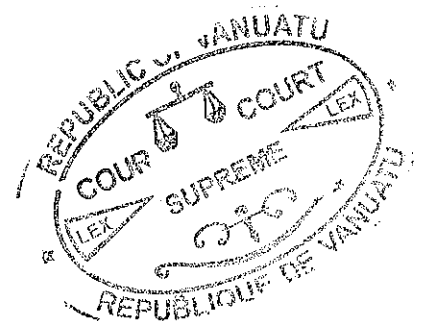
Date of Judgment: 31st May 2024

JUDGMENT

1. This judgment is made on the papers filed before the Court.
2. On 14th February 2024 when the case was called for hearing the respondent did not appear despite he was informed by counsel through telephone, he had threatened that there should be no personal service on him.
3. This proceeding commenced in the Magistrate Court. On 7th September 2023 when the respondent appeared in person and contested petitioner for divorce. As a result the Magistrate the case to this Court for hearing.
4. On 14th February 2024 the Court gave seven days to the Petitioner to file further sworn statement producing a copy of the Domestic Violence Protection Order she asserted was issued by the Magistrates Court.
5. The additional sworn statement by the Petitioner was filed on 19th February 2024 annexing a copy of the Protection Order dated 15th January 2021 as "AR1(a)" and "AR1(b)".



6. Section 5 (a) (ii) of the Matrimonial Causes Act [Cap 192] provides that persistent cruelty is one of the grounds for a petition seeking dissolution of a marriage. The other ground is adultery, section 5 (a)(i).
7. The Respondent relied on his Response filed on 1st September 2023 and the sworn statement he filed in support on the same date. He took no issue with their being married in May 2010 and them having 3 children as stated by the Petitioner. However he contested the facts about adultery not referring to any specific names. He also contested the allegations of violence alleged and opposed the petition for dissolution of their marriage.
8. Despite those responses, the petitioner has shown by her additional evidence dated 19th February 2024 with the production of the Protection Order issued by the Magistrate Court in 2021, the response of the respondent is untenable and is hereby rejected. Clearly the Petitioner has shown to the satisfaction of the Court that since the celebration of their marriage in May 2010, the respondent has persistently been cruel to her. As such section 5 (a) (iii) of the Act is met.
9. As regards the issue of adultery the petitioner relies on the evidence of Sylvie Kalsal filed on 30th January 2024 deposing to the fact that during the year 2021 she went over to co-habit with the petitioner's husband in their house at Destination Area. That relationship ended in December 2021.
10. That evidence has not been rebutted by the respondent. I am satisfied the grounds of adultery has been proved by the petitioner and section 5(a)(i) of the Act has been fulfilled by the Petitioner.
11. I therefore enter judgment in favour of the Petitioner. She is entitled to an Order for dissolution of Marriage. Accordingly I Order that her marriage celebrated on 27th May 2010 between her and the respondent be dissolved after a period of 3 months from the date of this judgment.



12. This is a Decree Nisi pursuant to section 12 of the Act. This Order shall end on 31st August 2024 when a final order may be issued.

DATED at Port Vila this 31st May 2024

BY THE COURT



Hon. Oliver A Saksak

Judge

