

WILSON (E.) v. WILSON (R. A.) and GENET

COURT OF APPEAL (Ames, P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 27th, 1965
(Civil App. No. 2/65)

- [1] **Courts—Court of Appeal—procedure—amendment of original proceedings—divorce petition—appeal court may give leave to amend:** Leave to amend a divorce petition under the Matrimonial Causes Rules (*cap.* 7) may be given by the appeal court, if sufficient grounds are disclosed (page 244, lines 5-7).
- [2] **Family Law — divorce — adultery—damages—amount claimed to be stated in petition:** The Matrimonial Causes Rules (*cap.* 7), r.4(3)(a), requiring the amount of any claim for damages to be included in the particulars of relief claimed in a divorce petition, is not inconsistent with the Matrimonial Causes Act (*cap.* 102), s.20(2), requiring a claim for damages on the ground of adultery to be tried in the same manner as an action for the tort of criminal conversation, and applies to a claim for damages for adultery (page 242, line 36—page 243, line 8; line 35).
- [3] **Family Law—divorce—petitions—amendment—appeal court may give leave to amend:** See [1] above.
- [4] **Family Law—divorce—petitions—amendment—possible after close of case and before judgment:** A divorce petition may be amended under the Matrimonial Causes Rules (*cap.* 7) after the close of the parties' cases and before judgment (page 343, line 36—page 244, line 3).
- [5] **Family Law — divorce — petitions — contents — amount of damages claimed for adultery to be stated:** See [2] above.

The appellant in his answer to the respondent's petition for divorce in the Supreme Court prayed for a dissolution of the marriage on the grounds of the respondent's adultery with the party cited, and for damages.

The answer did not specify the amount of damages as required by the Matrimonial Causes Rules (*cap.* 7), r.4(3)(a). This defect was first pointed out when counsel were addressing the court after the close of their cases and before judgment and no application for leave to amend was made. The party cited was dismissed from the suit on the ground that he did not commit adultery with the respondent and damages were not awarded. The proceedings in the Supreme Court are reported in 1964-66 ALR S.L. 193.

On appeal, counsel for the appellant asked for judgment against the party cited for damages. He submitted that r.4(3)(a) was incon-

sistent with the Matrimonial Causes Act (*cap.* 102), s.20(2), by the effect of which the claim for damages on the ground of adultery was to be tried as a claim in tort so that it was unnecessary to state the amount claimed. Counsel also asked the court to allow the appellant's answer to be amended so as to specify the amount claimed but no formal application for leave to amend was made and there was nothing before the court to show why the rule had not been complied with or why an application to amend had not been made earlier.

Cases referred to:

(1) *Pegler v. Pegler* (1901), 85 L.T. 649; 18 T.L.R. 13, observations of Barnes, J. applied.

(2) *Spedding v. Spedding* (1862), 31 L.J.P. & M. 96, followed.

Statutes and rule construed:

Matrimonial Causes Act (Laws of Sierra Leone, 1960, *cap.* 102), s.20(2):

"A claim for damages on the ground of adultery shall be tried on the same principles and in the same manner as actions for criminal conversation were tried in England immediately before the commencement of the Matrimonial Causes Act, 1857. . . ."

Matrimonial Causes Rules (Laws of Sierra Leone, 1960, *cap.* 7), r.4(3):

"The petition shall conclude with a prayer setting out particulars of the relief claimed including—

(a) the amount of any claim for damages. . . ."

Matrimonial Causes Act, 1857 (20 & 21 Vict., c.85), s.33:

The relevant terms of this section are set out at page 243, lines 10–12.

Marcus-Jones, S. H. Harding and Okoro-Idogu for the appellant;
C. N. Rogers-Wright for the respondent;
Barlatt for the party cited.

AMES, P.:

The appellant in his answer to the respondent's petition prayed for the rejection of the petition and for a dissolution of the marriage on the ground of the respondent's adultery with the party cited. He also included a prayer for damages against the party cited but did not specify any amount, which r.4(3)(a) of the Matrimonial Causes Rules (*cap.* 7) requires him to do.

Mr. Marcus-Jones argues that it is not necessary to do so and that the rule is inconsistent with the Act. The argument is briefly this.

The Act enables a claim for damages for adultery to be included in a petition in a matrimonial cause. The claim is to be tried in the way in which an action for criminal conversation was tried in England immediately before the commencement of the English Matrimonial Causes Act, 1857. An action for criminal conversation was a claim in tort. It is not necessary in claims of tort to state the amount of general damages claimed. Therefore it is not necessary to state the amount claimed as damages for adultery.

The Act of 1857 abolished actions for criminal conversation and provided in s.33 that a claim for damages for adultery could be included in a petition and that such a claim should be tried "as actions for criminal conversation are now tried and decided. . . ." The word "now" there means immediately before the coming into effect of that Act.

The report of *Pegler v. Pegler* (1) shows (85 L.T. at 649; 18 T.L.R. at 14) that the omission to state a specific sum "was contrary to the practice of the Divorce Court, as laid down in *Spedding v. Spedding* (2)". (No report of *Spedding v. Spedding* exists in the court's library). Section 33 of the 1857 Act was still in force at the date of both those cases. The requirement of stating the amount of damages was therefore considered in England to be consistent with the trial of a claim for damages in the way in which an action for criminal conversation was to be tried before the 1857 Act.

That is still the law in England. Section 33 was replaced by s.189 of the Supreme Court of Judicature (Consolidation) Act, 1925, which in its turn was replaced by s.30(2) of the Matrimonial Causes Act, 1950. What was described as "the practice of the Divorce Court" on this point is now to be found in r.4(4) of the English Matrimonial Causes Rules, 1957, as it also was in the corresponding rules of 1950 which they revoked. It is exactly the same here. We have s.20(2) of our Matrimonial Causes Act (*cap.* 102) and our r.4(3)(a) of the Matrimonial Causes Rules (*cap.* 7). It is not surprising that it is the same here, our Act and Rules being derived from the English Act and Rules.

So I do not agree with Mr. Marcus-Jones' proposition. He has, however, another string to his bow. He asks this court to allow the pleading to be amended so as to specify Le6,000 as the amount claimed. The defect was first pointed out by counsel for the respondent in the court below, not, however, until counsel were addressing the learned judge after the close of the cases and before judgment. The Matrimonial Causes Rules (*cap.* 7) make provision for the

amendment of a petition and, although it is an inconvenient thing to do at that stage because fresh service is usually necessary, it could have been done at that stage. However, no application was made for leave to amend it and judgment was given.

5 An amendment would have been more inconvenient in this court but would not have been impossible, if sufficient grounds were disclosed. Yet, as Mr. Barlatt said, no formal application was made.

10 Mr. Marcus-Jones submitted that in the circumstances of what happened in the court below the party cited must be taken to have waived the "irregularity" but I see no reason to assume that.

15 So here is this almost later-than-last-minute informal application to amend the petition because of the initial failure to comply with what Mr. Barlatt submits is an obligatory rule. There is nothing before the court to show why it was not complied with and why an application to amend it could not have been made at some more reasonable time. I would not allow the amendment and consequently I would not make any judgment for payment of damages.

20 BANKOLE JONES, C.J. and DOVE-EDWIN, J.A. concurred.
Order accordingly.

JANNEH and SIX OTHERS v. COMMISSIONER OF POLICE

25 COURT OF APPEAL (Ames, P., Dove-Edwin, J.A. and Cole, J.):
July 21st, 1965
(Cr. App. No. 3/65)

30 [1] **Courts—Supreme Court—appeals—appeals against sentence—time for appeal—14 day limit under Courts (Appeals) Act, 1960, Part III:** When an appeal has been taken from a magistrate's court to the Supreme Court and ultimately to the Court of Appeal, a sentence passed by the Supreme Court on the instructions of the Court of Appeal is a matter within Part III of the Courts (Appeals) Act, 1960, in respect of which an appeal must be lodged within 14 days unless the Court of
35 Appeal grants more time (page 247, line 34—page 248, line 10).

[2] **Criminal Procedure — appeals — appeals against sentence — original sentence stands on dismissal of appeal:** If an appeal against sentence is dismissed, the original sentence still stands and no further sentence is required (page 248, lines 22–26).

40 [3] **Criminal Procedure — appeals — appeals against sentence — time for appeal—14 day limit under Courts (Appeals) Act, 1960, Part III:** See [1] above.