

ABEL F.B. STROME

A N D

EMILDA R.R. STRONGE

A.F. Serry-Kamal Esq., for the Appellant

Respondent absent

Judgment delivered 25th May, 2000

This is an Appeal by the Appellant against the granting of a decree absolute by the Respondent during the pending of this Appeal.

The Grounds of Appeal are as follows:-

1. That the Learned Trial Judge was wrong in law in granting ancillary relief of custody and maintenance when these issues to wit, custody and maintenance were not before him and in making orders on matters not in issue before him.
2. That the Learned Trial Judge was wrong in law to have required the Appellant to make compensation towards the three adult children of the marriage when the issue of compensation for the said children was not before him.
3. The Learned Trial Judge acting on wrong principles when he made absolute the decree nisi pronounced on the 17th day of October 1995 as amended on the 22nd day of January 1996 during the pendency of the appeal to the Court of Appeal against the aforesaid decree nisi.

Learned Counsel for the Appellant said that a decree nisi was pronounced on the 17th October 1995 and the decree absolute granted on the 14th June 1996. The Notice of Appeal was dated 18th October, 1995. He told the court that no decree nisi can be made absolute while there was an appeal pending except where damages was given. He referred to Raydon on Divorce 9th Edition Paragraph 4 Sub Paragraph 1 and Lloyd Davies 1947 1 AER 161 W vs W & D 1948 Probate Page 846. He submitted that the trial judge was wrong in sitting as an appellate court over his own order, the decree nisi having been perfected and drawn.

In this matter a decree nisi was pronounced on the 17th day of October 1995 and amended on the 22nd day of January 1996. The Notice of Appeal was dated 18th October 1995 and a decree absolute was granted on the 14th June 1996 while the appeal was pending.

It is clear from the authorities cited that a decree nisi must not be made absolute while an appeal is pending see vide Lloyd - Davies v. Lloyd Davies 1947 P.53 unless the appeal is on the quantum of damages only vide W v W and D (1948) P.57.

The trial judge in his judgment on the 17th October 1995 in pronouncing the decree nisi made the following ancillary Orders:

1. The Respondent ^{the} granted custody of Millicent Noreen.
2. The Petitioner shall be responsible for the education bills of Millicent Noreen. The institutions of learning should be agreed by both parents. All such institutions should be ^{within the} financial means of the Petitioner.
3. The Petitioner shall also be responsible for Millicent's medical bills reasonably incurred and within the means of the Petitioner.
4. The Petitioner shall maintain the said Millicent, ~~not~~ until she is of age and is of independent means. A secured sum shall be stated after consultation with both sides in chambers.
5. Though this court does not wish to make it an order for the computation and payment of all relevant expenditure Petitioner failed to pay for his children since December, 1990, the court will urge that Petitioner be magnanimous enough to offer some form compensation towards this road.

This was amended by an order of the court dated 22nd January, 1996 as follows:-

"It is hereby ordered as follows:"

That the orders as to maintenance and custody in the Decree Nisi herein be varied by deletion of the words "AND IT IS ORDERED " as follows to the end of the Decree Nisi.

The Learned Trial Judge ought not to have granted ancillary orders in his pronouncement of the decree nisi on the 17th October, 1995 since these matters were not argued before him in court and quite

rightly so as all ancillary matters were to be argued in Chambers after the pronouncement of the decree nisi.

The Learned Trial Judge was also wrong in varying the Order of the 22nd January 1996 since he cannot sit on his own judgment.

For the reasons given above the decree absolute is hereby set aside and the decree nisi pronounced on the 17th October, 1995 is hereby varied to exclude all ancillary matters. Liberty to apply. No Order as to Costs.

V.A.D. Wright
(Sgd) Hon.^{rs} Mrs. Justice V.A.D. Wright-^{JA}

I agree

I agree

Alfred

F. G. G. G.