

**IN THE HIGH COURT OF SIERRA LEONE**  
**DIVORCE JURISDICTION**

**IBRAHIM PAPA KAMARA**

- PETITIONER

AND

**FATMATA SARJOH KAMARA**

- RESPONDENT

PRESIDING;

**THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA**

**Counsel;**

*SUB Saffa Esq* for the Applicant

## **Judgment** dated 16th November 2016

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1. The petition herein is dated 1<sup>st</sup> day of March 2016 and by a motion dated 15<sup>th</sup> March 2016 the petitioner applied for leave to serve the petition on the respondent by post at their address in the United Kingdom. This application was granted. An affidavit sworn to on 21<sup>st</sup> June 2016 by one Ashford Strasser-King Solicitors Clerk and Process Server sets out the circumstances of the service of the said petition on the respondent. The said deponent swears that he did post by DHL a copy of the petition to the respondent to her address in the UK. Exhibited to the said affidavit is a DHL delivery note with the respondent's names as addressee the same which is duly endorsed as delivered and received on 16<sup>th</sup> June 2016. The petitioner applied for the Registrars Certificate to proceed with the cause as an undefended matter and also set the matter down for trial on 14<sup>th</sup> October 2016. On 1<sup>st</sup> November 2016 the matter was set down for trial and duly proceeded with as an undefended cause the respondent not having entered appearance though served on 16<sup>th</sup> June 2016.
2. On Friday 4<sup>th</sup> November 2016 the Petitioner Ibrahim Papa Kamara gave the following testimony: The Respondent is his wife and they were married on 7<sup>th</sup> October 2008 at the Registry Walpole Street Freetown. They have been married for 8yrs. After the marriage

they first cohabited at 17 White Street Freetown and later at 50 Kingsmead House London in the United Kingdom where they currently reside.

3. At the time of the wedding the Respondent was a student, but she now works as a Nurse in the UK. The petitioner works as a Supervisor at Arriva a bus company in the UK. The couple have a seven (7) year old son named ASHIM IBRAHIM KAMARA
4. The Petitioner testified that there is no previous suit or processes with respect to the marriage and that the present petition is not brought in collusion with the respondent. The petitioner testified that the respondent has treated him cruelly causing him much distress and that the respondent has demonstrated a desire to bring the marriage to an end by her continuous cruel treatment of him.
5. On or around 3<sup>rd</sup> October 2013 the petitioner told the court that he had gone to watch a football match in Peckham which is some ways away from the matrimonial home. The match had just ended when he received a phone call from his wife. She told him on the phone that someone was going to move into the apartment with them. When he asked who the person was she replied he did not need to ask her and she hung up the phone. On arrival home the petitioner found a strange man lying on their son's bed and two pieces of luggage in the sitting room. The petitioner then called the Police who came and asked the person out of the house and warned the respondent against any such behavior in the future.
6. The respondent would bring people to the house that the petitioner did not know. Normally they would come at night and when the Petitioner wished to sleep. They would played loud music and be generally noisy. On one such occasion when the petitioner complained and asked the man and woman who were her guests to leave after they had refused to acknowledge him with any courtesies or greetings the respondent said that it was her house too and that they could stay. The respondent promised to give the petitioner such a hell of a time that he would move out of the house.
7. On another occasion the petitioner had returned home from work and put his dirty clothes in the washing machine. He then went to bed. When he woke up later and came to check on his clothes he found them all on the floor unwashed. He tried to put them back into the washing machine but the respondent just tossed them out again unto the floor. The petitioner had cause to call the police. When the police arrived the respondent explained that she had bought the washing machine and did not want the petitioner to use it. The police explained to her that as long as the two continued to cohabit she must allow the petitioner to use the washing machine. The respondent has since adopted a similar conduct and attitude in relation to any other appliance in the house which she had bought like the electric iron. The petitioner in the end had to buy his own iron.



8. The petitioner told the court that in 2012 the respondent moved out of the bedroom which they shared and they have since had no sexual or other intimate contact. Their relationship has since steadily deteriorated till they were now only speaking through text messages even though they stayed in the same house. Even the text communications are usually only about matters relating to their son.
9. The petitioner testified that he has solicited the assistance of their friends, their pastor, his family members as well as the family members of the respondent to intervene and assist in reconciling them but to no avail. He testified further that when their son started school in 2015 a social worker had a meeting with them. At that meeting his wife told the social worker that the only favour she wanted from the husband was for him to move out of the house.
10. Since the respondent was served with the petition, which the petitioner saw her receive and immediately put in the trash bin, the respondent has now moved out of the matrimonial home with the child of the marriage. She would text the petitioner to pick up the child on Fridays after school so that the boy can spend the weekend with the father who would then drop the boy off at a particular bus stop at Stratford in the evening. As before they continue to communicate only by text messages.
11. The petitioner says that he is distressed by the respondent's conduct and that he is traumatized emotionally. He says that he has put a lot into this marriage and that he is only surviving the stress and emotional trauma which the respondent has caused him by the grace of God. He asks that the court dissolves their marriage due to the respondent's cruelty.
12. The petitioner relies on the various acts and conduct of the respondent as being evidence of the respondent's cruelty. The proof of cruelty may be found in a single act or in the cumulative effect of various acts. The questions that need to be answered therefore are: "What would amount to cruelty in the eyes of the law?" "How is cruelty proved and what standard is sufficient for divorce?"
13. Confronted by these questions in Wellesley- Cole v. Wellesley-Cole 1967-68 ALR SL 65, Beoku-Betts J. found comfort in the definition advanced in "Rayden on Divorce" and as those words continue to encapsulate the true position of the law even now I will repeat them here;

*"Legal cruelty may be defined as conduct of such a character as to have caused danger to life, limb or health -bodily or mentally- or to give rise to a reasonable apprehension of such danger"*
14. The act complained about need not have caused actual danger. It is sufficient if the act complained about creates an apprehension of danger. It is also of significant note that the danger need not be of a physical kind threatening the body. If the party is in danger

mentally or apprehends danger which will affect the party mentally even though the harm anticipated is of an unseen kind it would also be sufficient to prove cruelty.

15. In **Lake v Lake 1970 ALR 426** Betts JSC opined that that *"cruelty can be established by one act which is in itself so grievous as to constitute cruelty but it is also proved by continued acts of ill-usage none of them in itself sufficient to support such a charge which accumulate until a case of cruelty arises"*.
16. There is no doubt that the uncontroverted narration of various acts and conduct perpetrated by the respondent taken at their lightest may still appear to be acts of ill-treatment. Bringing another man who is unknown to the husband to come and stay in the matrimonial home is quite a daring and taunting move. In a family where the couple is already having friction it will be a frightening prospect certainly for one partner to bring a complete stranger into the house. In the present instant it was the wife who was bringing a strange man to come and reside in the matrimonial home without any explanation to the husband as to whom this man was, what relationship did she have with him, why did he need to come to live in the matrimonial home? At the best of times this must cause anxiety in the other partner and it is of little surprise that the petitioner promptly called the police who less surprisingly removed the stranger and his luggage from the premises immediately.
17. Similarly, refusing and denying the husband conjugal pleasures for a total of four years and counting must also be quite distressing. The evidence is such that the husband took steps to have these rights restored. He tried to get help from others to intervene and help heal whatever may have caused the respondent to act in the way she was. All his efforts were met with a refusal.
18. The petitioner's testimony is that the total effect of the respondent's conduct has been emotional trauma. In **Moses v. Moses (unreported 22/33 2003. No 2)** Ademousu JA (as he then was) had this to say *"I opine that an accumulation of minor ill-treatment causing or likely to cause the suffering spouse to break down under strain may constitute the offence of cruelty"*. I find that the various incidents of ill-treatment narrated by the petitioner herein do have a similar cumulative effect as described by Justice Ademousu.
19. I am satisfied in the absence of evidence to the contrary that the respondent has treated the petitioner with cruelty since the celebration of the marriage. I also find that the various acts recounted by the petitioner which according to him are but examples of the respondent's regular and similar conduct are such that will cause distress and emotional trauma in a person. I find that the respondent did cause the petitioner distress and emotional trauma.

In the circumstances, I hereby order a decree nisi of the marriage solemnized between the Petitioner and the Respondent on 7<sup>th</sup> October 2008 at the Registry Walpole Street Freetown on the ground of Respondent's cruelty to the Petitioner.



16/11/2011



..... **Reginald Sydney Fynn JA**