

DIV. C. 1/09      2009 K.      NO. 1

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

BETWEEN: -

SHAKA KONNEH      -      PETITIONER

AND

FAYRAH DIONA KONNEH -      RESPONDENT

Miss. B. E. T. Cummings for the Petitioner

Miss A. Suwu for the Respondent

**JUDGMENT DELIVERED THE 8<sup>th</sup> DAY OF October 2012**

The Petitioner herein **SHAKA KONNEH** filed a petition dated 2<sup>nd</sup> January 2009 in which he is seeking the dissolution of his marriage to the Respondent, **FAYRAH DIONA KONNEH**. The parties were married on the 26<sup>th</sup> December 1998 at the Church of Jesus Christ of Latter Day Saints, Congo Cross Branch Freetown. After the celebration of the marriage the parties lived and cohabited at 33 Freetown Road Wilberforce and later at 17 Woodlands Estate, off Congo Cross Wilberforce.

They have two biological children and one adopted child. The Petitioner is the resident Representative of Evans Brothers Ltd. and the Respondent is a Secretary. Both parties are domiciled in Sierra Leone and there has been no previous proceedings relating to the marriage in any court in Sierra Leone or elsewhere.

The Petitioner alleged that the Respondent has treated him with cruelty since the celebration of the marriage and has committed adultery. He gave particulars of the cruel treatment he received at the hands of the Respondent as follows: That after a few years of the marriage the Respondent adopted the habit of threatening to use and often did use knives, scissors, broken bottles and other dangerous items on the Petitioner. That she would use insulting language on him and would even assault him regardless of other persons around and where they were and was in the habit of using provocative words on the Petitioner. That she has demonstrated gross irresponsibility in taking care of the home and has been insupportive of the Petitioner in matters regarding their home. That the Petitioner's mother-in-law has been constantly interfering with their marriage and made use of insulting language and gestures at him with intent to provoke him to commit a breach of peace. That the Petitioner usually used threatening language on him, to wit: "My mum will wear black" and as a result he stopped eating food she prepared and lived in separate rooms. That a piece of land was given to them as a wedding gift on which both of them had built a house. That the Respondent without his knowledge and consent prepared the title deeds for the said property in her own name and rented the same.

With regards the allegation of adultery committed by the Respondent, the Petitioner alleged that sometime in February 2008 the Respondent brought a man and slept with him in their matrimonial home which is evidenced by a note dated 10<sup>th</sup> February 2008 which he found in her possession.

That when the Petitioner confronted her about the content of the note, she boasted that she had got someone better than the Petitioner who will give her all the comfort she needs. Further that he intended to buy her a car in the not too distant future.

The Petitioner therefore prayed that for all the above reasons his marriage to the Respondent be dissolved and that the Respondent be condemned to pay the costs of the suit.

The Respondent entered appearance to the Petition but failed to file an Answer within the stipulated time. She however obtained leave to file her Answer and Cross-Petition out of time which she did file.

The Respondent in her Answer denied treating the Petitioner with cruelty and committing adultery. She denied the allegation made by him with regards adultery and explained that on 10<sup>th</sup> February 2008 at about 5. 17 am. she received a text message stating that she was seen bringing a man into the matrimonial home to spend the night. She thereupon woke up the household and asked them to search the house to discover the man in the house and that this was done but no man was found. That subsequently the Petitioner's nephew admitted that he had sent the text message. That she made a record of the said message and kept it in her handbag which the Petitioner later found whilst rummaging in her said bag.

With regards the issue of cruelty she alleged that it was the Petitioner who treated her with cruelty and committed adultery. With regards the allegation that she was irresponsible with regards matters of the home, she denied that she ever neglected her duties as a wife and mother and averred that it was the Petitioner who failed to maintain her and provide care and support for herself and the children.

The Respondent denied all the several allegations of cruelty made by the Petitioner and in her Cross-Petition set out the particulars of cruelty meted out to her by the Petitioner. She itemized them as follows: That the Petitioner would regularly both verbally and physically assault her and these assaults were carried out in the presence of the children and other members of the household much to her embarrassment. That sometime in 2008 the Petitioner brought home the life card of a **NANCY SAWYER**, his mistress 'vehicle and subsequently misplaced it. That on failing to find it woke her up at about 3 a.m. by squeezing her throat and demanding the document. That he dragged her from the bed and assaulted her with his fists. That his mother and aunt were present but did nothing to stop him. He later found the document but did not apologise to her for his conduct. That sometime in 2006 whilst she was in the kitchen cooking, the Petitioner asked her to get him something and she delayed in getting it as she wanted to finish what she was doing. He then came to the kitchen and assaulted her as a result of which she fell and he then proceeded to kick her on her side.



That he habitually assaulted her with his fists or pieces of furniture and anything that was at hand regardless of who was present. Most times these assaults occurred in the presence of the children who were visibly upset by such acts. That the Petitioner has had several extra-marital relationships and more particularly with the said **NANCY SAWYER** with whom he spends most of his time. That he practically stays at the house he rented for her and only comes to the matrimonial home to wash and change his clothes. That he spends little or no time with his children and has effectively abandoned his family. That because of his relationship with his mistress he has stopped sharing intimacies with the Respondent for almost two years. That he drove the Respondent out of the matrimonial bedroom and she now shares a bedroom with the children. That he also bought a Mercedes Benz car for the said mistress and on being confronted with that fact by the Respondent retorted that it was his money and he could do what he liked with it. That on one occasion he allowed the said **NANCY SAWYER** to call her on her mobile phone and abuse her. That sometime in 2007 she saw the Petitioner and the said **NANCY SAWYER** out together at Tengbeh Town and when he returned home told the Petitioner that she should act as if she has not seen him whenever they meet in public.

With regards the ownership of the piece of land at Regent, the Respondent alleged that it was a wedding gift to her by her mother.

The Respondent prayed the court to dissolve her marriage to the Petitioner and grant her custody of the children. She further prayed for adequate maintainance for the children until they attain 21 years, and that they remain in the matrimonial home until they attain majority or until they decide to leave home whichever first occurs. She also asked for a declaration that she has 50% interest in the matrimonial home and all the property (real or personal) acquired during the subsistence of the marriage.

The Respondent filed a Judges Summons dated 9<sup>th</sup> August 2010 praying for alimony pending suit for herself and maintainance for the children. By Order of Court dated 3<sup>rd</sup> November 2010 the Petitioner was ordered to pay the sum of Le400, 000 monthly to the Respondent as alimony pending suit and further to pay the sum of Le600, 000 monthly to the Respondent as maintainance for the children.

I should at this stage mention that the trial of the petition was conducted by another Judge and the cause has been passed on to me for judgment to be written. I did not therefore have the opportunity of hearing the testimony of the witnesses or observe their demeanour. I have had to depend on the records of proceedings in writing this judgment.

At the trial, the Petitioner gave evidence on his own behalf and testified to the events set out in his Petition. He tendered in evidence the note he found in his wife's handbag as Exh. B. He told the court that there are a total of five people living in his household.

He testified to the threatening remark the Respondent made to him about his mother having to wear black and stated that as a result of that remark he asked her out of the house but she pleaded with him for time to relocate and with the intervention of her relatives he allowed her to stay but asked her to move out of the matrimonial bedroom.

He told the court that initially during the marriage the Respondent took good care of the home but later in 2007 she began to neglect her duties and delegated most of them to the ward, a **SALIMATU KAMARA**.

He admitted that he knew **NANCY SAWYER** but denied that she was his mistress. He also admitted that he and the Respondent quarreled over the said **NANCY SAWYER** on one or two occasions.

With regard the ownership of properties, the Petitioner told the court that he owned the property at 17 Woodlands Estate, Congo Cross and that it was built as the matrimonial home. He stated the he bought the said property from one **BERYL JUMA** and he produced the receipt which he tendered as Exh C. He explained that he did not have the deed of conveyance for the said property as it is the subject matter of a court action. He further testified that he financed the construction of the said house and that the Respondent did not contribute in any way to its construction. He stated that he built the house between 2002 and 2003.



He told the court that the property at Guilford Street, Regent was given to them as a wedding gift by the Respondent's mother on their wedding day. He stated that there is a house constructed on the property jointly built by both of them and the Respondent's mother. He stated that he paid for the conveyance to be in his name but his mother-in-law changed the name to that of the Respondent.

Under cross-examination the Petitioner stated that the Respondent did not look after him during the period he was building, the house but took care of the children. He stated that she was working for a construction firm but that the labourers he used to construct the said house were not from the Respondent's firm.

That ended the case for the Petitioner.

The Respondent gave evidence on her own behalf as DW1. She too reiterated the particulars of cruelty set out in her cross-petition. She elaborated on the incidents of cruelty she alleged he perpetrated against her. She tendered in evidence as Exh D a medical report made by the Police doctor following a report of an assault made on her by the Petitioner which she reported to the Police. She admitted that the assault occurred in May 2009 after the Petitioner had issued the petition for divorce. She stated that his assaults on her started in 2003 but that she had not made a report to the Police of those earlier assaults. She testified that he stopped her from cooking for him in early 2008 and that he stopped eating at home and did not give her any reason for stopping her from cooking for him.



She denied that her mother gave both of them a plot of land in Regent as a wedding gift and that both of them built a house on the land. She stated that the land was given to her by her mother and that the deed of conveyance is in her name alone and that it was her mother who paid the solicitor's costs for its preparation. She further told the court that it was her mother who constructed the house on the land and that the Petitioner did not contribute anything towards it.

With regards the matrimonial home, the Respondent admitted that its construction was financed by the Petitioner but stated that they both agreed that the house would be constructed as their matrimonial home and that she would take care of the house whilst he concentrated on the building. She testified that she provided the workers from the construction company where she worked to work on the building and he paid them at a discounted rate because they were her colleagues. She stated that her younger brother served as caretaker for the building and that she asked her mother for a loan of Le 2 million which she gave to them. She denied that her mother gave them the said Le 2 million in exchange for some C.I Sheets as alleged by the Petitioner.

The Respondent further told the court that the Petitioner owns land in Kenema on which he has built a house and that they have three family cars and that the Petitioner operates three bank accounts.

The Respondent was cross-examined on her testimony and she admitted that the Petitioner buys foodstuffs for the house, pays the children's school fees and pays DSTV subscription and that both of them buy fuel for the generator. She stated that her salary at the time of the hearing was Le300,000.00. She denied that the house at Woodlands Estate is owned by the Petitioner alone but admitted that the deed of conveyance is in the Petitioner's name alone. She further admitted that she did not contribute financially to the building of the matrimonial home.

The next witness for the Respondent, DW2 was **SABINA AUGUSTA NGIAWO**. She told the court that she lived with the parties from 2006 to 2009. She stated that when she moved in with them they often quarreled and fought over **NANCY SAWYER** and recalled an occasion when they fought over a life card. She also recalled the incident with the text message when the Respondent asked her if she had sent the text as the text came from her mobile phone. She stated that the Respondent woke everybody in the house and asked them to search for the man referred to in the text message. She told the court that the Petitioner's nephew admitted that he had sent the text.

The witness also recalled an incident when she was in the car with the Respondent and the parties son when they saw the Petitioner driving with the said **NANCY SAWYER** and she confirmed the Respondent's testimony that she heard the Petitioner tell the Respondent to pretend not to see him if they were to meet in public.

She further confirmed that the Petitioner bought provisions for the household and that both Petitioner and Respondent buy fuel for the generator. She also told the court that the Respondent prepared food for the house and that the household chores were done by the Respondent, **SALIMATU KAMARA** and herself.

The witness DW2 was cross-examined on her testimony.

The third witness for the Respondent was **BRIMA VONJOE KANNEH**, DW3. He is employed by Anduco Inc., the same construction company where the Respondent worked. He is the office Manager of the said company. He told the court that the Petitioner is his cousin and that he came to know the Respondent in 2000 when she started working as a Secretary in the company. He stated that he shares the same office with the Respondent and some other persons and he recalled one morning in October 2008 when the Respondent received a call on her mobile phone which she answered and put on loudspeaker so that her colleagues could hear the conversation. He stated that the person calling told her that she was Shaka's girlfriend. He said the Respondent then recorded the conversation in which the said girlfriend proceeded to abuse her.

The witness DW3 further testified that after about an hour later the Petitioner telephoned him and they arranged to meet the next day. At the meeting he told the witness that he had decided to seek a divorce from his wife but he advised him not to take such an action.



The witness told the court that the Petitioner complained that the Respondent was not very helpful in the house and that she usually threatened him with knives and other dangerous weapons. He said he then showed him the piece of paper on which the Respondent had written out the text message. He said he read it and was able to identify that it was written by the Respondent. He stated further that the Petitioner disclosed that he did not investigate the text message because the Respondent did not show it to him and he only discovered it in her handbag.

The witness then went to testify about the property at 17 Woodlands Estate. He told the court that it belonged to both the Petitioner and the Respondent and that the Respondent had asked some of the company's workers to assist in its construction. He was able to name some of the technicians who worked on the building. He stated that the Petitioner paid them for the work.

The witness was cross-examined on his testimony.

The last witness for the Respondent was **MABINTY KARGBO** DW4, the Respondent's mother. She stated that she is a gardener and that she owned land at Regent which she gave to the Respondent. She explained that she gave the land to the Respondent who was her third child because she is her eldest daughter and she has a wealth of experience to take care of the land. She stated that she did not give the said land to the Petitioner and Respondent as a wedding gift.

Under cross-examination she stated that when she bought the land it was vacant land and that the Petitioner did not help to erect the building thereon. She denied that he contracted the services of a surveyor to survey the land nor did he get a lawyer to prepare the title deeds.

That ended the case for the Respondent.

Both counsel submitted closing written addresses.

The Petitioner herein is seeking the dissolution of his marriage on the grounds of cruelty and adultery. Cruelty has been defined as conduct of such a character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. See **Raydon on Divorce** 10<sup>th</sup> ed. at page 187. The Petitioner has to satisfy the court that the Respondent has behaved in such a way that she cannot be reasonably be expected to live with him.

Has evidence of such behaviour been produced before the court? The Petitioner has complained that the Respondent has been extremely irresponsible in looking after the home, her use of provocative and threatening language and her habit of threatening to use knives, scissors etc and did use them on him. He was however not able to identify any instance when she actually did use the said weapons and caused him injury. Her threat that his mother would wear black caused him to stop eating food prepared by her.

The test is whether such conduct was of such magnitude that no right thinking person would expect the Petitioner to live with her taking into consideration the whole of the circumstances and the characters of the parties.

It should also be borne in mind that the Respondent has also complained that the Petitioner has treated her with cruelty. She testified of his acts of violence on her and she gave instances of such violence, which evidence is corroborated by **DW2, SABINA AUGUSTA NGIAWO**. In addition there is the police medical report to support her allegation of his physical assault of her. It is clear from the Respondent's evidence that the Petitioner's conduct has endangered her life and injured her health both bodily and mentally.

In my judgment the Petitioner's behaviour towards the Respondent has been of a much graver or weightier nature than the conduct of the Respondent to the Petitioner. His conduct was more serious and made cohabitation virtually impossible.

The Petitioner also alleged that the Respondent committed adultery during the subsistence of the marriage. Adultery has been defined as voluntary sexual intercourse between a married person and a person of the opposite sex who is not the other spouse during the subsistence of the marriage.



See **Halsbury's Laws of England**, 4<sup>th</sup> ed. Vol. 13 paragraph 562. Is there evidence of such activity by the Respondent before the court?

It seems to me that the allegation is based on the note of the text message written by the Respondent. Counsel for the Respondent submitted that to support a finding for adultery there must be evidence of both opportunity or passion. She relied on the case of **Wilson vs. Wilson and Cousins** 1964 AFLRSL 200.

The burden of proof is throughout on the person who alleges adultery and it must be proved to the satisfaction of the court, that is, on a preponderance of probability but the degree of probability is higher than that required in a civil case. See **George vs. George** 1970-71 ALRSL 1, and **Williams vs. Williams**, {1961} 1 SLLR 92. The Respondent testified about the efforts she made to controvert the allegation that she had harboured a man in her bedroom immediately she received the text message. There is no evidence before the court corroborating the allegation, even though there were seven persons living in the said house at the time of the incident. As counsel for the Respondent has submitted, the Petitioner could have called at least one witness among the several persons living in the matrimonial home to testify of the Respondent's alleged adultery. I therefore agree with counsel for the Respondent's submission that there is no shred of evidence to support the Petitioner's allegation of adultery by the Respondent.

In the circumstance the Petitioner has failed to sufficiently prove the contents of his petition and it is hereby dismissed.

The Respondent has sufficiently proved that the Petitioner is guilty of the matrimonial offence of cruelty and a decree nisi is hereby pronounced in her favour.

The Respondent has claimed 50% interest in the matrimonial home and in all the property acquired during the subsistence of the marriage. The main property in issue here is the matrimonial home. Is the Respondent therefore entitled to a share in the said matrimonial home? It is clear from the evidence that the title deeds are in the name of the Petitioner alone and that he built the said house with his own finances and with no financial contribution from the Respondent. It is also clear that at the time the said house was being built it was intended to be the couple's matrimonial home. The question is: can the fact that the house was constructed as the matrimonial home impute that the wife, who has made no financial contribution, to its construction, has a beneficial interest therein?

This issue has been discussed in several cases both within and outside our jurisdiction.

In this case at the time of its construction the intention was that the house should be the parties matrimonial home. Although the Respondent did not contribute financially to its construction, but she looked after the home and supported the Petitioner in the venture by securing workmen to work on the house from the construction company for which she worked. Construction of the house was thereby done at a reduced rate.

In the case of **Ulrich vs. Ulrich and Felton** {1968} 1 All E. R. 67 at 72, Lord Hodson stated as follows

“Where there is no explicit agreement, the court’s first task is to infer from their conduct in relation to the property what their common intention would have been had they put it into words before matrimonial differences arose between them.”

In those circumstances a simple test should be: What is reasonable and fair in the circumstances as they have developed, seeing that they are circumstances which no one contemplated before? There is no doubt that at the time of its construction it was intended to be the matrimonial home, but does that without more entitle the Respondent to a beneficial interest, bearing in mind that she made no financial contribution to its construction costs. Can it be said that providing labour from her colleagues at work, such labour being paid for by the Petitioner entitles her to a resulting trust?

In **Gissing vs. Gissing**, Lord Diplock stated as follows {1970} 2 All E. R. 780 at 793

“Where the wife has made no initial contribution to the cash deposit and legal charges and no direct contribution to the mortgage instalments nor any adjustments to her contribution to the other expenses of the household which it can be inferred was referable to the acquisition of the house, there is in the absence of evidence of an express agreement



between the parties, no material to justify the court in inferring that it was the common intention of the parties that she should have any beneficial interest in a matrimonial home conveyed into the sole name of the husband, merely because she continued to contribute out of her own earnings or private income to other expenses of the household. For such conduct is no less consistent with a common intention to share the day-to-day expenses of the household, while each spouse retains a separate interest in capital assets acquired with their own moneys or obtained by inheritance or gift. There is nothing here to rebut the prima facie inference that a purchaser of land who pays the purchase price and takes a conveyance and grants a mortgage in his own name intends to acquire the sole beneficial interest as well as the legal estate; and the difficult question of the quantum of the wife's share does not arise."

I believe the situation as described above aptly fits the situation of the parties here. There is no evidence here of the Petitioner and Respondent acquiring the property at 17 Woodlands Estate by their joint effort for the court to impose or impute a constructive or resulting trust. In the circumstance the Respondent is not entitled to a beneficial interest in the said property situate at 17 Woodlands estate off Congo Cross Wilberforce. Having said that, it is observed that the Respondent has prayed for an order that she and the children remain in the matrimonial home until the children attain majority or until they decide to leave home whichever first occurs and for the Respondent's lifetime.

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I believe it is the court's duty to be fair and just having regard to all the circumstances of the case.

It is observed that the Respondent and children occupy the matrimonial home. The children still go to school and require some amount of security of accommodation and the environment to which they are accustomed. It is therefore my view that it would be fair and just in these circumstances to grant the Order for the Respondent and children to remain in the matrimonial home until all the children attain the age of 21 years or until they all leave home which <sup>ever</sup> first occurs. I <sup>must</sup> make it clear that the Respondent is not to live in the said property for her lifetime. That part of the order prayed for is refused.

With regards the property situate at Gulford Street Freetown, I accept the testimony of the Respondent and her mother DW4 that it was given to the Respondent alone. It therefore belongs to her solely. The court has already ordered maintenance *pendente lite* for the Respondent and maintenance for the children. See Order of court dated 3<sup>rd</sup> November, 2010.

In sum I make the following Orders

1. A decree nisi is hereby pronounced in favour of the Respondent on the ground of the Petitioner's cruel treatment of her.
2. The Petitioner's petition for divorce is dismissed.

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3. The Respondent is granted custody of the children with reasonable access to the Petitioner.
4. The Petitioner is to continue to pay maintenance for the children as ordered by Order of Court herein dated 3<sup>rd</sup> November 2010 or until further Order.
5. The Respondent and the children are to remain in occupation of the matrimonial home until the youngest child attain the age of 21 years or until the last child decide to leave home whichever first occurs.
6. The prayer that the Respondent remains in the said matrimonial home for life is refused.
7. The property situate lying and being at 17 Woodlands Estate off Congo Cross Wilberforce is owned by the Petitioner solely.
8. The property situate lying and being at Gulford Street Regent is owned by the Respondent solely.
9. The Petitioner is to bear the costs of the suit to be taxed if not agreed upon.

*A. Showers*

SIGNED: - A. SHOWERS 8/10/2012

JUSTICE OF COURT OF APPEAL