

WILLIAMS (C. C.) v. WILLIAMS (V. E. S.)

SUPREME COURT (Cole, Ag. C.J.): September 4th, 1964  
(Divorce Case No. 29/62)

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[1] Family Law—divorce—petitioner's adultery—discretion of court—factors to be considered: In considering its discretion to grant a decree in favour of an adulterous petitioner, a divorce court may properly have regard to the interests of the children of the marriage and to whether the marriage has utterly broken down and may grant a decree if it feels that it would be contrary to public policy to allow this marriage to continue (page 123, lines 19-27).

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The petitioner petitioned for the dissolution of her marriage with the respondent.

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Shortly after the parties were married the respondent began to ill-treat the petitioner and continued to do so even when she was pregnant. He refused to maintain her or their children and was so violent that she lived in a state of constant fear. Subsequently he attacked her in the street leaving her almost naked, after which she left him and did not return in spite of entreaties to do so. She obtained a maintenance order which the respondent obeyed for only four months. After leaving the respondent the petitioner gave birth to two children of whom the respondent was not the father.

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She prayed the court to exercise its discretion as to her adultery.

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The respondent denied the truth of the petitioner's allegations and offered a different explanation of the facts.

*S. H. Harding* for the petitioner.  
The respondent appeared in person.

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COLE, Ag. C.J.:

By her amended petition, the petitioner prays the court for the exercise of its discretion in her favour notwithstanding her adultery during the marriage and for a decree—

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“(a) That her marriage with the respondent be dissolved; (b) That the respondent do pay the petitioner's costs of and incidental to these proceedings; (c) That the petitioner may have the custody of the children of the marriage; (d) That the respondent do pay the petitioner such sums by way of maintenance for the children as may be just.”

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According to the evidence, the petitioner and the respondent

were lawfully married at the Weaver Memorial E.U.B. Church, Bonthé, in the Parish of St. Luke, on June 20th, 1951. After their marriage they cohabited at various places including Sembahun and Bo. There are three children of the marriage all living, namely Kenneth born on May 14th, 1954, Christiana born on December 26th, 1955 and Lauretta born on September 11th, 1957. According to the petitioner, soon after the marriage the respondent started ill-treating her. The respondent who had a very evil temper would return home late at night drunk and in that state he would wake her and beat her up. This would happen quite often, even while she was expecting a baby. He would not maintain her or the children of the marriage, and whenever they were together, she lived in a state of constant fear of him. Conditions did not improve but, on the contrary, grew worse. On February 28th, 1958, he attacked her in the streets of Bo, beat her up, kicked her and tore her dress leaving her naked but for the pair of knickers she had on. She produced the dress in evidence marked "B". The respondent contrary to the wishes of the petitioner would also practise fetish. The petitioner left the matrimonial home on February 28th, 1958, after the attack made on her by the respondent and has not returned since in spite of entreaties on his part for her to do so. She gave as her reason for not having returned that she did not trust him. She added that he had threatened to kill her and that his atrocious conduct towards her made her take his threat seriously. She also said that she had previous to February 28th, 1958, left the matrimonial home on a number of occasions because of the cruelty of the respondent; he would beg her to return and on her return he would mete out the same treatment again. She deposed that on October 15th, 1960, she obtained a maintenance order of £12 monthly against him which he obeyed for only four months. He had paid nothing since. The respondent has not been supporting her or the children who are all living with her. The petitioner added that since she finally left the matrimonial home on February 28th, 1958, she has given birth to two children of whom the respondent is not the father.

The respondent gave evidence. He denied the allegations made against him by the petitioner. He alleged that the incident of February 28th, 1958, deposed to by the petitioner was untrue. He said that some time in February 1958, it was the petitioner who had a fight with one Nettie Tucker in the streets of Bo in the course of which her dress was torn. He heard of the incident while he was at work and on his return he questioned the petitioner who denied

it. He later searched for and found the dress (Exhibit B) and confronted the petitioner with it, but she gave no answer. He then said he would send for his sister, a Mrs. Rosetta Cole. He also reported the matter at the Social Welfare Department at Bo; a representative of that department, a Mrs. Betts, settled the matter and he and the petitioner lived amicably until Saturday, February 22nd, 1958. That day he went to work and on his return he found the petitioner had gone with all her belongings and the children. He did nothing about it. Some time in May 1958, one of the magistrates in Freetown, Mr. Betts, sent for him and interviewed him at his chambers in the presence of the petitioner. He tried to get at the petitioner after the interview without success. He added that although the petitioner promised the magistrate who made the maintenance order against him to return to the matrimonial home, she did not and has not kept her promise. He produced several letters in support of his story. He denied having starved or not maintained the petitioner or the children.

Having carefully considered the evidence as a whole, I believe the petitioner and her witnesses. Her story is to a great extent corroborated by Exhibit F, a letter dated January 3rd, 1958, written by the respondent to the petitioner. I shall refer only to paras. 1, 3 and 4:

"1. The contents of the letter you sent with driver Bockari are not at all pleasing to me, especially when you stated that you had entirely decided not to come back to me. I am writing this letter with contrition, and full repentance of the past and with eyes full of tears."

"3. You know Kate, I am very haughty, it is not wickedness that had led me to maltreat you: it is jealousy and it is because I love you. To be outspoken, your absence has left my heart bleeding with worries. At present my position is rather pitiful and require your forgiveness [*sic.*]. I was looking up to you in place of my late sister Laura who was my all in all. Who then must I look up to now that you have almost deserted me? I have now realised the evil that lies in beating. Since I left Torma, I have been filled with cares and worries so much that I scarcely find time to sleep when I go to bed. 4. Please forgive me for the sake of only Ken and Chris. I am praying daily so that God will change my evil ways and create in me a clean heart. Now I make this solemn promise as I did when we first got to Bo that I never again will ill-treat

you and further promise to co-operate with you in everything whatsoever. Therefore I am asking that you change your mind and resolve to come back with the hope of meeting your husband a thoroughly changed person."

It should be noted that soon after the petitioner returned home after Exhibit F was written, the respondent again in February 1958 attacked her and beat her up. I am satisfied on the evidence that since their marriage the respondent treated the petitioner with cruelty and that it was his cruel treatment that caused her to leave the matrimonial home. I am also satisfied on the evidence that the petitioner was justified in her not returning to the matrimonial home in spite of the entreaties on the part of the respondent. I find the petitioner's case proved.

The petitioner both in her evidence and in the discretion statement filed on her behalf, has been completely frank about her adultery. In my view the respondent by his conduct condoned to the petitioner's adultery. I have no doubt in my mind on the evidence that the marriage here has utterly broken down, due substantially to the fault of the respondent. Although the petitioner is guilty of adultery whilst the marriage subsisted, it would, in my view, be contrary to public policy to allow such a union to continue. I have looked at every aspect and circumstance of this case, particularly the interests of the children of the marriage, and as I have already pointed out, the fact that the union has utterly broken down. I am of the view that no injustice would be done if I exercised my discretion in favour of the petitioner. I therefore grant her prayer and order a decree nisi notwithstanding her adultery. The petitioner will have the costs of and incidental to these proceedings, such costs to be taxed.

With regard to the prayer of the petitioner relating to custody and maintenance of the children of the marriage, the Rules not having been complied with, I make no order at this stage other than giving the parties liberty to apply.

*Petition granted.*