

After carefully considering all that has been argued by both solicitors, I have come to the conclusion that the omission of the word "Limited" in the name of the defendant in the title of this action is a mere misnomer, which can be cured by an amendment, and is, therefore, not a ground for setting aside the writ of summons in this action.

The summons is therefore dismissed, with costs to be taxed and paid by the defendant to the plaintiff.

*Application dismissed.*

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WILSON (A. O. S.) v. WILSON (E. T.) and COUSINS

SUPREME COURT (Beoku-Betts, J.): December 16th, 1964  
(Divorce Case No. 26/63)

- [1] **Evidence—burden of proof—divorce—adultery—burden lies throughout on person alleging adultery:** In a divorce case, the burden of proving adultery is throughout on the person alleging it, there being a presumption of innocence (page 201, line 41—page 202, line 3).
- [2] **Evidence—burden of proof—standard of proof—divorce—adultery—proof against persons charged beyond reasonable doubt:** In a divorce case, adultery must be proved strictly and beyond all reasonable doubt (page 201, line 41—page 202, line 6).
- [3] **Evidence—presumptions—presumption of law—presumption of innocence—adultery:** See [1] above.
- [4] **Family Law—divorce—adultery—burden of proof lies throughout on person alleging adultery:** See [1] above.
- [5] **Family Law—divorce—adultery—evidence—evidence of both opportunity and inclination required:** To support a finding of adultery as a ground for divorce there must be evidence both of opportunity and of inclination or passion (page 202, lines 27–29).
- [6] **Family Law—divorce—adultery—evidence—proof of particular acts of adultery unnecessary where general cohabitation:** Where adultery is alleged as a ground for divorce, proof of general cohabitation excludes the necessity for proof of particular acts of adultery (page 202, lines 29–30).
- [7] **Family Law — divorce — adultery—standard of proof—proof against person charged beyond reasonable doubt:** See [2] above.

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

The petition was contested on the ground of the respondent's adultery with the woman named in a lodging house where they were both living. There was evidence to prove the adultery and, on the other side, evidence that the relationship between the respondent and the woman named was an innocent one. The respondent and the woman named both gave evidence and denied the adultery.

*S. H. Harding* and *Coker* for the petitioner;  
*Buck* for the respondent;  
*Mackay* for the woman named.

BEOKU-BETTS, J.:

The petition before this court is for desertion and adultery. Before evidence was taken both counsel informed me that the petition relating to desertion would not be contended and was withdrawn. The issue now therefore is a petition for adultery in which a woman called Eunice Cousins is named. Most of the evidence was taken in the United Kingdom as the adultery is alleged to have taken place at No. 1 Bolton Road in London, England. I however heard evidence of the petitioner and the respondent who gave evidence in this court.

The petitioner alleges that on divers dates between the months of April 1958 and October 1958 the respondent lived and cohabited and frequently committed adultery with Eunice Cousins at 1 Bolton Road, London E.15 and continued to do so so far as is known to her (the petitioner) until 1962.

The petitioner herself did not give evidence of the adultery because she was in Sierra Leone for the greater part of the time during this period. She was in England from March 1958 to November 1958. During this period of time she did not give evidence that she knew of any adulterous relationship between the respondent and the woman named. Her complaint is mostly concerned with the respondent's unfair treatment of her when she was ill and in and out of hospital. Most of this had nothing or very little to do with a case of adultery, save that from other evidence which I will refer to later it was established that in that period the respondent lived in the same premises as the woman named.

Adultery must be strictly proved and, to quote from *Rayden on*

*Divorce*, 9th ed., at 149 (1964) under "Burden and standard of proof": "The burden of proof is throughout on the person alleging adultery, there being a presumption of innocence. It has been held that . . . the same strict proof is required of adultery as is required in a criminal case . . . that is, the tribunal must be satisfied on proof beyond all reasonable doubt." I am bound to adhere strictly to this principle of law. There are a great number of cases in support of this principle which are well known to lawyers. I need not refer to them.

I shall now consider the whole evidence and determine whether adultery has been proved bearing in mind where the burden of proof lies. It is known and agreed that both the respondent and the woman cited lived in the same house at 1 Bolton Road from 1958 to some time in 1963. Taking only the period April 1958 to December 1962, I shall examine the effect of the evidence covering this period. I observe that the evidence given by witnesses for the petitioner in the main tends to suggest that the respondent and the woman cited lived quite openly as man and wife in the same room on the ground floor of the house at 1 Bolton Road whilst the witnesses for the respondent gave evidence to the contrary. I also observe that most of the witnesses for the petitioner are relations of the petitioner whilst the witnesses for the respondent are nearly all, if not all, relations of the respondent. With this situation arising my task is therefore to scrutinise the evidence most carefully. In cases of adultery it is not necessary to prove direct facts of the act of committing adultery. The fact could be inferred from circumstances. The court must be satisfied that where there is opportunity some further evidence of inclination or passion must be given. Proof of general cohabitation excludes the necessity for proof of particular acts of adultery.

In this case the evidence of the petitioner's witnesses if believed provides ample proof of opportunity and inclination. In short they provide evidence of continued cohabitation as a natural consequence of the way they lived and carried on. For instance the witness Mr. A. E. Browne stated that he lived in 1 Bolton Road from the end of 1961 to the end of 1962 and that he lived in the second room on the ground floor whilst the respondent and the woman named lived in the first room on the ground floor. He said the respondent and the woman lived on affectionate terms and that they called each other "darling." He had seen them kiss and he had heard the creaking of the bed, whispering and heavy breathing. Above all

he stated he had seen them actually lying in bed in the morning. This witness also gave evidence of an occasion when he heard Mr. Wilson call Miss Cousins into the bathroom to wash his back. As I said if I believe this witness alone the petitioner must succeed. Apart from this witness Mr. Reuben Adekunle Johnson said that he spent his vacation in Bolton Road from 1960 to 1962. He also knew that the respondent and the woman named lived in the same room on the ground floor. He further said both Mr. Wilson and Miss Cousins had their clothing in the same room. I discard his evidence covering 1963 as the petition does not extend to then. Miss Annette Muriel Olufami Songo Williams went to England in 1958. She said she visited Bolton Road four times. She knew that the respondent and the woman named lived in the same room. She described the room and said she saw female dress in the room. Another important witness for the petitioner who gave evidence before me is Mrs. Lady Smith Williams. She knew both the petitioner and the respondent and the woman named in 1957. She went to live at 1 Bolton Road in 1959 and lived there for six months. She said she lived in the room next to the one both the respondent and the woman named lived in.

The respondent himself gave evidence denying the charge and stated how he got to know Miss Eunice Cousins, stating that he was introduced to her by Mr. Marcus Cole in 1957 and that he was asked to guarantee Miss Cousins for the purchase of 1 Bolton Road. He said he later lived in the house as a tenant and that he paid £3 weekly for board and lodging. He said he was instrumental in getting the witnesses for the petitioner to lodge in the house including Mrs. Lady Smith Williams. He said that he did not live in the same room with the woman named but that he occupied the second room on the ground floor, vacating it for Mr. Browne in the first instance. On one instance he insisted that for part of the period of the petition he lived in the common room having his belongings in a cupboard in the basement. He later moved to the first floor. He denied that there was any immoral relationship between himself and Miss Cousins. His daughter Mrs. Ernestine Ndoye confirmed that she saw Mrs. Lady Smith Williams at 1 Bolton Road in August 1959. She also visited the house and sometimes slept there. She stated that the respondent at one time lived in the room next to Miss Cousins. She did not know of any unusual happening between her father and Miss Cousins. Mr. Marcus Cole also visited Bolton Road and did not know that Miss Cousins

and the respondent shared the same room. He admitted introducing the two to each other. He did not notice any unusual familiarity between them.

Miss Eunice Cousins gave evidence denying the charge and stating that Mr. Wilson was a tenant in the house occupying the second room on the ground floor. Sometimes in cases of emergency he occupied the common room. She denied all the evidence of Mr. Browne and the other witnesses. She said she called Mr. Wilson "Pop" as the others did and not "darling." She also gave evidence of how she met Mr. Wilson and of the purpose for which she met him. Mrs. Henrietta Anthony gave evidence that she went to England in 1959 and stayed at 1 Bolton Road for one month. She said she occupied the same room as Miss Cousins. She also testified that Mr. Wilson lived in a separate room and that she never observed anything unusual between the two. Miss Johnetta Theresa Rose went to England in August, 1962. She lived at 1 Bolton Road from October 1962 to October 1963. She lived on the ground floor. She said Mr. Wilson was living in the sitting room. Mr. Black's evidence does not take us far in this case of adultery apart from an obvious conflict between his evidence and Mr. Wilson's relating to when the petitioner was in England in 1958.

Having reviewed the whole evidence it is made clear on which side the witnesses have their interests. As I said earlier the witnesses are almost equally divided. The petitioner's relations gave evidence for the petitioner and the respondent's relations gave evidence for the respondent. The only witnesses who might be called neutral are Mrs. Lady Smith Williams for the petitioner and Mr. Marcus Cole for the respondent. Mrs. Lady Smith Williams' evidence has more weight as she actually lived in the house 1 Bolton Road. She was severely cross-examined but she was not shaken, but what is of importance in her evidence and that of the witnesses for the petitioner is that Mr. Wilson the respondent was instrumental in bringing them into the house to stay. It is important because if he was in fact living with the woman named in the manner given in evidence he must be a very callous man or a very immoral man. I saw this witness in the box. Although he did not strike me as a good and intelligent witness, he did not strike me as a man who would be so callous as not to consider the feelings of the petitioner's relations who lived in the house. I am convinced that if the respondent was in fact living such an immoral life with Miss Cousins

he would not have advertised it as much as the witnesses for the petitioner suggest.

Taking the whole circumstances of the case after much scrutiny of the evidence on both sides, I have grave doubts on the issue of adultery.

I therefore hold that adultery has not been proved. The petition is dismissed and the woman named is discharged from the suit.

*Petition dismissed.*

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COMMISSIONER OF POLICE v. JANNEH and SIX OTHERS

COURT OF APPEAL (Ames, P., Bankole Jones. C.J. and Dove-Edwin, J.A.): March 8th, 1965  
(Cr. App. No. 40/64)

- [1] Courts—magistrates' courts—jurisdiction—criminal jurisdiction—may try arrested person for offence not that for which arrested: A person arrested for an offence and brought before a magistrate's court may be tried on a charge of another offence (page 213, lines 26–29).
- [2] Courts — magistrates' courts — jurisdiction — criminal jurisdiction — summary conviction offences—magistrate assuming jurisdiction under Summary Conviction Offences Act (cap. 37), s.18, need not record circumstances: Before assuming jurisdiction to try a person summarily under the Summary Conviction Offences Act (cap. 37), s.18, a magistrate need not record the circumstances having regard to which he assumes jurisdiction (page 210, lines 2–7).
- [3] Courts — magistrates' courts — jurisdiction — criminal jurisdiction — summary trial with accused's consent—circumstances to ground jurisdiction need not be ascertained from depositions alone: For the proper exercise of his discretion to proceed from a preliminary investigation to a summary trial under the Criminal Procedure Act (cap. 39), s.110, a magistrate is not obliged to ascertain the circumstances of the case solely from what has been said in the depositions
- [4] Courts — magistrates' courts — jurisdiction — criminal jurisdiction — summary trial with accused's consent—magistrate may conclude offence triable summarily any time after starting depositions: A magistrate's conclusion that an offence is suitable for summary trial under the Criminal Procedure Act (cap. 39), s.110, may be drawn at any stage after he has commenced to take down the depositions in a preliminary investigation (page 211, lines 21–26).