

S. T. WILLIAMS v. L. A. WILLIAMS and SEBASTIAN

SUPREME COURT (Bankole Jones, C.J.): May 29th, 1964
(Divorce Case No. 23/63)

- [1] **Evidence—privilege—without prejudice—communications concerning marital reconciliation privileged:** Communications made in the course of attempts at reconciliation by the parties themselves, their families or official agencies, are privileged on the ground that they are made without prejudice and will be disregarded by the court in matrimonial proceedings (page 61, lines 3-14). 5 10
- [2] **Family Law—divorce—condonation—reconciliation—condonation cannot be unilateral:** There is no condonation where the guilty party does not consent to be forgiven, since nothing short of full reconciliation can amount to condonation (page 62, lines 1-3). 15
- [3] **Family Law—divorce—condonation—reinstatement a necessary element:** Mere forgiveness of a matrimonial offence cannot amount to condonation unless it is followed by the reinstatement of the offending spouse in his or her former marital position (page 61, lines 39-41). 15
- [4] **Family Law—divorce—evidence—privilege—communications concerning reconciliation privileged:** See [1] above. 20

The petitioner petitioned for divorce on the ground of his wife's (the respondent's) adultery with the co-respondent.

The petitioner alleged that he had seen the co-respondent leaving his house and subsequently discovered stains on a bed sheet which appeared to be spermatozoa and the same substance in the region of his wife's sexual organs. Following these events a family meeting was held after which the respondent signed a written apology which had been prepared by the petitioner confessing adultery with the co-respondent. The petitioner was not present when the apology was signed. On a later occasion the petitioner saw the respondent in the co-respondent's compound and was so enraged that he put the respondent out of the matrimonial home. Following reconciliation attempts by the Social Welfare Department the petitioner allowed the respondent to return to the matrimonial home on condition that the respondent did not allow members of her family to visit her. The respondent broke this promise and also refused to have sexual intercourse with the petitioner. After this relations deteriorated and resulted in the present proceedings. 25 30 35

At the close of the petitioner's case, the co-respondent was dismissed from the action for want of sufficient evidence against him. 40

The respondent denied the allegation of adultery completely and claimed that the confession was untrue and had been obtained by duress. She maintained that evidence of what transpired at a family meeting and at a meeting at the Social Welfare Department was inadmissible as proof of adultery because privileged; and that even if adultery were established, it had been condoned by the petitioner's behaviour. She admitted refusing to have sexual intercourse with the petitioner but maintained that this was the result of his own behaviour towards her.

Case referred to:

(1) *Theodoropoulos v. Theodoropoulos*, [1964] P. 311; [1963] 2 All E.R. 772, applied.

S. H. Harding for the petitioner;
R. E. A. Harding for the respondent;
During for the co-respondent.

BANKOLE JONES, C.J.:

The parties in this suit were married on April 23rd, 1960 at St. Paul's Church in the parish of Wilberforce in the then Colony of Sierra Leone at a time when the petitioner-husband was 23 and the respondent-wife 22 years of age, respectively. They lived together with the petitioner's mother at No. 11 Murray Town Road, Congo Town and there is one child of the marriage, Samuel Theophilus, now about two years of age.

The petitioner in his petition alleges adultery by his wife with one Copolla Sebastian, an Italian who was cited as co-respondent. At the close of the petitioner's case, on the submission of his counsel and in accordance with s.8 of the Matrimonial Causes Act (*cap.* 102), the co-respondent was dismissed from the suit.

The case for the petitioner is that on returning home from work about 4 p.m. on June 20th, 1963, he saw the co-respondent through his kitchen window in the kitchen and that by the time he got to the back steps of the house which lead into and from the kitchen the co-respondent was already descending these steps into the street. A conversation took place between them. He did not then appear to have been suspicious because the co-respondent was an opposite neighbour of theirs who had at least on two occasions visited the house. When he knocked at the door, it took some time for the wife to open and he then noticed that her eyes were red and her hair

dishevelled. She told him that the co-respondent had brought a pint of beer for him and a packet of biscuits for the baby, both of which articles she showed him. On inquiring after his mother the wife told him that she was out. When he entered his bedroom, he saw a lappa belonging to his wife spread over the centre of the bed. Picking it up, he saw fresh stains on the sheet which, on examination, turned out to be spermatozoa. By this time, the wife had gone upstairs to the bathroom where the petitioner found her undressed and about to take a bath. He reluctantly persuaded her to follow him down to his bedroom to have intercourse with him. When she lay on the bed, the petitioner discovered spermatozoa all over the region of her private parts. The petitioner thereupon accused her of adultery with the co-respondent. The wife denied this and accounted for the spermatozoa on her person by saying that she was lying on the bed with her baby when she discharged on herself. When his mother came home shortly after this discovery, the petitioner told her what he had discovered. When questioned, the wife told her mother-in-law that her husband was merely suspicious but that in fact she had discharged on herself, a thing which sometimes happened to her without intercourse. The petitioner then left to call the wife's mother. When she came to the matrimonial home, and in the presence of the wife, she was shown the fresh stains of spermatozoa on the bed sheet. When questioned about it by her mother, the wife merely sighed.

On June 23rd a family meeting was held at the matrimonial home. On June 26th, the petitioner told his wife to apologise in writing about what happened between herself and the co-respondent and composed the apology which is contained in the document (Exhibit B) and which the wife copied out and delivered to him (Exhibit C). The petitioner said he was not present when his wife wrote out and signed Exhibit C.

On July 3rd, the petitioner, returning from work, saw his wife in the compound of the co-respondent. He was so enraged that he put her out of the house. The next day, as a result of a telephone call from the Social Welfare Department, the petitioner called at that department where he met his wife and a social welfare officer interviewed them both. During the next 10 days, the wife was taken to the matrimonial home on several occasions by various persons with a request that the petitioner should take her back. He stoutly refused to do so, but on July 14th when the wife came with some of these persons and begged both the petitioner and his mother

she was allowed to return home. The petitioner took her back because his mother was finding it hard both to look after the baby who had been left behind and run the home. He said this in evidence: "I wanted her to come and help in the home work. My wife went on her knees to my mother begging when they came the last time, before I took her in."

The wife had promised her husband not to allow her mother and her brother to come to the house for some time to come. Two days after she had been taken back the brother went to the house and when the petitioner upbraided her, she retorted that as long as she stayed there anyone she wanted to come to the house would do so. From that day the relationship between them rapidly deteriorated and the petitioner consulted a solicitor and these proceedings are the result.

The case for the respondent is a complete denial of the allegation of adultery against her. Her account, supported by her mother, was that the stain on the bed sheet in the petitioner's bedroom was caused by their baby's urine. She denied that there were spermatozoa found in the region of her private parts. She denied that she had told the petitioner and his mother that she would sometimes discharge on herself without intercourse. She said that after she was taken back her husband persisted in returning home very late at night and that when he would enter her bedroom to have intercourse with her, she would refuse and say to him: "Go where you have come from." She admitted that she had told the petitioner on the occasions when her brother visited her that as long as she stayed in the house the brother would visit her there. Her evidence under cross-examination on this and other points is rather illuminating. She said:

"My husband drove me out. I was anxious to return home. A Mr. Cookson and others brought me home. My husband did say that he would admit me home temporarily and for the time being my mother and brother should not visit me. Mr. Cookson advised me to do what my husband said. Three days or so after, my husband met my brother in the house. My husband upbraided me. I said that as long as I was living with him my brother would come to see me. Our relationship became strained. He wanted sex with me but I refused him."

The confession contained in Exhibit C, according to her, was obtained by duress. She wrote it out because the petitioner threatened that if she did not do so, he would throw her out and

take the child himself. She believed this. There was no truth in the confession, as she had not committed adultery.

Now, on the question as to whether the petitioner has succeeded in proving adultery against his wife, Mr. R.E.A. Harding submitted that all the evidence relating to what happened at a family meeting held on June 23rd when the parties and their relations were present as well as the evidence of the parties themselves and that of the social welfare officer as to what transpired at the Social Welfare Department, was inadmissible and should be disregarded because it amounted to attempts at reconciliation and was therefore privileged. I find myself in agreement with him, my attention having been drawn to the recent case of *Theodoropoulos v. Theodoropoulos* (1). In therefore coming to the conclusion I have reached, I have completely disregarded all the evidence mentioned above.

I accept the story of the petitioner relating to the discovery of spermatozoa on his bed sheet and in the region of his wife's private parts immediately after the co-respondent had left his house. I reject her denial. She certainly did not impress me as a witness of truth. I also accept without reservation that although the petitioner composed the confession which the wife wrote out in Exhibit C the wife knew quite well what she was doing when she copied it out. She did it voluntarily, and I find at a time when her husband was not even present to exert any influence over her, hoping thereby to receive forgiveness for her adulterous act with the co-respondent. I therefore find that on the evidence, although the petitioner failed to prove that the co-respondent committed adultery with the wife, he has however succeeded in proving that the wife committed adultery with the co-respondent.

Mr. R.E.A. Harding submitted that even if the court comes to the conclusion that the wife committed adultery, the petitioner would not be entitled to a decree because he, with full knowledge of the facts, condoned such adultery. He argued that the inference of condonation can be drawn from the evidence. For example, in Exhibit C, the confession, there is mention of a promise to forgive followed by the reinstatement of the wife in the matrimonial home. I am afraid, and with respect, this is not how I read the evidence. But first, what is condonation in law? In *Rayden on Divorce*, 8th ed., at 234 (1960), para. 19, is to be found the following:

"Mere forgiveness of a matrimonial offence, whether expressed orally or by letter, cannot amount to condonation, unless it is followed by the reinstatement of the offending spouse in his

or her former marital position. . . . But nothing short of full reconciliation will suffice; therefore if the guilty party does not consent to be forgiven there is no condonation."

Applying this yardstick to the circumstances of this case, it seems clear to me that even if the petitioner had the intention to forgive and remit his wife's wrong, she was certainly not reinstated into her former marital position and this was principally due to the contumacious and unwise behaviour of the wife who, knowing that she was on trial, so to speak, made it appear as if she did not care to be forgiven. How else can one explain her retort to her husband on the occasion of the visit of her brother or, if her story is to be believed, her deliberate refusal to have sexual intercourse with the petitioner, the one thing which may have been conclusive proof of condonation? It was therefore not a matter of surprise to find that the relationship so soon after her return home deteriorated to such a degree as to account for these proceedings.

In my view, therefore, the husband must succeed and I accordingly declare that the marriage had and solemnised between the parties on April 23rd, 1960 be dissolved by reason of the adultery committed by the respondent on June 20th, 1963. I therefore grant the petitioner a decree nisi. In all the circumstances there will be no order as to costs.

Decree nisi granted.

HARDING v. WILLIAMS and PELHAM

SUPREME COURT (Bankole Jones, C.J.): June 5th, 1964
(Civil Case No. 27/64)

[1] **Tort—defamation—slander—slander of women—statements imputing unchastity:** Imputations of sexual immorality and incestuous conduct on the part of a woman will constitute imputations of unchastity within the meaning of the Defamation Act, 1961, s.3, and will therefore be actionable *per se* (page 64, lines 26–35).

The plaintiff brought an action against the defendants to recover damages for slander.

The plaintiff contended that the defendants slandered her by imputing that she was a person of immoral habits and guilty of