

not vitiate the conviction because the court was satisfied that whatever the warning given to the jury they would still have come to the conclusion, beyond any reasonable doubt, that the appellant was guilty, and the appeal was dismissed although there had been a non-direction, that is, a failure to direct the jury in the summing-up of a most material matter.

*Appeal allowed.*

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NAVO v. NAVO

SUPREME COURT (Browne-Marke, J.): May 4th, 1967  
(Divorce Case No. 28/65)

- [1] **Family Law—divorce—answer—allegation of petitioner’s adultery—respondent cannot give evidence of petitioner’s alleged adultery unless cross-petitions:** Where the respondent to a divorce petition alleges in her answer that the petitioner has committed adultery but does not cross-petition for divorce, she will not be entitled to give evidence in support of her allegation (page 135, lines 10–12).
- [2] **Family Law—divorce—cruelty—test of cruelty—intention to injure only to be proved if acts do not allow its inference:** Where the acts of one spouse readily allow the inference of an intention to be cruel to the other, no affirmative evidence of actual intention will be necessary; where the acts do not allow such an inference to be drawn, however, the court will look for evidence of an intention to injure (page 127, line 37—page 128, line 2).
- [3] **Family Law—divorce—petitioner’s adultery—alleged in answer—respondent cannot give evidence of petitioner’s adultery alleged in answer unless cross-petitions:** See [1] above.
- [4] **Family Law—divorce—petitioner’s adultery—discretion of court—factors to be considered:** In exercising its discretion to grant a petition for divorce despite the petitioner’s adultery, a court should consider all the facts of the case and every interest involved, and in particular (a) the position and interest of any children of the marriage; (b) the interest of the party with whom the petitioner has committed adultery, with special regard to the prospect of their future marriage; (c) the prospect of reconciliation of the spouses if the marriage is not dissolved; (d) the interest of the petitioner, particularly that he or she should be able to remarry and live respectably; and (e) the interest of the community at large, balancing respect for the sanctity of marriage and the public policy which does not support the continuance of a marriage which has completely broken down (page 133, line 37—page 135, line 9).

[5] **Family Law—divorce—petitions—cross-petition—cross-petition essential to allow respondent to give evidence of petitioner's adultery alleged in answer:** See [1] above.

The petitioner petitioned for the dissolution of his marriage to the respondent on the ground of her cruelty, the custody of and access to the child of the marriage, and such further or other order as might appear just. 5

The parties were married in England while they were both students there. There was evidence that the respondent's father made it a condition of giving his consent to the marriage that the respondent should be allowed to complete her training as a nurse before she returned to Sierra Leone. After the petitioner qualified, he returned home; but the respondent remained in England, and the respondent later sent their child to join him. The correspondence between the parties indicated that the petitioner promised to visit the respondent in England during the remainder of her studies, but he never did so. He alleged that despite all his attempts at persuasion, she wilfully and unreasonably refused to return home to him. 10 15

The respondent in fact returned to Sierra Leone three years later before completing her nursing qualifications. She found a young girl living in the matrimonial home with the petitioner, said to be the daughter of one of the petitioner's deceased benefactors. There was evidence that the respondent quarrelled with this girl, on one occasion resorting to blows and allegedly striking the petitioner as well. After several disagreements and unpleasant scenes, the girl left the house. 20 25

The respondent left her employment with the Ministry of Health so that she could complete her training. The petitioner alleged that she resigned without consulting him, that he had heard that her work was unsatisfactory, and that after her resignation the respondent became temperamental and quarrelsome. All the allegations were denied by the respondent. She finally moved to another address: the petitioner claimed that it was without his consent, but the respondent gave evidence that he rented the house for her, visited her there and maintained her. 30 35

There was evidence that the petitioner committed adultery with a neighbour who became pregnant. Although the petitioner denied this to the girl's father, he apparently admitted it to the respondent without attempting to excuse himself, and subsequently admitted it in seeking the exercise of the court's discretion. 40

The petitioner alleged that the respondent's unreasonable, un-governable and cruel temper, selfish, headstrong and wilful nature caused him to become moody and depressed and finally ill. There was, however, no other evidence of mental stress or illness and such evidence as there was in fact suggested that he was usually healthy. He petitioned for the dissolution of his marriage, the custody of and access to the child of the marriage, and such further or other order as the court should think just.

The respondent did not cross-petition but in her answer and in the course of her evidence she alleged cruelty by the petitioner.

Cases referred to:

- (1) *Blunt v. Blunt*, [1943] A.C. 517; [1943] 3 All E.R. 76, *dicta* of Viscount Simon, L.C. applied.
- (2) *Fowler v. Fowler*, [1952] 2 T.L.R. 143, *dicta* of Hodson, L.J. considered.
- (3) *Squire v. Squire*, [1949] P. 51; [1948] 2 All E.R. 51, observations of Evershed, L.J. considered.
- (4) *Wilson v. Wilson*, [1920] P. 20; (1919), 122 L.T. 222.

Statute construed:

Matrimonial Causes Act (Laws of Sierra Leone, 1960, *cap.* 102), s.7(1):

The relevant terms of this section are set out at page 127, lines 16-21.

s.9: The relevant terms of this section are set out at page 127, lines 23-30.

*C.N. Rogers-Wright* for the petitioner;  
*Barlatt* for the respondent.

BROWNE-MARKE, J.:

This is a petition filed by Samuel Toma Navo, a barrister-at-law and a civil servant, for dissolution of his marriage with his wife Emily Oyah Navo, a nursing sister employed by the Ministry of Health, on the ground of cruelty.

The petitioner in para. 7 of his petition alleged that the respondent had treated him with cruelty since the celebration of the marriage, and in para. 8 that the respondent is a person of ungovernable and cruel temper and is of an extremely selfish, headstrong and wilful nature. He therefore prayed this court to exercise its dis-

cretion and (a) dissolve the said marriage, (b) make such order as to custody of and access to the child of the marriage as shall be just, and (c) make such further or other order as shall seem just.

The petitioner also filed a discretion statement in which he prayed the court to exercise its discretion in his favour and dissolve his marriage with the respondent notwithstanding his adultery. This he said was the result of the bitterness which steadily and insidiously crept into his home, in consequence of which he found it more and more difficult to spend any time at home and thus spent more and more time out of doors. Further, that in consequence of the adultery with the person named, the said person was pregnant at the time of filing the discretion statement, and that the petitioner admitted paternity.

Section 7(1) of the Matrimonial Causes Act (*cap.* 102) provides the following:

“On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to inquire into any countercharge which is made against the petitioner.”

Section 9 further provides:

“If in any proceedings for divorce the respondent opposes the relief sought, in the case of proceedings instituted by the husband, on the ground of his adultery, cruelty or desertion, or, in the case of proceedings instituted by the wife, on the ground of her adultery, cruelty or desertion, the court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.”

In *Squire v. Squire* (3) ([1949] P. at 60; [1948] 2 All E.R. at 55) Evershed, L.J. said that proof of a spiteful or malignant intention may be an important or in some cases even an essential consideration, but that its absence in the abstract did not prevent a petition on the ground of cruelty from succeeding. In *Fowler v. Fowler* (2) Hodson, L.J. said ([1952] 2 T.L.R. at 145):

“The word ‘cruel’ itself, in its ordinary meaning, seems to me to imply the notion of malignity, but it is not necessary to prove affirmatively an intention to be cruel if the acts themselves readily allow that inference to be drawn. . . . When acts are not such as to render that inference readily to

be drawn, the Court will look to see whether there is an intention to injure. . . .”

5 The facts of the case based on the petition are as follows: The parties were lawfully married at the Registry Office in the Metropolitan Borough of Fulham in London. After their marriage the petitioner lived and cohabited with the respondent at Fulham Road, London, at various other addresses and finally at the Junior Ministers’ Quarters, Spur Road, Wilberforce, Freetown. After vacating the Junior Ministers’ Quarters the parties later lived at No. 5 Cockerill  
10 North, Freetown, and that, according to the petitioner, was the last address at which he lived with his wife. There was one child of the marriage, namely Samuel Umpha, who was born in London on September 29th, 1954.

15 According to the petitioner, the respondent resided at 18B Brookfields, Freetown. Both of them are domiciled in Sierra Leone. He said further that he had never been to the courts before with his wife on any matter with reference to their marriage or the child of the marriage, and that he had in no way condoned the alleged cruelty of the respondent complained of in his petition. He alleged  
20 further that his petition was not presented or prosecuted in collusion with the respondent.

In para. 9, the petitioner alleged that from the start things commenced to go wrong. At the time of their marriage he was a law student reading for the examination for call to the bar. He  
25 qualified in May 1954, and was called to the bar in July of the same year. Despite the most strenuous arguments of the petitioner to persuade the respondent to return home with him and start life, the respondent wilfully and unreasonably refused. He was forced to return home in November 1954, and in September 1955 the child  
30 of the marriage was sent to him by the respondent. The petitioner was thus early in the marriage deprived of the company of the respondent in building a new home. The position was worsened by the extremely acrimonious letters with which the respondent bombarded the petitioner.

35 The petitioner did not produce any of the acrimonious letters referred to. He said in evidence:

“I pleaded with my wife to return home as we were a young married couple and I would like us to settle down. I explained to her that four years’ absence would not be conducive to a  
40 happy matrimonial home. Despite all persuasions she insisted and refused to return, and said that she must get her S.R.N.

and S.C.M. before returning home. I reluctantly had to return home.”

The respondent in evidence rejected the allegation. She said that before their marriage there had been an arrangement between her husband and her father that she would be permitted to complete her training before returning home. Subsequently the respondent said:

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“When my husband left England in 1954, I entertained hopes of seeing him again before I finished my training because he promised to visit England on holidays as soon as possible. After my husband returned home he kept on writing and promising to visit me before I completed my training. He did not keep any of these promises.”

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The respondent tendered two letters written by the petitioner to him when she was still in England, marked Exhibits B and C respectively. In Exhibit B, dated September 5th, 1955, when writing about his delight in seeing their son on his arrival home, the petitioner said: “He was well taken care of. I may bring him over when I come so that we will all come home together.” In Exhibit C, dated July 4th, 1957 and written by the petitioner to his wife when she was still in England, the petitioner said: “You have now compelled your parents to agree that you come. My opinion was not sought in the matter and when given was never respected. I therefore had no alternative but to accept whatever you decide on.” He wrote later in the same letter: “I regret that as things now stand it is not necessary for me to come. Last year I promised you that I will come immediately after the General Elections, then it was expected to be in December or January. . . . I have booked my passage on the M.V. ‘Apapa’ for June 22nd.” The petitioner went on further to write: “However, this is now all over and all I can assure you is that I welcome you home when you come. It will be to help build our home from my little resources, but forget that idea of going again.”

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These extracts from Exhibits B and C are contrary to the allegations in paras. 9 and 10 of the petition as well as the evidence of the petitioner. In para. 10 of the petition it is alleged that during 1957 and after the respondent had gone half way through her midwifery course, having completed the S.R.N., she suddenly decided that she wanted to come home. The combined efforts of the petitioner and her parents failed to budge the respondent from her set purpose.

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The father of the respondent, Mr. U.A. Koroma, in his evidence corroborated the evidence of the respondent on this aspect of the petitioner's allegation. He said (referring to the petitioner and the respondent):

5 "Before they were married both of them wrote to me that they wished to marry and sought my permission. I eventually gave permission but gave a condition that my daughter's professional course must be completed. The petitioner agreed. I did not know then that the petitioner was pressing for his  
10 wife to accompany him home immediately after he finished his career."

The father was not cross-examined on any point. I cannot see, then, how the petitioner can say that the respondent wilfully and unreasonably refused to return home with him.

15 In para. 11 of the petition it is alleged that because the respondent failed to obtain her final qualifications she did not get the seniority in her employment that she expected, and that put her in continuous bad temper which she continuously and inexorably worked out on the petitioner. This led to quite unnecessary and  
20 bitter quarrels every day, day by day. As a direct result the petitioner became moody, distracted and depressed, and eventually became ill through worry.

The court expects a petitioner to prove his allegations by facts where necessary. In the first place, there is no evidence to suggest  
25 that the respondent failed to obtain her final qualification. On the contrary, there is the unchallenged evidence of the respondent that she elected to return home fully realising that she was doing so before her course ended because she was homesick and because her husband did not travel to England as he promised. The petitioner  
30 himself did not suggest that his wife failed in any of her examinations. This is what he said:

"My wife had done her Part I midwifery and was training for the second part, which required the same period. She wrote to say that she was packing up the hospital and would not do  
35 any further training. I wrote to tell her that I was most surprised as she had just about five months to complete training. I pleaded with her to stay and complete. I even offered to go on holidays if she so wished."

This is the husband who complained in his petition that his wife refused to return home with him. He did not join his wife in  
40 England, contrary to her expectation, and the only inference I can

draw is that he preferred her to stay abroad as long as possible. There was then no positive evidence that his wife had been cruel to him.

The petitioner gave evidence further that he received complaints from the medical authorities that his wife's behaviour was not good and that they were thinking of dismissing her; that his wife showed no signs of repentance or that she was prepared to co-operate with the authorities; that she became highly temperamental and quarrelled with him over the smallest thing; and that she resigned her appointment without consulting him and that the behaviour reacted on his health.

The petitioner did not say what happened to his health, and on this all-important question of the unsatisfactory conduct of his wife the only witness whom he called, Lilian Abdulai (whom the wife met already installed in the house when she returned from England), gave evidence on other matters.

The respondent in evidence said: "I decided to take the first part only as I intended to return home to my husband. I had not seen my son for three years and I was anxious to return home." The respondent denied that she was disgruntled over her status in the medical service, and said that she worked for eight months. She said that she was never threatened with dismissal and that she resigned in order to return to England to complete her midwifery. She said that she had only one complaint against her, when she stayed away from work to look after their son who was ill. On a previous occasion she had the son admitted and when her husband returned from trek he was annoyed with her.

In para. 12 the petitioner alleged that a daughter of his great benefactor was beaten up and driven from the matrimonial home. On the petitioner remonstrating with the respondent, she set upon him and after abusing him in every conceivable way, attacked him by hitting him on the head. The background to this allegation is that the respondent returned from England to find Lilian Abdulai, who the petitioner said was about 16 years of age, already in the house, and she had received no prior hint from her husband what to expect. This Lilian Abdulai was not a relation of the petitioner, but he described her as the daughter of his great benefactor. In evidence, the petitioner said that Lilian's father sent him to England to study law. The father died in 1958 and before his death asked him to take care of his two daughters. He said that his wife beat Lilian up and threw her out of the house, and that when he



quarrelled with her she hit him on the head with her fist. He only pushed her. As a result he became ill.

5 Lilian in her evidence described the petitioner as her adopted brother, and said that she lived with him at 80 Kissy Road from 1956 to 1958. The wife returned and met her in the house. The respondent shouted at her and started to ill-treat her. She was fed up and left the house. Some time later she went to the house in the absence of the petitioner. She said: "I held their son and the respondent snatched him from me. She slapped me and hit  
10 me on my head with a pan. She said she was annoyed because she had been informed that my father had given me as a wife to the petitioner."

The respondent in evidence said that she ignored Lilian because after a month the petitioner started to treat her badly. On the  
15 petitioner's return home he would enquire about Lilian and if he did not see her he would go round the house looking for her. The petitioner would speak to Lilian but would ignore the respondent. She told the petitioner that she understood Mr. Abdulai would like him to marry one of his daughters, and when she told him that she did not want Lilian in her house the petitioner sent Lilian away.  
20 She admitted that she hit Lilian with a pan, but explained she was annoyed because Lilian went to her house and did not compliment her.

The whole affair appears to me rather unpleasant, and I regard  
25 it as an ordeal for a wife to go through to return home from England to meet a young girl in the house without any previous information, no relative of her husband, and for the girl to be a source of trouble between husband and wife which went to the extent of violence.

30 In para. 14 the petitioner alleged that the respondent against the will of the petitioner and without his consent and in his absence transferred herself to Pademba Road. The latter house was rented by the petitioner himself. The petitioner said that when he went to Somalia the respondent transferred to Pademba Road. On his return he said he did not go to Pademba Road but went to Spur Road.  
35 The respondent joined him there.

The respondent in evidence said that on the day they were to remove to Pademba Road, the petitioner promised to return to help her. As he did not return in time, she said she decided to remove  
40 his things as well. Her husband met her at Pademba Road and told her that he had told her not to remove his own things, and he

took some back to Kissy Road. She lived at Pademba Road with her son for two months and two weeks before the petitioner went abroad. She admitted that during that period the husband visited and maintained them.

In para. 15 the petitioner alleged that the conduct of the respondent had been aimed at the petitioner and had to the knowledge of the respondent caused him mental stress and illness. 5

I must say that there has not been any convincing evidence of mental stress and illness. On the contrary, the wife regarded him as a healthy man. She said that the petitioner seldom stayed in bed; that he had had fever on a few occasions but was always up soon afterwards; and that he had never to her knowledge suffered from any nervous breakdown. 10

Both parties agreed that there had not been any sexual relationship since February 1963 although they shared the same matrimonial home until September 1965. The wife said that when they were living at Cockerill she made advances to her husband but he rejected them and said that if she insisted he would move to a hotel. The mother of the respondent gave evidence, which corroborated to an extent the respondent's evidence, that on one occasion the respondent left her room when she (the mother) was living with them at Cockerill to spend the night with her husband, but she returned in tears. 15 20

I should mention the evidence of the Hon. A.J. Demby concerning his ward, who he discovered was pregnant. The ward had informed him that she had had intercourse with the petitioner. He spoke to the respondent on the subject and when he asked the petitioner about it he denied it. The petitioner and the respondent were then neighbours of the witness. The respondent said that the petitioner was annoyed because he did not want the Demby family to tell his wife, and as a result did not visit them for a long while. She said that she asked her husband, and he replied that other people did worse things and got over them and that whatever he did there was always trouble over it. He said that he was not a perfect man and that if she wanted to leave him she had the chance to do so. 25 30 35

In *Blunt v. Blunt* (1), Viscount Simon, L.C., in delivering judgment cited the case of *Wilson v. Wilson* (4). He said ([1943] A.C. at 525; [1943] 3 All E.R. at 78):

"Duke P., in dealing with the particular case before him, mentioned four circumstances which, in his view, warranted 40

the exercise of the judicial discretion in the petitioner's favour, and these four considerations were referred to with approval by Lord Birkenhead L.C. when he was sitting in the divorce court and deciding *Wilkinson v. Wilkinson* (37 T.L.R. 835n.).

5 These four points are: (a) the position and interest of any children of the marriage; (b) the interest of the party with whom the petitioner has been guilty of misconduct, with special regard to the prospect of their future marriage; (c) the question

10 whether, if the marriage is not dissolved, there is a prospect of reconciliation between husband and wife; and (d) the interest of the petitioner, and, in particular, the interest that the petitioner should be able to remarry and live respectably. To these four considerations I would add a fifth of a more

15 general character, which must, indeed, be regarded as of primary importance, namely, the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken

20 down. It is noteworthy that in recent years this last consideration has operated to induce the court to exercise a favourable discretion in many instances where in an earlier time a decree would certainly have been refused. It is to be observed that in the case last quoted divorce was decreed notwithstanding that the petitioner's misconduct was only disclosed

25 after the King's Proctor had intervened, and this was also the fact in *Wilson v. Wilson*, and in other cases. Nevertheless, it is important to emphasize, as Lord Birkenhead said in *Wilkinson v. Wilkinson* that: 'It is the duty of every petitioner in this court to place the facts of his or her case most fully

30 before the court; and the wholesome and well-established rule, that on the intervention of the King's Proctor a decree may be rescinded, if there is a failure to deal with the utmost good faith, is one that is not to be relaxed.' Some years

35 later, the exercise of the discretionary power of the divorce court to grant a decree notwithstanding the petitioner's adultery was the subject of elaborate consideration by Lord Merrivale P. in *Apted v. Apted and Bliss* ([1930] P. 246) when previous decisions and judicial pronouncements were carefully

40 reviewed. Lord Merrivale rejected as a practical impossibility any precise formulation of the grounds on which discretion is

to be exercised. He pointed out, however, that 'a judicial discretion cannot be rightly exercised except upon due ascertainment of the relevant facts, and every interest involved is a proper matter for consideration. Upon these facts a judgment is to be formed in accordance with a statutory duty. When the court has used the authority to secure knowledge of the material facts, and a decree is pronounced upon due presentment of them, it must I think be assumed to be a decree based on the statutory requirements.'"

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The respondent did not cross-petition and was therefore not entitled to give evidence on several allegations of adultery by the petitioner tabulated in her amended defence. However, in para. 11 of the defence and in the course of her evidence she said that the petitioner had treated her with cruelty. On the facts before the court I find that the petitioner has treated the respondent with cruelty. Apart from the other facts I have mentioned, the petitioner did not deny that for a year (in 1961) he took no meals at home. These and other facts would certainly hurt the pride of a wife and cause her mental or physical strain.

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I pronounce a decree nisi today, February 4th, 1967, in favour of the respondent on the ground of the cruelty of the petitioner. I further order:

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(a) Custody of the son of the marriage is to be given to the respondent with reasonable access to the petitioner and liberty to apply.

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(b) The petitioner is to contribute Le30 monthly towards the maintenance of the son of the marriage. In awarding this amount consideration was given to the fact that the petitioner is responsible for school fees, etc., in respect of the said child.

(c) The petitioner is condemned in the costs of this action, such costs to be taxed.

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*Order accordingly.*

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