

Answer under Section 72 of the Civil Procedure Code

In the District Court of Moratuwa.

Case Number: DDV 3613/24

Nature: Divorce

Procedure: Regular

Value: 5000/-

Hettiyakandage Rehan Anton Fernando,
64/19, Uyana Road, Moratuwa.

Plaintiff

-Versus-

Franciscu Hettige Vidya Sanali Silva,
No: 19, Housing Scheme, Lunawa, Moratuwa.
Defendant

On this 17th day of February, 2024.

The above-named Defendant, appearing through her Attorney-at-Law Mrs. Nadeeka N. Seneviratne, presents her answer and states and prays as follows:

1. The Defendant states that she is aware of the case filed by the Plaintiff in the District Court of Moratuwa and is aware of the facts in the plaint¹.
2. The Defendant states that since she does not intend to live a married life with the Plaintiff, it is not necessary to participate in family counseling regarding this case, and that a long time has passed since she separated from the Plaintiff².
3. The Defendant states that she does not contest the first cause of action prayed for in the Plaintiff's plaint³.
4. The Defendant requests equal rights regarding the child's maintenance, upbringing, legal and physical custody, and access, and agrees for the child to be in her house for a period of three and a half days and in the Plaintiff's custody for a period of three and a half days⁴.
5. The Defendant agrees to carry out all matters concerning the child in consultation with the Plaintiff, without prejudice to the child's health, safety, and education⁵.

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6. Furthermore, in the event the Plaintiff or the Defendant travels abroad, she reserves the right to have the order regarding legal and physical custody amended with the full permission of the Honourable Court, or to have the said order changed by the agreement of the parties⁶.
7. The Defendant reserves the right to pray for the permanent legal and physical custody of the child through another custody case if the Plaintiff does not act for the welfare of the child⁷.
8. Accordingly, she states that she does not object to the reliefs prayed for in the prayer of the Complaint by the Plaintiff and expresses her consent thereto⁸.

Signed/-

Defendant 9

Signed/-

Attorney-at-Law for the Defendant 10

[Stamp of K.V. Nadeeka N. Seneviratne, Attorney-at-Law] 11

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Plaint

In the District Court of Moratuwa.

Case Number: DDV/3613/24

Nature: Divorce

Procedure: Regular

Value: 5000/-

Hettiyakandage Rehan Anton Fernando,
64/19, Uyana Road, Moratuwa.

Plaintiff

-Versus-

Franciscu Hettige Vidya Sanali Silva,
No: 19, Housing Scheme, Lunawa, Moratuwa.
Defendant
On this 29th day of January, 2024.

The above-named Plaintiff, appearing through his Attorney-at-Law Mrs. Gayani L. Mallawaarachchi, presents his plaint and states and prays as follows:

1. It is respectfully stated that this Honourable Court has the jurisdiction to hear and determine this case as the parties are permanently residing within the jurisdiction of this Court¹².
2. The Plaintiff states that he was legally married to the Defendant after an acquaintance that arose from a marriage proposal¹³.
3. The marriage certificate bearing No. 7773 and dated the 29th day of June, 2019, is marked as P1 and submitted herewith to certify the said marriage, and it is prayed that it be considered a part of the plaint itself¹⁴.
4. The Plaintiff states that after the marriage, they lived their married life in a rented house for a period of about 4 months, but due to several economic problems, they both decided to move to his parents' house mentioned in the caption thereafter, and that although various problems arose between them from the beginning of the marriage, he lived peacefully with the Defendant, patiently enduring everything¹⁵.

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5. The Plaintiff states that as a result of the marriage, the Defendant gave birth to a male child named Hettiyakandage Ethan Anthony Fernando on April 11, 2020¹⁶. The child's birth certificate bearing No. 7141 and dated April 11, 2020, is marked as P2 and submitted herewith, and it is prayed that it be considered a part of the plaint itself¹⁷.
6. He states that he discussed with the Defendant regarding her neglect of responsibilities concerning household matters, and on such occasions, the Defendant behaved in a confrontational manner and stated that she wanted to leave the marital home¹⁸.
7. The Plaintiff states that due to the disputes that arose in this manner, a great distance was created between them, and as a result of one such dispute, the Defendant left the marital home on or around the 14th day of September, 2023, and went to live at her

parents' house, and did not return to the marital home at any time thereafter¹⁹.

8. The Plaintiff states that all the efforts he made to restore the married life were futile, and that the Defendant abandoned all connections with him with the intention of divorcing him²⁰.

First cause of action against the Defendant²¹

09. The Plaintiff states that the aforementioned complete course of conduct of the Defendant constitutes the matrimonial fault of malicious desertion, and for that reason, a cause of action has accrued in his favor to pray for a divorce judgment in his favor, dissolving the marriage existing between him and the Defendant²².

Second cause of action against the Defendant²³

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10. The Plaintiff states that with the intervention of the elders of both parties, it was agreed that the maintenance, custody, and upbringing of the child born of this marriage, Hettiyakandage Ethan Anthony Fernando, would be borne equally by both of them, and accordingly, the child is cared for by the Defendant for a period of three and a half days of the week and by him for a period of three and a half days²⁴.
11. The Plaintiff states that a cause of action has accrued in his favor against the Defendant to obtain the permanent legal and physical custody of the child, Hettiyakandage Ethan Anthony Fernando²⁵.
12. For the purpose of the Stamp Act, the Plaintiff values this case at five thousand rupees (Rs. 5000/-)²⁶.

Therefore, the Plaintiff respectfully prays from the Honourable Court: ²⁷

a) For a judgment and decree of divorce in favor of the Plaintiff, dissolving the marriage subsisting between the Plaintiff and the Defendant on the ground of the matrimonial fault of malicious desertion by the Defendant²⁸.

b) That the permanent legal and physical custody of the child born of this marriage, Hettiyakandage Ethan Anthony Fernando, be granted to him²⁹.

c) For the costs of the action and ³⁰

d) For such other and further relief as to this Honourable Court shall seem meet³¹.

Documents attached to the Plaint ³²

1. Proxy. ³³

2. P1: Marriage Certificate. ³⁴

3. P2: Birth Certificate. ³⁵

Signed/-

Attorney-at-Law for the Plaintiff ³⁶

[Details of Gayani L. Mallawaarachchi, Attorney-at-Law] ³⁷

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Motion

In the District Court of Moratuwa.

[Case details and parties as previously stated] ³⁸

On this 29th day of January, 2024. ³⁹

The proxy of the Plaintiff, the Plaint, and a copy thereof in the above-numbered case are submitted herewith, and I pray that it be ordered that they be accepted and filed in the case record, and, ⁴⁰

I respectfully pray that, having informed the Honourable Court of the settlement reached whereby the Defendant in this case will not be contesting the case, this case be ordered to be called in open court on the 19th day of February, 2024, to establish the facts for the purpose of concluding the legal proceedings without a contest. ⁴¹

Signed/-

Attorney-at-Law for the Plaintiff 42

[Details of Gayani L. Mallawaarachchi, Attorney-at-Law] ⁴³

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District Court - Moratuwa.

Before her Honour, District Judge Chathurika Silva. ⁴⁵

Note taking: by Asst. Clerk Nilmi Jayasinghe 46

Case Number: DDV 3613-24 ⁴⁷

Date: 2024.02.19 ⁴⁸

Statement under S.72 is filed. ⁴⁹

Plaintiff is present.⁵⁰

Attorney-at-Law Mrs. Gayani L. Mallawaarachchi appears for the Plaintiff.⁵¹

Defendant is present.⁵²

Mrs. Nadeeka N. Seneviratne appears for the Defendant.⁵³

The Defense files the proxy and documents under Section 72 today.⁵⁴

Submissions on behalf of the Plaintiff:

The Plaintiff in this case filed this case in the lower court.⁵⁵ Accordingly, a request was made to obtain a divorce judgment in favor of the Plaintiff on the matrimonial fault of malicious desertion by the Defendant.⁵⁶ Accordingly, custody of the child of the parties, Hettiyakandage Rehan Anthony Fernando, born of this marriage, was prayed for in the plaint.⁵⁷ However, based on the agreement of the parties, both have reached an agreement to bear the legal and physical custody of the child equally.⁵⁸ Accordingly, for a period of 3 1/2 days in the mother's custody and for a period of 3 1/2 days...⁵⁹

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...in the father's custody, they have agreed to bear the legal and physical custody of the child equally.⁶¹ Accordingly, I respectfully request that a divorce judgment be granted in favor of the Plaintiff.⁶²

On the basis of the said settlement, the Plaintiff is called to give evidence:⁶³

Hettiyakandage Rehan Anton Fernando. Age 33 years. Address No. 64/19, Uyana Road, Moratuwa. Occupation: Businessman. Roman Catholic, is sworn in.⁶⁴

Examination-in-chief: ⁶⁵

I am the Plaintiff in this case. I filed this case with the intention of being legally divorced from my wife, who is named as the Defendant in this case. ⁶⁶I state that the Defendant in this case and I were legally married on the 29th day of June, 2019, on the basis of the marriage certificate bearing No. 7773, which has been submitted to the Honourable Court as P-1. ⁶⁷It is marked and submitted once again as P-1. ⁶⁸After this marriage, we maintained our marital home in a rented house for a period of about 4 months. ⁶⁹Thereafter, I state that we had to move to my parents' house due to financial difficulties and conflicts of opinion that arose between us. ⁷⁰I state that although various conflicts of opinion arose from the early stages of this marriage, I endured everything with the intention of maintaining the marriage. ⁷¹I state that as a result of this marriage, the Defendant gave birth to a male child named Hettiyakandage Ethan Anthony Fernando on 2020.04.11. ⁷²The child's birth certificate is submitted, being marked as P-2. ⁷³It is marked and submitted once again as P-2. ⁷⁴

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However, I state that due to the Defendant neglecting her duties regarding household matters, conflicts of opinion arose between us on various occasions. ⁷⁶I state that due to the disputes that arose in this manner, a great distance was created between us. ⁷⁷When filing this case, I had prayed for the full physical and legal custody of my child, but I state to the Honourable Court that an agreement was reached with the Defendant, and we have agreed to share the legal and physical custody of the child equally between the Defendant and me. ⁷⁸Accordingly, I respectfully pray from the Honourable Court for a divorce judgment in my favor, dissolving the marriage subsisting between me and the Defendant on the ground of the matrimonial fault of malicious desertion by the Defendant, and also, for a declaration that the joint permanent legal and physical custody of the child born of this marriage, Hettiyakandage Ethan Anthony Fernando, is granted to the Defendant and me. ⁷⁹

No cross-examination. ⁸⁰

Judgment⁸¹

According to the evidence given by the Plaintiff, the Plaintiff and the Defendant have entered into a valid marriage within the jurisdiction of this court on 2019.06.29 on the basis of marriage certificate No. 7773.⁸² As a result of that marriage, the male child Hettiyakandage Ethan Anthony Fernando was born on 2020.04.11.⁸³ After the marriage, they have lived in a rented house for a period of about 4 months.⁸⁴ Subsequently, they have lived in the Plaintiff's parents' house, considering it as the marital home.⁸⁵ Regarding household matters...⁸⁶

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...the Defendant has neglected her responsibilities, and regarding that, the Plaintiff has discussed it with the Defendant, and on such an occasion, the Defendant has behaved in a confrontational manner and has stated that she needs to leave the marital home.⁸⁸ In this manner, the Defendant, having created a dispute, left the marital home on 2023.09.14 and has gone to her parents' house.⁸⁹ I determine this course of conduct by the Defendant to be a malicious desertion of the Plaintiff.⁹⁰ Accordingly, I grant a divorce judgment in favor of the Plaintiff on the ground of this matrimonial fault of malicious desertion by the Defendant.⁹¹ I annul and dissolve the marriage entered into by the parties on 2019.06.29 on the basis of marriage certificate No. 7773.⁹² I vest the physical and legal custody of the child born of this marriage, Hettiyakandage Ethan Anthony Fernando, in both parties.⁹³ No costs or divorce alimony.⁹⁴

Let both parties sign the case record.⁹⁵

Call for consideration of Decree Absolute - 2024.05.31.⁹⁶

Signed/-
(Chathurika Silva) ⁹⁷

District Judge - Moratuwa.⁹⁸

2024.02.19⁹⁹

I hereby certify that the foregoing is a true copy of the record dated 2024.02.19 in case No. D.D.V. 3613-24 of the District Court of Moratuwa.¹⁰⁰

Typed by: [illegible numbers]¹⁰¹

Signed/-
Registrar 102
District/Magistrate's Court¹⁰³

Moratuwa¹⁰⁴

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Decree Nisi for Separation from the Bond of Matrimony.

In the District Court of Moratuwa.

[Case details and parties as previously stated]¹⁰⁵

When this case was called for final disposal on the 19th day of February, 2024, before Her Honour Chathurika Silva, the District Judge of Moratuwa, while the Plaintiff appeared, and Mrs. Gayani L. Mallawaarachchi, Attorney-at-Law, appeared for him, and while the Defendant appeared, and Mrs. Nadeeka N. Seneviratne, Attorney-at-Law, appeared for the Defendant,¹⁰⁶

After considering the evidence and documents submitted on behalf of the Plaintiff, and as the Plaintiff's evidence was not challenged by the defense, having accepted the Plaintiff's evidence and documents, it is hereby ordered and decreed that a divorce decree

vinculo matrimonii is granted in favor of the Plaintiff as prayed for in paragraph (a) of the prayer of the plaint, annulling and dissolving the marriage entered into on the basis of marriage certificate No. 7773 dated the 29th day of June, 2019, which was submitted as P-01

through the Plaintiff's evidence, on the ground of the matrimonial fault of malicious desertion by the Defendant.¹⁰⁷

Further, it is hereby ordered and decreed that the legal and physical custody of the child born of this marriage, Hettiyakandage Ethan Anthony Fernando, is vested in both parties.¹⁰⁸

Further, from the moment a Decree Absolute is entered herein, the Plaintiff and the Defendant...¹⁰⁹

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...shall be entitled to enjoy all the rights and privileges afforded to unmarried persons in our society, and it is hereby ordered and decreed that the Defendant may resume the use of her maiden name.¹¹⁰

And it is further ordered and decreed that if no objection whatsoever is filed against this Decree Nisi within a period of three months from the date of its entry, upon the lapse of the said three-month period, this Decree Nisi shall be made a Decree Absolute.¹¹¹

On this 19th day of February, 2024.¹¹²

Prepared by me,
The Attorney-at-Law for the Plaintiff 113
Attorney-at-Law Gayani L. Mallawaarachchi¹¹⁴

[Details of Gayani L. Mallawaarachchi]¹¹⁵

Signed/-
District Judge 116
District Court of Moratuwa¹¹⁷

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In the District Court of Moratuwa.

[Case details and parties as previously stated] 118

The Decree Nisi in the above-numbered case is submitted herewith, and I respectfully pray that it be ordered to be accepted and filed in the case record, and that accordingly, it be ordered that the Decree Nisi be made absolute. ¹¹⁹

Signed/-

Gayani L. Mallawaarachchi,

Attorney-at-Law for the Plaintiff 120

[Details of Gayani L. Mallawaarachchi] ¹²¹

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In the District Court of Moratuwa.

[Case details and parties as previously stated] 122122122122

On this 20th day of June, 2024. ¹²³

The Decree Absolute, cover letter, its copies, a certified photocopy of document P:01, and a stamped envelope in the above-numbered case are submitted herewith, and I pray that they be accepted and filed in the case record, and, ¹²⁴

that further steps be taken after filing. ¹²⁵

Signed/-

Attorney-at-Law for the Defendant 126

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Decree Absolute for Separation from the Bond of Matrimony.

In the District Court of Moratuwa.

[Case details and parties as previously stated] 127127127127

When the above-numbered case was called for trial on the 20th day of June, 2024, before Her Honour Chathurika Silva, the District Judge of Moratuwa, while the Plaintiff did not appear, Attorney-at-Law Mrs. Gayani L. Mallawaarachchi appeared for the Plaintiff, and while the Defendant did not appear, Attorney-at-Law Mrs. N. Nadeeka Seneviratne appeared for the Defendant, whereas no objections have been filed to the Decree Nisi entered on the 19th day of February, 2024, and whereas a period of 03 months has lapsed since the entry of the said Decree Nisi, it is hereby ordered and decreed that the aforesaid Decree Nisi was declared a Decree Absolute on the 20th day of June, 2024. ¹²⁸

And it is further ordered and decreed that the Registrar General was ordered to record the Decree Absolute of Divorce in the marriage register, being the marriage register No. 7773 dated 2019.06.29. ¹²⁹

On this 20th day of June, 2024. ¹³⁰

Prepared by me,

The Attorney-at-Law for the Defense - Attorney-at-Law Nadeeka N. Seneviratne 131

Signed/-

District Judge 132

District Court - Moratuwa ¹³³

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2024.06.20 ¹³⁴

The Registrar,

Registrar General's Office, 135

Denzil Kobbekaduwa Mawatha,¹³⁶

Battaramulla.¹³⁷

Dear Sir/Madam,¹³⁸

Regarding Divorce Case No. 3613/24 of the District Court of Moratuwa.¹³⁹

As the marriage entered into on the basis of marriage certificate No. 7773 dated 2019.06.29 has been dissolved in accordance with the Decree Absolute dated 2024.06.20 in the above-numbered case, I hereby inform you to cancel the said marriage certificate that exists in your office.¹⁴⁰

Copies of the said marriage certificate and the Decree Absolute are attached hereto.¹⁴¹

Signed/-
Registrar, 142
District Court,¹⁴³

Moratuwa.¹⁴⁴