**AMOS G. BOLANLE**

**V.**

**OLUSOLA B. BOLANLE**

HIGH COURT LAGOS STATE

FEBRUARY 4, 1972

SUIT HD/88/70

**LEX (1972) - HD/88/70**

**OTHER CITATIONS**

3PLR/1972/43 (HC)

**BEFORE HIS LORDSHIP:**

KASSIM., J

**REPRESENTATION**

OLAGBEGI for the petitioner.

NICOL for the respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW – Divorce and custody of children – Whether court can amend petitioner’s statement to reflect ground for dissolution of marriage – Maintenance of wife and daughter of marriage – How treated

EDUCATION AND LAW:- Matrimonial causes - Divorce – Education of children of divorced parents – Duty of court to make proper orders to secure same – How treated

CHILDREN AND WOMEN LAW: *Women and Divorce* – *Children and Custody proceedings* - Dissolution of marriage – Custody of child of the marriage – Maintenance of wife and child – Education of child of a dissolved marriage – Proper orders to secure same - Relevant considerations

**MAIN JUDGMENT**

**KASSIM J.:**

The parties in this action were married at the Marriage Registry at Lagos on November 10, 1960; the petitioner was born in Owo in the Western State and the respondent was born and bred in Lagos. There is only one child of the marriage still surviving, a daughter, called Modupe Arinola Bolanle, born on June 14, 1962, and now residing with the respondent at the respondent’s parents’ house at 57 Queen’s Street, Yaba. After the marriage, the parties lived at No. 6 Bishop Street, Alakara, Idioro, from where they moved to 23 Wakeman Street, Yaba, and thence to 63 Herbert Macaulay Street, Ebute Metta, where they separated on September 3, 1966, and have since been living apart.

In his address, the learned counsel for the petitioner raised the point that the respondent did not allege the only ground available for dissolution of marriage since March 7, 1970, when the Matrimonial Causes Decree 1970 came into operation, to wit, that the marriage has broken down irretrievably. I cannot but agree with him; but for the purpose of determining in the existing suit the real questions in controversy between the parties, I, of my own motion, amended the sentence immediately before paragraph 3 of the respondent’s answer to read:

“ By way of cross-petition, the respondent avers that the marriage has broken down irretrievably. . .”

From the evidence before me and their demeanour in the witness-box, I find that the parties to this action have married not for love but for convenience and that they have treated the process of this court with as much levity as they have been treating their union; many of the allegations made by each of them could have been supported by other pieces of evidence, but all I have before me is almost the oath of each of them against that of the other.

With regard to the question whether their marriage should be dissolved or not, the only point on which I am satisfied is that they have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition-s. 15 (2) (7) of the M.C. Decree 1970. There is lying on both sides with regard to the complaints of cruelty and desertion which they make against each other.

The petitioner does not oppose the respondent’s prayer that she may be granted the custody of the only child of the marriage, and, therefore, he cannot reasonably oppose her prayer for maintenance for the child. I agree with his counsel that the respondent is now very much more well-off than she was when she was living with the petitioner and that, therefore, she is not entitled to an order that the petitioner do maintain her.

I decree that the marriage, had and solemnised on November 10, 1960, at the Marriage Registry at Lagos between Amos Gbolahan Bolanle, the petitioner, and Olusola Bolarinwa Bolanle, then Johnson, spinster, the respondent, be dissolved by reason that the marriage has broken down irretrievably because the petitioner and the respondent have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition, unless sufficient cause be shown to the court within three months from the making of this decree why such decree should not be made absolute.

Considering the circumstances of this case, I order that each of the parties do bear his or her own costs, and it is ordered that the child Modupe Arinola Bolanle do remain in the custody of the respondent until further order of the court, but it is directed that the said child be not removed out of the jurisdiction of the court without leave until she attains the age of 18 years.

It is further ordered that the petitioner do pay or cause to be paid to Olusola Bolarinwa Bolanle, the respondent, as from the date hereof, maintenance for the child, Modupe Arinola Bolanle, at the rate of £10 per month payable monthly. It is further ordered that the petitioner do pay, in addition, to the respondent the amounts on all bills issued by any educational institution in respect of the said child with effect from the date hereof.