**CLAUDE NABHAN**

**V.**

**GEORGE NABHAN**

SUPREME COURT OF NIGERIA

21ST APRIL, 1967.

SUIT NO. SC 358/1965

**LEX (1967) - SC 358/1965**

**OTHER CITATIONS**

2PLR/1967/48 (SC)

**BEFORE THEIR LORDSHIPS:**

LIONEL BRETT, J.S.C.

GEORGE BAPTIST A. COKER, J.S.C.

IAN LEWIS, J.S.C.

**ORIGINATING COURT(S)**

**ORIGINATING COURT**

THE HIGH COURT OF WESTERN NIGERIA (Adeyinka Morgan, C.J., Presiding)

**REPRESENTATION**

H. O. DAVIES (B.A. ADEDIPE with him) - for the appellant

F. R. A. WILLIAMS - for the Respondent

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

FAMILY LAW:- Matrimonial Causes - Divorce – Husband’s Application for grant of Decree Nisi on ground of Cruelty by wife – How proved - Whether unreasonable conduct is not necessarily cruel, and neither an over-bearing will nor domineering character is of itself enough to establish cruelty – Need for the conduct complained of as cruel to be what an ordinary man would describe as “cruel” if the full story were told – Whether proof that conduct complained of was the immediate cause of a suicide attempt on petitioner’s side relieves petitioner of the necessity of satisfying the Court that it was such a course of conduct as the Court could reasonably call cruel when adopted by this wife towards this husband – Applicability of the maxim res ipsa loquitur

HEALTHCARE AND LAW: - Suicidal attempt by married person – When directly linked to a course of event caused by wife – Whether can be sufficient ground for grant of divorce on ground of cruelty

**PRACTICE AND PROCEDURE ISSUES: -**

APPEAL - Findings of fact of trial court – Attitude of Appeal Court to invitation to disturb same – Circumstances justifying disturbance

EVIDENCE: - Evidence required to prove cruelty sufficient to grant divorce – Where a course of conduct derives its cruelty from the cumulative effect of a number of incidents none of which would be sufficiently grave and weighty by itself to constitute the matrimonial offence of cruelty – Need to establish same by evidence

**MAIN JUDGEMENT**

**BRETT, J.S.C**. (delivering the judgment of the court):

This is an appeal from the judgment of Adeyinka Morgan, C.J. In the High Court of Western Nigeria, granting a decree nisi for the dissolution of the marriage between the parties. The sole ground of the petition was cruelty, and paragraph 6 of the petition contained sixteen sub-paragraphs giving particulars of the cruelty alleged. Two of these were abandoned before the hearing began and the suit went to trial on the remaining fourteen.

The cruelty alleged was not, in the main, physical, though it was alleged that the respondent had on numerous occasions struck the petitioner on the head with her hand, and also that on numerous occasions she had inflicted finger-nail wounds on him. For the rest, the complaint was that she nagged the petitioner, habitually quarreled with him, deliberately set out to wound and humiliate him, and Insulted him and his parents; that she always insisted on having her own way; that she was in the habit of absconding from the matrimonial home for long periods and without leaving word; and that she showed complete inability to look after the child of the marriage. Finally it was pleaded that the petitioner was put in perpetual fear of violence and disgrace, and that he had had to be treated in hospital for nervous complaints in consequence of the respondent’s behaviour.

Both parties gave evidence and called witnesses. In summarising his findings of fact, the Chief Justice said:-

“Upon a consideration of the facts I am of the view that there is not sufficient evidence before me in proof of all the allegations with the exception of the 4th and 11th which should be considered together. In fact the 12th is false in part.

The 4th complaint is as follows:

‘The respondent is a person of ungovernable temper and over-bearing will and always insists on (having) her way in every circumstance.’

In my view there is no doubt that the respondent’s behaviour in relation to the question of bringing her brother to live and work in the house in which she lives with the husband and his parents and her insistence on having her wish is reasonable and is evidence of an over-bearing will. And there is [ample] evidence that she is a domineering type of woman.

The 11th complaint reads:

“By her course of conduct the respondent has put the petitioner in perpetual fear of violence and disgrace.”

In my view this complaint is supported by the evidence before me that the petitioner left the matrimonial home rather than face the consequences of remaining in the house with his wife on the night of the quarrel and that he tried to kill himself by taking an overdose of alcohol and dispirin rather than face life with the respondent again.”

The appellant asks this Court to say that these findings do not justify the dissolution of the marriage on the ground of cruelty. In considering the matter we have borne In mind the dictum of Pearce, J., (as he then was), In Lander v. Lander to which Chief Williams referred us –

“in a cruelty case the question is whether this conduct by this man to this woman or vice versa is cruelty”

as well as the passages in that and other cases in which appellate courts in England have pointed out that a judge who has heard the parties tell their stories is in a peculiarly favourable position for answering that question, and that an appellate court should be cautious in holding that he came to a wrong conclusion. This cannot mean that the findings of fact of the trial judge on the Issue of cruelty should never be set aside In a matrimonial cause, and our duty, as we see it, is to consider the findings, bearing in mind the peculiar advantages which the trial judge enjoyed, but applying the tests which this Court always applies to disputed findings of fact.

As regards the first of the allegations which the Chief Justice found proved, he rested his findings on a single incident in which he regarded the appellant’s con-duct as unreasonable, and as “evidence of an over-bearing will”, adding that there was ample evidence that the appellant was a domineering type of woman. Unreasonable conduct is not necessarily cruel, and neither an over-bearing will nor domineering character is of itself enough to establish cruelty. What matters is the conduct of one party to a marriage towards the other; as Harmna, L. J., said in Le Brace v. Le Brace “cruel” is not used In any esoteric or “divorce court” sense of the word, and the conduct complained of must be what an ordinary man would describe as “cruel” if the full story were told.

Briefly, the Incident referred to was as follows: The petitioner and the appellant lived with the petitioner’s parents who were getting on in years. The petitioner worked for his father, and had failed to make a success of various business enterprises in which he had engaged. The appellant suggested that they should arrange for her brother to come from the Lebanon and start a hairdressing business, and the petitioner’s father was sufficiently interested to talk of taking a half share in the business. The appellant made up her mind that her brother should come to live in the family house, and that the hairdressing salon should also be in the house, and when her mother-in-law was away in the Lebanon she had the necessary partitions put into the house for the purpose of the salon. On her mother-in-law’s return there was a heated dispute in the family, which ended with the appellant’s saying that she insisted on her brother’s living in the house, and that she would live wherever her brother did after which she left the house and did not return. It was also alleged that she made various offensive remarks about her husband and his parents, but this was not accepted by the Chief Justice; and angry remarks made in the heat of a quarrel on a single occasion do not, in any event, constitute cruelty. Making every allowance for the difficult situation of a married woman living in the house of her husband’s parents, we do not dissent from the Chief Justice’s view that the appellant pressed her own opinion to an extent that was unreasonable, but we do not consider that one single incident is enough to establish that the appellant always insisted on having her own way to such an extent that her conduct would injuriously affect her husband’s health.

In accepting the other complaint, the Chief Justice referred to the effect of the appellant’s conduct on the petitioner, without setting out what “course of conduct” he found proved. Having found that the remaining twelve specific complaints were not supported by sufficient evidence, we think he ought to have made it clear what other conduct that was cruel he did find established against the appellant and we do not think it is justifiable to infer the nature of her conduct solely from the results it produced. In other words, the question formulated by Pearce, J., cannot be answered in favour of the petitioner merely on proof that his wife’s course of con-duct was the immediate cause of his trying to kill himself, and he is not relieved of the necessity of satisfying the Court that it was such a course of conduct as the Court could reasonably call cruel when adopted by this wife towards this husband; there can be no place for the maxim res ipsa loquitur in the circumstances of this case. No doubt a course of conduct may derive its cruelty from the cumulative effect of a number of incidents none of which would be sufficiently grave and weighty by itself to constitute the matrimonial offence of cruelty but that is something to be established by evidence, and we cannot overlook the fact that the judge found that the majority of the petitioner’s complaints were not supported by the evidence. We have summarised them above and they seem to include, in addition to physical assaults, most of the forms that non-physical cruelty usually take. If these complaints are ignored, as they should be, there is really nothing in the judgment to show what the conduct was that was held to have amounted to cruelty. Before answering Yes to the question framed by Pearce, J., the Court must reach reasonable dear findings as to what this conduct consisted of and we are unable to see any such findings here. We give full weight to the fact that the Chief Justice had seen and heard the patties, and in particular the wife, but with all respect, we can only conclude from his judgment either that in assessing what he called the eleventh complaint he took into consideration the complaints which he had earlier held were not proved, or that he fell into the error of saying that the appellant’s conduct must have been cruel because of the effect it had on the petitioner.

We feel bound to hold that the finding of cruelty was against the weight of evidence and to allow the appeal. The judgment of the High Court is set aside and the petition is dismissed. The appellant must have costs of the proceedings in the High Court assessed at 75 guineas and of the appeal assessed at 52 guineas.

Appeal allowed.

**CASES REFERRED TO:-**

Lander v. Lander

Le Brace v. Le Brace