

IN THE HIGH COURT OF LESOTHO

In the matter of :

RAMALOTI FOBO

v

AMELIA FOBO

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 4th day of December, 1991

I have heard the evidence led on behalf of the plaintiff Ramaloti Fobo. The plaintiff has outlined a number of things which in my mind tended to show that he and his wife had an incompatible type of temperament.

I tried keenly when jotting down the evidence in chief to arrest a moment when I would find where exactly the divorce claimed or the reason for the divorce claimed is based. The nearest that the plaintiff came to supplying a reason for the divorce yearned for was that he lives in a different bedroom from the defendant. His Counsel strained to find the reasons or the grounds on which the divorce sought is based. It was only at the stage of cross-examination when the cross-examiner asked whether the plaintiff does at all afford his wife conjugal rights that he denied doing ever so. It turned out then from that point on that the plaintiff does not only deny the defendant conjugal rights but he does no

longer love her.

He admitted the plea in the defendant's case that she has on her part asked for or demanded conjugal rights but in vain.

As for the rest of things which have been advanced as reasons which constitute desertion on the part of the defendant, they amount to what in other territories or countries are looked upon - as an additional ground of divorce to our own recognised grounds of divorce - and known as incompatibility of temperament. It is a matter for the legislature or a matter that reflects perhaps on the state of our nation's morality that this has not been incorporated into our law as a ground for divorce.

Our law recognises grounds of divorce as follows : adultery, cruelty and malicious desertion (constructive or otherwise). Constructive desertion occurs when one of the spouses whose conduct is complained of lives under the same roof with the other but does not afford the other spouse the conjugal rights. And the ordinary type of course of desertion is the straight-forward one where the parties live separately in different places altogether.

It could be argued, but it was never pleaded, that in this particular case the defendant's conduct amounted to justification for the other type of ground for divorce, namely, the ground of cruelty which could perhaps be well-founded on the evidence of assaults or threatened assault which evidence has sought to establish.

In this case then the party whose conduct is complained of as constituting constructive desertion happens to have demanded conjugal rights and this was thwarted by the plaintiff's loss of interest or loss of affection for the party who was eager to have conjugal rights afforded her. It is therefore difficult to see how in the circumstances of this case the party who was eager to be afforded conjugal rights but were denied her because of disaffection on the part of the plaintiff could be faulted with constructively committing an act of desertion.

As I stated our law has not advanced to that extent where other countries - and I must say these are very few countries - have incorporated an additional ground of divorce in the shape of incompatibility of temperament in their law.

I need not moralise about marriage but there is well worthwhile adage in marriage that it (marriage) is a compromise and an on-going compromise between parties who are yoked together as husband and wife.

I find that the plaintiff has not made out a case for divorce based on desertion of either type. The conclusion then that this Court comes to is that the application for absolution from the instance is well-founded and it is granted.

There will be no order for costs as Counsel for the plaintiff assures me he has deliberately let that aspect of the matter be.

J U D G E

4th December, 1991

For Plaintiff : Mr. Ntlhoki

For Defendant: Mr. Matete