

RICKY YOLOK @ RICKY BIN OLOK v PAULA BTE ANAKUNG

CaseAnalysis
| [2010] MLJU 1506

Ricky Yolok @ Ricky Bin Olok v Paula Bte Anakung [2010] MLJU 1506

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HIGH COURT (KOTA KINABALU)

STEPHEN CHUNG, JC

DIVORCE PETITION NO K33-203 OF 2008

27 October 2010

Sonny Durai (Allion Kitingan & Partners) for the petitioner,

Jacky Lettong (Tan, Jack Arthur & Co.) for the respondent

STEPHEN CHUNG, JC

JUDGMENT

1. I have read the Petition, the Answer and heard the parties and their counsels. I have also at the requests of the parties and their counsels interviewed the children of the marriage in chambers, in the presence of the court interpreters.

2. After considering all these, I allow the Petition that the marriage between the Petitioner and the Respondent be dissolved as the marriage has broken down irretrievably. Both are equally to be blamed for the breakdown of the marriage. The Petitioner and the Respondent have separated and live separately for many years. They are still not on talking 10 terms with each other. The Petitioner is a forest ranger with the Sabah Forestry Department. The Respondent was a housewife looking after the family. But since separation, she has become a rubbertapper.

3. There are seven (7) children from the marriage. As for custody of the children, since the Petitioner and the Respondent separated in 2001, after the birth of their youngest child, the Petitioner has custody of the following children: Macclaude Ricky (m) 20 years old, Thecla (f) 12 years old and Derrall (m) 9 years old. The Respondent has custody of Chlorellianna (f) 19 years old, Vianylitta (f) 13 years old and Vedilina (f) 10 years old. Another child of the marriage Feattyliana was given up to the Petitioner's sister for defacto adoption when she was a child.

4. The eldest child Macclaude Ricky is now studying at the Polytechnic, Kota Kinabalu and is no longer staying with the Petitioner. He has obtained a loan for his studies. Both the Petitioner and Respondent give him some pocket money.

5. Although it was not pleaded in her Answer to the Petition, the Respondent has now applied for custody of the 2 remaining children staying with the Petitioner. She alleged that the Petitioner is not taking good care of them. [Section 88](#) of the Law Reform (Marriage and Divorce) Act 1976 governs the court's power in respect of custody of children. The 10 welfare of the children should be the paramount consideration. I have interviewed them and they are happy staying with the Petitioner. They have been looked after by the Petitioner with the help of his sister and neighbors since the parties have separated in 2001. The 2 children said that they are used to their home environment, to their present school, their friends and way of life and prefer not to move to stay with the Respondent. But they requested for more visits and contacts with their eldest brother and with the 3 sisters who are staying with the Respondent.

6. These 2 children have been looked after well by the Petitioner. They 6. are healthy. There was no allegation and no evidence by the Respondent that they were or are abused or neglected by the Petitioner. For these reasons, I will not grant custody of Thelca and Derrall to the Respondent who shall continue to stay with the Petitioner.

7. As the Petitioner and Respondent are not on talking terms and not getting proper access to the children, I make the following order on access. In view of the distance and the costs involved, the Petitioner and the Respondent shall have weekend overnight access to the children below 18 years of age on alternative months, being the last weekend of each month. The children should be encouraged to go for the access.

8. S.77 and s.78 of the Act provide for maintenance of the spouse and s. 92 and s. 93 provide for maintenance of the children of the marriage. On the question of maintenance, the Respondent is asking for RM300.00 per month for herself and for each of the 3 children staying with her ie, a total of RM1200.00 per month. The Petitioner previously did not agree to pay any 300.00 per month maintenance. He has now agreed to pay RM maintenance to the Respondent and the children staying with the Respondent.

9. The Petitioner's gross salary is RM 2163.32 per month. His net 9. salary is only RM1132.01 per month after deductions for loans which he had obtained. The Petitioner was not very forthright in explaining what were the loans for and whether his business was doing well or otherwise. The Respondent earns about RM500.00 per month from tapping rubber The which is hardly enough to maintain herself and the 3 children. Petitioner did not pay any maintenance to maintain the Respondent and the 3 children staying with her since they separated. Her brothers and sisters have been helping her and her children all these years.

10. From my interview with the children, Chlorelliana and Vianylitta are now attending the same boarding school, free of charge. They are provided with accommodation, school uniforms, books, three meals a day and a monthly allowance which they say are more than sufficient for their 30 pocket money. Chlorelliana is now 19 years old and in Upper Six. The Respondent only has to maintain herself and another child staying with her.

11. I find that given the financial means and needs of the Petitioner and Respondent and the circumstances of this case, the offer of RM300.00 monthly maintenance made by the Petitioner is too low. The Petitioner is to pay to the Respondent monthly maintenance in the sum of RM400.00 for herself and the children below 18 years old commencing from 1.4.2010, when this case came before the court for hearing but was adjourned on several occasions to enable the parties to work out some issues and attempt an amicable settlement. I make this order for maintenance of RM400.00 partly for the reasons which I will give subsequently regarding the division of the properties.

12. S. 76 of the Act gives power to the court to order the division of 20 matrimonial assets. The Respondent is applying for a half share of the value of the matrimonial house which the Petitioner is presently occupying. The Respondent has not in her affidavit nor testimony referred to or gave the value of the house. Neither party has produced any valuation report to indicate the approximate value of this house.

13. The Petitioner has exhibited a document of title for NT13314568 which showed that this parcel of land was alienated to him by the State Government on 29.8.1994 for the cultivation of agriculture crop. It is not 30 the parcel of land which he said was inherited from his father and shared with his brother. He did not exhibit the document of title of that parcel of land.

14. The Petitioner also said that the matrimonial house is not built on either the NT land nor on the parcel inherited from his father. He said that the house was actually built on State land which was next to the NT land. He explained that by building the house on the State land, he could eventually apply for the land to be alienated to him. The Respondent's counsel despite being given time to verify this was not able to contradict or cast any doubt on this allegation of the Petitioner that the house is built on State land.

15. If the house is built on State land, then the land does not belong to the Petitioner and the Respondent is not entitled to any share to this land and this court is also not able to make any order regarding division of the State land.

16. In any event, the Petitioner based on his own evidence has two other parcels of land; one was alienated to him

during the marriage and the other he said he shared with his brother and inherited from his father. He did not have to pay for the NT land which was alienated to him except for the land premium. From the contributions made by the Respondent to look after the children of the marriage and her maintenance of the 3 children staying with her since the parties separated, it is only fair that she gets a half share of the value of the land NT 13314568. If the parties are not able to agree on the value of this parcel of land, then the value is to be determined by a valuer at the expense of the Petitioner. If the Petitioner is not able to pay to her the half share in the value of the land within three months from the date of this order, then this parcel of land should be sold and the proceeds to be shared equally after paying the expenses of the sale.

17. In making my decision I have referred to the following authorities cited by the parties: *Wong Kim Fong (F) v Teau Ah Kau @ Chong Kwong Fatt* (1998) 1 MLJ 359, *Lim Bee Cheng v Christopher Lee Joo Peng* (1997) 4 MLJ 35, *Re Heng Peng Hoo & Anor* (1989) 3 MLJ 103, *Choong Yee Fong v Ooi Seng Kiat & Chua Chong Hong (Joint Respondent)* (2006) 5 CLJ 144 and *Koay Cheng Eng v Linda Herawati Santoso* (2008) 4 CLJ 105.