

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN DIVORCE
SUIT NO. D. 1977/MO74

BETWEEN	WILLY MCKENZIE	PETITIONER
AND	JOYCE MCKENZIE	RESPONDENT

THE 28TH DAY OF JUNE, 1978

T. N. Willoughby, Esq., for petitioner.

Carey, J. :

This is a petition on the ground that the parties have been living separately and apart for a period of five years. As far as the facts are concerned, these are unexceptional. The petitioner and his witness confirmed that the parties have in fact been separated for that period, to be precise, from June 1972.

I am constrained to make some comments not about the facts, but on a rather odd situation. The respondent, through an attorney, entered an appearance that was a general appearance to the petition. The answer which was in due time filed gives rise to the comments that I now make. Paragraph 1 of the answer is in the following terms: "That I admit all the allegations made in paragraphs 1, 3, 4 and 5 of the same divorce petition." Paragraph 2 contains a denial of an allegation regarding the arrangements made for the care and upbringing of the child of the marriage. An answer is a defence and commonsense would show that if one is admitting all the allegations, or at all events admitting the ground on which the remedy is sought, then there is no defence and the need to file one does not arise. Well, it is quite clear that this particular attorney has displayed crass ignorance of the laws of pleading.

It is a matter of profound regret that I must highlight this situation and I trust I will not have any necessity in the future to make such comments about pleadings drafted by any attorney who has been duly enrolled to practice law in the several

courts of this country.

The court pronounces a Decree Nisi on the ground that the parties have been living separately and apart for a period of five years and the court certifies that arrangements have been made as to the relevant child are satisfactory.

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of that report in which the learned President of the Divorce Court,
Sir Joslyn Simon remarked:-

"Of course, if there is violence between the parties, the court will not stop to enquire whether there is general injury to health, but in the absence of acts of violence themselves the law requires that there should be proved a real impairment of health or a reasonable apprehension of it".

It has always been clear that physical acts of violence of the nature that occurred in this case constitute cruelty on any reasonable definition of cruelty.

The appeal is allowed. The Judgment of the learned trial Judge is set aside. The Petition is granted on the ground of cruelty. The appellant/petitioner to have costs below and costs of this appeal; such costs to be agreed upon or taxed.

ZACCA, J.A. - PRESIDING -

Yes, Mr. Edwards, the appeal is allowed; order of the trial Judge set aside; decree nisi to petitioner on ground of cruelty; cost of trial below and cost of appeal to petitioner to be agreed on or taxed.

274

~~274~~