

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
DIVORCE

SUIT NO: 185 OF 1995

IN THE MATTER OF THE PETITION OF EMMANUEL MC VALE
KYDD FOR DISSOLUTION OF MARRIAGE



BETWEEN:

EMMANUEL MC VALE KYDD

PETITIONER

AND

CHERYL HERMISE KYDD nee GREGG

RESPONDENT

Stephen Huggins for the petitioner

Olin Dennie for the respondent

[20th November, 199]

[24th November, 1998]

DECISION

BAPTISTE J.

This is an application on the part of the respondent for the following orders -

1. That the petitioner do provide monthly maintenance in the sum of \$750.00 for the benefit of the respondent and the children.
2. In the alternative the petitioner do provide a lump sum of \$20,000.00.
3. In the still further alternative that the petitioner do pay secured periodical payments in the sum of \$2,250.00 per quarter.

The application is being opposed by the petitioner. The applicant filed affidavits in support of her case, the petitioner filed counter affidavits.

The Court heard oral evidence from the parties as well as from one Carlton Benjamin who gave evidence on behalf of the petitioner.

The petitioner's evidence is that he earns a salary of \$994.00 a month. His expenses include \$250.00 a month for rent, \$160.00 a month to the applicant for maintenance of the two children, \$50.00 a month for maintenance of Onica John a child he has with one Linda John, and \$350.00 a month for a loan, in addition to paying phone and light bills, which according to his affidavit amounts to \$123.00. His expenses total \$923.00 leaving balance of \$71.00 from his salary. He also stated that he earns an average of \$210.00 a month for what he refers to as "garden work."

The applicant's evidence is that the petitioner pays \$120.00 a month for the children, and not \$160.00. He never paid \$160.00 and he never paid maintenance to Onica, although in December he might have given her something. The applicant stated that the petitioner told her he makes \$1000.00 extra, this seems to be from his lawn mowing work. The applicant further deposed that Carlton Benjamin told her that he pays \$125.00 towards the rent and also pays his light bill. The applicant testified that she earns a salary of \$380.00 a month of which she pays the bank \$150.00 and pays \$55.00 in light and phone bills. She also earns on an average \$200.00 a month in tips when the tourist season is good, that's from December to January.

Carlton Benjamin gave evidence on behalf of the petitioner. Benjamin stated that he did not make any contribution to the household expenses and he never told the applicant that he pays rent. He denied paying rent. It is interesting to note that the petitioner himself stated that Benjamin contributed towards the electricity bill. Benjamin in his evidence denied making contributions to the household expenses.

I do not consider Benjamin to be a witness of truth or a reliable witness. He lacked creditability and I reject his evidence.

In my opinion the petitioner was not always free and frank with the Court. He did not initially disclose that he was earning an additional income from lawn mowing activities. I do not accept his evidence that Benjamin did not contribute to the rent. Benjamin's earning of \$95.00 a week certainly permitted him to so contribute. I also do not accept his evidence that he gave the applicant

\$160.00 a month for maintenance or that he paid \$50.00 a month in maintenance for Onica John.

The applicant impressed me as a witness of truth and I accept her evidence that the petitioner only paid \$120.00 a month in maintenance and did not pay maintenance to Onica John.

I find as a fact that (1) the petitioner paid \$120.00 a month to the applicant (2) the petitioner did not pay maintenance to Onica John and (3) Benjamin contributed \$125.00 towards the rent. With respect to the extra earnings of the petitioner it is probable that he earned much more than \$210.00 a month, though not necessarily as much as \$1000.00.

The petitioner's biggest expense is the loan of \$355.00 payable monthly to the Credit Union.

No evidence was provided as to the duration of the loan, that's how many installments remain to be paid. Be that as it may the Court in the circumstances of the case is of the view that the petitioner can and should pay more than the \$120.00 per month he is paying at present without unnecessary hardship being occasioned thereby to him.

It is ordered that the petitioner pays the applicant \$270.00 a month for the benefit of herself and the two children.

.....
DAVIDSON KELVIN BAPTISTE
High Court Judge (Ag.)