SAINT LUCIA

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IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. 848 of 1994

BETWEEN: CYNTHIA SAMUEL

Petitioner

and

LUCIEN SAMUEL

Respondent

APPEARANCES:

Mr. A. George for the Petitioner
Mr M. Foster for the Respondent

1994: December 20 and 21.

JUDGMENT

MATTHEW J. (In Chambers)

The Petitioner who is a nurse and 37 years old was married to the Respondent, a labourer, on December 28, 1985. They have three children named Junior, Chad and Jodie.

By a petition filed under the provisions of Articles **841** and **850 (17)** of the Code of Civil Procedure on November 10, 1994 the Petitioner asked for order to restrain the Respondent from assaulting, molesting or threatening her and also to restrain him

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from remaining or entering the matrimonial home until the divorce proceedings have been finalized.

In support of her petition the Petitioner filed an affidavit on the same day. In that affidavit she deponed that since August 1991 the Respondent has repeatedly beaten, threatened or insulted her and had behaved in an abusive and violent manner towards her and the three children putting them in fear of their lives.

She gave an instance of the Respondent on October 28, 1994 in the presence of the children at the matrimonial home slapping her in the face and inflicting a three-inch long first degree burn on her right forearm. In support of that she tendered a medical certificate by Dr. Marius dated October 29, 1994.

On December 15, 1994 the Respondent filed an affidavit in opposition in which he stated that he had never been physically abusive to his wife. He further alleged that the matrimonial home was his sole property acquired before they got married but there is another house which he could move into within one or two months when the present occupiers were given notice.

During his submissions learned Counsel for the Petitioner intimated that he was in process of initiating divorce proceedings and that the Petitioner was consistently abused any time she refused the sexual advances of the Respondent.

Counsel submitted that the Petitioner lives in constant fear for herself and the children.

In his reply learned Counsel for the Respondent submitted that this was a case of **"he say"** and **"she say"**. Counsel observed that the Respondent had denied being abusive.

Counsel said that nothing had happened between the Parties since they were last in Court on December 7, 1994.

On the affidavits before me it seems that the version of the Petitioner is more consistent within truth having the support of the medical evidence of Dr. Marius. The Respondent did not find it important to appear in Court yesterday and no explanation had been been given for his absence.

Mr. Foster referred to the case of **RICHARDS V RICHARDS 1984 1 AC 174.** I commented on that case in a judgment I gave earlier today, **D6 of 1992 VIRGINIA JOSEPH V JULIAN JOSEPH**. All I shall say here is that I shall take into account the judgment of the House of Lords in my deliberations in relation to the present case.

I shall also have regard to what is stated in Rayden on Divorce, Fifteen Edition, at page **939** dealing with exclusion from the matrimonial home.

I believe an order is necessary for the protection of the health of the Petitioner and her children and there is nothing to suggest that the Respondent would find it impossible to find some other place to live.

In fact Mr. George in reply submitted that he had instructions that the Respondent is never present at the home. I balance the hardship likely to be caused by the granting of the order against the hardship likely to be caused by refusing it.

In my judgment the balance of convenience lies in granting the order.

My order is that:-

1. Upon the Petitioner undertaking to pay the damages in case the Court shall hereafter be of the opinion that the Respondent should have sustained any by reason of this Order which the Petitioner ought to pay:

   IT IS HEREBY ORDERED that the Respondent be restrained and an injunction is granted restraining the Respondent from:-

   (a) assaulting, molesting, threatening or otherwise interfering with the Petitioner;

   (b) entering or remaining in the matrimonial home at

Babonneau until the finalization of the divorce proceedings.

2. Costs in this matter shall be reserved.

A.N.J. MATTHEW
Puisne Judge