

BAMAKO COURT OF APPEAL

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**Commune I Court of First Instance
in the Bamako District**

REPUBLIC OF MALI
One People -One Goal - One Faith

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**No. 2373/RG
No. 1599/RC
No. 39/JGT/CH.MAT**

CASE TYPE:

Divorce.

“IN THE NAME OF THE PEOPLE OF MALI”

ORDINARY PUBLIC HEARING OF 30 November 2014

JUDGEMENT No. 39/ CH-MAT-TPI-CIV

The matrimonial affairs division of the *Commune I* Court of First Instance in the Bamako District, during its ordinary public hearing of Fourteen November Two Thousand and Thirteen held by :

Mr **Fily SISSOKO**, presiding judge, President;
Assisted by *Maitre* Madina BALL, Court Registrar;
After consulting the State;

Declared the following judgement in the case between:

Sadio COULIBALY: Executive Secretary, domiciled in Sikoroni Sourakabougou in *Commune I*, with legal counsel from the DIOP-DIALLO law firm;

APPELLANT

AND

Sekou MAGASSOUBA: resident in Pointe Noire (Congo Brazzaville), domiciled in *Sébénicoro, Cité SOTELMA II* with legal counsel from Barrister Djibril COULIBALY, Attorney at Law

RESPONDENT

I • THE COURT:

- Mindful of the case documents;
- In accordance with the petitioner's claims;
- In accordance with his plea:
- The State heard;
- After deliberating about this case in accordance with the law;

Whereas through a legal instrument of 22 February 2009, the couple Sadio COULIBALY and Sékou MAGASSOUBA got married before the officer of the Sikoro civil status centre; Whereas their union led to the birth of a child called : Yacouba aged five;

Whereas through a petition of 29 August, 2013, Sadio COULIBALY seized the President of the civil court with a case for divorce between the Sekou MAGASSOUBA couple;

Whereas the attempted reconciliation scheduled for the hearing of 27 September, 2013 failed;

II • SUBMISSIONS AND CLAIMS OF THE PARTIES:

Whereas to support her suit, the petitioner states:

That a few months after their marriage, marital life became unbearable for her; ; That she informed her spouse that she has a certificate in Secretariat studies and that she would like to practice this profession ; That her husband did not take the time to look for a job for her ; That worse, every time she tried to look for work, she came up against stiff resistance from her husband ; That the latter argues that they are on the territory of a third party state and she will not be able to work in a department ; That following a dispute, her husband inflicted abuses and cruelty on her and threatened to kill her; That she was compelled to secretly leave the marital home in Pointe Noire and go to Brazzaville and later Cotonou through a flight with ASKY airlines, That upon arriving in Cotonou, she discovered that her husband had alerted the Beninese security forces and accused her of having stolen one million six hundred thousand (CFAF1,600,000) francs cfa, That after the police searched her luggages, they did not find a penny ; That she then boarded a bus in Cotonou to return to her parents in Bamako, That she would like the Court to order divorce for serious injury making marital life unbearable, and verbal abuse and cruelty ; In response, the respondent through his lawyer argues that some of hiswife's allegations are outright lies ; That his wife does not respect him ; that since she came over to meet him she has never wanted to stay by his side ; That she demanded that he should get a job for her That she suggested that he should open a restaurant that she was going to manage ;

That much to his surprise, his wife left the marital home and travelled to Cotonou ; That he would like the court to note that his wife has deserted the marital home ; That in any event, he loves his wife and is against the divorce she seeks ;

III• LEGAL ARGUMENTS

I•) AS CONCERNS THE DIVORCE:

The petitioner in support of her case accused her husband of serious injury, verbal abuse and cruelty;

Whereas according to the provisions of article 352 of the Persons and Family Code, a husband may apply for divorce for wrongdoing on grounds of abuse, cruelty and serious injury making marital life unbearable and the woman may ask for divorce, when her husband refuses to cater to the basic needs of housing, clothing, feeding and health care ;

Whereas in this particular, it has constantly been seen in the proceedings and case documents that Sadio COULIBALY was assaulted and battered following a dispute around the fact that she wanted to work; That following this dispute, her husband threatened to kill her if she continued with this demand; That these beatings and threats can effectively be considered excessive and injury, making their marital life unbearable; That in these conditions, given that the grievances constitute the grounds for divorce as stated in the provisions of the above-mentioned article, it is therefore appropriate to declare her suit admissible and rule to give due consideration to all her claims;

Whereas the husband is also accusing his wife Sadio COULIBALY of criminal desertion of the marital home;

Whereas in this particular case, it is undisputed as established by the proceedings held with both parties present, that Sadio, with regards to the violence inflicted on her by her husband and threats made, wilfully left the marital home ;

That this desertion can purely and simply be seen as serious injury rendering marital life unbearable;

Whereas the facts established against Sadio COULIBALY also constitute grounds for divorce as spelt out in the provisions of article 352 of the Persons and Family Code;

That in these conditions, given that both spouses made mistakes, it is appropriate to order the divorce of the couple on account of the fault of both parties;

Furthermore, the spouses having both been found guilty, it is necessary to order both of them to pay costs, in accordance with the provisions of article 332 of the Persons and Family Code.

2*) AS CONCERNS CHILD CUSTODY AND VISITATION RIGHTS

Whereas as meant by the provisions of article 369 of the Persons and Family Code, the custody of under-age children is granted to the husband in whose favour the divorce has been granted, unless the court, by itself or at the request of the family or the Public Prosecution orders, in the interest of the children, that custody of all or some of the them should be given to the other spouse or a third party;

Whereas in this particular case, since the divorce was ordered on account of the fault of both parties, it is necessary to consider the interest of under-age children with regards both parents;

Whereas in this particular case, it has been established for a while now, that the child Yacouba MAGASSOUBA lives in Bamako;

That is thus necessary to give custody to his mother, while giving his father extensive visitation rights, pursuant to sub paragraph 2 of article 370 of the Persons and Family Code.

3*) AS CONCERNS THE PAYMENT OF THE FATHER'S CONTRIBUTION:

Whereas fathers and mothers have to keep their right to contribute to the expenses of their children depending on their respective income as meant in the provisions of article 370 of the Persons and Family Code;

Whereas the rights and privileges of the child remain intact despite the divorce of the parents as provided for by the provisions of article 364 paragraph 2 of the same code ;

Whereas in this particular case, custody of the under-age child enfant Yacouba MAGASSOUBA, given that it was given to his mother whose needs have increased owing to the divorce that has been ordered, it is necessary to set the father's contributions to the child's expenses at fifteen thousand francs (CFAF15,000) per month and per child, to be paid directly to Mme Sadio COULIBALY and this pursuant to the provisions of article 370 of the Persons and Family Code;

NOW THEREFORE

Having considered;

Ruling in public, in the presence of both parties in a matrimonial case and as the court of first resort;

As concerns the form, finds the petition of Sadio COULIBALY admissible;

On the merits, declares it well founded, allowing the claim;

Grants the divorce of the Sadio COULIBALY and Sékou MAGASSOUBA couple with both parties found at fault;

Grants custody of the under-age child Yacouba MAGASSOUBA to his mother;

Orders Sékou MAGASSOUBA to pay directly to Fatoumata COULIBALY every month the sum of fifteen thousand (15,000) CFAF, as his contribution to costs for the child's upkeep and education;

Grants extensive visitation rights to Ibrahim Sékou MAGASSOUBA ;

Orders both spouses to pay costs.

It is therefore ordered, adjudged and decreed publicly by the civil court in session on the days, month and year stated herein above.

SIGNED BY THE PRESIDENT AND THE COURT REGISTRAR

Signed (below)

[illegible]6000

Registered on 19/02/2014

[illegible] No. 10 Docket 18

Received six thousand francs cfa

Registration Inspector

Signature illegible

CERTIFIED TRUE COPY

Bamako, on 18/04/2014

CHIEF COURT REGISTRAR

[Signature and stamp here]

[Illegible name]

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