

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LUCYANNE KENDO

Petitioner

- and -

JOHN KENDO

Respondent

MEMORANDUM OF JUDGMENT ON AN EXPARTE APPLICATION

[1] The Petitioner has applied for a divorce judgment without oral hearing on the basis of affidavit evidence.

[2] The Petition for Divorce states that there is one child of the marriage, B.J.K. and contains a claim that “custody with day to day care granted to [the Petitioner] by court order. No other support requested.” The Petition for Divorce was served upon the Respondent on July 16, 2013 and a Direction to Note the Respondent in default was filed on September 17, 2013.

[3] The Affidavit of the Petitioner filed in support of the application states that a court order, which is attached as an Exhibit, was made in 2009 regarding custody. There is no reference to any arrangements for child support.

[4] An order was made on October 29, 2009 granting the parties joint custody of B.J.K. and giving the Petitioner day to day care and control of the child. The issues of child support, retroactive child support and extra childcare expenses were adjourned *sine die*. There is no evidence that these issues have ever been dealt with.

[5] Pursuant to s. 11(1)(b) of the *Divorce Act*, the court has a duty in a divorce proceeding:

to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;

[6] In this case, there are no support arrangements and there is no information upon which the court can satisfy itself that reasonable arrangements for support have been made for B.J.K. Section 11(1)(b) is designed to protect the interests of the children of the marriage and to ensure that there are reasonable arrangements for their support in place. It is the child's right to receive support and parents cannot bargain away or fail to pursue this right without explanation. *Hawker v. Hawker*, 2012 NWTSC 06.

[7] In order to be satisfied as required by s. 11(1)(b), further affidavit evidence should be submitted which details the financial positions of the Petitioner and Respondent, including all sources of income, as well as the reason why the Petitioner is not seeking child support from the Respondent. Accordingly, until such evidence is received, I stay the granting of the divorce.

S.H. Smallwood
J.S.C.

Dated in Yellowknife, NT this
18th day of September, 2013

Ms. Kendo, Petitioner, is self-represented
No one appearing for the Respondent

S-1-DV-2013-104269

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**MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE S.H. SMALLWOOD**
