

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHMT2021/0158

BETWEEN:

MARGARITA MYRTLE LOUIS-OCTAVE

Petitioner

and

HAMILTON OCTAVE

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:

Mrs. Kim St. Rose of Counsel for the Petitioner

Mrs. Esther Greene-Ernest of Counsel for the Respondent

2022: February 28;
May 27.

JUDGMENT

[1] **CENAC-PHULGENCE J:** On 27th September 2021, the Petitioner, Margarita Myrtle Louis-Octave ("Mrs. Octave") filed a petition seeking the dissolution of her marriage to Mr. Hamilton Octave ("Mr. Octave") on the ground that the marriage has broken down irretrievably because Mr. Octave has behaved in such a way that she cannot reasonably be expected to live with him pursuant to section 4(1)(b) of the **Divorce Act**.¹

[2] At the date of the petition, Mr. and Mrs. Octave had been married for thirteen years having married on 21st June 2008. The couple has one child, Rudell Kachina Nicole Octave born on 2nd July 2002 and who is over eighteen years but currently attending university.

¹Cap. 4.03, Revised Laws of Saint Lucia.

- [3] Mr. Octave filed an acknowledgement of service on 27th October, 2021 and indicated his intention to contest the divorce and on 8th November, 2021, he filed an answer in which he admits that his marriage to Mrs. Octave has indeed broken down irretrievably but denies that it is as a result of his behaviour.
- [4] Mr. Octave prays that the marriage be dissolved, and the divorce be granted based on the fact that Mrs. Octave is the one who has behaved in such a way that he cannot be expected to live with her.
- [5] The trial in this matter took place on 28th February 2022 with both parties being cross-examined. Both parties filed closing arguments in compliance with the Court's Order.

The Law

- [6] The case of **Buffery v Buffery**² confirms that the specific fact³ of behaviour on the part of the respondent such that the petitioner cannot reasonably be expected to live with him or her must be proven independently of irretrievable breakdown. In **Katz v Katz**,⁴ the Court said:

“Behaviour is something more than a mere state of affairs or a state of mind. It is an action or conduct by one party that affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct and it must have some reference to the marriage. ... It is for the judge, not the petitioner alone, to decide whether the behaviour is sufficiently grave to fulfill that test, that is, to make it unreasonable to expect the petitioner to endure it, to live with the respondent. Also, it is for the judge to say whether the marriage has irretrievably broken down. The court must consider the effect of the behaviour on this particular plaintiff ...”

- [7] In **Rayden & Jackson on Relationship Breakdown, Finances and Children**,⁵ the learned authors state that the behaviour itself does not have to

² [1988] 2 FLR 365.

³ i.e. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

⁴ [1972] 3 All ER 219 at 223.

⁵ <http://lexisweb.co.uk/sources/rayden-jackson-on-divorce-and-family-matters?contentonly=true>.

be unreasonable, but instead it must be of such gravity that the petitioner or applicant cannot reasonably be expected to live with the respondent.⁶

[8] The words 'reasonably be expected' in the statute prima facie suggest an objective test. Nevertheless, in considering what is reasonable, the court will have regard to the history of the marriage and to the individual spouses before it in assessing what is reasonable.⁷

[9] In order for the Court to decide the question whether the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, it is necessary to make findings of fact as to what the respondent actually did and the impact of that conduct on the particular petitioner. In this sense there is a subjective element in the assessment of the totality of the facts that are relevant, but when that has been evaluated, the question falls to be determined on an objective test. Each case must be looked at in light of its own facts.

[10] In the case of **Owens v Owens**,⁸ Lord Wilson analysed the six leading cases⁹ in respect of the behaviour fact in order to determine what the law requires the petitioner to prove. At paragraph [28] Lord Wilson said:

"As in effect the Court of Appeal in the present case has held, and as Mrs. Owens now concedes, these six old authorities continue to provide a correct interpretation of the subsection. **The inquiry has three stages: first (a), by reference to the allegations of behaviour in the petition, to determine what the respondent did or did not do; second (b), to assess the effect which the behaviour had upon this particular petitioner in the light of the latter's personality and disposition and of all the circumstances in which it occurred; and third (c), to make an evaluation whether, as a result of the respondent's behaviour and in the light of its effect on the petitioner, an expectation that the petitioner should continue to live with the respondent would be unreasonable.**"(my emphasis)

⁶At paragraph 6.81.

⁷*Birch v Birch* [1992] 2 FCR 545, [1992] 1 FLR 564, CA; Paragraph 6.82 of Rayden & Jackson on Relationship Breakdown, Finances and Children.

⁸ [2018] UKSC 41.

⁹*Pheasant v Pheasant* [1972] 1 All ER 587; *Livingstone-Stallard v Livingstone-Stallard* [1974] 2 All ER 766; *Thurlow v Thurlow* [1975] 2 All ER 979; *Stevens v Stevens* [1979] 1 WLR 885; *Balraj v Balraj* (1981) 11 Fam Law 110; and *Buffery v Buffery* [1988] 2 FLR 365.

- [11] The court will have regard to the cumulative effect of the behaviour. Conduct may therefore consist of a number of acts each of which are apparently reasonable in isolation, but which taken together are such that the petitioner or applicant cannot be expected to live with the respondent.¹⁰
- [12] There is no need to prove injury to health.¹¹ The totality of the evidence of the matrimonial history must be considered. The outcome will depend on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view (after a consideration of any excuse or explanation which this respondent might have in these circumstances) the conduct is such that the petitioner or applicant ought not to be called upon to endure it.¹²

Burden of proof

- [13] The burden of proof lies with the petitioner and the allegations made about the respondent must be proved on the balance of probabilities.¹³ Where, as in this case the respondent has also made allegations as to the petitioner's behaviour in his answer, the burden of proof in relation to these allegations lies with the respondent.

Discussion

- [14] The Court must determine whether based on the facts presented, the marriage has broken down irretrievably. There is no dispute between Mr. and Mrs. Octave that their marriage has indeed broken down irretrievably.
- [15] In accordance with the approach outlined in **Owens v Owens**, I must make findings as to what Mr. Octave actually did.

¹⁰Hadjimilitis (Tsavlis) v Tsavlis [2003] 1 FLR 81.

¹¹Gollins v Gollins [1964] AC 644.

¹² See Sheldon J in Stevens v Stevens [1979] 1 WLR 885 at 887.

¹³Blyth v Blyth and Pugh [1966] AC 643 at 669, 673–674.

The Evidence

[16] The particulars of behaviour pleaded by Mrs. Octave are stated at paragraph 8 of the petition. Mr. Octave responded to these allegations in his Answer. He says he and Mrs. Octave lived separate lives because of Mrs. Octave's conduct which makes it unreasonable for him to live with her. Of course, Mrs. Octave denies that she has behaved in any way that Mr. Octave cannot be expected to live with her.

[17] I now turn to examine the specific allegations on unreasonable behaviour. Mrs. Octave's allegations of unreasonable behaviour on Mr. Octave's part are:

Allegation (i)

Mr. Octave neglected her during the marriage, never giving her any gifts for any occasion and never reciprocating her gift giving except on the occasions when their daughter caused him to buy a gift for her. As a result of this, Mrs. Octave says she felt unappreciated and taken for granted.

[18] Mr. Octave denies neglecting Mrs. Octave and never buying her gifts. He says he bought her a bracelet for \$3,000.00 at Christmas 2020. She had expressed that she did not like it and he had it changed to something of her choice and added a pair of earrings. He says that despite her allegations which are unfounded, Mrs. Octave remained in the marriage and so she cannot rely on this alleged omission of his.

[19] Mrs. Octave admits receiving the gift of the bracelet but denies that she was gifted with earrings then. She says this was a rare occasion. She goes on to say that from January 2021 onwards Mr. Octave never gave her any further gift.

[20] In cross-examination, Mrs. Octave was asked whether she had ever expressed to Mr. Octave that she wanted to receive gifts from him as a sign of being appreciated. Her response was that Mr. Octave was her husband so he should have known. Mr. Octave in cross-examination says that the problems between himself and Mrs. Octave started from 1st January 2021 and so he agrees that he did not give any gifts after that time.

Analysis-Allegation (i)

- [21] Mrs. Octave's allegation that she never received gifts from Mr. Octave except when prompted by her daughter proved not to be completely true. She admitted to receiving the gift of the bracelet but she said in cross-examination 'that was at the point when the marriage had already broken down'. Mr. Octave could only speak to two occasions when he gave Mrs. Octave gifts. The evidence clearly revealed that Mrs. Octave had access to the funds from the business. She admitted that there were no restrictions on her, she did not lack anything materially and anything she wanted she could write a cheque to get it.
- [22] Whilst it is that Mrs. Octave had access to funds and seemed to have a free hand and faced no restrictions on what she could access, I think what she refers to is different. Her complaint is that Mr. Octave did not give her gifts and that made her feel unappreciated and taken for granted. It is clear that Mr. Octave's perspective is that Mrs. Octave had access to the income of the business and in addition she received a monthly stipend.
- [23] What I think is telling is that Mrs. Octave admitted that she had never told Mr. Octave throughout their marriage that she liked receiving gifts and that it made her feel appreciated. She thought that Mr. Octave should have known that without having to be told. Unfortunately, this is not an uncommon problem in relationships and simply has to do with the fact that persons have different perspectives and come from varying backgrounds which shape how they think about things such as giving gifts. For some, giving unrestricted access to the money is sufficient as the other party is at liberty to buy any gift they desire. For the other party, what they want is not the ability to buy the gift but to be given the gift.
- [24] The unfortunate thing is that Mr. Octave was in the dark all the years of marriage. He was never told that he was not meeting Mrs. Octave's love language and he thought he was doing what he ought to, giving her access to the money. She had no limits according to him. Whilst I understand Mrs.

Octave's position in relation to how she felt about not receiving gifts, I am not of the view that this allegation rises to the level of behaviour which is so unreasonable that Mrs. Octave cannot be expected to live with Mr. Octave. If Mrs. Octave had told Mr. Octave many times of her desire to receive gifts and he ignored her or told her that she did not deserve or need any gifts that behaviour may be unreasonable. I am still not sure whether it would meet the required legal standard though.

Allegation (ii)

- [25] Mr. Octave does not contribute to the household expenses, the utilities or maintain the child of the family or share his earnings with her.
- [26] In response, Mr. Octave says that all the parties' income is derived from the business Octave's Auto Supplies, registered as a business name. He says from the onset of Mrs. Octave coming to work in the business, the agreement was that the income from the business would pay the mortgage, all utilities and home expenses. Mrs. Octave had full access to the income of the business in addition to a fixed \$2,500.00 monthly while he earned \$3,000.00 monthly. He says Mrs. Octave wrote all the cheques for personal expenses. He also says that they have a joint account at Republic Bank which Mrs. Octave closed without his consent and kept the proceeds for herself. In addition, Mr. Octave says the child Rudell is the beneficiary of a bank account also at Republic Bank which is funded from the business earnings.
- [27] Mrs. Octave admits that the mortgage, utilities and expenses of the home were met by the branch of the business managed by her, but Mr. Octave never brought his earnings from the branch managed by him into account. She admits that they were both paid a monthly sum although she says it was \$3,000.00 each. The business had two branches, one managed by Mrs. Octave and the other by Mr. Octave. In January 2021, Mrs. Octave says she stopped giving Mr. Octave the Saturday sales from her shop branch which she had given him when his branch was first started in or about 2013. She says she stopped giving Mr. Octave a salary in April 2021 as he refused to account for and share his earnings from his branch of the business. She says since then

Mr. Octave has maintained himself from the proceeds of his branch. Mrs. Octave says her daughter has two bank accounts which she opened for her but denies that these are funded by the business. She alleges that the monies for these accounts are derived from her separate salary earnings. In relation to the joint account, Mrs. Octave admits to closing one joint account but says that she told Mr. Octave about it only after she had closed it as she did not anticipate any objection as he never used it and she alone banked in that account. She says further that there is a joint account at RBTT Bank from which Mr. Octave withdrew \$50,000.00 to pay towards the purchase of a lot of land which he never revealed to her.

Analysis-Allegation (ii)

[28] Mrs. Octave makes a very broad statement that Mr. Octave does not contribute to the household expenses, maintenance of the child of the family or share his earnings with her. The evidence does not totally support this. Firstly, Mr. and Mrs. Octave are joint registered proprietors trading as Octave's Auto Supplies. The business which is registered as a business name has two branches, the Castries Branch managed by Mr. Octave and the Bois D'Orange Branch managed by Mrs. Octave. From the evidence, Mrs. Octave has full access to the income of the business with no restrictions. She said in cross-examination that she has never had another job. I find it hard to accept that Mr. Octave does not contribute to the family expenses when the business is jointly owned. I am not sure what earnings Mrs. Octave complains is not shared with her.

[29] Whilst it is not quite clear how Mr. and Mrs. Octave may manage their finances, I do not see any evidence that because of Mr. Octave's behaviour, Mrs. Octave suffered or was deprived of necessities. In fact, the evidence is clear that Mrs. Octave has control of finances as she said in her reply that she stopped giving Mr. Octave the Saturday sales from her branch of the business in January 2021 and stopped paying him a salary in April 2021. She then says that Mr. Octave maintains himself from the funds from his branch of the business. I do not see that this allegation rises to the required standard.

Allegation (iii)

[30] Mr. Octave fathered a child prior to their marriage but during the time they were in a relationship which he did not disclose to her which she discovered in about 2018. She says had she known this she would not have married Mr. Octave. Mr. Octave has secretly maintained a relationship with the child and has led a double life for their entire marriage. Mrs. Octave alleges that this has caused her to distrust Mr. Octave and as a result, their relationship deteriorated with Mr. Octave always quarrelling, cursing and picking a fight with her.

[31] Mr. Octave admits the birth of the child prior to the marriage. He says the child was conceived at a time when he and Mrs. Octave were courting but had broken off the relationship for a period due to some issues which had developed. However, the relationship rekindled, and they subsequently got married. He claims that he had no knowledge of the child until the child was two years old. He says Mrs. Octave found out about the child about twelve years ago which would be about 2009. He denies all the other allegations made against him by Mrs. Octave.

Analysis-Allegation (iii)

[32] In relation to the allegation that Mr. Octave fathered a child before his marriage which he kept a secret and this led to trust issues, Mrs. Octave in her reply states the birth of the child is not relied on as a ground of divorce but was just used to explain how the relationship between the parties deteriorated which led to Mr. Octave's behaviour, constant cursing and quarrelling. Mrs. Octave says it is this behaviour which occurred in the last six months in particular that finally prompted her to decide that she cannot reasonably be expected to live with Mr. Octave.

[33] Mrs. Octave says she discovered the birth of the child in 2018. Mr. Octave on the other hand says that he told Mrs. Octave about the child about twelve years ago which would be somewhere about 2009. He also explains that he did not know about the child until the child was two years old. It is clear that this is not an allegation of behaviour being relied on by Mrs. Octave to ground

unreasonable behaviour. Instead, Mrs. Octave says that this issue with the concealment of the child led to Mr. Octave's unreasonable behaviour. I am not able to accept that it was only Mr. Octave who was quarreling and cursing as a result of this issue. It seems to me that it is Mrs. Octave who had an issue and who was distrusting of Mr. Octave as a result of the discovery of this child born before the marriage and I can accept Mr. Octave's evidence in cross-examination when he said that Mrs. Octave was cursing and quarrelling with him. I believe that they may have both quarreled and cursed each other.

Allegation (iv)

- [34] Mr. Octave has refused to do an STD test which she requested that he do and as a result they have not been intimate for the past year and Mr. Octave has vacated the bedroom in January 2021 and slept on a chair in the living room.
- [35] In response to this allegation, Mr. Octave denied Mrs. Octave's assertions. He alleged that when he shared the bedroom with Mrs. Octave she would accept calls and upon hearing the intimate nature of the calls he felt disrespected and emasculated. He says that given what he heard he could only conclude that it was a conversation with a 'lover'. He says many times she would leave the bed and go into the bathroom, lock the door and continue the conversation. He says he drew the behaviour to Mrs. Octave's attention many times. He alleges that he was unable to bear the disrespect and humiliation and to avoid discord, he moved from the master bedroom in January 2021.
- [36] Mr. Octave claims that he tried prior to 1st January 2021 to reconcile their differences but her response was that she never loved him but only married him to prove a point to someone and this was hurtful to him. After this, he says he thought it best to remove himself from Mrs. Octave's space. He says he was betrayed and emotionally distraught by Mrs. Octave's utterance.
- [37] Mrs. Octave responded to this allegation by saying that it was in the context of reconciliation that she asked Mr. Octave to do a STD test which he refused to do. She denies Mr. Octave's allegations of conversations with a lover or going into the bathroom and locking the door to carry on such conversations. She

admits that on a few occasions she left the bedroom to take calls from her friends and went into the living room. This she did to avoid disturbing Mr. Octave and because sometimes she wished to have a private conversation with her siblings or friends especially when she wanted to discuss him.

- [38] Mrs. Octave admits telling Mr. Octave that she never loved him and only married him to prove a point to someone but says that was untrue. She says she only said that to hurt Mr. Octave because he was picking on her. She says she immediately regretted saying that and immediately apologized to Mr. Octave over and over which he accepted. She says he ought not to revisit the matter now.

Analysis-Allegation (iv)

- [39] The failure of Mr. Octave to submit to an STD test in the face of no allegation of infidelity is interesting to say the least. I can understand why he may not have found the request reasonable. Mrs. Octave in cross-examination said she did a test as well, but she never shared the results with Mr. Octave.
- [40] Mrs. Octave's allegation that the couple was not intimate for the past year does not indicate that it was as a result of something which Mr. Octave did and seemed to have been linked to the fact that he did not take the STD test and the general state of the relationship. I accept Mr. Octave's evidence of why he vacated the marital bedroom in January 2021.
- [41] Mrs. Octave admitted to Mr. Octave's allegations against her of what she said to him which precipitated his leaving the bedroom and sleeping on the chair in the living room. That reaction is understandable given the utterances by Mrs. Octave. Although she did indicate that she apologized right away as she realized that she was wrong, it did not take away the sting of such words. Mrs. Octave's response in cross-examination that she did not see how devastated Mr. Octave was by her statement tells me that this marriage had broken down by then and there was a level of detachment which existed in the relationship.

[42] In the context of what transpired, I do not see that Mr. Octave's behaviour of not doing the STD test and moving out of the bedroom rises to behaviour that is so unreasonable that one spouse cannot be expected to live with the other especially when there is a trigger for the alleged offensive behaviour. I am of the view though that Mrs. Octave's utterances to Mr. Octave that she never really loved him but only married him to prove a point would be behaviour such that Mr. Octave cannot reasonably be expected to continue to live with her.

[43] Mrs. Octave does admit to leaving the bedroom to have her private conversations with family and friends especially when she wanted to discuss Mr. Octave. There is no indication of how often this happened and without some detail, I am not of the view that by itself it amounts to behaviour that is so unreasonable that Mr. Octave cannot reasonably be expected to live with Mrs. Octave.

Allegation (v)

[44] Mr. Octave stopped her from doing his laundry and ironing and started doing it himself. He previously cooked for the family but now only does it for himself and does not require her to assist him with any domestic duties.

[45] Mr. Octave denies this and says that they always had a domestic helper who did all the chores until Mrs. Octave stopped her from coming when she left in October 2021.

[46] Mrs. Octave replied by saying that the only thing she continued to do for Mr. Octave was to pay his telephone and electricity bills from the earnings of her branch of the business. She says he stopped the helper from washing his clothes which she only did on Saturdays. Prior to that Mrs. Octave says she used to handwash Mr. Octave's clothes. In addition, Mrs. Octave says when she left the house she took the helper with her since she was the one paying the helper and Mr. Octave had declined the assistance of the helper. Mrs. Octave says the helper did not cook for Mr. Octave or do any other chores for him except clean the house.

Analysis-Allegation (v)

- [47] I am unclear how this allegation of behaviour rises to unreasonable behaviour such that Mrs. Octave cannot reasonably be expected to live with Mr. Octave. Mr. Octave stopped Mrs. Octave from doing his laundry and ironing and started doing it himself. It is clear that the relationship between Mr. and Mrs. Octave is damaged and there is nothing to indicate when this behaviour manifested. By the time the petition was filed in September 2021, Mr. Octave had already vacated the marital bedroom and he and Mrs. Octave appeared to exist in the same house but leading separate lives.

Allegation (vi)

- [48] In 2020, Mr. Octave started accusing her of having various men which Mrs. Octave says is untrue.
- [49] Mr. Octave says that he had reason to question Mrs. Octave on her leaving their business and going to Bois D'Orange every day from 5 p.m. to 9 p.m. from early 2021 and in the process spending time with someone called "John". When confronted, he says Mrs. Octave admitted to doing accounts for "John". He says when he recently confronted Mrs. Octave about the matter, she responded that she was no longer "friendly" to "John" and she could say so because the parties are no longer together. He also recounts that on one occasion he witnessed Mrs. Octave being dropped off to her vehicle near their business at about 10:05 p.m. and saw her kiss the man who was in the vehicle. He says when he confronted her about that a few days later she said that this was the first time she had gone out with that person.
- [50] In response, Mrs. Octave denies spending time with 'John' as alleged. She says with Mr. Octave spending most of his time away from the home and her daughter being abroad, she was bored and alone at home every evening, so she agreed to assist her friends to tally the receipts of their business most afternoons. She would return home when the business closed since at that time Mr. Octave was never home. She says he knew where she was and only had an issue after the relationship deteriorated. When her daughter returned

home during the Covid-19 pandemic she no longer was alone at home and no longer had need for something to occupy her time. In short, Mrs. Octave denies all of Mr. Octave's allegations.

Analysis-Allegation (vi)

[51] Mr. Octave's accusations against Mrs. Octave started in 2020 and evidently were sparked by something. The pleadings reveal firstly that Mrs. Octave alleges that Mr. Octave came home late almost every evening which he denies and that Mrs. Octave came home late as well having spent hours at her friend's business doing their accounts. Mrs. Octave claims that Mr. Octave was fully aware of where she was and only took issue after their relationship was taking a nose-dive.

[52] Mrs. Octave while denying that she had spent time with "John" as alleged by Mr. Octave admitted that (a) she spent time at her friend's business doing accounts and returning home after close of business; (b) she had gone out with the man whom Mr. Octave said he had seen her in the car with but she had not kissed him; (c) the vehicle which she was seen in was the same vehicle which had been parked in the driveway at the house.

[53] Given what had transpired and the admissions made by Mrs. Octave I do not see that Mr. Octave levelling these allegations at her would not be understandable. Certainly, her behaviour did arouse suspicion and with the already damaged relationship it is reasonable that Mr. Octave may have had questions. Did he go about it the correct way? I would think maybe no but his accusations are not without a basis.

Allegation (vii)

[54] On 15th September 2021, Mr. Octave told her that he had made up his mind that he had to move on which was welcomed by her as she wished to regain her peace of mind.

[55] Mr. Octave in response to this allegation says that on 8th September 2021, which was his birthday, he received no greetings from Mrs. Octave. He

alleges that she told him that she had gone on with her life so she felt empowered to disrespect him. He said he then told her that he had not gone on with his life yet and would need to seek advice to make a transition.

- [56] Mrs. Octave admits that she did not acknowledge Mr. Octave's last birthday but at that time he had moved out of the bedroom, was largely hostile towards her and he had treated her similarly on her birthday the previous year. Mrs. Octave agrees that she also made a decision not to allow Mr. Octave to disturb her peace of mind and so she no longer tried to please him and largely ignored him when he was picking on her.

Analysis-Allegation (vii)

- [57] Like in the case of some of the other allegations, this allegation is of something which took place in September 2021, the same month the petition for divorce was filed. Clearly, Mrs. Octave did not object to Mr. Octave's indication that he was moving on with his life and welcomed it, albeit Mr. Octave alleges that it was Mrs. Octave who indicated that she was moving on with her life. This allegation does not rise to the level of unreasonable behaviour.

Allegation (viii)

- [58] Mr. Octave although living in the same house with her lives a separate life and comes and goes as he pleases without explanation.

Analysis-Allegation (viii)

- [59] Again, this allegation is broad and does not speak to any particular behaviour of Mr. Octave which is unreasonable. What does 'lives a separate life' mean and how does this impact Mrs. Octave? The fact is this marriage is sadly broken and both Mr. and Mrs. Octave are barely hanging on.

Conclusion

- [60] A review of the allegations made by Mrs. Octave in the petition make it very difficult to make findings that Mr. Octave behaved in such a way that Mrs. Octave cannot reasonably be expected to live with him. The allegations are for the most part very general with no particulars and seem to be primarily

concentrated on a period of time between October 2020 and up to the filing of the petition. It is clear to me based on the evidence in cross-examination that the breakdown in the marriage happened long before that. In my view, a lot of the behaviour alleged from both sides during that time was the parties' emotional response to the already broken relationship.

[61] It must be remembered that part of the Court's duty is to determine the gravity of the behaviour and its impact on the petitioner and in this case the respondent none of which the Court can properly do with vague or non specific particulars.

[62] Mrs. Octave says that it is Mr. Octave who chose to separate himself from her by ceasing to share their bedroom, refusing any further domestic assistance and absenting himself from the home regularly. She says if her behaviour was such that Mr. Octave found it unreasonable to continue to live with her, he should have filed a petition for divorce but instead he chose to embark on a course of conduct that made it unreasonable for her to live with him. The fact that Mr. Octave did not file a petition for divorce and still said he thought that he and Mrs. Octave could have reconciled even if he admitted that the marriage had irretrievably broken down to my mind is irrelevant to the findings which the Court has to make with regard to the alleged behaviours.

[63] As submitted by counsel for the respondent and with which I agree, the history of the marriage does not show abusive behaviour on the part of the Mr. Octave. Mrs. Octave herself admitted in cross-examination that Mr. Octave had never 'laid a hand on her'. There is no history of adultery and certainly not of neglect on the part of the Mr. Octave as the evidence clearly shows that Mrs. Octave had access to funds anytime she needed from the business operations.

[64] Mrs. Octave in her pleadings suggests that Mr. Octave's behaviour caused her to experience anxiety attacks for which she usually had to seek medical attention due to the constant stress in the home. While it is not necessary to show injury, if one alleges that the effect of the behaviour on them was as

alleged by Mrs. Octave, then this should be supported by medical evidence. An idea of the frequency of these anxiety attacks and when they occurred would also have assisted. Mr. Octave said in cross-examination that he was not aware of these anxiety attacks.

[65] In the reply filed by Mrs. Octave she mentions very briefly and with not much detail an incident where she says Mr. Octave broke down her daughter's bedroom door to pursue her and assaulted her subsequent to filing of the petition for divorce. She does not say exactly when this happened. The explanation of what transpired was given by Mr. Octave in cross-examination. From what he indicated, the incident would have happened on 21st October, 2021. Mr. Octave says Mrs. Octave left to go to a hotel with the man on 16th October, 2021 and returned on the Monday. When he got home on the Thursday of that week, the entire house was in darkness, and he noticed the man's vehicle parked in the driveway. He entered the house from the back and when he opened the bedroom, he noticed the light was on and he confronted Mrs. Octave about the car in the driveway to which she replied that it was none of his business. He admitted that he pinned Mrs. Octave down on the bed and she then ran to their daughter's room and she called someone. He says he tried to get into the room, but the door was locked so he kicked it in. He however denied assaulting Mrs. Octave. I tend to believe Mr. Octave that he did not assault Mrs. Octave as he was very forthright with the information as to what transpired. It is very probable that the contusion recorded on the medical certificate produced by Mrs. Octave was as a result of Mr. Octave pinning Mrs. Octave down on the bed.

[66] While this Court will not condone any form of abuse or violence, big or small, I have taken into consideration that by all accounts and even from Mrs. Octave's response, Mr. Octave never hit her before. The events of the specific day must be taken into account. Mr. Octave clearly felt emasculated seeing the vehicle of this gentleman in his driveway. This would have happened after he found out about the accident Mrs. Octave had and had asked her about it and she had told him it was none of his business. She had not told him about the accident and it was clear that the relationship between them barely existed.

- [67] I have assessed the allegations against Mr. Octave individually but even taken cumulatively all the allegations do not meet the threshold. I therefore would dismiss Mrs. Octave's petition.
- [68] Turning to the allegations of behaviour alleged against Mrs. Octave by Mr. Octave, I find that while individually some of them may not rise to the standard of behaviour required, cumulatively they amount to behaviour which makes it such that Mr. Octave cannot reasonably be expected to live with Mrs. Octave.
- [69] The cumulative effect of the following behaviours suggests that this is what led to the breakdown of the marriage on a balance of probabilities: (a) the statement by Mrs. Octave that she never loved Mr. Octave but married him to prove a point albeit Mrs. Octave said it was untrue and she apologized; (b) leaving the bedroom to have private conversations; (c) admitting to being in a vehicle with a man and that same vehicle turning up in the driveway at the matrimonial home after Mrs. Octave says she had had an accident which she did not inform Mr. Octave about. The result is that it is Mrs. Octave who has behaved in such a way that Mr. Octave cannot reasonably be expected to live with her.

Order

- [70] In all the circumstances of this case and having assessed the facts, I make the following order:
- (1) That the petition filed on 27th September 2021 is dismissed.
 - (2) This Court holds that the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with the Petitioner;
 - (3) That the marriage solemnized on the 21st day of June, 2008 at the Gros Islet Roman Catholic, Gros Islet in the State of Saint Lucia between the Petitioner and the Respondent has broken down irretrievably.
 - (4) The Court decrees that the said marriage be dissolved unless sufficient cause be shown to the Court within three (3) months from the making of this Decree why such Decree should not be made absolute.
 - (5) Each party shall bear his/her own costs.

(6) That Court declares that it is satisfied that for the purposes of section 41 of the **Divorce Act** Cap. 4.03, there is one child of the family to whom the said section applies, namely **RUDELL KACHINA OCTAVE** born on 2nd July, 2002 and who is pursuing tertiary education.

(7) In the interim, the respondent shall pay maintenance in the sum of \$500.00 monthly commencing 1st June 2022 and continuing on the first working day of every month until the determination of all ancillary relief matters or until further order of the Court.

(8) Ancillary relief matters are adjourned to Chambers upon application by either party.

[72] In cases like these, unfortunately the Court is forced to decide which party's behaviour rises to the level of unreasonable behavior such that the other party cannot reasonably be expected to live with the other, which is an unenviable task. There are a few cases where it is necessary to defend a petition to ensure that proper justice and balance is achieved. I am not of the view that this was such a case. It is my hope that despite the contested first stage of the proceedings, that the parties in this matter can put aside the emotions and seek to address their minds to the ancillary relief matters and resolve these amicably without the need for a contested trial. Divorce is already emotionally taxing on a husband and a wife even if they may not easily admit. I therefore urge the parties to spare no effort to bring amicable resolution to the next stage of the proceedings through discussion or mediation.

Kimberly Cenac-Phulgence
High Court Judge

By The Court

Registrar