

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHMT2015/0028

BETWEEN:

AVANDALE CARRIERE

Petitioner

and

FLORIAN JULIENNE CARRIERE

Respondent

Appearances:

Mr. William Riviere for the Petitioner

Mrs. Dawn Yearwood Stewart for the Respondent

2015: June 26
July 24

RULING:

- [1] **Stephenson, J.:** The parties were lawfully married on the 14th December 1991 at the New Testament Church of God, Tortola. After twenty four years of marriage the petitioner on 27th April 2015 filed for divorce on the stated grounds that the respondent has behaved in such a way that petitioner cannot reasonably be expected to continue to live with the respondent.
- [2] The petition as filed by the petitioner did not contain any particulars of the unreasonable behaviour, however at paragraph 11 of the Petition it was averred that the facts concerning the behaviour of the respondent are contained in the affidavit sworn by the petitioner which accompanies the petition.

- [3] On the said 27th day of April 2015 the petitioner filed an affidavit containing twenty two paragraphs setting out the facts upon which he is seeking to rely on to prove the respondent's unreasonable behaviour.
- [4] The Petition, Affidavit and the other usual accompanying documents¹ were duly served on the respondent and on the 20th day of May 2015 the respondent through her solicitors filed and acknowledgment of service of petition. In the acknowledgment the respondent indicated that it is her intention to defend the case.
- [5] On 22nd May 2015 the respondent filed a notice of application with accompanying affidavit for an order that the petition be struck out for reason of fact that it did not disclose any facts whatsoever to support the ground for a divorce, in that, the petitioner only stated that the marriage has broken down irretrievably but fails to give any particulars that he intends to rely on and it discloses no pleaded facts upon which the ground is based for a divorce.
- [6] The respondent is asking that the petition be struck out with costs.
- [7] On 18th April 2015 the petitioner filed an affidavit in response to the application. In his affidavit the petitioner is asking that the respondent's application be denied with costs to him. He averred that he has been advised by his counsel and that he verily believed the following:
- (1) That he stated in his petition that his wife has behaved in such a way that he cannot reasonably be expected to continue to live with her;
 - (2) That the petition did not go into all the things that she has done to cause the marriage to break down and cause him to want it to be dissolved;
 - (3) That the details of her behaviour are contained in his affidavit which has been sworn in support of his petitioner;
 - (4) That both the petition and affidavit has been served on the respondent;

¹ Solicitor's certificate as to Reconciliation, Statement of Arrangements for Children, a certified copy of the Marriage certificate, Notice of Proceedings and Acknowledgment of Service of Petition form.

- (5) That in the recent past the High Court did not require a petitioner to file an affidavit in support of a petition. That what was required that the details of why the marriage broke down should be written in the petition;
- (6) That now the petitioner is required to file a petition and an affidavit in support of petition and that he has filed both.
- (7) That the court will look at both the petition and affidavit together and not separate and distinct.
- (8) That he has been told by his lawyer and verily believes that it is not correct to state that the petition does not set out the facts upon which it intends to rely.
- (9) That the facts upon which he intends to rely on to get his marriage resolved have been properly put before the court.

[8] The applicant filed submissions on the 24th June 2015 in support of her application. On 26th June 2015 the application was heard and Learned Counsel Mrs. Yearwood Stewart amplified her submissions with brief oral arguments and Mr. Riviere made oral submissions in response and I reserved. This is my ruling on the application.

Mrs. Dawn Yearwood Stewart's submissions

[9] Learned Counsel Mrs. Yearwood Stewart submitted that to set out the facts upon which the petitioner is seeking to rely on in the affidavit in support of petition is the wrong approach and the petition in the circumstances ought to be struck out with costs.

[10] That the affidavit in support of the petition which has been filed has been filed pursuant to Rule 33(3) of the matrimonial causes Rules of 1977 which is an affidavit by the petitioner indicating that he has read the petition and that the contents therein are true and correct. It is an Affidavit verifying the Petition.

- [11] That in the case at bar the petitioner has sought to place the facts upon which he intends to rely on in his affidavit and not in his petition. That the said affidavit is a sworn statement confirming what was said in the petition and that they are true. Learned counsel made reference to and relied on the learning in **Rayden and Jackson on Divorce Matters**² which states;

“Irretrievable breakdown may be proved by satisfying the court that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.”

- [12] Learned counsel also submitted that the petition cannot stand and should be struck out as it only stated the ground and no facts were adduced which is against the law and she made reference to the General form of Petition³ which states

“The petitioner will rely on the matters hereinafter alleged (state with sufficient particularity the facts which are relied on but not the evidence by which they are to be proved”

Mr. Riviere’s submission

- [13] Learned Counsel Mr. Riviere submitted that the petition referred to and filed is a general petition. That the affidavit as filed does not violate the requirement of Rule 36 of the 1977 Matrimonial Causes Rules.
- [14] That the evidence upon which the petitioner is relying on is contained in the affidavit which has been duly filed and served.
- [15] That in the alternative it is a matter of procedure and not substantive law which the court can settle by directing that the petitioner cures the defect by filing an amended petition.

Court’s considerations and decision

- [16] There are two issues before the court in the case at bar. Firstly whether the petition should be struck out for failing to state the facts upon which the petition is seeking to have the

² Volume 1 16th Edition Buttersworth, London, 1991 page 213 at Paragraph 13.17 Section 1(2)(b) of the Matrimonial Causes Act 1973.

³ Ibid page 1720 -1722 paragraph 13 on page 1722

marriage dissolved and in so doing deciding that it is not acceptable or correct for the petitioner to state the particulars she wishes to rely on in the affidavit in support of the petition. Secondly, in the alternative whether leave should be granted to the petitioner to amend her petition to include the particulars of behaviour not pleaded in the petition but stated in the affidavit.

- [17] The Petition and affidavit form part of the pleadings in matrimonial causes. Pleadings have an important part to play in all proceedings before the court. They should set out with sufficient particularity the facts being relied on by the parties but not the evidence by which they are proved. The purpose of this basic rule of pleading is that the opposing party should not be taken by surprise and that they would know what case they have to meet.

- [18] Section 11 (1) of the Eastern Caribbean Supreme Court (Dominica) Act⁴ states

“The jurisdiction vested in the High Court in ... matrimonial causes, shall be exercised in accordance with the provisions of this Act, of any other law in operation in the State and of the rules of court; and where no special provision is therein contained such jurisdiction shall be exercised as nearly in conformity with the law and practice administered on 1st June 1984 in the High Court of Justice in England.”

- [19] Divorce proceedings in Dominica are therefore governed by the provisions of the Matrimonial Causes Rules UK (1977). (MCR). The content of a petition is particularized by Section 9 of the MCR which provides

“Contents of petition

(9) Unless otherwise directed, every petition shall contain the information required by Appendix 2 of these Rules.”

Appendix 2 of the Rules states at paragraph 1 (l) and (m) state that ...

“Every petition shall state ...

(l) In the case of a petition for divorce, that the marriage has broken down irretrievably;

(m) “ the fact alleged by the petitioner ... the ground on which relief is sought, together in any case with brief particulars of the individual facts relied on but not evidence by which they are to be proved;”

⁴ Chapter 4:02 of the laws of Dominica

- [20] The purpose of an affidavit which is sworn in support of a petition is to verify the case as stated in the petition. The affidavit in support of the petition is usually filed pursuant to rule 33(3) of the MCR and in fact affirms the contents of the petition. The affidavit basically states that the petitioner has read his or her petition including the reason for applying for the divorce; it states whether the petitioner wishes to alter or add any statement in the petition or the particulars and whether those additions are true and such issues as affect that which is stated in the petition. I agree with learned counsel Mrs. Yearwood Stewart when she says that the affidavit is an affidavit verifying the petition.
- [21] The affidavit is therefore not the source of the particulars of the reasons why the marriage is to be considered as broken down. In fact a strict reading and compliance with the MCR section 33 this affidavit only needs be filed at the time of request for directions. I therefore disagree with the submissions of Mr. Riviere who invited this court to find that the fact of the unreasonable behaviour is properly found in the affidavit in support of the petition.
- [22] It is noted that it has become the practice to file ones affidavit along with the petition which I am of the view does not interfere with the process at all. However the affidavit is not the document that informs the respondent of the case he or she has to meet. Indeed it is the petition that has to do so. The petitioner is obliged to state with particularity the grounds upon which he or she is relying on for the application that the marriage be dissolved.
- [23] Therefore, in the case at bar the petition does fall far short from stating the particulars of the grounds upon which the petitioner is seeking to have the marriage dissolved. It does not in fact comply with Rule 9 and Appendix 2 paragraphs (l) & (m) of MCR
- [24] This being said, should I order that the petition be dismissed as applied for the by the respondent or should I grant leave to the petitioner to file an amended petition as submitted by Learned Counsel Mr. Riviere.
- [25] **Rayden on Divorce Matters**⁵ has this to say on the issue

⁵ Op cit page 387 para 23 "Contents of Petition"

"The content of a petition is particularized by Matrimonial Causes Rule and Appendix 2. Reference must be made to Appendix 2 when settling a petition and this paragraph deals only with matters which may not be readily apparent therefrom and additional matters which are not there set out but which in certain circumstances, must appear in a petition by reason of other requirements of the rules. The court has power to allow a petition to stand notwithstanding a deficiency there in as to any information by required by Appendix 2, as Rule 9 required such information to be contained in a petition or otherwise directed" (emphasis mine)

[26] I would in the circumstances not dismiss the petition but grant the petitioner leave to file an amended petition to bring the said petition into compliance with the MCR.

[27] I am constrained at this time to grant costs to the Respondent as it is due to the petitioner's error that the application had to be made. I would award costs in the sum of \$300.00.

[28] I would therefore order as follows:

ORDER

[29] Leave granted to the petitioner to file an amended Petition within 14 days hereof.

[30] Matter to take its normal course thereafter.

[31] Costs to the Respondent in the sum of \$300.00

M E Birnie Stephenson
High Court Judge

IN THE EASTERN CARIBBEAN SUPREME COURT

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BETWEEN:

AVANDALE CARRIERE

Petitioner

and

FLORIAN JULIENNE CARRIERE

Respondent

BEFORE: Justice M E Birnie Stephenson

Dated the 24th day of June 2015

Entered the day of June 2015

APPEARANCES:

Mr William Riviere for the Petitioner

Mrs Dawn Yearwood Stewart for the Respondent

UPON READING the Notice of Application and Affidavit in Support to and filed on the 22 May 2015

AND UPON HEARING Mrs. Dawn Yearwood Stewart of Dawn Yearwood Chambers, counsel for the applicant and Mr. William Riviere of William E Riviere Chambers, counsel for the respondent

AND UPON THE COURT ruling on the written and oral submissions of Counsel Mrs Yearwood Stewart for the applicant and on the oral submissions of Mr. William Riviere

IT IS HEREBY ORDERED that

- 1) Leave granted to the petitioner to file an amended petition within 14 days hereof.
- 2) Matter to take its normal course thereafter.
- 3) Costs to the respondent in the sum of \$300.00

BY ORDER OF COURT

REGISTRAR