

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHMT 2010/0120

BETWEEN:

DENIS MAURICETTE

Petitioner/Respondent

and

EUNICE BRENDA MAURICETTE

Respondent/Applicant

Appearances:

Ms. Veronica Barnard for the Applicant

Ms. Kim St. Rose for the Respondent

2011: May 17th
May 31st

DECISION

- [1] **Belle, J:** On 6th August 2010 the Petitioner filed a divorce petition claiming that the marriage between himself and the respondent celebrated on 10th August 1985 had broken down irretrievably and that the Respondent/Applicant had behaved in such a way that the Petitioner finds he cannot reasonably be expected to live with the Respondent/Applicant..
- [2] On 17th September 2010 the Applicant/Respondent filed an Acknowledgment of Service, stating that she intended to defend the Petition and further that she would contest every issue arising in the Petition.
- [3] The Petitioner followed up his Divorce Petition with an application for a restraining order to restrain the Respondent/Applicant from writing cheques on any accounts of Sanitary Upkeeps Limited. This application was heard and an order was given restraining the Respondent from writing cheques on the account of Sanitary Upkeeps

Limited and ordering the Petitioner/Respondent to this application to keep proper accounts of the said Sanitary Upkeeps Limited pending the determination of ancillary matters. This matter was eventually resolved by way of consent order on November 30th 2010.

- [4] On November 30th 2010 the Respondent/Petitioner requested Directions for Trial in the divorce proceedings and the Registrar confirmed on 24th December 2010 that the Petition was to be heard on 7th March 2011.
- [5] On 3rd February 2011 the Respondent/Applicant filed an application for leave to file an Answer and Cross-Petition for divorce. In her affidavit evidence the applicant stated that she was tardy in filing her Answer and Cross-Petition because she was not sure that the Petitioner would proceed with the trial. Secondly she stated that she was a devout catholic and wanted to first consult with her priest and finally she cited the illness of a number of family members which distracted her during the period September 2010 to January 2011.
- [6] Counsel for the Applicant argued that it was a matter for the court's discretion since she could not proceed to file the Answer and Cross-Petition without the Court's leave pursuant to section 17 of the Divorce Rules. She argued that the Answer and Cross-Petition would not prevent the Petitioner from obtaining his divorce.
- [7] Counsel for the Petitioner argued that the Applicant had shown no substantial reason for the delay in filing the Answer and Cross-Petition. She had acknowledged service of the Petition by stating that she would contest every issue. She had ample time to consult her priest on the issue of divorce and she could not show that she had any functions in relation to the illnesses of family members which prevented her from filing the necessary pleadings.
- [8] Counsel also argued that the Applicant was at all times represented by experienced and competent counsel. The trial of the matter had already been adjourned once and should not be adjourned again. The applicant was 7 months late with her Answer and Cross-Petition.

- [9] I am of the view that the Applicant has failed to satisfy the court that there was any good reason for her failure to file the required Answer and Cross-Petition in time. She was not ill herself although family members were. She had ample time to consult her priest. The Applicant was also aware of the position taken by her husband in the Divorce Petition and in the business matters. She could not demonstrate that anything had been said or done leading to the presumption that there would be a reconciliation. This was so, even though the Petitioner relied on her to access medical insurance during his illness in January 2011.
- [10] The Petitioner/ Respondent in his affidavit of April 12th 2011 stated that he had left the matrimonial home since September 2009 in response to his wife's application to the family court for a Protection and Occupation Order. Since this time he thought he had been treated unfairly by his wife who wanted him out of the matrimonial home and thereafter she never gave any indication that she had any interest in reconciliation.
- [11] My view of Section 17 of the Divorce Rules and, in the absence of any authority being cited, is that a court would be moved to permit the late filing of an Answer and Cross-Petition due to innocent inadvertence causing a filing date to be missed, not being properly advised, not been properly served with the Petition or something of that nature. None of those kinds of clear-cut circumstances arise in this case. The motive here could simply be to have an opportunity to vent and or frustrate the Petitioner. Such motive would not be a good reason to grant leave to file pleadings at this stage probably causing another delay of the trial.
- [12] I am also of the view that since the result would probably be the same, i.e. the parties would be divorced whether or not the Respondent is permitted to file an Answer and Cross-Petition, I see no good and compelling reason to grant leave to the Applicant to file an Answer and Cross-Petition notwithstanding the Registrar has given directions for trial.
- [13] The Application is dismissed with costs awarded to the respondent.

Francis H V Belle
High Court Judge