

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(DIVORCE)

CLAIM NO. BVIHMT2012/0061

BETWEEN:

MOHAN BUDHAN

Petitioner

and

DHANWANTIE BHAGOO-BUDHAN

Respondent

Appearances:

Ms. Mishka Jacobs of McW. Todman for the Petitioner
Ms. Nelicia St. Jean of Orion law for the Respondent

2013: July 15th

JUDGMENT

- [1] **ELLIS J.:** By Petition of Divorce filed on the 8th November, 2012 and Amended on 2nd January, 2013, the Petitioner petitioned the Court for a decree dissolving the marriage solemnized on the 26th May, 2003, at the Church of the Nazarene No. 19 Berbice, Guyana between the Petitioner and the Respondent.
- [2] The Petition is made on the ground that the marriage has broken down irretrievably and that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The Particulars of behavior alleged that:

- i. The Respondent and the Petitioner disagree on most decisions affecting their marriage, this results in frequent arguments between them;
- ii. When the parties get in an argument, the Respondent would get in a rage and grab at anything in an attempt to hit the Petitioner. There are many times when the Petitioner would sleep in his vehicle in order to avoid a physical fight with the Respondent
- iii. The parties would make up but shortly thereafter the same behavior continues
- iv. The Respondent would consult with her friends and others before making any decision that affects the marriage; this the Petitioner finds to be humiliating
- v. The Respondent frequently curses the Petitioner and she would use indecent language at him, this behavior the Petitioner considers very insulting;
- vi. The Respondent belittles the Petitioner by telling him that she is the one who made him somebody; this is also very insulting and humiliating to the Petitioner;
- vii. The Respondent and Petitioner have not lived together as husband and wife since July 2012, that is, around that time although the parties live in the same apartment, they stopped sleeping in the same bed. The Respondent later stopped washing the Petitioner's clothing and taking out his food when she cooks, as she would have done previously. The Petitioner has moved out of the matrimonial home in October 2012 and has not resumed cohabitation since then. Further, the parties have agreed that they should get a divorce;
- viii. The Petitioner cannot continue living like this as the Respondent's behavior is humiliating, embarrassing and causing him to be stressed."

[3] The Respondent filed an Answer to the Petition on 5th December 2012 and an Amended Answer to the Amended Petition on 8th January 2013 in which she denies that the marriage has broken down irretrievably. She avers that the Petitioner informed her that he is seeking a divorce because he wishes to adopt his niece and he believes that it is necessary for him to move out of the matrimonial home and seek new accommodations to facilitate this.

[4] She alleges that the Petitioner then moved out of the matrimonial home a few weeks later. To the Respondent's knowledge the aforementioned niece resides in Guyana with her mother and in any event, for the foreseeable future would only be able to visit the Petitioner in the Territory, which she does not oppose.

[5] Further, the Respondent, not being satisfied with the reason given by the Petitioner for wanting a divorce and moving out of the matrimonial home, approached the Petitioner time and again seeking an adequate explanation as to the real reason that he wishes to get divorced. She claims that as far as she is aware, they have no major issues within their marriage warranting such a course of action.

- [6] The Respondent also denies that she has behaved in the manner alleged by the Petitioner or any manner whatsoever such that the Petitioner cannot reasonably be expected to live with her. She denies that she ever disrespected, belittled, insulted, humiliated or otherwise caused any distressed and/or embarrassment to the Petitioner as alleged.
- [7] Contrary to what has been stated in the Amended Petition, the Respondent avers that the Parties have lived peaceably as man and wife up until October 2012 when the Petitioner left the matrimonial home under the circumstances as stated in paragraph 2 herein. Additionally, to the best of the Respondent's knowledge they had no major problems in their relationship and the Respondent cannot recall the last time they had a serious argument.
- [8] The Respondent denied each and every allegation set out in the Amended Petition and stated as follows:
- (a) On the occasion (s) when the parties do get into an argument, it is usually at times when the Petitioner returns home highly intoxicated as a result of which he would become verbally abusive to the Respondent, using expletives and shouting towards the Respondent. The Respondent denies that she ever attempted or hit the Petitioner on any occasion whatsoever.
 - (b) Further, contrary to what the Petitioner avers, on the occasion (s) when the parties did not sleep in the same bed, it would often be the Respondent who would leave the bedroom and sleep on the couch. She stated further that the parties did sleep in the same bed up until October 2012, when the Petitioner moved out.
 - (c) She would always prepare the Petitioner's meals, including dinner. However, the Petitioner would often return home late at nights, 10-11pm, when the Respondent would have already retired to bed for the night. Additionally the Respondent did not stop washing the Petitioner's clothing. The Petitioner himself would often remove his clothing from the laundry basket and do his own laundry, before the usual time when the Respondent would often do laundry.
 - (d) Lastly, the Respondent at no time whatsoever agreed with the Petitioner that they should get a divorce.
- [9] The Petitioner filed a Reply to the Respondent's Answer on the 11th February, 2013. At paragraph 4 of his Reply he states that he discussed with the Respondent that he would like them to adopt his niece, whose mother suffered a heart attack and was unable to properly care for the child. The Respondent was not open to discuss the matter and indicated that she did not wish to be a part of the adoption. The Petitioner stated that he felt very hurt by the respondents reaction to this very important issue and that this caused a strain in the marriage
- [10] Further at paragraph 5, the Petitioner stated that, they disagree on most issues affecting their marriage. By way of example, he stated that he discussed with the Respondent that he would like to construct a home in their native country, Guyana. However, the Respondent

disagreed on this issue as she insists that they migrate to Canada. Neither the Respondent nor the Petitioner has a Canadian Visa or other documents required to live and work in Canada. The Petitioner therefore does not see migrating to Canada as a viable option for them. Nevertheless, the Respondent insists on migrating there. This caused a strain in the marriage and the Petitioner feels that the Respondent does not want to live with him, but wants to move to be with her relatives who reside there. He further stated that prior to filing the Petition they had discussed and agreed that they would seek a divorce.

ISSUE

- [11] The sole issue for determination is whether the pleadings and the evidence presented sustain a finding that the marriage has broken down irretrievably as a result of the behavior of the Respondent such that it would be unreasonable to expect the Petitioner to continue to live with her.

LAW

- [12] According to section 3 of the **Matrimonial Proceedings and Property Act, 1995** ("the Act") the sole ground on which a petition may be presented to the Court by the other party to the marriage shall be that the marriage has broken down irretrievably. In proving this ground, section 4 of the Act provides that the Petitioner must satisfy the Court of one of more facts. One of the prescribed facts (which is relied upon by the Petition in the case at bar) is set out at section 4 (b) which provides that: "the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent."
- [13] Section 4 (2) of the Act, prescribes that on a petition for divorce it shall be the duty of the Court to inquire, so far as it is reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent. Further, section 4 (3) states that if the Court is satisfied on the evidence of a fact, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall grant a decree nisi of divorce.
- [14] The appropriate test to determine whether the Petitioner has established this fact is as adumbrated in the case of **Livingstone-Stallard v Livingstone- Stallard**¹ which has since been followed and applied in **O'Neill v O'Neill**², **Thurlow v Thurlow**³ and **Bergin v Bergin**⁴.
- [15] In **Livingstone-Stallard v Livingstone-Stallard** on the presentation of a Petition of Divorce by the wife, the Court held that the question whether the husband had behaved in such a way that the wife could not reasonably be expected to live with him was a question of fact the correct approach to which was to ask whether any right- thinking person would come to the conclusion

¹ (1974) 1 Fam LR 47; [1974] 3 W.L.R. 302

² [1975] 1 W.L.R. 1118

³ [1976] 3 W.L.R. 161

⁴ [1983] 1 W.L.R. 279

that the husband had so behaved taking into account the whole of the circumstances and the characters and personalities of the parties and that, on the evidence, any right-thinking person would conclude that the husband had behaved in such a way that the wife could not reasonably be expected to live with him.

- [16] The Court accepts that this correctly states the law to be applied. The words reasonably be expected 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. The Court must therefore consider *this* petitioner and *this* respondent in assessing what is reasonable. Having regard to all the circumstances of this case it must consider whether this particular Petitioner can or cannot be expected to live with this particular Respondent.
- [17] The English Court of Appeal in **O'Neill v O'Neill** affirmed this approach and also stressed that no other extraneous concepts should be imported into the test, such as that the behaviour should be 'grave and weighty'. The appropriate approach, therefore, is primarily concerned with assessing any conduct which is not utterly trivial and in looking at that conduct objectively, in the light of its effects on this Petitioner.
- [18] The Court also accepts that it is unrealistic to take each individual act in isolation; rather the whole context involved and their knowledge of each other, cause and effect must be examined bearing in mind the personalities of the parties.
- [19] Ultimately, the burden is on the Petitioner to prove that the marriage has broken down irretrievably by advancing cogent evidence which proves the fact or facts upon which he relies. He must do so to requisite degree or standard of proof – on a balance of probabilities. Because of the polarized positions taken by both parties in this case, it is clear that much of this case will depend on the credibility of the Parties who were the only witnesses in this trial and who gave viva voce evidence.

THE PARTIES' EVIDENCE

- [20] During the course of the trial the Petitioner gave evidence of the actions and behaviour of the Respondent which he alleged made it intolerable for him to continue to cohabit with her. The behaviour upon which he relies includes (1) constant arguments and disagreements (2) violent behaviour (3) belittling and insulting behaviour (4) inability to agree on marital decisions (5) discontinuing marital duties and withdrawal of cohabitation.

Constant Arguments and Disagreements

- [21] Under examination in chief the Petitioner testified that he and his wife have had issues from the beginning of the marriage even before she came to live in the BVI in 2004. He stated that their quarrels were so frequent/constant that he cannot remember how regularly this occurred or indeed

the last time that they had an argument. He later clarified in cross examination that they last argument they had would have been in June or July or August of 2012.

- [22] He did however testify that they would be sufficiently loud that he would be embarrassed to appear before his neighbours the following morning. After arguing he stated that she would ignore him and would take about a week or so before she would speak to him. she would refuse to accept a ride with him to work the following morning such that his neighbours would see her walking while he drives alongside her trying to make her come into the vehicle. He stated that this makes him embarrassed and tried and stressed.
- [23] He stated that he is tired of the constant nagging and quarrelling as it prevents him from properly relaxing at home. He testified that the arguments usually happen at night and that several times he has elected to sleep in his car to avoid the conflict. He stated that he gets headaches which make work the following day difficult.
- [24] The Respondent wholly denies all of these contentions. She testified that since 2003 she and her husband have had a loving and peaceful marriage. Although she concedes that they would have had arguments she stated that these were seldom and inconsequential. She stated that they had a happy, unstrained marriage before he suddenly left the home in October 2012.
- [25] She stated that their few arguments were always initiated by the Petitioner. In cross examination that she testified she finds it difficult to discuss things with the Petitioner as he is not a person with whom one can sit and discuss things. Although she conceded that they were disagreements she denied that they led to arguments because she would always try to agree with him on anything he wanted.
- [26] She indicated that she was shocked by the Petitioner's allegation that he has ever had to sleep in his vehicle although she agreed that once or twice he may have slept on the couch in the apartment. She testified that more often than not, she is the one who has had to sleep on the couch following a disagreement. She stated that he would then beg her to return to the marital bed.

Violent Behaviour

- [27] The Petitioner testified that during the course of their arguments, the Respondent would threaten and come at him with her fist as if she wanted to engage in a physical altercation. He further stated that about two years ago she drew a knife on him which bore the bedroom door in the apartment. As a result, he stated that he felt unsafe and afraid so that he eventually moved out of the apartment 2 years later. He stated that he no longer felt comfortable in the home and that he cannot go on living like this.

- [28] In cross examination he stated that he did not move out of the home following that incident because he felt that it had only happened once, out of rage and passion and that at the time he did not wish to break up his marriage.
- [29] The Petitioner testified that if the Respondent had anything such as washing dishes in her hand during an argument, she would approach him with it. If she nothing in her hand, he testified that she would then approach him with her fist. However, when examined by the Court, he conceded that the Respondent has never struck him or flung any object at him.
- [30] Again, the Respondent categorically denies all of these allegations. He stated that she has no idea why the Petitioner would wish to lie to the Court. She denied that she ever threatened him with a knife or that any other instrument or with her fist. She denied that she ever threw any item at him, neither has she threatened to harm him in any way. Rather she testified that it was the Petitioner who has been guilty of violence against her. She stated that about three or four years ago he had a drinking problem which often resulted in him returning from work in an intoxicated state. He would then engage in arguments with her which did become physical but which never caused her injury. She would cry and try to move away or sometimes she stated that she would just "*take my licks and go outside and sit.*" She stated that this had occurred about three times over the course of their marriage and that each time she had forgiven him after he apologized.

Belittling and Insulting Behaviour

- [31] The Petitioner also contended that the Respondent would often use profane or indecent language during their arguments and even when they would have a normal conversation. He stated that he has asked her to stop using the language. He testified that he has noticed that she would not use that language in the presence of her family members and that he considered that to be an indication that she has more respect for them than she has for him.
- [32] The Petitioner also testified that the Respondent has during the marriage constantly reminded him that it was her family who had brought him to the BVI and had "*made him somebody*". He confirmed that when he came to the BVI in 2003, he was employed or sponsored by the Respondent's family but that he resented her constant reminders especially since he has never mentioned the fact the he was the one who brought her to the BVI in 2004.
- [33] He stated that she brings this up every time that they had a fight and that this would make him feel bad, like he is not man enough or less of a person and not worth anything.
- [34] He also stated that he feels belittled by the fact that the Respondent would always seem to consult and take advice from her family and friends rather than him. By way of one example he noted that she once wanted to open up another joint savings account at Development Bank. When he pointed out to her that they already had an account available which could be used for that purpose, she did

not respond to him until several days later when she agreed that she would use the said account. He stated that it was clear to him that she had taken the time to consult with someone else rather than simply adopting his position.

- [35] He also testified that she never sits down and discusses things with him. While he permits her to vent about her job, she never allows him to discuss his day at work.
- [36] In her oral testimony, the Respondent denied that she ever used indecent or profane language. She stated that it is the Petitioner who has cursed at her during the marriage. She stated that she has never used any "*bad words*" to him
- [37] She testified that although she has heard him say this before, she denied that she constantly reminded him of her family's role. She further denied that she ever consulted with her family and friends before taking advice from him. He testified that when a decision has to be made in the marriage, she would always "*give him back the answer right way*".

Inability to Agree on Marital Decisions

- [38] The Petitioner testified that they disagreed on most decisions affecting their marriage and that this resulted in frequent arguments between them. He gave a number of examples which included (1) the purchase of land in their homeland Guyana and their eventual return there; (2) the Respondent's wish to relocate to Canada; (3) the purchase of a 32" flat screen TV; (4) the move to a smaller apartment in order to reduce their expenses; (5) the adoption of his 14 year old niece in Guyana and (5) permitting his family to visit from Guyana.
- [39] In oral testimony during the trial the Respondent testified that her close family members, namely her mother, brother and sister all live in Canada. She stated that her father also lived there up until his recent death. Despite the fact that all of her immediate family appear to reside in Canada, the Respondent denied that she ever discussed relocating to Canada with the Petitioner. She stated that she did not wish to relocate there if it would mean that she would have to do so "*illegally*" and without the Petitioner.
- [40] The Respondent also testified that they have never discussed returning to Guyana to live in the future. She stated further that during their nine years of marriage they had never discussed where they would build a matrimonial home. This is largely because the Petitioner is difficult to talk to so that she would refrain from bringing up any issues which may cause problems. She stated however that she is not opposed to buying land in Guyana although they have never discussed it as a couple.
- [41] When examined by the Court however the Respondent testified that she did not wish to return to Guyana but that she had never expressed this to the Petitioner. She stated that she has told the

Respondent that they do not have the money to buy land. When he left on October she stated that his savings had increased to \$4000.00 and they had not discussed taking out a loan to purchase the land.

- [42] She stated that she felt that the Petitioner also does not wish to return to Guyana. She stated that *"all he keeps saying is to buy a piece of land there"*. This was somewhat confirmed by the Petitioner who when examined by the Court, the Petitioner stated that while he is not planning to relocate to Guyana in the near future but that in years to come this may well materialize. He stated that no one knows what may happen in the future and that they need to have a foundation somewhere. He stated as follows" *...she wants to migrate to Canada whether I am there or not. She doesn't want to go back to Guyana. So I feel that maybe some time in the future, even if we try to make back and she had the opportunity to go, she will go because her intention is not to go back to Guyana and live."*
- [43] With regard to the adoption of the Petitioner's niece, she testified that shortly before the Petitioner left the home he approached her about the possibility of adoption. She stated that the matter was not discussed; rather the Petitioner simply said that he wanted to adopt his niece. She stated that she did not express any view on the matter and that on the following day the Petitioner indicated to her that while he cared for her, he had to move out of the home because he had to adopt his niece. She stated that this came as quite a shock to her as she had never indicated that she wanted no part of this plan. She stated that the marriage can be saved and that she would have agreed to adopt the child.
- [44] She confirmed that although her family had visited them in the BVI, the Petitioner family has never visited. It was only when questioned by the Court that she admitted that there has always been some tension with his family who have never accepted her. She stated however that she has never threatened to move out if he brought them to the BVI.
- [45] She also stated that she never dismissed his plan to purchase the TV and she testified that he did in fact purchase the same.

Marital Duties and General Discord

- [46] She stated further that they had a peaceful and loving marriage for nine and one-half years. She testified that whilst they would sometimes have little arguments it was not on the scale averred to by the Petitioner. She stated that she generally lived happily with her husband and so sometimes to make her marriage work, she would refrain from any discussions which would lead to an argument.
- [47] This is entirely at variance with the Petitioner's evidence to the Court. He describes his marriage as an unhappy one with constant quarrelling. He testified that prior to moving out in October 2012, the

Respondent has stopped cooking for him and doing his laundry and that they has not been intimate since July, 2012. The Respondent denied that she ever stopped cooking for the Petitioner. She described herself as "a loving and dutiful wife" who did whatever the Petitioner like in order to make him happy and who supported him in everything. She further testified that they only ceased to live as man and wife when the Petitioner left the home in October 2012.

[48] The Petitioner stated that he generally feels used by the Respondent who just wants to live a luxurious life at his sole expense. He stated that despite living here for the past 10 years he had achieved nothing at all. He complained that the Respondent only works two days a week and she refuses to get a job for the other three days. Despite this he testified that she refuses to move into a cheaper apartment.

[49] He stated that this is not the way that a married couple should live and he repeatedly stated that he was tired of the marriage and stressed out because of it. He denied that he left the matrimonial home because he became involved in an extra marital relationship. He stated rather that he did so because he felt unsafe and uncomfortable. He stated that when he left he asked the Respondent for a divorce and she indicated that she would give it to him. He could not account for her obvious opposition to his petition.

[50] In response, the Respondent testified that during the marriage the Petitioner never expressed dissatisfaction with her as a wife and that the allegations in the petition have come as a shock to her. She posited that the reason that the Petitioner wants a divorce is because he is seeing someone outside of the marriage. She stated that although he has denied it, she has gotten confirmation from his friends.

[51] The Court has no doubt that the real reason for the breakdown was expressed by the Petitioner when he left the matrimonial home in October 2012 when he stated "*I told her I wanted to adopt my niece, we talk about it, you don't want to be part of it, there's future for us, so...*" He noted that she does not support his efforts to help his family.

[52] He explained to the Court that the reasons he wants the divorce is because he cannot live another ten years like this with the constant arguments and their different aspirations.

FINDNGS AND ANALYSIS

[53] The Parties in the case at bar presented widely differing evidence as regards the status of their marriage. The Court was left in no doubt that the Parties did not have the fairy tale marriage that the Respondent seemed to wish to convey. The Court did not find that Respondent's evidence reliable when she said that they have had a loving and peaceful marriage over the past nine and one-half years before the Petitioner's abrupt departure from the home. The Court finds on the Respondent's own evidence that at times this marriage was typified by domestic violence

instigated by the Petitioner who would have engaged in physical and verbal abuse. This however appears to have been largely forgiven by the Respondent who has admitted that the last incident occurred about three years ago when the Petitioner was able to control his drinking.

- [54] The Court finds that the evidence does not support a finding of uncontrolled rages and violence on the part of the Respondent. The conflicting evidence of the Petitioner demonstrated that in this regard he was not a witness of truth and the Court did not accept his evidence that the Respondent attacked him with a knife or otherwise threw objects at him during arguments. Even if his evidence as to the knife attack were accepted, it is clear that the incident would have in any event been forgiven and could not form the basis of a petition some two years later.
- [55] The Court does not accept that Petitioner (who would have engaged in domestic violence) would have been in fear of the Respondent or that this would have caused him to be uncomfortable enough to either sleep in his car or to leave the home. Further even if the Court accepts (which it does not) that the Respondent used indecent language to the Petitioner in the course of ordinary conversation, the Court finds that this given his past behaviour, he could reasonably have been expected to live with the Respondent in those circumstances.
- [56] With respect to the cessation of marital relations, both parties gave conflicting evidence as to the relevant date of the cessation. In this regard, the Court prefers the evidence of the Respondent. The Court finds that the Parties lived as husband and wife until the Petitioner left the home in October 2012. The Court therefore finds that it was the Petitioner who withdrew from the marital bed. In any event, it is clear that this could not, *without more*, be a crucial factor in considering whether in fact a marriage has broken down irretrievably.⁵
- [57] The Court also finds that the Petitioner's concerns regarding the preparation of his meals and laundry may well have had more to do with his own dissatisfaction with the marriage and his consequent emotional withdrawal. Having regard to the Parties' pleadings and their oral evidence, the Court finds that while the Respondent may have stopped dishing out the Petitioner's food (due to his late hours) she did not stop cooking for him. The Court also finds that he would preempt the Respondent by doing his own laundry.
- [58] The Court finds that like most marriages, the Parties would have engaged in disagreements or quarrels. The Court however finds that such discord would not have been degree advanced by the Petitioner who was unable to provide convincing proof the actual frequency and the intensity of the arguments. Judicial authorities have made it abundantly clear that some level of discord is to be expected between marriage partners and that this in and of itself would not be sufficiently grave to warrant the dissolution of the marriage. Again the Court finds that the Petitioner's own behaviour during the marriage is culpable in that regard. The quarrels between the Parties would

⁵ Pheasant v Pheasant [1972] 1 All ER 587

clearly not have been one sided and the Court accepts the evidence of the Respondent that they would have resulted from the fact that the Parties are unable to effectively communicate with each other.

- [59] The Court also accepts the Respondent's evidence that the Petitioner's dictatorial approach made it difficult to have any meaningful discussion on the issues of contention. The Petitioner's general demeanour and evidence to the Court demonstrated that issues would not be broached with a view to engaging in a genuine discussion but rather presented as a *fait accompli*, such that any expressed dissent would be deemed to be offensive. There is clearly an element of his personality which makes it unacceptable for the Respondent to not immediately agree with him, to take advice outside of the marriage or to demur from his point of view.
- [60] Despite the docile and submissive impression which the Respondent sought to convey in her oral evidence, the Court has no doubt that there were times when she would have expressed her reservations or dissent to the Petitioner and that this would have caused discord in the marriage.
- [61] I do not accept the Respondent's evidence that the Parties did not discuss the purchase of property in Guyana; their eventual return to Guyana, her wish to relocate to Canada; the Petitioner's wish to move to cheaper accommodation and his wish assist his family and to adopt his niece. The Respondent's own evidence discloses that these issues did come up and that they would have caused discord between them.
- [62] When she was pressed in examination, it became clear that the Respondent's concerns regarding the purchase of property in Guyana was based on the practical issues of funding as well as the fact that she does not wish to return to live there. The Court also did not accept the Respondent's evidence that she has never expressed a wish to move to Canada. With her entire family resident there, the Court found it implausible that she would not have discussed this issue during the course of the marriage.
- [63] Clearly, both Parties appear to be ambivalent about their plans after the BVI. Neither of them appear to have any immediate plans to relocate and it seems to the Court that the Petitioner's concerns in that regard are largely abstract and hypothetical. However, the Court is not satisfied that their differing goals would constitute an act, conduct or an omission on the part of the Respondent such that it would be unreasonable to expect the Petitioner to live with him.
- [64] What seems to have been critical in the breakdown of the marriage is the Parties' attitudes to their family members. Given the Respondent's tenuous relationship with the Petitioner's family, (she also indicated that he does not really know the Petitioner's sister and the mother of his niece), the Court has no doubt that she would have expressed serious reservations about a possible visit to the BVI. Given the Petitioner's closeness with his family this would not doubt have caused him significant distress. It is apparent that his proposal to adopt his niece stems from a deep seated

need to assist his family back in Guyana. This is a significant aspiration for the Petitioner and it is clear that he would have wished to have had the wholehearted support of the Respondent.

[65] The Court finds that the Respondent would have been less than enthusiastic and that this would have somehow been conveyed to the Petitioner. The Court found her attempt to evade the questions posed on this issue to be disingenuous and self-serving. When examined by the Court she stated that "I told him to do what you have to do..." This response demonstrates that there was some sort of discussion in which the Respondent's obvious disinclination would have been conveyed to the Petitioner. This would not have resolved itself the following day when he admittedly explained to her that he could not in the circumstances continue to live with her and it has clearly not since resolved itself. The one point of common ground between the Parties is that they have not shared a residence since October, 2012 when this issue culminated and this indicates how the Respondent's reaction was viewed by the Petitioner.

CONCLUSION

[66] Both parties have acknowledged that they have not sought nor had the benefit of professional marriage counseling. There is no doubt from the evidence of both Parties that there has been discordancy in their relationship resulting from their general lack of agreement on a few issues and an inability to effectively communicate. In the Court's view this would not *per se* sustain a petition for dissolution of this marriage having regard to all the circumstances.

[67] However, in applying the test of **Livingstone-Stallard** the Court must consider *this* petitioner and *this* respondent in assessing what is reasonable, having regard to the history of the marriage. The Court must consider whether this particular Petitioner (taking into account his character, personality, disposition and behaviour, with his faults and other attributes good and bad)⁶ can or cannot be expected to live with this particular Respondent. Given the importance with which the Petitioner regards his family, it is not surprising that he would find it intolerable to continue with the marriage in the wake of the Respondent's reaction to his family and his need to assist them.

[68] Conversely, the Court accepts the Petitioner's evidence that he also found it intolerable to be constantly reminded of the assistance which the Respondent's family would have rendered to him. The Court believes his evidence that this has been a real issue in the marriage which would have added to the breakdown. The Court accepts that the Petitioner has been unhappy in the marriage for some time and he has expressed the view that they have no future together. This is borne out in the fact that the Parties have lived apart for over eight months as at trial date with no attempt at reconciliation.

⁶ Ash v Ash [1972] 1 All ER 582

[31] Applying the test to the facts of this case, the Court therefore finds that a decree nisi of divorce should be granted to the Petitioner.

[32] It is therefore ordered as follows:

- i. The said marriage be dissolved unless sufficient cause be shown to the Court within 2 months from the making of this decree why such decree should not be made absolute.
- ii. Ancillary matters are adjourned to Chambers to a date to be fixed by the Registrar on application by either party.
- iii. No order as to costs.

.....
Vicki Ann Ellis
High Court Judge