

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

COMMONWEALTH OF DOMINICA

DOMHCVAP2015/0013

BETWEEN:

DERWIN MELROSE PELTIER

Appellant

and

JACINTA PELTIER nee JNO. LEWIS

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Paul Webster, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

On written submissions:

No submissions filed by the Appellant
Ms. Heather F. Felix-Evans for the Respondent

2016: January 13.

Interlocutory appeal – Divorce petition – Unconditional leave to defend action – Whether an order of a judge giving unconditional leave to defend an action is appealable – Sections 11 and 30(2) of the Eastern Caribbean Supreme Court (Dominica) Act

JUDGMENT

[1] **PEREIRA CJ:** An interlocutory appeal was filed herein following the grant of leave on 29th June 2015. The appellant seeks to appeal against the order of the judge below made on 27th March 2015 in which she granted leave to the respondent to file an answer to the appellant's petition for divorce – in effect to defend the action. The appellant seeks to contend that the learned judge erred in so ordering.

- [2] By order dated 20th November 2015, I directed the parties to file and serve written submissions on the question: 'Whether an appeal may lie from the order of a judge giving unconditional leave to defend an action' having regard to sections 11 and 30(2) of the **Eastern Caribbean Supreme Court (Dominica) Act**¹ ("the Supreme Court Act") by 7th December 2015. No submissions have been filed by the appellant in compliance with the Court's direction. The respondent filed submissions as directed on 3rd December 2015.
- [3] Section 11 of the **Supreme Court Act** confers jurisdiction on the court to hear matrimonial causes.
- [4] Section 30(2) of the **Supreme Court Act** states in effect that no appeal shall lie to the Court of Appeal from an order of a judge giving unconditional leave to defend an action.
- [5] The respondent accordingly says that the answer to the question posed by the Court is that the order of the judge of 27th March 2015 in which she gave to the respondent unconditional leave to defend the petition by the filing of an answer is not appealable to the Court of Appeal by virtue of the clear provision contained in section 30(2) of the **Supreme Court Act**.
- [6] I agree that this is a correct reading of section 30(2) of the **Supreme Court Act**. The order granting unconditional leave to defend the action (in this case the petition) is expressly made unappealable by this provision which is not one open to any discretion in its application. It states: 'No appeal shall lie...'

¹ Cap. 4.02, Revised Laws of Dominica 1991.

[7] Accordingly the appeal must be considered as improper and I would order that it be struck out with costs in the sum of \$1,000 to the respondent.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Louise Esther Blenman
Justice of Appeal

I concur.

Paul Webster, QC
Justice of Appeal [Ag.]