

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE NO. MNIHMT 2017/0003

BETWEEN

KENNETH ERWIN SCOTLAND

Petitioner

and

MEZLENA ROSA SCOTLAND nee GREENAWAY

Respondent

Appearances

Ms Chivone Gerald for the Petitioner.

Mr David Brandt for the Respondent.

2017: December 6

December 8

JUDGMENT

- 1 **Morley J:** The Petitioner (Kenneth) who is 56 has filed on 03.02.17 for divorce from the Respondent (Mezlana) who is 62¹. They married on Montserrat on 24.07.85. They have two children: Ken born in 1989, and Kendrea born in 1991, both now adults. Since 1996, Kenneth and Mezlana have lived apart, he on Montserrat and she in New York. She wants to remain his wife.
- 2 There was a trial on 06.12.17, where Kenneth appeared in person and Mezlana appeared on skype. I have to decide whether there has been an irreconcilable breakdown in the marriage.
- 3 There was a divorce petition filed by Kenneth in 1991, but it was not pursued.
- 4 Owing to volcanic activity, on 25.09.95 Mezlana and the children left for Antigua, and later for the US. There was agreement she should reside there, to begin with Mezlana's mother and sister, working as a nurse, raising the children, owing to the difficult conditions on Montserrat, including in the aftermath of Hurricane Luis of 1995, while Kenneth continued to live and work on the island, where from 2000 he was director of the Social Security Fund.
- 5 Kenneth visited the family in the US in May 2007, July 2009 and April 2014, and on other occasions, up to six times in total. Mezlana has been back to Montserrat in 2003, 2006 and 2015. Kenneth has always supported his family financially. In the US, Kenneth was on Mezlana's health insurance, and she filed tax returns as a married person.
- 6 Kenneth says there have been no marital relations since the 1990s, and that when visiting the US or Mezlana visiting Montserrat, he has slept on a couch or in a separate bedroom. Mezlana disagrees and says marital relations have always occurred when together. To decide this case, I do not need to make a finding as to who is right, and will look instead at the realities of the parties' separate lives. In particular, Mezlana has said that Kenneth has always openly had relations with other women while she has been in the US, her naming four women, as Cheryl, Rona, Regina, and Mathilda, the last name being a partner for several years, including the

¹ For the purposes of this judgment, the parties will be referred to as bracketed for ease of reading, and no disrespect is intended by not writing out on each mention full names and titles or the legalese as to whether the Petitioner or Respondent.

years 2006-9, when Mathilda lived with Kenneth, he looked after her son when apparently she went to jail, and he brought her son to Mezlena as part of his visit in 2009.

7 Mezlena says there is still hope for the marriage and that Kenneth did not choose her for his wife but God did. Moreover, through her counsel, the argument has been advanced that the parties had agreed to live separately, and in the end to retire together in the US. However, I find that while there might once have been such an agreement perhaps in passing conversation, it has long given way to the realities of the two living so separately for so long.

8 Under *s7 Matrimonial Proceedings Act 2012 cap 5.02* it says *inter alia*, *'breakdown of a marriage is established only if— (a) the spouses have lived separate and apart for at least one year immediately preceding the commencement of the divorce proceedings'* and *'either of them had the intention to live separate and apart from the other'*.

9 I am satisfied that breakdown of marriage has been established, as the parties have been at least one year living separate and apart, and that Kenneth has had the intention to do so. I am also satisfied from the length of separate living, the evidence and attitude of Kenneth, having open other relations, who has said he wants to move on with his life, and the clear disconnection there is between both, obvious in the court, including that there was no discussion by Kenneth with Mezlena that he wanted a divorce and instead he simply filed for one, that under s11 of the Act there is no possibility of reconciliation. It is not for Mezlena to deny Kenneth a divorce, much as she may wish to stop this process, and it may help her through this judgment to understand that dissolution of the marriage does not require her consent. To quote a great and long-serving judge of this jurisdiction, Redhead J, sadly *'one hand can't clap'*.

10 In the circumstances I have granted dissolution of the marriage on 06.12.17, to take effect on 06.01.18, promising written reasons, which these are.

11 However, I order each party to pay its own costs, and do not award costs against Mezlena, though the losing party, as the court expresses some sympathy with her that Kenneth never spoke with her directly about his seeking a divorce. If he had, with sensitivity, showing her due respect as the mother of his children and long-time spouse, which he agreed before me and

apologises that he should have done, so that she could have digested his request, the court is of the view that this may not have been a contested hearing.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

8 December 2017