

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(MATRIMONIAL)

DOMHMT2018/0031

BETWEEN:-

SIEAN ULYSSES

Petitioner

And

PERICSON WARREN ISIDORE

Respondent

Before: The Hon. Justice M E Birnie Stephenson

Appearances:

Mrs Dawn Yearwood Stewart for the Applicant

2018: July 10, 27 & 31

Ruling

- [1] STEPHENSON J.: This is an application brought by the applicant for leave to file a divorce petition within 3 years of marriage.
- [2] The parties herein were married little over a year ago on the 3rd June 2017. The application was accompanied by an affidavit in support also filed on the 11th April 2018. The application was duly served on the respondent who filed an affidavit in reply on the 20th April 2018.
- [3] The application first came up before the Court on the 9th May 2018 and certain directions were given by the court for the exchange of documents and the filing of further affidavits and the matter was fixed for hearing on the 10th July 2018.

- [4] The applicant filed a supplementary affidavit on the 3rd July 2018. When the matter was called Learned Counsel Mr Julian Prevost who initially appeared on behalf of the respondent appeared **and informed the Court that his client's instructions were the he was no longer interested in** contesting or participating in the application or the hearing of the application and Counsel accordingly sought and obtained the **court's leave to withdraw from the proceedings.**
- [5] **In light of Learned Counsel Mr Julian Prevost's** statement and application to the court this court thought it fit to therefore strike the affidavit filed on behalf of the respondent.
- [6] Learned Counsel Mrs Yearwood Stewart was ordered by the court to make brief written submissions in support of her application for the court to rule. The matter was thereafter adjourned for decision and I now rule.
- [7] This application is made pursuant to Rule 5 of the Matrimonial Causes Rules and Section 3 of the Matrimonial Causes Act 1973 which provides that
- "A judge of the court may, on an application made to him, allow the** presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of **the respondent; "**
- [8] In the case of Simpson –v- Simpson¹ Lord Justice Denning in examining section 2(1) The Matrimonial Causes Act, 1950, which is in identical terms as section 3 of the 1973 Matrimonial Causes Act held that the judge should exercise his discretion by looking at the affidavits filed in support of the application.
- [9] The court is to look at all the material that is before it. The court is also required to consider the possibility of reconciliation, which Lord Justice Denning referred to as "a most important consideration".²
- [10] The facts presented to the court should be taken at face value and the question to be asked is do those facts establish a case of exceptional hardship suffered by the wife or exceptional depravity on the part of the husband.

¹ [1954] 2 ALL E R 546

² Ibid at page 547

[11] Based on the facts presented in the case at bar it is clear that the applicant is seeking to establish a case of exceptional hardship suffered by her.

[12] The facts as stated which this court does not intend to disclose here save to say the problem that has arisen in the marriage has caused distress to the applicant causing her to fall physically ill by causing a rise in her blood pressure causing her to seek medical help. The distress has also caused the applicant serious psychiatric distress causing her to seek psychiatric counseling.

[13] It is clear that there is no hope of these parties reconciling.

[14] Having given due consideration to the facts as stated in affidavits sworn to by the applicant it is this **court's view that the** applicant has established to this court that the problems which has arisen between her and her husband has caused extreme hardship on her as evidenced by it causing her both physical and psychological distress. Further there is clearly no hope of reconciliation and in the circumstances this court will exercise its discretion and grant leave to the applicant to file her application for divorce within three years of the celebration of the marriage.

[15] There shall be no order as to costs.

[16] As a post script, it is noted that from the evidence presented to the court in the affidavits filed by the applicant it does seem clear to the court that there is the option available to the applicant to pursue an annulment order which course of action the applicant may well consider taking.

M E Birnie Stephenson
High Court Judge

(S E A L)

BY THE COURT

REGISTRAR