

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

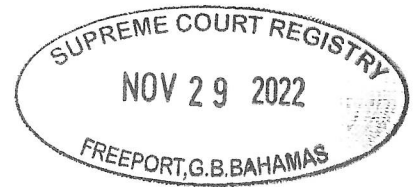
**2022/FAM/div/FP/00091**

**BETWEEN**

**SHANEKA KENDRA CLEDANOR nee RICHARDSON**  
**Petitioner**

**AND**

**JODE CLEDANOR**  
**Respondent**



BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Kendall Knowles for the Petitioner

Mrs. Cassietta McIntosh-Pelecanos for the Respondent

HEARING DATE: August 31, 2022

**RULING**

**Hanna-Adderley, J**

**Introduction**

1. This is an application by the Respondent herein for leave to file an Answer and Cross-Petition out of time. The Registrar's Certificate was filed on June 28, 2022. The application for leave was commenced by Summons filed July 1, 2022 and supported by the Affidavits of the Respondent filed August 29 and September 2, 2022. The Petitioner is opposing this application and relies on the Petition filed herein on May 24, 2022 and the Affidavit filed herein on August 31, 2022.
2. The Respondent's evidence is that when he was served with the Petition he was appalled by its contents and filed a Memorandum of Appearance indicating his intention to defend the action. That he was unable to complete the requisite documents because he was attending to defending several other matters in Court pertaining to the Petitioner. He exhibited to his Affidavit a draft Answer

and Cross- Petition. In his Memorandum of Appearance filed on June 1, 2022 he indicated that he was served with the Petition and accompanying documents on June 1, 2022 and that he intended to defend the action.

3. The Petitioner's evidence is that the Court ought not to grant the leave sought because the Respondent had no interest in the Petition for divorce until she had presented the Department of Immigration with a letter not to renew his Spousal Certificate. That the divorce is scheduled to be heard on October 29, 2022, and that the application for leave is a stalling tactic, in order to prevent the Petitioner from producing a Decree Nisi to the Immigration authorities. That the allegations she has made against the Respondent are true. That he has threatened her life and that she wants to get the divorce behind her. That the matter concerning the altercations between them are being heard in a criminal trial against the Respondent in the Magistrate's Court. She exhibited an undated letter to the Department of Immigration and a complaint dated July 4, 2022, addressed to S & C Magistrate Charlton Smith.
4. The Respondent denied that he is attempting to stall the proceedings. That he has resided in the Bahamas for over 20 years. That his work permit was renewed every year until he got married. That the Petitioner in March of 2022 began making false accusations against him and wrote to the Immigration Department stating that she was not supporting his spousal permit, despite the fact that they were still together and acting as husband and wife in all respects. That the Petitioner's assertion that he is contesting the Petition as result of the letter to the Department of Immigration is without merit because the Petition was not filed until some 2 months after she had sent the letter to the Department of Immigration. That as he was in The Bahamas legally prior to the Petitioner's attempt to stop his Spousal Permit. That he was granted a work permit which expires on March 6, 2023. That his stay in The Bahamas is not dependent on the Petitioner. That his children from the marriage reside in Grand Bahama, he owns property within The Bahamas and he operates an electrical business. That

the Petitioner's attempt to have him deported failed and she was unaware that it did.

### **Submissions**

5. Mrs. Cassietta McIntosh-Pelecanos of Counsel for the Respondent submitted that the Respondent always indicated his intention to defend the Petition. The Respondent accepted that he was late in filing his Answer and Cross-Petition. He was dealing with other matters in other courts concerning the parties and was not able to finalize the divorce documents within the requisite time but as soon as the Respondent's Counsel was alerted that the Registrar's Certificate had been issued this application for leave was immediately filed. That there are a number of issues in the Petition that the Respondent wants to address particularly as relate to his children. That when one looks at paragraphs 2-6 of the Petitioner's Affidavit in response, it appears that the Petitioner believes that this application is a stalling tactic for immigration purposes. That the Respondent has no reason to rely on the Petitioner for any status in The Bahamas. She has taken this position in other matters. The Respondent was in The Bahamas prior to meeting her. He has obtained a valid Work Permit which is valid until March of 2023. A copy of the same was exhibited to the Respondent's Affidavit filed on September 2, 2022. The Respondent has been in The Bahamas for over 20 years. That the allegations contained in the Petition are untrue and he wants an opportunity to defend them.

That the Petitioner's application against the Respondent to bind him over to keep the peace before S & C Magistrate Smith had been defended by the Respondent and dismissed. That the Respondent was charged with Threats of Death against the Petitioner before Deputy Chief Magistrate Ferguson and that matter is ongoing.

6. Mr. Kendall Knowles of Counsel for the Petitioner submitted that the Petitioner maintains that the filing of the application is a stalling tactic, so as to prevent the Petitioner from being able to present a Decree Nisi to the immigration authorities.

## Issues

7. The Court must determine whether it should exercise its discretion and grant the Respondent leave to file an Answer and Cross-Petition out of time. In so determining the Court must consider (1) the reason for the delay, (2) the length of the delay, (3) the likelihood of the Respondent succeeding on his Answer and Cross-Petition, (4) whether the grant of leave will prejudice the Petitioner and (5) whether the application is an abuse of the process of the Court.

## Analysis and Conclusions

### The Law

8. Rule 20 (1) of the Matrimonial Causes Rules provides as follows:

**“(1) No pleading shall be filed out of time without leave after the registrar certificate has been granted under rule 30.”**

9. Rule 16 (1) of the Matrimonial Causes Rules provides as follows:

**“16. (1) A respondent, co-respondent or person named who has entered an appearance to a petition and who wishes to defend all or any charges made therein shall, within fourteen days after the expiration of the time limited for the entry of appearance, file an answer to the petition by sending it by pre-paid post to, or by leaving it at, the Registry:....”**

10. Rule 17 (1) of the Matrimonial Causes Rules provides as follows:

**“17. (1) Every answer or subsequent pleading containing more than a simple denial of the facts stated in the petition or answer, as the case may be, shall set out with sufficient particularity the facts relied upon but not the evidence by which they are to be proved, and, if the answer or subsequent pleading is filed by the husband or wife, it shall, in relation to those facts, contain the information required by subparagraphs (l) and (n) of rule 4(1) in the case of a petition, and shall be supported by an affidavit verifying the facts of which the deponent has personal knowledge and deposing as to belief in the truth of the other**

**facts. The affidavit shall be contained in the same document as the answer or subsequent pleading and shall follow at the foot or end thereof."**

### **Cross-Petition**

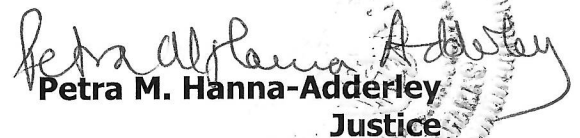
11. The Respondent was served with the divorce documents on June 1, 2022. He should have filed his Answer and Cross-Petition no later than June 23, 2022. The Application for Registrar's Certificate was filed on June 24, 2022 and issued and filed on June 28, 2022. The Notice of Hearing was filed on June 29, 2022. It was on July 1, 2022 that the Respondent's attorneys filed the Summons seeking leave to file an Answer and Cross-Petition out of time, some 8 days outside of the time within which the Answer and Cross-Petition ought to have been filed. The Summons seeking leave was filed some 3 days after the filing of the Registrar's Certificate. In my judgment the length of the delay in filing the Answer and Cross-Petition is not inordinate.
12. Although the reason given for not filing an Answer within the time prescribed by the Matrimonial Causes Rules is not the strongest of excuses the Respondent was just not standing idly by as time passed and being engaged in other proceedings in other Courts involving the parties is not so grossly inadequate an excuse to justify disallowing the Answer and Cross-Petition. The Respondent's draft Answer raises a defence to the allegations of cruelty made by the Petitioner in her Petition and are not a bare denials of the allegations. The draft Cross-Petition lays out allegations of mental and physical cruelty against the Petitioner. If proven the same are likely to meet the ingredients of the matrimonial offence of cruelty.
13. If the Court grants this application the Petitioner will suffer some prejudice in that the divorce proceedings will be delayed as a contested trial date must now be determined and the trial of this matter is unlikely to take place within this calendar year. She must now also incur additional legal costs in defending the Cross-Petition. However, the prejudice suffered by the Petitioner does not outweigh the prejudice that would be suffered by the Respondent should he not

be permitted to defend the matrimonial allegations contained in the Petition. The Petitioner can also be compensated in costs.

14. In summary, I find that the delay in filing the Answer and Cross-Petition is not unreasonably inordinate, that the excuse for the delay is not grossly inadequate, that if proven the Respondent is likely to convince the Court that the Petitioner's behaviour meets the ingredients of the matrimonial offence of cruelty, in short, the Answer and Cross-Petition disclose an arguable case on behalf of the Respondent, that the prejudice suffered by the delay in the proceedings can be cured by costs. That in all the circumstances of the case, I am not satisfied that the Respondent's application is an abuse of process. The Respondent is granted leave to file and serve an Answer and Cross-Petition within 7 days and the Petitioner has leave to file a Reply to Cross-Petition with 14 days of service of the Answer and Cross-Petition.

15. The Costs of and occasioned by this application are hereby awarded in favour of the Petitioner and is fixed in the sum of \$1,000.00, to be paid before the trial date.

Dated this 29 day of November A. D. 2022

  
**Petra M. Hanna-Adderley**  
**Justice**

