

SUPREME COURT OF SEYCHELLES

Not Reportable

[2019] SCSC 931

MA 278/2019

(Arising in DS121/2016)

In the ex parte matter of:

WILLIAM JEAN BRISTOL

(rep. by Guy Ferley)

Applicant

Neutral Citation: *Ex-Parte Bristol* (MA278/2019) [2019] SCSC (25 October 2019).

Before: E. Carolus J

Summary: Application for Leave to lodge Notice of Application for Conditional Order of Divorce to be made Absolute - Rule 31 (1) Matrimonial Causes Rules

Heard: 9 October 2019

Delivered: 25 October 2019

ORDER

Leave granted to file Notice of Application for Conditional Order of Divorce to be made Absolute.

ORDER ON MOTION

E. CAROLUS J

- [1] Pursuant to divorce proceedings before the Supreme Court initiated by the applicant against his wife Jennifer Anne Bristol, the Court granted a Conditional Order of Divorce to be made absolute six weeks from the date of the said Order, by judgment delivered on 10th February 2016.
- [2] The applicant has now filed a notice of motion supported by an Affidavit sworn to by his attorney praying for leave to file a Notice of Application for the Conditional Order of Divorce to be made absolute.

- [3] The reason for the application as set forth in the affidavit in support thereof, is essentially that the application for the Conditional Order of Divorce to be made absolute was not made within the prescribed period because of an omission on the part of the applicant's attorney.
- [4] Where a Conditional Order of Divorce has been granted, either of the parties may make an application to make the Conditional Order absolute. This, as well as the time at which such application may be made, is provided for by section 6 of the Matrimonial Cause Act, the relevant provisions of which are reproduced below:

"Grant of divorce

6.(1) When granting a divorce the court shall in the first instance grant a conditional order of divorce which, subject to this Act, the court may, on application, make absolute.

(2) [...]

(3) An application for a conditional order of divorce to be made absolute may be made by the party who was granted the order at any time after the expiration of 6 weeks after the grant of the conditional order of divorce or after such longer or shorter period which the court has specified in the order.

(4) Where a party who was granted a conditional order of divorce fails to make an application under subsection (3) after 3 months from the earliest date on which the party would have made such application, the party against whom the conditional order of divorce was granted may apply to the court to make the order absolute."

Underlining is mine

- [5] The procedure for making an application to make a Conditional Order absolute is provided for by Rule 31 of the Matrimonial Causes Rules which provides as follows:

"Order absolute

31.(1) *An application by a spouse to make absolute a conditional order pronounced in his favour shall be made to the court by lodging a notice of application in accordance with Form 8 on any day after the expiration of the period prescribed for making such order absolute. The registrar having searched the court minutes and being satisfied-*

(a) that no appeal against the said order is pending, that no order has been made by the Appellate Court enlarging the time for appealing against the said order (or, if such order has been made, that the time so enlarged has expired),

(b) that no notice has been given (or if notice has been given that no affidavits have been filed within the time allowed for filing), by or on behalf of any person wishing to show cause against the order being made absolute

the notice shall be filed:

Provided that if the application is made after the expiration of one year from the date of the conditional order there shall be filed with the application an affidavit by the applicant or his attorney accounting for the delay, and the notice of application shall not be filed without the leave of a judge.

(2) Upon the filing of the said notice the conditional order shall become absolute.

(3) An application by a spouse to make absolute a conditional order pronounced against him shall be by summons to a judge accompanied by a notice of application in Form 8, on not less than four days' notice. On any such application the judge may make such order as he thinks fit.

(4) A certificate in accordance with Form 9 or Form 10 whichever is appropriate, that the order has been made absolute, shall be prepared and filed by the Registrar. The certificate shall be authenticated by fixing thereto the seal of the Supreme Court."

Underlining is mine

- [6] In the present case, the Conditional Order of Divorce was granted on 10th February, 2016, and the present Notice of Motion lodged on 3rd September 2019, over three years later. The procedure in such cases as provided for in Rule 31, is for the applicant to seek leave of a Judge to file the notice of application to make absolute the Conditional Order of divorce. It is only after leave is granted that the application is filed, whereupon the Conditional Order becomes absolute.
- [7] I am satisfied on the facts of this case that the applicant should be granted leave to file the notice of application to make absolute the Conditional Order of Divorce granted on 10th February, 2016.
- [8] Accordingly, I grant the motion and in terms of Rule 31 of the Matrimonial Causes Rules –
- (i) grant leave to the Applicant to file in the Registry of the Supreme Court, a Notice of Application for Conditional Order to be made Absolute in accordance with Form 8 of the Schedule to the Rules; and
 - (ii) direct the Registrar, if she is satisfied as to the matters stated in Rule 31(1) (a) and (b) of the Rules and upon the filing of such Notice, to prepare and file a Certificate of Making Conditional Order Absolute in accordance with Form 10 of the Schedule to the Rules. The certificate shall be authenticated by fixing thereto the seal of the Supreme Court.

Signed, dated and delivered at Ile du Port on 25 October 2019

Carolus.

Carolus J