**SUPREME COURT OF SEYCHELLES**

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**Reportable/ Not Reportable/ Redact**
[2020] SCSC 755
MA 45/2020
(Arising in DS144/2017)

In the matter between:

**ROY PATRICK BENNY JEAN-LOUIS** **Applicant**
*(rep. by Vanessa Gill)*

and

**ANNABELLE JACHINTA DELORIE** **Respondent**
*(rep. by Alexia Amesbury)*

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**Neutral Citation:** *Jean-Louis v Delorie* (MA45/2020) [2020] SCSC 755 (07 October 2020).
**Before:** E. Carolus J
**Summary:** Application for leave to file application ancillary relief out of time – Pleas in Limine Litis
**Delivered:** 07 October 2020

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**ORDER**

The pleas in limine litis raised by the respondent against the application for leave to file application for ancillary relief out of time are dismissed. Parties are to file written submissions on the supplication for leave proper.

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**RULING**

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**CAROLUS J**

**Background**

[1] The parties are divorced and the conditional order of divorce in respect of their marriage was made absolute on 13th December 2017 in DS144/2017.

[2] The applicant had previously, on 19th October 2018, filed a Notice of Application for financial relief under section 20(1)(g) of the Matrimonial Causes Act in MA254 of 2018, in respect of which the respondent filed three pleas in *limine litis*. One of the pleas in *limine litis* was that the application was bad in law as it was filed more than 2 months after the order absolute without leave being sought from or granted by the Court. On 23rd January 2018, before hearing of the pleas in *limine litis*, the Applicant filed an application for leave in MA19/2019 and it was agreed that the leave application would be dealt with before the pleas in *limine litis*.

[3] By a ruling dated 27 March 2019, the Court dismissed both the main application for financial relief in MA254 of 2018 and the application for leave in MA19/2019 on the ground that the main application was defective in that it was unsupported by any evidence, the affidavit in support thereof being invalid. The Court further held that leave could not be granted to file an application out of time when such application was itself defective. The Court however stated that the applicant was at liberty to file a fresh application for financial relief after leave had been granted to file such application.

[4] Counsel for the applicant then, on 14th January 2020, filed a Notice of Application for ancillary relief supported by affidavit in MA07/2020 which was heard on 4th March 2020. In its ruling dated 11th March, 2020, the Court found that both the Notice of Application and the supporting affidavit concerned leave to file an application for ancillary relief out of time as well as the application for ancillary relief itself. It dismissed the application, on the ground that the proper procedure was not followed. It stated that leave to file an application for ancillary relief out of time, should be sought by way of motion supported by affidavit in accordance with Rule 20 of the Matrimonial Causes Rules whereas the application for ancillary relief should be made "*by notice in accordance with Form 2 issued out of the Registry*" in accordance with Rule 4(1)(f) of the Matrimonial Causes Rules. In dismissing the application, the Court stated at paragraph 10 of its Ruling:

> *10. The conditional order having been made absolute on 13th December 2017, the procedure which should have been followed by the applicant therefore is firstly filing an application for leave by way of notice of motion supported by affidavit, and secondly, if such leave is granted, filing the application for ancillary relief "by notice in accordance with Form 2 issued out of the Registry". What the applicant has done*

*instead is file one application combining both the leave application and the application for ancillary relief which is not in accordance with the Act or the Rules.*

[5] On the 4th March, the date fixed for hearing of MA07/2020, the applicant filed an application by way of Notice of Motion supported by affidavit in MA45/2020 seeking leave *"to file an application for a share of the matrimonial property of the parties out of time"*. This application is the subject matter of this ruling. In his affidavit the applicant states the grounds for his late application as follows:

> 4. *That the reason why I have filed my application for financial relief late is because previously I was not ready to return to Court within two months of being divorced to seek a share in matrimonial property when there was a possibility of reconciliation and the hope of an amicable settlement thereafter.*
> 5. *That, because of this, I felt that I was being optimistic at the time and hoping for a reconciliation between myself and the Respondent as well as a reasonable offer from her.*
> 6. *That it is only after a few months, that I came to the realization that my hopes of reconciliation and an amicable and reasonable offer were in vain, that I filed an application to the Court, namely, this current application. I attach herewith as* ***"Doc 2"*** *a copy of the Petition.*
> 7. *That I admit having instructed my lawyer, Mr. Bernard Georges, at the time, to file an application for ancillary relief but unfortunately the application was dismissed due to leave not being sought first.*
> 8. *That I have been made to understand by my Lawyer, as per the Judge's ruling dated 27th March 2019, that I am at liberty to file a fresh application for financial relief after leave has been granted. I attach herewith as* ***"Doc 3"*** *a copy of the Judge's Ruling.*
> 9. *Further, I verily believe and have been advised by my Lawyer, that an application for leave to file out of time may be made at any point during proceedings and I wish to apply for one now, which I have been made to understand is not an abuse of process for the reasons in paragraph 8 of this Affidavit.*
> 10. *That I believe that I have sufficient reasons for leave to be granted, in the interests of justice, in order for me to file my application for ancillary relief.*

[6] I note that the petition exhibited as Doc 2 in paragraph 6 of the applicant's affidavit, is the Notice of Application and supporting affidavit filed in MA07/2020 seeking both leave to file an application for ancillary relief out of time as well as the ancillary relief itself which was dismissed on 11th March 2020. This shows that the current application for leave relates to the application for ancillary relief in MA07/2019, which at the time of filing of the current

application had not yet been ruled upon. The current application was filed at that point presumably because counsel had realised belatedly that the procedure it had followed in MA07/2020 for obtaining leave was not the proper procedure to be followed. Be that as it may, MA 07/2020 having been dismissed, this court will treat the current application for leave as one made with a view, if granted, to file an application for ancillary relief.

[7] Counsel for the respondent raised several pleas *in limine litis* and also filed an affidavit sworn by the respondent in reply on the merits. The pleas in limine litis are as follows:

1. *The Application is incompetent as it fails to specify under which law it is being made.*

2. *It is brought under the MCA the section and sub-rule should be clearly stated.*

3. *This is the third application for leave being brought over two years after the decree absolute was granted and it is an abuse of process as throughout the proceedings the applicant was represented by counsel.*

4. *A judgment of the Supreme Court in MA19/2019 arising in MA254/2018 arising in DV144/2017 was dismissed both an application for leave identical to the present one, and the main application for financial relief. Another Application in MA7/2020 arising in DV144/2017 was also dismissed. This now MA45/2019 but filed on 4th March 2020.*

5. *The parties are wrongly cited. The proper citation since this is a "Motion" the person making the motion is the "Applicant" and not "Petitioner".*

6. *If the Application for leave is being made pursuant to Rule 34(1) under section 27 of the Matrimonial Cause Rules it clearly states that "where a prayer for relief under rule 4(1)(f) has not been included in the Petition for divorce ... may be made by the PETITIONER at any time after the expiration of the time for appearance to the petition, but no APPLICATION shall be made later than two months after order absolute except by leave." The right to apply for leave for extension of time is one given to the Petitioner and not a Respondent who has slept on his right.*

7. *Since the conditional order of divorce granted against the Respondent was based on section 4(1)(d) of the MCA, his right to claim any financial relief is restricted by section 9(1) of the MCA [Protection of respondent in cases under section 4(1)(d)], which clearly stipulates that the Respondent can seek such relief, at any time only*

*before the order is made absolute, not after. Hence the Respondent's claim herein is time barred under the Act and he has no locus standi now to make such a claim for financial relief.*

[8] It was agreed by the parties that the points of law would be dealt with first by written submissions. These submissions were considered and will be referred to as relevant in the court's analysis below.

**Analysis**

*Form of the application for leave*

[9] Points 1, 2, and 5 of the plea in *limine litis* relate to the form of the application for leave and will be dealt with together.

[10] The application is challenged firstly on the ground that it fails to specify under which law it is being made (Point 1) and that the relevant provision of that law should also be clearly stated (Point (2).

[11] Counsel for the applicant submits that not specifying the law and specific provisions in terms of which an application is made cannot render the application incompetent as there is no legal provision which makes it necessary to do the same. She further submits that *"[T]he provision being relied on to seek leave will be stated in Court once the application is stated before the Court"*. Counsel also attempts to draw a parallel between the application in the present case and a plaint, and submits that the same rules apply to both. She relies on section 71 of the Seychelles Code of Civil Procedure ("SCCP") which sets out the particulars which a plaint must contain, to submit that since that provision does not put an obligation on a plaintiff to specify the applicable law, the same applies to applications. Relying on the same section she submits that the pleadings in the matter before this Court discloses a reasonable cause of action namely "seeking leave ... to allow the Respondent to file his application for ancillary relief out of time". It is also submitted that leave is sought to file an application for ancillary relief under section 20(1)(g) of the Matrimonial Causes Act as specified in Doc 2 namely the affidavit in support of the Notice of Application in MA07/2020 exhibited in paragraph 6 of the applicant's affidavit in the present case.

[12] Let me state at the outset that section 71 of the SCCP finds no application in the present case as it concerns an application and not a plaint. Having said that, I note that the rule relating to pleadings in civil proceedings commenced by way of plaint is that the plaint must disclose the material facts and circumstances constituting the cause of action. The reason for this is that the case against the defendant must be sufficiently clear so that he or she is able to make his or her defence and would otherwise be prejudiced in making such defence. Logic dictates that the same rationale applies to applications and for that purpose where an application is made pursuant to a legal provision, it is my view that it is desirable that the provision is stated. However it is clear from the circumstances of this case that counsel is aware of the legal provision pursuant to which the application for leave is being made and that the respondent was not prejudiced in any way in formulating her defence.

[13] The respondent also challenges the application on the ground that in the citation, the applicant therein is cited as the Petitioner instead of the "Applicant" (point 5).

[14] Counsel for the applicant submits that the defect which could be easily remedied by amending the citation of the application with the Court's leave cannot be used as a means to deny justice to the applicant. She submits that meeting the ends of justice should prevail over applying a practice which will result in denial of justice. She relied on the case of *Ablyazov v Outen and Ors (2015) SCCA 23* in which Justice Domah stated at paragraph 34 of the judgment *"We adopt the reasoning that procedure is the hand-maid of justice and should not be made to become the mistress even if many hand-maids would aspire to become mistresses"*, and further at paragraph 35 thereof *"In the Toomany and Anor v Veerasamy, Law Lords of the Judicial Committee such technicalities raised to shut out litigants from the court system constitute a blot on the administration of justice . This has been made part of the law of Seychelles as per the decision of Twomey JA, now Chief Justice".*

[15] Counsel for the respondent submits what the applicant is saying in essence is that "technicality of legal rules of procedure cannot obstruct the administration of justice" and in response states that *"[T]his obiter dictum cannot be misinterpreted to defeat the very purpose of making rules to regulate proceedings in litigations. Rules are only to bring uniformity and*

*certainty and to regulate the proceedings for the better administration of justice. Rules are made to be followed and applied in litigation, and should not be flouted by the parties".*

[16] Rule 20 of the Matrimonial Causes Rules provides that:

> 4. *No pleading shall be filed out of time without leave. Applications for leave shall be made by motion supported by affidavit.* Underlining is mine.

[17] In terms of this provision a person seeking leave must do so by making an application by way of motion and affidavit. Although there are no written rules to that effect, usually a person making an application is referred to as the applicant and a person making a petition is referred to as the petitioner. However whether a person is applying to the Court or petitioning the Court for something, they are asking the court to do something for them, in the present case as per the Notice of Motion to grant leave "to file an application for a share of the matrimonial property of the parties out of time".

[18] This Court agrees that rules bring uniformity and certainty and must as much as possible be followed. However rules should not be followed blindly to the exclusion of all other considerations. The role of the Courts is to administer justice and in doing so must consider whether in departing from the strict application of procedural rules any prejudice would be caused to either party. In my view no prejudice would be caused to the respondent by this defect as not only is it clear who the parties are, but the case which the respondent has to meet is also clear so that the defect does not affect the respondent in making her defence. As stated in the Toomany case it would be a blot on the administration of justice to allow such a technicality to prevent the applicant from bringing forward his case.

[19] I therefore find no merit in points 1, 2 or 5.

*Abuse of process*

[20] Abuse of process is raised in points 3 and 4 of the plea in *limine litis*. Counsel for the respondent submits that the filing of the present application is an abuse of process as it is the applicant's third application for leave, bearing in mind that the applicant was represented by counsel in all these proceedings.

[21] Counsel for the applicant relies on the Courts statement in its ruling dated 27th March 2019 in MA254 of 2018 dismissing his application for financial relief that *"[T]he respondent is at liberty to file a fresh application for financial relief after leave has been granted"*, to state that the current application cannot therefore be an abuse of process. She further submits that there cannot be abuse of process because no finality has been reached in the current case. She relied on the case of <u>Gill v Film Ansalt (2013) SLR137</u> in which it was held that "the rule to close the door of the court to a litigant can only be applied when the facts are such as to amount to an abuse. Otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation". It is submitted that in this case, Mr. Jean-Louis is at danger of being prevented from bringing forward a genuine case before the Court.

[22] As stated above the applicant filed a first application for financial relief in MA254 of 2018, followed by an application for leave in MA19/2019, both of which were dismissed on technical grounds. His second application in MA07/2020 was for leave to file an application for ancillary relief out of time as well as for ancillary relief itself, in the same application which was also dismissed again on technical grounds. The present application is indeed the third application for leave. It was filed before final disposal of MA07/2020, as explained previously.

[23] The conditional order of divorce in this case was made absolute on 13th December 2017. The deadline for filing of proceedings in relation to the matrimonial property of the parties as prescribed by rule 34(1) of the Matrimonial Causes Rules is not "later than two months after order absolute", in the present case 13th February 2018. Any application made after that date would require leave of the Court. Proceedings regarding the matrimonial property of the parties commenced on 19th October 2018, a little over eight months after the deadline, with the filing of the Notice of Application for financial relief in MA254 of 2018 without leave being sought first. This and ensuing applications were dismissed for reasons stated above with only the present application for leave remaining which was filed on 4th March 2020.

[24] In <u>Gomme v Maurel (2012) SLR 342</u>, the Court of Appeal considered the principles of res judicata and abuse of process in light of their objective to stop multiplicity of litigation. In respect of abuse of process it stated:

> *"... Courts cannot stay unconcerned where their own processes are abused by parties and litigants. There is a time when they have to decide that enough is enough where the lawyers have not advised their clients. Abuse of process will also apply where it is manifest on the facts before the court that advisers are indulging in various strategies to perpetuate litigation either at the expense of their clients who may be hardly aware or at the instance of their clients who have some ulterior motive such as of harassing parties against whom they have brought actions or others who may not be parties. Courts have a duty to intervene to put a stop to such abuses of legal and judicial process: see Bradford & Bingley Building Society v Seddon Hancock & Ors [1999] 1 WLR 1482, House of Spring Gardens Ltd & Ors v Waite and Others [1990] 2 All ER 990, and In Re Morris [2001] 1 WLR 1338."*

[25] Having considered the scope of the rule of abuse of process, the Court of Appeal considered its limit. It stated:

> *"So much for the scope. Now for the limit. That may be found in what Lord Wilberforce, delivering the opinion of the Board in Brisbane City Council v Attorney-General for Queensland [1979] AC 411 at 425, stated when he confined it to its "true basis": namely, <u>the prohibition against re-litigation on decided issues</u>. Abuse of process -*
>
> > *.... ought only to be applied when the facts are such as to amount to an abuse; otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation.*
>
> *As Kerr LJ and Sir David Cairns respectively emphasized in Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd [1982] 2 Lloyd's Rep 132 at 137 – 139, the courts should not attempt to define or categorize fully what may amount to an abuse of process and that the doctrine should not be "circumscribed by unnecessarily restrictive rules" inasmuch as <u>the purpose was to prevent abuse by not endangering the maintenance of genuine claims</u>.*
>
> *For a recent application of the doctrine, one may refer to Sir Thomas Bingham MR as he then was, in Barrow v Bankside Agency Ltd [1996] 1 WLR 257 at 260:*
>
> > *The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppels. <u>It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a</u>*

*defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."*

[26] In relation to the case before it, the Court of Appeal found as follows:

> *"To come back to the present appeal, we have gone through the record and the history of the dispute which started some 11 years ago. The decision of the Chief Justice cannot be impugned when he found that the appellant was engaged in re-litigation. The case of Bradford & Bingley Building Society [supra] is pretty clear on this point that even parties who were not originally in the case may be caught by the doctrine of abuse of process if they seek a re-litigation of a case which has already been decided upon.*
>
> *The very fact of engaging in a second action to re-litigate an issue resolved in an earlier matter should raise professional eyebrows..."*

[27] In the present matter, previous applications for leave having been dismissed on technical grounds, it cannot be said that the issue has been determined. The question of re-litigation of an issue resolved in previous proceedings therefore does not arise. Furthermore, I am of the view that the filing of applications for leave three times was not done to perpetuate litigation or to harass the respondent but was more due to the lack of diligence on the part of counsel for the applicant who did not follow the proper procedure for filing of the applications. The ends of justice would hardly be met if the applicant were to be penalised for this by being prevented from bringing forward a genuine subject of litigation.

[28] Points 3 and 4 therefore fall.

*Respondent has no right to apply for leave to file application out of time belongs*

[29] It is the respondent's contention under point 6 that the applicant has no right to file an application for leave such as the present one, this right being given solely to the petitioner and not a respondent who has slept on his right.

[30] The respondent in the present application petitioned for divorce against the applicant in the present application. The Court granted her a conditional order of divorce which was made absolute on 13th December 2017. Thereafter, on 19th October 2018, the applicant decided to make an application for financial/ ancillary relief under section 20(1)(g) seeking *"an order*

*that he be granted a share in the proceeds of the sale of the matrimonial property and other joint assets".* Section 20(1)(g) provides as follows:

> *20. (1) Subject to section 24 [Scope of order made in respect of a relevant child] on the granting of a conditional order of divorce ... , or at any time thereafter, the court may, after making such enquiries as the court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage –*
>
> *[...]*
>
> *g. Make such order as the court thinks fit in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child;*

[31] The application was dismissed and was followed by other applications which eventually culminated in the making of the present application for leave, as explained above.

[32] Applications for financial/ ancillary relief may be made either in the divorce petition by the petitioner or, where this is not done by a separate application either by the petitioner or the respondent in the divorce petition, as was done by the applicant (respondent in the divorce petition). Rule 4 of the Matrimonial Causes Rules sets out the procedure to be followed in the latter case. In respect of the relief sought by the applicant, Rule 4(1)(f) provides that -

> *4. (1) Every application in a matrimonial cause for ancillary relief where a claim for such relief has not been made in the original petition shall be by notice in accordance with Form 2 issued out of the Registry, that is to say every application for:-*
>
> *[...]*
>
> *f. An order in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child;*

[33] There is nothing in section 20(1)(g) of the Act or Rule 4(1)(f) of the Rules to suggest that only the petitioner may make an application for financial/ ancillary relief under those provisions.

[34] The respondent relies upon Rule 34 in support of her contention that *"[T]he right to apply for leave for extension of time is one given to the Petitioner and not a Respondent who has slept on his right"*. Rule 34 provides as follows:

> *34. (1) An application ... in relation to property in accordance with rule 4(1) (f), (h), (i) or (j) where a prayer for the same has not been included in the petition for divorce ... may be made by the petitioner at any time after the expiration of the time for appearance to the petition, but no application shall be made later than two months after order absolute except by leave.*

[35] The first part of this provision provides for the point in time at which the petitioner in a divorce petition, who has not included in the divorce petition a prayer for financial/ ancillary relief, may file a separate application for such relief, namely *"at any time after the expiration of the time for appearance to the divorce petition*. The second part of that provision which reads *"but no application shall be made later than two months after order absolute except by leave*" makes no reference to either the petitioner or the petitioner or respondent in the divorce proceedings and in my view refers to an application for financial/ ancillary relief by either party. This part of the provision limits the time within which an application for financial/ ancillary relief may be made to two months after order absolute and also permits the Court to grant leave for the extension of the time limit so that an application for financial/ ancillary relief may still be made even after two months have elapsed after the order absolute.

[36] The reason for imposing a time limit for commencing actions is stated by the Court of Appeal in the case of Michel v Talma [2012] SLR95 as follows: *"The historical basis for the limitation of actions is one based in equity, namely that "equity defeats delay." Limitation periods by their very nature curtail the right or ability of a plaintiff to pursue a claim. For this reason they require strong justification – fairness and certainty (closure of claims) being the strongest reasons."* In some cases the court is empowered to extend those time limits for good cause.

[37] In my view, it is understandable to provide a time after having filed a divorce petition, at which the petitioner may file an application for financial/ ancillary relief. However, it would be absurd not only to fix a time limit within which such applications must be filed which only applies to the petitioner and not the respondent but also to allow the court to extend such time

limit only for the petitioner and not the respondent. Such cannot have been the intention of the legislator and this Court refuses to give such an interpretation to this provision.

[38] If the Court were to adopt the interpretation suggested by counsel for the respondent, it could also be argued that there is no time limit prescribed in the Act for the respondent in a divorce petition to file an application for financial/ ancillary relief, and that the general rules of prescription would apply. In my view this would be misconceived.

[39] I hold that under Rule 34(1) both the petitioner and the respondent in a divorce petition have to apply for financial/ ancillary relief within two months of the order absolute failing which they have to obtain leave of the court to do so.

[40] I further take note of the proceedings in MA254/2018 in which the applicant was seeking financial/ ancillary relief. The respondent objected to the same and filed inter alia the following plea in *limine litis*: *"The Application is bad in Law as it was filed more than two months after the Order Absolute and no leave has been sought and no leave has been granted for this Application to be brought before the Court.*" Counsel cannot adopt one stance when it suits her and another when it is not favourable to her client's case. Point 6 therefore falls.

*Respondent's claim for financial relief is time barred and he has no locus standi*

[41] Counsel for the respondent claims in terms of point 7, that the grounds for divorce on the basis of which the conditional order of divorce was granted against the respondent, being based on section 4(1)(d) of the Act (living apart for at least 1 year and consent of the respondent), the respondent's right to claim any financial relief is restricted by section 9(1) of the Act which provides that the respondent can seek such relief at any time only before the order is made absolute, not after. As such the respondent's claim is time barred under the Act and he has no locus standi to make such claim.

[42] A reading of section 9 of the Act shows that the respondent's argument is utterly misconceived. This section provides as follows:

> *9. (1) Where the court has granted a conditional order of divorce based on section 4(1)(d) and the respondent has, at any time before the order is made absolute, applied to the court, the court-*

*(a) may rescind the order where the respondent alleges and the court is satisfied that the petitioner misled the respondent, whether intentionally or otherwise, about any matter which the respondent took into account in deciding to consent to the grant of the divorce; or*

*(b) shall, subject to subsection (2), not make the order absolute unless, after considering all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligation of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first, the court is satisfied that-*

*(i) the petitioner should not be required to make any financial provision for the respondent; or*

*(ii) the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.*

*(2) Notwithstanding subsection (1)(b), the court may, if it thinks fit, make a conditional order of divorce absolute if-*

*(a) it appears that there are circumstances making it desirable that the order should be made absolute without delay; and*

*(b) the court has obtained a satisfactory undertaking from the petitioner that the petitioner will make such financial provision for the respondent as the court may approve.* (emphasis added)

[43] It is clear from the above that section 9(1) of the Act deals with circumstances in which the Court may, on the application of the respondent in a divorce petition where the Court has already granted a conditional order of divorce on grounds stated in section 4(1)(d), but not yet made such order absolute rescind such conditional order or not make such conditional order absolute. Nowhere in this provision does it say that such a respondent can seek financial relief only before the order is made absolute. This plea in *limine litis* therefore also fails.

[44] This Court finds no merit in any of the points of law raised by the respondent and in the respondent's contention that the application for leave is vexatious and oppressive. The pleas in *limine litis* are therefore dismissed.

[45] The application for leave must be fixed for hearing on the merits or alternatively dealt with by written submissions.

Signed, dated and delivered at Ile du Port on 7th October 2020

E. Carolus J