

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 229

MA 300/2022

(Arising out of DC 06/2021)

In the matter between:

**SHANNON MERYONA ANNIE CASSIME
(BORN LESPERANCE)**

Petitioner

(Absent/Represented by Mrs Amesbury)

and

ELVYN JONATHAN MARCUS CASSIME

Respondent

(Absent/Unrepresented)

Neutral Citation: *Cassime vs Cassime* (MA 300/2022) [2023] SCSC 229 (28th March 2023)

Before: Adeline J

Summary: Leave to lodge notice of application for conditional order of divorce to be made absolute.

Heard: 01 February 2023

Delivered: 28 March 2023

FINAL ORDER

Application by way of a notice of motion supported by an affidavit, for leave to file notice of application to make absolute conditional order of divorce – Rule 31(1) of the Matrimonial Causes Rules – Application is made after more than one year from the date the conditional order of divorce was pronounced – leave of this court is hereby granted to lodge notice of application for conditional order of divorce to be made absolute.

RULING

Adeline, J

- [1] By way of a divorce petition filed in court on the 3rd February 2021, the Petitioner, one Shannon, Meryona, Annie Cassime born Lesperance, petitioned this court for an order of divorce to dissolve the marriage between her and the Respondent, one Elvyn, Jonathan, Marcus, Cassime, celebrated on the 1st January 2013.
- [2] On the 11th February 2019, this court, presided over by myself, the Master of the Supreme Court then, granted the Petitioner a conditional order of divorce (a decree nisi) following which the Petitioner had six weeks from the date of the order for her to apply by way of notice of application in accordance with Rule 6 (1) read with Rule 6 (3) of the Matrimonial Causes Rules for this conditional order to be made absolute, but did not do so.
- [3] The Petitioner now files this application, by way of notice of motion supported by an affidavit sworn by her as MA 300/2022 pursuant to Rule 31(1) of the Matrimonial Causes Rules, for leave of this court to lodge notice of application for the conditional order of divorce made on the 25th June 2021, to be made absolute.
- [4] In her affidavit in support of her application, interalia, the Petitioner makes the following averments;
- “3) I was unaware that I could make an application for decree absolute after the expiratory of 6 weeks of the conditional order.*
- 4) More that 1 year has lapsed since the conditional order was granted. My present counsel failed to apply for the conditional order to be made absolute, and*
- 5) My ex husband and I have never resumed cohabitation as parties to the marriage and I wish to marry but I cannot do so unless and until the decree absolute is issued. I hereby seek leave to the judge to file notice of application having accounted for the delay as stated above”.*

- [5] Section 232(1) of the Civil Code of Seychelles Act, 2020 Cap 33, (previously Section 6(1) of the Matrimonial Causes Act) reads;

“232 (1). When granting a divorce, the court shall in the first instance grant a conditional order of divorce which the court may, on application made absolute”.

- [6] The granting of the conditional order of divorce in accordance with Section 232 (1) of the Civil Code of Seychelles Act, 2020 was on the 25th June 2021.

- [7] Section 232 (3) of the Civil Code of Seychelles Act, 2020, Cap 33 (previously Section 6 (3) of the Matrimonial Causes Act) reads;

“232 (3). An application for conditional order of divorce to be made absolute may be made by the party who was granted the order at any time after the expiry 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”.

- [8] It is pertinent to note, that up and until the Civil Code of Seychelles Act, 2020 came into operation on the 1st July 2021, similar statutory provisions existed under Section 6(1) and 6(3) of the Matrimonial Causes Act, which but for the enactment of the Civil Code of Seychelles Act, 2020 containing these provisions, the provisions of Section 6(1) and 6(3) would have still be in force and apply to the facts and circumstances of this case.

- [9] In case DC 06/2021, in its judgment dated 11th February 2019, at paragraph [11] this court made the following pronouncement;

“[12] Therefore, for the reasons stated at paragraph [11] above, this court grants the divorce petition, and accordingly, grants a conditional order of divorce to dissolve the marriage between the Petitioner and the Respondent, to be made absolute after six weeks from the date of this judgment in accordance with Section 6(1) read with 6 (3) of the Matrimonial Causes Act, Cap 124”.

- [10] 6 weeks from the date of this judgment means 6 weeks from the 25th June 2021 when the conditional order of divorce was pronounced.
- [11] There is no provision under the Civil Code of Seychelles Act, 2020 similar to the provision of Rule 31(1) of the Matrimonial Causes Rules which in part reads;
- “31(1). An application by a spouse to make absolute a conditional order pronounced in her 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”.*
- [12] Rule 31(1) of the Matrimonial Causes Rules is subject to a proviso that reads;
- “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 leave of a Judge. (Underlined emphasis is mine)*
- [13] The Petitioner, having not lodged his notice of application to make the conditional order of divorce made on the 25th June 2021 absolute after 6 weeks, after more than a year later, she now seeks for leave of this court to lodge a notice of application for making such order absolute.
- [14] On account of the uncontroverted affidavit evidence in support of the motion, this court grants the motion, and accordingly, grants the Petitioner leave for her to lodge her notice of application for the conditional order of divorce made on the 25th June 2021 to be made absolute.

Signed, dated and delivered at Ile du Port 28 March 2023.

