COMONWEALTH OF THE BAHAMAS **2023**

IN THE SUPREME COURT **FAM/DIV/00232**

FAMILY DIVISION

BETWEEN:

J. W. N.

Petitioner

AND

S. L. N. (nee D)

Respondent

Before: The Honorable Madam Justice C.V. Hope Strachan, Justice of The Supreme Court of The Commonwealth of The Bahamas.

Appearances: Devard Francis for the Petitioner

Ramona Farquharson and Samuel Taylor for the Respondent

Hearing Date: 14 July 2023

Divorce- Setting Aside Decree Nisi- Judges ability to change mind after decision or Order- S.61 Matrimonial Causes Act, 1991 - S. 32 Matrimonial Causes Rules, 1987- Delay in filing Answer & Cross Petition – Discretion to give or refuse leave to file Answer & Cross Petition out of time.

RULING

Background/Chronology of Events

1. By Petition filed 21 April 2023, the Petitioner applied for a dissolution of marriage on the grounds that since the celebration of marriage the Respondent has lived separate and apart from him for a continuous period of at least five years immediately preceding the presentation of the Petition.

2. An undated affidavit of service filed 11 May 2023 attested to the Respondent having been served with a copy of the Petition, Notice of Petition, Memorandum of Appearance and Acknowledgement of Service on 9th May 2023.

3. An appearance was entered on behalf of the Respondent on 15 May 2023 wherein the Respondent notified the Petitioner and the Court of her intention to defend the case at the hearing however, the Respondent failed to enter An Answer and/or Cross-Petition.

4. Notwithstanding, a Registrar Certificate was obtained on the 13th June 2023 for a contested hearing of the Petition.

5. A day before the Petition was set to be heard ie.13th July, 2023 Counsel for the Respondent filed a Summons seeking leave to file an Answer and Cross Petition out of time pursuant to Rule 20 of the Matrimonial Causes Rules 1987, Chapter 125 Statute Laws of The Commonwealth of The Bahamas (MCR).

6. The intention as I understand it was to appear on the morning of the 14th July 2023 to have the said application heard prior to the trial proceeding.

7. Court commenced at 10 a.m. on 14th July, 2023 the Court having been informed by the judge's clerk that counsel for the Respondent was before a Senior Justice of the court for a hearing and would attend this court at earliest after completing her matter before that Judge. The Court recognizes that Counsel was mandated to prioritize the fixture based on seniority of the Judge.

8. While the court received no formal or proper request from counsel for such an accommodation nevertheless this court, once informed by the clerk of counsel's indisposition and in an effort to accommodate counsel stood the matter down until all of the other Four (4) uncontested divorces on the court's calendar were completed. It should be noted here, that opposing counsel who was representing

the Petitioner, was present throughout the subject proceedings and agreed to the stand down of the matter until the court had completed the other matters listed for hearing that morning.

9. However, at the completion of the matters listed counsel for the Petitioner indicated to the court that she did not wish to wait any longer for the Respondent and her counsel and wished to proceed with having her client's Petition heard.

10. There being no appearance by the Respondent or her counsel, the court proceeded to hear the Petition undefended and the Petitioner was granted a Decree Nisi on the grounds that the Respondent had lived separate and apart from him for a period of at least Five (5) years immediately preceding the presentation of his Petition. The Decree was not to be made absolute until the expiration of Six (6) weeks from the making thereof and the court issued a Declaration pursuant to section 73(1)(a) of Matrimonial Causes Act, 1991 Chapter 125, Statute Laws of The Commonwealth of The Bahamas (MCR) that there were no children of the marriage to whom Section 73 applied.

11. The court then adjourned and retired to chambers having concluded the matters set for the morning. This would have been sometime between 11 a.m. and 11:45 a.m.

12. It was after this time period that counsel for the Respondent arrived in a flurry at court (with her client in tow) and preceded to berate the Judge's clerk that he had not conveyed her message to the judge that the court was to await her arrival (whatever time that happened to be) I wish to emphasize. Again it is important to note that no effort was made to formalize her request to the court. The court also takes note of the fact that counsel is not a sole practitioner in her firm and could well have sent another attorney from the firm to hold brief for her.

13. These events precipitated the application which is now before this court for consideration, that being, a Summons filed 20th July, 2023 for the court to set aside the Decree Nisi granted to the Petitioner on 14th July, 2023.

14. The issues for the court to consider are:

    i. Whether the court has a discretion to change the Decree Nisi that has been pronounced.
    ii. Whether the Decree Nisi granted ought to be set aside in the circumstances.

iii. Whether leave ought to be granted to the Respondent to file an Answer & Cross Petition out of time.

In this regard it is essential that the Court examines the factual circumstances and the evidence being used by the Respondent in aid of her application to set aside the Decree Nisi.

The Evidence

15. **Stacey Larrine Neely (nee Dames) the Respondent – Affidavit filed 20th July, 2023 in support of the Application to set aside the Decree Nisi**

i. Ms. Neely avers that she believed her Counsel made contact with Mr. Devard Francis Counsel for the Petitioner and the Clerk to Justice Strachan (the presiding Judge) advising of a scheduling conflict and that the matter be stood down for one (1) hour, as her counsel was before a more Senior Judge.

ii. She further avers that there was a miscommunication, and the dissolution of marriage was heard without her application for leave to file her Answer and Cross Petition out of time.

iii. She further averred (without more, I might add) that much of the Petitioner's evidence is untrue and that the Respondent is in fact the cause of the breakdown of the marriage.

16. **Calvin Seymour – Affidavit filed 13th July, 2023 – in support of the Application to set aside the Decree Nisi**

i. Mr. Seymour, counsel in the firm of R.A. Farquharson & Co., by affidavit filed 13 July 2023 avers that the delay in filing an Answer and Cross Petition was due to an "inadvertence" which resulted from a mix up of dates and sending relevant pleadings within the time prescribed by the Rules.

ii. He further averred (without more, I might add) that he believed that the Respondent had a more compelling case for the grant of a Decree Nisi in her favour.

17. **Submissions – made by Counsels to support their respective client's**

The Respondent as applicant to set aside the Decree Nisi made submissions and contended that:

> The Petitioner's Attorney had no locus standi to make submissions on the application as no affidavit in response to the application for setting aside the Decree had been filed to address or counter the allegations made in the Respondent's Affidavit. Further that the general rule is that the court is entitled to change its ruling at anytime before the order is drawn up and perfected as per the authorities of **Forbes v Forbes and Brooks [2011]/FAM/div/FO00039 , Re L and another (children) [2013] 1 WLR 634.**

The Petitioner in defending the application to set aside the Decree Nisi contended that:

18. He was contacted by counsel for the Respondent the day before the Trial and informed her that he did not have carriage of the matter and that she ought to make contact with attorney Miranda Adderley of his firm but that Counsel made no conscientious effort to do so.

19. The Petitioner further argues that counsel for the Respondent, just one (1) day prior to the hearing for the dissolution of the marriage filed a Summons seeking to be heard on an application to file an Answer and Cross Petition when in fact an appearance was entered on behalf of the Respondent from the 15 May 2023. His argument is that counsel had sufficient time after service of the Petition upon the Respondent to file an Answer and Cross Petition on behalf of her client.

20. Moreover, that a Notice of Hearing in regard to the dissolution of marriage was served on counsel for the Respondent on the 28 June 2023 allowing her a further two (2) weeks before the hearing date to serve counsel and the Court. The suggestion is that Counsel was dilatory in her efforts to adhere to the timelines stipulated by the MCR.

21. Further, that Counsel for the Respondent had ample time to write or to send an email communication to both counsel and the Court to request the desired stand down or adjournment of the case or alternatively to have another attorney in her chambers attend the matter on the 14th July 2023.

22. The Petitioner relied on the case of **Fitzroy Robinson Limited v. Mentmore Towers Limited [2009] EWHC 3070 (TCC)** which outlined what matters should be taken into consideration when deciding on granting an adjournment. These include the following:

    a.) The parties conduct and the reason for the delay;
    b.) The extent to which the consequence of the delay can be overcome before the trial;
    c.) The extent to which a fair trial may have been jeopardized by the delays;
    d.) Specific matters affecting the trial, such as illness of a critical witness and the like;
    e.) The consequences of an adjournment for the claimant, the defendant, and the court.

23. Counsel stated that his reliance was focused on the parties conduct and reason for delay, being of the view that counsel had acted inappropriately in not filing the Answer and Cross Petition in time yet waiting until the hearing date of the Petition to apply for leave, failing to address the stand down request directly with the attorney in his firm who had carriage of the matter and also in her failure to appropriately inform the court by letter or email of her request.

24. The court's determination of these submissions will become clear as these deliberations progress.

Discussion & Law

25. The First Issue to be addressed by the court is in answer to the Respondent's submissions that counsel for the Petitioner in objecting to the Application to set aside the Decree Nisi is prohibited from participating in the application, his client not having filed an affidavit in response to the Respondent's. It is noted that the Respondent failed to support this contention with authorities either legislative or by precedent. Given the nature of the application in the surrounding circumstances it behooves me to see what could have been contained in such an affidavit in response which could further assist the court. In the premises the Court will consider submissions by the Petitioner in response to the application.

26. The Second issue which the court is called upon to address is, whether, the judge having pronounced the grant of the Decree Nisi to the Petitioner in court, being apprised of the objections posed by the Respondent to the grant of the decree and having reserved the signing of the Decree Nisi until the arguments opposing the

decree are fully ventilated, is in a position to reverse or set aside the Decree Nisi. This action would be tantamount to the judge changing her mind in granting the Decree Nisi.

27. **Change of judge's decision**

While there is unfortunately a dirth of authority on this issue in our local jurisdiction British jurisprudence is replete with authority which establishes that a judge may in fact change his/her mind in apposition to that which has already been stated, delivered or declared.

> ***Re L and B (children) (care proceedings: power to revise judgment) [2013] 2 All ER 294***
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> ***Held – A judge was entitled to reverse her decision at any time before her order was drawn up and perfected. In exercising that jurisdiction, the judge was not bound to look for exceptional circumstances. A carefully considered change of mind could be sufficient. Every case was going to depend upon its particular circumstance. The starting point was the overriding objective in the CPR to deal with cases justly. A relevant factor had to be whether any party had acted upon the decision to his detriment, especially in a case where it was expected that they might do so before the order was formally drawn up. The discretion had to be exercised judicially and not capriciously. That might entail offering the parties the opportunity of addressing the judge on whether she should or should not change her decision.....It has long been the law that a judge is entitled to reverse his decision at any time before his order is drawn up and perfected.***

28. The principles to be applied in determining whether the judge should change his/her mind and reverse or set aside a Decree nisi confirms that it is a decision that should however be seriously considered; and in **Kearly v Kearly [2010]1 FLR 619** the discussion although centered around matters subsequent to the grant of a Registrars Certificate (within the parameters of that jurisdictions definition and meaning) it nevertheless provides invaluable guidance as to the approach which should be taken in applications to set aside a Decree Nisi. The cases set out hereunder are helpful in this regard.

29. In **Mitchell v Mitchell [1984] Fam 1, [1983] 3 WLR 666, [1984] FLR 50,** the Court of Appeal considered the principles to be applied when an application is made after a certificate has been granted. They described three classes of case and, at 11, 672 and 55 respectively, Cumming-Bruce LJ set them out, quoting the principles stated by Davies LJ in **Stevens v Stevens [1965] P 147, [1965] 2 WLR 736, at 162 and 745** respectively:

> ***'As it seems to me, these applications to the Divisional Court fall into at least two classes. There is the class where the applicant comes along and says "I was not served; I knew nothing about it", or, "I was deceived; all the proceedings took place behind my back". In that sort of case the applicant obtains a rehearing almost automatically. The other class of case is the Winter class of case, the Tucker class of case, and this class of case, where an applicant may come along and say "I knew all about this: I chose not to defend; but 'it was all wrong: let me defend now and grant me a rehearing'". In a case of that latter kind, speaking for myself, I think that for an applicant to succeed he has to convince the Divisional Court, or this court if it comes before this court, that on the evidence before the court on the application as a whole it is more probable than not that the decree was obtained contrary to the justice of the case.'***
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> ***And Cairns J in Nash v Nash [1968], P 597, [1967] 2 WLR 1009, at 603 and 1013 respectively:***
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> ***'I think there is probably at least one more class. That is the type of case where the respondent in divorce proceedings is aware that the proceedings are in progress and is anxious to defend and although no sort of deception has occurred, nevertheless, through ignorance or lack of full advice he is unaware of the necessity of taking procedural steps in order to preserve his position and has no knowledge of the actual hearing until after it has taken place. In such circumstances, I am of opinion that this court should not automatically, or almost automatically, grant a rehearing, but on the other hand should not require to be satisfied that, if there were a rehearing, a different result would be more probable than not. The court is not bound to accept the applicant's affidavit at its face value, but on the other hand should not attempt to make any such investigation of its truth as would be appropriate at the hearing of the suit. I would have preferred to have more details***

of the husband's case than are set out in the affidavit which he has sworn here, but in order to avoid delay and further expense, and bearing in mind that the applicant is appearing here in person, I am content to proceed on the basis of the existing affidavit. I take the view that that affidavit is sufficient to show that the applicant has a case which he wants to put before the court and which, if accepted, might well lead to a result different from the result of the first hearing.'

30. A distinction may be made that the discussion had in the Kearly, Stevens and Nash cases referenced a special procedure in the English rules under S 1 (4) of the Matrimonial Causes Act 1973. Per **Ormrod LJ in Day v Day [1980] Fam 29, [1979] 2 WLR AT 33 (d) AND 684**.

Authority for that proposition can be found in the judgment of **Ormrod LJ in Day v Day [1980] Fam 29, [1979] 2 WLR 681, at 33(D) and 684 respectively:**

'The registrar certifies that the petitioner has proved the contents of the petition and is entitled to a decree. The requirements of section 1(4) of the Matrimonial Causes Act 1973, therefore, have been complied with, and subject to sections 3(3) and 5 of the Act, which do not apply, a decree must be granted. Subsection (4) refers to the "court" not to a "judge". It is, accordingly, impossible to regard the pronouncement of the decree by the judge as anything more than a formality, and it is difficult to see how he can have jurisdiction to do anything but make the pronouncement, save possibly to postpone it until a later date to give time for other steps to be taken, eg, to apply to stay or set aside the registrar's certificate.'

31. The distinction lies in the difference in the role and authority of the Registrar in the process. Under the MCR S. 30(1), the purpose of the Registrar Certificate is to certify that the cause is fit to be set down for trial on the condition that all of the relevant and legislative mandated preliminary steps have been taken in the procedure. In other words the Registrar certificate is not dispositive of the matter here as it is in the U.K. jurisdiction and the Judge here decides whether the Decree should be granted at all instead of the Judge role being just a formality.

32. Notwithstanding the distinction in the value given to the Registrar Certificates between the Two (2) jurisdictions I am of the view that the **Stevens, Tucker and Nash** principles are applicable to the present circumstances where an applicant may come along and say "I knew all about this: I chose not to defend; but 'it was all wrong: let me defend now and grant me a rehearing'".

33. It is in this precise context, applying the subject principles that I turn to consider the reasons given by the Respondent for not filing the Answer and Cross Petition in the requisite time.

34. The Respondent's Affidavit in support of the Application to set aside the Decree Nisi spoke to "much of the Petitioner's evidence being untrue and that the Respondent is in fact the cause of the breakdown of the marriage." The affidavit of Calvin Seymour also on behalf of the Respondent attributed blame to "inadvertence and scheduling in dates" as reasons for the delay in filing the Answer and Cross Petition. These reasons I deem insufficient and less than compelling to put the Court on inquiry at the very least or to set aside the Decree Nisi at most.

35. Additionally, the **Matrimonial Causes Rules** pursuant to section 20 states:-

> ***"No pleading shall be filed out of time without leave after the Registrar's certificate has been granted under rule 30."***

36. The Respondent was served with the relevant documents on the 11 May 2023, and subsequently an appearance was entered on 15 May 2023 to which the Respondent expressed her intention to defend the action. The Respondent had until the 5 July 2023 to file an Answer and Cross Petition in the action. The Respondent failed to do so again and now seeks leave to have the same filed over a month later.

37. In **Lawlor v Lawlor [1995] 1 FLR 269** Butler-Sloss LJ addressed instances where there is a delay in filing an answer to a Petition stating,

> ***"where the delay in filing the answer was minimal and not prejudicial to the other spouse, it would be usual to permit the answer to be filed, unless the contents of the answer were***

frivolous, irrelevant such that they would be considered an abuse of the Courts process."

This presupposes a situation wherein the Court has advanced to the hearing of the application to file the Answer & Cross Petition out of time. Unfortunately that is not the position in this case as the Respondent has not yet crossed the threshold of having the Decree Nisi set aside.

38. The Respondent's counsel on the day of the hearing also failed to attend indicating that the court clerk was informed that counsel for the Respondent was before a more senior judge and needed the matter to be set down for 1 hour.

39. As the Court sought to accede to counsel's request, the matter was stood down until all of the several uncontested divorces set for that morning had been concluded, more than an hour later. Counsel for the Respondent failed to attend and or have another counsel of the firm represent the client's interest given the circumstances.

40. The Court at that juncture, could not prejudice the Petitioner and his counsel by failing to hear the Petition which was ultimately scheduled for hearing 10:00 am that morning. At 10:45 or thereabouts the court at the insistence of Counsel for the Petitioner determined that sufficient grace had been extended to counsel for the Respondent.

41. Further, there are certain courtesies of the Court which counsel should always observe. The **Bahamas Bar (Code of Professional Conduct) Regulations** "the Regulations" outline the expectations of counsel as an advocate. Rule VIII of the regulations addressing an Attorney as advocate states:-

"When acting as an advocate the attorney must, while treating the tribunal with courtesy and respect, represent his client resolutely, honourably and within the limits of the law."

42. It is established that delays in the prosecution of cases are also relevant to deciding an issue as to whether to permit pleadings such as an Answer and Cross Petition to be filed out of time.

43. **Harris (Re) [1998] BHS J. No. 182** - Bahamas Supreme Court, Equity Side 1964 No. 459 -Dunkley J.

> ***8 There are two distinct, though related, circumstances in which an action may be dismissed for want of prosecution, namely, (a) when a party has been guilty of intentional and contumelious default, and (b), where there has been inordinate and inexcusable delay in the prosecution of the action. (Allen v. Sir Alfred McAlpine & Sons Ltd. [1968] 2 Q.B. 229; [1968] 1 All E.R. 543, C.A., approved in Birkett v. James [1978] A.C. 297, [1977] 2 All E.R., 801, H.L.).***
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> ***39 Under (b) above, an action may be dismissed for want of prosecution where: (a) there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and a third party: Birkett v. James [1978] A.C. 297 at 318; [1977] 3 W.L.R. 38; [1977] 2 All E.R. 801, H.L.***
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> ***40 "Inordinate" means "materially longer than the time usually regarded by the profession and Courts as an acceptable period" (Birkett v. James, above). It is easier to recognise than to define, but the present case is a clear case of inordinate delay.***
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> ***41 "Inexcusable delay" must be looked at primarily from the Applicant's point of view or, at least, objectively.***

44. While the Court does not find the delay in itself to have been inordinate the reason for the delay in filing the Answer and Cross-Petition I consider to be wholly inadequate.

45. The obvious nonchalance of the non-appearance of counsel and the Respondent on the morning of the hearing is inexcusable. "Inadvertence" resulting from a mix up of dates and sending relevant pleadings within the time prescribed by the Rules is the only explanation given by the Respondent for the delay in filing the Answer and Cross Petition out of time. I do not accept this as sufficiently compelling to cause this court to reverse the Decree Nisi. Moreover there is no

provision under the MCR which entitles counsel as of right to appear at trial and insist on obtaining leave to file an Answer and Cross Petition out of time.

46. S. 32 of the MCR is also particularly relevant to the issue of whether a party to divorce proceedings on the morning of the hearing, having been served within the requisite times provided by the rules, should be allowed to highjack proceedings to make an application to file an Answer and Cross Petition out of time. To this extent S. 32 of the MCA does allow a Respondent without filing an Answer to be heard without filing an Answer but it limits that right to questions of costs or damages and the question of custody or access to any children of the marriage. Neither of these issues formed part of the application before this court for consideration.

    It therefore stands to reason that the subject application to set aside the Decree Nisi is purely discretionary for the judge.

47. At this juncture having regard to the reasons given for counsel's non-appearance at the assigned hearing date and time and in light of the above mentioned authorities there is no compelling reason given to the court to reverse or set aside the Decree Nisi.

48. The Respondent's application is made pursuant to S.61 of the MCA which provides;

> ***"Every decree for divorce or for nullity of marriage shall in the first instance be a decree nisi not to be made absolute until after the expiration of three months from the pronouncement thereof, unless the court shall by general or special order from time to time direct that the same shall be made absolute within a shorter time, not, however, before the expiration of six weeks from the pronouncement thereof, and during that period any person shall be at liberty, in such manner as the court shall by general or special order in that behalf from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not brought before the court; and, on cause being so shown, the court shall deal with the case by making the decree absolute, or by reversing the decree nisi or by requiring further inquiry, or otherwise as justice may require; and at any time during the***

progress of the cause or before the decree is made absolute any person may give information to the Attorney- General of any matter material to the due decision of the case, who may thereupon take such steps as he may deem necessary or expedient, and if from any such information or otherwise the Attorney-General shall suspect that any parties to the suit are or have been acting in collusion for the purposes of obtaining a divorce contrary to the justice of the case, he may, by leave of the court, intervene in the suit, alleging such case of collusion, and retain counsel and subpoena witnesses to prove it; and it shall be lawful for the court to order the costs of such counsel and witnesses, and otherwise, arising from such intervention, to be paid by the parties of such of them as it shall see fit, including a wife if she have separate property."

49. Section 61 of the MCA outlines the circumstances under which a court is empowered to set aside a Decree Nisi. Simply put the court must look for and find either that there was ***"collusion"*** between the Petitioner and Respondent which facilitated the grant of the Decree Nisi or that there has been a discovery of ***"material facts"*** not having been brought before the court when the grant of the Decree Nisi was being considered. It is important to note that these are the only Two (2) circumstances in which the court has the power to either;

    i. *Make the Decree Nisi Absolute*
    ii. *Reverse the Decree Nisi*
    iii. *Require Further Inquiry or*
    iv. *otherwise as justice may require*

50. Having reviewed the affidavit evidence of the Respondent in support of her application to set aside the Decree Nisi, together with the submissions of counsel I am satisfied that there is no allegation on either side which might lead the court on an inquiry as to whether there has been any "***collusion***" between the parties, thereby extinguishing any such consideration.

51. The application must then fall to the discovery of ***"Material facts"*** and in a situation such as this where a Respondent is seeking to set aside a Decree Nisi already granted such facts must be introduced by the Respondent in her Affidavit or in evidence in support of the set aside application. In this instance the Affidavit in support of the application to set aside the Decree Nisi did not disclose any

"material facts" to sustain the application to set aside the Decree. Simply averring that the Petitioner's allegations in the Petition are untrue and that the Petitioner is the cause for the breakdown of the marriage amounts to nothing more than a blanket denial and a blanket averment. To put the court upon further inquiry allegations and facts intended to be relied upon should be particularized in the supporting affidavit. To put it in common parlance the Respondent failed to put meat on the bare bones of her assertions.

52. In keeping with the "*Fitzroy*" principals specified before in particular those relied on by Counsel for the petitioner in his submissions I conclude the following:

(i) the parties conduct was not in keeping with expected standards and ethics when approaching the court for an accommodation, and the reason for the delay in the filing of the Answer and Cross Petition is insufficiently compelling to cause the court's reversal of something so significant and life changing as a decree dissolving a marriage;

(ii) The consequences of the delay of having the Decree Nisi pronounced have not been specifically mentioned or alluded to by either the Petitioner or the Respondent, however the court appreciates that a reversal of the decree in favour of the hearing of an application to file an Answer and Cross Petition out of time would prejudice the Petitioner to the extent that documents would be required to be filed and served anew involving time and costs not contemplated.

(iii) To receive a fair trial in divorce and matrimonial proceedings there are an entire set of Rules that have been promulgated which are required to be adhered to by counsel and should never be ignored on the premise that the court, will always allow pleadings to be filed out of time at whatever time in proceedings that counsel pursues it;

(iv) **There has been no suggestion of any matter affecting the trial such as witnesses being ill or incapacitated;**

(v) **The consequences of an adjournment amounts to judicial time (which is at a premium) being wasted, a waste of resources for the Petitioner and in fact time wasted for the Respondent who on the day in question would only just have been taking an early step in the proceedings.**

53. Another issue to be decided in this matter is, having determined that the Decree Nisi will not be set aside and that it is affirmed, whether the court should still hear the application to file an Answer and Cross-Petition out of time.

54. In all of the above circumstances the application to set aside and reverse the Decree Nisi granted herein on the 14th day of July, A.D. 2023 is hereby dismissed. The Decree Nisi is affirmed that the Decree Nisi is granted to the Petitioner on the grounds that the Respondent has lived separate and apart from him for a continuous period of at least five (5) years immediately preceding the presentation of the Petition, it is not to be made Absolute until six (6) weeks from the making thereof and the Court grants a Declaration pursuant to S. 73(1)(a) OF the Matrimonial Cause Act, Chapter 125 Statute Laws of The Commonwealth of The Bahamas. The application to file an Answer and Cross-Petition out of time is also dismissed.

55. Costs of the Application to the Petitioner to be taxed if not agreed.

Dated this 6th day of December A.D., 2023

The Honorable Madam Justice C.V. Hope Strachan