

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2025/CLE/gen/01126

IN THE MATTER of The Inheritance Act, Chapter 116

AND

IN THE MATTER of The Matrimonial Cause Act, Chapter 125

AND

IN THE MATTER of The Matrimonial Cause Rules, Chapter 125

AND

The Estate Of The Late Dwight Eddison Brice of Flamingo Bay, Exuma

BETWEEN

DEMARRO JAROD BRICE

First Claimant

AND

DERON ROMEKO BRICE

Second Claimant

AND

SHEANDA DWONETTE BRICE

Third Claimant

AND

LASHANTIA JANET BRICE

Fourth Claimant

AND

TRAVON DWIGHT BRICE

Fifth Claimant

AND

DEVINA MARGO MURPHY

Sixth Claimant

AND

NASHECKA KEARRA BRICE (nee ROLLE)

Defendent

Before: **The Hon. Madame Justice J. Denise Lewis-Johnson MBE**

Appearances: Regina E. Bonaby of Counsel for the Claimants
Owen Wells and Linique Murphy-Grant of Counsel for the Defendent

Hearing Dates: 12th December 2025; 15th December 2025;

Family Law – Decree Nisi –Decree Absolute – nunc pro tunc – Administrator of the deceased spouse – Lodging of Notice of Application to make Decree Absolute – Filing of Notice of Application to make Decree Nisi Absolute –Section 64 of The Matrimonial Causes Act - Rule 37 of The Matrimonial Causes Rules – Section 4(b)(ii) of The Inheritance Act

RULING

Introduction

1. By Certificate of Urgency, Originating Application, Notice of Application and Affidavit of Deron Romeko Brice all filed on the 10th December A.D., 2025 the Claimants sought the following relief:-
 - a. An Order to dispense with case management conference as the matter is of urgency pursuant to Section 27.6 (b) of the Supreme Court Civil Procedure Rules 2022.
 - b. An Order that the Consent Order dated 27th February A.D., 2025 and filed 5th September A.D., 2025 in relation to the Supreme Court Action of Case No. 00123 of 2022 in the Family Division that the Consent Order came

into immediate effect on 27th February A.D., 2025 pursuant to Section 42.8 of the Supreme Court Civil Procedure Rules 2022.

- c. An Order that the Decree Nisi be certified nunc pro tunc as being made Absolute on 20th March A.D., 2025 (Lodging of Notice of Application to Make The Decree Nisi Absolute) in relation to the Supreme Court Action of Case No. 00123 of 2022 in the Family Division.
- d. An Order that the Death Certificate of **DWIGHT EDDISON BRICE** at Spouse Information be deleted and the Informant Relationship as widow and that such vacancy must be substituted with ex-wife pursuant to Section 24 of the Births & Deaths Registration Act, Chapter 188.
- e. An Order restraining Curtis Memorial Mortuary from obtaining and acting upon instructions from the Defendant with respect to arranging and preparing the body of the deceased **DWIGHT EDDISON BRICE** for burial and or cremation on the 13th December A.D., 2025.
- f. An Order authorizing Curtis Memorial Mortuary to obtaining and acting upon instructions from the Claimants with respect to arranging and preparing the body of the deceased **DWIGHT EDDISON BRICE** for burial and or cremation on the 13th December A.D., 2025.
- g. An Order for Leave that the any of the adult heirs of the deceased **DWIGHT EDDISON BRICE** inclusive of the Claimants be granted leave to apply for Grant of Administration.
- h. Such further or other relief that the Court deems just and fit.
- i. **AND** that the costs of and occasioned by this action be provided for.

2. The matter was heard on an emergency basis inter parties on Friday the 12th December A.D. 2025.

Claimants Evidence:

3. That they are the children of the deceased, Dwight Eddison Brice, who died on the 15th November 2025. The deceased had 12 children and 6 of them are parties to this action as Claimants.

4. That on the 3rd March A.D., 2022 the Defendant filed a Petition for divorce from the deceased being action number 2022/Fam/div/00123. That a Decree Nisi was pronounced on the 13th September 2022. The parties arrived at a consent position and an Order was made on the 27th February 2025, a Declaration was granted pursuant to Section 73(1) B of the **Matrimonial Causes Act, Chapter 125**.
5. That on the 20th March A.D., 2025 the Defendant filed a Notice of Application to Make Decree Nisi Absolute.
6. That the Defendant has taken control of the remains of the deceased, planned a funeral, instructed Curtis Memorial Mortuary to prepare the body for burial and or cremation on the 13th December 2025 with out consultation or communication with the Claimants.
7. That the Defendant registered the death of the deceased as widow and not ex-wife. That the Defendant received the death benefit from the National Insurance Board.
8. That Curtis Memorial Mortuary has refused to act upon the instructions of the Claimants with respect to arranging and preparing the body of the deceased, Dwight Eddison Brice for burial and or cremation.

Evidence of the Defendant

9. That she is the surviving spouse of the deceased and as such is entitled to his remains and to arrange for his funeral and burial.
10. That the evidence of the Claimants is not disputed.
11. That she wishes to be reimbursed for moneys spent on the funeral if the court finds that she is not the wife and thus acted outside the scope of her authority.

Issues as per the Emergency Application

12. Whether the Defendant is the wife of the deceased Dwight Eddison Brice having regard to the filed Notice of Application to make Decree Nisi Absolute.
13. Under the laws of intestacy who has the rights to the remains of the deceased and is therefore authorized to plan his funeral and burial.
14. Should an injunction be granted to the Claimants to stop the funeral and burial of the deceased scheduled for the 13th December A.D., 2025.

The Law

15. Section 64 of the **Matrimonial Causes Act** (MCA) provides as follows:

“When the time (if any) limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal, any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.”

16. Rule 37 of the **Matrimonial Causes Rules** (MCR) provides as follows;

“37. (1) An application by a spouse to make absolute a decree nisi pronounced in his favour shall be made by lodging in the Registry where the cause is proceeding a notice of application in accordance with Form 13 on any day after the expiration of the period prescribed for making the decree absolute. If the Registrar, after searching the court minutes, is satisfied —

(a) that no application for rehearing under rule 34 is pending; and Intervention by person other than the AttorneyGeneral.

(b) that no appearance has been entered, or, if appearance has been entered, 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 decree 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 decree nisi there shall be lodged with the notice an affidavit by the applicant accounting for the delay, and the notice shall be filed without leave.

(2) Upon the filing of the said notice the decree nisi shall become absolute.

(3) An application by a spouse to make absolute a decree nisi pronounced against him shall be made to the Registrar on not less than four days' notice and shall be accompanied by a notice of application in accordance with Form 13. On any such application the Registrar may make such order as he thinks fit, or may refer the application to the judge.

(4) A certificate in accordance with Form 14 or Form 15, whichever is appropriate, that the decree has been made absolute shall be prepared by the person applying for the decree and filed by the Registrar. The certificate shall be authenticated by fixing thereto the seal of the Registry.”

17. Section 4 b(ii) of **The Inheritance Act** provides as follows:

“(1) The residuary estate of an intestate shall be distributed in the manner mentioned in this section, namely —

(a) if the intestate leaves a husband or wife and no children, the surviving husband or wife shall take the whole residuary estate;

(b) if the intestate —

(i) leaves a husband or wife and — (A) one child, the surviving husband or wife shall take one half of the residuary estate and the remainder shall go to the child; (B) children, the surviving husband or wife shall take one half of the residuary estate and the remainder shall be distributed equally among the children;

Abolition of descent to heir, curtesy, dower.

(ii) **leaves children but no husband or wife, the residuary estate shall be distributed equally among the children and where there is only one child that child shall take the whole residuary estate;”**

Decision

18. The court has to determine whether the Defendant is the spouse of the deceased and all other issues will be determined by operation of law under the rules of intestacy as set out in the Inheritance Act. Fortunately, the facts are not in dispute.
19. The effect of filing a Notice of Application to make Decree Nisi Absolute is at the core of this case. Whether at the date of filing of the Notice, the Decree is made absolute albeit the Registrar has not signed the Decree Absolute.
20. By Rule 37(2) of the Matrimonial Causes Rules “Upon the filing of the said notice the decree nisi shall become absolute.” This suggest that the Decree is automatically made absolute as of the date of filing of the Notice. What is also to be noted is that by this Rule an applicant is to “lodge” a notice of application the day after the expiration of the period prescribed for making the decree absolute. In this case that would be after 90 days from the granting of the Decree Nisi (subject to the issuance of the Section 73 Declaration). After the lodging of the application, the Notice of Application for making Decree Nisi Absolute is then filed. It is also the obligation of the Registrar to search the courts minutes to be satisfied that no application for rehearing under Rule 34 was made and that no appearance has been entered. A further obligation is to make certain under Section 64 of the MCA that there is no appeal pending in relation to the Decree Nisi issued.
21. The Claimants asked the court to apply the principle of nunc pro tunc, which allows a court to retroactively correct or change a court record, order or judgment. In this case it would be to certify the that the Certificate for making Decree Nisi Absolute would be dated as of the date of filing of the Notice being 20th March A.D., 2025. That would be the date the marriage ended and as of that date the Defendant would not be the spouse of the deceased.
22. In the case of **Siamone F. McKenzie v Nathaniel McKenzie and Samuel Thompson SCCivApp No. 208 of 2023** the Court of Appeal addressed the present issue. The

Appellant re-married between the filing of the Notice of Application to make Decree Nisi Absolute and prior to the Registrar signing the Certificate to make the Decree Nisi Absolute. The Appeal Court held that while there was no evidence of the lodging of the notice prior to the filing; by the acceptance of the filing of the Notice it is presumed that the required lodging per Rule 37(1) of the MCR was complied with. Further the Court applied the principle of nunc pro tunc and held that the Decree was made absolute as at the date of filing of the Notice.

23. In the present case no Certificate of making Decree Nisi Absolute was filed. The McKenzie case does not address whether it is mandatory that the Certificate be filed. What it established is that without a signed Certificate of Decree Absolute the Court of Appeal held an absolute existed as of the date of filing of the Notice and as such a party was at liberty to marry another person and not be guilty of bigamy. It therefore stands to reason that if you can re-marry you are divorced and therefore you are not a spouse.

24. The Court of Appeal in McKenzie further stated:

“In our judgment, this is consistent with fairness. If the Decree Absolute did not relate back to the time when the Notice was first lodge it could have a serious effect on the party who has applied to make his Nisi, Absolute. In between the time the person lodges his Notice and the Absolute is signed and filed by the Registrar, the person would remain married and subject to the consequences of marriage. Examples of these consequences would be pension and inheritance rights. If the Registrar, for whatever reason, takes months (as often occurs in this jurisdiction) to sign and file a Certificate making a Decree Nisi, Absolute and the Certificate does not relate back to when the process first started with the lodging of the application, the implications could be significant and prejudicial to the applicant.”

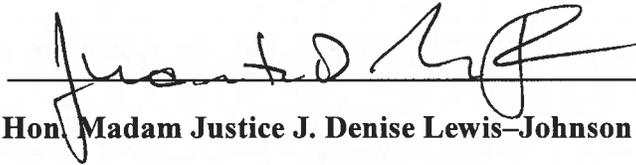
25. This Court therefore finds that the Defendant is not the spouse of the decease at the date of his death, that the Certificate making the Decree Nisi Absolute will be dated the 20th March A.D., 2025 being the date the Notice of Application for Making Decree Nisi Absolute. This court is bound by the ruling in McKenzie and therefore equally presumes

that the necessary Notice was lodged and all prerequisite actions in law were complied with. Sir Michael Barnette, P. in Mckenzie stated and applied the “The maxim omnia praesumuntur rite esse acta provides that, in the absence of evidence to the contrary (a) something which should have been done was in fact done, or (b) something which has been done was done in accordance with all relevant technicalities.” As such the Registrar is presumed to have carried out all necessary checks as stated above.

26. Having determined that the Defendant is not the spouse of the deceased, we now look to the law of intestacy under the Inheritance Act. As stated above, the deceased died having no wife, but leaving children. The children are by Section 4(ii) of the Inheritance Act entitled to the remains of the deceased, to plan and arrange his funeral and burial.
27. The parties all accept that the funds paid to Curtis Memorial Mortuary were the death benefit from the National Insurance Board, the Defendant claimed the refund of those sums. As no personal funds were advanced by the Defendant she is not entitled to a refund and she is certainly not entitled to the funds paid by the National Insurance Board to the funeral home toward the burial expenses of the deceased.
28. The Court having considered the evidence and the law in this matter, finds and Orders as follows:-
 - a. The Defendant Nashecka Kearra Brice nee Rolle is not the spouse/wife of the deceased Dwight Eddison Brice.
 - b. That the Decree Nisi issued in action 2022/Fam/div/00123 be certified nunc pro tunc as being made Absolute on the 20th March A.D., 2025. The Registrar is to sign the Absolute as of that date.
 - c. That the Claimants as children of the deceased are entitled to his remains, to plan and arrange his funeral and burial.
 - d. That Injunction is grant restraining Curtis Memorial Mortuary from obtaining and acting upon the instructions of the Defendant with respect to arranging and preparing the body of the deceased Dwight Eddison Brice for burial and or cremation on the 13th December A.D., 2025.

- e. That Curtis Memorial Mortuary is authorized and directed to act upon the instructions of the Claimants with respect to arrangements and preparations of the body for burial and or cremation of the deceased.
- f. The Defendant is restrained whether by herself, her servants, and her agents from obtaining, instructing, arranging or preparing the body of the deceased for burial or cremation.
- g. That the Defendant is not entitled to a refund of moneys paid to the Curtis Memorial Mortuary.
- h. The court will hear the parties on Cost on the return date.
- i. Matter adjourned to the 6th May 2026 at 11:00 in the forenoon.

Dated this 29th day of December, A.D. 2025

A handwritten signature in black ink, appearing to read 'J. Denise Lewis-Johnson', is written over a horizontal line.

The Hon. Madam Justice J. Denise Lewis-Johnson MBE