

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
FAMILY DIVISION**

**2023**

**FAM/div/00388**

**BETWEEN**

**K P L**

**Petitioner**

**AND**

**L M L (nee R)**

**Respondent**

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

**Appearances:** Regina Bonaby of Counsel for the Petitioner

Phillip Lundy of Counsel for the Respondent

**Hearing Dates:** 7<sup>th</sup> December 2023, 25 February 2024, 18<sup>th</sup> June 2024, 27<sup>th</sup> January 2026,  
3<sup>rd</sup> February 2026

*Setting aside Decree Nisi – Failure to Service of Notice of Trial – Cruelty – Marital Rape*

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**ORAL RULING**

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**Background and Procedural History**

1. By Petition filed on the 27<sup>th</sup> June 2023 the Petitioner sought a divorce on the ground of cruelty.

2. The Respondent entered a Memorandum of Appearance on 20<sup>th</sup> July 2023 indicating among other things her intent to defend the case at the hearing.
3. A Registrar's Certificate was issued on the 6<sup>th</sup> October 2023 and the Notice of Hearing was filed on the 16<sup>th</sup> October 2023 with a return date of 7<sup>th</sup> December 2023.
4. At the hearing on the 7<sup>th</sup> December 2023 the matter proceeded uncontested and a Decree Nisi was granted to the Petitioner on the ground of Cruelty.
5. I accept the Respondent's submission that both parties have been cruel, however while the Respondent has forgiven and wants the marriage to work, the Petitioner has not and wants the Court to act on that cruelty.
6. By Summons filed on the 4<sup>th</sup> March 2024 supported by an Affidavit of even date the Respondent applied to have the Decree Nisi set aside pursuant to Section 61 of the Matrimonial Causes Act and the inherent jurisdiction of the Supreme Court on the ground that the Petitioner failed to serve the Respondent with the Notice of Hearing.
7. Notice of Change of Attorney was filed by both the Petitioner and the Respondent.
8. A Registrar's Certificate was issued on the 7<sup>th</sup> November 2025 and Notice of Trial was filed on even date with a returned date of 27<sup>th</sup> January 2026.
9. At the hearing on the 27<sup>th</sup> January 2026 the Respondent asked leave of the Court to file an Answer out of time. The adjourned date was the 3<sup>rd</sup> February 2026 at 10:00 in the forenoon.
10. The Respondent filed an Answer on the 2<sup>nd</sup> February 2026.
11. The contested hearing of the Petition was held on the 3<sup>rd</sup> February 2026

### **Petitioner's Evidence**

12. The Petitioner's evidence was that the Respondent was cruel to him in that she was verbally and physically abusive. She was aggressive and would fight him, hit him, punch and tear off his clothes and he had to call the Police on numerous occasions during these fights.
13. That the Respondent vandalized his personal property, including tearing up his clothing.
14. That the abuse was so significant that he partitioned the front room to create a private bedroom for himself, but he would wake to find the Respondent over him and she would

force him to have sex against his will. That he was forced to have sex with her on numerous occasions against his will.

15. That the Respondent stopped cooking, cleaning and would leave the home with the child for days without saying where they were and this caused him distress.
16. That he was embarrassed, ashamed and did not condone the cruelty, nor did he do anything to cause the Respondent to treat him this way.
17. That the Petition was not brought in collusion with the Respondent and there was no possibility of reconciliation. The Petitioner therefore asked the Court to dissolve the marriage on the ground that the Respondent had been cruel to him.
18. On cross examination the Respondent asked the Petitioner if he was saying to the court that his wife raped him, to which he replied she forced me to have sex against my will. The Respondent asked again, are you saying you were raped, counsel for the Petitioner objected on the ground of asked and answered and that the Petitioner in his evidence in chief never used the word rape.
19. It was put to the Petitioner that the Respondent was not cruel to him, that she did not hit him, tear his clothing, and that they had consensual sex. The Petitioner denied it all.
20. It was put to the Petitioner that the police were called because the Respondent was afraid of the Petitioner who had a shot gun. This was denied by the Petitioner.
21. That the Petitioner tendered a Discretion Statement.

### **Respondent's Evidence**

22. That the majority of the Respondent's evidence was incoherent.
23. That she acknowledged the fights between the parties, that she instituted sex with the Petitioner and that he initially said no and was resistant, but she was of the view that he consented.
24. That she denied being cruel to the Petitioner, that she always performed her wifely duties and that the parties had counseling with a priest.
25. That she did not think the marriage was bad and should be dissolved.
26. Under Cross Examination the Respondent acknowledged pulling the Petitioner into a bedroom and forcing him to have sex.

27. The Respondent asked that the Petition be dismissed and the parties be allowed to resume the marriage.

### **The Law**

28. Rule 31(1) of the Matrimonial Causes Rules (MCR) provides as follows: -

“31. (1) The petitioner, after the Registrar’s certificate has been obtained, or (where directions have been given for the separate trial of any issue) the plaintiff, after the directions have been complied with, shall set the cause or issue down for trial in the Registry, and shall, within twenty-four hours thereafter, give to each party who has entered an appearance notice of his having done so. If the petitioner fails to set the cause down within fourteen days after the granting of the Registrar’s certificate, any party defending the cause may set it down for trial and shall, within twenty-four hours thereafter, give to the petitioner and all other parties who have entered an appearance notice of his having done so.”

29. Section 61 of the Matrimonial Causes Act provides as follows: -

“61. 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 has separate property.”

30. Cruelty is defined as follows in Section 2 of the Matrimonial Causes Act (MCA): -

“cruelty” includes voluntary conduct reprehensible in nature or which is a departure from the normal standards of conjugal kindness on the part of one party to a marriage thereby occasioning injury to the health of the other spouse or a reasonable apprehension of it on the part of that other spouse and being conduct which, after taking due account of all the circumstances of the case, would be considered to be so grave and weighty a nature that should such other spouse be called upon to continue to endure it, would be detrimental to his or her health;

**Issue:**

31. Whether the Decree Nisi pronounced on the 7<sup>th</sup> December A.D., 2023 should be reversed?
32. Whether the Petitioner has met the standard and requirements for cruelty as required under the MCA there by allowing for the marriage to be dissolved? Alternatively, has the Respondent through her Answer met the standard to have the Petition dismissed.

**Decision**

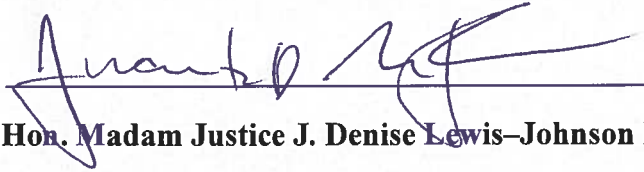
33. On the first issue the parties were represented by Mrs. Alexandria Lindsay-Collie for the Petitioner and Mrs. Romona Farquharson-Seymour for the Respondent.

34. The Petitioner was statutorily bound to serve the Respondent with the Notice of Trial as the Respondent filed a Memorandum of Appearance and she indicated her intent to defend the matter at the hearing.
35. This requirement to serve the Respondent is mandatory per Rule 31(1) of the MCR which states in part “the plaintiff, after the directions have been complied with, shall set the cause or issue down for trial in the Registry, and shall, within twenty-four hours thereafter, give to each party who has entered an appearance notice of his having done so.” As the word “shall” is mandatory the Court finds that the Petitioner is in breach for failure to serve the notice.
36. Having failed to serve the Notice, the Respondent further asked the Court to set the Decree Nisi granted on the 7<sup>th</sup> December 2023 aside. The Court per Section 61 of the Matrimonial Causes Act has authority to reverse a Decree Nisi and thus finds this to be an appropriate case to do so as the Respondent was denied the opportunity to:-
- I. Defend the allegations in the Petition;
  - II. Put the Answer to the Petitioner
  - III. Be heard on her Answer,
  - IV. Cross Examine the Petitioner and test the veracity of his evidence.
37. The Petitioner acknowledged having made a procedural error and did not object to the reversal of the Decree Nisi. Further noting that the step was mandatory.
38. The Court Orders the Decree Nisi granted on the 7<sup>th</sup> December 2023 be reversed.
39. As to the second issue, the Court starts with accepting the submission of the Respondent that both Parties were cruel to each other. However, while the Respondent has, by her evidence, forgiven the Petitioner and wishes the marriage to continue, the Petitioner has not forgiven her and is asking the Court to dissolve the marriage on the ground of the Respondent’s cruelty.
40. The Respondent did not file a Cross Petition only an Answer, thereby requiring the Petitioner to meet the statutory standard of cruelty if he is to succeed with his Petition.
41. The standard of behavior that would amount to cruelty is defined in the MCA Section 2 as stated above. The Court notes particularly in part “voluntary conduct reprehensible in nature or which is a departure from the normal standards of conjugal kindness on the part of one party to a marriage” toward the other.

42. The Court found the Petitioner to be a credible witness, his evidence was compelling and under cross examination he appeared truthful. It was clear that he was pained at having to give oral evidence in open court as to the level of cruelty and abuse he received. His articulation of the events was measured, particularly when speaking to having nonconsensual sex and the physical altercations with the Petitioner. There was a level of embarrassment and discomfort in giving his evidence.
43. The Court accepts that within the confines of Bahamian matrimonial law forced sex without one's consent amounts to cruelty. Combined with the verbal and physical abuse, clothing was torn and property destroyed and the police had to be called, there was clearly no conjugal kindness and the behavior was such that the Petitioner should not be made to continue to endure it. The standard for cruelty was clearly met by the Petitioner.
44. While it is not easy for anyone to speak publicly about being physically beaten to the point of having to call the police for protection, it was evident that for this husband it was humiliating. The hesitance he proceeded with was understandable, knowing that his allegations would generally not be believed and that he would be subject to public criticisms, ridicule and mockery. The Court accepts the Petitioner's evidence.
45. The Court took note of the Respondent's evidence, particularly her acknowledgment of the treatment she met out to the Petitioner. Her inability to accept that it was abusive was concerning and even with religious intervention the relationship did not improve.
46. The Court remains hopeful with the growing number of these cases (and men are now coming forward) that those sitting in the other place would deem it important to act without delay. Respect and human dignity demands that persons ought not to be made to give oral evidence in open court in contested divorces.
47. The Court therefore finds as follows: -
1. The Decree Nisi granted on the 7<sup>th</sup> December 2023 to the Petitioner be reversed.
  2. Cost of the reversal application to the Respondent in the amount of \$500.00 plus VAT.
  3. The Court exercises its discretions and grants a Decree Nisi on the ground that since the celebration on the marriage the Respondent has treated the Petitioner with cruelty.
  4. The Decree is not to be made absolute within three (3) months.

5. Ancillary matters adjourned to Chambers.
6. The Respondent is condemned in cost in the amount of \$1,500.00

Dated this 3<sup>rd</sup> day of February, A.D. 2026

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

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