

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

Claim No. 2025/FAM/div/00332

B E T W E E N

CPL

Applicant

AND

WBL

Respondent

AND

SD

Co-Respondent

Before: The Honourable Madam Justice Cheryl Bazard KC

**Appearances: Mrs. Kelley Bostwick Toote for the Petitioner
 Mr. Jairam Mangra for the Respondent
 No appearance of the Co-Respondent**

Hearing Dates: 12 August, 2026

Family Law - Divorce – Adultery – Cruelty – Petitioner claiming adultery and cruelty by the Respondent – Respondent claiming cruelty by the Petitioner - Whether the grounds of adultery and cruelty have been proven by the Petitioner – Whether there was a strong presumption that the acts of adultery took place – Whether the ground of cruelty has been proven by the Respondent – Whether the grave and weighty test has been satisfied – The issue of condonation.

RULING

Bazard KC, J:

INTRODUCTION

[1.] On the 27th June, 2025, the Petitioner filed a Petition for Divorce seeking the dissolution of the marriage on the grounds of adultery and cruelty.

[2.] On the 18th August, 2025, the Respondent filed an Answer and Cross-Petition on the ground of cruelty.

[3.] The Petitioner filed a Reply to the Answer and Cross Petition on the 28th October, 2025.

[4.] The Petitioner and the Respondent both gave sworn evidence. There was no cross-examination of either of the parties. No other witnesses were called.

[5.] The trial of this matter was heard and concluded on 12 August, 2026. Counsels both rested on the evidence given. No further submissions were made.

BACKGROUND

[6.] The parties were married on the 25th day of November, A.D., 2005 when the Petitioner was a spinster and the Respondent a divorcé. There are no children of the marriage and two children of the family who are *sui juris*. The marriage was subsisting for 20 years when the Petitioner filed the said Petition.

The Petitioner's evidence

Adultery

[7.] In her sworn evidence the Petitioner stated that she felt that the Respondent committed adultery because in early 2025, she would notice a vehicle parked between the offices. A lady was bending down and went into the office. By the time, the Petitioner returned, the lady had already left. She hired someone to take a photo of the vehicle and found out that the car belonged to the Co-Respondent. When she walked into the office, she heard the other employees whisper, "She coming, she coming.", referring to the Petitioner. She said that she would also notice the vehicle during her traverse in the morning.

[8.] On another occasion, she drove in the back by the office as she was suspicious. The Respondent was at home at this time sleeping. The Petitioner observed the Co-Respondent stop at

the end of the corner and speak with the tenants. She then sped off. She further noted that she has photos of the Co-Respondent coming out of the office. No such photos were exhibited or tabled into evidence. The Petitioner also stated that she saw the Respondent jump out of the vehicle sometime in 2025 at 10:30 a.m.

[9.] The Petitioner stated in her evidence that she never approached the Respondent with this information and insisted that the “coming and going” continues. She also stated that one day she was folding clothes and heard a noise at the bottom of the basket. She then pulled up a blue package that said ‘Wet Rider’ condom. She said she and the Respondent never used condoms. She approached the Respondent about the finding the following morning. The Respondent denied that it was his and that the Petitioner must have had somebody in the house. A photo of the condom was exhibited in the Petitioner's Reply neatly positioned on the top of the folded clothing.

[10.] The Petitioner, in evidence on the ground of adultery then stated that the Respondent had an office to the right of the business that was a room for him to relax in. She was not welcomed in the room. It has a television, love seat and kitchen and it was attached to the business.

Cruelty

[11.] The Petitioner then gave evidence regarding her allegations of cruelty. She stated that in August, 2024, she was physically abused by the Respondent. She was asleep and around 3:00 a.m., the Respondent woke her up and said that he wanted to talk about a part for the lawn mower. He also said that she spent too much time with her parents and not enough time with the business. The Petitioner then said that she told the Respondent, “Don’t f--- with me tonight.” That was the first time in 20 years that she used profanity with the Respondent. She stated that he cursed at her all the time and that she could carry her “motherf---ing ass”. The Respondent then came to her side of the bed, grabbed her and choked her. She screamed and got up off the bed. The Respondent then walked away and said, “Ha, ha. That was funny.” He then told her that if she thought she was going to take his property, “you lie”. He then jumped in his truck and sped off. This was around 4:45 a.m. She then called her sister and packed a bag and left.

[12.] Before he left, the Petitioner told the Respondent that he was not going to harm her like he did his stepmother. She said that in her presence, he had beaten his stepmother with a piece of wood.

[13.] She later reported the matter of the choking to the police, on the advice of her then Counsel and she told them not to arrest him but to give him a warning. That afterward, the Respondent called her and cursed her out and said it was a sin what she did. She said that the Respondent was verbally violent towards her.

[14.] After this incident, the Petitioner returned to the matrimonial home because she wanted her marriage to work. She said that the Respondent is not a bad person and that she went back to rekindle the relationship. While the parties resumed cohabitation, the Petitioner said that the Respondent told her that the relationship would never be the same. Since that time, there was no physical harm from the Respondent.

[15.] The Petitioner then turned to the numerous doctor appointments and procedures that the Respondent underwent for 2 to 3 years both in The Bahamas and South Florida. She stressed that she was his caretaker. Sometimes, he would disappear without the Petitioner's knowledge. This made the Petitioner feel worthless and that he did not want her there.

[16.] In 2025, on one occasion when he was visiting his daughter, he took ill and was rushed to the hospital via ambulance. She only found out about the incident when she saw the expense on her medical insurance. She said he snapped at her and was arrogant. He told her that he did not need her after he received a good bill of health. Before that time, the emergency contact persons for the physicians were the Petitioner and the Respondent's daughter. The Respondent removed her as an emergency contact in November, 2025. She said that this made her feel worthless, used and abused. Further, the Respondent no longer communicated to her when he would be travelling. She would find out on the day of travel and when she asked him about his return, he would say, he would be back on Tuesday, Wednesday, Thursday or Friday. Reservations were now only being made for him and not both of them.

[17.] The last incidences of alleged cruelty that the Petitioner spoke of was that the Respondent on one occasion left his shotgun exposed. He moved it from the bedroom and put it on the bathroom steps. It was there for 2 weeks. This occurred in August, 2024, around the time of the alleged choking incident. This placement of the gun made her feel afraid. On occasions, he would also leave the door unlocked when the gun was exposed. Photographs of the gun were exhibited in the Petitioner's Reply. A photograph of an open laundry door was also exhibited to the Petitioner's Reply.

[18.] The Petitioner stated that she finally left in June, 2025. She feared for her life and felt as if she was walking on egg shells. She had little to say so as to not get him "riled up." She had headaches. She couldn't sleep. Her doctor told her that she had stress and needed to deal with the stress issue as nothing else was wrong with her. She did not trust him anymore. She did not want to be in that space anymore. She suggested counselling, but the Respondent rejected it. She later told their priest that she was being disrespected.

[19.] The Petitioner also made mention of a Cane Corso canine that the Respondent had. Subsequently the dog died and the Respondent accused her of poisoning the dog and further

accused her of trying to poison him too. This made her feel like a “nobody”. She could not believe that the Respondent would go to those lengths.

[20.] In 2024, the parties went on a trip to Dominica. There was a glitch and her sister, who was also on that trip was waiting for a room to be assigned to her. The Petitioner said that the Respondent agreed that the sister could share the room with them, but that later the Respondent said that she allowed her sister to come into the room without informing him.

[21.] The Petitioner then addressed her absence at the Respondent’s father’s funeral. She stated that when the Respondent’s father died almost 11 years ago, she had already purchased tickets to travel to Europe. The funeral occurred around the time of travel. She stated that the Respondent said that she could go. She said that his position on matters such as this was, ‘Let the dead bury the dead.’ She said that she was later penalized by him and that he said that she should have been to the funeral.

[22.] In closing her evidence, the Petitioner stated that she was the office administrator, went through great lengths to make the Respondent comfortable. She went to great lengths to allow him space with his family even when his ex-wife came to see him. The actions of the Respondent left her deeply hurt and scarred as well as depressed. She believes that the marriage is irretrievably broken.

The Respondent’s evidence.

Cruelty

[23.] The Respondent stated that much of what is in the Petitioner’s petition was new to him. That 5 years into the marriage, the Petitioner told him that the marriage was not what she thought marriage would be and that she should not have gotten married.

[24.] He stated that early in the marriage, and in particular, on the wedding night, he took off all of his clothes hoping to obtain sexual pleasure. The Petitioner spurned him and told him that he only thought that marriage was for sex. This behaviour continued during the honeymoon period.

[25.] When he met the Petitioner, she was in a travelling group. In order to join his wife in what she enjoyed, he joined. She later told him that going with him was boring because all he wanted to do was hold hands and have sex. She preferred travelling with friends and family and without him. He then became fed up and stopped going with the group.

[26.] The Respondent stated that the first 5 years of the marriage was good and then it went downhill from there.

[27.] Recalling the incident of choking the Petitioner or beating his stepmother, the Respondent vehemently denied the same. He stated that it never happened. He said that he did go at his stepmother because she slapped his father who was 83 years old and a dialysis patient. He never beat the stepmother. As for the choking allegation, he said that he did not choke the Petitioner. He put his hand over her mouth because she was cursing loudly and he did not want the neighbours to hear. He again stated that he never hit or choked the Petitioner.

[28.] Regarding police intervention, he said that he received a call from a corporal who asked if he was WBL. He was taken aback as no one calls him by his first name. Persons use the shortened version of his middle name. She asked him to come to the CDU. He told her that he was not coming anywhere. The officer said that she would send a car for him, but none ever came and he heard nothing further about the incident from the police. He called the Petitioner and she told him that she did not contact the police.

[29.] Addressing the death of his father in 2013, the Respondent stated that the Petitioner knew that he and his father were "two peas in a shell". They worked together for more than 50 years and were really close. His father lived with his sister in Dannottage Estates, but he took care of him every night from 6 p.m. to 6 a.m. when he would take him to dialysis. The Petitioner was there for the Respondent and showed her love for the father. As for attendance at this funeral, the Respondent stated that he would not tell a grown woman to stay for her father-in-law's funeral. He went to all of her relatives' funerals. The absence of the Petitioner, in the Respondent's words, "hurt me up to this day." He thought it was cruel and he still feels it.

[30.] Turning to his medical treatments, in 2018/2019, he experienced an enlarged prostate. During COVID 19, the Respondent could not get medical attention which made the symptoms progressively worse. He then sought medical attention in the United States. The Petitioner accompanied him all the time to the doctors. However, when he had his surgeries, he noticed that the Petitioner was distant when his sisters were there. She told him to let his sister take care of him. Although she was there in person, her attention and care was not there. When the Petitioner's sister visited with her, the Petitioner's attention was toward her sister rather than the Respondent.

[31.] The Respondent stated that the Petitioner accompanied him to doctors from 2020 to 2024. She would be texting on the phone and the Respondent had an aversion in having his business spread without his personal consent. The Petitioner was there in person but not as a caretaker. On one occasion, she left him at the timeshare that they used and said that her stepmother said that she misses her a lot and she wanted to go back. He told her to go back.

[32.] As for the condom that the Petitioner stated was found in his laundry, the Respondent responded that he has never used condoms and think that it was planted by the Petitioner. He had

prostate surgery in November, 2024 and when the Petitioner alleged that she found the condom in January, 2025, it was "hard for me to go to the bathroom to urinate; much less use a condom."

[33.] On another occasion, he had a biopsy when they clipped him 14 times on his prostate. He asked the Petitioner to drive. She said that she did not feel good to drive despite having driven and being able to drive in Florida. The Respondent then had to sit on one side of his body in order to make the drive to their accommodation.

[34.] As for a show of affection, whenever he attempted to hold the Petitioner's hand, she would walk ahead and leave him lingering behind. On 3 occasions, the Petitioner packed and left the matrimonial home. That the final time she left, he was only aware when he saw boxes via the home cameras. The Petitioner left when the Respondent was in Florida attending doctors and left the house unattended.

[35.] When the parties returned to The Bahamas, the Respondent slept in the room once occupied by his daughter because he had to get up frequently throughout the night and did not want to wake up or disturb the Petitioner. His daughter had at that time relocated to the United States. Only the Respondent and the Petitioner resided in the home. On one occasion, he came home after going for a walk and fell by his daughter's bedroom door. The location was close to the matrimonial bedroom. He called for the Petitioner 6 times but received no response. After being on the ground for hours and regaining comprehension, he telephoned his sister and told her to call the Petitioner to come and assist him. After receiving the call, the Petitioner came to where the Respondent was and said to him, "What wrong with you. Why you on the floor?" She then left him on the floor and returned to bed.

[36.] The Respondent also recalled the Petitioner telling his sister that she hoped he lived long enough to see him suffer.

[37.] With respect to the incident in relation to the gun, the Respondent stated that he made the house safe with cameras, dogs, fences, alarms and 2 licensed shotguns. One night, the cameras kept blinking and it alerted the Respondent and he went to the back with one of the guns. When he returned inside, he left the gun on the table or on a chair in the room. This was not the first or 2nd occurrence doing this. He had licensed guns for about 40 years and every year, it was the Petitioner who renewed his licenses for the guns. The guns were never a problem for the Petitioner and one occasion, the Petitioner would bring the gun to the Respondent's vehicle for him. He always told her that he took one gun and left one home and that she was to use it to defend herself. He showed her where the safety was and was surprised to hear that he intimidated her with the gun.

[38.] Regarding the opened back door; the door was an inner door and was not locked by the Petitioner nor the Respondent. The garage doors were always down and secured the home.

[39.] As to the adultery allegations, the Respondent stated that he does not know why the Petitioner jumped to that conclusion. There are their businesses at the back as well as the business of a man who repaired vehicles. There is a lot of "back and forth" to the business and there is no back door to the place.

[40.] The Co-Respondent was at the office to give him, his brother and sister advice on the business. The company was audited and the co-respondent would come twice per week to the establishment. The Petitioner was the accountant for the business and had the right to come to the office. He had asked the Petitioner, over the years, to work from the office but she decided to work from home. He told her that she could use his desk because he was usually on the road. She refused. Further, there is no alleyway. The Petitioner never told him about the co-respondent until he saw it in the Petition. Most of the times when the Co-Respondent visited the office, he was not there. He strongly stated that he never had an amorous or sexual relationship with the co-respondent.

[41.] As for the photo exhibited in the Reply of a vehicle, he could not identify the car and could not know the licence plate for the car. He has never driven in that vehicle and there is no evidence of him being in that vehicle at any time.

[42.] In closing, the Respondent said that he was never abusive. It was the first time he heard about it. The Petitioner never complained to him about it. She never discussed being stressed out with the Respondent. He did not mentally, physically or psychologically harm the Petitioner. She never provided a doctor's report nor a psychologist or psychiatrist report. He was never charged with causing harm. The police never came to him. He knows nothing of being disrespectful to the Petitioner. These issues were never discussed with him by the Petitioner.

[43.] The Respondent stressed that when he was sick and going through surgeries, that's when the Petitioner served him with divorce papers. He received them one morning after returning from Florida. The Petitioner had already moved out. When he received them, he was surprised, angry, shocked and hurt. After he received the papers, he told the Petitioner that the marriage could never be the same. He felt that all trust was lost. Prior to the service of the documents, the parties were living together like brother and sister. In fact, this state of affairs was existing even before the Respondent's surgeries. She never discussed counselling with him.

[44.] He has asked the Court to dissolve his marriage.

Issue

[45.] The issues are whether the Petitioner has proven the grounds of adultery and cruelty and whether the Respondent has proven the ground of cruelty.

Law and Analysis

Adultery

[46.] Section 2 of the Act defines adultery as:

“adultery” includes any voluntary act of an intimate sexual nature, other than that regarded as an act of mere familiarity, between one party to a marriage with another party of the opposite sex who is not the other spouse and which act is inconsistent with that sexual fidelity that is presumed in the interest of public policy to exist between parties to a marriage, or any conduct between a party to a marriage with another person as afore-mentioned whereby a strong presumption arises that such sexual act occurred between them;

[47.] Allegations of adultery made by the Petitioner are tenuous at best. There appears to have been a business relationship between the Co-Respondent and the Co-Respondent’s business and nothing more.

[48.] There is no evidence from the Petitioner regarding intimate acts between the Respondent and the Co-Respondent. In fact, on one occasion when she saw the Co-Respondent, the Respondent was at home asleep.

[49.] The Petitioner never confronted the Respondent with the allegations and never mentioned it to him.

[50.] I find that the ground of adultery has not been proved and the ground is hereby dismissed.

Cruelty

[51.] Section 2 of the Act defines cruelty as:

“...voluntary conduct that is 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

of the part of that other spouse and being conduct which after taking due account of all 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.”

[52.] In the case of *Saunders v. Saunders* [2005] 1 BHS J. No. 66, Hepburn J. noted that the offending party’s behavior “*must be conduct deserving of censure or rebuke, or must be conduct which, in the context of the marital relationship, is clearly blameworthy. It must not be conduct of a trivial nature nor conduct which can properly be described as being part of the fair wear and tear one would reasonably expect in a marriage...*”

[53.] In *Russell v. Russell* [1897] AC 395 the House of Lords defined cruelty at pages 401 to 402 as:

“The principle is that cruelty consists of the willful infliction of a bodily or mental pain, and the Courts will not wait until a person suffers before they find cruelty, the apprehension of injury being enough. But in order to found an application for relief in matrimonial cases the conduct must be grave in degree. Further, there is no legal limitation to the character of the cruelty, but the Courts will consider as an important element of the conduct in question whether it is likely to produce injury to health; or whether it is calculated to make the discharge of matrimonial duties practically impossible or unendurable.”

[54.] In the oft-cited *Gollins v. Gollins* [1962] All ER 797, Denning MR defined cruelty as:
“Whether cruelty, as a matrimonial offence, has been established is a question of fact and degree, which should be determined by taking into account the particular individual concerned and the particular circumstances of the case, rather than by any objective standard; accordingly, in cases where the two spouses are of normal physical and mental health, and the conduct of the respondent spouse, so considered, is so bad that the other should not be called on to endure it cruelty is established and then it does not matter what was the respondent’s state of mind, e.g., it is immaterial whether the respondent’s conduct was aimed at the other spouse or due to unwarranted indifference, attributable, perhaps to selfishness or laziness.” (Emphasis added)

[55.] In *Lauder v. Lauder* 1949 1 All ER 76, Pearce J stated at page 90:-
“Cruelty cases, more than any other class of case, depend particularly on a careful estimate of the witnesses, for in a cruelty case the question is whether this conduct by this man to this woman, or vice versa is cruelty. How far a spouse has to depart from the normal standards of kindness and self-control that are the basis of married life and how

great an effect that departure has to have on the other spouse before it constitutes cruelty is always a question of degree, depending largely on the temperament, circumstance and health of each party...”

[56.] In *Gollins v. Gollins*, *supra*, Wilmer, L.J. added that:

“I would venture to propose the relevant proposition of law as follows:

- (1) The conduct complained of must be such as to cause danger to health (bodily or mental) or a reasonable apprehension thereof. This is the basic requirement laid down by the House of Lords in Russell v. Russell [1997] A.C. 395.*
- (2) The conduct on the part of the offending spouse must be in some sense aimed at or directed towards the complaining spouse. This requirement was laid down by this Court in Kaslefsky v. Kaslefsky [1950] 2 All E.R. 398 a decision which, so far as I know, has never been overruled and is therefore binding on us. Moreover, the necessity of this element in order to constitute cruelty follows, I think, from the circumstances noted by Bucknill, L.J., in Kaslefsky v. Kaslefsky at pp 401, 402 that the statute speaks of offending spouse having treated the petitioner with cruelty. It follows that in order to constitute cruelty there must always be some element of intention in relation to the impact of the conduct complained of on the other spouse. Where the Court finds that the conduct complained of was pursued with an actual intention to injure the other spouse, no further inquiry is necessary. But such an intention may in a proper case be inferred where, for instance, the conduct complained of is persisted in (a) after warning that it is having an adverse effect on the other spouse, or (b) in circumstances in which any reasonable person would appreciate that it was likely to injure the other spouse. For any spouse may be presumed to intend the natural consequences of his own behaviour. Thus, any course of conduct intentionally pursued, provided it has some impact on the other spouse, may in appropriate circumstances justify a finding of cruelty. This concept has, I think, never been better expressed than by Shearman, J. in Hadden v. Hadden, (Dec 4, 1919), “The Times”, Dec 5, 1919, in words specifically approved by Lord Merriman in Jamieson v. Jamieson, [1952], 1 All E. R., at pp 881*

I do not question ... that he had no intention of being cruel...but...his intentional acts amounted to cruelty.”

- (3) If the two foregoing requirements are not satisfied, the charge of cruelty is not made out and must as a matter of law be dismissed. [Emphasis added]*
- (4) If the two requirements, which I have mentioned, are satisfied, then the question whether the conduct complained of does or does not amount to cruelty is one of fact and degree to be decided in the light of all the circumstances of the particular case. In approaching this question of fact and degree, regard must be had to the following consideration. (a) A charge of cruelty is a serious charge, and a spouse is not lightly to be held guilty of it. In this connexion I venture to quote the words of Denning, LJ at the conclusion of his judgment at Kaslefsky v. Kaslefsky, at p 403:*

If the door of cruelty were opened too wide we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled."

In Squire v. Squire, [1948] 2 All E.R. 51, it was said by Evershed, L.J., that the alleged cruelty must be something which satisfies that language according to its ordinary acceptance...(B) It is always necessary to consider the personality of two spouses, and in particular the physical and mental condition or susceptibilities of the innocent spouse – per Lord Tucker in Jamieson v. Jamieson, [1952] 1 All E.R., at p 887... [I]f it is necessary to consider that the impact of the conduct complained of was on the personality of the complaining party. In this connexion I think that it is worth repeating once more the oft-quoted remark of Pearce, J, in Lauder v. Lauder, [21949], 1 All E.R., 76, at p 90:...in a cruelty case the question is whether this conduct by this man to this woman, or vice versa, is cruelty." [Emphasis added]

[57.] For a party to succeed in the claim for cruelty it must be shown and proven on a preponderance of probability that there has been injury to life, limb or health, bodily or mentally or reasonable apprehension of it.

[58.] Hall, C.J. in **Lockhart v. Lockhart** 1995 BS SC 22 set out the task of the court in contested divorces -

"141. The inevitable task of trial courts in (contested) divorces and matrimonial matters is to wade through the detritus resulting from the posture of parties (who, despite the fact that they must have been "in love" with each other at some time in the past, in the unforgiving glare of scrutiny by strangers (which is the trial process), each seeks to monopolize virtue for his/her cause and to demonize the other party (and this, even if they so choose to embarrass themselves, to the distress of the children of that union reverberating for years to come)) and shift minutiae of truth from the sediment."

[59.] It should be noted that after the one alleged incident of physical cruelty, the Petitioner returned to live with the Respondent. Since the further acts of cruelty, she has again returned to live with the Respondent, leaving only in June, 2025. The Court must then consider the issue of condonation.

Condonation

[60.] The court must determine whether some of the acts of cruelty complained of by the petitioner had been condoned. Section 16 (4) Matrimonial Causes Act provides —

“(4) On a petition for divorce it shall be the duty of the court —

(a) to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties.”

[61.] Condonation has been defined by the authors of Hayden's Practice and Law of Divorce as *“... the reinstatement in his or her former marital position of a spouse who has committed a matrimonial wrong of which all material facts are known to the other spouse with the intention of forgiving and remitting the wrong, on condition that the spouse whose wrong is so condoned does not henceforward commit any further matrimonial offence. Condonation therefore consists of a fiction of reinstatement and an annum remittendi.*

THE FACTUM OF RE-INSTATEMENT -- Mere forgiveness of a matrimonial offence, whether expressed orally or by letter cannot amount to condonation, unless it is followed by the reinstatement of the offending spouse in his or her former marital position. Although the best evidence of such reinstatement is the continuance or resumption of sexual intercourse, there may be a resumption of conjugal cohabitation sufficient to constitute a reinstatement without sexual intercourse: Conversely, there may be sexual intercourse not amounting to reinstatement. But nothing short of full reconciliation will suffice; therefore if the guilty party does not consent to be forgiven there is no condonation.

THE INTENTION TO FORGIVE AND REMIT THE WRONG -- Re-instatement is not sufficient without proof of an intention to forgive and remit the wrong. The intention can be, and generally is, inferred from the circumstances. ... The Matrimonial Causes Act, 1963, now incorporated in the Matrimonial Causes Act, 1965, provided that any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted, on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative the necessary intent. The burden lies upon the petitioner to disprove condonation and to show that a resumption of cohabitation between the parties had taken place with a view of effecting a reconciliation ...”

[62.] The Petitioner cannot complain of any act that preceded her return to the matrimonial home and to the resumption of cohabitation. The Court therefore finds that the presumption of condonation has not been rebutted by the Petitioner and indeed the Petitioner stated that she returned to make the marriage work because the Respondent was “not a bad man.”

[63.] Referring to the other incidences of the Respondent stressing her out, I am of the opinion that the Petitioner has not proved the cruelty as alleged. I am not satisfied that the standard required by law on the evidence before the court that the Respondent treated the Petitioner with cruelty as defined by the Matrimonial Causes Act has been met.

[64.] The Court had the opportunity to witness both the Petitioner and the Respondent as they gave sworn testimony in the witness box. The Court prefers the evidence of the Respondent. The Respondent's evidence was frank, clear, transparent and credible.

[65.] I find on a balance of probabilities that the Petitioner has not satisfactorily discharged her burden of proving cruelty.

[66.] I therefore dismiss the Petitioner's petition in its entirety pursuant to s. 18(a) of the Act.

[67.] The Court accepts the evidence of the Respondent and finds that since the celebration of the marriage, the Petitioner has treated him with cruelty.

Conclusion

[68.] As such, the Petitioner's Petition is dismissed.

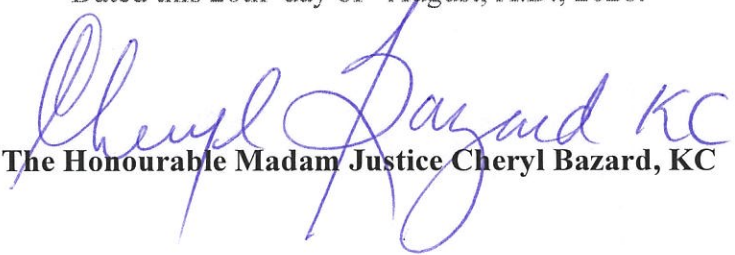
[69.] The Decree Nisi is issued to the Respondent on the ground that since the celebration of the marriage, the Petitioner has treated him with cruelty.

[70.] The Petitioner shall bear the Respondent's costs of these proceedings.

[71.] Ancillary matters are adjourned to Chambers.

[72.] The Court makes a declaration pursuant to s. 73(1)(a) of the Matrimonial Causes Act, Chapter 125 of the Statute Laws of the Commonwealth of The Bahamas that there are no children of the family to whom the said section applies.

Dated this 20th day of August, A.D., 2026.


The Honourable Madam Justice Cheryl Bazard, KC