

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2025/FAM/div/00187

Family Division

B E T W E E N:

W.B.

Petitioner

AND

N.B.

Respondent

Before: The Honourable Justice C.V. Hope Strachan

Appearances: Elsworth Johnson for the Petitioner

Maria Zancolla-Willie for the Respondent

Hearing date: 6th July, 2026

matrimonial proceedings, set aside, reversal or dismissal of decree nisi, disputed service of petition, collusion, non-disclosure of material facts, whether reconciliation is an established fact, the relevance of delay in prosecuting case, whether dismissal of petition or striking out is available after decree nisi.

RULING

C.V.H. STRACHAN, J

Background Facts

[1.] After **Twenty-four (24) years** of marriage and **Three (3)** children the Respondent (“the wife”) obtained a Decree Nisi against the Petitioner (“the husband”) in Action No. **2010/FAM/DIV/63** “the 2010 divorce petition” on 19th May 2010, some Sixteen (16) years ago. The matter proceeded on an uncontested basis, the husband not having entered an appearance to the Petition and the court proceeding on the basis of a sworn Affidavit of service by a retired police officer Rudolph Sweeting, who deposed that he personally served the Husband on 26th February, 2010 at No. 253 Millennium Gardens with the Petition, Notice of Petition, Memorandum of Appearance and Acknowledgment of Service. Mr. Sweeting further deposed that the person served answered to and identified himself by the Husband’s name and resembled a photograph exhibited to the affidavit. *Barnett J* as he then was, pronounced the Decree Nisi on the grounds of the husband’s cruelty towards the wife and adjourned ancillary matters to chambers. Nothing transpired further in the proceedings until the husband filed this Petition for divorce on 24th April 2025. This Petition was served on the wife on 7th May, 2025 and prompted the present application and the issues to be decided by this court.

Husband’s Submissions

[2.] The husband submits that the wife’s 2010 divorce petition was not duly served upon him. Although an affidavit of service filed on 15th March, 2010 records personal service, the husband has consistently denied service and denied knowledge of either the petition or the Decree Nisi granted on 19th May, 2010. He relies on the parties’ subsequent conduct, including their continued co-parenting, counselling, travel, social and family activities, and joint mortgage up-stampings, as being inconsistent with his knowledge that divorce proceedings had been commenced.

[3.] Dr. Wayne Thompson’s un-controverted report is said to confirm that the subject of divorce was not raised during counselling. The Husband further submits that, if he had refused to acknowledge service, this should have been recorded in the affidavit of service; no evidence has been filed from the process server addressing that alleged refusal. In those circumstances, he submits that there is substantial doubt as to service and that the Court should find that the petition was not personally served, as required by rule 9 of the Matrimonial Causes Rules (“MCR”).

[4.] The Husband further submits that the Decree Nisi should be set aside pursuant to section 61 of the Matrimonial Causes Act (“MCA”) because material facts were not before the Court when it was granted. Reliance is placed on **J.W.N. v V.S.N. (Nee D)**, **2023/FAM/DIV/00232**, in which *Strachan J* explained that section 61 permits the Court to make the decree absolute, reverse it, order further inquiry, or otherwise act as justice requires where there has been collusion or where material facts were not disclosed. The husband also relies persuasively on **RN v DA** [2023] EWFC 255, where a Decree Nisi was rescinded after the parties’ subsequent shared life and prolonged delay were found to have undermined the assumptions on which the decree had been made. It is submitted that the parties in the present case continued to share a common life between 2010 and 2024, including living together, caring for their children, travelling, celebrating family occasions and jointly financing repairs to the matrimonial home. Their conduct, coupled with the husband’s later filing of his own divorce petition, is said to demonstrate that the 2010 proceedings had become redundant. The wife’s explanation, that financial instability prevented her from pursuing ancillary matters, is submitted to be unsatisfactory, particularly given the parties’ joint mortgage transactions during the relevant period.

[5.] Finally, the Husband submits that the Wife’s 2010 petition should be dismissed or struck out for unreasonable delay under section 18(d)(i) of the MCA and/or Order 9 of the MCR. Notwithstanding that the wife obtained a Decree Nisi in May 2010, she took no effective steps to bring the proceedings to finality for approximately **sixteen (16)** years, save for her affidavit of 30th July, 2026. Having regard to the length of the delay, the parties’ continued relationship and family life, and the inadequacy of the explanation advanced, the Husband submits that the delay was unreasonable. He accordingly seeks orders setting aside the Decree Nisi, dismissing or striking out the Wife’s petition, awarding him costs to be taxed if not agreed, and granting such further relief as the Court considers just.

The Wife’s Submissions

[6.] The Wife opposes the Husband’s application to set aside the Decree Nisi pronounced on 19th May, 2010 to, dismiss the Wife’s 2010 Petition, and allow the Husband’s April 2025 Petition to proceed instead. Although the Wife accepts that the 2010 decree was never made absolute, she submits that the cause had progressed well beyond the filing of a petition. The Court had determined the petition, pronounced a Decree Nisi, and adjourned ancillary matters to Chambers. The issue is therefore whether the Husband has established a sufficient basis to undo that determination, terminate the existing proceedings and require the parties to begin again.

[7.] The Wife submits that section 61 of the Matrimonial Causes Act governs the Court’s jurisdiction following a Decree Nisi and before it is made absolute. In **J.W.N. v S.L.N. (nee D.)**, *Hope Strachan J* held that an application to reverse a Decree Nisi is discretionary, with

attention directed to whether the decree was obtained by collusion or whether material facts were not placed before the Court when it was granted. Where reliance is placed upon alleged undisclosed facts, they must be established by affidavit evidence. Although **J.W.N.** is not a binding appellate authority, the Wife submits that it is a recent and persuasive decision directly addressing section 61. In that case, the application to reverse the decree was refused.

[8.] The Husband's principal contention is that he neither knew of nor was served with the 2010 proceedings. The Wife submits, however, that the Court record contains the contemporaneous sworn Affidavit of Service of Rudolph Sweeting, a retired police officer, who deposed that he personally served the Husband on 26th February 2010 at No. 253 Millennium Gardens with the Petition, Notice of Petition, Memorandum of Appearance and Acknowledgment of Service. Mr. Sweeting further deposed that the person served answered to and identified himself by the Husband's name and resembled a photograph exhibited to the affidavit. The Wife submits that the Husband's denial, advanced some fifteen (15) years later, must be assessed against that contemporaneous sworn evidence. There is, she contends, no evidential basis for finding that the Affidavit of Service was false, fabricated or improperly obtained.

[9.] The Husband also relies upon the parties' subsequent conduct, including cohabitation, family activities, travel, financial dealings and periods of intimacy, as demonstrating reconciliation. The Wife disputes that characterization. Her evidence is that, while the parties remained under the same roof and participated in certain family activities, they lived separate lives and did not reconcile. She submits that such matters do not necessarily establish a resumption of married life without a full examination of the circumstances. The Wife accepts that **RN v DA (Divorce—Rescission of Decree Nisi)** [2023] EWFC 255 (B) may be of comparative assistance, but submits that it is a persuasive English authority decided under a different statutory regime and on findings that the parties had in fact reconciled and resumed a common life. No such finding has been made here, and reconciliation remains disputed. In any event, subsequent conduct does not, without more, establish that the 2010 decree was improperly obtained for the purposes of section 61.

[10.] The Wife further submits that the Husband's April 2025 Petition does not displace the existing cause. She does not allege that its filing was abusive, since the Husband says he was then unaware of the 2010 proceedings. However, the 2010 cause remains extant: a petition was filed, service was supported by sworn evidence, the petition was heard, a Decree Nisi was pronounced, and ancillary matters were reserved. The parties agree that the marriage has ended; there are no minor children requiring determination; and the substantive matters outstanding principally concern matrimonial property and financial relief. Those matters may be determined within the 2010 proceedings. To set aside the decree, dismiss the original

petition and recommence the proceedings would, the Wife submits, create unnecessary expense, delay and duplication.

[11.] The Wife relies on **BAF Financial & Insurance (Bahamas) Ltd v Kendal Williams Construction Co Ltd & Others**, SCCivApp & CAIS No. 136 of 2022, not as a matrimonial authority, but for the general proposition that, in exercising a discretion to disturb an existing order, the Court may consider delay, the explanation for the order having remained in place, and whether setting it aside would serve a useful purpose. The Wife submits that those principles support an assessment of the justice and practical consequences of the relief sought, rather than acceptance of the bare allegation of non-service. She submits that the Court should not permit the 2025 Petition to supplant an existing cause capable of resolving the outstanding dispute unless the Husband first establishes a proper legal and evidential basis to reverse the 2010 Decree Nisi.

[12.] Accordingly, the Wife submits that the application should be dismissed. The Husband's denial of service must be weighed against the contemporaneous Affidavit of Service; the alleged reconciliation is disputed and does not itself establish that the decree was improperly obtained; and the later petition provides no independent basis for extinguishing the earlier cause. The Wife invites the Court to refuse to set aside the Decree Nisi and dismiss the 2010 Petition; to refuse, dismiss or stay the 2025 Petition insofar as it duplicates or seeks to replace the existing proceedings; to direct that the outstanding ancillary and property matters be brought on for determination in the 2010 cause; to give appropriate directions regarding the status of the Decree Nisi and any application to make it absolute; and to award the Wife her costs, to be taxed if not agreed.

THE STATUTORY AUTHORITY

[13.] The Matrimonial Causes Act (MCA) –

s. 61. MCA - 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.[Emphasis mine]

- s. 18 (d)(i) MCA - The court may dismiss a petition for divorce if: (a) it is not satisfied on the evidence that the case for the petitioner has been proved; or (b) it finds that the petition is presented or prosecuted in collusion with the respondent or either of the respondents; or (c) it finds that the petitioner has during the marriage been guilty of adultery; or (d) in its opinion the petitioner has been guilty — (i) of unreasonable delay in presenting or prosecuting the petition; or [Emphasis mine]

[14.] The Matrimonial Causes Rules (MCR)

Rule 9. (1) - Unless otherwise directed — (a) a copy of every petition shall be served personally or by registered post upon every respondent, co-respondent and person charged with adultery or sodomy who is named in the petition; and

Rule 11. (1) MCR - Unless otherwise directed, and except where the provisions of rule 9(4) have been complied with, a petitioner shall not proceed to trial unless the respondent and every co-respondent thereto and every person named therein — (a) has entered an appearance; or (b) is shown by affidavit in accordance with Form 10 (which shall be filed) to have been served with the petition personally or in accordance with an order for substituted service. Such affidavit must show the means of knowledge of the deponent as to identity and where identification depends upon proof of signature the document containing the signature must be exhibited; or (c) has returned to the attorney for the petitioner, or to the petitioner if he is acting in

person, an acknowledgement or service in accordance with Form 3, which shall be lodged with the Registrar. [Emphasis Mine]

Rule 12. (1) - Unless otherwise directed, service or delivery of any notice or other document in a matrimonial cause may, if no other mode of service or delivery is prescribed, be effected — (a) where the party to be served is the petitioner or has entered an appearance, by leaving the notice or document at, or by sending it by pre-paid post to, the address for service; (b) in any other case by delivering the notice or document to the party to be served or by leaving it at, or sending it to him by pre-paid registered post to, his last known address. [Emphasis mine]

[15.] **THE ISSUES**

- i. Whether the 2010 Petition was served in accordance with Rule 9(1) MCR.
- ii. Whether the Affidavit of Service sworn in relation to the 2010 action was in accordance with Rule 11(1) MCR.
- iii. Whether the Decree Nisi pronounced on 19th May 2010 should be set aside.
- iv. Whether the Petition in action no. 2010/fam/div/63 filed by the wife 8th February 2010 should be struck out for unreasonable, inordinate and/or contumelious delay in prosecuting the Petition.
- v. Alternatively, whether the Decree Nisi in the 2010 petition should be sustained and the Petition herein dismissed.

DISCUSSION AND ANALYSIS

[16.] The court is empowered pursuant to s.61 of the MCA to set aside the Decree Nisi of 2010. The power consists of reversing the decree nisi (setting aside) or by requiring further inquiry, or otherwise as justice may require;

[17.] The rescission or setting aside of a Decree Nisi is analytically distinct from dismissal of the petition upon which the decree was pronounced. The former removes the existing decree; the latter terminates the underlying matrimonial cause. The Court must therefore determine, first, whether a proper basis has been made out under section 61 to reverse the Decree Nisi and, secondly, if so, what consequential order should be made concerning the 2010 petition, including whether it should be dismissed, further inquiries directed, or the cause otherwise disposed of as justice requires.

[18.] The distinction is illustrated, albeit under a different statutory regime, by **Cazalet v Abu-Zalaf** [2023] EWCA Civ 1065, where the Court of Appeal held that reconciliation had undermined the conclusions supporting the Decree Nisi and consequently ordered both rescission of the decree and dismissal of the petition. That outcome does not mean that dismissal invariably follows rescission; it demonstrates that each order addresses a separate procedural object and must be justified by the facts and the governing statutory discretion.

[19.] Critical to the court's determination is whether the remedies sought by the respective parties are actually permitted by s.61 MCA. Reversing, given its ordinary meaning, is drawing back, withdrawing or retreating (setting aside) the Decree Nisi, clearly this is allowed under s. 61 MCA. Requiring further inquiry does not mean dismissal. In my view, the ability for the court to do "*otherwise as justice may require*," empowers the court to dismiss the petition. Either one of these remedies are available on an application such as this.

Consequence of a finding on service

[20.] The parties dispute whether the Husband was personally served. The Affidavit of service of retired police officer Rudolph Sweeting must be examined in that light. Rule 9 (1) MCR mandates that a copy of every petition shall be served personally or by registered post upon every wife, co-wife and person charged with adultery or sodomy who is named in the petition.

[21.] Rule 9 of the Matrimonial Causes Rules makes personal service the ordinary means by which a respondent is brought before the Court in a matrimonial cause. The importance of that requirement is demonstrated by the persuasive English authorities.

[22.] In **Wiseman v Wiseman** [1953] P 79, the Court of Appeal set aside decrees obtained after substituted service where the respondent had received no notice and reasonable available steps to bring attention to the petition, had not been taken.

[23.] In **Purse v Purse** [1981] Fam 143, the Court stressed that a party seeking dispensation from ordinary service must pursue every reasonable inquiry which may permit service and that the Court must scrutinize such an application carefully because it may affect a parties' status and financial rights without his or her knowledge. Those decisions do not displace the evidential force of a contemporaneous affidavit asserting personal service. They do, however, demonstrate why the Court must determine with care whether the service required by Rule 9 was in fact effected before deciding whether the Decree Nisi should stand.

[24.] The distinction between this case and **Wiseman** and **Purse** is important. In those cases, the problem was substituted service or dispensation, coupled with inadequate efforts to give notice. Here, the 2010 court file is said to contain a contemporaneous affidavit from Mr.

Sweeting asserting personal service, identifying the person served by name, self-identification and photograph.

[25.] It is material to note that no order for substituted service or to dispense with service was made by the wife in the 2010 Petition. Any irregularity in service could well undermine the Decree Nisi of 2010 making it susceptible to reversal, further inquiry or dismissal.

[26.] It is my view that the prima facie evidence in the Affidavit of service of retired police officer Rudolph Sweeting, which specified the date, location, the documents served and identification of the person served. Notwithstanding that the Affidavit did not reference the fact that they did not sign the acknowledgement of service, an issue raised by the husband, I am keenly aware that that document is not ordinarily signed by a respondent to a petition immediately upon service but usually comes after and through that respondent's attorney where applicable. The information provided in the Sweeting affidavit is in conformity with affidavits of service usual in this jurisdiction accepted by the court as reliable and in conformity with Rule 9 MCR.

[27.] I consider it is not necessary or proportionate to obtain further evidence from officer Sweeting or to permit him to be cross-examined. It is unlikely given the effluxion of time that he would recall such detail about the failure of the husband to sign the Acknowledgement of Service. More significantly is the Husband's failure to put forward evidence capable of undermining the reliability of the Sweeting affidavit of service, rather than a bare denial of the husband's accusation made many years later.

[28.] Taking the affidavit of service and the surrounding evidence as a whole, the Court accepts that a denial of service, without more, does not reverse the burden of proof or nullify a contemporaneous Affidavit of Service. The burden upon the applicant seeking to reverse the Decree Nisi remains to establish the factual basis on which that exceptional relief is sought. Nevertheless, because proper service is fundamental to procedural fairness in a matrimonial cause, the Court must scrutinize the evidence with care. The Affidavit of Service is prima facie evidence of service; the question is whether the Husband's evidence and the surrounding circumstances are sufficient to displace, or materially undermine, that evidence on the balance of probabilities. To that end I would expect that the Husband would've challenged either the date of service, the time of service, the location of service or the identification of the person served as appears from the photograph attached to the affidavit. No such challenge has been made.

[29.] The Husband has also failed to address in his affidavit in support of his Petition any issues concerning the absence or availability of obtaining further evidence from Mr. Sweeting, the process server; the significance of the exhibited photograph and the asserted

means of identification; the husband's allegation that a refusal to acknowledge service ought to have been recorded; whether cross-examination is necessary to resolve a material factual dispute; and whether the lapse of time affects the reliability or availability of evidence. These are issues pertinent to the success or failure of his application and he has failed to even mention the same in his supporting affidavit.

Collusion pursuant to s.61 MCA

[30.] In the context of section 61, collusion denotes more than the parties' shared wish to end their marriage, or a parties' decision not to contest a petition. It concerns an agreement or bargain between the parties, or their agents, by which the institution or conduct of the matrimonial cause is procured or controlled in a manner capable of preventing the Court from deciding the cause upon the true and complete facts. In **Churchward v Churchward** [1895] P 7, collusion was found where the parties had agreed upon the commencement and conduct of a divorce suit, including non-defense, notwithstanding that the matrimonial offence was genuine and no specific false evidence was identified.

[31.] The more modern formulation in **Gosling v Gosling** [1968] P 1 recognizes that not every arrangement between spouses is objectionable; agreements concerning ancillary matters may be legitimate. The flaw lies in an arrangement which affects the conduct of the suit so as to stifle a genuine defense, suppress material information, or otherwise endanger the justice of the case.

[32.] On the submissions presently before the Court, there appears to be no pleaded or evidential allegation of collusion in the 2010 proceedings. The Husband alleges non-service and relies on subsequent conduct said to amount to reconciliation. Those matters may raise questions about: whether personal service occurred; whether the Decree Nisi was granted on an adequate factual basis; whether later events justify relief under section 61; and the appropriate exercise of the Court's discretion. They do **not**, without more, establish collusion. In particular, the Wife's alleged failure to pursue ancillary relief, the parties' later cohabitation, joint mortgage dealings, counselling, or family activities are not themselves evidence of an agreement to procure or manipulate the 2010 decree.

Material facts" pursuant to s 61 MCA

[33.] The Husband relies substantially on conduct after May 2010. The question is whether and in what circumstances, events occurring after the Decree Nisi can constitute "material facts" that were not before the Court when the decree was pronounced.

[34.] The Court must distinguish between post-decree conduct which undermines the basis upon which the Decree Nisi was pronounced and conduct which is relevant only to the

exercise of discretion as to the relief now sought. The persuasive authorities establish that a genuine and substantial reconciliation may amount to a subsequent event which demonstrates that the original conclusion that the marriage had broken down, or that the parties could not reasonably be expected to live together, no longer remains valid. In **Savage v Savage** [1982] Fam 100, a prolonged reconciliation led the Court to conclude that the inference supporting the Decree Nisi was wrong when assessed in light of all the later circumstances. The Court of Appeal in **Cazalet v Abu-Zalaf** [2023] EWCA Civ 1065 formulated the inquiry as whether the evaluative exercise undertaken when the Decree Nisi was granted remains valid in the light of subsequent events.

[35.] It does not follow, however, that continued residence, co-parenting, travel, joint financial dealings, counselling, family activities, or periods of intimacy necessarily amount to reconciliation or invalidate the decree. The Court must first decide whether the parties resumed married life, viewed objectively and in the round. If it finds that no such reconciliation occurred, the later conduct cannot, without more, establish that the Decree Nisi was wrongly granted. It may nevertheless remain relevant to the exercise of the Court's discretion under section 61, including the explanation for delay, the utility of rescission, and the appropriate means of bringing the remaining financial and property issues to determination.

[36.] Based on the evidence of the wife the alleged reconciliation does not, in any way demonstrate that the factual foundation for the decree was wrong. It appears merely that circumstances later changed. Clearly the lack of service itself is a material fact not before the Court in 2010; and I reiterate that there is no allegation or evidence of collusion, as distinct from non-service or subsequent reconciliation before the court when the 2010 decree Nisi was granted to the wife.

Whether reconciliation is established as a fact

[37.] Whether the parties resumed a shared marital life, rather than merely remained in the same residence or maintained family relations is of course a matter of fact and is material to determining the application. The parties failed to specify the period(s) in which they allegedly lived together. They are at odds as to the circumstances of their domestic arrangement. The wife contends they lived separate lives in the same premises while the Husband emphasizes cohabitation, parenting, counselling, travel entering into a mortgage together.

[38.] Notwithstanding the questionable issue of whether the parties resumed habitation after the Decree Nisi, I regard a few issues as being extremely influential to this court's decision and that is;

- i. the joint mortgage taken out by the parties. The details of the mortgage were not disclosed by either party. However, the wife did not deny the husband's allegation. The Court takes judicial notice that mortgages are usually a financial obligation of long duration. Any contemplation of entering into one with another requires commitment to a long standing relationship and is antithetical to having sued the other party for a divorce and included in the Petition a prayer for property adjustment,
- ii. the counselling sessions with Dr. Wayne Thompson and the fact that at no time did the wife disclose the divorce petition or the Decree Nisi she had obtained with Dr. Thompson
- iii. the failure of the wife to serve the husband with the Decree Nisi after it was granted in 2010. Rule 12 (b) MCR provides that service of documents in any other case is effected by delivering the notice or document to the party to be served or by leaving it at, or sending it to him by pre-paid registered post to, his last known address. The wife had an obligation to serve the husband with the Decree Nisi she obtained in 2010,
- iv. The wife's explanation for the inordinate delay in prosecuting the 2010 divorce to completion is that she was not financially stable is unsupported by any cogent evidence
- v. Given that there was the availability under the MCA for maintenance pendente lite as well as a prayer for costs against the husband at the request of the wife when the Decree Nisi was obtained, it is difficult to accept her explanation of financial incapacity in prosecuting the 2010 divorce to conclusion,
- vi. The wife's behavior and intention in attending the counselling sessions with Dr. Thompson undermines her sworn averment that she would have been required to make to the court, at the uncontested hearing, that there was no chance of a reconciliation between her and the husband. On the other hand, it is obvious the marriage was experiencing challenges hence the need for the parties to attend Dr. Thompson for counselling. The joint attendance points to a joint intention to save the marriage,
- vii. The wife admitted to going out to dinner with the husband, albeit with the children of the marriage,

- viii. The wife admitted to Two (2) up-stampings of their joint mortgage of the matrimonial home.
- ix. The wife admitted to the purchase of vehicles, building a wall and installing railings at the matrimonial home and to completing renovations at the matrimonial home. Again these admissions do not suggest financial challenges such that she could not find the resources to complete the divorce proceedings,
- x. As in **RN v DA** supra the factual situation in this case suggests that the parties did in fact reconcile and makes it susceptible to a s 61 MCA remedy.

The relevance of delay and when it should be measured

[39.] The Wife did not dispute that she took no effective step for approximately sixteen years “save for her affidavit of 30th July 2026.” The Decree Nisi in her 2010 Petition was granted on 19th May 2010. Her first action thereafter was not done until prompted by service of a petition by the husband. Her affidavit was filed 30th July 2026. The wife’s inaction extended to pursuit of the ancillary relief and consequently the issuance of the decree absolute. I am also cognizant of the possible danger of the passage of time upon property and financial claims, the possibility that the delay may render any relief futile, disproportionate, or unjust. It is notable that the husband immediately upon becoming aware of the 2010 petition applied to have the matter of the prior petition and decree nisi resolved by the court. The court recognizes that the Husband could not be criticized for failing to challenge a decree before he knew of it.

Whether dismissal or striking out is available after a Decree Nisi

S. 61 MCA

[40.] The textual sequence matters. Section 61 expressly permits the court, “on cause being so shown,” to make the decree absolute, reverse the decree nisi, require further inquiry, “or otherwise as justice may require.” **Ravenscroft v Ravenscroft** (1872) LR 2 P & D 376 demonstrates that reversal together with dismissal of the petition is within the range of outcomes under the corresponding English wording. **Alexandre v Alexandre (1870) LR 2 P & D 164, Hunter v Hunter [1905] P 217; Pretty v Pretty [1911] P 83 and Brooke v Brooke [1912] P 36**, demonstrate the qualification. The court must evaluate the proved collusion or newly disclosed facts and the Husband’s resulting entitlement to a decree, it must not equate showing cause with an automatic dismissal.

[41.] While there are no Bahamian authorities available for guidance there are a number of English authorities that serve as persuasive comparators which I make reference to guide my

determination of this matter. Having considered them my view is that s. 61 permits the court, after cause has been shown, to reverse the decree nisi and dismiss the divorce petition where the facts establish that the Wife should not have obtained a decree. The words “or otherwise as justice may require” reinforce the breadth of the court’s choice of disposition. They do not make dismissal automatic whenever collusion or an undisclosed material fact is alleged or proved. The court must decide what the established facts mean for the Husband’s entitlement to relief.

Decisions that actually dismissed the petition

[42.] **Ravenscroft v Ravenscroft (1872) LR 2 P & D 376** is the clearest comparator. After a decree nisi, the Queen’s Proctor intervened and the Husband’s own adultery was proved. Applying the English provision containing the same operative words as s. 61, the court reversed the decree nisi in its entirety and dismissed the petition. It also reversed the associated costs order. This is direct support for the proposition that dismissal can be the final disposition following a successful intervention. [Emphasis Mine]

[43.] **Roche v Roche [1905] P 142** also rescinded the decree nisi and dismissed the petition after finding that the Husband had intentionally concealed material facts. It is, however, unsafe to rely on **Roche** for its broader reasoning, it treated intentional non-disclosure as sufficient in itself to prevent the decree becoming absolute, even though the court said it would probably have granted relief had the facts originally been disclosed. That approach was rejected in **Hunter v Hunter [1905] P 217**, and **Brooke v Brooke [1912] P 136** said **Roche** could no longer be regarded as authority for an automatic rule.

Decisions limiting dismissal

[44.] **Alexandre v Alexandre (1870) LR 2 P & D 164**: the *Queen’s Proctor* established that a material fact had been concealed, but another, un-condoned ground for divorce remained proved. The court made the decree absolute. Its point was that the intervention allows the court to ascertain the true position; concealment alone does not justify refusing a divorce if, on the full facts, the petitioner remains entitled to it. [Emphasis Mine]

[45.] **Hunter v Hunter [1905] P 217**, the court allowed the decree to be made absolute, notwithstanding an undisclosed matter concerning the petitioner’s conduct. It distinguished concealment from collusion and held that the intervention provision did not itself create a new ground for defeating a decree. The question was whether the decree should have been refused on the true facts. **Brooke** later cautioned against reading **Hunter** so narrowly as to make a fact “material” only if it would necessarily change the outcome.

[46.] **Pretty v Pretty [1911] P 83**, despite findings adverse to the petitioner, following the *King's Proctor's* intervention, the court expressly declined to dismiss the petition and allowed the decree to become absolute. The case illustrates that even a successful challenge to the original presentation of the facts does not, without more, dictate dismissal.

[47.] **Brooke v Brooke [1912] P 136**: this is the most useful synthesis. The court held that, after intervention, it must consider all the facts then established before deciding whether to rescind the decree nisi, permit the decree to become absolute, or take an intermediate course such as further inquiry. **Brooke** was not itself a final order dismissing the petition; it addressed how the discretion was to be exercised.

S. 18 (1) (d)(i)

[48.] It is my view that s 18(d)(i) is capable of being raised after decree nisi, but a decree nisi cannot simply be ignored. Section 18 says the court “may dismiss” a petition if, *in its opinion*, the petitioner has been guilty of unreasonable delay in presenting or prosecuting it. Section 61, expressly keeps the matter before the court until the decree is made absolute and allows the court, when cause is shown, to reverse the decree nisi, require further inquiry, or otherwise deal with the case as justice requires. Read together, those provisions provide an arguable basis for asking the court to consider unreasonable post-nisi delay in prosecuting the petition, then to reverse the decree nisi and dismiss the petition if that is the justified disposition.

[49.] The closest English comparator is **Lewis v Lewis [1892] P 212**. More than a year after obtaining decree nisi, the petitioner had taken no step towards making it absolute. On the respondent's application, the court held that the petition would be dismissed for want of prosecution unless the petitioner took the necessary step within one week. **Lewis** therefore supports both the availability of dismissal after nisi for failure to prosecute and an important qualification: the order gave the petitioner an opportunity to proceed. It was a conditional dismissal order, not a finding that every period of delay requires immediate dismissal. The earlier **Ousey v Ousey and Atkinson (1875) 1 PD 56** suggested that a respondent could call on a petitioner to proceed or face revocation of the decree nisi and dismissal; that point was suggested rather than finally decided in **Ousey** and was acted upon in **Lewis**.

[50.] Two distinctions matter here:

- Delay in presenting the petition concerns the period before filing. A later decree nisi does not erase the historical facts, but a challenge to the decree already granted would need to identify the proper post-nisi route and explain why the delay warrants setting it aside.

- Delay in prosecuting can concern the failure to take steps after nisi, as in **Lewis**. The statutory waiting period itself cannot sensibly be treated as the Husband's unreasonable delay, s. 61 requires the decree to remain nisi for the prescribed period.

[51.] **Owen v Owen** [1964] P 277 further illustrates that setting aside a decree obtained by due process is a serious step requiring substantial grounds, although it concerned a rehearing rather than delay in prosecution.

Order 9(1)(a) MCR

[52.] Order 9(1)(a), as quoted, is a rule about service of the petition, not delay in prosecuting it. It ordinarily requires a copy of the petition to be served personally or by registered post on each person it identifies, "unless otherwise directed." It does not itself say that a petition must be dismissed after decree nisi if service was defective.

[53.] It remains relevant after decree nisi in this sense: the court may need to examine whether the petition was properly served before the decree was granted. If it was not, the appropriate question is whether the decree nisi should be set aside and the case reheard, rather than whether Order 9 creates a fresh ground for dismissal. In **Manners v Manners and Fortescue** [1936] P 117, a wife challenged a decree nisi on the ground that she had not received proper notice of the petition. The English court entertained a post-nisi application for rehearing so that she could be heard; it did not treat the service issue as automatically requiring dismissal of the petition.

[54.] The effect of a defect depends on what happened. In **Marsh v Marsh** [1945] AC 271, the *Privy Council* distinguished procedural irregularities that cause a failure of natural justice from defects that leave an order capable of being set aside but not automatically void; acquiescence or waiver may also matter. **Marsh** concerned a Jamaican intervention procedure, not service of a Bahamian petition, so it is persuasive only on that general distinction.

[55.] Accordingly, Order 9(1)(a) and s. 18(d)(i) raise different issues:

- **Order 9(1)(a):** Was a named person served as required, or did the court direct otherwise? If not, did the defect deprive that person of a fair opportunity to respond before decree nisi?
- **Section 18(d)(i):** Was the Husband guilty of unreasonable delay in presenting or prosecuting the petition? The post-nisi failure to move towards decree absolute considered in **Lewis v Lewis** [1892] P 212 bears on this question, not on compliance with a service rule.

[56.] In the final analysis in my view, Order 9(1)(a) may be examined at the post-nisi stage, but its apparent remedy is a challenge to the validity or fairness of the decree nisi and, where justified, a rehearing—not automatic dismissal under s 18(d)(i). The words “unless otherwise directed” also make any order dispensing with or changing service important. I have only paragraph (1)(a), so I cannot exclude qualifications elsewhere in Order 9.

CONCLUSION

[57.] Having considered all of the evidence before the court, the statutory provisions, the cases which provide precedent and authority, and in exercise of the court’s discretion where applicable I find the following:

[58.] That pursuant to s. 61 MCA there has been no collusion between the parties. I equally find that at the time of the grant of the Decree Nisi there were not any material facts that were “not” brought before the court.

[59.] I find that the service of the 2010 Petition was in conformity with Rules 9 and Rules 11 MCR.

[60.] The information provided in the Sweeting affidavit is in conformity with affidavits of service usual in this jurisdiction accepted by the court as reliable and in conformity with Rule 9 MCR. the Husband’s failure to put forward evidence capable of undermining the reliability of the Sweeting affidavit of service - rather than a bare denial made many years later does not assist his cause. His bare denial and the surrounding circumstances are insufficient to displace, or materially undermine, the Sweeting affidavit evidence on the balance of probabilities. This court accepts the Sweeting affidavit as proof of service of the wife’s 2010 Petition on the husband.

[61.] I am satisfied that the wife failed to serve the Husband with the Decree Nisi as required by Rule 12 (1) MCR, which would have been another factor of proof of bringing the 2010 proceedings to the attention of the Husband.

[62.] I am satisfied that the husband’s affidavit in support of his application was devoid of material facts relevant to the period before or at the same time that the Decree Nisi was granted see **JWN v SLN** supra. Further that the material facts now being relied upon for the set aside/reversal of the Decree Nisi occurred subsequent to the grant of the Decree Nisi.

[63.] I am not satisfied that the parties reconciled their marriage based on their conflicting accounts of their marital arrangements, their actions subsequent to the grant of the Decree Nisi, and the failure to establish a clear timeline for their activities post Decree Nisi.

[64.] I find that the wife is culpable for unreasonable delay under section 18(d)(i) of the Matrimonial Causes Act and/or Order 9 of the Matrimonial Causes Rules. Having delayed prosecution of her Petition for Fifteen (15) to (16) years without a credible excuse. However, this is subject to other considerations clarified hereinafter.

[65.] *Barnette J* as he then was heard the evidence of the wife in the 2010 Petition and was satisfied that the wife had proven cruelty by the husband and granted the wife a decree Nisi of divorce. It is not open to this court to question his factual findings. In the absence of proof of collusion or that material facts were undisclosed to the Court when the decree Nisi was granted in 2010 the groundwork has not been laid for the setting aside of the Decree Nisi of 2010.

[66.] This court also adheres to the principle established in **BAF Financial & Insurance (Bahamas) Ltd. v Kendal Williams Construction Co. Ltd & Others** supra, that the obligation to avoid needless duplication, expense, and delay are objectives to be considered when determining matters before the Court. Looking at the circumstances of this case and applying the **BAF** rule of thumb the court finds that to use the wife's delay in prosecuting the case as the only justification for setting aside or reversing the Decree Nisi would simply delay the resolution of a marriage already broken down, cause a duplication of effort and increase costs for the parties. The husband has already filed and served the present Petition which is an acknowledgment that he also considers the marriage to be broken down. Given that there are no minor children involved, there seems to be little utility in setting aside the 2010 decree and causing the present petition to be prosecuted, to end the marriage.

[67.] I am satisfied that the mere setting aside of the 2010 Petition would simply remove the existing decree. Whereas a dismissal of the petition and the Decree Nisi terminates the underlying matrimonial cause entirely. I am convinced that a timely dissolution of this marriage by application for the Decree Absolute in the 2010 petition will afford the parties an opportunity to move onto the ancillary matters, like property adjustment. This will enure to their ultimate benefit. I hereby refuse the application to set aside the Decree Nisi. Ultimately the court found no collusion by the Wife nor that at the time of the obtaining of the Decree Nisi was there any material facts not brought before the court pursuant to s.61 MCA.
[Emphasis Mine]

DISPOSITION

1. The husband's application for reversal and or dismissal of the wife's Decree Nisi is refused.

2. The wife is given **Fourteen (14)** days from the date hereof to make the appropriate application for the Decree Nisi granted on 19th May 2010 to be made absolute.
3. The wife is given **Twenty-one (21)** days to file any ancillary application in Action No. 2010/FAM/DIV/63 of 2010.
4. The husband's Petition herein is stayed for a period of **Fourteen (14)** days pending the application by the wife to make the Decree Nisi of 19th May, 2010 absolute.
5. Should the wife fail to make the requisite application for the said Decree Nisi to be made absolute within the **Fourteen (14)** day period then her Petition shall stand dismissed for unreasonable delay and the husband shall have leave to proceed with the prosecution of his Divorce Petition herein.
6. Should the wife proceed with obtaining the Decree Absolute within **Fourteen (14)** days of the date hereof the husband's Petition filed herein shall stand dismissed.
7. Each party shall bear their own costs of this application.

Dated the 16th day of October A.D. 2026

The Honorable Justice C. V. Hope Strachan