

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2025/FAM/div/00006

B E T W E E N:

N.M.N

Petitioner

AND

M.S.C.N

Respondent

Before: The Honourable Justice C.V. Hope Strachan

**Appearances: Robert Adams K.C.; Richard Todd K.C. and Samuel Brown for the
Petitioner
Gail Lockhart-Charles K.C. and Tatyana Maynard for the Respondent**

Hearing date: 26th June, 2026, By written submissions of Counsel for the parties.

*matrimonial causes act (mca), contested proceedings, grenfell application, converted to
uncontested proceedings, whether petition should be dismissed or stayed, discretion pursuant to
s 18 (c) mca.*

DECISION

Introduction

[1.] This application arises in highly contested divorce proceedings between the Petitioner Mr. N (“the husband”) and the Respondent Mrs. N (“the wife”). The Husband’s Petition, filed on 13 January 2025, seeks dissolution of the marriage on the ground of cruelty. Wife’s Answer and Cross-Petition, filed on 15 January 2025, seeks dissolution on the grounds of the Husband’s adultery and/or, cruelty. The Husband admits the allegation of adultery. The immediate issue is not whether the marriage should be dissolved on that admitted ground, but whether, following the hearing of wife’s uncontested Cross-Petition, the Husband’s unproved Petition should remain stayed until decree absolute, as he contends, or should be dismissed, as the wife submits. The parties agree that the reciprocal allegations of cruelty were not tried for the purpose of the divorce and remain available, where relevant and permitted, in the ancillary financial-relief and children proceedings.

Husband’s Submissions

[2.] As both parties seek the same ultimate relief—the dissolution of the marriage—and both acknowledge that proof of the admitted adultery would be sufficient to bring the case to an end, it would therefore be unnecessary and unproductive for the Court to investigate the parties’ competing allegations of cruelty.

[3.] This decision is necessary, not because of any dispute between the parties regarding the substance, mode or manner that the divorce hearing which occurred on 26th June, 2026, on an uncontested basis took place. Both parties prior to the hearing recognized that the issues and allegations in the husband’s petition and in the wife’s cross-petition could be expedited by the husband’s admitted adultery. They indicated that they had reached a consensus on how the matter would proceed to trial on the day in question. At the beginning of the hearing, counsel laid out for the court that pursuant to an agreement made between the parties, the hearing would proceed on an uncontested basis, the wife giving evidence of the husband’s adultery, the husband not giving evidence but having admitted that adultery. The parties made it clear that

the agreed position was that the cross allegations of cruelty would abide the ancillary applications.

[4.] Clearly the parties selected and modelled their methodology for progressing the case after the seminal decision in **Grenfell v Grenfell** [1978] 1 Fam 128, which followed **Morley v Morley** (1972) 117 SJ 69, **Mustafa v Mustafa** [1975] 1 WLR 1277 and **Parsons v Parsons** [1975] 1 WLR 1272. The essence of the agreement by the parties was:

- a. The wife's Cross Petition shall be listed for trial on 26th June 2026 at 11 a.m.,
- b. The Husband's cruelty grounds in his Petition and the wife's cruelty grounds in her Answer and Cross petition shall be stayed;
- c. The trial of the wife's Cross petition should proceed on the sole ground of adultery, uncontested with the costs of the trial and of the Cross-Petition be reserved to the trial judge hearing the Petition.
- d. The wife's application for permission to amend the Cross-Petition is hereby withdrawn;
- e. Both parties shall remain at liberty to rely upon allegations of cruelty on the hearing of ancillary relief claims, including the claims for ancillary relief relating to the children, should they so elect; and
- f. The husband agreed to give an undertaking to the wife and to the Court in the terms appearing in Appendix A of this Consent Order.

[5.] Notwithstanding the differing nuances in the 1973 modernized Matrimonial Causes Act of the U.K. where dissolution of a marriage occurs once the ground "irretrievable breakdown" is proven, the Bahamian jurisdiction nonetheless subscribes to the **Grenfell** line of authorities. The principle extracted from *Ormrod LJ* exposed in **Grenfell** is germane to the present circumstances and is adopted as representative of this court's position;

"There is no point, as I see it, in a case like this of conducting an inquiry into behaviour merely to satisfy feelings, however genuinely and sincerely held by one or other of the parties. To do so would be a waste of time of the court and, in any event, would be running, as I think counter to the

general policy or philosophy of the divorce legislation as it stands today. I cannot help thinking, however, that the matter could have been dealt with more simply than by ordering an issue to be tried, by simply staying the prayer in the petition, striking out the reply and directing that the case should proceed undefended on the answer. That would have met all the requirements and would have avoided the need to formulate an issue and so on.”

- [6.] On 26th June, 2026 the trial of the matter proceeded as agreed between the parties. Prior to the start of any testimony the wife’s attorney invoked the terms of the agreement between the parties as to the methodology for the hearing. The wife gave her testimony under oath, she confined her evidence to the allegations of adultery against the husband. The husband was not present at the hearing. His attorney elected not to cross-examine the wife and she concluded her evidence and closed her case. As the court was about to render its decision the husband objected to the court ruling a dismissal of the Petition, as preferred by the wife, and instead argued that the Petition should instead be stayed. He based his argument on **Grenfell**. The court invited the parties to provide submissions in writing. The submissions were provided and this decision is as a consequence.

The Husband’s Submissions

- [7.] The husband’s written submissions presented through his Counsel Richard Todd K.C., were intituled; “Husband’s Skeleton Argument in Support of a **Grenfell** Summons.” The submissions focused on the argument that the **Grenfell** methodology was the appropriate methodology for the matter to proceed as **Grenfell** is settled law. He submitted that **Grenfell, Mustafa, Morley and Parsons** supra establish that, where facts sufficient to justify dissolution are admitted, the Court may proceed on that ground without investigating alternative allegations of conduct or behavior. In **Parsons, Sir George Baker P** stated that, once the relevant admissions had been made, “there is nothing which [wife] can defend under that head and the husband is entitled to a decree.” The Husband contends that the admitted adultery similarly concludes the present suit, and that the remaining grounds would serve no independent purpose after dissolution.

- [8.] Counsel Todd K.C further acknowledged the possible contention that an issue estoppel, on the principle in **Henderson**, could arise if matters relevant to financial relief were not litigated

in the divorce case. However, relying on **Poon Lok Otto v Kan Lai Kwan Kay** [2014] 17 HCFAR 414, the Husband submits that any such estoppel is no more than a rebuttable presumption and that the proposed order expressly precludes it. The Husband accordingly invites the Court to grant the relief sought in his **Grenfell** summons and to determine the cause on the husband's admitted adultery ground without trying the alternative cruelty allegations.

[9.] In further reliance upon **Grenfell v Grenfell** [1978] Fam 128, **Ryder v Ryder** (1861) 30 LJPM & A 164, and **AA v BB** [2021] (1) CILR 678. He submits that these authorities support a staged procedure: the admitted ground should proceed to decree nisi; the remaining cruelty grounds should remain stayed pending decree absolute; and, upon decree absolute, those stayed claims should be dismissed without findings on their merits. The proposed stay is said to preserve a procedural safeguard should the Cross-Petition not proceed to decree absolute, while avoiding an unnecessary trial of allegations that cannot affect the dissolution of the marriage. The Husband further submits that the dismissal after decree absolute would arise because there would then be no marriage capable of dissolution, rather than from any adjudication of the cruelty allegations.

[10.] The Husband further submitted that the parties and the Court adopted that course by consent in June 2026. Under the consent order, the parties' cruelty grounds were stayed; wife's Cross-Petition was to proceed solely and uncontested on adultery; the wife withdrew her amendment application; and the parties retained liberty to rely on relevant cruelty allegations in ancillary-relief and children proceedings. The wife also undertook not to apply for decree absolute until a final ancillary financial-relief order was capable of taking effect, or until further order. Although the wife subsequently sought immediate dismissal of the Petition after her evidence on adultery was heard on 26 June 2026, the Husband contends that this was not an agreed term and that the consent order remains effective unless set aside.

[11.] It is further submitted that the proposed disposition neither creates findings on the cruelty allegations nor precludes either party from raising relevant facts in later financial or children proceedings, subject to case-management directions. The Husband relies on **Henderson v Henderson** (1843) 3 Hare 100, **Johnson v Gore Wood & Co** [2002] 2 AC 1, and **Ako v Rothschild Asset Management Ltd** [2002] EWCA Civ 236, but contends that the express

absence of adjudication and reservation of relevant matters prevent any unintended issue estoppel. The Husband also relies on **de Lasala v de Lasala** [1980] AC 546 and **Isaacs v Robertson** [1985] AC 97 for the proposition that the June consent order should be obeyed unless and until set aside.

[12.] The Husband accordingly invites the Court to list the wife's Cross-Petition as an undefended cause on the sole ground of adultery; to grant decree nisi if satisfied that the statutory requirements have been proved; to maintain the Petition and the alternative cruelty limb of the Cross-Petition on stay pending decree absolute; and thereafter to dismiss those stayed claims without findings on their merits. It is submitted, that this course is consistent with the overriding objective, avoids disproportionate expenditure and delay, and permits the Court's resources to be directed to the outstanding children, interlocutory and ancillary-relief issues.

The Wife's Submissions

[13.] The wife's position put forth by Counsel Lockhart-Charles K.C. is that the Husband's application, described as a **Grenfell** Summons, should be dismissed. These proceedings have involved multiple applications and more than **thirty (30)** affidavits. The wife says that she was preparing to petition for divorce when the husband persuaded her attorney Adams K.C. to delay, then petitioned first on cruelty. He subsequently sought to have the divorce proceed on her Cross-Petition, relying on his admission of adultery, while insisting that his own Petition remain alive. She characterizes that position as inconsistent: he seeks the benefit of an uncontested determination on her ground but resists dismissal of his competing, unproved Petition.

[14.] The parties' agreed procedure was to stay the cruelty grounds pleaded in both the Petition and Cross-Petition, proceed to trial on the Cross-Petition's adultery ground alone and uncontested, withdraw the wife's application to amend her Cross-Petition, reserve trial costs, and preserve both parties' ability to rely on cruelty allegations in ancillary relief proceedings, including matters concerning the children. Counsel initialed a draft consent order, which the husband's counsel submitted to the Court on 18th June 2026. The Wife says that, at the hearing

on 9th June, the Husband's counsel had distinguished this agreed procedure from a contested **Grenfell** direction: it achieved the same saving of hearing time without requiring determination of that application. The Court directed that the agreement be recorded and listed the Cross-Petition for an uncontested hearing on 26th June.

[15.] The wife submitted further that, on 25th June, the Court discussed how the hearing would proceed and indicated that, if decree nisi were granted on the Cross-Petition, the Petition would be dismissed. At the hearing on 26th June, counsel confirmed the initialed terms. The wife gave sworn evidence on adultery alone, confirmed that the Cross-Petition was not being pursued by connivance or collusion, and was not cross-examined. After her evidence, the wife counsel objected to dismissal of the Petition, maintaining that it should remain stayed. The issue of dismissal or stay being discussed prior to the hearing remained disputed. The husband's counsel said he had not heard the Court's indication the previous day. The Wife submits that the agreement stayed grounds of cruelty, not the Petition or Cross-Petition, and said nothing about preserving the Petition after decree nisi. She declined the Husband's later proposal to withdraw his Petition only if she also withdrew her stayed cruelty ground.

[16.] The Wife relies on sections 16(1), 16(4) and 19(1) of the Matrimonial Causes Act ("MCA"). Adultery and cruelty are grounds for divorce; the Court must inquire, so far as it reasonably can, into the alleged facts, relevant connivance, condonation or collusion, and countercharges; and the grant of a decree depends on the requisite evidential findings. In her submission, the qualified duty of inquiry does not require every disputed allegation to be tried when an admitted ground suffices. She also relies on section 29(1), concerning the circumstances and conduct relevant to financial provision and property adjustment, and section 74(1), under which the Court's jurisdiction concerning children continues before, on and after a decree. Accordingly, dispensing with a cruelty trial for the purpose of decree does not dispose of every issue to which those allegations may later be relevant.

Offering the Wife's account of Grenfell, Her Counsel Submitted;

[17.] In **Grenfell v Grenfell** [1978] 1 Fam 128, the *English Court of Appeal* approved proceeding on an admitted ground of five years' separation rather than investigating wider, disputed conduct allegations. *Ormrod LJ* regarded it as proper to stay the competing prayer and strike out a reply opposing dissolution when the wife had herself sought a decree: she could not "blow hot and cold". His discussion of **Morley v Morley** likewise illustrated that admitted adultery could establish the basis for a decree without a trial of additional conduct allegations. **Mustafa v Mustafa** [1975] 1 WLR 1277 illustrated the qualification: a judge could, as a matter of discretion, investigate disputed conduct where pending children or property issues made it potentially relevant, although those issues might more conveniently be addressed in the relevant later proceedings. The Wife treats these English authorities as persuasive case-management comparators, not as deciding what must happen to a competing Petition after decree nisi. In particular, **Grenfell** concerned a preliminary direction and did not order dismissal of the original Petition at the decree nisi stage.

[18.] For the latter point, the Wife relies on the Bahamian *Court of Appeal's* account in **James William Murray Guthrie v Irene Elizabeth Guthrie**, SCCivApp No. 13 of 2015, §§ 5–7: the husband's Petition was dismissed when decree nisi was granted on the wife's Cross-Petition, before decree absolute, and he subsequently pursued ancillary relief during that interval. She submits that **Guthrie** illustrates dismissal at decree nisi without loss of access to ancillary relief. She also invokes **Rose v Rose (Divorce: Consent Orders) (No. 2) [2002] EWCA Civ 208** by limited analogy: a party should not lightly resile from an agreed procedural course placed before the Court and acted upon. She accepts that the agreement cannot bind the Court to grant a decree or make any particular order contrary to its own assessment.

[19.] The distinction on which the application turns, the Wife submits, is between preserving cruelty allegations and preserving an unproved prayer for dissolution. The agreed terms protect both parties' ability to rely on the allegations later; dismissal of the Petition would not adjudicate their merits. Nor, she says, is a continuing Petition needed to regulate decree absolute: Appendix A contains the Husband's undertaking not to apply for it until the final

ancillary financial relief order has been approved or sealed and can take effect, or until further order. Costs of the Petition and Cross-Petition have been reserved. The Husband's proposed order itself contemplates eventual dismissal if the adultery cause reaches decree absolute, but identifies no juridical or case-management benefit in postponing dismissal until then. The Wife therefore asks the Court to grant decree nisi on her uncontested Cross-Petition, dismiss the competing Petition and the Husband's **Grenfell** Summons, and award her the costs of the Summons, to be taxed if not agreed.

The Law – Matrimonial Causes Act, (MCA)

s. 2 - "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 aforementioned whereby a strong presumption arises that such sexual act occurred between them;

s. 16. (1) - A petition for divorce may be presented to the court either by the husband or the wife on any of the following grounds that respondent — (a) has since the celebration of the marriage committed adultery; or (b) has since the celebration of the marriage treated the petitioner with cruelty;

s. 18 (c) - 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

19. (1) - If the court is satisfied on the evidence that the case for the petitioner has been proved and — (a) where the ground of the petition is adultery, that the petitioner has not in any manner accessory to or connived at or condoned the adultery;

29. (1) - It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say — (a) – (g)

s. 73. (1) (b) (i) - The court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied — (a) that for the purposes of this section there are no children of the family to whom this section applies; (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that — (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or

74. (1) - The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen — (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);

Discussion And Analysis

[20.] The dispute between the parties after having arrived at the methodology modelled after **Grenfell**, having reduced it to writing and having proceeded to trial under those consent terms, the issue is whether the court is bound to “stay” the husband’s petition (as the husband submits) or whether the court still has the discretion to “dismiss” the husband’s petition (as the wife contends). It must be determined what effect does that have on the court’s duty in adjudicating the case.

The difference between a stay of Petition and dismissal of Petition

[21.] A dismissal has a materially different effect from a stay. A stay suspends the Husband’s divorce claim and preserves it as a procedural fallback; a dismissal brings that claim to an end, subject only to any appeal or successful application to set aside or vary the dismissal. However, dismissal of the Petition need not determine, extinguish, or prevent later reliance upon the

underlying cruelty allegations if the Court expressly states—as it apparently did—that those allegations are preserved for the ancillary financial and children proceedings.

[22.] The principal practical consequence is therefore that, after dismissal, the Husband cannot simply resume or prosecute his Petition for dissolution if the Cross-Petition does not proceed to decree absolute. That is the substantive protection which a stay would have retained.

[23.] That does not mean the Court lacked power to choose between those alternatives. **Grenfell** confirms the Court's case-management jurisdiction to stay a petition or prayer where a sufficient admitted basis exists for the divorce to proceed on the answer/cross prayer; it does not prescribe the ultimate treatment of the competing petition after decree nisi. Indeed, the case concerned a stay of the petition's prayer and an undefended course on the answer, not a rule requiring dismissal at a particular later point.

[24.] Once the Court makes an order dismissing the Petition, rather than merely staying it, that order governs unless varied, set aside, or successfully appealed. A court order must be obeyed and treated as operative unless and until it is set aside, even if a party contends that it was procedurally mistaken. **Isaacs v Robertson** [1985] AC 97.

Consequences of dismissal

[25.] The consequences of dismissal of the Husband's petition means that the prayer for divorce is concluded. The Husband no longer has a live Petition upon which he can seek a decree. It cannot simply be reactivated at his election. This differs from a stay, under which the Petition remains before the Court but cannot be pursued unless the stay is lifted.

[26.] That distinction matters before decree absolute. If, for any reason, wife's Cross-Petition did not result in decree absolute—for example, it was not progressed, were withdrawn, or some obstacle arose—the Husband would not retain his own pending cruelty petition as an automatic fallback. He would need to seek appropriate relief from the Court to challenge or reverse the dismissal, rather than simply invite the Court to lift a stay.

[27.] The fact is that the wife has closed her case. The case proceeded on the **Grenfell** methodology. The case proceeded based on the terms of the agreement between the parties which did not reference that it was proceeding on **Grenfell**. Of note is that it is disputed between the respective counsel as to whether the issue of the stay as opposed to the dismissal was discussed prior to the hearing. However, the agreement as presented to the court was devoid of any such consideration. Having regard to that fact, the court will err on the side of caution proceeding on the basis strictly on the agreement between the parties. The question is whether the court is bound to stay the husband's Petition or, does the court have the discretion to dismiss the petition and if it does what are the implications of that dismissal.

[28.] Based on the husband's submissions he is seeking resolution to a situation that has already been resolved. Whether the **Grenfell** trial methodology should be used in this case is to my mind no longer at issue. Having heard the case, the question is can the court unhear the evidence of the wife to have another trial on the same issues using the same methodology.

[29.] There is no doubt that a party may apply to reopen a hearing after a judge sitting alone has heard the evidence but before judgment. The judge must deal fairly with a properly made application, but there is no entitlement to have the same evidence heard again, or even necessarily to have an oral hearing of an application. The strongest authority on the distinction between considering and granting a reopening request is **AIC Ltd v Federal Airports Authority of Nigeria** [2022] UKSC 16, [31]–[40]. That case concerned a request after judgment but before the order was sealed, so its finality principle is stronger than it would be before any decision has been given. Nevertheless, the Supreme Court said that a judge may read an application and refuse it in limine, without directions or a hearing, where it has no real prospect of success ([32]). It endorsed the observation that a trial is “not a dress rehearsal” ([31]), while emphasizing that the discretion is flexible and depends on the circumstances ([33]–[40]).

[30.] The proposition that the judge “has to hear the same evidence again,” is weak. The decisive questions are what has changed, what defect is alleged in the first hearing, and why a targeted measure would not suffice. It occurs to me that if the application to have it heard using the **Grenfell** methodology was proceeded with by the husband and he prevailed the court would

be required to duplicate the hearing or at the very least duplicate the exercise of its discretionary power to either dismiss the husband's petition or to stay that petition. This is contrary to the court's duty as provided by the Matrimonial Causes (Amendment) Rules s.68 as amended by the Supreme Court Civil Procedure Rules 2022 (CPR) are incorporated wherever the rules are silent. The duty is to deal justly with a case which includes, so far as is practicable:

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to — (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly;
- (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and
- (f) enforcing compliance with rules, practice directions and orders.

[31.] I am of the view that a request to repeat the evidence needs an identified reason why doing so is necessary for a fair and just decision. The anticipated result to be accomplished is also relevant to the process and some indication of its success.

Effect of the absence of an agreed post-hearing term

[32.] Counsel Lockhart-Charles' submissions regarding the role of the agreement in the existing situation is material. **James William Murray Guthrie v Irene Elizabeth Guthrie**, SCCivApp No. 13 of 2015, §§ 5–7: proves that an application for ancillary relief made after dismissal of the Petition and before Decree absolute, is available after a trial in ordinary circumstances.

[33.] I consider the agreement entered into by the parties prior to the hearing as material to the decision. The proposition that the principle that a party should not lightly resile from an agreed

procedural course placed before the Court and acted upon which Counsel Lockhart-Charles K.C. supported by **Rose v Rose (Divorce: Consent Orders) (No. 2) [2002]** EWCA Civ 208 (“**Rose**”) by limited analogy is momentous. In **Rose** the husband’s Petition was dismissed when decree nisi was granted on the wife’s Cross-Petition, before decree absolute he subsequently pursued ancillary relief during that interval. While Counsel Lockhart-Charles accepted that the agreement cannot bind the Court one way or the other. I view the argument as persuasive.

No finding is made on cruelty merely because the Petition is dismissed

[34.] A dismissal following the uncontested adultery disposal is not, without more, a finding that the Husband’s cruelty allegations were false, frivolous, abandoned on their merits, or admitted by wife. Nor does it establish the wife’s cruelty allegations are true or false. That is particularly so where the Court expressly reserved the parties’ rights to rely on the allegations in ancillary matters. The relevant distinction is between:

- the **Petition**: a procedural claim for a decree dissolving the marriage; and
- the **alleged facts of cruelty**: matters which may later be relevant evidence in financial, conduct, costs, or children litigation.

The former can be dismissed without adjudicating the latter.

The allegations remain available only if later relevant and admissible

[35.] The preservation language is important, but it is not a pre-judgment that every cruelty allegation will be admitted or tried in later proceedings. It means neither party is barred merely because the divorce cause was resolved on adultery. In ancillary proceedings, the party relying on a cruelty allegation must still establish, that it is relevant to the particular relief sought; that it is properly pleaded or permitted under the applicable directions; that it is supported by admissible evidence; and that trying the issue is proportionate. **Grenfell** itself recognizes that conduct questions may, where genuinely relevant, be dealt with in the ancillary or custody proceedings rather than in the divorce suit.

Dismissal should not, on these facts, create issue estoppel on cruelty

[36.] Issue estoppel requires an issue to have been actually and finally determined. On the facts described, the cruelty allegations were not tried and no finding was made on them. Accordingly, the dismissal should not generate an issue estoppel as to whether either party behaved cruelly.

[37.] The broader **Henderson v Henderson** (1843) 3 Hare 100 principle concerns the abusive re-litigation of matters which a party should have raised in earlier proceedings. It is substantially weaker here because the Court did not require the cruelty allegations to be tried for the purpose of divorce; the order expressly preserved their potential use in ancillary matters; and ancillary relief and children proceedings raise different statutory questions from whether the marriage should be dissolved. Nevertheless, the express reservation does not permit a party to relitigate immaterial marital history. It preserves relevant factual reliance; it does not confer an unrestricted right to reopen the divorce case.

Effect of section 18 MCA

[38.] Neither counsel raised Section 18 (c) MCA as a provision which the court should consider in determining this application. However, I am of the view that this provision materially strengthens the conclusion that dismissal is within the Court's discretion. On the facts as described, the husband's admitted adultery, and wife's Cross-Petition having proceeded uncontested invokes s 18(c) MCA. It provides that the Court may dismiss a petition for divorce where it finds that the spouse opposite has, during the marriage, been guilty of adultery. Thus, if the Court found the admitted adultery established, it has an express statutory power to dismiss the Husband's Petition.

[39.] I am of the view that the word "may" is important. It confers a discretion; it does not mandate dismissal in every case in which the husband has admitted to committing adultery. The Court is therefore required to decide whether dismissal, rather than a continued stay, is the just and procedurally appropriate disposition and it is upon this basis that the court has ruled.

Reserved costs and ancillary jurisdiction should survive

[40.] On the issue of costs, I am of the view that if costs of the Petition and Cross-Petition were expressly reserved, dismissal of the Petition should not, without further wording, dispose of the costs question. Similarly, dismissal of the competing divorce petition should not itself remove the Court's statutory jurisdiction to determine the ancillary financial and children issues arising from the divorce cause. The Court's express preservation of those issues reinforces that conclusion.

Conclusion

[41.] I am of the view that the Court's dismissal produces a cleaner and more final disposition of the competing divorce claims than a stay. It prevents the Husband from retaining an unproved divorce petition on the record after wife's uncontested adultery case has been heard. It also does not, by itself, prejudice either party's ability to use relevant cruelty allegations in the ancillary proceedings, provided no merits findings are made which they are not, and the Court expressly preserves that liberty.

[42.] The Husband's strongest point is narrower: immediate dismissal removes the procedural fallback that a continuing stay would supply until decree absolute. When balancing the husband's justification for a stay against the overriding objective under the CPR, the protracted, multiplicity of issues raised by the parties, by the plethora of applications presently before the court, many of which have been characterized as urgent and most importantly the court's duty to expedite hearing these applications and to get to the substantive issues surrounding the interest of the children of this marriage, I accept that the risk justifying a stay is a matter for this Court's procedural discretion. Any potential loss to the Husband is confined to the loss of that fallback—not the loss of the allegations themselves.

[43.] The parties' consent arrangement did not remove that statutory discretion. It governed the route to the hearing. The cruelty grounds would not be tried for the purpose of dissolution. The Wife's Cross-Petition should proceed on adultery alone, uncontested to be determined and the allegations of cruelty would remain available, if relevant, in ancillary proceedings. But it did

not expressly provide that the Husband's Petition must remain stayed after the Court heard the Wife's uncontested case and found the adultery ground proved. The issue was therefore not settled by consent and remained for the Court to determine.

[44.] Counsel's objection, raised when dismissal was proposed, meant that the Court should hear and consider the Husband's argument for a stay. But the objection did not displace the Court's discretion under section 18(c) MCA, nor did it create a right to preserve the Husband's unproved Petition. The Court could properly ask what useful purpose a stay served where the Wife had completed the agreed uncontested proof of adultery; the Husband had admitted the adultery; decree nisi was to be granted on the Wife's Cross-Petition; the parties' cruelty allegations were expressly preserved for ancillary-relief and children issues; and the wife had undertaken not to seek decree absolute before the financial-relief order was ready to take effect, or absent further order.

[45.] If no genuine procedural prejudice was demonstrated, the Court could rationally exercise its statutory discretion to dismiss the husband's Petition under section 18(c), while expressly recording that it made no finding upon the stayed cruelty allegations.

[46.] The parties' agreement governed the basis upon which the divorce hearing would proceed. It enabled the wife's Cross-Petition to be heard on the husband's admitted ground of adultery, without a trial of the parties' reciprocal allegations of cruelty. The agreement did not, however, stipulate the consequential disposition of the Husband's Petition once wife's uncontested evidence had been heard.

[47.] That question accordingly remained for the Court. The Husband's objection to dismissal was properly raised and has been considered. It does not, however, establish that the Petition must remain stayed. Section 18(c) of the MCA expressly permits the Court to dismiss a petition where it finds that the husband has during the marriage been guilty of adultery. The Husband's adultery was admitted and was proved for the purpose of wife's Cross-Petition. Expressed another way, s. 18 (c) MCA supplied an express statutory basis for dismissal and that the Court exercised that discretion after considering the Husband's request for a stay.

[48.] In the exercise of that discretion, I am satisfied that dismissal is appropriate. The Husband has identified no sufficient purpose served by retaining an unproved Petition for the same relief after decree nisi has been granted on the wife's Cross-Petition. The dismissal does not determine the truth or falsity of either party's cruelty allegation. Those allegations remain available for reliance in the ancillary-relief and children proceedings, if relevant, admissible and permitted by further case-management direction.

[49.] In any event the concerns about a possible Decree Absolute being granted before the ancillary issues concerning the children are determined are misconceived. S. 73 (1)(b)(i) MCA operates to preserve any possibility of that occurring. It mandates that unless a Declaration is made by the court that the best or satisfactory arrangements have been made for the welfare of the children a Decree Absolute shall not be issued. This is not within the court's discretion it is a command or directive which must be followed.

[50.] In all the circumstances of the case I find that the Husband has since the celebration of the marriage committed "adultery" as defined in s. 2 MCA, having admitted to engaging in voluntary act or acts of an intimate sexual nature, other than that regarded as an act of mere familiarity, between himself as a party to his marriage with another party of the opposite sex who is not his 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 pursuant to s. 16 (1) (a) MCA.

[51.] I am satisfied that the husband has led no allegations that the wife has in any manner been accessory to or connived at or condoned his adultery pursuant to s. 19 (1) MCA. This means that any such obstacle to her obtaining a Decree Nisi is not present.

[52.] I am also satisfied that the court's power to make orders pursuant to the provisions of s. 74 (1) and S. 29 (1) MCA continues to be available to this court.

Disposition

1. The Petition of the Husband is dismissed.
2. The Court grants a Decree Nisi to wife on the grounds that the Husband, since the celebration of the marriage, has committed adultery. The Decree Nisi is not to be made absolute until at least three (3) months from the making hereof.
3. The ancillary matters are adjourned to chambers with the allegations of cruelty preserved for the parties to avail themselves of during the hearing on the ancillary matters.
4. Costs of these Decree Nisi proceedings and the **Grenfell** application are reserved pending the result of Submissions on Costs, by the parties.

Dated the 5th day of October, A.D., 2026



C.V. Hope Strachan J.

