

IN THE SUPREME COURT OF BELIZE, A.D. 2012

(DIVORCE)

ACTION NO. 23 OF 2011

	(JOAQUIN RIVEROL	PETITIONER
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BETWEEN	(AND	
	(	
	(MARIA ELENA RIVEROL	RESPONDENT
	(ALBERTO HAMILTON	CO-RESPONDENT

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Before the Honourable Madam Justice Michelle Arana

Mr. Hubert Elrington, S.C., for the Petitioner

Mrs. Robertha Magnus Usher for the Respondent and Co-Respondent

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**RULING**

1. This matter began by way of Petition filed by the Petitioner Joaquin Riverol seeking a divorce on the grounds of Cruelty and Adultery by the Respondent.

2. The Respondent Maria Elena Riverol filed an Answer to the Petition denying the allegations of Adultery and Cruelty made against her in the Petition and seeking a divorce based on the Petitioner's Cruelty and Adultery.
3. The Petitioner failed to file a Reply to the Respondent's Answer.
4. At the hearing of the Petition, the issue arose as to whether the Court should first determine whether the Petitioner had proven the allegations made in his Petition before going on to consider the Answer (as submitted by Counsel for the Petitioner), or whether (as argued by Counsel for the Respondent) the Petitioner's failure to deny allegations made in the Respondent's Answer meant that those allegations were uncontested and the Court should just go on to grant the divorce based on the grounds stated in the Answer. Written submissions were due on February 17<sup>th</sup>, 2012. I received the submissions from Counsel for the Respondent on February 20<sup>th</sup>, 2012 and from Counsel for the Petitioner on April 5<sup>th</sup>, 2012.
5. The sole issue before the Court is whether the Court is obligated to first consider the Petition and then (if necessary) go on to consider the Answer, or whether the Court should just set aside the Petition, treat the Answer as uncontested and grant the divorce based on the allegations contained in the Answer.

6. Counsel for the Petitioner in his written submissions contests that as there was no claim or cross petition from the Respondent before the Court, the Petitioner was under no duty in law to file an Answer. He further submits that if the Respondent wanted to bring a cross petition she could have done so and that the Respondent cannot rely on the Answer to serve as a cross petition because petition and cross petitions are originating process which start a civil proceeding. He goes on to assert that the cases cited by Counsel for the Respondent ***Khoo Hoon Eng v. Wong Kien Kong*** [2005] SGDC 148 and ***Grenfell v. Grenfell*** [1978] 1 ALL ER 561 go to show that it is only where there has been a failure to plead to a petition or a cross petition that the Court has the authority to strike out the petition. Learned Counsel for the Petitioner concludes by urging this Court to strike out the application and grant judgment for the Petitioner on the ground that both the Petitioner and the Respondent have clearly admitted that the marriage has broken down irretrievably for a minimum of 3 years before the presentation of the Petition; that being the case, that the Court ought not to inquire into the allegations contained in the wife's Answer.

7. Counsel for the Respondent submitted that Rule 23 of the Matrimonial Causes Rules of Belize of the Supreme Court of Judicature Act Chapter 82 of the Laws of Belize clearly governs the procedure to be followed by a Petitioner where an Answer has been filed by a Respondent in divorce proceedings:

*“Within fourteen days from the filing and delivery of the answer, the petitioner may file a Reply thereto, except where such answer is a simple denial, and no subsequent pleadings shall be delivered except by leave.”*

8. The cases of *Khoo Hoon Eng v. Wong Kien Kong* [2005] SGDC 148 and *Grenfell v. Grenfell* [1978] 1 ALL ER 561 were cited by Counsel for the Respondent in substantiating her argument.
  
9. In ***Khoo Hoon Eng v. Wong Kien Kong and Another*** [2005] SG DC 148 the Petitioner filed a petition alleging that her husband the Respondent had committed adultery and that she found it intolerable to live with him. The Respondent filed an Answer and Cross Petition denying the alleged adultery or that the Petitioner found it intolerable to live with him, and claiming in his Cross Petition that it was the Petitioner who had committed adultery and he found it intolerable to live with her. The Petitioner then filed a Reply to the Respondent’s Answer and an Answer to his Cross Petition denying the allegations against her and repeating her allegations against him. On the hearing of a Summons in Chambers filed by the Respondent asking that the Petitioner’s pleadings be struck out and that the Respondent be allowed to proceed with the hearing of his Cross Petition on an uncontested basis, Madam Justice Carolyn Woo held as follows:

*“Both the Petition and the Cross Petition filed herein cite adultery of the other party. In light of the fact that there is no admission by the Petitioner that the Respondent finds it intolerable to live with her, her pleadings cannot be struck out, leaving only his Cross Petition to stand, and for him to be the pot calling the kettle black by alleging that her adultery and conduct makes it intolerable for him to live with her when he is allegedly otherwise involved as well. Furthermore, the Petitioner has, in her Reply to Answer and Answer to Cross Petition of the Respondent, denied various allegations in the Answer and Cross Petition. In my view, both the Petitioner and the Respondent still need to satisfy the court that their marriage has irretrievably broken down on the facts that they have alleged, and the court hearing the contested divorce proceedings should consider all the pleadings filed.”*

10. Counsel for the Respondent in the present case sought to distinguish the Khoo Hoon Eng case on the basis that in that case the wife had filed a Reply to the Answer denying most of the allegations, and that her Reply had brought many of the allegations against her into question. In this case, the Petitioner never filed a Reply to the Respondent’s Answer and never denied any of the allegations made against him in the Answer. In the circumstances the charges of Adultery and Cruelty have not been denied by the Petitioner meaning that those matters are uncontested and a divorce may be

granted on the prayer of the Respondent. Counsel for the Respondent further argues that once the pleadings as filed by each party reveals that the divorce can be granted on either the Petition or the Answer (which contains the prayers) based on an admission (whether deemed or explicit) or a failure to deny, then the divorce should be granted on that ground.

11. I agree with the submissions made by Counsel for the Respondent. The Petitioner had every opportunity to contest the allegations made against him in the Respondent's Answer and he did not do so. Under Rule 23 of the Matrimonial Causes Rules of Belize, he had fourteen days within which to file a Reply. He did nothing. Contrary to the submission of Learned Counsel for the Petitioner, the Matrimonial Causes Rules of Belize under the Supreme Court of Judicature Act make no provision for a cross petition to be filed. The Answer filed by the Respondent was not a simple denial; it contained 13 paragraphs setting out specific denials of adultery by the Respondent, and detailed allegations of adultery and cruelty against the Petitioner. The Rules of Court set out clearly what steps were to be taken by the Petitioner if he wanted to deny the allegations made against him by the Respondent. These steps were not taken. Therefore the Petition is set aside, and the divorce will now proceed on the basis of the uncontested Answer filed by the Respondent.

12. Since Belize (unlike England) is still a fault-based jurisdiction in matters of divorce and since irretrievable breakdown of marriage under Section 129 (2) of the Supreme Court of Judicature Act was not pleaded as a ground by either the Petitioner or the Respondent, the court needs to enquire into the facts alleged in the Respondent's Answer in order to establish whether these grounds can be substantiated by the evidence as required by Section 133 of the Supreme Court of Judicature Act Chapter 82 of the Laws of Belize.

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Michelle Arana

Supreme Court Judge

***Dated this 28<sup>th</sup> day of May, 2012***