

IN THE HIGH COURT OF BELIZE, A.D. 2023**ACTION NO. 305 of 2022****BETWEEN****HUSSAIN IAN REYES****PETITIONER/APPLICANT****AND****ZEIDI YAZMIN REYES****RESPONDENT****BEFORE** The Honourable Madam Justice Patricia Farnese**Hearing Date:** March 23, 2023**Appearances**

Robertha Magnus Usher, SC for the Petitioner/Applicant
Erin Quiros, for the Respondent

LEAVE TO AMEND DIVORCE PETITION

[1] The Petitioner commenced divorce proceedings under the *Supreme Court of Judicature Act*¹ on no-fault grounds as he believed the petition would not be challenged or defended. The Respondent filed an answer and cross-petition on the grounds of cruelty. The Petitioner seeks the court's permission to amend his petition to include fault-based grounds. The Respondent opposes

¹ Cap. 91 of the Substantive Laws of Belize.

the Petitioner's application because it was filed after the *Senior Courts Act*² came into force and section 133(1) provides that the irretrievable breakdown of marriage is the sole permissible ground. The Petitioner asserts that fairness requires that he either be permitted to fully answer the allegation of cruelty or that ground ought to be struck from the cross-petition.

[2] The *Senior Courts Act* contains the following transitional provision:

245.–(1) The Supreme Court of Judicature Act and the Court of Appeal Act and the Court of Appeals Rules are repealed.

(2) Notwithstanding the repeal of the Supreme Court of Judicature Act and the Court of Appeal Act, nothing in this Act shall affect any proceedings taken or a right which has accrued or a liability which has been incurred under the repealed Acts.

(3) Every proceeding commenced under the Supreme Court of Judicature Act and the Court of Appeal Act shall be continued and completed as if the proceeding had been commenced under this Act.

(4) Notwithstanding the repeal of the Supreme Court of Judicature Act and the Court of Appeal Act, all Regulations, By-laws, Rules, Orders, Practice Directions and other subsidiary laws made under the repealed Acts, shall, to the extent they are not inconsistent with this Act, continue in force until repealed by Regulations, By-laws, Rules, Orders, Practice Directions and other subsidiary legislation made under this Act

The Petitioner relies on subsection (2) to argue that his right to amend in response to the cruelty allegation is retained during this transitional period. The Respondent does not dispute that the Petitioner continues to have a right to amend his petition with the court's permission, but argues that subsection (3) constrains the content of any proposed amendment because the proceeding "shall be continued and completed" under the new legislation.

² Act No. 27 of 2022.

[3] I find a purposive interpretation of section 245 supports granting permission to the Petitioner to amend his petition. The order of the subsections is relevant. During this transitional period, the *Senior Courts Act* did not intend to deprive a party of rights available to them when they initiated their proceedings. Consequently subsection (3), when read in conjunction with (4), must be read to apply to any new or amended procedures and not substantive rights.

[4] Because the Respondent has alleged cruelty, section 135 of the *Supreme Court of Judicature Act* gives the Petitioner the right to the same relief sought by the Respondent:

135. If in any proceedings for divorce the respondent opposes the relief sought, in the case of proceedings instituted by the husband, on the ground of his adultery, cruelty or desertion or, in the case of proceedings instituted by the wife, on the ground of her adultery, cruelty or desertion, the Court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

The Respondent seeks a decree that “the marriage be dissolved on the grounds of the Petitioner’s cruelty,” custody of the children, and maintenance (including alimony). Findings of cruelty can be relevant to the court’s determination of each of these claims for relief. Therefore, I find that the Petitioner’s right to those reliefs as guaranteed by section 135 of the *Supreme Court of Judicature Act* is saved by subsection 245(2) of the *Senior Courts Act*.

[5] I further find that permitting the Petitioner to amend his petition to seek a divorce on the grounds of the Respondent’s cruelty and to outline the particulars of the cruelty are the most efficient ways to provide the court with the information it needs to decide this matter. The Respondent will have an opportunity to respond to those allegations in the normal course thereby alleviating any concerns of unfairness.

[6] The *Senior Courts Act*’s removal of all fault-based grounds of divorce recognizes that on a balance, more harm than good results from protracted disputes over each spouses’ culpability in the marriage breakdown. A fault-based approach to divorce can be extremely expensive and

thoroughly damaging to everyone involved, especially children of the marriage. During this transitional period, fairness requires that the Petitioner be granted the right to adopt this approach in response to the Respondent's decision to oppose a no-fault approach.

Disposition

[7] It is hereby ordered that:

1. The Petitioner is granted leave to amend his Divorce Petition dated 8 September, 2022 to seek a decree that the marriage be dissolved on the grounds of the Respondent's cruelty.
2. The Petitioner files and serves his amended Petition within seven (7) days of the date-leave to amend is granted.
3. The Respondent files an amended Answer within fourteen (14) days thereof.
4. The Petitioner files a Reply thereto, if necessary within fourteen (days) therefore.
5. Costs shall be in the cause.

Dated 22 June 2023

Patricia Farnese
Justice of the High Court