



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

ACTION NO. D 47/23

**In the matter of an application to issue a petition within the specified period
Matrimonial Causes Ordinance (Cap. 11.04) Section 7(2)
(Divorce: Exceptional Hardship)**

BETWEEN:

R. PROPOSED PETITIONER

V

R. PROPOSED RESPONDENT

REASONS

Before: The Hon. Mr. Justice Anthony S. Gruchot

Appearances: Mr George Missick of Geordins for the Proposed Petitioner
No appearance by the Proposed Respondent.

Hearing Dates: 29th November 2023, 25th January and 2nd February 2024

Venue: Court 5, Graceway Plaza, Providenciales.

To be Handed Down: 6th February 2024 at 2:00 p.m.



Legal Framework

1. The Matrimonial Causes Ordinance (Cap. 11.04) ('the MCO') came into force on 28th December 2012, repealing the much out-of-date Jamaican Divorce Law of 1879.

2. Section 7 of the MCO provides:

“Restriction on petitions for divorce within three years of marriage

7. (1) Subject to subsection (2), no petition for divorce shall be presented to the court before the expiration of the period of three years from the date of the marriage (hereinafter in this section referred to as “the specified period”).

(2) A judge of the court may, on an application, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent. But in determining the application, the judge shall have regard to the interests of any child of the family and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.”

3. The Matrimonial Causes Ordinance is broadly based on the Matrimonial Causes Act 1973 (‘the MCA’) in England and Wales. Section 3 of the MCA is almost identical in its wording to section 7 of the MCO.
4. A brief history of ‘the specified period’ is given in **C. v C. (Divorce – Exceptional Hardship)**¹. Ormrod LJ, giving the judgment of the Court stated:

“The legislative history of section 1 of the Act of 1937 is interesting and illuminating and we are indebted to Mr. Wilson for his research on this aspect of the case. From 1857 to 1937 there was no statutory restriction in point of time on the presentation of petitions for divorce, though the ground was, of course, confined to adultery, except in the case of a wife who could rely on rape, sodomy, etc. When the Marriage Bill, as it was originally called, was presented to Parliament in 1937, it provided for a considerable extension of the grounds for divorce and for nullity, but imposed an absolute ban on the presentation of petitions for a period of five years from the date of marriage. There was no “escape clause” of any kind. In this form, the Bill passed the

¹ [1979] 2 WLR 197

House of Commons and it seems probable that this clause was an important factor in securing its passage. But when the Bill reached the House of Lords clause 1 ran into very heavy opposition. Lord Atkin described it as a “terrible clause,” and was strongly supported by the legal peers, most of whom objected to any kind of time limit. Eventually the period of five years was amended to three years and Lord Maugham successfully moved a further amendment to introduce a proviso in the same terms as those which now appear in the first part of section 3 (2) of the Act of 1973. When the Bill returned to the Commons Mr. A. P. Herbert moved a further amendment which is now the second part of section 3 (2).”

5. The ‘specified period’ was further shortened to 1 year by the Matrimonial and Family Proceedings Act 1984 (England and Wales) which has been retained post the April 2022 introduction of no-fault divorces.
6. The position in the Turks and Caicos Islands remains as set out in paragraph 1, i.e. a petition for divorce may not be presented to the Court within a period of 3 years from the date of marriage has passed unless allowed by the Court on application showing that the proposed petitioner would suffer ‘exceptional hardship’ or the proposed respondent had demonstrated ‘exceptional depravity’.
7. Bucknill L.J. in **Fisher v Fisher**², cited with approval in **C. v C.**³ opined that the provision was “*enacted not only to deter people from rushing into ill-advised marriages, but also to prevent them from rushing out of marriage so soon as they discovered that their marriage was not what they expected.*”
8. The issues that arise is what is considered to be ‘exceptional hardship’ and ‘exceptional depravity’?
9. As a result of the ‘Specified Period’ of 1 year in England and Wales there have been few reported cases of applications being made to present a petition within that period.

² [1948] P. 263, 264

³ *Supra*

10. In **Fay v Fay**⁴ Ormrod LJ cited a passage from **Hillier v Hillier and Latham**⁵:

"Section 3 of the Act of 1973, and its predecessors, have troubled judges who have to apply their provisions ever since these were first introduced by section 1 of the Matrimonial Causes Act 1937. The principal difficulty lies in knowing what standards to use in assessing exceptional hardship and what is meant by the phrase 'exceptional depravity.' Both involve value judgments of an unusually subjective character, so much so that in the earlier cases in this court these appeals were treated as appeals from the exercise of a purely discretionary jurisdiction: Winter v. Winter [1944] P. 72 and Fisher v. Fisher [1948] P. 263. Later, in Brewer v. Brewer [1964] 1 W.L.R. 403, it was held that exceptional hardship or exceptional depravity involved provisional findings of fact."

11. Ormrod LJ goes on:

"It is equally clear that the proviso was intended to provide for cases where the three year bar would operate unduly harshly and cause injustice. It seems therefore unlikely that Parliament intended to create two separate ways of avoiding the bar, although the proviso is expressed unequivocally in a disjunctive form. It is difficult to imagine a case where exceptional depravity does not cause exceptional hardship but it is possible that the draftsman was thinking primarily of hardship arising from the enforced delay in starting divorce proceedings." (My emphasis)

12. He concludes "... it is now accepted that in dealing with these applications the judge may properly take into account hardship arising from the conduct of the other spouse, present hardship, and hardship arising from having to wait until the specified period has elapsed. In these circumstances it seems to be unnecessary in the great majority of these cases to rely on exceptional depravity with all its unpleasant overtones and difficulties."

13. There is also the difficulty that perceptions and attitudes as to the standards of

⁴ [1982] 3 WLR 206

⁵ [1958] P. 156

society change over time. Again from C. v C.⁶:

“Hardship is a concept with which judges are familiar in various contexts though it is often difficult to decide whether it can properly be called exceptional. A considerable degree of hardship is inevitable when a marriage breaks down in the first three years.

Exceptional depravity, on the other hand, is much more difficult. The word “depravity” has fallen out of general use — it is not included in Fowler’s Modern English Usage — so that it now conveys only a vague idea of very unpleasant conduct. In 1937 it may have carried to contemporary minds a much more specific meaning, but norms of behaviour, particularly in the sexual sense, have changed greatly in the last 40 years. It is unlikely that the meaning of “depravity” and “exceptional depravity” suggested by Denning L.J. in Bowman v. Bowman [1949] P. 353 would find much support today.

In contrast, the change in the basis of divorce from the matrimonial offence to irretrievable breakdown with the expectation of relatively easy divorce may have increased the hardship involved in waiting for the specified period to elapse.”

14. In **Fay v Fay**⁷ O'Connor L.J. (when the case was in the Court of Appeal) was of the view that “... it must be clear, if leave under the section is to be given, “that there is something out of the ordinary in what has happened.”
15. Lord Scarman, giving the judgment of the House of Lords, set the test for finding ‘exceptional hardship’ as:

“... the section requires the judge to ask himself whether he is satisfied that, upon a provisional determination (for there is no trial) of the facts as disclosed in the affidavit evidence, the would-be petitioner has suffered exceptional hardship. But he does not proceed by inference, which is a process of reaching a finding of one fact from primary evidence of the existence of another fact (or set of facts), but by assessment. For what is or is not exceptional is a matter of

⁶ *Supra*

⁷ *Supra*

degree. The present case illustrates the difference. There was plainly hardship suffered by the applicant as a result of her husband's conduct and the breakdown of her marriage. But was it exceptional? Applying prevailing standards and taking account of all relevant circumstances, the judge had to make his assessment. He had to make a "value" judgment, the values with which he was concerned being not numerate as in the assessment of damages for personal injury but moral and social."

16. It is in my judgment clear from **Fay v Fay**⁸ that the correct approach is to consider the evidence in the round. The House of Lords declined the invitation from both counsel and the Court of Appeal to offer guidance as to the meaning of 'exceptional' in the context of the provision. Lord Scarman stating:

"I hope that I have made clear that any attempt to define a meaning would be a betrayal of the deliberate imprecision favoured by Parliament in entrusting the court with the power to grant leave to present an early petition. But guidance can be given as to the way in which professional advisers and judges should approach the section. The practice of confining the evidence to the bare minima required by the rule of court is not satisfactory. The facts and matters relied on as showing that the applicant has suffered, or is suffering, exceptional hardship as a result of the respondent's conduct must be included in the evidence."

The Application

17. The application was supported by an affidavit from the wife sworn on 28 August 2023 in which she states that the marriage has irretrievably broken down and records the following facts:
- a. The parties were married on 18 April 2022 in Florida, United States of America, and separated on 22 April 2022. They have never lived together.
 - b. After the wedding, the wife resided in Grand Turk and the husband resided in Jamaica.

⁸ *Supra*

- c. The wife visited the husband in Jamaica in July 2022 to put matters in hand for her to move to live in Jamaica, having sent monies for the construction of a small apartment block in order to increase their income and compensate for a loss of income by the wife as a result of her proposed relocation to Jamaica. She says that she was “*treated horribly*” by the husband during this visit
 - d. The wife again visited the husband in Jamaica in November 2022 and on or around 26th November 2022 the wife became aware that the husband was engaged in adulterous relationships with 2 women.
18. The wife categorises the husband’s behaviour as exceptional depravity “*due to the duration, extent and intentional nature of the affair*”.
19. The wife says that she has and is suffering exceptional hardship “*emotionally, psychologically, and financially*”. She records that the husband’s betrayal has caused her severe mental anguish and a deterioration of her overall well-being. She states that she had commenced counselling.
20. When the matter came before me on 29 November 2023, I was not of the view that the husband’s behaviour amounted to exceptional depravity whatever the definition is given to that phrase. In **Bowman v Bowman**⁹ Denning LJ explained the test as:
- “The case put forward by the applicant must disclose “exceptional” depravity on the part of the other spouse or “exceptional” hardship suffered by the applicant. This involves an inquiry into the degree of depravity alleged or the degree of hardship said to be suffered—an inquiry which, it is plain, may prove to be a difficult task, and it is not surprising that different judges have interpreted the provisions of s 1(1) in different ways.*
- The only cases in which the question arises are, of course, those of adultery or of cruelty. If there is nothing more than adultery with one person within the first three years of marriage that may be considered ordinary depravity. There is, I am sorry to say, nothing exceptional about that situation, and it does not involve exceptional hardship on the innocent spouse, the applicant.*

⁹ [1949] 2 All ER 127

The distress that it causes is one which many have to endure. If, however, the adultery is coupled with other matrimonial offences, eg, if a husband not only commits adultery, but also deserts his wife in favour of another woman, or if he is cruel to her, thus causing her not only distress by his adultery but also injury by his violence, then, even if his offence cannot be stigmatised as exceptional depravity on his part, nevertheless, it does involve exceptional hardship suffered by the wife. Even if the adultery is not coupled with another matrimonial offence, nevertheless its consequences may involve exceptional hardship to the applicant, as, for instance, when a wife as a result of her adultery has a child by another man so that the husband, if he took her back, would have to maintain another man's child, or it may be committed in such aggravating circumstances as to show exceptional depravity. The husband who commits adultery within a few weeks of marriage, or who commits adultery promiscuously with more than one woman or with his wife's sister, or with a servant in the house, may probably be labelled as exceptionally depraved. Such, at least, are instances in which, when sitting in chambers, I have given leave to a spouse to present a petition for divorce within three years of marriage."

21. As noted in C. v C.¹⁰, it was unlikely that the meaning of depravity or exceptional depravity described by Denning LJ would have found much traction by 1979 given the changing societal norms over time, *a fortiori* in today's world.
22. Whilst the circumstances are somewhat unusual, the parties having never lived together as man and wife, I was also not persuaded that the evidence presented was convincing. The wife cited that the marriage had broken down just 4 days after the wedding due to the husband's adultery, which she only discovered 7 months later. The separation, taking place just 4 days after the wedding therefore could not have been as a result of the alleged adultery. I was also not persuaded that any financial hardship was anything more than is created when married couples decide to divorce,

¹⁰ *Supra*

and certainly not exceptional.

23. The wife went on to say that “[T]he betrayal has resulted in severe mental anguish and a deterioration of my overall well-being. I have to start counselling as I was not coping with the trauma and stress of the whole situation I started in January and the process is ongoing.” Again I was not persuaded that this amounted to exceptional hardship, the evidence in support of counselling being lacking.
24. Accordingly, I adjourned that application to allow the wife to adduce further evidence which she did by way of a further affidavit sworn on 22nd January 2024.
25. In this affidavit the wife states:
- a. The parties were uncertain about living arrangements due to the husband’s difficulty in finding employment in the Turks and Caicos islands and it was agreed the the wife would move to Jamaica in August 2022.
 - b. That did not happen and in October 2022 the husband said that he was unable to afford for the wife to move and suggested she remained in the Turks and Caicos islands on her own for a further two years before considering relocation.
 - c. She says that the breakdown of the plans adversely affected her mental and emotional well-being and that she experienced a significant loss of self-esteem, body dysmorphia, and poor mental health. She had sleep disturbances, a poor diet and there was a decline in her work performance which she says continues due to the uncertainty as to whether she will have to stay married for a further two years to a man who is no longer in her life.
 - d. She goes on to say that the breakdown of the marriage has led to social anxiety when it became public knowledge that the marriage had broken down. She says she withdrew from social activities, stopped attending church, and faced embarrassment and shame.
 - e. The wife further says that she discovered through text messages that the husband had engaged in extramarital affairs almost immediately after the

wedding in April 2022 she says that this severely impacted her trust, self-image, and overall perception of marriage and relationships leading her to have significant psychological distress.

- f. She recounts that there were initial attempts to reconcile since November 2022 but they have been met with no reciprocation. She further suggests that there is no chance of reconciliation as the respondent readily agreed to the idea of divorce when served with this application.
 - g. Exhibited to this affidavit was a brief medical report from an associate counselling psychologist suggesting the wife has displayed symptoms of major depression (situational) and anxiety directly related to the unexpected loss of her marriage it goes on to say that she is currently being seen twice per month.
26. In considering whether the above amounts to exceptional hardship, I take into account the fact that the wife resides in Grand Turk, a small community where everyone knows everyone else. I also take into account the wife's strong religious beliefs and I am mindful of the impact of the unusual circumstances of the breakdown of this marriage given the wife's background in that community. I have also taken into account the wife's demeanor in Court and I am of the view that she is genuinely suffering. I am therefore of the opinion that in this particular case, the wife has suffered exceptional hardship, which hardship will continue if she were made to wait out the specified. I am persuaded that this is a marriage which has irretrievably broken down and therefore gave leave for the wife to present a petition for divorce within the specified.

6th February 2024

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court

