

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**ACTION No. CV 305 of 2022**

**BETWEEN:**

**HUSSAIN IAN REYES**

Petitioner

**and**

**ZEIDI YAZMIN REYES**

Respondent

**Appearances:**

Robertha Magnus-Usher, SC for the Petitioner

Erin Alexis Quiros for the Respondent

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2023: 25 October  
12 December  
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**DECISION**

[1] **FARNESE, J:** The Parties were asked to provide a list of authorities in support of their positions on the question of whether the court is obliged to consider the alternative ground of cruelty where the petition and counter-petition each ask the court to grant a divorce on the ground of irretrievable breakdown of the marriage. This question arises because section 133(1) of the Senior Courts Act

[the SCA]<sup>1</sup> now provides that a petition for divorce can only be presented to the court based on the irretrievable break down of the marriage.

- [2] Prior to the recent repeal of the Supreme Court of Judicature Act [the SCJA],<sup>2</sup> the law was clear. Section 133(1) of the SCJA required the court “to inquire, so far as it reasonably can, into facts alleged” by the Parties.<sup>3</sup> Section 135 also gave the court discretion to grant respondents who oppose relief sought on the grounds of adultery, cruelty, or desertion the right to any relief they would be entitled had they petitioned seeking such relief. Consequently, Young J in **Alvarez** held that the court was required to investigate fault-based grounds to determine whether the respondent ought to be awarded that relief even when the petition also contained the ground of the irretrievable breakdown of marriage.
- [3] In a previous written decision permitting Mr. Reyes to amend his petition to include fault-based grounds despite the SCA no longer permitting petitions for divorce on fault-based grounds, I stated section 245(2) of the SCA saved the reliefs guaranteed by section 135 of the SCJA because the cross-petition was filed before the SCA was enacted.<sup>4</sup> Nonetheless, I find the circumstances have substantially changed since the application to amend the petition was filed. Specifically, Ms. Reyes now seeks a divorce because of the irretrievable break down of the marriage.
- [4] Consequently, the court has an avenue, previously unavailable to it, to grant a divorce without considering cruelty or any other fault-based grounds. I held that Mr. Reyes had a right to the reliefs in section 135 in the previous decision, not because Ms. Reyes alleged cruelty, but because the court had no choice, but to consider cruelty at that time. I stated allowing the amendment to outline the particulars of cruelty Mr. Reyes wished to allege in response to the allegations made against him was “the most efficient ways to provide the court with the information it needs to decide this matter”.

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<sup>1</sup> Act No. 27 of 2022.

<sup>2</sup> The Substantive Laws of Belize, Cap. 91 (Rev. Ed. 2011).

<sup>3</sup> Alvarez v. Alvarez, Act. No. 274 of 2014 [Alvarez].

<sup>4</sup> Decision dated 23 March 2023 at para 4.

[5] The SCA now has only one ground for divorce and mirrors the regime Young J lamented was not open to her in **Alvarez**. I agree with the court in **Mustafa v Mustafa** that “it is wrong, wasteful and contrary to policy that more matters should be canvassed in litigation than are necessary to lead to a result of utility.”<sup>5</sup> That the SCA was recently enacted and has deliberately eliminated fault-based grounds of divorce serves to underscore that proceeding to hear Mr. Reyes’ case for cruelty is contrary to the policy.

IT IS HEREBY ORDERED THAT:

1. The petition for divorce will proceed by consent.
2. The court will hear the Parties on the issue of costs on a date to be determined.

**Patricia Farnese**  
**High Court Judge**

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<sup>5</sup> [1975] 3 All ER 355 at 357.