

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

ACTION NO. 567 OF 2023

BETWEEN:

SHAWN BROWN

Petitioner

and

LARLEY O. FLOWERS
(Otherwise known as “Larry Flowers”)

Respondent

Appearances:

Mrs. Robertha Magnus Usher, SC, and Ms. Tiffany Cadle for the Petitioner

Mrs. Magali Marin Young, SC, and Ms. Kristy P. Lopez for the Respondent

2024: December 20.

Catchwords:

SUMMONS TO STRIKE OUT- Petition for Maintenance

SUMMONS TO STRIKE OUT – Affidavit of Respondent

RULING - DECISION ON PAPERS

[1] **NABIE J.:** By summons dated 29th November 2023, the respondent seeks to strike out paragraphs of the petition for maintenance. Further, by summons dated 2nd January 2024, the petitioner seeks to strike out certain paragraphs of the respondent’s affidavit filed in support of his summons. My rulings are provided below.

BACKGROUND

- [2] The petitioner has filed a petition for maintenance seeking a monthly sum of \$6,443.59. The court has jurisdiction pursuant to section 161 (1) of the Senior Courts Act (SCA) to make orders for the maintenance of a spouse.

“161.– (1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that a spouse shall, to the satisfaction of the Court, secure to the other spouse such gross sum of money or annual sum of money for any term, not exceeding that spouse’s life, as having regard to that spouse’s fortune, if any, to the ability of the spouse ordered to pay and to the conduct of the parties, the Court may think to be reasonable, and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.”

- [3] In this case the petition is made by a common law spouse and this is permissible by virtue section 158 of the SCA. Section 158 provides:

“158. A party to a common-law union shall have the same rights as a spouse to a marriage, in respect of himself or the children born out of the union, if any, to apply to the courts, either during the subsistence of the union or upon the separation of the parties to the union, for maintenance, and any law now or hereafter in force in relation to maintenance in respect of spouses to a marriage shall, upon the commencement of this section, apply, with the necessary modifications, to a party to a common-law union.”

- [4] The respondent, instead of filing an answer to the petition, has filed the aforementioned summons and an affidavit of even date which seeks to strike out certain paragraphs of the petition. Subsequently, the petitioner filed a summons objecting to certain paragraphs of the respondent’s affidavit in support of his aforementioned summons.

**RESPONDENT'S SUMMONS TO STRIKE OUT/REQUEST FOR PARTICULARS
– THE PETITION**

[5] The respondent objects to paragraphs 4 to 8, 10, 13 to 15 and 17 of the petition. These objections are based on Rule 95 of the Matrimonial Causes Rules and Order XXII Rule 2, 5, and 31 of the Supreme Court of Judicature Rules (SCJR). The rules are set out below:

“Rule 95 of the Matrimonial Causes Rules states as follows:

“In any matter of practice or procedure which is not governed by statute or dealt with by these Rules the Rules of the Supreme Court in respect of like matters shall be deemed to apply.”

Order XXII, Rules 2, 5 and 31 state as follows:

Rule 2. “The plaintiff shall subject to the provision of Order XXII and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall subject to the provisions of Ord. XXIV, and at such time and in such manner as therein prescribed, deliver to the plaintiff his Defence, set-off or counterclaim. Such statements shall be as brief as the nature of the case will admit and the taxing officer in adjusting the costs of the action, shall at the instance of any party or may without any request inquire into any unnecessary prolixity and order the costs occurred by such prolixity to be borne by the party chargeable with the same.”

Rule 5: “Every pleading shall contain, and contain only a statement in a summary form of the material facts upon which the party pleading relies for his claim or Defence, as the case may be but not the evidence by which they are to be proved and shall when necessary be divided in paragraphs numbered consecutively.”

Rule 31: “The Court may at any stage of the proceedings, order to be struck or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which tend to prejudice, embarrass or delay the fair trial of the action and may in any such case, if the Court shall think fit order the

costs of the application to be paid between the solicitor and client.”

[6] The respondent’s objections to the petition which serve as the pleadings are of some significance as he has to answer the case put to him.

In ***NEC Semi-Conductors Ltd v Revenue and Customs [2006] EWCA Civ 25***, Mummery LJ stated:

“[131] While it is good sense not to be pernickety about pleadings, the basic requirement that material facts should be pleaded is there for good reason – so that the other side can respond to the pleaded case by way of admission or denial of facts, thereby defining the issues for the benefit of the parties and the court. Proper pleading of the material facts is essential for the orderly progress of the case and for its sound determination. “

CONDUCT OF THE PARTIES

[7] The parties differ on whether marital misconduct falls to be a consideration in the determination of a maintenance claim. The respondent essentially argues that with the recent developments in Belize regarding no fault divorce that marital misconduct ought not to have a role in the maintenance proceedings and should be excluded. The petitioner argues that marital misconduct is relevant and out to be considered as there has been no change to the legislation which identifies “conduct of the parties” as a factor to be considered by the court. I agree that marital conduct should be considered as it is relevant to the determination of maintenance. Marital misconduct may play a role in this regard. This must be examined on a case by case basis, but what is paramount is that such conduct must be relevant to the issues before the court.

[8] The objections will be considered under three categories:

1. UNNECESSARY: Paragraphs 4, 5, 6 and 17 of the Petition.

These paragraphs concern the conduct of the parties. While conduct is a factor, such can only mean relevant conduct. These paragraphs deal with the petitioner’s contribution to the family and home. I find that these pleadings to be relevant as they touch and concern issues material to the proceedings. They speak to the contribution of the petitioner. They are not

prejudicial to the respondent and he shall answer them. They are not struck out.

2. UNNECESSARY AND SCANDALOUS: Paragraphs 10, 13, 14, 15 and 17 of the Petition:

- (i) Paragraphs 13, 14 and 15 relate to marital misconduct and in my view are not necessary and bear no relevance to the determination of maintenance. These paragraphs are scandalous and may redound to being prejudicial to the respondent. These matters in my view serve no purpose in resolving the issues and coming to a determination. The inclusion of these paragraphs aim to embarrass or prejudice the respondent and only distract from the real issues to be considered in arriving at a decision.
- (ii) Paragraph 10 is in my view relevant to the claim as it relates to earning capacity of both parties. I find that the conduct described to be helpful in the determination of the matter. This paragraph is not struck out.
- (iii) Paragraph 17 also remains. It assists in the narrative and gives some background to the union.

3. PROLIXITY: Paragraphs 7 and 8 of the Petition:

In Davy v Garrett [1878] 7 Ch. D. 473, the statement of Baggallay LJ is instructive on what constitutes a prolix statement of case:

“The complaint is that the Statement of Claim is prolix and embarrassing. The word “prolix” may be used to denote two different things; it may refer to the too lengthy statement of necessary facts, or to the statement of facts unnecessary to be stated.”

Having reviewed these paragraphs, they are relevant to the claim and I find that the objection to be unreasonable. These pleadings are not excessively lengthy or repetitive. They are not in violation of the rule. The respondent is not prejudiced or burdened in responding thereto. These paragraphs are not struck out.

REQUEST FOR PARTICULARS

- [9] A request for particulars is made pursuant to rule 27 of the Matrimonial Causes Rules which reads:

“27. Application for further particulars of the matters pleaded may be made by summons, but before applying by summons, a party may apply for them by letter. The costs of such letter and of any particulars, delivered pursuant thereto shall be allowable on taxation and in dealing with the costs of any application for particulars by summons the provisions of this Rule shall be taken into consideration.”

- [10] The respondent has requested particulars for paragraph 20 of the Petition. Paragraph 20 reads:

“The Respondent on the other hand is doing well financially and has obtained a number of government and private contracts, through the various companies started by the parties and has absorbed the financial benefits from the Companies in complete disregard of the Petitioner contributions.”

In considering the request for particulars, I understand that he is saying that he requires more information to respond. The pleading in my view is vague and does not provide sufficient detail. I grant the request for those reasons and further they will assist in the determination of the issues before me.

PETITIONER'S SUMMONS – to strike out the following certain paragraphs of the respondent's affidavit filed on 29th November 2023:

- [11] (a) Paragraphs 4 to 9 and 12 of the respondent's affidavit are objected to on the grounds that the paragraphs are argumentative, contain opinions of law and are in breach of XXXIX rule 3 of the subsidiary rules, Supreme Court of Judicature Act.

Order XXXIX, Rule 3 of the Subsidiary Rules of the Supreme Court of Judicature:

“Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove....”

I agree with the objection, those paragraphs in the respondent's affidavit contain his attorney's advice to him on certain legislation and rules of procedure and contains legal submissions. Affidavits should contain evidence of facts that are within the personal knowledge of the deponent. The respondent has sworn to matters of law and legal arguments. This is not the purpose of affidavits of such a deponent in any proceedings. These statements about the law and opinions are to be made in submissions by counsel and findings to be made by this court in the deliberation of the matter. They are irrelevant and prejudicial in my view because they contain opinion evidence of which the respondent has not demonstrated the requisite knowledge to give. These paragraphs are therefore, struck out. I have noted the authority of **Nielson v. Franco Action** no. 176 of 1989, cited by the respondent. However, while affidavit evidence not within a deponent's knowledge, may be allowed in interlocutory matters where the sources are identified, the content of the affidavits in that matter is quite different from the matter before me. The **Nielson** case does not assist in this particular objection where the deponent's evidence is based on legal arguments and findings for which he does not have the competency.

(b) Paragraphs 13 to 24 of the respondent's affidavit are objected to on the ground that they are irrelevant to his summons.

In my view these paragraphs contain answers to the petition and are not relevant to the summons filed by the respondent and ought properly to be in the answer to the petition. The inclusion of these paragraphs are procedurally improper and are not in support of the summons. Accordingly, they are also struck out.

FURTHER CONSIDERATIONS

[12] I have also considered the other affidavits filed in these proceedings. The affidavit of the petitioner in support of the summons filed on 2nd January 2024. Based on the above considerations I strike out paragraph 2(i) and 2(ii) of the said affidavit.

The second affidavit of the respondent filed on 11th January 2024 in answer to the petitioner's summons to strike out certain paragraphs of his first affidavit was also examined. Paragraphs 4,5,6,7 and 8 of that affidavit are accordingly struck out.

DISPOSITION

[13] I make the following orders:

1. Paragraphs 4, 5,6,13 and 17 of the Petition for Maintenance filed on 19th September 2023 are struck out.
2. Paragraphs 4 to 9 to 12 and 13 to 24 of the affidavit of Larley O. Flowers dated 29th December 2023 are struck out.
3. Paragraphs 2(i) and 2(ii) of the affidavit of Shawn Brown dated 2nd January 2024 are struck.
4. Paragraphs 4 to 8 of the affidavit of Larley O. Flowers dated 11th January 2024 are struck out.
5. The Petitioner is to provide particulars of paragraph 20 of the Petition within seven 7 days of this Order.
6. The Respondent is to file an answer to the petitioner within fourteen (14) days of this Order.

7. No Order as to Costs.
8. A date for the hearing of the Petition for Maintenance will be fixed by the Court.

Nadine Nabie
High Court Judge