

IN THE SUPREME COURT OF BELIZE A.D. 2008

DIVORCE

CLAIM NO. 72 OF 2008

BETWEEN

ARTHUR LINSFORD LOCKWOOD

PETITIONER

AND

ADELAIDA CRUZITA LOCKWOOD

RESPONDENT

Mrs. Dolores Balderamos Garcia, for petitioner.
Mrs. Robertha Magnus-usher, for respondent.

AWICH Chief Justice (Ag)

1.7.2011

JUDGMENT

1 *Notes: Divorce and maintenance; divorce on counter-petition; the traditional grounds for divorce and the recent ground of irretrievable breakdown of marriage co-exist in Belize; maintenance of wife and of child of the marriage; son over the age of 18 years but attending college – court order for continuation of maintenance of child over 18 years upto the age of 21 years, and thereafter if the child is pursuing full time education or is disabled; the order not to be for more than 3 years at a time.*

2. On 14.2.1992, the petitioner, Arthur Linsford Lockwood, was married to Adelaida Cruzita Moya at St. Ignatius Church, Belize City. They cohabited in Belize. They had one child Arthur Lockwood Jr., born on 28.6.1992. At the time of hearing this petition for divorce, Lockwood Jr. was attending college at St. John's College Junior College, Belize City.

3. On 8.4.2008, Mr. Lockwood Sr. petitioned this court for divorce. The ground he gave was that the marriage had, "broken down irretrievably, and they had lived apart and separate for a continuous period of at least three years". His prayer was simply that the court may dissolve the marriage, although he included the usual prayer for such further relief as may be just.

4. The respondent, Mrs. Adelaida Lockwood, filed an answer contesting the petition for divorce on the ground that they had not stopped cohabiting three years before the petitioner filed the petition for divorce; they had sex last on 16.7.2006. She said that they lived separate lives after that. However, the respondent counter-petitioned for divorce on the ground of cruelty. The details were that: the petitioner stopped communicating with the respondent and stopped consortium (after 16.7.2006); shouted at her and called her demeaning names; told her that after he would have done with the respondent no man would want her; flirted in public and in the presence of the respondent with a particular woman at the embarrassment of the respondent; physically

punched her and sprayed on her burning pepper spray; and drank too much and would not control his anger.

5. *Determination*

In Belize the traditional grounds (matrimonial offences) for divorce still obtain, but the modern ground of irretrievable breakdown of marriage has been added as a ground. Section 129 of the Supreme Court Act, Cap. 91 sets out the grounds as follows:

“129.-(1) A petition for divorce may be presented to the Court either by the husband or the wife on the ground that the respondent -

(a) has, since the celebration of the marriage, committed adultery; or

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) has, since the celebration of the marriage, treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition,

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

(2) Notwithstanding the provisions of subsection (1), a petition for divorce may be presented to the Court by either party to a marriage on the grounds that the marriage between them has broken down irretrievably, and that they have been living separately for at least three years immediately preceding the presentation of the petition.”

6. After the court heard the testimonies of the petitioner and of the respondent, the petitioner informed the court that he would not insist on the dissolution of the marriage being granted on his petition; and that he accepted that it be granted on the counter-petition of the respondent. Each had testified about angry utterances and angry conducts of the other. They were the usual precursors of the end of an unhappy marriage.

7. On the concession by the petitioner, and on the ground given by the respondent and proved by evidence adduced, the court grants that the marriage solemnized on 14.2.1992, in Belize City, between Arthur Linsford Lockwood and Adelaida Cruzita Moya may be dissolved. Decree Nisi of Divorce issues; and in the circumstances, may be made absolute after six (6) weeks.

8. Much evidence was adduced about the income and expenses of the wife and of the husband, and also of the needs of the wife and Arthur Lockwood Jr. The law, **s:77(1) of Families and Children Act, Cap. 173**, provides that:

“77-(1) In all cases of divorce, separation or nullity, both parents shall continue to maintain and educate their child, subject to their personal circumstances and ability to pay.”

9. By that provision the law imposes obligation on both parents to maintain their child. In this case the obligation is imposed on Mr. and Mrs. Lockwood individually, to maintain Lockwood Jr., now that they are living apart. The question is, what is the appropriate sum to order Mr. Lockwood Sr. to pay over to Mrs. Lockwood with whom Lockwood Jr. lives. That sum is decided based on the general maintenance and education needs of Lockwood Jr., and the personal circumstances and financial ability of Mr. Lockwood Sr. on the one hand, and of Mrs. Lockwood on the other.

10. The general rule is that a parent is obliged to maintain and educate their child. A child is a person below the age of eighteen years – see **s:2 of Families and Children Act**. Lockwood Jr. was over eighteen years old when this petition was tried. He has just turned nineteen years. He is no longer a child, but he was attending college at St. John's College, Junior College, and was expected to continue at college in the next academic year beginning August/September 2011.

11. The law recognises that a person over eighteen years old may still be a dependant of the parents if he continues to pursue education, or if he is disabled. That is in **s:70 of the Act**. For a better understanding I set out that section and **s:71** here:

“70. Subject to the provisions of sections 55 and 71, a maintenance order shall not, except for the purpose of recovering money previously due under the order, be of any validity after the child has attained the age of eighteen years or has died.

71(1) If, on the application of a parent or guardian of a child, it appears to the court that the child is or will be engaged in a course of education or training after attaining the age of eighteen years, or that the child is suffering from a mental or physical disability, and that it is therefore expedient for payments to be made under the order after the child attains that

age, then subject to subsection (2) below, the court may by order direct that payments be so made for such period not exceeding three years from the date of the order as may be specified in the order.

(2) The period specified in an order made under subsection(1) may from time to time be extended by a subsequent order so made, but shall not in any case extend beyond the date when the child attained the age of twenty-one years except in the case of a disabled child or a child pursuing full time education.”

12. At the time of hearing the petition Mr. Lockwood Sr. was paying maintenance sum of \$125.00 per fortnight for the maintenance of Lockwood Jr., and \$50.00 per week for the maintenance of Mrs. Lockwood. The sums were ordered on 7.4.2008, on an application to the Family Court by Mrs. Lockwood. Mr. Lockwood Sr. was also paying school fees and other school expenses without a court order compelling him to do so. Mrs. Lockwood who lives with the son naturally paid for minor needs of the child.
13. Mr. Lockwood Sr. did not contest that he was obliged to maintain the son. He said that he would continue to pay all school fees and expenses. The only qualification he put to that was: “I will pay until he completes school, I can’t pay forever.” That view is generous and is

consistent with the law, which provides for payment of maintenance of a “child” over eighteen years old if he is pursuing full time education. I encourage Mr. Lockwood’s view to pay as long as his son is pursuing education. Most parents do that without a court order.

14. The question that remains to be decided is a fair sum taking into consideration the circumstances of Mr. Lockwood and the needs of Lockwood Jr. Given that Mr. Lockwood Sr. will pay all the school fees, and will pay for all school requirements; and taking into consideration his salary and his regular expenses, the sum of \$125.00 payable fortnightly for the general maintenance of Lockwood Jr., in addition to education expenses, is a reasonable sum.

15 Regarding maintenance to Mrs. Lockwood, Mr. Lockwood Sr. did not contest or accept that he was obliged to pay maintenance. But he had to say that he did not know how much Mrs. Lockwood was paid as salary.

16 The power of court to order alimony and or maintenance in divorce is given in **s:152 of the Supreme Court of Judicature Act, Cap. 91** which states:

“152.-(1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of

money or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband 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.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1), direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable:

Provided that –

(a) if the husband, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit; and

(b) where the Court has made any such order as is mentioned in this subsection and the Court is satisfied that the means of the husband have increased, the Court may, if it thinks fit, increase the amount payable under the order.”

17. The law is clear that in deciding alimony or maintenance the court is required to consider the circumstances of the wife and of the husband. In this petition the most material circumstances are of the income and expenses of each party, and the fact that the son now lives with the mother in her house.

18. Although it is not material to this petition, it is worth noting that the law of alimony and maintenance as stated in **s:152** is now outdated to the extent that alimony or maintenance may be ordered to be paid by the husband, and there is no provision to order the wife to pay. It is now common place that a wife may have better background or employment, and better income so that on separation or divorce it is the husband who will need alimony or maintenance. **Section 148I** introduced by an amendment Act, **No. 8 of 2001**, seems to recognize the anomaly brought about by changed and current circumstances. A more direct amendment is desirable to put the matter beyond doubt. Moreover, a provision authorising maintenance order based on sex may be inconsistent with **s:16 of the Constitution**.

19. Mr. Lockwood's income is currently a salary of \$52,000.00 per annum (or \$4,333.33 per month) plus some allowances such as travelling allowances, telephone allowances. His expenses are:

Rent	\$650.00 per month
Maintenance to wife	\$200.00 per month
Maintenance to son	\$250.00 per month
Fuel \$200 - \$400	\$350.00 per month
Food	\$400.00 per month
Electricity	\$20.00 per month
His mother	\$100.00 per month
	<hr/>
Total	\$1,970.00

20. Mrs. Lockwood's income is \$24,972.00 per annum (or \$2,081.00 per month). Her expenses are:

Electricity	\$110.00 per month
Water	\$60.00 per month
Food with son	\$700.00 per month
Telephone	\$100.00 per month
Medical bills	\$45.00 per month
Cable TV	\$45.00 per month
Loan	\$250.00 per month
	<hr/>
Total	\$1,310.00

She also pays a mortgage loan of \$900.00 per month. Mr. Lockwood Sr. paid the loan for 13 years. The wife admitted. He did not claim any right to the house, so the house remains the wife's house.

21. In the circumstances, a fair sum of maintenance to be paid by Mr. Lockwood Sr. to Mrs. Lockwood is \$400.00 (four hundred) per month. In addition, he will pay \$125.00 per fortnight to Lockwood Jr., and college tuition fees and all college expenses, until three years from today, that is until 1.7.2014, provided Lockwood Jr. continues to pursue full time education. The order may be extended if it will be necessary. Of course, Mr. Lockwood Sr. may continue to assist the son beyond the extent of the order, but that will be voluntary.
22. The sum of \$400.00 maintenance for the wife will be paid at the Family Court, Belize City, by instalments of \$200.00 by the first day and the sixteenth day of each month. The order will last until Adelaida Lockwood marries or finds a boyfriend. The payment is back-dated to 26th November 2010, when the hearing of this petition commenced.
23. Mr. Lockwood Sr. will pay one-half costs of these proceedings because he withdrew opposition to the counter petition, and because he did not contest responsibility to pay maintenance to Mrs. Lockwood and to his son.

24. I conclude by mentioning another point which is not material in deciding this petition. There is need to consolidate matrimonial matters and causes in one Act. Currently there are: Marriage Act, Families and Children Act, and Part XI of the Supreme Court of Judicature Act, all providing for different aspects of matrimonial matters. Probate and administration of deceased estates matters also need to be consolidated into one Act.

25. **Delivered this Friday the first day of July 2011**

At the Supreme Court

Belize City

SAM LUNGOLE AWICH
Acting Chief Justice