IN THE SUPREME COURT OF BELIZE A.D. 2017

CLAIM NO. 119 OF 2017

IN THE MATTER OF THE MARRIAGE ACT AND IN THE MATTER OF an Infant, Christina Turley.

IN THE MATTER OF Part 61 of the Supreme Court (Civil Procedure) Rules and Section 38 of the Supreme Court of Judicature Act.

BETWEEN

THE ATTORNEY-GENERAL OF BELIZE **CLAIMANT/Respondent**

AND

ACXEL MATUS **DEFENDANT/Applicant**

Before: **The Hon. Madame Justice Griffith**
Dates of Hearing: **28th April, 2017**
Appearances: **Mr. Nigel Hawke, Solicitor General for the Claimant and Mrs. Robertha Magnus-Usher S.C. for the Defendant.**

DECISION

Introduction

1. The Attorney-General by fixed date claim form brought an action for certain declarations - firstly that a marriage executed between a minor aged 16 years and the Defendant Acxel Matus, is null and void; and thereafter for the cancellation of the certificate of marriage that was issued and rectification of the marriage register. The basis of the Attorney-General's action was that the marriage was executed without the consent of the child's father, as required by section 5 of the Marriage Act, Cap. 174. Learned Senior Counsel for the Respondent submitted that the declarations sought were in effect for nullification of the marriage, which being a matrimonial cause could not be sought by way of fixed date claim under the Civil Procedure Rules. Instead, the matter ought to have been commenced by petition under the Matrimonial Causes Rules and as such the fixed date claim ought to be struck out.

2. The application to strike was in part based on Rule 2.2(3)(d) of the Civil Procedure Rules 2005, which excludes the application of the CPR to family proceedings as the same certainly includes matrimonial causes. The learned Solicitor-General on the other hand contended that pursuant to Rule 61.1(1)(a)(ii) of the Rules, the Court is vested with jurisdiction to determine any question of law referred to it by a Minister (including the Attorney-General) and other named parties. It was submitted in the circumstances, that the question of the Respondent's compliance with sections 4 and 5 of the Marriage Act, being a point of law, the matter was determinable under Part 61 of the Rules and properly commenced by way of fixed date claim. Additionally, the learned Solicitor-General submitted that the definition of 'matrimonial cause' according to Ecclesiastical law[1] did a suit to have a marriage declared void for non-compliance with the Marriage Act.

Issues

3. The application to strike out the claim raises the following issue for the Court's determination:-

   (i) Whether the claim for a declaration that the marriage is void is a matrimonial cause, and if so, whether it is properly instituted under the Civil Procedure Rules, 2005.

The Court's Consideration

Submissions and Analysis

4. The primary relief sought by the Attorney-General is a useful starting point to commence the Court's determination of the matter and that relief in substance is set out as follows:-

   (i) A Declaration that the marriage executed on the 16th day of December, 2016 between the Defendant and infant be declared null and void;

[1] The definition of matrimonial causes was submitted to comprise malicious jactitation, suits for nullity of marriage on account of fraud, incest or other bar, suits for restitution of conjugal rights, divorce, alimony or other causes arising since the marriage.

(ii) A Declaration that the Defendant acted in breach of section 5 of the Marriage Act, Chapter 174 of the Laws of Belize having failed to obtain the consent of both parents of the infant as is required by law;

(iii) An Order that the Marriage Certificate issued by the Vital Statistics Unit be cancelled and that the Register be rectified by annotating that the marriage has been duly declared void;

5. In this case, the issue at bar is concerned with whether the jurisdiction of the Court has been properly invoked to enable it to hear and determine the claim filed by the Attorney-General. Firstly, it is accepted as submitted by learned senior counsel for the Defendant, that by virtue of Rule 2.2(3)(d), the Civil Procedure Rules, 2005 do not apply to family proceedings. Family proceedings at the very most mean, or at the very least include, matrimonial proceedings. With respect to the question which then arises as to whether the Attorney-General's claim is a matrimonial proceeding, learned senior counsel for the Defendant asserts that it is such, as a declaration is sought that the marriage is void. That declaration sought it is submitted, is for a declaration of nullity and such a declaration is included in the definition of 'matrimonial cause', as contained in Black's Law Dictionary.[2] The submission on a whole therefore is that the proceedings should have been commenced by petition pursuant to the Matrimonial Causes Rules and as such are not properly before the court and ought to be struck out.

6. With respect to the learned Solicitor-General's arguments, an immediate determination, is that the relief sought by the Attorney-General is not relief to which Part 61 of the Rules applies. Part 61 is intituled 'Appeals to the Court by way of Case Stated'. The application of this Part as outlined in Rule 61.1 concerns cases stated or ordered to be stated for determination by the Supreme Court pursuant to any enactment; or questions of law referred to the Court by a Minister (including the Attorney-General), magistrate, judge of a tribunal, a tribunal or other person. The Attorney-General's claim for declarations requires determination of a question of fact - viz - whether the infant's marriage satisfied the statutory requirement for consent of the infant's father.

[2] Black's Law Dictionary 5th Ed., 1979 pg 882.

The claim is therefore neither a case stated or ordered to be stated pursuant to any enactment, nor a question of law referred by any of the parties named in Rule 61. The Solicitor-General's argument that the claim is properly brought pursuant to Part 61 of CPR 2005 is therefore rejected by the Court.

7. Additionally, the learned Solicitor-General contended that although the nullification of the marriage could be sought by petition as a matrimonial proceeding, the Attorney-General was nonetheless entitled to bring the proceedings, as they pertain to a question of a party's compliance or not, with the provisions of a statute - the Marriage Act. It was then submitted that section 38 of the Supreme Court of Judicature Act, Cap. 91 provided sufficient basis upon which the Court could entertain the proceedings. When read, section 38 in effect obliges the Supreme Court to grant whatever remedy is appropriate in any cause or matter, in such a way as to finally determine the issues between the parties and avoid multiplicity of proceedings. Section 38 reads as follows(emphasis mine):-

> *"The Court, in the exercise of the jurisdictions vested in it by this Act, shall, in every cause or matter pending before it, grant, either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters is avoided."*

8. In considering any question of jurisdiction and an exercise of the Court's powers, there would obviously be no issue taken with section 38. However, one must look closely at what the section actually says. The first point to note is that it refers to the Court '*in the exercise of the jurisdictions vested in it'* – jurisdictions being plural. By virtue of section 18 of Cap. 91, the Supreme Court is of course vested with all the jurisdictions (plural) vested in the High Court of England pursuant to the Supreme Court of Judicature (Consolidated) Act, 1925 of England. These jurisdictions - include the civil, criminal, matrimonial, probate, admiralty, appellate and insolvency jurisdictions. By section 17 of Cap. 91, the Court is separated into two divisions - the criminal division which deals with the criminal jurisdiction and the civil division which deals with all jurisdictions other than criminal.

This apparently trite exposition into the rudiments of the Court's jurisdiction and classification of jurisdictions, sets the stage for the resolution of the issue at bar.

9. In addition to the acknowledgement of the existence of the several jurisdictions vested in the Court, section 38 also frames the obligation to grant remedies parties may be entitled to, in relation to legal or equitable claims '*properly brought*' before the Court. In the circumstances, inasmuch as the Court might accept that the Attorney-General is entitled to challenge a party's compliance or not with the provisions of a statute, the jurisdiction of the Court which is invoked must be the correct one and the claim must be properly brought. The question of what is properly brought can be subject to any number of given factors, including requisite interest and standing; appropriateness of jurisdiction by classification; or appropriateness of cause of action, relief or procedure. In this case, the question of the propriety of the jurisdiction invoked (the civil as opposed to the matrimonial jurisdiction), has been challenged by the Respondent. Notwithstanding the inclusive definition of Black's Law Dictionary which was proffered by learned senior counsel on behalf of the Respondent, the Court considers that resolution of the issue requires a more in depth investigation.

10. In order to ascertain the precise nature of the jurisdiction which is sought to be invoked, the Court firstly identifies the nature of relief sought. An action for a declaration that a party has or has not complied with an act of Parliament, all other factors being equal, can properly be brought under the civil jurisdiction of the Court. However, the Attorney-General seeks more than a declaration of non-compliance with the Marriage Act in relation to the marriage of the infant and the Defendant herein. The relief sought includes a prayer for a declaration that the marriage is null and void, in addition to orders cancelling the marriage certificate and rectifying the marriage register to reflect the void marriage. The relief sought therefore is to alter or pronounce upon the status of the marriage in question and effect consequential order following upon the alteration of that status. How is this proposed exercise of the Court's jurisdiction to be classified? In answering this question, the Court returns to the law of England, from which the law of Belize is derived.

The law in Belize

11. In the Supreme Court of Belize, the matrimonial law jurisdiction is contained in Part X of Cap. 91 and is procedurally governed by the Matrimonial Causes Rules. Unlike most commonwealth Caribbean countries, there is no separate act, such as a Matrimonial Causes or Matrimonial Proceedings Act which governs the court's matrimonial jurisdiction. The current version of matrimonial law provisions in Cap. 91, is taken from the English Matrimonial Causes Act, 1937 including updates, such as an additional ground for divorce, taken from the Divorce Reform Act, 1969 of England.[3] The Matrimonial Causes Rules are based on the English Matrimonial Causes Rules 1957. These references speak to the origins of the substantive and procedural laws in force in Belize. The question of the Court's jurisdiction however - meaning the authority with which the Court is vested to hear and determine matters or put another way, the repository within which dwells the existence and exercise of the Court's judicial power – is a separate consideration than the scope and definition of the substantive laws that the Court applies.
12. It is recalled, that section 18 of Cap. 91 establishes the exercise of the Supreme Court's jurisdiction (which includes that in relation to matrimonial causes) as being the same as that exercised by the High Court of Justice of England under the Supreme Court of Judicature (Consolidation) Act, 1925 of England. In order to answer the issue as to the exercise of its jurisdiction in relation to a void marriage, the Court will now examine the precise nature and limits of its matrimonial jurisdiction which was received by section 18.

The matrimonial jurisdiction received from England

13. In England, as early as in the 12th century, the Ecclesiastical Courts, exercised exclusive jurisdiction over matrimonial suits[4]. That jurisdiction was subsequently vested in the Queen, exercisable by a specific court and thereafter transferred to the High Court of England.

[3] By Act No. 29 of 1985, the additional ground of divorce of 'irretrievable breakdown' was added to section 129 of Cap. 91.

[4] Rayden's Pratice and Law of Divorce, 10th Ed. Cap. 1 (Historical Introduction) pg. 1 et seq.

These origins were highlighted in **Kassim (Otherwise known as Widmann) v Kassim (Otherwise known as Hassim)**[5] – where Ormrod J was called upon to determine whether to grant a declaration that a bigamous marriage was void or to grant a decree of nullity in respect of the marriage. At stake in that case, was the power of the Court after granting the relief of a declaration of a void marriage or alternatively a decree of nullity of the marriage, to continue on to grant ancillary relief (maintenance and custody), which was prayed by the Petitioner. The submission was, that should the Court grant the declaration that the marriage was void, it would thereafter be *functus officio* and could entertain no further action for ancillary relief. Were the court to grant a decree of nullity however, the ancillary relief (by virtue of statute), could be entertained. Of this apparent dilemma Ormrod J said thus[6]:-

> *"It would be surprising and unfortunate if in these days the jurisdiction of the court and the rights and liabilities, or more accurately the potential rights and liabilities, of the parties, were to depend on the precise form in which the effect of my judgment was formally recorded on the court record. It would be even more deplorable if so much were to hang on mere minor verbal differences between the alternative forms of order. I must, therefore, consider first of all whether I have the supposed option."*

14. In considering whether he had the supposed option, Ormrod J noted that the power to grant the declaration in respect of the marriage had two roots.[7] One such root was exercisable pursuant to the old English RSC order 25 r 5, under which the Court was empowered with a general discretion to grant declarations in civil matters. It was accepted that the power to grant a declaration could be applied to matrimonial matters in what was described as a proper case[8]. A proper case was explained as a case in which issues such as domicile of the parties, or recognition of a foreign decree[9] arose within or as conditions precedent for the determination of a matrimonial cause.

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[5] [1962] 3 All ER 426
[6] Ibid @ 431
[7] **Kassim** supra @ 432
[8] **Har-Shefi v Har-Shefi** [1953] 1 All ER 783
[9] **Lee v Lau** [1967] P. 14

The other root by which declarations were granted in matrimonial matters, was described as that derived from the original exercise of matrimonial jurisdiction in the Ecclesiastical Courts, which was then transferred, by statute to where it exists today in the High Court. In following Ormrod J's arguments the Court extracts the provisions referred to therein for purposes of illustration in the instant matter.

15. Particularly by way of illustration, sections 2 and 6 of the Matrimonial Causes Act, 1857 firstly transferred jurisdiction from the Ecclesiastical Court as follows (emphasis mine):-–

> *[2] "As soon as this Act shall come into operation, all jurisdiction now exercisable by any Ecclesiastical Court in England in respect of divorces a mensa et thoro, suits of nullity of marriage, suits of jactitation of marriage, suits for restitution of conjugal rights, and in all causes, suits and matters matrimonial, shall cease to be so exercisable, except so far as relative to the granting of marriage licences, which may be granted as if this Act had not been passed."*
>
> *[6] "As soon as this Act shall come into operation, all jurisdiction now vested in or exercisable by any Ecclesiastical Court or person in England in respect of divorces a mensa et thoro, suits of nullity of marriage, suits for restitution of conjugal rights, or jactitation of marriage, and in all causes, suits, and matters matrimonial, except in respect of marriage licences, shall belong to and be vested in Her Majesty, and such jurisdiction, together with the jurisdiction conferred by this Act, shall be exercised in the name of Her Majesty in a Court of Record to be called 'The Court for Divorce and Matrimonial Causes'".*

16. It is seen from these two sections that the matrimonial jurisdiction ceased to be exercised by the Ecclesiastical Courts and instead became vested in Her Majesty, the Queen, exercisable in a court of record to be called the Divorce and Matrimonial Causes Court. This jurisdiction was itself later transferred to the High Court of Engalnd, firstly by virtue section 56 of the Judicature Act, 1873. By this section the jurisdiction of the Divorce and Matrimonial Causes Court became exercisable by the probate division of the High Court. Finally, by section 21 of the Supreme Court of Judicature (Consolidation) Act, 1925, the matrimonial jurisdiction (as was received into Belize by Cap. 91), was ultimately defined as follows.

> *"The High Court shall have such jurisdiction*
>
> *(a) In relation to matrimonial causes and matters, as was immediately before the commencement of this Matrimonial Causes Act, 1857, vested in or exercisable by any ecclesiastical court or person in England in respect of divorce a mensa et thoro,*

nullity of marriage, jactitation of marriage , or restitution of conjugal rights and in respect of any matrimonial cause or matter except marriage licences; and
(b) With respect to declarations of legitimacy and of validity of marriage, as is hereinafter in this Act provided;
and all such jurisdiction in relation to matrimonial causes and matters as, under or by virtue of any enactment which came into force after the commencement of the Act of 1873 and is not repealed by this Act, was immediately before the commencement of this Act vested in or capable of being exercised by the High Court, constituted by the Act of 1873."

17. In relation to the issue of jurisdiction, Ormrod J. determined that the discretion to grant a declaration under Order 25 r 5 did not apply in the circumstances of the case and that the only recourse available to him was to grant a decree of nullity by which the marriage would be declared void. It was illustrated[10] by Ormrod J. with reference to several very old cases[11] that the nature of a void marriage was of such that the Court's declaration was strictly not necessary given that the status of parties in a marriage void ab initio was never altered. More importantly with respect to the case at bar however, were the following statements[12](emphasis mine):-

"In cases such as the present, therefore, where a declaration is sought that a marriage is void ab initio there is no need to invoke the provisions of RSC, Ord 25, r 5, and indeed, in my judgment, there is no room for the operation of the rule in this class of case. The jurisdiction of this court to deal with marriages void ab initio exists quite independently of the Rules of the Supreme Court and unlike that jurisdiction is not a matter of discretion. Either party, and indeed third parties having an interest in the subject-matter, are entitled ex debito justitiae to a declaration on proof of the necessary facts... This conclusion is strongly reinforced by an examination of the wording of the order in which a decree of nullity is drawn up. The decree is itself a declaration.

"In my judgment, therefore, I have in fact no option. When this court pronounces on a marriage which is ipso facto void it is merely finding and recording a particular state of fact for the convenience of the parties and the public, and the court is exercising the jurisdiction inherited from the ecclesiastical courts. In such cases the form in which the

[10] Kassim supra @ 432
[11] ***Hayes falsely called Watts v Watts*** (1819), 3 Phill Ecc 43 (a purported marriage for 18 years declared void for want of the father's consent)
[12] Kassim supra @ 432-433

judgment is recorded is a declaration that the marriage is and always has been null and void, and it is called a decree of nullity. The fact that both in name and in form this is identical with the order made by the court when it annuls a voidable marriage is, as was pointed out by Lord Greene MR in De Reneville v De Reneville, an anomaly arising from the ecclesiastical origin of the jurisdiction. The difference between the functions of the court in the two classes of case was none the less fully recognised by the ecclesiastical courts."

18. The effect of Ormrod J's analysis, which finds favour with this Court, is that whilst the concept of 'jurisdiction', can firstly be understood in its broad sense of the Court's capacity to hear and entertain matters generally, it is also to be recognised, that jurisdiction refers to subject specific areas and within those subject areas, there can be different rules and procedures which apply in order for the court to be moved to hear and determine the matter. The Court's matrimonial jurisdiction, is therefore understood as having originated in the Ecclesiastical Courts and thereafter devolved by statute to its current place in the High Court. Whatever therefore is properly deemed a matrimonial cause, must therefore be exercised by the matrimonial jurisdiction, in accordance with the Court's matrimonial rules. In this respect, albeit not included in Cap. 91, in the interpretation section (section 225 of the Supreme Court of Judicature (Consolidation) Act, 1925 UK), matrimonial cause by use of the word 'means', is restrictively defined as follows:-

    "any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights"

    In the circumstances, it is seen that the statutory definition of 'matrimonial cause' from the Act which defined the power and jurisdictions of the Belize Supreme Court, includes 'nullity of marriage'.

19. It has already been pointed out in ***Kassim***, that 'nullity of marriage', is a phrase that encapsulates both void and voidable marriages[13]. In examining the Belize legislation, unlike the current English Matrimonial Causes Act, 1973, Part X of Cap. 91 does not specifically prescribe the circumstances in which a marriage is void[14].

[13] Supra n. 12.
[14] Matrimonial Causes Act, 1973 of England ss 11 & 12.

In section 144, of Cap. 91, it is provided that in addition to any other circumstance in law by which a marriage is void or voidable, a marriage is also voidable in the several circumstances thereafter defined. In Belize, that the appropriate relief to be sought in relation to a void or voidable marriage is a decree of nullity, is inferred from english case law dealing with applicable statutes, the practice and procedure upon reception of the jurisdiction of the Supreme Court in 1925 and also from section 144(3) of Cap. 91. This section provides that "*Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted*." Additionally, as is the case with a divorce, the law in Belize is[15] that a decree of nullity of marriage shall in the first instance be a decree nisi to be made absolute in not less six months, unless sooner by special order of the Court. All this is said to affirm, that the procedure applicable in order to declare a marriage void, is a matrimonial cause, effected by way of a petition, pursuant to the Matrimonial Causes Rules.

20. For completeness with respect to the legal arguments made, mention is made of a point raised by learned senior counsel for the Defendant in further support of her arguments against the validity of the proceedings by way of fixed date claim. This further argument concerned the implication for ancillary matters that would follow were the Court to grant the declarations sought in the claim. Illustrated by **Fitzgerald v Fitgerald**[16], the submission was, that should a declaration that the marriage was void be granted, the Court would be *functus officio* and could entertain no further proceedings in respect of ancillary matters. It was submitted in the instant case that an issue of custody of the infant born to the parties would arise as an ancillary matter and the Respondent would be prejudiced insofar as he would be unable to have that issue addressed upon conclusion of the fixed date claim. It is firstly noted that the Matrimonial Causes Act of the Bahamas which was under consideration in ***Fitzgerald*** as it related to void versus voidable marriages, clearly

[15] Section 138, Cap. 91
[16] Supra @ pg

gave rise to the construction that (a) a decree of nullity was returnable in relation to a voidable marriage and (b) a declaration that the marriage was void, applied in relation to a void marriage.

21. The Act therein, further made clear that ancillary relief could be granted only in respect of a decree of nullity, thus being applicable in respect of voidable marriages only. In any event however, it is acknowledged that this Court would indeed not have been able to consider ancillary proceedings upon grant of a declaration of a void marriage in this case. This is because the jurisdiction to grant ancillary relief (relating to custody, maintenance or education of children) even in relation to decrees of nullity, is statutory, provided for in section 153 of Cap. 51. The jurisdiction to grant ancillary relief is expressed to apply to children of a marriage which is the subject matter '*in any proceedings for divorce, nullity or judicial separation*'. Little turns upon this finding however, given that the Court has already found that the proceedings have not been properly instituted by way of fixed date claim and should instead have been commenced by petition, in accordance with the Matrimonial Causes Rules.
22. This conclusion is found consequent upon examination of the history and operation of the matrimonial jurisdiction of the High Court of England. As stated above, this refers firstly to the jurisdiction exercised by the Ecclesiastical Courts of England; then transferred (by the Matrimonial Causes Act of England, 1857) to the 'Divorce and Matrimonial Court'; and thereafter finally vested in the High Court of England by the Supreme Court of Judicature (Consolidated) Act, 1925 of England. The final transfer of jurisdiction is that received into Belize by section 18 of the Supreme Court of Judicature Act, Cap. 91.

Disposition

23. The claim is accordingly disposed as follows:-
    (i) The Application to Strike Out the Fixed Date Claim, seeking relief by way of declarations that the marriage of the Respondent Acxel Matus to the minor Christina Turley is void is successful and the claim is dismissed.

(ii) Costs are awarded to the Respondent in the sum of seven thousand dollars ($7,000).

Dated this 15th day of June, 2017.

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Shona O. Griffith
Supreme Court Judge.