

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

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CAUSE NO. D11 of 2006

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8 **BETWEEN:** **DARELL HINES** **Petitioner**

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11 **AND:** **ESTHER HASSETT** **Respondent**

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14 **Appearances:** **Mr. Anthony Akiwumi of Stuarts Walker Hersant**
15 **for the Petitioner**
16 **Ms. Sheridan Brooks of Brooks & Brooks for the**
17 **Applicant/Respondent**

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20 **Before:** **Hon. Justice Henderson**

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23 **Heard:** **September 8, 2006**



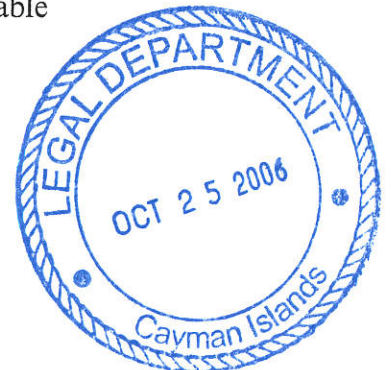
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26 **RULING**

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28 This somewhat unusual application raises a question of domicile.

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30 In his amended petition for divorce, the Petitioner said this (in paragraph 3):

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32 “This Honourable Court has jurisdiction in the above cause
33 by reason that the Petitioner is domiciled and resident in
34 The Cayman Islands. The Petitioner has been resident in
35 the Cayman Islands since March 2001 and has been employed
36 on several work permits by his employer, Caribbean Network
37 Solutions, as a manager. The Petitioner is recognized by his
38 employer as key to the organization. It is the Petitioner’s settled
39 intention to remain in the Cayman Islands for the foreseeable
40 future.”

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42 The Respondent (Applicant here) mounts two attacks on this petition.



1 First, she says that the petition should be struck out as it does not allege, in proper form,
2 the jurisdictional underpinnings which must be present for the Court to assume
3 jurisdiction over this matrimonial proceeding.

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5 I have already ruled, during the course of argument, that the allegation quoted above is
6 sufficient. If the facts alleged in paragraph 3 of the amended petition are proved to the
7 satisfaction of the Court, the Petitioner will indeed have established that he is domiciled
8 in the Cayman Islands. That aspect of the application is dismissed.

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10 The summons also asks for an order that the amended petition be dismissed “on the basis
11 that this Honourable Court has no jurisdiction to hear the matter”. With the acquiescence
12 of both counsel, I have chosen to treat this as an application for, in effect, summary
13 judgment on the question of jurisdiction.

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15 The only evidence before me is that of the parties themselves. Mr. Hines has attested in
16 his affidavit that he has a fixed intention to remain in the Cayman Islands indefinitely.

17
18 In response to that, Ms. Hassett points to his immigration status. This requires some
19 explanation. Mr. Hines is from the United Kingdom; that, I take it, is his domicile of
20 origin. To acquire a new domicile in this (or any other) common law jurisdiction he
21 must, establish first that he is a resident in the jurisdiction and, secondly, that he has a
22 settled intention to remain indefinitely.

23

1 The question of intention is not judged in a purely subjective manner. The Court takes
2 into account the subjective intention of the party, but also takes into account objective
3 considerations which bear upon not only the sincerity of the professed intention but (I
4 accept, for present purposes) the possibility or impossibility of fulfilling that intention.

5
6 As a foreigner in this jurisdiction, Mr. Hines will not be permitted to work here without a
7 work permit. He will not be permitted to have a work permit which would take the
8 aggregate of all the work permits issued to him beyond a period of seven years unless and
9 until the Immigration Board classifies the position he is holding as an exempt position.

10 There is evidence that Mr. Hines' employer intends to apply to have the position so
11 classified, but the evidence does not indicate that the employer has actually commenced
12 that process. There is a significant amount of time remaining within which the employer
13 can commence the process. Now may not be an opportune time for making such an
14 application, as it is my understanding that aspects of the current immigration policy are
15 under active review by the Government of the Cayman Islands and may be altered,
16 perhaps significantly, in the near future.

17
18 The degree to which Mr. Hines' subjective intention is unrealistic because of immigration
19 constraints is a question of fact and one which is highly disputed. The resolution of that
20 question would require more evidence that I have before me. I would need evidence
21 from Mr. Hines' employer, and I expect there will be a need for some evidence from the
22 Immigration Department itself on the subject of current practices and policies regarding
23 exempt positions. In addition, the proposition that a person's subjective intention can be

1 overridden for domicile purposes by the legal impossibility of carrying out that intention
2 is still, I think, open to some debate. (I have not lost sight of the fact that, in *Hawkes v.*
3 *Hawkes*, Justice Douglas of this Court assumed the validity of the proposition.)

4

5 For these reasons, the question of fact is not ripe for decision on this application. With
6 some regret, I must leave this question for resolution at trial. The application for
7 summary judgment is dismissed.

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9 Dated this 8th day of September, 2006

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11 *Henderson, J.*

12 Henderson, J.
13 Judge of the Grand Court

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