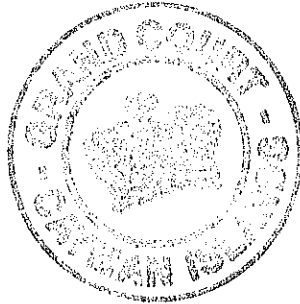


**This Judgment was delivered in private, but the Judge hereby gives leave for it to be published.**  
The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the children and the adult members of their family must be strictly preserved.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FAMILY DIVISION**

**CAUSE NO: FAM 0006 OF 2015**

**BETWEEN:**



**MD**

**PETITIONER**

**AND**

**ED**

**RESPONDENT**

**IN CHAMBERS**

**Appearances:**

**Mrs. Stacy Thompson for the Petitioner  
Ms. Sheridan Brooks for the Respondent**

**Heard:**

**19 November 2015 and 15 March 2016**

**Before:**

**The Hon. Justice Ingrid Mangatal**

**Judgment distributed to Counsel and clients only: 15 March 2016**

**Released for Publication in Anonymised Form: 7 March 2017**

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**EX TEMPORE JUDGMENT**

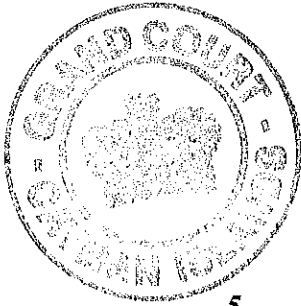
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1. This matter first came before me as a contested divorce on 19<sup>th</sup> November 2015. At that time I indicated that I would deal with the strike out points referred to in Paragraphs 1 and 2 of the Respondent's Answer and Cross-Petition as preliminary points.
2. I commenced by hearing the legal points and adjourned part-heard for counsel to provide written submissions and provide copies of relevant authorities.

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3. The Hearing commenced after the Court's encouragement of the parties to see if it could be sorted out in an amicable way proved futile.
4. Today is therefore the continuation of the Part-heard Hearing. The Application by the Respondent is to Strike Out the Petition on the basis that it does not set out the grounds for a Divorce as provided for in S.10(1) of the *Matrimonial Causes Law* and as such, it discloses no reasonable course of action and/or is deemed scandalous, frivolous or vexatious.
5. Ms. Brooks on behalf of the Respondent, further alleges that paragraphs 8(ii) and 8(vi) of the purported Petition allege adultery, but this ground is not pleaded in the Petition and nor is a Co-Respondent named as is required by S.17 *Matrimonial Causes Law*.
6. In my judgment, a Divorce Petition must set out the grounds and must be those provided for in Paragraph 10 of the *Matrimonial Causes Law*. Divorce Petitions are subject to the same general rules of pleadings, see for example *Thompson -v- Thompson 1957 page 19*, referred to in the decision of Williams J in *CMS v. RGS FAM 177 of 2013*, unreported decision, delivered 10 August 2015, to which reference is made by Ms. Brooks on behalf of the Respondent.
7. In the *Thompson* decision see in particular, the headnote and pages 27, 33 and 34. See also *B -v- B&G 1937 P 1, page 5* and *Neville -v- Neville [1959] 1 Weekly Reports page 330*. These latter two cases were decisions to which the Court referred Counsel and useful comment by Counsel was made in relation thereto.
8. In the instant case, what the Petitioner has pleaded at Paragraph 8 of the Petition, is as follows: "*that the marriage has broken down by reason of the Respondent's unreasonable behaviour which includes an extra-marital affair*" and particulars of unreasonable behaviour are set out. And in paragraph 8(viii) "*By reason of the facts set out in paragraphs (i) to (vii) above, the Petitioner is convinced that the*



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*marriage has broken down irretrievably and no longer wishes to be married to the Respondent”.*

9. None of these are grounds as set out in the *Matrimonial Causes Law*. As pointed out by Ms Brooks, the Grounds set out in the *Matrimonial Causes Law* that come closest to what the Petitioner has pleaded appear to be 10(1) (a) and (b).

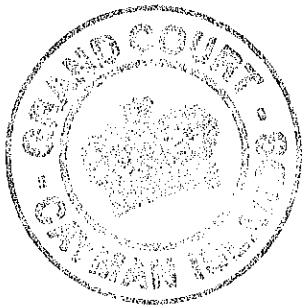
10. Those sub-sections read as follows:

*“Grounds for pronouncing decrees for dissolution of marriage.*

*(1) A decree of dissolution of marriage may be pronounced by the Court in respect of a marriage on the ground that since the celebration of the marriage:*

*(a) The respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;*

*(b) The respondent has behaved in such a manner that the petitioner cannot reasonably be expected to live with the respondent.”*



11. In my judgment, the Petitioner has failed to plead proper grounds in that she has yet to allege in her Petition that she cannot reasonably be expected to live with the respondent as a result of the behaviour described by her in the Petition as being “unreasonable”. Describing the behaviour as unreasonable is insufficient.

12. As regards adultery, I agree that this has not been properly pleaded, nor has the Petitioner pleaded “and the Petitioner finds it intolerable to live with the Respondent”. Further, she has not named a co-respondent as required by section 17 of the *Matrimonial Causes Law*.

13. In *CMS v RGS, at paragraphs 60-65*, Williams J. discusses the grounds for divorce and, in relation to ground 10(1)(b), the importance of that aspect of the ground consisting of “that the petitioner cannot reasonably be expected to live with the Respondent”.

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14. At paragraph 62, Williams J. discusses the English decision of *Grenfell v Grenfell* [1978] 1 All ER 561, which decision makes it clear that the grounds set out in the equivalent of section 10, are the facts. Pleadings must plead facts before the Court can be required to “*inquire so far as it can into the facts of the case*”.
15. As explained by Langton J in *B v B&G*, at page 5, the lack of proper pleading cannot be excused by saying that the opponent must already be perfectly aware of the facts. This is also in my judgment not a matter that can be dealt with by inference. This is not a question of evidence; it is a failure to plead relevant facts.
16. Although rules as to pleadings have become more relaxed, it nevertheless remains the case that they are necessary to delineate the case to be tried.
17. Not only has the Petitioner had notice of the proposed application for a very long time, but indeed, the matter has even been part-heard, and to date, no application to amend, (as could easily have been made) under section 14 of *the Matrimonial Causes Rules*, has been made.
18. As to the argument seeking to have the Court exercise its power to dispense with the naming of a co-respondent, it seems to me that again, no proper application has been made and it is in any event too late in the day to be making an application at this stage. This is not a proper use of the Court’s scarce resources.
19. In all of the circumstances, the Petition filed January 9 2015 is struck out. There shall be no order as to costs.

  
THE HON JUSTICE MANGATAL  
JUDGE OF THE GRAND COURT

