

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHMT2021/0046

BETWEEN:

ROSE JOSEPH nee HILAIRE

Petitioner

and

RUSSEL JOSEPH

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Lydia Faisal for the Petitioner

Ms. Christa Anthony for the Respondent

2023: July 13;	(Trial)
September 15;	(Closing Submissions)
2026: February 20.	(Decision)

JUDGMENT

- [1] **CENAC-PHULGENCE J:** Before the Court is an application for ancillary relief filed by the petitioner, Rose Joseph nee Hilaire ("Mrs. Joseph") in which she claims that certain property was acquired during the subsistence of the marriage and is therefore community property and she is therefore entitled to a half share in the value of the said properties. On the other hand, the respondent, Mr. Russel Joseph ("Mr. Joseph"), claims that the properties are his separate property acquired with his separate funds. The Court is tasked with determining whether the properties referred to are community or separate property.

Introduction

- [2] Mr. and Mrs. Joseph were married on 14th September 2011 according to their marriage certificate.¹ After approximately ten (10) years of marriage, the parties divorced and the Court granted a decree nisi on 11th February 2022.
- [3] Mrs. Joseph in her affidavit in answer to Mr. Joseph's affidavit for the first time raises that the date of marriage as per the marriage certificate (14th September 2011) is incorrect and should be 15th September 2010. She said she noticed the error two to three years after the marriage, but she did not know what to do so she left it alone. In the petitioner's submissions, I note that details of the efforts made to rectify this error are provided. However, that is evidence which should have formed part of Mrs. Joseph's evidence and not in submissions. The Court cannot have regard to this 'evidence' which now finds its way in submissions.
- [4] I therefore do not accept Mrs. Joseph's evidence on this. She would have known about this alleged error in the date between at least 2012-2013 yet when she filed her petition for divorce, this was not pointed out to the Court, nor did it form part of her evidence on the petition. The Court therefore accepts the date of marriage as stated on the marriage certificate.
- [5] Mrs. Joseph filed an application for ancillary relief on 1st September 2022. For the purposes of this application, the Court considered Mrs. Joseph's affidavit in support filed on 1st September 2022² and affidavit in answer filed on 7th November 2022,³ Mr. Joseph's affidavit in response⁴ and affidavit of Nicholson Joseph⁵ filed on 13th October 2022, the evidence on cross-examination and the closing submissions of the parties.

¹ p 5 of the Trial Bundle (TB).

² p 19 of TB.

³ p 70 of TB.

⁴ p 29 of TB.

⁵ p 66 of TB.

The Application

- [6] The application for ancillary relief only relates to property, the parties having no children. In her application Mrs. Joseph seeks the following orders:
- (i) A declaration that the following properties are community property
 - a. Dwelling house erected on Block and Parcel No. 1453B 1411 situate at Monchy, Gros Islet which is Mr. Joseph's family land;
 - b. Contents of the dwelling house comprising furnishings and appliances;
 - c. Toyota Voxy Vanette registration no. PJ5319;
 - d. Subaru motor car registration no. PE295
 - (ii) The dwelling house and its contents be valued and the respondent pay her fifty percent (50%) the value of the house and its contents and also of the two vehicles.

Issues

- [7] The following issues arise on this application:
- A. What is the relevant section of the Divorce Act applicable to this case?
 - B. Whether the property in question is community property?
 - C. If yes, whether the presumption of community has been rebutted by the respondent's evidence so that the property is his separate property?
 - D. If not, whether the petitioner is entitled to the relief sought?

Discussion

A. What is the relevant section of the Divorce Act applicable to this case?

- [8] I note that the application for ancillary relief does not state which section of the Act it was made pursuant to. Mrs. Lydia Faisal ("Mrs. Faisal"), Counsel for Mrs. Joseph in submissions suggests that section 24 and 25 are the applicable sections in relation to this application and this appears to the position of Counsel for the respondent, Ms. Christa Anthony ("Ms. Anthony") as well.

- [9] In **Jonathan David Lesfloris v Glenda Dale Lesfloris**⁶, Michel JA addressed this very point emphasizing the importance of stating the relevant section in the application for ancillary relief. He said that it is important to the determination of the orders which a court can make pursuant to an application that it states clearly the specific provisions of the Divorce Act and/or Divorce Rules under which the application is made.⁷ The learned judge went on to indicate that although important, the failure to state the applicable section will not necessarily be fatal to the application⁸ depending on the stage at which the matter is being considered.
- [10] Having reviewed the application, I will treat the application as having been made pursuant to sections 24 and 25 of the Act.
- [11] Section 24 of the Act allows the Court on granting a decree of divorce or nullity of marriage or at any time thereafter (whether, before or after the decree is made absolute) to make the following orders so far as relevant to the circumstances of this case:
- “(a) an order that a party to the marriage shall transfer to the other party such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
 - (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the party to the marriage;
 - (c) an order extinguishing or reducing the interest of either of the parties to the marriage under any such contract or settlement.”
- [12] Section 25 of the Act sets out the factors which the Court should have regard to when deciding whether to exercise the powers granted under sections 22 and 24 in relation to a party to the marriage. These include: (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (c) the standard of living enjoyed by the family before the breakdown of the marriage; (d) the age

⁶ SLUHCVP2015/0018, (delivered 13th December 2019, unreported) at para 38-39.

⁷ At para [18].

⁸ At para [33].

of each party to the marriage and the duration of the marriage; (e) any physical or mental disability of either of the parties to the marriage; (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

Discussion and Analysis

About the parties

- [13] Mrs. Joseph claims that all of the property in question was acquired during the marriage with the parties' joint effort. She is Haitian and an artist and craft dealer and vendor by profession. Mrs. Joseph would have come to Saint Lucia in about 2010 and met Mr. Joseph shortly thereafter, around Jazz Festival in May 2010. Their courtship according to Mrs. Joseph did not last very long before they got married.
- [14] Mr. Joseph according to Mrs. Joseph is a vendor selling handicraft which he made himself near a local hotel. According to Mrs. Joseph after they met, Mr. Joseph sold the paintings that she did and the craft she had purchased overseas from Haiti, Martinique and other countries where she travelled to shop. Mrs. Joseph's evidence is that she had a larger stall at the Castries Market as well, which was doing very well until about March 2020. According to Mrs. Joseph she generated more income than Mr. Joseph, but she only wishes to be given a half share in the community property.
- [15] Mrs. Joseph left the matrimonial home because of the constant confrontations and disagreements between the parties. After she left, Mr. Joseph changed the locks and she was unable to enter the house. Mr. Joseph in response says that she left the house of her own volition, but she would come and go and after a year he changed the locks to ensure his safety and that of his contents.

- [16] According to Mr. Joseph, he resells crafts and paintings from local and regional artists and manufacturers to tourists. He commenced his business “Ross Art and Craft” in about 1990 and officially registered it in 2011. He does not provide the certificate of registration. Mr. Joseph claims that in about 2011 he purchased a stall at the Castries Market for Mrs. Joseph for \$3,000.00 as a gift. He claims he thereafter gave Mrs. Joseph his personal funds to purchase craft from Haiti and Santo Domingo for resale. He denies that he sold Mrs. Joseph’s paintings to which Mrs. Joseph expresses great surprise as he did not have to buy the paintings to sell them. They were given to him free of charge to sell. Why would he not sell them? According to Mr. Joseph the proceeds from sales at the Castries Market stall were Mrs. Joseph’s to spend as she desired.
- [17] Mrs. Joseph says that when she met Mr. Joseph, she was already into the business of buying goods from overseas on wholesale and producing paintings to sell. The imported items she sold wholesale to other vendors and business places. She had two stalls at the Castries Market which she had before she met Mr. Joseph and occupied with the intention of later purchasing. She says when she was paying the purchase price of \$2,500.00 for the stalls, Mr. Joseph would have given her \$1,000.00. She claims that during their marriage, Mr. Joseph only paid the utility bills. She paid the groceries. In cross-examination, Mrs. Joseph was asked about bills for the food she provided to which she responded, ‘I never stored any kind of bills because I did this for myself and my husband.’
- [18] Mrs. Joseph provides some insight into her relationship with Mr. Joseph. According to Mrs. Joseph, it was Mr. Joseph who proposed that they could have a better life if they worked together and merged their businesses. He suggested that she not sell her goods on a wholesale basis and that they obtain permits to sell at the hotels. At that time, she did not have a bank account so she would have joined a “sou sou”, one at EC\$40 per day which she used to maintain her stalls in the market and give Mr. Joseph towards the house. The other was at US\$60 per day and this money she used to travel and

purchase items overseas. She also claims that she used this money to go overseas to purchase materials for the house.

[19] Mrs. Joseph's evidence is that they eventually got permission to set up at Sandals Grande Hotel which Mrs. Joseph took up whilst Mr. Joseph got permission to vend at St. James Club. However, Mr. Joseph convinced her that it was not the best thing for her to operate at Sandals Grande and he then operated between Sandals Grande and St. James Club. Mrs. Joseph says she continued to operate her two stalls in the market and later expanded to five but because of her personal situation, the stalls had been closed for some time now. Mrs. Joseph's evidence is that the money they each made was pooled and used to build the house and improve themselves.

[20] Mr. Joseph was in charge of everything and because she was a stranger and could not communicate well in English, he was the one who did everything in terms of business transactions. She claims that she gave him most of the money she made at her stalls so that he could purchase materials to build the house as well as for the vehicles. All she kept was money for restocking, her 'sou sou' and to purchase groceries.

[21] As to her finances, Mrs. Joseph says she opened a bank account at Republic Bank (formerly Scotiabank) in 2013 but the activity on the account was limited since she gave most of her earnings to Mr. Joseph for the purpose of building the house. That account was closed in 2021 when she withdrew all the monies she had left.

[22] Mrs. Joseph says Mr. Joseph never provided any financial assistance to her save for the \$1,000.00 towards the stall. She purchased groceries and did her paintings without any financial assistance from him.

[23] Mrs. Joseph says after the house was completed and furnished and the two vehicles purchased, Mr. Joseph started to change towards her and seemed to want her out of the house. She was also restricted when inside the house as there were certain rooms which Mr. Joseph kept locked and she had no

access to. She speaks of Mr. Joseph reminding her that he had a gun which made her frightened that he may have used it. They lived alone in the house, and she felt very lonely and desolate. Mrs. Joseph's health was also impacted by Mr. Joseph's treatment of her, and she had to seek medical attention in Martinique, but Mr. Joseph showed no care or concern.

Conclusion

[24] Neither party provided the Court with any concrete evidence of their earnings from their respective businesses/sales. Mrs. Joseph at least provides her 'sou-sou' contributions but does not provide any details as to how often she collected. In the absence of any specific evidence, I am prepared to find that both Mr. and Mrs. Joseph earned from the sale of items at the hotel sites and at the Castries market stalls respectively. From the receipts and invoices produced, it is clear that Mrs. Joseph had already started her business by the time she met Mr. Joseph. I also accept that they both expended monies to purchase items for sale.

[25] I accept Mrs. Joseph's evidence that she bought the groceries and contributed monies to purchase the items for resale, and that Mr. Joseph paid the utility bills. One would not expect a wife to hold onto grocery bills especially when the groceries are to be used for the household so the fact that she could not or did not produce them is immaterial.

[26] Mr. Joseph's evidence suggests that he was the provider of all funds to purchase goods for resale whether at his place of business or that of Mrs. Joseph. The picture painted is that Mrs. Joseph contributed no finances to the purchasing of the items. I do not accept this at all.

B. Whether the property in question is community property?

C. If yes, whether the presumption of community has been rebutted by the respondent's evidence so that the property is his separate property?

[27] These two issues will be dealt with together.

The Applicable Law

[28] The starting point as stated very clearly in **Jonathan David Lesfloris v Glenda Dale Lesfloris**⁹ is that the law recognizes only two types of matrimonial regimes: community and separate property. There is no middle ground and no discretion for the Court to vary the statutory entitlement as provided for in the **Civil Code of Saint Lucia**¹⁰ (“the Code”). Therefore, once a marriage ends, each spouse becomes entitled to one-half of all community assets as of right. The task of the Court in ancillary relief proceedings is to determine which assets fall into the community and which do not and to make appropriate orders for division, transfer or sale, or other appropriate orders in the circumstances of a case in accordance with the **Divorce Act**¹¹ (“the Act”) and the Civil Code.

[29] As stated by Michel JA in **Lesfloris** at paragraph 38:

“...The property of married persons is either community property, in which each holds a moiety (which is a right exactly equal to the right of the other) or is the separate property of one of the parties. ...”

[30] The following articles are relevant to the discussion:

Article 1189 states:

“Community commences from the day the marriage is solemnized; the parties cannot stipulate that it shall commence at any other period.”

Article 1190 states:

“Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.”

Article 1193(1) states:

“Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired after marriage, is admitted or proved to have been acquired in one of the ways set out in article 1192, or to otherwise belong to one of the spouses only. Provided, however, that where property is acquired by one of the spouses while they are living separate and apart from each other by virtue of a

⁹ SLUHCVP2015/0018, (delivered 13th December 2019, unreported) at para 38-39.

¹⁰ Cap. 4.01, Revised Laws of Saint Lucia, 2020.

¹¹ Cap. 4.03, Revised Laws of Saint Lucia 2020.

separation deed, such property is presumed to be the separate property of such spouse unless it is admitted or proved to be community property.”

- [31] The above articles create a presumption that whatever assets are acquired during the subsistence of a marriage while parties are living together is community property. It is therefore important to examine the property which is the subject of this application.
- [32] If the property in which the petitioner claims a share was acquired during the marriage, this raises a presumption that they are community property. It would therefore be for the respondent to displace that presumption by showing that he acquired the assets with his own separate funds despite the fact that they were acquired during the marriage.

Dwelling house

- [33] According to Mrs. Joseph when she met Mr. Joseph he had a small wooden house that was termite infested on family land. She moved in with Mr. Joseph in the little wooden house about three (3) months before they got married. The only concrete the wooden house had was a flush toilet and bathroom. In cross-examination, Mrs. Joseph said that the wooden house had two small bedrooms and a small bathroom in concrete. When the house was finished it had two bigger rooms, two bathrooms, a living room, a kitchen and a bar next to the house. It was during the marriage that they built the dwelling house where they lived together until she left just before filing the divorce.
- [34] Mrs. Joseph’s evidence is that they built the house over several years using the earnings they obtained from the sale of craft she had purchased overseas; her paintings and craft made by Mr. Joseph. According to Mrs. Joseph, construction of the house took about six years from commencement to completion.
- [35] Mrs. Joseph claims that a valuation was done on the property by David Emmanuel in July 2018 although she does not know the intended purpose. Mr. Joseph says that this valuation relates to another property and not Parcel

1453B 1411 where the dwelling house is situated. This valuation is not relevant to the matter.

- [36] Mr. Joseph on the other hand vehemently denies that the dwelling house is community property. He claims that the house was constructed during his prior marriage as a three-bedroom structure. Mr. Joseph's evidence is that he owned the house and a white Toyota motor car when he met Mrs. Joseph in about 2011. He claims that Mrs. Joseph moved in with him while the house was being renovated into a two-bedroom, two-bathroom house with a walk-in closet. The renovations which commenced in 2010 were done with his own separate funds and with no assistance from Mrs. Joseph. They were completed in 2013 with the help of his brother Nicholson Joseph ("Nicholson").
- [37] Nicholson is Mr. Joseph's brother. He claims that he assisted Mr. Joseph around 2010 to renovate the dwelling house. He says prior to 2009, the house was a concrete structure with wooden partitions which included three bedrooms, a living area, kitchen area and one bathroom. He assisted in replacing the wooden partitions separating the rooms in the house with drywall.
- [38] Notably, Nicholson in his witness statement says he and Mr. Joseph worked on the renovations to the concrete house when he acquired the personal funds to purchase the materials which they carried out on weekends. He says the renovations took about three years from 2010 to 2013. At the end of the renovations in or around 2013, the house had two bedrooms, open floor living area/kitchen area with two bathrooms and a walk-in closet.
- [39] Mrs. Joseph in reply says that all the money they made was for them to build their house to get out of the wooden shack. It took six years to complete the house. Mrs. Joseph is very adamant that the house was not renovated but was built from scratch. The construction commenced around the wooden house which was gradually broken down as the new house progressed.

[40] Mrs. Joseph is adamant that Mr. Joseph did not build the concrete house with his first wife. She says Mr. Joseph told her the house he had with his first wife was at Bois d'Orange and that he had left it for his first wife since they had a child together. Mr. Joseph completely denied this in cross-examination and claims that the house from his previous marriage was owned by his former wife. Mrs. Joseph says Mr. Joseph is able to say these untruths because he knows that none of his family will ever deny what he says.

[41] In relation to Nicholson's evidence, Mrs. Joseph does not deny that he assisted with the construction of the house but says that he would not know where any of the monies expended came from. Mrs. Joseph says Nicholson basically built the house which was done room by room because they had no other place to stay. According to her nothing stayed in the wooden house.

Conclusion

[42] Mr. Joseph's evidence was that the house existed before he met Mrs. Joseph and was constructed during his previous marriage. As seen from the cross-examination, he said that the house at Bois d'Orange was his former wife's house. Mr. Joseph wishes the Court to believe that he built the dwelling house at Monchy all on his own during his previous marriage and that when he met Mrs. Joseph the house was already completed. That is what he says in his answer to the petition at paragraph 5.7.¹² However, later on in his affidavit in response filed in this application at paragraph 12, he says that she moved into a concrete house which was being renovated.¹³ It is either the house was completed or it was being renovated when he met Mrs. Joseph. It certainly cannot be both.

[43] Mr. Joseph's attempts throughout his evidence to deny Mrs. Joseph's contributions to the acquisition of any of the property is very telling. He admitted in cross-examination that he did not have any receipts for the renovations he claims he undertook and also that he had no evidence of the time span of the renovations. He claimed that part of the renovations was done

¹² p 8 of TB.

¹³ p. 31 of TB.

during the marriage but by his own evidence if they started in 2010, they would have been ongoing until 2013 which is practically within the first three years of the marriage.

[44] Mr. Joseph provided no evidence to support the fact that he had the house before his marriage to Mrs. Joseph. Both of these parties were into the same business, and it is highly unlikely that Mr. Joseph could have financed all of the renovations, purchase of vehicles and furniture and appliances with absolutely no input from Mrs. Joseph. In addition, most of the renovations were done within the first few years of the marriage which supports Mrs. Joseph's version of events that they would have converted the wooden house into concrete.

[45] I am convinced that Mr. Joseph was not telling the truth as he was too insistent on denying Mrs. Joseph's contributions. Nicholson in cross-examination said he knew nothing about a wooden house and said when Mrs. Joseph came the house was under renovations. He also could not say with certainty whether she made any contributions to the renovations or construction. In answer to a question posed regarding the timeline for the work on the house, Nicholson started by saying the construction and then quickly changed it to the renovations almost as if he had to keep to a certain narrative. At one point in cross-examination, Nicholson appeared visibly uncomfortable and when asked whether he felt pressured he responded 'yes'. He was then asked whether he felt pressured because he did not want to do what he was asked to do and he refused to respond. Even after the Court asked him in the presence of only Counsel, he still did not respond. Nicholson admitted that he and Rose had a good relationship and he had no problem with her. He said he came to say what he had done for Mr. Joseph and the reason he took long to answer the questions was because he was nervous.

[46] Having assessed Nicholson in cross-examination, I came to the conclusion that he exhibited discomfort rather than nervousness and it was quite evident that he was not being truthful about the state of the house when the construction/renovations started. I believe Mrs. Joseph's version of events,

that the house they first lived in was a wooden house which was subsequently converted to a concrete structure with both parties contributing.

[47] Mr. Joseph does not provide any evidence to show that he had a concrete house prior to his marriage. No house insurance documents, utility bills, ancillary relief order from his previous marriage or any other evidence were provided to assist the Court.

[48] *In these circumstances, I find that the dwelling house situated on Mr. Joseph's family land is community property having been built and acquired during the marriage and that Mr. Joseph has in no way displaced that presumption.*

Contents of dwelling house (furnishings and appliances)

[49] Mrs. Joseph says that they acquired the contents of the dwelling house during the marriage and using their joint finances.

[50] As with the dwelling house, Mr. Joseph claims that the furniture and appliances were purchased by himself personally with his separate funds and with no assistance from Mrs. Joseph. He exhibits copies of receipts as proof.

[51] Mrs. Joseph in her reply affidavit states that the only reason Mr. Joseph's name is on the Courts receipts is because he was the one who went to Courts to purchase the furniture. In cross-examination, Mrs. Joseph explained that it was normal for Mr. Joseph to make the purchases since he was the one in charge; he was the one doing everything. She said he asked for money and she gave him US\$500.00 in cash, but she gave him no more because he was already receiving paintings, merchandise and cash from her on a regular basis. She also spoke of giving US\$480.00 when the sofa was being bought. The microwave she bought from Martinique.

Conclusion

[52] It was understood that the craft that Mrs. Joseph bought would be sold to get money which was used to buy these items. Mrs. Joseph evidently contributed

cash at times towards certain of the purchases. Mr. Joseph's claim that she contributed nothing is unbelievable.

[53] It is clear from the invoices exhibited¹⁴ that they were all in Mr. Joseph's name. They show that all of the purchases are in relation to items of furniture and appliances and span 24th December 2012 to 29th January 2019 which means that they were all purchased during the marriage. Between November 2014 and December 2015, the items purchased included, coffee table, sofa set, king mattress, television, dining set and blender. In 2016, they would have purchased a television and a recliner. The dates of the purchase of the items suggest a piecemeal acquisition of the items.

[54] I accept Mrs. Joseph's evidence that given that she was not from Saint Lucia, she relied on Mr. Joseph to make the purchases as she would not have been familiar with things. The fact that the receipts were all in Mr. Joseph's name is not conclusive of his ownership of them or that he paid for them with his separate funds.

[55] *I find that the furniture and appliances are community property and that Mr. Joseph has not shown that he purchased them with his separate funds.* The Court will use the total value of the purchased items discounted by 10 percent per year from the year of the last purchase to the date of trial. This is to account for wear and tear and general depreciation of the items. The total value of the items purchased is EC\$20,493.05 discounted by 10% per year from 2019, the value would be EC\$14,344.94. Mrs. Joseph is entitled to half of that amount.

Vehicles

Toyota Voxy Vanette -PJ5319

[56] Mrs. Joseph says that they acquired this vehicle during the marriage using their joint finances. Mr. Joseph on the other hand claims that he purchased this vehicle in 2017 for his personal use for the sum of EC\$27,800.00 with his separate funds as it was bought for transporting his goods and crafts for sale.

¹⁴ pp 35-47 of the TB.

He exhibits copies of the purchase invoice, inspection and insurance certificate in support of this assertion.

Subaru motor car-PE295

[57] Mrs. Joseph says that they acquired this vehicle during the marriage using their joint finances. Mr. Joseph admitted that this vehicle was purchased during the marriage in 2016 for EC\$20,000.00 but he of course claims that he used his separate funds for the purchase. He claims that after three years of use, he sold the vehicle in about March 2022 for EC\$5,000.00 but provides no evidence of this sale.

[58] Mrs. Joseph in cross-examination agreed that when she met Mr. Joseph he owned a white car and then they decided that they needed to buy a bigger vehicle to carry on their business which was the Toyota Voxy. She denies that the white car was sold to buy the two vehicles and says that they were bought long before. I think Mrs. Joseph's explanation in cross-examination gives a very clear picture of her reliance on Mr. Joseph and why the receipts are in his name. This is what she says, "Put yourself in my place and you travel to a country, you find someone you love but he is the one who knows the country etc. what would you do?" She admits that everything in relation to the vehicles was done in Mr. Joseph's name, but she says she did purchase them together with him. He is the one who had to do the things because she could not speak English.

Conclusion

[59] It is clear and both parties agree that the vehicles were bought during the subsistence of the marriage. I accept Mrs. Joseph's evidence that they jointly contributed to the purchase of the vehicles. Whilst Mr. Joseph wants the Court to accept that the vehicles are his separate property, he provided no evidence of the separate funds that he claims he used for their acquisition or how he financed the purchase. In addition, whilst Mr. Joseph says he sold the Subaru car three years after its purchase in 2016 which would have been 2019, in his evidence in chief he says he sold it in March 2022 which is actually five years

later. I do not accept Mr. Joseph's evidence regarding sale of the vehicle given the inconsistency in his evidence as to when the vehicle was allegedly sold.

[60] I do not accept the respondent's submissions that because the insurance documents were in Mr. Joseph's name only means that it is his separate property. Although Mr. Joseph produced the sale invoice and the insurance documents, these do not assist in proving that the vehicle in question is his separate property.

[61] *I therefore find that the vehicles are community property having been acquired during the marriage. I also find that Mr. Joseph has not rebutted the presumption of community property and has provided no evidence to support his assertion of separate property.*

Costs on the application

[62] In her application Mrs. Joseph asks that there be no order as to costs. However, in her affidavit in support, she invites the Court to award her costs because were it not for Mr. Joseph's conduct, the marriage would still be subsisting.

[63] This matter was not a complicated matter, and the parties ought to have been able to resolve this matter amicably but chose to engage the Court in a trial. I therefore will order that each party bears his/her own costs.

Conclusion and Order

[64] Having found that all the items of property were acquired during the marriage, they are all presumed to be community property. I do not accept the respondent's submissions that the petitioner would have to show the value of her contribution to the acquisition of the properties, or their maintenance as this is flawed and flies in the face of the concept of community property. The presumption is that if property is acquired during the marriage, it is for the benefit of both parties regardless of the extent of contribution. It is not

contribution which raises the presumption of community. It is acquisition during the marriage. Once the presumption is raised, the burden fell on Mr. Joseph to rebut it to show that the property is properly his separate property.

[65] I found Mrs. Joseph's evidence in chief and cross-examination to be consistent. Mr. Joseph on the other hand made every effort to perpetuate the narrative that Mrs. Joseph contributed absolutely nothing to the properties acquired. His demeanour in cross-examination showed that he did not have much regard for Mrs. Joseph and made every effort to downplay her contributions. Mr. Joseph has provided nothing but bald assertions coupled with no cogent evidence that he acquired the items with his separate funds. The Court is satisfied that the parties contributed to the acquisition of the property during the marriage in the absence of any evidence to the contrary. I therefore find that all the property which is the subject of the ancillary relief application is community property, and that parties are entitled to a half share of their value.

Order

[66] In the premises I make the following Orders:

1. The Court declares that the following property is community property and that the petitioner and respondent have a half share interest in the value of the said items:
 - (a) Concrete dwelling house erected on the respondent family land registered as Block and Parcel 1453B 1411 situated at Monchy, Gros Islet;
 - (b) Contents of the said dwelling house comprising the furniture and appliances;
 - (c) Toyota Voxy registration no. PJ5219;
 - (d) Subaru motor car registration no. PE 295.
2. The parties shall jointly agree and appoint a licensed quantity surveyor to view and value the concrete dwelling house situated on the respondent's family land at Monchy, Gros Islet within two (2) months of the date of this judgment.
3. The costs of the valuation shall be borne by the parties equally.

4. On receipt of the valuation, the respondent shall pay the petitioner half of the value of the said dwelling house within two (2) months of the date of receipt of the valuation report.
5. The respondent shall pay the petitioner the sum of \$7,172.47 representing her half share of the value of the furniture and appliances acquired during the marriage.
6. The Toyota Voxy registration no. PJ5219 and the Subaru motor car registration no. PE 295 shall be valued and the respondent shall pay the petitioner half of the value of the said vehicles. Should any of the vehicles have been already sold at the date of this judgment, the respondent shall pay the petitioner half of the value of the sale proceeds.
7. The parties shall bear their own costs on this application.

[67] I sincerely apologise to Counsel for the delay in delivery of this judgment and for any inconvenience caused as a result.

Kimberly Cenac-Phulgence
High Court Judge



By The Court

Registrar