THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHMT2019/0136

BETWEEN:

ENNATHA HUBERT nee ELIODORE

Petitioner

and

PETER CORNELIUS HUBERT

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:

Ms. Mertle John for the Petitioner
Mrs. Maureen John-Xavier for the Respondent

2023: January 27; (Trial)
February 6; (Trial)
January 31; (Respondent's submissions)
February 3, 16; (Petitioner's submissions)
2025: November 28. (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J**: Mrs. Ennatha Hubert nee Heliodore ("Mrs. Hubert"), the petitioner and Mr. Peter Cornelius Hubert ("Mr. Hubert"), the respondent, were married on 26th December 2007. Twelve years (12) later in 2019, Mrs. Hubert filed a petition for divorce alleging that Mr. Hubert had behaved in such a way that she could not reasonably be expected to live with him.

[2] On 2nd November 2020, the matter proceeded as an uncontested divorce and the Court granted a decree nisi dissolving the marriage and adjourned ancillary relief matters to Chambers upon application by either party. As there are no minor children of the family, the ancillary relief matters solely relate to property. Although the Hubert's had been married for almost thirteen years at the date of

the decree nisi, it is not disputed that they had been in a relationship and living together for about thirty-five (35) years.

[3] On 23rd March 2021, Mrs. Hubert filed an application for ancillary relief supported by an affidavit and exhibits. Mr. Hubert filed an affidavit in response to the application on 7th July 2021. Mrs. Hubert filed an affidavit in reply on 30th July 2021. The Court having afforded the parties the opportunity to resolve the matters of ancillary relief amicably and that proving unsuccessful, proceeded to give directions for trial. Consequently, Mrs. Hubert filed a witness statement in addition to her affidavits already filed and a witness statement from Germa Hubert was filed.

The Applicable Law

[4] The starting point as stated very clearly in **Jonathan David Lesfloris v Glenda Dale Lesfloris**[1] 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**[2] ("the Civil 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**[3] ("the Act") and the Civil Code.

[5] 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…."

[6] I note that the application for ancillary relief does not state which section of the Act it was made pursuant to. In **Lesfloris**, Michel JA addressed this very point

[1] SLUHCVAP2015/0018, (delivered 13th December 2019, unreported) at para 38-39.
[2] Cap. 4.01, Revised Laws of Saint Lucia, 2020.
[3] Cap. 4.03, Revised Laws of Saint Lucia 2020.

emphasizing the importance of stating the relevant section in the application for ancillary relief. He said:

> "[18] …The application does not state, however, the specific provisions of the Divorce Act and/or Divorce Rules under which the application was made, which is usually important to the determination of the orders which a court can make pursuant to an application, but which, in proceedings under the Divorce Act, is even more important, because there are different requirements to be met for the making and granting of applications under different sections of the Act.
>
> [33] …I consider the position in law to be that **in making applications to a court for relief, it is important to state in the application the provision of the law under which the application is being made and/or the relief is being sought**, … Important though it is to state the specific provision in the Act or the Rules under which an application is being made or relief is being sought, the failure to do so will not necessarily be fatal to the application, particularly if the issue is being raised at the conclusion of the hearing of the application or, worse, on appeal." (my emphasis)

[7] At the close of the trial on 6th February 2023, the Court asked Counsel for Mrs. Hubert, Ms. Mertle John ("Ms. John") to clarify the basis of the application for ancillary relief. Counsel advised that the application was being made pursuant to section 24 of the Act. I will therefore consider the application in light of this, but the correct approach is that the applicable section should be stated in the application.

[8] 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 orders so far as relevant to the circumstances of this case that (a) one party to the marriage transfer to the other party property to which the first party is entitled; (b) a settlement of such property, being property to which a party to the marriage is entitled, be made for the benefit of a party to the marriage and (c) the interest of either of the parties to the marriage under any contract or settlement be extinguished or reduced.

[9] 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.

[10] In assessing these factors, the Court's ultimate aim is to place the parties so far as is practicable and just, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards each other. The parties' conduct is also a relevant consideration in the Court's assessment. The Court must view the situation broadly and aim to reach an outcome which is fair and reasonable given all the circumstances of the case.

Issues

[11] The issues in this matter relate solely to two pieces of property one of which is the matrimonial home, and which is agreed to be community property. The other is Toyota Minibus registration number M531 ("Toyota Minibus"), which Mrs. Hubert alleges is community property and Mr. Hubert alleges is his separate property.

[12] The relief sought by Mrs. Hubert in her application is as follows:

(a) a declaration that she be declared the sole owner of the matrimonial home situate on lands registered as Block and Parcel No. 0819B 132 ("the Black Bay property");

(b) that Mr. Hubert transfer to her all his rights, title and interest in the Black Bay property;

(c) that Mr. Hubert be declared the sole owner of the Toyota Minibus provided that he refunds her investment in the Toyota Minibus of $18,500.00;

(d) that Mr. Hubert be restrained or prohibited from trespassing upon, or entering, remaining or in any other way interfering with her property;

(e) that Mr. Hubert pays costs to her in the sum of $1,500.00.

[13] Mr. Hubert opposes the grant of the relief which Mrs. Hubert seeks. In his affidavit in response, Mr. Hubert seeks the following relief:

(a) a declaration that the three-bedroom matrimonial home is community property and that he and Mrs. Hubert are each entitled to an undivided half share interest therein.

(b) an order that Mrs. Hubert pays him the value of his undivided half share in the matrimonial home being $32,400.00 in accordance with the valuation report of Dominic Mathurin, Valuation Surveyor

(c) an order that the respondent is the sole owner of the minibus and is solely responsible for the repayment of the loan relevant to the minibus

(d) that Mrs. Hubert pays the costs of the proceedings

Background

[14] Mr. and Mrs. Hubert were married for almost twelve years when their marriage was dissolved. However, as mentioned previously and which is undisputed, the Hubert's were in a relationship and had lived with each other for almost twenty-two years prior to their marriage in 2007. In total, their relationship spanned about thirty-five years at the date of filing of the application for ancillary relief. Although the property in this matter is not extensive, the parties could not arrive at an amicable settlement.

[15] It must be remembered that the basis of orders made pursuant to section 24 of the Act is not to seek to punish either party. The purpose of the proceedings is to arrive at a position which is fair, reasonable and just taking into account all the circumstances of the case.

[16] I note that Counsel for Mrs. Hubert, Ms. Mertle John ("Ms. John") in her submissions repeatedly referred to the case of **Stack v Dowden**[4] and to the concept of constructive trust which have no applicability in the context of property which is considered community property.

[17] In **Lesfloris**, Michel JA reminded that unlike in the UK and other Caribbean countries, there is no concept of matrimonial property in Saint Lucia with respect to which a court can determine the extent of the ownership interest of the parties to the marriage. The learned judge went on to say:

> "… If it is community property, then each party owns a community moiety or half share in the property; if it is separate property, then it is owned entirely by one or the other of the parties. The approach taken by the UK courts in cases like White v White, MAP (Petitioner) v MFP

[4] [2007] 2 AC 432.

> (Respondent) and Stack v Dowden that treat with the property of parties to a marriage as matrimonial property which can be distributed to the parties upon the dissolution of marriage as the court sees fit, cannot be applied to Saint Lucia."

Matrimonial property

The evidence

[18] The land on which the matrimonial home sits does not belong to the parties. It is Crown Lands which Mrs. Hubert says was previously occupied by her mother. After she and Mr. Hubert started a relationship, her mother gave her a house spot to put the house on. It is not disputed that the matrimonial home is community property. The evidence shows that it was built by the parties during their relationship and prior to their marriage and was intended to be their matrimonial home.

[19] Mrs. Hubert says that Mr. Hubert has alternative accommodation and was frequently not home. She says she was forced out of the bedroom after the decree nisi was granted and had to sleep on the sofa in the living room. She also says that Mr. Hubert has been demanding that she pay him his share of the house.

[20] Mrs. Hubert's reason for her proposition that she be given the house is that she worked to take care of the children, feed the household and care for Mr. Hubert and their five children, while Mr. Hubert squandered the money he earned from the Toyota Minibus and had extra-marital affairs, an allegation which is denied by Mr. Hubert. She says she worked all her life for her family and only got $80 per week from Mr. Hubert, which was barely enough. Mr. Hubert, she says, paid the water and electricity bills. All the furniture in the house was and is being paid for by her. She says she recently stopped working as a cleaner and that she used her entire salary on her family.

[21] Mr. Hubert says that the things Mrs. Hubert did were things which a wife or partner would generally do and that as a husband he performed all his obligations to his wife including providing her with a home, food, paying her medical expenses, giving her an allowance.

[22] Mrs. Hubert says Mr. Hubert has failed to maintain the house and she has done so with the assistance of her children. Given that she is the one who took care of the house and its surroundings, and Mr. Hubert acted as a guest or visitor and made no further investment in the upkeep and maintenance of the house, she wishes to be given sole ownership of the house. Mr. Hubert does not sleep at the house, and this has been for a long time although since the Court proceedings he comes once a week on Wednesdays to sleep.

[23] Mr. Hubert and Mrs. Hubert provided the Court with valuations of the matrimonial home. Given the great disparity between the two valuations and the fact that they did not agree with each other's valuation and had agreed to commission a new valuation, the Court on 21st November 2022, ordered that a valuation of the matrimonial home be conducted by Valuation Surveyor, Mr. Richard Samy.

[24] Mrs. Hubert speaks in her evidence about a loan which Mr. Hubert said he took out against the house, but she knows nothing about this and if there is a loan, he ought to repay it. There is no evidence to support this allegation, and it was not put to Mr. Hubert in cross-examination.

[25] Mr. Hubert says he is prepared to leave the matrimonial home, but he will not do it unless he is paid his share of the matrimonial home unless, the Court compels him to do so.

Discussion and Analysis

[26] In relation to the matrimonial home, the parties accept that this is community property. There is some dispute as to how the house came to be but what is clear is that the parties built this house together on land which was Crown Lands.

[27] It therefore means that Mr. and Mrs. Hubert own the matrimonial home each having a half share interest in the value of the house. As indicated earlier, a valuation of the matrimonial home was ordered and was conducted by Mr. Richard Samy. His report is dated 20th December 2022. In his report, Mr. Samy

describes the building as having an approximate area of 468.38 square feet in total and constructed of concrete and timber framing with one floor level. The concrete section is approximately 312.08 square feet, and the timber section is approximately 156.30 square feet.

[28] Mr. Samy says that the building is generally in a poor condition and the structure will require completion and renovation works to most areas such as rendering to block walls, floor screed and tiling, replacement of timber frame sections of walls and floor, completion of cupboards, replacement of windows and doors, roof repairs and guttering and electrical and plumbing works.

[29] Mr. Samy valued the matrimonial home at a market value of $40,118.10. This would mean that each party's share is valued at $20,009.05. The report does not detail the costs of the repairs and renovations which are required but they appear to be extensive.

[30] Counsel for Mr. Hubert, Mrs. Maureen John-Xavier (Mrs. John-Xavier"), submitted that if Mrs. Hubert is ordered to pay Mr. Hubert his undivided half share interest in the matrimonial home and to deliver up possession of the house, Mr. Hubert would have lost the opportunity of purchasing land at the rate offered by PROUD which is a concessionary rate. She stated that this is a right that he has earned by virtue of his long possession of the land. Counsel therefore asks the Court to consider that benefit to the petitioner which the respondent would lose when considering what is fair in all the circumstances of the case.

[31] In her evidence, Mrs. Hubert indicated that the letter from PROUD dated 23rd August 2004 is written to Mr. Hubert because when the surveyors came, they asked whose name to put the land on, and she told them Mr. Hubert. That letter informed Mr. Hubert that since he had been occupying the land for 17 years, parcel 0819B 132 was being offered to him at $1.50 a square foot, the total cost being $11,205.00. The letter requested that he visit the office to discuss methods of payment. There is no evidence that he ever approached PROUD or was paying any money towards this land.

[32] I do not accept that Mr. Hubert would have been purchasing the land for himself. The letter would have been written to the head of the household and that would have been Mr. Hubert. The benefit would have inured to the household had the property been purchased and it being acquired in marriage would have been community property in any event. That letter was dated 2004 and up to the time prior to the divorce, Mr. Hubert does not speak of any attempts to buy the land. His purchase of the land was not imminent, and he cannot say that he stands to lose that opportunity. The opportunity existed some seventeen years prior and he did not pursue it. In these circumstances, it would be unfair to take this into account.

Toyota Minibus registration number M531 ("Toyota Minibus")

[33] Mrs. Hubert says she wishes to be refunded the sum of $18,500.00 which she invested in buying the Toyota Minibus and which came from a medical insurance claim. She says the Toyota Minibus was supposed to be used to help take care of the family, but Mr. Hubert never gave her more than $100 per week from it.

[34] According to her, Mr. Hubert sold the Toyota Minibus without her knowledge and without giving her a share of the proceeds and then he bought another minibus with the money from the sale. He has enjoyed the benefit of the Toyota Minibus to her exclusion although she invested her money in it without which he would not have secured the loan to buy the Toyota Minibus.

[35] Mr. Hubert admits that the Toyota Minibus was purchased during the marriage but asserts that it is his sole property as well as the liability attached to it. He says he purchased the Toyota Minibus in 2011 with a loan from the Laborie Co-operative Credit Union. The loan was for $18,000.00 to purchase the bus and to assist with payment for rental of the route band, insurance and legal fees.[5] He says he is indebted to the Credit Union in the amount of $34,446.96[6] which comprises various loans applied for to purchase, repair and replacement from time to time. He does not give any details of these various loans.

[5] See PH 5 at p of ETB.
[6] See PH 6 at p of ETB.

[36] The bus as at 28th June 2021 was valued at $12,000.00.[7] Mr. Hubert says he is not aware of Mrs. Hubert paying any sum towards his Toyota Minibus. He says he is aware that a short-term loan was granted to him about 22nd September 2009 to purchase a Mitsubishi L200 pick up van and for repair costs for use by the family. Mrs. Hubert paid off that loan by making a payment of $11,363.99 following her personal injury settlement of $26,360.00. According to Mr. Hubert's evidence, the pickup van was sold, and the proceeds were placed into his account at the Credit Union on which Mrs. Hubert had authority to transact. He says they both used that account without restriction.

[37] Mrs. Hubert's evidence is that the Credit Union lent her $11,000.00 which was used to purchase a pickup van. She cleared that debt when she received her settlement money. That evidence is incorrect as it was clearly Mr. Hubert who took the loan. Mrs. Hubert says that when Mr. Hubert sold the pickup van, it was agreed that that money along with an additional $6,000.00 from her savings which she gave him would be used to purchase a minibus and they agreed that she would get fifty percent of the money made from the minibus.

[38] From Mrs. Hubert's evidence, the proceeds of the sale of the pickup and the $6,000.00 which she contributed were deposited as shares on Mr. Hubert's Credit Union account in order to allow him to get a loan to purchase the minibus. She says the loan would not have been approved without her contribution.

[39] According to Mrs. Hubert, the Toyota Minibus was supposed to be a joint undertaking, but Mr. Hubert never told her how much he made, he did not tell her when he sold it and bought another. I do not find that the Toyota Minibus was to have been a joint venture as there is no evidence to support this. Instead, I find that this was another source of income for Mr. Hubert.

Discussion and Analysis

[7] See PH 7 at p of ETB.

[40] The starting point is that since the vehicles, all of them, the pickup, the first and second minibuses were acquired during Mr. and Mrs. Hubert's marriage, they are all presumed to have been community property. Mr. Hubert however suggested in his evidence that he financed the purchase of the Toyota Minibus solely.

[41] When I examine the documentary evidence, they support Mrs. Hubert's evidence of her contribution to the acquisition of the pickup van. Exhibit PH8[8] is a short-term loan application by Mr. Hubert not Mrs. Hubert dated 22nd September 2009 the purpose of which was 'to purchase vehicle for $7,500.00 and repair it in the sum of $3,500.00'. That loan was to be paid in one instalment on or before 31st October 2009. There is a note attached indicating that Ennatha Hubert is the wife of Mr. Hubert and that proceeds from the cheque (settlement) will pay off the loan.

[42] The letter dated 29th September 2009[9] shows that payment of the settlement was made on 28th September 2009 and that among other payments, the amount of $11,363.99 was paid to Laborie Credit Union and that the payout to Mrs. Hubert was $10,996.01. The bill of sale shows a 1993 Mitsubishi L200 which was the pickup van.

[43] PH5 is a loan application dated 15th July 2011 in which Mr. Hubert is the applicant. The loan was for $23,000.00 of which $18,000.00 was to purchase a minibus. His savings is listed as $11,090.00. The collateral for this loan was a bill of sale. There is no mention of shares being used as security for this loan. If it was that Mrs. Hubert had given Mr. Hubert $6,000.00 for the purchase of the Toyota Minibus or that the proceeds of the sale of the pickup had been taken into account, to my mind this would have been reflected on the loan application, perhaps as shares or savings.

[8] p 62 of ETB.
[9] p. 65 of ETB.

[44] The accounts produced by Mrs. Hubert for the period 1999 to 2021[10] were simply produced with no explanation or reference to any particular transactions. Parties cannot simply put bank/credit union statements before the Court and expect the Court to comb through them to find the relevant transactions. In this case, Mrs. Hubert has not assisted the Court in identifying the transactions which are relevant to support her evidence.

[45] Loan application dated 9th October 2015[11] is for a loan of $5,000 to purchase a damaged vehicle for $4,500.00 and to pay the mechanic $500.00. This shows savings of $9,245.00. The debt service ratio for this loan was calculated using Mr. Hubert's school contract of $1,700.00 and his caretaker's income of $846.00 monthly.

[46] Loan application dated 25th September 2018[12] in which Mr. Hubert's income is stated as $3,000.00 from being a minibus driver and a school contract. The purpose of loan was to refinance the present vehicle loan, to purchase vehicle for $20,000.00, to pay separate loan, legal fees and insurance. In this application, it shows savings of $3,980.00. The loan application shows a previous loan balance of $10,734.38 and that an additional loan of $25,160.59 was being taken.

[47] Counsel for Mr. Hubert, Mrs. John-Xavier, submits that Mrs. Hubert has not shown that the bus purchased in 2018 is community property or that she has any interest in the bus. Counsel submits that since the value of the bus is less than what is owed to the Credit Union and the bus is subject to a Bill of Sale in favour of the Credit Union, in the interest of fairness, that Mr. Hubert should be declared the sole owner of the bus and be solely responsible for all liabilities relating to any loans taken for the buses.

[48] Counsel for Mrs. Hubert, Ms. John, submits that because Mrs. Hubert has no knowledge of the sale of the Toyota Minibus, the second and any other minibus and its debts are to be borne solely by Mr. Hubert. As he did not inform Mrs.

[10] pp.188-206 of ETB.
[11] pp 52-55 of ETB.
[12] pp 56-59 of ETB.

Hubert about the sale of the minibus, Counsel submits that the Court should order that he returns the $18,500.00 which was supposed to be held as security for the bus.

[49] Interestingly, in the 2018 loan application it states the purpose of that loan as being '<u>To refinance present vehicle</u>, to purchase vehicle, to pay separate loan, legal fees'. I also note that on this application in the comments section it states that 'A bill of sale valued at $18,000.00 is being held as security on the present loan. This will continue, a new bill of sale valued at $20,000.00 will be taken as added security on loan requested.' There is no evidence of a sale of the Toyota Minibus which was bought in 2011. The purpose of the 2018 loan does not seem to support that the previous minibus was sold. In addition, there is no evidence of this $18,500.00 which was being held as security.

[50] From the evidence, I find that the pickup van and Toyota Minibus acquired in 2009 and 2011 respectively are community property having been bought during the course of the marriage. However, I find that the minibus acquired in 2018 is the sole property of Mr. Hubert since this was acquired without the knowledge of Mrs. Hubert. He ought therefore to be fully responsible for any debts associated with its acquisition. As relates to the proceeds of sale of the pickup van, whilst Mr. Hubert asserts that those were placed on his account, he does not produce any statement of this account to show this deposit and its use. There being no evidence of the actual sale price for the pickup van, I find that Mrs. Hubert is entitled to a nominal sum to represent her share of the sale proceeds. Mrs. Hubert would also be entitled to a share of the equity in the Toyota Minibus acquired in 2011 and while there is no evidence of what that equity is or what it may have been sold for if it was really sold, the petitioner is entitled to be awarded a nominal sum in recognition of her interest in the Toyota Minibus.

Income earning capacity of the parties

[51] From the evidence, it appears that Mrs. Hubert worked periodically and she gave her last work period as 2012 to 2016. Ms. Germa Hubert is the daughter of the parties and she gave evidence that from 1993 to 2007 Mrs. Hubert used

to clean and do odd jobs to assist with taking care of the family. They also got a lot of assistance from Mrs. Hubert's mother.

[52] At trial, Mrs. Hubert indicated that she had recently been employed and was on job training having started a job with NICE that week. Mrs. Hubert does not give any evidence of her earnings or even what it is proposed she will receive by way of salary, but she did say that she was only there for one (1) month. The Court accepts that Mrs. Hubert was not in any permanent employment at the time of trial and that she worked for periods throughout the marriage.

[53] From her evidence, it appears that through the years she relied on Mr. Hubert to supplement the household especially after her injury in 2007, but he did not always give her the money especially when he was upset.

[54] Mr. Hubert on the other hand is a bus driver. Like Mrs. Hubert he did not provide any evidence of his income. In cross-examination, Mr. Hubert said he earned $1,300.00 monthly from a school contract but only during school terms. He did not provide a copy of any school contract or other evidence of his earnings. In addition, Mr. Hubert said he worked the bus route four days a week and only made about $70.00 per day. Having looked at Exhibit PH5- Loan Application Form, Ms. John put to Mr. Hubert that he earned about $3,000.00 a month, to which he responded, 'that was then not now'.

[55] It is clear that Mr. Hubert has the means to earn an income given that he has the minibus. That is more than Mrs. Hubert has. Mr. Hubert is more financially able it would appear, than Mrs. Hubert.

Age of the parties and physical or mental disability of either of the parties

[56] At the date of the trial, Mr. Hubert was 58 years old and Mrs. Hubert was 53 years old. Mrs. Hubert says she suffers with varicose veins and diabetes having to take insulin. Her evidence of her medical condition was not challenged in cross-examination. There was no evidence of any physical or mental disability in relation to Mr. Hubert.

Conduct

[57] In her evidence, Mrs. Hubert says he has suffered at the hands of Mr. Hubert. Mrs. Hubert claims that she only got money from Mr. Hubert from the minibus earnings sporadically. Even when the Counsellor at the Family Court made an arrangement with them that Mr. Hubert provide her with money, he still did not keep the arrangement and only gave money when he felt like or out of guilt or when she quarrelled with him.

[58] Mrs. Hubert says that after Mr. Hubert started the affair with a young woman, things started to go downhill. She claims he physically abused her: he hit her with the van, punched her, kicked her in her stomach, attempted to strangle her, threatened to kill her, beat her with wire, destroyed her cell phone, changed the locks on the house. She also says she has been humiliated in the community of Black Bay where she lives due to Mr. Hubert's treatment of her and the affair. This evidence is further supported by her daughter, Germa Hubert, who speaks in her evidence of Mr. Hubert ill-treating her mother from the time she was young. She says he was abusive physically and financially, leaving them without groceries at times. Her evidence remained unchallenged in cross-examination.

[59] In about 2012, Mrs. Hubert says Mr. Hubert started to neglect the family and the household and she had to take him to Family Court, and he was ordered to pay $120.00 per week which he did not do often. The last time he paid that money was October 2020. She says she relied on her extended family and neighbours to take care of the children. In fact, the third child had to work every day after school at Massy Stores Supermarket to help herself and the family.

[60] According to Mrs. Hubert, Mr. Hubert said that she should have thought that she needed money before she divorced him. He is also alleged to have said that if he cannot stay in the house, no one will. He stopped paying all the bills since the date of the divorce and as a result the electricity was cut. As a result, Mrs. Hubert was forced to approach the Court, and an order was made to cause Mr. Hubert to pay half of the amount to enable the supply to be reconnected. However, the electricity could not be connected without an inspection because

it had been disconnected for one (1) year. Mrs. Hubert says that despite Mr. Hubert knowing that she is diabetic, he still allowed the electricity to be cut.

[61] Mrs. Hubert also alleges that from the time she filed the petition for divorce, Mr Hubert has been antagonising her and that intensified since the grant of the decree nisi. She says on the night of the same day when the decree nisi was granted, that is, 2nd November 2020, Mr. Hubert made her move out of the bedroom and she had to sleep in the living room. She says Mr. Hubert would do things just to start an argument.

[62] Mr. Hubert in response stated that since the divorce had been granted, he did not think it was right for him to continue to sleep on the same bed with her and he asked her to occupy another bedroom in the house (which she did off and on) but she insisted she would not sleep anywhere else. They exchanged words and then she called the police to warn him. She then filed for a protection order and on the return date an order was made for both himself and Mrs. Hubert. Mrs. Hubert only disclosed the one in relation to him. Mrs. Hubert denies Mr. Hubert's version and says she was already on the bed when Mr. Hubert came home and he only got upset because she had her leg on his extra pillow resulting in him hurting the leg and demanding that she leave the room. Although Mrs. Hubert says she disclosed the protection order made against her, the record does not support this.

[63] Mrs. Hubert says on 3rd November 2020, Mr. Hubert attacked her, causing injury to her foot which was recently operated on. Mr. Hubert is verbally abusive towards her and has caused her mental distress by deliberate actions meant to cause anguish, distress or provoke an argument, such as washing his work shoes in the kitchen sink.

Discussion and Analysis

[64] In the exercise of the Court's powers under section 25 of the Act, the Court may have regard to the conduct of the parties. In **Wilmoth Daniel v Violian Daniel**,[13]

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[13] St Vincent and the Grenadines Civil Suit No 607 of 1999, (delivered 26th September 2001, unreported) at para 24.

the Court relying on the English case of **Watchel v Watchel**[14] and **Richardson v Richardson**[15] stated that unless the conduct of one of the parties is gross and obvious, and repugnant to one's sense of justice, it should not be taken into account.

[65] Ms. John in her submissions urges the Court that Mr. Hubert's conduct ought to be considered. I have considered the submissions of the petitioner in this regard and agree that Mr. Hubert's conduct especially as relates to his abuse of Mrs. Hubert, in particular the fact that he allowed the electricity to be cut by ceasing payment of the bills after the divorce should be taken into account by the Court. Mr. Hubert would have known of Mrs. Hubert's need to refrigerate her insulin and yet he decided to cease the utility payments which he had done for all the years. That to my mind was a callous and thoughtless act which resulted in Mrs. Hubert having to now find the money to get the property inspected and reconnected.

[66] In the cases referred to by Ms. John, the Court embarked upon an adjustment of the financial awards to the parties having taken into account the conduct of one party. In our context in Saint Lucia, where there is community property, the conduct of a party cannot be used to adjust the interest in the community which is a half share to each party. It can however be considered in determining whether pursuant to section 24 of the Act, the Court can order that one party transfer their share to the other. In **Lesfloris**, Michel JA explained that such orders are permissible under section 24 of the Act.

[67] Ms. John also refers to Mr. Hubert's conduct of the litigation, in particular his failure to engage in mediation and the delay in paying for his share of the cost of the valuation report. Counsel also refers to the respondent's failure to provide disclosure of his earnings. These are matters which can be dealt with by making an appropriate costs award. The Court can also draw adverse inferences as relates to Mr. Hubert's failure to provide relevant information. Counsel has also raised Mr. Hubert's alleged affair as conduct which should be taken into account.

[14] [1973] AER 829
[15] SVG Civil Suit No. 204 of 1994, unreported.

However, there is no evidence that this affair had a direct financial consequence for the parties even if one may be tempted to assume.

[68] I observe that in submissions, Counsel for the petitioner, Ms. John has raised relief which was not the subject of Mrs Hubert's ancillary relief application. Counsel has indicated that the Court should ask Mr. Hubert to continue to pay Mrs. Hubert $120.00 from the date of the decree nisi to the date of judgment. However, there is no application for financial provision made pursuant to section 22 of the Act and the Court declines to consider this relief.

[69] It is a fact that Mr. Hubert failed to give full and frank disclosure of his accounts at the Credit Union and of his contracts. The petitioner also has a duty to provide evidence to support her allegations. The Court sees no utility in ordering Mr. Hubert to give disclosure at this point especially given the nature of the parties' assets as this would lead to unnecessary prolonging of this matter.

Conclusion

[70] Having reviewed all the evidence in the matter and having regard to all the factors as outlined in section 25 of the **Divorce Act**, I make the following findings:

(a) The Toyota Minibus, the subject of the 2011 loan and the matrimonial home are both declared to be community property.

(b) Given the value of the Toyota Minibus which is stated as $12,000.00 and the fact that the loan balance attached to the vehicle is $34,446.96, I think it would be fair that Mr. Hubert be declared the sole owner of the Toyota Minibus and that he be solely responsible for all liabilities relating to any loans taken for the purchase of the minibus registration number M531 or any other minibus acquired thereafter for that matter. I have come to this conclusion because the evidence does not support that this Toyota Minibus was actually sold. I also did not find that there was any business undertaking between the parties which resulted in profit sharing or sharing of earnings.

(c) The matrimonial home is definitely in need of repairs, is incomplete and as at the date of trial required that the electricals be inspected and approved in order for the electricity to be reconnected. The electricity situation was all due to Mr. Hubert's callous behaviour when he stopped paying the bills without even alerting Mrs. Hubert. I am of the view that given Mrs. Hubert's financial situation compared to that of Mr. Hubert, that it is only fair that he transfers his interest in the matrimonial home to her.

(d) Given that the pickup van would have been sold and then the Toyota Minibus was bought in 2011, I would award a nominal sum to Mrs. Hubert to account for her half share in the proceeds of sale of the pickup van since Mr. Hubert insisted that these monies were not put towards the purchase of that Toyota Minibus but were deposited on his account. There is also no evidence of how much the pickup was actually sold for. I also find that there is no evidence to support that the sale proceeds were actually applied in relation to the Toyota Minibus. The Toyota Minibus bought in 2011 is valued at $12,000.00 and there was still a bill of sale over the Toyota Minibus in favour of the Credit Union, but it is unclear what the equity would be.

[71] I have taken all the circumstances of this case into account and weighed the factors outlined in section 25 and I make the following orders:

1. The respondent shall transfer his half share interest in the matrimonial home situate on Crown Lands in Black Bay, Vieux Fort to the petitioner and shall relinquish any interest in acquiring the land on which the matrimonial home is located, and the petitioner shall be the sole owner of the said matrimonial home.
2. The document evidencing the transfer of the respondent's half share interest shall be executed within 60 days of today's date.
3. The respondent shall immediately vacate the matrimonial home.
4. The respondent is declared to be the sole owner of the Toyota Minibus registration number M531 purchased in 2011 and he shall be solely responsible for all liabilities relating to any loans taken for the purchase of the said Toyota Minibus registration number M531 or for any other minibus which he acquired thereafter.

5. The respondent shall pay the petitioner the nominal sum of $4,000.00 representing her share of the proceeds of sale of the pickup van and equity in the Toyota Minibus.
6. The respondent shall pay the petitioner costs in the sum of $1,500.00 on this application.

[72] I do apologise to Counsel and the parties for the delay in delivery of this judgment and for any inconvenience caused.

Kimberly Cenac-Phulgence
High Court Judge

By The Court

EASTERN CARIBBEAN SUPREME COURT
SEAL
HIGH COURT

Registrar