

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
DIVORCE

SAINT LUCIA

CLAIM NO.: SLUHMT2023/0104

BETWEEN:

ROSARIA DAVIS AUGUSTE nee NOEL

Petitioner

-and-

JAMES RAYMOND AUGUSTE

Respondent

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mr. Eghan Modeste for the Petitioner
Mr. Horace Fraser for the Respondent

2025: June 16 – Trial
June 30 – Primary Submissions
July 11 – Submissions in reply
July 23 – Decision

JUDGMENT

Petitioner's Application for Ancillary Relief

[1] **PARIAGSINGH, J:** - Before the Court is the Petitioner's application for ancillary relief filed on the 6th August 2024. Having considered the parties' affidavits and the relevant deeds and hypothecs, together with the decision of **Jonathan Lesfloris v Glenda Lesfloris**¹, which outlines the proper legal approach to community property in Saint Lucia, these are the reasons for my decision.

[2] The starting point is that the law recognises only two types of matrimonial regimes: community and separate property. There is no middle ground and no discretion for the

¹ SLUHCVP2015/0018

Court to vary the statutory entitlements under the Civil Code. Once a marriage ends, each spouse becomes entitled to one half of all community assets as of right. The task of the Court is to determine which assets fall into the community and make appropriate orders for division, transfer or sale in accordance with the Divorce Act and Civil Code.

Assessment of the witnesses in cross examination:

[3] Both parties gave evidence and were cross examined. The Court finds that the Respondent was the more honest, direct, and believable witness, and that the Petitioner's evidence of her financial position was inadequate. Overall, the Court believed the Respondent. I will now treat with each claim separately.

Maintenance Claim (Lump Sum or Periodic Payments):

[4] The Petitioner sought a lump sum of EC\$100,000.00, described vaguely as a sum "to help her restart her life"; a sum she came up with upon the "advice of her legal counsel", without reference to need or income disclosure. She argued that her income was historically spent on the children and household, and that post-separation she was left with under \$5,000.00 in savings. She cited **Medar v Medar**², where Belle J awarded the wife \$1,000,000.00 or alternatively \$2,500.00/month based on a decline in standard of living and her entitlement to a comfortable retirement.

[5] The Respondent argued that the Petitioner failed to identify whether her claim was made under sections 22, 23 or 24 of the Divorce Act, which attract different considerations. More critically, she failed to set out her reasonable requirements, a mandatory requirement under **Clara Munro v Clayton Munro**³ at paragraphs 31–34. Her vague estimate of expenses, lack of a financial statement, and failure to provide proof of need seriously undermined her credibility.

² SLUHMT2008/0024

³ DOMHCV2014/0330

[6] As in **Handler-Ruiz v Haydon**⁴, the court is likely to find that the Petitioner's failure to disclose her financial circumstances is fatal to her maintenance claim.

[7] The **Medar** case is distinguishable: Mrs. Medar was nearing retirement, had spent years contributing to the household, and her husband failed to disclose his financial position. Here, the Respondent gave full financial disclosure and was found credible. I accept the Respondent's position that his current income (EC\$5,000.00/month) does not permit a lump sum payment. The Petitioner's inability to produce concrete evidence of her needs makes it impossible for the Court to assess maintenance.

[8] The Petitioner's lump sum claim is therefore dismissed.

Ownership of the Anse La Raye Property (Parcel 0641B 323):

[9] The Petitioner alleged the property was community property because it was acquired during the marriage and the deed of sale exhibited to her Affidavit in Support as "R.A.2", did not state that it was purchased with separate funds. She submitted that the Respondent's claim that it was a gift was not supported by any affidavit from the alleged donor (Mr. Clery), and that the vendor was actually Geest Industries (Estates) Ltd, a corporate seller unlikely to make gifts.

[10] The Respondent argued that the property was purchased with his separate funds or was a token sale amounting to a gift. He relied on Articles 1193 and 1198 of the Civil Code, and the principle in **Alison Gail Joseph v Walter Albert Joseph**⁵, that the presumption of community property can be rebutted with sufficient evidence.

[11] The Petitioner admitted under cross-examination that she did not know when the property was bought, made no contribution to its purchase, and could not identify it. Given my finding that the Respondent was more credible, his narrative of separate acquisition is accepted.

⁴ Civil Appeal No. 11 of 2003, BVI

⁵ SLUHMT2014/0066

[12] The absence of express declaration of separate funds in the deed is relevant (per Article 1198), but not determinative. In this case, I accept the evidence about the acquisition and intention as stated by the Respondent.

[13] Accordingly, I find that Parcel 0641B 323 is the Respondent's separate property.

Republic Bank Loan for \$113,000.00 (Instrument 4530/2012):

[14] The Petitioner claimed the debt related to a credit card solely used by the Respondent and that she signed the mortgage under coercion. However, under cross-examination, the Petitioner admitted that by signing the documents, she acknowledged joint liability for the loan. The Petitioner also did not dispute the funds were used to develop the matrimonial property.

[15] The Petitioner's allegations of coercion are undermined by her own admissions in cross-examination. The Court finds that the loan was used to improve the matrimonial property and, consistent with Article 1192(3), it is a liability of the community. No compelling evidence was adduced to establish exclusive liability on the Respondent.

[16] Accordingly, the \$113,000.00 loan is declared a joint debt.

Matrimonial Home (Parcel 1052B 651, Corinth, Gros Islet):

[17] The Petitioner proposed that the property be valued, and the Respondent pay her for her one-half share after deducting debts, or that it be sold and proceeds equally divided. She further claimed EC\$2,000.00 /month as occupation rent from the Respondent until the property is sold. The Respondent did not dispute the property was jointly owned but objected to the claim for EC\$2,000.00/month as not pleaded and baseless. He noted that the Petitioner left the home voluntarily in 2023 and could not explain her departure under cross-examination.

[18] There is no dispute that the home is community property. The Petitioner is entitled to a ½ share. However, her claim for occupation rent was not pleaded in her application for ancillary relief and appears as a late submission. No valuation or evidentiary basis was given for the \$2,000.00/month sum. The Court treats this claim as an afterthought and rejects it.

[19] The Court will order a sale and equal division of the net proceeds, subject to deduction of community debts (including the \$113,000.00 loan).

Claim to the Chevy Trax (Vehicle):

[20] The Petitioner claims the vehicle was purchased for her use and should be transferred to her. The Respondent testified that the vehicle is in his name, was used by both parties, and is now his only means of transport.

[21] The Petitioner offered no independent evidence of ownership, contribution to purchase, or justification for exclusive possession.

[22] Given the Respondent's credibility and her weak financial evidence, the Court is likely to accept that the vehicle is the Respondent's separate property or community property not susceptible to division due to it being his only vehicle. No claims were made in respect of the Toyota Land Cruiser and the Nissan Pickup. In any event, neither of these vehicles are owned by the Respondent at present and his evidence is that the proceeds of the sale all went back into the improvement of the matrimonial home.

[23] Accordingly, the claim for transfer of the Chevy Trax fails.

Tertiary Education Expenses of Children (Aged 25 and 22):

[24] Section 28 of the Divorce Act prohibits maintenance orders for children over 18 unless they are enrolled in education or training, which both children are not. The Respondent's evidence (unchallenged) is that both children are employed.

[25] Whilst the Petitioner sought to suggest that the employment was temporary and to enable the children to pursue tertiary education, given the Respondent's current financial position, making any order for him to pay towards the children's tertiary education will cause him financial hardship. I decline to do so.

[26] Accordingly, this claim also fails.

COSTS:

[27] In relation to costs, the Petitioner has gained nothing more than what was conceded by the Respondent and in fact offered. Her evidence in support of this application ought to have informed her that she was not ready or able to obtain any relief at a trial yet still she persisted. While in some family law matters, courts may be slow to make adverse costs orders (especially in applications concerning the welfare of children), this matter involved financial and property claims between two adults, with no minors involved and no success on the part of the Petitioner. There are no equitable grounds apparent for depriving the Respondent of his costs.

[28] Accordingly, the Petitioner shall pay the Respondent's costs of this application to be assessed by the Registrar in default of agreement within 21 days.

[29] For the reasons above, I make the following orders:

- 1) It is hereby declared that Parcel 1052B 651 situate in the Quarter of Gros Islet is community property.
- 2) The said property shall be valued and sold, and the net proceeds of sale (after payment of the mortgage debt and other encumbrances) shall be divided equally between the Petitioner and the Respondent.
- 3) In the alternative, the Respondent may elect, within 60 days, to pay to the Petitioner one-half of the net value of the said property, such value to be

determined by a qualified valuer agreed by the parties or appointed by the Court.

- 4) It is hereby declared that Parcel 0641B 323 situate in the Quarter of Anse La Raye is the separate property of the Respondent.
- 5) It is hereby declared that the debt secured by Instrument No. 4530/2012 in the sum of EC\$113,000.00 is a joint liability of the Petitioner and the Respondent.
- 6) The claim for transfer of the Chevrolet Trax Motor Jeep Registration No. 6299 to the Petitioner is dismissed. No orders are made in respect of the Toyota Land Cruiser or the Nissan Pickup, as there is no evidence before the Court that these vehicles are available or subject to distribution.
- 7) The Petitioner's application for a lump sum payment or any form of maintenance from the Respondent is dismissed.
- 8) The Petitioner's claim for a monthly occupational sum of EC\$2,000.00 for the Respondent's use of the matrimonial home is dismissed.
- 9) The Petitioner's application for an order that the parties jointly fund the tertiary education of the children is dismissed.
- 10) The Petitioner shall pay the Respondent's costs of this application to be assessed by the Registrar in default of agreement within 21 days.

Alvin S. Pariagsingh
Judge

By the Court,

Registrar