

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
(Civil Division)

CLAIM NO. SVGHMT2021/1013

BETWEEN:

ROSALIND OPHELIA BROWNE nee PINDER

Petitioner

And

REYNOLD SYLVESTER BROWNE

Respondent

Before: The Hon. Mde. Cybelle Cenac-Dantes

Judge of the High Court

Appearances:

Zhing Horne-Edwards counsel for the Petitioner

Paula David counsel for the Respondent

2025: 14th April
29 May

ORAL DECISION

- [1] **Cenac-Dantes, J.:** This is my oral decision and I reserve the right to amplify these brief reasons in the event of an appeal.

Introduction

- [2] The central issue in this case revolves around the matrimonial home, a two-story house at Ratho Mill, constructed on land registered in the petitioner's name for which the respondent claims he paid the full down payment by selling his van and contributing significantly to the home's construction through labour and resources. The petitioner disputes the extent of the respondent's

contributions, asserting that her income financed most expenses, including loans and mortgages. Consequently, her claim is for (i) a declaration that she is entitled to a 75% share of the home, or such other share as may be just, (ii) a lump sum settlement in respect of her share, (iii) further or other relief and (iv) costs.

[3] *“The overriding objective that the court must strive at is fairness. In apportioning the assets, the court must consider the various factors the legislature has asked it to take into account and then arrive at a solution that is, in all the circumstances, fair to the parties”.*¹

[4] The **Matrimonial Causes Act, Chapter 239 of the Laws of St. Vincent and the Grenadines Revised Edition 2009** (the "Act") section 34 provides that:

It shall be the duty of the court.....in relation to a party to a marriage.....to have regard to all the circumstances of the case, including the following matters, that is to say –

- (1) the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (2) the financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future;
- (3) the standard of living enjoyed by the family before the breakdown of the marriage;
- (4) the age of each party to the marriage and the duration of the marriage;
- (5) any physical or mental disability of either of the parties to the marriage;

¹ Timothy Stonich v Tamara Stonich (BVI Civil Appeal No, 17 of 2002) para. 27 as stated by Justice of Appeal Adrian Saunders

(6) the contribution 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

(7)

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, 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 the other.

Factual Background

[5] The Affidavit of Rosalind Browne, the petitioner, 58 years old outlines the financial and personal circumstances surrounding the dissolution of her marriage with Reynold Sylvester Browne, the respondent.

[6] Rosalind and Reynold were married on March 31, 1996, and remained legally married for 26 years. By the admission of the petitioner the parties had been in a relationship for approximately 10 years prior to their marriage. The marriage was dissolved by decree nisi on March 4, 2022, on the ground that the parties had lived separate and apart for at least 2 years. In total, the parties were together for approximately 34 years.

[7] The couple share one son, Rosario, aged 19, who has graduated from college and the petitioner represents that he intends to pursue university education. The petitioner states that she has been solely responsible for his maintenance since the divorce proceedings began and in fact, during the entirety of his life has been the one primarily responsible for all his needs, save for sporadic assistance from the respondent. This is not disputed by the respondent, who states at paragraph 11 of his affidavit, that for most of the marriage the

petitioner took care of Rosario. His oral evidence also does not contradict this. The son is currently employed under the government's trainee SET program and he has no set plans for attending university.

- [8] The petitioner deposes that she works as a civil servant but was recently transferred to the Lands and Surveys Department as Acting Assistant Secretary to the Chief Land Surveyor, earning the same monthly salary of \$3,832.00 with an additional acting allowance of \$801.00. She also collects \$1,100.00 in rent from the upper floor of the former matrimonial home.

- [9] The petitioner further deposes that she owned the land at Villa A, which was exchanged for the current plot at Ratho Mill where the home is built. Both Villa A and Ratho Mill were registered in her name only. She states that she financed the construction through multiple mortgage loans, all serviced by her salary. The respondent, she states, contributed labour and materials on an ad hoc basis.

- [10] She states that she is burdened by significant financial responsibilities, including monthly mortgage payments of \$2,284.00, utility bills, and expenses related to her son. The home remains uninsured due to her inability to afford the lump-sum premium.

- [11] Currently, she and Rosario reside temporarily with a family friend, rent-free, due to increasing acrimony with the respondent, while continuing to pay utilities and maintain the former matrimonial home.

- [12] The petitioner seeks a court order for the sale and distribution of proceeds from the matrimonial home, proposing a 75/25 division in her favour, given her substantial financial contributions. She requests a further deduction from the respondent's share to account for unpaid mortgage contributions since the divorce proceedings began. The respondent opposes this and requests an equal division of the asset.

- [13] Her affidavit provides financial documents, including salary slips, mortgage agreements, and valuation reports, to support her claim.
- [14] Resolution of this matter will depend on the court's determination of the parties intention, and each party's financial contributions and responsibilities during the marriage, in light of the considerations to be taken into account under the Act.

The Evidence Summary

- [15] Throughout her affidavits, the Petitioner sought to make a case that the Respondent's contributions towards the welfare of the family, and in particular, his contributions in respect of the construction of the matrimonial home, *"were small and made on an ad hoc basis"*. She said, and the Respondent admitted, that it is she who has paid the bulk of the mortgage. Where the parties disagree relates to the Petitioner's contention that the construction of the matrimonial home was financed primarily by mortgage loans. The Petitioner alleged that the construction of the lower storey of the matrimonial home was financed by a mortgage loan of \$80,000.00 which *"was, by far, the major source of financing of the construction of the former matrimonial home"*. At paragraphs 12 and 13 of her Affidavit of Means the Petitioner said that a second mortgage loan of \$25,000.00 financed the purchase of *"the bulk of the materials used to construct the upper floor, such as lumber and galvanized sheeting. The cement from which the blocks were made was also purchased with the proceeds of the further mortgage loan"*.
- [16] The Respondent gave evidence that it was largely through his efforts that the matrimonial home was constructed. At paragraph 14 of his Affidavit of Means the Respondent said that by the time the parties got the \$80,000.00 loan, *"the downstairs was almost complete"*. In support of his contention, the Respondent produced documents related to the construction of the matrimonial home. Most notably, the Respondent produced a report prepared by Mr. Sebastian Alexander, which showed that prior to the grant of the \$80,000.00 loan, the

matrimonial home was in an advanced state of construction. At paragraphs 15 and 16 of his Affidavit of Means the Respondent pointed out that the Application for Mortgage Finance Form which he and the Petitioner signed on 22nd September 1997 indicated that \$28,476.60 of the \$80,000.00 loan went towards consolidating a former loan for the purchase of land at Villa A, a consumer loan of \$7,471.20 and paying off the Petitioner's loan at GECCU. It was only the balance after those loans were accounted for that was made available to the parties for the construction of the matrimonial home.

- [17] At paragraph 21 of his Affidavit of Means the Respondent said, *"I paid for most of the labour and materials that went into constructing the upstairs from my pocket"*. He noted that *"the upstairs is bigger than the downstairs"* and reflected, therefore, that it could not have cost less to construct the upper storey than it did to construct the lower storey. At paragraph 24 of his Affidavit of Means the Respondent referred to another Inspection and Valuation Report prepared by Mr. Sebastian Alexander almost two years before the transaction of \$25,000.00 was approved, which showed that the upper storey was almost complete by the date of that report. At paragraph 25 he referred to a letter from the Bank of Saint Vincent and the Grenadines which confirmed his evidence that the \$25,000.00 transaction was not a loan, but only an upstamping of the mortgage to consolidate existing loans.

Standard of Proof

- [18] It is for the petitioner to prove, on a balance of probabilities that she is entitled to a greater share of the matrimonial home based on the facts and evidence presented. Having read the affidavit of means of the petitioner and her response to the affidavit of the respondent, and having listened to her oral evidence under cross-examination I am of the view that the petitioner has failed to meet the standard required of her.

[19] I find this for the following reasons:

(1) Misrepresentation of Land Ownership

In paragraph 6 of her affidavit, the Petitioner claimed to be the owner of the land at Villa A at the time of marriage. However, under cross-examination, she conceded that she did not own any land prior to meeting the Respondent. She clarified that the Villa A land she referred to was, in fact, jointly owned by both parties. This constitutes a misrepresentation, as she acknowledged that the land was not hers alone, but was held jointly with the Respondent.

(2) Source of Construction Funds

At paragraph 10 of her affidavit, the Petitioner stated that the mortgage loan was the principal source of financing for the construction of the matrimonial home. During cross-examination, she admitted this was inaccurate and clarified in re-examination that other funds also contributed, including small loans from GECCU, financial assistance from others, and contributions from the Respondent. Nonetheless, she maintained that these did not exceed the amount obtained through mortgage loans.

While I accept that the loans likely constituted the major source of financing, I also acknowledge that the Respondent made informal financial contributions that played a supporting role in the overall funding of the construction.

(3) Purpose of the \$25,000 Mortgage Upstamp

When questioned about the \$25,000 mortgage upstamp referenced in paragraphs 12 and 13 of her affidavit, the Petitioner stated that the funds were intended for the construction of the upper floor of the home. However, when confronted with paragraph 25 of the Respondent's

affidavit and her exhibit RB7, which indicated the upstamp was used to consolidate existing loans (including a vehicle loan and a mortgage), she conceded that the Respondent's account was correct.

Exhibit RB7 confirms this, stating the funds were used *"1. To refinance existing loans #121516 and assist with yard work and fence property. 2. To refinance loan and assist with insurance on van."* The facility was approved in the names of both parties.

Accordingly, I accept the Respondent's evidence that the \$25,000 upstamp did not finance the construction of the upper floor, but was used for the purposes indicated. It is also evident that the loan was obtained jointly and used for the benefit of both parties, including some improvements to the property.

(4) Inaccuracies Regarding Window Purchases

The Petitioner further admitted that paragraph 14 of her affidavit was incorrect, wherein she claimed that proceeds from the mortgage loan were used to purchase windows for the upper floor. When shown the valuation report from quantity surveyor Sebastien Alexander, which stated that *"sliding glass windows [were] fitted,"* she admitted her statement that there were no windows was incorrect, as was her claim that they were purchased with the \$25,000 loan.

(5) Vehicle Ownership and Contributions

In paragraphs 24 and 25 of her affidavit and paragraph 38 of her response affidavit, the Petitioner stated that the Respondent gave her \$2,000 from the sale of vehicle PB953. Although the vehicle was purchased by the Respondent for \$2,500, it was registered solely in her name, and she took responsibility for its insurance and maintenance. She asserted that by the time she received the \$2,000, she had already purchased vehicle P1108 using funds from family members. She also

recounted that the parties had previously owned vehicle P9970, which the Respondent sold while she was studying in Barbados.

No documentary evidence or corroborating testimony was presented to support her claim of financial contributions from family members. Under cross-examination, she stated that the contributors included her aunt, sisters, mother, and herself, and that the vehicle cost \$9,500 in total. She described her aunt as retired with a family, one sister as a civil service technician with no family, and her mother as also retired. She said she gave the \$2,000 from the Respondent to one of the family members who had helped with the purchase.

Despite the lack of supporting evidence, I accept the possibility that she received assistance from family members to acquire vehicle P1108. However, her efforts to diminish the Respondent's role in these transactions are unconvincing. The overall pattern of vehicle acquisition and use appears to have been a shared effort, intended for joint benefit. Furthermore, the Petitioner's own admission that the \$2,000 was given to a family member who helped fund P1108 supports the conclusion that this contribution by the Respondent was applied toward that purchase, albeit lately.

(6) Down Payment on Villa A Property

At paragraph 10 of her response affidavit, the Petitioner disputed the Respondent's claim that he paid the full down payment of \$16,613.30 for the Villa A land. She stated instead that the funds came from the sale of a passenger van jointly purchased by them. However, when cross-examined on the inconsistency between this statement and her suggestion that the Respondent alone did not make the down payment, she conceded that it was *"the same thing."*

This appears to be an attempt to mislead the court through semantics. As noted by the Respondent's counsel, it would have been more transparent to state simply that the van was jointly owned and its proceeds were used

for the down payment. Her convoluted explanation seems aimed at supporting her earlier, inaccurate statement that she solely owned the Villa A land at the time of marriage.

In any case, I am satisfied that the down payment was made from the sale proceeds of the van, whether it was jointly or solely owned by the respondent, and that those proceeds were applied toward the purchase of the Villa A property.

(7) Additional Contributions to Villa A Construction

The Petitioner also stated in her response affidavit that she took a \$10,000 GECCU loan to begin the foundation at Villa A. When asked why this was not mentioned earlier, she said her memory was jogged only after reading the Respondent's affidavit. She acknowledged that the Respondent and his friends helped dig the foundation and place the steel, and she later admitted that the purchase of the steel was funded by contributions from them both.

Based on the evidence, I am satisfied that the Villa A property was purchased and developed through the joint efforts of both parties. I also accept that the Respondent contributed to the purchase of construction materials and physically assisted with preparing the foundation alongside friends.

(8) Rent at Fairhall

When asked whether the Respondent continued paying rent while they lived together at Fairhall before marriage, the Petitioner admitted that he did so on occasion.

(9) Property Taxes

The Petitioner acknowledged that property taxes had been in arrears since 2018. She confirmed that she paid part of the outstanding amount, and the Respondent paid the balance.

(10) Cooking Gas

She admitted that while she occasionally purchased cooking gas, the responsibility mostly fell to the Respondent.

(11) Electricity Bills

The Petitioner admitted that she initially paid for electricity, but the Respondent later took over, and that he paid most of the bills over time.

(12) Rental Income from Upper Floor

She acknowledged collecting all rental income from the upper apartment since 2004. When the court inquired whether the Respondent was entitled to an equal share of those rents, she deflected, stating that it was his decision for her to collect them as she was paying the mortgage and lacked other income. She said the rental income was used to cover household expenses, support their son Rosario, and provide for herself. She also claimed she occasionally gave some of the funds to the Respondent.

(13) Intent of Joint Ownership at Villa A

When questioned by the court, the Petitioner admitted that the intention was for the Villa A property to be jointly owned. Their arrangement was that she would pay the mortgage from her salary, while the Respondent would reimburse her for personal expenses and cover household bills.

- [20] It is clear from the evidence of the petitioner that her initial affidavit evidence, aimed at painting the respondent as a ne'er-do-well; lazy, irresponsible, generally unsuccessful and who has failed to live up to her expectations of him as a provider, husband and father and who has not contributed meaningfully to the family has been upended by her own oral evidence.
- [21] The evidence of both parties, when considered collectively, reflects a long-standing partnership between individuals who utilized their available resources to first acquire the property at Villa A. That acquisition was supported by a combination of loans, financial contributions from both parties, and physical labour—particularly by the Respondent and his friends in laying the foundation of their initial home. Following the compulsory acquisition of that land by the government, the parties' shared interest transitioned to the Ratho Mill property. Their collaborative efforts continued as they worked together toward the construction of their matrimonial home. I do not accept that either party, at any point, regarded the property as belonging solely to one of them, or that either believed they were entitled to a disproportionately greater share. On the contrary, the evidence—both testimonial and documentary—supports the conclusion that the parties always intended the Ratho Mill property to be jointly owned in equal shares. Moreover, there is nothing in the evidence presented that would justify awarding the Petitioner a greater interest in the property than that of the Respondent.

The Law

- [22] The petitioner appears to rely entirely on subsection (f) of section 34(1) of the **Matrimonial Causes Act**, framing her case solely within this provision, with little to no consideration of the broader range of factors that the court is required to assess. This selective interpretation overlooks the necessity of evaluating the totality of circumstances, including the common intention of the parties, their respective contributions—both financial and non-financial—the realities of their economic positions, and the fairness of the proposed division in light of the marriage's history. The court's role is not merely to apply one subsection in isolation but to balance all relevant considerations, ensuring that

the judgment reflects both the legislative intent and the principles of equity. To disregard these additional factors would risk an unjust outcome, failing to acknowledge the broader matrimonial context within which the property arrangement was formed.

[23] The respondent relies quite heavily on two Antiguan cases of **Abbott v Abbott**² and **Romig Westerby Michael v Heather Michael**³ and the English case of **Stack v Dowden**.⁴

[24] I agree with the legal analysis of counsel for the respondent that these cases are not appropriate for an assessment of the circumstances of this case. Both **Romig** and **Abbott** are Antiguan cases, a jurisdiction within the Eastern Caribbean that does not share comity in the Matrimonial Legislation of Saint Vincent in that it has “*no equivalent of the wide powers of property adjustment enjoyed by divorce courts in the United Kingdom. Property disputes have therefore to be resolved according to the ordinary law.*”⁵

[25] I accept that what Her Ladyship described as the “*ordinary law*” are the constructive trusts principles she discussed emanating from her decision delivered in **Stack v Dowden**, a case in which the parties were an unmarried co-habiting couple to whom the legislation on distribution of matrimonial assets did not apply. An application of the “*ordinary law*” therefore meant that the court in that case enquired into the common intention of the parties at the time of acquisition and whether the party claiming a beneficial interest had placed a detrimental reliance on an expectation that he would benefit from contributions made towards the acquisition of property and therefore the other party would be holding that share on a constructive trust. This is not the case at bar.

[26] It is useful for consideration on how the court should view the contributions of the spouses, whether financial or otherwise to extract a large tract of the decision of Justice Saunders in **Stonich**:

² [2007] 2 ALL ER 929

³ HCVAP2008/015

⁴ [2007] 2 ALL ER 929

⁵ Lady Hals, para. 2 of *Abbott v Abbott*

One of the useful features of the MPPA is that it gives the court a broad discretion in apportioning assets built up over the course of the marriage. The ultimate and overriding objective that the court must strive at is fairness. In apportioning the assets, the court must consider the various factors the legislature has asked it to take into account and then arrive at a solution that is, in all the circumstances, fair to the parties. The wide discretion available permits the court the ability to interpret fairness in light of prevailing societal standards.

The court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure.

The MPPA does not rank in order of preference any of the factors to which courts are obliged to have regard. It is for the court to consider all of them. In one case, the facts and circumstances may call for a particular factor to be given special importance. In another case another factor may assume most significance. The point is that there is no basis in law for courts to regard always as decisive or of special importance *the financial* contribution made by a party to the welfare of the family. In the normal course of things any such contribution should be weighed in the scales as a contribution of a different nature. Spouses may choose to perform different roles in a marriage. If the husbands' skill, initiative, hard work and drive yield handsome financial rewards, it is entirely unfair to

regard those rewards as being any greater in value than those of the wife who might have employed equal skill, initiative and dedication at home bringing up the children and keeping a stable household. In such a case I see no reason why the assets acquired during the marriage ought not to be equally divided. As Lord Nicholls states, each in their different spheres contributed equally to the family and, as a general guide, equality in the distribution of matrimonial assets should be departed from only if, and to the extent that, there is good reason for it.⁶

- [27] In this case, if, as the petitioner alleges, that it was her skill, initiative, hard work and drive which yielded the family's comfortable financial rewards, would it not be unfair to regard those rewards as being any greater in value than those of the husband, who, while he may not have contributed significantly in raising and tutoring Rosario, might have employed his own skill, limited as they were to construction and eking out a meagre living for the family, however inconsequential the petitioner may deem them to have been.
- [28] Conversely, if the shoe was on the other foot, and the petitioner found herself in the same position as the respondent, I am sure it would be considered grossly unjust, after 26 years of marriage and 34 years together to deprive her of an equal share of the home in which she had lived for the last 24 years.
- [29] Further, to make such an order as requested by the petitioner would effectively render the respondent not only homeless but destitute.
- [30] The respondent is a 64-year-old man, and although in good health he is on the cusp of retirement age. He admits having no provision for retirement. His only conceivable retirement provision would be his share of the matrimonial home. He is functionally illiterate and never completed primary school. He has worked

⁶ White v White

as a block maker, minibus operator, delivery truck operator and most recently, a barbeque stand. In comparison, the petitioner is 58 years old, with a remaining working life of approximately 7 years, and as a civil servant will either retire on an NIS pension or government pension, or both. She is a university graduate and enjoys a senior position in the civil service and is likely to enjoy future promotion prospects judging by her professional record. Even after retirement her university education affords her far greater opportunities for other professional employment outside the government service.

- [31] The only significant asset of the marriage is the matrimonial home. A sale where the proceeds are divided should afford both parties an opportunity to obtain other suitable rented or purchased accommodation. Based on the proposal of the petitioner, if the asset valued at \$535,000 was to be distributed 75/25, the respondent would be entitled, even before repayment of the mortgage to approximately \$133,750.00. A further deduction as proposed by the petitioner of her full contribution to the mortgage (\$2,284 x 3 years) since the divorce, would amount to a further deduction of \$82,224. This would therefore leave the respondent with the contemptuous sum of \$51,526.00 in comparison to the petitioner's healthy \$483,474. And these figures are to be even further reduced following mortgage payoff in full. Seen in the cold light of day this could not be in keeping with the Matrimonial Causes Act of being fair in all the circumstances.

Conclusion

- [32] It is unfortunate that, upon separation and divorce, parties often seek to reinterpret their original intentions regarding the division of property, reshaping past understandings to fit present circumstances. This tendency reflects the complexities of human nature and the shifting perspectives that accompany the dissolution of intimate relationships.
- [33] It is hard to find that the respondent has outright lied to the court. She has misrepresented facts and misremembered details. Mostly, I think she has spoken from her own self-serving vantage point—offering a different

interpretation of the same shared history. This divergence is not unusual in matters of property division and, indeed, is an inherent characteristic of human perception. If the roles were reversed, and the respondent as a woman claiming a half share in similar financially constrained circumstances, the argument would undoubtedly highlight the systemic inequities often faced by women in domestic partnerships. A woman who has contributed little financially to the household should not be disadvantaged by failing to obtain an equal share—especially if that was always the intention of both parties. The same principle must apply irrespective of gender; equity in the division of property must consider both financial and non-financial contributions.

[34] In marriage, equality—whether in finances, household responsibilities, or childcare—is rarely absolute. Traditionally, women have borne the greater share of nurturing duties, an expectation rooted not only in societal norms but in a natural inclination toward caregiving. However, a man should not be discredited simply because caregiving does not come naturally to him, particularly if he belongs to an older generation where such roles were more rigidly defined. The evolving dynamics of domestic responsibility, especially in contrast to younger generations, must be considered in a fair and just determination.

[35] The petitioner admitted to the Court, when asked, that the original intention was for the property to be owned equally—50/50. However, it appears that in retrospect, the petitioner has assessed the respondent's role in the marriage by collating the sum total of what she perceives to be his good and bad deeds, her dissatisfaction with his contributions as a provider, her frustration at being the primary and, at times, sole breadwinner, and has allowed these experiences to reshape the common intention that was once shared. It should not be that one enters into a marriage with a clear and mutual understanding, only to discover later that this understanding was unilaterally adjusted by one spouse based on the perceived contributions or shortcomings of the other.

[36] While the expectation of equal financial contributions may have existed at the outset, the reality of the respondent's circumstances—his illiteracy and lack of

marketable skills—meant that an equal financial standing was unlikely ever to materialize. This was a factor the petitioner would have had to acknowledge from the beginning, and therefore, it is unreasonable to now expect that financial contributions should have been equal when the respondent was inherently disadvantaged in this regard. Even if the respondent could have done more to assist the family's financial standing, even if one were to go so far as to characterize him as a layabout, which the court does not find, such assessments cannot erase the common intention expressed by the parties at the outset. Their discussions concerning the property, its acquisition, and its construction suggest, that in the beginning, they planned these matters together. While I am sympathetic to the petitioner and acknowledge all that she has done to elevate the family's lifestyle and financial position, I cannot find justification to grant the order she now seeks, as it would contradict the clear intention that existed at the inception of their marriage.

[37] **My order is as follows:**

1. That the matrimonial home at Ratho Mill is to be divided equally between the parties.
2. As agreed prior to trial each party is to bear their own costs.
3. The respondent is to take carriage of the order after judgment.

Cybelle Cenac-Dantes
High Court Judge

BY THE COURT

REGISTRAR

