

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CLAIM NO. MNIHCV 2011/0007

BETWEEN:

[1] Mildred Kirwan

Petitioner

and

[1] Neville Kirwan

Respondent

Appearances:

Mr. Lawrence Daniels for the Petitioner

Ms. Chivone Gerald for the Respondent

2024: NOVEMBER 13

NOVEMBER 19

NOVEMBER 20

NOVEMBER 30

2025: FEBRUARY 24

RULING

COTTLE [AG.]:

[1] In January 2012, more than a decade ago the High Court rendered its judgement, making orders ancillary to the dissolution of the union between the parties. Redhead J. decided that the

matrimonial assets of the parties would be shared equally. The Petitioner appealed the decision but was ultimately unsuccessful. Despite this, the division of the matrimonial assets remains incomplete to this day. The Petitioner has issued a judgement debtor summons seeking to be paid her moiety of the matrimonial assets. This court has sought to ascertain the present position to bring finality to this seemingly never-ending litigation.

The assets

- [2] There are two items of real property. There is a house in Olveston. A recent valuation places a present value of \$986,665.90 on this property. This house is not occupied and will require some maintenance work. There is a second house located in Palm Loop, Woodlands. The Petitioner occupies this house. It is now valued at \$904,210.00. I note that the values stated represent the opinion of the valuer. The actual price fetched at sale may be higher or lower. For the purposes of this decision, I treat the two properties as effectively equal in value.
- [3] There is furniture in both houses. The value of the furniture is unclear.
- [4] There is an investment of \$500,000. 00 in Colonial Life Insurance Company Limited (CLICO), a regional insurance company which no longer trades. It is unlikely that the capital or income on this investment will ever be realised.
- [5] There is an investment of \$50,000.00 in British American Insurance Company Limited (BAICO), another regional insurance company which is related to CLICO and no longer operates. There is little likelihood that the capital or full interest from this investment will ever be realized.
- [6] From the BAICO investment the sums of \$5,633,84 was paid to the Respondent in 2018. A further 2,253.54 was paid in 2019 to both parties. The Petitioner is entitled to one half of the sum recovered from the 2018 payment. She has already received directly from BAICO one half of the 2019 payment.
- [7] There are 32,700 shares in Bank of Montserrat Ltd. One half of these was transferred to the Petitioner in January 2014 by the bank. Dividends on these shares were paid by the bank in 2020 representing outstanding arrears from 2009. The payment was made equally to the parties in 2020. Another payment of dividends was received by the defendant in 2009 in the amount of 3,180.00. One half of that amount is owed to the Petitioner by the Respondent.

- [8] There is rental income from the Olveston real property referred to as Tradewinds rentals. The Petitioner calculates that the rentals collected amount to \$177,865.14. One half of that sum is due to the Petitioner. She has already received an interim payment of \$37,000.00 in May 2013. A balance of \$51,982.50 remains due. There is no evidence as to the value if any of the plumbing business at present. I disregard this as a matrimonial asset. The Respondent husband was ordered to pay costs of \$7,500.00 That payment also remains outstanding.
- [9] Confronted with this gordian knot this court makes the following orders to give effect to the equal distribution of assets.
- [10] No order is made in relation to any real property located in the exclusion zone of this country.
- [11] The Palm Loop property is declared to be the sole property of the Petitioner wife along with all furniture therein. The Olveston property is declared to be the sole property of the Respondent husband along with all furniture therein. This in my view is the most efficient way to achieve equal division of the available real estate. The Respondent shall pay to the Petitioner the sum of \$51,982.50, being one half of the outstanding rental income from the Tradewinds rental receipts. He will also pay to the Petitioner the further sum of \$2,816.92 being one half of the BAICO interest payment he received in 2018. The Respondent shall also pay to the wife costs awarded in the sum of \$7,500.00, however the Petitioner was ordered to pay costs of the unsuccessful appeal in the sum of \$2,000.00. The Respondent may deduct this sum from the costs of \$7,500.00 he must pay leaving a balance due of \$5,500.00 as costs to the Petitioner.
- [12] Interest due must also be considered. This matter ought to have been concluded long ago. The petitioner is entitled to interest on the sums that I find to be payable to her. The total due is \$54,768.42. Interest shall be at the rate of 4% on the total of \$54,768.42 for six years up to today's date. Post judgement interest at the rate of 6% will accrue from today until payment. The interest will be computed on the principal judgement debt of \$54,768.42.

[13] I thank all counsel for their assistance in finally putting an end to this long drawn-out matter.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR