

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
A.D. 2023
(DIVORCE)**

SUIT NO. NEVHMT2021/0019

BETWEEN

ANNIE SAWH

Petitioner/Applicant

And

UMRAN SAWH

Respondent

Before: **His Lordship Justice Patrick Thompson Jr.**

Appearances: Mr. Ricaldo Caines for the Petitioner/Applicant
Mr. Jeffrey Nisbett for the Respondent

2023: July 6th & 28th

JUDGMENT

Thompson Jr J:

Factual Summary:

- 1) The Sawh's were married on January 1st, 2006. For reasons that do not require traversal in this judgment their marriage has unhappily come to an end as of June 20th, 2022.
- 2) Their union produced one child and the Sawhs agreed that while they are to enjoy joint custody of the child Ms. Sawh is to have primary care and control of their daughter with Mr. Sawh being afforded liberal access to his daughter. Financial support for the child has also been agreed in the sum of EC\$200.00 per week. It is to their credit that they have been able to agree on what is in the best interests of their daughter.

- 3) Unfortunately, the Sawhs are unable to agree on the respective ownership shares in the parcel of land measuring 6,150 square feet at Bath Estate in the Parish of St John in Nevis. That parcel of land is registered in their joint names as joint tenants and there is a Certificate of Title in their names in the Nevis Register of Titles.
- 4) A house measuring approximately 1,389 square feet is on the land at Bath Estate ("the matrimonial home"). That house and by extension the land that it sits on was valued by Brand's Architectural Services on December 9th, 2021, and has a fair market value of EC\$534,000.00. A valuation of the matrimonial home was done by GB Architectural Design and Services in May 2021 and that company was of the view that the house and land were cumulatively worth EC\$323,424.23. The Brand's valuation was commissioned by Mr. Sawh, presumably in response to Ms. Sawh's application for ancillary relief which had been supported by the GB Architectural valuation. Both sides are content for this Court to proceed to determine their entitlement to the matrimonial home based on the Brand's Architectural valuation in the sum of EC\$534,000.00.
- 5) By her summons for ancillary relief filed on June 16, 2022, Ms. Sawh sought a declaration that the matrimonial home is held in equal shares by herself and Mr. Sawh. Among other reliefs, Ms. Sawh also sought an order from this Court declaring that she was the owner of 50% of Mr. Sawh's trucking business.
- 6) It would surprise no one that Mr. Sawh has trenchantly disputed Ms. Sawh's claim for a 50% share in the matrimonial home and trucking business. In his view, Ms. Sawh is entitled, at best, to a 25% share in the matrimonial home and no share in the trucking business.
- 7) In summary it is Mr. Sawh's case that there is no trucking business per se and that while he owns a truck there was no common intention that either party would have an interest in each other's respective vehicles (Ms. Sawh is the owner of a now decrepit motor car) and has gone on to purchase another car for herself. Mr. Sawh says that he was the sole contributor to the purchase of the land on which the matrimonial house now sits and that his financial contributions to the matrimonial home dwarfed those of Ms. Sawh. For this reason, he says that he is entitled to no less than 75% of the matrimonial value of the house and land.
- 8) Both Mr. and Ms. Sawh filed three affidavits each in these proceedings. A further affidavit from Mr. Danny Shivnandan (Ms. Sawh's brother) was also filed on behalf of Ms. Sawh but Ms. Sawh made no attempt to have Mr. Shivnandan's evidence taken and perhaps because of inadvertence on the part of counsel, Mr. Shivnandan was present in court ostensibly for the purpose of supporting his sister and thus could not have been called as a witness.
- 9) In the same vein, Mr. Sawh exhibited a demand letter addressed to him from the law offices of Ramsanahie & Ramsanahie, a law firm in Trinidad and Tobago. In summary, their letter to Mr. Sawh is on behalf of his uncle (Deochand) who lent him the sum of US\$17,000 to build the matrimonial home and is unsurprisingly demanding its return. No effort was made by Mr. Sawh to obtain an affidavit from his uncle or have his uncle called as a witness, virtually or otherwise.

- 10) Faced with Mr. Sawh's position, Ms. Sawh has essentially contended that she is entitled to 50% of the matrimonial home and maintains her claim to a share in the trucking business. It was her case that she paid the duty on the truck when it was delivered to Nevis from Japan in the sum of EC\$10,456.82 towards the global sum of \$20,456.82 which was required for the clearance of the truck at Customs in Nevis.
- 11) Ms. Sawh has moved out of the matrimonial home since about April 2023 and currently resides in rented accommodation where she pays rent in the sum of EC\$650.00 per month. Mr. Sawh remains the sole occupant of the matrimonial home.

Relevant Law:

- 12) The relevant legal principles have been settled for some time by the House of Lords in **Stack v Dowden [2007] UKHL 17** and **Miller v Miller and McFarlane v McFarlane [2006] UKHL 24**. Lord Nicholls' reasoning in *McFarlane v McFarlane* in the following terms is particularly instructive:

"in the search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife is not in the nature of largesse. It is not a case of taking away from one party and giving to the other property which belongs to the former. The claimant is not a supplicant. Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of fairness in the particular case.....this element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, homemaker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties ages, their future earning capacity, the family's standard of living and any disability of either party."

- 13) The other critical question in these proceedings is rhetorically posed by the House of Lords in Stack v Dowden in the following terms:

"the question in joint cases is not simply what is the extent of the parties' beneficial interests but did the parties intend their beneficial interest to be different from their legal interests? And if they did, in what way and to what extent?"

- 14) The latter question which Mr. Justice Ward (as he then was) posed to himself in SKBHCV2013/0323 – Liburd v Liburd and then applied to the facts of that case is a useful technique for cutting to the chase of applications of this nature. Both sides have sought to deploy a wealth of evidence, but that evidence should be narrowly focused on the issue posed above. The Sawh's legal interests are reflected in the fact that the title to the matrimonial home is in their joint names as joint tenants. The next and most critical question is whether the parties intended their beneficial interest to be different from their legal interests?
- 15) The evidence on this aspect is not extensive and suggests that Mr. Sawh's position is not so much that they intended that their beneficial interests should be different from their legal interests

but that it was unfair in Mr. Sawh's view for Ms. Sawh to have the same interest as him in the matrimonial home in view of their differing financial contributions.

- 16) There is a paucity of evidence, on both sides, of exactly what the parties said and did at the time of the acquisition of the land and conveyance of the house into their joint names. For example, neither side adduced any evidence of any discussion among them as to the amount of the share that they should have thus leading to a strong presumption that the legal position (equal shares) was intended to reflect their position.
- 17) Therefore, as a matter of law, the onus lay on Mr. Sawh to demonstrate that the parties intended their beneficial interest to be different from their legal interest. See paragraph 68 of Baroness Hale's judgment in Stack v Dowden to this effect.
- 18) All the same, at paragraph 69 of her judgment in Stack v Dowden Baroness Hale neatly encapsulated the challenge for a court in these matters:

"In law, context is everything and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more facts than financial contributions may be relevant to divining the parties' true intentions. These include any advice or discussions at the time of the transfer....the reasons why the house was acquired in their joint names;...the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they had a responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses.....The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties individual character and personalities may also be a factor in deciding where their true intentions layAt the end of the day having taken all this into account cases in which the joint legal owners are to be taken to have intended that their beneficial interest from their legal interests will be very unusual"

- 19) This Court is entitled to apply the foregoing principles to the instant case particularly since at paragraphs 61 and 66 of her judgment Baroness Hale cited with approval the reasoning of Mr. Justice of Appeal Chadwick in Oxley v Hiscock [2004] EWCA Civ 546 to the following effect. Firstly, that there is no difference in principle between property in the name of joint cohabittees and property in the sole name of a cohabitee in determining the extent of the parties' respective beneficial interests. Secondly, *"each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property"*.

Advice/Discussions at the time of transfer

- 20) Neither side adduced any evidence of any such discussions. Mr. Sawh indicated in his first affidavit that he had received advice from an attorney, a Mr. Hobson, who told him that the property should be in the name of himself and his wife. Baroness Hale at paragraph 67 of Stack v Dowden recognized that parties do not always have a full understanding of the legal effects of

their choice but there is no evidence from Mr. Sawh that he had a different intention or disagreed with or appreciated the significance of the advice that he had received from Mr. Hobson.

House in their Joint Names

- 21) There was no evidence from either side as to why the house was in their joint names. Mr. Sawh was not asked why he went along with Mr. Hobson's advice of whether he had a contrary view and Ms. Sawh's counsel did not touch upon this issue in his cross examination of Mr. Sawh. The inescapable inference is that the Sawh's were content to have the property in their joint legal names because this accurately represented how they viewed the house. In this Court's view the subsequent dissolution of their union is what has led each side to "honestly but mistakenly reinterpret the past in self-exculpatory or vengeful terms"¹. More on this later.

Purpose for which the home was acquired.

- 22) Again, neither side adduced any evidence on this issue. If this court were to step back in time, as it were, and ask the parties at the time of acquisition of the land and the subsequent construction of the house why they wanted a home of their own they are likely to have said that owning a home is a natural and probable consequence of married life. In this Court's view, that is/was an inevitable consequence of their desire to provide a home for their child. In this regard the chronology is significant. The parties were married in 2006 and their child was born in 2010. Construction of the house appears to have commenced in 2016 thus confirming their joint intention to meet the responsibility of providing a home for themselves and their daughter. Thus far, the factors all appear to suggest that the beneficial interest and beneficial burden was meant to be equally shared between the parties.

Nature of their Relationship:

- 23) The parties were able to arrive at some common ground on the nature of their relationship. In good times, Mr. Sawh was the main breadwinner while Ms. Sawh, though employed earned considerably less than her husband. Ms. Sawh bore the responsibility of childcare and domestic care while Mr. Sawh provided financial support as and when needed. As the union deteriorated Mr. Sawh appears to have been obliged to fend for himself in the kitchen. All the same, Ms. Sawh's role as minister for childcare and domestic matters was acknowledged, albeit with some reluctance by Mr. Sawh.
- 24) The law is clear. Domestic contributions are significant. As long ago as 1976 in Haldane v Haldane [1976] 3 WLR 760 the Court held the view that the overall value of the husband's assets would not have increased had it not been for the wife's services, management and her general contribution as a wife and mother in respect of the matrimonial home as the amount of time spent providing the domestic services would have enabled the husband to work and gain an increase in assets. Simply put, it would be unfair to marginalize the undisputed time that Ms. Sawh spent

¹ See per Baroness Hale at paragraph 68 of *Stack v Dowden*

making domestic contributions including but not limited to the significant work involved in rearing the child of the marriage.

- 25) Ultimately, the Sawhs appeared to have gotten along well until Ms. Sawh lost patience with the consequences of Mr. Sawh's affinity for a well-known West Indian export, part of the *raison d'être* for colonization.

How was the purchase financed?

- 26) It was common ground that Ms. Sawh gave Mr. Sawh \$30,000 towards the construction of the house. It was also common ground that the land was purchased solely from Mr. Sawh's funds. Ms. Sawh said that she also gave her entire salary to her husband and kept \$50.00 for herself. According to Ms. Sawh, she was of the view that she contributed approximately \$60,000.00 towards the \$180,000 to \$210,000 that the house cost to build.
- 27) On the other hand, Mr. Sawh was of the view that aside from the \$30,000 she only gave him money on two occasions (\$650 once and \$550 another time) during the construction of the house. This Court found Mr. Sawh's evidence on this aspect largely implausible. The clearest indication of the falsity of Mr. Sawh's evidence in this regard can be seen in Ms. Sawh's passbook which suggests regular monthly deposits into her account averaging \$650.00 per month between 2018 and 2020. These deposits coming after the end of the construction of the house suggest that Ms. Sawh was very frugal with her meagre salary (\$445 per fortnight) and thus suggests that during construction she did have the means to contribute more than \$650 and \$550 on 2 separate instances.
- 28) This finding is balanced by the fact that Ms. Sawh's salary was meagre. Quite how she was able to accumulate a further \$30,000 which she passed on to her husband as part of the construction process is also dubious. Ms. Sawh did not disclose any alternative employment or sources of income and while her frugality is commendable this Court does not accept that her financial contribution to the construction of the matrimonial home amounted to \$60,000.
- 29) Mr. Sawh disputed Ms. Sawh's evidence that she cooked food for the workmen and friends who came and voluntarily helped them to build the matrimonial home. According to Mr. Sawh, he wrote down the names of the workmen who worked on the house and how much he paid them. It was his evidence that he was never asked about this book until his wife's lawyer asked him about this in cross examination.
- 30) If such a book existed, it is difficult to understand how the book was never tendered in evidence or why Mr. Sawh's lawyer would either fail to ask about such a book or not seek to tender it if he were aware of its existence. One likely inference is that Mr. Sawh's evidence about such a book is a recent fabrication invented in the witness box to meet the questions asked of him by his wife's lawyer. This Court is hard pressed to see how even if Mr. Sawh did not tell his lawyer about the book, he did not have the presence of mind to bring the book with him to court particularly since these proceedings had been ongoing for some time and the issue of who paid for what was a central issue. Mr. Sawh's economy with the truth on this issue suggests, that the matrimonial home was built in part because of the efforts of friends and well-wishers as opposed to solely by paid workmen.

- 31) Ultimately, this Court is satisfied that Ms. Sawh contributed roughly \$50,000 to the construction of the matrimonial home. This figure appears to be consistent with Ms. Sawh's evidence of her monthly savings deposits to her accounts. This Court is satisfied that the construction of the house was defrayed by the fact that some of the work was done by friends and not exclusively by paid workmen. This Court is minded to accept Mr. Sawh's evidence that construction of the house cost closer to the \$285,000 contended for by Mr. Sawh as opposed to the \$230,000 to \$240,000 contended for by Ms. Sawh. The valuation of the house in the sum of \$534,000 suggests that the house would have cost in excess of \$250,000 to construct.

How were the bills paid?

- 32) The parties accept that the bills were paid as follows. Mr. Sawh paid the water and electricity bills while Ms. Sawh paid the cable and internet bills. Mr. Sawh wouldn't give Ms. Sawh money for groceries but would buy what he felt the house needed. Ms. Sawh would buy groceries and when the union deteriorated in 2020 Ms. Sawh stopped buying food for the household altogether. There was no mortgage.

How were their finances arranged?

- 33) The parties accept that they never had joint accounts. Ms. Sawh said that she wanted to be added to Mr. Sawh's account, but he refused to do so and refused to be added to her account as well. How their finances were arranged is to be balanced and weighed against the factors set out above since this aspect tells against their joint legal ownership of the property.

The Loan for US\$17,000

- 34) Ms. Sawh does not dispute the fact of the loan from Mr. Sawh's uncle in the sum of US\$17,000. In her view this loan only became an issue after divorce proceedings were filed. According to Mr. Sawh, the loan for US\$17,000 was received via one payment of US\$5,000 and three subsequent remittances in the sum of US\$4,000 each. The precision of Mr. Sawh's evidence on this matter (he was able to recall without effort which relative brought the money and when) suggests that he was speaking the truth about how the monies came to be in Nevis. He accepts that he did not tell Ms. Sawh about the initial payment of US\$5,000 but that he told her about the remaining payments.
- 35) Even without the evidence of Mr. Sawh's uncle, Ms. Sawh did not repudiate the loan as a sham transaction between Mr. Sawh and his uncle. The inescapable inference is that Ms. Sawh was aware that Mr. Sawh's uncle in Trinidad had lent money to him/them which they used to enhance the matrimonial home. Mr. Sawh bears the sole burden of repayment, and this must be considered as a factor in determining how the construction was financed.
- 36) This Court's task is to determine that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property". It is accepted that Mr. Sawh's larger financial contributions and how the parties organized their finances is one side of the equation and tells in favour of a beneficial interest different from their legal interests. In the same vein, the burden of dispensing with their legal interests is a heavy

one and is to be considered in the context of Ms. Sawh's responsibility for domestic matters and the Sawhs joint responsibility to provide a home for their daughter. This Court is satisfied that an adjustment from the strict equal shares position is warranted and finds that Ms. Sawh is entitled to a 42% share in the matrimonial home with Mr. Sawh being entitled to a 58% share in the matrimonial home.

- 37) Ultimately, the onus lay on Mr. Sawh to persuade this Court that the legal position was not what the parties had intended and to show further that Ms. Sawh was only entitled to a 25% interest in the matrimonial home, irrespective of what the legal title provided. This was a heavy burden, and an analysis of the evidence indicates that the linchpin of Mr. Sawh's complaint was their differing financial contributions. Moreover, Mr. Sawh will retain possession of the house and will enjoy the sole benefit of any appreciation of the matrimonial home and the land.
- 38) As a result, Baroness Hale's dictum in *Stack v Dowden* that "the arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally" resonates loudly with this Court. In simple terms, Mr. Sawh has not met the burden of persuading the Court that Ms. Sawh is entitled to a 25% interest in the home. The finding that her entitlement is 42% is eminently fair and just in the circumstances of this case particularly when one considers that Mr. Sawh bears the burden of repaying the loan of US\$17,000 or XCD\$46,187.30 to his uncle.

The Trucking Business

- 39) Mr. Sawh accepts that he owns a 1.5-ton flatbed truck but denies that he owns any trucking business. No trucking business is registered in his name, and it was his evidence that his earnings from the truck were sporadic and sparse and as such there is no business which Ms. Sawh is entitled to 50% of.
- 40) Everyone accepts that in or about April 2018 Ms. Sawh wrote a check for the sum of approximately \$21,400 to clear the truck. Of that \$21,400, \$10,400 came from Ms. Sawh while Mr. Sawh deposited \$10,000 into Ms. Sawh's account.
- 41) In this Court's view, the parties contributed in equal shares to the purchase of the truck and the truck is an income-earning asset which is solely owned and controlled by Mr. Sawh. This Court is skeptical of Mr. Sawh's evidence that he would only earn the odd \$50 or \$100 for 'carrying stuff in the truck'.
- 42) His evidence begs the question of why one would invest so much in what appears to be a loss-making asset and retain said asset notwithstanding these losses. This Court prefers Ms. Sawh's evidence on this issue and considers that Mr. Sawh's accounts, such as were disclosed, appear to indicate earnings far more than what is supported by his job letters which suggest earnings of approximately \$3,000 per month.
- 43) This Court is satisfied that Mr. Sawh retains the exclusive use and benefit of a jointly purchased income earning asset during the marriage. It is therefore just and convenient that Mr. Sawh should pay to Ms. Sawh the sum of \$5,200, being 50% of her contribution to the purchase of the truck on or before December 31st, 2023. The rationale for the discount lies in the fact that Ms.

Sawh would have benefitted from the purchase of the truck in 2018 since its earnings went into Mr. Sawh's pocket and ultimately was for the benefit of the family unit.

- 44) It would thus be unfair to order that Mr. Sawh bear the burden of repaying Ms. Sawh for her entire investment in the truck, particularly when the legal title to the truck appears to have been exclusively in Mr. Sawh's name. There is no evidence from which it can be safely inferred that the truck was intended for their joint benefit or use, and Ms. Sawh has not discharged the burden of proving that she is entitled to a half share in any trucking business.

Costs

- 45) The parties have agreed that each side is to bear their own costs in this matter and this Court is content to make an order that effect.

**Patrick Thompson Jr
Resident High Court Judge**

BY THE COURT

REGISTRAR