

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2021/1014

BETWEEN

LOLITA TRIMMINGHAM

PETITIONER

and

WAYNE TRIMMINGHAM

RESPONDENT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. Paula David for the petitioner.

Mr. Sten Sergeant for the respondent.

2023:Feb. 14
Jul. 19

JUDGMENT

BACKGROUND

[1] **Henry, J.:** No one enters marriage intending to exit through divorce. Unhappily, many couples eventually surrender all hopes of happily ever after and part ways at the courthouse. Quite often, the judge is assigned the task of deciding which party is awarded particular assets acquired during the course of the union. Mrs. Lolita Trimmingham ('the wife') and Mr. Wayne Trimmingham ('the husband') decided to end their marriage after 19 ½ years.

[2] During happier times their union produced two children, a daughter and a son who are now adults.

The daughter recently completed studies at the Saint Vincent and the Grenadines Community College while the son is undergoing training in electrical installation at the St. Vincent Technical College. The daughter aspires to pursue a career in law. The son suffers from a neurological condition which impacts his academic pursuits.

[3] The wife petitioned the court for a divorce and a decree nisi was granted by order of court dated 21st March 2022. In her petition, she applied for periodical and lump sum payments and a property settlement order.

[4] On 28th April 2022, she filed a Notice of application for ancillary relief in which she particularized the reliefs sought. In relation to the son and herself, she seeks from the husband, maintenance of \$2500.00 per month and full financing of the children's future university studies. For herself, she seeks an order that the husband transfers title to a residential property located at Amos Vale together with the furniture and appliances. She claimed ownership of a Toyota Ist motor vehicle and a Kawasaki Mule motor vehicle; absolute ownership of the proceeds of all bank accounts and other financial products held in her name and all personal and real property registered in her name. She also seeks an order that the husband maintains health insurance coverage for her and the two children of the family.

[5] The husband contended that he should be declared sole beneficial owner of the residential property in Amos Vale, both motor vehicles claimed by the wife or alternatively an order that the vehicles are held in equal shares; and that he be declared the sole legal and beneficial owner of a Yamaha YZ250 HP motorcycle and a Toyota Harrier motor vehicle both registered in his name. He asserted that a residence in Mustique was acquired by him before the marriage and that it should be excluded from the matrimonial assets and further that no order of maintenance ought to be made in respect of the wife or son. He urged that the court denies the wife's request for uninterrupted health insurance coverage for the wife. As to the children's university expenses, he submitted that those should be equally shared by both parents. After the trial, the husband's position shifted somewhat.

[6] For the reasons set out in this judgment, it is ordered that the husband transfers to the wife the legal

and beneficial title to the Amos Vale property; that she retains ownership of the two motor vehicles claimed by her; and that the husband pays her the monthly sum of \$1000.00 over an 18-month period. The husband retains all legal and beneficial interests in the Mustique residence and the other two vehicles. No order is made that the husband maintains health insurance coverage for the wife. The husband and wife shall bear their own costs.

ISSUES

[7] The parties identified three issues that arise for consideration. I agree with them that the issues are:

1. What are the matrimonial and non-matrimonial assets;
2. To what property adjustment orders is the wife entitled; and
3. Whether the Court should make financial provision orders in the wife or the children's favour.

ANALYSIS

Issue 1 – Matrimonial and Non-matrimonial Assets

[8] The **Matrimonial Causes Act**¹ ('MCA') empowers the court among other things to make an order:

1. directing either party to the marriage to make one or more periodical payments to the other and/or to some person on behalf of a child of the family for a specified term; and/or
2. that effects the settlement for the benefit of the husband or the wife, property to which the other party is entitled.

[9] When considering such an application, the court must have regard to several factors specified in section 34 of the **MCA**. These include the parties' respective ages, any physical or mental disability of either party, their earning capacity, income, property and other financial resources that each party has or is likely to have in the foreseeable future; the length of the marriage, the parties' respective obligations and responsibilities, their past and prospective financial needs, the standard of living to which the family was accustomed before the breakdown of the marriage; and the parties' respective contributions to the family's welfare (e.g. any contributions made towards the upkeep of the home and taking care of the family; and the value of any benefit that a party may lose because of the breakdown of the marriage.

¹ Cap. 239 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, sections 31 and 32(1)(b).

- [10] The guiding principles as to the application of those provisions are well-established. The wife and the husband referred to them in their written submissions. Suffice it to state at this juncture that some of the leading decisions in which those principles were outlined include **White v White**², **Stonich v Stonich**³, **Michael McIntyre and Margery Anne McIntyre**⁴ and **Miller v Miller**⁵. The paramount consideration is fairness to each party. I shall return to them later in the judgment. At this stage, I turn my attention to identification of the matrimonial assets.
- [11] In their affidavits of means, the husband and wife listed a number of assets that are registered in their respective names. They are the two residences Sunflower House and Sunflower Cottage, the four vehicles (Toyota Ist PV11, Kawasaki Mule PK838, Yamaha motor cycle P6792 and the Toyota Harrier P3528) and a 5th motor vehicle PU464, acquired by the husband allegedly after the marriage ended.
- [12] The parties also alluded to monies held in their respective names in financial institutions in the State but expressed no interest in having those taken into account. Apart from the husband's disclosure of a bank statement addressed to the wife that he opened without her consent, neither party adduced evidence as to their respective savings or investment portfolios. He did stipulate that he laid no claim to those funds.
- [13] The parties are agreed that the wife was the primary caregiver for the children and homemaker and except for a few years when she worked outside of the home, was largely a stay-at-homewife and mother. The husband was the primary financial provider. He purchased the major assets including the vehicles and paid all outgoings in respect of them including licensing and registration, insurance and maintenance expenses. The Toyota Ist and Kawasaki Mule are registered in the wife's name. The others are registered in the husband's. From time to time, the husband rents the Mule.

² [2001] 1 All ER 1.

³ BVI Civil Appeal No. 17 of 2003, delivered on September 29th, 2003.

⁴ GDAHMTAP2013/0024.

⁵ [2006] UKHL 24.

[14] In 1996, he became the leaseholder of the land on which Sunflower House is built. He explained that by virtue of his birth on Mustique, he was able to secure a 99-year lease of two parcels of land therefrom the Mustique Company Limited in 1993. He exchanged those properties for what he considered to be a better one. He subsequently obtained a mortgage and constructed known as Sunflower House on the leased land. Construction was completed around 1996. The residence consists of two self-contained floors, comprising a two-bedroom apartment on the ground floor and a three-bedroom upper floor unit. He rented the house and was able to repay the mortgage completely before marrying the wife in 2001.

[15] The couple moved into the unit on the ground floor immediately after the marriage. The upper floor was rented during that time. When the family eventually moved into the upper floor, the apartment on the ground floor was rented out. The most recent valuation of Sunflower House was commissioned in May 2012 and a value of EC\$561,000.00 ascribed to it.

[16] In 2009, the husband bought Sunflower Cottage on mainland Saint Vincent and the Grenadines for the stated purpose of providing accommodation for the children, who would eventually move to the mainland to attend secondary school. The purchase was secured by a mortgage taken out in the husband's sole name. He recalled that the wife declined to be a signatory to the mortgage agreement. The property was registered in his sole name by Deed of Conveyance No. 167 of 2009. The husband carried out repairs and upgraded the property to make it comfortable for the family. This included re-modelling of the kitchen, bathroom, bedrooms and the ceiling. The wife expended roughly \$50,000.00 in the purchase of furniture and appliances. The husband serviced the mortgage payments from his income.

[17] Around 2020, the wife's father approached the husband with a proposal to invest jointly with him in the purchase of land on Bequia and he agreed. The plan was to purchase the land and resell later at a profit. To obtain the seed money, the husband negotiated a further mortgage on the Sunflower Cottage in the amount of \$80,000.00. When the land in Bequia was eventually sold, he did not liquidate the second mortgage. As a result, there was an outstanding balance of \$122,304.73 on

the mortgage as at April 30th 2022. It was appraised on April 9th 2019 at a market value of \$300,000.00.

[18] When the children started secondary school, the wife moved to the mainland with them. She and they now live at the Sunflower Cottage. Before the breakdown of the marriage, the husband would join the rest of the family in Saint Vincent from time to time. After the marriage ended, the wife would go elsewhere whenever the husband visited.

Wife's Submissions

[19] Citing **Miller v Miller**, the wife submitted that the term 'matrimonial property' is not an immutable, statutory concept such as exists under Scottish law. She quoted from the judgment where Lord Nicholls opined:

'In Scotland ... Matrimonial property means the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance: Family Law Scotland Act 1985, sections 9 and 10. In England and Wales the Matrimonial Causes Act 1973 draws no such distinction.'

She concluded that in view of the parties' concessions regarding the vehicles, the only matrimonial properties are Sunflower House and Sunflower Cottage.

Husband's Submissions

[20] The husband cited **Batcheler v Batcheler**⁶ as authority regarding how the court would determine what property is a non-matrimonial asset. He argued that an analysis of all relevant case law on the issue of 'non-matrimonial' property was captured in **Batcheler** by Smith J. in the Grenada High Court. There, the learned judge opined that three factors must be considered:

'(1) when and where did the asset originate from and what is its nature and value? (2) How have the parties treated the asset over the course of the marriage? (3) Can the parties' needs be met without recourse to the asset?'

⁶ GDAHMT2017/0137, decided June 6, 2019.

⁷ Ibid. at para. [23].

[21] As to the first of those questions, the husband argued that it is not in dispute that he holds a 99-year

lease from the Mustique Company Limited. He submitted that this overarching factor should cause the Court to consider that he does not hold the property in reversion but only a right to possession.

In such circumstances, he said, the Court is restrained from making a property adjustment or settlement order with respect to it.

[22] Citing **Prest v Prest and Others**⁸ the husband noted that in that case, the UK Supreme Court considered section 24(1)(a) of the Matrimonial Causes Act 1973 which is in identical terms as section 32 of the **MCA**. The facts in a nutshell are that the wife Yasmin Prest levelled allegations that her husband sought to conceal his assets by placing ownership in his companies and sought financial remedies against her husband. Lord Sumption SCJ explained that there is no special and wider principle in matrimonial proceedings by virtue of section 24(1)(a)⁹. He opined further:

‘The language of the provision is clear. It empowers the Court to order one party to the marriage to transfer to the other “property to which the first mentioned party is entitled, either in possession or reversion”. An “entitlement” is a legal right in respect of the property in question. The words “in possession or reversion” show that a proprietary right, legal or equitable. The section is invoking concepts with an established legal meaning and recognized legal incidents under general law. Courts exercising family jurisdiction do not occupy a desert island in which general legal concepts are suspended or mean something different. If a right of property exists, it exists in every jurisdiction of the High Court If it does not exist, it does not exist anywhere’.¹⁰

[23] The husband submitted that in real terms, that passage leaves no doubt that the legal effect of the 99-year lease must be given its full legal effect. What this means is that at the end of the term of years, the property will revert to the Mustique Company Limited under the terms of the lease and this holds true even if the remaining term of years were to be devised by Will. The property cannot

⁸[2013] 4 All ER 673.

⁹ At paragraphs 37 and 38.

¹⁰ At paragraph 37.

be mortgaged or sold unless the Mustique Company Limited converts the leasehold to freehold. He reasoned that this is unlikely to be the Company's policy and attitude to indigenous persons and landholdings given the 2002 and 2017 revisions of the **Mustique Company Limited Act**¹¹.

[24] In response to this argument, the wife pointed out that the husband did not in fact produce a copy of his lease of the Sunflower House Property (described as Deed No. 1375 of 1995) but rather a Deed of Surrender No. 1375 of 1994. She noted that it was incomplete and contained only a portion of the habendum. It is a matter of record that the wife lodged a certified copy of the Deed of Surrender No. 1375 of 1994 with her post-trial submissions. It reveals that Deed No. 1375 of 1995 is in fact a surrender of the leases registered as Deed Nos. 2802 and 2803 of 1993. The husband did not produce a copy of the lease.

[25] The wife referenced further, section 32(1)(a) of the **MCA** which authorizes the Court to transfer from one party to another, property held either in possession or reversion. As to **Prest**, she countered that it has no bearing on this case since it decided the question of the Court's capacity to lift the corporate veil, to enable an award being made to one party from property belonging to a company.

[26] The husband submitted that there is a remarkable distinguishing feature between Sunflower House and Sunflower Cottage, in that the valuation methodology is wholly different between the two, since former is a leasehold, and the latter is freehold. He argued that this can be gleaned from the two property valuations. He contended that in relation to Sunflower House, no value was placed on the land so that the \$561,000.00 estimated value was said to be the 'Replacement/Reinstatement' cost. This simply means the costs to replace the structure.

[27] Regarding the second '**Batcheler**' question, the husband submitted that he did not live at Sunflower House before he got married and used it purely for renting as was the underlying intention for the construction. I am constrained to interject that this assertion must be contrasted with his testimony that he decided to acquire property because of the limited space in his grandmother's house which house his grandmother, he and his siblings. I therefore do not accept this as a serious argument. The husband argued further that the rental nature of that property has

¹¹Cap. 153 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

not changed even to date. I make the observation that the property has housed the Trimmingham family ever since the marriage between the parties, whilst one unit has continued to generate rental income for the family. Those two objectives are not in my opinion mutually exclusive.

[28] In answering the third '**Batcheler**' question, the husband argued that the learning in **White, McFarlane**

v McFarlane¹², and **Prest** suggests that properties of this nature should not be considered for 'distribution'.

'Compensation' on the other hand is possible if the value of the asset improved as a result of contributions made by the party who did not bring the asset into the marriage. This was described by LordNicholls in **McFarlane** as 'the financial product of the parties common endeavour'. The husband reasoned that in the case of Sunflower House, its 'value'*per se* is not its market resale value for the purposes of sale, but rather, its replacement value.

[29] He submitted that what the referenced cases demonstrate with regards to 'pre-matrimonial' property, is simply that, by whom, when and how it was brought in to the marriage is of less significance unless the other party's needs can be met without recourse to it. He contended that given the rental nature of the property, it evidently provides a source from which the wife's financial needs could be met depending of course on the order the Court is contemplating.

DISCUSSION

[30] The concept of what property is taken into account for purposes of property adjustment or financial orders has been considered by the Eastern Caribbean Supreme Court many times including at the appellate level. It was pronounced on by the Court of Appeal as recently as January 2016 in the case of **Michael McIntyre and Margery Anne McIntyre**. In that judgment, Blenman JA highlighted **White v White** and **Miller v Miller** in which the House of Lords enunciated the relevant principles.

[31] It is settled law that the source of property is usually, but not the sole determinative factor as to whether it constitutes matrimonial property or non-matrimonial property. One indicium of

¹² [2006] 1 All ER 1.

matrimonial assets is whether the property is acquired during the marriage or otherwise than by inheritance or gift.

[32] In the Grenadian case of **McIntyre v McIntyre**, Justice of Appeal Blenman distilled from **Miller** and **White** the core features as to how matrimonial properties are categorized. She stated:

'In **White** and **Miller**, the House of Lords made a distinction in the source of property that constitutes the assets of a couple upon an application for ancillary relief. Two sources of assets are recognised: (1) property acquired during the marriage otherwise than by inheritance or gift (commonly referred to as the 'matrimonial property') and (2) other property.[See *Miller v Miller* [2006] UKHL 24 at para. 22.]... In **Miller**, Baroness Hale of Richmond stated at paragraph 146 as follows:

"Section 25(2)(f) of the 1973 Act does not refer to the contributions which each has made to the parties' accumulated wealth, but to the contributions they have made (and will continue to make) to the welfare of the family. Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares."¹³

[33] The learning from the referenced cases is to the effect that generally the term 'matrimonial property' refers to assets that a husband and wife jointly acquire by dint of collective endeavours, before the breakdown of the marriage, whether those efforts arose from employment within or outside the home.¹⁴ This includes contributions made by a wife or husband who had sole or exclusive responsibility for the management of the family's domestic affairs. As stated by Lord Nicholls of Birkenstead, matrimonial property is the 'financial product of the parties' common endeavour' while non-matrimonial property is not.¹⁵

[34] As a general rule, non-matrimonial property are those assets brought into the marriage by the respective parties, or property that one of them received as a gift or by inheritance during the

¹³ GDAHMTAP2013/0024 at para. 38.

¹⁴ *Miller v Miller*; *McFarlane v McFarlane* [2006] 1 All ER 1.

¹⁵ At paras. 21 - 23 of *Miller v Miller*.

marriage.¹⁵ There are times when it becomes necessary for the Court in its bid to effect fairness, to treat such other property as matrimonial property. Much would turn on the specific circumstances of each case. The Court will of course look at the conduct of the parties, among other things. What this means is that the Courts for this reason, refrain from drawing a rigid, clear and precise boundary between matrimonial and non-matrimonial property.¹⁶ The court will look at all of the circumstances of each case to determine whether property is matrimonial property.¹⁵

[35] The totality of the evidence leads me to the ineluctable conclusion that the husband always intended that Sunflower House would be the matrimonial home. He made this clear even before the wedding. He explained that when the wife's father inquired of him how he intended to take care of his daughter, he invited the family to Mustique and took them on a tour of the island and showed off his house to them. The father was left in no doubt that he was capable of providing a comfortable life for his daughter. The husband followed through after the nuptials and brought his wife to his home where they lived as husband and wife until their family was enlarged by the birth of their children.

[36] The husband admitted that he considers himself to be a traditional man whose responsibility is to provide for his family. To his credit, he did so seemingly effortlessly, with great pride and in every respect throughout the life of the union, even when it came time to obtain a home on the mainland. I entertain no doubt that it has always been the couple's intention and understanding that Sunflower House and Sunflower Cottage were to be viewed and treated as the matrimonial family homes. Their contributions on different fronts to the family's welfare enabled them to proceed on that footing. I find therefore on a balance of probabilities that both residences are matrimonial assets. I am likewise satisfied that the Toyota Ist, Kawasaki Mule, Yamaha motor cycle and the Toyota Harrier are matrimonial assets.

Issue 2—Property Adjustment Order

[37] The Court is required to consider the nature of the matrimonial assets in determining whether the facts justify an adjustment of the legal and beneficial interests to effect a just and equitable outcome.

¹⁶ Seepara. 26 of *Miller v Miller*, per Lord Nicholls of Birkenhead, where he referred to *White v White*.

It must also have regard to the factors listed in the **MCA**. I turn my attention to those factors at this point.

[38] The wife is 44 years old and the husband is 58. The husband is employed as the Community Liaison Officer on Mustique and the wife is a business entrepreneur who has recently embarked on a fledgling business enterprise with others, engaged in the sale of exotic plants. The husband earns a monthly income of \$9,266.00. The wife indicated that she is not yet benefiting from a regular salary or dividend from the business. She did not disclose her salary from a bookkeeping job she started recently in Bequia with the Bequia Express.

[39] The parties are relatively healthy. The husband is being treated for a non-communicable disease and incurs medication costs of \$350.00 each month. The wife suffers from a respiratory complaint when exposed to irritants in the environment. It emerged at trial that as at 30th September 2021, the wife has a bank balance of \$88,536.07 at a financial institution in the State. She did not disclose this asset. The husband has invited the Court to draw an adverse inference. The wife explained that she did not appreciate that she was required to disclose the holding. I did not find her explanation convincing or satisfactory and therefore draw the adverse inference that she was not forthright to the Court regarding her finances. I hasten to add that the husband did not shed light on his savings and I draw the same adverse inference in relation to him.

[40] The husband will probably remain in his current employ for the foreseeable future. He will no doubt continue to receive rent from whichever of the units he decides to rent at Sunflower House going forward. The wife still has some working years ahead and should be able to generate a decent income from her book-keeping and entrepreneurial undertakings, to sustain a lifestyle commensurate with the one to which she is accustomed.

[41] At 19 ½ years, the Trimmingshams enjoyed a longer than average marriage. They obviously approached their union with an eye to achieving comfort and equity in the division of labour and rewards. The wife worked outside of the house for short periods but as the main caregiver for the

children must be viewed as contributing equally to the successes and achievements (including acquisition of material possessions) enjoyed by them. It is evident that their standard of living was at least at the level of the lower middle class and possibly above. There is not sufficient evidence to ascertain where they fall. The Court is not in a position to determine what their reasonable monthly expenses would entail, since neither provided specifics. Their need for housing, clothing and food is a given. The ability to assign a figure to any of those categories based on the lifestyle to which they are accustomed, has eluded me.

[42] As to a benefit that would be lost due to the breakdown of the marriage, the wife has highlighted the possibly lack of health insurance. However, under cross-examination she said that she would be able to pay the premiums on her own from her savings. For his part, the husband testified that the policy covers a wife and not an ex-wife. Even if he was able to negotiate an arrangement whereby the insurer would continue to offer coverage to the wife, the arrangement would prove problematic if he re-marries.

[43] At this juncture, the Court is concerned with determining to which of the parties should the interests in Sunflower House and Sunflower Cottage be allocated. The parties made very comprehensive submissions which have been considered in full by the Court. It suffices to highlight some of the main points raised.

Wife's submissions

[44] The wife argued that the needs and sharing principles enunciated in **Miller and Martin v Martin**¹⁷ would be served by an order that the husband convey Sunflower Cottage to her free from encumbrances and that he be declared the absolute owner of Sunflower House. She pointed to Stamp LJ's statement in **Martin v Martin** that:

'It is of primary concern ... that on the breakdown of the marriage the parties should, if possible, each have a roof over his or her head. That is perhaps the most important

¹⁷ [1977] 3 All ER 762.

circumstances to be taken into account in applying s25 of the Matrimonial Causes Act 1973 when the only available asset of the matrimonial home.'

Husband's submissions

[45] The husband accepted that there is no hard and fast rule that requires the Court to exclude from consideration as matrimonial property, assets acquired before the marriage or by way of gift or inheritance. He acknowledged that **White v White** and **McFarlane v McFarlane** illustrated that such treatment is not set in stone, but rather that such property can and sometimes:

'... represent[s] a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property'.¹⁸

[46] He cited further **Lawrence Wheatley v Raishauna Wheatley**¹⁹ in which Thomas J.A. [Ag] took a similar stance and opined that property acquired outside the time of the marriage may be included as matrimonial property. The learned Justice of Appeal quoted the learned authors of **Rayden and Jackson on Divorce and Family Matters** as follows:

'Pre-marriage assets, inherited wealth, or gifts received, during the marriage represent assets that derive from sources external to the marriage; however they are not to be quarantined and set apart from the other assets in the case...'.²⁰

[47] The husband contended that the Court should take into consideration that both properties are registered in his sole name and that he serviced the loans in respect of both without financial

¹⁸ At pg. 10 a-c of *McFarlane v McFarlane*.

¹⁹ BVIHMT2007/0006.

²⁰ At paragraph 96.

assistance from the wife. He cited the decisions of the House of Lords in **Stack v Dowden**²¹ and the UK Supreme Court in **Jones v Kernott**²² and noted that **Jones v Kernott** was followed by the Eastern Caribbean Court of Appeal in **Teckla Edwards v Dr. Alvin Edwards**²³.

[48] He recited that the parties in that case were cohabitants who later married and had acquired property during the marriage in relation to which the court was asked to determine the beneficial interest. Noting that the State of Antigua and Barbuda is unique, in that interest in matrimonial property is determined under section 19 of the Married Woman's Property Act²⁴, he submitted that the only limit the Court has in that jurisdiction (as the Board observed in **Abbott v Abbott**²⁵) is that the Court does not have the wide powers of making property adjustment orders which may also benefit the children of the marriage.

[49] The husband contended that Sunflower Cottage is a matrimonial asset that was acquired so that the children of the family would have their own home on Saint Vincent when they attend school on the mainland. He argued that there is no other evidence that it was intended that the wife should have a beneficial interest in the property. The law operates as such where a property is in a single name and there is no presumption of joint beneficial ownership. He maintained that the wife should not benefit from that property other than by an award to her of a lump sum equivalent to 33% of the equity in it. He submitted that no property adjustment order should be made in her favour in relation to it. With respect to Sunflower House he contended that no property adjustment whatsoever should be made.

DISCUSSION

[50] I have already indicated that I am satisfied from the evidence and the law that both residential properties are matrimonial assets. I remain mindful that it is now established that when evaluating the parties' respective contributions to the family's welfare, the Court is not at liberty to ascribe to

²¹[2007] UKHL 17.

²²[2011] UKSC 53.

²³ANUHC VAP2012/0040.

²⁴ Cap. 267 of the Revised Laws of Antigua and Barbuda 1992.

²⁵ (2007) 70 WIR 183.

the main breadwinner's a greater value than those of the homemaker spouse. Indeed, in **White v White** and **Stonich v Stonich**, this point is underscored. In the words of Saunders JA:

‘... The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little a contribution that is less measurable but equally important to the family structure. In the vast majority of cases where these two types of contribution are in issue – that of a homemaker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of gender discrimination in degrading the woman's role in the home.’²⁶

[51] It strikes me as being manifestly unfair in this case, to sanction an outcome where the husband retains both residences simply because he earned the majority of the income in the marriage and because he had acquired Sunflower House before the marriage. This would amount to a total disregard for the wife's substantial contributions to the family's welfare and leave her to fend for herself as she approaches the normal retirement years. It would also ignore the husband's clear signals that he built the house in Mustique for his own use and that it was the parties matrimonial home until the children had to go on to secondary school. In my opinion, fairness demands that the husband and the wife each leave the marriage with adequate housing from their joint matrimonial assets. A property adjustment is therefore in order in accordance with section 32 of the **MCA**.

[52] The evidence shows that the husband reaped to the exclusion of the wife, his share of the sizeable profits derived from the purchase and re-sale of the Bequia property, although the seed capital was extracted from the equity in Sunflower Cottage. I accept that, but for that withdrawal, the mortgage on the Amos Vale property would very likely have been fully discharged. In the circumstances, fairness dictates that he be made to make this right, by paying off the mortgage and transferring Sunflower Cottage to the wife, debt-free on or before August 31st 2023, together with all furniture, furnishings and appliances. I hold further that it is fair for the husband to retain all interests in the Sunflower House together with all furniture, appliances and furnishings.

²⁶ At para. 29 of *Stonich*.

[53] In my estimation, this adjustment is the best that can be attained on facts. I am satisfied that as to the housing needs of the parties it approaches equality as far as possible.

Issue 3—Financial Provision Order

[54] Following the trial, the wife withdrew her request for maintenance of the son and for the husband to finance the children's university education. She expressed satisfaction with the husband's undertaking to take care of those matters and also with the current arrangements whereby the husband has granted his daughter access to funds to cover her and her brother's living expenses and those of the household at Amos Vale (Sunflower Cottage). I therefore make no order for maintenance of the son or directing the husband to pay for the children's university education.

[55] The husband argued that in round, the evidence highly favours the Court making a financial provision orders by way of a lump sum payment to compensate the wife for her contribution to the welfare of the family and to meet her needs without crippling him. He submitted that the evidence demonstrated that the wife has sufficient means and employment to sustain herself, whilst he continues to take care of both children and the expenses at Sunflower Cottage since the breakdown of the marriage.

[56] The wife submitted that in **Miller v Miller**, Lord Nicholls cautioned that the court must be mindful of economic disadvantage caused by the way the parties conducted their marriage. She pointed to the husband's answer in cross-examination when asked if he was the sole breadwinner, to which he replied, 'Yes, as a father and a husband that is how I was brought up. That is my sole responsibility until death do us part.'

DISCUSSION

[57] In seeking to make an order that is fair to the parties, I remind myself that the wife is employed, has embarked on a business venture and for the time being, the daughter has access to monies from the husband to take care of the household expenses at Sunflower Cottage. I infer that the wife benefits from such disbursements, particularly in the area of utility bills and the general upkeep of the property. No doubt this will cease when the children leave for university, return to Mustique to live or become self-sufficient. She will probably continue to rent the Mule. In the circumstances, the

wife's standard of living is not likely to suffer in the short term. It appears that in the medium term and beyond, her future looks bright provided that the business venture takes off and she remains gainfully employed for the foreseeable future.

[58] She did not disclose how much she earns at present. Her highest level of education was completion of Secondary School. Although the husband's secondary schooling was interrupted, he had further training as an auto mechanic and now commands what I consider to be a much larger salary than the wife is likely to earn from book-keeping. To my mind, the husband's intake on a monthly basis probably exceeds hers, as do his outgoings.

[59] Both parties may eventually re-marry and this must be factored into any award of financial provision to the wife. The Court must seek to counter any perceived disadvantage to the wife occasioned by the breakdown of the marriage, by ensuring that an award is reasonable in terms of the amount, extent and the ability of the husband to pay. I am satisfied that within the next 18 months, the wife will be able to place herself in better financial position than at present and should be able to maintain for herself a comfortable lifestyle akin to the one that subsisted during the marriage. Taking all of this into account, I am of the view that it is just and equitable to make a financial provision order in the wife's favour. I therefore award her pursuant to section 31 of the **MCA**, the monthly sum of \$1000.00 as maintenance to be paid by her husband each month for the next 18 months, commencing on July 31st 2023.

[60] This I believe would assist her in preparing for fully independent living, without detriment, after the children move on. The monthly instalments are designed to ensure that the husband does not become overwhelmed with a flood of multiple large disbursements.

Miscellaneous

[61] It is unnecessary for the Court to make a determination regarding the allocation of the vehicles since the parties have arrived at a settlement in relation thereto. As a matter of formality, I nevertheless order that the wife retains the legal and beneficial interests in the Toyota Ist and the Kawasaki Mule while the husband retains all legal and beneficial interests in the Yamaha motorcycle and Toyota Harrier. The husband is required to provide an accounting to the wife of all

rent received in relation to the Mule and pay over to the wife such rent less all disbursements on or before August 16th 2023. The wife shall reimburse him in respect of any deficit arising after deductions for associated expenses. The husband must deliver the keys to the Mule to the wife by August 15th 2023.

DISPOSITION

[62] It is accordingly declared and ordered:

1. Lolita Trimmingham's application for a property adjustment order is granted in terms of this order.
2. Mr. Wayne Trimmingham shall on or before August 31st 2023 convey to Mrs. Lolita Trimmingham legal and beneficial title to the Amos Vale residential property, Sunflower Cottage, registered by Deed of Conveyance 167 of 2009, free and clear of all encumbrances, together with the furniture, furnishings and appliances in it, and shall execute all documents necessary to effect the transfer.
3. Mr. Wayne Trimmingham retains all shares and rights to the leasehold interest in the Mustique residential property Sunflower House being lot V2 on plan Gr 492, registered by lease 1375 of 1995, together with the furniture, furnishings and appliances in it.
4. Mrs. Lolita Trimmingham is entitled to and shall retain all legal and beneficial interest in the Toyota Ist motor vehicle registration number PV111; and the Kawasaki Mule motor vehicle registration number PK838.
5. Mr. Wayne Trimmingham shall on or before August 15th 2023 deliver the keys to the Kawasaki Mule motor vehicle registration number PK838 to Mrs. Lolita Trimmingham; and shall provide her with a full accounting of all rental income received in respect thereto; and shall pay to her any such rentless payments made for annual license, insurance fees and maintenance costs. On receipt of such accounting, Mrs. Lolita Trimmingham shall reimburse Mr. Wayne Trimmingham in respect of any deficit arising after deductions for disbursement of the insurance, licensing and maintenance expenses.
6. Mr. Wayne Trimmingham shall pay to Mrs. Lolita Trimmingham, maintenance at the rate of \$1000.00 per month for a period of 18 months, commencing on July 31st 2023 and continuing each and every month thereafter on the last working day of each month.

7. No order is made in respect of the children of the family.
 8. Mr. Wayne Trimmingham is entitled to and shall retain all legal and beneficial interest in the Yamaha YZ250 HP motorcycle registration number P6792 and the Toyota Harrier motor vehicle Registration Number P3528.
 9. Each party shall bear his or her own costs.
- [63] I wish to express gratitude to counsel for their very comprehensive submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar