

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHMT2017/0140

BETWEEN:

JEANNETTE KHODRA DARIAH nee DESROSES

Petitioner

And

FRANCIS DARIAH

Respondent

APPEARANCES:

Ms Kim St. Rose of Counsel for the Petitioner

Mr Horace Fraser of Counsel for the Respondent

2022: February 14;
September 12.

DECISION

Introduction

- [1] **PHILLIP, J:** On 8th January 2020, the petitioner filed a notice of application for ancillary relief under section 24 (a) Divorce Act¹ (“the Act”) supported by her affidavit of even date. The nub of the application is the marital home on lands situated at Vanard in the Quarter of Anse La Raye in Saint Lucia, registered as Block 0840B Parcel 256 in the respondent’s sole name (“the property”). The petitioner seeks a property adjustment order and transfer of the property into her name or a share in the property equal to the amount she contributed and the sum the respondent owes her. The respondent filed an affidavit in response to the application on 20th May 2020, requesting that the parties complete the arrangements for voluntary settlement previously engaged for the sale of the property. That they deduct the sum of \$50,000.00 for the benefit of the respondent’s three children of a previous marriage, and the parties share equally the balance of the proceeds of the sale.

¹ Cap 4:03 of the Revised Laws of Saint Lucia

- [2] The court adjourned the application several times for the parties to settle the matter voluntarily, but they could not agree. On 18th November 2021, the court gave directions for the trial of the ancillary relief application and ordered: that the petitioner may file and serve a reply regarding the application by 10th December 2021; the parties' affidavit(s) shall stand as their evidence in chief and they shall attend for cross-examination at the trial, except their attendance is dispensed with in writing; that the parties shall file and exchange brief written submissions with authorities on the legal principles they intend to rely on at the trial of the application by 25th January 2022; and the trial of the application on 14th February 2022.
- [3] The petitioner filed her affidavit in reply on 10th December 2021 and her submissions with authorities on 24th January 2022. The respondent filed no submissions.

The Parties' case

- [4] The petitioner's case is this application is for a share of the respondent's separate property to which she made substantial contributions during the marriage. The petitioner contends she is entitled to a beneficial interest in the property and deposes² that there was a discussion, agreement, or understanding that she would have a share of the property. Consequently, she invested heavily into the property, which the respondent has not refuted, but instead claims the petitioner is entitled to no more than one-half of the property's value. However, the petitioner asserts that the evidence shows her contribution financially to the home and the family's welfare was substantial. Thus, she seeks a property adjustment order and transfer of the property into her name or a share in the property equal to the amount she contributed and the sum the respondent owes her.
- [5] The respondent's pithy position is that the case does not turn on the evidence of either party. The respondent recognizes the petitioner's contribution, so although he is the property owner, he says the petitioner is entitled to a half share, considering her contribution to the family and the property.

² Affidavit filed 8th January 2020, para 4

Issues

[6] The application has proceeded based on the property being the respondent's separate property; however, on perusal of the parties' evidence and case, it may suggest otherwise. Indeed, the Court of Appeal affirmed in ***Jonathan David Lesfloris v Glenda Dale Lesfloris (nee Henry)***³ that:

"[89] Unlike the situation in the UK and in the countries of the Commonwealth Caribbean with matrimonial property law identical to the UK, there is no concept of matrimonial property in St Lucia with respect to which a court can determine the extent of the ownership interest of the parties to the marriage. In accordance with article 1192 of the Civil Code, the property of parties to a marriage in St Lucia is either community property or separate property. If it is community property, then each party owns a community moiety or half share in the property; if it is separate property then it is owned entirely by one or the other of the parties. The approach taken by the UK courts in cases like *White v White*, *MAP (Petitioner) v MFP (Respondent)*, and *Stack v Dowden* that treat with the property of parties to a marriage as matrimonial property which can be distributed to the parties as the court sees fit, cannot be applied to St Lucia. [footnotes omitted]

[90]

[91] In St Lucia though, the strict property rights of the parties need to be resolved before the court in divorce proceedings can distribute property "without having to ascertain the shares of the parties to the marriage". The court in St Lucia must first determine what (if any) property is the community property of the parties and what (if any) is the separate property of each or either of the parties." [underlined added]

[7] Therefore, I must first probe whether the property is property of the community or the respondent's separate property. Secondly, I must determine whether the respondent should transfer the property or a share to the petitioner.

Discussion

[8] I turn now to consider the issues that engage the court's attention.

Whether the property is property of the community or the respondent's separate property

[9] The petitioner deposes that before the marriage, the respondent owned the property (a concrete two-bedroom house that was unfinished), which was his separate property and exhibits a copy of the land register.⁴ The house had no bathroom, toilet or running water inside. The bedrooms had no doors. When they married in 1994, the respondent told her he would like her to have a share

³ SLUHCVP2015/0018 (delivered 13th December 2019)

⁴ Petitioner's affidavit filed 8th January 2020, para 3 and Exhibit "JD1"

in his property. She asked him if he was sure because she knew he had been married before and did not want to put my money into anything that would jeopardize my finances. He told her, "I will marry you so you can have a share in this property". She believed him because at that time and for some time after, she trusted him absolutely.⁵

[10] The petitioner sold her previous home, a small two-bedroom wooden house, from which she realized \$3,000.00. She used that money to make the respondent's house more comfortable for them by putting in a toilet and bath, cupboards and sink in the kitchen and doors to the bedrooms. The bedrooms were so tiny that she had to break the partition between one bedroom and the space designated for the toilet and bath. This was to accommodate a double bunk she subsequently bought so the respondent's two daughters and her two daughters could sleep in that bedroom.⁶

[11] Further, after the bus was damaged, the petitioner sold the wreck, and with the \$17,000.00 she got from its sale, she repaired the bathroom, which was leaking and extended and reconfigured the marital house. There were materials left over after the renovation, so they extended the house further to put a flat upstairs that housed their master bedroom and a small study for the petitioner. It took two years to construct the upstairs as the builder was working alone.⁷

[12] The respondent's evidence is that he had the property before he met the petitioner and built the marital house with a total mortgage of \$50,000.00 with the help of my ex-wife Matilda Dariah.⁸ He noted that the information contained in the petitioner's first affidavit is misleading, out of sequence and far from the truth.⁹ He acknowledged there were renovations to the house. He funded the renovations with money saved over many years and contributions made by my ex-wife Matilda and her family for hip replacement surgery for his daughter Indira. It took about four years to complete because he was the only one paying for materials and labour.¹⁰

⁵ Ibid, para 4

⁶ Ibid, para 5

⁷ Ibid, para 12

⁸ Respondent's affidavit, paras 7 and 17

⁹ Ibid, para 3

¹⁰ Ibid, paras 5 and 8

- [13] In cross-examination, the respondent accepted that the petitioner invested in the property the \$3,000.00 proceeds from selling her two-bedroom house. Still, he disputed that the investment was to complete the house for the family to move in. The respondent denied that there was a conversation about the property and the petitioner jeopardising her finances. He did not accept that the marital house was incomplete when he met the petitioner. He stated the house had doors and windows but no indoor bathroom and toilet. There was a side step to access the house, but the front step was not there. It was not titled but had special plastering, and one bedroom had closets. When he met the petitioner, the house was rented to a company running wires for the electricity company.
- [14] The respondent indicated that the marital house initially had three bedrooms; now, it has five bedrooms and a study. He accepted that the petitioner contributed to the marital home moving from two to five bedrooms and that she was neither selfish nor kept her money for herself. Also, in cross-examination, the respondent indicated that the marital house is community property because the petitioner lived there and did everything in the family. He concluded that he dealt fairly and squarely with the petitioner, so the law should consider half-half.
- [15] The Civil Code of Saint Lucia¹¹ (“the Code”) and the Act prescribe the applicable law for ancillary relief matters. The Code’s provisions govern what constitutes community or separate property, and the Act stipulates the power of the court to settle or transfer and award the property to the parties. The provisions of the Code, so far as material to this case, state:
- “1190. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.
1191. Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles.
- 1192.
- (1) The property of persons married in community is divided into separate property and the property of the community.
- (2) Separate property comprises—

¹¹ Cap 4:01 of the Revised Edition of the Laws of Saint Lucia

- (a) the property, movable and immovable, which the spouses possess on the day when the marriage is solemnized;
 - (b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse;
 - (c) property, movable and immovable, acquired by succession, or by donation or legacy made to either spouse particularly;
 - (d) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived; and
 - (e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.
- (3) Property which is acquired by the husband and wife during marriage in any manner different from that above declared is the property of the community.
(*Substituted by Act 34 of 1956*)

1193.

- (1) Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired after marriage, is admitted or proved to have been acquired in one of the ways set out in article 1192, or to otherwise belong to one of the spouses only.
- ...
- (2) Where spouses purchase property in their joint names such property falls into the community unless it is expressly stated at the time of purchase that they are purchasing with their separate funds.
(*Substituted by Act 34 of 1956*)

1194. Income and earnings are the separate property of that spouse from whose separate property or by whose sole labour they come, without prejudice, nevertheless, to the liability of the spouses to contribute towards the education and the support of the children and the expenses of marriage.

In case of disagreement the judge determines the contribution, if any, to be made by either spouse in accordance with the duties, liabilities, means and circumstances of the spouses. (*Substituted by Act 34 of 1956*)

...

1198. Property acquired during marriage with separate funds or in exchange for separate property is separate property. (*Substituted by Act 34 of 1956*)”

- [16] At the outset, I must note that the petitioner's evidence is unchallenged. The respondent's counsel did not cross-examine her except to ask - whether the respondent lives in the marital home. She responded that he no longer lived there for five years, to 2022. On the other hand, the petitioner's counsel carefully cross-examined the respondent.
- [17] I accept the petitioner's evidence of the conversation about the property, her concerns about jeopardizing her finances, and the respondent indicating his desire for the petitioner to share in the property. The respondent did not refute this evidence in his affidavit. He did not confront the petitioner on it or any other aspect of her evidence. The petitioner would not likely have been so free and unselfish with investing and contributing her money to the property as the respondent admits she was. Further, the respondent's evidence of funding the renovations with funds saved for his daughter's surgery because she immigrated to Canada and received free medical care is inconsistent with the evidence of when the renovations were done. He has provided no evidence to substantiate this position.
- [18] This case is not one that easily fits into the confines of the provisions of the Code cited above. There is no dispute that the property is registered in the respondent's sole name and acquired before the marriage. Accordingly, *prima facie* under article 1192 (2) (a), this property that the respondent possessed on the day the marriage was solemnised should be his separate property. However, it is equally not disputed that the property was the parties' marital home. The petitioner also invested her funds, the \$3,000.00 proceeds from the sale of her two-bedroom house, to renovate the house and contributed to the expansion of the marital home from three bedrooms to five bedrooms and a study that it is now. Therefore, it begs what is the effect, if any, of the petitioner's investment and contribution to the property.
- [19] From the parties' evidence, it is clear that the property, now the subject of the ancillary application, is quite different from the respondent's original separate property. The respondent's separate property initially comprised a two or three-bedroom concrete house. This house was subject to an initial mortgage of \$50,000.00 and had no bathroom, toilet or running water inside and no inner doors to the bedrooms or a front step. However, the present marital home, which is mortgage free, has an upstairs with five bedrooms (including a master bedroom) and a study. It has the inside toilet and bath, the kitchen cupboards and sink, and the bedroom doors from the initial renovations.

Consequently, I find that the present marital home, the subject of the ancillary application, was acquired during marriage through the parties' joint efforts.

- [20] Articles 1192 (3) and 1193 (1) of the Code are instructive. The present property, having been acquired in a manner different from that prescribed or declared by article 1192 (2) (b) of the Code, that is, from the parties' joint efforts and resources, makes it a property of the community. I believe the respondent's voluntary acquiescence to the petitioner's involvement in the various renovations and expansions bolsters this. It demonstrates an intention and acceptance that they owned the property jointly and the property of the community, and I so find.

Whether the respondent should transfer the property or a share to the petitioner

- [21] This issue is governed by sections 24 and 25 of the Act, the relevant provisions of which provide:

“24. Transfer and settlement of property and variation of Settlements

(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of sections 28 and 32(1), make any one or more of the following orders, that is to say—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) ...

25. Factors to be considered by court

(1) It is the duty of the court in deciding whether to exercise its powers under sections 22, 23 or 24 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) contributions 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;
- (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring;

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.

...”

- [22] Before considering the factors under section 25 cited above, it is apposite that I indicate that having determined that the property was the property of the community, the parties *prima facie* share the property equally. Also, I note the court’s power under section 24 of the Act, as the Court of Appeal clarified in the ***Lesfloris*** case (para [42]) that:

“... a transfer of property order can be made under section 24 of the Act with respect to community property, because orders under section 24 are made upon or after the granting of a decree of divorce, which decree not only dissolves the marriage but also dissolves the community, thus terminating the community ownership of property by the parties and leaving it open to the court to order the transfer by one party to the other of the whole or part of any property which was community property prior to the dissolution of the marriage.”

Consideration of the section 25 factors

- [23] The court’s task is to determine, having regard to the factors listed in section 25 (1) of the Act, whether to make an order for the transfer of the respondent’s half share or a part thereof in the property to the petitioner to place her, so far as it is practicable, in the financial position in which they would have been if the marriage had not broken down and they had adequately discharged their financial obligations and responsibilities towards each other. The court may regard the parties’ conduct if it is just to do so. I would briefly consider the factors and examine the evidence material to the matters under consideration.

The parties’ income, earning capacity, property, and other financial resources

- [24] Both parties are retired public officers. The petitioner deposed that she receives a monthly pension of \$2,395.00. Occasionally she gets temporary employment, especially to assist in meeting the cost of caring for her mother and providing food for her unemployed sister. The latter resides with her while receiving chemotherapy. She has no other source of fixed income and no other home but the marital home in which to live. Presently she has a bakery job to assist with meeting these expenses, earning \$300.00 weekly, but she does not know how long this job will last. The petitioner estimates the property’s value is about \$500,000.00 - \$550,000.00 but could not provide the court with a copy of the valuation commissioned by the respondent.

- [25] The respondent has provided no evidence on his income, earning capacity, property or other sources of income. Still, the respondent is a retired police officer who invested in a Senior Citizens Investment Plan with Financial Investment Consultancy Services (“FICS”).¹² So one would expect him to receive a pension and the FICS investment as an additional source of income.

The parties’ financial needs, obligations and responsibilities

- [26] The petitioner’s evidence is her medication cost approximately \$185.00 monthly. She has a vehicle loan repaying \$453.00 monthly and spends at least \$300.00 on car fuel monthly as her mother resides in Micoud and often visits due to her poor health. The petitioner assists her mother, who is 83 years old and has dementia, in paying a water bill of \$48.00 and contributes \$150.00 to her food monthly. Also, she usually gives about \$100.00 to assist in paying for her 24-hour caretaker. Sometimes she gave a larger sum, but, being retired, she cannot now afford more.
- [27] The respondent has again provided no evidence of his financial needs, obligations or responsibilities. There is evidence, though, from the petitioner and the respondent himself that he did work after retirement. Therefore, it is reasonable to presume that his pension, like the petitioner’s, is inadequate to meet his needs, obligations and responsibilities.

Standard of living enjoyed by the parties

- [28] Neither party gave evidence of the standard of living they enjoyed before the divorce. Still, the parties were both relatively senior public officers - the petitioner, a Master’s degree holder and acting vice principal of a secondary school, and the respondent was an acting Sergeant of Police in the Royal Saint Lucian Police Force. They owned a five-bedroom home (including a master bedroom and study), were able to raise loan financing to engage in various investments, and had more than one vehicle. Accordingly, I would hold that the parties, at the very least, enjoyed a middle-income lifestyle.

Age of the parties and duration of the marriage

- [29] The petitioner and respondent were respectively 34 and 39 years on their wedding date on 1st May 1994 and are now 62 and 67 years old. There is no significant age disparity. The marriage was just over 23 years on the grant of the *decree nisi* order on 14th November 2017.

¹² Respondent’s affidavit, para 10

Physical or mental disability of the parties

- [30] There is no evidence of either party suffering from a physical or mental disability. Still, the petitioner indicated that she is now hypertensive due to the immeasurable stress from the marriage breakdown caused by the respondent. She also suffers from glaucoma. While in cross-examination, the respondent stated that he spent part of the proceeds from selling the house to the petitioner's older daughter on his sickness. He also admitted that he was recently and is still sick but provided no details of his condition.

Contributions of the parties to the welfare of the family

- [31] The evidence suggests that both parties contributed significantly to the family's welfare. The parties took care of the family's expenses from a joint account into which both parties deposited their salaries. In cross-examination, the respondent confirmed that two of his children of the family suffered from sickle cells and were often sick as expected. The petitioner helped but did not take care of them totally. She cooked for the children and sometimes stayed up at night assisting him when the children were sick. He did not accept that the petitioner took care of the children to adulthood or that she changed their diet so that they could be better. He did not accept that the petitioner was a caring stepmother to the children.
- [32] There is no specific evidence as to the elements of the homelife. Still, one would expect that it was a mutual sacrifice of the parties for the family's benefit while the petitioner was studying in Trinidad and the respondent was the only parent at home. The children were still relatively young then. Similarly, when the petitioner immigrated to Canada. Although the children were much older then, it could not have been a walk in the park for the respondent as the petitioner appears to make it out to be. In the circumstances, I find that both parties contributed to the welfare of the family financially and as homemaking and caregiver, albeit the petitioner may have contributed more.

Value of the lost chance to parties by reason of the dissolution of the marriage

- [33] There is no evidence by either party that they will lose the chance of acquiring any benefit from being married (for example, a pension) because of the divorce.

Conduct of the parties

- [34] In my view, the respondent's conduct in managing the financial affairs of the petitioner in her absence, especially her pension and gratuity, is a significant consideration. The petitioner deposes, among other things, that about November 2007, the petitioner purchased a third bus partly to employ my daughter, Janel's husband, who was unemployed then. She borrowed \$65,000.00 from the Credit Union to make this purchase and paid \$2,000.00 monthly in repayment. After about six months, her son-in-law left Saint Lucia for Canada. A driver, namely Vicky Felix, was employed to run the bus. Every week the petitioner went to Scotiabank to make deposits of \$500.00 to repay the loan.
- [35] Around 2011, the petitioner got an opportunity to work in Canada. She took early retirement and accepted the job in Canada, where she worked for six years, earning approximately Cdn. \$1,600.00 monthly and sending all she made back to Saint Lucia to the respondent. After the petitioner left Saint Lucia for Canada, Vicky Felix made the bus loan repayment to the Credit Union. He paid himself with one week's earnings and gave the balance of the money to the respondent. The respondent maintained the bus from this sum and retained the balance.
- [36] When the bus loan was repaid, the respondent received the additional \$2,000.00 previously paid on the bus loan, which he has never accounted for to the petitioner. He received these sums for the next three years, amounting to over \$72,000.00, until the bus was involved in an accident in September 2010 [sic 2017]. The respondent did little to assist; when the petitioner returned from Canada in 2017, she paid to tow the bus to their home at Vanard from where it was stored. She later sold the wreck and, with the proceeds, purchased a new solar water heater to replace the one on the marital home, which was not working.
- [37] Further, while the petitioner was in Canada, the respondent collected the \$500.00 rent from her daughter for six years, amounting to \$36,000.00. He also collected rent from the tenants, which she had found, of two bedrooms that they had added to their home of \$500.00 each for six months, amounting to \$6,000.00.

- [38] The petitioner added the respondent's name to her account at the Credit Union to facilitate the ease of making withdrawals to assist in paying her mother's medical expenses and for her caretaker. She gave the respondent permission to withdraw sums and make deposits. She gave him no authority to take loans. Still, the respondent negotiated two loans for purchasing a bus and for personal reasons, respectively, for \$23,000.00 without her permission or knowledge. The two loans were repaid monthly at \$800.00 from the petitioner's said account from the \$1,250.00 deposited monthly out of my pension in the Credit Union. The petitioner was saving \$1,250.00 to assist her during retirement. The loans were not for our home or family, and he had no authority to make those withdrawals. Her mechanic, Theophilus Charles, subsequently told her the respondent sold him the shell of the said bus, having sold the parts to other persons.
- [39] While in Canada, the petitioner's gratuity of \$135,000.00 was deposited in her account. The respondent called and told her he was working with a security company selling shares. He wanted her to invest in the Caribbean Guardian Security Co. Ltd. ("the security company"). The petitioner questioned the respondent about the proposed investment in the security company as she was unsure. She was abroad and could not determine whether the investment was legitimate or good. The respondent kept calling her in Canada, putting pressure on her and spoke convincingly. Because he was in Saint Lucia, where he had access to her funds, she felt pressured into agreeing for him to make the proposed investment. He withdrew various sums at different times, amounting to \$120,000.00, for which I have never seen a share certificate or any proper accounting. The significance of the respondent not proposing to invest any of his money did not occur to her then.
- [40] The petitioner continued that when she eventually returned to Saint Lucia and visited the security company's office in Rodney Bay, she received a few payments totalling \$3,000.00 from a lady. Finally, the lady gave the petitioner a personal letter acknowledging receiving her money. She noted that the acknowledgement did not come from the company, as it was not on its letterhead. She searched the Companies Registry and noticed that the only shareholder of the security company was Mrs Christina Duncan-Antoine, the lady who gave her the letter acknowledging the debt. Between 2011 and 2018, the security company issued no shares.¹³ She, therefore, concluded that

¹³ Copies of the Return of Allotments for the said company filed on 23rd September 2011 and the annual returns filed on 23rd July 2019 are exhibited as "JD21" and "JD22".

the loan of her money to Mrs Christina Duncan-Antoine was a personal loan made by the respondent, which she did not authorise.

[41] In contrast, upon retirement in 2009, the respondent got a gratuity of \$87,770.00 but told her he received only \$40,000.00. He gave the petitioner \$1,000.00 to pay off a washing machine she had purchased for the household at Courts. He told her he had deposited the balance at FICS.

[42] The respondent's evidence is that the petitioner purchased the bus and route permit for her son-in-law, Ashmead Mommerelle, who was a bus driver on the Bexon route. Shortly after the petitioner bought the bus, Ashmead decided to travel to Canada for employment. The respondent and Mr Patrick Lubin worked the bus on a secondary school contract to repay the loan at the Credit Union. That went on for some time until Mr Lubin recommended Mr Anthony Felix, who was responsible for generating revenue from the bus. In 2010 the bus was in an accident. He borrowed \$20,000.00 from FICS to repair the bus, which was settled by insurance almost 18 months later. In October 2012, he was visiting the petitioner in Canada when they were informed of another accident with the bus. He had to purchase a used shell for the bus, and several parts were damaged. The petitioner told him to sell the bus and the route permit because it was not profitable. However, he tried his best and kept the bus running on the road with almost no profit until he completed the total loan repayments at the Credit Union. The bus was entirely written off after it got into a third accident. At that time, we were trying to save a little to buy parts to repair the bus, but the petitioner collecting cash from the driver every week hampered this. The petitioner sold the bus in parts and kept the proceeds to herself.

[43] The respondent stated that the petitioner's gratuity was on a separate account, and he never had access to her gratuity. Still, he knew the petitioner, and Mrs Christina Duncan-Antoine spoke several times via the magic jack. The petitioner told him their discussions were very cordial, and she was satisfied with the discussions. Within two weeks, the petitioner authorized me to withdraw a sum of \$40,000.00 to pay Mrs Duncan-Antoine. Shortly afterwards, the petitioner requested him to give another sum of money to Mrs Duncan-Antoine. He suggested that the petitioner hold on and allow others to contribute, but she indicated the significant cash injection was to expedite the security company's upgrade. She would have a place to work upon returning to Saint Lucia. The petitioner made further contributions other than the amounts stated above. The respondent

indicated that on no occasion did he tell the petitioner to invest or persuade her in any way to invest her money. He only knew Mrs Duncan-Antoine for about two weeks, and all their conversations were professional. There was no friendship between them. The petitioner acted according to her judgment based on discussions with Mrs Duncan-Antoine.

- [44] I recall that the petitioner's evidence is unchallenged. However, I do not accept that the respondent coerced the petitioner into investing in the security company or withdrew her gratuity and invested in it without her knowledge or authorization. Still, I find that the respondent did not adequately discharge his financial obligations and responsibilities towards the petitioner regarding managing and safeguarding her pension and gratuity. The respondent failed to ensure that the security company shares or some other form of security were issued to the petitioner to evidence and protect the investment of her gratuity.
- [45] The petitioner prays for a property adjustment order and transfer of the property into her name. Alternatively, a share in the property of equal value to the amount she contributed and the sum the respondent owes her. This request appears misconceived because, as stated above, the purpose or object of the court's exercise of its discretion to order a property transfer under section 24 of the Act is to seek as far as practicable to place the parties in the financial position they would have been in had the marriage not broken down, and each had adequately discharged their financial obligations and responsibility towards the other, having regard to the conduct of the parties so far as it is just to do so. It is not to compensate for a party's contribution or monies owed because the party would not have been paid if the marriage had not broken down.
- [46] Further, the petitioner's case appears to ignore the fact that this was a long marriage of 23 years that raised a family of five children, two of which were the petitioner's children of a previous marriage. The parties would have had a mutual obligation and responsibility to the family. The respondent accepted that the petitioner was the higher income earner and would have made a more significant financial contribution to the family's welfare. However, the petitioner has not refuted that the parties operated a joint account into which they deposited their salaries and from which they paid the family's expenses. Giving the petitioner what she requested will effectively create an unjust situation.

- [47] The net financial situation of the parties' investments and management of their marital affairs is what they would have had to live with had the marriage survived. Therefore, the court making a property transfer order will not interrogate every transaction in the marriage, particularly a long marriage, to determine what was its cause and effect. The court is more concerned with the current financial situation as the sum effect of the marriage. However, it is reasonable and just for the court to consider in deciding a property transfer order which party carries the benefits and the burdens upon the divorce of the parties' actions during the marriage.
- [48] Consequently, I do not propose to dwell on the other properties that did not form part of this application, although both sides argued them extensively, namely the bus route permit, the concrete house sold to the petitioner's older daughter and the property at Fond Assou donated to her second daughter. The parties appear to have settled the bus route permit by agreement. At the same time, the uncontroverted evidence is that the parties shared the net profit from selling the concrete house to the petitioner's older daughter. Regarding the land at Fond Assou, it appears to have been the respondent's separate property that never contributed to the standard of lifestyle the parties enjoyed and was donated before the divorce.
- [49] The parties invested the petitioner's gratuity on the respondent's suggestion, and it is doubtful that the petitioner will ever recover it, at least not without great efforts. In contrast, despite no details being placed before the court, the respondent's gratuity remains secure for his benefit after the divorce. Still, there is now the well-settled principle that the parties in ancillary relief matters have a duty to the court to make full and frank disclosure of assets.¹⁴ Where there was a failure to make the disclosure, the court can draw certain inferences. This and that the respondent depleted the petitioner's pension for the payment of loans negotiated at the Credit Union by him without the petitioner's knowledge of relevant circumstances justifying a property transfer order to the petitioner.
- [50] In all the circumstances, it is just and fair that the court, under section 24 of the Act, orders a transfer of an additional 10% share of the property to the petitioner to seek to place her in the financial position she would have been in had the marriage not broken down, and the parties had adequately discharged their financial obligations and responsibility towards the other.

¹⁴ Hughes v. Hughes (1993) 45 WIR 149

Costs

- [51] Generally, a successful party gets costs at the discretion of the court. Though the petitioner got a transfer order in her favour, it is significantly less than prayed. Indeed the award made by the court is closer to what was suggested by the respondent. Therefore, I refuse the petitioner's claim for costs and hold each party should bear their own costs.

Conclusion

- [52] The court has determined that the property (former marital home) at the time of the divorce was property in the community to which the parties are entitled to share equally. The petitioner is entitled to have transferred a further 10% share of the property to her. However, the petitioner has asked that if the court ordered the property sold, she wished the first option to purchase the same.

I now make the following orders:

1. The property is the property of the community shared 60% for the petitioner and 40% for the respondent. Should the parties not agree on the property's value within 14 days, it shall be valued by a valuator mutually appointed by the parties at their joint expense.
2. Within 120 days of this order, the respondent shall transfer the legal title and interest in the property to the petitioner, and the petitioner shall pay the respondent for his 40% share of the property as agreed or valued plus interest under article 1008 of the Code at the statutory rate of 6% per annum from the date of judgment until payment.
3. Should the petitioner not pay the respondent for his share as ordered or otherwise agreed by the parties, the property shall be sold by public auction with a reserved price as agreed or valued, and the net proceeds shared as specified above.
4. The parties shall each bear their respective costs.
5. The parties have the liberty to apply.

Justice Rohan A Phillip
High Court Judge

By the Court

Registrar