

THE EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES  
IN THE HIGH COURT OF JUSTICE

SVGHMT2020/0088

IN THE MATTER OF THE PETITION OF MELISSA CAVIA QUESTELLES NEE SARGEANT FOR THE  
DISSOLUTION OF MARRIAGE

BETWEEN:

MELISSA CAVIA QUESTELLES NEE SARGEANT PETITIONER

AND

KENROY ALEXANDER QUESTELLES RESPONDENT

**Appearances:**

Mrs. Kay Bacchus-Baptiste for the Petitioner

Mr. Duane Daniel and Ms. Chante Francis for the Respondent

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2022: May 18  
June 17  
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**Oral Decision**

**Byer, J.:**

- [1] In this court's mind, the relationship and subsequent marriage between these parties, clearly highlights the chronic issues that arise between parties of great age disparity. Love sometimes is not everything and a broken marriage and lost trust between parties who are at different stages of their lives always becomes more pronounced and acrimonious.

**Background**

- [2] The parties were married on 21 July 2007 at the Hope for Life Restoration Ministries in St. Vincent and the Grenadines. The Respondent filed the application for Ancillary proceedings, and the Petitioner, responded to same. For avoidance of doubt and ease of reference, Mrs. Questelles throughout these submissions shall be referred to as the Petitioner; while Mr. Questelles will be referred to as the Respondent.

- [3] The Petitioner filed for divorce on 5 August 2020 on the basis that the Respondent had behaved in such a way that the Petitioner could not be expected to live with him. The initial petition for divorce was amended on 1 February 2021 for the purpose of changing the basis for the divorce to the parties having lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition and the Respondent consented to the divorce.
- [4] The Decree Nisi was granted on 19 February 2021 on the condition that it was to be made Absolute within six weeks of 19 February 2021 unless cause be shown why it should not be made absolute. The Decree Absolute was granted on 20 August 2021.
- [5] The Respondent filed an Application for Ancillary Relief on 24 August 2021 seeking property adjustment orders.
- [6] Both parties have filed affidavit evidence outlining their respective means and contributions to the matrimonial assets.
- [7] By the summons for ancillary relief filed by the Respondent, the Respondent sought the following orders:
- (i) That the Petitioner and the Respondent are entitled to shares to be determined in the former matrimonial home situate at Belvedere, which interest is to be calculated on the equity in the former matrimonial home as at 1 June 2018; or
  - (ii) In the alternative, a declaration that the Respondent is the sole beneficial owner of the former matrimonial home situate at Belvedere.
  - (iii) That the Respondent shall pay the Petitioner for her interest in the former matrimonial home within six months of the date of the determination of the captioned ancillary proceedings.
  - (iv) That the Respondent is the sole beneficial owner of Suzuki Escudo bearing registration number PX-216.
  - (v) That the Respondent shall keep all the furniture and household appliances in the former matrimonial home.
  - (vi) That the Respondent is entitled to all of the funds standing to the credit of the Respondent in his bank accounts.
  - (vii) That the Petitioner is entitled to all of the funds standing to the credit of the Petitioner in accounts held in her name at financial institutions.
  - (viii) That the Petitioner shall provide an account of the profits of the books titled "The Unmockable Master" and "Dangerous Passion".
  - (ix) That the Respondent is entitled to a share to be determined in the profits of the books titled "The Unmockable Master" and "Dangerous Passion".
  - (x) That the Respondent shall not pay any spousal maintenance to the Petitioner.
  - (xi) Each party to bear their own costs.
  - (xii) Liberty to apply.

[8] At the commencement of the trial of the matter on the 18 May 2022, the court allowed the parties an opportunity to narrow the issues to be determined on the summons as filed. Having been given that opportunity, the Petitioner agreed to reliefs at numbers six (vi), seven (vii) and ten (x).

“vi) That the Respondent is entitled to all of the funds standing to the credit of the Respondent in his bank accounts.

vii) That the Petitioner is entitled to all of the funds standing to the credit of the Petitioner in accounts held in her name at financial institutions.

x) That the Respondent shall not pay any spousal maintenance to the Petitioner.”

However, it became apparent to the court that, the agreement by the Petitioner to these prayers was conditional for the Respondent as he maintained that if this court found that the Petitioner was entitled to a share in excess of ten percent (10%) of the value of the Matrimonial home as elucidated in his evidence, the Respondent indicated that he then intended to pursue a claim of a share of the funds in the name of the Petitioner. Additionally, at the hearing of the actual evidence, the Respondent then further accepted that he was no longer making a claim as set out at eight (viii) and nine (ix) of the summons. These were as follows:

“viii) That the Petitioner shall provide an account of the profits of the books titled “The Unmockable Master” and “Dangerous Passion”.

ix) That the Respondent is entitled to a share to be determined by the court in the profits of the books titled “The Unmockable Master” and “Dangerous Passion”.”

[9] The court therefore proceeded to trial and having heard the evidence and having seen the parties give evidence, it was clear that the issues were simple:

a) what are the assets that could be considered matrimonial assets and

b) what if any interest does the Petitioner have in those assets?

**A) What are the assets that could be considered matrimonial assets?**

[10] It was clear to the court that these parties had not acquired large amounts of assets over the period of the existence of the marriage.

[11] Indeed it was accepted by the Petitioner in her evidence (a fact that counsel for the Petitioner did not seem to recall) that the marriage subsisted in any real sense for a period of 3 years. From 2007 to 2010, the legal end of the same in 2018 had not made any difference to when the parties considered the marriage at an end and had broken down.

[12] However what this court does accept, a fact that the Respondent was at pains to minimize, is that the relationship between the Petitioner and the Respondent had existed for many years previous to the legal joining of the parties. This court accepts that the parties started to contemplate marriage when the Petitioner was 17 or 18 years old, that is around the years 1999 to 2000. That during that

period the relationship was serious and that the parties in fact lived together from that time until they moved into the home that functioned as the matrimonial home and then got married.

- [13] Even though the court accepts that the actual acquisition of the matrimonial home was before the marriage of the parties and that property brought into the marriage is, on a general scale to be dealt with differently from property acquired during the marriage<sup>1</sup>. However, this is not a hard and fast rule to be adhered to slavishly and in **White v White**<sup>2</sup> the court stated, after identifying the general principle with regard to properties that are acquired before marriage had this to say, “[P]lainly, when present, this factor is one of the circumstances of the case. It represents 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.” (My emphasis added)
- [14] That having been said, this court is of the opinion that the Petitioner's claim cannot be met unless the property at Belvedere is taken into consideration and as such this court finds that the matrimonial home must be considered a matrimonial asset for the purposes of the distribution to be effected.
- [15] In relation to the vehicle PX-216, this court considers this differently.
- [16] It is clear in this court's mind that this vehicle was acquired, on the evidence of the Petitioner herself, after the marriage had broken down and certainly at the latest by the time the parties had ceased the incidents of marriage completely.
- [17] This court accepts that the acquisition of this vehicle was on the sole strength of the Respondent and that even though it may have been acquired after the existence of a vehicle that had been used by the family at one point, the court is not convinced on a balance of probabilities that any disposition of any previous vehicle assisted in the acquisition of the present one. As such this court does not find that this asset is part of matrimonial assets and will be excluded from further consideration by this court.

**B) What if any interest does the Petitioner have in those assets?**

- [18] This court has read the submissions of both counsel for the Petitioner and counsel for the Respondent and there is no dispute as to what the relevant law is in relation to what must be considered by the court upon determining the respective interests of former spouses in a property settlement.

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<sup>1</sup>**White v White** [2000]UKHL J1026-3 at paragraph 55

<sup>2</sup> Ibid at paragraph 56

- [19] Indeed the court must be guided by the provisions of the Matrimonial Causes Act<sup>3</sup> and must take into account “several factors including their respective ages, physical and mental health, income, assets, financial resources and earning capacity, needs, obligations and responsibilities. The duration of the marriage will also be considered.”<sup>4</sup>
- [20] The yardstick that is usually touted as the starting point for the distribution of property, is that based on the relative and modern value placed on contributions by both parties to the welfare of the family. Therefore, any division should recognize those contributions which should then translate into an equal division of property unless there is good reason not to so order<sup>5</sup>.
- [21] The case at bar is similar to that as was considered by my brother Glasgow J in the case of **Kim Joseph v Stephen Joseph**<sup>6</sup> out of the jurisdiction of Grenada where he considered and accepted that a pre-marital asset was to be considered matrimonial property, it becoming such a central aspect of the circumstances of the marriage. In considering how the share of the wife should be determined where the evidence established that there had been a greater contribution to the asset by one party than the other, he had this to say:

“30. Baroness Hale of Richmond in **Miller and McFarlane** stated 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 contribution to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares.”

31. In applying the above principles from **Miller and McFarlane**, I am of the view that in the circumstances of this case there is good reason to depart from the equality principle. There is a considerable disparity in the contributions of the parties to the acquisition and construction of the matrimonial assets. The matrimonial home originally consisted of a concrete two bedroom home. The home was a pre-marital asset that eventually became a central place in the marriage and was used by both parties as their dwelling home. Further, Ms. Noel admits that the husband’s contributions to the acquisition and construction of the matrimonial assets were greater than her contribution.” (My emphasis added)

- [22] This court finds itself also in these very similar circumstances. It was clear to this court that although the Petitioner seemed to suggest that her contribution to not only the acquisition but the development of the matrimonial home was as equal if not greater than the Respondent, this court finds that it cannot accept this suggestion on a balance of probabilities.

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<sup>3</sup>CAP 239 sections 32 and 33

<sup>4</sup>**Mascoli Née Mascoli v Mascoli** SVGHMT2014/0020 at paragraph 23

<sup>5</sup>**Miller v Miller** [2006] UKHL 24 at paragraph 22

<sup>6</sup>GDAHMT2012/0089

- [23] What this court unreservedly does however accept is that the Respondent an older more experienced man, some 18 years senior to the Petitioner, manipulated and dominated the Petitioner. This court finds that the Petitioner did join the Respondent on jobs almost as an apprentice and carried out work that she should have been paid for had she been just an employee, but which monies the Respondent “kept” for their future, an idea that would have been wholly and totally accepted by the young starry eyed former student. However, the fact that the Petitioner made claim to having paid sums in excess of \$230,000.00<sup>7</sup> towards the “marital home” without having proven the majority of those expenses, this court finds on a balance of probabilities that the Petitioner made contributions to the home, even if not directly, but that the same were not sufficient and could not be sufficient to determine that she was entitled to an equal share in the property and that in those circumstances, this court finds that there is good reason to depart from the principle of equality.
- [24] This court must also consider whether the failure of the Petitioner in disclosing all her assets to the court must also count against her and permit the court to make adverse inferences against her in that regard.
- [25] It is not disputed that it is imperative<sup>8</sup> that frank disclosure be given by both parties to enable the court to make appropriate findings. It was not disputed by the Petitioner that she had failed to do so but gave the reasoning as being due to the cost restrictions that would have been attached to the requests to obtain the records. Be that as it may and as much as this court takes judicial notice that the banking institutions attach a cost to every request made of them, those documents that were produced, resulted in more questions being raised than answers being provided about the true financial status of the Petitioner.
- [26] This court is of the view that the failure of the Petitioner to ensure that the court not only had the true and full picture of her finances but also of her employment status has resulted in this court having no other option but to draw adverse inferences against her and as such it must take that into consideration as it addresses its mind to the statutory factors that must guide the court and which are relevant to the case at bar.

**The income, earning capacity, property and other financial resources of each of the parties**

- [27] In this regard, the failure of the Petitioner in a material sense handicaps this court from making a clear and fulsome assessment of her present financial situation including her employment status. The court has no cogent evidence as to her financial status and as such the court is not permitted to fill in the blanks or make assumptions.

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<sup>7</sup> As set out at paragraph 4 of the Affidavit of means of the Petitioner filed on the 9/11/2021 at page 227 of the TB filed 25/2/2022

<sup>8</sup> Per Foster J in **Price Findlay v Findlay** BVIHMT2006/0070 at paragraph 20

[28] The Respondent on the other hand has provided his financial status from the financial institutions and there was no averment by the Petitioner that he had attempted to hide anything from the court in this regard.

[29] Indeed it is clear that the matrimonial home is the one property that is of concern to both parties and in spite of the attempt to insinuate that the Petitioner may be entitled to inherit property from her parents this court can pay very little attention to such a nebulous unknown. This court therefore accepts that the Respondent is now retired, his income is reduced, that he still has financial obligations on outstanding loans and that the only property in which he has an interest is that which houses the former matrimonial home.

**Financial needs, obligations and responsibilities which each party has or is likely to have**

[30] It is once again clear that the failure of the Petitioner's full disclosure has hamstrung the court from getting a clear picture of her obligations and outgoings save her personal living expenses.

[31] The Respondent has shown that his outgoings are all legally tied to an institution for which he still owes considerable sums.

**The age of each party to the marriage and the duration of the marriage**

[32] It is not disputed that the Respondent has an eighteen year lead on the Petitioner. He is already retired and as such his working life is on the decline while the Petitioner who is now 40 still has other options for at least a further twenty year period. This is so even with her alleged termination from the Government of St. Vincent and the Grenadines, but she still can rely on her self- admitted experience as an electrician and air conditioning technician.

[33] Additionally at the least the marriage lasted the 3 years as accepted by the Petitioner or 11 years as the date that was pleaded as the date of separation for the purposes of the divorce proceedings. In either time frame it was clear that the parties from a very short time into the marriage experienced problems that drove them apart and led to them conducting their lives and businesses wholly separate.

**The contribution made by each of the parties to the welfare of the family including any contribution to be made by the looking after the home or caring for the family.**

[34] In the case at bar there is no family in the form of children for the court to consider, but this court accepts that there was indeed a period when the Petitioner would have been responsible for the domestic chores of the house and would have been equally responsible for the maintenance of the home, however much the Respondent sought to suggest otherwise.

[35] In fact in the words of the Petitioner herself, there was a time that she really was impressed by the Respondent her older "wiser" husband and this court believes on a balance of probabilities that the Petitioner pulled her weight just as much as the Respondent even if not by direct financial contribution.

[36] This court also believes on a balance of probabilities that the Petitioner in her attempt to “keep up” would have bought and provided items for the house including furnishings that were used for the benefit of the family.

### **Conclusion**

[37] This court therefore having taken all matters into consideration and the evidence that was given and the inferences that this court must draw against the Petitioner, this court orders that the Petitioner is entitled to a twenty-five percent (25%) interest in the former matrimonial home.

[38] Having awarded the Petitioner a share greater than ten percent (10%) as “offered” by the Respondent, this court is however not satisfied on any evidence that the Respondent is in any event entitled to any share in the savings of the Petitioner and I make no order in that regard.

[39] Further given the fact that the court accepts that the Petitioner made significant contribution to the welfare of the family and the furnishing of the home the Petitioner shall be awarded the items of furniture that she has requested.

### **The order of the court is therefore as follows:**

1. The Petitioner is entitled to a twenty-five percent (25%) interest in the matrimonial home situate at Belvedere which interest is to be calculated on the equity in the former matrimonial home as of 1 June 2018.
2. The Respondent shall pay to the Petitioner within 6 months of today’s date the said sum. Upon payment of the said sum the Petitioner shall also be at liberty to collect those items from the former matrimonial home that she requested and that are still in working order. A list of all furnishings is therefore to be provided to counsel for the Petitioner for the items to be identified for transfer. Such list is to be provided within 6 weeks of today’s date.
3. The Respondent is declared the sole beneficial owner of the motor vehicle PX-216.
4. The Respondent is entitled to all the funds standing to his credit in his bank accounts.
5. The Petitioner is entitled to all the funds standing to her credit in her bank accounts.
6. There is to be no accounting on the sales of the novels authored by the Petitioner.
7. The Respondent will pay no spousal support to the Petitioner.
8. Liberty to apply.
9. Each party to bear his or her own costs.

**Nicola Byer**  
**HIGH COURT JUDGE**

By the Court

Registrar