

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHMT2020/0004

BETWEEN

JAMES AUGUSTUS WILLIAMS

PETITIONER

AND

SELMA ADINA WILLIAMS

RESPONDENT

Appearances:

Ms. Dannielle France holding papers for Mr. Richard Williams for the petitioner.

Ms. Chante Francis holding papers for Mr. Duane Daniel for the respondent

2022:Feb.21
Mar. 2

DECISION

BACKGROUND

[1]**Henry, J.:** This matter involves a dispute over division of property in the wake of a broken marriage.

After a marital union of just over 11 years, Mr. James Williams made the decision to end his marriage to Mrs. Selma Williams. His petition for divorce was granted in November 2020.

[2] Mrs. Williams wants a share in properties she claims that Mr. Williams owns. She filed an application for maintenance pending suit and subsequently had it amended to obtain a property settlement order and a lump sum payment or periodical payments. She has since made an application for an order compelling Mr. Williams to supply her with deeds and valuation reports of all real property registered in his name and registration details of all motor vehicles registered to him. She asserted

that he has not divulged the value or supplied the ownership documents to a parcel of land and a truck that he acknowledged owning in his affidavit account. She also seeks such details in respect of all such property owned by Mr. Williams. Mrs. Williams averred that she is unemployed and unable to contribute to the cost of obtaining the valuations.

- [3] Mr. Williams asserted that he owns land at La Croix on which his house is built. He admitted that he once owned a functional two-ton truck but claims that it is no longer road worthy. He averred further that by July 2020 he had surrendered the licence plates to the police. He accepted that he had purchased four other used trucks over a period of 15 years prior to 2020 but asserted that they were not operational, were bought for spare parts and cost no more than \$1000.00. He contended that his means are limited and insufficient to cover the expenses associated with securing the requested valuations. For the reasons outlined below, Mrs. Williams' application is granted in part.

ISSUE

- [4] The issue is whether James Williams should be ordered to furnish Selma Williams with copies of: -
- a. deeds and valuation reports for all real property registered in his name; and
 - b. motor vehicle registration details and valuation reports of all motor vehicles registered in his name?

ANALYSIS

Issue – Should James Williams be ordered to furnish Selma Williams with copies of deeds and valuation reports for all real property registered in his name; motor vehicle registration details and valuation reports of all motor vehicles registered in his name?

- [5] The Matrimonial Causes Act¹ ('the Act') and the 1977 UK Matrimonial Causes Rules ('the Rules') govern the disposition and procedure regarding matrimonial proceedings in Saint Vincent and the Grenadines. Rule 77 empowers the Registrar of the High Court to adjudicate over ancillary proceedings initiated by form 11 or 12 of the Rules. The Registrar may refer any such application

¹ Cap. 239 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

to a judge for his discretion².

[6] It is noteworthy that the present application was expressly formulated and directed for attention of the Registrar in accordance with the rules and prescribed form. No formal referral was made by the Registrar to the judge in the instant case. It appears that the practice has been fully operationalized administratively in this jurisdiction where all applications for ancillary relief are routinely listed for consideration by a judge. In some cases, a judge may refer such an application to the Registrar for determination.

[7] This practice raises the issue of the legal basis on which a judge assumes adjudicatory function in the absence of a referral from the Registrar. The parties made no submissions on this point until invited to do so by the court on the date set for delivery of this decision. They acknowledged that the practice is now well-entrenched and that they had no objections to the matter being disposed of by the Judge. Learned counsel Ms. Francis represented that counsel's experience has been that when applications of this kind are filed and addressed for attention of the Registrar, they are generally listed before the judge. She added that even when approaches are made to the Registrar, counsel is told that they will be dealt with by the Registrar only if referred by the Judge. This is the opposite of what is contained in the Rules.

[8] Rule 79 states: -

'The Registrar may at any time refer an application for ancillary relief, or any question arising thereon, to a judge for his decision.'

It is clear that what the law contemplates is that such referral would take place for any number of reasons such as where the issues involved are more complex than normal; where bias concerns arise or otherwise. The practice that has been adopted for referral by the judge to the Registrar is potentially problematic since a referral to the Registrar creates a situation where the Registrar may have no further referral recourse at that stage. I make the observation that the time has come to regularize the practice in keeping with the letter and spirit of the rules.

[9] It is instructive to note that the **Eastern Caribbean Supreme Court Act (Saint Vincent and the**

²Rule 79 of the Rules.

Grenadines) Act³reserved unto the Judges of the High Court the jurisdiction enjoyed and exercised by Judges under the **Supreme Court Act 1941** or other law; all jurisdiction, power and authority exercised by the High Court as at 1st January 1968; and the jurisdiction exercised by the High Court in matrimonial proceedings as nearly in conformity with the law and practice in the High Court of Justice in England as at 27th December 1989.

[10] It is a matter of record that at the referenced times the UK county court judges and registrars did adjudicate and determine ancillary relief applications in matrimonial proceedings as did the Judges in Saint Vincent and the Grenadines. Accordingly, I am of the firm view that the Judges of the High Court may continue to do so in Saint Vincent and the Grenadines without a formal referral by the Registrar pursuant to rule 77 of the Rules, except where an application is formulated and expressed to be made to the Registrar. In such a case, the Registrar has a duty to hear the matter and if considered necessary to refer it for consideration of a judge in accordance with Rule 79 of the Rules..

[11] Applications for ancillary relief may be made in a petition for divorce or answer⁴, or in a stand-alone application⁵. Form 13 of the Rules is prescribed for use in the former case and Form 11 is reserved for the latter.

[12] Sub-rule (4) of rule 77 of the Rules provides that a party to an application for ancillary relief may request from the other party ('affiant') by letter, further details about any matter set out in an affidavit by the affiant, or a list of relevant documents, or to allow inspection of such document. If the requested party refuses, the one requesting the documents may apply to the Registrar for directions. The procedure outlined in this sub-rule mirrors almost entirely the protocol in civil proceedings referred to as 'disclosure'.

³ Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, sections 6, 11 and 12.

⁴Rule 68(1) and 73(1) of the Rules.

⁵Rules 68(2) and (3) and 73(2) of the Rules.

- [13] In civil proceedings, parties are routinely directed to file standard disclosure which entails supplying to the court a list of all documents ever held in the possession, control or custody of the filer. The opposing party may apply for specific disclosure of any materials which they allege are not included in the standard list of documents filed by the other side. It should not go unremarked that by directions issued by this court on 21st December 2020, the parties were ordered to file and exchange standard disclosure on or before January 12th 2021 and their respective affidavits of means on or before 9th February 2021.
- [14] This court accepts that there are no prescribed forms under the rules for standard disclosure. It notes that rule 73 of the Rules contemplates that the party served with an application for ancillary relief in Form 11 or 13 must within 14 days file an affidavit in response setting out full particulars of his property and income. In similar fashion, the applicant must within 14 days of receipt of that affidavit, file and serve an affidavit with details of her property and income. In this way, the rules provide for full disclosure of all details of the parties' respective properties and income with supporting documentation including registration details. This is no different than what is required when the court directs the filing of affidavits of means.
- [15] Rule 57 of the rules provides another avenue whereby the respondent to a divorce petition may get the court to compel the disclosure by the petitioner of full particulars of his property and income. In such cases, an application is made in form 12 for the court to consider the respondent's financial position after the divorce. If the petitioner has not already filed an affidavit of means pursuant to rule 73, he must within 14 days of receipt of the Form 12 application, file an affidavit declaring the full extent of his property and income. The respondent is also required to file a similar affidavit in response within 14 days of receipt of the petitioner's affidavit.
- [16] This procedural background makes clear that opposing parties to an application for ancillary relief in matrimonial proceedings are bound by law (including the Rules) to supply full details of their property and income pursuant to applications made under rules 57, 68, 73 or 77 of the Rules. They are also bound to comply with any directions issued by the court for the conduct of the proceedings.
- [17] Mrs. Williams initiated her application for ancillary relief by form 11 of the Rules. It follows that Mr. Williams was required by law to file full particulars of his property and income within 14 days of

service on him of the notice of application as originally filed and after any the amendment. It is worth noting that the notice of application for maintenance pending suit and Mrs. Williams' affidavit in support were filed on 10th July 2020. The record contains no information about the date of service on Mr. Williams. He filed his affidavit in response on 28th July 2020 in which he provided details of ownership by him of a small two-ton truck and a house and land at La Croix. He did not exhibit any registration documents or valuations for either.

- [18] In her affidavit filed on 28th August 2020, Mrs. Williams asserted that Mr. Williams had about 5 second-hand trucks that he had bought. She averred further that he had about 3 trucks when she left their home. She added that he farms land from which he reaps produce for sale and that he earns between \$2000.00 and \$3,000.00 for yams and potatoes. She added that he has cultivated potatoes on his land at La Croix. He denied this.
- [19] Mr. Williams in his further affidavit dated 14th October 2020, countered that that he never owned 5 trucks at any one time. He stated that his lawyer wrote to Mrs. Williams' lawyer seeking further information about the license numbers of the trucks purportedly owned by him and did not receive a response. He did not volunteer any details about registration in respect of any of the trucks he admitted purchasing. The Rules mandate that he did so.
- [20] By Notice of Application filed on 13th November 2020, Mrs. Williams applied for an order to amend her application to make it one for ancillary relief, specifically for a property settlement order and lump sum payment. It was granted unopposed on 21st December 2020. No affidavit of service was filed attesting to the date of service on Mr. Williams. His legal practitioner was present at the hearing when that order was made. By then, Mr. and Mrs. Williams had filed several affidavits as to their property and income as required by the Rules and the directions issued by the court.
- [21] Mrs. Williams does not expressly allege that Mr. Williams failed to detail all of his real and personal property. The instant application implied that she thinks that he did not list all of his real property. However, she has not alluded to any such property or reasons for believing that he may have withheld such details. Just before the decision was rendered, she indicated that her application is one for specific details about real property and information about the referenced vehicles. Mr. Williams' legal practitioner was given an opportunity to make further representations based on this

clarification. Learned counsel Ms. France stated that she wished to add nothing further and did not require more time to consider the point and to respond.

[22] Rule 77(4) provides: -

'Any party to an application for ancillary relief may by letter require any other party **to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter**, or to **furnish a list of relevant documents** or to **allow inspection of any such document**, and may, in default of compliance by any such other party, apply to the registrar for directions.'

[23] This rule allows a party to request in the first instance further information concerning any matter in an affidavit filed by the other side; in the second case, a list of relevant documents; and thirdly inspection of any such documents on the list. Mrs. Williams' request is of the second kind **and fits within what is regarded as disclosure of documents**. Although that description is not qualified by the adjective relevant, it is trite law that only relevant documents are required to be disclosed and if disclosed could be adduced into evidence. Mrs. Williams' requested list must satisfy these criteria.

[24] Mrs. Williams and Mr. Williams submitted that they do not have the means to commission and pay for the valuations being sought by Mrs. Williams. Mrs. Williams averred that she is unemployed and relies on the generosity of her children to assist with her living expenses. Mr. Williams alleged that while he leased land from the government during his marriage to Mrs. Williams, he no longer has access to them because the leases under which he held the properties were not renewed and in one case, the land was possessed by the government and converted into a playing field. He claimed that he now works only for 2 days each earning \$40.00 per day. He asserted that he lives with his nephew who pays the electricity and water bills for the property.

[25] The Williams' accounts were not tested by cross-examination. I accept the admissions made by Mr. Williams at face value. In this regard, it is safe to conclude that he owns a house and land at La Croix, and at one time owned 5 trucks, at least one of which was being used by him to ply his trade. He did not say whether he does or does not own other real property.

[26] Mrs. Williams made fulsome written submissions. Both parties made short oral submissions. Mrs.

Williams relied on section 34 of the Act; rule 77(4), (5) and (6) of the Rules; and the judgments in **Raishauna Wheatley v Lawrence Wheatley**⁶ and **Vidy v Vidy**⁷. She submitted that both parties in matrimonial proceedings have a duty of full and frank disclosure of all material information within their possession, custody, control or power to obtain. She argued that for this reason, Mr. Williams must bear the cost of producing them. She contended that the court may make an order pursuant to rule 77(4) of the Rules directing Mr. Williams to provide the documents that she is seeking. She reasoned that the court should do so in the instant case and stipulate a timeframe for compliance.

[27] Mr. Williams' legal counsel represented to the court that on 14 Dec. 2021 his lawyers transmitted to Mrs. Williams' lawyers deed number 1943 of 1989 and a valuation of the property on which he resides (presumably the La Croix property). He contended that no valuation of any vehicle was sent to them because he did not have one. No evidence of this was before the court. However, Mrs. Williams did not deny that she received those documents. I accept that she did.

[28] Mrs. Williams submitted that the valuation of the land is dated, having been prepared on March 30th 2016. She observed further that it is in relation to 37,696 sq. ft. of land and not one acre as described in Deed No. 1943 of 1989. Those documents were not before the court. I take judicial notice that it is not unusual in this jurisdiction for deeds to contain incorrect information as to the extent of land registered thereby.

[29] It has not escaped the court's attention that Mr. Williams appears not to have thought it important enough to seek to put any evidence before the court as to the reason for his failure to supply the requested valuations or at a very minimum the registration details of the trucks he acknowledged he owned at some point.

[30] In any event, the court remains mindful of that while it is relevant for purposes of ancillary proceedings to have as much particulars as to the description of property owned by the respective parties, lack of specificity about the extent of land or current valuation does not preclude the court from making an appropriate order for division or sharing of the same, contingent on a subsequent

⁶[2006] ECSC 1117-1

⁷[2019] Bda LR 79.

valuation, the cost of which may be borne by one or other or both parties. This position also obtains in relation to personal property such as motor vehicles. I find that the valuations sought are not necessary for this part of the proceedings. However, the registration or licensing specifics of the motor vehicles are directly relevant to the resolution of this dispute.

[31] It concerns me that Mr. Williams neglected to supply to Mrs. Williams at the very least with the registration numbers or the most recent licensing information of the 5 vehicles that he admitted owning at some point within the 15 years preceding the application and their whereabouts. I am satisfied that he would have had that information in his possession and under his control at some point. If he was no longer in possession, he is the person to whom the relevant authorities are most likely to release those details. In the absence of any explanation from him about efforts made to search for or secure them from the appropriate authorities, I draw the inference that he made no such efforts. I draw the further inference that Mr. Williams was simply not interested in assisting this court in understanding what practical difficulties he encountered or was likely to encounter in seeking to retrieve that information; and by extension was simply not interested in making that information available to the court.

[32] I note that both parties are represented by legal counsel who no doubt would have advised them of the legal requirements and procedures of disclosure outlined earlier. In this regard, I am amazed that Mr. Williams was not more proactive in making inquiries and presenting before the court, information which could assist it in determining whether he made a good faith effort to obtain the licensing and registration details of the trucks to which he referred. It was incumbent on him to at least try to do so, since they are relevant to disposition of these proceedings. In similar fashion, his silence about whether he owns further real property cannot be ignored. He is duty bound to identify any such real property and supply deeds or other documentary proof of ownership and should be directed to do so. The fact that he was able to provide one deed suggests to me that the cost of extracting same from the Registry of Deeds is not prohibitive.

[33] Neither party has supplied this court with an estimate of the likely charges to obtain the licence or registration details from the Inland Revenue Department. Likewise, no letter from the Traffic

Department was produced as to the allegation that the licence plates for the two-ton truck was surrendered there and the attendant implications. No estimate of the cost to secure valuations of the La Croix property has been presented to the court. I will not speculate regarding these matters.

[34] I am satisfied that Mr. Williams is in a position to make inquiries of the Inland Revenue Department as to the costs associated with obtaining the licence and registration details of his vehicles and correspondence from the Traffic Department as to the allegation that he has surrendered his licence plates, the date this was done and the implications for use of the said vehicle. He has a duty to supply those details to Mrs. Williams and to the court pursuant to section 34 of the Act and rule 73 of the Rules. It is just that he be directed to do so. I have no reason to believe that the cost of doing so is beyond his means.

[35] I do not consider that a more recent valuation is critical to determination of the issues which are presently before the court. I am not satisfied that either Mrs. Williams or Mr. Williams can bear the charges associated with getting a valuation of the La Croix property, other real property or the referenced vehicles. I make no order that Mr. Williams supplies such.

COSTS

[36] Mrs. Williams seeks the costs of this application. Since each party was partially successful, the appropriate order in the circumstances is that each party bears his or her own costs.

ORDER

[37] It is accordingly ordered:

1. Selma Williams' application is granted in part.
2. (1) Selma Williams' application that James Williams furnishes her with copies of valuations of all motor vehicles owned by him is dismissed.

(2) James Williams is directed to obtain at his own expense and furnish Selma Williams on or before March 24th 2022 with: -

- (a) copies of registration and licence details of the 5 trucks that he acknowledged he owned and their current location; and
 - (b) a letter from the Traffic Department detailing the date of surrender by him of his licence plates in respect of the two-ton truck he admitted that he owned and operated; and an explanation of the implications of such surrender (whether the vehicle is thereby rendered permanently or temporarily inoperable).
- 3. Selma Williams' application that James Williams disclose to her copies of deeds for all real property registered in his name other than deed 1943 of 1989 is granted.
 - 4. Selma Williams' application that James Williams disclose to her copies of valuation reports for all real property registered in his name is refused.
 - 5. Each party shall bear his or her own costs.

[38] I am grateful for the submissions by the parties.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar