

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

SVGHMT2018/0005

BETWEEN:

KENTY ROSHEMA WILLIAMS nee ANTOINE

PETITIONER

AND

KYROL VALENTINO WILLIAMS

RESPONDENT

Appearances:

Ms. Kensha Theobalds for the Petitioner

Ms. Jenell Gibson holding for Mr. Duane Daniel for the Respondent

2020: December 1

2021: January 21

Byer, J.:

- [1] I have always found that the words of Lord Nicholls in the seminal case of **White v White** describes succinctly the role and function of the court, as it considers the end of a marriage and the subsequent division of property between persons who had planned to make a life together. In that speech His Lordship said it thusly “*divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms the answer is obvious. Everyone would accept that the outcome on these matters whether by agreement or court order should be fair. More realistically, the outcome ought to be fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differs in each case and sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty is in the eye of the beholder*”.
- [2] This application filed by the Petitioner on 6 January 2020 sought a property adjustment order pursuant to Section 32 of the Matrimonial Causes Act CAP 239 and by her affidavit of means filed on even date in support of the said application, the Petitioner sought a declaration that the house at Ruthland Vale should belong to her solely and a declaration that the Respondent is entitled to the matrimonial home at Layou (Betremy) or in the alternative 50% of all the assets of the marriage and the sum of \$400.00 for the maintenance of the child of the family.

- [3] This application was supported by affidavits of the Petitioner filed on 6 January 2020, the 19 March 2020 and 17 May 2020.
- [4] In response the Respondent filed an affidavit of means on the 17 February 2020 and filed 5 affidavits by witnesses in support of his case on the 15 May 2020. By the affidavit in response the Respondent made no specific claims of his own but essentially sought that the prayers of the Petitioner should be dismissed.
- [5] This matter although not a lengthy one or one that could not be determined amicably between the parties went to trial on 1 December 2020 at which time the parties were cross examined on their affidavits as filed. Both the Petitioner and the Respondent made comprehensive submissions to the court on the law relative to the respective divisions and this court wishes to thank both counsels for their diligence in that regard.
- [6] The nub of the variance at which the parties find themselves is as to what is to be considered matrimonial property and what is not. It is this determination that must be made and thereafter the respective distributions to the parties.
- [7] From the evidence given to this court on affidavit, the Petitioner identified for the court several assets that the Petitioner alleged had been acquired during the marriage, but a distribution of the same was never pursued based on her prayers as sought and identified earlier. However, it was on the submissions of the Respondent that the court was informed as to the present position with the additional assets of the parties. These assets are as follows:
- a) Motor vehicle registration # PQ576 – the court accepts that the same is registered in the name of the Petitioner and that the evidence as to the purchase having been funded solely by the Respondent was never disputed. I accept that this should form part of the assets of the marriage.
 - b) The 25 foot fishing boat – this was acquired during the alleged period of co habitation between the parties – before their marriage. This asset has been sold and the issue of whether the monies used as the collateral for the purchase of the boat which was allegedly taken by the Petitioner was not pursued in cross examination of the Petitioner and the court is left with the failure of the Petitioner to answer that allegation. This asset however is no longer with the parties, and as such cannot be considered a matrimonial asset, but I do accept that there was a sum of \$10,000.00 for which the Petitioner has not accounted to the Respondent.
 - c) Motor vehicle registration PC693 – this was involved in an accident and sold for parts. Neither party made any claim with regard to those proceeds and in any event this asset is no longer with the parties.
 - d) Two cement mixers – the Respondent indicated that neither of these was operational and the Petitioner did not dispute that. These do not form part of the matrimonial assets available for distribution.
 - e) The scooter and motor vehicle registration number PA399 - the indication given by the Respondent was that the scooter was acquired before marriage, but no further information was given in that regard and the Petitioner did not dispute this averment. No evidence was given as to

the present circumstances with regard to PA399. I therefore exclude both of these from any distribution as between the parties.

[8] Therefore the only matters left in contest are the property at Betremy in the sole name of the Respondent and the property at Ruthland Vale in the sole name of the Petitioner.

[9] In this court's mind and having heard the evidence of the parties, the court accepts the following facts with regards to the Betremy and Ruthland Vale properties:
(Bearing in mind that this court agrees with the submissions by counsel for the Petitioner that this court must consider the parties actions and intentions over a period of time to consider what was the intention with regard to the relative properties)

1. There was no dispute that the Betremy property had been acquired by the Respondent long before his marriage to the Petitioner and was used as the home he shared with his first wife. However, the court accepts the version of events elicited from the Respondent with regard to the start of the period of co habitation as between these parties. The court accepts that the parties commenced cohabitation in or around 2005 at the latest and continued until their marriage in 2009. I also accept that it was during this period, before marriage, that the renovations and additions to the house at Betremy were undertaken. I further accept that this was done to prepare the home to formally accept the Petitioner as the wife to be. In fact, in the words of the Respondent himself the Petitioner and himself were still in a relationship when she left to go to Barbados to work and while she was in Barbados they remained in the relationship and that he was in love with her. The court accepts on a balance of probabilities that the Respondent in love with the Petitioner and with a view to having her live with his children and himself as a family that he with the assistance of the Petitioner made the changes to the Betremy property and bought furniture to make sure that the house was welcoming to its new occupant, the Petitioner. I am fortified in this view when the Respondent also admitted that these changes were undertaken in September 2008 and the parties were married May 2009. I accept that the intention was that the parties would reside there as the matrimonial home and did so until 2016. There was therefore no dealing with this property to the exclusion of the Petitioner or without reference to her and even though I accept that this property falls outside the period of the marriage and even the period prior to co habitation, I accept that the parties dealt with it in a manner that showed the parties intention that this was a property to benefit them both. I therefore find that the Betremy property is in fact matrimonial property and that the Petitioner is therefore entitled to a share in this property.

2. With regard to the Ruthland Vale property, it has not been disputed and in fact cannot be disputed that the same was acquired during the currency of the marriage. This is also therefore to be considered matrimonial property.

[10] That being said, and in light of the findings that the court has made above the issue that remains now is, what is the extent of the entitlement of the parties to these respective properties.

[11] In considering this assessment to make the requisite distribution, this court must be guided by the provisions of Section 34 of the Matrimonial Causes Act CAP 239 (hereinafter referred to as the

Act). This section sets out the factors that the court must consider in making a property adjustment order as is sought in these proceedings. These are well known to the parties and the Court.

- [12] As my sister in the case of **Euvorn Bibby v Horace Bibby** stated so succinctly:
“41. The Act empowers the court to make a property adjustment order. Among other things, a property adjustment order is used to settle property owned by one party for the other party’s benefit, or to extinguish or reduce either party’s interest to a settlement. As far as reasonably practicable and just, such an order is aimed at:
- 1. Achieving a clean break between the former spouses;*
 - 2. Placing them in the position they would have been in, had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other; and*
 - 3. Ensuring that the parties’ financial positions after the marriage remains as close as possible as during the marriage.”*

Betremy Property

- [13] In looking at this property, this court is well aware that generally property that is brought into a marriage and that which has not been acquired during the marriage, is dealt with differently from that which is actually acquired during marriage. However, in the case of **Lawrence Wheatley v Raishauna Wheatley** the court of appeal in determining whether certain property acquired outside the time of the marriage should be considered in distribution, quoted from the text Rayden and Jackson on Divorce and Family Matters and had this to say “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 [sic] and set apart from the other assets in the case.”
- [14] It was however also recognized in the case of **White v White** that this treatment is not a hard and fast rule and that properties of this nature “...represents a contribution made in 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.”
- [15] Therefore having considered the manner in which the Respondent dealt with this property and the court accepting that the Petitioner did assist in the renovations of the home with the joint intention of having this home represent the matrimonial home of the parties and the parties in fact cohabiting there until they moved to the Ruthland Vale property only after the marriage was “shaky”, I find that the Respondent is entitled to a ten percent (10%) share of the value of this property.

Ruthland Vale Property

- [16] In relation to this property, the circumstances of acquisition are far removed from that of the Betremy property.

- [17] In 2015 the Petitioner decided to purchase a parcel of land at Ruthland Vale. The Respondent states that at the time this purchase was made, he and the Petitioner were getting along well, however this contradicts his own statement that the Petitioner never consulted him about the purchase and she never told him she had in fact bought the land.
- [18] It was therefore clear in this court's mind that the Petitioner did not intend to share this parcel of land with the Respondent and that is clear even from the nature of her relief as prayed. However, this court is satisfied that this parcel of land must be considered matrimonial property and must form part of the division that is to be undertaken.
- [19] When this court considers the evidence surrounding the development of this parcel of land, this court accepts again on a balance of probabilities the version of events as given by the Respondent.
- [20] Indeed, it is clear from the documentary evidence that the Petitioner was the initial mortgagor for the purchase of the said lot of land in April 2015. By August 2015, the Respondent was joined as mortgagor for the advancement of a further \$232,000.00 which both parties accept was for the construction of the home. Upon the creation of that mortgage the monthly re-payment was \$2170.00, a sum that was directly deducted from the salary of the Petitioner which at that time of \$3,503.00.
- [21] I am therefore in agreement with counsel for the Respondent that this amounts to almost 80% of the salary of the Petitioner. I therefore do not accept that the reason for the joining of the Respondent as a mortgagor to the document was as a matter of convenience but rather as a means to enable the Petitioner to qualify for the loan.
- [22] That being said, I also accept that the Respondent as the husband of the Petitioner, contributed his talents and contacts to assist in the construction of the home and assisted in the upkeep of the home allowing the Petitioner her salary to cover the mortgage payments. The Petitioner at trial attempted to both downplay the contribution of the Respondent and at times to suggest that he gave no assistance at all. By doing so, the Petitioner sought to introduce evidence on cross examination for the very first time that she had engaged in activities that brought in extra income. In this court's mind this was less than believable, and this court accepts that this was just an attempt by the Petitioner to downplay the role played by the Respondent. In this court's mind it failed woefully.
- [23] So having said so, it is clear that "marriage should be regarded as a joint endeavour..." The concept of the "equal sharing principle" is one that has evolved from the modern view of marriage as a "*partnership of equals*". However, the case law has seen this principle of equality as merely a yardstick for the assessment that is to be undertaken by the court. Having said so, in this case I am satisfied that there are "ample reasons to depart from awarding an equal share". As the case of **Jacqueline Cowan v Michael Cowan** clearly indicated, "the consistent theme is the search for the goal of a **fair outcome**.....the decision in *White v White* clearly does not introduce a rule of equality. The yardstick of equality is a cross check against discrimination. **Fairness is the rule ...**" (My emphasis added)

- [24] Further as Saunders JA (as he then was) stated in the case of **Stonich v Stonich**:
*“The ultimate and overriding objective **that the court must strive at is fairness**. In apportioning the assets, the court must consider the various factors the legislature has asked to take into account and then arrive at a solution **that is in all the circumstances fair to the parties**. The wide discretion available permits the court the ability to interpret fairness in light of the prevailing societal standards”.* (My emphasis added)
- [25] In agreeing with these propositions of the law and in considering the provisions of section 34(1), I am satisfied that I must take into consideration that even on the Respondent’s own evidence his contribution to the construction of the home was only for a specific period. In the evidence elicited on cross examination he had this to say:
“When the Ruthland Vale property was being constructed I was paid at the rate of \$200.00 per day. With that money I would pay utilities at Ruthland Vale and contribute towards groceries...I paid the workers for a period of two weeks who were doing the finishing...I bought BRC and I bought steel and I bought cement.”
- [26] In the evidence of the Petitioner she in fact corroborated this when she told the court also on cross examination:
“I am not disputing that he contributed his labour to the house at Ruthland Vale, he knew I was his wife and was carrying his child, he agreed to volunteer his labour. He contributed his services as contractor to the house that we were to live in...he was never paid for these services – the payments from the bank were used to buy materials and pay for work done on the house. I am not sure that it was true that he saved me thousands of dollars but I would agree that he saved me some.”
- [27] In this court’s mind this was a clear acceptance by the Petitioner herself to the contribution made by the Respondent, and when “the marriage ends fairness requires that the assets of the parties should be divided so as to make provision for the parties’ housing and financial needs taking into account the factors set out in the legislation.” Therefore, when this court considers all the circumstances of the case and the relative positions of both parties and the contribution made by the Respondent, this court finds that the Respondent is entitled to a 35% interest in the value of the Ruthland Vale property.
- [28] That being said, the Petitioner has sought, on her application, in the event that she was not granted the entirety of the Rutland Vale property, 50% of all the matrimonial assets and maintenance for the child of the marriage. Since this court has found that the only other matrimonial asset is the vehicle that is registered in the Petitioner’s name, I will not grant her prayer in that regard but I accept that the Respondent provided the purchase price for this vehicle and that he should be entitled to a share in the same. I make an order that the Respondent is to be paid 15% of the value of the vehicle as of the date of the separation of the parties. With regard to the sum claimed as maintenance for the child of the marriage, the Respondent indicated in his evidence that at one point he was paying the sum of \$200.00 towards the upkeep of his son. I accept that this ended when the Petitioner left the jurisdiction and left the child in the care of other persons other than his father.
- [29] As much as this court accepts that the Petitioner may have had her reasons for leaving the child with persons other than the Respondent and he may have felt slighted by that action, it was not

open to the Respondent to refuse to make payments for the support of his child. However this court was not in receipt of any information as to the present income of the Petitioner and as such it is not in a position to determine what in fact the needs of the Petitioner are with regard to the child of the family. The Respondent having indicated that he had at one time made the payment of \$200.00 for the support of his son, I therefore order that the Respondent is to re-commence making payments of \$200.00 per month towards the maintenance of his son and the Respondent and the Petitioner will be jointly responsible for the payment of all his educational and medical needs until he shall reach the age of 16.

The order of the court is therefore as follows:

1. The Petitioner is awarded a 10% interest in the house at Betremy to be calculated on the value of the same as at the date of separation in 2017.
2. The Respondent is awarded a 35% interest in the house at Ruthland Vale to be calculated on the value as stated in the valuation of Franklyn Browne dated 7th July 2016.
3. The Respondent is entitled to a 15% interest in the vehicle registration number PQ576 to be calculated on the value of the said vehicle as of the date of separation in 2017.
4. The Respondent is to pay the sum of \$200.00 for the maintenance of the child of the family and the Respondent and the Petitioner are to equally share the medical and educational expenses of the child until he shall reach the age of 16.
5. Liberty to apply.
6. Each party to bear their own costs.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar