

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(DIVORCE)**

GRENADA

SUIT NO.GDAHMT2015/0120

BETWEEN:

GABRIELA KOZUB-BEGGS

Petitioner

AND

HIMENEISE BEGGS

Respondent

Appearances:

Mrs. Dawn De Coteau for the Petitioner

Mr. Jerry Edwin for the Respondent

On Written Submissions
2021: January 19

JUDGMENT

[1] **ACTIE, J.:** This is an application for ancillary relief. The applicant, Gabriela Kozub-Beggs (“Ms. Kozub”) and the respondent, Himeneise Beggs (“Mr. Beggs”) began living together in or about the year 1999 while the parties lived in the United Kingdom. The parties were married on 21st February 2002 in the United Kingdom. At the date of the marriage, Ms. Kozub was 24 years old and Mr. Beggs was 58 years old. The parties lived together for many years until Ms. Kozub petitioned the court for dissolution of the marriage on 6th July 2015. The parties obtained a decree absolute on 10th December 2015 bringing an end to the marriage.

Background

[2] Ms. Kozub filed an affidavit in support of her application for ancillary relief in which she deposes that she met Mr. Beggs in the year 1997, in the City of London in the United Kingdom while studying as an International English student from Poland. In the year 1999, she moved into Mr. Beggs’ home situate at 65 Monks Drive, London. In the year 2001, Mr. Beggs inherited property from his late sister, Eileen Nyack, at 3 Whellock, Chiswick in the United Kingdom (“3 Whellock Road”). Mr Beggs and

Ms. Kozub solemnised their union in marriage on 21st February, 2002. The marriage produced two children, namely: Daniel James Kozub-Beggs and Sophia Isabella Kozub-Beggs. Daniel was born on 3rd February 2004 and Sophia was born 7th February 2008.

- [3] The parties lived at the matrimonial home at 65 Monks Drive, London in the United Kingdom (“65 Monks Drive”). The matrimonial home was pre-marital property which was owned by Mr. Beggs since the 1980’s. On or about the year 2012, Mr. Beggs’ health deteriorated, and he reportedly suffered a stroke. Shortly thereafter, the family decided to move to Grenada permanently and leased their former matrimonial home in London. The parties began living at their property in L’anse Aux Epines in the parish of Saint George in the State of Grenada.
- [4] On 9th October 2015, Ms. Kozub filed an application by way of summons seeking inter alia, interim orders, including maintenance for herself and the children of the marriage. The court granted the said application for interim orders, including an order of maintenance in the sum of \$5,000.00 for Ms. Kozub and the children of the marriage.
- [5] Thereafter, Ms. Kozub filed various actions for committal against Mr. Beggs for breaches of the court’s orders. The said ancillary relief application filed by Ms Kozub on 21st November, 2018 is lengthy, but can be summarised as follows:
- (1) An order that the respondent (Mr Beggs) conveys half share or in the alternative to pay a share in the matrimonial assets to the applicant as follows:
 - (a) One half share or interest in land together with concrete building thereon situate at L’anse Aux Epines in the parish of Saint George in the State of Grenada;
 - (b) One half share or interest in the land together with concrete building thereon situate at 3 Whellock Road, Chiswick W4 1DY in the United Kingdom;
 - (c) One half share or interest in the property situate at 65 Monks Drive, London in the United Kingdom

- (2) An order that Mr Beggs account and pay to the applicant such sum found to be due to her as occupational rent;
- (3) An order that Mr Beggs account and pay to the applicant such sums found to be due to her in rental income collected by Mr Beggs for the rental apartment or the main house or entire property situate at L'anse Aux Epines aforesaid;
- (4) An order that the applicant be granted full custody of the children of the family, namely, Daniel James Kozub-Beggs and Sophia Isabella Kozub-Beggs;
- (5) An order that Mr Beggs to pay maintenance in the amount of \$5,000.00 for the said children of the family.
- (6) An order that Mr Beggs is to pay the arrears of maintenance for the children of the family;
- (7) An order that Mr Beggs is to pay to 50% of the special or extraordinary expenses for the children of the family;
- (8) An order that Mr Beggs to pay to 50% towards the future education of the children of the family;
- (9) An order that there be liberty to apply for further orders or direction;
- (10) Such further or other relief as this Honourable court deems just;
- (11) Costs.

Issues

[6] Issues to be determined are:

- (1) What are the matrimonial assets?
- (2) What share in the matrimonial assets is Ms. Kozub entitled to?
- (3) Whether Ms. Kozub is entitled to occupational rent and rental income?
- (4) Whether Ms. Kozub is entitled to sole custody of the children of the family?
- (5) Is Ms. Kozub entitled to maintenance for the said children of the family?

Law and analysis

[7] The court has jurisdiction under the **UK Matrimonial Causes Act 1973** ("the Act") to make property adjustments orders. Section 24 of the Act said section provides:

- (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 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) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
 - (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage [F35, other than one in the form of a pension arrangement (within the meaning of section 25D below)];
 - (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement [F35, other than one in the form of a pension arrangement (within the meaning of section 25D below)];

Section 25 of the Act

[8] Where financial orders are being sought by parties in the dissolution of marriage, the court is guided by the factors set out under **section 25 of the UK Matrimonial Causes Act 1973**, ("the MCA") namely:

- (1) 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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire.
- (2) the financial needs, obligations, and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
- (3) the standard of living enjoyed by the family before the breakdown of the marriage.
- (4) the age of each party to the marriage and the duration of the marriage.

- (5) any physical or mental disability of either of the parties to the marriage.
- (6) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.
- (7) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (8) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

Income, earning capacity, property and other financial resources

[9] Ms. Kozub deposed that she is currently employed as an Operations General Manager at the International Airport and her monthly income is \$ 5,600.00. Ms Kozub does not disclose any other supplemental income from other sources. Moreover, she has not disclosed whether she has any other property, including bank accounts, vehicles, investments, shares, stocks or real estate.

[10] Mr. Beggs is a retired OB/GYN Medical Practitioner and his sole income is derived from two NHS pensions of £98.00 GBP each. Mr. Beggs has not disclosed whether these pensions are received daily, weekly or monthly nor has he provided the court with any documentary evidence supporting the above pensions. Additionally, he earns rental income of GBP£800.00 from one flat in the UK and an apartment at L'anse Aux Epines. He employs a gardener, housekeeper and cook for EC\$1,200.00 each per month. He relies on his pensions and rental income from his properties.

[11] Ms. Kozub in her affidavit stated that the rental income for the L'anse Aux Epines property is USD\$4,000.00 which Mr. Beggs collects and used for his benefit only. This allegation has not been denied by Mr. Beggs. .

Financial needs, obligations and responsibilities of the parties

[12] Mr. Beggs has not disclosed all of his average monthly expenses but states that he pays the sum of \$3,300.00 in maintenance and \$3,600.00 in monthly salaries for his employees who look after him and his home at L'anse Aux Epines. Both properties in the United Kingdom and Grenada have been

mortgaged, with the L'anse Aux Epines property being encumbered with 3 mortgages. Mr. Beggs has not disclosed the current balances of the mortgages on the properties.

[13] It is the evidence that Mr Beggs suffered a stroke around 2012, which may have been negatively impacted his health over the years. However, in relation to his financial needs, the court notes that in 2018, Mr. Beggs sold the first matrimonial home at 65 Monks Drive in the United Kingdom for approximately GBP £700,000.00 which is equivalent to over EC \$2,300,000. Mr. Beggs has enjoyed the fruits of the proceeds of sale of the first matrimonial home.

[14] Ms Kozub deposed that her recurrent monthly expenses are in the region of \$11,122.11¹ with rent, food, and school fees forming the majority of her expenses but failed to provide supporting documentary evidence. Ms Kozub lists the following occasional expenses which in the court's view ought not to be included as recurrent monthly expenses:

(1) Outing, birthday party, cinema	\$ 200.00
(2) Doctor and dental visits	\$ 350.00
(3) Once a year trip to grandparents	\$1,000.00
(4) Christmas & birthday gifts	\$ 300.00
(5) School accessories	\$ 400.00
(6) Clothing and shoes	<u>\$ 420.00</u>
Total	\$2,670.00

[15] The amount being occasional expenses leaves an average monthly recurrent expenditure in the sum of \$8,452.11.

Standard of living enjoyed by the family before the breakdown of the marriage

[16] The parties enjoyed a high standard of living during the early years of their marriage. This lifestyle continued when the parties decided to move to Grenada as a family. The new matrimonial home was built in L'anse Aux Epines, an affluent neighbourhood in the south of Island. Further, it is not disputed that the family entertained frequently and enjoyed the finer things in life.

¹ Para 50 of the Affidavit of Gabriela Kozub filed 21st November 2018

[17] Both children of the marriage also attend private school which is an added monthly cost for the parties. The rental income of USD\$4,000.00 of the apartment at L'anse Aux Epines in the context of Grenada, would be classified as a luxury rental.

Age of each party to the marriage and the duration of the marriage

[18] Mr. Beggs was 58 years old and Ms. Kozub was 24 years old. Given the timeline Mr. Beggs would be about 76 years old and Ms. Kozub would be about 42 years old and the marriage lasted approximately 13 years.

Physical or mental disability of either of the parties to the marriage

[19] Neither of the parties led any evidence of physical or mental disability. However, the court notes that Mr. Beggs suffered from a stroke several years ago.

Contributions of each of the parties

[20] Ms. Kozub's contributions:

- (1) Taking care of family and household.
- (2) Paying bills and purchasing household items
- (3) Purchasing furniture and other household items at discounted prices using her employee discounts benefit.
- (4) Her father, Leszek Kozub assisted in painting, wallpapering and carpentry work. He also built a brick wall, flowers beds and changed the fence, and trimmed hedges and trees.
- (5) Her mother, Maria Kozub assisted the family in taking care of her son, Daniel and the household whenever she visited them.
- (6) She supervised the renovation of the flats at 3 Whellock Road when Mr. Beggs had a heart attack.
- (7) In 2012 she sold her property at 67 Monks Drive which Mr. Beggs gave to her as a gift and transferred the proceeds of sale in the sum of 1,274,164.89 to purchase the L'anse Aux Epines property.
- (8) She decorated and designed the L'anse Aux Epines property, including choosing fixtures and furnishing for the property.

(9) She managed the rental bookings of L'anse Aux Epines property

[21] Mr. Beggs' contributions:

- (1) He was the main breadwinner of the family during the marriage.
- (2) He contributed the majority of the finances to renovate or purchase property during the marriage, including the former property at 67 Monks Drive which he gifted to Ms. Kozub who then sold it and the L'anse Aux Epines property.
- (3) He brought the 65 Monks Drive, 3 Whellock Road and the land L'anse Aux Epines properties into the marriage.
- (4) His evidence is that the 65 Monks Drive property was purchased in the 1980's and formed the first matrimonial home.
- (5) The 3 Whellock Road Property was devised to him from the estate of his late sister and was converted into two flats. One of which was sold during the marriage.
- (6) The acquisition of the real estate assets during the marriage was his brainchild.

Conduct of the parties

[22] Ms. Kozub placed much emphasis on Mr. Beggs' conduct in relation to his alleged breaching of orders of the court. This in the court's view are separate actions for contempt proceedings which are not relevant for the division of matrimonial assets.

Loss of benefits

[23] There is no evidence that either party has or is likely to lose any benefits as a result of the divorce.

What are the matrimonial assets?

[24] In **Miller v Miller**² Lord Nicholls defined matrimonial property as “***the financial produce of the parties' common endeavour***³” and Lady Hale defined it as “***the fruits of the matrimonial partnership***⁴”. In **Charman v Charman**⁵, the English Court of Appeal described matrimonial property as “***...property of the parties generated during the marriage otherwise by the external***

² Ibid

³ Ibid at para 22

⁴ Ibid at para 141

⁵ (No.4) [2007] EWCA Civ 503 at para 66

donation". Further, in **Hart v Hart**⁶ Moylan J defined non-matrimonial property "**as being assets (or that part of the value of an asset) which are not the financial product of or generated by the parties' endeavours during the marriage. Examples usually given are assets owned by one spouse before the marriage and assets which have been inherited or otherwise given to a spouse typically from a relative during the marriage.**"⁷

[25] Lord Nicholls of Birkenhead in **Miller v Miller**⁸ stated that:

"This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. **The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose.** As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."⁹

[26] The court notes that Mr. Beggs brought the majority of the assets into the marriage. The only properties that were acquired in the marriage was the former property at 67 Monks Drive which was subsequently sold and the construction of the L'anse Aux Epines home in Grenada. The properties are recorded in the sole name of Mr. Beggs.

[27] The court in **Jones v Kennot**¹⁰ held that where the property is registered in the sole name of one party, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealing between them in relation to the property and determine what is fair. In doing so it must be noted that financial contributions are only one of the relevant factors.

⁶ [2017] EWCA Civ 1306

⁷ Hart v Hart [2017] EWCA Civ 1306 at para 2

⁸ Miller v Miller and McFarlane v McFarlane [2006] UKHL 24

⁹ Ibid at para 22

¹⁰ [2011] UKSC 53.

[28] The former matrimonial home at 65 Monks Drive was sold in November 2018 for approximately £700,000.00 and Mr. Beggs' evidence is that the sum of £342,000.00 was received by him for the sale of the property after the mortgage balance was deducted. Prior to the sale, the property was a pre-marital asset that was brought into the marriage and was used as the matrimonial home for many years while the parties lived in the United Kingdom. The property at 65 Monks Drive was undoubtedly matrimonial property.

- The 3 Whellock Road property was also a pre-marital asset which Mr. Beggs brought into the marriage as part of his inheritance. The property was renovated and converted into two flats during the marriage. Ms. Kozub deposed that her father assisted in its expansion and conversion. This was not expressly denied by Mr. Beggs. Ms. Kozub also deposed that she supervised the project to completion. The court accepts her contribution and that of her father's to the conversion of the house into flats. This further shows that property was used and contributed to by both parties, albeit disparate. The court is of the view that 3 Whellock Road property became a central place in the marriage and became matrimonial property.

[29] The L'anse Aux Epines property was bought as vacant land by Mr. Beggs on 24th December 2001 and the construction of the home on the said land began sometime in 2007 and was completed in or around 2013 based on the evidence of both parties. Its completion coincided with the family's relocation from the United Kingdom to Grenada. When the family moved to Grenada, the home at L'anse Aux Epines became the new matrimonial home. The property was mortgaged in 2007 by both parties to RBTT Bank. For reasons given, the court is of the view that this property also became matrimonial property.

What share in the matrimonial assets is Ms. Kozub entitled to?

[30] In determining Ms. Kozub's share in the matrimonial assets, the court will have regard to the learning from **Miller** in relation to the principles of sharing. Baroness Hale of Richmond in **Miller and McFarlane**¹¹ 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 contributions to**

¹¹ *Miller v Miller and McFarlane v Mc Farlane* [2006] UKHL 24 at paragraph 146

the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares.” (Bold emphasis mine)

[31] Further, Lord Nicholls of Birkenhead opined:

“The matter stands differently regarding property (‘non matrimonial property’) the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding nonmatrimonial property was summarised in the White case [2001] 1 AC 596, 610:

‘Plainly, 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.’

In the case of a short marriage fairness may well require that the claimant should not be entitled to a share of the other’s non-matrimonial property. **The source of the asset may be a good reason for departing from equality.** This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of a short marriage. (Bold emphasis mine)¹²

Needs principle

[32] In light of the above circumstances in relation to the sharing principle, Baroness Hale in **Miller**¹³ explained the needs approach and opined that:

“The most common rationale is that the relationship has generated needs which it is right that the other party should meet. In the great majority of cases, **the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living which they enjoyed during the marriage** (note that the House did not adopt a restrictive view of needs in White: see pp 608g to 609a). This is a perfectly sound rationale where the needs are the consequence of the parties’ relationship, as they usually are. **The most common source of need is the presence of children, whose welfare is always the first consideration**, or of other dependent relatives, such as elderly parents. But another source of need is having had to look after children or other family members in the past. Many parents have seriously compromised their ability to attain self-sufficiency as a result of past family responsibilities. Even if they do their best to re-enter the employment market, it will often be at a lesser level than before, and they will hardly ever be able to make up what they have lost in pension entitlements. A further source of need may be the way in which the parties chose to run their life together. Even dual career families are difficult to manage with completely equal opportunity for both. Compromises often

¹² Miller v Miller and McFarlane v Mc Farlane [2006] UKHL 24 at paragraphs 23-24

¹³ Miller v Miller [2006] UKHL 24

have to be made by one so that the other can get ahead. All couples throughout their lives together have to make choices about who will do what, sometimes forced upon them by circumstances such as redundancy or low pay, sometimes freely made in the interests of them both. **The needs generated by such choices are a perfectly sound rationale for adjusting the parties' respective resources in compensation.**¹⁴

3 Whellock Road property

[33] The court is minded to follow the needs approach to achieve an appropriate and fair outcome in the case at bar. The 3 Whellock Road property was inherited by Mr. Beggs through the estate his late deceased sister. The source of the property does play a factor in the division of matrimonial assets even though it is not the main one. However, the court finds good reason not to share this property equally between the parties. Ms. Kozub claims that herself and her father contributed to the conversion of the property from a home to two separate flats.

[34] While these contributions are not significant enough to award a 50% share to Ms. Kozub in the property, the court assess her direct contributions and her indirect contributions through her father assisting in the building works as 15% of the property. It is not disputed that this property is valued at £700,000.00 with a rental income of £2,300.00 and is currently mortgaged. Notwithstanding this assessment of 15% of the value of the property, the court is mindful that given the need to adequately provide for the future needs of Ms. Kozub and the children of the family and to make a clean break. In the circumstances, it would be more equitable for Mr. Beggs to transfer his share or interest in this property to Ms. Kozub absolutely. This in the court's view that this clean break will achieve a fair result to meet the future financial needs of Ms. Kozub and the children of the family.

L'anse Aux Epines property

[35] The land on which the matrimonial home at L'anse Aux Epines was built, is a pre-marital asset that became a central place in the marriage when it became the new matrimonial home for the family when they relocated to Grenada. Ms. Kozub claims to have managed the rental of the property which has been admitted to some degree by Mr. Beggs. Further, Ms. Kozub claimed that she transferred the sum of \$1,274,164.89 from proceeds from the sale of the 67 Monks Drive property towards the construction of the matrimonial home on the property.

¹⁴ Ibid at para 138.

[36] The court notes that Ms. Kozub admits that Mr. Beggs purchased the 67 Monks Drive property solely and placed it in her name. Further, the source of the financing was solely from Mr. Beggs. The court can therefore conclude that Mr. Beggs' money was used to purchase the 67 Monks Drive property and it was later transferred to construct the matrimonial home at L'anse Aux Epines. Therefore, the court is of the view that Mr. Beggs contributed most of the finances, if not all, to purchase the land and construct the home thereon. Moreover, Mr. Beggs sold the former matrimonial home at 65 Monks Drive and has admitted to receiving GBP £342,000.00 which he has enjoyed without accounting to anyone. Further, the rental income of the said property in the sum of USD\$4,000.00 which was deposited by Ms. Kozub and the court accepts, will be more than adequate to meet the financial needs of Mr. Beggs. Taking all the factors into consideration and given Mr. Beggs' substantial direct financial contributions to the property and given the circumstances surrounding the acquisition of the land and the construction of the matrimonial home, the court is of the view that fairness dictates that the property L'anse Aux Epines ought to remain with Mr. Beggs.

Occupational rent, rental income and maintenance of the children

[37] In her affidavit Ms. Kozub alleges that she has not received any share in the rental income for the properties at 65 Monks Drive, 3 Whellock Road in the United Kingdom and the L'anse Aux Epines in Grenada. She claims that the property at 65 Monks Drive was rented in 2012 in the sum of GBP £2,500.00 per month and that she has not received any share in its proceeds and L'anse Aux Epines USD\$4,000.00 in rental income.

[38] Further, Ms. Kozub claims the sum of \$5,000.00 as maintenance for the children of the family. The court is not of the view that periodic payment of maintenance or lump sum payment in maintenance is apposite in these proceedings given Mr. Beggs' age and medical condition. The parties have engaged in much debate in relation to the issue of maintenance. Mr. Beggs has also raised his inability to meet such a figure of \$5,000.00 as maintenance. He is also of the view that Ms. Kozub's monthly expenses are inflated.

[39] Given the conflict between the parties as to the amount of maintenance that is necessary for the children, the court is not minded to make a further order for maintenance by periodic payments. Further, a lump sum payment of maintenance may pose a challenge for Mr. Beggs as he would experience grave difficulty in raising a loan at his age to meet such a payment. Having ruled earlier

in this judgment that the property at 3 Whellock Road, Chiswick in the United Kingdom be transferred to Ms. Kozub to meet her financial needs and that of the children of the family, the court will not make any order for occupational, rental income and maintenance as proceeds of sale of this asset will, in the court's view, be adequate to meet the financial needs of the family for the years to come.

Custody of the children of the family

[40] The court in deciding the issue of the custody of children shall have regard to the welfare of the children as the first and as most paramount consideration. The court's powers are derived from its inherent jurisdiction as *parens patriae*¹⁵ since there is no custody legislation in Grenada. The relevant facts and consideration are to be taken into account and weighed with respect to the welfare of the children¹⁶.

[41] Ms. Kozub deposed that the children visit Mr. Beggs “***on a regular basis. They sometimes stay the night, weekend or a week in a row as per their wish or his wish***¹⁷.” There has been no allegation that Mr. Beggs ill-treats the children nor is his environment not conducive for their visits. Further, there is no evidence before the court that renders Mr. Beggs unfit to share custody of the children. On the contrary, the opposite is true, the evidence before the court is that the children visit Mr. Beggs regularly and stay as long as they like. The court therefore does not see any good reason to change the status quo in these proceedings. Ms. Kozub has led no exceptional circumstances for the court to take into account in awarding her sole custody of the children. Ms. Kozub's claim for sole custody of the children is hereby dismissed and the court orders joint physical custody to the parties with primary care and control to Ms. Kozub.

Conclusion

[42] For reasons given above, it is ordered and directed as follows:

- (1) Mr. Beggs is solely entitled to the property together with building thereon situate at L'anse Aux Epines in the parish of Saint George in the State of Grenada.
- (2) Mr. Beggs shall transfer to Ms. Kozub all of his title, share and/or interest in the property at 3 Whellock Road, Chiswick W4 1DY in the United Kingdom (“the flat”) within thirty (30)

¹⁵ R v Gyngall [1893] 2 W.B 232 at page 246

¹⁶ J and Anor. v C and Ors. [1969] 1 All ER 788 at page 821

¹⁷ Para 48 of the Affidavit of Gabriela Kozub filed 21st November 2018.

days of this judgment to meet the future needs of Ms. Kozub and the family and to satisfy her claims for maintenance, occupational rent and rental income.

- (3) No order is made with respect to Ms. Kozub's claim for occupational rent, rental income and maintenance as provision has been made through the conveyance to Ms, Kozub of the property at 3 Whellock Road, Chiswick in the United Kingdom.
- (4) Ms. Kozub's claim for sole custody is dismissed. Mr. Beggs and Ms. Kozub are to have joint physical custody of the children of the family with primary care and control to Ms. Kozub.
- (5) The parties are to bear their own costs.

Agnes Actie
High Court Judge

By the Court

Registrar