

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

CLAIM NO. GDAHMT2012/0089

BETWEEN:

KIM JOSEPH NÉE NOEL

Petitioner

AND

STEPHEN JOSEPH

Respondent

Appearances:

Ms. Naeisha John Diarra for the Petitioner

Ms. Hazel Hopkin for the Respondent

2020: October 19
November 27.

JUDGMENT

[1] **GLASGOW, J.:** This is an application for ancillary relief which was filed on 26th July, 2017 by the petitioner, Ms. Kim Joseph née Noel, ("**Ms. Noel**") seeking the following:

- (1) A property adjustment order that the court declares that she is entitled to one-half of the value of the matrimonial property situated at L'anse Aux Epines in the parish of Saint George in the State of Grenada and that the husband ("Mr. Joseph") do transfer all of his share or interest in the matrimonial property to her;

- (2) Alternatively, an order that the matrimonial property be sold and that the proceeds thereof be used to pay a lump sum payment of fifty percent (50%) of the proceeds from the sale to her;
- (3) An order that Mr. Joseph provides spousal support to her as the court deems fit.
- (4) An order that Mr. Joseph do pay the costs of this application;
- (5) Further or other relief;
- (6) Costs.

Background

- [2] The parties began their relationship in or about the year 2003. After the couple met, Ms. Noel moved in with Mr. Joseph and they lived together in a common-law relationship. After six years of living together, the couple was married on 28th February 2009 at Gateway Assembly at Calliste in the parish of Saint George. The marriage did not produce any children. However, Mr. Joseph has three children and Ms. Noel has one child from previous relationships.
- [3] Unfortunately, after living together for a few years the marriage broke down irretrievably. On 30th May 2012, Ms. Noel filed a petition to dissolve the marriage. It was officially dissolved on 13th September 2012 when the decree nisi was made absolute. The marriage only lasted three years. The court must determine Ms. Noel's application seeking division of the matrimonial property.

Issues

- [4] The issues for determination are:
 - (1) What property(ies) comprise matrimonial assets?

- (2) What is Ms. Noel's share, if any, in the matrimonial assets?

Ms. Noel's affidavit evidence

[5] Ms. Noel filed an affidavit on 26th July 2017 in support of her application for ancillary relief wherein she deposes that:

- (1) That there are four children of the family namely: Soniva Alexander, Melissa Fleming and Jamie Fleming who were born to Mr. Joseph and Elijah Buckmire who was born to Ms. Noel. The court notes that all of these children are now adults and therefore section 41 of the Matrimonial Causes Act 1973 (the Act) does not apply.
- (2) She was married to Mr. Joseph for three years from 2009 to 2012 and that prior to the marriage, they cohabitated continuously for six years. Further, she states, she covered all expenses for the wedding, including the costs of rings, food and clothing for both parties from her personal savings account as Mr. Joseph was unable to afford.
- (3) The parties lived on a lot of land situate at L'anse aux Epines in the parish of Saint George measuring Seven Thousand Nine Hundred and Sixty square feet (7,960 sq. ft.). Ms. Noel accepts that the land was given to Mr. Joseph by his aunt and it comprised a small two bedroom concrete house when she began cohabiting with him.
- (4) Between the years 2004 to 2011, she took loans to assist in building apartments and enlarging the concrete house. She explains that at the time Mr. Joseph led her to believe that they would share the matrimonial property jointly and therefore she invested substantially into the property.
- (5) On or about the year 2005, she took a loan of \$10,000.00 from the Bank of Nova Scotia to purchase a refrigerator and furnishing for the matrimonial property and to do some refurbishing of the property.

- (6) Further, on or about the year 2005, she loaned Mr. Joseph \$5,000.00 to serve as security for a loan to purchase a bus registration number HN 22. The bus traversed the Grand Anse bus route for several years. Ms. Noel claims that Mr. Joseph sold the bus and used the proceeds to purchase another Toyota Middle Roof bus registration number HAD 882. Thereafter, in or about the year 2012 Mr. Joseph sold the Toyota Middle Roof bus and purchased another Toyota Middle Roof bus registration number H 4299. Ms. Noel says that Mr. Joseph informed her and she verily believed that, he again sold this Toyota Middle Roof and purchased a black Noah vehicle. Ms. Noel exhibits a copy of a bank draft for the sum of \$5000.00.
- (7) On or about the year 2006, the parties sought a mortgage from the RBTT Bank Grenada Ltd to improve the matrimonial property. Ms. Noel avers that she secured the mortgage in the sum of \$15,000.00 which was used to improve the condition of the matrimonial property.
- (8) In the year 2011, the parties obtained another mortgage to expand the matrimonial property. Ms. Noel states that her salary is assigned to the mortgage and the proceeds of the mortgage were used to build rental apartments for additional income and to improve the condition of the matrimonial property. Ms. Noel exhibits a copy of the loan agreement and mortgage. Her evidence is that between the months of October 2010 to December 2013, she paid the sum of \$600.00 monthly towards the mortgage which totalled \$15,600.00.
- (9) On or about the year 2016, she observed that the matrimonial property was listed for sale with Coldwell Banker with a sale sign prominently displayed thereon. By way of solicitor's letter dated 13th May, 2016 she directed Coldwell Banker to remove the listing of the matrimonial property from their website. The company subsequently complied with the

demand. Ms. Noel believes that Mr. Joseph listed the matrimonial property with another company and that he may dispose of the matrimonial property if he is not restrained.

- (10) Further, Ms. Noel claims a share or interest in the rental apartment at the matrimonial property and of Mr. Noel's bus transport business. Her evidence discloses that she was in charge of managing the rental apartments by obtaining linens, cleaning, running errands, and paying bills. Further, she claims that she managed Mr. Joseph's bus business by paying the salary of the driver and depositing the husband's salaries while he worked at the blocks plant. These services, her evidence asserts, were provided without compensation and without the input or assistance of her husband.

Mr. Joseph's affidavit evidence in response

- [6] On 22nd September 2017, Mr. Joseph filed an affidavit in response to Ms. Noel's application for ancillary relief. In the affidavit Mr. Joseph avers that:
- (1) He is 47 years old having been born on 13th June, 1970. He is employed as a Truck Driver with Southern Waste Management Limited. Ms. Noel is not entitled to a fifty percent (50%) share in the matrimonial property.
- (2) The parties began their relationship in 2003 and were married on 28th February 2009. They were divorced on 6th August, 2012. There are no children of the marriage. However, both parties have children from previous relationships; he has three children and Ms. Noel has one child.
- (3) When the parties began cohabitating in 2003, he was already the owner of his own home – a two bedroom concrete house at L'anse aux Epines. He further avers that he constructed the house from his personal savings.

The house is located on lands measuring 7,960 square feet formerly owned by Gordon and Christine Brathwaite, who are not related to him, but are friends of his family. Mr. Gordon Brathwaite was his former employer and also his father's former employer. He grew up on the land in a wooden house which is located next to his current house.

- (4) In relation to the Toyota bus registration number HN33, he obtained same via a loan from First Caribbean International Bank in January 2006. Ms. Noel contributed \$4,500.00 in cash towards the purchase of the bus sticker. He insists that his former wife must provide proof of any further sums contributed to the purchase of the bus. He states that Ms. Noel's exhibit "KN3" with respect to the bank draft is illegible. He also exhibits a copy of the loan statement.
- (5) In January 2006, he obtained a loan from the Royal Bank of Trinidad and Tobago (RBTT) in the sum of \$15,000.00 for roof repairs. He used some of the proceeds of the loan to repay Ms. Noel for the monies she contributed to the purchase of the bus registration number HN33. He avers that Ms. Noel was joined to his bank account with First Caribbean to allow her to draw down on the loan principal at her convenience. He exhibits a copy of the loan statement.
- (6) It was his intention to extend the house and in order to do so, he procured the title for the land via a Deed of Gift from Mrs. Christine Brathwaite, the Executrix in the estate of Mr. Gordon Brathwaite. The deed of gift was executed on 24th March, 2006. The land was used as security for a loan from Republic Bank (Grenada) Ltd, the proceeds of which were applied to the construction of three additional bedrooms to the house and two (one bedroom) apartments to the back of the said house. He exhibits a copy of the mortgage deed dated 17th January 2007. Mr. Joseph avers that he did all of the above through his own efforts before the parties were married.

- (7) Ms. Noel was previously employed as a waitress at Beach House Restaurant, but unfortunately she suffered a knee injury which required surgery. His evidence is that as result of the injury, Ms. Noel became immobile and he waited until her recovery in order to wed her. However, Ms. Noel remained unemployed even after her recovery.
- (8) Since Ms. Noel was unemployed at the time, he states that he single-handedly bore all their living expenses. Further, he explains, contrary to Ms. Noel's statements, he contributed to the costs of the wedding, including cost of the rings and snacks. During that period, his monthly salary was \$2,400.00 and it was his usual practice to keep \$200.00 of that salary for transportation cost. He gave the remainder to Ms. Noel to pay utility bills, mortgage and other living expenses. He explains that he would ask Ms. Noel for money whenever he needed.
- (9) In the year 2010, the mortgage with Republic Bank was transferred to Scotia Bank Grenada. As a result of the release, he contracted a mortgage with Scotia Bank in the sum of \$345,085.00. He states that he was advised that it would be advantageous to join Ms. Noel to the mortgage and thus, consented to doing so. He exhibits a copy of the conveyance and the Deed of Mortgage.
- (10) He continued to repay the mortgage sums solely until the year 2011, when both parties refinanced the mortgage in the sum of \$39,415.00. The Deed of Further Charge was obtained to construct a two bedroom apartment at the downstairs of the house. Thereafter, the couple repaid the loan by monthly instalments of \$3,600.00, of which \$3,000.00 came from rent and his salary and Ms. Noel contributed \$600.00. Ms. Noel at that time gained employment at Bryden and Minors Ltd and Digicel Grenada Ltd.
- (11) Subsequently after, in May 2012, Ms. Noel filed for divorce and continued making payments until 2013. He claims that since Ms. Noel stopped

paying the mortgage, he has been solely responsible for making the full monthly repayments of \$3,600.00.

- (12) He denies that Ms. Noel acquired diverse loans to assist in building the apartments and expanding the house and puts Ms. Noel to strict proof of this claim.
- (13) Notwithstanding that purchases were made in Ms. Noel's name, he believes that those finances came from his salary and earning from the buses as Ms. Noel was the repository of those funds.
- (14) Save instances where Ms. Noel made payments to the mortgage and household items, Ms. Noel did not expend any of her personal funds on the property. Ms. Noel was not responsible for paying the tenants' bills and if she did so it was at the request of the tenants as a favour. Ms. Noel usually collected the rent from the tenants and applied the proceeds as she wished. At that time two (one bedroom) apartments were leased which brought in USD\$600.00 which is equivalent to EC\$1,600.00 each.
- (15) He was the primary breadwinner in the marriage and also contributed to the upkeep of the house, including cleaning, washing dishes, and carrying out repairs and maintenance of the premises.
- (16) He currently earns \$2,700.00 per month. The downstairs apartment is being rented at \$1,100.00 and one of the upstairs apartments is leased at \$1,600.00. He states that his average monthly expenses total \$5,365.00, with the mortgage payment being \$3,600.00.
- (17) He reiterates that the property in issue, that is, the land was given to him as a gift does not form part of the matrimonial assets. He states that he possessed the two bedroom concrete house before the couple commenced their relationship. With respect to the additional bedrooms and apartments, he states that two upstairs apartments were constructed

by him before the marriage and not during the currency of the relationship. He avers that Ms. Noel's contribution to the downstairs apartments does not entitle her to a fifty percent (50%) share in the property.

- (18) In closing, Mr. Joseph suggests that Ms. Noel is entitled to a ten percent (10%) share of the downstairs apartment for her contribution to the household and the mortgage.

Ms. Noel's submissions

- [7] On 13th March 2020, counsel for Ms. Noel, Ms. Naeisha John Diarra filed written submissions on her behalf. Counsel for submits that:

- (1) In relation to the prayer for spousal support, while Ms. Noel may be entitled to financial support post-divorce, she has not provided the necessary facts to support an award. Therefore, she does not intend to pursue this relief unless the court deems it fit to make an award¹.
- (2) Applications for ancillary relief are always considered in two stages, namely, computation and distribution. At the computation stage, the court determines what constitutes the matrimonial assets and at the distribution stage, the court determines how these assets are to be shared. It is generally accepted that matrimonial property is divided on the equal sharing principle or the equality principle.

Whether the entire property at L'anse aux Epines forms part of the matrimonial assets?

- (3) The applicable law to be considered by the court on an application for ancillary relief is section 24 of the UK Matrimonial Cause Act 1973 (the

¹ Para 22 of the petitioner's written submissions filed 13th March 2020

Act). Counsel states that section 24 of the Act empowers the court to make an order for financial provision and property adjustment.

- (4) Section 25 of the Act makes provision for the matters which a court must consider in deciding how to exercise its powers.
- (5) Counsel submits that the law is settled as to what constitutes matrimonial assets. It is trite law that property acquired during the marriage by the efforts of the parties constitutes matrimonial assets. Counsel explains that in **White v White**² and **Miller v Miller**³, the House of Lords made a distinction as to the source of the property of a couple on an ancillary relief application. Two sources of matrimonial assets are recognised. The first source being property acquired during the marriage otherwise than by inheritance or gift and the second source is property acquired otherwise.
- (6) Counsel submits that section 25(2)(f) of the Matrimonial Causes Act provides that the court is to consider "***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.***" Counsel references Baroness Hale of Richmond's dictum at paragraph 146 of the judgment in **Miller**⁴ to support her view regarding contributions of the parties to the welfare of the family. The court is also referred to Lord Nicholls' guidance in **Miller**⁵ and **Charman v Charman**⁶ with respect to treating property brought into the marriage as matrimonial property.

² [2000] UKHL 54

³ [2006] UKHL 24 at para 22

⁴ [2006] UKHL 24 at para 146

⁵ [2006] UKHL 24 at para 22

⁶ [2007] EWCA Civ 503 at para 81

- (7) Counsel notes that learned Queens Counsel in **Mc Intyre v Mc Intyre**⁷ argued before the court of Appeal that the learned judge in the court below should not have been concluded that certain property at Calivigny Gardens and the balance in the bank account in the Cayman Island were acquired during the course of the marriage and were therefore matrimonial assets. Blenman JA however found that the learned judge was correct in regarding those assets as matrimonial assets.
- (8) Further, counsel refers the court to the facts in **Farray v Farray**⁸, where land on which the matrimonial home was built was gifted to the husband one year prior to the marriage, but during the currency of the parties' relationship. The learned trial judge found that since the land was given in contemplation of marriage it had a central place in the marriage. It was accepted by the court as a pre-marital gift. The court applied the learning in **Miller**⁹.
- (9) In the case at bar, the gift of the lot of land at L'anse aux Epines was executed on 24th March 2006. It is agreed that the parties were in relationship for six years prior to their marriage from the year 2003 to 28th February, 2009 when they were married. The gift was made while the parties were in a serious relationship living together in the said property which at the time was a two bedroom house. Further, counsel states that it is undisputed that prior to the marriage, financial and non-financial contributions were made by both parties who were living together and in no doubt were in contemplation of marriage. The entire marriage was spent on the property which was gifted to Mr. Joseph. Therefore, following to the learning in **Farray** and **Mc Intyre** the lot of land together with the house ought to be properly considered as matrimonial property even though Mr. Joseph brought this asset into the marriage.

⁷ GDAHMTAP2013/0024

⁸ GDAHMT2010/0166

⁹ GDAHMT2010/0166 at para 6

Land

- (10) Counsel, states that the valuator experienced difficulty in ascertaining the value of one of the apartments. The common law maxim "***cuis est solum eius est usque and caelum ad inferos***": he who owns the surface owns everything up to the heavens and down to the depths of the earth. However, counsel submits that there are exceptions to this principle, including rights to the Crown for minerals, petroleum, gold and silver and rights reserved for aircraft under the Civil Aviation Act¹⁰. Therefore counsel concludes that the building is undivided and consequently should be treated as a whole when considering division of the matrimonial assets.

To what share is Ms. Noel entitled?

- (11) Counsel recites the facts of the high court judgment of **Mc Intyre v Mc Intyre**¹¹ which was heard by Mohammed J. Counsel explains that in **Miller**, Lord Nicholls of Birkenhead at paragraphs 16, 20 and 29 referred to the "equal sharing principle" and "share entitlement". Lord Nicholls explained that the "equal sharing" concept is derived from the basic concept of equality pervading a marriage. The yardstick of equality as developed in **White** was meant to reflect the "modern, non-discriminatory conclusion that the proper evaluation under section 25(2)(f) of the parties' different contributions to the welfare of the family should lead to an equal division of their property unless there is good reason to depart from it."
- (12) Counsel states that the principle of compensation seeks to address prospective financial disadvantage that some parties face on divorce because of the decisions taken for the family's benefit. Where the

¹⁰ Section 40(1) of the Civil Aviation Act Cap 54A of the 2010 Continuous Revised Edition of the Laws of Grenada.

¹¹ GDAHMT2013/0024

marriage is short, it was relevant to consider whether a party had suffered financial disadvantage arising out of entry of it. Counsel cites the authority of **S v S**¹² for the view that section 25(2)(h) of the Act requires the court to consider any loss of possible pension rights as a result of the dissolution. The court has to be mindful of every disadvantage in determining the principle of compensation as mentioned by Hale J, as she then was, in **SRJ v DWJ**¹³ and Thorpe LJ in **Lambert v Lambert**¹⁴.

- (13) When an enquiry is being conducted, the principle of sharing dictates that the court considers the contributions of each party to the welfare of the family (s.25 (2)(f)) and the duration of the marriage (s.25(2)(d)). The conduct of a party may also weigh in arriving at whether there is reason to depart from principle of equality.
- (14) Counsel refers the court to the English high court case of **N v F**¹⁵ with regard to the treating of pre-marital property on an ancillary relief application. In that case, Mostyn J explained that there are two schools of thought. The first was preferred in **Charman** where the technique of taking into account all property, matrimonial and non-matrimonial and simply adjusting the percentage from 50% taking having regard to the extent that the property is non-matrimonial. The second approach is to identify the scale of non-matrimonial property to be excluded leaving the matrimonial property alone to be divided in accordance with the equal sharing principle.
- (15) Counsel also referred the court to the Grenada high court authority of **Olive v Olive**¹⁶ where Henry J ruled that the wife was entitled to half of the matrimonial home even though the husband inherited the land from

¹² [1997] Fam 127 at 134C

¹³ [1990] 2 FLR 176 at 182E

¹⁴ [2003] Fam 103 at 122G

¹⁵ [2011] EWHC 586 (Fam)

¹⁶ GDAHMT2005/0020

his father's estate. The court found that the matrimonial home formed a central place in the marriage and it was their only home.

- (16) Therefore, counsel submits that the court ought to be guided by the principles in **Mc Intyre, Miller, White and Farray** to award Ms. Noel fifty percent (50%) of the L'anse aux Epines property on the equality principle. Counsel further submits that this award ought to be in the form of a lump sum given that the matter is long outstanding.
- (17) Counsel submits that the apartments were constructed for the welfare of the family and they continue to be rented. The land is inextricably linked to the matrimonial house and was gifted in contemplation of marriage. Further, both parties made financial and non-financial contributions to the household prior to and during the currency of the marriage. The assets that were brought into the marriage were for the welfare of the marriage and ought to be deemed matrimonial assets even though Mr. Joseph brought more financially to the marriage.
- (18) In closing, counsel submits that Ms. Noel is entitled to one-half share of the net value of the matrimonial property. The court is asked to order that Mr. Joseph transfers a half share to Ms. Noel or in the alternative that the property be sold and the proceeds of sale thereof be used to pay a lump sum payment of 50%.

Mr. Joseph's submissions

[8] Counsel for Mr. Joseph, Ms. Hazel Hopkins submits that:

- (1) Section 24 of the Act outlines the court's powers to make a property adjustment order for a party to the marriage or to any child of the family on the grant of a decree of divorce. In relation to section 25 of the Act, counsel states that the section delineates the items that the court must

consider when exercising its powers on application pursuant to section 24 or 24A of the Act.

Income, earning capacity, property and other financial resources of the husband.

- (2) Mr. Joseph sets out his current income of \$2,700.00 monthly at paragraph 20 of his affidavit. He exhibits a copy of his fortnightly pay slip. He also disclosed that the downstairs apartment is being rented at \$1,000.00 per month and the upstairs apartment is being rented at \$1,600.00 per month.
- (3) Mr. Joseph disclosed that he is a Truck Driver and works with the Southern Waste Management Limited. Counsel states that Ms. Noel has not provided evidence of her employment status nor any information concerning her income, earning capacity, property or other financial resource to assist the court when considering her application.

Financial needs, obligations, and responsibilities of the husband

- (4) At paragraph 15 of Mr. Joseph's affidavit he avers that Ms. Noel has not made any payments toward the mortgage since August 2012 and that he has had to bear this responsibility alone. Also, at paragraph 21 of Mr. Joseph's affidavit he gives details of his monthly expenses which amounts to \$5,365.00. Counsel notes that Ms. Noel did not provide the court with any information about her financial needs and responsibilities.

Age of each party and the duration of the marriage

- (5) Counsel recites the fact that Mr. Joseph is 50 years old and was born on 13th June, 1970. Counsel also repeats that the parties were married on 28th February, 2009 and were divorced on 6th August, 2012. The marriage was therefore a short one, having only lasted for 3 years.

- (6) The main house was constructed prior to the parties' marriage. Counsel also recites the fact that the downstairs apartment was the only property constructed during the currency of the marriage.

Contributions of each party has made or is likely to make to the welfare of the family.

- (7) Counsel submits that the property is a pre-marital asset which was owned by Mr. Joseph prior to the marriage. Ms. Noel has not contributed to the acquisition of the property nor the construction of the matrimonial home, save for her contribution to the repayment of the loan that was used to construct the downstairs apartment. Ms. Noel contributed \$15,600.00 to the repayment of the mortgage for the downstairs apartment over the course of 26 months at a rate of \$600.00 monthly.
- (8) Mr. Joseph avers that he was providing financially for the children and gave Ms. Noel money to send to Soniva in Barbados. Ms. Noel was not responsible for the care of Mr. Joseph's children. Further, Mr. Joseph states that he carried out household duties, including repairs and maintenance of the house.
- (9) Counsel submits that in **White v White**¹⁷ the court held that there was no legal presumption of equal division awarding ancillary relief. However, in considering the factors under section 25 of the Act, a judge must weigh his tentative views against the yardstick of equality of division and depart from that quality only if there is good reason to do.
- (10) Counsel submits that in **Miller v Miller** and **McFarlane v McFarlane**¹⁸, the House of Lords approved the learning from **Lambert v Lambert**¹⁹ and held that "*only if there is such a disparity in their respective*

¹⁷ [2001] 1 AC 596

¹⁸ [2006] 2 WLR 1283

¹⁹ [2002] EWCA Civ 1685

contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares²⁰. Further, counsel refers to paragraph 16 in **Miller** where Lord Nicholls opined that the yardstick of equality is to be applied as an aid, not a rule.

- (11) In relation to the conduct of the parties, counsel refers to paragraph 65 of the judgment in **Miller** and **McFarlane** where Lord Nicholls stated that ***"fairness does not requires consideration of the parties' conduct."***
- (12) Counsel also refers the court to the judgment of Foster J in **Margaret Price Findlay v Donald Findlay**²¹ where he opined that ***"an important aspect of family life is the financial contribution that each party contributes or saves the other from contributing towards the family's welfare."*** The judgment of Mohammed J in **Julie Brown nee McQueen v Andrew Garvin Brown**²² is also relied on to support Mr. Joseph's request for the court to depart from the equality principle. Counsel in that case argued that the contribution of the wife to the construction of the house was trivial when compared to the husband's contributions. As a result the wife was awarded five percent (5%) value of the home.
- (13) At paragraph 60 of the submissions, counsel opines that the parties cannot be said to have contributed equally to the welfare of the family. The land upon which the matrimonial home was built was gifted to Mr. Joseph in 2006. The home was constructed in three phases. The home was originally a wooden structure and then, it was converted to a concrete building. Thereafter, Mr. Joseph constructed the first set of apartments followed by the downstairs apartment. Counsel submits that Ms. Noel had no involvement in the first two phases and that the parties were not

²⁰ **Miller v Miller** at para 146

²¹ **BVIHMT2006/0070**

²² **GDAHMT2013/0006**

married at the time. Further, the repairs to the roof of the matrimonial home were completed prior to the marriage.

- (14) Counsel submits that Mr. Joseph bore most of the financial responsibilities of the family. Ms. Noel presents no evidence that she was responsible for paying utility bills. Ms. Noel's contribution to the welfare of the family is wholly disproportionate to that of Mr. Joseph.
- (15) At paragraph 71 of the submissions, counsel concludes that considering the disproportionate contributions of Ms. Noel with regard to the acquisition of the land, the construction of the matrimonial home and the general welfare of the family, this is an appropriate case to depart from the equality principle. Counsel urges the court to find that Ms. Noel is not entitled to an interest in the buildings constructed prior to the marriage and to award Ms. Noel with 10% share of the value of the downstairs apartment.

Property adjustment orders

- [9] Section 24 of the Matrimonial Causes Act outlines the jurisdiction of the courts to make property adjustments orders. The section provides that—
 - (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)];

subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

- (2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.
- (3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute."

Section 25 factors

[10] 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") follows:

- (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.

[11] I will now consider the factors under section 25 of the Matrimonial Causes Act.

Income, earning capacity, property and other financial resources

[12] Ms. Noel has led no evidence of her income whether past or present. She has failed to disclose her current occupation, her present and future financial prospects. The only evidence Ms. Noel discloses of her employment are allegations in paragraphs 12 to 13 of her affidavit²³ where she avers that she paid

²³ Affidavit of Kim Noel filed on 26th July, 2017

the sum of \$15,600.00 in monthly payments of \$600.00 from her salary towards the mortgage dated 29th June, 2010. There is no evidence before this court of her educational background to determine her future earning capacity or career prospects. Ms. Noel has not disclosed whether she owns any property. Mr. Joseph deposed in his affidavit²⁴ that his wife was previously employed as a waitress at a restaurant.

- [13] Mr. Joseph deposed that he is a truck driver and he earns a monthly salary of \$2,700.00. A copy of his fortnightly payslip was exhibited to this affidavit. Further, he deposed that the combined current rental income for the both the downstairs and upstairs apartments is \$2,700.00. Neither Mr. Joseph nor Ms. Noel has disclosed any other relevant assets, for example vehicles, shares or stocks for the court's consideration.

Financial needs, obligations and responsibilities of the parties

- [14] Ms. Noel led no evidence of her expenses or commitments. The court therefore has nothing to take into account concerning Ms. Noel's financial needs or responsibilities. Mr. Joseph's evidence is that his average monthly expenses amount to \$5,365.00. The mortgage payment in the sum of \$3,600.00 is the bulk of his expenses. The other expenses are in relation to household matters including food, transportation, school and utility bills.
- [15] The court notes that Mr. Joseph's current income, including rental income, is \$5,400.00 which means that when Mr. Joseph deducts his monthly average expenses of \$5,365.00 there is little to no money left back. This means that, on average, Mr. Joseph may have there is very little, if any, savings after expenses.

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

²⁴ Affidavit of Steven Joseph filed on 22nd September 2017

- [16] The evidence suggests that the family enjoyed a modest standard of living based on the husband's gross income and the rental income from the apartments enjoyed during their marriage and any monies, if any, earned from the buses. The family did not lead a luxurious nor wealthy lifestyle. In my assessment, they lived comfortably during the marriage.

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

- [17] Ms. Noel has not disclosed her age. The only evidence from which the court can deduce her age is the marriage certificate attached to the divorce petition. At the date of the marriage on 28th February, 2009 Ms. Noel was 33 years of age. Therefore, at present Ms. Noel is expected to be around 44 to 45 years old. Mr. Joseph has disclosed his age stating that he was born on 13th June 1970 which would make him 50 years old as at the time of this ruling. The marriage between the parties lasted for three years. However, the court takes into account that the couple cohabitated for six years prior to their marriage. So overall the parties were in a relationship for nine years.

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

- [18] There is no evidence that either party suffers from any disability.

Contributions of each of the parties

- [19] Mr. Joseph's evidence is more extensive on this issue. He pleads that he built a two bedroom concrete house on the land before the couple met. The house was later used as the matrimonial home. The land on which the house stands was later gifted to him before the marriage took place. He contributed significantly to the build-up of the property and taking care of the needs of the family out of his

own income derived from utilising the buses, his employment and the rental income obtained from the apartments.

[20] Ms. Noel pleads that she made contributions to the build-up of the property. Although she was the signatory to several loans, there is little evidence of direct financial contributions. Mr. Joseph concedes that Ms. Noel contributed over \$15,000 to the build-up the two downstairs apartments. He also accepts that Ms. Noel contributed to the acquisition of a bus. Mr. Joseph however claims that he repaid Ms. Noel for her financial contribution to the purchase of the bus.

[21] Ms. Noel also presented evidence that she acquired a number of household items from Unicomer (Grenada) Limited. There is little or no evidence of other financial contributions. I will accept nonetheless that both parties contributed time, energy and effort towards raising a family and managing the affairs of the home and the income received from the business of the apartments and the buses.

Conduct of each of the parties

[22] Ms. Noel alleged in her affidavit²⁵ that Mr. Joseph listed the matrimonial property for sale with Coldwell Banker, a real estate company and also displayed a sale sign on prominently on the matrimonial property. The matrimonial property was allegedly listed at a sale price of \$975,000.00. Ms. Noel then instructed her solicitors to send a letter to the company to remove the listing from its website. The company complied. Mr. Joseph did not deny this allegation or address it in his affidavit²⁶.

Loss of benefits

[23] Neither of the parties has led any evidence of loss of benefits.

²⁵ Affidavit of Kim Noel filed on 26th July 2017 at paras. 14-17

²⁶ Affidavit of Steven Joseph filed on 22nd September 2017

What property comprises matrimonial assets?

- [24] Lord Nicholls of Birkenhead's guidance in **Miller; McFarlane** is most instructive as to what property is to be considered matrimonial property.

"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."

- [25] There was much discussion in the parties' submissions as to how the matrimonial property is to be treated and shared. Both parties agree that when the couple began their relationship in the year 2003, the two bedroom concrete home was already in existence. Therefore, the two bedroom concrete house was a pre-marital asset. The couple and the children moved into the house before the marriage ensued and once the marriage took place, there is no gainsaying that the house was treated as and became the matrimonial home. During the marriage, the matrimonial home was expanded and apartments were constructed upstairs and downstairs.

- [26] Counsel for Ms. Noel, Ms. John Diarra submits that the matrimonial home together with these apartments should be considered as a whole and Ms. Noel ought to receive a 50% share. On the other hand, counsel for Mr. Joseph rejects this submission and suggests that Ms. Noel is only entitled to 10% share in the value of the downstairs apartment to reflect her contribution to its construction. Ms.

Hopkin grounds her submission in the posture that Ms. Noel did not contribute to acquisition or construction of the matrimonial home. It was a gift to Mr. Joseph from friends of the family. Further, Ms. Noel made no financial contributions to the construction of the upstairs of the property. The only concession by Mr. Joseph is that Ms. Noel contributed to the construction of the downstairs apartment and contributed to the mortgage which was used to construct it.

[27] There can be no argument that the two one-bedroom upstairs apartments were constructed while the parties were already cohabiting in a steady relationship. The two bedroom downstairs apartment was constructed during the marriage. Given the above peculiar circumstances including the fact that this was a relatively short marriage, I will consider home and the apartments separately. It would seem that it is also relevant to treat with the two in this manner since part of the premises could be viewed as the matrimonial residence and the balance of it can be seen as the income earning assets or business assets of the family. In this regard, reference is made to the apartments from which rent was obtained to sustain the family. It is also evident that the contributions by the parties to either of the matrimonial home and/or the income earning assets were unequal.

[28] For the avoidance of doubt, the matrimonial home consists of 4 bedrooms and 3 bathrooms. The business assets comprise the single two bedroom downstairs apartment and the two, one-bedroom upstairs apartments. These two together form the matrimonial assets. I find that the evidence regarding the acquisition and disposal of the buses, the income derived therefrom and the use to which the parties put any income derived therefrom is quite scant. There is very little evidence as to whether the bus or buses are even operational, earning income and what, if any income, they are earning or are likely to earn. I note Mr. Joseph's submissions that he acquired and built up the upstairs apartments before the marriage. However, the evidence indicates that he brought the upstairs apartments into the marriage and these, along with the downstairs apartments, formed a central part of the income obtained to sustain the family financially.

Ms. Noel's share of the matrimonial assets

[29] The parties do not agree as to how the matrimonial assets are to be divided and the respective shares of each party.

[30] Baroness Hale of Richmond in **Miller and McFarlane**²⁷ 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 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] In applying the above principles from **Miller and McFarlane**²⁸, 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 contribution²⁹.

[32] In relation to the length of the marriage, Lord Nicholls opined in **Miller** that this may also be a relevant factor in departing from this general rule of equal sharing of matrimonial assets. It is not disputed that the marriage was short-lived and only last 3 years.

Ms. Noel's contributions

²⁷ Miller v Miller and McFarlane v Mc Farlane [2006] UKHL 24 at paragraph 146

²⁸ Miller v Miller and McFarlane v Mc Farlane [2006] UKHL 24 at paragraph 146

²⁹ Paragraph 30 of the Petitioner’s submissions filed 13th March 2020

[33] Ms. Noel in her affidavit filed submitted the following as her contributions to the welfare of the family:

- (1) Took care of Soniva Alexander, the husband's child, from the year 2003 to 2005. She states that she sent money to Soniva for 3 years while she attended school in Barbados.
- (2) Also, Ms. Noel states that she took care of Melissa and Jamie Fleming, the husband's children, for about nine years from 2003 to 2012.
- (3) She obtained many loans from the years 2004 to 2011 to assist in the building of the apartments and the expansion of the original concrete house which was brought into the marriage.
- (4) On or about the year 2005, she obtained a loan from the Bank of Nova Scotia to purchase a refrigerator and furnishing for the matrimonial property.
- (5) A year later in the year 2006, she and her husband obtained a loan in the sum of \$15,000.00 from the RBTT Bank Grenada Ltd to improve the condition of the property.
- (6) Further, in 2011 the parties obtained a mortgage from the Bank of Nova Scotia to construct apartments on the matrimonial property and to improve their living quarters.
- (7) Ms. Noel claimed that she managed the apartments by obtaining cleaning, running errands and paying bills for the apartments and the matrimonial property without any remuneration for her services.

- (7) After Ms. Noel ceased making payments to the mortgage in 2013, the monthly mortgage instalments of \$3,600.00 became his sole responsibility.

[35] It must be recalled that this is strictly a case of division of these properties. The court is not being tasked with, for instance, providing for the future needs of either party. In all the circumstances, I have concluded that fairness dictates that Ms. Noel should be awarded a twenty five (25%) percent share in the matrimonial assets. I have not used the approach of separating her interest in the matrimonial home and the business assets as suggested by counsel for Ms. Joseph. I have taken the matrimonial assets as a whole and made adjustments for –

- (1) the fact that the marriage and relationship were not relatively long;
- (2) the assets were largely acquired and built up by Mr. Joseph. However, I do take into account the fact that Ms. Noel provided evidence of financial and non – financial contributions to the build-up of the matrimonial home and the downstairs apartments. I made some small allowance for the fact that Mr. Joseph may be left with the bus(es), if any, and the two set of upstairs apartments. These assets may augment his income in the future.

Conclusion

[36] For reasons stated above, I order as follows:

- (1) The property located at L'anse aux Epines in the parish of Saint George in the State of Grenada is to be valued by a qualified valuator within 60 days of this order;
- (2) Mr. Joseph is to pay Ms. Noel twenty five (25%) of the value of the property;
- (3) The parties are to agree on a joint qualified valuator who is to value the property. If the parties do not agree, a valuator is to be appointed by the court on application by either party;

- (8) She states that pursuant to the said mortgage she paid the sum of \$15,600.00 in monthly instalments of \$600.00 from her salary.

Husband's contributions to the welfare of the family

[34] Mr. Joseph's contribution to the acquisition and build-up of the matrimonial property is evidently greater than that of Ms. Noel. There is no dispute that he was the primary breadwinner of the family and that he brought the land together with the concrete two bedroom house into the marriage. Mr. Joseph deposes the following as his contributions:

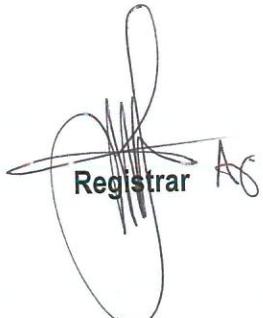
- (1) That he contributed solely for the financial well-being of his children, including their educational expenses.
- (2) In January 2006, he obtained a loan from RBTT Bank in the sum of \$15,000.00 to conduct repairs of the roof of the matrimonial home.
- (3) The title to the matrimonial property was formally transferred to him by way of Deed of Gift.
- (4) He used this title Deed to secure a loan at Republic Bank (Grenada) Ltd and the proceeds of the loan were used to construct three additional bedrooms to the house and two (one bedroom) apartments to the back of the house.
- (5) In or about 2010, Mr. Joseph transferred the original mortgage to the Bank of Nova Scotia in the sum of \$343,985.00.
- (6) In 2011, he and his wife refinanced the mortgage in the sum of \$39,415.00 and used the proceeds to construct the downstairs apartment. The loan was repaid using the rental income of the apartments.

- (4) The property is to be valued within 30 days of this judgment and the costs of the valuation are to be paid jointly by the parties;
- (5) Mr. Joseph is to pay to Ms. Noel twenty five (25%) of the value of the property within 90 days of the presentation of the valuation. The value on which the 25% is to be paid to Ms. Noel is to be calculated after deducting the balance due on the mortgages, any other legal charges attaching to the property and the costs of the valuation;
- (6) If Mr. Joseph fails to pay Ms. Noel as ordered by this judgment, the registrar of the high court is to put up the property for sale by public auction;
- (7) The proceeds of the sale are to be distributed to the parties in the manner set out in this order after deducting the balance due on the mortgages, any other legal charges and the costs of the sale.
- (8) Each party is to bear their own costs on this application.

Raulston L. A. Glasgow
High Court Judge



By the Court


Registrar AS