

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

SVGHMT2014/0146

IN THE MATTER OF THE PETITION OF JOANNE BALCOMBE NEE DABREO FOR THE DISSOLUTION
OF MARRIAGE

BETWEEN:

JOANNE BALCOMBE NEE DABREO
Of Georgetown

PETITIONER

AND

ALLISON BALCOMBE
Of Georgetown

RESPONDENT

Appearances:

Mr. Duane Daniel for the Petitioner

Mr. Richard Williams for the Respondent

2020: 30th June
17th September

JUDGMENT
RE-ISSUE 28th SEPTEMBER 2020
AS TO LUMP SUM CALCULATION

Byer, J.:

- [1] In the case of **Philomena La Qua v Justin La Qua**¹ at paragraph 1 thereof Mohammed J opined that “...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”.

¹ GDAHMT2010/0006

- [2] The central element that a court is required to bear in mind when it is placed in the position to determine the division of property at the end of a marriage, whether long or short, is that the court must attempt to be fair as between the parties and their assets.
- [3] It is therefore of utmost importance for the court to be seised of all necessary facts to ensure that in making any such decision, that it does so not being blinded by only one version or side of a series of events.

Background Facts

- [4] The petitioner began these proceedings by way of petition for divorce filed on 29th December 2014. At the time of the filing for divorce, the ground for such divorce was that the parties had lived separate and apart for a continuous period in excess of five years averring that the parties had been separate from 1995.
- [5] At the time of the filing for divorce all the children of the marriage were adults and by 19th June 2015 the petitioner had obtained her Decree Absolute.
- [6] On 21st November 2016 the petitioner filed an application for leave to file ancillary relief which application was re filed on 18th January 2017. The leave aspect of the application was never heard and on the day of trial upon the same being raised by counsel for the respondent, this court granted leave to the petitioner to proceed with the application for ancillary relief as filed.
- [7] By that notice the petitioner claimed the following relief:
a) Periodical payments under Sections 31(1) (a) and 31(b) of Matrimonial Causes Act
b) Lump sum payment under Section 31(1) (c) of the Matrimonial Causes Act
c) A property settlement order pursuant to Section 32 of the Matrimonial Causes Act
d) An order for sale of property pursuant to Section 33 of the Matrimonial Causes Act
e) An order for avoidance of transactions intended to prevent or reduce financial relief pursuant to Section 47 of the Matrimonial Causes Act.
- [8] Upon the filing of the submissions of the parties the respondent's counsel made certain concessions for his client to transfer certain properties to the petitioner. In particular the respondent has conceded that he will forgo all his interest in the home in Port Lucie Florida in which the petitioner resides and will not seek to set aside the revocable trust to which the property is subject and further to transfer the two parcels of land at Arnos Vale, St. Vincent which in cross examination the petitioner had made it clear that the respondent had purchased for her.
- [9] In this court's mind based on the foregoing, the only remaining issue is whether the petitioner is entitled to either periodical payments or a lump sum payment or both.
- [10] However before this court considers that issue, I wish to make a comment on the manner in which this application was presented to the court.

- [11] As previously indicated the application for ancillary relief sought certain relief. It was stated in general terms and the court nor, for that matter the respondent, were guided as to the extent of that relief, the property they were seeking to claim or what transactions they were seeking to avoid.
- [12] In the submissions of counsel for the respondent the point was made that obligations under Section 74(1) and (2) of the Matrimonial Causes Rules 1977 were not adhered to by the petitioner when the application for property adjustment was made.
- [13] Section 74 states as follows:
*“(1) where an application is made for a property adjustment order, or an avoidance of disposition order, the application **shall state briefly the nature of the adjustment proposed or the disposition to be set aside** and the notice in Form 11 or 13 as the case may be shall unless otherwise directed be supported by an affidavit by the applicant stating the facts relied on in support of the application.*
- (2) The affidavit in support shall contain so far as known to the applicant **full particulars-***
(a) In the case of an application for a transfer or settlement of property
(i) The property in respect of which the application is made
(ii) Of the property to which the party against whom the application is made is entitled either in possession or reversion;
(b) ...
(c) In the case of an application for an avoidance of disposition order –
(i) Of the property to which the disposition relates ,
(ii) Of the persons in whose favour the disposition is alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement
(3) Where an application for a property adjustment order or an avoidance of disposition order relates to land the affidavit in support shall in addition to containing any particulars required by paragraph (2) –
(a) State whether the title to the land is registered or unregistered and if registered the land registry title number,
(b) Give particulars so far as known to the applicant of any mortgage or the land or any interest therein....” (My emphasis added)
- [14] It is therefore pellucid that the application filed by the petitioner would require some particularity where they seek not only a property adjustment order but also an avoidance of disposition order.
- [15] When this court considered both the application upon which the trial was based, and the affidavits relied upon by the petitioner, the court was at some pains to find in those documents the properties that the petitioner was seeking an adjustment order or an avoidance order.
- [16] In fact it was only in the cross examination of the petitioner at trial, that the court was given a sense of which properties the petitioner in fact appeared to be claiming. These were the Arnos Vale property (where she said that the respondent told her he bought for her) and the property in Florida in which she said she bought it in her own name with monies sent to her from the respondent. This was confirmed in the submissions filed on behalf of the petitioner².

² Paragraph 2.28 Submissions of the Petitioner filed 17/7/2020

- [17] There was no evidence therefore as to any disposition which the petitioner sought to avoid that had been intended to “prevent or reduce” the financial relief of the petitioner.
- [18] That being said, it was therefore fortunate for the petitioner that the respondent made the concessions that were made in the submissions and this court therefore makes orders in keeping with those concessions.
- [19] With regard to the Port St Lucie property, the petitioner accepted that the same was bought in her sole name with funds from the respondent. The respondent would have therefore been entitled to a share of this property it having been acquired during the marriage with funds that he provided. This court has however not determined the quantum of that share.
- [20] It is therefore ordered that the respondent is to relinquish all his rights and claims in the property at Port Saint Lucie, Florida, United States of America identified as Parcel #3420-690-1248-000-7 to the petitioner and the revocable trust established by the petitioner on 6th October 2008 shall not be set aside.
- [21] With regard to the property at Arnos Vale, St. Vincent. The same was purchased in the joint names of the petitioner and the respondent by Deed of Conveyance dated 30th April 1992. It is clear to this court that the conveyance having been made in the names of both parties with no words of severance, that there is a presumption of joint tenancy. The same has not been severed by any of the evidence before the court and the basis of the claim of the petitioner is that the respondent bought it for her.
- [22] The respondent has also conceded to divest himself of his interest in the said property and the court orders that the respondent is to convey all his interest in the said property to the petitioner free from any encumbrances.
- [23] When the court considers that the petitioner will be the sole owner of these two properties the court must be guided by the only evidence that was produced as to the value of these properties. The Port St Lucie property was valued in 2018 at USD\$132,500.00³ (XCD\$359,989.25) and the Arnos Vale property was valued at XCD\$417,000.00⁴ together a value of XCD\$776,989.25.
- [24] Having considered that benefit, it is now open to this court whether it should additionally make an order for periodical or lump sum payments.

Lump Sum Payment or Periodical Payments

- [25] Once again the court was not assisted by the evidence of the petitioner as to the quantum, the reason why or the period of payment. It was rather in the submissions of the petitioner which clearly stated that the petitioner was seeking a lump sum payment in the sum of USD\$200,000.00 to support her until the age of 83 based on her present monthly outgoings.

³ Annex 5 to the Affidavit of the Petitioner filed on the 17/10/18

⁴ Annex 4 to the Affidavit of the Petitioner filed on the 17/10/18

- [26] Counsel for the petitioner seemed to base this submission on the principles of needs, sharing and compensation. In so submitting the petitioner relied on the dicta of the court of appeal in the case of **Michael McIntyre v Margery Ann McIntyre**⁵ in which the court enunciated the applicability of the three principles. The court in relying on the case of **John Robert Charman v Beverley Anne Charman**⁶ stated clearly at paragraph 49 that the principle of needs requires the consideration of the financial needs, obligations and responsibilities of the parties⁷ the standard of living enjoyed by the family before the breakdown of the marriage⁸, of the age of each party⁹ and of any physical or mental disability of either of them¹⁰.
- [27] The principle of compensation encapsulates the financial decisions that a party may have taken for the benefit of the family during the marriage. For instance, not pursuing a career or sacrificing one. This head also takes into consideration where the party who leaves the marriage may have obtained some pension benefit from the other party if they had stayed.
- [28] The final principle was sharing. This refers to the relative contributions made by each party to the welfare of the family¹¹ as well as the duration of the marriage¹².
- [29] It is therefore upon the assessment of these principles that the petitioner submitted that she was entitled to a lump sum payment that could easily be met by the means of the respondent.
- [30] The respondent has stated quite clearly that as a man of 70 he is way past his prime as to his earning capacity to provide any payment of cash to the petitioner. The respondent did admit that he is however still in possession of a large parcel of land from which he admitted on cross examination he has sold some smaller lots on behalf of the company that owns them, Stalk Plantation Limited to "pay the bank and the court".
- [31] The respondent's position is that even though the company, of which he is a shareholder is solvent in excess of \$1 million dollars, he is not the sole shareholder there being six other persons and as such he cannot deal with the assets of the company in a manner detrimental to the other shareholders and that in any event under the principle of a clean break as between the parties there should not be any payment of periodical payments. There was however no submission made by the respondent in relation to a lump sum payment save as to indicate that the petitioner brought nothing of value to the marriage and that it was the respondent who instead bore all financial burdens even after they had separated and that in a nutshell she is not entitled to anything more in that regard.

⁵GDAHMTAP2013/0024

⁶[2007] EWCA Civ 503

⁷Section 34(1) (b) of the Matrimonial Causes Act CAP 239 of the Laws of Saint Vincent and the Grenadines (the Act)

⁸Section 34(1) (c) of the Act

⁹Section 34(1) (d) of the Act

¹⁰Section 34(1) (e) of the Act

¹¹Section 34(1) (f) of the Act

¹²Section 34(1) (d) of the Act

- [32] As between the petitioner and the respondent, several principles have been relied on to support their relative positions. Indeed, they are identified as matters which the court must take into consideration under the provisions of Section 34 of the Act. As such I will therefore seek to address each one in turn.

The needs principle/means principle: Section 34 (1) (b) “the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future”/Section 34 (1) (c) “the standard of living enjoyed by the family before the breakdown of the marriage”/Section 34 (1) (e) “any physical or mental disability of either of the parties to the marriage”

- [33] When this court addresses its mind to these considerations, it is clear to the court that a proper assessment can only be done if the court is in fact privy to frank disclosure by both parties. This duty is “imperative”¹³ it being the only way that “the court will be placed in a position to properly exercise its discretion as provided by Section 34 of the Act”¹⁴.
- [34] Indeed it is now clearly accepted by our courts that where a party has failed to make full and frank disclosure then the court is at liberty to draw adverse inferences¹⁵. In this case at bar counsel for the petitioner has urged upon the court to make findings adverse to the respondent on the evidence that he did not lead in his affidavits but that emerged under rigorous cross examination by counsel for the petitioner.
- [35] The respondent in this court’s mind gave evasive answers to matters. It was clear to the court that the respondent at times seemed to forget particulars of transactions that he had undertaken on behalf of Stalk Plantation but was still able to succinctly state that the funds from the sale of any parcels of land were used for the reduction of an overdraft in the name of Stalk Plantation and towards a judgment debt entered against Stalk Plantation in civil suit 57/2016 in the sum of \$115,134.00 as of 2018. In making these assertions he was with some disbelief that the court viewed his convenient recollection of matters when the respondent provided no documents as to the financial history of this overdraft or the judgment debt.
- [36] By virtue of this assessment the court is satisfied that the respondent’s access to means is not as limited as he purports to state when he asserts that he maintains himself from the sale of cattle and the sale of arrowroot from one acre of land that he maintains in cultivation. This court accepts that the respondent’s evidence before this court was meant to hide his true assets from the court and the petitioner. This court accepts that even though Stalk Plantation is incorporated with six other shareholders that the respondent is the man behind the company and that additionally he makes an undisclosed income from the sale of vehicles imported from the United Kingdom which only became apparent upon diligent cross examination before the court. It is these instances that have allowed for the court to find that the respondent is a stranger to the truth as to his means.

¹³ Per Foster J in **Price Findlay v Findlay** BVIHMT2006/0070 at paragraph 20

¹⁴ Op Cit

¹⁵ **Payne v Payne** [1968] 1 ALL ER 1113 at 1117

- [37] However it was also incumbent upon the petitioner to provide information as to her assets and her income. In this court's mind it is satisfied that not only does the petitioner have monthly outgoings that are marginally met by the social security payments exhibited to the petitioner's affidavit but she also failed to disclose whether there were any bank accounts in her name as by her own admission her inability to work has only manifested itself in the last 5 years. It was therefore more than passing strange that in the affidavit of means of the petitioner no indication had been made as to the period of income earned from the time of separation in 1995 to 2015 a period of some two decades.
- [38] In this court's mind there was therefore not sufficient information to accurately make a determination as to the extent of the needs of the petitioner but I do so based on the evidence that remained uncontroverted that the petitioner requires at a minimum USD\$748.00 per month to meet her monthly obligations. On a purely mathematical calculation this would extrapolate to USD\$8,976.00 a year or XCD\$24,386.89 or say XCD\$25,500.00 per annum.
- [39] In this court's mind this is not an excessive sum of money for a woman who for twenty years lived in a house as landed gentry and who is now unable to work and remains on disability for a disorder that the respondent himself acknowledges.
- [40] It has been made clear by the courts¹⁶ that to make an order for a lump sum payment the court must be satisfied that the husband has capital assets from which to pay without crippling his earning power. In the case at bar, this court accepts that the respondent has sorely underestimated his capital assets from which a lump sum payment could be made to the petitioner. Therefore, if the court was minded to make an order under this head, this court is satisfied that the same could be met by the respondent.

The compensation principle- what decisions did the petitioner make for the benefit of the family that resulted in her giving up or deferring her own life plans.

- [41] This consideration must be viewed as "not needs related but [as] loss related"¹⁷. As Lord Nicholls identified it in the **Miller** case¹⁸ this head of consideration is "aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicapped so far as her own earning capacity is concerned. Thus, the wife suffers a double loss: a diminution in her earning capacity and the loss of a share in her husband's enhanced income."
- [42] For the court to consider whether this head of relief is open to the petitioner, this court must assess the evidence that was given in this regard.
- [43] The petitioner stated in her affidavit of 17th October 2018 at paragraph 4: *"I dropped out of high school in Form 3. I went to College of Hair and Beauty....I got a diploma in Hair dressing. Prior to*

¹⁶**Watchel v Watchel** [1973]1ALL ER 829 at 840 per Lord Denning

¹⁷**Miller v Miller** [2006] UKHL 24 per Lord Nicholls at paragraph 98

¹⁸Op Cit paragraph 13

that, I had no skills training.” Additionally at paragraph 5 “during the marriage I practiced as a hair dresser for about three years....during that time I paid the bills for the products for the salon and if the children needed anything, I used the money I made to pay for them...the respondent did not want me to go to work or do anything outside the home. He said that he married me to cook his food and clean his shoes...”

- [44] Further at paragraph 4 of the affidavit of the petitioner filed on 14th May 2019, the contextual period of this utilization of this skill was given as 1986 some 10 years after the marriage, when she relates that the skill in hairdressing was one she pursued in order to care for her youngest son while she resided in the United Kingdom after fleeing the alleged abuse of the respondent.
- [45] That being said, it is clear to this court, that the petitioner’s career was not only short lived but was also one that came within the first decade of the marriage and was not one that she gave up on the marriage to the respondent. The court also accepts that the benefits from the career were of limited value to her or the marriage in any event.
- [46] In this court’s mind this was not a sequence of events that warrants compensation to put the petitioner in a “comparable position which she might have been in had she not compromised her own career for the sake of them all.”¹⁹ While it is recognized that there may be instances in which the evidence may give some indication as to how an abandoned career disadvantaged the person giving up the career or created a benefit for the marriage²⁰, in real terms there cannot be any hard and fast rule to make that determination. However in the present case, I do not accept that this factual matrix gave rise to the necessity to quantify any such disadvantage or advantage and as such I do not find that the petitioner is entitled to have this taken into consideration in all the circumstances.

The sharing principle: Section 34(1) (f) – the contribution made to each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; Section 34(1) (d) the duration of the marriage

- [47] When this court considers this principle it is imperative that any concept of sharing must be seen within the context of the contributions of the parties during the currency of the marriage. Of course, this is applicable whether the marriage is short lived or not but is of more importance in this court’s mind when the marriage is of a lengthier duration.
- [48] In that regard, the counsel for the respondent had submitted that this marriage can only have been said to have subsisted for a period of 20 years. On the authority of the case **Linda Monica Johnson v Keith Earle Johnson**²¹ counsel for the respondent submitted that taking into consideration that the parties had separated in 1995 when the petitioner moved to the United States the calculation as to the date of the end of the marriage must be taken from the period of separation even though it may take longer to formally end the union. In the words of Mohammed J

¹⁹ **McFarlane v McFarlane** [2009] 2 FLR 1322 per Lady Hale at paragraph 154

²⁰ **Waggott v Waggott** [2018] EWCA Civ 727 per Moylan LJ at paragraph 96

²¹ GDAHMT2009/0152

in the **Johnson** case²², “in my view it would be unfair to include the period after separation in 2004 in the duration of the marriage since the parties were leading separate lives by 2004 although it took them some eight years afterwards to formally be legally separated.”

- [49] This court cannot find any ground to disagree with that proposition based on the facts of this case at bar. I therefore find that this was a marriage of some 20 years, a period over which the petitioner was solely responsible for the emotional needs of the children and contributed to the welfare of the children while periodically assisting the respondent when needed in the tasks associated with the business when he required it. The fact that she may not have had intimate details of the running of Stalk Plantation in this court’s mind does not in any way diminish her contribution to the family. Indeed “what she contributed to the home and the children [was] just as valid as the work that she did in the business”²³ from time to time.
- [50] With regard to the operations of Stalk Plantation, it was clear to this court that this entity acquired 3 large parcels of land during the currency of the marriage. These parcels from the evidence on cross examination of the respondent were 13 acres (of a 50 acre piece the balance having been acquired prior to marriage), 144 acres and 195 acres. These parcels were all conveyed into the name of Stalk Plantation in which the respondent indicated from the company records was a company made up of him and 6 other shareholders.
- [51] It was however interesting to hear the respondent who appeared to give the impression that he was an old feeble man definitively answer on cross examination that of the 7 shareholders “the only real name is mine as it’s my company” while he further admitted that none of the other shareholders had invested either money or land into the company.
- [52] However having formed the company the question must arise as to whether the corporate veil could have been pierced to consider the dealings of the company through the respondent. Indeed, when one considers the evidence, I must agree with the submission made by counsel for the petitioner that the factual matrix did not lend itself to taking that extraordinary step. This court is satisfied that at the time of incorporation in 1977, just two years after the marriage, that the same was not done with a view to evading any existing or future legal obligation²⁴ that may have arisen between these parties and as such there is nothing to warrant the piercing of the veil to examine the transactions completed under that company umbrella.
- [53] However in looking at this matter what did become clear is that the respondent having failed to properly disclose his financial assets save in the barest of terms, this court is of the opinion and draws the inference that during the marriage the respondent acquired considerable wealth in the form of land. It is this land that gives the respondent the ability to maintain his lifestyle and this court does not believe that he has divested himself of the bulk of the same as he wished the court to accept. His estimation in evidence that there is only a remainder of 70 acres in this court’s mind is neither accurate nor factual.

²² Op Cit paragraph 33

²³ **Dharamshi v Dharamshi** [2001] 1 FLR 736 at 743 per Thorpe LJ

²⁴ **Doubloon International Limited v Bank of Saint Lucia Limited** SLUHCv2011/0821

Conclusion

- [54] In the case at bar, this court having accepted that the respondent has sorely underestimated his capital assets from which a lump sum payment could be made to the petitioner orders that a lump sum payment is to be made to the petitioner which she will be at liberty to invest as she desires.
- [55] Since the petitioner has also not provided disclosure as she should have and this court has no valuation as to the value of the remaining assets of the respondent, this court is in agreement with the petitioner that the calculation of the lump sum payment should be based on the declared and uncontroverted evidence as to the monthly outgoings. So rounding up the yearly requirement to XCD\$25,000.00 and giving the petitioner her three score and ten plus another ten (if she is lucky) to the age of 80, that is a further seventeen years, I order that the respondent is to pay to the petitioner a lump sum payment of XCD\$425,000.00. This sum is to be paid to the petitioner within twelve months of the date of this order.

The order of the court is therefore as follows:

1. That the respondent is to relinquish all his interest in the house in Port Saint Lucie Florida United States and the court declares that the petitioner is the sole owner of the same subject to the revocable trust made by the petitioner in favour of the children of the marriage.
2. That the respondent is to convey all his interest in the parcels of land at Arnos Vale, St. Vincent under the Deed of Conveyance dated 3rd April 1992 numbered 1603/1992 free from encumbrances.
3. That the respondent is to pay to the petitioner the sum of XCD\$425,000.00 within twelve months of the today's order.
4. Each party is to bear their own costs.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar