

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Divorce)**

SLUHMT2014/0066

BETWEEN:

ALISON GAIL JOSEPH (nee KING)

Petitioner/Applicant

and

WALTER ALBERT JOSEPH

Respondent

**BEFORE: Her Ladyship, the Honourable Justice Kimberly Cenac-Phulgence
(A JUDGE IN OPEN COURT)**

APPEARANCES:

Mrs. Lydia Faisal with Mrs. Cynthia Combie-Martyr of counsel for the
Petitioner/Applicant

Mr. Mark Maragh with Mrs. Shervon Pierre of counsel for the Respondent

2018: July 4;
2019: September 30.

JUDGMENT

Background

- [1] **CENAC-PHULGENCE J:** This is an application for ancillary relief in matrimonial proceedings. The applicant, Alison Gail Joseph (nee King) ("Mrs. Joseph"), seeks an order of the Court settling various movable and immovable properties between herself and the respondent, Walter Albert Joseph ("Mr Joseph"), and for maintenance by Mr. Joseph of the three children of the family.

- [2] With respect to the properties, Mrs. Joseph requests that:
- i. Mr. Joseph transfer all his rights, title and interest in the property registered as Block and Parcel Nos. 1254B 774, 868 and 1003 located at Rodney Heights, in the Quarter of Gros Islet ("the Rodney Heights property") to her;
 - ii. Mr. Joseph transfer all his rights, title and interest in the property registered as Block and Parcel No 1454B 97 located at Bonne Terre, in the Quarter of Gros Islet ("the Bonne Terre property") to her;
 - iii. A half share in the property registered as Block and Parcel No 0027B 3 located at Chateau Belair, in the Quarter of Soufriere ("the Soufriere property") in her sole name be transferred to Mr. Joseph in joint ownership with her;
 - iv. the property registered as Block and Parcel No 0423B 49 in the Quarter of Choiseul ("the Choiseul property") in her sole name be transferred to Mr. Joseph in his sole name;
 - v. the property registered as Block and Parcel Nos 1450B 495, 496 and 497 located at Monier, in the Quarter of Gros Islet ("the Monier Property") remain in the sole name of Mr. Joseph;
 - vi. the property registered as Block and Parcel No. 0848E 1078 located at Coral Street, in the Quarter of Castries ("the Coral Street property") remain in the sole name of Mr. Joseph;
 - vii. Mr. Joseph's half share in the property registered as Block and Parcel No. 0848E 502 located at Chaussee Road, in the Quarter of Castries ("the Chaussee Road property") remain in his sole name;
 - viii. Mr. Joseph relinquish his rights and interest in the time share in St. Martin belonging to her and that she keep the full benefit of the time share;
 - ix. She maintain sole ownership of motor vehicles with registration numbers PC700 and PK5722;
 - x. Mr. Joseph maintain sole ownership of motor vehicles with registration numbers 700, 867 and PJ4905;
 - xi. Mr. Joseph keep his electronics, certain articles of furniture, and pieces of artwork currently stored at the matrimonial home.

- [3] With respect to maintenance, Mrs. Joseph requests that Mr. Joseph be ordered to pay the sum of \$2,000.00 per month, per child until each child attains the age of 18 years or completes a course of further education, whichever is later; that Mr. Joseph pay half the cost of the tertiary education of all three children of the family until each completes her education; and that Mr. Joseph pay her the sum of \$50,500.00 representing half the cost of expenses already incurred by her in respect of the tertiary education of the first child of the family.
- [4] Mrs. Joseph's application is by way of notice of application filed on 27th May 2016 and states that the relief sought is pursuant to section 42 of the **Divorce Act 1973**. The application was supported by two affidavits deponed by her; the first filed on 27th May 2016 and supplemental affidavit filed on 4th January 2017. Mr. Joseph responded to the application by two affidavits; his first affidavit filed on 17th October 2016 and his supplemental affidavit filed on 20th January 2017. The petitioner and the respondent filed closing submissions on 5th September 2018.

Issues

- [5] The following issues will engage my consideration on this judgment:

Preliminary issues:

- (a) Whether Mrs. King followed the proper procedure to obtain the relief sought?
- (b) Whether Mrs. Joseph can obtain relief in respect of the shares in the Medical Laboratory?

Other issues:

- (c) Whether the properties ought to be divided between Mrs. Joseph and Mr. Joseph as Mrs. Joseph requests, pursuant to section 24(1)(a) or (b) of the Act, having regard to the factors set out in section 25 of the Act and what is a fair and reasonable distribution of the properties?
- (d) Whether Mr. Joseph should be ordered to pay monthly maintenance for each child of the family in the sum of \$2,000.00 until each child attains the age of 18 years or completes a course of further education, whichever is later; and one-half of the cost of each child's tertiary education until completed, including

reimburse Mrs. Joseph for one half the cost already incurred by her towards the tertiary education of the first child of the family?

The Evidence

Mrs. Joseph

- [6] Mrs. Joseph says that she and Mr. Joseph met in 1990 and married on 10th December 1992 at the ages of 27 and 31 years respectively. She was then already a Civil/Environmental Engineer and Mr. Joseph a qualified Economist by profession. At the time of their marriage though, Mr. Joseph was a manager in his mother's supermarket business. Their first child, Abigail Leanna Joseph was born on 10th November 1995, and on 12th March 2002, their twin daughters, Chelsea Alea Joseph and Sade Alana Joseph.

The Property

The Rodney Heights Property (Block and Parcel Nos. 124B 774, 868 and 1003)

- [7] Mrs. Joseph says this was their first property purchased in 1995 at the cost of \$127,552.00 and registered in their joint names. In order to meet the cost, she and Mr. Joseph sold a lot in Marigot and Mr. Joseph sold a lot in Cap Estate. The property was mortgaged the following year for the sum of \$300,000.00, and a total of \$800,000.00 was spent in order to complete construction of the matrimonial home. Two smaller adjoining lots were later purchased which now comprise the Rodney Heights property. Mrs. Joseph says that in respect of the mortgage, monthly deductions were made from her account to repay the loan, however that Mr. Joseph subsequently paid off the loan.
- [8] Mrs. Joseph says that from the years 2000 to 2003, the matrimonial home itself was rented at a monthly sum of \$8,000.00, whilst they lived rent-free in a house in Rodney Bay owned by Mr. Joseph's mother. In 2007, she says she and Mr. Joseph invested the sum of \$600,000.00 in the construction of apartments as an addition to the Rodney Heights property. Of that sum Mrs. Joseph says she contributed \$540,000.00 which she took from her inheritance. The apartments

were subsequently rented for the monthly sum of \$5,000.00. She says Mr. Joseph has earned a total of over \$500,000.00 in rental income from the matrimonial home and the apartments to date, which he has used solely for his personal use, and that she has received no monies from the rental income.

- [9] Mrs. Joseph avers that since 2014, she has undertaken urgent repairs to the matrimonial home and the apartments. She says that the cost of these repairs together with the costs of property tax and insurance for 2014-2016 has totalled more than \$130,000.00, all of which she has expended on her own. Further that the matrimonial home is still in need of repairs which would protect their health and safety.

The Bonne Terre Property (Block and Parcel No. 1454 97)

- [10] Mrs. Joseph says that this property was purchased in 2000 at a cost of \$320,000.00 and also registered in their joint names. In order to meet the cost, she and Mr. Joseph took a loan in the sum of \$288,000.00. Mrs. Joseph says that she made payments on the loan intermittently and then in 2007, she paid off the mortgage in the sum of \$242,000.00 using her inheritance.

The Monier Property (Block and Parcel Nos. 1450B 485, 496 and 497)

- [11] Mrs. Joseph says this property, which consists of three lots registered in Mr. Joseph's sole name, was acquired during the marriage, and subdivided from a larger parcel in 2000 for re-sale.

The Chaussee Road Property (Block and Parcel No. 0848E 502)

- [12] This property was purchased in 2000 by Mr. Joseph and his mother jointly. A mortgage was taken in the sum of \$340,000.00, the property renovated, and the restaurant "Keebees" and a bakery for his mother established.

The Coral Street Property (Block and Parcel No. 0848E 1078)

- [13] In 2003, Mr. Joseph purchased this property which was registered in his sole name to facilitate business expansion of his mother's business known as 'Lera's'.

The Medical Laboratory

- [14] Mrs. Joseph says that in 2004, she and Mr. Joseph invested in the opening of a medical laboratory at the Tapion Hospital. They received 20% of the shares at the time. She invested the sum of \$20,000.00 and Mr. Joseph, the sum of \$10,000.00. Their total investment yielded \$202,190.00 in dividend payments between the years 2003 to 2012. The dividend payments were received by Mr. Joseph, none of which was shared with her. She says she recently discovered that Mr. Joseph withdrew their initial investment sum of \$30,000.00 without her knowledge and without reimbursing her.

Monetary Gift of \$1,075,000.00

- [15] Mrs. Joseph avers that in 2007, she received the sum of \$1,075,000.00 from her parents as part of her inheritance. Her parents had sold property and from the proceeds made a gift to each of their children in that sum. It was their specific wish that this money was for their children as part of their inheritance. Mrs. Joseph says that she used this sum as follows: towards constructing apartments as an addition to the Rodney Heights property (\$540,000.00); paying off the mortgage on the Bonne Terre property (\$242,000.00); purchasing a Kia motor vehicle for transportation of herself and the children (\$135,000.00); purchasing the Choiseul property (\$55,000.00); and the deposit towards purchasing the Soufriere property (\$100,000.00).

The Choiseul Property (Block and Parcel No. 0423B 49)

- [16] Mrs. Joseph says that in 2008, Mr. Joseph encouraged her to purchase this property at the price of \$55,000.00, convincing her that it could be used for a housing development or resold, despite its lack of vehicular access, which he

insisted could be acquired. This property was purchased in her sole name and paid for from her inheritance.

The Soufriere Property (Block and Parcel No. 0027B 3)

- [17] Mrs. Joseph says that in the same year 2008, Mr. Joseph encouraged her to purchase this property also. She says that on first view, she was convinced it was land for goats despite having a fantastic view of the Pitons. However, Mr. Joseph convinced her it was a good investment. After purchase, the property was zoned for camping, according to the Hyder Report, and it too does not have vehicular access. Mrs. Joseph says she purchased it for the price of \$350,000.00, using the remaining \$100,000.00 from her inheritance and took a loan for the balance of the purchase price. She repaid the loan in monthly instalments from 2008 to 2013.

Maintenance and Household Expenses

- [18] Mrs. Joseph says that during the marriage, household and other costs were split between her and Mr. Joseph, however that she has always borne most of the costs of the household and maintenance of the children of the family, while Mr. Joseph chose to spend his money on personal items and affairs.
- [19] Mrs. Joseph says that her household responsibilities consisted of: groceries; helper's wages and NIC contributions; school fees, extra lessons, school books, uniforms and supplies for the three children; numerous extra-curricular activities and associated gears for the three children; clothing for herself and the three children; toys and gifts for the three children and other close friends and family members; doctor's visits, medication and hospital bills for the three children; landline and internet including overseas calls, her cell phone and the three children's cell phones; her vehicle and all associated costs including insurance; property taxes and insurance; overseas travel and accommodation for vacations and travel associated with the children's extra-curricular activities; and time share maintenance.

[20] She says Mr. Joseph's responsibilities were: the water bills; electricity bills; the gardener's wages; pool supplies and maintenance; house maintenance, which was ignored by him in the last few years; his cell phone and associated costs; his clothing; his vehicles and associated costs; and car rental on vacations. This seemed to have been the accepted approach to the family expenses for some time until Mr. Joseph stopped after he left the matrimonial home in 2015.

[21] Mrs. Joseph averred that she calculated the cost of living for the family over a 5 month period between June and October 2013, whilst Mr. Joseph was still living in the matrimonial home. Her average monthly contribution was the sum of \$16,732.00 while Mr. Joseph's was the sum of \$1,700.00. She says that Mr. Joseph left the matrimonial home in or around January 2015. He continued his contribution for a brief period before instructing the gardener and pool man to speak to her about their payment and discontinuing payment of the water and electricity bills. He currently makes no contribution to the expenses of the household. The additional cost of maintaining the household, since Mr. Joseph relinquished his responsibilities, she estimates to be the sum of \$1,900.00 per month. Mrs. Joseph says that up to March 2016, she has spent in excess of EC\$101,000.00 on university fees and associated costs for their daughter Abigail who was attending university in Canada.

Employment and Income

[22] Mrs. Joseph says her employment has consisted mainly of contract employment, typically for periods of 3 years at a time with government, shorter term contracts, and working for herself by bidding for contracts. She says she has always had to plough all her earnings back into the running of the household, maintenance of the children, shared property investments and mortgages. As a result, she has never been able to save. Due to the contractual nature of her employment, she is without a pension or retirement, save her NIC and a Bank of Saint Lucia pension fund she was only able to start in 2007 from her inheritance.

Family Life

- [23] Mrs. Joseph says that she has always been the primary caregiver and the source of the children's emotional and financial support. She says that Mr. Joseph was absent from family meals on a daily basis as well as family functions/events including the children's swim meets when they were on the national team. He would very seldom participate in family activities, both immediate and extended; he claiming to be working late or prioritizing social events above time spent with his children. She says that on many occasions, she would have to make excuses to conceal his lack of interest in being present.
- [24] As primary caregiver Mrs. Joseph says she ensured that the children were exposed to a wide variety of extra-curricular activities. To facilitate this, she ensured that there was a live-in helper to remain at home with them and to assist with housekeeping; she also worked out elaborate schedules to shuttle the children to and from school and their activities in a manner most convenient to her and Mr. Joseph. However, Mr. Joseph typically found taking on these responsibilities a problem, leaving her to undertake most of them with the help of relatives.
- [25] She also says she believes Mr. Joseph to have been dishonest and unfaithful during the marriage, which caused her hurt and embarrassment.
- [26] Having said the foregoing, Ms King explained her reasons for requesting that the property shared in community with Mr. Joseph be dissolved and distributed in the manner sought. In respect of the Rodney Heights property, she explains it is because of the significant contribution made by her to this property; and because the children are most comfortable living there, she would prefer that they continue to reside there. She would also like to continue renovation and use the rental income from the apartments to supplement the costs of tertiary education of the three children, especially having regard to the heavy expenses she has already incurred in relation to Abigail's university expenses. After the children leave home,

the matrimonial home could be rented to generate income. In relation to the Bonne Terre property, it is also because of her contributions to the property, and her wish and intention to subdivide and distribute it to each of the three children, as part of their inheritance. She also wishes to build a small house to ensure she has a suitable place to live on retirement. With respect to the Soufriere property, so that an effort may be made to have it acquired by the government, or seek a change of land use with a view to it being sold and the significant proceeds anticipated shared equally between her and Mr. Joseph. As to the Choiseul property, simply because she has never had any interest in it, whilst Mr. Joseph remains of the view that it is a worthwhile investment.

Mr. Joseph

The Property

- [27] Mr Joseph says that it is important to obtain valuations for the properties so that the court can assess the relative values of the assets in weighing the balance between their respective financial positions. He confirms Mrs. Joseph's statements as to the purchases and mortgages, subject to confirming actual prices. He says he undertook maintenance and upkeep of all the properties.

The Rodney Heights Property

- [28] Mr. Joseph says Mrs. Joseph attempts to marginalize his role in relation to this property. He says that he also contributed funds to the acquisition and construction of this property and supervised construction to ensure it was properly built. He says that he too made payments towards the mortgage. He confirms that he undertook rental of the matrimonial home during the time it was rented and the apartments, but says he ploughed most of the rent back into the property.

The Medical Laboratory

- [29] Mr. Joseph says that he has requested audited statements to confirm share ownership but this has not been forthcoming. He says however, that the shares were recorded in his name from the start. He says that payments made to him

were salary for his daily work as Chairman, but were recorded as dividends on the advice of the company's accountants. He says that he has not received any payments from the Lab since his and Mrs. Joseph's separation.

Monetary Gift of \$1,075,000.00

- [30] Mr. Joseph alleges that this sum was paid by Mrs. Joseph's parents to them as a union and that similar payments were made to her siblings and their partners.

The Time Share

- [31] Mr. Joseph says Mrs. Joseph failed to disclose their joint ownership of the timeshare at Sunterra Resorts in St. Maarten, which was transferred to them by her parents and exhibited a copy of the transfer. He says this is evidence of the manner in which her parents also gifted them the \$1,075,000.00 in community.

Maintenance and Household Expenses

- [32] Mr. Joseph denies Mrs. Joseph's averment as to how household responsibilities were divided between them. He says that she did not undertake the responsibilities she says she did alone. He says he contributed equally to the upkeep of the family, financially and otherwise, however he has no proof or way of evaluating her calculation of their average monthly contributions to running of the household. Further, she failed to disclose receipts or invoices for the expenses alleged by her. He says he was unable, due to financial circumstances, to continue upkeep after he was asked to vacate the matrimonial home.

Employment and Income

- [33] Mr. Joseph says that Mrs. Joseph has been deliberately vague and obscure in her representations about her financial position, which he says can only be fairly determined upon disclosure of all financial records by them both. Only then will the court be able to adjudicate the relative financial position of the parties and values of the immovables to be separated. He notes that Mrs. Joseph has failed to indicate her income and provide proof thereof such as bank statements but says

that he can state that her financial position is far better than his. He then exhibits a Value Added Tax Declaration in which Mrs. Joseph indicated gross sales of between \$300,000.00 and \$400,000 with cost of sales between \$100,000.00 and \$200,000.00.

[34] He says at present he is suffering from financial hardship, which he has, since being asked to leave the matrimonial home. He currently lives upstairs his restaurant which is far less secure and comfortable than he was used to prior to their separation. He says that his income is from the restaurant and is seasonal. He says he is indebted to 1st National Bank in the principal sum of \$248,962.96 and exhibited a copy of the loan agreement. He says further that his account with Bank of Saint Lucia is not in good standing and exhibited a letter from the bank. His credit card with First Caribbean International Bank (FCIB) is maxed out and exhibited a statement from FCIB. He says his chequing account with FCIB shows a closing balance of \$520.68 as at 15th December 2016.

[35] He says given Mrs. Joseph's posture of selectively disclosing relevant information as to income and expense, an order of the Court should be issued to all financial institutions so the Court can be in possession of all the facts. He says in the end, they are all entitled to expect to be maintained to as close to the standard they had all enjoyed prior to the divorce.

Family Life

[36] All Mr. Joseph says in this regard is that Mrs. Joseph would like the Court to believe that he is a 'deadbeat' dad and husband and that her allegation that he was dishonest and unfaithful during the marriage is, even for her, below the belt. Mr. Joseph concludes by saying that he loves his daughters and will do what is necessary to assist with their upbringing but that Mrs. Joseph's request for ancillary relief is unfair and seeks to render him broke, thereby affecting his ability to care for himself and his children.

Mrs. Joseph's Reply

The Property

- [37] Mrs. Joseph exhibited valuations of the Rodney Heights, Bonne Terre, Coral Street, Monier and Chaussee Road properties, which were done in 2014. Mrs. Joseph also exhibited copies of the Land Register for the Rodney Heights and Bonne Terre properties, confirming the amounts of the respective mortgages.

The Rodney Heights Property

- [38] Mrs. Joseph says she does not dispute that Mr. Joseph may have used some of the rental income from the Rodney Heights property towards its maintenance, but rejects that he ploughed all or most of it back into the property. She says even before Mr. Joseph left the household, he was not properly maintaining the matrimonial home, which necessitated her undertaking significant repairs since then.
- [39] She says that she did the structural design for and shared in supervision of construction of the matrimonial home. She also designed the layout for the apartments. She avers that she was struggling to pay off the mortgage on the Rodney Heights property, so when another property was sold, the proceeds were used to pay off the mortgage. She has been unable to obtain a statement from the bank to give the Court an appreciation of the amount that she put towards paying off that mortgage.

The Medical Laboratory

- [40] Mrs. Joseph exhibited a printout of dividend payments she says were made to Mr. Joseph. She notes that Mr. Joseph did not deny that they both invested in the lab. She says the lab has confirmed that the shares were registered in his sole name but maintains that she contributed directly to the original investment. She avers that the lab stopped issuing dividend payments long before their separation.

The Monetary Gift of \$1,075,000.00

- [41] Mrs. Joseph is adamant that her parents did not intend to benefit Mr. Joseph when they gave her the monetary gift of \$1,075,000.00. She says they stated plainly at the time that they were gifts to their children and not to their spouses. She exhibited an unattested statutory declaration to this effect from each of her siblings and their respective spouses.

Maintenance and Household Expenses

- [42] Mrs. Joseph states emphatically that Mr. Joseph did not contribute equally to household expenses or to the maintenance of the family. She exhibited details of her expenditure for the period June to October 2013 together with supporting documents and her records of household maintenance costs incurred by her since 2014. She says that the type and quantum of these payments was typical of the costs that she carried throughout the marriage, whilst Mr. Joseph generally held back. She notes that he has also been silent on the house maintenance costs which she has had to undertake since he left the matrimonial home.
- [43] Mrs. Joseph says that when she asked Mr. Joseph to assist with Abigail's university education he replied that he was overextended at the bank and not in a position to help. She notes that Mr. Joseph has been silent on her statements concerning Abigail's university expenses on which she has spent in excess of \$190,000.00 and which continues.

Employment and Income

- [44] Mrs. Joseph says she has had no significant contracts between June and October 2016 and that Mr. Joseph is in no position to know what her income is. Therefore, his statement that her financial position is far better than his is speculation. She says that at this stage her spending exceeds her earnings. Further she had

recently been advised by the Inland Revenue Department that she has a tax liability of \$75,000.00 outstanding for the years 2007-2013.

Cross Examination

Mrs. Joseph

- [45] In cross examination, Mrs. Joseph admitted that she had produced no evidence of her earnings, though she says she stated the amount she earns. She disclosed several of her well-known public and private clients. She admitted that she has been gainfully employed since 1985 save the period she was pursuing her Master's degree. She admitted that she has several accounts with various banks and a retirement fund.
- [46] She agreed that the Rodney Heights property was acquired jointly and that the repayment term of the mortgage was 10 years but that it was paid off in 7 years. She denied that the rents were used to pay off the mortgage and stated that the mortgage was paid off prior to the apartments being built. She admitted that this was the most valuable property and the only one that has rental income. She agreed that the Bonne Terre property was also acquired jointly and is one of the more valuable properties. She stated that it has an abandoned dwelling house which would need to be demolished. She agreed it was debt free.
- [47] She agreed that the Choiseul and the Soufriere properties are in her sole name and are also debt free. She says they were put in her sole name at Mr. Joseph's request. She agreed that the Soufriere property would be valuable but for the no-build and being currently valued as agricultural land. She admitted that an offer for purchase was received in the sum of \$1,900,000.00 but on the condition that it was re-zoned to residential property.
- [48] She admitted that she did not know whether the Monier or Coral Street properties were encumbered by a mortgage. She accepted that the Monier property is undeveloped land with the access being a dirt road and that the Chaussee Road

property is currently boarded up. She admitted that she has no idea of Mr. Joseph's income.

- [49] She admitted that Mr. Joseph was involved in the operations of the lab as chairman. She admitted that the print out she exhibited from the lab is not signed or audited, and the source of the information is not provided. She denied that the payments were salary though she does not recall ever seeing a resolution declaring dividends. She accepts that she never requested any share of the dividends in her application for ancillary relief.

Mr. Joseph

- [50] Mr. Joseph admitted that he is a university graduate and a trained economist and that he has always had the option to work in his field of training. He admitted that instead he decided to go into the restaurant and real estate business. He admitted that he provided no audited statement or statement of affairs from his accountant. There is merely a document that is not signed and the author unknown. He admitted that he put no proof of his income before the court. He admitted he had no proof that Mrs. Joseph was in a better financial position than him.
- [51] He denied that Mrs. Joseph contributed \$20,000.00 and he contributed \$10,000.00 to the original investment in the lab. He says he contributed the \$30,000.00. He denied that he received dividends from the lab; insisted that the payments were salary but admitted that he provided no evidence that he worked for the lab, was receiving a salary, or that the lab paid NIC or made any other payments on his behalf. He was asked what he has done about having not received payment since separation. He replied that his salary stopped when the project for expansion of the hospital started.
- [52] He denied that it was Mrs. Joseph's salary that was assigned to repay the mortgage on the Rodney Heights property and stated that it was his salary with 1st

National Bank for which there was a standing order. He denied that Mrs. Joseph invested the sum of \$500,000.00 in the apartments, stating that it was in the property as a whole and not just the apartments and that he did not know the actual sum she invested. He admitted that he had not indicated any sum that he invested in the apartments. He admitted that the rental income from the Rodney Heights property came to him and was used by him. He further admitted that he had not put before the court any evidence of what he had done to plough back the rental income back into the community and that his statement to this effect is a bald assertion. He admitted that he had not indicated the balance on the mortgage on the Rodney Heights property paid off by him, stating that he thinks it was over \$100,000.00. He denied that the money used to pay off that mortgage was from the proceeds of sale of jointly owned property.

[53] He insisted that the gift of \$1,075,000.00 was a gift to him as well, though he admitted that neither Mr. nor Mrs. King handed him money. He said that Mrs. King said it to him. He said that he was unaware that Mrs. Joseph was no longer VAT registered because the threshold had increased. He admitted that the VAT registration form he exhibited does not state her income and that he was not certain what her income was. He agreed that the loan facility he referred to was granted to him after he left the matrimonial home and has nothing to do with his marriage or his children. He was asked whether he has explained to the Court any of his debts to allow the Court to determine whether they were reasonably incurred. He replied that he thinks the documents from the bank do.

[54] He admitted that Mrs. Joseph has put her evidence before the Court but said she has done so with a motive. He admitted that Mrs. Joseph put proof of payments for property tax and insurance and that he had put no evidence or proof of expenditure by him to that nature and extent. He admitted that he had not provided any evidence to show that what Mrs. Joseph stated about their respective contributions to running of the household was not true. He agreed that Mrs. Joseph has given evidence to substantiate her expenses. He agreed that he

was not in a position to state that Mrs. Joseph has not expended as much as she earned. He admitted that he has not provided any evidence to show that he was not in a position to continue upkeep of the matrimonial home.

- [55] He admitted that since leaving the matrimonial home in 2015 he has not assisted with maintenance of any of his children. He admitted that his children enjoy an above average standard of living. He accepted that children's extracurricular activities alone amount to \$1,182.00 per month. He agreed on that basis that the children would require maintenance of more than \$1,000.00 monthly. He accepted the level of expense Mrs. Joseph says she has already spent on Abigail's university education and stated that he would not be in a position to reimburse her one half of that cost. He also stated he would not be in a position to pay 50% of the expenses Mrs. Joseph has incurred for the other children of the family since he left the matrimonial home. He stated that he had no clue if or when his financial position would improve so that he can make such payments.

Preliminary Issues

Issue A- Whether Ms King followed the proper procedure to obtain the relief sought?

- [56] At the start of trial, counsel for Mr. Joseph, Mr. Mark Maragh ("Mr. Maragh"), sought to raise a procedural objection to the application for ancillary relief. His objection was that the notice of application states that it is made pursuant to section 42 of the **Divorce Act**¹ ("the Act") and does not seek any relief under section 45 of the Act as it relates to community property. Further the procedure to be followed for invoking the jurisdiction of the Court under section 45, which is by way of originating summons, was not followed. The Court did not take the objection at that time and ruled that it ought to be addressed in submissions at closing. Both parties dealt with this issue in their respective submissions.

¹ Cap 4.03 of the Revised Laws of Saint Lucia.

- [57] In closing submissions, Mr. Maragh submitted that the essence of Mrs. Joseph's application is that Mr. Joseph relinquish his interest in certain property, which he submitted is community property, being the Rodney Heights property, the Bonne Terre property and the time share. Mr. Maragh contends this is tantamount to asking Mr. Joseph to forfeit his share in community property which is provided for by section 45 of the Act. He however says there was no request for Mr. Joseph to do so in her petition, nor was any leave granted in the Decree Nisi or any other order for her to make a Form 15 application in such terms. Mr. Maragh submitted that this is in breach of rule 50 of the **Divorce Rules**² ("the Rules") and is the first hurdle to Mrs. Joseph's application. The second hurdle he submitted is that rule 75 requires an application for relief under section 45 of the Act to be made by summons. He says Mrs. Joseph has failed to comply with this rule also.
- [58] Counsel for Mrs. Joseph, Mrs. Lydia Faisal ("Mrs. Faisal"), in her closing submissions, argued that Mr. Maragh's posture is flawed because section 45 is not the only section in the Act which deals with separation of property on divorce. She says that Mrs. Joseph seeks the transfer of property which can be achieved under section 24. She submits that her application is in essence a section 24 application since the section 45 procedure was not pursued. The procedural requirement under section 24 that the application be made before the decree nisi is made absolute has been met. That section 24 was not identified by Mrs. Joseph is of no moment as the substance of the application speaks for itself and the court is entitled to proceed under section 24 having regard to the guidelines in section 25. In support, she relied on the case of **Craig Laurie Barnard v Penelope Ann Barnard (nee Bird)**³ in which Edwards J confirmed that "section 45, section 22, and section 24 of the **Divorce Act** exist independently with a separate head of power being granted to the Court by each of these provisions. It follows therefore that the Court's exercise of its powers under each of these provisions will depend on the nature of the application before the Court."

² The Divorce Rules, 1976.

³ Claim No. SLUHMT2001/0131.

Analysis

[59] Rule 50(1) so far as relevant requires that an application by a petitioner for certain orders including a periodical payment order, a settlement of property order or a transfer of property order, be made in the petition. Rule 50(2)(a) provides that notwithstanding anything in paragraph 1, an application for ancillary relief which should have been made in the petition may be made subsequently, by leave of the court either by notice in Form 15 or at the trial. Rule 50(2)(b) provides that a subsequent application for such ancillary relief may only be made without leave, where the parties are agreed upon the terms of the proposed order.

[60] The petition filed by Mrs. Joseph on 25th April 2014 states:

“The Petitioner therefore prays:-

...

3) That the respondent be ordered to pay reasonable maintenance for the minor children of the family in the sum of \$2,000 each per month until they attain the age of eighteen (18) years or complete a course of further education whichever is the later with liberty to apply.

4) That the immovable property held by the parties be partitioned.

5) That the respondent assists with the cost of schooling and university for each child of the family.”

The application then goes on to state how Mrs. Joseph wished certain property to be divided between the parties. There is no need to set out the proposed division here, save to say that the Court acknowledges that it is entirely different from that requested in her subsequent application. Further her application asks the Court to treat with additional properties not previously mentioned in her petition.

[61] It is clear that Mrs. Joseph indicates in her petition that she is seeking ancillary relief, including maintenance and settlement of property. However, it is also clear that the way in which she now desires the property to be settled is different and includes additional property. What she now seeks, pursuant to rule 50(1) ought to have been set out in her petition. However, rule 50(2) provides recourse in circumstances such as this, where different, new, or additional relief is subsequently being sought, by allowing her to obtain the leave of the court by

notice in Form 15. When I examine her application, it follows the wording of Form 15. Therefore, to my mind she does not fall afoul of rule 50. Under rule 50, leave is sought by virtue of the application being in Form 15. The rules do not refer to any prior or other form of application to obtain leave.

[62] The Court is of the view that rule 50 contemplates that parties may change their mind about the relief sought, and provides for that eventuality. It is often the case that at the stage of the proceedings at which a petition is filed, parties will hardly have thought of and identified each and every property, and decided how precisely such property ought to be divided between them. Their primary concern is usually simply obtaining the divorce, and ancillary matters are often ordered to be dealt with in chambers at a later date. Further, in Mrs. Joseph's case, she has had a change of attorney. It is therefore conceivable that new counsel will take a different view of the case and may wish to pursue further or other relief. So long as the rules permit, and no injustice is caused, there is no reason why Mrs. Joseph should be precluded from amending the relief sought.

[63] In relation to Mr. Joseph's challenge to Mrs. Joseph's application on the basis that it could only be made under section 45(a)(ii) of the Act and ought to have been made by summons in accordance with rule 75, the Court does not accept that this is necessarily the case. Section 45 is not the only section of the Divorce Act which would permit Mrs. Joseph to obtain the relief sought. The Court also has jurisdiction to make an order settling or transferring property under section 24 of the Act. It is admittedly unclear to which section of the Act Mrs. Joseph's application was pursuant, as the application states that it is made under section 42. This appears to be an error as section 42 is unrelated. This leaves both sections 24 and 45 available to her.

[64] I agree with Mrs. Faisal's submissions. As the procedure for an application for relief under section 45 was not followed, I take it that this is not the section under which she intended to apply, especially where the application has been properly

made and could properly be granted under section 24. I also agree that the Court has the jurisdiction to grant Mrs. Joseph the relief she seeks under section 24, having regard to the circumstances of the case, which jurisdiction is independent of that under section 45. I find support for this in the case cited by Mrs. Faisal **Barnard v Barnard**. In that case, in similar circumstances in which the respondent failed to follow the proper procedure for what Edwards J termed ‘a property order’ under section 45 of the Act, Edwards J decided that this relief could equally be obtained under section 24(1)(a) of the Act. In fact she found that no application had been made under section 45, that application having not followed the procedure for relief under that section. She distinguished between a transfer of property application, which would be an application under section 24 of the Act and an application for a property order under section 45.⁴ Edwards J noted the following about the interplay of sections 24 and 45 of the Divorce Act:

“It seems therefore on the authority of *Hunter v Hunter* (supra) that the absence of the wife’s Application under Section 45 (b) is not necessarily fatal to her Application under Section 24 (1) (a) for a transfer order relating to the separate property of her husband. It seems also that a prior determination of a claim under Section 45 (b) cannot prevent the Court from determining a claim under Section 24 (1) (a). The absence, failure or success of a claim under Section 45 (b) is only a circumstance to have regard to when considering the wife’s Application for a property transfer order, in my view. It might serve to reduce or extinguish her right to a property transfer under Section 24 (1) (d), but it certainly does not follow therefrom that the wife is disentitled to a transfer of property order under Section 24 (1) (a) of The Divorce Act.”⁵

[65] Based on the foregoing, and the relief sought and the nature and tenor of the evidence, I find it appropriate to consider Mrs. Joseph’s request for relief under section 24 of the Divorce Act.

[66] Having found that Mrs. Joseph’s application is made pursuant to section 24 and not section 45, the line of cases cited by Mr. Maragh in support of his contention that failure to comply with rule 75 is fatal, is of little relevance. Nonetheless, I

⁴ *Barnard v Barnard* at paragraph 12.

⁵ *Barnard v Barnard* at paragraph 51.

express my disagreement with these cases – that failure to make a section 45 application by way of summons is fatal to the application and that the court's hands are tied. This is an archaic and draconian approach that does not serve any useful purpose. It only results in injustice. To follow rule 75 slavishly is to elevate form over substance, which the court has time and again condemned. In particular, with the new dispensation brought about with the advent of the **Civil Procedure Rules 2000** ("CPR"), it is now the norm that the court will not lightly throw out parties' cases where there may be an error of procedure. I acknowledge that matrimonial proceedings are governed by its own set of rules, the Divorce Rules and not by the CPR. However, it is apposite to draw an analogy as to the stance the court ought to take in dealing with matters of procedure and how it may treat with such circumstances in order to achieve justice between the parties. For example, leave may be given to amend and breaches of procedural rules can be recognised by way of cost orders.

[67] These divorce proceedings were instituted with the petition being filed on 25th April 2014, some 5 years ago. To dismiss Mrs King's application now, on a point of procedure without even considering the merits of the application can only result in injustice. The very real issues which arise on the application, being first and foremost arrangements best suited for the maintenance of the children and the furtherance of their education, and the division of parties' property so as to achieve a fair distribution would be left unresolved. Further it would result in a waste of the parties' and the Court's time and resources.

[68] Mr. Joseph could point to no prejudice he would suffer as a result of the application proceeding as filed. The application has been duly made in Form 15 as the rules require. Mr. Joseph has had notice of the precise relief Mrs. Joseph seeks and ample opportunity to respond to it, which he has. He has filed two affidavits in response, thus putting his evidence before the Court. In neither of these affidavits did Mr. Joseph take issue with the different and additional relief being sought, or that the application is stated to be made pursuant to section 42,

or that the relief sought could not be granted in the form in which the application was made. He did not seek to have the application dismissed on any of these, or any grounds. Instead, he responded in substance to Mrs. Joseph's application and evidence. He must therefore be taken to have been aware of and accepted it. It is obviously unfair on the day of trial, to take this challenge and it would not be entertained. In any event, I am of the view that the relief Mrs. Joseph seeks can appropriately be considered under section 24 of the Act.

Issue B- Whether Mrs. Joseph can obtain relief in respect of the Shares in the Medical Laboratory?

- [69] Mr. Maragh also raised as a preliminary issue, that Mrs. Joseph claims an interest in the shares in the lab for the first time in her affidavit evidence. No reference is made to this asset in her petition or notice of application for ancillary relief. The Court accepts Mr. Maragh's submission that as a result she cannot now claim an interest in the shares and dividends. As discussed above, rule 50 required any interest in the shares in the lab to have been claimed in the petition or subsequently in her Form 15 application. This is also in-keeping with the general rule that pleadings must state the nature of the case so as to let the other side know the case it has to meet and provide the particulars necessary for that purpose. Mrs. Joseph cannot be permitted to seek and obtain relief in relation to property she never raised in her pleadings. Consequently, her claim to any interest in the shares and dividends will not be considered and the objection in relation thereto, that certain statements and exhibits are hearsay and inadmissible is of no moment.

Applicable Law

- [70] Ancillary relief is determined by both the **Civil Code of Saint Lucia**⁶ ("the Civil Code") and the **Divorce Act**, though where there is a conflict between the two, the

⁶ Cap 4.01 of the Revised Laws of Saint Lucia.

Divorce Act shall prevail⁷. The legislative provisions relevant to determination of this application are set out below.

[71] The **Civil Code** provides:

“1190. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.

1191. Legal community ... takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles.

1192.

- (1) The property of persons married in community is divided into separate property and the property of the community.
- (2) Separate property comprises—
 - (a) the property, movable and immovable, which the spouses possess on the day when the marriage is solemnized;
 - (b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse;
 - (c) property, movable and immovable, acquired by succession, or by donation or legacy made to either spouse particularly;
 - (d) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived; and
 - (e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.
- (3) Property which is acquired by the husband and wife during marriage in any manner different from that above declared is the property of the community.

1193.

- (1) Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired after marriage, is admitted or proved to have been acquired in one

⁷ The Divorce Act Cap 4.03 of the Revised Laws of Saint Lucia, section 53.

of the ways set out in article 1192, or to otherwise belong to one of the spouses only.

...

- (2) Where spouses purchase property in their joint names such property falls into the community unless it is expressly stated at the time of purchase that they are purchasing with their separate funds.

1194. Income and earnings are the separate property of that spouse from whose separate property or by whose sole labour they come, without prejudice, nevertheless, to the liability of the spouses to contribute towards the education and the support of the children and the expenses of marriage.

In case of disagreement the judge determines the contribution, if any, to be made by either spouse in accordance with the duties, liabilities, means and circumstances of the spouses.

...

1196.

- (1) Gifts and legacies made to one of the spouses do not fall into the community unless there is an express declaration to the contrary.
- (2) Gifts and legacies made to the spouses jointly, if made by an ascendant of one of the spouses, are deemed to be the separate property of such spouse as being acquired under a title equivalent to succession, and do not fall into the community unless there is an express declaration to the contrary.
- (3) Gifts and legacies made to the spouses jointly, if made by others than ascendants, come under the contrary rule, and fall into the community, unless they have been expressly excluded.

1198. Property acquired during marriage with separate funds or in exchange for separate property is separate property."

[72] The **Divorce Act** provides:

"24. Transfer and settlement of property and variation of Settlements

(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, subject to the provisions of sections 28 and 32(1), 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 party to the marriage and of the children of the family or either or any of them;

...

25. Factors to be considered by court

(1) It is the duty of the Court in deciding whether to exercise its powers under sections 22, 23 or 24 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (a) 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;
- (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;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable, and having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3), it shall be the duty of the Court in deciding whether to exercise its powers under section 23 or 24 in relation

to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) the manner in which he or she was being and in which the parties to the marriage expected him or her to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)(a) and (1)(b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him or her.

...

Analysis

Issues (C) & (D)-Ownership of the properties and appropriate distribution;

Maintenance of children

- [73] I now turn to the issues of the property and maintenance of the children. I find that the appropriate starting point is to determine ownership of the various properties in accordance with the provisions of the **Civil Code**. In respect of most of the properties, ownership is undisputed. Ownership is disputed in respect of the gift of \$1,075,000.00 and the time share. Further, ownership of the gift of \$1,075,000.00 will determine ownership of the Soufriere and Choiseul properties and the Kia motor vehicle purchased from that sum. I make the following findings:

The gift of \$1,075,000.00

- [74] I accept the evidence of Mrs. Joseph that this sum was specifically gifted to her by her parents as part of her inheritance and not to the union, and that a similar gift was given to each of her siblings as part of their inheritance. Mrs. Joseph initially exhibited to her affidavit of 4th January 2017 an unattested statutory declaration from her siblings and their partners to this effect, and on the day of trial, sought without leave of the Court, to substitute that document with a similar statutory

declaration signed and witnessed. I ruled that this was not permissible and the statutory declaration as exhibited would be given the appropriate weight. I make my finding despite the trifling weight that must be attributed to the unattested statutory declaration. Mr. Joseph merely says that the sum was given to them as a union, and that similar payments were made to Mrs. Joseph's siblings and their partners, but he provides no evidence to support this. In cross examination, he conveniently says for the first time, that Mrs. King told him so.

[75] I find on a balance of probabilities that the sum was gifted to Mrs. Joseph alone as part of her inheritance from her parents. Mr. Joseph may have been told about the gift by Mrs King, and maybe he or both of them anticipated that the sum given to her would benefit the family as a whole, which it did. However, I do not believe it was a gift to Mr. Joseph. Therefore, in accordance with article 1196(1), as a gift made to one of the spouses in the absence of any express declaration to the contrary, it is Mrs. Joseph's separate property. Even if I am wrong that the gift was made to Mrs. Joseph alone, I still find that it would not fall into the community pursuant to article 1196(2) which provides that gifts made to spouses jointly, if made by an ascendant of one of the spouses, (in this case Mrs. Joseph's parents) are deemed to be the separate property of such spouse.

[76] Consequent on that finding, I find therefore that the Soufriere and Choiseul properties and the Kia motor vehicle purchased from the gift of \$1,075,000.00 are also Mrs. Joseph's separate property pursuant to articles 1192(2)(e) and 1198 of the **Civil Code**, being acquired with separate funds, and the fruits derived from the proceeds of separate property.

The Time Share

[77] Mr. Joseph says that he and Mrs. Joseph jointly own the time share which was transferred to them by her parents. He exhibited a copy of the transfer which states that the time share is being transferred from Mr. and Mrs. King to Mrs. Joseph as the new owner and Mr. Joseph as new co-owner and is signed by all of

them. Both Mrs. Joseph and Mr. Joseph state in their evidence that the transfer was by way of gift. On the evidence, I accept that the time share was a gift made to them jointly by Mrs. Joseph's parents. On that basis and in accordance with article 1196(2) of the Code, I find that the time share is Mrs. Joseph's separate property and does not fall into the community.

Separate property

[78] The following properties are separate property belonging to Mr. Joseph on the basis that they were acquired by him with his separate funds in accordance with article 1198 of the **Civil Code**: the Monier Property; the Coral Street Property and Mr. Joseph's half share in the Chaussee Road Property. Similarly, the Choiseul and Soufriere properties are the separate property of Mrs. Joseph.

[79] At this juncture, it is apt to point out that Mr. Joseph has made no application pursuant to either section 45(b) or section 24 of the **Divorce Act** for any interest in the separate properties belonging to Mrs. Joseph. Neither has he stated this in his reply to Mrs. Joseph's application. Further, counsel for Mr. Joseph has confirmed via his submissions that Mr. Joseph is not claiming any interest in her separate property. Therefore, the Court cannot consider transferring any interest in the Choiseul or Soufriere property to Mr. Joseph as requested by Mrs. Joseph.

Motor vehicles

[80] In relation to the motor vehicles, there is agreement by Mr. Joseph that the vehicles should be distributed in the manner detailed in Mrs. Joseph's application for ancillary relief. Therefore, Mrs. Joseph shall maintain sole ownership of motor vehicles registration numbers PC700 and PK5722 whilst Mr. Joseph shall maintain sole ownership of motor vehicles registration numbers 700, 867 and PJ4905.

Community property

[81] It is accepted by both the parties that the Rodney Heights Property and the Bonne Terre Property are community property in accordance with articles 1190, 1191, and 1193(2) of the **Civil Code**, having been purchased during the marriage in their joint names and by their joint funds. It is in relation to these two properties that the Court must consider whether it is appropriate to order a transfer or settlement of such property in favour of Mrs. Joseph pursuant to sections 24 and 25 of the Act.

Application of sections 24 and 25 of the Divorce Act

[82] Section 24(1)(b) permits the court to make an order for settlement of property to which one spouse is entitled for the benefit of the other spouse or the child/children of the family or either of them. In deciding whether to make the order, the Court must have regard to all the circumstances of the case including the factors set out in subparagraphs (1)(a) to (g) of section 25. The Court must further exercise this power so as to place Mrs. Joseph and Mr Joseph in the financial position they would have been, had the marriage not broken down and each had properly discharged their financial obligations and responsibilities toward the other, so far as it is just to do so, having regard to the conduct of the parties, and so far as is practicable.

[83] The Court in exercising its power in relation to the children, must have regard to all the circumstances of the case including the factors set out in subparagraphs (2)(a) to (e) of section 25, and exercise its power so as to place the children in the financial position they would have been, had the marriage not broken down and Mrs. Joseph and Mr Joseph had properly discharged their financial obligations and responsibilities towards them, so far as it just and practicable to do so, having regard to the considerations in subparagraph (1)(a) and (b).

Consideration of the factors

(1)(a) Income, earning capacity, property and financial resources of each party to the marriage

[84] I find that both Mrs. Joseph and Mr Joseph have equal income earning capacity. Both are university trained and qualified in their respective fields, which are potentially equally profitable. The evidence discloses and I accept that Mrs. Joseph earns approximately \$16,000 per month. There is no evidence as to Mr. Joseph's earnings. However, the parties accept that presently Mrs. Joseph earns more than Mr. Joseph, and I find that this is simply because she has chosen to be proactive in obtaining employment and to work assiduously in her field in order to provide for her family. Mr. Joseph, on the other hand, has opted to undertake less secure and seasonal ventures (restaurant and real estate) which he says have affected his income. It appears that despite that outcome, he has persisted in these undertakings over a period of time, leaving Mrs. Joseph to shoulder the brunt of the financial obligations/responsibilities toward the family. Mr. Joseph provided the Court with no evidence of his income from the restaurant.

[85] Mrs. Joseph has two properties that belong to her – the Choiseul and Soufriere properties. There was some dispute in relation to the value that should be accepted by the Court in respect of the Soufriere property. The Soufriere property was valued by Mr. Andre Mathurin in the sum of \$147,000.00 as at 13th September 2017 at the instance of Mrs. Joseph, and by Mr David Emmanuel in the sum of \$1,496,286.00 as at 9th February 2018 at the instance of Mr. Joseph. I certainly do not accept the valuation of Mr. Emmanuel. Mrs. Joseph purchased the Soufriere property in 2008 at the cost of \$350,000. Her evidence is that it does not have vehicular access and is zoned for camping. It is not zoned for residential purposes. This evidence is uncontroverted. In the circumstances, I find that both valuations are somewhat self-serving. The value to my mind is more likely to be closer to the sum for which it was purchased. I accept the value of the Choiseul property as \$83,000.00 and that both properties are debt free.

[86] Mr. Joseph has two separate properties belonging to him and another in which he has a half interest. Accepting the valuations provided, which are not disputed, the Monier property is valued at \$233,000.00, the Coral Street property at

\$165,000.00 and the Chaussee Road property at \$554,500.00. He therefore has separate property valuing \$675,250.00. I accept the Coral Street and Monier properties are encumbered by a mortgage in the principal sum of \$248,962.96 and that Mr. Joseph has other debt for which he is liable in the sums of \$8,092.00 to Bank of St. Lucia and \$10,817.52 to First Caribbean International Bank as at the date of his supplemental affidavit. Taking the net value of these properties, I find that any disparity between that and the value of Mrs. Joseph's separate property would not be significant.

(1)(b) Financial needs and obligations and responsibilities of each party to the marriage

[87] From the evidence it is clear that Mrs. Joseph is the one who has always shouldered the majority of the responsibility of providing financially for the family. This was the case even prior to the separation. I accept Mrs. Joseph's evidence that even while Mr. Joseph lived in the household and the marriage was subsisting she contributed \$16,732.00 monthly to the running of the household while Mr. Joseph contributed \$1,700.00. Since the separation and Mr. Joseph left the matrimonial home and stopped contributing to the household expenses, Mrs. Joseph has had to bear an additional \$1,900.00 per month. This does not include Abigail's university expenses up to December 2016 in the sum of \$190,441.00 also borne by Mrs. Joseph. It does not include capital expenses in respect of maintenance of the Rodney Heights property in the sum of \$160,802.00 borne by Mrs. Joseph since 2015. Based on Mr. Joseph's evidence as to his financial position and ability to support his children which he admitted he is only able to contribute \$700.00 monthly, it is certain that Mrs. Joseph may have to continue to bear the majority of the expenses of all three children of the family on her own, including their university education.

[88] Mr. Joseph has not indicated any responsibilities or obligations he has, save for paying the various debts he has incurred, some only after the separation. He does not incur additional rent as he lives above his restaurant. He has accepted that he

is liable to maintain and provide for his children but has indicated that he is unable to do so in the amount sought by Mrs. Joseph due to his financial circumstances. In relation to maintenance expenses for the three children from 2015 to date, he said he does not know if or when he will be in a position to pay Mrs. Joseph half of these expenses. Mr. Maragh submitted that Mr. Joseph's business expenses must be taken into account here including rental of the business premises where he also resides, and food, water and electricity costs which relate to his personal needs also. It is worthy of note that Mr. Joseph provided a statement of affairs in which he detailed his assets and liabilities, but he provided no evidence of what his personal or business expenses are. These have been given the appropriate consideration, bearing in mind that Mrs. Joseph also has business expenses and similar personal needs which she has detailed.

(1)(c) Standard of living enjoyed by the family before breakdown of the marriage

[89] It is disclosed on the evidence and accepted by all, that the family enjoyed a very high standard of living before the breakdown of the marriage.

(1)(d) the age of the parties to the marriage and the duration of the marriage

[90] Mrs. Joseph is currently about 54 years old and Mr. Joseph 57 years old. The marriage lasted some 23 years up to the date of the grant of the decree nisi.

(1)(e) Physical or mental disability of either of the parties to the marriage

[91] There is no evidence of either Mrs. Joseph or Mr. Joseph suffering from any physical or mental disability.

1(f) contribution made by each of the parties to the welfare of the family, including contribution made by looking after the home and caring for the family

[92] I accept that Mrs. Joseph has made substantial contribution to the welfare of the family, and when Mr Joseph's contribution is juxtaposed against hers, his contribution is miniscule. In relation to the Rodney Heights and Bonne Terre properties, I accept that both Mrs. Joseph and Mr. Joseph contributed more or less

equally to the initial sums required to acquire them. The evidence also shows that both contributed to paying off the mortgage on the Rodney Heights property, although in what proportions is unclear. Both their evidence is vague in this regard.

[93] However, the evidence also discloses that Mrs. Joseph alone contributed \$540,000.00 of the \$600,000.00 required to construct the apartments at the Rodney Heights property. Mr Joseph is the one who collected the rental income and while I accept that some of this income went back into maintaining the property, I do not believe that most did. Mr. Joseph has failed to provide evidence to support his claims that all the rental income was ploughed back into the maintenance of the Rodney Heights property. Based on the extent of his contributions to the household and the fact the property does not appear to have been properly maintained at least in the last few years before their separation, I find that a substantial amount of that income was retained by Mr. Joseph for his personal use. It is undisputed that Mrs. Joseph paid off the majority of the mortgage on the Bonne Terre property, some \$242,000 of the \$288,000. Since 2015, Mrs. Joseph has been maintaining the Rodney Heights property on her own which has required significant repairs. In relation to the household, I have detailed their respective contributions and my conclusion at paragraph 87 above that Mrs. Joseph bore the financial responsibility for maintaining the household and the children, almost exclusively. The evidence discloses further that Mrs. Joseph bore the emotional and other non-financial support for the children, whereas Mr. Joseph generally tended to shirk those responsibilities.

(2)(a) The financial needs of the children

[94] Abigail is, at the date of this judgment, 23 years old and was due to complete her university education in July 2019. She is currently being maintained by Mrs. Joseph who has been paying for her university education and all associated expenses. The twins are 17 years old and are still completing their high school education. They would therefore continue to require the maintenance they are

accustomed to which on the evidence includes food, clothing, healthcare, education and extracurricular activities and the associated costs. The twins are expected to pursue tertiary education on completion of their high school education.

2(b) Income, earning capacity, property, financial resources of the children

- [95] There is no evidence that any of the children of the family have any source of income or financial resources or have or are entitled to any property. As to earning capacity, Abigail who is due to complete her university education would soon be in a position to obtain employment and earn an income therefrom. However, it is unlikely that the twins who are still attending high school will have significant earning capacity in the very near future.

(2)(c) Physical or mental disability of the children

- [96] There is no evidence that any of the children suffer from any physical or mental disability.

2(d) Standard of living enjoyed by the family before breakdown of the marriage

- [97] It is undisputed that the family enjoyed a very high standard of living. The cost of maintaining the household since 2015 has been the sum of \$18,632.00 monthly. This does not include Abigail's expenses. Of this sum, the extracurricular expenses for the twins alone amount to \$1,233.83 monthly.

2(e) Manner in which the children were/are being educated and the parties to the marriage expected them to be educated

- [98] Abigail was due to complete her studies at McGill University in Canada in July this year. The twins are expected to complete tertiary education in similar manner. Both Mrs. Joseph and Mr. Joseph are university educated, Ms King having a masters degree. Both are professionals. I am certain that their children are expected to achieve no less.

Analysis

Whether it is just to make the order having regard to the conduct of the parties

[99] Mr. Joseph has acknowledged that he had a responsibility to contribute to the maintenance, education and support of his children and the expenses of his marriage. Despite this, when I consider all the circumstances of the case, it is evident that Mr. Joseph generally flouted his responsibilities as husband and father. Based on the tenor of his evidence, he seems content to have contributed the bare minimum to the maintenance and support of his family over the years, and to have left Mrs. Joseph to bear the burden of these responsibilities alone. Even now his attitude and approach before this Court has been that Mrs. Joseph has more than he does and therefore must continue to bear his responsibility towards his family. This is certainly not conduct which this Court condones. The Act requires me to consider what is just having regard to the conduct of the parties.

[100] The Act also requires me, having regard to what is just, to seek to put the parties in the same financial position they would have been, had each discharged his or her financial obligations towards the other. Mr. Joseph has made much of Mrs. Joseph's financial position being better than his although the evidence of his financial position is somewhat vague. However, it is clear that he did not discharge his financial obligations towards her or to the children. Not only did Mrs. Joseph discharge her financial obligations towards him, she compensated for his lack of contribution. The fact is that because Mrs. Joseph has shouldered most of the responsibility, with little contribution or assistance from him, no doubt for the benefit and welfare of her children, Mr. Joseph has obtained a windfall throughout the course of the marriage. He has had the luxury of taking on various business and personal undertakings of his choosing without a care or concern for the financial impact on the family. Consequentially, Mrs. Joseph has far less financially than she would have had, had Mr. Joseph made his fair contribution.

[101] When I calculate the expenses required to maintain the children of the family from January 2015 to the date of this judgment: Abigail's university expenses from September 2015 to December 2016 (16 months) was the sum of \$190,441.78. Assuming these expenses remain constant, the total expense for her university

education would be approximately \$570,000.00 up to the end of her studies. From Mrs. Joseph's evidence which was not contradicted, the twins require maintenance in the sum of \$16,732.00 per month. From January 2015 to September 2019, the date of this judgment, the amount required for their maintenance would have been \$870,064.00. The twins will require maintenance until they attain the age of 18 years in March 2020 and beyond if they choose to pursue tertiary education which is highly probable.

[102] Each parent being similarly qualified and capable of contributing equally to the maintenance of the three children of the family, I find that each would be liable to contribute the sum of approximately \$720,032.00 if each had properly discharged their financial obligations towards the children to date. It is quite interesting that Mr. Joseph says he loves his children, yet that Mrs. King's request for maintenance of \$2,000.00 in respect of each child would render him broke. He also failed to indicate a reasonable monthly amount that he could contribute to the maintenance of his children. In the submissions of Mr. Maragh for the first time, a figure of \$700.00 was suggested. I note that Mr. Joseph's responses to this application for ancillary relief focused more on distribution of the properties than on the maintenance of his children, who in my view, are paramount.

[103] The Rodney Heights property has a value of \$1,808,730.00 as per valuation report of Mr. Terrence St. Clair dated 4th December 2017 whom the parties had agreed to engage to value the property as per the Court Order dated 24th October 2017. No other valuation was provided to the Court for its consideration. This valuation does not include Block and Parcel 1254B 1003 which up to this time although purchased by Mr. and Mrs. Joseph has not been registered in their names. This means that Mr. and Mrs. Joseph's half share in the Rodney Heights property is valued at \$904,365.00 each. This property has apartments which can be rented by Mrs. Joseph to supplement her income and assist her with the future expenses of the children of the family. I am of the opinion that given that the children reside with Mrs. King and are accustomed to living in the Rodney Heights property, that

Mrs. King should have sole ownership of this property. The value of Mr. Joseph's half share in the property would address his contribution of half of the university expenses for Abigail as well as maintenance for the twins from the time he left the matrimonial home in 2015 to the date of this judgment to which he has made no contribution whatsoever.

[104] I recognize that Mr. Joseph did contribute to the acquisition of the community properties and the Rodney Heights property is of greater value than the Bonne Terre property, which was valued by Ronald Gardner in February 2014 at \$655,000.00. No other valuation was presented to the Court by Mr. Joseph and so I accept that as the value. The Rodney Heights property also affords Mrs. Joseph the potential for extra income. Despite that, it is tempting to say that given that Mr. Joseph seems unable to contribute to his children's maintenance that perhaps his share in Bonne Terre should be transferred to Mrs. Joseph so that she could have the option of selling or mortgaging the property to take care of the expenses related to further studies by the twins. That would achieve the 'clean break' to which Mrs. Faisal refers in her submissions. However, it must be noted that the clean break principle which applies and is provided for in the **Matrimonial Causes Act**⁸ of the UK is absent from the provisions of our **Divorce Act** and therefore does not apply.⁹ What is required is a determination of what is fair taking into consideration all of the factors. It is not an exercise to punish any one party to the marriage.

[105] I am mindful that the Rodney Heights property is unencumbered and therefore is not a burden for Mrs. Joseph. I have taken into account Mr. Joseph's contribution to the acquisition of the community properties and will give him the Bonne Terre property solely. I am not persuaded that Mr. Joseph can only afford to pay maintenance of \$700.00 monthly for each child, even if this is what he says. The extra curricula activities for the twins alone amount to over \$1,000.00 monthly.

⁸ Section 25A of the Matrimonial Causes Act 1973.

⁹ See **Marie Antoinette Medar v Michael Medar**, SLUHMT2008/0024, delivered 28th July 2014, unreported.

Given Mr. Joseph's admission that his children enjoy an above average standard of living, he would no doubt agree that they would require maintenance of more than \$700.00 monthly. Whilst I am very disheartened by Mr. Joseph's approach to his children's maintenance, I am of the view that Mr. Joseph has sufficient assets to enable him to make good on the years of maintenance which he has neglected to make and those to come, if he so chooses. It is matter of conscience for Mr. Joseph and perhaps an opportunity to do better with the twins' maintenance and their tertiary education when that rolls around.

Conclusion

[106] I find that it is appropriate under section 24(1)(b) to make an order in relation to the properties for the benefit of Mrs. Joseph and the children of the family. In coming to this conclusion, I take into account:

- i. the tremendous contribution of Mrs. Joseph towards the maintenance and education of the children of the family and the expenses of the marriage throughout the course of the 23 year marriage and alone since January 2015;
- ii. the tremendous contribution of Mrs. Joseph towards acquiring, paying off, maintaining and improving the community property being the Rodney Heights and Bonne Terre properties;
- iii. the contribution of Mr. Joseph towards acquisition of the community properties;
- iv. the conduct of Mr. Joseph, being his passive and neglectful attitude and approach to his responsibilities towards his children and his marriage while it subsisted;
- v. the financial needs and expenses of the three children from January 2015 to present as well as their future financial needs up until each completes her university education;

- vi. most importantly, Mr. Joseph's uncategorical statements in cross examination that he is not in a position to reimburse Mrs. Joseph one half of the cost that she has incurred in maintaining the children since 2015 including one half of the cost of Abigail's university fees up to December 2016;
- vii. Mr. Joseph's uncategorical statement in cross examination that he has no clue if or when his financial position would improve so that he can make such payments;
- viii. The lack of any evidence from Mr. Joseph to assist the Court in determining what he can truly afford by way of maintenance payments for the children of the family until such child attains 18 years or completes tertiary education, which to my mind, excludes Abigail who is now 23 and should have completed her university studies in July 2019;
- ix. the value of the respective properties when juxtaposed against the maintenance needs of the children from 2015 to date and the anticipated future maintenance expenses;
- x. the Rodney Heights property does have income earning potential and the rental income earned therefrom may be used to supplement the expenses of the children.

[107] I am of the firm view that a father ought not to have to be ordered by a court to pay a specified sum towards maintenance of his children. That is an obligation which should come naturally and which he should honour willingly and with pride. Mr. Joseph has failed in his obligations and this certainly cannot continue. Mr. Joseph made no attempts to make any contributions to his children's maintenance and it very well raises doubts as to whether he will honour any obligation placed on him to do so by the Court but he should at least be given an opportunity to honour any order for maintenance. I am of the firm view that an order for maintenance ought to be made in the circumstances.

[108] On the basis of the foregoing, I find that it is just in all the circumstances, having regard to the factors set out in section 25(1) and (2) of the Act, the conduct of the parties and that which will enure to the benefit of the parties and the welfare of the two children of the family that the ancillary matters shall be settled as set out in the order below.

It is hereby ordered that:

Properties

- i. Mr. Joseph shall transfer his interest in the Rodney Heights property (Block and Parcel Numbers 1245B 774 and 868) to Mrs. Joseph absolutely within three (3) months from today's date so that she shall be the sole owner of the Rodney Heights property.
- ii. Any deed of sale in relation to Block and Parcel 1245B 1003 shall be executed in favour of Mrs. Joseph solely, when the documents in relation to that parcel of land are sorted out.
- iii. Mrs. Joseph shall transfer her interest in the Bonne Terre property (Block and Parcel 1454B 97) to Mr. Joseph within three (3) months from today's date so that he shall be the sole owner of the Bonne Terre property.
- iv. The following properties are declared to be the sole property of Mrs. Joseph:

Movables

- (a) the sum of \$1,075,000.00 gifted by her parents in 2007;
- (b) the time share at Sunterra Resorts in St. Maarten and Mr. Joseph shall have no rights, and interest therein;
- (c) Motor vehicle registration numbers PC700 (Kia Sorento)

Immovables

- (d) Block and Parcel No. 0423B 49 situate in Choiseul;
- (e) Block and Parcel No. 0027B 3 situate at Chateau Belair, Soufriere;

- v. The following immovable properties are declared to be sole property of Mr. Joseph:
- (a) Block and Parcel Numbers 1450B 495, 496 and 497 situate at Monier, Gros Islet;
 - (b) Block and Parcel Number 0848E 1078 situate at Coral Street, Castries;
 - (c) his half share in Block and Parcel Number 0848E 502 situate at
 - (d) Chaussee Road, Castries;

Motor Vehicles

- vi. As agreed by the parties, Mrs. Joseph shall maintain sole ownership of Motor vehicles registration numbers PC700 (Kia Sorento) and PK5722 (Mazda Pickup) and Mr. Joseph shall maintain sole ownership of Motor vehicles registration numbers 700 (BMW), 867 (Nissan Pickup) and PJ4905 (Old BMW).

Maintenance

- vii. Mr. Joseph shall pay maintenance for the two children of the family namely, Chelsea Alea Joseph and Sade Alana Joseph in the sum of \$1,500.00 per month for each child commencing 31st October 2019 and continuing until the said children attain the age of eighteen (18) years or complete a course of tertiary education with liberty to apply.
- viii. Mr. Joseph shall pay half of the cost of the tertiary education for the two children of the family namely, Chelsea Alea Joseph and Sade Alana Joseph until each child completes her education.

Section 41 Declaration

- ix. The Court declares for the purposes of section 41 of the **Divorce Act**, Cap. 4.03 that there are two children of the family to whom the said section applies, namely Chelsea Alea Joseph and Sade Alana Joseph born on 12th

March 2002 and that arrangements have been made for the maintenance of the said children and are satisfactory.

Costs

- x. Each party shall bear his/her costs.

[109] I wish to apologize to counsel and the parties for the delay in delivering this judgment.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar