

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2009/0041

BETWEEN

KADER PANSITHA BRAMBLE NÉE WILLIAMS
of Kingstown Park

PETITIONER

AND

ST. CLAIR MAXWORTH BRAMBLE
of Kingstown Park

RESPONDENT

Appearances:

Ms. Paula David of counsel for the petitioner.

Mr. Sten Sargeant of counsel for the respondent.

2018: Feb. 15

Jun. 7

2019: Apr. 16

May 22

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** Mr. St. Clair Bramble and Mrs. Kader Bramble were married on August 31st 1996 at the

ages of 40 and 31 respectively. They parted ways in 2009. Later that year Mrs. Bramble petitioned¹ the court for divorce and a decree nisi was granted. Mrs. Hercules has applied² for an order granting her custody, care and control of their child Shari; and for division of all matrimonial property.

- [2] The parties each presented their respective position on each aspect of the application. They gave extensive testimony. The main bone of contention was which properties constitute matrimonial property and who was entitled to what share in each. Equal division of the matrimonial properties is the fair outcome in this case.

ISSUE

- [3] The issues are:

1. What order should be made for Shari Bramble's custody, care, control and maintenance?
2. (a) What properties constitute matrimonial property; and
(b) To what share in each is Mr. and Mrs. Bramble each entitled?

ANALYSIS

Issue 1 – What order should be made for Shari Bramble's custody, care, control and maintenance?

- [4] In her affidavit of means³ Mrs. Bramble averred that Shari attained the age of 18 years on 15th March 2019. She indicated that Shari is gainfully employed and that there is no longer any necessity for arrangements to be made for her custody and maintenance. She acknowledged this in her pre-trial submissions and indicated that Shari's employment is full time in nature. I infer that Mrs. Bramble has also abandoned her application for orders in respect of Shari's care and control.

- [5] In any event, the Matrimonial Causes Act⁴ ('the Act') empowers the Court to make maintenance orders in respect of children until they have attained the age of 16 years in the first instance and up

¹ Filed on 24th March 2009.

² By Notice of Application filed on 27th May 2013.

³ Filed on 21st July 2017.

⁴ Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 38 (1) and (2).

to the age of 18 years. Beyond that milestone, whether or not a 'child' is gainfully employed she may benefit from maintenance and financial provision orders, only if she is attending an educational institution or undergoing training for a trade, profession or vocation; or for other special circumstances such as mental or physical disability. No evidence has been adduced which places Shari in any of those categories. Mrs. Bramble's application for orders regarding the custody, care, control and maintenance⁵ of Shari Bramble is accordingly dismissed.

Issue 2 – What properties constitute matrimonial property?

- [6] Before the Court can move to decide what property division orders to make in respect of matrimonial property acquired by the parties, it must first determine which properties fall within that category and which do not. Matrimonial property is generally accepted as referring to assets which a husband and wife jointly acquired during the marriage, as a result of their collective efforts, whether by virtue of their employment within or outside the house.⁶ It includes the contributions made by a homemaker whose sole efforts have been restricted to management of the family's domestic affairs. In the words of Lord Nicholls of Birkenstead, matrimonial property is the 'financial product of the parties' common endeavour' while non-matrimonial property is not.⁷
- [7] Non-matrimonial property consists of assets which either party brought into the marriage with them or received through inheritance or gift during the course of the marriage.⁷ Sometimes, such property may be treated as matrimonial property to effect a fair outcome for both parties. It is therefore not always possible to draw a clear and precise boundary between the two.⁸ The court will look at all of the circumstances of each case to determine whether property is matrimonial property.⁹

⁵ Including contributions to her educational and health care expenses.

⁶ *Miller v Miller; McFarlane v McFarlane* [2006] 1 All ER 1.

⁷ At paras. 21 - 23 of the *Miller v Miller* case.

⁸ Per Lord Nicholls of Birkenhead at para. 26 of the *Miller v Miller* case, where he quoted from *White v White* [2001] 1 All ER 1 at 14, [2001] 1 AC 596 at 610.

⁹ Para. 22 of the *Miller v Miller* case.

[8] The Court will look at whether the property was transferred to or registered in both parties' names or in one only. It will examine all of the circumstances to assess the parties' intentions at the time the property was acquired and will evaluate whether such intentions changed during their course of dealings. The decision in **Stack v Dowden**¹⁰ is very instructive on the approach the Court will take when deciding the parties' respective interests in property whether registered in both their names or in one name only.

[9] Baroness Hale of Richmond delivered the leading opinion. She provided a non-exhaustive list of matters which will assist the court in making its determination as to the parties' respective shares in such property. They include the financial contributions made by each party towards the acquisition of the property; any discussions they had at the time of transfer or since then; the reasons for registering the property in one or both names; the purpose for acquiring it; whether they had children in respect of whom they had an obligation to provide a home; how the acquisition was originally or subsequently financed; how they arranged their finances and discharged the households and other expenses; and their individual characters and personalities.¹¹ The referenced factors are also relevant in deciding whether the property is matrimonial property.

[10] Baroness Hale cautioned that each case must be determined on its own facts. She offered further guidance on how the Court will assess what property is or is not matrimonial. In this regard, she opined that unless a contrary intention is proved, persons named in a deed of conveyance as joint owners are entitled to share the legal and beneficial interests in the property in that capacity.¹² The court must also look at their entire course of conduct and decide those beneficial interests. It must also determine whether they intended those interests to be different from their legal interests and if so, in what proportions.

[11] Mr. Bramble has carefully reproduced the referenced principles in his written submissions. In her pre-trial submissions, Mrs. Bramble also rehearsed the guiding factors which the Court is

¹⁰ [2007] 2 ALL ER 929.

¹¹ At para. 69 of *Stack v Dowden*.

¹² *Stack v Dowden* at para. 58.

mandated to consider in these types of cases, when deciding how to apportion matrimonial property. She relied on the decided cases of **Stonich v Stonich**¹³ and **Miller v Miller** in which the learned Justices of Appeal indicated that fairness was the ultimate objective which the Court aims to achieve being mindful that the starting point for arriving at a fair award is equality.

- [12] She highlighted as did Mr. Bramble the learning that, sexism has no part to play in the Court's determination of an appropriate order. Mrs. Bramble submitted further that although it is well established that gifts made to one party in a marriage by his family members will not usually be distributed between the parties on the dissolution of the marriage, there is no absolute bar to them being so apportioned. She cited the case of **Horne v Horne**¹⁴. The foregoing principles will be applied to the facts in the case at bar to assess which properties embody the characteristics of matrimonial property.

Matrimonial home

- [13] Mr. and Mrs. Bramble were involved in a romantic relationship for 30 years and lived together for 25 years. Their marriage lasted for 17 of those years. They lived together in the matrimonial home at Kingstown Park until their marriage broke down. The house is registered in their joint names by Deed No. 2518 of 1995. Mr. Bramble occupies the upstairs section of that building while Mrs. Bramble lives downstairs with Shari. Mr. and Mrs. Bramble accept that the matrimonial home is one of the assets which they jointly acquired and contributed to improving and maintaining. They accept that it must be apportioned between them. I agree.

Gift of Richmond Vale land to Mr. Bramble

- [14] During the course of Mr. and Mrs. Bramble's relationship, Mr. Bramble's grandmother transferred to him a parcel of land at Richmond Vale (ADC), by Deed of Gift 1050 of 1995. He insisted that the land is owned exclusively by him and that Mrs. Bramble has acquired no interest in it. Mrs. Bramble claimed an equal share of that property. She claimed that she paid the registration and legal fees for the transfer of the referenced parcel of land from Mr. Bramble's grandmother to him.

¹³ Civil Appeal No. 17 of 2002 (British Virgin Islands).

¹⁴ Civil Appeal No. 16 of 2005 (Saint Vincent and the Grenadines).

- [15] Mrs. Bramble explained that the grandmother gave to her the deed to that parcel of land and told her that she wanted to transfer it to Mr. Bramble before her death. Mrs. Bramble recalled that the grandmother told her to tell Mr. Bramble that she would go with him to a lawyer to get the transfer done. Mr. Bramble insisted that his grandmother never gave Mrs. Bramble any deed.
- [16] Mrs. Bramble asked that the Court take into account that the grandmother discussed with her the proposed transfer to Mr. Bramble before she discussed it with her grandson. She expressed the view that she believed that the grandmother wanted the property to benefit her and their children.
- [17] Mr. Bramble admitted that on 9th September 1996, he and Mrs. Bramble secured a loan of \$10,000.00 from the Bank of Nova Scotia evidenced by Deed of Indenture No. 3367 of 1996. The underlying collateral for the loan was the Richmond Vale land and the matrimonial home at Kingstown Park. The funds were used to partially finance his studies leading to a degree. Mr. Bramble claimed that he repaid that loan. Mrs. Bramble contended that it was a joint loan for which she was liable and to which she contributed. Based on his admission and the surrounding circumstances of the loan, I infer that Mr. and Mrs. Bramble approached the matter of his further education as a joint endeavour to which they both contributed.
- [18] Notwithstanding Mr. Bramble's denials, the evidence revealed that Mrs. Bramble was a full partner in the management of the land gifted to him by his grandmother and that it was used as a communal asset to support his educational pursuits at that time in their relationship. It does not appear that any further joint efforts were expended by the parties in connection with the dealings over that piece of land. In all the circumstances, I conclude that the subject property at Richmond Vale does not constitute part of the matrimonial property.

Land at Fitz Hughes, C/Belair

- [19] Mr. Bramble bought land at Fitz Hughes, Chateaubelair in or about 1986. It was registered in his sole name in 1996 by Crown Grant No. 49 of 1996. Mr. Bramble contended that Mrs. Bramble is not entitled to an interest in that property. She disagrees with him. She asserted that the land was bought when their son was a baby. Mrs. Bramble recalled that although they were not married they were living together as a family.
- [20] Mr. Bramble produced a Mortgage No. 3361 of 1996 by which he and Mrs. Bramble (then Ms.

Williams) secured a loan of \$10,000.00 from the Bank of Nova Scotia dated 9th September 1996. Mr. Bramble testified that he repaid that loan. Under cross-examination he claimed that he bought this land from his grandmother. However, a comparison of the description of the land in that mortgage and the description in the referenced Crown Grant reveals that the land described in both documents is identical.

[21] Mr. Bramble is either mistaken or was being deliberately untruthful. I infer that he must have been mistaken. I find that he purchased the subject land from the Government as outlined in the Crown Grant. It appears that Mr. and Mrs. Bramble had embarked on a course of conduct even before their marriage which revealed that they had committed themselves to each other at a very deep level even in respect of their investments, financial affairs and support for each other.

[22] Mr. Bramble admitted that the proceeds from that loan were used to cover some of his educational expenses when he went to Jamaica to pursue studies leading to a degree. Mrs. Bramble submitted that she supported him in this endeavour by co-signing the mortgage deed and assuming responsibility with him for repayment of the loan.

[23] I accept that Mrs. Bramble's contributions to the household facilitated the repayment of the loan. She was a soft spoken witness. Her testimony had the ring of truth to it. She presented as a frank, forthright albeit at times a hesitant witness. Mr. Bramble was cocky and often evasive. Where his account differed from Mrs. Bramble I prefer and accept hers. I am satisfied on a balance of probabilities that although Mr. Bramble initially paid for the land at Fitz-Hughes, Mrs. Bramble acquired an interest in it by her contributions to the household and family endeavours including the referenced loan obligations. For these reasons, I find that the Fitz Hughes property is to be dealt with as matrimonial property.

Car

[24] Mrs. Bramble also claimed entitlement to share in the proceeds of a car which she said that Mr. Bramble bought for her while she was in Jamaica pursuing studies. She testified that Mr. Bramble sold it in or about 2009. She explained that she went to Jamaica in 2008 to pursue a 4 month course of studies and at that Mr. Bramble bought her a car while. She averred that he registered the car in his name and told her that he bought it from his own funds. She claimed that on her return she used the car until around 2009 when she had an accident while driving it.

- [25] Mrs. Bramble stated that she believed that at least part of the funds came from her account to which Mr. Bramble held a bank card while she was abroad. She explained that he had absolute control over her salary and account while she was out of the State. He did not deny this. I accept that he did. Mrs. Bramble recalled that their children were living with someone else while she was overseas studying.
- [26] She reasoned that the household expenses should have been less while she was out of the State. She indicated that she noticed that although her salary was deposited to her account during that time and should have amounted to about \$7600.00 by the time she returned, she met a balance of only \$400.00 on the account. She expressed the belief that part of the amount withdrawn from her account must have been applied to the purchase price for the vehicle. She said that she continued using the vehicle until 2009 when it was involved in an accident. She testified that Mr. Bramble offered to get it repaired and that she gave him the keys to facilitate this.
- [27] Mrs. Bramble said that she never saw the car again because her husband sold it and never accounted to her for the proceeds. She submitted that the Court should deduct from the value of his half share in the matrimonial home, half of value of the car sold in 2009, which represented her share in it.
- [28] Mr. Bramble testified that he bought a 1996 model Nissan Bluebird but not for Mrs. Bramble. He explained that he purchased it for himself at a price of \$10,000.00. He testified that he paid for it with a credit card cheque from his Scotiabank Mastercard. He explained that he paid off for it in 2011 when he got his gratuity. Mr. Bramble accused Mrs. Bramble of crashing 'his car'. He explained that it had only third party insurance coverage so he got no payment from the insurance company to repair it.
- [29] He recalled that he took it to get the bonnet, windscreen, bumper, grill, headlights and turn signal lights repaired or replaced. He admitted that he sold it in 2014 and received the sum of \$5000.00 for it, a sum he described as far less than what he paid to repair it. Mrs. Bramble did not provide any evidence about the price paid for the car or its value at the time it was sold. Even though he did not provide any documentary evidence of the sums paid to repair the vehicle, I accept the figures supplied by Mr. Bramble for the purchase price paid for the vehicle and the amount he received when it was sold some 5 years or so after it was bought for \$10,000.00.

[30] Taking into account the reality of depreciation and the likely expenses associated with replacing the damaged parts, Mr. Bramble's figures seem reasonable. There is no evidential basis on which the court can make a contrary evaluation. In the premises, I find that notwithstanding the Brambles' intention as to ownership of the vehicle, it did not retain sufficient value at the time it was damaged, repaired and sold as to constitute an asset from which value can be extracted and applied in Mrs. Bramble's favour. I am satisfied on a balance of probabilities that no such value subsisted in the car at the time it was sold. It is therefore excluded from the cache of matrimonial property to be distributed between the parties.

Monies in bank account

[31] Mrs. Bramble testified that Mr. Bramble holds monies in a Bank of Nova Scotia account and a Teacher's Credit Union account. She laid no express claim to those funds but implied that the Court should consider making a partition order in her favour. She indicated that she has modest savings. Mr. Bramble submitted that the parties should be permitted to retain the proceeds of any bank accounts they might have.

[32] Neither party disclosed any significant shareholdings, monies in bank accounts or other assets which are subject to apportionment for present purposes. Due to the paucity of information provided by the parties regarding their holdings in bank accounts, I make no finding as to the quantum. By extension, I make no order for that any such sums exist and if so whether they are matrimonial assets. I make no order of partition of such amounts. Each party is entitled to retain his or her individual savings.

[33] In light of the foregoing, I hold that the matrimonial properties are the matrimonial home and the parcel of land at Fitz Hughes, C/Belair.

Issue 2 – To what share of each matrimonial asset is Mr. and Mrs. Bramble each entitled?

[34] The Court is mandated to have regard to the matters set out at Section 34 of the Act when determining the respective interests of ex-spouses, to matrimonial assets. Its principal objective is to achieve fairness for both parties. Both parties made submissions along those lines. Mr. Bramble submitted that the modern approach was best summarized by Lord Nicholls of Birkenhead in **Miller v Miller; McFarlane v McFarlane** where he said:

'Discrimination is the antithesis of fairness. In assessing parties' contributions to the family there should be no basis in favour of the money-earner and against the home-maker and the child-carer. This is a principle of universal application.'¹⁵

- [35] Mr. Bramble contended further that the converse of this dictum must also be the position in law. He argued that there cannot be any bias in favour of the home-maker and child-carer as against the money-earner. Mrs. Bramble acknowledged that this is an accurate statement of the law.
- [36] The Court is seeking to achieve a 'clean break' for the divorcées. It does this by assisting them to 'begin a new life that is not overshadowed by the relationship which has broken down'. The Act stipulates that the Court must consider all relevant factors including the parties respective ages; needs; earning capacity; financial resources; obligations; physical and mental health; their respective contributions to the family welfare; current and future income and the duration of the marriage. The Court must also examine their conduct relative to each matrimonial property; the standard of living they enjoyed during the marriage and the value of any benefit which either party will lose as a result of the breakdown of the marriage.
- [37] In making its decision, the court must take the listed factors into account with a view to placing each party, so far as reasonably practicable and just, in the position that he or she would have been in had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other. In addition, the court must give effect to those legal principles which govern the apportionment of matrimonial property as demonstrated in the referenced decided cases.
- [38] The Court is authorized to make a property adjustment order under section 32 of the Act. It may also make a property transfer or property settlement order, a financial provision order or an order for periodical payments to a former spouse or children of the family and an order for lump sum payment to one party.¹⁶ A property adjustment settles property owned by one party for the other

15

¹⁶ Section 31 of the Act.

party's benefit, or extinguishes or reduces a party's interest to a settlement. Such orders are geared to as far as reasonably practicable and just, ensure that the parties' financial positions after the marriage remain as close as possible it was during the marriage.¹⁷ I next turn to consider the factors outlined in the Act.

Age, physical and mental health, income, earning capacity, standard of living

- [39] Mrs. Bramble is 54 years old and is employed as a Nursing Aide at the Lewis Punnett Home for the older adult¹⁸. She holds a Diploma in Social Work from the University of the West Indies. Mr. Bramble is 63 and is a retired from the Civil Service since 2011. He retired after a long career in the teaching profession from 1977. He holds a Diploma in Physical Education and a Bachelor's Degree from the G. C. Foster College, Jamaica.
- [40] Mrs. Bramble's gross salary is \$1,974.00. Her net pay is \$1,071.06 after deductions for contributions to National Insurance Services and other items are made. She testified that she has monthly outgoings totaling \$1574.00 in respect of food, utility bills and two loans. The first loan was secured in August 2009 for the sum of \$25,400.00 while the second was obtained in 2015 in the amount of \$18,600.00. She has accumulated savings of \$1,300.00. This will not provide the required financial cushion when she reaches retirement at age 55.
- [41] She is expected to receive an NIS pension in respect of the contributions made on her behalf. Mrs. Bramble has indicated that she earns additional income from her small business. She averred that she earned and earns extra income from trading in groceries imported from Trinidad and Tobago for resale. Mr. Bramble insisted that he was the main trader in that endeavor, during the marriage. After retirement Mrs. Bramble can continue that enterprise and supplement her pension from those proceeds. She has modest shares in the Teachers Credit Union amounting to approximately \$2,000.00, a \$25,000.00 death benefit and a life insurance policy with Sagicor for \$100,000.00 payable on her death.

¹⁷ Section 34 of the Act.

¹⁸ Home for the elderly.

[42] Mrs. Bramble averred that she is in good health. All things being even, she would be expected to enjoy about 15 to 20 more years of productivity from which she should reap some financial benefits if she persists with her entrepreneurial endeavours. She has made no claims that her standard of living has been or is likely to be jeopardized by reason of the breakdown of the marriage, neither has Mr. Bramble. I find therefore that neither of them will be impacted adversely.

[43] Mr. Bramble is a diabetic. He admits that his condition is under control for the time being. He produced no medical records but the court takes judicial notice that he appeared to be walking with the help of a prosthetic leg. He lives of a fixed pension and has not worked since he contracted work with the Government as a damage assessor, between the months of March to September 2014 in the aftermath of the 'Christmas-Eve floods' in 2013. He has a Death Benefit plan with the Teacher's Credit Union for \$6,000.00 payable on his demise. He produced a computer printout reflecting the value of his shares at the Credit Union as \$14,412.

Contributions to the family welfare

[44] Mrs. Bramble claimed that she was largely responsible for taking care of the children in their infancy and childhood. Mr. Bramble refuted this claim. He insisted that he provided substantial care of the children. It is clear that both parents contributed to the well-being of the children during the course of the marriage in one form or another. I accept this.

Conduct relative to each matrimonial property

Matrimonial home

[45] The evidence revealed that Mr. and Mrs. Bramble obtained a mortgage to purchase the matrimonial home. In accordance with their agreement Mr. Bramble paid the mortgage while Mrs. Bramble paid the utility bills and bought groceries. Both of them were gainfully employed away from the home. They demonstrated that they functioned as a cohesive unit in the management of their finances until unhappy differences developed between them.

[46] About 2007, Mr. and Mrs. Bramble extended the matrimonial home by adding 2 bedrooms including a master bedroom with ensuite bathroom. It was financed through a loan obtained by Mrs. Bramble

in the amount of roughly \$30,000.00. Mr. Bramble insisted that he purchased the materials for the additions. Mrs. Bramble produced receipts which supported her contention that she paid the workmen and bought sand and stone for the project. Mr. Bramble bought other materials such as cement and steel. I have no doubt that this was a joint project which they approached collectively and in a harmonious and collaborative manner.

[47] In 2009 after the breakdown of the marriage, Mr. Bramble wrote to the mortgage company (Bank of Nova Scotia) directing them to stop withdrawing mortgage payments from his salary. They declined his request. In March 2009, Mr. Bramble also directed the electricity and water companies to disconnect their services. Mrs. Bramble was forced to pay \$600.00 to re-connect the water supply. Around 2011, Mr. Bramble moved out of the matrimonial home and went to a house in Chateaubelair. He returned about a year later and forcibly entered the matrimonial home, removed some furniture and appliances including 2 of the 3 mattresses in the house.

[48] Mrs. Bramble started some additional repair work to the roof and cupboards in 2017. This would have increased the value of the home. No direct evidence of this was provided. Mrs. Bramble produced estimates. They are not probative of the expenditure undertaken. I am satisfied that Mr. and Mrs. Bramble treated this property as their home for the 17 years of their marriage and approached most of the improvements to it in a cooperative manner as a unit. They are entitled to benefit equally from their efforts and investments.

[49] Mr. Bramble argued that although he and Mrs. Bramble cohabitated for 6 years before the acquisition of the matrimonial property that the evidence is that they kept their finances separate before, and during the marriage. He contended that this is one of the indicators pointed out by Baroness Hale in **Stack** that points away from the parties wanting their beneficial interest to be different from their legal interest. He argued that his salary was assigned to pay the mortgage; and that his salary was considerably more than hers.

[50] Although Mr. Bramble paid the mortgage, this does not make him the sole purchaser of the property. Even if his payments were greater than Mrs. Bramble's this is of no moment in deciding their

shares. It is now accepted that parties are entitled and often do arrange their personal affairs in a convenient manner based on their individual circumstances without necessarily decreasing the entitlement of the party who contributed a smaller amount of money. The court will consider what contributions each made whether monetary or otherwise.

[51] I am satisfied that Mrs. Bramble played an equal role in acquiring the matrimonial property and that she has continued to make substantial contributions to its maintenance. I refrain from diminishing those efforts by reason of a mathematical equation of the quantum of monies she personally invested in direct payment to the mortgage. That would not be fair.

[52] Mr. Bramble submitted that the undisputable evidence is that, from the end of month February 2009 to May 31, 2017, he single-handedly repaid the mortgage to Scotiabank without receiving any benefit of shared living expenses he enjoyed whilst the marriage subsisted. He produced a certified loan activity report which purports to calculate his sole contribution as being \$110,642.40 to the mortgage repayment. I take note of this evidence and ascribe very little weight to it in light of the evidence which was adduced. In this regard, I note that Mr. Bramble occupied the upstairs floor of the building during most of this time while Mrs. Bramble and Shari stayed in the downstairs apartment. The upstairs unit comprises 3 bedrooms kitchen living quarters and a bathroom. The ground floor contains a one bedroom apartment. Mr. Bramble enjoyed the larger spacious part of the building while Mrs. Bramble had a space which was considerably less than what he enjoyed.

[53] I accept Mrs. Bramble's testimony that Mr. Bramble removed several pieces of furniture from the matrimonial home which he has retained for his exclusive use since then. Furthermore, Mrs. Bramble testified to the loss of insurance payment from British American Insurance which she was unable to recover simply because Mr. Bramble refused to sign the release document. Mr. Bramble's conduct on several scores would have caused Mrs. Bramble to incur unnecessary expenses which she had to forego.

[54] It seems fair to me that this can be reasonably offset against the losses experienced by Mrs. Bramble not limited to the insurance payment and furniture and appliances and the discomfort and

inconvenience of having to share a living space designed for one with her daughter. It does not go unnoticed that Mr. Bramble had responsibility to provide equally for Shari for part of that period, not limited to food but also accommodation. The implications and inferences are obvious.

[55] Mrs. Bramble submitted that the Court should consider that while she was unselfishly applying all of her income to the welfare of the family, Mr. Bramble was selfishly setting aside assets for his own benefit to the exclusion of the rest of the family. Mr. Bramble submitted that he should be awarded an 80% share in the value of the property. I find that there is no satisfactory basis on which such an order is justified. Fairness dictates that Mr. and Mrs. Bramble each share the property equally as their conduct demonstrates their intention to be throughout the years of their dealings with it. I make no property settlement order or order for transfer of property to the children of the family in respect of the matrimonial home.

[56] It is therefore ordered that the parties arrange for a valuation of the property to be obtained from a licensed valuer, the cost associated with which is to be borne by the parties equally. The matrimonial property is to be offered for sale on the open market between October 1, 2019 and December 31, 2019 by public auction or private treaty, at a price as close as possible to the value ascribed in the valuation report as often as necessary until the property is sold, right of first refusal reserved to Mr. Bramble or Mrs. Bramble. The Registrar shall effect conveyance, transfer and registration of title. The proceeds of the sale are to be divided equally between Mr. St. Clair Bramble and Mrs. Kader Bramble, after all expenses related to the sale have been fully satisfied.

Land at Fitz Hughes, C/Belair

[57] Although Mr. Bramble bought the Fitz Hughes land and had it registered in his sole name, and obtained a loan¹⁹ for \$10,000.00 to facilitate his pursuit of further education, he and Mrs. Bramble. This is apparent on the face of the mortgage Deed 3361 of 1996 which he produced to evidence the loan. I accept that Mrs. Bramble contributed to the repayment of that loan.

¹⁹ Using it as collateral.

[58] Mr. and Mrs. Bramble's joint dealings with that property in that collaborative manner suggests an acknowledgement by them that they were functioning as a unit with common goals and desires for the family's benefit and not solely for Mr. Bramble's private and personal purposes. I infer that they had a common intention to treat the property as jointly owned. By virtue of her contributions to the family's well-being and advancement, including her payment of utility bills and purchase of groceries, school books and other necessities for the family, Mrs. Bramble has earned and is entitled to an equal interest in the subject property. It is declared that she is entitled to 50% of the equitable and legal interests in the Fitz Hughes property.

Miscellaneous

[59] Mrs. Bramble sought orders for a financial provision order, a transfer of property order; a lump sum payment; and periodical payments for her and Shari Bramble. I find that there is no adequate basis on which those orders can be made. I make no such orders.

[60] The position in law as to the loan payments is clear from the learning in *Clarke*. The evidence is that from February 2009 the parties were living separate lives under one roof paying their own living expenses. The issue of the balance of loan payments squarely falls into the principle of equitable accounting as the common purpose of the marriage ended when the parties separated as of that period.

Gift of Richmond Vale land to Mr. Bramble

[61] Regarding the land at Richmond Vale (ADC), registered by Deed of Gift 1050 of 1995, Mrs. Bramble explained that the grandmother gave to her the deed to that parcel of land and told her that she wanted to transfer it to Mr. Bramble before her death. Mrs. Bramble recalled that the grandmother told her to tell Mr. Bramble that she would go with him to a lawyer to get the transfer done. Mr. Bramble insisted that his grandmother never gave Mrs. Bramble any deed.

[62] Mrs. Bramble asked that the Court take into account that the grandmother discussed with her the proposed transfer to Mr. Bramble before she discussed it with her grandson. She expressed the view that she believed that the grandmother wanted the property to benefit her and their children. She indicated that she wished the court to take into account her contributions to the registration and legal fees. Mr. Bramble claimed that he paid the registration and legal fees totaling \$7.75.

[63] Mr. Bramble admitted that on 9th September 1996, he and Mrs. Bramble secured a loan of \$10,000.00 from the Bank of Nova Scotia evidenced by Deed of Indenture No. 3367 of 1996. The underlying collateral for the loan was the Richmond Vale land and the matrimonial home at Kingstown Park. The funds were used to partially finance his studies leading to a degree. Mr. Bramble claimed that he repaid that loan. Based on his admission and the surrounding circumstances of the loan, I infer that Mr. and Mrs. Bramble approached the matter of his further education as a joint endeavour to which they both contributed.

[64] This suggests to me that notwithstanding Mr. Bramble's denials, Mrs. Bramble was a full partner in the management of the land gifted to him by his grandmother and that it was used as a communal asset to support his educational pursuits at that time in their relationship. However, it does not appear that any further joint efforts were expended by the parties in connection with the dealings over that piece of land. Likewise, I find that the grandmother did not state that any person other than Mr. Bramble would benefit from that gift. In the circumstances, I conclude that the subject property at Richmond Vale does not constitute part of the matrimonial property.

Land at Fitz Hughes, C/Belair

[65] Mr. Bramble produced a Mortgage No. 3361 of 1996 by which he and Mrs. Bramble (then Ms. Williams) secured a loan of \$10,000.00 from the Bank of Nova Scotia dated 9th September 1996 in respect of the land at Fitz Hughes, Chateaubelair. Mr. Bramble testified that he repaid that loan. Under cross-examination he claimed that he bought this land from his grandmother. However, a comparison of the description of the land in that mortgage and the description in the referenced Crown Grant reveals that the land described in both documents is identical.

[66] Mr. Bramble is either mistaken or was being deliberately untruthful. I infer that he must have been mistaken. I find that he purchased the subject land from the Government as outlined in the Crown Grant. It appears that Mr. and Mrs. Bramble had embarked on a course of conduct even before their marriage which revealed that they had committed themselves to each other at a very deep level even in respect of their investments, financial affairs and support for each other.

[67] Mr. Bramble admitted that the proceeds from that loan were used to cover some of his educational expenses when he went to Jamaica to pursue studies leading to a degree. Mrs. Bramble said that

she supported him in this endeavour by co-signing the mortgage deed and assuming responsibility with him for repayment of the loan.

[68] I accept Mrs. Bramble's account that she assisted with the repayment of the loan. She was a soft spoken witness. Her testimony had the ring of truth to it. She presented as a frank, forthright albeit at times a hesitant witness. Mr. Bramble was cocky and often evasive. Where his account differed from Mrs. Bramble I prefer and accept hers. I am satisfied on a balance of probabilities that although Mr. Bramble initially paid for the land at Fitz-Hughes, Mrs. Bramble acquired an interest in it by her contributions to the household and family endeavours including the referenced loan obligations. For these reasons, I find that the Fitz Hughes property is to be dealt with as matrimonial property.

Costs

[69] In matrimonial proceedings, it is unusual to make an order for costs. This case provides no reason to make an exception. Each party is required to pay his or her own costs.

ORDER

[70] It is declared and ordered:

1. Kader Bramble's application for an order regarding custody, care, control and maintenance of Shari Bramble is dismissed.
2. Kader Bramble's applications for:
 - (1) a lump sum payment; and
 - (2) periodical payments;for her and Shari Bramble are dismissed.
3. Mr. St. Clair Bramble and Mrs. Kader Bramble each owns and is entitled to a half share beneficial interest in the:
 - (1) matrimonial home situated at Kingstown Hill and registered by Deed No. 2518 of 1995;
 - and

(2) the property located at Fitz Hughes, Chateaubelair and registered by Crown Grant No. 49 of 1996.

4. Mr. St. Clair Bramble and Mrs. Kader Bramble shall on or before 28th June 2019 obtain a valuation of the matrimonial property at Kingstown Hill from a licensed valuer agreed to by the parties; the expenses associated with the preparation of the valuation report to be borne equally by the parties.
5. The matrimonial property is to be offered for sale on the open market between October 1, 2019 and December 31, 2019 by public auction or private treaty at a price as close as possible to the value ascribed in the valuation report obtained pursuant to sub-paragraph 4 of this order; as often as necessary until the property is sold, right of first refusal reserved to Mr. Bramble or Mrs. Bramble.
6. The Registrar is to effect conveyance, transfer and registration of title.
7. The proceeds of the sale of the matrimonial property are to be divided equally between Mr. St. Clair Bramble and Mrs. Kader Bramble after all expenses related to the sale have been fully satisfied.
8. Mr. St. Clair Bramble is the sole owner of and entitled to all legal and equitable interests in property located at Richmond Vale and registered by Deed of Gift 1050 of 1995.
9. Mr. St. Clair Bramble and Mrs. Kader Bramble shall bear his or her own costs.

[71] Learned counsel provided comprehensive written submissions which were very helpful to the court. I wish to express gratitude for those arguments.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar