

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

(MATRIMONIAL)

DOMHMT2015/0049

BETWEEN:-

MARY GEORGE

Applicant/Petitioner

And

REGIE PETER GEORGE

Respondent

Appearances

Mr Tiyani Bihanzin for the Applicant/Petitioner
Mrs Laurina Vidal Telemacque for the Respondent

2017: March 20

2018: October

JUDGMENT

[1] **Stephenson J.:** Before the Court is an application for Ancillary Relief and a Property Adjustment

Order filed by the Applicant/ Petitioner Mary George ("The applicant") on the 13 October 2016.

[2] The governing statute is the **Matrimonial Causes Act 1973 (UK)** which grants the court a wide discretion as it regards ancillary awards which includes vesting the matrimonial home in the either or both of the parties, to direct the sale of the matrimonial home or to direct that either party pay to the other a sum which is deemed to be reasonable.

[3] In looking at the element of fairness in ancillary proceedings in divorce Lord Nicholas in **Miller –v- Miller** had this to say

"...every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-care giver,. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter"¹.

¹ Ibid paragraph 11

[4] The Parties herein were married on the 27th December 1982 and divorced on the 27th May 2016 that being the date the Decree absolute was granted. At the time of the marriage the applicant was 19 years old and Regie Peter George “the respondent” was 30 years old. He had fathered two children prior to the marriage. There are four children of the marriage all of whom are adults.

[5] The property which is the subject of the property adjustment application is located at Calibishie Ridge registered in the name of the respondent in Land Titles Register Book N15 Folio 88 on the 11th day of May 2004.

[6] The respondent contested this application and filed two affidavits in response to the applicant’s claim. The respondent’s affidavit was filed on the 7th December 2016 and there was a second affidavit sworn to by Mary Stephenson his sister which was filed on the 13th March 2017. Miss Stephenson did not give evidence therefore her affidavit will be disregarded.²

[7] This matter came up for trial on 20th March 2017. The applicant relied on her affidavit filed in support of her application with the exhibits and the Respondent relied on his affidavit in response. These affidavits and exhibits were treated as the evidence in chief of the parties for this ancillary relief application. Both parties were cross examined.

² It is noted that in her submissions Learned Counsel Miss Vidal made reference to the evidence of Miss Stephenson however a careful review of the Trial notes and the Court’s minutes indicate that Miss Stephenson did in fact not give evidence as stated by Counsel.

[8] At the conclusion of the hearing the parties were ordered to make written submissions to the court which submissions with authorities were filed on behalf of the Respondent on 12 June 2017 and to date there were no submissions were filed on behalf of the Applicant. I will now render my decision

Acquisition of the parcel of land:

[9] The applicant sought to persuade this court that the property was given to her and the respondent as a wedding gift from the respondent's father. This is what she averred in her affidavit in support of her application³. The respondent's uncontroverted evidence is that he did receive the property from his father and in fact he paid his father \$500 for the property even though his father gave him the property as a gift. He stated that he paid his father the money in an effort on his part to avoid any problems with his siblings. The applicant said that he paid his father this money in 1977. The respondent tendered in support of his statement the indenture sworn to on the 20th May 1988 by his father Alfred George who acknowledged in that indenture that he received \$500.00 from the Respondent in 1977.

[10] It is noted that the applicant was born in November 1963 and would have been 14 years old in 1977. It is also noted that the parties herein got married in 1982. It is therefore clear that the land was not gifted to the parties herein as a wedding present as claimed by the applicant.

[11] I find as a matter of fact that the property was given/purchased by the respondent solely from his father and that the property was not given to the parties as a wedding gift as claimed by the applicant.

³ See Paragraph 13 of the Affidavit sworn in support of the Application for Ancillary Relief dated 12 October 2016 and filed on the 13 October 2016

[12] The question to be considered is what is the entitlement of each of the parties as it regards their respective interests in the aforementioned property? This property it is agreed is the matrimonial home of the parties and at the time of trial it was occupied by the applicant.

[13] It is useful to state briefly the history of the matrimonial home (the house) which has been gleaned from the evidence given by both parties. During the course of their marriage, the parties occupied three different houses located on the same parcel of land. The first house was a wooden house which was occupied by the respondent before the marriage in fact it was a house occupied by the respondent's family prior to the marriage. There was a second house which was a concrete structure built during the course of the marriage which was destroyed by fire and then there was the third house another concrete house that was built subsequently.

[14] In her affidavit in support of her application the applicant says that the first concrete house which was built after the marriage was built solely by her. She averred that when this house was built she worked caring for the elderly, as an agricultural worker boxing bananas and in the garden where she tended to the crops and sold same. She said that this house was built in 1986 from the proceeds of her work.

[15] The applicant said that at this time whilst the house was being built, the respondent drank heavily and was not providing any resources to the home further that he made no contribution to the building of this concrete structure.

[16] The respondent's evidence in this regard differs from the applicant's. He says that at that time he got married he, together with his father were one of the largest banana producers in Calibishie. He

averred that they planted over 8 acres of bananas and other produce. The respondent also averred that he also owned and operated a bar.

[17] It is the respondent's case that the first concrete house was built over a period of time out of pocket.

He said he built it room by room and it was not built solely by the applicant as she contends. The respondent averred that at during the period that the first concrete house was being built the applicant bore two children Reginald and Emiline and that she essentially stayed at home to look after them whilst he worked.

[18] The respondent stated that during the time he worked his income allowed him to take a loan in the sum of \$50,000.00 from the Dominica AID Bank. The loan agreement and account statement were tendered as exhibits in support of his statements.

[19] Under cross examination and in answering questions from the court it is significant to note that the respondent did not deny that the applicant has an interest in the matrimonial property. In fact he said "...*she has some little thing in the house*" and "*she could get a portion*". Under cross examination the respondent also said the applicant used to "*cook and clean and look after the house*" and "*she used to go to the garden*".

[20] The respondent told this court that the applicant assisted with the boxing of the bananas and that "*she would put plastic on the bananas*". He acknowledged that putting plastic on the bananas, referred to as "sleeving" was an important part of the banana planting. He also said that she ceased to assist when there was no more money in bananas.

[21] I pause to note that in her affidavit the applicant stated that the respondent was drinking all the time and was always drunk. In her cross examination she admitted that he started drinking in 2008. The respondent admits to drinking but not as claimed by the applicant he also averred that the applicant also drank.

[22] It is also to be noted that the applicant admitted under cross examination that when she first met him the respondent had a bar and also that he used to work with his father on the farm.

[23] It is the respondent's evidence also that he during the course of his marriage also did a bit of fishing.

[24] After the home was burned down in 1999 another house was built by the parties herein (the third house). Their evidence as to the building of this structure was once again at variance, with the applicant seeking in her evidence to minimise the respondent's participation.

[25] Upon review of all the evidence adduced at trial herein it is my finding that it is clear that the second house was built from a combination of donations of money, material and service from family and friends as well as assistance from the Church and Government. I also accept as evidenced by the Loan documentation exhibited by the respondent that money was also borrowed from AID bank to assist in the rebuilding of this house.

[26] I also accept the respondent's evidence that some of the funds from the sale of the portion of land by the respondent was also utilised in the building of the house.

[27] The applicant seeks a property adjustment and seeks that 70% the matrimonial home be given to her. The applicant has been living solely in the matrimonial home since 2011 whilst the respondent has

been forced to live in less than acceptable conditions. The applicant is retired and says that she is unable to work because of a medical condition. It is my view that having been born in 1963 she still should be in the prime of her life. She has not provided this court with any proof of her medical condition which makes it impossible for her to work. She says she lives off the assistance of her children.

[28] The applicant is asking this court to find that she is entitled to remain in the matrimonial home and for a declaration that she is entitled to 70% of the property. The applicant is also asking this court to declare that she is entitled to 50% of the monies received from the sale of the property by the Respondent. The applicant is also asking this court to order the respondent to pay the arrears of maintenance allegedly owed by the respondent on a Magistrates Court order of maintenance.

[29] The respondent is retired. He is in his mid sixties and has no real source of income and relies on his sister to assist him. He states further that he lives in a shed on his brother's land and that this accommodation was fixed up in order for him to live there by his sister. Apart from the matrimonial home, he owns no property. He averred that his current situation is very depressing to him considering what his life has been reduced to.

[30] He asks this court to make the decision as regarding the division of the property and submits that it is he who should be entitled to 70% and he is asking that thereafter that the court orders the property be sold and that the proceeds divided in the percentage decided on by the Court.

[31] I will say that the evidence of the respondent on the whole was more acceptable than that of the applicant. It is the finding of the Court that her evidence varied in significant instances between her

affidavit in support and her viva voce evidence particularly under cross examination and in her answers to the questions from the Court. It is to be noted also that the evidence of the respondent was not contradicted by the applicant if at all.

[32] As it regards to the contribution made by the parties to the acquisition of the matrimonial homes I reject the applicant's evidence and accept that of the respondent as he appeared to the Court to be the more truthful witness.

[33] The Court when exercising its powers must have regard to all of the circumstances of the case. The aim is to put the parties in the position they would have enjoyed financially had the marriage subsisted. The Court's aim in this application is to try and achieve fairness by applying section 25 of the Matrimonial Causes Act 1973, and the case law principles.

[34] The matters as set out in Section 25 of the **Matrimonial Causes Act** 1973 are:

- “(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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire;
- (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) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for your family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value of each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.”

[35] I am compelled to view the evidence adduced in this case broadly, and to look at the entire circumstances of the case, in an effort to ensure that justice is done and to achieve a fair division of the matrimonial assets.

[36] In making its reckoning this court is obliged to take into contemplation the matters as set out in section 25 (as quoted above). In the circumstances of this case, having considered the evidence of both of the parties, and the fact that I prefer the evidence adduced by the respondent along with the submissions counsel for the respondent and having regard to the respective contributions of the parties this court is satisfied that the applicant is justly entitled to 40% in the matrimonial home.

[37] Further in considering the circumstances of this case it is best that the property be sold and that the parties be each paid the value of this percentage entitlement in the home. For the avoidance of doubt it is the finding of this court that the matrimonial home is to be sold and the proceeds be divided 60% to the respondent and 40% to the applicant.

[38] As it regards the proceeds of the sale of the 0.999 acre of land by the Respondent I am satisfied based on the evidence adduced by the respondent which is uncontroverted that the proceeds of that

sale was ploughed back into the building of the matrimonial home currently occupied by the applicant with a balance placed on account which was at all times accessible to the applicant.

[39] This Court also takes into consideration that the applicant has since 2011 enjoyed what little comfort the matrimonial home has had to offer whilst the respondent was forced to live in a lesser standard that he would have been accustomed to over the years which must translate into something.

[40] The court's conclusion and order therefore is as follows:

- (1) It is declared that the applicant is entitled to 40% of the matrimonial home and the respondent is entitled to 60%.
- (2) It is directed that the matrimonial home is to be sold and the proceeds be divided between the parties herein in the following proportions:
 - a. 60% to the Respondent
 - b. 40% to the Applicant
- (3) The applicant's application for a declaration that she is entitled to 50% share of the proceeds of the sale of the 0.999 acre of land sold by the Respondent is hereby refused
- (4) The applicant's application that this court orders the Respondent to pay the arrears of maintenance as ordered by the magistrate's court is denied as this Court does not have the jurisdiction to make such an order
- (5) Each party shall bear their own costs.

[37] As a short post script to this ruling, due to the passage of Hurricane Maria and the consequent unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, this Court apologises for the delay in delivering this ruling and for any errors which may appear herein.

M E Birnie Stephenson

High Court Judge

[SEAL]

By the Court

Registrar