

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**COMMONWEALTH OF DOMINICA**

**(MATRIMONIAL)**

**DOMHMT2012/0077**

**BETWEEN:-**

**CALEB SERAPHIN**

Petitioner/ Respondent

And

**MORLEE SERAPHIN**

Respondent/Applicant

Appearances:

Mrs Singoalla Blomqvist Williams for the Applicant/Respondent

Miss Lisa de Freitas for the Respondent/Applicant

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2016:October 17

December 5;12;

2017: March 14

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### **JUDGMENT**

[1] **STEPHENSON J.:**The parties in this matter were married on the February 17<sup>th</sup>, 1993. There are two children of the family both of whom are adults. The Respondent/Applicant (hereinafter called the wife) is a Ward Aide and is employed by the Ministry of Health at the Marigot

Hospital and the Respondent/Petitioner (hereinafter called the husband) is self-employed and earns a living as a farmer, builder, and fisherman. <sup>1</sup>

[2] The divorce was made absolute on the 1<sup>st</sup> day of August 2013 on the grounds that the parties lived separate and apart for a period exceeding five years preceding the presentation of the petition. It is not disputed that the parties were living separate and apart from June 2006 when the husband left the matrimonial home. That is after 13 years of living together and the marriage was finally dissolved after 20 years of marriage.

[3] The wife, in this matter, made an application for Ancillary Relief on the 27<sup>th</sup> March 2015. She made application for:

- (i) Maintenance;
- (ii) A property adjustment order;
- (iii) A lump sum;
- (iv) Costs

[4] This matter came up for trial on the 17<sup>th</sup> October 2016. The wife relied on her affidavit sworn to on the 27<sup>th</sup> March 2015 with the exhibits and the husband relied on his affidavit in response filed on the 27<sup>th</sup> May 2015. These affidavits and exhibits are to be treated as evidence in chief of the parties and they were both cross-examined.

[5] At the conclusion of the hearing the respondent was ordered to file and serve an additional affidavit exhibiting the following items:

- i. A valuation of the former matrimonial home occupied by the applicant;
- ii. A valuation of the boat that he owns;
- iii. A valuation of the truck that he owns;
- iv. A statement from the AID bank as to the amount owing on the mortgage;
- v. A statement from NCCU on the balance owing on the truck loan.

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<sup>1</sup>The parties are called husband and wife for ease of reference even though there has been a decree absolute.

This affidavit was filed on the 11<sup>th</sup> November 2016, exhibiting the information as ordered save for the valuation of the truck. The parties were also ordered to make written submissions to the Court which submissions with authorities were filed on behalf of the wife on the 5<sup>th</sup> December 2016 and on behalf of the husband on the 12<sup>th</sup> December 2016. I will now render my decision.

[6] The sole matrimonial asset comprises of a house located at Londonderry Estate, Wesley in the Parish of St Andrew containing 4050 square feet registered in the name of Caleb Seraphin (the husband) with a current market value of \$71,375.00.<sup>2</sup> The wife lives in the house and has been doing so since the marriage and after the dissolution of the marriage. The property is mortgaged to the Dominica Agricultural , Industrial and Development Bank (“AID Bank”)securing the original purchase of the land which loan has since be consolidated with a loan to purchase a boat by the husband. The current balance due on the consolidated loan as at 9<sup>th</sup> November 2016 was \$160,859.19.<sup>3</sup>

[7] Also before the court for its consideration is a dumper truck owned by the husband and a fishing vessel named “Bone Crusher” registration number 37-001MGT with a current market value of \$70,000.00 and a forced sale value \$65,000.00.<sup>4</sup> It is noted that there is no valuation before the court regarding the truck in noncompliance with that aspect of the court’s order by the husband.

[8] The matrimonial home comprises a single building comprising three bedrooms, one washroom, front verandah, kitchen, dining room and living room. This building was constructed in 1996.

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<sup>2</sup> Valuation dated 9<sup>th</sup> November 2016 done by Sherwin Joseph and exhibited to the affidavit of Caleb Seraphin dated 11<sup>th</sup> November 2016.

<sup>3</sup> Loan report dated 11<sup>th</sup> November 2016 and exhibited to the affidavit of Caleb Seraphin dated 11<sup>th</sup> November 2016.

<sup>4</sup> Valuation dated 7<sup>th</sup> November 2016 done by Hanford Thomas and exhibited to the affidavit of Caleb Seraphin dated the 11<sup>th</sup> November 2016

[9] There is no dispute that the building is to be considered as the matrimonial home. The wife in her application for ancillary relief is asking this court to order *inter alia* that the ownership be transferred solely to her or that the husband sells his boat and truck to reduce the outstanding loan or that she be awarded a lump sum sufficient to enable her to purchase a property for herself.

[10] The husband, on the other hand,, urges that the court makes a property adjustment order awarding to the wife 30% value of the matrimonial home and that respondent make a contribution to the outstanding mortgage payments if she is permitted by the court to continue in occupation of the matrimonial home.

[11] It is the husband's evidence that the land upon which the matrimonial home stands was purchased in 1993 for \$30,000.00 with funds secured by way of a loan from Dominica AID Bank and the house was built using his earnings and savings. It is the husband's contention that the wife made no direct contribution to the acquisition of the matrimonial home and has occupied it at all times.

[12] It is undisputed that when the husband left the matrimonial home it was properly furnished and that the wife and the children of the marriage enjoyed the use of same.

### **The earnings of the parties**

[13] Based on the evidence adduced in this matter neither party in this matter is a high-income earner even though it can be said that the husband has the ability to increase the income which he has sought to impress upon the court is minimal.

[14] The wife is employed by the Ministry of health as a wardaide at the Marigot Hospital. She stated that her monthly expense as \$2,131.00<sup>5</sup> over twice her stated income. Under Cross-examination the wife disclosed that her expenses are now much less than that stated in her affidavit primarily because the children of the marriage no longer live with her and the younger daughter who is an adult is at college in the United States of America.

[15] It is the husband's case that this daughter is on a scholarship from the Government of Dominica and that she works in the United States and also receives assistance from her boyfriend. The wife insisted under cross-examination that she knew nothing of her daughter receiving any scholarship or assistance from the Government. She insisted that she sends \$200.00 per month to her daughter. I do not accept the wife's evidence that she did not know that her daughter is receiving assistance from the Government of Dominica. It is reasonable to assume that attending college involves the payment of tuition fees and subsistence for any student. Clearly, a student could not possibly rely on receiving \$200 or so EC dollars a month to live in the USA.

[16] I find as a matter of fact based on the wife's evidence that her monthly expenses are in the vicinity of \$900.00 and not \$2,000 plus dollars as stated in her affidavit in support.

[17] The husband in his affidavit stated that he was engaged in the Banana Industry but his earnings are minimal in that regard. He says he plants some lettuce, parsley, and chives and that he makes about \$150.00 a month from the sale of same. The husband says that he owned a fishing boat and purchased a bigger boat "Bone Crusher"; however he has not been able to realise that because the boat engines have been down for some time.

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<sup>5</sup> Re: Affidavit of Morlee Seraphin dated 27 March 2015 at paragraph 10

[18] The husband admits to owing the bank on the consolidated mortgage and that the said loan is in arrears. The consolidated mortgage is the loan taken on the matrimonial home with the loan taken to purchase the boat.

[19] The husband in his viva voce evidence and under cross-examination insisted that his earning are between \$1,000 to \$2,000 per month and that he has been trying everything to make money as best as he can. He said that he earns money by doing trips with his truck and a little fishing with his friends, a little side construction, and agriculture. He denied having any Government contract as was put to him under cross-examination.

[20] As it regards the truck, the husband said that he purchased the truck so as to allow him to compete in the construction industry.

[21] The husband since obtaining his divorce has remarried and lives in a house that he has built on Government Lands which he occupies as a squatter. There is no evidence before the court that there are any loan or mortgage obligations regarding this house.

[22] The husband gave evidence as to his monthly expenses which include payment of the mortgage and loan payments for the truck amounting to over \$3,000.00. The husband submitted that he is unable to make any payments or contributions to the wife's living expenses.

[23] I have had the opportunity to observe the husband as he gave his evidence under rigorous cross-examination and I find he made no attempt to gild his evidence or exaggerate his position. I found him to be a reliable and truthful witness.

## The Law

[24] The governing statute is the **Matrimonial Causes Act 1973 (UK)** which grants the court a wide discretion as it regards ancillary awards which include vesting the matrimonial home in 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. The court is required to consider the matters as set out in Section 25 of the Matrimonial Causes Act 1973 which 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.”*

[25] The court is guided also by the principles regarding how to achieve fairness in the division of property following divorce as laid down in **Miller –v- Miller**<sup>6</sup> as has been applied in cases of this nature in our jurisdiction.

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<sup>6</sup>[2006] UKHL 24

[26] 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, homemaker and child-carer. 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”<sup>7</sup>.

[27] As a judge, I am required to apply section 25(2) of the Matrimonial Causes Act 1973 to all the circumstances of the case and to arrive at a fair result that avoids discrimination. This section has been interpreted to give the courts a wide discretion to take account of all the relevant circumstances of the case; The objective of the section has been applied to achieve a fair outcome.

[28] In *White v White*<sup>8</sup> Lord Nicholls of Birkenhead pointed out that in seeking to achieve a fair outcome there was no room for discrimination between husband and wife and their respective roles. Whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering their respective contributions for the purpose of s 25(2)(f) of the Matrimonial Causes Act 1973

[29] It is well-established law that when a wife looks after the home and the family, she is considered to have contributed as much as if she pays the mortgage. Her contribution is considered as contribution in kind. She is entitled to a share after she looks after the home

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<sup>7</sup> Ibid paragraph 11

<sup>8</sup> [2001] 1 AC 596, [2000] 2 FLR 981,

and family for years in the same way as the wife who makes substantive money and contributes.<sup>9</sup>

[30] In the case at bar, the Applicant did not make any direct mortgage payments, however, she did make contributions towards the home in kind, in that the evidence before the court is that she looked after the family after the husband left the matrimonial home and from his own testimony he gave them money when he could.

[31] Taking into the consideration the evidence of the husband, and the factors as set out in section 25 and the authorities cited by Counsel; I find that the wife is entitled to an interest in the matrimonial home.

[32] This, however, is not the end of the matter. I am compelled to view the situation 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.

[33] I have also taken into account that the husband is indebted to the AID Bank and I would say here that should the mortgaged property be foreclosed on, the wife will be without a home and would, in fact, only have a percentage interest in whatever difference there is between what is owed on the mortgage and what the sale would realize. There is also to be considered that she would be without a home.

[34] In the case at bar, the problem is that the neither party has available to each other much disposable income and the actual assets belonging to the husband are in fact secured by lending institutions. The mortgage owed on the house is much more than the market value of

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<sup>9</sup> Watchel –v- Watchel [1993] 1 All E R 829 @838-839.

the house. Neither the boat nor the truck is owned with free and clear title. Both parties have limited income.

[35] In an effort to arrive at a fair outcome and complying with the requirements of the court to take into account the provisions of section 25 of the Matrimonial Causes Act the first item I would turn my attention to is the Boat "Bone Crusher". The husband in his evidence stated that this is what could be referred to as a non-performing asset. He lists on his expenses that he pays the sum of \$1700.00 to Aid Bank which loan payment includes payment for the house and the boat. Therefore it would be in the best interest of the parties for the husband to sell the boat and pay off part of that mortgage.

[36] The wife asks that the truck be sold. I would decline to make such an order for two reasons. It would be patently unfair to the husband to sell same and in the circumstance deny himself a performing asset as it is his evidence that he uses this asset to make a living. Further, this truck was acquired by the husband after the marriage was over and I am of the considered view that this does not really form part of the matrimonial property and therefore, I would decline to make such an order.

[37] What is most fair considering all the circumstances of the matter I declare that the wife is entitled to a 35% interest in the matrimonial home.

[38] The matrimonial home is heavily mortgaged to the AID Bank and given its current value against the amount owed to the bank should I order that it be sold would really not be of benefit to either of the parties before the court. In all of the circumstances of this case, I find that it would be best that the boat named "*Bone Crusher*" be sold and the proceeds of sale applied to the mortgage to bring it current.

[39] In the event that the husband is unable to service the mortgage and the home is foreclosed on I order that he pays one-half of the rent for property to be occupied by the wife not exceeding \$350.00 per month.

[40] My order, therefore, is as follows:

- (i) That the Applicant is entitled to 35% of the value of the matrimonial home.
- (ii) That the fishing boat Bone Crusher be sold and the proceeds be applied to the outstanding consolidated loan at the AID Bank.
- (iii) Should the AID Bank foreclose on the matrimonial home the husband is ordered to pay half[½] of the cost of the rental accommodation capped at EC\$350.00 similar to the accommodation currently occupied by the Applicant for the rest of her life.

[41] There shall be no order as to costs.

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M E Birnie Stephenson  
High Court Judge