

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHMT2011/0137

BETWEEN:

EARLON ALVAN LEWIS

PETITIONER/CROSS-RESPONDENT

-AND-

**ISADORE PAMELA LEWIS
née BENN**

RESPONDENT/CROSS-PETITIONER

Appearances: Mr Moet Malcolm for the Petitioner, Mrs Anneke Russell for the Respondent.

2015: Feb. 19
Mar. 26

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** Mr Earlon Lewis and Mrs Isadore Lewis were married in 1990. Their marriage lasted for almost 23 years.ⁱ They are now both 57ⁱⁱ years of age and while their union produced no children, they each have two children from previous relationships. Mr and Mrs Lewis are employed in the hospitality industry on the island of Mustique where Mr Lewis works as a butler for one of the properties, while Mrs Lewis is employed at another property as a housekeeper. They are both employed by the Mustique company. Before tying the knot, they acquired two lots of land in Questelles which were registered in their joint names. On becoming husband and wife, they secured a loan and built a two-storey

house on the lots which became the matrimonial home. Their equity in that property was used subsequently to secure four loans. The proceeds from the first two loans were used to purchase a vehicle and to fund renovations to the house in 2001 and 2002 respectivelyⁱⁱⁱ. The other loans were taken to fund the education of Mrs Lewis' son Rodney.^{iv} He left for England around in 2005 at the age of 28 years and is still there.

- [2] Mr Lewis has applied for ancillary relief and seeks a property adjustment order and a declaration that he is entitled to a half share in the matrimonial property.^v He claims a half share on the basis that the lots were acquired and the house built and paid for equally by the parties. Mrs Lewis resists this claim and contends that Mr Lewis is entitled to only a one third share in the matrimonial property since she alone bought the lands on which the house was built and she has been solely responsible for servicing the mortgages, paying insurance premiums and from 2009 the property taxes.

ISSUES

- [3] The singular issue is to what share in the matrimonial property is Mr Lewis entitled. The factors to be considered by the court in making this determination are well established^{vi}. The court will consider the facts of the case in light of those principles.

ANALYSIS

Issue: What share is Mr Lewis entitled to in the matrimonial property?

- [4] The court is empowered to make property adjustment orders for the purpose of adjusting the financial position of the parties to a marriage and any children of the family.^{vii} The court on making a property adjustment order, may also make an order for sale of any property owned by or in which either party has a beneficial interest.^{viii} When considering an application for such orders, the court must have regard to all of the circumstances of the case.^{ix} Fairness is the

established and accepted guiding principle which governs the court in its exercise those powers. In seeking to achieve fairness, the court is required to give primary consideration to the welfare of the children and as far as possible seek to accomplish a “clean break” between the parties.^x A child of the family is one who is either a child of both parties or one who has been treated by both parties as a child of their family.^{xi}

- [5] The court is enjoined also to take account of the income, earning capacity, property and financial resources, financial needs, obligations and responsibilities of each party currently and in the foreseeable future.^{xii} Other factors which must be considered by the court in arriving at its decision are the age of the parties, the physical and mental health of each, the duration of the marriage, each party’s contribution to the family’s welfare and the standard of living enjoyed by the family before the breakdown of the marriage.^{xiii}

Duration of marriage, standard of living, income, earning capacity, age, physical and mental health

- [6] Mr and Mrs Lewis enjoyed a marriage which can be described as long, having regard to all the circumstances. Their marriage spanned two decades starting when both parties were in their early 30s^{xiv} and ending as they approached the autumn of their lives. From their accounts, during that time the family members cooperated with one another and existed as a cohesive unit. Throughout the marriage, Mr and Mrs Lewis spent most of their time on Mustique while the children remained on the mainland in Saint Vincent. Before their marriage, Mrs Lewis had left her children in a friend’s care in Prospect. When they became a couple, from both accounts Mr Lewis accepted Mrs Lewis’ children as his own. In this regard, he said that he did not like the conditions under which the children were living and he was further concerned that they were not performing well academically. He explained that “the girl” and “the boy” respectively had failed their common entrance and school leaving examinations. With Mrs Lewis’

consent and support, he arranged for his sister Marie Lewis, to take them to live with her and for their admission to the Barroullie secondary school. He explained that the children were around 10 and 12 years old respectively at that time.^{xv} The children lived with Ms Lewis from then except for two years when the daughter lived with Mr Lewis' brother Augustine Lewis. Subsequently, the children moved into the matrimonial home.

[7] Mrs Lewis indicated that she would sometimes spend six months "straight on Mustique".^{xvi} Whenever she got the opportunity she would visit her children at Prospect even if only for a day. Likewise, when Mr Lewis was on the mainland, he would take the children to his home on the mainland and occasionally to Mustique to spend time with him.^{xvii} The picture painted by the parties of those early years together suggests that there was mutual cooperation and common endeavour for the ultimate good of the unit which comprised the husband and wife and the wife's two children. No mention is made of Mr Lewis' children or what if any involvement Mrs Lewis had in their lives. The court infers from the evidence that Mrs Lewis paid minimal if any role in their lives as she appears not to have had much time for her own children during their formative years largely due to the fact of her virtual confinement on Mustique meeting the demands of her job. This remark is not intended to be a criticism, but rather to note the sacrifice she likely endured and accepted to contribute to the family's livelihood.

[8] When they were first married, Mr Lewis was earning approximately \$2000.00 per month which increased to roughly \$3000.00 around 2010.^{xviii} Mrs Lewis was receiving \$4500.00 per month in July 2013^{xix} and she states that this is her current salary. The court notes that Mr Lewis has not provided any documentary evidence of his income now or in 1990. In fact, most of the details concerning Mr Lewis' means and circumstances were provided by him in cross-examination and in affidavits in response to statements made by Mrs Lewis in hers. The court observed that Mr Lewis appeared to have difficulty comprehending questions which were not straight forward. He indicated in response to the court

that he left school in senior 2. It appears that he faces certain challenges linguistically which might have hampered him in this regard. However, this does not relieve him of the duty to make full and frank disclosure to the court on these matters. His attorney would be expected to provide the necessary guidance. Suffice it to say, where a party fails to make full disclosure of his or her financial affairs, the court is entitled to draw adverse inferences from such default and conclude that the defaulting party is hiding assets with a view to ensuring that he or she leaves the marriage in a substantially more advantageous financial position than the other party.^{xx} In the premises I conclude that Mr Lewis is currently earning at least \$3000.00 per month and quite likely more.

- [9] Neither party claims nor appears to suffer from any physical or mental disability. In the normal course of life, they each can hope to enjoy at least 8 more years of gainful employment with the Mustique company or another entity. They would each also expect to live for at least another 20 years or so. Neither party informed the court of any pension scheme operated by the Mustique company. The court notes however that Mrs Lewis salary slip records a deduction for NIS and regular pension. The court infers that both parties will at the statutory timelines, sometime within the next ten years, receive pensions from both the NIS and the Mustique company. To their credit, while they started their lives together as members of the working class, their combined efforts have resulted in them enjoying a comfortable lower middle class lifestyle which is projected to last well into their retirement, barring any catastrophic life-changing event.

Property, financial resources, financial needs, obligations and responsibilities, contributions to family's welfare

- [10] Neither party appears to have much savings. There is no evidence from which the court can assess their respective savings as the two accounts^{xxi} for which details were provided are joint accounts with balances of less than \$500.00. The data provided on each is dated and no recent banking activity has been disclosed.

Having regard to the historical data reflected in both those accounts as to the saving ability and habits of both party, I have little doubt that they both have amassed modest savings elsewhere. The court takes into account that while Mrs Lewis has provided a breakdown of her monthly expenses, Mr Lewis has failed to do so. I harbor no doubt that Mr Lewis' income is enough to meet and even surpass his reasonable monthly expenses. Based on the available information, after paying the mortgage for the outstanding loans, Mrs Lewis has roughly \$550.00 to cover her necessities of water, food, electricity, clothing and cooking gas. She provides an overall estimate of \$698.25 per month which seems reasonable.^{xxii} She would experience a deficit each month if she is to meet those expenses only from her salary.

[11] It is clear from the evidence that Mr Lewis relied on Mrs Lewis to handle the family's finances and financial matters particularly with respect to paying bills and managing their banking needs. Mr Lewis stated under cross-examination that Mrs Lewis came to the mainland more often than he did and he would give her instructions and sometimes withdrawal slips to obtain money from their joint account. He added that the slips he gave her were to allow her to buy supplies for him and to do anything she wanted to do including paying the bills. He said that he did not pay any bills himself because Mrs Lewis took care of that. He reasoned that because of the amounts she withdrew from the account and the small sums she sent to him he thought that she paid bills or used the monies for other things. He declared that he left Mrs Lewis "to do the business all the time."

[12] Mrs Lewis does not refute this. She stated that she alone paid all the bills including purchase of food and payment for other amenities while Mr Lewis contributed to their savings from his salary. She admits she had access to Mr Lewis' account at the time. She accepted also that sometimes she was using funds from the joint account with Mr Lewis to maintain the house. She stated that monies from Mr Lewis' salary and from her account went into the joint account. Neither party has indicated how much money from each went into the joint account. What is clear

though is that Mr Lewis' entire salary went into that account. There is no dispute that Mr Lewis was the initial account holder and that he subsequently added Mrs Lewis to that account. It seems that Mrs Lewis retained another account of her own which was not jointly held with Mr Lewis. Further, it appears that Mrs Lewis' salary went into her account from which sums were transferred into the joint account. There is no evidence before the court about what sums were so transferred and the frequency of such transfers. Mrs Lewis accuses Mr Lewis of squandering monies they had for their savings in another joint account. Under cross-examination Mr Lewis denied knowledge of that joint account, stating that he knows of only one joint account. This couple regrettably spent time seeking to justify respective contributions they willingly made to the family during happier times when they obviously intended those efforts to benefit all members. This is to be discouraged in cases of this nature.^{xxiii}

- [13] Mrs Lewis exhibited an account activity record for that second joint account^{xxiv} for the period 3/31/01 to 12/31/07. Three names appear on the account.^{xxv} It is not very helpful as it contains no details about the source of funds or the names of persons who deposited and made withdrawals. It will therefore be disregarded. Mr Lewis exhibited almost 110 withdrawal slips in respect of the joint account with Mrs Lewis for the period 2002 to 2007. Among them are 23 signed by Mrs Lewis alone for sums ranging from \$500.00 to \$5000.00. Curiously, Mrs Lewis deposes that she only recently learned that that account was a joint account.^{xxvi} I do not accept that testimony in face of the said withdrawals from that account under her hand. Also included are several slips signed by Mr Lewis directing the bank the sums withdrawn, to pay to Mrs Lewis. Mrs Lewis having reviewed the entire bundle of receipts during cross-examination insisted that the last sums she received from that account were for \$2500.00 and \$3000.00 in 2005.^{xxvii} Contrary to her assertions the bundle contains 3 withdrawal slips after that date signed by Mrs Lewis reflecting a total withdrawal of \$3500.00 and a balance of \$51,722.09.

[14] The only property which the parties own is the matrimonial property registered in their names as joint tenants in 1989. In situations where a marriage has ended and there is only one house between the parties, the court seeks to ensure that if possible each gets a roof over his or her head.^{xxviii} They have settled into a routine where they share the one house but it is clear that Mr Lewis wishes to have a clean break as he has asked that the property be sold. The children are now adults so there is no reason to maintain the status quo for their benefit. The first floor of the building comprises a one bedroom apartment occupied by Mr Lewis, while Mrs Lewis resides in the second floor which consists of a four bedroom, three bathroom unit.^{xxix} There is no evidence before the court regarding who if anyone occupies the upper storey of the house along with Mrs Lewis. No information was elicited about her daughter's whereabouts although Mrs Lewis testified that her son is now in England. Obviously, Mrs Lewis enjoys the majority of the facilities and amenities at the house.

[15] The property has a market value of \$373,000.00.^{xxx} It is mortgaged to First Caribbean International Bank on which there is an outstanding balance of between \$50,000.00^{xxxi} and \$199,924.71 according to Mrs Lewis.^{xxxii} The court notes the disparity in the two figures. The evidence is that in 1990 they obtained a loan in 1990 to construct the house and less than 10 years later in 2001 had repaid it.^{xxxiii}

Mr and Mrs Lewis' accounts differ as to how the property was acquired. Mr Lewis asserts that they paid equally for the lots on which it was built while Mrs Lewis is adamant that she alone paid the full purchase price which she borrowed from her employer. I accept Mr Lewis' version because the evidence shows clearly that the property was registered in the joint names of the parties at the time. I do not accept Mrs Lewis' account that she put Mr Lewis' name on the deed because her lawyer suggested it. They got married soon after the property was bought and their behavior throughout their marriage demonstrates that they arranged their affairs to be mutually beneficial. They deviated from this practice only after the marriage broke down.

[16] After they repaid the loan to construct the house Mr and Mrs Lewis borrowed \$26,000.00 in 2001 to purchase a vehicle and another \$30,000.00 in 2002 to undertake renovations and improvements to the house,^{xxxiv} a total of \$56,000.00. The property was mortgaged additionally in 2003 and 2005 for loans of \$47,000.00 and \$65,596.78 respectively (a global sum of \$112,596.78)^{xxxv} to pay for Rodney's tertiary education. Mrs Lewis testified that she has been paying \$2675.00 monthly since 2005 when the debt was transferred to First Caribbean Bank Ltd. Interestingly, the mortgage transfer and the second student loan were executed on the same day. This could explain Mr Lewis' apparent ignorance that he had signed another loan for Rodney's education as expressed under cross-examination.

[17] Mr Lewis maintains that his salary contributed to the repayment of the initial \$56,000.00 and possibly a portion of the loans for Rodney's education. He insists that the amounts borrowed for the vehicle and repairs to the house have already been repaid and that the remaining balance relates only to the student loans. He explains that he executed the mortgages for the student loans only because he was a co-owner of the property and this was required by the lending institutions. He maintains that Mrs Lewis agreed that she would be solely responsible for their repayment. Mrs Lewis contends that Mr Lewis is equally responsible for all the loans because he executed the mortgages and agreed to contribute equally to the repayment of each. She submits further that Rodney was always treated as a child of the family by Mr Lewis and in those circumstances, Mr Lewis is legally bound to contribute to the cost of his tertiary education. I do not agree with Mrs Lewis on this score. I do not believe that Mr Lewis agreed to assist with repayment of the student loans. I am satisfied that despite Mrs Lewis' protestations to the contrary, that when the student loans were taken for Rodney's tertiary education, she agreed to retain sole responsibility for them. She admitted as much under cross-examination. I find that they did have such an agreement.

[18] At the time of the mortgage transfer, the principal sum of \$94,403.22 was owed. If the term of the mortgage was ten years ending in 2015, the loan would be repaid

by September 2015 at a monthly repayment of just under \$1200.00. At the stated rate of \$2700.00 per month, the loan would have been repaid long ago. Mrs Lewis' assertion that the outstanding balance on the \$94,500.00 mortgage is almost \$200,000.00 is incredible based on calculations using any amortization schedule. Mathematically, the figures provided by Mrs Lewis do not compute unless there were significant defaults on repayment throughout the years or if other undisclosed loans were taken. In either case no such information is before the court. I reject them totally.

[19] The court is empowered to make a financial provision order or an order requiring one party to transfer property to the other for the benefit of a child of the marriage.^{xxxvi} A person becomes an adult at eighteen years.^{xxxvii} A corollary to that is that the court is not ordinarily, at liberty to make a financial provision order or order for transfer of property for a "child's" benefit where he has reached eighteen years. However, the court may make such an order if there are exceptional circumstances for doing so or if the court considers it necessary where the child is pursuing studies at an educational institution.^{xxxviii} Rodney would have been 26 and 28 years respectively, a full grown man, when the two loans were obtained to fund his education. He is now an adult of 37 years of age. Neither he nor his mother could reasonably expect Mr Lewis to cover loans for his education. Additionally, in the natural course of events he should have already concluded his studies and made arrangements to pay those loans himself. In fact, the second student loan was received in October 2005 almost 10 years ago. Surely Rodney would have completed his studies and armed with his qualifications and a career, is now contributing to or making the payments for those or other outstanding student loans.

[20] Mrs Lewis did not provide any information regarding Rodney's progress or whether he is assisting or repaying the loans. This is a clear breach of her duties to be candid with the court. In the premises, I draw the inference that she is likely receiving assistance to service those loans. Based on the couple's track record in

repaying the earlier loan for construction of the house, I have no difficulty in inferring and concluding that those two later loans were fully paid off by 2009 when Mr Lewis left the family unit. I am fortified in this view particularly as no evidence was led to the contrary, taking into account that the family accumulated in excess of \$50,000.00 in the joint accounts at NCB between 2002 and 2007 and having regard to mathematical calculations and amortization schedules based on the interest rate and other figures in the mortgage deeds.^{xxxix}

[21] Mr Lewis struck the court as a very simple man who was endeavouring to tell the truth to the best of his recollection. Mrs Lewis was clearly the dominant partner in this relationship and had a shrewd business sense which Mr Lewis clearly relied on and which he himself does not possess. He left it up to Mrs Lewis to manage their joint financial affairs and endorsed unquestioningly whatever decisions or proposals she made in that regard. This is reflected in his testimony that he did not know that he had signed another student loan for Rodney's Education. I perceive that due to his limited academic progress his understanding of the import and effect of the legal documents he signed likely came from Mrs Lewis. Mrs Lewis gave conflicting testimony on important matters and was considered not as forthcoming as the circumstances required. She was almost combative at times during her testimony under cross-examination. Where therefore they contradict each other, the court prefers and accepts Mr Lewis' account. On the evidence before the court, I am satisfied that Mr Lewis' salary was utilized by Mrs Lewis to defray the outstanding balances on the vehicle and housing renovation loans up to 2009 when the marriage broke down and the parties separated. In all the circumstances, Mr Lewis is entitled to be reimbursed any sums he would have expended in excess of his half contributions to the house renovation and vehicle loans.

[22] I am satisfied that this is not a proper case in which the court should make either a financial provision order in respect of Rodney's education or an order for transfer of Mr Lewis' interest in the matrimonial property for Rodney's benefit. Not only had

Rodney exceeded statutory prescribed age for that kind of consideration but there are no special circumstances which merit it and it would also be flying in the face of reason to do so. This is not a case in which the court can make an order for financial provision or adjustment of property mandating contribution by Mr Lewis in respect of Rodney's student loans. I accordingly, make no such order. Instead, I find that Mr Lewis is entitled to recover from Mrs Lewis any sums he would have contributed unwittingly to servicing Rodney's student loans. I hold that Mr Lewis is entitled to a half share interest in the property and reimbursement of all sums which he paid towards the repayment of the student loans. I find also that Mrs Lewis is entitled to be repaid by Mr Lewis half of all insurance premiums and property taxes for those years that he did not contribute to them. Finally, this is an appropriate case in which to give the parties a clean break and provide them each with the opportunity to obtain adequate accommodation for their current and future needs.

ORDER

[23] It is therefore declared and ordered:

1. Mr Earlon Lewis and Mrs Isadore Lewis each owns and is entitled to a net share of 50% in the matrimonial property registered by Deed of Indenture 4612 of 1989, less:
 - a) in Mr Lewis' case, one half of the sums paid by Mrs Lewis for property tax and insurance premiums between 2007 and 2014; and
 - b) in Mrs Lewis' case those sums that Mr Lewis would have contributed towards the repayment of the student loans for Rodney.
2. The parties are to use their best endeavours to obtain documentary proof of the respective amounts spent on the items described in 1 (a) and (b) on or before May 15, 2015
3. The matrimonial property at Questelles registered by Deed of Indenture 4612 of 1989 is to be offered for sale on the open market between October 1, 2015 and December 31, 2015 by public auction or private treaty at a

price as close as possible to the value of \$373,000.00 provided in the valuation report of Mr Franklyn Evans. Sale of the property is to be attempted as often as necessary until the property is sold, right of first refusal reserved to Mr Earlon Lewis or Mrs Isadore Lewis.

4. The Registrar is to effect conveyance, transfer and registration of title.
5. The proceeds of the sale are to be divided equally between Mr Earlon Lewis and Mrs Isadore Lewis after the appropriate adjustments are made in accordance with paragraph [21] 1. of this Order and after all expenses related to the sale of the house have been fully satisfied.
6. Mrs Isadore Lewis is to pay costs of \$3,730.00 to Mr Earlon Lewis

[24] The Court wishes to thank counsel for their submissions.

.....
Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ See marriage certificate - date of marriage – August 11, 1990; decree absolute entered on April 24th, 2013, 22 years and 8 months later.

ⁱⁱ Mrs Lewis provided her current age in examination in chief and their ages are recorded on marriage certificate exhibited as “EAL1” to the Petition.

ⁱⁱⁱ See paragraphs 18 and 19 of Isadore Lewis’ Affidavit of Means filed on January 23, 2014 and mortgage deeds numbered 2759/2001 and 263/2003 respectively, exhibited at pages 20 – 28 and 29 – 32 of exhibit “PL1”.

^{iv} See paragraph 20 of Isadore Lewis’ Affidavit of Means filed on January 23, 2014 and mortgage deeds numbered 3020/2003 and 3509/2005 respectively, exhibited at pages 33 – 35 and 41 - 45 of exhibit “PL1”.

^v Registered as Deed of Indenture 4612 of 1989.

^{vi} Matrimonial Causes Act Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 as illustrated by decided cases.

^{vii} Ibid. at sections 29 (2) and 32 which provide respectively:

“29 (2) The property adjustment orders for the purposes of this Act are the orders dealing with the property rights available (subject to the provisions of this Act) under section 32 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say-

- (a) any order under subsection (1) (a) of that section for a transfer of property;
- (b) any order under subsection (1) (b) of that section for a settlement of property; and
- (c) any order under subsection (1) (c) or (d) of that section for a variation of settlement.”

“32: 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 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 of the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) ...
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement,

subject, however, in the case of an order under paragraph (a), to the restrictions imposed by section 38 (1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.”

^{viii} Ibid. at section 33 which states:

“(1) Where the Court make, under section 31 or 32, a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making the order or at any time thereafter, the Court may make a further order for the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the Court thinks fit and, without prejudice to the generality of the foregoing provisions, may include –

- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates; and
- (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

(3) ...

(4) Where an order is made under subsection (1), the Court may direct that the order, or such provision thereof as the Court may specify, shall not take effect until the occurrence of an event specified by the Court or the expiration of a period so specified.”

^{ix} Ibid. at section 34.

^x **Miller v Miller [2006] UKHL 24, paragraphs 5, 6 and 9 per Lord Nicholls of Birkenhead** where he stated:

“Primary consideration must be given to the welfare of any children of the family. The court must also consider the feasibility of a ‘clean break’. ... Implicitly, the courts must exercise their powers so as to achieve an outcome which is fair between the parties. ...

Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of *fairness* in the particular case.”

See also **White v White [2001] 1 A.C. 596, pages 599 letter G and page 605 letters B, F and G per Lord Nicholls of Birkenhead** where he had this to say:

“Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances.”

“But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles.”

“Sometimes, having carried out the statutory exercise, the judge’s conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge’s decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well-advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if and to the extent that, there is good reason for doing so.”

^{xi} Ibid. defined in section 2 as follows:

“child of the family”, in relation to the parties to a marriage, means –

- (a) a child of both of those parties; and
- (b) any other child who has been treated by both of those parties as a child of their family;”

^{xii} Supra. Matrimonial Causes Act at section 34 (1) (a) and (b) which provide:

“(1) It shall be the duty of the Court in deciding whether to exercise its powers under section 31(1)(a), (b) or (c), 32 or 33 in relation to a party to a 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 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;”

^{xiii} Ibid. at section 34 (1) (c), (d), (e) and (f) which state:

- “(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 contribution 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 to 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 to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just so to do, 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.”

^{xiv} They were both 33 years old when they got married.

^{xv} This is supported by Mrs Lewis' oral testimony that her son was born on December 21, 1977.

^{xvi} See paragraph 12 of Isadore Lewis' Affidavit of Means filed on February 17, 2015.

^{xvii} Ibid. at paragraph 13.

^{xviii} See paragraph 37 of Isadore's Affidavit of Means filed on January 23, 2014 and 35 of Earlon Lewis' Response to Affidavit of Means filed on 23rd January, 2014.

^{xix} Evidenced by her salary slip for July 2013, exhibited at page 68 of 'PL1' “.

^{xx} **NG v SG [2011] EWHC 3270 at para.16.**

^{xxi} Regular savings account 113325 and NCB account number 2103778.

^{xxii} Net salary of \$3290.84 less all expenditure (excluding the property tax and house insurance amounts of \$16.67 and \$133.33 - to be adjusted to reflect Mr Lewis' responsibility to contribute equally.)

^{xxiii} “parties should not seek to promote a case of “special contribution” unless the contribution is so marked that to disregard it would be inequitable. A good reason to depart from equality is not to be found in the minutiae of married life.”

^{xxiv} Exhibit PL1 pages 47 – 67; account number 113325.

^{xxv} Pamela Lewis, Erlon Lewis and Joycelyn Gailene Dellimore.

^{xxvi} Supra. at paragraph 26 of Affidavit of Means filed on February 17, 2015.

^{xxvii} At page 33 of “EAL1”.

^{xxviii} **Martin v. Martin [1977] 3 All E.R. 762 per Stamp L.J at page765** where he said:

“It is of primary concern in these case that on the breakdown of the marriage the parties should, if possible, each have a roof over his or her head. ... It is important that each party should have a roof over his or her head whether or not there be children of the marriage.”

^{xxix} See valuation report dated November 17, 2014, provided to Mr and Mrs Lewis by Franklyn G. H. Evans of Evans Properties Inc.

^{xxx} Ibid.

^{xxxi} See paragraph 23 of Isadore Lewis' Affidavit of Means filed on January 23, 2014.

^{xxxii} See paragraph 20 of Isadore Lewis' Affidavit of Means filed on February 2, 2015.

^{xxxiii} See paragraph 17 of Isadore Lewis' Affidavit of Means filed on January 23, 2014.

^{xxxiv} Supra. at note iii above.

^{xxxv} Supra. at note iv above.

^{xxxvi} Supra. Section 34 (1) (a) of Matrimonial Causes Act.

^{xxxvii} See section 2 of the Age of Majority Act Cap. 226 of the Revised Laws of Saint Vincent and the Grenadines.

^{xxxviii} Section 38 of the Matrimonial Causes Act which provides:

- “38 (1) Subject to subsection (3), no financial provision order and no order for a transfer of property under section 32 (1) (a) shall be made in favour of a child who has attained the age of eighteen.
- (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but –
 - (a) shall not in the first instance extend beyond the date of the child's sixteenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and
 - (b) shall not in any event, subject to subsection (3), extend beyond the date of the child's eighteenth birthday.
- (3) Subsection (1) and subsection (2) (b) shall not apply in the case of a child if it appears to the Court –
 - (a) the child is, or will be, or, if any order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment;
 - (b) there are special circumstances which justify the making of an order without complying with either or both of these provisions.”

See also **Horne v Horne SVGHMTAP2005/0016**.

^{xxxix} Ibid. see records exhibited as “EAL1”