

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CIVIL

SUIT NO: DOMHMT2013/0025

BETWEEN:

MERVIN BIRMINGHAM



Petitioner/ Applicant

AND

NESHA BIRMINGHAM

Respondent

DONAN JERVIER

Co- Respondent

Appearances:

Mrs. Singoalla Blomqvist Williams for the Petitioner

Mrs. Zena Dyer for the Respondent

2014: November 6th, 11th

2015: January 27¹¹¹

DECISION

- i
- [1] **THOMAS, J (Ag.):** By way of an application for ancillary relief, filed on 1st April 2014, the petitioner/applicant ("the applicant") applies for certain reliefs. In his affidavit in support the applicant details the order obtained in the Magistrate's Court against him which, inter alia, prohibited him from remaining in the household residence of the applicant, weekly payments for respondent and the minor child, payment of the mortgage by the applicant; and prohibition regarding the jointly owned motor vehicle.
 - [2] With respect to the matrimonial home the applicant deposes that it was purchased by him prior to the marriage through a loan of \$185,000.00 and with a monthly repayment of \$1,685.53, with no contribution from the respondent. The applicant deposes further that he owns a motor vehicle, PM254.
 - [3] At paragraph 10 of his said affidavit the applicant gives details of an order made by this court on 12th July 2013, and his compliance therewith in terms of the valuation of the motor-vehicle, and non-compliance by the respondent.
 - [4] The matters of the applicant's ownership of two other parcels of land situate at Riviere La Croix Estate and Shawford are addressed at paragraphs 15 and 16. It is also deposed by the applicant that both parcels were purchased prior to the marriage without any contribution from the respondent.
 - [5] The applicant's prayer is for: half share of the value of the vehicle, PM 254; the respondent vacates the matrimonial home and the applicant paying a rental fee for the respondent's new accommodation; joint custody of the minor child of the family; costs and further and other reliefs.
 - [6] Under cross-examination the applicant revealed the following: the vehicle PM254 is owned by both parties but that this was not revealed in the affidavit in support. He went on to say that the incident involving the said vehicle occurred when he was having mental turbulence, but he did what he was ordered to do in relation to the said vehicle. He added that Reuben's Bakery, where he works, has two vehicles to which he has access, and which are fully maintained by the bakery and as such he does not have to pay for transportation. The vehicle PM 254 was sold by the respondent who told him verbally that she has his share of \$20,000.00 in an account.

- [7] With respect to the property at Bath Estate, the applicant revealed that after he consolidated two mortgages on that property he repays \$1,685.35 per month.
- [8] As far as the respondent's employment is concerned, the applicant testified that he is aware that she operated a restaurant prior to the marriage and after the marriage; but that during the marriage it was closed and she worked at Reuben's Bakery after he hired her. The applicant also testified also testified that at a later stage he fired the respondent and the matter is still unresolved. And in relation to the respondent's job at Instyle Boutique, the applicant denied that he caused the respondent to be fired.
- [9] In further testimony concerning the child of the marriage, the applicant detailed his schooling, the school fees paid and his medical and optical needs.
- [10] Concerning his place of abode, the applicant said he lives at Stockfarm with a friend and he pays a portion of the \$650.00 per month rent for the house.
- [11] In relation to property the applicant testified as follows: The property, situate at Shawford, is in his sole name but the transfer documents were sent to be signed. Regarding the property at Bath Estate he said it was purchased from Ferdinand Alexander, but he did not give him land at Pointe Michel. The applicant explained that that Alexander owed him \$49,000.00 and a caveat was filed in respect of the Pointe Michel property. He ended by saying that the Pointe Michel property was not transferred to him.
- [12] In terms of buses, the applicant explained that during the marriage he owned a bus with the respondent, HA373. He added that HB982 was another bus. The applicant explained further that HA373 was sold by him while HB982 was sold by both of them. He added that it was agreed some of the proceeds from the latter sale would go towards the loan.
- [13] . With respect to HB982 the applicant said that it was leased to a bus driver to give the respondent and himself an income of \$1,000.00 per month which in turn was given to the respondent to help with the restaurant.

- [14] In further cross-examination the applicant was questioned about other property besides Bath Estate. He revealed that one parcel was situate at Rivere La Croix valued at \$30,000.00, while the other was at Shawford in a residential area and worth \$60,000.00.

Affidavit in answer

- [15] Nesha Birmingham in her affidavit seeks to make out a case for maintenance as well as a share of the matrimonial property, including vehicles. The respondent deposes as to her self-employment prior to marriage and the manner in which her income was used. Also her employment at the applicant's family business, her dismissal therefrom, her unemployment for six months and her new employment in August 2013 at a boutique earning EC\$880.00 per month.

- [16] In terms of the matrimonial home, the respondent deposes that she resides therein and is solely responsible for the support and upkeep of her daughter while the petitioner assists with the child of the marriage. In this regard the respondent details her domestic expenses.

- [17] With respect to the matrimonial home, the respondent deposes that during the marriage she gave money to the petitioner to enable him to make repayments, that she also contributed improvements to same which she contends is reflected in the valuation of the said property submitted by the petitioner; that she contributed to the applicant's consolidated loan by way of contributions to household expenses, running the home and assisting the applicant with that he could finance the loan payments. At the same time the respondent deposes that the applicant provides maintenance for two other children, outside of the family.

- [18] It is the respondent's contention that he has more disposable income than indicated as well as more income than that declared.

- [19] In the premises the respondent prays for the following:

- "(1) The petitioner gives me my share and interest in the matrimonial property based on my contribution which amounts to $\frac{1}{4}$ of the value of the matrimonial property and considering the improvements to the property;
- (2) Maintenance for the child of the marriage;
- (3) Maintenance for myself;
- (4) My share and interest from the bus sales jointly owned;

- (5) My share of the furniture of the home to which I contributed to which I estimate to be approximately EC\$10,000.00;
- (6) Any other Order the court deems just."

- [20] Under cross-examination the respondent testified concerning the loss of her job at Instyle Boutique and of her present unemployment.
- [21] Concerning the restaurant which she owned and operated, the witness said that the applicant assisted her by co-signing a loan of \$10,000.00 and he also assisted in building the counter. It is also her evidence that she earned \$300.00 to \$400.00 per day for six days per week with profits of \$700.00 to \$800.00 per month. Mention was also made of the six month period when she was put on bed rest because of her pregnancy. It is also her evidence that during this period the applicant assisted with paying some bills, lights and the loan. Assistance also came from her daughter's grandfather who sent a barrel every two months. This ceased in July or August 2013.
- [22] In further evidence concerning her business, which opened in March 2009, the respondent testified that her husband gave her \$1,000.00 to help with the business. She added that they agreed that the money would go to the loan. The witness also gave evidence as to the bills paid by both of them.
- [23] The matter of the buses was also addressed by the respondent. In relation to HB982 she said it was purchased in May 2008 and sold in 2011 after the breakup, but she did not know the selling price. She added that they agreed that the proceeds would go towards the loan for the house. And with respect to the bus PM254, the respondent said that she sold it for less than \$38,000.00 because she had just started to work. She went on to say she still had the applicant's share on an account. And she denied that she told the applicant of her efforts to sell the vehicle after the sale was completed.
- [24] In making her case for a $\frac{1}{4}$ share of the matrimonial home, the respondent detailed what she did to the home which she now occupies. She added that she also has expenses for the doctor, education and miscellaneous such as bus fares for two children and clothing. She also made for a case a share of the total value of the furniture which she said amounted to \$10,000.00.

- [25] Finally, the respondent refuted the suggestion that she had no input into the joint account: according to her, she gave the applicant \$2,500.00 to put in the account but she was not aware what happened to it.

Curtis James

- [26] The essence of Curtis James' witness summary is that he was hired by the respondent to renovate the property situate at Bath Estate of which he was in charge. According to Curtis James work was done on the alley, re-designed the bathroom and partially one bedroom. He gives his wage as \$450.00 and the other two workers as \$350.00 and \$100.00 respectively.

Issues

- [27] The issues for determination are
1. Whether the applicant is solely entitled to the matrimonial home; or whether the respondent is entitled to a $\frac{1}{4}$ share thereof?
 2. Whether the applicant is entitled to half share of the value of the vehicle registration No. PM 254?
 3. Whether the applicant is entitled to joint custody of the minor child of the marriage?
 4. Whether the respondent is entitled to maintenance for herself and the minor child of the family and financial assistance?
 5. Whether the respondent is entitled to her share and interest from the bus sales jointly owned?
 6. Whether the respondent is entitled to the value of her share of the furniture which were in the home to which she contributed and estimated at \$10,000.00?
 7. Who is liable in costs?

Issue No.1

Whether the applicant is solely entitled to the matrimonial home; or whether the respondent is entitled to a $\frac{1}{4}$ share thereof?

[28] The property in issue is situate at 133 Gomier Street, Bath Estate. It consists of 1,080 square feet of land and is mortgaged to the Central Cooperative Credit Union Ltd with a balance, as of "03.01.2014" of \$177,234.69¹. The property is valued at \$201,548.000 and the equity stands at \$24,313.31.

[29] The applicant seeks the property to the exclusion of the respondent. But the respondent seeks a $\frac{1}{4}$ share of the property.

Submissions

[30] The submission on behalf of the applicant on the issue are as follows:

"The Applicant/Petitioner's evidence is that prior to the marriage and throughout the marriage he was solely responsible for the monthly mortgage payment which amounts to \$1,685.35. The Respondent in her affidavit in response filed on the 25th April, 2014 states that she is entitled to $\frac{1}{4}$ of the value of the matrimonial property as she has made improvements to the property namely:

- (a) She added an allyway;
- (b) Remodeled the bathroom;
- (c) Build a storeroom

The Respondent provided no receipts to substantiate that claim or the value which was added to the property bearing in mind that the equity in the building is \$24,313.31.

We submit that the Respondent made no substantial improvements to the property although we do accept that she did paint the bedroom, oversaw the replacing of the sink in the bathroom. We submit that this does not entitle the Respondent to a share in the matrimonial home and the building of the alley way (corridor). Particularly, as the Respondent continues to have full use of the matrimonial to the exclusion of the Applicant/Petitioner. The Respondent was granted an order by the court which removed him from the matrimonial home.

The Applicant/Petitioner continues to pay the mortgage in the sum of \$1,685.00 and he is also required to pay rent of \$400.00. He understands that he, must continue to maintain and provide a home for the minor child of the family, he therefore proposes that he be allowed to return to the former matrimonial home and he is willing to pay rent to provide accommodation for the minor child. We propose maintenance to include housing in the sum of \$800.00 per month which amounts to approximately $\frac{1}{3}$ of his income."

[31] On behalf of the respondent the submissions, in part are as follows:

¹ Exhibit MB3

- "81. The Respondent submits she is entitled to a 1/4 share of the matrimonial property and the Court should not doubt the Respondent is so [entitled].
82. The Respondent has provided evidence of contribution. See paragraphs 3-13 herein. The Respondent looked after the home, cared for the home (child and Petitioner) and the Petitioner has admitted under cross-examination that the Respondent contributed. The contribution of the respondent warrants her being granted the 1/4 share as requested.
83. The Court must determine if the Respondent being given a 1/4 share of the value of the property can be achieved based on the fact that the equity is now EC\$24,313.31. The Court should note that in evidence the Petitioner admitted continuing paying the mortgage since the filing of his affidavit in April 2014. Although he denied the balance is less than the document he submitted it is clear that the loan is reduced. The Petitioner's evidence is that he continues paying the mortgage and therefore the Court must calculate the balance as since his Affidavit in April, six mortgage payments would have been made.
84. Although the equity in the property is EC\$201,548.00 less \$177,234.69 (being EC\$24,313.31) a 1/4 of which is EC\$6,078.33, the Court is asked to take into account there is no evidence of an updated outstanding balance as the ancillary is being heard 6 months after.
85. It is clear from the evidence that the Respondent has no income, she is unemployed and her financial needs, obligations and responsibilities are onerous. The Respondent needs a place that she can call home and maintenance for herself and the child sufficient to look after the future medical expenses of the child of the marriage who has a medical condition and her day to day expenses. The Respondent has to provide food for the child and herself, pay electricity, look after the educational, medical and transportational needs of the child with an income of EC\$200.00 from renting her son's bedroom.
86. The Respondent's standard of living before the break down of the marriage was one of comfort. The parties owned a vehicle, were able to extend their house and seemingly lived a normal life. Since the breakdown of the marriage, the Respondent's standard of living is on the poverty line (she was forced to sell all her jewelry and rent her son's bedroom). It should be noted that the standard of living of the child of the marriage has also been affected as he now does not have a room of his own.
87. It is submitted that the Petitioner should be made to pay maintenance for the Respondent and the child of the marriage of EC\$2,000.000 monthly. This is submitted in paragraph 18 of the Respondent's Affidavit her monthly expenses total EC\$1,321.00 and this amount did not take into account the educational needs of the child (school expenses) and that the Respondent is now unemployed. These contingencies should operate to give the Petitioner the additional EC\$2,000.00 as maintenance, being an additional EC\$1,121.00 (EC\$2,000.00-EC\$1,321.00).
88. Further, the Petitioner's conduct, that is, his abuse of the Respondent, and violence (destroying the vehicle jointly owned) and his failure to disclose his assets should operate on the Court's mind in favour of the Respondent.
89. The Petitioner has more income than disclosed. He has means greater than the Respondent The Petitioner has a vehicle, operates a Bank account and never disclosed the sum therein. He has property valued at over EC\$90,000.00 and a debt to

receive of EC\$40,000.00. he has land on which to build a house. He thus has means to earn income. He is renting and has a roof over his head.

90. The Court is asked to consider that the Respondent has no alternative home to live. The Respondent lives with the child of the marriage in the matrimonial home registered in the Petitioner's sole name, as a result of the Domestic violence Order. How can the Petitioner ask the Respondent to vacate the matrimonial home with the child?
91. The Respondent submits that the Court must adjust assets so that a home of the Respondent and the child of the marriage are at the forefront."

The Law

- (32) The matter of matrimonial property is governed by the **Matrimonial Causes Act**, 1973. and section 25 thereof reads thus:

"25. - (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23 (l) (a), (b) or (e) or 24 above in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-

- a) the income, earning capacity, property and other financial re-sources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - d) the age of each party to the marriage and the duration of the marriage;
 - e) any physical or mental disability of either of the parties to the marriage;
 - f) 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 so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other..."

- [33] The court must now examine the criteria prescribed by the law.

Income: The evidence suggests that the applicant, a manager of Rueben's Bakery, earns \$3,000.00 per month. On the other hand, the respondent is unemployed for more than six months.

Financial needs obligations and responsibilities: The applicant is obligated to pay the mortgage payments plus the maintenance as ordered by the court. The evidence is that he also pays rent of \$400.00 per month for his living accommodation: he also has to feed himself. In the case of the respondent, she has to care for the child of the marriage. Apart from the maintenance paid by the

applicant, her only income is \$200.00 derived from the rental of her son's bedroom at the matrimonial home.

Standard of living: It is fair to say that the parties enjoyed a reasonably comfortable standard of living as there was a home, a vehicle and some of the modern devices such as telephone and cable television. During the marriage the respondent drove the applicant's vehicle.

Physical or mental disability: there is no evidence of either of these in the case of the parties.

Contribution made by each party to the welfare of the family, including any contribution made by looking after the home and caring for the family: The applicant's contribution rests on the fact that he alone pays the mortgage of \$1,685.53 per month. He also paid some of the bills when he lived at the matrimonial home

Value of either party to the marriage or any benefit: no considerations apply in this regard as this is not a case of proceedings for divorce.

Reasoning

[34] In the sphere of the division of matrimonial property, the well established rule that each party is entitled to a fair share depending on his or her contribution. And such contribution need not be by way of money and must include whatever that spouse did in relation to the maintenance or otherwise in relation to said property.

[35] . The respondent's contribution is not in doubt but it is the applicant's contention that it is insufficient to warrant the grant of a share of the matrimonial home. This is the respondent's articulation of her contribution:

"I am asking for a $\frac{1}{4}$ share of the home. I added a corridor [alley]. I painted all the bedrooms. I built the wall with my money. It was done in 2012. It was after my daughter's trip in June 2012. I had about \$3,000.00 on my account at the Central Cooperative Credit Union Ltd.

The corridor [alley] was built in late 2012. I never sat down to say how much I spent. I would buy what was needed. The bedroom was done at the same time. We were married for five years.

The equity in the house is \$24,343.31. I did not know that. I live in the house now. I am in sole possession. He still comes there. He has a key to the house."

[36] At the same time, it cannot be doubted that the applicant has been paying the mortgage debt without any contribution from the respondent. At the same time also the court notes that one of the

underlying objectives of the **Matrimonial Cause Act, 1973** is that the division of such property should not lead to the demise of one party to the benefit of the other. In *Rayden on Divorce*:

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

[37] There is no evidence that, apart from the improvements, the respondent did not take charge of the home and the family. Indeed the child of the marriage has medical and optical challenges at the age of *five*. This rests almost entirely on the respondent.

[38] In comparing the future prospects of both parties, there is a stark contrast. On the one hand, the applicant is a Book Keeper/Accountant and is Manager of a bakery. He earns some \$3,000.00 per month and at one point owned buses in conjunction with the applicant. The applicant has other real estate situate at Shawford and in addition he is owed some \$40,000.00 which brings other land situate at Pointe Michel into the equation. And is now 39 years old. In contrast the respondent is now aged 33 and two income-earning endeavors were in relation to the operation of her own restaurant and being an employee at a boutique. There is no evidence of her qualifications but a reasonable inference can be drawn from the jobs held.

[39] And there can also be no doubt that life is difficult for the respondent which is reflected in the fact that because she is unemployed she has to rent her son's bedroom at the rate of \$200.00 per month. To this must be added the applicant's sporadic payment of maintenance.

[40] In this context of the reality of both parties, learned counsel for the respondent submits the following:

"The Respondent submits that as she [is] unemployed and the *five* year old child lives with her, she and the child should be allowed to remain in the matrimonial home until the child reaches the age of majority of 18 years old.

Thereafter, (when the child reaches 18 years) the house should be sold and proceeds divided so as to give the Respondent her $\frac{1}{4}$ share of the house representing her contribution. The petitioner should continue to meet the mortgage payments for the home."

Conclusion

- [41] The latter submission on behalf of the respondent must be rejected as it contradicts one of the basic principles of the legislation in that it proposes that the applicant pays his rent plus the mortgage payments for another 13 years. In the meanwhile the respondent would live in the home without paying anything.
- [42] It is therefore the conclusion of the court that the applicant is not entitled to sole ownership of the matrimonial home because of the totality of contribution made to the home by the respondent which has not been doubted or contradicted. In the circumstances of the respondent, she is awarded a $\frac{1}{4}$ share of the equity in the matrimonial home which amounts to \$6,078.33 to be paid by the applicant. The respondent must give up possession of the matrimonial home no later than 90 clear days after the said sum of \$6,078.33 is paid; but if the money is not paid after 90 days, possession must be given up 30 days after payment.

Issue No.2

Whether the applicant is entitled to half share of the value of the vehicle, registration No. PM254?

- [43] Both parties say that the vehicle bearing the registration number PM254 was jointly owned. The difficulty arises because the respondent sold the vehicle for much less than the valuation ordered by the court, being \$20,000.00 rather than \$38,000.00. The respondent's evidence in this regard is that the applicant had done further damage to the said vehicle in defiance of the court order. The damage consisted of the breaking of park lights, the left back window and "dismantled the vehicle again." It is further stated in her affidavit that the matter was reported to the police who took photographs. Under cross-examination the respondent said that at this time she had just started to work and she was not going to spend her money to put the bus back on the road.
- [44] Learned counsel for the applicant has questioned the absence of a police report in evidence given the context. The further submission of learned counsel is that the respondent acted contrary to the order of the court regarding the valuation and sale.

[45] In that context this court must follow the logic and compulsion of the law. Learned counsel has also submitted that what is owed to the respondent can be deducted from the value of the half share of the value of the bus, being \$19,000.00.

[46] The order on this issue is that the applicant is entitled to his half share of the bus, registration No. 245 which must be paid by the respondent. The money owed to the respondent for maintenance may be deducted from the \$19,000.00 owed to the applicant.

Issue No. 3

Whether the applicant is entitled to joint custody of the minor child of the marriage?

[47] This issue is not contested by the respondent and in order that there would be some certainty in the matter, the court orders that care and control of the said child shall vest in the respondent and the child shall spend every other weekend with the applicant. This weekend period shall commence on Friday afternoon after school and end on Sunday afternoon at 6:00 pm at which time the child shall be returned to his mother, the respondent. The child shall also spend alternate Easter and Christmas holidays with the applicant commencing in the year 2015.

Issue no. 4

Whether the respondent is entitled to maintenance for herself and the minor child and financial assistance for new accommodation?

[48] . The matter of maintenance is already subject of a court order. The other matter for which the applicant has prayed is an order requiring him to provide financial assistance to the respondent with respect to accommodation.

Reasoning

[49] As noted before, the legislation in issue mandates the court that in the circumstances of the division of matrimonial property should ensure that the parties are in the same position they would be in had the marriage not broken down, as far as practicable. In this regard the contrasting positions of both parties have been noted. And, at the same time the court notes that both parties

have detailed their monthly expenses. In the case of the applicant it is \$4,352.18, while in the case of the respondent it is \$1,456.00.

- [50] Based on the evidence the court can reasonably query the following expenditures advanced by the applicant. First, the matter of \$172.00 for transportation as the applicant did testify that he uses a company vehicle which is fully maintained by the company. Second, the fee of \$100.00 for medical/dental without any cost for medication, on the basis that it is unreal for an adult, plus it is monthly. Third, the amount for electricity in a house shared with others.

Submissions

- [51] On behalf of the applicant the submissions are in these terms:

"The Respondent asks for maintenance for herself. We submit that the wife is 34 years old, she is not suffering from any disability and able to provide for herself in fact this point was emphasized upon in her evidence that she was able to provide for herself and in fact she was employed even when this suit was filed. The Applicant/Petitioner is a man of limited means. After paying his inescapable commitment which includes maintenance of two other minor children has no surplus. Taking into consideration the fact that the marriage was a very short which lasted only 3 years. We submit that the Petitioner ought not to be ordered to pay maintenance for the Respondent nor a lump sum. We refer to Hughes v Hughes 1993 45 WIR Watchel v Watchel 1973 1 ALL ER."

- [52] In the case of the respondent the submissions read as follows:

" 86. The Respondent's standard of living before the break down of the marriage was one of comfort. The parties owned a vehicle, were able to extend their house and seemingly lived a normal life. Since the breakdown of the marriage; the Respondent's standard of living is on the poverty line (she was forced to sell all her jewelry and rent her son's bedroom). It should be noted that the standard of living of the child of the marriage has also been affected as he now does not have a room of his own.

87. It is submitted that the Petitioner should be made to pay maintenance for the Respondent and the child of the marriage of EC\$2,000.000 monthly. This is submitted as in paragraph 18 of the Respondent's Affidavit her monthly expenses total EC\$1,321.00 and this amount did not take into account the educational needs of the child (school expenses) and that the Respondent is now unemployed. These contingencies should operate to give the Petitioner the additional EC\$2,000.00 as maintenance, being an additional EC\$1,121.00 (EC\$2,000.00-EC\$1,321.00).

88. Further, the Petitioner's conduct, that is, his abuse of the Respondent, and violence (destroying the vehicle jointly owned) and his failure to disclose his assets should operate on the Court's mind in favour of the Respondent."

Conclusions

- [53] The fact of the matter is that the respondent lives in the former matrimonial home, and is unemployed. On the other hand, despite learned counsel's submission that the applicant is a man of limited means, this cannot be accepted by the court given the extent of properties he owns. He even borrowed money from Reuben's Bakery² and repaid it. In the midst of all this is a five year old child with medical and optical challenges.
- [54] The order of the court is that the applicant shall pay the respondent the sum of \$75.00 per week for the maintenance of the child of the marriage, the sum of \$150.00 per week for the maintenance of the respondent for a period of 12 months, and the sum of \$500.00 per month to the respondent to assist with the payment of rent for a period of 12 months. The payments for maintenance shall commence in February 2015. The payment with respect to rent shall commence 30 days after the respondent leaves the matrimonial home and so informs the applicant in writing by registered mail.

Issue No. 5

Whether the respondent is entitled to the value of her share of the cost of furniture which were in the matrimonial home to which she contributed and estimated at \$10,000.00?

- [55] This issue in the view of the court turns on documentation on the part of the respondent. In any event the submission on behalf of the applicant is that the furniture was repossessed by Courts.
- [56] This is not a case of antiques or furniture purchased many years ago to warrant exercising its power to make an award³. The evidence clearly suggests that the items of furniture were purchased during the marriage which lasted 5 years and which ended in 2013. The point is that there must be documentation, especially since they were taken on hire purchase.
- [57] In the circumstances the respondent is not entitled to share of the cost of the furniture in the absence of documentation, given the recency of the alleged transactions.

² Exhibit NB4

³ See: *Grant v Motilal Moonan Ltd and Anox* [1988] 43 W.I.R 372 (CA:T&T)

Who is liable in costs?

[58] There were successes on both sides and for this reason there is no order as to costs.

ORDER

IT IS HEREBY ORDERED as follows:

1. The applicant is not entitled to sole ownership of the matrimonial home because of the contribution made to the home by the respondent which has not been doubted or contradicted by the applicant.
2. In the circumstances of the respondent, she is awarded $\frac{1}{4}$ of the equity in the matrimonial home which amounts to \$6,078.33 to be paid to the applicant.
3. The respondent must give up possession of the _home not later than 90 days after the sum of \$6,078.33 is paid, but if the payment is not made after 90 days possession must be given up 30 days after it is paid.
4. The applicant is entitled to his half share of the truck, registration No. PM 254 which must be paid by the respondent based on the valuation of \$38,000.00 as ordered by this court. The money owed to the respondent for maintenance may be deducted from the \$19,000.00 owed to the applicant.
5. The applicant is entitled to joint custody of the child of the marriage and care and control shall vest in the respondent. The child shall spend every other weekend with the applicant and the period shall commence on Friday afternoon after school and end at 6:00 pm on Sunday at which time the child shall be returned to the respondent. The child shall also spend alternate Easter and Christmas holidays with the applicant commencing in the year 2015.
6. The respondent is entitled to maintenance and applicant shall pay the respondent the sum of \$75.00 per week for the maintenance of the child of the marriage and the sum of \$150.00 per week for maintenance to the respondent for a period of 12 months and \$500.00 per month to the respondent to assist with the payment of rent for a period of 12 months.

7. The payments for maintenance to the child and the respondent shall commence in February 2015, while the payments for rent shall commence 30 days after the respondent leaves the matrimonial home and the applicant is so informed in writing by registered mail.
8. The respondent is not entitled to any share of the cost of the furniture in the absence of documentation given the recency of the alleged transactions
9. There is no order as to costs.
10. There is liberty to apply by either party.



EL

Justice Errol L. Thomas

High Court Judge (Ag)