

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO. 128 OF 2009

BETWEEN:

GREGORY KEITH ANTHONY BOWMAN

PETITIONER

-AND-

MARLEISE CLARE-WEN JACQUELINE BOWMAN
née LIVERPOOL

RESPONDENT

Appearances: Ms Paula David for the Petitioner, Mr Olin Dennie for the Respondent.

2014: July 23
Sept. 29

CORRECTED DECISION¹

BACKGROUND

[1] **Henry, J. (Ag.):** This is an application by the Applicant/Respondent (“Respondent”²) for reimbursement of half of the relocation expenses in respect of the two minor children of the marriage, pursuant to a decision by Justice Monica Joseph (as she then was) dated October 4, 2011. Madam Justice Joseph’s decision was made pursuant to an application for ancillary relief by the Petitioner regarding entitlement and distribution of matrimonial property between the parties and maintenance for the children. At paragraphs [28] and [51] 3 of her decision, the learned judge ordered:

“[28] ... I also hold that the parties are to meet relocation expenses equally.

[51] 3. Relocation expenses to Canada of the children to be met equally by the parties. The Respondent to present a statement of those

¹ By Order dated January 12, 2015 – paragraphs 14, 20 and 26 (re: incorrect calculation of figures).

² Respondent in the substantive matter

expenses in Chambers on 16th November 2011.”

[2] The Respondent filed a “Notice of Filing of Relocation Expenses to Canada” on November 9, 2011 and attached a Certificate of Exhibit marked “ML1”. The exhibit “ML1” contained a list of 26 items ranging from airline tickets, suitcases, winter jackets and sweaters to laundry expenses. The Petitioner/Respondent, (“Petitioner”³) filed an Affidavit on November 16, 2011 responding to and expressing his agreement and concerns respectively with the items listed. By Affidavit filed on February 14, 2012 the Respondent responded to the Petitioner’s Affidavit and gave explanations in respect of the concerns highlighted by him.

[3] The matter was heard in Chambers on July 23, 2014 and both parties were cross-examined on their affidavit testimony. The Petitioner conceded in his Affidavit and in his oral testimony that some of the items were reasonably incurred and that the Respondent should be reimbursed in respect of those. He challenged other items outright contending that those were not relocation expenses. He also accepted that yet other items while being relocation expenses, were purchased or billed by the Respondent at excessive prices and should be discounted to reflect more realistic amounts.

ISSUES

[4] Three issues arise for consideration:

1. What constitutes “relocation” expenses and which items on the Respondent’s list fit within that description?
2. Does the expression “relocation expenses” cover rental accommodation for the period January 1, 2011 through July 1, 2014?
3. In the circumstances of this case, what are reasonable relocation expenses in respect of the children of the marriage MacGregor Anthony born on March 31, 1993 and Mikaila Leisa born on May 6, 1995 and what individual and global amounts should the Petitioner pay to the Respondent as his contribution?

LAW

[5] The learned judge Madam Justice Joseph in paragraphs [11] and [13] of her decision identified the factors which the court must take into account in exercising its discretion regarding the distribution of matrimonial property and the parties’ contributions to the welfare of the family. She referred to section 34 (1) of the Matrimonial Causes Act (Cap. 239) of the Revised Laws of Saint Vincent and the

³ Petitioner in the substantive matter

Grenadines (“the Act”) which outlines the factors which the court must take into account in exercising that discretion as being: “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.” Very importantly she highlighted the need for the court to seek to achieve equality if equality is fair. The twin concepts of equality and fairness must therefore exercise the court’s attention and focus in resolving applications for ancillary relief including the present application for relocation expenses.

[6] Section 31(1) (e) & (f) empowers the court to make:

“ (e) an order that a party to a marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the Court, such periodical payments, for such term, as may be so specified;

(f) an order that a party to a marriage shall pay such person as may be so specified for the benefit of such child, or to such a child, such lump sum as may be so specified,”

Sections 34(1)(a) and (b) and (2) of the Act requires the court in making a determination *inter alia* under section 31(1) (e) and (f) “to have regard to all the circumstances of the case including the following matters, that is to say –

“(1) (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;

(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:

(2) (a) the financial needs of each child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the standard of living enjoyed by the family before the breakdown of

the marriage;
(e) the manner in which he was being and the manner in which the parties to the marriage expected him to be educated or trained.

and so to exercise those powers to place the child, so far as it is practicable and, having regard to their considerations mentioned in relation to the parties to the marriage in subsection (1) (a) and (b), just to do so, in the financial position in which

[7] “Relocation” is defined in the online Merriam-Webster dictionary as “to establish in a new place”. Applying the Golden Rule of interpretation the expression “relocation expenses” will be given its ordinary dictionary meaning, i.e. “expenses associated with and reasonably incidental to establishing oneself in a new place.”

ANALYSIS AND FINDINGS

What constitutes relocation expenses

[8] Taking into account the factors listed in section 34 of the Act, I have examined the respondent’s claims and the petitioner’s submissions and conclude as outlined below. Based on the description of “relocation” expenses contained in paragraph [7], it is necessary to review and analyze the list of items in exhibit “ML1” to determine which of those qualify for consideration as relocation expenses. While the Respondent did indicate in response to a question by learned counsel Ms David under cross-examination that she was “relying on her affidavit” and “not on exhibit ML1”, ML1 is a comprehensive record of the several items originally claimed by the Respondent as relocation expenses. I am of the view that an assessment of the list would provide an excellent overview of the opposing positions of the parties throughout this part of the proceedings. I have re-arranged the items in the list and set them out in tabular format for ease of reference and analysis. I have also inserted an item which was claimed separately by the Respondent during her testimony but which were not included in ML1⁴. It was also necessary to adjust some of the unit prices and total costs to achieve mathematical accuracy which in some instances is lacking in the quantification and calculations in ML1.⁵

⁴ That is “accommodation” for the period January 1, 2011 through July 1, 2014.

⁵ For example, item No. 2 (North Face winter jackets) on ML1 reflects a unit price of US\$250 which computes to US\$1500 and EC\$4,075.35. The amount entered as the US dollar total is US\$1350 with an EC dollar total of \$3645.00.

No.	Description of item	Unit Price	Total Cost		
1	2 Suitcases*	EC\$100	EC\$ 200		
2	2 Jetblue airline tickets (Barbados to NY, USA)*	US\$506	EC\$2749.50		
3	2 LIAT/Cheapo airline tickets (St. Vincent to Barbados)*	CD\$737.37	EC\$2057.26		
4	Departure tax (St Vincent to Barbados) x 2*	US\$ 40	EC\$217.35		
5	Greyhound Bus tickets (NY, USA to Canada) x 2*	US\$158	EC\$858.54		
6	(a) Shipment of 2 packages (NY to Canada) on Amerijet*	US\$100	EC\$540		
	(b) Customs duties	CD\$172.62	EC\$481.61		
7	6 winter jackets*	US\$225	EC\$3667.81		
8	6 sweaters*	US\$80	EC\$1304.11		
9	2 female winter shoes*	US\$180	EC\$978.08		
10	2 male winter shoes*	US\$200	EC\$1,086.76		
11	1 female winter boots*	US\$150	EC\$407.54		
12	1 male winter boots*	US\$200	EC\$1086.76		
13	Immigration fees*	CDN\$2500	EC\$6975		
14	2 beds*	CDN\$500	EC\$2790		
15	1 dining room furniture set*	CDN\$899	EC\$2508.21		
16	1 living room furniture set*	CDN\$799	EC\$2229.21		
17	1 set kitchen utensils+	CDN200	EC\$558		
18	School registration fees*	CDN\$90	EC\$502.20		
19	Transportation to school+	CDN\$2400	EC\$6696		
20	Basketball uniform+	CDN\$75	EC\$209.25		
21	Food for overnight games+	CDN\$300	EC\$837		
22	Mikaila's basketball practice+	CDN\$480	EC\$1339.20		
23	MacGregor's Physio and weight training+	CDN\$48	EC\$133.92		
24	Groceries+	CDN\$2200	EC\$6138		
25	Laundry+	CDN\$105	EC\$292.95		
26	Accommodation – Jan. 1, 2011 – Jul+. 1, 2014*	CDN\$1055	EC\$63,164		
27	Medical tests*	EC\$185.00	EC\$370.00		

[9] The Respondent abandoned her claim for reimbursement in respect of a number of the items in the above list. In that regard, at paragraph 24 of her affidavit she stated that “the cost of laundry services and groceries has been inadvertently stated as a relocation expense”. They appear at lines 21 and 25 in the table. There is no need for the court to consider them further. They are accordingly disallowed. Likewise, in his written submissions, learned Counsel Mr Dennie on behalf of the Respondent restricted the claim to accommodation, clothing (including footwear), travel and shipping expenses (including the cost of suitcases), medical reports, educational expenses, furniture and immigration fees.⁶ He omitted any reference to reimbursement for kitchen utensils, transportation of the children to school, basketball uniform, food for overnight athletic games, basketball practice and physio and weight training for MacGregor coupled with the Respondent’s pronouncement that she was not relying on ML1, is interpreted as an abandonment of that part of the original claim, unless indicated otherwise.

[10] If however I am wrong, suffice it to say that except for the kitchen utensils the other items would in no circumstances be captured by the descriptive term “relocation expenses”. When making the order for the Petitioner to pay the Respondent \$1500.00 for maintenance of the children, Justice Joseph took into consideration the Respondent’s account of the sums she expended for food and transportation of the children. It is obvious that the maintenance award was intended to cover transportation, food, clothing and other related expenses of the children which were not associated with and reasonably incidental to them establishing themselves in a new place. For this reason, the Respondent’s claim for reimbursement of a part of those amounts is disallowed. Regarding the kitchen utensils, although the Respondent did not produce any receipts in proof of purchase or to guide the court in assessing what amount was in fact paid for such items, the court is minded to allow a nominal amount for those as the Respondent would have needed to purchase a set of kitchen utensils⁷ for the family’s use. In all the circumstances, having regard to the cost of those items in Saint Vincent and the Grenadines, it is reasonable to infer that the figure entered in ML1 is a fair representation of what the Respondent would have spent for those wares. The Petitioner is required to contribute ½ of EC\$558, being EC\$279.00.

Rental Accommodation - Relocation Expense

⁶ These appear as items 1- 16, 18 and 26 in the table.

⁷ Including pots and pans, dinnerware, flatware, linen etc.

[11] The Respondent claims payment by the Petitioner of EC\$31,582.00⁸ for rent for the children for the period January 1, 2011 through July 1, 2014. This she claims to be one of the relocation expenses incurred in respect of immigration to and settlement in Canada. It is worth noting that Justice Monica Joseph at paragraph [37] of her decision addressed the issue of maintenance of the children and stated:

“The Petitioner is employed and the Respondent has been unemployed from the time she arrived in Canada. The Respondent claims that from December 2010 she paid rent for herself and the children CAN\$1055.00 monthly up to July 2011 totaling some CAN\$7,371.00: she also paid for groceries CAN\$153.00 to \$200.00 per week, in addition to transportation expenses, (no figure given) for them to attend school. I hold that the Petitioner is to pay maintenance for both children at \$.... per month. Although MacGregor is eighteen I accept that he needs special attention and the order with respect of him will be made until he is twenty at which time it should be reviewed.” (underlining mine for emphasis).

I note here that although the amount awarded for maintenance is missing from this paragraph, it is captured in paragraph [51] 2 as \$1500.00. The entire paragraph reads:

“The Petitioner is to pay \$1500.00 monthly maintenance from January 2011 for the children to be reviewed when MacGregor attains twenty years of age.”

It is important to note that in arriving at the figure for maintenance of the children, the learned judge considered the amounts which the Respondent claims she paid for rent and groceries. She also took into account an undisclosed sum for transportation costs. This leads to the inescapable conclusion that the maintenance award included an element for monthly accommodation.

[12] In addition, it would be illogical for the court to hold that a period of 43 months from January 1, 2011 through July 1, 2014 is a reasonable period for settlement, and accommodation over that time as part of relocation expenses. I reject that submission.

⁸ The Respondent's submissions contain a figure of \$63,164.00 being half of the global sum of \$126,328.41. The Respondent attributes this half to the children without seeking to apportion the amount between the Respondent and the Petitioner respectively.

To require the Petitioner to pay the Respondent an amount for accommodation of the children over and above the maintenance awarded by the court would be to award two separate and concurrent amounts to the Respondent in respect of accommodation. If the Respondent's circumstances had changed since the initial award of maintenance she was entitled to apply to the court at any time for revision of the award. She has not done so. She is not permitted to achieve that result in this manner. Her claim for 43 months rent in respect of the children is dismissed.

[13] Notwithstanding, the court notes that in her Certificate of Exhibit "ML1" the Respondent lists as item number 8 an amount for "deposit, first and last month's rent". The court takes into account that the Respondent will get the benefit of the last month's rent and the deposit at the end of the tenancy, provided that no damage is done to the property. Having regard to the principles of equality and fairness referenced in the Act, it is reasonable that the Petitioner be required to assist with those additional expenses which could be burdensome for a family to absorb along with the main expenditure and other miscellaneous incidentals which arise necessarily as a part of settling into a new country. Accordingly, the Petitioner is required to pay the sum of EC\$2943.45⁹ to the Respondent to assist with the initial outlay of the security deposit and last month's rent.

Reasonable Relocation Expenses

Travel and shipping

[14] Learned Counsel Ms David for the Petitioner submitted that a number of the expenses claimed are reasonable and are not disputed by the Petitioner. In this regard, she submits that US\$229.50 each for the JetBlue tickets, US\$124.25 each for the LIAT tickets to Barbados, EC\$40.00 paid as departure tax for each child, EC\$185.00 each paid for the medical tests for each child, US\$42.00 each as the cost of Greyhound tickets for each child, US\$134.18 for shipment of personal effects from New York to Canada and CDN\$172.62 for customs duty were sums reasonably incurred for relocation expenses. Likewise in paragraph 2 of his affidavit, the Petitioner does not object to the expense of EC\$200.00 related to the purchase of 2 suitcases claimed by the Respondent in ML1. This position accords with the Respondent's claim as outlined in her affidavit and in written submissions in support. I am of the view that those expenses were reasonably incurred as necessary incidentals to relocation of the children. The Petitioner is therefore ordered to pay one half of the total cost of airline and bus tickets, departure taxes, medical tests, suitcases and one third of the amount

⁹ The equivalent of CDN\$1055.00

paid for shipping personal effects and the related customs duties.¹⁰ The global award for those items payable by the Petitioner is EC\$1682.27.¹¹ I so order.

Winter clothing

[15] Learned counsel Ms David submits on behalf of the Petitioner that “the Petitioner agrees that winter jackets, winter boots and sweaters reasonably constitute relocation expenses as the children were relocating from a tropical to a temperate climate at the beginning of winter. The Petitioner, however, disputes the sums which the Respondent says she paid for those items and in the case of the winter coats and winter shoes, if the Respondent bought the numbers of those items which she says she did, she purchased with reckless disregard to the financial means of both the Petitioner and herself.” She added “.... If even the Respondent bought only one North Face winter jacket for each child and paid US\$250.00 for it, she would have purchased recklessly.” She submitted further that each child needed only 1 jacket and a reasonable price for 1 jacket would have been in the vicinity of US\$100.00. The Petitioner submitted further that 6 sweaters as a reasonable number to acquire for the children but rejects the claim that each sweater cost US\$80.00 as stated on the table or between US\$80.00 and US\$150.00 as the Respondent claimed in viva voce evidence. The Petitioner contends that if the Respondent did spend that amount of money she did so recklessly. Instead, through his attorney he asserts that a reasonable price for each sweater would be in the vicinity of US\$25.00.

[16] While the Petitioner accepts that a pair of winter boots for each child was a reasonable relocation expense, it was submitted on his behalf that “if the Respondent did purchase high end Timberland boots for the children, given the financial resources both of herself and the Petitioner, she spent recklessly.” It was also submitted that “based on his exhibit GB13, an allowance of US\$100.00 for winter boots for each child would be a generous allowance which would afford each child high quality winter boots. In addition, Ms David submitted that “a family in the position of the Petitioner's and Respondent's would have had no business purchasing high end, designer coats, sweaters and boots for their children. The winter clothing which the Respondent claims to have purchased for the children exceed what is reasonable given the income, earning capacity, property and other financial resources of the parties to the marriage and though the children may have wanted designer clothing, they did not need them.”

¹⁰ Items numbered 2, 3, 4, 5, 6 and 27 in the table

¹¹ A conversion rate of \$US1 = EC\$2.7169 and CDN\$1 = EC\$2.79 is used throughout.

[17] The evidence of the parties is that the Respondent at the time had an income of \$4000 plus from the government of Saint Vincent and the Grenadines while the Petitioner earned over \$5000.00 per month from his employment. The Respondent in response to a question in cross-examination indicated that when she emigrated to Canada in 2011 the only income she was receiving was just over \$4000.00 from the government. She also exhibited to her affidavit as exhibit ML16, a letter from the Chief Personnel Officer dated July 8, 2011 approving no pay leave for her from July 1, 2011 to June 30, 2012. It would appear therefore that unless the Respondent was on no pay leave from January 1, 2011 to June 30, 2011, she was receiving her salary from the Ministry of Education.

[18] Justice Joseph in rendering her decision on the Petitioner's application for ancillary relief remarked at paragraph [39] of her decision: "Counsel for the Petitioner's submission was that prior to the breakdown of the marriage, the parties enjoyed a comfortable middle class lifestyle.... I accept counsel's submission." I too accept that as the correct position as between the parties which I am of the firm conviction has continued even after the breakdown of the marriage after an initial re-settlement period endured by the Respondent and the children. I am fortified in that position having read the Affidavits of both parties, heard their oral testimonies and generally observed their conduct and demeanour during the hearing and as can be inferred from their several statements.

[19] During her testimony, the Respondent gave the impression by her words and her body language that there was not much limit to what reasonably is required to satisfy the requests and desires of the children of the marriage with respect to their clothing requirements. She said as much in response to a question in cross-examination when she responded "I do not say that \$80 is too much to pay for a sweater for a teenager. She looked at it. She liked it. I am going to get it.... Nothing is too much for my children." It does not appear from what the Respondent said that any other consideration affected her in purchasing the sweaters. This is unfortunate as the parties resources are not limitless. With respect to the winter jackets she stated that she was going to purchase one for US\$175.00 but her uncle advised her that the quality was not good and she chose instead to get the more costly one because it was better quality. This in my opinion is reasonable. In light of the respective resources available to the parties at the relevant time, I am of the considered opinion that two winter jackets would have been adequate for the children's needs as this would allow for cleaning while ensuring that they had adequate protection during any period of cleaning. Similarly, it seems reasonable that the Respondent purchased 3 sweaters each for the children, a pair of winter boots and two pairs of winter shoes.

[20] The Respondent has failed to produce any receipts for the winter clothing which poses a challenge in assessing what sums were actually expended. I find it difficult to accept that the Respondent was unable to locate or obtain from the merchants she sourced the clothing receipts or duplicate receipts. The Respondent by stating she is not relying on ML1 has failed to provide any evidence regarding the number of jackets she bought. She states in paragraph 10 of her affidavit that she paid some US\$250.00 for good jackets. Exhibited to her affidavit is exhibit MB11 showing a timberland boot at a price of \$175.00 (presumably Canadian dollars). Under cross-examination she stated that the children are still using those jackets purchased in 2011. For his part, the Petitioner proposes a figure of US\$25 for a sweater and US\$100.00 for one pair of winter boot in respect of each child. The imprecision of the claims by the Respondent in respect of the purchase prices of the winter jackets, sweaters, boots and shoes leaves no option but for the court to seek to strike a rough median between the figures proposed by the Petitioner and those advanced by the Respondent. Accordingly, the amounts allowed in respect of the purchase on winter clothing are:

- | | | |
|-------|--|--|
| (i) | US\$100.00 for one pair of winter boots for the each child | - US\$200; |
| (ii) | US\$ 60.00 for two pairs of winter shoes for each child | - US\$240; |
| (iii) | US\$160.00 for one winter jacket for each child | - US\$320; |
| (iv) | US\$35.00 for 3 sweaters for each child | - US\$210; |
| | Total | - <u>US\$970.00/EC\$2635.39</u> |

The Petitioner is to contribute and reimburse the Respondent half of that sum, being EC\$1317.70.

Furniture

[21] The Respondent claims contribution by the Petitioner of EC\$7,198.21 for furniture as part of the relocation expenses. She asserts that she bought beds for each child at a cost of CDN\$2225.00; a dining room set at a price of CDN\$550.00 and a living room set at price of CDN\$869.98, an overall total of CDN\$3644.98. Learned counsel for the Petitioner submits on this aspect of the claim that "While it is reasonable to say that furniture used exclusively by the children is a relocation expense; it is not quite so straightforward to say that the cost of communal furniture such as living room and dining room furniture should be apportioned between the parties. There is also the problem that the Respondent has not exhibited even a single receipt for any item of furniture." In addition, she submits that the Petitioner "...swore her affidavit scarcely over a year after she must have bought the furniture. It is passing strange that 1 year after making those major purchases the Respondent is unable to supply a single receipt for even 1 item of furniture." I agree with that observation. While one might excuse the Respondent for not

retaining the receipts for clothing items, it would be expected that she would have kept receipts for the higher priced items like furniture. This is particularly so having regard to the fact that the respondent was put on notice by the decision of Justice Joseph that a further hearing would subsequently consider relocation expenses. I do not accept that the Respondent was unable to locate those receipts. It would appear that the Respondent deliberately withheld those receipts. It is reasonable to conclude that is she did do, it could only be to enable her to artificially inflate the cost of the furniture.

[22] It cannot be denied that the Respondent would have had to purchase furniture in the ordinary course of living. Both she and the children would use those items. I agree with the submission of learned counsel Ms David that the Respondent would benefit most from the acquisition of the furniture as she would be utilising them for a much longer period than the children, who would be expected to leave home on attaining adulthood. Be that as it may I am satisfied that the acquisition of those pieces of furniture were part of the relocation expenses for the family. She is allowed as reasonable expenditure in this regard:

(i)	CDN\$550 for the cost of one bed for each child	- EC\$3069.00
(ii)	CDN\$400 for the cost of a dining room set	- EC\$1116.00
(iii)	CDN\$650.00 for the cost of a living room set	- EC\$1813.50
	Total	- <u>EC\$5998.50</u>

The Petitioner should contribute half of the cost of the beds and $\frac{1}{4}$ the cost of the living and dining room furniture. He is accordingly required to reimburse the Respondent the sum of EC\$2266.88.

Educational Related Expenses

[23] The Respondent claims the sum of CDN\$90.00 each in respect of registration of the children at school on their first entry into the Canadian school system. She produces no receipts for this but exhibits the package she says was given to her in connection with Makaila's registration. It appears that the fee is an administrative fee referable to processing of the children. Learned counsel Ms David challenges this amount and submits that the Petitioner "disputes the Respondent's claim that she paid any money towards the "Reception and Assessment Centre" tests or in respect of registration fees for school as claimed at paragraphs 21 and 22. Exhibit "MB14" is not a receipt for CAD\$90.00 or any other sum. The Respondent did not supply any receipt for either sum of CAD\$90.00 which she claims at paragraphs 21 and 22." She submitted that the claims should be disallowed. It is understandable that the Respondent might have misplaced the receipts for these sums. The amount is not great comparatively speaking and is incurred with respect to processing of the children's entry into school. The court

takes judicial notice that even in Saint Vincent and the Grenadines such fees are payable for admission across the school system. It fits within the description of relocation expenses. The sum is accordingly allowed and the Petitioner is required to contribute ½ of the fee being CDN\$90/EC\$251.10.

Immigration Fees

[24] The Respondent claims CDN\$700.00 from the Petitioner for immigration fees. She avers that the Petitioner contributed CDN\$980.00 towards the bill of CDN\$2380.00 paid for immigration fees, leaving a balance of CDN\$1400.00 which she paid. In her written submissions Ms David posited that the Petitioner "...admits that he is responsible for contributing towards immigration fees for the children as this is a relocation expense. The Respondent's exhibit "MB12" shows that CAD\$150.00 was payable in respect of each child. At paragraph 19 of her affidavit the Respondent admits that the Petitioner paid CAD\$980.00 towards those fees. Since half of immigration fees paid for the children is CAD\$150.00; the Petitioner has overpaid \$830.00 towards this item." Indeed in response to questions from the court, the Respondent answered that "... the fee of \$550.00 was paid in respect of me as principal applicant" and the second mount of \$550.00 she paid in respect of the Petitioner. The other charges on the exhibit are a duplicated fee of \$150.00¹² for family members under the age of 22 and another double fee of \$490.00 for permanent residence.¹³

[25] The Petitioner testified that he never migrated to Canada as the Respondent withheld his landing forms and has never released them to him. Additionally, he claims that he paid \$980.00 towards those fees and is entitled to be reimbursed. The Respondent admits that the Petitioner paid that portion of the immigration fees. It is difficult to understand why the Respondent would seek to have the Petitioner reimburse her for immigration fees referable to his migration into Canada when by her deliberate actions the Respondent prevented the Petitioner from emigrating to Canada. In the premises, the Petitioner is entitled to be reimbursed for any sums he paid in excess of contributions for the half of the children's fees. The Petitioner would have been responsible for CDN\$150.00 being half of the fees applicable to the children. He paid CDN\$980.00, an excess of CDN\$830.00/EC\$2315.70. This sum will be offset against the total amount payable by the Petitioner to the Respondent.

ORDER

¹² Paid in respect of the children

¹³ paid presumably for the two adults

[26] It is ordered as follows:

1. The Petitioner shall pay the Respondent the sum of EC\$279.00 being $\frac{1}{2}$ of EC\$558.00, paid by the Respondent to acquire kitchen utensils.
2. The Petitioner shall pay the sum of EC\$2943.45 to the Respondent being an amount equivalent to one month's rent, to assist with the initial outlay of the security deposit and last month's rent.
3. The Petitioner shall to the Respondent one half of the total cost of airline and bus tickets, departure taxes, medical tests, suitcases and one third of the amount paid for shipping personal effects from NY to Toronto and the related customs duties, being EC\$1682.27.
4. The Petitioner shall pay to the Respondent $\frac{1}{2}$ of the cost of one pair of winter boots for each child – EC\$270; $\frac{1}{2}$ of the cost of two pairs of winter shoes for each child – EC\$326.03; $\frac{1}{2}$ of the cost of one winter jacket for each child - EC\$434.70 and $\frac{1}{2}$ of the cost of 3 sweaters for each child – EC\$285.27, a total of EC\$1317.70.
5. The Petitioner shall pay to the Respondent $\frac{1}{2}$ of the cost of beds for the children – EC\$1534.50; and $\frac{1}{4}$ the cost of living room and dining room sets i.e. EC\$279.00 plus EC\$453.38, a total of EC\$2266.88.
6. The Petitioner shall pay to the Respondent the sum of EC\$251.10 being $\frac{1}{2}$ of the school registration fee for the children.
7. The Respondent is entitled to recover the total sum of EC\$8740.40.
8. The Respondent shall pay to the Petitioner the sum of EC\$2315.70 being an excess incurred by him in respect of immigration fees for the children. This sum will be offset against the total amount payable by the Petitioner to the Respondent. Accordingly, the total amount due and owing to the Respondent after the immigration fees are offset is EC\$6424.70.
9. Liberty to apply.
10. Each party to bear their own costs.

.....

Esco L. Henry
HIGH COURT JUDGE (Ag.)