

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHMT 2007/0111

BETWEEN:

KENNEDY JAWAHIR

Petitioner

AND

MARGARET JAWAHIR

Respondent

Appearances:

Ms. Kim George for the Petitioner

Mrs. Celia Edwards, Q.C & Ms. Karina Johnson for the Respondent

2013: February 21

JUDGMENT

[1] **PRICE FINDLAY, J.:** The applicant by way of Notice of Application dated 6th June, 2011 applied for the following relief:

1. A property adjustment order in respect of the matrimonial property situated at Grand Anse.
2. An order that this Honourable Court appoint a suitably qualified valuator for the purpose of conducting a valuation of the matrimonial home.
3. That the cost of this application be the Applicant's
4. Such further or other relief as to this Honourable Court seems fit.

5. Liberty to apply.

- [2] The subject matter of these proceedings, the matrimonial home, consists of a house and land situated at Grand Anse also called Frequente, St. George's measuring 11,323 sq. ft. and purchased from the Government of Grenada by the respondent/wife on the 20th January, 1987. Before the construction of the matrimonial home, the parties lived at different premises at Woburn in St. George's and then at Grand Anse.
- [3] At the time, he says, they both made contributions towards the rental of those properties. When they first met, he said he was a member of the People's Revolutionary Government and she was a Stenographer with Government of Grenada. He said that the respondent's salary was \$413.00 a month and that his salary was \$400.00 a month. He further deposed that after the demise of the revolution in 1983, he went to Canada to work as a fruit picker. He did this for about 9 months and then he got a job in Miami working on a cruise ship. He said he had to leave Grenada to look for work because there were no job opportunities open to him and he needed to support his family. By this time he says they had children, who were aged approximately two and three at the time. He says his wife continued to work with the Government of Grenada. He claimed that when he was working in Miami and on the cruise ship that he sent money back to Grenada on a monthly basis by way of money order.
- [4] He said he never neglected to support his family. He further stated that he worked for two years on the cruise ship and then returned to Grenada and then began to work in the construction industry with Handel Budhlall. He said he worked with Budhlall from 1991 to 1993 and then he went to work with DJ's Bobcat as a Project Co-ordinator from 1993 to 1995. He said he was laid off in 1995 as the project came to a close and thereafter he remained at home for one year. He said he purchased a bus which he drove along the Grand Anse bus route and at one time he was the president of the Grand Anse Bus Association.

- [5] He said he worked the bus from 1996 to 1999 and then he became self-employed as a local historian, offering classes as a freelance historian at the St. George's University for freshman students. He said he did the orientations for students and he did the same for cruise ship agents such as George F. Huggins and Co. He said on average he earned \$3,500.00 a month at this time. And that he used the majority of this money on the family. In 2003 he took up a permanent job with Government as a tour guide bus driver, and in 2005 he started his own tour business Kennedy Tours and it is what he continues doing up to this day.
- [6] He said the business has significantly decreased within recent time due to the decline in the tourism industry. I note here that he has produced no documentation with respect to his previous employment, either by way of letter from his employers or by way of payment slips to prove his assertions. The two children of the family are now adults, age 29 and 28 respectively. The first matrimonial home according to the petitioner/applicant was built in 1987 with the proceeds of a \$45,000.00 loan which was obtained from the Grenada Development Bank. The loan was repaid by the respondent wife out of her salary. The respondent and petitioner agreed that her salary would be used for the repayment of the loan because she had steady employment. He said he continued to contribute towards the maintenance and upkeep of the household by sending monies back from his job on the cruise ship.
- [7] He said that his salary was about US\$600.00 a month and he recall sending at least \$EC500.00 per month back home. The family continued to live in that home until 2004 when the home was substantially damaged by Hurricane Ivan and had to be totally rebuilt. It was rebuilt from the proceeds of another Grenada Development Bank loan which was approximately \$256,000.00. He said that loan was repaid in instalments by the respondent and this remains the case through today.
- [8] He said the majority of her salary went towards the loan payment and insurance premiums for the house, and he was exclusively responsible for the food that was

consumed by the household. He said he gave \$800.00 per month. He also deposed that he paid the utility bills except for the rare occasion when the respondent contributed and paid. He said he purchased the vast majority of the household furnishings and he also paid for the installation of rot iron in the house. He said he did not keep the majority of his receipts so he was unable to provide the court with receipts except for a few which he was able to obtain from Courts Grenada Ltd. where he said he had a credit account. And he has exhibited to his application, documentation from Courts evincing the payment for a fridge, a 20 piece dinnerware set, a 41 piece cutlery set, a Samsung digital HD TV and a total gym.

[9] He indicated that he had tried to get a valuation done on the matrimonial home but there was never an agreement between the parties as to an appropriate time. The last paragraph of his affidavit he said that he did not know what the respondent's present salary was but his present monthly salary was approximately \$3,300.00 per month. He said he was presently living in rented accommodation as he does not have house of his own. At the time of the making of the affidavit he said he was 51 years old and desirous obtaining his share of the home so that he could move on with his life.

[10] The respondent wife replied by way of affidavit dated July 22nd, 2011 and she categorically stated that the relationship had lasted from 1981 and from the marriage in 1983 that the petitioner husband has never taken a single responsibility in maintaining or providing for the family. She agreed that they got married on the 17th September, 1983, but she agree with little else what the petitioner husband said in his affidavit. She agreed that he was a soldier in the People's Revolutionary Army and she said once the Revolution came to an end in 1983, that the petitioner was out of a job and made no effort to get a job for two years.

[11] She said that during the time that the family lived in rented premises and she paid the rent and every bill in the house. The petitioner then went to Canada to pick

fruits for two month stints, not 9 months as he alleged. He did two stints amounting to 6 months in total. She deposed that while he was in Canada he sent not one cent back home. She said when he returned for the first time he brought some items for the children; he came home without sending her any money and did not work again and then returned to Canada for the second stint. During that second stint he sent back no money, not one cent and the second time he also brought back items for the children, a television, radio for the house, a watch, a chain and a bottle of perfume for her.

[12] Subsequent to his return, they had a quarrel, and he smashed the radio and the television to pieces as well as a sewing machine which she owned. She deposed in the meantime she continued paying all the bills in the house. In 1997, she deposed that they moved to Grand Anse and she bought the lands from the government and she exhibited the deed in her name thereto. She said she took out a loan from the Grenada Public Service Credit Union to pay for the same quickly because she was applying for a loan of \$45,000.00 from the Grenada Development Bank to build the house on the land at Grand Anse.

[13] She said all the negotiations were done by her, all the fees and charges were paid by her and the mortgage was and still is being paid by her. The petitioner contributed not one cent as she described him as being "comfortably out of work". She said when they moved into the house at Grand Anse they had nothing. She paid for furnishings with money borrowed from the Credit Union. She deposed that while they were living at Grand Anse, he got a 3-month construction job in the Industrial Park. Again she deposed that he spent no monies on the family. And she didn't know what he spent his money on. When that job was completed, she deposed he was out of work for two more years and then he became employed on the cruise ship. During the time that he worked on the cruise ship, he sent not one cent home. She deposed that it was her money that paid the mortgage and all the bills in the home.

- [14] She said one Friday while he was on the ship he sent EC\$500.00 down to Grenada for her. He came to Grenada the following Monday. She said the second time he came back from the ship he sued the cruise line and got EC\$15,000.00 as a settlement. She said again she did not know what he did with the money, but it was not spent on the home and again he was comfortably unemployed for a further two years after that.
- [15] During that time he would have gotten another job on another cruise ship, she said, but once they learnt that he had sued the original cruise ship he worked on the employment offer was withdrawn. She agrees that he did work with Handell Budhlall for 11 months, and he did work at DJ's Bobcat for 2 years then he was laid off and unemployed yet again. She said the situation was beginning to wear her out because the applicant was not looking for a job and she had to maintain the home as well as him.
- [16] She said in 1994, she approached the Public Service Credit Union for a loan of \$25,000.00 to assist him in the purchasing of a bus and she has annexed, the loan application with two of her affidavits. She said with that money he was able to approach the Grenada Bank of Commerce, now RBTT, for the loan and he was able to purchase the bus. She said true to form, she did not know what he did with the money earned from the bus, but he did not maintain the family with it nor did he pay the loan at RBTT. She said the bus was re-possessed, she said she still had to pay the loan at the GDB as well as the Credit Union loan which she had obtained to assist him in obtaining the bus.
- [17] She said at the time, their daughter was 15 years old and she had won a regional show, and one of the prizes was \$5,000.00. She deponed that the applicant asked their daughter to lend him the money so he could get back the bus, she did so encouraged by the respondent. She said to this day he has failed to repay their daughter. She said shortly after he got back the bus from the bank he sold the bus and made a profit of \$15,000.00 which he put in the bank. She said she does not know what he did with it but the family has not seen one cent of it. When

asked for an explanation, he said he lost it making counterfeit money. After that he once again was out of work for a number of years. She said he would make intermittent earnings as a tour guide for which he was paid \$135.00 per tour, but she said that that money did not come to the home.

[18] She indicated that occasionally he would buy some groceries and for two months he gave her \$800.00 towards household expenses. She says when the children had to go to study, she remortgaged the home each time to get their loans and she has exhibited two documents indicating remortgaging or refinancing of the mortgage of the house. Once Hurricane Ivan came she says she was unable to pay the insurance for the house because of all the additional responsibilities she had and the house was destroyed and everything was lost. After Hurricane Ivan she applied to the Grenada Development Bank for a mortgage of \$250,000.00 to rebuild the said home. She indicated that her salary was not enough for them to give her the mortgage on her own so that their daughter and the petitioner/applicant were required to join in the mortgage with her and she has exhibited the mortgage document signed by all three of them.

[19] The loan was paid entirely by her through salary deductions and again, she exhibited the salary deduction slip which showed the monies coming out of her salary every month. She said once again she had to pay the mortgage, buy the food and pay the utility bills because the respondent paid nothing. And she has exhibited samples of the utility bills paid by her to FLOW, to GRENLEC the Grenada Electricity Company and others. She said she recalled on one occasion when she asked the petitioner/applicant to pay the utility bills for her she subsequently found out that the bills were all in arrears, she did not know what he did with the money but the bills were not paid and she had to find more money to bring the accounts up to date.

[20] She has exhibited her salary slip and the mortgage documents showing what her salary was that would go to the bank and the deductions there from. She said that the children and herself had to make ends meet and she had multiple mortgages

on the property in order for them to do so. She has indicated that after the house was rebuilt the petitioner applicant and their daughter jointly bought some items for the house. She admitted that the television is at the home and he can take it if their daughter permits. She said she had her own refrigerator he threw it out and he put in another. She also indicated that he could have this item. She said the cutlery set was free as a consequence of buying of other things. The total gym was brought in 2003-2004 and the petitioner/applicant could have it if he wished.

[21] She said throughout the marriage the petitioner/applicant had contracted different adulterous relationships. In December 2005 she assisted him in making brochures, cards and obtaining the loan for a bus and they started the business called Kennedy Tours which provide tours to tourists. She said she was the one who did all the preliminary work on the brochure and the cards. And those brochures and cards were produced as an exhibit. She said it was that very December, he picked up with one Jenny and she said that was it. The applicant boasted to the children that he had borrowed money to purchase a cell phone for Jenny and when she confronted him with his conduct, his response was in appropriate.

[22] The affair, according to her continued through 2006 whilst she continued to build the home. The applicant she said contributed nothing. She claims that he borrowed money at Republic Bank for the said Jenny and he was now being sued with respect to another loan that he took from Republic Bank to live the high life, according to her with his Cuban lady. She said while all of this was going on he did not move out. She said that at one time when she had to get cement for the construction for the home that he made her pay him for the use of the bus to go and collect the two bags of cement saying 'that the bus does not run on water.'

[23] She says that on Mother's Day 2006, she fell and she was unconscious for a while and the petitioner did absolutely nothing to help her, it was their children and an office worker who came to her assistance. He said when he left to go and live with his paramour that he was making money like rain and that when she was

finished paying her bills, she would have nothing in her hand. She said that his response to him was “that she hope when his dry season came that he would be able to stand up to it”. She was glad that he was leaving as she was tired.

[24] She said that the lady left Grenada in 2009 and Courts re-possessed all the furniture and equipment that he had credited for them to live together as he was not making the payments. She said she was tired of the applicant taking advantage of her, he had not contributed anything to her, the family finances over the year, his money was spent on himself and his paramours. That she has various loans that she has had to pay and is still paying. And that she has not been out of debt for one day, since the first loan had been taken. She was asking the Court to not give him anything from the house, she said she had given him the business Kennedy’s Tours absolutely, she wants no part of it, and she says she is prepared to forego any share she is entitled to in that business, if the applicant were to leave her alone.

[25] The Court is given wide discretionary powers by the Matrimonial Causes Act, 1973, in dealing with the task of dividing property between the parties following a divorce. The Court is directed to have all regard to all the circumstances of each case that comes before it. The House of Lords in **Miller v Miller**¹ pointed out that the Court must exercise their powers so as to achieve an outcome that is fair to each member, each party to the marriage. The Court must look at all the requirements of fairness in any particular case. The Court noted in that case, that in every relationship of marriage, gives rise to a relationship of interdependence between the parties. That the parties share the roles of homemaker, child carer, money earner and that marriage in this modern day and age is considered a partnership. And that husband and wife are for all practical purposes equal partners in the marriage.

[26] When the relationship ends, the Court approved the equal sharing principle, that is, each party is entitled to an equal share of the assets of the partnership, unless

¹ 2006 UK House of Lords 24

there is good reason to the contrary, according to the authorities, fairness requires no less. On application for property settlement pursuant to the Matrimonial Causes Rules, the Court must consider all of the circumstances of the case including:

- 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.
- 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. The contributions made by each of the parties to the welfare of the family including any contribution made by looking after their home or caring for the family."

[27] One of the main principles that the Court has to look at in the search for fairness between the parties is the contribution that each party has made to the family. Lord Nicholls in **Lambert v Lambert**,² stated:

"A point of similar nature concerns the approach to be adopted when evaluation the contributions of each party made to the welfare of the family. Apparently in this post ... era there is a growing tendency for parties and their advisors to enter into the minute detail of the parties married life with a view to lauding their own contribution and denigrating that of the other parties."

² EWCA Civ 1685 [2003] Fam 103,117 para 27

In the words of Thorpe, LJ the excesses formerly seen in litigations concerning the Claimant's reasonable requirements had been transported into disputed and often futile evaluations of the contributions of both parties.

- [28] Counsel for the respondent urges upon the Court that this is an applicable case where it should depart from the equality principle. The submission is that it was by the sheer hard work of the respondent that the family acquired the land and the house, which became the matrimonial home. The respondent alleges that the applicant's contribution to the welfare and well being of the family was minimal. He being unemployed for vast periods of time for the duration of the marriage. The respondent alleges that the sole contribution of the petitioner/applicant to the matrimonial assets was that he signed the mortgage documents when the bank required additional signatures because she was unable to do so by herself. She, her daughter and the applicant signed the mortgage documents. Apart from this contribution, she alleges that the applicant only made very sporadic payments to the acquisition of the home and the maintenance of the home.
- [29] She asserts that even when the applicant was employed in Florida as a picker and on the cruise ship, his contributions to the maintenance of the home were minimal. She says "Not one cent" did he send to her except EC\$500.00 and at another time some \$800.00 and that even though he got a \$15,000.00 settlement from the cruise line that money was not used towards the upkeep of the home or the maintenance of the family.
- [30] She submits that under those circumstances, the respondent's contribution can be a factor pointing away from equality. It is noted there was a third affidavit filed in these proceedings by the son of the parties, Krishnan Jawahir. He said that he deposed that most of the time as he was growing up, his father was out of a job and never contributed to the family at all. He said the only thing his father contributed to the household was hardship and embarrassment. He said his father was out of a job for most of the time, and when ever he did have a job he would never be at home, and when he did come home, he was abusive to all of them.

- [31] He said that he could attest that his father never contributed to the financial support with respect to any utilities or foodstuff. It was his mother's salary alone, according to him that allowed them to go to sleep at night with their bellies full. He said his father left with the business which was more than he ever contributed to the household and that without his mother he would never have had a business today. He said that he could say with confidence that it was his mother who paid an integral part in his father's success as he really never knew how to manage money at all. He said his father always placed the family last, and was not surprised when he had heard that he lost a lump sum of cash, or when he found out that he had been making phone calls to women over seas and buying expensive gifts for them. He said it was an absolutely lie that his father contributed financially to the household living expenses. He said however that he must be truthful and inform the court that during the time that he worked at the Grenada Board of Tourism, his father did make a small contribution towards food stuffs, and twice he boasted to him he had given his mother \$800.00 for groceries but that was it. He said he was soon back to his old ways not caring for the home.
- [32] He said his father also assisted in purchasing some items of furniture for the living and dining room. He said that his father had said that he would not fight for the house once he got the business but once more his father had proved himself to be untrustworthy and that his faith in his father had been misplaced.
- [33] To say that this is a damning affidavit on the character of the applicant/petitioner is an understatement. It is a very sad day when a son who ought to look up to his father as an example of what he should grow to be as a man can say the things that were said in the affidavit of Krishnan Jawahir about the respondent.
- [34] The affidavit lends credence to what the respondent has said about his lack of support and his lack of contribution to the acquisition of the matrimonial home and the maintenance thereof. I am also required to consider the duration of the marriage, in coming to any conclusion as to what if any the share of the matrimonial property ought to be to the petitioner applicant. As indicated earlier

the marriage lasted some seventeen years and the marriage was dissolved in 2009, after some twenty-six years of marriage.

[35] Bearing in mind the evidence before and having considered all of the circumstances of the case, the Court is of the view that the contribution made by the respondent to the acquisition and the rebuilding of the matrimonial home was whether the acquisition of the land and the contribution to the household expenses by the respondent, it gives a good reason for departing from the equality principle. I think it would be unfair to award an equal share to the applicant based on the evidence that has been presented to the Court. The Court however recognizes that the petitioner applicant did make contribution to the mortgage loan which was acquired to repair the house after Hurricane Ivan. As he had to sign along with the daughter of the parties and the respondent in order for the respondent to get the loan. While the respondent is the person paying that loan back it was a contribution because the respondent would not have gotten, obtained the loan from the bank had it not been for the two signatures one of them being the petitioner/applicant.

[36] The Court must recognize the contribution of the petitioner/applicant even if the contribution may not have been as much as the respondent would have liked. The fact that his signature was necessary for the respondent to obtain the loan was a contribution to the acquisition of the home and as a result the Court is of the view that he is entitled to a share of the property.

[37] Since a valuation was not done of the property due to logistical difficulties I will first order:

1. That the property house in the former matrimonial home be valued within one month of the date of the order;
2. That the petitioner be paid 7.5% of the equity in the former matrimonial home;
3. The tour guide business referred to by both parties is to be valued by a certified valuer.

4. The Applicant is to provide the valuer with all relevant documents in order for the valuation to be carried out.
5. At the conclusion of the valuation 15% of the assessed value of the business is to be paid to the respondent as her share in the business.
6. The parties may set off the values of the business and the matrimonial home and pay the difference to any of the relevant party.
7. Cost of \$2,000.00 to the respondent.

Margaret A. Price Findlay
High Court Judge