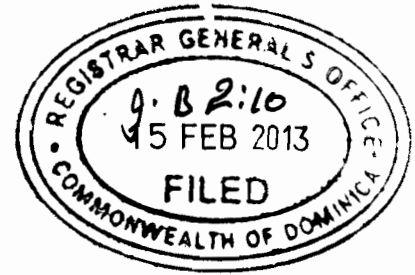


IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOMHMT2012/007
[CIVIL]



BETWEEN:

MERILIA HENDERSON
and

Petitioner

JENNER HENDERSON

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Dawn Yearwood-Stewart for Petitioner
Mr. David Bruney for Respondent

[2012: November 8th]
[2013: February 15th]

JUDGMENT

- [1] **COTTLE J:** This is an application for ancillary relief by the former wife. The parties were married in 1992. A decree nisi was pronounced in June 2012. It has since been made absolute. The union produced 6 children, three of whom are now adult. The wife seeks maintenance for herself and the minor children as well as a property adjustment order.
- [2] The parties are now aged 41 and in good health apparently. The wife is unemployed. The husband is a bus driver. At some point in the past he also engaged in animal husbandry but he has largely discontinued this for reasons which will appear below. The only asset of real property is the matrimonial home. It is a 4 storey building- still incomplete, which sits on about a quarter of an acre of land.
- [3] On the land which adjoins the matrimonial home, the husband used to rear rabbits. He also kept some goats and sheep. By order of the Magistrate's Court the husband was ejected from the matrimonial home. He says that on the night he was forced out, the cages of the rabbits were destroyed and the animals escaped. He no longer earns an income from this source.

- [4] The applicant wife says that the husband gives her \$50.00 per day for the maintenance of herself and the children. She says he earns \$250.00-\$300.00 per day from plying his bus for hire. She does not say if this is net or gross income. The evidence of the husband is that he earns about \$100.00 per day net. His bus is a 1997 model vehicle and not in very good condition. He has no earnings from farming and is not always able to pay the wife \$50.00 per day without the assistance of his mother or adult children. He now resides with his mother. He has no savings. He is repaying a small loan at the rate of \$300.00 per month.
- [5] Considering all of the circumstances of this case as Section 25 of the Matrimonial Causes Act requires me to do, I find firstly that I cannot accede to the wife's prayer that she be awarded a lump sum payment. The husband simply has no assets out of which such an order can be satisfied. As far as the application for the property adjustment order goes I am content to order that the matrimonial home be held equally by the parties to this lengthy marriage.
- [6] What is equally clear is that it provides the only accommodation for the wife and children. No value was adduced for the home but it is unlikely that one half of the proceeds of sale will be enough to secure a home for the wife and children or the husband at this time. Both counsel in their helpful written submissions suggested that an order for the sale of the matrimonial home be postponed until the youngest child attains the age of maturity. This seems eminently sensible to me.
- [7] The order of the court is for the wife to remain resident in the matrimonial home with the minor children until the youngest reaches the age of 18 years. Thereafter both parties are at liberty to procure a sale of the home and the proceeds of such sale are to be equally divided between the husband and wife.
- [8] No evidence was led which persuaded me that the husband is able to pay maintenance at any rate above that which he now does voluntarily. I therefore order that he continue to pay maintenance at the rate of \$50.00 per day for the wife and children. I thank counsel for their assistance in this matter and make no order as to costs.



Brian Cottle
High Court Judge