

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

BVIHMT2007/0087

BETWEEN:

LESETTE GREENE

Petitioner

AND

KENNETH GREENE

Respondent

Appearances:

Tamara Cameron of Farara Kerrins for the	Petitioner
Mr. Kenneth Greene Unrepresented	Respondent

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2011: 9 February, 2 March
10 March
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Judgment

Maintenance of child - Division of property – Variation of Order

[1] **Joseph-Olivetti J:** I have heard together three applications flowing from the order of the court of 23 March 2010 made on an ancillary relief application by Mrs. Greene

[2] **The Facts**

[3] The parties were married on 18 March 2001. A decree nisi was granted on 31 July 2008. The parties have one child together. The child lives with the mother who is the primary caretaker. Mr. Greene is employed as a heavy equipment operator and Mrs. Greene who has no special skills is employed as a housekeeper.

[4] Mr. Greene has not complied with the terms of the order, causing Mrs. Greene to make an application for his committal for breach of the order. The application was adjourned to be heard with Mr. Greene's application for variation of the court order of 23 March 2010 and a stay of the sale of the property in the order.

[5] **The Court Order**

[6] On 23rd March 2010 the court ordered Mr. Greene to;

- (a) Pay the sum of US\$325 per month as maintenance for the child of the marriage, Kennisia Greene until she attains the age of 18 or completes tertiary education, whichever is later.
- (b) Pay half of Mrs. Greene's rent in the sum of US\$200 per month and half of all future increases commencing on 31 March 2010 and continuing so long as the child resides with Mrs. Greene and is under the age of 18 or engaged in tertiary education.
- (c) Pay half of the medical expenses outstanding in the sum of \$1,625.12 directly to the hospital authorities within 6 months hereof and shall lodge evidence of such payment with the court office. Mrs. Greene shall ensure that she pays the other half within 6 months also and likewise lodge proof of payment with the court office.
- (d) The land in St. Vincent held in joint names of the parties and each party is beneficially entitled to a half share of interest in it. The land shall be sold within 3 months at a price to be agreed by the parties or by a valuer approved by the court if there is no agreement. Each party is at liberty to buy the others shares.
- (e) Mr. Greene shall pay the sum of US\$1,250.00 being half of Mrs. Greene's legal costs summarily by way of six monthly instalments of US\$208.33 commencing at the end of March 2010 and continuing at the end of each succeeding month until the amount is paid off in full. Payments must be made to Mrs. Greene's lawyers.

[7] **Maintenance Arrears/Variation**

[8] Mrs. Greene's financial situation is essentially the same as it was in the previous proceedings in that she still struggles to meet her monthly obligations and this is further compounded by Mr. Greene's failure, neglect or refusal to comply with the terms of the court order with regard to maintenance payments. She told the court that she is actively seeking higher earning employment but has been unsuccessful to date.

[9] Mr. Greene sought a variation of the court order to reduce his maintenance payments with respect to the child from US\$325 to US\$200; to vacate his obligation to pay half of Mrs. Greene's rent of US\$200 citing financial hardship and that he be solely responsible for the child's medical, educational and transportation expenses.

[10] I find that Mr. Greene's financial situation has improved since judgment was delivered, this was not disputed. His earning potential by his own admission is expected to increase as he is currently studying for higher qualifications in his field that will allow him to earn a larger salary. The court was not given enough information to support the variation and in any event I find that the proposed sums are woefully inadequate in that no material adverse changes in his financial position was established to meet the needs of their daughter. Mr. Greene's application for variation is dismissed and the order of 23 March 2010 remains.

[11] I have considered the evidence in relation to the alleged arrears and I find that Mr. Greene still has the following amounts outstanding as ordered:

- (a) US\$1,625.12 for medical expenses to Peebles Hospital
- (b) US\$800 balance on legal fees as ordered
- (c) US\$90.00 one half educational fees
- (d) US\$287.50 for February 2011 maintenance

[12] This outstanding amount excluding the hospital fees total \$1,177.50 He must pay this by instalments forth nightly of \$196.25 commencing 1st April 2011. For the avoidance of doubt he must continue to meet his monthly obligations pursuant to the 23 March 2010 order. Further he must make every effort to liquidate the hospital bill.

[13] **Sale of the Matrimonial Property**

Mrs. Greene's efforts to sell the property have been frustrated by Mr. Greene on every occasion. Mr. Greene apparently still contends that Mrs. Greene has no entitlement to the property in St. Vincent. He filed applications to stay the sale of the property, to enable his purchase of Mrs. Greene's half share of the property by way of instalments.

[14] Mr. Greene wanted to buy out Mrs. Greene's interest and to pay by instalments. He indicated to the court that he will be assisted by his employer Mr. Dwite Flax of Ebony and Ivory Construction. He was allowed to submit a letter dated 8 March 2011 by his employer which supports this. In effect his employer has agreed to give him a loan of US\$15,819.47, by 3 monthly instalments to be paid to Mrs. Greene.

[15] Ms. Cameron, counsel for Mrs. Greene, objected to payments by instalments, submitting that it was an unreasonable request as Mr. Greene had a history of non-payment in the matter and has refused to acknowledge the court's order giving Mrs. Greene an equal share in the property.

[16] On consideration of all the circumstances and bearing in mind the particular worth people place on owning land in his or her own country Mr. Greene will be given one final chance to purchase Mrs. Greene's half share of the property, which was an option that had been given to each party. He is therefore ordered to pay a total of US\$15,819.47 (this represents the value of the half share) by three equal instalments commencing the 30 April 2011 to be paid to the High Court at the High Court Registry.

[17] In default of any one payment the land is to be sold and any payments made refunded to Mr. Greene. Mr. Greene has agreed the valuation obtained by Mrs. Greene and that is to be used as the basis for default sale. Upon completion of the payments Mr. Greene is to draw up the transfer documents at his own expense for Mrs. Greene's signature and upon execution of same by Mrs. Greene, the funds are to be released to her upon application to the court.

[18] **Costs**

[19] Mr. Greene is to bear the costs of this application summarily assessed at \$1,000.

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Rita Joseph-Olivetti
Resident Judge
Territory of the Virgin Islands