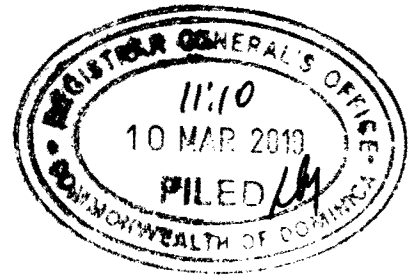


**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



**COMMONWEALTH OF DOMINICA
DOMHCV2006/0052
BETWEEN:**

**PAULETTA BIRMINGHAM
and
SAMUEL BIRMINGHAM**

Petitioner

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for the Petitioner
Mrs. Dawn Yearwood - Stewart for Respondent

JUDGMENT

[2009: 17th December; 13th January 2010]
[1st February, 10th March 2010]

- [1] **COTTLE J:** The parties were married in 1998. They were divorced in 2007. The wife now applies for ancillary relief. She seeks a property adjustment order and maintenance for herself. There are no children with whom the court must concern itself.
- [2] The petitioner wife is now 47 years old. The respondent is one year older. The petitioner is employed and earns a monthly salary of \$350.00. The 19 year old son of the couple lives with her. He too is employed and contributes to the domestic expenses. The petitioner has also now embarked on a new relationship but the gentleman in question is married.
- [3] The respondent is a fire officer. He earns \$2,813.13 per month, before deductions, from this source. He also owns a 16 seater bus. He is the sole driver. He earns \$1,200.00 monthly from plying for hire
- [4] The petitioner swears that her monthly expenses amount to \$ 1,008.50. The respondent says his expenses are \$2,509.50 with the additional \$200.00 per month approximately spent on insurance for his bus, making a total of \$2,700.00 per month in average

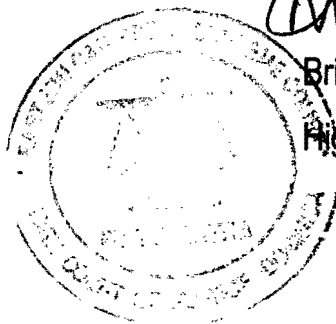
Real Property

- [5] The matrimonial home is situate at Pointe Michel. In 2006 it was valued at \$144, 00.00. The outstanding mortgage balance as at June 2009 was \$91, 216.91. The property is registered in the sole name of the respondent. The petitioner did not contribute financially towards the acquisition of the property. Major renovations were done after the property was acquired. Again, the petitioner did not make direct financial contributions to these. She says her contribution was limited to carrying the stones and the material used to fill the foundation of the building. She did not contribute to the utility expenses of the home. She testifies that she paid for groceries. This is out of her earnings from a small huckstering trade she engaged in for about three years. She says the business made money sometimes. I find that her financial contribution to the expenses of the family was minimal.
- [6] There was also another parcel of land purchased by the respondent in 1990 and sold in 2006. The respondent says that all the proceeds of the sale went to liquidating existing loans and debts. Nothing was left. The petitioner gave no evidence to contradict this. I therefore do not consider the property as part of the available family assets.

- [7] The petitioner now seeks
- (i) A property adjustment order
 - (ii) Maintenance for herself by way of a lump sum or periodic payment
 - (iii) Costs
- [8] In order to grant the relief asked for by the petitioner the court is called upon to have regard to all the circumstances of the case including the factors enumerated in Section 25 of the Matrimonial Causes Act 1973. The aim is to place the parties in the financial position they would have been had the marriage not broken down and each party had properly discharged his or her financial obligations and responsibilities towards the other.
- [9] Both parties were cross examined. In terms of contributions by the petitioner I have already explained that these were minimal. The petitioner swore that she earned 1,500.00 per month which she used towards the running of the home. This was not borne out by her evidence on cross examination. She says that the business was capitalized with a loan of \$3,500.00 from the A.I.D Bank. She only made money 'sometimes' from the business and it only lasted 3 years. I do not believe the venture could have made the returns that she swore to.
- [10] Similarly, the respondent fared badly under cross-examination. The monthly expenses he swore to seemed to be inflated. He says he pays \$600.00 per month in credit card bills but it was only in cross-examination that it emerged that these loans will be paid off in full by February 2010. So too will his travel loan of \$50.00. This immediately leaves him with \$650.00 available per month. I am also of the view that the respondent can earn far more from the proper use of his bus perhaps by having a full time driver rather than having it idle while he is at work as a fire officer.
- [11] There is no expense for child maintenance at \$300.00 per month as claimed in the respondent's affidavit. As explained above the only child of the family is now adult and employed.
- [12] Counsel for the petitioner submits that the petitioner should receive a lump sum payment to allow a clean break between the parties. She calculates the equity in the matrimonial home to be \$ 78,467.09. Counsel for the respondent does not differ markedly from this assessment and I accept it as the value of the matrimonial home after the outstanding mortgage debt is deducted

Counsel for the petitioner urges the court to award the petitioner wife one half share of the value of the house. Counsel for the respondent thinks it should be a one third share. When I consider the circumstances of this case I conclude that fairness is on the side of the award of a one third share to the petitioner. Thus, instead of a property adjustment order, the respondent husband will remain in possession of the matrimonial home and responsible for payment of the mortgage. He will pay to the wife the sum of \$26, 155.00 as representing her interest in the matrimonial home.

- [13] I have also concluded that it is fair for the petitioner wife to be paid a sum as maintenance. I would also like to award a lump sum in this regard but I must have regard for the respondent husband's available means. I also note that this marriage subsisted for almost 20 years. Had the pool of available assets permitted I would have been minded to award the petitioner wife further sum of \$25,000 as a lump sum payment in lieu of maintenance but I do not think that the husband can easily raise this sum in addition to the already ordered lump sum for the matrimonial home share of the wife. Thus, despite my desire for a clean break I feel constrained to award periodic payments instead.
- [14] I order the respondent to pay the petitioner the sum of \$500.00 per month as maintenance from the date of this judgment for 60 consecutive months unless the petitioner wife earlier remarries. I have decided to cap the periodical payments at 60 months to reflect my view of the future prospects of both parties. The respondent will pay the costs of this application in the sum of \$1,000.00



Brian Cottle

Brian Cottle

High Court Judge