



THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 114 OF 2004

BETWEEN:

WORSLEY CAMBRIDGE

Petitioner

V

ESTHER H. CAMBRIDGE nee WALKER

Respondent

Appearances:

Ms. M. Eustace for the Petitioner

Ms. Paula David for the Respondent

2009: June 30,
July 1, 20
August 25

JUDGMENT

APPLICATION:

[1] **JOSEPH, Monica J** : A Mediation Order was made on 19th June 2008 in these terms:

1. Esther Cambridge will pay to Worsley Cambridge the sum of \$60,000.00 in full settlement of his share in the matrimonial home situate at Greggs.
2. Esther Cambridge will pay the \$60,000.00 at the rate of \$300.00 per month, the first payment to be made on or before 31st July 2008.
3. The monies will be paid and collected through their respective counsel in the matter.

- [2] This is an application for variation of that Mediation Order, on the ground that the time it would take the respondent to satisfy the Order, is unconscionable to the petitioner. The parties were granted leave to file additional affidavits of means. I take this application to mean that the parties acknowledge that both contributed to the matrimonial home, but that what is really in issue is the extent of the contributions made by the parties and the manner in which any share payment is to be made.

BACKGROUND

- [3] On 8th October 1980 the parties were married. The marriage was dissolved with the grant of a decree absolute on 22nd April 2005, after twenty five years. The petitioner sought a property adjustment order in respect of a parcel of land situate at Greggs with a dwelling house thereon (matrimonial home). There are six children of the marriage who have reached the age of majority: Elaine, Saylene, Kendol, Cindy, Kirt and Shamika. At the date of the dissolution of the marriage Shamika having been born on 3rd September 1990, was a minor. She is now eighteen years. On 30th April 2008, applications for ancillary relief were heard and an Order for mediation was made on 29th May 2008, followed by the Mediation Order.

WRITTEN SUBMISSIONS: 27TH JULY 2009 AND 28TH JULY 2009.

ISSUES raised by Ms. Eustace:

- [4] 1. How should the Court deal with manifest inconsistencies?
 2. Has the petitioner's conduct been gross and obvious?
 3. Can a finding of gross and obvious conduct impact the petitioner's application for ancillary relief?

CASE FOR PETITIONER

- [5] The petitioner was in search of a piece of land to build a home when the respondent's parents informed them that they would give them land. The respondent's mother conveyed the land to the respondent who holds the legal title. He built a two bedroom board house and when he was about to retire it was renovated to a concrete house. He

purchased all the materials for the house. He bought fifty barrels of stone to cast deck. His salary was \$300.00 a month and every time he received his monthly salary he bought two to three hundred blocks until he put up the roof to the two storey house. In the evening after work the children helped him take the blocks to the house.

- [6] He purchased cement from Hazells and he asked a Government truck driver to bring him a load of sand. He obtained the help of one Vernon Mark in the construction of the house. The respondent did not help him with the construction of the house. She helped transport sand and blocks from the road to the house for which she was paid. They had a joint account into which his salary was paid. They borrowed from a bank and had no knowledge that the bank had threatened to sell the matrimonial home when the loan fell into arrears.

CASE FOR RESPONDENT

- [7] She and the petitioner obtained approximately one acre of land from Lauders Estate in Greggs to farm and she farmed the land which she did with help from their children. Her brother worked with her 'a day or two' on the land. The petitioner did not help with cultivating the land but did help with transporting the bananas in the van.
- [8] They obtained a loan of \$15,000.00 for a van to transport bananas to the Banana Association. The petitioner crashed the van. They then borrowed \$8,000.00 to repair the van totaling \$23,000.00, which loan was in arrears and they had to pay the bank \$32,000.00. They had a joint account and \$690.00 was the monthly payment to the bank. She received a telephone call from the bank advising that the loan was in arrears and there was a threat to sell the matrimonial home. She went to the bank and to the bank's lawyer and the monthly payment was reduced to \$485.00 per month which she paid.

MATRIMONIAL CAUSES ACT (Cap 176) (the Act)

- [9] The application for variation is made under section 40 of the Act which reads:
- (1) Where the Court has made an order to which this section applies, then, subject to the provisions of this section, the Court shall have power to vary

or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say -

.....

(d) any order made by virtue of section 31 (3) (c) or 36(10) (b);

(e) any order for a settlement of property under section 32 (1) (b) or for a variation of a settlement under section 32 (1) (c) or (d), being an order made on or after the grant of a decree of divorce or judicial separation;

.....

(7) In exercising the powers conferred by this section, the Court shall have regard to all the circumstances of the case, including any change in any of the matters to which the Court was required to have regard when making the order to which the application relates"

[10] Section 32 (1):

....the Court may make any one or more of the following orders, that is to say.....

.....

(b) ...an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled be made to the satisfaction of the Court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) An order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them;

(d) an order extinguishing or reducing the interest of either of the parties to the marriage under such settlement....."

[11] Under section 34 of the Act the Court takes into account these factors: **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.**

[12] Ms. Eustace submitted that the petitioner lives in a house owned by a Ms Nedd Wylie, and he may be described as having a licence, which offers no security of tenure. He receives a pension of \$300.00 a month from Central Water and Sewerage Authority. His sole assets are: one "54 x 75" bed valued at \$1,220.00: one refrigerator valued at\$2,578.00:

one "54 x 75" mattress valued at \$450.00. His dim fiscal picture is unlikely to change. I accept that the respondent has legal title to the matrimonial home in which the claimant has an interest.

[13] In an affidavit the petitioner deposed that when he left the matrimonial home in 2003 he left the items referred to as his sole assets with the respondent. I think that those items in the house are owned in equal shares. Those items are valued and half their value paid to the petitioner.

[14] Ms. David submitted: that the parties do not enjoy significant income, significant earning capacity or any significant financial resources and the parties are not likely to have access to enhanced financial resources. I accept the parties do not have the means to acquire additional property. The respondent lives in the matrimonial home. Two of the children live permanently in the matrimonial home and one son lives in the matrimonial home intermittently. The petitioner lives in the home of his latest partner. Further, Ms David submitted the respondent's evidence was that the petitioner has an interest in a house at Simon village that he helped his former interest S. Peters to construct.

[15] I accept that the income and earning capacity of both parties are modest.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future:

[16] Ms. Eustace submitted that the earnings of both are low and securing their retirement is daunting. The respondent has the present advantage of security of tenure in the matrimonial home and relative youth. She further submitted that the petitioner suffers from prostate cancer and there would be a need to finance treatment for this ailment. He has no legal responsibility for the welfare of his adult children.

[17] Ms. David submitted that, although the petitioner's means are modest, his evidence revealed that he traveled to Canada twice, the second time being "about a year ago" when he remained for eight months. He claimed the need for medical attention to deal with prostate cancer but produced no supporting medical certificate. In his affidavit filed on 28th January 2009 he mentioned that he was due to undergo an operation related to

prostate cancer in about four months, but has not had an operation and four months have passed.

[18] Counsel's submission was that the respondent has to maintain herself and Shamika who is unemployed: Cindy lives with her daughter in the matrimonial home. In the context of normal familial obligations in Vincentian culture, she submitted, it is not unusual for the children of the family (particularly a girl and with her children) to continue living in the matrimonial home until they are in a financial position to house themselves.

[19] Both parties need a roof over their heads, but there is one matrimonial home. I accept that there was a time when the matrimonial home was under threat of being sold and that it was the respondent who made arrangements with the bank and so saved it.

The standard of living enjoyed by the family before the breakdown of the marriage:

[20] The respondent's evidence was because of lack of funds that the petitioner failed to provide, the three eldest children did not receive adequate education. The petitioner denies this and gives contradictory reasons. Whatever those reasons might be, I think it is agreed that their standard of living was modest. There is unlikely to be a change in that situation. The petitioner's evidence was that the relationship between him and the children was not good and that they ignored him. From this bit of evidence I deduce that the emotional attachment which also contributes to the standard of living, was lacking.

The age of each party to the marriage and the duration of the marriage

[21] Ms. Eustace submitted: that the marriage lasted twenty five years: that the petitioner is 77 years and the respondent 52 years. It is the petitioner's advanced age, submitted Ms. Eustace that underpins the application for variation of the Mediation Order. Payment to him by the respondent of \$300.00 a month would take the respondent 200 months or sixteen years and eight months to repay \$60,000.00 awarded in the mediation settlement of the property. She would be 67 and he 92. The respondent's payments are often late and she is now in arrears. I accept that this age difference will impact significantly the order that is made.

Any physical or mental disability of either of the parties to the marriage:

- [22] Neither party has any mental disability. I accept that the petitioner has prostate cancer and it is reasonable to conclude that finances would be required to meet medical treatment. His eyesight is not first class as he suffers from glaucoma. He walks slowly aided with a cane. The respondent suffers from chronic arthritis.

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

- [23] Ms. Eustace submitted that the petitioner has made direct financial contributions to the construction of the matrimonial home up to the roof stage and to the loan of \$15,000.00 taken in both names to construct the roof. He is entitled to a beneficial interest behind an inferred common intention constructive trust in the matrimonial home. Counsel submitted that the petitioner made the lion's share of contributions to the construction of the matrimonial home. It was his direct contributions to the purchase price, initially (majority contribution to the construction itself) or by means of contributions towards the mortgage payments (subsequent loans on the house that evidences a constructive trust. The case cited Lloyds Bank PLC v Rosset (1991) AC 107, Lightfoot v Lightfoot-Brown (2005) EWCA Civ 2001.
- [24] Ms David submitted that the respondent was the primary caregiver, income earner and financial provider for the family. The respondent's evidence was that her fortnightly earnings were \$550.00. She spent \$200.00 to \$300.00 for food. She supplied most of the school books with the petitioner providing a few. She contributed \$40.00 for electricity, \$25.00 for gas \$15.00 for water. She harvested dasheen three or four times a year for which she received \$80.00 a sack. She used to work for other persons washing and packing bananas. Money from bananas sales met loan payments and money for dasheen sales met food, education and utilities expenses she said in cross-examination.
- [25] I accept that both parties made contributions to the welfare of the family. Acknowledged instances of the petitioner making contributions: The respondent collected the petitioner's pension for about six months while he was in Canada which met family commitments.

The petitioner gave money for groceries some of which the respondent used to purchase clothes for the children.

[26] I accept that the parties made contributions to the construction of the matrimonial home. The petitioner provided labour. Financial contributions from the petitioner, from his monthly salary from Central Water Sewerage Authority, from payment for private plumbing work and from farming. He contributed in repayment of the loan taken to construct the roof. The respondent's family provided the land for the matrimonial home. The respondent made contribution by transporting sand and blocks from the road to the matrimonial home spot. By looking after the welfare of the children and caring for the home she also made an indirect contribution.

[27] In the case of proceedings for divorce or nullity of the marriage, **the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring** – does not apply in this case.

CONDUCT

[28] The petitioner alleges that Shamika is not his daughter. I disregard that allegation as he ought to have raised that at the time he applied for a divorce. The respondent stated that she delivered Shamika by herself. His conduct was deplorable, as related by him:

“On date Shamika was born I was home. She took pain. I leave and go away because child is not my child. I cannot tell you if anybody in the house help her. She has children there and I leave and go away. I don't know if she delivered by herself and I don't want to know”.

[29] It seems that three children did not attend school as they should. The respondent said that the children were taken from school to help her farm. The petitioner said that some of children stayed at home to take care of the younger ones as the respondent was enjoying the company of a male companion.

[30] I do believe there was an incident involving the parties and a man called Lovedear which involved the police. However, in making a decision about contributions made by the parties, I disregard the allegations made by both parties relative to gross conduct.

CONCLUSION

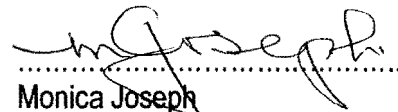
[31] I find that both parties made contributions to the welfare of the family. The petitioner was employed with the Central Water Authority and his salary was paid into a joint account which met bank repayments and also assisted with contributions to the family welfare. I accept that the respondent also made contributions to the welfare of the family, looking after the children from proceeds of farming, taking care of the family. The land conveyed in her name was given to the family. She was responsible for saving the matrimonial home from being sold by the bank when the loan ran into arrears.

[32] The respondent was unable to meet the monthly sum of \$300.00 following the mediation order. I accept from the petitioner that he would be around 92, assuming that the respondent makes regular payment. The best course is to order that the matrimonial home be sold. There are two valuations, one of which was rejected by the respondent as the valuator had not seen the inside of the home. The second valuation was obtained at the instance of the bank. If the parties can agree to accept that bank's valuation by a stated date then that would be the valuation. I will make an order for a valuation in case there is no agreement. The shares of the parties in the matrimonial home proceeds is 40% for the petitioner and 60% for the respondent.

[33] I accept that there is an incomplete house on the matrimonial premises being constructed by one of the children of the marriage. The order for sale of the matrimonial home does not include this incomplete house and the land on which it stands. Half of the value of "54 x 75" bed valued at \$1220.00; one refrigerator valued at \$2,578.00; one "54 x 75" mattress valued at \$450.00 is to be paid to the petitioner by the respondent.

ORDER

- [33]
1. If no agreement on valuation on or before 30th September 2009, another valuation of the matrimonial home to be obtained on or before 30th November 2009.
 2. Cost of that valuation to be met 40% by the petitioner and 60% by the respondent.
 3. The matrimonial home to be sold with share of the proceeds 40% to the petitioner and 60% to the respondent.
 4. The respondent is to pay to the petitioner, upon sale of the matrimonial home, half the value of the bed, mattress and refrigerator, that is, \$4248.00 = \$2,124.00.00.
 5. I make no order as to costs.


.....
Monica Joseph
HIGH COURT JUDGE (Ag.)
13th August 2009.