

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2008/0238

BETWEEN

NORMAN JARVIS

Claimant

And

CARMELLA WILLIAMS

Defendant

Appearances:

Mr. Septimus Rhudd for the Claimant

Ms. Kamilah Roberts for the Defendant

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2009: March 29
April 23
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JUDGMENT

[1] Blenman J: This is a claim by Mr. Norman Jarvis against Ms. Carmella Williams for a declaration of their respective interests in the land described and registered as Registration Section McKinnons Block: 45 1696B Parcel 103 (the land).

[2] Background

Mr. Jarvis and Ms. Williams were married for approximately 20 years. They divorced each other in 1987.

[3] In or around May, 1975, while the parties were married to each other, Mr. Jarvis purchased the land from the Government of Antigua and Barbuda. The agreed purchase price was

EC\$4,500.00. He paid the deposit in the sum of \$1,000.00 towards the purchase price and requested of the pertinent Government Department that the title to the land should be registered in the names of himself and Ms. Williams. The payment was made to the Central Housing and Planning Authority. Mr. Jarvis subsequently paid the balance by way of installments and completed payments in November, 1999. This was several years after the parties were divorced. By the time the payments were completed, the parties were no longer married to each other, neither was there any desire or intention by Mr. Jarvis to have the title to the land transferred into their joint names. The title to the land remains vested in the Crown as Vendor, even though the property has been paid for in full. The Government is only prepared to transfer title into the joint names of the parties as originally instructed. Mr. Jarvis has made attempts to communicate with Ms. Williams in an effort to either compensate her for any interest as she may have in the land or for her to relinquish her interest. Ms. Williams has refused to communicate with him in relation to this matter. As a result, he is unable to complete the process of having the land transferred from the Crown as Vendor. He says that he is willing to reimburse Ms. Williams the current market value of her interest in the land if it is found that she has such an interest.

- [4] In the circumstances, he seeks a number of reliefs, namely:
- (a) A Determination and a Declaration of the respective interests of Mr. Jarvis and Ms. Williams in the parcel of land registered as Registration Section: McKinnons Block: 45 1696B Parcel 103.
 - (b) A Declaration that the parcel of land is to be valued and that Mr. Jarvis pay to Ms. Williams such amounts as represents her interest (if any) in the land.
 - (c) An Order that upon receipt of payment Mr. Jarvis take such steps as are necessary to facilitate the transfer of title to Mr. Jarvis.
 - (d) Such other Orders as the Court deems just.
- [5] Ms. Williams strongly resists Mr. Jarvis' offer. She says that it was the express intention of Mr. Jarvis and herself that the land would be held jointly in equal shares. She denies that he paid the entire purchase price for the land. She says that her brother, Mr. Joseph

Williams assisted him on her behalf in the payment of the monthly installments during Mr. Jarvis's period of financial difficulty. It is her view that the land belongs to them jointly. She says that she has a 50% interest in the land and is willing to accept monetary compensation representing the current market value of this interest. Ms. Williams therefore seeks an order declaring that the land be valued and Mr. Jarvis pays to her half of the current value which represents her interest in the land.

[6] She says that she is willing to take such steps as are necessary to facilitate the transfer of title to Mr. Jarvis.

[7] Issue

The sole issue that arises for the Court to resolve is to what interest or share in the land, if any, is Ms. Williams entitled.

[8] Mr. Septimus Rhudd's submissions

Learned Counsel Mr. Rhudd said that the evidence obtained from Mr. Jarvis was obtained primarily from his witness statement and through cross-examination by Counsel for Ms. Williams. In essence, Mr. Jarvis confirmed that he had originally intended to benefit the parties jointly, if Ms. Williams had contributed towards the purchase of the land. This did not in fact happen as Ms. Williams made no financial contributions towards the purchase. Mr. Jarvis agreed that at the time Ms. Williams was a housewife, but she eventually became employed when the family moved to Canada.

[9] Learned Counsel Mr. Rhudd said that during cross-examination, Counsel for Ms. Williams questioned Mr. Jarvis as to how he expected Ms. Williams to contribute financially to the purchase of the land when the latter was not working. Mr. Jarvis testified that Ms. Williams had become gainfully employed when the parties had moved to Canada, in 1977. From the evidence of Mr. Jarvis, learned Counsel Mr. Rhudd said that it also became apparent that the intention to own the land jointly must have been dependent on the parties remaining married.

- [10] The further evidence of Mr. Jarvis was that the marriage had disintegrated, the parties got divorced and Mr. Jarvis alone made all further payments in respect of the land. Apart from the initial deposit of \$1,000.00 made in 1975, all other payments took place after the parties had become divorced in 1987. Ms. Williams made no contributions whatsoever. Mr. Jarvis admitted during cross-examination that he had not asked her to contribute to the payments.
- [11] Learned Counsel Mr. Rhudd said that the thrust of Ms. Williams' evidence was that, by virtue of her work as wife, housewife and mother to the parties' three children, she had acquired a 50% interest in the land. She conceded that she had not made any financial contribution towards the initial \$1,000.00 deposit and that she had not made any other financial contributions whatsoever towards the eventual purchase. Apart from her Counsel's questions during her cross-examination of Mr. Jarvis, there was no other suggestion or indication, on the part of Ms. Williams, that she had been willing to make any financial contribution towards the eventual purchase. Her testimony was that the land had been given to her as a gift by Mr. Jarvis but when pressed in cross examination, she was unable to say whether it had been gifted to her in her sole name or as a co-owner with Mr. Jarvis.
- [12] Learned Counsel Mr. Rhudd submitted that her attitude, as expressed throughout the cross-examination, was that she was too busy with the business of being wife, housewife and mother, that she did not have time to be bothered with "those things". She admitted that she had not been to visit the land right after she was told that she had obtained it as a gift and then conceded that it was pointed out to her some time afterwards by her husband.
- [13] The legal position in respect of lands acquired, in circumstances as in the case at bar, revolves around the existence of a constructive trust. Learned Counsel Mr. Rhudd stated that this constructive trust must emanate from a common intention on the part of the parties to share a beneficial interest in the land and some action on the part of the "non-proprietary" party to his/her detriment based on that intention and referable to a beneficial

interest in the property. In the case at bar, for Ms. Williams to succeed, she is required to show firstly, that the land, when acquired, was intended to belong to the parties in equal shares and secondly, that she had contributed directly towards its acquisition.

[14] Learned Counsel Mr. Rhudd referred the Court to the case of *Burns v Burns* [1984] 2 WLR 582. In that case, the plaintiff and the defendant set up home together in rented accommodation and then decided to purchase a house. The house was purchased and conveyed in the sole name of the defendant, who financed the purchase out of his own money and by way of mortgage. The plaintiff did not directly contribute to the purchase price or to the mortgage payments. She remained at home to look after the children and to perform domestic duties and was unable to earn until sometime in 1975. She used her earnings, along with her house keeping allowance received from the defendant to pay rates and bills and to buy certain fixtures, fitting and domestic chattels for the house. The plaintiff eventually left the defendant and brought proceedings claiming a beneficial interest in the house by reason of her contributions to the household. Her claim was dismissed and she appealed. The Court of Appeal, in dismissing her appeal, held that since she had not made a substantial financial contribution to the acquisition of the house, the Court could not impute a common intention that she should acquire a beneficial interest in it. Further, the Court held that the plaintiff's contribution to the welfare of the family by performing the domestic duties of the household and bringing up the children were not factors which could be taken into consideration in determining whether or not she had acquired a beneficial interest in the house.

[15] The Court, in so deciding, applied principles that were previously established in *Pettit v Pettit* [1970] A.C. 777 and *Gissing v Gissing* [1971] A.C. 886.

[16] Learned Counsel Mr. Rhudd in analyzing the evidence of both parties, submitted that Ms. Williams' interest in the land, if any, could only extend to 50% of what was paid by Mr. Jarvis by way of the initial deposit. This interest, if found to exist, would have to be assessed at current market value. Mr. Rhudd said that there is no legal basis whatsoever for Ms. Williams claiming, or being allocated a 50% interest in the land. Her evidence is

that, when she was initially told that the land had been “bought” for her, her initial query was “how could she buy land when she was not working?” This demonstrated an appreciation on her part that she had not made any financial contribution towards the “acquisition” of the land.

[17] Learned Counsel Mr. Rhudd submitted that Ms. Williams readily admitted that she did not make any contributions towards the eventual purchase of the land. While the initial deposit was made when the parties were married, and without any contribution from Ms. Williams, the balance of the purchase price, along with the accrued interest was paid some 12 years later and solely by Mr. Jarvis, after the parties had become separated by divorce. Ms. Williams could not reasonably expect that any payment made by Mr. Jarvis at that time would have been influenced by her work as wife, housewife and mother during the marriage years earlier. At no point in time after the marriage ended did Ms. Williams express any interest in or otherwise demonstrate any intention to hold the parcel of land jointly with Mr. Jarvis.

[18] Learned Counsel Mr. Rhudd said that Mr. Jarvis’ evidence was that he had expected her to contribute towards the purchase of the land. This evidence was never seriously challenged or refuted by Ms. Williams. In fact, his evidence was that Ms. Williams became gainfully employed when the parties had moved to Canada in 1977. Despite this, she had made no offer of payment towards the purchase of the land. The marriage having come to an end, any expectations previously entertained by Mr. Jarvis, in respect of contributions from Ms. Williams, would also have ceased.

[19] Further, learned Counsel Mr. Rhudd submitted that the evidence was clear that the payments made by Mr. Jarvis for the land took place between 1992 and 1999. This was never challenged by Ms. Williams. The parties had clearly, by then, been divorced. Contrary to the assertion of Ms. Williams, there was no evidence produced to show that Ms. Williams’ brother made any payment of loan installments for the land. There is not even any evidence that Ms. Jarvis had taken out a loan to pay for the land. What was irrefutable learned Counsel Mr. Rhudd said, was that Mr. Jarvis resumed payment for the

land in 1992 and completed it in 1999. Mr. Rhudd urged the Court to disregard Ms. Williams' evidence as being untruthful and a fabrication.

[20] On a strict application of the law, Ms. Williams would not, ordinarily, be entitled to any beneficial interest in the land. She made no contribution to its purchase. She did not contribute to the initial deposit during marriage; she did not contribute to the eventual purchase price after the divorce. Mr. Jarvis has, despite this, been willing to allow her an interest in the land.

[21] Finally, learned Counsel Mr. Rhudd submitted that on consideration of the totality of the evidence presented to the Court, it should rule that Ms. Williams' interest, if the Court finds that she has any, amounted to no more than 50% of the initial deposit. The deposit of \$1,000.00 at the time constituted only 22% of the stated value of the land. Therefore, Ms. Williams' interest should only translate into 11% of the current market value of the property.

[22] Learned Counsel Mr. Rhudd asked the Court to order that the land be valued and that any payment, representing no more than 11% of the value of the land, due to Ms. Williams, be made by Mr. Jarvis upon the execution of the appropriate documentation that would allow title to vest in Mr. Jarvis absolutely.

[23] Ms. Kamilah Roberts' submissions

Learned Counsel Ms. Roberts stated that Ms. Williams' position is that she is entitled to a 50% interest in the land and as such, should be paid such amount as represents this interest, upon valuation of the land by a competent property valuer.

[24] Ms. Williams does not dispute Mr. Jarvis' evidence as found in his witness statement that he paid the full purchase price, inclusive of interest towards the purchase of the land. However, Ms. Williams' claim to an interest in the land is not based on the parties' respective financial contributions to the purchase of the land but instead on the common intention of the parties, as relied upon by Ms. Williams which would give rise to a

constructive trust. Learned Counsel Ms. Roberts said that Mr. Jarvis sought to qualify this action by claiming in the same paragraph of his witness statement, that it was his expectation that both parties would have contributed towards the eventual purchase of the land. However, Ms. Williams challenges his assertion in this regard, as by his own admission in cross-examination, Ms. Williams was a housewife at the time of the purchase and had been a housewife since the start of the marriage. Upon those circumstances, learned Counsel Ms. Roberts said that Mr. Jarvis could not have held a real expectation that his wife, who at the time was not earning any income would have contributed to the purchase of the land.

[25] Next, learned Counsel Ms. Roberts submitted that Mr. Jarvis later contradicted his witness statement by admitting in cross-examination that it was his intention that “the land was to be held jointly and equally as long as the marriage remains in tact”. At this stage, Mr. Jarvis appears to be relying on the success of the marriage as a condition for Ms. Williams retaining an interest in the land and not her financial contribution.

[26] Learned Counsel Ms. Roberts further said that Mr. Jarvis acknowledged that Ms. Williams was entitled to an interest in the land but denied that she is entitled to a 50% interest in the land. In cross-examination, Mr. Jarvis confirmed his previously stated position that she was entitled to at least 11% interest in the land.

[27] Learned Counsel Ms. Roberts said that the basis of Ms. Williams’ claim is that she is entitled to a 50% interest in the parcel of land, such interest arising under a constructive trust. Her evidence lends further support to her position that it was the mutual intention of the parties that the land was to be held jointly. Ms. Williams stated that Mr. Jarvis came home and told her that “he had bought a parcel at Marble Hill for us from the Central Housing and Planning Authority”.

[28] Ms. Roberts said that evidence of detrimental reliance is also borne out in Ms. Williams’ witness statement as expanded on by her in cross-examination. She repeatedly

emphasised the fact that she was a dedicated housewife and looked after Mr. Jarvis and their three children, during the course of the marriage.

[29] Ms. Roberts submitted that Ms. Williams' position is that she is entitled to a 50% interest in the land based on the fact that a constructive trust arises in the case at bar, based on the actual intention of the parties. A clear articulation of the constructive trust principle can be found in the UK Court of Appeal case of *Grant v Edwards* [1986] Ch.63 at page 646 where Nourse L.J. stated as follows "In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it".

[30] Learned Counsel Ms. Roberts said that there is clear evidence of a common intention between the parties that Ms. Williams would have an interest in the land. By Mr. Jarvis' own admission, he requested that the title to the land should be registered in the joint names of himself and Ms. Williams. Mr. Jarvis also admitted in cross-examination that it was his intention that the land was to be held jointly. However, he is seeking to convince the Court that his intention was conditional upon Ms. Williams' contributing towards the purchase of the land. Learned Counsel Ms. Roberts asked the Court to reject this assertion as it is not supported by the surrounding facts particularly the fact that Ms. Williams was not employed at the time of the payment of the initial deposit, and had worked within the house as a housewife since the beginning of their marriage. Mr. Jarvis also attempted in cross-examination to assert that Ms. Williams' acquisition of an interest in the house was conditional upon the "marriage remaining in tact". Learned Counsel Ms. Roberts said that once a party acquires an interest in property during the marriage, this right cannot be extinguished simply by the breakdown of the marriage of the parties.

[31] Ms. Williams acted upon this common intention by performing various duties as a housewife and taking care of her husband and the three children of the marriage,

operating under the assumption that the property acquired by her husband would be acquired jointly. Nourse J in the above cited *Grant v Edwards* ibid provides guidance on the interpretation of the “detrimental reliance” requirement. At page 657 he states as follows “once it has been shown that there was common intention that the claimant should have an interest in the house, any act done by her relating to the joint lives of the parties in my judgment, is sufficient detriment to qualify”.

[32] In view of the above circumstances, learned Counsel Ms. Roberts submitted that Ms. Williams is entitled to a beneficial interest in the land, such interest arising under a constructive trust. This interest was acquired by Ms. Williams at the date of the payment of the deposit in 1975 during the parties’ marriage. If at the time of the divorce, Ms. Williams was entitled to a share in the land, Mr. Jarvis cannot extinguish her entitlement by paying off for the land without her knowledge or consent, after the divorce. Ms. Williams would have been equally entitled to pay off for the land at Central Housing and Planning Authority, her name being one of the names registered on the title at Central Housing and Planning Authority. If Ms. Williams had taken the steps to pay off the land, which she was legally entitled to so, Mr. Jarvis would no doubt have advanced strong arguments for his own entitlement.

[33] In the case at bar, learned Counsel Ms. Roberts submitted that the Court does not need to look at the direct financial contribution of the parties to the acquisition of the property as Ms. Williams is not claiming under a resulting trust. Her claim is under a constructive trust and as such, it is the actual intention of the parties, and not direct financial contributions which should be considered by the Court.

[34] By Mr. Jarvis’ admission, the land was registered in the joint names of the parties, and as such the normal inference is that the land would be owned jointly and equally, in the absence of any other evidence to the parties, when the beneficial interest in the land was first acquired. At this time, it was clear that the common intention of the parties was that the land would be held jointly and equally. Ms. Williams’ entitlement to an equal share of the land would survive the divorce.

- [35] The deposit of \$1,000.00 as paid during the marriage amounted to 22% of the purchase price of the land at that time. Learned Counsel Ms. Roberts said that therefore, if the Court does not accept that Ms. Williams' interest in the land is 50%, it must amount to at least 22% of the current market value.
- [36] Finally, learned Counsel Ms. Roberts said that upon applying the law of the constructive trust to the case at bar, it is clear that Ms. Williams is entitled to a 50% beneficial interest in the land. It was the clear common intention of the parties that the land should be held jointly and Ms. Williams has acted upon this intention to her detriment. Under the above circumstances, Ms. Roberts asked the Court to order that the land be valued by a competent valuer to be agreed by the parties and that Mr. Jarvis be ordered to pay Ms. Williams, such amount as represents 50% of the value of the land.
- [37] Learned Counsel Ms. Roberts said that on the question of costs there should be no order as to costs in the matter, as each party is clearly entitled to an interest in the land and as such there can be no clear winner in this case. Each party should therefore pay its own costs.
- [38] **Court's analysis and conclusions**
I have had the opportunity to review the evidence and the very helpful submissions of both learned Counsel, and importantly to assess both Mr. Jarvis and Ms. Williams, and the following represent my findings and analysis. The parties were married in 1967 and the union produced several children. Mr. Jarvis was the income earner while Ms. Williams took care of him, the children and the home. In 1975, Mr. Jarvis bought the property in the joint names of himself and Ms. Williams and paid an initial deposit of \$1,000.00 towards the purchase price of \$4,638.31. No other payments were made towards the balance of the purchase price. The parties divorced in 1987 and there were property settlements (which do not form the subject matter of this claim). Meanwhile, interests accrued on the outstanding balance of the purchase price of the land, which Mr. Jarvis liquidated after the divorce.

- [39] Indeed, 22 years have elapsed since the parties have been divorced and during those years I am satisfied that there was very little, if any, communication between the parties.
- [40] Mr. Jarvis, having paid off the balance of the purchase price, now wishes to have the land registered in his sole name. He says that Ms. Williams is only entitled to receive the current market value of the deposit that was made when they were still married. She disagrees. Ms. Williams is adamant that she is entitled to a 50% interest or share in the current market value of the land.
- [41] I have no doubt that Mr. Jarvis and Ms. Williams' clear intention was that the land was to be owned by them jointly. Mr. Jarvis has so indicated. I have no reason to disbelieve him. Ms. Williams sought to stretch the truth when she testified by saying that she understood that the land was a gift from Mr. Jarvis to her. I do not believe her. In any event, this runs counter to her pleaded case and her evidence in the witness statement. She spoke the truth in her witness statement but quite unwisely sought to embellish evidence. I am supported in my view based on Mr. Jarvis' uncontroverted evidence that which he paid the initial deposit of \$1,000.00 towards the purchase price of \$4,638.31 and requested that the title to the property in their joint names.
- [42] However, I do not believe Mr. Jarvis when he said that it was his expectation that they would both have contributed towards "the eventual purchase of the land". It is clear that when he paid the deposit on the land, that is the time when he purchased the land and not at any other later date. He did not have any such expectation of his wife contributing to the payment of the balance, since at the time of the purchase of the land; Ms. Williams was a housewife, who did not work outside of the home.
- [43] There is no doubt that Mr. Jarvis paid for the land with his own monies. I therefore do not accept Ms. Williams' evidence when she stated that her husband took out a loan to pay for the land and that her brother also helped him to pay for the land.

[44] I digress to emphasise that the land in question has not been conveyed but I emphasise that it was purchased in both names.

[45] Indeed, in circumstances such as the case at bar, there are two questions that the Court must determine: first, was it intended that the parties should share a beneficial interest in the land? Secondly, if so, what is the extent of the parties' beneficial interest? In *Stark v Dowden* (2007) UK HL 17 AT paragraph 31, Lord Walker said "in the case about beneficial ownership of a matrimonial or quasi matrimonial home (whether registered in the name of one or two legal owners) the resulting trust should not in my opinion operate as a legal presumption, although it may (in an updated form which takes account of all significant contributions, direct or indirect, in cash or kind) happen to be reflected in the parties common intention".

[46] The law is based on the decisions of *Petitt v Petitt* [1970] AC 777; *Gissing v Gissing* [1971] AC 886; *Lloyd's Bank PLC v Rosset* [1971] 1AC 107 and *Stack v Dowden* [2007] UK HL17. The development of the law continued and finally cumulated in the modern and recent case of *Abbott v Abbott* Privy Council Appeal No. 142 of 2005. The Privy Council in this latter case made it clear that the constructive trust is generally the more appropriate tool of analysis in most matrimonial cases. Baroness Hale, delivering the advice of the Board in *Abbott v Abbott* *ibid* said that "the search is to ascertain the parties shared intention, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it". Further, Baroness Hale remarked that "the law has moved on" and made the following statement:

"If the question really is one of the parties "common intention", we believe that there is much to be said of adopting what has been called a "holistic approach" to quantification, undertaking a survey of the whole course of dealings between the parties and taking account of all conduct which throws light on the question what shares were intended."

[47] On the facts presented, the Court has no doubt that when Mr. Jarvis bought the land in their joint names and later went home and told his wife of the purchase, they had a common intention that the land would be owned jointly. The uncontroverted evidence which is accepted is that based on the common intention that they shared, Ms. Williams

acted to her detriment. In so holding, the Court is cognisant of the fact that Ms. Williams made no financial contribution to the purchase of the land. It is however not disputed that she cooked, cleaned and managed the household. There is no doubt that the parties shared a common intention that they should have beneficial interest in the land. In *Green v Green* [2003] RC 39, Lord Hope of Craighead in the Privy Council said that: “the question in all these cases is whether a common intention can be inferred from the parties conduct as to how the beneficial interest is to be held”.

[48] Baroness Hale in *Abbott v Abbott* *ibid* stated the fundamental question to be determined is:

“whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, an arrangement or understanding reached between them that the property is to be shared beneficially”.

At paragraph 3 of the judgment of *Abbott v Abbott* *ibid*, Baroness Hale, quoting Lord Bridge in *Rosset's case* [1991] 1 AC 107, at 132-3 stated that Lord Bridge said “the finding of an agreement or arrangement to share in this sense can only, I think be based on evidence of express discussions between the parties, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her own detriment and significantly altered his position in reliance on the agreement in order to give rise to a constructive trust.”

[49] There can be no doubt that Ms. Williams made a substantial contribution to the welfare of the family, including Mr. Jarvis, during the marriage. Accordingly, the Court is also satisfied that based on the common intention of the parties, Ms. Williams has acted to her detriment.

[50] In coming to this conclusion, I have utilized the principles as enunciated in *Abbott v Abbott* *ibid*. However, I am mindful of the fact that in *Lloyds Bank PLC v Rosset et al* [1990] 1 All ER, the Court of Appeal held that:

“in resolving a dispute between two persons who had shared a home in circumstances where one party was entitled to the legal estate and the other party claimed to be entitled to a beneficial interest... the fundamental question which had to be resolved was whether, on the basis of the evidence of express discussions between the partners and independently of any inference to be drawn from their conduct in the course of sharing the property and managing their joint affairs, there had been at any time prior to the acquisition of the property, or exceptionally at some later date, any agreement, arrangement or understanding reached between them that the property was to be shared beneficially coupled with detrimental action or alteration of position on the part of the person claiming the beneficial interest or, failing that, whether there had been direct contributions to the purchase price by the person claiming the beneficial interest from which a constructive trust can be inferred”.

[51] This leaves me now to determine the share or interest that each party is to receive in the property. In so doing, I am guided by the approach stated in *White v White* [2001] 1 AC 96. It is the law that when there is evidence before the Court upon which the Court could properly conclude that each of the parties is entitled to an interest in the land, the starting point is to presume that they are equally entitled to a half share or interest in the land. Of course this presumption can be displaced by cogent and credible evidence which points to a different position. See *White v White* [2001] 1 AC 96 in which Mr. Lord Nicholas stated that

“where each spouse has contributed equally in their different sphere to the family, as a general guide equality in the distribution of the matrimonial assets should departed from only if and to the extent that there is good reason for it.”

[52] I also adopt the views expressed by Saunders JA in *Stonich v Stonich* Civil Appeal No. 17 of 2002 BVI in which he said:

“In assessing the respective contributions of husband and wife, there was a time when one regarded the fruits of the money earner to be more valuable, more important than the child rearing and home making responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved, his contribution was almost automatically treated as being greater than that of the wife who remained at home. Ironically, if the man's business failed, whether through bad luck or ineptitude, his wife invariably shared equally the couple's hard times.

The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little a contribution that is less measurable but equally important to family structure. In the vast majority of cases where these two types of contributions are in issue – that of homemaker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of gender discrimination role in the home.”

[53] I paid particular regard to the fact that Ms. Williams did the housekeeping while Mr. Jarvis worked outside of the home. She took care of Mr. Jarvis and the children, cooking, cleaning and ensuring that the children received an education. I have no reason to disbelieve that she eventually obtained employment several years later, after they had migrated as a family, to Canada. I also take into account that the marriage was one for a substantial number of years. I also factor in that it was some several years after the divorce that Mr. Jarvis paid off the purchase price for the land. I am also mindful of the fact that this claim is now before the Court 22 years after the parties have been divorced. The Court must bear in mind the need to be fair and just to both sides, in the determination of each party's share or interest, in the land. The Court has an obligation to take all of the relevant matters into consideration in order to arrive at a solution that is reasonable.

[54] I have taken into account all of the relevant factors including the length of the marriage; the contribution of both parties either in cash or household chores; the way in which the parties subsequently arranged their financial obligations once Ms. Williams had obtained employment, the fact that the substantial part of the purchase price was paid solely by Mr. Jarvis, years after the dissolution of their marriage. I note also that while Ms. Williams subsequently obtained employment in Canada, she made no contribution towards the balance of the purchase price (which was not a substantial sum).

[55] Accordingly, I am of the considered opinion that even though the principle stated in *White v White* [2001] 1AC 96 is relevant to the case at bar, it represents no more than a useful starting point. I have no doubt that the circumstances of this case requires that “the equality is equity” principle departed from. It seems to me that based on the totality of the

circumstances including the length of the parties' marriage, coupled with Ms. Williams' contribution to the care and maintenance of the family, I dare say, I am of the considered opinion that she is entitled to a 20% beneficial interest in the land. Therefore, I hold that Ms. Williams is entitled to 20% beneficial share in the land and Mr. Jarvis is entitled to 80% interest or share in the land.

[56] With the greatest of respect, I see no basis for the proposition that her share should be reflected in relation to the original purchase price. Accordingly, Ms. Williams is entitled to a 20% interest or share in the present market value of the land.

[57] **Conclusion**

In view of the foregoing premises, it is ordered and declared that:

- (a) Mr. Norman Jarvis is entitled to 80% interest in the land registered as Registration Section: McKinnons Block: 45 1696B Parcel 103, at the current market value.
- (b) Ms. Camella Williams is entitled to 20% interest in the land, at the current market value.
- (c) The land is to be valued by a competent property valuer, agreed to by both parties, and costs be borne by each party equally.
- (d) The agreement as to the valuer should be reached no later than 21 days from the date of this order.
- (e) Mr. Norman Jarvis is ordered to pay Ms. Camella Williams such amounts as represents her interest in the land.
- (f) Upon receipt of the payment, Ms. Camella Williams is to immediately take such steps, as are necessary, to facilitate the transfer of the title of the land to Mr. Norman Jarvis.
- (g) Each party is ordered to bear its own costs, as agreed.

[58] I gratefully acknowledge the assistance of both learned Counsel.

Louise Esther Blenman
High Court Judge