

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO. SLUHMT 2007/0032

BETWEEN:

IAN PIZEY

Petitioner

AND

ROSELLA PIZEY (nee LAWRENCE)

Respondent

Appearances:

Mrs. Kim St. Rose for Petitioner

Mrs. Andra Foster for Respondent

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**2008: November, 14, 21
December, 8th**
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JUDGMENT

[1] COTTLE J: This is an application by the Respondent wife for custody of the child of the marriage, maintenance for the said child and a declaration that the former matrimonial home is community property along with consequential orders aimed at providing the respondent with the monetary value of her declared interest in the former matrimonial home.

[2] The parties met in October 2002. The respondent was then the mother of three (3) children. They were married on 12th July, 2003 and the respondent gave birth to the child of the union in October 2003. The petitioner filed for divorce on 9th July, 2007 as the Respondent had given birth to an infant in April, 2007 and the Petitioner was not the father of that child.

[3] On September 14th 2007 the Respondent filed an answer and cross petition, alleging unreasonable behaviour by the Respondent adultery by the Petitioner as well as acts of cruelty by the Petitioner.

[4] The marriage was ended as the decree nisi was granted on both the petitioner and the cross petitioner on the grounds of unreasonable behaviour by both parties.

Custody and maintenance of the child of the marriage

[5] Aliyah, the daughter of the marriage is now five (5) years old. She lives: with the Petitioner who has primary care and control. The Respondent has access and has custody on weekends. The respondent seeks primary care and custody of the child with reasonable access to the Petitioner.

{6} In determining this issue, the welfare of the child remains the paramount concern of the court.

[7] In this case there is a disturbing possibility that the child may have been the victim of sexual abuse while in the care of the Respondent. The medical evidence is equivocal. The attending physician found only “erythema” of the genital area of the child. The social enquiry reports do not offer much further guidance but the very nature of the reported abuse makes it a factor which I must consider when I try to determine what course would be in the best interests of the child.

[8] There are several competing factors. The petitioner is in a better financial position than the Respondent. He has no other children and is able to devote his entire attention (apart from obvious work commitments) to the care of the child. The Respondent works as well. She also has responsibility for four (4) other children ranging in ages from fourteen and a half years to twenty months old. Three of those children reside with her while her mother has primary care of the fourth child. The respondent explains that this is because her mother resides in close proximity to the primary school that the child attends and it is more convenient for her schooling for her to reside at the home of the Respondent's mother.

[9] The petitioner resides in the matrimonial home a three bedroom concrete structure with his present girlfriend. The child has her own room. The Respondent lives in a three bedroom apartment. Her current partner, lives with her and pays the rent. The son of the respondent has one room and his two sisters share the other bedroom. It is proposed that the child Aliyah share that room with her sisters.

[10] It is often considered desirable for young girls to be in the care of their biological mother and the presence of siblings is an added attraction.

[11] Having considered the competing factors in this case I conclude that the best interests of the child are served by permitting her to remain in the custody of her father, the Petitioner. I therefore grant custody of Aliyah to the Petitioner with reasonable access to the Respondent. The respondent will remain wholly responsible for the maintenance of the child.

The matrimonial home

[12] Block 1456B Parcel 817, on which the home now stands, was purchased in September 2003, two months after the marriage. The house was built during the marriage. From the evidence before the court the Petitioner paid the entire purchase price for the land from his separate funds. Indeed he had been negotiating the purchase of the parcel long before the marriage. He applied for an alien's landholding license to permit him to purchase the land before the parties were married. Counsel for the respondent accepts, correctly in my view, that there in the circumstances of this case a presumption of sole ownership in favour of the Petitioner.

[13] However. Counsel goes on to argue, the respondent is entitled to an interest in the property on the basis of and constructive or resulting trust. She cites the judgment of Edwards J in SLU HMT 2002/0118 Charlery v Charlery.

[14] At para 65 of that judgment Edwards J refers to s.45 of the Divorce Act No. 2 of 1973, which permits the court to deal with the separate property of a party to a marriage upon dissolution. This authority is of no assistance to the respondent in this case. The

Respondent has not applied to the court for an order under section 45 of the Act. Applications under section 45 are to be made by summons supported by affidavit. (See Rule 75 of the Divorce Rules). Here the Respondent is claiming an interest on the basis that the matrimonial home is community property. On the evidence adduced I find that parcel 817 of Block 1456B is not community property. It was bought by the Petitioner from his own funds, out of the proceeds of sale of his home in the United Kingdom. That is the same source of financing that was used to construct the matrimonial home.

[15] I declare the matrimonial home to be the property of the petitioner solely.

[16] The application by the respondent for ancillary relief is dismissed. I award costs of the application to the petitioner and I assess those costs at \$3,000.00.

BRIAN S. COTTLE

High Court Judge