

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 477 OF 2001

BETWEEN:

JULIA LUENETA STOWE

Petitioner

v

BERTHIA MARSHALL STOWE

Respondent

Appearances: Mr. Sylvester Raymond-Cadette for the Petitioner
Mr. Olin Dennie for the Respondent

2007: May 11

JUDGMENT

- [1] **BRUCE-LYLE, J:** The Petitioner and the Respondent were married on the 7th day of August 1993 and lived together in Bequia, in the State of Saint Vincent and the Grenadines. The parties had first met in 1983 and started to live together in 1985 when the Petitioner went to live in Bequia. The Petitioner is a Nurse/Midwife and the Respondent a fisherman.
- [2] The marriage was a relatively short one and had produced no children. On the 27th December 2001 the Petitioner filed for a dissolution of the marriage on the grounds that the parties had lived separate and apart for a continuous period of five years since October 1996. The parties therefore had only lived together in the marriage for just over three years, according to the petition.
- [3] This is very pertinent because the assertion of the Petitioner at paragraph 2 of her affidavit filed on the 5th December 2003 states "That during my marriage to Berthia Marshall Stowe from the August 1993 we accumulated real estate which is registered in the name of my

ex-husband the said Berthia Marshall Stowe". IF this is so how then could the parties have acquired the family home at Paget Farm Bequia, three boats with engines and two other houses in such a short space of time of just over three years as forming the estate?

[4] From the evidence adduced it is not in dispute that the only property in issue is the matrimonial home. I am inclined to accept and do hold that the fishing boats and the two wooden houses do not form part of the estate to be divided. The question in issue as pertains to the "matrimonial home" is whether the Petitioner is entitled to a share of this home having regard to the evidence adduced, all the circumstances of this case and the law.

[5] It is clear from the evidence that the legal estate in the said property is vested in the name of the Respondent. In paragraph 3 of his affidavit dated 13th January 2004, the Respondent avers that the property in question, located at Paget Farm, Bequia was given to the Respondent by his mother Pearline Stowe by virtue of Deed Number 2672 of 1987 dated the 29th of September 1987 some six years before his marriage to the Petitioner. The Respondent subsequently acquired the services of one Averil Cozier to provide architectural services for the construction of a dwelling house on the said parcel of land. This is evidence by the Exhibit of a Bill dated 13th March 1987 addressed to the Respondent for the sum of \$2,348.00 for the services of the architect.

[6] The Petitioner does not dispute the fact that the Respondent built this home before their marriage in 1993 but states that she was the one who provided all the fittings and most of the furniture for the said house from her own resources being employed as a nurse both in Bequia and the United States of America. She stated in her evidence under cross-examination that herself and the Respondent agreed that she would go to the United States to work to raise funds to assist in the construction of the said house and to help pay for the mortgage. Of course, the Respondent disputes this assertion of the Petitioner and from his evidence categorically states that the property was built solely by him with assistance by way of a loan from the Caribbean Banking Corporation in the sum of \$55,000 by virtue of Deed of Mortgage Number 2614 of 1992 and a Deed of further

Charge Number 1484 of 1993 for a further sum of \$12,000. This is in paragraph 4 of the Respondent's affidavit. The Respondent further adduced that the monthly installments on this loan from the bank is paid solely by him from his account number 211803 at the said Bank.

- [7] The Petitioner in her evidence stated that she had sent various sums of monies (six times) for the Respondent to use to pay for the mortgage and had also accommodated the Respondent for periods of up to four months in the United States of America at her expense during the marriage. She complained of the Respondent not working for those periods and living solely on her earnings and the subsequent deterioration of the marriage, when on those visits to the U.S.A. the marriage was one of constant bickering and insults – mental and physical abuse.
- [8] The question therefore arises – In the circumstances of the acquisition of this property and the assertion by way of evidence that the Respondent alone has paid the mortgage debt from inception to even after the marriage, can the Petitioner justify her claim to any entitlement in the said property? In answering this question one has to take into consideration that the legal estate in the said property is vested in the name of the Respondent alone. One also has to bear in mind the very important factor as to whether the Petitioner has demonstrated to the Court that there was any common intention as required by law on the part of the parties that the property was to be owned jointly by them. Does the procuring of fittings and furniture from the United States of America for the house and the sending down of various sums of monies to the Respondent as stated by the Petitioner amount to the establishment of that common intention to own the property jointly? And is it enough contribution to warrant the Petitioner a share in the property as settlement for the dissolution of the marriage?
- [9] The Petitioner in this case would have to convince this Court that there was a common intention by the parties that the property in issue, which was acquired before the marriage by the Respondent and which was registered in his name only must be regarded as joint property. There is no evidence adduced by the Petitioner that there was any common

intention that the property would be owned jointly by the parties. For instance the Petitioner has not produced any evidence to show that there was any joint account in the name of the parties to facilitate the monthly payments on the mortgage debt; neither has the Petitioner produced any evidence to show that she invested in the building of the property by way of monies from her income earned in the United States of America between the period 1990 to 1993 before her marriage to the Respondent.

- [10] The Petitioner has stated that on some six occasions she had sent monies to the Respondent to help with the payment of the mortgage on the property in issue. The Respondent has not disputed receiving these monies, but in my view these monies were not meant to register an intention on the part of the Petitioner to own the property jointly with the Respondent or vice versa, but rather a wife trying to assist in a gratuitous manner, her husband in the payment of a financial obligation. It did not to my mind signify a common intention by the parties that the property must be regarded as joint property – See *Stonich v Stonich* Civil Appeal No. 17 of 2002; *Roy Green v Vivian Green* Privy Council Appeal No. 4 of 2002 at paragraph 11.
- [11] Where parties have not used express words to communicate their intention with the result that there is no direct evidence of it, their intention can be inferred from their actions or from other circumstances. Then it must also be shown that the Claimant has acted to his or her detriment on the basis of that common intention. There must be a sufficient link between the common intention and the conduct which is relied upon to show that the Claimant has acted on the common intention to his detriment. There has to have been conduct on which the Claimant could not reasonably have been expected to embark unless he/she was to have an interest in the property.
- [12] So we look at the evidence of the Respondent. I am inclined to accept that due to the seasonal nature of his employment as a fisherman/diver it took some five years from 1989, for him to complete the construction of the house. This was four years prior to his marriage to the Petitioner.

- [13] The Petitioner at paragraphs 5 of her affidavit filed on the 5th December 2003 averred that the mortgage was paid off from a joint account in the names of both parties; yet the evidence as at trial was that the property was still mortgaged to the bank. Which mortgage then was liquidated from that so-called joint account? I find this piece of evidence from the Petitioner to be misleading and bordering on dishonesty.
- [14] I also find it difficult to accept that the parties having been living apart since October 1996 when the Petitioner's petition stated that their marriage had broken down irretrievably, would then get together in 1997 and send monies from the United States of America to the Respondent's mother for the payment of the mortgage on the family home. This piece of evidence is contained in Paragraph 13 of the Petitioner's supplemental affidavit filed on the 21st April 2004.
- [15] On the whole I cannot accept the Petitioner's evidence that there was a common intention on the part of the parties as regards the ownership of the property, having regard to all the circumstances of this case and evidence adduced. Bearing in mind that the property at the time of the trial was still encumbered and the Respondent alone servicing the mortgage debt, and the fact that the marriage lasted only for three years and the property in issue was vested in the name of the Respondent only, and that it was acquired before the marriage, this Court finds that there was no common intention on the part of the parties as regards the ownership of the property and that accordingly the Petitioner is not entitled to a share in the property, as she has failed to convince this Court demonstrably that she acted to her detriment on the basis of any common intention.
- [16] However, it is not in dispute that the Petitioner expended various sums of money to the Respondent to furnish the said property and to pay other expenses pertaining to the property. The Respondent himself admits so in his viva voce evidence under cross-examination. The Petitioner has furnished the Court with several copies of receipts and bank statements. I have examined them all. I find that only those shown in Exhibit J.S. 2 are relevant to the justice of this case. These involve cheques to furniture stores in the United States of America and cheques to the Respondent from the Petitioner's account in

the United States of America which buttress her story that she paid for all the furniture and fittings in the said house. It is only fair that she be reimbursed these amounts to afford an amicable parting of the ways.

[17] I therefore order that the Respondent pay to the Petitioner the sum of \$5,154.00 United States Dollars which is the total of the cheques shown in Exhibit J.S. 2. Each party is to bear their own costs for this proceeding.



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Frederick V. Bruce-Lyle
HIGH COURT JUDGE