

SAINT VINCENT

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 13 of 1980

BETWEEN:

ERWIN VENO LEIGERTWOOD - Respondent/~~Appellant~~

and

AGNES LEIGERTWOOD - Petitioner/Respondent

Before: The Hon. Sir Neville Peterkin - Chief Justice
The Honourable Mr. Justice Berridge
The Honourable Mr. Justice Robotham

Appearances: S. Commissiong for Respondent/Appellant
R. Cummings for Petitioner/Respondent

1982: July 19,
Dec. 6

JUDGMENT

PETERKIN, C.J.

The parties married in 1947 in the Island of Curacao. There they lived together until 1965 when they returned to St. Vincent. After the marriage, the wife was not allowed by the husband to accept employment. She worked as a housewife. The husband worked for the Shell Petroleum Refinery in Curacao, and is now a Pensioner. His pension is \$443.41 per month.

The husband purchased a lot of land at Arnos Vale with his own money. There he erected a dwelling house in 1965 at a cost of \$27,000.00 in which they lived together as the
/matrimonial.....

matrimonial home until June, 1976. The only assistance provided by the wife was a truck load of stones given by her brother for constructing a septic tank for the dwelling house. It is now estimated to be worth \$75,000. But Parliament has recognised that the wife who looks after the home contributes as much to the family assets as the wife who goes out to work. The one contributes in kind, the other in money or money's worth.

The husband left the matrimonial home in June, 1976, and went to live in the home of Mr. & Mrs. Richards at Belair. They are the parents of a Miss Viola King for whom the husband had developed an affinity, and with whom he later enjoyed an intimate relationship. In November, 1976, she bore him a son. The wife commenced divorce proceedings against him, and the marriage was finally dissolved in November, 1979. The question of ancillary relief was adjourned to Chambers for hearing on a date to be fixed.

In the meantime, the wife continued to occupy the matrimonial home where she carries on a small guest house in the upper storey which enables her to earn a living. She is 54 years old. The husband is 60 years old, but in good health and still able to work. In addition to his pension he receives \$300 per month rent for the lower storey of the matrimonial home. He is living with the party cited in secure accommodation, while the wife is living in the upper storey of the matrimonial home and has nowhere else to go.

/The only.....

The only available asset is the matrimonial home. The husband has offered a lump sum payment of one-third its estimated value in full and final settlement of all ancillary matters. The wife contends for 7/15 of its value, and to be allowed to remain in her present occupation of it.

The learned trial Judge in a reasoned judgment ordered that the husband make to the wife a lump sum payment of \$25,000, and that she continue to occupy the upper storey of the matrimonial home as a dwelling house for herself and as a guest house during her lifetime, or until her remarriage. He made no order as to periodical payments. The husband now appeals to this Court.

The grounds of appeal are, (1) that the learned trial Judge improperly and unfairly exercised his discretion under section 25 of the Matrimonial Causes Act, 1973, in permitting the Petitioner to remain in the matrimonial home for her lifetime, having regard to the evidence which was before the Court; and (2) that the learned trial Judge misconstrued and/or misapplied the ratio decidendi in the case of *Martin v Martin*, 1977, 3 All. E.R. 762, on which he based his decision to allow the Petitioner to occupy the matrimonial home of the parties herein.

In exercising the wide discretionary powers given to the Court by the Matrimonial Causes Act 1973, the Court should preserve, so far as it can, the utmost elasticity to deal with each case on its own facts. The decisions of the Courts are not precedents in the strict sense of the word. Indeed, they are never better than guidelines,

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but may nevertheless be helpful in certain respects. In the case of Martin v Martin cited above where, as in the instant case, the only available asset was the matrimonial home, Stamp, L.J. had this to say:

"It is of primary concern in these cases that on the breakdown of the marriage the parties should, if possible, each have a roof over his or her head. That is perhaps the most important circumstance to be taken into account in applying section 25 of the Matrimonial Causes Act 1973, when the only available asset is the matrimonial home. It is important that each party should have a roof over his or her head whether or not there be children of the marriage."

To return to the instant case, the learned trial Judge was obviously guided by this, and, having found as a fact that there was no suitable alternative accommodation available to the wife, decided that she should be allowed to continue to occupy the upper storey of the matrimonial home during her lifetime. I would agree. The Judge, in my judgment, approached the matter correctly. It should be borne in mind that not only was the husband in secure alternative accommodation, but that in deciding as he did he was not only leaving the wife with a roof over her head, but also was giving her an opportunity to earn a living in the only way in which she was qualified so to do, namely, by carrying on the business of a small guest house.

But the wife cannot be allowed to enjoy the best of two worlds. She cannot both be given a lump sum of \$25,000 as the equivalent of a one-third share of the only available asset and at the same time continue to enjoy a life interest in one-half of it. She is of course entitled to some sort of lump sum as her contribution in looking

/after.....

after the home and caring for the family for the duration of the marriage. All the circumstances must be taken into account. In the final analysis the Court must view the situation broadly and see that the financial arrangements it proposes meet the justice of the case. The essence of the legislation is to secure flexibility to meet the justice of particular cases and not rigidity.

Under the old dispensation the wife got one-third and had to provide her own accommodation. If she was given the right to occupy the matrimonial home, that went to reduce the one-third. Under the new dispensation she gets a share of the capital assets. Looking at it broadly I would propose that she receive \$12,500 as her share in addition to remaining in occupation of the upper storey of the matrimonial home during her lifetime. This seems to me to represent a fair assessment of her past contributions bearing in mind that she will receive no periodical payments. In this way her past contributions would in my view be adequately recognised, and her future living standard assured so far as may be.

Accordingly, I would affirm the Judge's order in regard to her occupation of the upper storey of the matrimonial home, and reduce his order for a lump sum payment of \$25,000 by one-half.

In addition I would order that the husband continue to pay the rates and taxes, and that he keep the building in a reasonable state of repair.

/I would....

I would make no order as to costs.

N.A. PETERKIN,
Chief Justice.

I agree.

N.A. BERRIDGE,
Justice of Appeal.

I also agree.

L.L. ROBOTHAM,
Justice of Appeal.