SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

No: D.91 of 1997

Between:

SHEILA MURILLA JUDE

Petitioner

.v

AUSTIN JUDE

Respondent

Appearances:

Mr. O. Larcher for the Petitioner
Mr. K. Monplaisir Q.C. for the Respondent

1999: March 10 & 30.

DECISION

ALLEN J.

This is an application for ancillary relief. The Petitioner and the Respondent were married in St.Lucia on the 2nd day of June 1956 when the Respondent was 23 years old and the Petitioner was three (3) years younger.

Shortly after marriage they proceeded to the United Kingdom to seek their fortune; the Respondent left on the 10th June and the Petitioner followed three months later. He was a bookkeeper and was determined to further his education. She, on the other hand, had little formal education , but expressed the desire to become rich.

Together they bore five (5) children and struggled to educate them. On the evidence, their lifestyle during married life together can be described as moderate. It is a credit to both of them that their children have apparently all done well; what is unfortunate is that after the struggle which manifestly continued for about the first 15 years of marriage, and now that there is sufficient to make them happy for the rest of their lives, allegations of cruelty and mistrust have caused the marriage to end in divorce and a bitter battle over property.

The Petitioner was raising a family at the same time as she was working hard to realise her dream and this, it seems, caused her to experience poor health during the early years of marriage. They both worked at restaurants and she did extra jobs as a cleaner.

In 1958 the Petitioner returned to St.Lucia to give birth to their second child and in 1959 she left the two children with her parents and returned to England, where she continued to work as hard as she had done before. A third child was born in 1961 and a fourth in 1962. According to the petitioner, she did extra work because the Respondent was neglectful in the maintenance of his family and was not particularly keen on work.

By 1966, the children that were left in St.Lucia came back to England. They received family allowances from the State but this was always a source of contention as the Respondent insisted on controlling it.

In about 1969 they began investing in property. They bought 10 acres of land from her parents and at about the same time purchased two leasehold properties in England which greatly reduced their cost of living.

In 1971 they returned home to settle. They brought with them a block making machine and items of household furnishings and furniture and they began construction of their first matrimonial home at L'Abayee.

In 1985 the Respondent incorporated a Family Company which he named Austensheil, and assured the petitioner that this was the way to protect family assets from any judgment that National Commercial Bank may obtain against him. What happened was that firstly, with other partners, the Respondent purchased a cargo vessel called *Endura*; the project failed and he was made liable for the full amount due to the Bank.

The name of the company was a clever joining of the Christian names of the petitioner and the Respondent but on a simple matter like this, under cross-examination, the Respondent made the answer that he called the company Austensheil because the company had to have a name.

Not much is disputed by the Respondent about the first 15 years of married life together; he agrees that the petitioner worked hard and was frugal. In fact, in paragraph 2 of his affidavit sworn the 6th January, 1999 he said this about the petitioner:

> "She brought her first pay packet to me and we agreed to allow her to spend it on household needs and on busfare....."

The Respondent has not even seriously denied that he has not been employed by anyone since 1975. Further, despite a strained relationship,

whenever he needed money or a financial backer, he turned to the petitioner even when it was reasonable to believe that he had monies of his own, yet now that he has embarked on a series of investment strategies, he insists that all the investment capital is from his own personal account.

The petitioner's allegation that these financial manoeuvres were all designed to deprive her of her right to community property must be carefully examined. When asked under cross-examination by counsel for the petitioner, questions concerning the financial status of Austinsheil and Marigot Properties Ltd, a company he later formed, this is how the Respondent answered:

> "*Austinsheil sold many properties but my wife is not part of the Company. I am managing director of both companies but will not answer where the monies are because* (referring to Counsel for the Petitioner) *you are not a member of the Company.*
> *Sheila Jude was a director of Marigot Properties, I agree I have her name there but she was not looking after the interest of the Company. Her name was there to facilitate the signing of cheques. If you want to know who are the shareholders ask the Company."*

When asked about the loan he took expressly for the development of Sarrot Estate the Respondent admitted that he took the loan for that purpose but gave up when he started getting blows. But when the Petitioner's effort in the development of Sarrot was put to him, he said his wife did not even know where Sarrot was.

It would have been fair to say that the Respondent did not keep the Petitioner informed of his corporate ventures because :

(a) Under the Civil Code it is the husband who manages the community property.

(b) Because of the Petitioner's limited education she would not have been able to understand them.

But the Respondent has not so stated. Instead, he gives the Court the impression that the petitioner has no interest or claim in the companies he incorporated because no community property has been invested in either of them. It is clear on the evidence that the Respondent, having through reasonable judgment and accumulated experiences after early struggles and some failed ventures, found himself acquiring wealth, has forgotten or ignored the years when the petitioner worked as a "Cleaner Lady" to bring up their children.

Both Counsels have creditably assisted the Court with useful authorities.

Counsel for the Respondent concedes that the lands at L'Abayee constitute community property. It is unnecessary therefore to repeat the history of this acquisition.

The Sarrot lands were purchased in September 1971 with Nicholas Jude, the brother of the Respondent. Nicholas Jude on emigrating to Australia donated his half share to his brother and a deed of donation was executed.

Counsel for the Petitioner contends that this was a sale but made no effort to prove it. Indeed it would have been difficult although it was not argued this way before the Court, some questions are irresistible.

There is no evidence that Nicholas Jude was wealthy nor that he had any special love for or obligation to the Respondent.

If he was emigrating to settle as far away as Australia would he not need as much money as he could muster? Would it have been unreasonable to sell the lands to the Petitioner and the Respondent even at a bargain price?

But the deed of donation is an authentic document and under **Article 1192(2)(c)** of the Civil Code donations are excluded from the community and are considered to be separate property.

I find that the Sarrot lands belong to the Respondent and the Petitioner in the proportion ¾ to ¼, that is, ¾ to the Respondent and ¼ to the Petitioner.

I do not accept that the Petitioner has no interest in Austinsheil Properties Limited. Before 1971 life for the Respondent was a struggle. Although he held one or two responsible jobs between 1971 and 1975 he has not impressed the Court as having earned therefrom any more than was necessary to maintain his family in the way they deserved.

So too, his contention that the Petitioner has no interest in Marigot Properties Limited is equally unconvincing.

I am satisfied that the Respondent has invested community funds in the capital of both companies.

The Court has given careful consideration to the orders that Counsel on both sides have invited the Court to make; but what the Court finds more desirable is an order which considering the advancing ages of the parties and the way of life towards which they are now inclined, will give them a clean break from

each other within the shortest time, and although the Petitioner will, no doubt, have the support of competent advisers, I will err on the side of caution and make an order which avoids costly and tedious investigations, but takes into account the need for the Petitioner to have proper financial security.

Such an order will have regard to the provisions of **sections 22, 24, 25 & 45** of the Divorce Act [No. 2 of 1973] and will be to some extent in lieu of the Petitioner's undetermined interest in Austinsheil Properties Limited and Marigot Properties Limited.

Order

The Order of the court is:

1. That the Respondent do transfer to the petitioner her half share in the community property known as L'Abayee.

2. That the Respondent do transfer to the Petitioner her one-quarter share in the community property known as Sarrot lands.

3. That the Respondent do transfer to the Petitioner the matrimonial home at Marigot in which she how lives and all the lands reputed to be associated therewith.

4. That the Respondent do transfer to the Petitioner the Restaurant known as *Chateau Mygo* and all the lands reputed to be associated therewith.

5. That the Respondent pay to the Petitioner forthwith the sum of $200,000.

6. That the Respondent pay to the Petitioner a further sum of $200,000 over ten (10) years commencing from the date of this order with payments of not less than $10,000 in any given year.

7. That the Respondent make monthly payment of $1,000.00 for the remainder of her or his natural life commencing from the 1st day of May, 1999.

8. That the Respondent pay to the Petitioner her costs in this application to be taxed if not agreed.

Liberty to apply.

KENNETH ALLEN Q.C. OBE
High Court Judge (Ag.)