

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 10 OF 2002

**IN THE MATTER OF THE PETITION OF JEMMA CHARLES nee MASSIAH
FOR DISSOLUTION OF MARRIAGE**

BETWEEN:

JEMMA CHARLES nee MASSIAH

Petitioner

V

DAVID CHARLES

Respondent

Appearances:

Ms. Nicole Sylvester and Ms. Rochelle Forde for Petitioner

Mr. Ronald Marks and Mr. Jaundy Martin for Respondent

2005: 17th January

DECISION

- [1] The parties were married on 24th July 1999. The decree absolute ending the marriage was made on 8th November 2004. The petitioner has sought and received leave to apply for dissolution of the marriage after less than three (3) years. The respondent now applies for ancillary relief. He seeks a property adjustment order. The only matrimonial property consists of a house and land at Belair in St. Vincent and an automobile. The vehicle has subsequently been sold by the petitioner. She offers to pay to the respondent the sum of \$5,000.00 representing his share of the proceeds of sale of the car. The respondent had written by his counsel demanding this amount as his share.

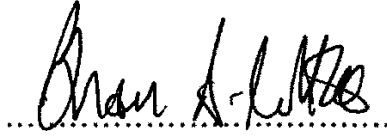
- [2] The house in Belair is built on land purchased solely by the petitioner before marriage. The respondent says that he contributed to the construction of the home and is entitled to fifty per cent (50%) of the equity. Both parties provided affidavits. In his initial affidavit of 13th May 2004 the respondent offered no corroboration in support of his bold assertion that the parties had “constructed the matrimonial home together”.
- [3] In her affidavit of means in response the petitioner was full and detailed. She gave evidence of her income and assets. She supported this by exhibits. She obtained \$15,000.00 by way of mortgage to build an access road and retaining wall to the land. A second mortgage of \$172,000.00 was raised to finance the construction of the house. Both parties are borrowers under this second mortgage. The monthly repayment installments are \$1,569.30. The recent pay slips of the petitioner reveal that her net income after various deductions is \$1,734.15 monthly. She says that because of the amount of the monthly mortgage payments the respondent co-signed the second mortgage as well. However, the petitioner says that she has made all of the installment payments to date herself. She says that she has had to work on a private basis as a registered nurse as well as overtime work to make extra income to make ends meet. She also exhibited money remittance advices showing that relatives have been assisting her financially from time to time. She says that the respondent has not contributed to the acquisition or construction of the matrimonial home and is not entitled to any property adjustment order in his favour.
- [4] On 1st November 2004 the respondent swore to a second affidavit. Here he deposes that his income as a sailor was about \$650.00 US per fortnight. He says he was so employed from 1990 until he was dismissed in September 2001 on account of his illness. He has not been able to work since. The respondent has offered no proof of his income apart from his own ipsa dixit. He says that he would regularly remit sums of \$500 to \$750 US to the petitioner. He exhibits one money transfer advice from Western Union for \$700 US in August 1998. One

Neil Caruth also swore to an affidavit in support of the Respondent. He says that on two occasions, the dates of which he does not provide, he delivered an envelope containing cash to the petitioner from the respondent. He does not say how much money. His evidence does not offer much assistance. I am left with the unsupported claim of the respondent that he made significant contributions to the construction of the matrimonial home in cash.

[5] It is the respondent who has made this application for a property adjustment order. He has the burden of satisfying the court that it is just and equitable to make the order sought. The evidence which he has provided comes far short of satisfying me. On the other hand the petitioner has been clear and consistent. Her affidavit evidence is largely supported by exhibits. These are, in the main, absent from the respondent's case.

[6] I note the petitioner's concession to pay to the respondent the amount of \$5,000.00 as his share of the vehicle. I decline to make the property adjustment order sought. The respondent has deposed that he is now indigent and has to beg

for a living – yet he has made no application for maintenance. However, in the circumstances I do not visit him with an order for costs. Each party is to bear his/her own costs of this application.

A handwritten signature in black ink, appearing to read "Brian S. Cottle", written over a horizontal dotted line.

Brian S. Cottle
MASTER