

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

SUIT NO. ANUHCV2004/0162

RACHEL JOSEPH

Claimant

And

FRANKLYN JOSEPH

Defendant

Appearances:

Mrs. Cherissa Roberts for the Claimant

Mr. John Fuller for the Defendant

.....
2007: February, 20th
April 30th
.....

JUDGMENT

[1] **Blenman, J;** Mrs. Rachel Joseph (Mrs. Joseph) and Mr. Franklyn Joseph (Mr. Joseph) were married on the 6th day of August 1993. After the marriage the parties lived and cohabited in a home situate at Falmouth and more particularly described in the Land Registry as Registration **Section: Falmouth & Bethesda Block # 34 2683E Parcel 70** (the property). Mrs. Joseph has since filed a petition for divorce against Mr. Joseph. In addition, she has filed these proceedings against Mr. Joseph and seeks an injunction to restrain Mr. Joseph from occupying the property. She also seeks a determination from the Court as to her interest in the property. (By the time of the trial of the matter the parties were divorced)

[2] Mrs. Joseph alleges that she is beneficially entitled to a share in the property. She says that she worked in the home and took care of Mr. Joseph by providing him with meals among other things. She further alleges that they shared a common intention that she should have a beneficial interest in the property even though it was registered in Mr. Joseph's sole name. As a result of this common intention she says that she contributed financially to the acquisition of the property.

- [3] Mr. Joseph strongly resists Mrs. Joseph's efforts to share in the property. He contends that she is not entitled to any share in the property and has never contributed thereto; in fact Mr. Joseph states that the acquisition of the property was as a result of his exclusive efforts. Mr. Joseph denies that the parties ever shared a common intention that Mrs. Joseph was to have benefited from or that she acted to her detriment.

Issue

- [4] The two issues that arise for the Court's determination are:
- (a) Whether Mrs. Joseph has any beneficial interest in the property?
 - (b) If so, to what the interest is she entitled?

Evidence

- [5] Mrs. Joseph deposed to an affidavit in support of her claim and she was cross examined. Similarly, Mr. Joseph adduced evidence on his behalf by way of affidavit and he too was cross examined. Mr. Austin Josiah (Mr. Josiah) also testified on behalf of Mr. Joseph.

Claimant's Evidence

- [6] I propose to delve in some detail into Mrs. Joseph's evidence. In her affidavit she stated as follows:

"I know the Defendant having been in a relationship with him since in or around 1990 and married to him since the 6th day of August 1993 in Brooklyn New York.

Once we were married we returned to Antigua to live and initially resided in rented accommodations in Christian Hill. The Defendant and I would often discuss owning our own home and I continually encouraged the Defendant to purchase a piece of land on which we could build as he had previously built a house for his parents and resided there prior to our marriage.

Sometime in or about 1998 the Defendant indicated that he had acquired a piece of land from his mother and that we could build there. On my prompting the Defendant and I made arrangements for the transfer of the land into his name and thereafter began planning to build our home. It was always my understanding that the house whatever and whenever we build would be our matrimonial home in which we would live as a family.

We approached the RBTT Bank for a mortgage but were having difficulty initially as we did not have the required deposit. The Defendant therefore, borrowed some of the money from his family and I too borrowed from Mr. Austin Josiah, which is a family relative of mine. Together we were able to raise approximately \$15,000.00 to start the foundation while we awaited the approval of the Mortgage Application at the bank. Unfortunately, our mortgage application was declined by the bank. However, the Defendant then indicated that he could obtain the assistance of CHAPA as they had a housing scheme.

The Defendant made all the arrangements with CHAPA and I am not aware of details, however, I do know that the Defendant was paying \$900.00 per month for the construction of our home.

Shortly after the completion of our foundation I had cause to travel abroad in an attempt to arrange for my some to attend University in the States where my sister and my son's father resides. I was overseas for just under a year and remained in contact with my husband, the Defendant.

Upon my return the Defendant had completed the house but had not done so on the original parcel of land upon which we had built the foundation before my departure. When I question the Defendant as to the reasons for the change he merely said it was complicated but to explain it simply the house could not be built on that land because of the land itself. I did not question him any further.

The Defendant and I resided in that house ever since my return in 1997 until in or around December 2003 when the Defendant removed most of the furniture from the house following an incident of domestic violence which I had reported to the police.

I subsequently obtained an Interim Protection, Occupation and Maintenance Order excluding the Defendant from the matrimonial home. The said Order to this day remains an Interim Order; however, I have filed a petition for divorce in addition to this claim.

For the duration of the marriage I have only been employed for approximately 18 months. I have and continue to experience great difficulty finding employment as a result of my non-national status as I require a work permit. Therefore, once my employment had ceased I sought the assistance of the Defendant in finding alternative employment. However, it was clear that the Defendant did not want me to work as he would often suggest that it was not necessary and that he was earning sufficient to provide for both of us.

That throughout our relationship the Respondent has taken responsibility for all our financial affairs. Even during the period of my employment he would manage my earnings as well as his. He would make all our financial decisions, pay utility bills, except the telephone which I paid. He would also do all the grocery shopping. Therefore all that was left for me to do was to remain at home to cook and clean and see to the general maintenance, upkeep and improvement of our home.

That whatever little money I had I spent primarily on the Defendant and our home. Some of my contributions to our home included the purchasing of a stereo, a television, fans, baking pans and dishes, curtains, kitchen towels, dish racks, table cloths, bedroom and bathroom lines, a center table, a cake mixer, a juicer, a pressure cooker, a toaster, an electric kettle, plastic chairs, bulbs, a washing machine, a bed, adopters and transformers."

[7] During cross examination by Learned Counsel Mr. Fuller, Mrs. Joseph maintained that she borrowed \$5,000 from Mr. Josiah which she contributed towards the construction of the foundation of their home. The matrimonial home that they eventually constructed is not located on the same spot where that foundation was. She insisted that they both intended the property to be their joint property. Mrs. Joseph was adamant that she contributed financially to the acquisition of the disputed property. She worked for a period of time earning \$1,000 per month which she gave to her husband. Her husband worked in town so she trusted him with everything. She had no problem with him paying the bills since her husband was the "man in charge". She said that during the construction phase of the home she went overseas and by the time she had returned the house was completed. No further work was done on the house. She maintained that before going overseas she also sold drinks and food for about 3-4 years and contributed to construction of the house. She said that her husband accused her of having a relationship with his nephew and as a result their relationship was strained for about 3-4 years; yet she continued to cook food for him.

[8] During re-examination by Learned Counsel Mrs. Roberts, Mrs. Joseph insisted that even though Mr. Josiah had stated that he has never lent her money to contribute towards the acquisition of the home, he did in fact do so. She maintained that during her marriage to Mr. Joseph she gave her husband all of the money that she earned and he purchased all of the food and paid the bills.

Defendant's Evidence

[9] Similarly, I will state Mr. Joseph's evidence in some detail. In response, Mr. Joseph stated as follows:

"While we had discussed owning our own home, the Claimant never encouraged me to purchase a piece of land on which to build. Furthermore, I never built a house for my parents. Rather I assisted my parents by contributing financially towards the rebuilding of their home. I do not regard these contributions as substantial. I was merely assisting my parents as at the time I was living at their home.

I was never prompted by the Claimant to transfer my mother's land into my name at any time. I had already caused the land to be transferred to my name from since 1997. Furthermore, I never indicated to the Claimant that we could build on my mother's land. Also, the land which I eventually built on was a separate parcel of land: Registration Section Bethesda and Falmouth; Block 34 2683E, Parcel 308.

I never borrowed any money from my family as stated. It was my father who had kindly donated a gift of EC\$10,000 to me which I used as the deposit for the house. The Claimant never borrowed any money from Austin Josiah and never made any contribution towards the deposit for the matrimonial home. At the time when I was arranging the loan transaction with CHAPA for funds to build the said house, the Claimant was overseas in the United States.

I was the one who made all the arrangements with CHAPA however I am and have been paying \$1,000 per month (the requirement is actually \$994.00 per month) to CHAPPA since 1999 towards loan payments. I state categorically that I have made all the loan payments towards the said house. These payments have been made in cash from my salary.

The Claimant has been living in the house not from 1997 but 1999. I admit that I removed the furniture but I never perpetrated any act of domestic violence.

The Claimant has been employed for 15 months from August 1996 to October 1997 at Selective Auto supplies for \$1000 per month and not 18 months as stated. Thereafter I got the Claimant two jobs and she refused to accept those jobs claiming that they were not up to her standard. Those jobs were cashier jobs at Antigua Discount Centre and Brownie's Outlet. The assertion that I did not want her to work as I had suggested that it was not necessary as I was earning sufficient to provide for both of us is not only a lie but ridiculous. My take home salary at the time was \$1663 per month out of which I had paid \$1,000 to CHAPA.

As far as I was aware the Claimant only sold local drinks and not food as claimed. She sold these juices for approximately 4 to 5 months. I know nothing of what she used money derived from such enterprise to do. I strongly doubt her assertion that she made \$900 a week as claimed.

I took responsibility for all financial affairs as I was by and large the only financial contributor. I categorically deny that I would manage the Claimant's earnings as well as my own. What the Claimant did with her money was none of my business.

I deny that the Claimant spent her money primarily on me. I deny also that the Claimant purchased transformers and adapters. The latter are mine. The majority of the other articles, save the washing machine, stated in par 15 have been acquired by the Claimant since January 2003."

[10] Mr. Joseph in amplifying his evidence stated that during the time that they lived together Mrs. Joseph has never contributed any money "to do with his life". She never assisted him at all in paying for anything.

[11] During cross examination by Learned Counsel Mrs. Roberts, Mr. Joseph said that he told Mrs. Joseph that "I was going to build a home for the two of us to live in because we were married." She did not say anything. They went about starting to build a house. Mrs. Joseph did not contribute initially to where he was going to build. At the time he worked at property evaluation and earned \$1700. "odd" dollars. He used to get \$1663 "in his hand" out of this net figure he paid \$1,000 towards the loan and was left with \$663. To supplement my income he raised cattle, mined coals which he used to cook. He said Mrs. Joseph never assisted him in those divers venture; in fact she never helped him with the cattle, she never helped him with the coals. He was adamant that Mrs. Joseph used to sell food in town for her and he did not know what she did with her money. However, he admitted during further cross examination that Mrs. Joseph used to cook his food, wash his clothes and clean for him. He was satisfied with the way in which she took care of their family. He smiling said that "he had good memories of being with her"; in fact she "made him feel good at the time" At that time, "his life as not good but making out." He said that he had commenced the construction of his home in 1998 on another plot of land but that he had difficulty with the rocks so he had to change and build elsewhere,

[12] During further cross examination, Mr. Joseph admitted, however, that he never had any financial hardship since he budgeted for "what he worked for". He was unaware that Mrs. Joseph had borrowed money from Mr. Josiah; he financed all of the purchases that were made in the home from "the Megaman". Mr. Joseph was adamant that he is a hard worker and an independent man and that Mrs. Joseph never gave him money. His wife was not a hard worker, since she had nothing else to do other than house work.

[13] The next witness was Mr. Josiah. He stated as follows:

"I know the Claimant very well and am a family friend of the claimant. I have been made to understand that the Claimant has made an allegation that I have loaned her money in the late 1990's which was used to assist in building her family home. The Claimant has never borrowed any money from me for the financing of a home."

[14] During cross examination by Mrs. Roberts, Mr. Josiah told the Court that while he knew both Mr. and Mrs. Joseph he had known Mrs. Joseph for a longer period of time and this was also long before her marriage. He recalled having loaned her money and said that she had requested it for a specific purpose. He was clear that he had never loaned her the sum of \$5,000.

[15] During re examination by Mr. Fuller, he said that he had lent her \$400.00 to assist her son in relation to his school.

Defendant's Submissions

[16] Learned Counsel Mr. Fuller submitted that Mrs. Joseph could not have returned to Antigua before 1998. In fact Mrs. Joseph admitted that she returned to Antigua in 1999. In her cross examination she admitted that she and Mr. Joseph were not friendly for some three to four years before she put him out of the house by the Order of court. This Order is dated 13th December 2003 so it is inescapable logic that it was since about 1999 that the parties were not on friendly terms. If the house was completed in 1998 and sometime in 1999 the parties were not on friendly terms how can the assertions of Mrs. Joseph that she "managed her earnings as well as his throughout their relationship" be believed. Mr. Fuller said that Mrs. Joseph's assertions that she gave all her money to Mr. Joseph are not

credible and must be rejected. Mrs. Joseph's demeanour does not lend any weight or strength to her bare assertions of some unspecified contribution to the acquisition of the property. Mr. Joseph on the other hand was most forthright and certain in his evidence that Mrs. Joseph made no contributions whatsoever to the acquisition of the property. Further Mr. Fuller stated that there is no evidence whatsoever of any intention by Mr. Joseph to enter into an agreement whereby the constructive trust would arise. Mrs. Joseph's evidence that Mr. Josiah lent her money to assist in a foundation is also proven to be untrue. Mr. Josiah testified that Mrs. Joseph borrowed a small amount to assist in a matter not related to the construction of any foundation. In any event if it were true, which is denied, that Mrs. Joseph contributed money to a foundation on some other property, and such contribution would be in support of a claim to a share in that property and not the instant property.

[17] Next, Mr. Fuller said that if Mrs. Joseph truly believes the assertions that she had made that Mr. Joseph "opted to build at an alternative location for reasons which were not known to me at the time, but which may very well be because I had contributed financially to the foundation of what originally was to be our home", there Mrs. Joseph was intimating that Mr. Joseph bought and built elsewhere ensuring that the property would be acquired by him without any contribution from Mrs. Joseph, and in so doing admitted that Mr. Joseph's case is true. It is clear that Mrs. Joseph has made no substantial direct or indirect contribution to the acquisition of the property and there is no evidence from which the Court can infer an agreement between the parties which would give rise to a constructive trust whereby Mr. Joseph could be held to hold the legal title to the property for himself and Mrs. Joseph.

[18] Mr. Fuller said that it is the law that the Court must find that there has been an agreement, arrangement or understanding reached between the parties that the property is to be shared beneficially. See the dicta of Lord Bridge of Harwich in the House of Lords decision in **Lloyds Bank Plc vs Rosette [1991] 1A.C 107** at page 132 which decision was quoted by Mr. Justice of Appeal Gordon in the Court of Appeal of Antigua and Barbuda decision in **Dane Norman Lawrence Abbott vs Lynn Anne Abbott Civil Appeal No. 32**

of 2003. In addition or as an alternative, in the absence of evidence regarding such an agreement, if the Court can find that a Claimant has made substantial direct or indirect contributions to the acquisition of the matrimonial property then such an agreement may be inferred. See **Gissing V Gissing [1970] 2 ALL ER 780** Finally, Mr. Fuller said that there is patently no evidence of any such agreement, arrangement or understanding between Mrs. Joseph and Mr. Joseph and in the absence of evidence of substantial contributions made by Mrs. Joseph to the acquisition of the property Mrs. Joseph's case must wholly fail.

Claimant's Submissions

[19] Mrs. Roberts submitted that the law upon which a determination of the interest may be made is that constructive trust, the elements of which are summarized as: a common intention relied upon to the detriment of the (Mrs. Joseph) so as to render it inequitable to deny (her) an interest in the property. Counsel referred the court to **Gissing v Gissing [1970] 2 ALL ER 780; Hammond v Mitchell [1992] 2 ALL ER 109**

[20] **On the Issue of Common Intention**, Mrs. Roberts adverted the Court's attention to the fact that Mr. Joseph stated that he did have discussions with Mrs. Joseph about "owning their own house". This statement was consistent throughout the evidence of Mr. Joseph as in cross examination he confirmed "I told her (Mrs. Joseph) I was going to build a house for the two of us to live in." When questioned whether the house in which they lived in, not being the original house he started, was also intended to be the "family" house his response was yes and he went on to state that they were building a future together. Therefore, Mrs. Roberts submitted, that there is no question that there existed a common intention between Mrs. Joseph and Mr. Joseph to build a house together for their mutual benefit as they built a future together. Further, Mrs. Joseph acted at all material times upon the reliance of the common intention that she and her husband, Mr. Joseph, had discussed and on this basis Mrs. Joseph's actions were aimed at furthering their common goal. By Mr. Joseph's own admission he was the primary bread winner for most of the marriage but his income was not sufficient after paying the monthly house payment to meet all other expenses. Mrs. Joseph stated that she trusted her husband, when she worked she got

paid in cash, \$250.00 at one point, \$300.00 per week, which she gave to him to pay bills and buy food as he worked in town. Mrs. Roberts submitted that this is neither an uncommon nor an inconceivable arrangement in a “happy” marriage and in the words of Mr. Joseph in cross examination: “yes she made me happy” although he did say that those feelings are now dead. Nonetheless, the Court, in considering whether or not there was a common intention between the parties, must be only concerned as to the relationship and intention of the parties during the relevant period.

[21] Mrs. Roberts said that Mr. Joseph would like the Court to believe that he supplemented his income doing various things including cattle rearing, coal mining without the assistance of his wife, Mrs. Joseph, who remained at home merely doing household chores; although, Mr. Joseph admitted that Mrs. Joseph worked for a period in excess of one year and that she sold food and drinks he denied that she ever gave him any money during their 10 years of marriage. Mrs. Roberts submitted that this is an unfortunate bitter position for Mr. Joseph to take which is obviously strategically aimed at denying her an interest in the “fruits of their labour” as husband and wife. In the circumstances, the Court should having regard to the demeanour of Mr. Joseph and reject his evidence where it conflicted with the evidence of Mrs. Joseph.

[22] In respect of the evidence of Mr. Josiah, Mrs. Roberts submitted, that the vein of consistency is that both parties borrowed from him as a close family friend, both Mrs. Joseph and Mr. Josiah contend that Mrs. Joseph borrowed more than once. However, there is some disparity as to the amount and purpose of one of the loans obtained by Mrs. Joseph which relates to her financial contribution to the matrimonial property. Mrs. Roberts next submitted that should the Court accept the evidence of Mr. Josiah it would merely affect the extent of the interest held by Mrs. Joseph in the matrimonial property and not the issue such as to determine whether or not there existed a common intention between the parties.

[23] Accordingly, Mrs. Roberts urged the Court to find that Mrs. Joseph has a beneficial share in the property. Mrs. Joseph therefore seeks a finding that she has a beneficial interest in

the matrimonial property more particularly described in the Land Registry as Registration Section: Falmouth & Bethesda Block No. 34 26883E Parcel No. 308 and that Mr. Joseph holds her interest upon trust for her.

Court Analyses and Findings

[24] I have reviewed the submissions made by both Learned Counsel and have perused the evidence. There is no dispute that the parties are married for a relatively long period of time and that the property was acquired during the marriage. Also, not in issue is the fact that the property is registered solely in Mr. Joseph's name even though Mrs. Joseph alleges that she has a beneficial interest in the property. As stated earlier, Mr. Joseph strongly resists Mrs. Joseph's claim. He maintains that the property belongs to him solely.

[25] It is the law that in the absence of an agreement or common intention between the parties the Court has no power to vary the beneficial interest of the parties in the property. A common intention is usually implied taking into consideration all of the circumstances of the case. Mrs. Joseph therefore has to prove to the Court that the parties shared a common intention that she would share in the property and as a result of the common intention she acted to her detriment. In **Grant v Edwards et al [1986] CH 638** Sir Nicholas Browne Wilkinson VC declared:

"In most of these cases the fundamental, and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties and almost always from the expenditure incurred by them respectively." Usually the most compelling evidence is the expenditure incurred referable to the acquisition of the house.

[26] Further, in **Lloyd's Bank PLC v Russell [1990] 1 ALL ER 1111** Lord Bridge of Harwich stated at page 1118 as follows:

"The first and fundamental question which must always be resolved is whether, independently or any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there was at any time prior to the acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to

share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however impressive their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel."

[27] In **Grant v Edwards** *ibid* Sir Nicholas Browne Wilkinson VC declared:

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a common intention that both should have a beneficial interest (b) that the Claimant has acted to his or her detriment on the basis of that common intention."

[28] I must state that having reviewed the evidence the resolution of this matter has proven to be less difficult than first anticipated. This was due in no small measure to the fact that even though Mr. Joseph alleged that Mrs. Joseph has no beneficial interest in the property yet he said on several occasions that he had previously discussed with her the provision of a home. Applying the legal principles stated in **Grant v Edwards and Lloyd's Bank PLC v Russell** to the case at Bar, I have no difficulty whatsoever based on Mr. Joseph's evidence, which is supported by Mrs. Joseph's evidence that the parties had a common, intention which was communicated by Mr. Joseph to Mrs. Joseph, that the property that Mr. Joseph was in the process of constructing was to have been owned by them both beneficially. Even though Mr. Joseph sought to persuade me that Mrs. Joseph never assisted him financially in the acquisition of the home I do not believe him. Equally, I do not believe that Mrs. Joseph made the substantial financial contribution to its acquisition as she would have me believe. I nevertheless have no doubt that she made very minimal contribution to the acquisition of the matrimonial home. I am also satisfied that based on the common intention that was shared by Mrs. Joseph and Mr. Joseph that the former acted to her detriment. I have no doubt as stated earlier that whatever money she earned from selling her food and drinks she gave to Mr. Joseph and together they were able as a family to construct and acquire the property and take care of themselves. I am satisfied

that during the marriage Mrs. Joseph acted to her detriment based on the common intention she shared with Mr. Joseph that she would have a beneficial interest in the property.

Mrs. Joseph's Interest

[29] I have now to determine Mrs. Joseph's interest in the property. While I have no doubt that Mr. Joseph significantly contributed financially to the acquisition of the property and that what ever little Mrs. Joseph earned either byway of selling or by working albeit for a very short period of time, she also contributed to its acquisition indirectly. It is clear to me that the completion of the matrimonial home was realized, to a greater extent, due to the financial and other efforts of Mr. Joseph; this is not in any way to down play Mrs. Joseph's contribution.

[30] Further, I do not believe Mr. Joseph when he stated that Mrs. Joseph never gave him any money since he was "an independent man." As stated earlier, I do accept that during the "good times" of their marriage the parties pooled their joint resources – including their financial resources to take care and provide for their family and this includes acquiring their property. In addition, she cooked, cleaned and performed other "wifely duties".

[31] In determining Mrs. Joseph's share in the property it is the Court's function to ensure that at the end of the day, the parties are treated fairly. In this regard, I am guided by **Stonich v Stonich Civil Appeal No 17 of 2002 BVI** in which Saunders JA stated:

"In assessing the respective contributions of husband and wife, there was a time when one regarded the fruits of the money earner to be more valuable, more important than the child rearing and home making responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved his contribution was almost automatically treated as being greater than that of the wife who remained at home. Ironically, if the man's business failed, whether through bad luck or ineptitude, he wife invariably shared equally the couple's hard times.

The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little a contribution that is less measurable but equally important to family structure.

In the vast majority of cases where these two types of contribution are in issue – that of homemaker and that of an income earner, it is the wife who has stayed at home which the husband has performed the role of breadwinner. There is therefore an element of gender discrimination role in the home.”

[32] In **White v White** [2001] 1 AC 96 Lord Nicholas stated “where each spouse has contributed equally in their different sphere to the family, as a general guide equality in the distribution of the matrimonial assets should be departed from only if and to the extent that, there is good reason for it.” I will not for one moment downplay the contributions made by Mrs. Joseph in caring and cooking for Mr. Joseph and will not repeat the circumstances among others that he shared with her and which he said gave him “fond memories” Also, I accept the views of Saunders JA in **Stonich v Stonich** as he then was when he said that the house keeping services must not automatically be treated as having less significance to monetary contributions. I also agree that house keeping contributions are to be accorded the importance they deserve in all cases. The Court must however ensure that it is fair to the parties in its determination of Mrs. Joseph’s beneficial interest.

[33] Accordingly, I am of the considered opinion that even though the principle stated in **White v White** is relevant to the case at bar it represents no more than a useful starting point since I have no doubt that the circumstances of this case requires that “the equality is equity” principle be departed from. It seems to me that based on the length of the marriage, the contribution made by the parties to the acquisition of the property and the parties’ contributions to the care and maintenance of the family, in happier times, I dare say, I am of the considered opinion that Mrs. Joseph is entitled to one-third beneficial interest in the property. In view of all of the circumstances, I hold that Mrs. Joseph is entitled to one-third beneficial share in the property which Mr. Joseph holds on trust for her. In order for there to be a clean break between the parties it may be in the parties best interest for them to have the property valued by an agreed valuator and either one of them should seek to purchase the other’s interest and so become the sole legal and beneficial owner of the property.

Conclusion

[34] In conclusion, I give judgment for Mrs. Rachel Joseph as follows:

- (a) I declare that Mrs. Rachel Joseph has a beneficial interest to the extent of one-third share in the property situate at Falmouth and more particularly described in the Land Registry as Registration Section: Falmouth & Bethesda Block # 34 2683E Parcel 70 (the property)
- (b) I also declare that Mr. Franklyn Joseph holds Mrs. Rachel Joseph one-third beneficial interest in the property on trust for her.
- (c) I direct that the Registrar of Deeds amends the Land Registry to reflect Mrs. Rachel Joseph's one-third interest in the property.

[35] In the exercise of my discretion, I order that each party bear his or her own costs.

[36] Liberty to apply.

[37] The Court acknowledges the assistance of both Counsel.

Louise Esther Blenman
High Court Judge