

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2006/0040

BETWEEN:

PATRICK JULIAN

Claimant

and

MARIE THERESA JULIAN

Defendant

Appearances :

Mrs. S. Lewis for Claimant

Mr. G. Williams for Defendant

2008: June 20.

JUDGMENT

[1] **COTTLE, J.:** The parties were married in 1970. They were divorced in 2008. The petitioner is now 71. He is a pensioner. The respondent is 3 years younger. The union was not always a happy one. The petitioner says they have lived apart from 1975 to 1998. He permitted the respondent to reside with him in Bocage while the original matrimonial home at Morne Du Don was being renovated.

[2] All the children of the marriage are adults. The only issue of ancillary relief which remains to be decided is the distribution of the matrimonial property.

- [3] There are two houses.
- [4] The Morne Du Don home consists of a partly wooden and partially concrete structure. It stands on land which belongs to the brother of the petitioner. This house is now rented and the respondent supports herself on the rental – some \$400.00 per month.
- [5] There is another property at Bocage. It is parcel 311 of Block 1048B. The land is registered in the joint names of the parties. There is a concrete house in this parcel. The petitioner now lives there alone. He says the respondent vacated the home in May 2005 of her own volition.
- [6] The respondent gets a pension of \$900.00 per month. It is against this backdrop of facts that the court is called upon to decide on the distribution of the family assets.
- [7] The legal position is to be arrived at by the application of section 25 et seq. of the Divorce Act.
- [8] The aim of the court is to have regard to all of the circumstances and attempt to place the parties in the financial position they would have enjoyed had the marriage not broken down.
- [9] In this case the available pool of assets, the two houses and the petitioner's pension are inadequate to provide an accommodation and maintenance for the parties separately.
- [10] The legal estate of the Morne Du Don property is in the brother of the petitioner. It may be that at some time in the future that estate may be transferred to the parties but this is by no means certain.

- [11] The value of the Bocage property is such that if it is sold, the proceeds will be inadequate to secure accommodation for two persons living apart.
- [12] The petitioner has no other income but his pension.
- [13] The respondent has no income but the rental of the Morne Du Don property. For the reasons already stated, that source of income is insecure.
- [14] Cognizant of the need to provide a shelter for the parties and faced with the clear constraints that this case presents, it appears that there is only one possible resolution.
- [15] The parties must reside in the Bocage property. Arrangements must be made to create in the Bocage house, two separate households. Once this is achieved the respondent will keep the rentals from the Morne Du Don house for her maintenance.
- [16] I invite both counsel to consult and propose a method of attaining the end I have indicated. In summary I declare as follows:

1. The Bocage house remains the joint property of the parties in equal shares. Both parties will reside in the house. The details of the Physical separation of the household will be presented to the court for approval within 4 weeks.

Should there be no agreement as to the separation each party is at liberty to make proposals for the court's consideration.

2. The respondent will continue to receive the rents from the Morne Du Don house for her maintenance.

3. Each party will bear his or her own costs.

BRIAN S. COTTLE
HIGH COURT JUDGE