THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 11 OF 2004

BETWEEN:

IN THE MATTER OF THE PETITION OF GEOFFREY GRAHAME BOLLERS FOR THE DISSOLUTION OF MARRIAGE

GEOFFREY GRAHAME BOLLERS

Petitioner

V.

LYNN MARIE CEVENE

Respondent

Appearances: Mr. Joseph Delves for Petitioner
Ms. Paula David for Respondent

2009: April 2nd
June..17th

JUDGMENT

BACKGROUND

[1] **JOSEPH Monica J:** The petitioner who is an attorney at law and the respondent, who is a teacher, were married on 25th July 1998 after a twelve year relationship. They resided at Prospect, from 1995 at Indian Bay, moving into the matrimonial home at Cane Hall in February 2003.

[2] There are two daughters of the marriage, Leah born on 23rd March 2000 and Isabella born on 3rd October 2005. In January 2004, the respondent taking Leah with her, moved out of the residence and into a rented residence at Rose Hall. .

[3] A petition for divorce was filed on 10th February 2004. On 16th November 2005 the respondent filed an answer to the petition citing a co-respondent and asking that the application for dissolution of the marriage be rejected. Then followed another answer filed on 17th November 2005, seeking a dissolution of the marriage: custody, care and control of the children, financial provisions orders and property adjustment orders for herself and the children of the family.

[4] On 24th November 2005, the petitioner filed a reply admitting that the marriage had broken down irretrievably and indicating that he does not oppose the respondent's application for dissolution of the marriage. A decree absolute was granted, effective 26th April 2006. On 13th March 2006 the respondent filed a notice of application for ancillary relief.

WRITTEN SUBMISSIONS: 30th April 2009 and 15th May 2009

[5] ISSUES stated on behalf of the petitioner:

1. To whom should custody be granted and should any terms and conditions be attached.
2. What lump sum, if any, should be awarded to the respondent
3. Should a maintenance award be made in favour of the children of the family, or both the children and the respondent? What figure should that maintenance order be?
4. Should the Court make other awards against the petitioner, such as bearing travel expenses, or the setting up of a trust fund to finance tertiary education?

RELIEF SOUGHT

[6] The respondent seeks (a) $3000.00 monthly maintenance for the children (b) custody, care and control of the children with reasonable access by the petitioner, (c) lump sum settlement equivalent to half of the value of the matrimonial home and distribution of all matrimonial property (d) an order for petitioner to pay the airfare of the children to visit their relatives in the United States once a year as they were accustomed to doing until 2006.

[7] The petitioner's states that he provides as much financial assistance as he can afford to their children's welfare: that currently he provides $2000.00 monthly, in addition to meeting a number of expenses for the children. He is quite willing to meet the expenses for education of the children.

MATRIMONIAL CAUSES ACT (CAP 176) (THE ACT)

[8] In deciding on the financial provisions to be made (including payment of a lump sum), reference has been made to the concept of fairness and both counsel pointed the Court to Miller v Miller and McFarlane v McFarlane (2006) UKHL 24, and regional cases.

[9] Ms. David for the respondent, submitted that the issue of fairness of financial provisions where there was a marriage of a relatively short duration, was discussed in ***Miller v Miller***, ***McFarlane v McFarlane*** 2 WLR 1283: that the ***Miller*** case is similar to the instant case. The Miller marriage lasted two years and nine months. The husband petitioned for a divorce but did not pursue his allegations as to the cause of the breakdown of the marriage until the wife cross petitioned and the marriage was dissolved (as is this one) on the basis of the wife's cross petition. With respect to the distribution of assets, at paragraph 16, Lord Nicholls said:

> "..The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: "unless there is a good reason to the contrary. The yardstick of equality is to be applied as an aid, not a rule.'

> This principle is applicable as much to short marriages as to long marriages: A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership.
>
> A different approach was suggested in ***GW v. RW*** (Financial Provision: Departure from equality) 2003 2FLR 108, 121-122. There the Court accepted the proposition that entitlement to an equal division must reflect not only the parties" respective contributions "but also an accrual overtime"....It would be fundamentally unfair that a party who has made domestic contributions during a marriage of 12 years should be awarded the same proportion of the assets as a party who has made the domestic contributions for more than 20 years...."

[10] Ms. David submitted that Baroness Hale explained it this way:

> "Section 26 (2)(f) of the 1973 Act does not refer to the contributions which each has made to the parties accumulated wealth, but to the contributions they have made (and will continue to make) to the welfare of the family. Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares."

[11] I think that the equality principle falls within the fairness principle as referred to by Lord Nicholls, that is, equality if that is fair, no equality if that is unfair. The fairness principle is to be considered within the ambit of the Act which sets out the factors, which themselves, encompass the fairness principle.

[12] I consider that both principles - of equality and of fairness - really move in the same direction: the direction that the evidence points to under the various factors mentioned in the Act. On that route the court considers all the circumstances of the case, including whether there is disparity such as should be taken into account in determining contributions. So I turn to the Act, relate the circumstances to the factors in the Act, and consider decided cases.

[13] The Court considers the factors in section 34 (1) of the Act, and exercises the powers as to place the parties, so far as it is practicable and having regard to their conduct just to do so, in the financial position they would have been if the marriage had not broken down and

each had properly discharged his or her financial obligations and responsibilities towards the other. They are:

The income, earning capacity, property and other financial resources which each of the parties to the marriage has, or is likely to have, in the foreseeable future.

[14] The respondent is a qualified teacher holding a Bachelor of Science degree. She receives monthly salary of $5,700.00 and after deductions $3,626.06. As at 12th February 2009, she had savings of $600.00 and chequing account of $1,792.76.

[15] For the foreseeable future the likelihood is that she would continue to be employed as there is always need for qualified teachers. Her current salary is likely to increase in the years ahead in the normal enhancement of conditions of service, but so of course would her expenses. I think I could take judicial notice of that. To attempt, without evidence, to assess what an increase is likely to be or what any expenses might be would be highly speculative. I acknowledge, without more, the likelihood of increases in both areas.

[16] As indicated in his affidavit of 29th January 2009, the petitioner's average monthly salary is $15,500.00. His assets are: 462 ordinary shares in Sgt. Hill Insurance Company Ltd. Valued at $28,581.05 RBTT Bank Caribbean Ltd., Savings: $36,722.01. Current: $4,436.56. Two savings accounts First Caribbean International bank (Barbados) Ltd. Account 0039183264 balance of $15,478.01 Account No. 0010157198 balance $7,925.53: joint holders of preferred money market account Citibank New York USA at 31st January 2006 US$100,814.86. Total $365,343.29. He owns two motor vehicles: one valued at $25,000.00, another at $4,000.00.

[17] Mr. Delves submitted that the respondent omitted to include a value for her car which is an asset and pointed to the fact that the petitioner had included value of two vehicles in his affidavit. I agree that she ought to have made that disclosure and will keep this mind in the overall view of the evidence. Ms David invited the Court to scrutinize the petitioner's evidence carefully and referred the Court to certain evidence he had given, only this I

mention: the fact that the petitioner did not declare that he is a paid member of the Board of Safe Harbour Bank until he was cross examined.

[18] His explanation that he did not do so as he intended to resign from the Board does not mesh with the fact that he failed to declare this fact in his affidavit as far back as 2006, she submitted. I agree that he ought to have disclosed that earlier. At the hearing he was still a member receiving US$6000.00 annually. I take that into consideration.

[19] Although it will take some time to have the office that he has recently opened running efficiently and gainfully, I accept that the petitioner's income and earning capacity in the foreseeable future, are likely to be good. I think it would be fair to say that he would continue to earn more than she does and consequently would be better off financially than the respondent.

The financial needs, obligations and responsibilities which each of the parties of the marriage has, or is likely to have, in the foreseeable future.

[20] Both parties now have similar basic financial needs and obligations in addition to their children's needs many of which are identified. The parties will probably have, in the foreseeable future, similar obligations and responsibilities as they both are currently in stable relationships. The petitioner in his affidavit asserts that his intention is to marry his companion in early 2010 and to start a family.

[21] The respondent's evidence was that she has a steady relationship, is receiving the support of a companion who is in the medical profession, but they have not discussed marriage. I do not think that the Court can rule out a marriage possibility in the case of the respondent, with its attendant needs, responsibilities and obligations.

[22] The respondent showed her total monthly expenses of $5700.00. Additional expenses: auto insurance $682.00 annually: motor vehicle license $450.00 and driver's license $75.00 car maintenance $875.16. This amount broken down monthly is $176.00, a total of $5876.00

monthly. She referred to the fact that she must pay for clothing, travel expenses, pharmaceutical items, household items and medical bills upfront, receiving partial reimbursement from her insurer.

[23] The respondent had received help from her mother in law in meeting some expenses, several of which are now met by the petitioner. In taking an overall view of the relief sought, I take into account that some of the expense items she has presented to the Court would also be for the respondent's benefit, in addition to providing a stable environment for the children, e.g., rent $1800.00: two helper/baby sitters $920.00: gardener $160.00: electricity $292.00: Cable and Wireless landline and internet $175.00: Digicel $75.00: gasoline: $300.00: cooking gas $30.00.

[24] At the date of hearing of ancillary relief the petitioner who had been a partner of a legal firm (now dissolved) had established his own office and had amended his affidavit to show that his monthly expenses have increased to $11,640.00 from the earlier figure of $9532.75. $11,640.00 includes monthly maintenance for children of $2000.00: temporary secretary of $1500.00 messenger: $600.00: office fax: $400.00: office telephone:$1600.00: office cleaner $150.00: rent $1200.00: home telephone: $120.00.

[25] Additional amounts indicated in his witness statement: stationary of $300.00 a month. These annual sums: vehicle insurance:$1170.00: house insurance $3300.00: daughter Leah's school fees:$4800.00: professional licence fees:$750.00: drivers licence fees:$75.00: vehicles licence $475.00: gun licence $250.00: vehicle maintenance $1,000.00: professional indemnity insurance:$15,000.00: post office box:$100.00: daughter Isabella's school fees: $1,100.00 a term.

[26] Those amounts broken down total monthly: $4,610.00 approximately. The petitioner is indebted to the Inland Revenue Department in respect of income year 2007 the sum of $120,642.76. $4,610.00 plus $120,642.76 = $125,252.76. He testified that office rental was being increased to $5,000.00 per month.

[27] The petitioner's witness statement identifies employment related obligations: a negligence claim filed against an associate of the dissolved firm for the sum of $545,000.00 for which he is legally liable to the extent of approximately $181,666.66. He has received information of the possibility of the filing of other negligence claims.

[28] Other liabilities: payable to an insurance company -his share $4666.06: his share of a sum payable to staff members of the firm: $28,666.67: His share of three months rental owed is $5666.67: his share of $5811.66 of $17435.00 owed to St. Vincent Building and Loan Association. These other liabilities total $44811.06. He owes an attorney $35,000.00. Liabilities: $125,252.76. + $181,666.66 + $44811.06 + $35,000 = $386,730.48.

[29] There was mention of $284,058.92 which might be claimed by legal action for failure to file a defence. I mention this but I do not take it into consideration as, in that type of case, there is a possibility that a legal step may be taken to rectify the situation. Mr. Delves submitted that the petitioner's income is about $16,800.00 monthly and his expenses are $17,297.00 monthly.

The age of each party to the marriage and the duration of the marriage.

[30] The submissions made on behalf of the petitioner indicate that the petitioner is forty five years and the respondent forty one years. They are both relatively young with their lives and new relationships ahead of them. Counsel for the petitioner submitted that the duration of the marriage is one year, notwithstanding that eight years had elapsed between the celebration and dissolution dates. Cases cited in support of the latter submission Hodge v Hodge HC 33/2002 (BVI) and Richardson v Richardson HC 54/1995 (Anguilla).

[31] The marriage date is 27th July 1998 and the decree absolute is dated 26th April 2006, but the date the marriage finally ended is somewhat blurred. The respondent, during cross examination, admitted that it was difficult to say when the marriage ended. Her evidence

was that it had certainly ended by the time she had filed her answer on 16th November 2005. It seems to me that it ended before that date.

[32] The petitioner's claim was that they separated in December 1999. The respondent's reply in affidavit of 13th November 2008, was that she initially moved into her parents home to have the benefit of her mother' assistance while Leah was an infant. Leah was born on 23rd March 2000. I find that the parties separated in December 1999, and had, to then, lived together for one year, six months.

[33] From 2000 to 2003 they lived in different houses with the respondent visiting the petitioner on week ends, which period I do not count as falling within the duration of the marriage. The matrimonial home was completed in January 2003 and in February 2003 the parties moved into the home. In January 2004 the respondent, with Leah, moved out of the home, another year. I think they actually lived together for two and half years. I hold that the marriage lasted two and half years and ended when the respondent moved out of the house in January 2004.

[34] In Richardson's case (above) the parties had a relationship from 1981, married in 1985 and divorced in 1986. A son was born in 1986. In 1988 the wife left the home. The parties lived apart and in 1992 a second child was born. The Court found that the marriage lasted two years and nine months ending when the wife left the house in 1988.

The standard of living enjoyed by the family before the breakdown of the marriage.

[35] This head is problematic as the parties lived together for two and a half years - short period of time. The little evidence there is of a standard of living indicates that the respondent was able to have some necessities for the family only with the help, mainly of her mother in law, and some help from her mother. Her evidence was that she did not seek her mother in law's help. The implication is that her mother in law was able to see that she needed financial help. I would regard this factor of the Act as a neutral element in arriving at a standard of living of the parties during the marriage.

Any physical or mental disability of either of the parties to the marriage.

[36] There is no evidence of physical or mental disability of the respondent. The petitioner has been medically advised to scale back his civil litigation practice as he suffers from stress associated with court work. He considers that that factor will have a significant negative effect on his earning capacity in the coming years. Mr. Delves referred to the medical report:

> He "has been advised to work less hours and take annual holidays. The stress of his work is a major cause of his systematic hypertension and it is doubtful whether he will be able to function at his optimal output. It may be that in the near future this patient may have the difficult decision of having to significantly reduce or cease his law practice altogether."

[37] I have difficulty accepting that the petitioner may significantly reduce his practice when he has just set up a new office. It seems to me that this is the time when the petitioner might be doing the opposite of scaling back his law practice. I observe that the doctor was voicing a type of worse case scenario: that in the future, the petitioner might have to make a decision about his law practice.

The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution ..... of the marriage, that party shall lose the chance of acquiring

[38] This is a factor that does not arise in this case.

The contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family.

[39] Both parties contributed to the welfare of the family financially and otherwise. The petitioner is able to provide greater financial contribution than the respondent by reason of the fact that he received greater financial remuneration than she receives. She put in as much as she was able.

[40] The petitioner admitted that the respondent is the primary caregiver of the children of the marriage. She will be continuing in that role. The petitioner provided emotional support for Leah but this was time limited by the respondent canceling his scheduled visitation arrangement to be with Leah. He said that regarding Isabella, the petitioner "did not trust him to supervise and have access to her" at a tender age.

[41] In the same way the respondent obtained her mother's help with baby Leah surely arrangements could have been made for female adult supervision when the petitioner visited with Isabella. I trust that that comment may be of assistance to the parties.

LUMP SUM PAYMENT - (MATRIMONIAL HOME)

[42] Section 31 (1) (c) of the Act empowers the Court to order a party to a marriage to pay a lump sum to the other party. Counsel for the respondent submitted that it appears that the petitioner's case is that any lump sum must be circumscribed by the relatively short length of their marriage, and pointed out that that is only one of the many factors to be taken into account under the Act.

[43] The respondent invited the Court to award her 50% of the value of the matrimonial home as a lump sum. The respondent did not contribute directly to the acquisition of the matrimonial home. She looked after a home for the children of the family for two and half years, and will continue to do so. By so doing she made indirect contributions to the acquisition of the home.

[44] Mr. Delves submitted that the petitioner's income is about $16,800.00. His expenses, tabulated monthly, are $17297.06. If the petitioner trims some of his expenses (he can for example find cheaper office space) as he must, he should be left with a margin which can be used to meet a mortgage to raise a lump sum payment.

[45] However, counsel further submitted, that lump sum award should not be greater than 25% of the available assets roughly $998142.32 (say a million): that with an award of $250,000.00 the respondent would have a substantial deposit towards her own house. That would free them from the rent expense which at $1800.00 is choking both parties.

[46] The land on which the matrimonial property is built, is owned by a company Elysium Holdings conveyed to it by a deed of gift 211/2003 dated 21st January 2003 from Barbara Bollers, the petitioner's mother. The deed recites that she "controls in excess of fifty one per cent of its share capital".

[47] As there is no exact formula for arriving at contributions made how do I decide? I do so (a) by attempting to answer a number of questions, one of which is: what would have been the quantum of the respondent's share in the matrimonial home on 26th April 2006, the date the marriage was dissolved. (b) by keeping in mind the principles in cases: ***Stonich v Stonich*** BVI C. Appeal No. 17 of 2002 and ***Wachtel v Wachtel*** (1973) 1 AER 829 (c) by considering the factors of section 34 of the Act, (as I have done.)

[48] In ***Stonich v Stonich*** Saunders JA (as he then was) said at para 27:

> "One of the useful features of the MPPA is that it gives the Court a broad discretion in apportioning assets built up over the course of the marriage. The ultimate and overriding object that the Court must strive at is fairness. In apportioning the assets, the Court must consider the various factors the legislature has asked it to take into account and then arrive at a solution that is, in all the circumstances, fair to the parties. The wide discretion available permits the Court the ability to interpret fairness in light of prevailing societal standards. The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure. In all these circumstances I agree with the learned judge that Mrs. Stonich should not receive 50% of the trust account. But equally, I find 30% to be somewhat on the low side. I believe not enough consideration was given to her role in the home. I would increase her award under this head to 40%. I believe that such an award to be more in line with the modern authorities of ***White v White*** and ***Lambert v Lambert*** (2002) EWCA Civ. 1685 and I would respectfully rely upon them in support of this order."

[49] In ***Wachtel v Wachtel*** Lord Denning MR said:

> "The wife should be compensated for the loss of her share by being awarded a lump sum. It should be a sum sufficient to enable her to get settled in a place of her own such as putting down a deposit on a flat or a house. It should not however be an excessive sum. It should be such as the husband can raise by a further mortgage on the house without crippling him:"

[50] In ***Stonich*** case the parties were married for thirteen years. Husband had two children from an earlier marriage and the wife had one child, who was aged 7, 7 and 5 at the time of the marriage. With a household of now three children they sold their respective pre-martial dwelling houses.

[51] They pooled their resources and using proceeds of that sale purchased a bigger house to accommodate the enlarged household. The house was placed in their joint names. She stayed at home and looked after the children. The house was subsequently sold and a yacht was purchased.

[52] In the instant case, the marriage lasted for two and a half years. The respondent did not own property before marriage. There are two children of the marriage. The respondent continued to work and cared for the children with the help of two baby sitters.

[53] The respondent made contribution to the welfare of the family: from 1998 to 1999 welfare of husband and wife while they occupied rented accommodation. After their marriage, for a time, they both met the household expenses equally. The petitioner however had the greater earning power. He was engaged in representing off shore sector firms and so attracted high monthly remuneration so much so that he was able to build the matrimonial home without a mortgage.

[54] From 1999 to 2000 there was contribution to herself, as she was in her mother's house. From 2000 to 2003 in her mother's house, she contributed to her welfare and that of Leah. From 2003 to 2004, in the matrimonial home, she contributed to the welfare of the family (husband, wife and Leah). In 2004 she moved out of the matrimonial home and contribution after that date was for the welfare of herself, daughters Leah and Isabella.

[55] Having considered the factors in the Act, the cases I have referred to, and the evidence given by the parties, my judgment is that the respondent's contributions to the welfare of the family for two and half years are not significant enough to point to equality in shares.

[56] ***Lawrence Wheatley v Raishuna Wheatley*** HCVAP 2007/006, CA Thomas, J.A. (Acting) made reference to what Saunders JA said in the ***Stonich*** case (above) and had this to say:

> "More need not be said as in all cases it is a matter of judgment having regard to the evidence and what strikes the court as being fair."

[57] I answer the question posed earlier, that the respondent's percentage share at the date of the dissolution of the marriage, based on her contribution to the care of the home and welfare of children is 30%. That is her percentage share in the value of the matrimonial home. The petitioner's share in the matrimonial home is 70%. There are two valuations for the property one for $965,000.00, the other $844,800.00. I use $965,000.00 valuation. The respondent is to be paid a lump sum: 30% of $965,000.00, that is, $289,500.00.

[58] In arriving at that percentage and making that award, I have taken into consideration that I do not award maintenance for the respondent, neither do I order the petitioner to meet travel expenses for the children. I also keep in mind that the petitioner is still a member of the Board of Safe Harbour Bank: that he has substantial debts, as earlier itemized, and the Court is required to make an order that will not cripple him. I balance all factors with the fact that the respondent has the care of the children, hence the upward adjustment of maintenance for the children.

CUSTODY, CARE AND CONTROL

[59] I am to make an order on custody and care and control that recognizes that the interests of the children must be paramount. Mr. Delves drew the Court's attention to Law of Minors Act (Cap 169) section 4 which acknowledges equality of parental rights.

[60] The petitioner stated that the respondent is an excellent mother. There does seem to be some conflict between them as to exactly how decisions that affect the children's lives are to be arrived at. The respondent's evidence was that the "manner in which the petitioner chooses to have access to Leah is frequently problematic". On the other hand, the petitioner's evidence was that, on an occasion, the scheduled arrangement of his having Leah on Saturdays and Wednesdays was changed by the respondent sending Leah to lessons on Wednesdays, thus canceling his Wednesday access, without his knowledge.

[61] I accept the respondent's comment that there should be routine and predictable arrangements with regard to the petitioner's access to Leah. This also relates to Isabella. Those arrangements, I thought, could be more easily accommodated if there is joint custody which would necessitate communication between the parties and joint decision making about their children.

[62] The Court had considered it is possible for both parties to put aside any residual animosity that may exist, act as reasonable adults, placing the welfare of their children first and foremost. I was disposed to making a joint custody order. However, during cross-examination the petitioner stated that he was not opposing that custody be granted to the respondent with reasonable access by him. He desired a condition, that the children be not taken out of the State by one party without the consent of the other.

[63] I rethought the matter and considered that what is best for the children is to give custody to the respondent, and attach conditions. The children will continue to live with the respondent with access at reasonable times by the petitioner. Care of the children and daily routine decisions regarding their welfare to be made by the respondent, with the important decisions being jointly made.

[64] That would go some way in ensuring that the children have the full benefit of supervision by both parents and a greater opportunity of being well rounded adults. The children must not be taken out of the country by one party without the consent of the other party which ought not be unreasonably withheld.

[65] I do not propose to go into a listing of what are routine decisions and what are important decisions, leaving that to the good sense and intelligence of the parties to do what they jointly feel is best for their children, with the court being the ultimate arbiter should there be a conflict between them.

OTHER AWARDS

[66] Should a maintenance award be made in favour of the children of family, or both children and the respondent? Should the Court make an order that the petitioner meet any overseas travel expenses of the respondent and the children of the marriage? Should the Court order the setting up of a trust fund to finance tertiary education?

[67] I keep in mind that both parties have a life ahead of them, possibly with new partners. On one hand, the petitioner must not be unduly burdened by the Court making any orders that are excessive in view of the financial circumstances. On the other hand, the respondent must be fairly comfortable with what is awarded, particularly as the children will be residing with her, and they must have a stable environment.

[68] I take into consideration that a lump sum payment is being ordered. I increase the monthly maintenance award for the children from $2000.00 to $2500.00 from 1st August 2009. I do not make an order for maintenance for the respondent. She benefits from some of the expenses she claims for the children. (to which I have earlier made reference) and she obtains a lump sum award.

[69] I do not make any order for the petitioner to meet cost of travel expenses of the children. That is an area that both parties, having joint decision making in important decision (which this is), would have to decide in the same way that many other parents have to decide on a yearly basis, that is, whether it is necessary and affordable for the children to travel overseas every year.

[70] I do not set up a trust fund for the children. To set up a trust fund there must be funds and no funds have been identified to the Court.

ORDERS

[71] 1. The petitioner is to make a lump sum payment of $289,500.00 to the respondent which is equivalent to 30% of the value of the matrimonial home (valued at $965,000.00).

2. The lump sum of $289,500.00 is to be paid on or before 1st January 2010.

3. The respondent is to have custody of the children of the marriage Leah and Isabella, with the children residing with the respondent and respondent providing care for them.

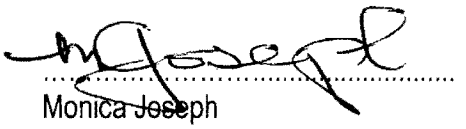
4. The petitioner is to have reasonable access to the children. Both parties are to make joint decisions on important matters affecting their children.

5. The children are not to be taken out of the country by one party without the consent of the other party.

6. The petitioner to pay maintenance for the children of $500.00 a month over and above $2000.00 currently being paid from 1st August 2009. (Total $2500.00 a month).

7. The parties are at liberty to apply (should financial situation change).

8. There is no order as to costs.



Monica Joseph
HIGH COURT JUDGE (Ag.)
8th June 2009.