

GRENADA

IN THE COURT OF APPEAL

HCVAP 2009/013

JOAN ISAAC

Appellant

and

CECIL ISAAC

Respondent

Before:

Hon. Mr. Hugh A. Rawlins

Chief Justice

Hon. Mde. Janice M. Pereira (formerly George-Creque)

Justice of Appeal

Hon. Mr. Frederick Bruce-Lyle

Justice of Appeal [Ag.]

Appearances:

Ms. Claudette Joseph and Mr. Ian Sandy for the Appellant

Mrs. Celia Edwards, QC and Mrs. Sabrita Khan-Ramdhani for the Respondent

2010: November 23;

2011: November 21.

Civil appeal- ancillary relief - division of matrimonial property - trial judge's application of the principle of fairness and equality - conduct of a spouse - what constitutes assets of the Business - inferences drawn from evidence - Matrimonial Causes Act 1973 (UK).

The appellant and respondent were in a common law relationship from 1979 until they got married on 8th December 2000. They were divorced in 2007. During the course of their relationship they owned an auto body repair Business in which the respondent did the auto mechanic repairs and the appellant the book-keeping. The Business enjoyed some success which enabled them to acquire other assets which included a house and land at Mount Rodney, St. Patrick, a house and land at Plains, St. Patrick's, (which was the matrimonial home), and a family vehicle. The appellant also argued that to be included in the family assets were various crash vehicles bought and repaired by the respondent and a parcel of land and a vehicle which she alleged the respondent had purchased and placed in the name of a third party. The respondent denied these allegations and disputed that these are family assets.

The trial judge ordered, so far as is relevant for the purposes of this appeal, that (1) the matrimonial home be sold and the net proceeds (after satisfaction of the outstanding mortgage debt) be divided equally between the parties, (2) the respondent's interest in the

property at Mount Rodney be transferred to the appellant in trust for the minor children of the marriage, (3) the appellant be paid a lump sum of \$45,000 as her share of the assets of the auto body repair Business, and that upon such payment by the respondent that all tools and equipment including a compressor formally the property of the Business, be turned over to the respondent, (4) the said lump sum be paid from the respondent's share of the sale of the matrimonial home, (5) the family vehicle which was in the appellant's possession shall remain her property with responsibility for its maintenance, and (7) each party bear their own costs.

The appellant, being dissatisfied with the property division made, has appealed on the grounds that the trial judge erred in applying the principle of equality which she contended resulted in unfairness to her. The appellant's main contention is with regard to the valuation of the Business and whether certain vehicles and repair jobs formed part of the assets of the Business. The appellant argued that the learned trial judge failed to take into account the respondent's conduct before and after the proceedings and in so doing deviated from the principles of fairness that ought to have informed her in making her decisions.

Held: dismissing the appeal, affirming the order of the court below and ordering that each party bears their own costs in the appeal:

1. The trial judge's application of the equality principle cannot be faulted unless the appellant is able to show that there were good reasons which required her departing from it. The amendment to section 25(2) (g) of the **Matrimonial Causes Act**, by **The Matrimonial and Family Proceedings Act 1984** states that among the various matters to which the court must have regard in making a property adjustment order, sale of property or financial provision is *'the conduct of each of the parties, if that conduct is such that it would, in the opinion of the court be inequitable to disregard*. The trial judge rightly found that the respondent could not take the assets of the Business into his new venture without accounting to the appellant for those assets and paying her proportionately for her value therein. This conduct however does not reach the threshold of conduct which may be considered to be repugnant to one's sense of justice and thus justify a departure from the equality principle in the distribution of the real property. The appellant has therefore failed to establish a case for departing from the equality principle and for upsetting the orders made by the trial judge in respect of the real property. **White v White** [2001] 1 All E.R. 1 and **Miller v Miller** [2006] UKHL 24; [2006] 2 W.L.R. 1288 applied.
2. The trial judge was not placed in a position of having the necessary information which would have provided assistance in obtaining relevant information pertaining to the finances of the Business or of the parties. Neither party saw it fit to engage a valuer for the purposes of valuing the Business and the financial records were rudimentary. The trial judge could therefore only do the best that she could with what limited information was available to her. This court is in no better position. Accordingly no basis has been established for disturbing the trial judge's conclusions and orders in respect of the Business. With respect to vehicle

registration number P2449, on the state of the evidence, it was open to the trial judge to conclude that the evidence adduced was insufficient to draw the inference being urged by the appellant. There is no basis to upset this finding merely because the appellant prefers an inference adverse to the respondent. The onus was on the appellant to show that on the evidence this was the only inference which could reasonably be drawn from the evidence. The appellant failed to discharge this burden

3. There were many allegations made by the parties with very little cogent evidence to prove them. A trial judge's findings of fact are not easily overturned on appeal unless it can be shown that there was no underlying evidence to support those findings. Similarly with regard to inferences drawn from primary facts, the basis rests firstly on a set of facts which are either agreed or not in dispute. The trial judge, who had the benefit of seeing and hearing the witnesses, based on the evidence before her, rightly concluded that the allegation that land was bought by the respondent and placed in the name of a third party was not proved.

Benmax Austin Motor Co. Ltd. [1955] 1All E.R. 326 applied; **Luella Mitchell et al v Maurice Jones** ECCA [SVG 16/ 2006 unreported] and **Grenada Electricity Services Ltd. v Peters** ECCA [GDA 10/2002 unreported] followed.

JUDGMENT

- [1] **PEREIRA, JA:** This appeal concerns the division of matrimonial property following the breakdown of the parties' marriage. The appellant ("the Wife") and the respondent ("the Husband") were married to each other on 8th December 2000, although they lived together in a common law union since 1979. They were divorced in 2007. The Husband though not having a formal education is an exceptional auto body mechanic. The Wife was more formally trained. The parties started from humble beginnings but over time they were able to build up an auto body repair business called Isaac's Auto ("the Business"). He did the auto body repairs and she did the books. The Business enjoyed some success in the earlier years and this enabled them to acquire other assets. At the time of the breakdown of the marriage, the undisputed family assets comprised the following:
- (i) a house and land at Mount Rodney, St. Patrick (to which neither party held the fee simple title). This property sustained damage during Hurricane Ivan. Some repairs required completion and electricity and water required re-connection;

- (ii) a House and land at Plains, St. Patrick's which comprised the former matrimonial home;
- (iii) the auto body works business which was operated on land on which the matrimonial home also stood; and
- (iv) a vehicle, called a 'family vehicle'.

[2] The Wife also asserted that:

- (i) the Husband bought a parcel of land which he had placed in the name of one Delina Samuel and that this comprised a part of the family assets. This is denied by the Husband.
- (ii) various crash vehicles, bought and repaired by the Husband, are also family assets, also denied by the Husband.

The Orders made by the trial judge

[3] After a hearing, the judge made the following orders:

- (i) that the property at Plains (the matrimonial home) be sold and the net proceeds (after satisfaction of the outstanding mortgage debt) be divided equally between the parties;
- (ii) that the Husband's interest in the property at Mount Rodney be transferred to the Wife in trust for the minor children of the marriage;
- (iii) that the Wife be paid a lump sum of \$45,000 as her share of the assets of the auto body Business, Isaac's Auto, and that upon such payment by the Husband that all tools and equipment including a compressor formerly the property of Isaac's Auto, be turned over to the Husband;
- (iv) that the said sum of \$45,000 be paid from the Husband's share of the sale of the matrimonial home;

- (v) that the Husband pays to the Wife maintenance for the minor children of the marriage in the sum of \$500.00 per week. The Wife to maintain custody of the minor children.
- (vi) the family vehicle which was in the Wife's possession to be the Wife's property, with responsibility for its maintenance.
- (vii) each party to bear their own costs.

The Wife being dissatisfied with some of these orders appealed.

The grounds of Appeal

[4] The orders appealed against are those dealing with the family assets. Eleven grounds of appeal are stated, and are somewhat prolix. Essentially however, the complaints against the trial judge's decision may be summarised as follows:

- (i) Generally, that the trial judge erred in applying the principle of equality¹ as this was contrary to the principles of fairness and equality as the order of the trial judge resulted in unfairness to the Wife as she was left in a position where she was unable to start afresh with a new Business and at the same time secure a home for herself and the children;

More specifically, that:

- (ii) the learned judge erred in law when, in attaching a global figure to the Wife's interest in the Business, she failed to consider adequately or at all that the Husband caused the Wife to lose \$30,000, and the loss of her land at Woodlands, St. Georges when he ruined the paint shop;
- (iii) The judge *presumably erred* in finding that the allegations that vehicles were purchased and /or transferred in the name of a third

¹ See para. 18 of the judgment.

party has not been proved, having accepted that the activities of the Business included the buying, repair and resale of crashed vehicles² ;

- (iv) The trial judge erred in fact and misdirected herself when, in respect of the records of the Business, she stated as follows: "... *The records consist of rudimentary entries in a note book. Even if the court accepts these as accurate, no figures were submitted as to the expenses for the same period. So that no conclusion can be drawn from those records as to how profitable the Business really was*"³ when the evidence from both was that the expenses of the Business were about \$40,000.00 per month or \$480,000.00 per year.
- (v) The trial judge's finding at paragraph 28 that the Husband did not simply re-locate "Isaac's Auto" when he moved to A&D Auto, is against the weight of the evidence;
- (vi) In assessing the value of the assets and in distributing the same, the learned judge erred in failing to take into account the conduct of the Husband which conduct directly impacted upon the court's ability to properly value the Business, and that the judge's finding at para. 20 adversely impacted on the Wife's ability to start afresh, and maintain the home and family.
- (vii) Generally, in making the orders the learned judge failed to take into account the respondent's conduct before and after the proceedings and in so doing deviated from the principles of fairness that ought to have informed her in making the decisions;

² See para. 32 of the judgment

³ At para. 20 of the judgment

- (viii) The order for the sale of the matrimonial home and transfer in trust of the Mt. Rodney property for the children was inconsistent with the learned judge's finding that the Mt. Rodney property would not be suitable for the Wife and children to reside⁴ and that this order was thus contrary to fairness and equality because:
 - (a) No provision was made for making the property habitable;
 - (b) There was lack of proper title, and
 - (c) The financial inability of the Wife to make the Mt. Rodney property habitable and at the same time obtain liquid assets to start afresh in Business;
- (ix) The learned judge erred in fact when she concluded that the defect in title of the Mt. Rodney property was not insurmountable, as there was no evidence as to the nature of the defect.
- (x) The learned judge erred in failing to consider adequately or at all the evidence in relation to the state of the family car, thus resulting in the Wife having a vehicle that was virtually worthless.

[5] At the hearing of the appeal, counsel for the Wife expressed her intention to argue the complaints set out at (vi) and (vii) above⁵ (which relates to the failure to take into account the Husband's conduct), and the matters set out at (viii) and (ix) above⁶ which deal with the learned judge's treatment of the Mt. Rodney property. I propose to consider the matter under the following main heads:

- (a) The Plains property and the Mt. Rodney property ("the real property")
- (b) The Business
- (c) The family vehicle

⁴ See para 42 of the judgment.

⁵ These coincide with Grounds 6 and 7 on the Amended Notice of Appeal.

⁶ These coincide with Grounds 8, 9 and 10 of the Amended Notice of Appeal.

I shall then consider them all in the round in respect of the evaluations and distributions made by the learned judge against the background of the equality principle which the learned trial judge applied. Based on how the appeal was argued, I consider this to be the most sensible approach.

[6] **The Law**

Firstly, it is useful to note that the applicable legislation governing disputes of this nature is the **Matrimonial Causes Act 1973** of the UK. Accordingly, the text **Rayden & Jackson's Law and Practice in Divorce and Family Matters** is heavily relied upon for guidance. The trial judge⁷, referred to **Miller v Miller**⁸ which sets out the rationale for the adoption of the equality principle as expounded in that case by Lord Nicholls. The learned trial judge had this to say:

"There is no doubt from the lengthy history set out above that this couple started out with little, but that with hard work and persistence, they built a good life together. A better example of a marriage partnership would be hard to find. Now that the marriage has ended, the assets of the marriage must be divided equally between them. But there is no serious challenge to this principle. The Husband recognises and considers the Wife to be his partner, not only in the marriage, but in the various Business ventures. He readily admits that she is entitled to half the matrimonial home and the property at Mount Rodney. **The problem arises as to the best means to accomplish this distribution**, and in identifying the assets of the now defunct Isaac's Auto Crash Repairs and Sales Inc. [the Business]."⁹ (My emphasis).

[7] In my view, the judge very early and correctly, placed her judicial finger on the problem which, as the case progressed on appeal, is not one in respect of the equality principle per se, but rather, whether the Learned Judge applied it properly or more to the point, ought to have deviated from it, in effecting the distribution. Further, on the hearing of the appeal, it became clear that the true contest is with regard to the valuation of the Business and whether certain vehicles, and repair jobs formed part of the assets of the Business.

⁷ At para. 14 of her judgment.

⁸[2006] UKHL 24; [2006] 2WLR 1288

⁹ At para. 16 of the judgment.

The Real Property

- [8] As far as the real property was concerned, the learned trial judge, in essence:
- (a) Divided the property at Plains (house and land) as being one half to the wife and one half to the Husband. This would necessarily have to take into account the mortgage on the property. Thus the learned judge ordered a sale of that property and directed an equal distribution of the proceeds, after satisfying the mortgage.
 - (b) Ordered that the Husband's interest (*presumably his half share therein*) in the Mount Rodney property be held by the Wife on trust for the minor children. Of note is the fact that the Wife retained a half share therein. Accordingly, the only interest being transferred in respect of this property was the Husband's. In effect then, the trial judge also treated their interest therein as being half and half.
- [9] I think it convenient at this point to address a criticism levelled at the trial judge in respect of the Mt. Rodney property. It was said that she had no basis for saying that defect in title was not insurmountable, as there was no evidence as to the nature of the defect. In my view nothing turns on this statement. Both parties recognised that there was a defect in title but they also recognised and accepted that they had an equal interest in it notwithstanding the defect. I do not understand the learned judge to have stated that the fact of the defect bore any reference to how the interest, as acknowledged by the parties was to be distributed. To whichever party the interest was transferred, the defect would remain unaffected. She merely dealt with the property 'as is' and the statement does not impact on her conclusion.
- [10] Given the findings of the trial judge set out at paragraph 6 above, her application of the equality principle as set out in well known cases such as **Miller v Miller** to which the learned judge referred, and **White v White**¹⁰, cannot be faulted unless

¹⁰ [2001] 1 All E.R. 1

the appellant is able to show that there were good reasons which required her departing therefrom.

[11] The Wife, on this appeal, asks for orders that:

- (a) The Husband keeps the Mt. Rodney property and pay to her half of its value.
- (b) The Husband pays off the outstanding mortgage and then convey his interest therein to the Wife in trust for the children; or, that he pays one half of the mortgage and together with all arrears in respect thereof and thereafter convey his half share therein to the Wife; or that the property at Plains be sold and the Wife be paid all the proceeds of sale after satisfaction of the indebtedness to the Bank in respect of the mortgage.

By these, I understand the Wife to be contending that she is entitled to more than a one half share in these properties. The basis on which this is sought is on an assertion of the Husband's conduct. I now propose to consider this aspect of the matter in deciding whether the trial judge ought to have departed from the equality principle.

Conduct of a spouse – the law

[12] Among the various matters to which the court must have regard in making a property adjustment order, sale of property or financial provision is "*the conduct of each of the parties, if that conduct is such that it would, in the opinion of the court be inequitable to disregard.*"¹¹ From the authorities, it would appear that this conduct must be "*obvious and gross*". It must be conduct where "*the facts are such that, after making all allowances for his disabilities and for the temperament of both parties, the character and gravity of his behaviour are of such a nature that it would be repugnant to anyone's sense of justice to ignore it in*

¹¹ This was brought about by an amendment to the sec. 25(2) (g) of the Matrimonial Causes Act, by The Matrimonial and Family Proceedings Act 1984.

deciding the provision to be made by one for the other or what should be their appropriate share in the family assets.”¹²

[13] It is not clear whether the trial judge was asked to specifically assess the Husband’s conduct in considering whether his conduct was of such as to be considered “obvious and gross”. The Wife complains that the trial judge ignored the Husband’s conduct which ought to have been taken into account by the making of adverse inferences against him in respect of his failure to account for assets of the Business, diversion of funds and the “closing down” of the Business.

[14] What is clear from the judgment is that even though the learned trial judge did not give discrete consideration to the conduct of the Husband, in virtually every area of conflict on the evidence regarding the Business, she found in favour of the Wife and disbelieved the Husband. For example, she found that:

- (a) the Wife was entitled to one half of the value of the Business at the time it ceased operations and that there were assets of the Business;
- (b) the Husband did not close down the Business due to lack of work or insufficient Business, but because the harmonious relationship between the Husband and wife had ended;
- (c) equipment and material and unfinished work were taken to the Business which the Husband says belonged to his brother;¹³
- (d) that the Husband’s welding and buffing machine were not the only items taken by the Husband to A&D, but rather that there was a list of tools, equipment and materials as exhibited and listed by the Wife¹⁴;
- (e) there was a period before the Husband started working for A&D when certain jobs coming into the Business were either held until Business started at A&D or was outright diverted to A&D;

¹² Rayden & Jackson’s Law and Practice in Divorce and Family Matters 17th Ed. Para. 21.61

¹³ See para. 28 of the judgment.

¹⁴ See para. 31 of the judgment.

- (f) all in-coming jobs rightfully belonged to Isaac's Auto (the Business); and
- (g) payment for completed jobs at the Business after March 2007 was not always deposited in the Business account¹⁵.

[15] The trial judge repeated the Husband's statement to this effect: "*I am the Business, without me the Business cannot run. I walked out the Business.*" This view was no doubt a reflection of the very nature of the Business which depended materially on the utilization of the Husband's personal and well-honed skills in auto-body works. If the Husband decided to walk away from the Business and start afresh, then there is very little that could be done in terms of forcing him to remain in the Business given that the relationship had broken down. However, as the trial judge found (rightly) he could not take the assets of the Business into his new venture without accounting to his partner (his Wife) for those assets and paying her proportionately for her value therein. Does this conduct however, amount to conduct which justifies a departure from the equality principle in the distribution of the real property? To my mind, and having regard to the approach adopted by the trial judge, it does not reach the threshold of conduct which may be considered to be repugnant to one's sense of justice. Accordingly, the Wife has not established a case for departing from the equality principle and for upsetting the orders made by the trial judge in respect of the real property.

The Business

[16] Counsel for the Wife valiantly argued that in relation to the gross deposits made to the account of the Business at the Grenada Cooperative Bank, 50% of that sum totalling \$314,287.00, ought to be paid over to the Wife. Further, she stated that the trial judge ought to have found that the Business had been "relocated" and was therefore subsumed in A&D Auto. Further, counsel contended that the net earnings of A&D Auto for the 21 months of its operation would have been in the region of \$1.05M with 50% to the Wife being \$525,000. Counsel insisted in favour

¹⁵ See para. 34 of the judgment.

of the Wife, that to that sum should be added 50% of the value of the vehicle P2449 which was registered to one Delina Samuel being \$20,000.00, as well as the wife's 50% share in the tools and equipment at \$25,000. This gave a grand total in the region of \$884,000 rounded off. Learned counsel contended that this amount represents 50% of the value of the business.

[17] Unfortunately, these extrapolations not only invite considerable speculation in the absence of evidence to support them, but also ignore the finding of the trial judge in respect of the financial state of the Business based on the banking records. At paragraph 29 the learned trial judge had this to say:

"Because the proper Business records were not kept, it is very difficult to place a value on the business at the time it ceased operations. There are no income and expenditure statements. Nor was there a record of the assets of the company [the Business]. While claims abound of the level of income, no figures were submitted by the Wife for the years after 2004. However, a print out of the company's Business account from January 2002 through July 2007 was submitted by the Husband. The record is quite revealing. Even those years which have been referred to as 'the prosperous years' are not reflected as such in the bank statements. While the record does support a high level of income prior to Hurricane Ivan as alleged by the Wife, the expenditures during the same period were equally high and throughout that period, the account operated on an overdraft facility. The account ends in July 2007 at \$0 balance."

[18] Counsel for the Wife specifically complained that it was not open to the judge to conclude that no figures were submitted for expenses when the trial judge had the uncontroverted evidence of the Wife that the monthly expenses of the Business was around \$40,000.00. However, with the utmost respect to learned counsel, this would be tantamount to asking the trial judge to turn a blind eye to the documentary evidence and the picture painted by the statements of the Business bank account, and not having regard, also, to the fact that income and expenses of the Business were comingled with expenses of the matrimonial home. In my view, the trial judge was quite correct to rely on the bank statements in respect of the Business as providing a more accurate picture of the true state of affairs of the Business. This showed a picture which was far from being as rosy as the parties believed. It is clear on the evidence that both parties held a mistaken view as to

the overall profitability of the Business and this is no doubt due in large measure to the lack of proper accounting records.

[19] At paragraphs 32 and 33 of the judgment the learned trial judge considered the allegation of cash diverted or otherwise secreted and examined the bank records for the period between January 2005 to September 2007. From this analysis she concluded:

- (a) that vehicles belonging to the Business and sold between 2005 and March 2007, had been deposited into the Business account.
- (b) along with further evidence from the Husband, that various sums totalling approximately \$27,000.00 for the months of July and August 2007 had not been deposited into the Business account.

The trial judge appears to have accepted the evidence of the parties' daughter who attested to the completion of four other bodywork jobs, for which she gave an approximate cost of \$12,000.00. These sums then account for the learned trial judge awarding a global value of \$40,000.00 in respect of work diverted or unaccounted for.¹⁶

[20] Neither party saw it fit to engage a valuer for the purposes of valuing the Business. Further, as the learned trial judge found, the financial records such as there were, were rudimentary. Neither party sought to obtain disclosure of relevant information pertaining to the finances of the Business or indeed of the other party. As the judge noted, the list of tools and equipment exhibited by the Wife also had no value attached to them. The trial judge was left in the position of virtually plucking a figure from the air in this regard. She assigned an overall value of \$50,000¹⁷. The trial judge was accordingly not placed in a position of having necessary information which would have provided assistance. She could only do the best that she could with what limited information was available to her. This court is in no better position. It is important that parties remember that it is not the duty of the

¹⁶ See para. 36 of the judgment.

¹⁷ See para 36 of the judgment.

court or the judge to make a party's case. That is the responsibility of the party and his or her lawyer, and, accordingly, where a party has failed to place before the court evidence or information, or fails to take the steps to acquire the requisite information which would enable the court to arrive at a determination based on the true or real position, the court cannot in turn do more than the evidence presented permits. Bald allegations without evidence to support them will not suffice.

[21] In respect of the vehicle P2449, counsel for the Wife contends that the trial judge ought to have found that this vehicle, although registered to one Delina Samuel, was an asset of the Business. The Husband's evidence was that he had sold the vehicle to Delina Samuel for \$40,000. That he owed her money and that he used the vehicle with her consent. As earlier indicated the trial judge found that monies from the sale of crash vehicles between 2005 and March 2007 went into the Business account. At paragraph 35 the trial judge had this to say:

"The court cannot, from the list of vehicles provided by the Wife, identify the vehicles sold after that date. With regard to the allegation of vehicles placed in the names of third parties, like the allegation of the purchase of land in Ms. Samuel's name, the allegation has not been proven."

On the state of the evidence the trial judge was being asked to draw an inference. It was quite open to the trial judge to conclude that the evidence adduced was insufficient to draw the inference being urged by the Wife. There is no basis to upset this finding merely because the Wife prefers an inference adverse to the Husband. The Wife was required to show that on the evidence this was the only inference which could reasonably be drawn from the evidence. This burden was not discharged.

[22] With regard to land alleged to be bought by the Husband and placed in the name of Delina Samuel, the judge, based on the evidence before her, rightly concluded that this allegation was not proved.

The Family Vehicle

[23] The Wife alleged that the Husband had committed various acts of sabotage in respect of the vehicle and, in essence, that the end result was a vehicle which did not work or was not roadworthy. She stated that the Husband should provide her with a good working vehicle for her and the children's use. The court had earlier ordered the vehicle (jointly owned) to be in the possession of the Wife. The trial judge then ordered, finally, that the vehicle was to become the property of the Wife. The Husband's evidence is to the effect that the Wife allowed other persons to drive the vehicle. The Husband also denied the allegations of sabotage.¹⁸ These allegations were not put to him in cross examination. The trial judge did not specifically address them. The court is in no better position to assess these allegations. Suffice it to say that the effect of the trial judge's order was to transfer the Husband's interest in the said vehicle to the Wife. She considered, given the Husband's occupation, that he would be better placed to obtain another vehicle for his personal use. I can find no fault with the trial judge's approach and thus no reason to disturb this order.

[24] This has been a case of many serious allegations being made- each as against the other, with very little in the way of information or cogent evidence to prove them. This was compounded by much conflicting evidence on the affidavits of the parties. The trial judge would have seen and heard the parties and was thus better placed to assess their respective veracity. A trial judge's findings of fact are not easily overturned on appeal unless it can be shown that there was no underlying evidence to support those findings. Similarly with regard to inferences drawn from primary facts, the basis rests firstly on a set of facts which are either agreed or not in dispute.¹⁹ This underlying basis is certainly not the case here.

¹⁸ See respondent's affidavit filed on 20th May 2008, at p. 303 of the Record of Appeal.

¹⁹ See: The line of cases such as *Benmax Austin Motor Co. Ltd.* [1955] 1 All E.R. 326; *Luella Mitchell et al v Maurice Jones ECCA* [SVG 16/ 2006 unreported]; *Grenada Electricity Services Ltd. v Peters ECCA* [GDA 10/2002 unreported]

Conclusion

[25] The trial judge applied the correct legal principles to the facts as she found them. For the reasons given in this judgment, the Wife has failed to establish the threshold warranting disturbance by this court of the conclusions made by the trial judge and the balancing exercise carried out by her pursuant to the provisions of the Matrimonial Causes Act. Accordingly, I would dismiss this appeal and would further order, as did the court below and given the nature of the proceedings, that each party bears their costs in this appeal.

Janice M. Pereira
Justice of Appeal

I concur.

Hugh A. Rawlins
Chief Justice

I concur.

Frederick Bruce-Lyle
Justice of Appeal [Ag.]