THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(DIVORCE)

CLAIM NO: ANUHMT 2002/0044

BETWEEN:

NOREEN NATALIE FRANCIS

Applicant

and

TITUS GABRIEL THEODORE FRANCIS

Respondent

Appearances:

Ms. Veronica Thomas for the Applicant
Dr. David Dorsett for the Respondent

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2011: September 23
December 14

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JUDGMENT

[1] **MICHEL, J.:** This case has a very long history. It commenced on 18th April 2002 when the Applicant instituted divorce proceedings to dissolve her 32 year marriage to the Respondent after they had been separated for 10 years. The marriage was dissolved by order of Mitchell, J dated 27th September 2002, by which order the hearing of all ancillary matters was adjourned to

Chambers. It was not until 29th October 2004, however, that the application now before the Court was made by the Applicant. That the application came before this Court for hearing nearly 7 years later is as a result of several factors.

[2] The first factor is that there was an order made by Blenman, J on 18th November 2005 which purported to be by consent of the parties and purported to determine the application of 29th October 2004. The second factor is that the order of 18th November 2005 was not entered until 7th November 2008 and was not served on the Respondent until 12th December 2008, over 3 years after it was made. The third factor is that on 23rd December 2008 the Respondent appealed to the Court of Appeal against the order of 18th November 2005 on the grounds that the order did not satisfy the mandatory requirements of Rule 42.7 (1) (c) of the CPR and that it did not represent the consent or agreement of the parties. The fourth factor is that the Court of Appeal (on a date not known to me) set aside the order dated 18th November 2005 and entered on 7th November 2008 and ordered that the application of 29th October 2004 be remitted to the High Court for determination. The fifth factor is that on 24th March 2010, while the matter was still before the Court of Appeal, the Applicant made applications for an order for sale of the properties which were to be shared in accordance with the order of 18th November 2005 and for committal of the Respondent to prison for his non compliance with the November 2005 order. The sixth factor is that the applications of 24th March 2010, having been set down for hearing in Chambers on 30th April 2010 and then in Open Court on 25th June 2010, were adjourned for a date to be fixed upon application by either party. The applications were apparently rendered nugatory however by the subsequent judgment of the Court of Appeal and so they were never fixed for hearing. The seventh factor is that the application now before the Court was fixed for hearing on 27th May 2011,

apparently following the judgment of the Court of Appeal, and was twice adjourned by another judge before it came before me in Chambers on 23rd September 2011.

[3] When the matter came before me on 23rd September, Counsel for the Respondent argued that it was determined in the English case of **Abbott v Abbott**[1] that a matter of this nature should be filed separately and not be proceeded with in the divorce proceedings and that the application now before the Court should be dismissed. He also submitted that a similar approach was taken by me in delivering judgment in the High Court of Justice in Antigua and Barbuda in the case of **Hanley v Hanley**[2].

[4] Counsel for the Applicant responded that the application was not filed pursuant to **the Divorce Act**[3] but was filed pursuant to the Court order of 27th September 2002 by which order all ancillary matters were adjourned to Chambers. She submitted that this order was clearly an exercise of the Court's case management powers, which powers the Court exercised by virtue of **the Divorce Rules**[4] and by virtue of Parts 11 and 26 of the CPR, which she submitted applies in this case. She submitted further that the Court having made an order adjourning ancillary matters to Chambers, the parties were entitled to invoke Part 11 of the CPR and seek any order for relief, which the Applicant did by making the application now before the Court. She pointed out that nowhere in the application or the affidavit in support of it was there any reference to the **Divorce Act**[3] and that the application was made by virtue of an order of the Court exercising its case management powers.

[1] [2007] UKPC 53

[2] Suit No. ANUHMT 2008/0128

[3] No.10 of 1997

[4] No.13 of 1998

[5] Counsel for the Respondent countered by submitting that the order of 27th November 2002 adjourned ancillary matters to Chambers, but that this is not an ancillary matter but is an application under **the Married Women's Property Act**[5] or an application for declaration of a constructive trust. He submitted that this is not an ancillary matter but a substantive matter and that it has nothing to do with **the Divorce Act**[3] and concerns a dispute which could just as well be between an unmarried couple.

[6] Counsel for the Applicant then submitted that if Counsel for the Respondent is right, then the Court will be asked to use its powers under Rule 26.9 of the CPR to rectify the procedural error that was made and to order the Applicant to file a fixed date claim within a reasonable time. Counsel further submitted that it was held by the Eastern Caribbean Court of Appeal in an appeal from the High Court in Grenada that an application is a proceeding and proceedings are commenced when an application is filed, so that this Court can determine that proceedings were commenced in 2004 when the application was filed and the Court can correct the procedural error by ordering the Applicant to file a fixed date claim.

[7] This Court cannot however go along with Counsel for the Applicant on her submission, having regard to the judgment of the Privy Council in the case of **Abbott v Abbott**[1] emanating from Antigua and Barbuda and the judgment of the High Court of Justice of Antigua and Barbuda in the case of **Hanley v Hanley**[2].

[5] Cap 267 of the Laws of Antigua and Barbuda Revised Edition 1992

[8] In **Abbott v Abbott**[1], Baroness Hale of Richmond (delivering the judgment of the Privy Council) said - in paragraph 2 of the judgment - "Unlike some other Caribbean countries, Antigua and Barbuda have no equivalent of the wide powers of property adjustment enjoyed by divorce courts in the United Kingdom. Property disputes have therefore to be resolved according to the ordinary law."

[9] In **Hanley v Hanley**[2], I said (in paragraph 11 of the judgment): "There is nothing in the Divorce Act of Antigua and Barbuda to ground the Respondent's application for an order that property owned by the Petitioner should be declared to be owned in whole or in part by the Respondent, however the Respondent may euphemize her application." Then in paragraph 12: "This Court can find no basis upon which it can or is minded to, in the context of divorce proceedings between the parties, interfere with the Petitioner's property in the manner sought by the Respondent. Counsel for the Petitioner is correct in his assertion that if the Respondent claims any beneficial interest arising from a constructive trust founded on contributions which she might have made to the acquisition, improvement or maintenance of any of the properties in which the legal estate is vested solely in the Petitioner, then she should make the appropriate application to the Court in that regard. Having regard to the contents of the Divorce Act of Antigua and Barbuda, an ancillary relief application in divorce proceedings is not the appropriate vehicle to transport her to that destination."

[10] It is open to the Applicant to file an application under section 19 of **the Married Women's Property Act**[5] of Antigua and Barbuda, or otherwise, with respect to the properties which she claims an interest in. Because the application is one involving entitlement to land, and because the cause of action may not have arisen before 19th September 2002 when the Respondent disputed the Applicant's entitlement to an interest in "the matrimonial property," the Applicant's claim does

not appear to be statute barred and so she should have no difficulty in instituting proceedings in respect thereof.

[11] The application of 29th October 2004 made in the divorce proceedings is accordingly denied. Noting that it was not until 23rd August 2011 that the Respondent first signified his opposition to the application made nearly seven years before, when on that date he swore to an affidavit asking for the application to be dismissed, this Court exercises the discretion conferred on it by Rule 64.6 (2) of the CPR to make no order as to costs.

[12] For the record, the Court notes that, but for the entry of the name of Mr. George Lake on the order of 18th November 2005 as Counsel for the Respondent, which was disavowed by the Respondent and in respect of which no notice of acting had ever been filed, the Respondent has been represented throughout these proceedings by the law firm of Watt & Associates, while the Applicant has been represented by Mr. Gary Collins from April 2002, Mr. Ralph Francis from March 2007, Mr. Charlesworth Brown from March 2008 and then Ms. Veronica Thomas from April 2011. Small wonder that there have been so many twists and turns, discrepancies and delays in the nearly ten-year life of this matter.

Mario Michel
High Court Judge