

BRITISH VIRGIN ISLANDS

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

Claim No. BVIHMT2008/0047

BETWEEN

DORA SCATLIFFE

Petitioner

-and-

IRVINE FLETCHER SCATLIFFE

Respondent

Appearances:

Ms. Michelle Worrell and Ms. Coreen George for the Petitioner
Respondent in person

2010: November 30
2011: January 24, May 18, October 25
2012: January 03

Matrimonial proceedings - Divorce – Ancillary Relief –Occupation order- What comprises matrimonial assets- division of matrimonial assets –Equality –non-disclosure by Respondent – Court entitled to draw adverse inferences

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** The court has the task of determining where the balance of fairness lies in awarding financial relief to spouses on the breakdown of their marital relationships. Before the court are, in the main, two applications for ancillary relief; one filed by the Petitioner (“Mrs. Scatliffe”) and the other by the Respondent (“Mr. Scatliffe”).

Background facts

[2] Mr. and Mrs. Scatliffe were very young when they tied the nuptial knot on 20 December 1971. She was eighteen and he was twenty five. They have been married for practically 40

years. There are two children of the marriage who are now adults and are not the subject of this ancillary claim. Unhappy differences have arisen between the parties which led to a Petition for Divorce by Mrs. Scatliffe on the grounds that the marriage has irretrievably broken down due to the unreasonable behaviour of Mr. Scatliffe. A Decree Nisi was pronounced on 16 July 2009 in Mrs. Scatliffe's favour. On 22 October 2009, it was made absolute.

[3] On 8 September 2009, Mrs. Scatliffe filed a Notice of Application for Ancillary Relief pursuant to the Matrimonial Proceedings and Property Act, 1995¹ ("the Act"). Her application was supported by an affidavit and exhibits filed on 3 September 2009². Subsequently, she filed three additional affidavits. The second affidavit was filed on 26 November 2009³; the third on 14 January 2010⁴ and the fourth with numerous exhibits on 15 June 2010⁵. Essentially, she seeks a one- half share in all of the matrimonial assets inclusive of:

1. The matrimonial home and property recorded in the Land Registry as Parcel 38 Block 2838B Road Town Registration Section and registered in the name of the Respondent;
2. Lands acquired during the marriage more particularly the lands recorded in the Land Registry as Parcel 195 Block 2938B Road Town Registration section on which stands a newly constructed building of 2 storeys, registered in the name of the Respondent;
3. Apartment building of 4 units situate on lands, 2 lots away from the matrimonial home, which Apartment building was constructed during the marriage on lands which the Respondent sought to lease obtain leasehold from the Crown;
4. The rental income derived presently and in the future from the abovementioned lands;
5. The monies held in a bank account in the name of the Respondent at National Bank of the Virgin Islands, more particularly to the extent of the sum of \$219,407.46 deposited to the said account by way of cheque No. 480063;

¹ No. 6 of 1995 of the Laws of the Virgin Islands, 1995.

² See Tab. 2 of the Trial Bundle prepared by the Petitioner.

³ Tab. 5

⁴ Tab.7

⁵ Tab 9

6. Any other property subject to an Order of disclosure herein owned by the Respondent and to which the Petitioner/Applicant has contributed directly or indirectly.

[4] Mrs. Scatliffe also seeks an order under section 23 (c) of the Act for a lump sum payment for maintenance and a lump sum payment for her contribution to the family businesses; one of which is known as 'Fletcher Apartment Rentals' and operated by the Respondent. She also seeks a disclosure order and costs.

[5] On 10 March 2010, Mr. Scatliffe filed a Notice of Intention to proceed with an Application for Ancillary relief. It was supported by an affidavit of even date ("Third Affidavit"). Mr. Scatliffe sought the following:

1. That he be granted ownership of the matrimonial home inclusive of its contents;
2. That the parties disclose any and all assets/monies held in any bank account anywhere and that the said assets be divided equally;
3. That he be granted a lump sum financial provision under section 23(c) of the Act;
4. That he be granted a periodic payment of \$400 per month payable by the Petitioner under section 23(a) of the Act;
5. That he is entitled to a one-half share in the property situated at lands described as Parcel 174 Block 2939B East Central Registration Section in the joint names of Mrs. Scatliffe and their son, Dervin Scatliffe.
6. That Mrs. Scatliffe bears the costs of these proceedings.

[6] Prior to his application of 10 March 2010, Mr. Scatliffe had filed two other affidavits. The first affidavit with exhibits was filed on 11 January 2010⁶ and the second which was filed on 18 January 2010⁷ concerned the Ex Parte Occupation Order of 25 November 2009. The contents of those affidavits are not directly relevant to the issues which now confront this court. The third affidavit with exhibits on 10 March 2010⁸ and the fourth on 11 October 2010 directly concern the issues before me. The gist of these affidavits is that during the

⁶ Tabs. 12 and 13.

⁷ Tab. 14

⁸ Tab. 17

currency of the marriage, "the parties did not share a "partnership" relationship but were more or less independent. They held and maintained separate bank accounts. According to Mr. Scatliffe, he paid for (and in the case of the matrimonial home, built) all the real estate acquired in the course of the marriage and he also worked part-time and was the principal carer for their children after their infancy."⁹ He suggested that since he acquired the matrimonial home prior to marriage, he should be awarded that property and Mrs. Scatliffe should move out of the matrimonial home which she now resides in to go and live with her son, Derwin in the property on Parcel 174, Block 2939 ("Parcel 174").¹⁰ This parcel is jointly owned by Mrs. Scatliffe and Derwin.

[7] Mr. Scatliffe suggested that in relation to all cash assets in their bank accounts and other similar assets, that they be divided equally between them.

[8] In his fourth affidavit filed on 11 October 2010, and perhaps to settle this dispute, Mr. Scatliffe suggested to the court that Mrs. Scatliffe can have:

1. The two-storey building that he inherited from his parents as stated in Mrs. Scatliffe's affidavit dated 14 January 2010;
2. The business companies, DIDS and Fletcher Lawn Mowing Services.
3. One-half share that Mr. Scatliffe is entitled to in Parcel 174;

[9] He also suggested that Mrs. Scatliffe can have him "in keeping with the matrimonial vows to love, honour and cherish; in sickness and in health; for better or for worse; until death do us part; what God put together, let no man take asunder."¹¹

[10] Perhaps, I should say something about Mr. Scatliffe's proposal in order to demonstrate its unreasonableness and why this matter dragged on for such a long time. The two-storey building which it is alleged that Mr. Scatliffe inherited from his parents does not form part of

⁹ See Tab. 17 of Trial Bundle at page 319, paragraph 31 of Mr. Scatliffe's third affidavit.

¹⁰ Ibid, page 320, paragraph 36.

¹¹ See page 5 at paragraph 7 of Mr. Scatliffe's fourth affidavit filed on 11 October 2010.

Mrs. Scatliffe's claim before the court. It was thrown into the picture when Mr. Scatliffe was effectively suggesting that Mrs. Scatliffe should leave the matrimonial home and return to her father's residence at Sea Cow's Bay. Next, Mr. Scatliffe suggested that Mrs. Scatliffe can have the business companies, DIDS and Fletcher Lawn Mowing Services. On 24 January, 2011, I ordered, among other things, that Mr. Scatliffe shall produce a valuation or audited financial report of the company DIDS Investment Ltd and the business Fletcher lawn Moving/Mowing Services. On 8 February 2011, SS Accounting and Consulting Services Ltd. submitted a Report stating "we write on behalf of our client, Mr. Irvine "Fletcher" Scatliffe, relative to two businesses, DIDS and Fletcher Lawn Mower Services."

[11] The Report stated:

"We have checked all the relevant government agencies,... and no such business has ever been recorded on their files as it relates to Fletcher Lawn Mower Services...."

As for the company DIDS, our search revealed that this business while established and incorporated on 28 March 2003, has never conducted any economic activities and also has since been struck off from the Companies Registry...."

[12] Next, Mr. Scatliffe stated that Mrs. Scatliffe can have his one-half share that he is entitled to in Parcel 174. Later on, I shall deal with this parcel but for the time being, it will be sufficient if I say that I find as a fact that this parcel belonged to their son, Derwin and Mrs. Scatliffe's name was placed on the register when Derwin became ill.

[13] The facts as I found them are as follows. Mrs. Scatliffe did not work during the first two years of the marriage but began full-time employment in 1973 and continued for eight years until 1981. When Mrs. Scatliffe stopped working in 1981, she cared for the family and worked in the family business. She performed the role of a secretary and assisted Mr. Scatliffe in his business adventures. They worked together as "partners" and acquired a few properties during the currency of the marriage. Most, if not all of the properties and assets were acquired in the name of Mr. Scatliffe. Sadly, Mr. Scatliffe is now an amputee and is therefore, not ambulant. It cannot be questioned that he worked hard during the marriage and provided for his family. But, he was a domineering man. Indeed, he was

responsible for Mrs. Scatliffe giving up her job after 1981. He used to embarrass her and this is borne out in documentary evidence before the court.

[14] I found Mrs. Scatliffe to be a credible witness in these proceedings. I am afraid that I cannot say the same for Mr. Scatliffe. I believe that his inability to comprehend that his long marriage to Mrs. Scatliffe was a partnership and that they will have to share the “matrimonial assets” is as a result of his bossy unconventional thinking that a woman is a chattel. Hence, he became a stranger to the truth. He was not forthright. Consequently, I preferred Mrs. Scatliffe's evidence.

[15] In addition, I pause to observe that in an effort to simplify the issues before the court, a disclosure order was ordered. Suffice it to say, despite the lengthy adjournments, these documents were not made available. It is therefore obvious that Mr. Scatliffe did not come clean with the court and he has not disclosed all of his resources including bank accounts. Mr. Scatliffe gave a reason for not producing the bank accounts. He said that his former legal representatives have them. I do not think that this is a good reason. In this regard, the Court is entitled to draw inferences adverse to that party. In **Payne v Payne (1968) 1 All ER 1113** at page 1117, Willmar LJ commented thus:

“It is well established that the Court is entitled to draw inferences adverse to the husband who has not made a proper disclosure of all his available resources....”

[16] See also: Cenac J. in **Deane v Deane** [Civil Suit No.177 of 1991] [unreported] (Saint Vincent & the Grenadines) at page 23.

[17] It is against this unhappy background that the court is saddled to determine how the properties of the parties should be divided bearing in mind that the outcome ought to be fair in all the circumstances.

The issues

[18] The following primary issues arise for determination:

1. What property/properties constitute the “matrimonial assets” of the parties?

2. Whether Mrs. Scatliffe's interest in Parcel 174 is a matrimonial asset to be divided among the parties?
3. Whether the income of the family business is a matrimonial asset to be divided between the parties?
4. Whether Mr. Scatliffe is guilty of material non-disclosure of assets?
5. To what extent can the Court balance the financial resources of the parties with the present needs of Mrs. Scatliffe and the needs and disability of Mr. Scatliffe?

The statutory provisions

[19] The court's jurisdiction to grant financial provision including maintenance and property adjustment orders on divorce is contained in the Act. Sections 23 and 25 give the court the power to make financial provision and property adjustment orders for a party to a marriage on proceedings for divorce or nullity of marriage.

[20] The Act expressly stipulates that in deciding whether to exercise the powers given by sections 23 and 25, and if so in what manner, the court shall have regard to section 26(1). Section 26(1) enjoins the court to **take into consideration all the circumstances of the case** including:-

- (a) "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,
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future,
- (c) the standard of living enjoyed by the family before the breakdown of the marriage,
- (d) the age of each party to the marriage and the duration of the marriage,
- (e) any physical or mental disability of either of the parties to the marriage,
- (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home under section 49,
- (g) any order made under section 49 (not applicable to the present case),
- (h) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage, of any benefit (for example, a pension) which, by

reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring,”

- [21] And, the ‘tailpiece’ to section 26 (1) requires the court, “to so exercise **those 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 in which they would have been if the marriage had not broken down and each had properly discharged his or her own financial obligations and responsibilities towards each other”. (Emphasis added).

Equality

- [22] In the English case of **White v White**,¹² Lord Nicholls of Birkenhead, in considering similar legislation, had this to say:

“Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. As Butler-Sloss LJ said in *Dart v Dart* [1996] 2 FLR 286, 303, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty stricken to the multi-millionaire. But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles.... If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer....

Sometimes, having carried out the statutory exercise, the judge’s conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge’s decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. **As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination**”. [emphasis added]

¹² [2001] 1 AC 596 at page 605.

[23] This dictum of Lord Nicholls encapsulates the essence of the provisions in the Act concerning the division of matrimonial property as the Act identifies the need for a just and practicable result having regard to all the circumstances.

Matrimonial assets

[24] The courts in embarking on determining what financial provision, if any, should be made to a party on divorce has traditionally found it helpful to differentiate between what is known as matrimonial or family assets and non-matrimonial property or assets although that distinction is not made in the Act. Undoubtedly, this is in an attempt to achieve the sometimes elusive concept of fairness: see Lord Nicholls in **Miller v Miller and McFarlane v McFarlane**¹³.

[25] The term "matrimonial assets" or "family assets" means all property acquired during the marriage otherwise than by inheritance or gifts and is the financial product of the parties common endeavour. At paragraph 22 of **Miller v Miller**, Lord Nicholls said:

"This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital [acquisition] (sic) but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. **The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose.** As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."

The matrimonial home

[26] It is accepted by both parties that the land and the lower floor of the matrimonial home were acquired by Mr. Scatliffe in 1969 before the parties were married. It is also accepted that the upper floor was added in 1972 during the currency of the marriage. The parties

¹³ [2006] UKHL 24 at paras. 21-27.

resided on this floor from 1972 until 25 November 2009 when the Court granted to Mrs. Scatliffe occupation and possession of the matrimonial home exclusive of Mr. Scatliffe until the hearing and determination of the present matter. The lower floor has two apartments which generates rental income of about \$1600 per month.

[27] This property is registered in Mr. Scatliffe's sole name. It was so registered in 1973 after the marriage. The present value of this property as indicated by the appraisal report is \$600,000.¹⁴

[28] Mr. Scatliffe maintained that this property is not a matrimonial asset to be the subject of division as it was acquired before the marriage. In his fourth affidavit, Mr. Scatliffe gave six reasons why the court should award him the benefit of Parcel 38; the principal one being that it was acquired before the marriage and as such; it should not form part of the division of properties; it is not matrimonial asset. He also deposed that it is the only piece of land that he owns that can provide him with an income which he badly needs and which will prevent him from begging.¹⁵ He also spoke to being close to close friends and family residing within the vicinity of the matrimonial home.

[29] Even though the matrimonial home was acquired before the marriage, I believed Mrs. Scatliffe when she said that whilst she did not contribute directly to the construction of the matrimonial home by way of monetary income due to the fact that Mr. Scatliffe prevented her from working during most of the years during the marriage, she contributed to its upkeep by her work as a house-maker. In addition, she decorated and refurbished the matrimonial home, kept the lawns and gardens and she also raised her children and grandchildren there during those nearly forty years.

[30] The law is plain. The entire matrimonial home therefore falls to be considered a matrimonial asset to be divided equally between the parties.

¹⁴ See Exhibit DSG-3.

¹⁵ See paragraph 7 of Mr. Scatliffe's fourth affidavit at Tab. 20.

Other assets acquired during the marriage

Parcel 195

- [31] Parcel 195 was purchased in 2003 for \$260,000. It was acquired during the marriage. It is registered solely in the name of Mr. Scatliffe. He resides on this property. The purchase was facilitated by savings from the business assets. A few months after the land was purchased, the parties constructed a two-storey building comprising two, three-bedroom units. This property falls within the definition of "matrimonial asset" even though both parties agreed that it was meant to be for the benefit of the children.
- [32] By order of the court dated 25 October 2011, an appraisal was carried out on this property by an independent appraiser. A report was submitted to the court. The report indicated that the building is approximately 50% complete, with the building being a shell only and therefore, the value of the unfinished building located on the land is \$350,000. Further, that the value of the completed building would be \$750,000.
- [33] This appraisal does not include another building which was constructed by the parties' adult daughter on the same parcel of land. It appears that this second building was the subject of dispute between Mr. Scatliffe and his daughter. As Mrs. Scatliffe is not claiming an interest in this property, there is no need for this court to be troubled with this building.
- [34] Back to the property in which Mr. Scatliffe resides. Mrs. Scatliffe suggested that he should continue to reside in this building since it is wheelchair accessible on both floors. However, Mr. Scatliffe stated that the property was constructed jointly by his sons and that they are the beneficial owners of the property. As at the time of giving evidence under cross examination, Mr. Scatliffe indicated that his son has provided him a place to live on Parcel 195, after being ordered to leave the matrimonial home and having no permanent place to go. I do not believe Mr. Scatliffe. I believe that he has injected lots of money into this property to make it wheelchair accessible.

Parcel 147 (Crown Lands Property)

- [35] The Crown Lands property is on Parcel 147. The land belongs to the Crown. The property consists of a four unit apartment building which was constructed in 1989. The construction was facilitated by savings from the businesses and the assets. Mrs. Scatliffe was not involved with the construction. The building has two lower floor units which Mrs. Scatliffe says is currently being rented for \$800 monthly each. According to her, the two upper floor units each were completed around 1999 and are currently rented for \$850 monthly each. Mrs. Scatliffe has provided an appraisal of the lands and building at \$425,000¹⁶; the lands are valued at \$30,000 and the building is worth \$395,000.
- [36] Mr. Scatliffe does not challenge the fact that this property was acquired during the marriage. In fact, at paragraph 5 of his fourth affidavit, Mr. Scatliffe deposed that in reference to Parcel 174 which was definitely acquired during the marriage, he paid 89% of the purchase price. He further stated that "providing my wife gives me the half of what I am asking, I will be generous enough to give back that half as a gift if she agreed that she will keep Parcel 174, I keep Parcel 38 which was acquired before the marriage and the children remain with Parcel 195." I therefore find that the Crown Lands property which is worth \$395,000 is a matrimonial asset.
- [37] With respect to the rents derived from this property, Mrs. Scatliffe deposed that during the marriage, she was responsible for managing and collected rents which she used towards the maintenance of the home, the education of the children and her own personal expenses. In 2008, Mr. Scatliffe excluded her from the apartment rental business and ceased to contribute to her maintenance so she was forced to seek work outside of the home. She is currently employed with the BVI Government House Museum and earns \$1,900 monthly.
- [38] On the rents allegedly derived from the apartments, Mr. Scatliffe stated that "*I decline respectfully to speak to any land that is not owned by me and will only speak to land that is owned by me. I further add, that the \$3,300 that the Petitioner claims that I receive, is false*

¹⁶ See Tab. 10 pp. 206-225 and pp. 228-237.

and very misleading.” Suffice to say, he did not provide any information of the rental income derived from these properties.

[39] In those circumstances, I will accept Mrs. Scatliffe’s evidence that Mr. Scatliffe receives about \$3,300 rental monthly from those apartments.

Parcel 174

[40] Mrs. Scatliffe deposed that in 2003, she acquired Parcel 174 jointly with her son, Derwin Scatliffe on which he has built a home in which he will live. It is not denied that Parcel 174 was acquired during the marriage. The land was acquired by means of a loan; of which \$35,000 came from Mr. Scatliffe. Mrs. Scatliffe said that she was named a joint owner at a time where Derwin was ill so as to ensure that the property passes to someone who could care for Derwin’s children.

[41] Mr. Scatliffe claimed that this is a matrimonial asset and he is entitled to his one-half of the undivided interest in that property.

[42] For all intent and purposes, this property was meant to be owned by Derwin who has constructed a house of Parcel with the aid of bank financing which he is paying.

[43] In my opinion, this property does not fall within the definition of “matrimonial assets”.

Lump sum payment: businesses acquired during the marriage

[44] Mrs. Scatliffe claimed a one- half of the share of the total value of the family businesses reflecting the value of her contribution. These businesses are Fletcher Apartment Rentals; DIDS Investments, Fletcher Lawn Mowing Services, business with Prime Foods.

[45] Mrs. Scatliffe alleged that she worked for a short period outside the home but then stopped in 1982 due to the demands and request of Mr. Scatliffe and that during the marriage she contributed to the work of Mr. Scatliffe’s various businesses by providing secretarial work and managing the rental apartments. As a result, she claimed a lump sum payment for the value of her contribution to the family businesses.

- [46] With respect to Fletcher Lawn Mower Services and DIDS Investment Ltd, the Report from SS Accounting and Consulting Services Ltd. reflected that there is no such business has ever been recorded on their files as it relates to Fletcher Lawn Mower Services. As to DIDS, it has been struck off the Companies Registry. With regards to Prime Foods, there is not enough evidence before me to make any finding on this business.
- [47] Given the information stated above coupled with the fact that the court does not have before it any valuation of the businesses said to be owned by Mr. Scatliffe, I am therefore not in a position to rule on the existence of those businesses, and as a corollary, is not in a position to exercise my discretion to estimate with reasonableness an approximate value of the said businesses and apportion accordingly.
- [48] In spite of this, I turn again to Fletcher Lawn Mower Services. I believe that even though the Report stated that “no such business has ever been recorded”, there is sufficient documentary evidence before the court that Mr. Scatliffe received \$219,000 in payment for works done under a government contract. Mr. Scatliffe did not deny the receipt of this money. He however argued that the monies received from this payout were dissipated in funding the construction of the building on Parcel 195. Mr. Scatliffe has not been frank to the Court because the records demonstrated otherwise. In fact, Mr. Scatliffe admitted and this is confirmed in the documents, that between the periods 1999 to 2004, he had paid out more than \$394,000 in making cash purchases of property or un-financed construction of buildings.
- [49] As said before, Mr. Scatliffe did not fully comply with the disclosure order made by the court and he has failed to disclose the accurate income of these businesses over the years. The court is then left to draw inferences adverse to Mr. Scatliffe from such material non-disclosure: see **Hughes v Hughes**.¹⁷
- [50] These considerations not doubt weigh in favour of a lump sum payment for Mrs. Scatliffe. At the very least, she is entitled to one-half of the \$219,000 received in payment for works done under a government contract.

¹⁷ 45 WIR 149.

[51] Given the fact that the matrimonial home and the revenue derived therefrom (as discussed in paragraph 59 below), will be awarded to Mrs. Scatliffe and the value of that home is \$600,000, I think it is fair that this court makes no lump sum award to Mrs. Scatliffe. This can be considered a set-off.

Shares in Telecom

[52] Mr. Scatliffe claimed an entitlement to a share in the value of the 400 investment shares which Mrs. Scatliffe holds in a company Telecom 7 Investment Holdings Limited. The said company holds shares in CCT Global Communications Inc. These shares were purchased in or about May 2002. Mrs. Scatliffe claims that the shares were purchased from her savings, costing \$5000. However in cross- examination it was revealed that a portion or all of that \$5000 came from rental income. The value of the shares is \$3000.00 as at June 2010. Although it falls within the definition of "matrimonial asset", it is just too nominal to be divided. The shares will therefore remain in the sole name of Mrs. Scatliffe.

Appraisal Reports

[53] Both parties have paid and done appraisal reports but Mrs. Scatliffe has paid for the bulk of them. On proper calculations by Counsel, she will be reimbursed one-half of the cost of the appraisal reports.

Costs

[54] As is usually the case, each party will bear his/her own costs.

Court analysis

[55] In determining the division of the matrimonial home and all other matrimonial assets, I am again guided by the principles laid down by Lord Nicholls in **Miller v Miller**¹⁸. At paragraph 11, he said:

"The element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual

¹⁸ [2006] 2 WLR page 1288

dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age and disability are instances of the latter."

[56] At paragraph 16, Lord Nicholls spoke of "sharing." He said:

"...This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals.... This is now recognized widely, if not universally. 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 good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

[57] In the present case, I am satisfied that fairness demands that the yardstick of equality must be applied particularly since this was a long marriage and both parties contribute directly or indirectly to all of the matrimonial assets which were acquired over the years.

[58] This case presents many problems because of the parties involved. I believe that I should assist both parties in the distribution of the matrimonial assets in order to achieve equality and fairness.

Matrimonial home and rent

[59] Mrs. Scatliffe has been living in the matrimonial home for the last 38 years. She is now 58. I do not feel that it would be just in the circumstances to disturb her continued occupation of the matrimonial home. In the circumstances, I believe that the justice of the case requires that Mrs. Scatliffe continue to reside in the matrimonial home. I therefore award her the entire matrimonial home inclusive of the lower floor with the two apartments. All income derived from the rental of the apartments is solely for the benefit of Mrs. Scatliffe.

Parcel 195

[60] Parcel 195 with the building thereon is a matrimonial asset even though it is in the sole name of Mr. Scatliffe. It was acquired during the marriage. Its purchase was facilitated by savings from the business assets. It is therefore a matrimonial asset which falls to be divided between the parties. However, both parties agreed that it was acquired for the benefit of the children.

[61] Mr. Scatliffe now resides in this property. It is wheelchair accessible. I believe that Mr. Scatliffe should continue to reside in this property until he dies. Furthermore, given his disability, I am of the opinion that fairness dictates that he should collect and use the rental income derived from this property until he dies. However, as per the parties' wishes, this property should be awarded to the children after they would have paid the necessary stamp duties as alleged by Mr. Scatliffe.

Parcel 147 (Crown Lands Property)

[62] The apartment building on Parcel 147 which is valued at \$395,000 is a matrimonial asset. The land on which the building stands belongs to the Crown. I will encourage the Crown to sell the lands to Mr. Scatliffe since he has been continuously occupying the lands since 1989. Fairness would be only achieved if I award this property solely to Mr. Scatliffe. He shall continue to receive and use the rents derived from the apartments for his sole benefit.

Parcel 174

[63] As already stated, Parcel 174 is not a "matrimonial asset" to be divided between the parties.

Conclusion

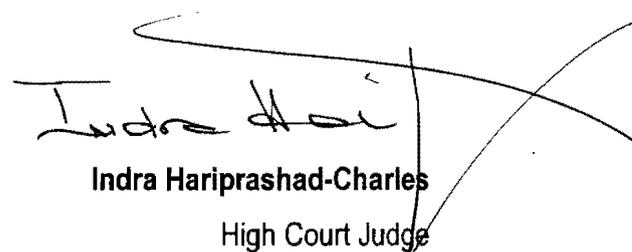
[64] In making my award, I am guided by the matters which I have to consider in section 26 of the Act. Having done so, my order is as follows:

1. Parcel 38 and the matrimonial home is awarded solely to the Petitioner, Mrs. Scatliffe. She will also receive all rental income derived from the said property.
2. Parcel 195 with the one property in which Mr. Scatliffe resides, is to be for the benefit of the children and will be transferred to them upon payment of the

necessary stamp duties. However, Mr. Scatliffe will have a life interest in the entirety of that building. He will continue to reside in one of the apartments and collect and use the rental income derived from the other apartment until he dies.

3. The apartment building standing on Parcel 147 known as the Crown Lands Property is awarded solely to the Respondent, Mr. Scatliffe. He will also receive all rental income derived from the said property. I will also encourage Mr. Scatliffe to approach the Government with a view to purchase that piece of land. It is my fervent hope that the Government will sell the land to Mr. Scatliffe at the market price.
4. Parcel 174 is not a "matrimonial asset" within the meaning of the law and does not arise for any further consideration.
5. The shares in Telecom are declared to be the sole property of Mrs. Scatliffe.
6. The Petitioner, Mrs. Scatliffe is to be reimbursed her half of the cost associated with the appraisal reports. Counsel for the Petitioner is requested to assist.
7. Each party will bear his/her own costs.

[65] Last but not least, I thank the parties and Ms. Worrell for their patience in awaiting this judgment.


Indra Hariprashad-Charles
High Court Judge