

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



**COMMONWEALTH OF DOMINICA
DOMHMT1995/37D**

BETWEEN:

ELLSWORTH CHENFIELD PREVOST

Petitioner

and

YGETTE CHRISTINE PREVOST

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Mary Roberts for Petitioner
Mrs. B. McDonald Christopher for Respondent

JUDGMENT

[2012: July 20th]

[1] **COTTLE J:** The parties to this application for ancillary relief filed written submissions with authorities in support. They agreed that the matter should be determined upon the written submissions. Unfortunately the submissions when filed were not placed before the judge for

determination. Consequently the file languished until enquiries by the Respondent cause the matter to be resurrected.

- [2] The parties were married in 1986. A decree nisi was granted in 2004. The Petitioner is a self employed businessman. The Respondent works in a bakery. At the date of the marriage the Petitioner was 31 and the Respondent ten years younger.
- [3] There are no minor children with whom these proceedings must be concerned. The respondent seeks the payment to her of a lump sum. The respondent also requires the Petitioner to pay to her all arrears of maintenance due to her under an existing court order. The arrears amounts to \$14,000.00.
- [4] At present the Respondent has 4 parcels of land registered in his name. These are all encumbered to provide security for various loans the Petitioner has taken as different financial institutions. There was another parcel of land on which the matrimonial home stood. The home was destroyed by fire. The Petitioner has received the proceeds of an insurance policy in that regard. Those proceeds were utilized to pay off the existing mortgage. The Petitioner then transferred the property to his son. It has since been compulsorily acquired by the state. The Respondent wishes the court to determine whether this property was transferred to the son of the Petitioner with the intention of defeating the claim for financial relief within the meaning of Section 37(2) of the matrimonial Causes Act 1973. The state paid compensation of \$501,291.00 for the land compulsorily acquired. This was done in 2006. This court notes that the transfer to the son of the Petitioner was done by the Petitioner after the institution of these divorce proceedings.
- [5] On a balance of probabilities this court concludes that this transaction was an attempt by the Petitioner to divest himself of all interest in this property, admittedly acquired during the course of the marriage to try to defeat any claim by the respondent to share. The Matrimonial Causes Act requires the court to consider all the circumstances of the case, including the matters enumerated at Section 25, when making an order. The objective is to place the parties, as far as this possible, in the position they would have been had the marriage continued and each had discharged his or her financial responsibility to the other.
- [6] It is clear that the Petitioner in the present case has substantial assets. It also appears that he is bent on conducting his affairs in such a fashion as to present the appearance of impecuniosity. With the benefit of orders from this court it eventually emerged that the 4 parcels of land the Petitioner now owns have values of over \$442 000 combined. These values were at 2008 and have undoubtedly risen since.
- [7] I take into account as well the fact that the respondent has been given a parcel of land by her parents since the divorce.
- [8] This is an apt case to make an order for a lump sum payment. Counsel for the Petitioner urges the court to pay special attention to several factors. These include the relatively short duration of the marriage and the relative ages of the parties. The petitioner says the respondent left the matrimonial home in 1993 after 7 years of marriage. She was then aged 25.

- [9] The ancillary relief proceedings were begun in 2005 after the grant of a decree nisi on 2004. Citing Chambers v Chambers (1979) 10 Family Law 22, counsel argues that after such a long lapse a party should be entitled to take the view that there should no revival or institutions of financial claims against him or her. Also the Petitioner in the interim had continued without the input of the respondent to build up his business. The Petitioner argues that the Respondent should not be entitled to any share of these after acquired assets.
- [10] There is much force in this observation. But even if the court restricts its consideration to only the matrimonial home, this is still an asset worth more than one half million dollars.
- [11] As outlined above, I find that the Petitioner deliberately divested himself of this family asset. I therefore consider it just to make an award out of his other assets as was done in White v White 2001 A All ER 1.
- [12] Having regard to all of these circumstances of this case I consider the respondent is entitled to a one third share of the value of the matrimonial home. I order the petitioner to pay to the respondent \$180,000.00 being \$166,000, the value of her share of the matrimonial home and \$14,000 being maintenance arrears unpaid.



Brian Cottle

Brian Cottle
High Court Judge