

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHMT 2009/0027

BETWEEN:

CLAUDETTE LAYNE

Petitioner

AND

JOHN LAYNE

Respondent

Appearances:

Mr. Alban John for the Petitioner

Mr. Michael Andrews for the Respondent

2013: February 21

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This is an application for a property adjustment order in the matrimonial proceedings. The property in question was purchased one year after the marriage of the parties and is situated at Maulty in the parish of St. David. The purchase price of the property was EC\$290,000.00 and the deed of conveyance which was exhibited to the petitioner's affidavit was executed in the joint names of the parties to this action.
- [2] The property comprises one acre two roods and 32 poles and has a two-storey building on it, that building is the matrimonial home. The property is currently subject to a mortgage between the parties and the Grenada Co-operative Bank and is recorded in the Deeds and Land Registry of Grenada in Liber 20-99 at page 117.

- [3] The mortgage is serviced by the respondent and the balance due on the mortgage as of the 14th July 2009 was \$142,345.42. The petitioner in her affidavit of even date stated, that for the duration of the marriage she was responsible for the maintenance of the child, the purchase of groceries and the payment of the utility bills. The parties to the marriage were so married on the 7th of September, 1998 and separated on or about on the 15th of November 2003 when the petitioner left the matrimonial home at Maulty due to the conduct of the respondent, the particulars which of were set out in the petition filed in the matter. More specifically the petitioner claimed that the respondent on or about the 15th day of November, so violently struck her with his fist that her nose bled and she sustained a cut to her forehead.
- [4] The petitioner in her application further states there is an arrangement to the parties with respect to the maintenance of the child and that is not an issue in these proceedings. The respondent in his affidavit of 15th October, 2009 confirms that the mortgage is in both his and the petitioners name and is still being serviced by him. The mortgage payment at the time was \$4,164.00 per month, he claimed that his monthly income was \$4,814.00. He further stated that the petitioner is a senior officer at the Co-operative Bank Limited of Grenada earning a salary of approximately \$7,500.00 to \$8,000.00 per month.
- [5] He further states that the petitioner did not pay the deposit or down payment towards the purchase of the matrimonial home. The matrimonial home was destroyed by Hurricane Ivan after the petitioner left it in 2003. He said that he secured a mortgage with Republic Bank in the amount of \$159,000.00 to facilitate the renovations to the matrimonial home at Maulty, and the mortgage payment on this is \$1,576.20 per month. He said in August of 2008 he secured a loan of \$143,200.00 to finance continued house repairs and renovations with a monthly repayment figure of \$1,815.00. He claims that the petitioner's interest in the matrimonial home is negligible and the petitioner is a full time worker and not a house wife.

- [6] The petitioner in her affidavit of response dated October 27, 2009, admits that the mortgage is serviced only by the respondent but she claims that the mortgage is not inclusively comprised of payments on the matrimonial home, but also includes loans granted to the respondent in 1999 by RBTT Bank then called the Grenada Bank of Commerce. She further states that the respondent is dissembling when he asserts that his salary is \$4,814.00 per month. She states that she is aware that the respondent is the District Medical Officer, for the parish of St. David, and in addition to that he runs a private medical practice located downstairs the matrimonial home.
- [7] She further says that the expenses deposed to in paragraphs 9 and 10 of his affidavit contradict his assertion that his salary is only \$4,814.00 per month. She further asserts that the respondent did not make any down payment on the matrimonial home as the entire sum was provided by the bank loan from the Co-operative Bank. She says in her affidavit in response that the property was insured through her sole effort as the respondent claimed that he had no money to insure the property. She insured the matrimonial home for \$360,000.00 and paid the first premium fully in the amount of approximately \$2,400.00.
- [8] She asserts that it was only after January 2004 that the respondent paid the second half of the premium, half of the second premium and she paid the other half. She does not say what transpired after that. After Hurricane Ivan, when the home was damaged, she asserts that the respondent recovered an excess of \$202,000.00 from the insurers, all of which was to be applied to financing the restoration of the matrimonial home. She claims that a loan of \$100,000.00 was taken out by herself and the respondent from the Grenada Co-operative Bank for the purpose of restoring the home, she has no knowledge of the other loans that the respondent asserts that he took out in respect of the home and she also claims that the home was fully repaired by 2006.
- [9] She says that there was no domestic help in the running of the matrimonial home while she lived there and that she did all the domestic work while she lived at the

home with the respondent. She re-asserts that all the expenditure in relation to the upkeep of the home including the financing of the grocery and household bills were borne solely by her.

- [10] Mr. Layne in his affidavit of November 2009 asserts that the petitioner has not disclosed her salaries or allowances from her employment at the bank, and that she never disclosed the salary and allowances and perks to her husband the respondent during the marriage, although he asked her several times. He asserts that the RBTT loan of 1999 was taken over by the Co-operative Bank and he emphasizes that that was serviced by him and not the petitioner. He further exhibits a certificate from the Ministry of Health stating his salary as the district medical officer.
- [11] And he says that he on average on average collects about \$3,000.00 per month from his private practice. The respondent exhibited a letter from the Republic Bank dated October 29, 2009, affirming that there was a loan account at the bank and as of October 28, 2009 the outstanding balance was \$145,541.14. The monthly payment being \$1,576.20. He further attached an exhibit from the Grenada Co-operative Bank indicating that there was a mortgage loan in the amount of \$348,791.30. The monthly instalments being \$4,164.00 and the remaining loan balance as of October 28, 2009 was \$131,640.52.
- [12] Also exhibited was a letter from the Ministry of Health certifying that Dr. Layne was employed as a district medical officer, and he was employed since 1st January 1991 and his salary is \$57,768.00 per annum. There was also exhibited a letter from the Grenada Public Service Co-operative Credit Union Ltd. in which it asserts that the loan, there is a loan from the credit union in favour of Dr. Layne made on the 3rd of April, 2008 for the purpose of house repairs and renovations. The loan amount was \$143,200.00 and the monthly repayment was \$1,815.00.
- [13] In respect of his salary, Dr. Layne asserts in his affidavit of 2nd of November, 2009, that he is allowed a private practice but being a district medical officer, the patients who come for attendance at that private office very few of them pay, therefore he

collects on average \$3,000.00 a month from his private practice that is in addition to his salary of \$4,814.00 as district medical officer. In that affidavit he also says he does gardening. He also says he rears pigs and he supplies meat for the home as well as to the hotels. He does not however state in that affidavit, what if any money he makes from the rearing of these pigs and from the sale of this meat to these hotels, but one would assume that he does make some money from the sale of these items.

[14] In her affidavit of November, 3rd ordered by the Court, the petitioner states that these proceedings are for the purposes of determining her rights and interest to the property from the matrimonial home and to secure contributions from the respondent for the maintenance and upkeep of the infant child of the marriage. It is unclear to her why it is necessary for her to set out what her earnings are. The Court is entitled to require such information as is proper and necessary for the fair disposal of such matters. And when one is applying for a property adjustment order, there are many orders which the Court is entitled to make in its discretion upon hearing the evidence.

[15] The earning capacity of both parties is important and vital to the Court making its determination in a matter such as this, as there are many orders which the Court is entitled and opened to make, one of which is either party buying out the other, the property being sold among other things. Should the Court be minded to make a determination that one party or the other is to pay out the other side, for what the Court determines is their share of the property. It is imperative that the Court be apprised of the earning capacity of both parties with respect to making such a determination, therefore it is important and vital for both parties to make full and proper disclosure of the earning capacity to the Court in order for the Court to make a reasoned determination as to what a fair and just property settlement would be in the circumstances.

[16] The petitioner exhibits to her affidavit of 3rd November 2009, a debit memo from the Grenada Co-operative Bank dated 25th June, 1999 which shows the sum of

\$49,209.55 which was the amount payable to the Grenada Bank of Commerce now RBTT Bank by way of outstanding loan to the respondent. She says that the interest rate payable on the mortgage was a highly concessionary staff rate currently resting at 5% per annum, a rate which she says, the respondent only received because of and by virtue of her employment at the bank. I accept that this was a contribution and a vital and substantial contribution made by the petitioner to the acquisition of the matrimonial home.

- [17] She disputes that the respondent earns only \$3,000.00 a month from his private medical practice, she indicates that she is aware that he has a thriving private practice in St. David's, operated from the matrimonial home for which there has never been any disclosure to her. She further states that she is aware that the respondent has acquired shares at the Grenada Co-operative Bank, RBTT Bank and Grenada Breweries Ltd all in or about the year 1999.
- [18] She further asserts, she carried the full maintenance, the responsibility of the full maintenance of the child, the upkeep of the matrimonial home, which deprived her of savings, while the same time, affording the respondent the additional monies to purchase the said shares. As indicated earlier, she makes the point that the farming that he refers to is done at the matrimonial property but he makes no disclosure of his earnings from that farming.
- [19] She exhibits to that affidavit, copies of the mortgage loan payout figure from Co-operative Bank payable to the Grenada Bank of Commerce; she also attaches by way of exhibit the cheques for the premiums payable to Trans Nemwil Insurance for payment of the matrimonial home, the insurance policy of the matrimonial home. She also exhibits a release, the final release form from Trans Nemwil in the sum of \$202,330.63 which represents the full and final settlement in respect of all claims made under the policy with respect to the matrimonial home caused by Hurricane Ivan.

- [20] It is signed for by Mr. John Layne as having received the funds. And in her final exhibit she exhibits a rent receipt showing that her current rent is \$900.00 that is representing rent for the month of October, 2009.
- [21] The petitioner filed further affidavit on October, 19th, 2011 in which she disclosed that she was a member of the Grenada Co-operative Bank Limited Employee security schemes akin to a pension scheme. She says she contributes 5% of her monthly salary to that scheme and the bank matches that monthly. She said under the rules of this scheme, members are allowed to withdraw monies for the purpose of investment. She disclosed that she holds 1,897 shares at the RBTT Grenada Bank Ltd. 8,050 shares at the Grenada Co-operative Bank Limited. She indicates that those shares were paid for by withdrawals from the said employees security scheme. She says she also holds 2,800 shares in Grenlec which were purchased in 1992, and she owns an Escudo jeep, which she uses, a 1994 model, she purchased it used in or about the year 2004 and the vehicle is now probably worth between \$13,000-\$14,000.00
- [22] The respondent sought to put in an affidavit dated October 24th 2011, he had neither the leave of the Court nor did he apply for such leave of the Court in order to place that affidavit before it. In the circumstances the Court will take no cognisance of it and will rely on the affidavits filed before that date by the respondent and make its determination based on those affidavits. The affidavit contains information that ought to have been put toward the Court prior to that date and it also contains some highly inflammatory statements and inadmissible evidence as far as this Court is concerned.
- [23] Counsel must not allow clients to dictate to them what ought to be put before the Court, and the affidavit of the 24th of October, 2011, was such was a document, which Counsel ought to have let the respondent know the document was highly improper in terms of not having the leave of the Court to do so and also with respect to the content of the affidavit. Such inflammatory material ought not to be placed before the Court at any time. Counsel and client ought to know better, the

contents of the affidavit as filed was akin to an incendiary device, thrown onto an already burning building to utterly destroy the character of the petitioner, and the Court frowns on such behaviour and hopes that it will not happen again.

[24] In determining the property settlement or property adjustment order, the matters to which the Court must have re-heard, in deciding how to exercise his powers under the Act, are set out clearly in Section 25 (2) paragraphs a-h of the Matrimonial Causes Act, 1973:

- "25 (2) (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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire
- (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) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family;
- (g) The conduct of each of the parties, [whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage], if that conduct is such that it would in the opinion of the Court be inequitable to disregard it;
- (h) *In the case of proceedings for divorce or nullity of marriage*, the value to each 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.

- (3)
 - (a) The financial needs of the child;
 - (b) The income, earning capacity (if any), property and other financial resources of the child;
 - (c) Any physical or mental disability of the child;
 - (d) The manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
 - (e) The considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b), (c) and (e) of subsection (2) above.
- (4)
 - (a) To whether that party assumed any responsibility for the child's maintenance, and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;
 - (b) To whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;
 - (c) To the liability of any other person to maintain the child.

[25] I reiterate what I had said earlier in my judgment with respect to the income and earning capacity of both parties. ¹Section 25 (2) (a) starts off:

"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 including in the case of the earning capacity, any increase in that capacity, which it would in the opinion of the Court be reasonable to expect a party of the marriage to take steps to acquire, it means that when the Court, and I repeat, when the Court is looking at all

¹ Matrimonial Causes Act, 1973, Section 25

the relevant factors, in determining whether or not, an order should be made and the type of order that should be made, it is relevant that the earning capacity and income of both parties be fully disclosed to the Court."

[26] In this case, the petitioner for reasons best known to herself, refused to disclose her income to the Court, until ordered to do so by the Court, a wholly unacceptable state of affairs. Again I urge Counsel to bear in mind the provisions of the section with respect to the material which ought to be placed before the Court, when the Court is making a determination, as to how to divide the matrimonial assets.

[27] It is not for Counsel to say that it is not relevant, it is one of the most relevant issues and matters that the Court ought to have information on in making decisions such as these. It is unfortunate that the petitioner in this matter, took the position that her income the disclosure of her income was not relevant to the determination of these proceedings. Full and frank disclosure foundation of matrimonial proceedings and without it the Court is left to guess and to wonder as to what the position of the petitioner is in terms of her earning capacity when it comes to dealing with this matter. It is an untenable position for the Court.

[28] I do not doubt that the matrimonial property at Maulty, St. David's was jointly acquired by the parties, as stated in the conveyance dated June 30th 1999, the property again I accept was acquired with a bank loan from the Grenada Co-operative Bank where the petitioner works. And that the parties were able to secure the loan at a highly concessionary rate of interest at 6% per annum because of her employment at that institution. This rate has now been further lowered to 5% per annum.

[29] That is a considerable and significant contribution made to the acquisition of the property by the petitioner. If the respondent who admittedly was responsible for the monthly payment of the mortgage had to pay the going rate which would have been higher, it was not disclosed to the Court what the rate would have been, but it was certainly a rate that would have been higher than the 5% that the

respondent is presently paying. I find this to be a significant contribution towards the acquisition of the matrimonial home. It certainly saved the respondent a certain amount of money that he would have had to pay in interest and therefore brought the monthly rate on the mortgage down to a considerable degree.

[30] I also find that the petitioner was the person who was responsible for the purchase of groceries and the payment of the utility bills initially as well as the maintenance of the child of the marriage. Because she made these payments it allowed the respondent to pay the mortgage because it released him of those financial obligations to the home.

[31] I also find and I accept that the petitioner made substantial contributions to the initial refurbishing of the home after the occupation of the home as stated in her evidence. She made contributions to the kitchen cupboards, to the electricals, to the refurbishment of the office and to the fencing of the property. The cross-examination of the respondent on the 15th November, 2011, he either admitted many of these contributions or certainly did not deny these contributions. Therefore I find the petitioner did make these contributions to the matrimonial home.

[32] With respect to the evidence of the respondent with respect to his income, I find that he earned \$4,814.00 per month from his government salary, but I find that his additional earnings are in excess of the \$3,000.00 which he stated to the Court. I find it very difficult to accept that he could have met his commitments to the mortgage of the matrimonial home and also service the other mortgages which he admitted in cross-examination to servicing.

[33] In cross-examination he also admitted that he had other mortgages and other lands which he had obligations to the bank for. He admitted that he was paying for the education of Devon McKenzie and the respondent, while he claimed the loan was in the sum of \$76,000.00, the mortgage deed which was shown to the Court and admitted as an exhibit, speaks to the sum of \$82,304.00. But that may be inclusive of the legal fees which ought to be taken into account.

- [34] There is a further mortgage at the Grenada Co-operative Bank in the sum of \$161,000.00 on security of some land located at Grand Anse. None of these mortgages were in fact were disclosed by the respondent. So I find that both parties were remiss in their disclosure of their earnings, their property and their finances with respect to this application.
- [35] Given all of the properties, including the matrimonial home and all of the mortgages and loans which the respondent has to various banking and financial institutions in Grenada, I find that his assertion that his salary, his total monthly salary being \$7,814.00 in total to be unbelievable, in that he would be unable to service all of these mortgages plus take care of himself and/or his family on the basis of earning that amount of money per month. I do not believe that he earns only \$3,000.00 from his private practice. I do believe because I have seen the evidence from the government, that his government salary is in fact \$4,814.00 a month on average. The Court finds that he earns in excess of \$3,000.00 from his private practice. I also find that his earnings from the gardening or farming that he does must be taken into account in calculating his monthly income.
- [36] I find therefore that he earns in excess of the amount of money that he has disclosed to the Court and I base that finding on all of the properties that he has acquired and all of the mortgages that he is repaying, the sum from the calculations that he has given to the Court are in excess of the \$7,814.00 he has admitted to earning to the Court. I also take into account the length of the marriage. The parties were married in 1998 and the petitioner left the matrimonial in 2003, the marriage lasted five years.
- [37] Decree Nisi was granted on the 8th day of April, 2009, and was made absolute on the 21st of May, 2009.
- [38] I find the circumstances under which the petitioner left the matrimonial home were caused by the respondent, the respondent did not deny that he had struck the petitioner causing her to receive an injury. She thereafter left the matrimonial home because she said feared that he may have struck her again. I do not find

any fault in the petitioner for leaving the home under those circumstances. Therefore I find that her moving into rented accommodation with the infant son was not an unreasonable position for her to take.

[39] Where properties purchased in joint names without any expressed declaration as to the beneficial interest, then if the purchase money was provided out of the jointly pooled resources, an equitable joint tenancy exist. The provision of the purchase price may arise as it did in this case from the payment of mortgage instalments or it may arise indirectly the one salary is used for household expenses so that the other party may be used to make the mortgage instalments. Again as happened in this case.

[40] Where a property is bought with the aid of a mortgage, the Court has to assess each of the parties respective contributions in a broad sense. But the Court is entitled to look not only at the financial contributions or their real or substantial equivalent to the acquisition of the property but all the attendant circumstances.

[41] If the purchase is financed in part or in whole by mortgage the person who assume liability for the mortgage payments as between the joint owners is to be treated as having contributed the mortgage money. However, in this case because the petitioner worked at a bank, she was able to obtain a concessionary rate on the mortgage interest which saved the respondent who was responsible for paying the mortgage a considerable amount of money. That means that that indirect contribution to the mortgage by the petitioner has to be taken into account as a contribution towards the acquisition of the matrimonial home.

[42] Clearly here where the property was put into both parties names, there was a common intention that the home should be the matrimonial, shared by both of the parties respectively. That common intention must mean a shared intention communicated between them and relates to the beneficial ownership of the property. And can only be based on expressed discussions between the parties however imperfectly remembered and however imprecise their terms may have been.

- [43] As Lord Nicholls says, in **Miller v Miller**² "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.' 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."
- [44] In this case, I find that fairness is equality. The respondent was able to pay the mortgage by the fact that the responsibility for the other household expenses and for the maintenance of the child were largely borne by the petitioner while the marriage lasted and he only commenced contributing to the child's education and upkeep after the separation of the parties. Further and I repeat that the benefit gained by the respondent in the low interest rate that he was granted on the loan cannot be likely discounted. This is a benefit realised only because of the petitioner's employment with the bank with whom the mortgage was granted.
- [45] The fact that the petitioner has now remarried, is of little consequence to the Court's mind with respect to deciding whether the matrimonial property ought to be divided equally. The respondent who resides in the home still enjoys the benefit of the concessionary rate of interest which he received as a result of the petitioner's employment with the bank even though she no longer resides in the home.
- [46] I therefore make an order that the petitioner is entitled to half of the equity in the former matrimonial home; the evaluation submitted by Joseph John & Associates, dated 15th July, 2010 minus whatever outstanding mortgage is at the date of the hearing. The valuation was placed at \$575,230.00; the outstanding mortgage is to be deducted from that figure, as well as the sum of \$70,000.00 the estimated cost, of the repairs required for the home. The respondent will pay to the petitioner 50% of the remaining sum as her interest in the matrimonial home.
- [47] I will not grant the occupational rent but I would order that the respondent continue the present arrangements for the maintenance of the minor child of the family as

² 2006 UK House of Lords, 24

stated in the petitioner's first affidavit and that the petitioner has liberty to apply for future variations of that order if and when the need arises. Costs to the petitioner in the sum of \$1,500.00.

[48] Again I would like to thank counsel for their submissions, I trust that they have taken heed of the admonitions that I have made with respect to the lack of disclosure in this matter.

Margaret A. Price Findlay
High Court Judge