

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

HIGH COURT OF JUSTICE

CLAIM NO. GDAHMT 2010/0138

BETWEEN:

MERRIT JONES

Petitioner

and

ELIZABETH JONES

Respondent

Appearances:

Mr. Ruggles Ferguson for the Petitioner
Ms. Kim George for the Respondent

2014: April 8;
May 29.

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** On 18th December 2013 Merrit Jones (“the Husband”) issued a summons for sale (“the application”) which requested the Court to order the sale of certain property situated in Carriacou as described in the schedule to the summons (“the Carriacou property”) for which Elizabeth Jones (“the Wife”) holds the title Deed (is the title owner). He also asked the Court to order that the proceeds of the sale be applied to satisfy an outstanding mortgage to the Grenada Co-operative Bank (“the Bank”); for him to be reimbursed all the monies deducted from his salary towards the mortgage payment subsequent to 22nd March 2013 together with interest at the rate of 6% per annum and for a valuator be allowed to

enter the Carriacou property to conduct a valuation at a time and date to be fixed by the Court.

[2] The Wife opposes the application and at the hearing Counsel for the Wife made two preliminary objections. She contends that the Husband is seeking to re-litigate issues which were already determined by the Court in the trial of the ancillary proceedings which was reduced in a written judgment by Rhudd J on 22nd March 2013 ("the judgment"); that the Court is therefore functus and cannot determine the issue at hand. Secondly, she submitted that the application does not state the section of the Matrimonial Causes Act or the rule under the Matrimonial Causes Rules upon which the Husband has grounded the application and, indeed, if the application is a summons for sale, in her view, the material parts of the judgment which concern the award of the Carriacou property does not bestow any rights on the Husband and as such he has no cause of action to request an order for sale of the Carriacou property.

[3] In response to the Wife's preliminary objection, Counsel for the Husband agrees that the Court is functus on the ancillary relief proceedings but instead submits that the application seeks an enforcement of the judgment concerning the Carriacou property.

[4] The issues for determination are:

- (a) Is the application a re-litigation of the issues determined in the judgment?
- (b) Does the judgment bestow on the Husband a cause of action in the nature of the relief sought in the application?

Is the application a re-litigation of the issues determined in the judgment?

[5] The judgment addressed the division of matrimonial assets, which included the Carriacou property, in ancillary relief proceedings. It was ordered in the judgment for the Carriacou property to remain in the possession of and under the ownership of the Wife and for her to assume liability for the payment of the balance of the mortgage loan secured by the Carriacou property.

[6] It is not in dispute that there was no appeal of the judgment; that the Bank was not a party to the ancillary relief proceedings; that the Bank's position subsequent to the judgment is that its rights in the mortgage deed takes priority to the judgment and it is not obliged to renegotiate the loan repayment with the Wife; that the mortgage repayments for the Carriacou property have been paid by the Husband through an assignment of his salary to the Bank and even after the judgment continue to be deducted and that the Wife has to date not assumed the liability of payment of the mortgage.

[7] When I examine paragraphs 41 to 44 of the judgment at page 11 it is clear to me that the Court had the evidence of the monthly income and expenses of both parties before it arrived at its decision, in particular at paragraph 42 where it is stated:

"... I note that in the Petitioner's original application he had sought an order that the Respondent be given the matrimonial home provided she takes over the mortgage payment associated with the property. In the circumstances, I think that would be fair and equitable. Any other decision in respect of this property, including its sale would invariably put the Respondent and the children of the family at a major disadvantage."

[8] The judge continued at paragraph 44 where he acknowledged the limited financial circumstances of the Wife:

"The Respondent will have to make the necessary arrangements to take over the payment. Those arrangements may involve re-financing using the said Carriacou property as security. The Respondent is only 42 years of age. She is, in my estimate, still a young person, although unskilled. She has untapped earning potential. It is in her interest to find some way to continue making the payments so that she and the children can be assured of a place to live."

[9] The judgment dealt with the division of the matrimonial property between the parties and therefore the Court is functus on the issue of division of matrimonial property. However, the application is entitled "Summons for sale" so I would treat

with it as if the Husband has so applied. Prima facie the application concerns the enforcement of the judgment with respect to the Carriacou property which, in my view, is not a re-litigation of the issue of division of matrimonial property raised at the ancillary proceedings but really touches and concerns the next issue (the issue of enforcing the judgment of Rhudd J).

[10] I therefore find that the Court is functus on the issue of division of the matrimonial property and cannot in this application permit a re-litigation of that issue, but it is not functus on the issue of enforcing or giving effect to the judgment if, of course, the order is capable of being enforced in the manner which is being sought in this application.

Does the judgment bestow on the Husband a cause of action in the nature of the relief sought in the application?

[11] Like Counsel for the Wife, it is unclear to me upon which section or rule in the Matrimonial Causes Act or the Matrimonial Causes Rules respectively, the Husband has grounded the application. The application is entitled "Summons for sale". In a summons for sale application, a judgment creditor applies to the Court to have real property of a judgment debtor sold to liquidate a money judgment (including costs) that is due from the judgment debtor to a judgment creditor.

[12] The order in the judgment with respect to the Carriacou property at paragraph 44 page 12 is:

"In conclusion, I would order as follows:

- (i) That the Carriacou property remains in the possession of and under the ownership of the Respondent.
- (ii) That the Respondent assumes liability for the payment of the balance of the mortgage loan secured by that property."

[13] It is clear that the learned Judge had dealt with the distribution of the Carriacou property between the parties. In the learned Judge's opinion, the sale of the premises, which was an option open to the Judge on hearing that application, was

not an appropriate order having regard to the circumstances of the case. Further, there was no lump sum payment ordered to be made by the Wife to the Husband to take into account his mortgage payments for the Carriacou property while she made arrangements to assume liability for the payment of the balance of the mortgage payments.

- [14] I agree with Counsel for the Wife that paragraph 44 page 12 of the judgment does not vest any rights in the Husband with respect to the Carriacou property; indeed, it does the opposite and vest rights in the Wife.
- [15] Further, if I am to read paragraph 44 on page 11 of the judgment, which I have set out aforesaid together with paragraph 44 (ii) on page 12 of the judgment also set out aforesaid in my opinion the learned judge at best directed the Wife on the 22nd March 2013 to assume liability for the payment of the mortgage. However, because of his position set out at paragraph 44, page 11 he knew that she did not assume liability on that date since there were certain steps to be taken by her and the Bank. However, he did not state a time period within which this was to be done.
- [16] The judgment therefore contemplated a period of time within which the mortgage would be paid by the Husband until the Wife took steps to secure payment of the mortgage, a relatively simple process. However, no timelines were established by the order to achieve this.
- [17] In those circumstances, I find that there is no evidence from the judgment that there is a quantified sum of money which is owed to the Husband by the Wife. In my view, the aforesaid paragraphs in the judgment do not create any relationship between the Husband and Wife such as judgment creditor and judgment debtor respectively to ground an application by the Husband in a summons for sale application. Accordingly, no relief can be ordered under this application.

[18] I therefore dismiss the application and order the Husband to pay the Wife's costs of the application.

[19] By consent costs of the application is agreed in the sum of \$1,200.00.

Margaret Y. Mohammed
High Court Judge