

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHMT2013/0092

**IN THE MATTER OF AN APPLICATION BY SARAH STUART JOSEPH PURSUANT TO SECTION 13 (2)
OF THE DIVORCE ACT 1997 AND RULE 2 OF THE MATRIMONIAL CAUSES RULES**

BETWEEN:

LIONEL AUSTIN JOSEPH

And

SARAH STUART JOSEPH

Appearances:

Mrs. Cherissa Roberts Thomas for the Respondent
Ms. Kathleen Bennett for the Petitioner

2014: October 17

DECISION

[1] **HENRY, J.:** The Respondent(wife) applies to the court for an order that:

- (a) The petitioner (the husband) do pay to the respondent such monthly or weekly sum in respect of maintenance pending suit as may be just pursuant to section 13 (3)(c) of the Divorce Act;
- (b) The husband do pay or secure to pay for the benefit of the wife during their joint lives or until her remarriage such lump sum or periodic payment for the support of the respondent as may be just pursuant to section 13 (2) of the Divorce Act.
- (c) Cost of the application

[2] The parties were married to each other on 12th April 2008. The union produced no children. The parties separated in 2011 and on 21st June 2013 the husband filed for divorce. Thereafter the instant application was filed by the wife.

[3] In her affidavit in support of her application, the wife states that she is employed with the Government of Antigua and Barbuda. She earns the sum of \$4,374.00 monthly. She obtains an extra income of \$950.00 from the rental of a property in Jennings Village, which she admits she owns, for a total income of \$5,324.00. According to her, following the couple's engagement, she was taken to identify a parcel of land upon which they could build their matrimonial home. Following the marriage, the husband, a contractor commenced construction of their home. The house remains incomplete. However, the interior of the bottom floor was completed and habitable and they took up residence there in December 2009.

[4] After the husband moved out of the matrimonial home, the wife continued to reside therein and to maintain same. She avers that sometime during the last year, the husband embarked on a course designed to force her out of the matrimonial home or at the very least to cause her discomfort within the home: he has removed locks from the door, removed or tampered with items in the home and instructed the utilities company to discontinue electricity service to the home. Following these incidents, she eventually vacated the matrimonial home. She now resides in rented accommodation at a cost of \$1,000.00 per month. She lists the following as her other monthly expenses:

1. House Insurance	\$ 154.16(per month)
2. Vehicular Insurance	\$ 98.83 (per month)
3. Vehicle Loan	\$1,441.17(per month)
4. Credit Card	\$ 290.00(per month)
5. Internet	\$ 178.25(per month)
6. Telephone	\$ 143.75(per month)
7. Chair set (bal \$4,595.00)	\$ 200.00(per month)
8. Groceries	\$ 650.00(per month)
9. Personal upkeep	\$ 300.00(per month)
10. Gas	\$ 600.00(per month)
11. Electricity	\$ 200.00(per month)
12. Medical Insurance	\$ 69.00(per month)
13. Cooking Gas	\$ 64.00(per month)
14. TV set	\$ 93.00(per month)
Total	\$ 4,482.06

[5] Her evidence is that before the husband vacated the matrimonial home he assisted with household expenditures including monies for food, water, and the upkeep and feeding of dogs. After the husband left, she struggled financially, as she has had to pay all the household expenses on her own.

- [6] It is her position that the increases in her usual expenses are the result of the husband's actions. For example, she notes that she has had to purchase a refrigerator at a cost of \$3,295.00, as a direct consequence of his actions. She pays monthly installments of \$260.00. She asserts that she cannot afford to pay rent and continue to pay her regular monthly expenses without the support of her husband. Her expenses, she says, exceed her income, once she includes the rental she now incurs as a result of having to vacate the matrimonial home.
- [7] The husband objects to the payment of a lump sum or periodic payment to the wife or to any payment whatsoever for her support. In his affidavit in response, he states that construction of the home began in January 2008, and not after the marriage as alleged by the wife. He is adamant that at no time did the wife contribute financially or otherwise to the construction of the home. The house, he says, was built exclusively from his own resources.
- [8] According to the husband the marriage broke down since December 2010; most of 2011 he spent in the United States of America and whenever he was in Antigua he would sleep on the floor of the house. He moved out in 2012.
- [9] Further, he insists that after he moved out of the house, the wife had no maintenance to do to the home, save for paying for the bills which she had incurred. He expressed the belief that the wife did not have to move into rented premises, since she owns her own property in Jennings Village. He is of the view that the wife's income is more than sufficient to meet her needs.
- [10] In regard to his income he avers that he is a self-employed contractor and that he is currently engaged in building a home for a client. Beyond this job he no has other work lined up. When he is working he sometimes pays himself approximately \$1500.00 per week. At other times he receives significantly less, depending on the job he is doing. He lives with his girlfriend and their 3 month old child. His average monthly expenses are as follows:

Cellphone	\$ 160.00
Credit Card	\$ 280.00
Groceries	\$ 800.00
Vehicle license & Insurance (I pay for my truck, and an SUV for my sister for which I have always paid)	\$ 291.29
Gas & Diesel	\$1,000.00
Electricity (bill in the name of my girlfriend)	\$ 214.69
Water(bill in the name of my girlfriend)	\$ 60.48
Treats for my three grandchildren	\$ 240.00
Payment for land at Bendals that the home is on	\$2,000.00
Electricity for house at Bendals	\$ 57.68
Personal maintenance and upkeep	\$ 500.00
General maintenance of my 3 month old	\$ 500.00
Total	\$6,104.14

[11] He denies that the breakdown of the marriage has caused the wife any economic hardship. He states that the marriage only lasted about three (3) years and that it would not be fair or just for him to pay the wife for the rest of their lives or until she decides to remarry. He asks that the wife's application be dismissed with cost to him.

[12] Section 13 (2) of the Divorce Act gives this court jurisdiction on application by either or both spouses, to make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of the other spouse.

Section 13 (5) provides:

"In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including:

(a) the length of time the spouses cohabited;

(b) the functions performed by the spouse during the cohabitation; and

(c) any order, agreement or arrangement relating to support of the spouse or child."

Condition, Means, and Needs of Each Spouse

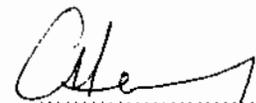
[13] The wife currently resides in rented premises. She has a total income of \$5,324.00. Her listed monthly expenses amount to \$5,482.16 including the payment of rent. Admittedly, if the court accepts all the expenses listed, the budget is challenging. However, at least 3 items referred to as expenses are items purchased on installment, so that the payments will come to an end in the foreseeable future. For example she complains that she was forced to purchase a new refrigerator. The refrigerator was purchased in March 2014, the agreement calls for monthly payments of 260.00, which would mean that the item will be fully paid in 12 or 13 installments. So that agreement has about 4 payments remaining. Similarly there are payments for a chair set and a television set. No information was given as to when the installment payments on these items would be completed.

[14] With regard to the payment of rent, the husband insists that she does not need to pay rent since she owns a property. That property gives her an income of \$950.00 monthly, so if she took it off the market and utilized it herself, her income would be reduced by that sum and in fact there would only amount to a gain of \$50.00 – not much of an improvement.

[15] Although the husband declares his income at \$6,000.00 per month and his monthly expenses at \$6,104.14, the husband's income is more flexible, since he is self employed. The income declared

is in respect of only one contract. The court notes that although he includes the utilities of the former matrimonial home among his current expenses, no information is given as to its current status. Since the husband and wife now both reside elsewhere, that home has potential as an income property that could increase the husband's income.

- [16] While the wife has demonstrated that she is in need of some assistance in the short term, certainly no basis exists in law for the court to order long term payments or a lump sum. The marriage lasted approximately 3 years. The wife was employed throughout and continues to be employed and generally financially stable. Until her short term debts are paid, some relief is in order. But the wife has not demonstrated that a lump sum or periodic payments as requested is necessary under the circumstances.
- [17] The court therefore orders that the husband do pay to the wife the sum of \$500.00 monthly for the support of the wife, starting at the end on October 2014 and continuing for 1 year. Cost to the wife in the sum of \$800.00



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CLARE HENRY
High Court Judge
Antigua & Barbuda