

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE COURT OF JUSTICE**

**COMMONWEALTH OF DOMINICA**

**CIVIL**

**DOMHMT2012/0081**

**BETWEEN:**

**TREASHA MARTHA MASSICOTTE**

Respondent/ Petitioner

**AND**

**ASHLEY ARTHURTON MASSICOTTE**

Applicant/ Respondent

**Appearances:**

Mrs Gina Moore Munro of Dyer & Dyer for the Applicant  
Ms Saudia Cyrus of Dawn Yearwood Chambers for the Respondent

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2015: January 20<sup>th</sup>, December 21<sup>st</sup>

2016: January 14<sup>th</sup>

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**DECISION OF APPLICATION FOR CUSTODY OF A MINOR  
CHILD OF THE MARRIAGE**

[1] **THOMAS. J.:[Ag]** On 4<sup>th</sup> September, 2013 the Applicant/ Respondent filed a notice of intention to proceed with an application for ancillary relief in respect of the following matters:

1. That the Respondent be granted joint and/ or full custody of the child of the marriage, namely Jélani Jabari Massicotte.
2. That the Respondent is granted maintenance as the court sees fit for the child Jelani Jabari Massicotte.

3. Such further or other relief of the court.

[2] In his affidavit in support, of even date respecting the application for ancillary relief, the applicant/respondent makes reference to the dates of grant of the decree nisi and decree absolute with respect to the divorce, being 5<sup>th</sup> July 2013 and 20<sup>th</sup> August 2013, respectively. Mention is made of the terms of the ancillary relief sought, as detailed above.

[3] On 29<sup>th</sup> October, 2013 the petitioner filed an affidavit in reply to the application for ancillary relief in which she opposes the grant of joint or full custody to the respondent. The reasons for the non-agreement are as follows:

- a. The Respondent has not provided any maintenance for the child since we have been living separate and apart. Over the years he has purchased some groceries monthly, school books and school shoes and we share the child's school fees equally. He has refused to give me any money for the said child. As a result I am responsible for the child's daily bus fare, meals, recreational clothing and other shoes. I have no difficulty in continuing to provide those necessities for him.
- b. The Respondent has health issues which have caused him to seek medical attention overseas therefore. I have seen a medical referral report dated 19<sup>th</sup> April, 2013 issued by a doctor in Barbados advising that the Respondent is in treatment for low levels of testosterone progesterone and DHEA and altered biochemistry. There are occasions when I have requested that the Respondent prepare meals for Jelani and he indicated that he is unable to stand for long periods or sit for long periods.
- c. Our son has advised me and I verily believe that on a few occasions when the Respondent is feeling unwell he calls his brother who resides in Roseau to assist him as the Respondent is unable to take care of himself. I would not like our son to be alone with Respondent when he is experiencing bouts of illness and cannot get the required assistance in a timely manner.
- d. Further on one occasion the Respondent sent the child to his relatives in the country when the child came to visit with him as he was unwell and could not take care of the said child.
- e. Since the Respondent and I have been living separate and apart, I have always had full custody care and control of the said child with reasonable access to the Respondent. I respectfully request that the status quo remain the same in that I be granted full custody care and control of Jélani Jabari Massicotte with reasonable access to the Respondent and that the Respondent provides maintenance for the said child.

[4] In an affidavit in reply to the affidavit of Treasha Massicotte, filed on April 30 2014 applicant/ respondent deposes the following at paragraphs 4 and 5 of his said affidavit:

“4. That I verily believe there is no just reason for the Petitioner to disagree with me having part of full custody of Jélani Jabari Massicotte and for her to pay maintenance for the said child.

5. That I know that it is in the child’s best interest to reside with me and for the Petitioner to have access.”

[5] In the remainder of his said affidavit the applicant/ respondent deposes as to his contributors to the child’s school fees, school books, school supplies, clothing and food. And in reply to paragraph 5(a) of the respondent/ petitioner’s affidavit in reply, the following is deposed:

“16. That with respect to the Petitioner’s statement in 5(a) that she is responsible for the child’s bus fare, meals, recreational clothing and other shoes, this again is untrue. After we separated, I have provided recreational clothes and shoes for the child. I would normally travel once or twice a year for work and buy clothes in large bulk, but different sizes for the child. Upon my return, I would give the petitioner the majority of the clothing I purchased for the child.”

[6] And further at paragraph 18 the applicant deposes that: “I have always maintained my son, who is covered under my Clico Medial Policy which I pay for.”

[7] Mr Ashley Artherton Massicotte further deposes in terms of his health and the necessity for him to stand to lecture at his place of work, the medical issues on the part of the respondent/ petitioner, indiscretions on the part of the respondent/ petitioner with respect to the child of the marriage including issues of anger.

[8] The affidavit ends thus:

“54. That paragraph 5(e) is incorrect, that I wrote and asked the Petitioner to resolve custody of the child. That she would use the child and prevent me from having the child even although the child was born in wedlock and I have legal custody of the said child.

55. That I verily believe that the child’s visits should be honoured and the child should reside with me permanently and visit the Petitioner as necessary. For one reason or the other, the child does not want to live permanently with the Petitioner.”

[9] A further affidavit in reply to the affidavit of Treasha Massicotte, filed on 7<sup>th</sup> May, 2014 speaks to the conduct of the respondent/ petitioner in leaving Dominica with the child of the marriage without

his consent. And in Dominica, the intervention of the Police at the applicant's residence at the behest of the respondent based on allegations of the kidnapping of the child of the marriage.

[10] On 15<sup>th</sup> May, 2014 the respondent/ petitioner filed two further affidavits in reply to the affidavits filed by the applicant/ respondent on 30<sup>th</sup> April and 7<sup>th</sup> May, 2014.

[11] Essentially, these affidavits touch and concern the custody, welfare and movement of the child of the marriage. There are also averments regarding the applicant's health and her health. In the end the respondents contention is that she is the fit and proper person to have the child reside with her: This is reflected at paragraphs 3 and of her affidavit filed on 15<sup>th</sup> May 2014:

"3. Paragraph 5 of the further Affidavit is denied. It is in the child's best interest to reside with me and for the Respondent to have access. This was always the position for the past three years after we separated. The child was very comfortable and was settled. I strongly support the Respondent playing an effective role in the child's life and spending time with him. We had an arrangement which worked and was convenient for both of us, where the Respondent had reasonable access to the child. Moreover there is a bond which was developed between the child and I when I had full custody and the respondent access.

25. Paragraphs 27 and 29 of the Further Affidavit are admitted. It is further stated that I was complying with the Interim Order of the court at the time. Further, this arrangement has been uncomfortable for the child. His normal routine has been totally disrupted. There have been noticeable changes in his behaviour as a result of the current arrangement. I strongly believe that [it] is in the child's best interest to continue to live with me as he did for three years after our separation Paragraph 5(e) of my Affidavit in Reply dated 29<sup>th</sup> October 2013 is repeated."

[12] The parties were cross-examined their affidavits and the evidence will feature in the judgment as appropriate.

[13] The report of Welfare Officer prepared in accordance with the Order of the court by the acting Chief Welfare Officer filed and bears the heading: "Child Custody matter between Ashely Massicotte and Treasha Toussaint Massicotte."

[14] The report consists of interviews with the two parties and the child of the marriage. Examinations are also made of the pre-existing relationship between the parties and the residences maintained by the parents.

[15] In terms recommendation, the Chief Welfare notes the attitude of both parents maintain a “meaningful relationship” with their son even after the divorce, the equal access arranged through mediation.

### **Issues**

The issues for determination are:

1. Whether the the applicant/ respondent should be granted joint and/ or full custody of the child of the marriage, namely Jelani Jabari Massicotte?
2. Whether the applicant/respondent should be granted maintenance as the court sees fit for the child of the marriage Jelani Jabari Massicotte?
3. Whether the applicant/respondent such further or other relief as the court sees fit?

### **Submissions**

[16] Learned counsel for the Applicant/ Respondent, Mrs. Gina Dyer-Munro, in her submissions examines the facts, the affidavit evidence, including the cross examination, the Report of the Chief Welfare Officer, the governing law, the relevant cases<sup>1</sup> plus extracts from **Rayden on Divorce**. The submissions continue as follows:

- “33. In the case at Bar the court has heard the evidence of both parents and has the benefit of a Social Welfare Report chronicling the situation which exists with respect to the child and also the views of the child. In considering the welfare of the child the court is asked to note that the child undoubtedly has a good relationship with both parents was taken out of state by the mother without notifying the father and was only brought back to Dominica by virtue of the Injunction.
34. Further during the currency of these proceedings the court had to be moved by the Respondent/ Applicant for the Petitioner/ Respondent to allow the child to travel to the USA with the Respondent/ Applicant.
35. It is thus clear that the mother in this case seemingly uses the child as a pawn and is not as cooperative in terms of raising the child with the father’s involvement. Since the child has returned to Dominica the child has for the most part been in the custody of the father however the father agreed at mediation to allow the child to spend time with the mother. As a result, it should be clear to the Court that the Respondent/ Applicant is more rational in the manner in which he operates in

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<sup>1</sup> These are: Gold Smith v Sands [1907] cited in Re Alford [1941]; Shuric Merchant v Tameka Williams, Suit NEVHCV2009/0085

dealing with the said child and affords the child the opportunity to have a relationship with his mother when the child is in his custody.

36. Furthermore the welfare report clearly shows that the child has expressed desire to live full time with his father. It cannot be said that the child has been prompted as the child clearly stated that he enjoys spending time with both parents but his preference is with his father. As a consequence the court is asked to grant sole custody to the father with access to the mother.
37. Moreover the case of **St. Christopher and Nevis Nevis Circuit Suit NEVHCV2009/0085 Between: Shuric Merchant-Applicant and Tameika Williams- Respondent** clearly shows that a consideration was made in that matter to the relationship between the parents and who it was felt would be best suited to rationally look after the well being of the child.
38. At paragraph 35 the Court noted:-
  - '35. The more important factor is the second one however. I am satisfied that because of very strong dislike that Mrs. Williams holds for Shuric Tameika would not be able to easily facilitate Faith's relationship with him, while they are under her roof. Shuric's evidence that during an incident at Mrs. Williams' property, she attempted to throw a stone at him remains uncontroverted. When she gave evidence, Mrs. Williams' disdain for her granddaughter's father was clear. Tameika is welcome at at the Shuric's home but is not welcome at hers. I find it hard to see that if how those circumstances would not impact negatively on his relationship with Faith.'
39. In our case, it is clear the Petitioner/ Respondent strained relationship with the Respondent/ Applicant would negatively impact on how the child interacts with the Respondent/ Applicant.
40. From the evidence it is clear that the Petitioner/ Respondent has anger issues and does not manage her emotions properly and therefore allows her feelings to interfere with the child's interaction with his father. This is evidenced by the fact that the mother unilaterally changes the arrangements for pickup of the child without notifying the father, took the child out of state (to Jamaica) without permission and refused to allow the child to travel with the father for the summer unless authorized by the Court.
41. For the foregoing it is submitted that custody should be given to the father with access to the mother."

[17] In the case of the Respondent/ Petitioner, learned counsel, Ms. Saudia Cyrus examined the relevant law and the learning thereon. Then, based on what is stated in **Bronley's Family Law**<sup>2</sup> at page 289 regarding what is in the best interest of the child a number of issues are examined in context. They are:

- a) Retention of the Existing Position
- b) Personality and character of the parties
- c) Medical Evidence
- d) Sex and age of the children
- e) Education
- f) Accommodation and material advantages
- g) Stability of Home Life
- h) The child's wishes

[18] After an factual and legal analysis of each 'fact' stated above learned counsel made the following submissions, seriatim:

#### **Retention of Existing Position**

"The child was cared for in a comfortable and stable environment. The child lived with the mother and the father had reasonable access where the child has spent every other weekend with him. The father also transported the child to school on a daily basis."

[19] After an examination of the reasoning in the case of: **Re (Residence Order): Status Quo Shuric Merchant v Tameika Williams**<sup>3</sup> and **JVC** submitted further the following:

"The principle to be extracted from the above mentioned case is that it is important that the child has a stable home and life and it can be gleaned from the factual background in the case at bar that the child is well acquainted with residing with his mother. It is therefore submitted that the arrangements subsequent to the separation be reverted to whereby the child lives with his mother and the father has reasonable access every weekend; as this continuity should be maintained in his life."

[20] Personality and character of the parties after an examination of the factual circumstances in this regard the submission reads thus:

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<sup>2</sup> 6<sup>th</sup> Edition

<sup>3</sup> NEVHCV2009/0085

- “20. It is noteworthy that in the Welfare Report the child did not indicate that the mother has anger issues or that he was fearful to be around her. The child also stated that he has never been abused by his mother or his father and that they treat him equally.
24. Based on the foregoing it is submitted that the personality of the mother does not pose a risk to the child as alleged by the father.”

### **Medical Evidence**

[21] The conclusion on this factual circumstances is as follows:

“We submit that based on the medical evidence it would be in the best interest of the child to reside with the mother as she appears to be in better health than the father. Although the father stated that he is not on any prescribed medication, he continues to take sick leave associated with his illness. If the child resides with the mother, it is likely that there will be less travel abroad by the mother for medical purposes.”

### **Education**

[22] No issues arise here as the contention is that both parents contribute to his educational needs.

### **Accommodation and material advantages**

[23] The final sentence under this subheading reads thus:

“Further the home maintained by either party does not pose any threat to the physical health or safety of the child. It is therefore submitted that both parents are capable of providing for the child’s physical and emotional needs.”

### **Child’s wishes**

[24] Under this heading, learned counsel for the Respondent/ Petitioner address the age of the child of the marriage as being of critical importance in the equation. In this regard the court considers that the following extracts are important to the equation:

- “31. Where the child is mature enough, this is likely to be the most important factor. ‘Sturge and Glaser’, two leading psychologists suggest that the wishes of children under the age of 6 should be regarded as indistinguishable from the wishes of the



main carer and the wishes of children over 10 should carry considerable weight while those between 6 and 10 are at an intermediate stage.”<sup>4</sup>

35. Despite these indications by the child that he prefers to reside with his father, it is submitted that the child is not competent and mature enough to make such a decision as at paragraph 31 herein.”
39. In the case at bar we submit that the factual situation in the **Torres**<sup>5</sup> matter is similar to the case at bar. Both parents their child and we submit that it is for this reason that he seems to be thriving in their care. However the situation with regard to the child being moved back and forth is untenable. Therefore we respectfully submit that the prayers of the mother be granted and that custody care and control should rest with her and the father to be granted weekend access. That the parties attend counselling if they deem it necessary.”

### **Analysis and conclusion**

[25] The court’s jurisdiction regarding the matter of custody is derived from two statutes, namely **Matrimonial Causes Act** and the **Guardianship of Infants Act**<sup>6</sup>.

[26] Section 4 2(1) of the **Matrimonial Causes Act** reads thus:

“ (1) The court may make such order as it thinks fit for the custody and education of the child of the family who is the age of eighteen:

- a) In any proceedings for divorce, nullity of marriage or Judicial separation, before the granting a decree or at any time thereafter (whether in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
- b) Where in any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;

And in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court...”

[27] A similar power is contained in section 6 of the **Guardianship of Infants Act**<sup>7</sup> which is in these terms:

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<sup>4</sup> Source quoted: Family Law 4<sup>th</sup> Ed. Jonathan Herring at page 503

<sup>5</sup> This is a reference to the case of Martha Josefina Ramirez Torres and Pedro Miguel Castellanos Basto BVIHMT2012/0041

<sup>6</sup> Chap. 37:04

“6. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order, as it thinks fit regarding the custody of the infant and right of access. Thereto of either parent having regard to the welfare of the infant and to the conduct of the parents, and the wishes as well of the mother as of the father; and the court may alter, vary or discharge such order on the application either parents....”

[28] In this context of custody of a minor child, the learning and authorities cited restate the fundamental principle that the welfare of the child is paramount.

[29] A further restatement is to be found in **Family Law**<sup>8</sup> authored by A M. Bronely who says this:

“The welfare of the child must remain the paramount consideration and today access tends to be regarded as the right of the child rather than of the parent. Consequently it will be refused if the parent is not a fit and proper person to see the child at all.”

[30] Also in **JVC**<sup>9</sup> Lord Mac Dermott addressing the question of custody and upbringing reasoned thus:

“[These words] must mean more than that the child’s welfare is to be treated as the top item relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child’s welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed.”

[31] Further, learned counsel for the applicant cited a ruling in **Gold Smith v Sands**[1907] as cited in **Re Alfred** [1941] in which it was said that :

“Welfare does not mean merely financial or social or religious welfare but includes an important element of the happiness of the child.”

[32] As noted before, learned counsel for the applicant/ respondent in making her case dwells on the following actions or conduct of the respondent/ petitioner; taking the child out of the jurisdiction without the father’s permission; using the child as a pawn; anger issues; taking the child to Jamaica

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<sup>7</sup> Ibid

<sup>8</sup> (6<sup>th</sup> ed.) at Page 289

<sup>9</sup> [1970] A.C 668, 710

without the child saying goodbye to his father; refusal to contact the applicant/ respondent regarding the transportation of the child; created a communication with respect to the agreed arrangements; sent the police to the applicant/ respondent's home for the child; forced the applicant to approach the court in 2014 in order to travel with the child; the removal of clothes purchased by the applicant in the principal's office, and the smashing of the applicant's new computer.

[33] Also, as noted before, the case for the respondent/ petitioner rests on the following contentions: she has cared for the child since the separation of the parents; the child is well acquainted with the mother's residence; the mother has no anger issues; and is not abusive; she has expressed remorse for leaving the child with a minor; the mother is in better health; the Welfare Officer has reported that both parents are capable of providing for the child's physical and emotional needs; the movement of the child moving back and forth is untenable.

### **Conclusion**

[34] Against the backdrop of the fundamental principle that the welfare of the child is paramount and the further principle that welfare really means the happiness, it may be said that the conduct of the parties is central to the determination. Financial matters also have a bearing but not in this case.

[35] The court must make clear that the wishes of the child will form no part of the determination; the child in issue is now a mere seven years old. This applies even in relation to the Welfare Officer's findings in this regard.

[36] The Welfare Officer did make findings on matters of mutual interest. This what he reports in part:

"Both parents have indicated that they are able to provide Je'lani Jabari Massicotte with the necessary care he requires. It should be noted that Treasha Toussaint Massicotte has altered her study plans just so she could make it easier for her son to have equal access to both parents. Treasha Toussaint Massicotte has indicated that she has a strong family support unit and her siblings are prepared to assist in whatever way they can with the supervision of her son in the event she is unable to do so at any point in time. She has indicated too, that if she has custody of her son and must leave the island for extended periods, arrangements would be made for the child to be with his biological father until her

return to the state. Treasha Toussaint Massicotte was however, concerned whether Je'lani's wishes would be considered by the court should he say that he would rather live permanently with his father.

Ashley Massicotte on the other hand claims to have a very close father/ son relationship with Je'lani Jabari Massicotte. He stated that if he is given full custody he will always see to it that his son maintains the close relationship he has with his mother. He indicated that Treasha Toussaint Massicotte will always be part of any plan he devises for his son."

[37] With respect to the central issue, it is the finding of the court, that as far as the applicant is concerned, the issue can be narrowed to the following: the manner in which the respondent/petitioner disciplines the child, the anger issues and the use of the child as a pawn to frustrate the applicant regarding the child. On the other hand, the respondent/ petitioner is concerned her narrow issues are: the applicant/ respondent health and his failure to maintain the child.

[38] To deal with the respondent/ petitioner's narrow issues, the matter of the applicant/ respondent's health without a medical certificate cannot be a serious issue for the simple reason that low testosterone has to do with the functioning of the testicles since testosterone is defined in the **Concise Oxford Dictionary**<sup>10</sup> as: "steroid androgen formed in the testicles." Thus, in layman terms, this is far different from a slipped disc which relates to the human spine. And again, the ordinary meaning of 'disc' is "a layer of cartilage between vertebrae." And without appearing to render a medical opinion but using the ordinary dictionary definition, a slipped disc must be of great concern as it relates to the human spine and thus body movements. As far as the question of the applicant/ respondent's alleged failure to maintain the child, this, the court rejects outright as there is ample evidence to the contrary which the court accepts.

[39] The anger issues on the part of the respondent/ petitioner comes down controlled and irrational conduct of which there is evidence. This includes the changing of the child's clothes in the principal's office, the disciplining of the child, calling the police to take the child from his father.

[40] It is common ground that a child is influenced by his or her environment. This in turn comes from the persons with whom he or she interacts and even from persons who are in close physical

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<sup>10</sup> Concise Oxford Dictionary, page 1197

proximity for conduct to be observed. In turn further, it is in this context that the paramountcy of the child's welfare must be determined, and by extension his or her happiness.

[41] What has been termed the respondent's anger issues can only operate against her as in all cases the child was present. For example the changing of the child's clothes from those purchased by his father, to those purchases by his mother – all in the principal's office. The departure from Dominica without saying goodbye to his father at the instance of his mother. Added to this, the legal action over the applicant's desire to travel overseas with his son; and the police going to his father's house to recover him.

[42] All of the foregoing may be classified as the respondent's conduct of which the child by implication would have been aware. And what has been highlighted only constitutes part of the evidence of the respondents conduct. There is even evidence of efforts at counselling in this regard.

[43] The other major issue is the matter of health of which the respondent claims the advantage. But as the court has noted before discs, because they relate to vertebrae can affect the entire body as it is the spine. And there are two slipped discs. In this regard the applicant gave evidence that he is able to stand to deliver his lectures at the college. And the absence of evidence of any disability in this regard. Indeed, the respondent's contention of infidelity on the part of the applicant contradicts her premise.

[44] There is no evidence of conduct on the part of the applicant that is similar to that of the respondent. On the contrary, the evidence on his part is that of a father seeking to be close to his child to which he is legally entitled.

[45] The court cannot ignore the respondent/ petitioner's conduct and hope for better. The child is at an age and as such his environment must be conducive to his welfare and happiness.

[46] Custody is not a matter to be taken lightly. It is given the following meaning in **The Law Relating to Children**<sup>11</sup> as follows:

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<sup>11</sup> H.K. Bevan (1973) at page 256

“Custody is an ambiguous term. In its primary sense it means the right to physical care and control: it is the correlative of the duty to protect. But in its wider meaning it represents ‘the whole bundle of rights and power vested in a parent or guardian.’ The right to the services of the child, to exercise disciplinary powers over him, including that of administering reasonable corporal punishment, and to determine his upbringing, especially the kind of education, religious and secular that he should receive, all stemmed from the parent’s being entitled to custody, a right which continues until the child attains 18, or until his or her marriage, if earlier.”

[47] It is therefore the determination and order of the court that, against the paramountcy of the welfare of the child and his happiness, the applicant and the respondent are hereby granted joint custody of the child of the marriage with care and control resting with the applicant because:

1.
  - a) there is no evidence of the applicant’s conduct being of the nature that of the respondent which is unacceptable in the context of a child of 7 years.
  - b) the evidence reveals that the applicant has an honest and sincere desire for closer ties with his son;
  - c) the applicant has the means to transport his son to and fro school thus avoiding any repetition of him walking from Shillingford’s to school with his heavy school bag;
  - d) the applicant like any human being can be ill but his illness has not been shown to affect his work or his infidelity, as alleged and;
  - e) there is an abundance of evidence, which the court accepts that the applicant has maintained his child.
2.
  - a) The child must be handed over the applicant not later than 1<sup>st</sup> January 2016.
  - b) The child must spend alternate weekends with the respondent commencing a 15<sup>th</sup> January, 2016.
  - c) For the aforesaid purposes the child must be collected from his school on Friday after school and returned to the applicant not later than 5:00 pm on Sunday afternoons.
  - d) The child shall spend alternate Christmas, Carnival and Easter vacations with the parents commencing with Carnival 2016.

- e) The long vacation must be spent equally between the parents in such periods as may be agreed.
3. a) the court makes no determination with respect to Issues 2 & 3 on account of the nature of the evidence before the court. But unless the parties can consent to the matter of maintenance, the applicant must file and serve a supplementary affidavit in this regard on or before 29<sup>th</sup> January 2016 and the respondent must file and serve an affidavit in answer on or before 9<sup>th</sup> February 2016.
- b) The Applicant has liberty to file an affidavit in answer on or before 16<sup>th</sup> February, 2016.

### **ORDER**

#### **IT IS HEREBY ORDERD as follows:**

1. It is the determination of the court that against the paramountcy of the welfare of the child and his happiness, the applicant and the respondent are granted joint custody of the child of the marriage with care and control resting with the applicant because:
  - a. There is no evidence of the applicant's conduct being of the nature of that of the respondent; which is unacceptable in the context of a child of 7 years;
  - b. the evidence reveals that the applicant has an honest and sincere desire for closer ties with his son;
  - c. the applicant has the means to transport his son to and from school thus avoiding and repetition of him walking from Shillingford's to school with his heavy school bag;
  - d. the applicant like any human being can be ill but his illness has not been shown to affect his work or his infidelity , as alleged;
  - e. there is an abundance of evidence, which the court accepts that the applicant has maintained his child;
2.
  - a. The child must be handed over to the applicant not later than 1<sup>st</sup> January 2016
  - b. The child must spend alternate weekends with the respondent commencing on 15<sup>th</sup> January 2016.

- c. For the aforesaid purposes the child must be collected from his school on Friday after school and returned to the applicant not later than 5:00 pm on Sunday afternoons.
        - d. The child shall spend alternate Carnival, Easter and Christmas vacations with the parents commencing with Carnival 2016 with the applicant.
        - e. The long vacation must be spent equally between the parents in such periods as may be agreed.
- 3.
  - a. The court makes no determination with respect to Issues 2 and 3 on account of the nature of the evidence before the court. But unless the parties can consent to the matter of maintenance, the applicant must file and serve a supplementary affidavit in this regard on or before 29<sup>th</sup> January 2016; and the respondent must file an affidavit in reply on or before 8<sup>th</sup> February 2016
  - b. The applicant has liberty to file an affidavit in answer on or before 16<sup>th</sup> February 2016.

### **Procedural**

[47] It is common ground that on December 21<sup>st</sup>, 2015, the court gave the decision in this case by delivering the Order with the undertaking to deliver the judgement at a later date due to the circumstances faced by the court. The written judgement was delivered on January 14<sup>th</sup>, 2016 and, as such, for any further proceedings in the matter, if any, the latter date is the operative date.

### **Apology**

[48] The court wishes to offer a deep and sincere apology for the tardiness of the delivery of the judgement which is due entirely to nature of the matter set for hearing.

**Errol L. Thomas**  
High Court Judge [Ag.]