EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2014/0012

BETWEEN:

HASSAN HADEED

Appellant

and

NAHLA HADEED

Respondent

Before:

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| The Hon. Mde. Louise Esther Blenman | Justice of Appeal |
| The Hon. Mr. Mario Michel | Justice of Appeal |
| The Hon. Mr. Paul Webster | Justice of Appeal [Ag.] |

Appearances:

Dr. Francis Alexis, QC together with Ms. Afi Ventour de Vega for the Appellant
Ms. Celia Edwards, QC together with Ms. Shireen Wilkinson and Mr. Deloni Edwards for the Respondent

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2016: January 26; December 15.

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*Interlocutory appeal – Divorce – Postnuptial agreement – Jurisdiction – Whether postnuptial agreement which concerns matrimonial property can be enforced in civil jurisdiction of High Court – Whether learned judge erred in so ruling – Whether learned judge erred in failing to hold that enforcement of postnuptial agreement may only be pursued as ancillary relief on divorce proceedings in matrimonial jurisdiction of High Court – Rule 2.2(3) of the Civil Procedure Rules 2000*

Mr. and Mrs. Hadeed, after being married for a number of years, began experiencing problems in their marriage. This eventually led to Mrs. Hadeed filing a petition for the dissolution of the marriage which included a claim for ancillary relief. . Prior to the grant of a decree absolute on 18th January 2010, in contemplation of the termination of the marriage, the parties effected a settlement agreement which was reduced to a legally drawn document on 16th November 2009 ("the Written Agreement"). The terms of the Written Agreement specified the details of lump sum payments to be made to Mrs. Hadeed by Mr. Hadeed, as well as living arrangements from that point in time onwards. Although pursuant to the Written Agreement the parties were supposed to continue living together in

the former matrimonial home until Mr. Hadeed bought another house for Mrs. Hadeed and had paid the full cost of renovating that house, as tensions rose between them the parties agreed that Mrs. Hadeed would rent alternative premises and that Mr. Hadeed would pay a sum of US$1,300.00 monthly towards the rent until the renovations were completed. Once Mrs. Hadeed had entered into the Written Agreement with Mr. Hadeed she excluded her claim for ancillary relief from the matrimonial suit.

Mrs. Hadeed initially received two lump sum payments from Mr. Hadeed in accordance with the Written Agreement. However, she alleged that Mr. Hadeed failed to provide sufficient funds to complete the renovations as was agreed under the Written Agreement and as a result of this, an oral agreement was made on 7th May 2011 ("the Oral Agreement") by which the parties agreed to quantify the cost of renovations to the house purchased for her and Mr. Hadeed agreed to pay to her the sum of $725,000.00 for the renovations. However, as a result of Mr. Hadeed's failure to provide sufficient funds to complete renovations to the purchased property in accordance with the Oral Agreement and his non-payment of any further lump sum in accordance with the Written Agreement, Mrs. Hadeed commenced proceedings against him in the general civil jurisdiction of the High Court ("the postnuptial suit") seeking enforcement of both the Written Agreement and the Oral Agreement, as well as payment of the outstanding lump sum payment. During the pendency of the postnuptial suit, on 12th July 2012, Mr. Hadeed applied for ancillary relief, requesting that the court set aside the executed Written Agreement. On the same day, he also filed an application to dismiss the postnuptial suit on the ground that the matter concerned marriage and matrimonial property and as such the court had no jurisdiction, or the court should not exercise its jurisdiction other than in matrimonial causes. On 30th October 2012, Mrs. Hadeed was granted an order to stay the ancillary relief proceedings pending the outcome of the postnuptial suit. In March 2013, the learned judge heard and dismissed Mr. Hadeed's application to stay the postnuptial suit and ruled that the court had jurisdiction to proceed with same. The basis of the learned judge's ruling was that both parties had entered voluntarily into this legally binding agreement after receiving separate independent legal advice in relation to their rights and obligations and accordingly, they were well aware of and understood its terms and consequences. The learned judge found that although the Written Agreement did concern matrimonial property there was nothing to prevent Mrs. Hadeed from seeking its enforcement in the civil jurisdiction of the court. Mr. Hadeed, after being granted leave to appeal by this Court, appealed the learned judge's decision.

On appeal, Mr. Hadeed argued that the learned judge erred in law by allowing the Written Agreement to be litigated in the general civil jurisdiction under the Civil Procedure Rules 2000 ("CPR") and accordingly, the judge's order should be set aside. He contended that the provisions which apply to family proceedings in Grenada are contained in the United Kingdom Matrimonial Causes Act 1973 ("the MCA"), sections 25-25A of which set out the matters that the court should consider in exercising its powers to make financial and property adjustment arrangements regarding the dissolution of a marriage. He further submitted that these provisions apply in Grenada by virtue of section 11 of the West Indies Associated States Supreme Court (Grenada) Act.[1]

[1] Cap. 336, Revised Laws of Grenada 2010.

Held: dismissing the appeal; ordering that the decision of the learned judge dated 10th March 2013 is upheld, that the civil suit GDAHCV2012/0229 be remitted to the High Court for case management and trial in accordance with the Civil Procedure Rules 2000, and that costs be awarded to the respondent in the sum of $1,666.67, being two-thirds of the costs in the court below, that:

1. Mrs. Hadeed was free to seek to enforce the Written Agreement in the court's general civil jurisdiction. Mr. and Mrs. Hadeed entered into an enforceable Written Agreement and Mr. Hadeed allegedly failed to comply with its terms. There is no indication in the Written Agreement of anything which restricted its enforcement to ancillary relief on the divorce proceedings in the matrimonial jurisdiction of the High Court. Since Mrs. Hadeed's avenues for relief in the event of a breach were not limited by the Written Agreement, she was well within her rights to seek to enforce the contract in the civil court – there were no terms in the Written Agreement which indicated that it could only be enforced in the matrimonial division of the court and neither was there anything in the Written Agreement which mandated that the provisions of the MCA must be applied if the Written Agreement is enforced in the civil jurisdiction of the court. Accordingly, the learned judge was correct to hold that Mrs. Hadeed could sue in the civil jurisdiction of the High Court.

   Roderick Alexander MacLeod v Marcia Renee Kalb MacLeod [2008] UKPC 64 applied; Radmacher (formerly Granatino) v Granatino [2010] UKSC 42 applied.

2. A contract executed by the parties as a postnuptial agreement stands to be enforced like any other contract and due to the court's multifaceted jurisdiction, its power to review such a document is not confined to the MCA. The fact that divorce proceedings are occurring does not mean that enforcement of the postnuptial agreement must be dealt with in those proceedings and that parties cannot sue on the agreement in civil proceedings. In the present case, even if the parties were suing in the civil jurisdiction, there was nothing in the Written Agreement which mandated the application of the MCA. The fact that divorce proceedings are pending does not necessarily mean that ancillary proceedings can only be brought as part of the divorce proceedings. A party has a discretion whether to invoke the court's matrimonial jurisdiction or the general civil jurisdiction of the court. There is nothing in the MCA that dictates that all ancillary claims which are brought on the dissolution of marriage are only cognisable under that Act. Neither is there any bar to a party to a Written Agreement that has been made during or after the dissolution of a marriage seeking to enforce the agreement as a civil suit without recourse to the MCA. This is fortified by the fact that Mrs. Hadeed excluded her claim for ancillary relief from the matrimonial suit once she had entered into the Written Agreement with Mr. Hadeed.

   Joseph Jackson, Rayden and Jackson**'s Law and Practice** in Divorce and Family Matters (15th edn., Butterworth & Co 1988) paragraph 1 cited.

JUDGMENT

## Introduction

[1] BLENMAN JA: This is an appeal by Mr. Hassan Hadeed ("Mr. Hadeed") against the decision of the learned judge contained in the order dated 10th March 2013, dismissing Mr. Hadeed's application filed on 12th July 2012 in which he sought an order that the court has no jurisdiction to try the claim. The claim concerned the enforcement of a postnuptial written agreement ("the Written Agreement") and a subsequent oral agreement ("the Oral Agreement") made between Mr. Hadeed and his former wife, Mrs. Nahla Hadeed ("Mrs. Hadeed") on 16th November 2009 and 7th May 2011 respectively, in contemplation of the dissolution of their marriage. The Written Agreement outlined the terms of the settlement of matrimonial assets and certain payment arrangements which would apply in the event of the dissolution of their marriage.

[2] Mr. Hadeed, aggrieved by the learned judge's refusal to decline jurisdiction, appealed. Mrs. Hadeed opposed the appeal.

[3] I now propose to refer to the factual background.

## Background

[4] On 3rd January 1981, Nahla Hadeed née Kassis, a businesswoman, lawfully married Hassan Hadeed, a businessman. It was the first marriage for both of them and they lived together in their matrimonial home at True Blue in St. George's, Grenada. The matrimonial home was held by the parties as joint tenants. Mr. and Mrs. Hadeed have one child by adoption, Cordell Hassan Toufic Hadeed, born 22nd December 1985. Unhappy differences arose between them and Mrs. Hadeed filed a petition for the dissolution of their marriage.

[5] Mr. Hadeed and Mrs. Hadeed last lived together as husband and wife in October 2008. A decree absolute was granted in the matrimonial suit on 18th January 2010. Prior to the grant of the decree absolute and in contemplation of the

termination of their marriage, the parties effected a settlement agreement on 14th November 2009 which was reduced to the Written Agreement on 16th November 2009. Under the Written Agreement, Mrs. Hadeed was to, among other things, receive lump sum payments, continue to live in the former matrimonial home and Mr. Hadeed was to buy an alternative house for her and pay the full cost of renovation of that house. However, as tensions rose between them while they were still living together in the former matrimonial home, the parties agreed on 24th April 2010 that Mrs. Hadeed would rent alternative premises with Mr. Hadeed paying the sum of US$1,300.00 monthly towards the rent until the renovations to the house purchased for her were completed.

[6] Pursuant to the Written Agreement, Mr. Hadeed purchased a house at True Blue, St. George's, Grenada and conveyed it to Mrs. Hadeed on 29th March 2010. Lump sums of $500,000.00 and $150,000.00 were also paid to her in view of the Written Agreement on 16th November 2009 and 17th December 2010 respectively. Mrs. Hadeed alleged that following Mr. Hadeed's failure to provide sufficient funds to complete the renovations as was agreed under the Written Agreement, an oral agreement was made on 7th May 2011 (the Oral Agreement) by which the parties agreed to quantify the cost of renovations to the house purchased for her at True Blue and Mr. Hadeed agreed to pay to her the sum of $725,000.00 for the renovations. However, as a result of Mr. Hadeed's failure to provide sufficient funds to complete renovations to the said house in accordance with the Oral Agreement and his non-payment of any further lump sum in accordance with the Written Agreement, Mrs. Hadeed brought suit against him in the general civil jurisdiction of the High Court of Grenada on 14th June 2012 (hereinafter referred to as "the postnuptial suit").

[7] In the postnuptial suit, Mrs. Hadeed sought the following relief:

> "(1) An Order for the enforcement of a written Agreement made between the parties dated the 16th November 2009 and an oral Agreement made between the parties on 7th May 2011.

(2) An order that the Defendant do pay to the Claimant the sum of $600,000.00 being costs of renovations for the Claimant's property situate at True Blue in the parish of Saint George [sic] in the State of Grenada pursuant to the oral agreement of 7th May 2011.

(3) An order that the Defendant do pay the sum of $150,000.00 being a portion of the lump sum payment due and owing to the Claimant pursuant to the Agreement of 16th November 2009 and that the Defendant do continue to make the lump sum payments due and owing to the Claimant pursuant to the terms of the said Agreement".

[8] There were a number of applications filed by both parties, some of which are not material to this appeal. However, it is noteworthy that Mrs. Hadeed had filed the petition of divorce which included a claim for ancillary relief. She however filed an amended petition from which the ancillary relief claim was deleted.

[9] During the pendency of the postnuptial suit, Mr. Hadeed applied for ancillary relief on 12th July 2012, requesting that the court set aside the executed agreement. On the same day, Mr. Hadeed also filed an application to dismiss the postnuptial suit on the ground that the matter concerned marriage and matrimonial property and as such the court had no jurisdiction, or the court should not exercise its jurisdiction other than in matrimonial causes. On 30th October 2012, Mrs. Hadeed was granted an order to stay the ancillary relief proceedings pending the outcome of the postnuptial suit. On 10th March 2013, the Honourable Justice Margaret Mohammed heard and dismissed Mr. Hadeed's application to stay the postnuptial suit and ruled that the court had jurisdiction to proceed with same.

[10] The learned judge reasoned that since both parties voluntarily entered into this legally binding agreement after receiving separate and independent legal advice in relation to their rights and obligations, they were well aware of and understood its terms and consequences. She found that although the agreement breached by Mr. Hadeed concerns matrimonial property, there is nothing to prevent

Mrs. Hadeed from seeking its enforcement in the civil jurisdiction of the court. Mr. Hadeed applied to the Court of Appeal for leave to appeal that decision.

[11] Mr. Hadeed's notice of appeal, filed on 20th November 2014, included 6 grounds of appeal. However, with no disrespect intended to him, the gravamen of his complaint can essentially be crystallised into the following two issues:

(1) Whether the learned trial judge erred in ruling that the Written Agreement may be enforced as a contract in the general civil jurisdiction of the High Court.

(2) Whether the learned trial judge erred in failing to rule that enforcement of the Written Agreement may only be pursued as ancillary relief on the divorce proceedings in the matrimonial jurisdiction of the High Court.

Issue 1 – Whether the learned trial judge erred in ruling that the Written Agreement may be enforced as a contract in the general civil jurisdiction of the High Court

**Appellant's Submissions**

[12] Learned Queen's Counsel, Dr. Francis Alexis contended that the learned trial judge erred in law by allowing the Written Agreement to be litigated in the general civil jurisdiction under the Civil Procedure Rules 2000 ("CPR") and as such the order should be set aside. Dr. Alexis, QC pointed out that the provisions which apply to family proceedings in Grenada are contained in the United Kingdom Matrimonial Causes Act 1973 ("the MCA"). Sections 25-25A of the MCA set out the matters that the court should consider in exercising its powers to make financial and property adjustment arrangements regarding the dissolution of a marriage. He further submitted that these provisions apply in Grenada by virtue of section 11 of the West Indies Associated States Supreme Court (Grenada) Act.[2]

[2] Cap. 336, Revised Laws of Grenada 2010.

[13] Dr. Alexis, QC argued that Mr. Hadeed ought to have the benefit of the considerations that are stipulated in sections 25-25A of the MCA and should the Court uphold the ruling of the learned judge it would have the effect of denying him the benefit of the statutory provisions as stipulated in the aforementioned sections to which he is entitled.

[14] Dr. Alexis, QC referred the Court to Roderick Alexander MacLeod v Marcia Renee Kalb MacLeod[3] in which it was held that postnuptial agreements are valid, binding and enforceable on the basis that they are no longer contrary to public policy. The Board also held that such agreements do remain subject to the courts' powers of variation. Learned counsel also referred the Court to the decision of Radmacher (formerly Granatino) v Granatino[4] which held that postnuptial agreements had now been accepted, and there remained no reason of principle to maintain the distinction with prenuptial or antenuptial agreements. The court ruled that in the case of both antenuptial and postnuptial agreements:

> "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."[5]

[15] Relying on MacLeod v MacLeod and Radmacher v Granatino, Dr. Alexis, QC submitted that included in 'family proceedings' or matrimonial proceedings are proceedings to determine what financial or property adjustment arrangements may be made for a member or members of a family in contemplation of the marriage in that family being dissolved by the grant of divorce on the breakdown of the marriage. He argued that in view of that or on any other proper definition of 'family proceedings', the underlying proceedings to enforce the Written Agreement are plainly family proceedings. He stated that the Written Agreement made between Hassan Hadeed and Nahla Hadeed on 16th November 2009, addresses the breakdown of their then existing marriage. Learned Queen's Counsel Dr. Alexis

[3] [2008] UKPC 64, paras. 41-42.
[4] [2010] UKSC 42.
[5] At para. 75.

pointed out the fact that in the Written Agreement, Mr. Hadeed agrees by clause 1.8 to 'take certain actions as a consequence of the pending Divorce to benefit the Wife'. He said that the Written Agreement in its WITNESSETH clauses disposes of the matrimonial home[6] and of 'furnishings … from the matrimonial home'.[7] Clause 1.11 of the Written Agreement states that it is legally binding and 1.10 states that 'subject to any Order which the Court may make on the dissolution of the marriage … the Parties intend that this Agreement shall be in full settlement of all rights and claims and duties they have to each other in law'. Dr. Alexis, QC submitted that references to the 'breakdown of the marriage', the fact that the Written Agreement was made as a 'consequence of the pending Divorce' and the fact that it sets out arrangements regarding the disposition of 'the matrimonial home' evidences that it contemplates family proceedings. He pointed out that the Written Agreement contemplated that it would have been determined in the Family Court and definitely not in the Civil Court.

**Respondent's Submissions**

[16] Queen's Counsel Ms. Celia Edwards for Mrs. Hadeed, submitted that the parties, experienced business people, being legally advised, or having had the opportunity to obtain legal advice, formulated and freely entered into a written agreement to settle their affairs. She emphasised that the court's power to review such a document is not confined to the MCA as its jurisdiction is multifaceted. This multifaceted jurisdiction allows the court to consider marital property under the **Married Women's Property Act 1**882 and under this Act the court would have no power to vary rights. While Ms. Edwards, QC admitted that there is no dispute that under the MCA the court would have jurisdiction to construe the agreement and adjudicate on it, she maintained that the court's jurisdiction is not limited to the Matrimonial Causes Act 1973 and Mrs. Hadeed was free to choose whether or not to invoke the court's jurisdiction under the said Act or whether she desired to invoke the general jurisdiction of the Court.

[6] WITNESSETH clause 1.
[7] WITNESSETH clause 4.

[17] Mrs. Edwards, QC emphasised that the parties voluntarily agreed to have the dissolution of their marriage litigated as a standalone item and excluded the ancillary relief from the court's determination in the matrimonial suit. Learned Queen's Counsel reminded this Court that the parties having voluntarily entered into this agreement with the benefit of legal advice it was stated in clause 1-11 of the agreement that it was conclusive. Ms. Edwards, QC stated that the parties never contemplated having to sue on the Written Agreement and therefore there could be no argument that when they entered into the agreement they must have had in their respective contemplations that sections 25-25A of the MCA would have been applicable to the agreement.

[18] Ms. Edwards also referred the Court to MacLeod v MacLeod in which the Privy Council held that a contract executed by the parties as a postnuptial agreement stands to be enforced like any other commercial contract. Ms. Edwards, QC reminded the Court that although the Board in that case declined to extend the principle to prenuptial contracts on policy grounds, in their 2010 decision of Radmacher v Granatino, the Board extended the principle to prenuptial contracts on the basis that there was no realistic reason in this day and age why the principle should be confined to postnuptial contracts. Ms. Edwards, QC argued that in those cases the Court found it unnecessary to construct the contract on strictly commercial lines because the application had been filed in matrimonial causes and therefore the court was not confined to the four walls of the contracts. Learned Queen's Counsel submitted that it is well-established, as evidenced by the aforementioned authorities, that the jurisdiction is not confined to matrimonial causes and that Mrs. Hadeed was well within her rights to seek to enforce the contract in the civil court. The fact that it would be more prudent for Mr. Hadeed to seek to apply the court's matrimonial jurisdiction does not make Mrs. Hadeed's application bad. Accordingly, Ms. Edwards, QC urged this Court to dismiss the appeal with costs.

Issue 2 - Whether the learned trial judge erred in failing to rule that enforcement of the Agreement may only be pursued as ancillary relief on the divorce proceedings in the matrimonial jurisdiction of the High Court.

**Appellant's Submissions**

[19] Dr. Alexis, QC argued that since the CPR in rule 2.2(3) clearly states that the Rules do not apply to 'family proceedings', it follows that the Rules do not apply in relation to the Written Agreement, these being family proceedings. In support of his argument, Learned Queen's Counsel referred to Christina Yearwood v Robin Kensworth Montgomery Yearwood[8] in which it was held that an order made in the family court in England could not be registered under the CPR in Antigua & Barbuda because the CPR does not apply to family proceedings. Dr. Alexis, QC submitted that Mrs. Hadeed similarly misconceived her application in seeking to enforce the Written Agreement in the general civil jurisdiction of the court under the CPR and therefore on this basis the order appealed against should be set aside as wrong in law.

[20] Learned Queen's Counsel Dr. Alexis argued that since the Written Agreement was made in contemplation of divorce it is not a commercial contract as it is governed by the principles encapsulated in particular in sections 25-25A of the United Kingdom Matrimonial Causes Act 1973 that guides matrimonial or family proceedings. He pointed out that these principles govern both postnuptial[9] and antenuptial agreements.[10] In support of his contention, Dr. Alexis, QC relied on the authority of MacLeod v MacLeod to remind the Court that the law recognises that '[f]amily relationships are not like straightforward commercial relationships'.[11] He further stated that the decision of the United Kingdom Supreme Court in the case of Radmacher v Granatino is also instructive on the issue of nuptial agreements. In that case, Lord Phillips confirmed that the court '[does] not consider it material in English ancillary relief proceedings whether the nuptial

[8] ANUHCV2010/0362 (delivered 8th December 2011, unreported).
[9] Roderick Alexander MacLeod v Marcia Renee Kalb MacLeod [2008] UKPC 64.
[10] Radmacher (formerly Granatino) v Granantino [2010] UKSC 42.
[11] See para. 42 of Roderick Alexander MacLeod v Marcia Renee Kalb MacLeod [2008] UKPC 64.

agreement … is or is not a contract. The court can overrule the agreement of the parties, whether contractual or not, and applies the same criteria … '.[12]

[21] Dr. Alexis, QC submitted that a separation agreement in a family relationship, whether or not a contract, is governed by sections 25-25A of the MCA and so should be litigated in family or matrimonial proceedings. He further submitted that even if he was wrong, and it was proper to sue in the civil jurisdiction of the High Court, then the MCA would still apply. Accordingly, the order appealed against should be set aside as wrong in law.

**Respondent's Submissions**

[22] Learned Queen's Counsel posited that in view of her submissions on issue one, there was no need to address issue two.

Discussion and Analysis

[23] It is the law that upon the grant of a divorce, annulment of marriage or judicial separation, a court may order ancillary relief. Ancillary relief deals with, among other matters, the financial arrangements between the husband and wife on the breakdown of their marriage. However, the parties may have made a prior agreement, such as a postnuptial agreement, to govern their financial affairs in the event of such a breakdown. Such an agreement is made after the marriage, whether while the husband and wife are still together and intend to so remain, or while they are in the process of separating or have already separated. Even though two issues have been identified, the more important issue in this appeal is whether enforcement of such an agreement may be sought in the general civil jurisdiction of the court. As stated earlier, the second issue is whether its enforcement is limited to ancillary relief on divorce proceedings in the court's matrimonial jurisdiction.

[24] I now propose to address issue one.

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[12] At para. 74.

Issue 1 – Whether the learned trial judge erred in ruling that the Written Agreement may be enforced as a contract in the general civil jurisdiction of the High Court.

[25] It is the law that the relation of husband and wife by no means precludes the formation of a contract, and the context may indicate a clear intention on either side to be bound. In Merritt v Merritt,[13] Mr. Merritt and his wife jointly owned a house. Mr. Merritt left his wife to reside with another woman. Mr. Merritt drafted and signed an agreement with his wife that he would pay her a £40 monthly sum, and eventually transfer the house to her, if she completed the monthly mortgage payments. When the mortgage was paid, Mr. Merritt refused to transfer the house. The court held that as the agreement was sufficiently certain, the wife provided good consideration by paying off the mortgage and the surrounding circumstances clearly indicated an intention between the parties to create legal relations the wife was entitled to sue on the agreement.

[26] Lord Denning MR in this judgment made it clear that the presumption of no intention to create legal relations is more strongly rebutted when the marriage concerned is on the verge of breaking down:

> "It is altogether different when the parties are not living in amity but are separated, or about to separate. They then bargain keenly. They do not rely on honourable understandings. They want everything cut and dried. It may be safely presumed that they intend to create legal relations".[14]

[27] In Edgar v Edgar,[15] Ormrod LJ in considering the weight of separation agreements stated at page 1417 of the judgment opined that:

> "To decide what weight should be given, in order to reach a just result, to a prior agreement not to claim a lump sum, regard must be had to the conduct of both parties, leading up to the prior agreement, and to their subsequent conduct, in consequence of it. It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel; *all* the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage. So, the

[13] [1970] 2 All ER 760.
[14] At p. 762.
[15] [1980] 1 WLR 1410.

> circumstances surrounding the making of the agreement are relevant. Under pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties. Important too is the general proposition that formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to the terms of their agreement. There may well be other considerations which affect the justice of this case; the above list is not intended to be an exclusive catalogue."

[28] Mr. and Mrs. Hadeed last lived together as husband and wife in 2008. By 2009 when they effected this agreement tensions were quite high between them and there was no evidence of hope of reconciliation. Mr. and Mrs. Hadeed both sui juris, and having received or having had the opportunity to receive competent and independent legal advice, entered into this contractual financial arrangement with full knowledge of all the circumstances, consequences, rights and obligations arising therefrom. They freely entered into this contract in order to settle their affairs in view of the breakdown of their marriage. There is nothing to prevent them from entering into such a contract and there is nothing to prevent either of them from seeking enforcement of same where one party fails to carry out his contractual obligations.

[29] This Court is in agreement with learned Queen's Counsel for Mrs. Hadeed that a contract executed by the parties as a postnuptial agreement stands to be enforced like any other contract and due to the court's multifaceted jurisdiction, its power to review such a document is not confined to the Matrimonial Causes Act 1973. While I agree with Dr. Alexis, QC that under the MCA the court would have jurisdiction to construe the Written Agreement and adjudicate on it, I do not accept the learned Queen's Counsel's submission that the court, in exercising its civil jurisdiction must apply the principles that are stated in the MCA. The fact that divorce proceedings are occurring does not mean that enforcement of the postnuptial agreement must be dealt with in those proceedings and that parties

cannot sue on it in civil proceedings. It is well-recognised that a party has a discretion whether or not to invoke the jurisdiction under the MCA.[16] There is nothing in the MCA that dictates that all claims which are brought on the dissolution of marriage are only cognisable under that Act. Neither is there any bar to a party to a Written Agreement that has been made during or after the dissolution of a marriage seeking to enforce the agreement as a civil suit without recourse to the MCA. This Court is in agreement with learned Queen's Counsel Mrs. Edwards that the court's jurisdiction can be enforced in constructive trust and as is the case here, in contract. I am fortified in this view by the fact that Mrs. Hadeed excluded her claim for ancillary relief from the matrimonial suit once she had entered into the Written Agreement with Mr. Hadeed.

[30] In MacLeod v MacLeod Baroness Hale of Richmond cited Lord Atkin who commented in Hyman v Hyman:[17]

> "Full effect has therefore to be given in all Courts to these contracts as to all other contracts. It seems not out of place to make this obvious reflection, for a perusal of some of the cases in the matrimonial Courts seems to suggest that at times they are still looked at askance, and enforced grudgingly. But there is no caste in contracts. Agreements for separation are formed, construed and dissolved and to be enforced on precisely the same principles as any respectable commercial agreements, of whose nature indeed they sometimes partake".[18]

[31] Applying the above principle to the present case, I have no doubt that Mrs. Hadeed was quite free to seek to enforce the agreement in the court's general civil jurisdiction. The fact of the matter is that Mr. and Mrs. Hadeed entered into an enforceable agreement and Mr. Hadeed allegedly failed to comply with its terms. There is no evidence that within the postnuptial agreement were terms which restricted its enforcement to ancillary relief on the divorce proceedings in the matrimonial jurisdiction of the High Court. Since Mrs. Hadeed's avenues for relief in the event of a breach were not limited by the Written Agreement, she was well

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[16] Joseph Jackson, Rayden and Jackson's Law and Practice in Divorce and Family Matters (15th edn., Butterworth & Co 1988) para. 1 cited.
[17] [1929] AC 601.
[18] See para. 19 of Roderick Alexander MacLeod v Marcia Renee Kalb MacLeod [2008] UKPC 64.

within her rights to seek to enforce the contract in the civil court. I accept without any reservation the argument of Mrs. Edwards, QC that Mrs. Hadeed's decision not to apply to the matrimonial jurisdiction does not make her application bad and Mr. Hadeed cannot simply compel Mrs. Hadeed to invoke the jurisdiction most favourable or convenient to him. I am fortified in this view by the principles that were enunciated in MacLeod v MacLeod and Radmacher v Granantino.

[32] Based on the reasons given above I have no doubt that the learned trial judge did not err in ruling that the Written Agreement may be enforced as a contract in the general civil jurisdiction of the High Court and accordingly I would dismiss Mr. Hadeed's appeal on this ground.

Issue 2 – Whether the learned trial judge erred in failing to rule that enforcement of the Agreement may only be pursued as ancillary relief on the divorce proceedings in the matrimonial jurisdiction of the High Court.

[33] In view of the determination on the first issue it has become unnecessary to consider the second issue.

Conclusion

[34] IT IS ORDERED AND DECLARED AS FOLLOWS:

(1) The appeal is dismissed and the order of the learned judge dated 10th March 2013 is upheld.

(2) The civil suit GDAHCV2012/0229 is remitted to the High Court for case management and trial in accordance with the Civil Procedure Rules 2000.

(3) Costs to the respondent in the sum of $1,666.67, being two-thirds of the costs in the court below on appeal.

[35] I gratefully acknowledge the assistance of all learned counsel.

I concur.
Mario Michel
Justice of Appeal

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar