

IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
ST CHRISTOPHER CIRCUIT
(CIVIL)

CLAIM NO. SKBCV2007/0171

IN THE MATTER of the Application by
AURELIE RAMSEY under Section 19
of the Married Women's Property Act
Cap 328 and Section 11(1) of the
Eastern Caribbean Supreme Court (Saint
Christopher and Nevis) Act, No. 17 of
1975

AURELIE RAMSEY

Claimant

And

KENNEDY DAVID RAMSEY

Defendant

Appearances: Mrs. Miselle O'Brien-Norton for the Claimant
Mr. Nassibou Butler for the Defendant

2008: May 9th and 15th, September 26th

DECISION

- [1] **BELLE J.** This matter concerns a claim for the determination of the interests of the parties in the property known as Lot No. 6 Humming Bird Housing Development, Camps St. Kitts along with some appliances and items of furniture which are to be found in the house which stands on the property. The parties were married on 16 November 1985 in St. Kitts and the marriage was dissolved on 30th September 2005. During that period a house was constructed on the land and it is that property which is now the focus of the dispute between the parties.

- [2] Two issues arise at the outset which must be clarified. These are firstly the reference to the style of the name of the Supreme Court and how it is to be reflected in the name of the Act no.17 of 1975. The second is the application of the CPR 2000 to these proceedings. To deal with the second issue first, Part 2.2 (3) of the CPR 2000 states that the CPR 2000 does not apply to family proceedings. Therefore if the division of property between husband and wife is a form of family proceeding it is not governed by the CPR 2000. But neither party attempted to define what is considered to be a family proceeding.
- [3] Clause 7 (1) (a) of the St Kitts and Nevis Constitution does not rename the West Indies Associated States Supreme Court (Saint Christopher and Nevis) Act. What that clause does in my view is to deem the name of the Supreme Court established by the West Indies Associated States Supreme Court Order 1967 to be styled the Eastern Caribbean Supreme Court.

Application in Limine

- [4] On 14th April 2008 the Respondent's counsel filed an application *in limine* in which it was submitted that the Court had no jurisdiction to determine the issues in these proceedings pursuant to the Married Women's Property Act because the parties were not husband and wife at the time the Claim was filed in this matter. The court has considered the submissions of both sides and the authorities in support thereof and has concluded that the application *in limine* should be upheld because the objection taken is not based on a mere breach of the rules of procedure, but goes to the root of the proceedings for relief in this matter.
- [5] Counsel for the Claimant argued that the provisions of Section 19 of the Married Women's Property Act Cap 328 permitted her to rely on the similar provisions of the United Kingdom Legislation pursuant to Section 11 of the West Indies Associated States Supreme Court Act No.17 of 1975 (the Supreme Court Act) which provides that the English provisions can be relied on in the circumstances. She therefore relied on this provision to incorporate section 39 of the UK Matrimonial Proceedings and Property Act which provided that parties

could make an application under the Married Women's Property Act so long as the application is made within the period of three years. I do not agree with this argument however because as counsel for the respondent argued there are clear provisions and rules in the laws of St Kitts and Nevis which provide that section 19 is a summary proceeding available only where parties are husband and wife. Neither section 11 nor 12 of the Supreme Court Act are capable of changing this fact.

- [6] I agree with counsel for the respondent and applicant *in limine* that the case of **Hinkson v Hinkson** 1971 18 WIR 366 is applicable to the circumstances in this case and deals with legislation which utilized identical language to the Married Women's Property Act. In that case the phrase "husband and wife" was construed to mean that the parties were married at the time of the application. A similar decision was made in **Mowatt v Mowatt** (1979) 28 WIR 96 and in **Strachan v Strachan** [1965] 2 All E.R. 77.
- [7] In **Mohammed v Mohammed** 1965 12 WIR 125 section 14 of the Trinidad Supreme Court of Judicature Act 1961 was considered. This section is very similar to Section 11 (i) of Act No 17 of 1975. But the case can be distinguished because that case dealt with a situation where the law failed to state the time which should pass before a decree nisi could be made absolute. This was considered a lacuna in the law which could be remedied by applying the relevant English provisions. The issue in the latter case was the absence of appropriate language and not the interpretation of clear language. I am also of the view that the decision **P v P** (1977) 30 WIR 8 is applicable to the present situation in so far as the learned trial Judge categorically ruled that the Law Reform (Miscellaneous Provisions) Act 1949 of England was not law in Barbados and could not prevent him from exercising his inherent powers in relation to children. Williams acting CJ, at the time, also pointed out that the Law of England could not be incorporated as a substantial amendment to the laws of Barbados
- [8] Indeed my understanding of the application of Section 11 of the West Indies Associated States Supreme Court Act is that this provision applies where there is a lacuna in the local legislation or procedure making it incomplete or impractical as was the situation in

Mohammed v Mohammed. This is not the situation in the case of the Married Women Property Act. Furthermore the English Matrimonial Proceedings and Property Act 1970 was not imperial law neither was it incorporated into the laws of the Federation by way of Statute.

[9] It is my view that this kind of misunderstanding occurs because the intention of the law is not understood. According to Halsbury's Laws of England , Fourth Edition Vol 22, para 1027 section 17 of the Married Women's Property Act 1882 (UK) is a procedural provision devised as a means of resolving a question as to title and in not a means of giving a title not previously existing. Clearly this is different to saying that section 17 is a procedural provision without more. The word "procedural" here is used to indicate that one cannot use the provision to change the existing title to property. But this does not mean that the statute is the equivalent of the Civil Procedure Rules. .But even if it were the equivalent the Respondent's counsel would still be fighting an uphill battle to argue that provisions which are clearly different can be made the same to bring one in line with the other.

[10] In the case of the CPR 2000 we are aware that the English Civil Procedure Rules do not treat amendments to the statement of case as strictly as the CPR 2000 does in Parts 10 and 20. But this does not give rise to a right to incorporate the English provisions. We should also note that the English provision the Matrimonial Proceedings and Property Act was itself amended by statute and is not just the application of the interpretation of a Judge.

[11] Counsel for the Claimant also argued that the failure to file the action while the parties were still married should be treated as an irregularity which could be rectified in the circumstances by deeming the proceedings valid because affidavits had been filed and the respondent had submitted himself to the jurisdiction, had replied to the affidavits of the Claimant and had been represented by counsel who had presented arguments on the substantive issues relating to the division of the property in dispute.

[12] However I find that the situation in this case is quite different. There were many reasons why The Married Women's Property Act and The Matrimonial Causes Act in Jamaica referred to in **Goodison v Goodison** (1995) 49 WIR 251 may have caused confusion. In addition the Claimant in that case was claiming maintenance for children to which the Matrimonial Causes Act applied, and a property interest , to which the Married Women's Property Act Applied. In the circumstances the court was able to apply Order 2 rule 1(1) in The 1975 Rules of the Supreme Court which render an irregularity waived if the parties have submitted to the jurisdiction by taking a further step. The rule reads as follows:

"Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these or any other rules of court, whether in respect of time, place , manner , form, or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, or any document, judgment or order therein."

[13] I have examined that provision carefully. Such a provision was examined in the case **Tiffany Glass Ltd v F Plan Ltd** it was held by the Court of Appeal of Trinidad and Tobago that entry of an unconditional appearance to a defective writ or taking a fresh step waives any objection to the jurisdiction of the court as well as any irregularity in the commencement of the proceedings. When one examines the words of that rule carefully the reason for the decision becomes clear. The matters raised by the rule address the fairness of the proceedings with regard to time, place, manner, form or content. The words following or in "any other respect" would have to be restricted to a similar genre such as applying the wrong rule. I therefore find that the relevant provision is restricted to matters of procedure which may be deemed an irregularity or a jurisdictional bar. In this case we are dealing with a statutory provision which given its plain meaning restricts summary proceedings under the Married Women's Property Act to certain circumstances, these being that the parties must be husband and wife. This is no mere procedural matter. It is a matter of substance. I therefore find that the cases **Eldemire v Eldemire** , **Hiniball and Another v Alele** and **Goodison v Goodison** can be distinguished as cases dealing with mere procedural errors in jurisdictions where the legislation permitted that such errors could be dealt with in the way suggested by counsel for the Claimant .

[14] The issue arises as to whether the parties can waive the jurisdictional point. I find that they cannot do so. A matter decided without jurisdiction would be a nullity. See: **Hinde v Hinde** [1953] 1 All E.R. 71 in which the English Court of Appeal had to refuse to enforce an order for payment of maintenance to the wife, after the husband had died based on a statute construed to be applied "during the joint lives of the parties ;",

[15] In the circumstances the court orders the proceedings to be struck out. . But there will be no order as to costs since the respondent permitted the matter to proceed to the point of trial before raising this matter, and the matter of costs is always discretionary. As a result the court has wasted many valuable judicial hours, and both parties have incurred unnecessary costs.

The Substantive Matter

[16] However in case I am wrong I will go on to determine the substantive issue in this matter. Indeed if there is an appeal the matter of costs can be canvassed at that point.

[17] The court heard submissions from counsel with regard to the factual and legal arguments in favour of each side's position in relation to the legal and beneficial ownership of the former matrimonial home and some of the contents of that home at Lot No.6 Humming Bird Housing Development, Camps, St. Kitts. From the exchange of affidavits I glean that the parties were married for nearly 20 years and had a child who at the time of trial was over eighteen years of age.

[18] The land in dispute No. 6 Hummingbird Housing Development was purchased in 1991. The purchase price was EC\$44,000.00. The land is registered in the names of both parties as tenants in common. A house was constructed on this lot between 1995 and 1997. The Defendant resides in the house. There are two apartments downstairs the said house which is rented to tenants. The Claimant claims that for some time she has been deprived of the benefits of the home and the rent collected from the rental of the apartments.

Accordingly she seeks several declarations and orders to vindicate her alleged right to enjoyment of her interest in the property and the proceeds of the rent from the apartments.

[19] The documents disclosed by the Defendant show that he was named on almost all of the transactions including the bank records which show how the relevant mortgage on the property was paid. However the Registered Title of the land and the loan facility letter of March 6, 1997 carry the names of both parties and the names Mr. and Mrs. Ramsey respectively.

[20] Mrs. Ramsey asserts that she worked throughout the period of the marriage at various places including in St Kitts, Tortola and the United States of America and contributed to households in St Kitts and Tortola from the income earned. The Claimant insists that she contributed in cash given to the Defendant while they resided in Tortola BVI. She also states that she paid certain bills, took care of the child and was a home maker. She continued to make contributions to the home in St Kitts on frequent visits to the country sometimes as many as three times per month and then continued to spend two months of the summer with her husband at their home in St Kitts.

[21] The Claimant states that she last visited the Defendant in St. Kitts in 2004. According to the Claimant the arrangement whereby she lived in Tortola and her husband lived in St Kitts occurred because her husband was forced to leave Tortola. They then agreed that it would make greater sense economically for her to stay in Tortola and earn US currency. The Claimant claims that she contributed to the purchase of the items of furniture and household appliances mentioned in her affidavits in Tortola, St Thomas and Puerto Rico.

[22] The Defendant denies that the Claimant made any contribution to the construction of the house in dispute or to the purchase of the land. He claims that he has paid all of the expenses and shows a number of receipts in his name including the receipt for the payment of \$10,000.00 to Sir Probyn Innis for the land. He says that the furniture and appliances were all purchased by him at reasonable prices and the prices shown by the Claimant are inflated. I find that the evidence in this case points to the logical conclusion

that during the marriage there was an indirect contribution made by one spouse, in this case the Claimant, which made it possible for the other to focus on building the house. It would not be possible to calculate exact contributions in those circumstances because during the course of the marriage it is very unlikely that either spouse kept bills and receipts in order to prove the extent of their contribution to the construction of a home. But this did not negate the intention to share the property equally. **Rimmer v Rimmer** [1953] 1 QB 63 and that line of cases applies to these circumstances.

[23] I make this finding after asking myself which party on a balance of probabilities is more truthful. I have determined that issue in favour of the Claimant. I note for example that it is clear that the Defendant for some reason does not want to disclose the sum of money that he has received from the rental of the apartments attached to the matrimonial home over the years. He claims that this money is spent in maintaining the apartments and apparently at some time told the claimant that he used the proceeds of the rented units to pay the mortgage. If this is the case then it should not be difficult to disclose the sum of the income from the rent. His failure to disclose this figure tends to imply that he has something to hide and is therefore being untruthful to this court. Accordingly the court does not hesitate in granting the order that the Defendant must give the Claimant an accounting for the proceeds of the rented apartments in 14 days.

[24] As far as the other matters are concerned I find that a presumption of ownership in equal shares remains quite strong based on the evidence before me. It is somewhat pitiful that the Claimant should be claiming half of the value of items of furniture. I think it makes much more sense for her to see the house and its contents as one major item. If the Defendant wants to exclude any item from this collective item it is then for him to show cause why that item should be excluded. I make this finding because it appears on a balance of probabilities that a man of Mr. Ramsey's standing and vocation would have found a way to exclude the Claimant from any interest in the property if he had decided to do so from the outset. It is clear that the Claimant's name was placed on the Registered Title for the disputed property either because she contributed to the purchase of the land or because of the Defendant's love and affection for her he decided to give her a share in

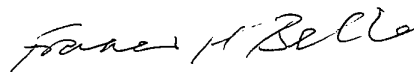
the property. Even though the parties do not come to the court as a married couple the fact that they were once married must weigh heavily on the decision with regard to the division of the property

[25] The Claimant is able to give detailed evidence of dates times, general agreements and attitudes of the parties over the years. The agreement to live in separate countries although clearly plagued with problems is not uncommon, and neither are the consequences. These conditions handily set up the kind of argument which the Defendant uses that the Claimant has willfully stayed away from the former matrimonial home. However there would be no need to make this an issue if the home was not intended as a matrimonial home in the first place, making it likely that there would have been a gift of an equal share in the said property to the then wife.

[26] In my view the Claimant also directly and indirectly contributed to the purchase of the land, the payment of the mortgage the construction of the home and the purchase of furniture and household appliances. I find that the law in the circumstances permits me to make a declaration that the Property situate at Lot No 6 Humming Bird Housing Development, Camps, St Kitts and registered in Book Q2 Folio 189 and with building situate thereon and its contents are owned by the Claimant and the Defendant jointly in equal shares. In the circumstances the Defendant is to be paid the value of her half share interest in the said property. In order to determine the applicable value of the Claimant's share the parties shall agree to the nomination and to pay the costs of an appraiser who is to value the property in dispute, including the likely rent to be accrued from the rental of the two apartments, for the court, and submit the valuation to the court thereafter in 30 days.

[27] It would not be possible to order that the Defendant pay the Claimant the value of one half of all rents received without the full accounting already ordered being done and the valuation report being submitted. Accordingly any sum due pursuant to the taking of the said account would have to be determined after the taking of the accounts.

- [28] Payment of interest on the outstanding sums would be ordered in accordance with Section 27 of the West Indies Associated States Supreme Court Act (No 17 of 1975) from the date of this order.
- [29] I would order that costs of the these proceedings excluding the point *in limine*, be paid by the Defendant.
- [30] As pointed out above, the orders I have made in relations to the substantive matter only apply if for some reason my previous finding on the issue of jurisdiction is overturned by a higher court.



FRANCIS H V BELLE

High Court Judge