

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(DIVORCE)**

GRENADA

SUIT NO. GDAHMT2013/0144

BETWEEN:

JUDITH LETT NEE PURCELL

Petitioner

AND

ALEXANDER LETT

Respondent

Appearances:

Ms Giselle Whiteman with Mr Ian Sandy for the Petitioner

Ms. Hazel Hopkin for the Respondent

2020: November 19th

Written Submissions filed on 27th November 2020

2021: February 4th

RULING

[1] **ACTIE, J.:** The union of marriage solemnized between the parties on 28th June 1986 lasted for 28 years until a decree absolute made on 11th March 2015 brought the marriage to an end. The marriage produced one daughter, Shynya Lett. The petitioner filed an application for ancillary relief claiming her share entitlement in the matrimonial property.

Evidence

[2] It is the evidence that the matrimonial home was built on a parcel of land purchased and recorded in the sole name of Mr. Lett. It is Mr Lett's evidence that the parties did a site visit of the parcel of land and agreed to purchase the land in contemplation of their marriage. The parties were in engaged in June 1985. The land was acquired in October 1985 after the engagement but prior to the marriage in June 1986 and recorded in Mr Lett's sole name.

- [3] Mrs. Lett's both in her affidavit evidence and at trial states that she was employed and contributed to the purchase of the lot of land. However, she vacillated in further cross-examination with respect to her employment status at the time of the acquisition of the parcel of land. The court accepts Mr Lett's evidence that the property was purchased solely with his funds.
- [4] The court accepts the evidence that the parties took a mortgage in their joint names to construct their matrimonial dwelling house on the said lot of land. Mrs Lett states that she secured a credit facility at L.A Purcell for the purchase of materials for the construction of the dwelling home and other loans for which she had the responsibility to make the repayment.
- [5] Mr. Lett in response states that Mrs Lett was a Christian and he entrusted her with his entire salary from which she only gave him money to pay bus fares when necessary. Mr. Lett states that he permitted Mrs. Lett to have total control and responsibility for the payments of all bills, mortgage and taxes. He said that all decisions in relation to their financial affairs were conducted by Mrs Lett and never questioned any issue relating to the payment of bills.
- [6] The court accepts Mr. Lett's 's evidence in totality. He was forthright and a much more credible witness than Mrs Lett. The court accepts that Mrs Lett was unemployed at the time of the purchase of the parcel of land which is contrary to what was stated in her evidence in support of the ancillary relief. The court accepts the evidence that Mrs. Lett was employed when the mortgage was taken in their joint names for the construction of the matrimonial home and that her salary was supplemented from selling floral arrangements, pastries and sewing.

Law and analysis

- [7] The court in making property adjustments orders is guided by **Sections 24 and 25 of the UK Matrimonial Causes Act 1973** ("the Act"). Where financial orders are being sought by parties in the dissolution of marriage, the court is required to take into account the specific factors set out under **Section 25 of the UK Matrimonial Causes Act 1973**, ("the MCA") namely:
- (1) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire.
 - (2) the financial needs, obligations, and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

- (3) the standard of living enjoyed by the family before the breakdown of the marriage.
- (4) the age of each party to the marriage and the duration of the marriage.
- (5) any physical or mental disability of either of the parties to the marriage.
- (6) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.
- (7) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (8) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

[8] Saunders J.A (as he then was) in the Court of Appeal decision in **Stonich v Stonich**¹ states at Paragraph 30

“ The MPPA does not rank in any order of preference any of the factors to which Courts are obliged to have regard. It is for the Court to consider all of them. In one case, the facts and circumstances may call for a particular factor to be given special importance. In another case another factor may assume most significance. The point is that there is no basis in law for Courts to regard always as decisive or of special importance the financial contribution made by a party to the welfare of the family. In the normal course of things any such contribution should be weighed in the same scales as a contribution of a different nature. Spouses may choose to perform different roles in a marriage. If the husband’s skill, initiative, hard work and drive yield handsome financial rewards, it is entirely unfair to regard those rewards as being any greater in value than those of the wife who might have employed equal skill, initiative and dedication at home bringing up the children and keeping a stable household. In such a case I see no reason why the assets acquired during the marriage ought not to be equally divided. As Lord Nicholls states, each in their different spheres contributed equally to the family and, as a general guide, equality in the distribution of matrimonial assets should be departed from only if, and to the extent that, there is good reason for it “.

[9] In **Miller v Miller** Lord Nicholls defined matrimonial property as “***the financial produce of the parties’ common endeavour***” and Lady Hale defined it as “***the fruits of the matrimonial***

¹ Civil Appeal 17 of 2002

partnership". Lord Nicholls of Birkenhead in **Miller v Miller** requires the court to have regard to all the circumstances of the case.

[10] The respondent seeks a higher percentage in the property on the ground that he acquired the parcel of land prior to the construction of the matrimonial home. It is settled law that the fact that the ownership of the beneficial interest in the land is determined at the date of acquisition does not mean that the ownership cannot alter after the time of acquisition.

[11] The court in **Jones v Kennot**² held that "where the property is registered in the sole name of one party, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealing between them in relation to the property and determine what is fair. In doing so it must be noted that financial contributions are only one of the relevant factors".

[12] The court is concerned with the whole course of dealing and statements which relate to the parties' agreement and understanding as to the ownership of the beneficial interest in the matrimonial property. The nature and value of the property, the time when and circumstances in which the property was acquired are among the relevant matters to be considered. In ascertaining the common intention regard is had to the parties' actual intentions, express or inferred and ascertained in light of their whole course of conduct in relation to it.

[13] In **Brown v Brown**³ Mohamed J cites the decision in **Miller v Miller** on the guiding principles of fairness, compensation and sharing in matrimonial proceedings where Lord Nicholls stated:

"A third strand is sharing. This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that 'husband and wife were now for all practical purposes equal partners in marriage': R v R [1992] 1 AC 599, 617. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick is to be applied as an aid, not as a rule.

² [2011] UKSC 53.

³ GDAHMT 2013/0006

[14] Baroness Hale of Richmond in **Miller and Mc Farlane**⁴ stated as follows:

“Section 25(2)(f) of the 1973 Act does not refer to the contributions which each has made to the parties’ accumulated wealth, but to the contributions they have made (and will continue to make) to the welfare of the family. Each should be seen as doing their best in their own sphere. **Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares.**” (Bold emphasis mine)

[15] The evidence is clear that the parties were involved in a dedicated joint enterprise with a common intention to share their matrimonial assets equally. The parties were engaged and eventually solemnised their marriage in less than a year after the acquisition of the land on which the matrimonial home was built. The property although purchased by Mr. Lett was used as collateral for the mortgage in their joint names. The construction of the matrimonial home was therefore from their joint financial contribution.

[16] The parties before this court from all accounts enjoyed a comfortable standard of living during their marriage and pooled their resources. Mrs. Lett is a religious leader and is presently living in comfortable quarters at the church patronage for which she receives a salary with most of her expenses are paid. The parties are now 62 and 63 respectively and had been married for at least twenty-eight (28) years with no known physical or mental disability. The parties appear to be self-sufficient for their future needs. There is no evidence that either party has or is likely to lose any benefits as a result of the divorce.

[17] The court will usually apply the sharing principle as a starting point to divide matrimonial property unless there are compelling reasons to depart from equality. The only evidence that has generated a dispute is the fact that the matrimonial home was built on land bought and registered in Mr. Lett’s name. This in my view is not sufficient reason for the court to depart from the equality principle. As indicated earlier the parties were in a dedicated and committed relationship from engagement until the breakdown of the marriage. The land was purchased in anticipation of marriage which lasted for approximately 28 years. The parties pooled their resources throughout the period of their marriage. The court in making a determination is concerned with the whole course of dealing and statements which relate to the parties’ agreement and understanding as to the ownership of the beneficial

⁴ Miller v Miller and McFarlane v Mc Farlane [2006] UKHL 24 at paragraph 146

interest in the matrimonial property. The court having heard the parties, considering all the relevant guiding principles and the authorities relied on by the parties is of the view that there is no compelling reason to depart from the equal sharing principle.

Order

[18] For reasons given above, it is ordered and directed as follows:

- (1) The matrimonial property was jointly and equally owned by the parties.
- (2) The parties each have a 50/50 % share entitlement in the matrimonial property.
- (3) The costs of the valuation survey shall be shared equally by the parties.
- (4) Each party shall bear their own costs.

Agnes Actie

High Court Judge

By the Court

Registrar