

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHMT 2011/0093

BETWEEN:

LILOUTI GOORODAT

Petitioner

and

IMTIAZUL TALLIM

Respondent

Appearances:

Ms. Stacy-Ann Saunders-Osborne for the Petitioner

Mr. Cosbert Cumberbatch for the Respondent

.....
2011: October 13, 18
December 21
.....

JUDGMENT

[1] **MICHEL, J.:** The parties to the proceedings before this Court are a husband and wife who are in the process of having their marriage dissolved. The date for the hearing of what is likely to be an uncontested divorce petition has not yet been fixed by the court office. In the meantime, however, the wife, who is the petitioner in the divorce proceedings, has filed two applications for determination by the Court and the husband, who is the respondent in the divorce proceedings, has himself filed an application for determination by the Court.

[2] The applications before the Court for its determination are – (1) an application filed on 27th July 2011 by the wife (who shall hereafter be referred to as the Petitioner) for the husband (who shall hereafter be referred to as the Respondent) to be restrained from molesting, following or waylaying her, using abusive language to her, behaving towards her in such a manner as to cause annoyance, injury or harm to her or to the child of the marriage (who shall hereafter be referred to as the child) and restraining the Respondent and his father from entering the household residence where the Petitioner resides with the child; (2) an application filed on the same 27th July by the Petitioner to be granted sole custody of the child, for the Respondent to be ordered to make monthly periodical payments to her for the maintenance and education of the child and monthly periodical payments to her by way of spousal support; (3) an application filed on 14th September 2011 by the Respondent for the Petitioner to be restrained (whether by herself or her servants or agents) from entering the Respondent's bar on Factory Road in St. John's, from interfering with him or any of his personal belongings or in any way preventing or impeding his access to his home at Carnival Garden's in St. John's or verbally abusing him, harassing him, assaulting him or encouraging any of her friends or family to do so.

[3] There were six affidavits filed on behalf of the Petitioner which have a bearing on the applications before the Court, four were sworn to by the Petitioner herself and two by witnesses called by her, while there were four affidavits filed on behalf of the Respondent, two were sworn by him and two by witnesses called by him. All six deponents were cross examined and some re-examined on their affidavits.

[4] The Petitioner's evidence was that she and the Respondent got married in Guyana on 31st December 1995 according to Hindu custom and on 24th June 2009 they got married in the Faith

and Holiness Church in Antigua and their marriage was then duly registered in Antigua and Barbuda; that there is one child of the marriage who was born on 5th July 1999; that she is concerned for her well being and fearful of the Respondent's erratic behaviour, because he has displayed violence and threatening behaviour towards her and because his erratic behaviour is worsening, so she does not wish to continue living in fear of what will happen next; that the Respondent has on many occasions threatened her life and has been extremely destructive of her things in her home. The Petitioner gave several examples of threatening and menacing behaviour by the Respondent towards her and of destructive behaviour by him with regard to her belongings in the home. She deposed too that the Respondent is actively encouraged in his treatment of her by his father, whom she says lives in the house with her and her child and has lived there for the past 15 years. She deposed that although she lives in fear of violence by the Respondent she has nowhere to go, but that the Respondent can make alternative living arrangements because he has been staying away from their home at Carnival Gardens for most of the time since March 2010 and only comes home sometimes on weekends. She deposed that he rents a one-bedroom apartment where he primarily lives with his girlfriend and daughter, paying between \$750 and \$800 per month for the apartment. She deposed too that the Respondent's father is in full time employment as a security guard and is quite able to find alternative accommodation. She asked the Court to exclude the Respondent and his father from the matrimonial home.

[5] The Petitioner also deposed that from 1995 to October 2007 she earned \$3,600 from her employment; that from October 2007 she earned between \$400 and \$500 per week selling roti from home; that whatever income she earned she gave to the Respondent for use by the family and what was not used immediately was put on a bank account in his name; that in February 2010 she and the Respondent decided to set up a business of a pool room, bar and restaurant, they

both put money into its establishment, she operated the business, with occasional assistance from the Respondent when he was not required to work in his full time employment, and they earned approximately \$6,500 per week from the business; that with the proceeds of their employment and the business, she and the Respondent purchased land at Carnival Gardens and constructed their home on it; that the Respondent pays the mortgage for the matrimonial home, the car loan, the school fees for the child and is responsible for the utilities at the matrimonial home, but he does not give her money every week to take care of all expenses for herself and the child. She deposed that presently she makes roti and earns approximately \$300 to \$400 per week from that source and \$1,400 per month from her employment as a cleaner at a pre school. She deposed that her monthly expenses are \$6,658.50 and that she needs the Respondent's assistance to be able to maintain herself and the child.

[6] Under cross examination, the Petitioner conceded that the Respondent pays all the utility bills for the matrimonial home, in addition to paying the full amount of the mortgage and the insurance for the house; that he pays medical expenses for the child, including \$16,000 for braces for the child; that he gives the child money; that, contrary to what was sworn to in her affidavit in support of her application for custody and maintenance, she does not pay for electricity and water, she does not pay school fees for the child, she does not pay any car loan, motor vehicle insurance or motor vehicle maintenance and that her actual expenses are less than half of the amount stated in paragraph 30 of her aforesaid affidavit; that the matrimonial home is a very nice and comfortable house, with security gates, a tiled yard and is air conditioned; that the Respondent bought the land and paid for everything; that she does not cook, wash or do anything for the Respondent; that the Respondent loves the child. She claimed that she never got angry with the Respondent and that, despite his violence, for all of their years together she never got angry with him. She claimed too

that she does not take the child by friends when she wants to go out; that she does not take him anywhere; that she does not go out and she just stays with him. She claimed that she does not go to the bar and dance inappropriately and that she does not like dancing.

[7] Ms. Rowanne Smith swore to an affidavit and gave evidence in court in support of the Petitioner. Her evidence was that she knows the Petitioner and the Respondent and that she has seen the Respondent and his father mistreat the Petitioner and has heard the Respondent verbally abuse the Petitioner and has heard both he and his father cursing the Petitioner.

[8] Under cross examination, Ms. Smith testified that she is the sister of Clive Olivera, who is married to the Petitioner's sister; that she and the Petitioner are close friends and they lime together sometimes; that she has known the Respondent for many years and has never known him to be a violent person.

[9] The Petitioner's sister, Goomatie Goordat, swore to an affidavit and gave evidence in Court in support of her sister. Her evidence was that the marriage between the Petitioner and the Respondent is very turbulent; that many nights she has had to rush to the aid of the Petitioner after she was attacked by the Respondent at their home in Carnival Gardens. She gave evidence of incidents of violence to the Petitioner by the Respondent witnessed by or reported to her and of the fact that the Petitioner had endured a great deal of physical and verbal abuse at the hands of the Respondent and of her fear for the safety of her sister.

[10] The Respondent's evidence, given by way of affidavits sworn to by him and oral testimony in Court, is a total contradiction of almost all of the evidence of the Petitioner and her witnesses. His evidence portrays the Petitioner as an irresponsible, party-loving alcoholic given to violence and

lewd and philandering behaviour. He portrays her too as a mother who is given to frequently and randomly leaving her son with friends and family so that she could go out to drink and party, sometimes through the night. He deposes and testifies to her failure in the business ventures that she has undertaken, whether it is the running of the "kitchen" forming part of the pool room, restaurant and bar that he operates or in the running of a bar which she established with her sister. He denies any contribution by her to the purchase of the land or the construction of the house on it, which house has been used as their matrimonial home, or any contribution by her towards the establishment of the pool room, restaurant and bar business that he operates. He deposes and testifies that in fact the Petitioner was usually unemployed during the course of their marriage and earning a small income when she was employed, which income she did as she pleased with, and that by February 2010, when she claimed that they decided to set up the pool room, restaurant and bar business together, their marriage had already broken down. He also testified that the Petitioner does not cook for him, wash for him or do any household chores for him, nor does she have sexual intercourse with him and that this has been going on for about 2 years. He deposed and testified that he pays the mortgage, insurance, utilities and other expenses towards the maintenance of the matrimonial home; he pays the car loan, insurance and maintenance cost of the motor car owned by him and previously used by the Petitioner, including the cost of repairing it when it was seriously damaged by her; and he pays all educational and medical expenses for the child and gives him money for himself and to give to the Petitioner to purchase groceries for the said child.

[11] Walton Bacchus swore to an affidavit and gave evidence on behalf of the Respondent. The only really significant part of his evidence was his allegation that he works at the Respondent's bar as a DJ and that he has seen the Petitioner at the bar from time to time dancing in a very suggestive

way and displaying an attitude that one would not associate with a married woman and causing the Respondent to be uncomfortable with the manner in which she behaved in the presence of his customers.

[12] Mohammed Tallim, who is the Respondent's father, also swore to an affidavit and gave evidence on behalf of his son. Most of his evidence consisted of specific denials of the various allegations made against him by the Petitioner. He also deposed and testified that the Petitioner is in the habit of going out almost every weekend without the knowledge of the Respondent and leaving the child at friends of hers who are not friends of the Respondent.

[13] Having read the affidavits of and seen and heard all six witnesses who swore to affidavits and gave oral testimony in this case, I have come to the following conclusions:

1. The Petitioner is not a witness of truth. Her demeanor and deportment in the Court were suggestive - indicative even - of much of what was said of her by the Respondent and his witnesses and her evidence of her celebrating her birthday at a bar in St. John's on the evening of 23rd November 2010, with her friends and without her husband, is inconsistent with the impression which she sought to create of herself as the stay-home mother not given to going out, partying, dancing or drinking alcohol. A lot of her evidence contained in her affidavits was untruthful and was contradicted by her own testimony under cross examination, including her evidence about her contributions to the acquisition and maintenance of the matrimonial home and the upkeep and maintenance of the family. Her evidence about her previous and present income was demonstrably untruthful and was clearly intended to overstate her income in "the happier times" of her marriage to the Respondent so as to create an impression of a significant contribution by her to the acquisition and maintenance of the

matrimonial home and the upkeep and maintenance of the family, and to understate her income at present in order to justify spousal support from the Respondent. So that, for instance, she earned \$3,600 per month from 1995 to 2007, but she earns \$1,400 per month at present; she earned \$400 to \$500 per week making and selling roti in 2007, but (according to her affidavit in support of her application for custody and support) she earns \$300 to \$350 per week from making and selling roti at present or \$200 to \$300 per week (according to her testimony in Court) from this undertaking. Her evidence about her average monthly expenses was also clearly untruthful, so that for instance, she claimed expenses for the child's school fees, which she admitted were paid by the Respondent, for utility bills, which she admitted were paid by the Respondent, for a car loan, motor vehicle maintenance and motor vehicle insurance, which motor car she admitted was non-existent. Her evidence about running her husband's bar and earning \$6,500 per week from it contrasted sharply with her evidence about running her sister's bar (which she testified was a very popular bar which had lots of patrons) and earning \$450 to \$500 per week from it. Her evidence about she and the Respondent deciding in February 2010 to set up a business of a pool room, restaurant and bar, of her running the business and earning \$6,500 per week from it and of the proceeds from the business being used to purchase a parcel of land and then constructing the matrimonial home on it, is inconsistent with her evidence of her returning from Guyana in March 2010 and learning of the Respondent being involved in an adulterous affair and of him installing the person with whom he was having the affair to manage and operate the business, as a result of which she (the Petitioner) no longer goes to work there. It is also inconsistent with her pleading that she and the Respondent have lived separate and apart since April 2010. It would obviously not be possible for the Petitioner and the Respondent to decide in February to operate a business, for the Petitioner to operate it and make \$6,500 per week from it, for the

money earned from it to be used to buy a parcel of land and then build a house on the land all between February 2010 and March or April 2010. It is also the case that the Petitioner's evidence in Court on 13th October 2011 that the Respondent moved out of the matrimonial home a year ago is inconsistent with her divorce petition which avers that the Respondent resided at Carnival Gardens (which is the location of the matrimonial home) at the time of the filing of the petition on 27th July this year.

2. The Petitioner's claim to the exclusive occupation of a house which she concedes is a nice and comfortable house, which is tiled inside and concreted outside, which is air conditioned, which is fenced and equipped with security gates, and which is paid for in its entirety – mortgage, insurance, utilities, etc. – by the Respondent, who must also make monthly payments to her for her maintenance and support, while the Respondent himself should live in a one-bedroom apartment rented for between \$750 to \$800 per month with his daughter and her mother, is both impudent and imprudent and audacious and presumptuous. The Petitioner also insists that the Respondent's 73 year old father should leave the home he has shared with his son and family (for 15 years according to her evidence) and should go and rent alternative accommodation for himself. All of this against the background of a marriage which – according to the Petitioner's divorce petition – took place in June 2009 and the separation of the parties in April 2009, and with the Petitioner not having performed any household chores for the Respondent or even engaged in sexual intercourse with him for a period of two years, which period is virtually coterminous with the period during which the parties were legally married.
3. There could be no justification for ordering the Respondent to pay any spousal support to the Petitioner while she lives in a house paid for and maintained entirely by him. If she is

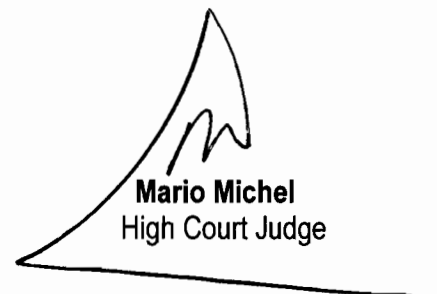
genuinely in fear of physical and/or verbal abuse by the Respondent, or for whatever reason decides to vacate the matrimonial home, she would be entitled to some spousal support from the Respondent for a period of time, the quantum of which spousal support should be equivalent to the amount that she says is paid for rental of the apartment which she considers is adequate for the Respondent, his daughter and the mother of his daughter (\$750 to \$800 per month), together with the total amount claimed by her for payment of utilities (\$260 + \$140 per month).

4. The Petitioner and the Respondent have both pledged their love for their son and acknowledged the love of each other for him, but I am not happy with the domestic arrangements of either of the parties, in terms of the care and attention that either is positioned or minded to give to the child. They are both entitled however to have custody of him and neither has disintitiled himself or herself to his custody (both legal and physical). I can only hope that appropriate arrangements can and will be made for proper care and attention of and to him.
5. The current relationship between the Petitioner and the Respondent is very volatile and each is a potential nuisance, annoyance and threat to the other. The Court will not however make any order at this time restraining either of them from returning to or remaining at the matrimonial home, but will make non molestation orders against both of them.

[14] Arising from its review of the evidence and the conclusions reached, the Court makes the following orders:

1. The parties shall have joint custody of the child of the marriage, Imtiaz Tallim, born on 5th July 1999.

2. The Respondent shall pay to the Petitioner the sum of \$1,000 per month towards the maintenance of the child of the marriage until the child shall have attained the age of 18 years or complete his full-time education, whichever is the later, or until further order of the court.
3. The Respondent shall be responsible for the payment of all educational and medical expenses for the child of the marriage.
4. If the Petitioner shall vacate the matrimonial home paid for and maintained by the Respondent, the Respondent shall pay to the Petitioner the sum of \$1,200 per month by way of spousal support on the last day of every month until 31st December 2016.
5. The Respondent is hereby restrained from the following acts -
 - (a) Assaulting, molesting, following, waylaying, making persistent telephone calls to or otherwise interfering with or intimidating the Petitioner;
 - (b) Beating the Petitioner or otherwise visiting physical or verbal abuse upon her.
6. The Petitioner is hereby restrained from the following acts –
 - (a) Interfering with the Respondent or any of his personal belongings or in any way preventing or impeding his access to the matrimonial home at Carnival Gardens in St. John's.
 - (b) Verbally or otherwise harassing the Respondent, physically assaulting him or encouraging any other persons to do so.
7. Each party to these proceedings shall bear his or her own costs.



Mario Michel
High Court Judge