

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

[CIVIL]



Suit No. DOMHMT2007/0020

BETWEEN:-

VIOLETTA LILIUS RICHARDS

Petitioner /Applicant

-and-

JAMES GILDON RICHARDS

Respondent

Appearances: Mrs. Dawn Yearwood-Steward for the Petitioner/Applicant
Mr. James Gildon Richards, the Respondent, in person

2010: 29th November

2011: 29th July

JUDGMENT

[1] **STEPHENSON-BROOKS J:** The parties in this matter were married on the 31st July 1975. At the time of the marriage, the husband was a Police Officer and the wife, a Secretary employed by the Dominica Social Security Board. The wife is 62 years old while the

husband is 57 years old. Since the marriage the husband has qualified himself as a lawyer and is now in private practice and the wife has since ceased to work at Dominica Social Security Board and is currently employed at Dominica Building and Loans Association as a part-time Secretary/Cashier.

[2] The Petitioner/Applicant, (hereinafter the Applicant), in this matter made an application for Ancillary Relief on the 14th November 2007. She seeks the following orders:

- (i) That the Respondent shall pay to the Petitioner maintenance by way of periodical payments for herself;
- (ii) That the Respondent shall pay to the Petitioner such lump sum as may be specified in respect of one half of the equitable value of the former matrimonial home situate at Kingshill and other property at Wesley for the purpose of adjusting the financial position of the Petitioner and the Respondent;
- (iii) A share in the motor vehicle PC345 when determining the matrimonial assets;
- (iv) In the event that the matrimonial home is sold as a consequence of a litigation suit between the Respondent and the Government Housing Loans Board, the Respondent to pay rent for the Petitioner in a sum no less than \$800.00 per month;
- (v) Such further or other relief as may be just;
- (vi) Costs.

[3] The Applicant relied on four affidavits filed in support of her application on the 14th November 2007, 14th December 2007, 25th February 2008 and 11th December 2009, with a total of nine (9) exhibits. The Respondent relied on a single affidavit in response filed on the 20th December 2007. These affidavits and exhibits are to be treated as evidence in chief for this ancillary relief application.

[4] This matter came up for hearing a number of times and various orders were made, including an order from Cumberbatch J for a confirmed settlement proposal to be filed and for a valuation of properties owned by the parties. These orders were complied with. There was no settlement despite efforts so to do.

[5] On 29th November 2010, the matter came up for hearing and the Respondent declined to cross examine the Applicant on the averments made in her four affidavits so the contents thereof remain unchallenged. The Respondent was cross examined at length by Mrs. Yearwood Stewart, Counsel for the Applicant.

[6] The parties were ordered to make written submissions to the Court which submissions with authorities were filed on the 30th December 2010 and 6th January 2011. I will now render my decision.

[7] At the outset of the proceedings the following fixed assets fell to be considered in the division of property:

- (a) The matrimonial home located at Lot 4, Kingshill in the parish of St George registered in the name of the Respondent, James Gildon Richards;

(b) Property located at Wesley registered in the name of J. Gildon Richards;

(c) Motor car registration number PC345 registered in the name of Gildon Richards;

[6] The Respondent has offered to transfer ownership in motor car registered as PC345 to the Applicant or to pay her the value of same and the property at Wesley, formerly owned by the Applicant's father, Martin Luther Harry and registered in his name to the Applicant and to pay one third of the equitable value of the matrimonial home to the Applicant, who must vacate the upper flat of the said premises which she now occupies.

[7] Should the Applicant vacate the matrimonial home, the Respondent has also offered to pay one half of rental accommodation for her with a ceiling of EC\$400.00. He has also offered to pay the sum of EC\$3,725.00 towards the costs of surgery which the Applicant is required to undergo.

[8] The Respondent has stated that he is unable to make the maintenance payments as asked.

ISSUES:

[1] Maintenance for the Applicant. Should the Respondent be ordered to pay maintenance to the Applicant?

(a) Income and earning capacity of the Applicant:

[9] The Applicant is a 62 year old retiree who is currently employed as a part-time Secretary at the Dominica Building and Loans Association with a net monthly income

of EC\$960. At her age it can be assumed that she would not be working much longer, and even if she does, it is unlikely that her employment would change substantially any time in the future. Her income is to be augmented by a pension that she is now qualified to receive from Social Security.

[10] Her basic monthly expenses have been stated in her affidavit as \$1280.00. She admits that her daughter who lives with her contributes to the utilities. Be that as it may, her stated expenses did not take into consideration things such as clothing, medication and such expenses.

[11] The Applicant admitted to receiving redundancy payments from the Dominica Social Security Board in the sum of EC\$90,000.00, and this was during the course of the marriage, but avers that these monies have been dissipated over the years in her meeting various expenses- such as the educational expenses for the children of the marriage and also the Respondent's educational expenses.

[12] It is to be noted that even though he was given the opportunity, the Respondent refused to cross examine the Applicant and save for what he has attempted to refute and deny in his single affidavit in response, the Applicant's evidence is uncontroverted and accepted by the Court.

[13] The Applicant has stated that she has no savings at this time.

(b) The income and earning capacity of the Respondent:

[14] The Respondent is a 57 year old Attorney in private practice who has, in his evidence before the Court, attempted to paint the picture that he is strapped for cash, that his expenses are more than his income and that in the circumstances he is unable to make any maintenance payments to the Applicant. The Respondent also states that his assets too have been dissipated as a result of his meeting the educational expenses of his children and for himself.

[15] Under cross examination, Mr. Richards said that, "I make an average salary of EC\$6,500.00". Mr. Richards also in his affidavit sworn in reply to the application for ancillary relief says that he receives a pension from the Police Force in the sum of EC\$1,193.00.

[16] The Respondent has failed to furnish this Court with what his daily living expenses is and the Court could only look at the personal living expenses of the Applicant to possibly hazard a guess as to what the Respondent's personal living expenses are. He has also made references to loans but has not furnished the Court with what his loan repayments are.

(c) The Matrimonial Home:

[17] The matrimonial home which comprises a single building with two separate and distinct apartments is located at Lot 4, Kingshill. The Applicant currently occupies the top flat and the Respondent occupies the bottom flat.

[18] There is no dispute that the building is to be considered as the matrimonial home to which the Applicant has an interest. The Applicant is asking for a fifty percent share in

the property and the Respondent is offering thirty percent with the proviso that the Petitioner Applicant vacates the premises. The Applicant is reluctant to so do.

[19] The Applicant's evidence is that the matrimonial home was valued at EC\$354,390.00 by Mr. Ian Williams, a Licenced Land Surveyor.¹

[20] It is worth noting that all of this is against the background that the said parcel of land and house is currently the subject matter of Court proceedings between the Respondent and the Government Housing Loans Board and that there is the likelihood that the said property could be sold pursuant to these proceedings.

[21] The questions to be considered are:

- (i) What is the entitlement of each of the parties as it regards their respective interests in the matrimonial home?
- (ii) Should an occupation order be made in favour of the Respondent or should the Applicant be allowed to continue occupying the top flat of the matrimonial home and if so should a property adjustment order be made to reflect joint ownership of the property?
- (iii) Should the Respondent be ordered to pay rent for the Applicant in the sum of at least EC\$800.00 in the event that the matrimonial home is sold as a result of the litigation between the Respondent and the Government Housing Loans Board?

¹ See Affidavit of Violetta I Richards dated and filed 11th December 2009 at paragraph 2 exhibit "VLR 9"

[22] The land where the matrimonial home was built according to the Applicant was bought by the parties and registered in the sole name of the Respondent. The house was built around 1984, a loan was taken from the Government Housing Loans Board to facilitate the building.

[23] The Applicant contends that she made a direct contribution to the acquisition of the matrimonial home in that she used information garnered from her position as Secretary to the Board of Directors of the Dominica Social Security to secure the loan to build. This of course was denied by the Respondent who contended that it was he who secured all the funding to build the matrimonial home. I accept the Applicant's evidence and note that her evidence is in fact unchallenged by the Respondent.

The family finances:

[24] The Applicant contended that she worked at the Dominica Social Security Board from 1975 to 2001, as Secretary to the Board of Directors, for a salary which started out at \$135.00 and ended in \$3,250.00.

[25] That she paid all the utilities and groceries whilst the Respondent paid the mortgage. The Applicant contended that she also paid off loans for furniture and some student loans for the Respondent's studies in law. The Respondent denied this and stated in his affidavit that he did not have a loan to finance his legal studies and that the

Applicant did not make any financial contribution towards the costs of his legal studies.²

[26] The Respondent further averred that he took a number of loans from different financial institutions to facilitate the purchase of land at Wesley, to pay for his eldest daughter Pearl's education at both Undergraduate and post graduate levels and also the education of his second daughter and that he also made direct contributions to their expenses also.³ The Respondent also averred that his family who lived abroad also made contributions to his daughter's education and his family locally also sent provisions to his home to assist him locally.

[27] The Respondent also contended that:

- (i) In 1983 he contracted a loan from the Roseau Credit Union for the purchase of the land and the construction of the matrimonial home and he bore full responsibility for repayment of the loan which was fulfilled by monthly installments from his salary;
- (ii) In 1989 or thereabouts he transferred the mortgage from the Roseau Credit Union to the Government Housing Loans Board, and that he obtained further financing to construct the lower flat of the building; that he borrowed initially EC\$132,000.00 and that all payments were made by him from his salary

² Re: Para 7 of the Respondent's affidavit in reply to the Petitioner's application for Ancillary Relief dated and filed the 20th December 2007 (hereinafter referred to as the Respondent's Affidavit).

³ Re: Paras 8,9, 10 and 14 of the Respondent's affidavit.

deductions in the sum of EC\$1,340.14. These payments were continued to be made during his studies abroad.

- (iii) That he also paid the monthly payments for the premiums on the life insurance in the sum of EC\$53.47 and fire insurance in the sum of EC\$88.08. I assume that the life insurance was what is normally termed in banking circles as Credit Life Insurance and that the fire Insurance referred to is the property insurance normally required by lending institutions as part of the security arrangements for mortgages.
- (iv) That he later obtained further funding from the Government Housing Loans Board in the sum of EC\$20,000 and the loan payments of EC\$1,537.14 was made by him via salary deductions.
- (v) That he took a loan for about EC\$30,000.00 from Roseau Credit Union to purchase land in Felicite Hall, Wesley;
- (vi) That in 1999 he obtained further credit from the Credit Union to facilitate Pearl in her legal Certificate

[28] The Respondent stated that he also contributed to the purchase of furnishings for the home but the Applicant's contribution was more than his because he was involved in paying the mortgages and insurance.

[29] The Respondent stated that he provided for his family and that "the Petitioner played a fair part in this regard"⁴

[30] The Respondent contends that the Applicant did receive a severance package from the Dominica Social Security Board in the sum of EC\$90,000.00 and that essentially he is unaware of how she spent it, that in spite of his advice to her to save same she refused and spent it all.

[31] The Applicant presented evidence to this Court, which is accepted, of her taking loans at the bank and her paying the same by way of deductions from her salary. She also presented evidence of monies being expended to repair the roof of the house at Kings Hill and of payments made at various times to the bank for loans. I find as a fact that the Applicant made financial contributions to the family expenses during the course of the marriage which are to be taken into consideration.

[32] "When deciding how matrimonial property ought to be divided, the Court has to consider the matters as set out in Section 25 of the Matrimonial Causes Act 1973 which are:

- "(a) 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;*
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*

⁴ Paragraph 6 of the Respondent's Affidavit

- (c) *the standard of living enjoyed by the family before the breakdown of the marriage;*
- (d) *the age of each party to the marriage and the duration of the marriage;*
- (e) *any physical or mental disability of either of the parties to the marriage;*
- (f) *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 your family;*
- (g) *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;*
- (h) *in the case of proceedings for divorce or nullity of marriage, the value of 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."*

[32] It is trite law that when a wife looks after the home and the family, she is considered to have contributed as much as if she pays the mortgage. Her contribution is considered as contribution in kind. She is entitled to a share after she looks after the home and family for years in the same way as the wife who makes substantive money and contributes.⁵

[33] In the case at bar, the Applicant did not make any direct mortgage payments, however, she did make contributions towards the home in kind, in that she looked after the family. She described herself as the primary care giver for the children and her earnings, both her monthly income and her gratuity, were utilized in the payment of the utilities, groceries, acquisition of the furniture and some of the student loans for the studies of the children of the family and the Respondent himself.

⁵ Watchel –v- Watchel [1993] 1 All E R 829 @838-839.

[34] It is the Applicant's evidence before this Court, which is accepted, that she also took various loans whilst the Respondent was pursuing his studies to meet the various financial commitments of the family.

[35] I do note that during the period 2001 and 2007 the Respondent was responsible solely for all the expenses as the Applicant was then unemployed. However, during that period that Applicant continued to look after the home and during this period she used up her gratuity which she had received from the Dominica Social Security Board.

[36] In making its calculation the Court is obliged to take into consideration the matters as set out in section 25 (as quoted above).

[37] In the circumstances of this case, having accepted the uncontroverted evidence of the Applicant; and taking into the consideration the evidence of the Respondent; and the factors as set out in section 25 and the authorities cited by Counsel⁶; I find that the Applicant is entitled to one half share in the matrimonial home. It should be noted that I have also taken into consideration the fact that the Applicant has also taken care of some repairs to the building, as it affected her occupation of the upper flat of the house.

⁶ Watchel –v- Watchel (op cit), White –v- White (Op cit), The Matrimonial Causes Rules and Act and the excerpts from Raydon on Divorce.

[38] This, however, is not the end of the matter. I am compelled to view the situation broadly, and to look at the entire circumstances of the case, in an effort to ensure that justice is done and to achieve a fair division of the matrimonial assets.

[39] The Respondent has during the course of this matter offered *inter alia* to:

- (i) Pay \$3,725.00 towards the surgery which we are told that the **Applicant has to undergo;**
- (ii) To transfer land at Wesley to the Applicant { two portions};
- (iii) To pay to the Applicant \$10,000.00 representing the value of the car that the Respondent now drives that the Applicant is seeking an **interest in;**

[40] I am also compelled to look at the status quo of the matrimonial home. The Applicant lives on the top floor and the Respondent on the lower floor. There is clearly a lot of acrimony between these two people and I do not see them continuing to live like that peacefully. I note the complaints that both parties have made regarding their occupation of the property. I have concluded based on the evidence before the Court that both parties cannot continue living together on the premises.

[41] I also have to consider that the property is the subject of High Court proceedings between the Respondent and the Government Housing Loans Board which could possibly result in the house being foreclosed and sold at public auction. I would say here that should the property be sold at public auction both the parties will be without a home and would, in fact, only have an interest in whatever difference there is between what is owed on the

mortgage and what the sale would realize. There is also to be considered that both parties would be without a home.

[42] The Respondent has also offered pay one half of the rent for premises, should the Respondent move to rented premises. This offer he has capped off at EC\$400.00.

[43] I am of the view, that it is clear, that one of the parties would have to vacate the matrimonial home. In the event that they both refuse, I would have to resort to order that the said home be sold and the mortgage paid and that the balance be divided between the parties. In all of the circumstances, I am also compelled to look at the age and earning power of the two parties. In this instance the Respondent is five years younger than the Applicant and she is a retired person in part-time employment with the hope of soon collecting a pension.

[44] The Respondent is an Attorney at Law in private practice with an average income he says of EC\$6,500.00. I am to also take into account the Respondent's indication that he intends to move on with his life.

[45] I find that both of these parties are entitled to enjoy the sunset of their years and should do so in peace. I am also aware that the Applicant should be allowed to live in the style and manner that she has grown accustomed to in the 37 years of her marriage.

[46] I find that the Applicant is entitled to forty percent of the value of the house as I have taken into account his offers in arriving at this decision and given him credit for same.

[47] It is clear from the evidence before the Court that the Applicant is not in a position to pay the Respondent for his share of the home and I am of the view that she should vacate the matrimonial home. However, the Respondent will have to pay her forty percent of the current value of the house which would be forty percent of \$354,390.00⁷, to allow the Applicant to acquire alternative accommodation.

[48] The Applicant will not have to vacate the home immediately, but pending the outcome of the litigation involving the Government Housing Loans Board, within three months of the ending of that matter.

[49] In the event that the said property is sold as a result of the current litigation before the Court, the Respondent will have to pay the rental accommodation of the Applicant, in similar accommodation to the one that she is now occupying. I think that would be a reasonable time frame especially in light of the fact that she has to find alternative accommodation.

⁷ The stated value of the house as per the valuation of Mr Ian Williams Licenced Land Surveyor see Exhibit VLR9 of the Applicant's affidavits.

[50] My order therefore is as follows:

- (i) That the Applicant is entitled to forty percent [40%] of the value of **the matrimonial home located at Kings Hill.**
- (ii) Should the Court order that the said matrimonial home be sold in Suit number DOMHCV 0201/ 2006 (Government Housing Loans Board –v- Gildon Richards & the Attorney General), the Applicant is **to vacate the said home within three months of the said order and** the Respondent is ordered to pay half [$\frac{1}{2}$] of cost of the rental accommodation capped at EC\$650.00 similar to the accommodation currently occupied by the Applicant.
- (iii) **In the event that the said matrimonial home is not ordered sold, the** Respondent is to pay to the Applicant forty percent [40%] of EC\$354,390.00 being the value of the matrimonial home located at Kings Hill, Dominica. In the event that the Respondent makes this payment the Applicant is to vacate the matrimonial home within three months of said judgment.
- (iv) The Respondent will pay EC\$3,725.00 towards the Applicant's surgery.
- (v) The Respondent will transfer to the Applicant all his interest in property registered in his name and located at Wesley in the parish of St. Andrew.

(vi) The Respondent will pay to the Applicant the sum of EC\$10,000 being the value of motor car PL345 registered in the name of Gildon Richards.

(vii) And costs in the sum of EC\$1500 in favour of the Applicant.

[51] I wish to thank Counsel for their assistance in this matter


M E Birnie Stephenson Brooks
High Court Judge