

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

COMMONWEALTH OF DOMINICA

DOMHCV2003/032

BETWEEN:

JEFFERY CHARLES

Petitioner

and

LOVETTE CHARLES

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs.Zena Dyer for the Petitioner

Mrs. Dawn Yearwood-Stewart for Claimants

JUDGMENT

2011: May 9th

June 2nd

November 29th

[1] COTTLE J: The parties were married on 12th April 1980. The petitioner was then aged 30 and the Respondent aged 20 years. The union produced five children, all of whom are now adult.

Unhappy differences arose between the couple. A petitioner for divorce was filed and the union was dissolved in 2004.

- [2] An application for ancillary relief was heard before Baptiste J. (as he then was). The order of the learned trial judge was appealed and the Court of Appeal in April 2010 remitted the matter for hearing in the High court.

This is that re-hearing.

- [3] The Petitioner is a bus driver. The respondent is a shop keeper. It is the Respondent wife who makes the application for ancillary relief. She seeks a property adjustment order, maintenance for herself, lumps sum payment and costs.

The Real Property

- [4] Before the marriage, the Petitioner says he acquired three parcels of land

- (1) The Disco property – 29,775 Square feet of land with a building on it.
- (2) "Cocoa" containing 6.80 acres
- (3) "Craig" 10.05 acres

At the time of the hearing the Petitioner had sold the 'Cocoa' property but retained the others.

The Petitioner's income

- [5] In his affidavit of means, the petitioner says his monthly income is \$23,000. This is made up of \$20,000 from operating a grocery shop and \$3,000 from running a passenger bus. He swears that his monthly expenses amount to \$18,268.00, leaving him with \$4,732. He goes on to say that of the balance, he uses \$4,500 to replenish his stock in his shop. In effect he has only \$232.00 per month to cover unforeseen expenses such as medicals bills.

The Respondent's income

- [6] In her affidavit of means, the Respondent says that she earns \$4000.00 per month from the sales in her shop. Her monthly expenses are \$1,217.15. She then uses the balance of \$2,782.85 to restock her shop. She has no savings.

She is the owner of a parcel of land at Marigot measuring 2.4 acres. This was given to her in 1993 by her grandfather. It is vacant land valued at \$99,600.

Other Property

- [7] Despite the requirement that parties make full and frank disclosure in the affidavit of means, certain matters arose on cross examination. The petitioner, who has remarried, has a Toyota Harrier Sports Utility Vehicle registered in his name. He says it really belongs to his wife who now works in his shop.
- [8] The petitioner owns a bus which is used to transport school children. He has a contract with the North Comprehensive School. He operates a bus transporting people between Marigot and Roseau. He also operates as a tour bus driver for passengers from cruise ships. He is constructing a large house at Dam, Marigot. He says it contains five bedrooms. It is a two storey building. This property is encumbered to the Credit Union. The petitioner says the land was given to him by his mother and is registered in the joint names of himself and his wife. It emerged that the petitioner has three buses operating. These vehicles are all registered in his name only.
- [9] While the parties were married, they lived at the home of the mother of the Petitioner. He says that he used to host functions at the disco and generated \$4,000 per month.
- [10] According to the wife the parties began a relationship while she was a teenaged school girl. She became pregnant with their first child. She had to leave school. She says that throughout the marriage, she assisted in the cultivation and harvesting of bananas. She cooked for the five children. She managed a shop which she received no salary. The income from the shop was used to maintain the home and purchase properties.
- [11] The husband denies that the wife assisted in the cultivation or harvesting of bananas. For the most part she was "just a housewife". His mother gave the couple a fully stocked shop which the wife ran. She retained the income from the shop.
- [12] From the available documentary evidence, it appears that the husband purchased the land on which the disco stands in 1983. A deed of Conveyance shows this. It is to this disco that the wife and children moved when the marriage began to deteriorate.
- [13] In making an order in this matter this court must look at all of the circumstances of the case including those laid out at section 25 of the Matrimonial Causes Act. But at this stage, I wish to emphasize the behaviour of the husband. He embarked on a campaign to get the wife out of the disco property. He had the roof removed. Under cross examination he tried to convince the court that it was his sister who hired men to remove the roof. He says he was merely a spectator. I reject this. The property is registered in his name. He would not just stand by and watch as strangers destroyed the roof of his building.

- [14] On another occasion he stormed the building. The wife had to approach this court to get a restraining order against the husband. When this ploy failed to bear the fruit the husband desired, he took a loan from the Dominica AID Bank. He encumbered the disco to secure this loan. He says he used the proceeds of the loan to buy a truck. He does not service that loan and as a result the bank has embarked on foreclosure proceedings. Despite this debt, the husband sold the Cocoa lands for \$210,000, none of which he applied towards settling the bank debt. Instead he gave money to his mother. He paid his lawyers. He has since embarked on the construction of a new home at Dam in Marigot for which he was able to secure financing. It is unclear what has become of the truck he bought.
- [15] From the foregoing it is clear that the husband is a man of means who is deliberately taking steps to drive his wife out of the Disco property or to have it sold by the bank so as to force her out. He retains property at Craig and says that he is permitting people to farm it rent free. He is willing to transfer 2 acres to the wife but says he has no money to make a lump sum payment.

The Submissions

- [16] Counsel for the wife submits that this is an apt case in which an order that the husband make a lump sum payment to the wife should be made. Despite his protestations the husband has been able to finance the purchase of a Toyota Harrier for his new wife who earns no income. He has been able to secure financing to build a large house at Marigot. Counsel estimates his net worth to be more than one million dollars. A lump sum payment of one third of this is advocated. It must be borne in mind that if the Disco property is vacated by the wife, she can no longer run the shop there as a source of income.
- [17] Counsel for the husband urges the court to make no award. The wife did not contribute to the acquisition of the real property. She has trespassed on the disco and occupied it without accounting to her husband for income earned from it. The argument is that she has become unjustly enriched thereby. The wife is ten years younger than the husband. He has remarried and has significant debts while the wife has a lover on whom she can rely. It is also said that the husband's weak financial position precludes the payment of any lump sum.

With respect, this argument by counsel emphasizes the persistence of the pernicious fallacy that domestic contributions such as raising a family are of less import than the money earning commercial enterprises of the husband. Why should the wife not share in the benefits of the husband's success when, had his ventures failed, she would have had to jointly endure the penury?

- [18] The dilemma which faces the court is to determine what would be a fair order in the circumstances. This dilemma is exacerbated by the failure of the husband to make full and frank disclosure of his available assets and income. The court is left to draw inferences. Based on the fact that the

husband has been able to secure substantial loan financing (despite the fact that he currently does not service one loan) this court feels convinced that the husband has substantial means which he is failing to disclose. The court must also consider that the wife too is not without means.

[19] In the circumstances the court will not make a property adjustment order. Instead I will direct that the husband pays the wife a lump sum payment of \$200,000 in full settlement of all matters of ancillary relief. I base this amount on my best estimate of the available resources of the husband. If I err on the high side it is only because the husband has seen it fit to conceal from the court the true extent of his assets. I also take into account the fact that the wife is not without resources herself and the husband will have a new family to maintain.

[20] Upon payment of this amount the wife will vacate the disco property within 30 days of receipt of payment. Should the husband fail to pay, the wife is at liberty to apply to the court for sale of the real estate to satisfy this order. The husband will pay the costs of this application in the sum of \$4000.00

His Lordship Brian Cottle

High Court Judge