

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE (DIVORCE)

CLAIM NO. GDAHMT 2009/0152

BETWEEN:

LINDA MONICA JOHNSON

Petitioner

and

KEITH EARLE JOHNSON

Respondent

Appearances:

Mrs. Celia Edwards, Q.C for the Petitioner

Ms. Claudette Joseph and Mr. Ian Sandy for the Respondent

2014: March 5; June 10.

JUDGMENT

[1] **MOHAMMED, J.:** The Petitioner ("the Wife") and the Respondent ("the Husband") were in a relationship from 1979 to 2004. They were married in 1992 and eventually after the Wife left the Husband in 2004, she petitioned the Court for a divorce in 2009, which was pronounced absolute in April 2012. Their union produced five children, but for the instant application section 41 of the Matrimonial Causes (UK) Act, 1973 as amended ("the MCA") is applicable to one child, Kweisi Johnson ("Kweisi").

[2] The Wife has applied for a property adjustment order, a lump sum payment of \$150,000.00, custody of Kweisi, maintenance in the monthly sum of US\$600.00 for Kweisi, and costs of the application ("the instant application"). Kweisi turned 18 years in April 2014 so the issue of custody is now moot, and I was satisfied from the evidence that once he is pursuing undergraduate tertiary education the Husband is to continue to pay the monthly sum of US \$600.00 and maintenance

for him. For this reason I will not address this as an issue. The parties' position with respect to the property adjustment and lump sum payment are different. Before the hearing of the instant application valuations of the properties were obtained and the parties have not disputed the sums. The Wife has listed the properties which, in her view, consist of the matrimonial property namely:

- (a) The matrimonial home situated at Village Road, St. Andrew's ("the matrimonial home") valued at \$460,000.00.
- (b) The commercial building situated at Albert Street, St. Andrew's, owned by the Husband and his aunt ("the Albert Street property"), valued at \$470,000.00.
- (c) The parcel of land situated at Cook Hill Road, St. Andrew's ("the Cook Hill Road property"), valued at \$240,000.00.
- (d) The property situated at Levera (Bathway), St. Patrick's ("the Levera property"), valued at \$360,000.00.
- (e) The property situated at Gladstone Road, Grenville, St. Andrew's ("the Gladstone Road property"), valued at \$520,000.00.

[3] Although the Wife did not list a property situated at Simon, St. Andrew's ("the Simon property"), valued at \$117,000.00 as part of the matrimonial assets, in her closing submissions she has asked that its value be considered as part of the total value of the matrimonial property. I will address the Simon property later.

[4] The Wife does not seek an interest in all the properties but instead she only requested a 50% interest in the matrimonial home and the Levera property respectively, and 100% of the Gladstone Road property. In her view, the total value of the matrimonial property is \$1,951,000.00 (including the Simon property). The value of the property adjustment order she seeks is \$930,000.00.

[5] While the Husband also asked the Court for a property adjustment order, he has put two different options to the Court, namely for him to pay the Wife the sum equal to 50% of the value of the matrimonial home less the total outstanding mortgage or to pay the Wife a lump sum of \$350,000.00 in full and final settlement of these proceedings. It is his position that because the Wife has not asked for an

interest in the Albert Street property, the Cook Hill property and the Simon property that they should not form part of the property adjustment order.

- [6] Each party filed one affidavit in support of his/her position and was cross-examined at the trial.
- [7] Based on the parties position, the issues which arise for determination are:
- (a) Do the Albert Street property, the Cook Hill property and the Simon property form part of the matrimonial assets?
 - (b) Is the Wife entitled to 50% of the matrimonial home and the Levera property respectively and 100% of the Gladstone Street property?
 - (c) Is the Wife entitled to a lump sum payment of \$150,000.00?
 - (d) Should the Husband bear the Wife's costs of the instant application?

Do the Albert Street property, the Cook Hill property and the Simon property form part of the matrimonial assets?

- [8] The approach to be adopted by the Court in determining whether property form matrimonial assets was set out by Lord Nicholls in **White v White**¹ as:

“...property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated the same way. Property acquired before marriage and inherited property acquired during the marriage come from a source wholly external to the marriage. In fairness, where this property still exist, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding the matrimonial property.

43. Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a

¹ [2000]UKHL 54 at paragraph 42

case where the claimant's financial needs cannot be met without recourse to this property."

- [9] According to the Husband, the Albert Street property was purchased jointly with his aunt in December 1996 from money provided by his aunt who resided in England at the time. The pharmacy which is situated on the property is owned jointly by the two of them and they share the income. He states that it makes about \$60,000.00 a year and there are two staff members, a pharmacist and another worker who are paid \$2,200.00 and \$1,200.00 per month respectively. He denies that it is a lucrative venture but he admitted that it helps supplement his income. In his affidavit he has stated that he earns approximately \$3,000.00 per month from the pharmacy. Under cross-examination he admitted that he has used the money earned from the pharmacy on one occasion as a part payment to purchase a car for the Wife and on another occasion to pay his mortgage.
- [10] The Wife's evidence on the Albert Street property was very bare. She acknowledged that the Husband and his aunt purchased the land in December 1996 and started the pharmacy. She admitted that she had no knowledge of the business but she was aware that it was popular.
- [11] In my view only the Husband's 50% share of the Albert Street property constitute part of the matrimonial assets for three reasons. Firstly the Wife acknowledged that it was purchased and owned jointly by the Husband and his aunt. Secondly, it was purchased by the Husband during the first few years of the marriage and thirdly, the Husband has not denied using income from the pharmacy to supplement his income to provide for this family. The value of this asset for the purpose of the instant application is \$235,000.00.
- [12] The Cook Hill Road property was acquired by the Husband in 1999, some 7 years after the marriage. It is situated at the back of the matrimonial home and it was mortgaged to finance one of his children's tertiary education in 2013. In my view it forms part of the matrimonial assets.

[13] The Simon property, which is agricultural land, was acquired by the Husband before the marriage and was disclosed by the Husband. He earns \$500.00 a month from farming the land, which he indicated supplements his income. This was unchallenged by the Wife. I agree with Counsel for the Husband that the Simon property does not form part of the matrimonial assets for the following reasons. It was acquired by the Husband before the marriage. Unlike the land on which the matrimonial home was built, there was no evidence that the Simon property played a central part in the marriage. In my view, the Wife ought to have been aware of the Simon property but by not listing it as one of the properties in her application, I have concluded that she did not consider it to be part of the matrimonial property since it was purchased before the marriage. It is therefore unfair to the Husband to allow the Wife to now include it as part of the matrimonial property in her closing submissions, when by not making a claim to it, the Husband was led to believe that she did not consider it to be part of the matrimonial property. I therefore exclude the Simon property from the matrimonial property.

[14] In light of my aforesaid findings, the total value of the matrimonial property is \$1,815,000.00.

Is the Wife entitled to 50% of the matrimonial home and the Levera property respectively and 100% of the Gladstone Road property?

[15] To determine the division of matrimonial assets the Court is guided by the following factors set out in Section 25 of the Matrimonial Causes Act 1973 ("the MCA"):

- (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.

- (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 made by looking after their home or caring for the 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 to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

[16] There was no evidence with respect to items (e) and (h) so I will not address them.

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.

[17] The Wife is presently 54 years old. She resides in New York where she works as a teaching assistant. Her monthly income is approximately US \$2,000.00 which she supplements by tutoring students on Saturdays. From this she earns an additional \$160.00 per month. Although the Husband challenged the Wife's income, I found her evidence to be credible since he failed to substantiate his challenges.

[18] The Wife started teaching in Grenada since 1993 at a monthly salary of approximately \$1,000.00 and continued teaching until she departed the jurisdiction in 2005. By that time her salary had increased to about \$1,500.00 per month. Although the Wife is middle age and has meagre financial resources, she stated that she has a student loan which implies that she is undergoing a course of study. Based on the evidence, the Wife earns an income of US \$2,000.00 per month with an income earning capacity of US \$24,000.00 per annum and the potential to

become a teacher in New York with a corresponding increase in income and to continue tutoring since there was no evidence of any physical or mental impediment on her part.

[19] The Husband stated that the Wife was given a parcel of land situated at Seaton James Street, Grenville by her mother, which she has not disputed. She has failed to disclose information concerning her savings in any financial institution either in Grenada or where she resides in New York or if she is entitled to receive a pension either from her teaching service in Grenada or in New York.

[20] The Husband is also 54 years old and he too, was a teacher at first. In 1986 he qualified as a medical doctor in Grenada where he has continued to work. He presented his monthly income as being derived from five sources, namely salary from Government as District Medical Officer (\$5,841.69); House rental (apartment downstairs the matrimonial home and sporadic rental from the Levera property) (\$1,000.00); Farming (\$500.00); Pharmacy (\$3,000.00) and private practice (\$7,000.00). His total stated monthly income is \$17,341.69 and after expenses he has an excess of \$3,000.00. He denies that his medical practice is lucrative since his clients are from the rural parish of St. Andrew's. However, under cross-examination he admitted to earning approximately \$9,000.00-\$10,000.00 per month from his private practice. Although not disclosed in his affidavit, he admitted in cross-examination that he had savings in RBTT in the sum of \$88,000.00 and in First Caribbean International Bank ("FCIB") in the sum of \$4,000.00.

[21] The Husband also stated that apart from the Albert Street property which he owns jointly with his aunt, he owns all the other properties which form the matrimonial assets. In total the value of all the Husband's real property is approximately \$1,932,000.00. He stated that he has encumbered the matrimonial home and the Gladstone property since they were mortgaged to FCIB to obtain funds to add the downstairs portion of the matrimonial home from which he earns rent. However, he has failed to provide copies of the deeds of mortgage. Instead, he relies on a statement from the FCIB which, at best, indicates that the monthly repayment is

\$4,172.00. He also stated that the Cook Hill Road property is also mortgaged to finance the tertiary education of his daughter and similarly, he has failed to provide supporting documentation.

[22] Despite the Husband's failure to provide supporting evidence on the mortgages I accept his evidence to the extent of their existence and that the repayment is one of his expenses. However, in the absence of any evidence on the duration of the mortgages and the remaining balance, I consider this to be his responsibility and that the Wife should not be adversely affected in the award of the share of the matrimonial property to her.

[23] Like the Wife, the Husband too failed to provide information to the Court on any future pension that he would be entitled to as the District Medical Officer for the Government.

[24] However, when I critically examine the Husband's evidence on his income, assets and expenses, I have to agree with the Wife that the Husband has additional assets which he has failed to disclose. By his own admission he states that one of his expenses is "Maintenance and gas for vehicles" in the sum of \$1,100.00; however, he failed to disclose the number of vehicles and the value of them. Further, under cross-examination he admitted that he earned between \$9,000.00 - \$10,000.00 per month from private practice which is a total monthly excess of \$5,000.00-\$6,000.00. In my view, his evidence points to a lucrative medical practice. I do not accept that he gave his payslips from the Government and his income tax records to his Counsel to support his contention that his medical practice is not lucrative, since none of these documents were exhibited to his affidavit. He is represented by experienced Counsel who is capable of taking proper instructions and conveying the instructions into writing. In my view, a person with such an excess per month would have more savings than the total of \$92,000.00 which he stated, and it is for these reasons I do not accept his income and earnings.

[25] The duty to make full disclosure to the Court is imperative since it is the only way the Court can be placed in a position to properly exercise its discretion under section 25 of the MCA. Each party has his/her own burden to prove his/her income, earning capacity, property and earnings since this information is in his/her possession.

[26] The consequences of the Court making a finding that a party has failed to make full disclosure of his/her assets was dealt with in **NG v SG**²:

“Where the court was satisfied that the disclosure given by one party had been materially deficient, the court was duty bound to consider, by the process of drawing adverse inferences, whether funds had been hidden. However, such inferences had to be properly drawn and reasonable. It would be wrong to draw inferences that a party had assets which, on an assessment of the evidence, the court was satisfied he had not. If the court concluded that the funds had been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms. In making its judgment as to quantification the court would first look to direct evidence such as documentation and observations made by the other party. The court would look at the scale of business activities and at lifestyle. Vague evidence of reputation or the opinions or beliefs of third parties was inadmissible in the exercise. The technique of concluding that the non-discloser had to have assets of at least twice what the claimant was seeking should not be used as the sole metric quantification. The court must be astute to ensure that a non-disclosure should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth was told”.

[27] In my view both parties have failed in their duty to make full and frank disclosure. The Wife's failure is unacceptable to this Court since even if she has no bank accounts and is not entitled to benefits, she had a duty to indicate this. Further, by not denying and indeed remaining absolutely silent on the ownership of the property at Seaton James Street, Grenville, I conclude that she is indeed the owner of the said property. By remaining silent the only conclusion that this Court can draw is she has deliberately withheld information in order to paint a picture of financial desperation, and I was not so convinced.

[28] Likewise, the Husband was no better. He disclosed information to paint him as giving full disclosure when indeed his evidence points that he has not disclosed all

² [2011] EWHC 3270 at paragraph 16

his assets. I find that he has a monthly income closer to \$20,000.00 and not \$17,000.00 and he has savings in excess of \$92,000.00. I am also of the view that he also has access to funds more than the sums disclosed as the matrimonial assets and the savings in his bank accounts to satisfy the award to be made by the Court. He also has a potential to earn significant income from his profession, the pharmacy, rent and even from farming in the future.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

[29] At present the Wife's monthly expenses consist of her living expenses and the monthly sum of \$100.00 she provides to the child of the marriage, Kweisi. Her total monthly expenses are \$2,261.00. She acknowledged that the Husband provided US \$1,000.00 every three months, which changed two years ago to US \$600.00 per month to maintain their minor children and now Kweisi. However, with an income of a little over \$2,000.00 per month she still has a deficit after paying expenses and has no income to save for the future. Although the Husband disputed the Wife's expenses, I accept the sums set out by the Wife since the Husband conceded some of her expenses under cross-examination. At present the Wife is paying rent. In my view, her most important future need would be to acquire a place as a home.

[30] The Husband's present monthly expenses are extensive, being \$14,492.14. I accept his expenses but I have noted that he can still afford to employ a housekeeper at \$600.00 per month. In my view, his future income can more than cover his future expenses and his future needs are minimal since he already has a home and several other properties and savings. His income can also cover his future financial obligations to the two children he has, who were not children of the marriage and who are now 11 years and 5 years respectively.

The standard of living enjoyed by the family before the breakdown of the marriage.

- [31] The parties enjoyed a relatively comfortable middle-class lifestyle before the breakdown of the marriage. Both parties were employed and were able to employ a housekeeper to assist with the household duties from Monday to Friday. The Husband was able to acquire most of the properties which consists of the matrimonial assets during the marriage. He was able to obtain loans to purchase them and repay the loans while maintaining the family.

The age of each party to the marriage and the duration of the marriage.

- [32] Both parties are 54 years. They both acknowledged that they started their relationship in 1979 at the age of 19 and they were married in 1992 at the age of 32. By the time they got married their relationship had produced three children. However, between the period 1979 and 1992 they were not in a period of continuous cohabitation. Between 1980 and 1984 they were in a long distance relationship since the Husband was studying in Cuba. They separated in 1984 and resumed their relationship in 1988 at which time the Wife was residing in the United States of America. They eventually separated in 2004 but in 2002 there was another separation. In **GW v RW**³ Nicholas J assessed how the Court should assess the duration of a marriage. He summed it up as:

“...I cannot imagine anyone nowadays seriously stigmatizing pre-marital cohabitation as ‘living in sin’ or lacking the quality of emotional commitment assumed in marriage. Thus in my judgment where a relationship moves seamlessly from cohabitation to marriage without any major alteration in the way the couple live, it is unreal and artificial to treat the periods differently. On the other hand, if it is found that the pre-marital cohabitation was on the basis of a trial period to see if there is any basis for the later marriage then I would be of the view that it would not be right to include it as part of the ‘duration of the marriage’.”

- [33] I find that the period before the parties were married cannot count in the duration of the marriage since there were at least two periods of separation which in my opinion count as periods of estrangement which interrupted their pre-marital

³ [2003] 2 FCR 289 at para 33

cohabitation. In my view it would be unfair to include the period after separation in 2004 in the duration of the marriage since the parties were leading separate lives by 2004 although it took them some eight years afterwards to formally be legally separated. I therefore find the duration of the marriage based on the evidence to be 12 years which I consider to be medium term since it was neither short nor long.

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 made by looking after their home or caring for the family.

[34] It is not in dispute that both parties worked during the marriage where the income from the Husband was greater than that earned by the Wife. The Husband paid the mortgage for the matrimonial home and he used his funds to acquire all the properties during the marriage with no financial contribution from the Wife. He also paid the other loans for the said properties. Both parties agreed that the four adult children have all done well in their adult life.

[35] However, the Wife stated that she paid several of the bills such as the telephone, internet, gas, bus fare for the children and other miscellaneous school allowances for the children. Even in the latter half of the marriage she agreed that the Husband paid some of the bills but she still continued to assist with the payment of some bills. Under cross-examination she stated she spent approximately \$300.00-\$500.00 per month on the bills. She acknowledged that the Husband purchased the food for the family which the Husband confirmed since he had an account at RE Walker Supermarket. She acknowledged that although the Husband furnished the matrimonial home, she contributed to the furnishings since she borrowed \$10,000.00 from NCB, Grenville, which she used to purchase a cooker, washing machine, refrigerator, curtains and carpet. After the Wife migrated she acknowledged that the Husband first provided the sum of US \$1000.00 every three months for the children and from two years ago the sum of US \$600.00 per month, but she still had to provide for Kweisi's school allowances.

- [36] The Wife also acknowledged that she had a maid, who worked from Monday to Friday to assist her with some household chores such as cleaning and the laundry. However the Wife did the cooking and remained responsible for looking after and caring for the children. In a large part, this evidence was not contradicted by the Husband. I therefore accept the Wife's evidence and find that she had help with the household chores but she bore the significant responsibility in caring for the children.
- [37] The Wife admitted that she did not make a financial contribution to the Levera property but she cleaned and transported guests who were staying at the Levera property. However, she did not state how often she did the cleaning and transportation and due to the lack of these particulars of her evidence on her own non-financial contribution, I find that it was minimal. Further, I accept her evidence that her non-financial contribution to the acquisition of the Gladstone Road property was limited to her father indicating to the Husband that it was for sale. However, while I find that her role was important in its acquisition, I also find that it was minimal.
- [38] The Husband being the main income earner in the family bore the corresponding financial responsibility. He purchased the food and provided most of the furnishings for the matrimonial home. His enterprise was such that he took a loan to purchase a small truck to transport the material and contracted a builder to construct the matrimonial home. He used \$100,000.00 of his own funds and borrowed \$100,000.00 from the bank to finance construction of the matrimonial home. This was not challenged by the Wife. He, too, paid some bills for the matrimonial home such as the telephone, electricity, water and bus fare for the children. He also paid for the maid.
- [39] He admitted the Wife purchased some furnishings for the home but insisted that he, too, used \$20,000.00 he saved from the loan to build the matrimonial home to furnish it. Even when the Wife moved out of the matrimonial home to live in Grand Bras, he stated he paid rent of \$800.00 per month, paid the grocery bill and provided funds for bus fare.

[40] The Husband also stated that he paid a loan to finance the undergraduate studies of his daughter, Karina, for five years while she pursued studies abroad. He mortgaged the Cook Hill Road property to facilitate a student loan for the said daughter's benefit, and in June 2013 he took it over and he only stopped when she earned her first month's salary, since that was their agreement. The monthly loan was \$1,000.00. He has also paid for tuition for Kazelle in the sum of US \$9,485.00 and has made regular contribution for Kazelle's education.

[41] I have found that although the Wife worked during the marriage, the Husband bore the bulk of the financial responsibility for the welfare of the family while they lived together. This even continued when she moved out of the home and continued to live in Grenada since he still paid for her rent and contributed for transportation. This changed when she left Grenada for the USA and while he still continued with his financial obligation to the children and he assisted his other children with their tertiary education fees and expenses, his contribution to the children from this period was inadequate.

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.

[42] The aspects of the parties' conduct which they have alluded to are the allegations of physical abuse by both the Husband and the Wife and the extramarital affairs. There were allegations of physical abuse by both parties against each other. Indeed, it is surprising to me with the allegations of abuse from each party and the several periods of separation that the marriage lasted as long as it did. I would characterize this relationship as volatile, and in this regard, I am of the view that any physical abuse during this marriage can be disregarded since it seemed to me both parties engaged in such conduct. Similarly, my position with respect to the extramarital affairs is no different. I therefore disregard it.

The Award

- [43] As stated previously, I have found that the total value of the matrimonial property is \$1,815,000.00 and the total value of the property adjustment order which the Wife seeks is \$930,000.00 which is about one-half. However she does not seek the payment of this sum or a corresponding percentage in each of the properties but instead she has cleverly crafted her request to obtain a substantial share in the three most valuable of the matrimonial assets, namely the matrimonial home, the Levera property and the Gladstone Road property.
- [44] However, in my view, her overall contributions to the Levera property and the Gladstone Road property were minimal, and both the matrimonial home and the Gladstone Road property are encumbered. The Husband mortgaged the matrimonial home and the Gladstone Road property before the instant application to the FCIB to finance construction/improvements to the downstairs of the matrimonial home. The effect of the said mortgages is they are a first charge on the said properties and take priority to any order that this Court would make. There was no evidence that the mortgagee FCIB is aware of these proceedings and indeed it was not invited by the Husband, as an affected, to be part of these proceedings, since the order which the Wife seeks impacts on the title to the matrimonial home and the Gladstone Road property. In any event, the mortgage was secured by the Husband and he has been and should continue to be responsible for them. I also agree with Counsel for the Husband that there was no evidence that the Wife, who presently lives in the United States of America, intends to return to Grenada to reside.
- [45] It is for these reasons I am of the view that it would be fair and prudent to order a lump sum payment to the Wife for her share of the matrimonial property, which will give her a clean break. I have noted that one of the suggestions by the Husband was to order a lump sum payment, but I do not share his view on the quantum he has suggested.

[46] In determining the share of the matrimonial assets the Wife is to get, I am guided by the principles laid out in the well-known case of **Miller v Miller**⁴:

“ When marriage ends, fairness requires that the assets of the parties’ should be divided primarily so as to make provision for the parties housing and financial needs, taking into account a wide range of matters such as the parties’ ages, their future earning capacity, the family standard of living, and any disability of either party. Most of these needs will be generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.”

[47] In reviewing the observation that “*husband and wife are now for all practical purposes equal partners in a marriage*” at paragraph 16 Lord Nicholls stated:

“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 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 of equality is to be applied as an aid, not a rule.”

[48] Applying the aforesaid principles to the facts of this application, I find “*there is good reason to the contrary*”. In **GW v RW**⁵ Nicholas J in departing from the equality principle said this on contributions by the parties to the marriage in the context of the duration of a marriage:

“I have to say whatever intellectual route is adopted I find it to be fundamentally unfair to be required to find that a party who has made domestic contributions during a marriage of 12 years should be awarded the same proportion of the assets as a party who has made the domestic contributions for a period in excess of 20 years. I think it is for this reason that Nicholson CJ expressed himself in the way that he did in *Figgins v Figgins*, and that the New York courts have adopted the principle to which I have referred.”

[49] I have not been convinced that the Wife is entitled to one half of the total of the matrimonial assets. In determining the lump sum to be awarded to the Wife I have taken into account the stated value of the matrimonial assets which is \$1,815,000.00. This was a medium-term marriage where there were several periods of separation. The matrimonial property were built up primarily from the contributions of the Husband. It was not a case where the Husband and Wife worked together in a business accumulating the matrimonial property. Indeed,

⁴ [2006] 2 WLR 1288 at para 11 per Lord Nicholls

⁵ [2003] 2 FCR 289 at para 43

although the Wife worked throughout the marriage she made no financial contribution to the acquisition of any of the properties which form the matrimonial assets. Her financial contribution was minimal.

[50] There was no evidence that the Wife forego her career to care for the family since she always was involved in the teaching profession either in Grenada and later in New York. While she was primarily responsible for caring for the children, she had assistance with the household chores, which was paid for by the Husband. Although the Wife is in her mid-50s she still has the potential for future earning, not as much as the Husband whom I have attributed with a far greater earning potential. Her standard of living during the marriage appeared to be comfortable because the Husband bore a significant financial responsibility but at present she can barely cover her expenses.

[51] While the Wife was primarily responsible for nurturing and caring for the children of the marriage I do not find that her role was more significant than the Husband's. I found that the Husband also cared for the children of the marriage by financially supporting them even in tertiary education. In my view, all the children were successful based on the joint effort of both parents who contributed in their own way.

[52] In light of the factors outline above, I am satisfied that based on the needs of the Wife and the income, earnings and value of the Husband's assets, I award the Wife 30% of the value of the matrimonial assets, which I have calculated to be the sum of \$544,500.00. I have not stated the net value since I have excluded the mortgages on the matrimonial home, the Gladstone Road property and the Cook Hill Road property since they were all mortgaged by the Husband for benefits which he primarily derived.

Is the Wife entitled to a lump sum payment of \$150,000.00?

- [53] Having awarded the Wife a lump sum payment in the sum of \$544,500.00 as her share of the matrimonial property. I can find no reason to make an additional award of \$ 150,000.00 as a lump sum payment.

Should the Husband bear the costs of the instant application?

- [54] Based on my order the Husband has effectively lost in these proceedings since I have made an award which is greater than his offer to his Wife. However, the Wife has not succeeded in obtaining what she asked for. I therefore order the Husband to pay to the Wife one third of her costs of the instant application.

- [55] On the issue of costs, it is appropriate that I mention here that on the 20th June 2013 I ordered that the properties set out in paragraph 28 of the Wife's affidavit filed 26th March 2013 to be valued and for the Husband to pay the total costs of the said valuations with the Wife's half share of these costs to be deducted from the final award to the Wife. I have noted that in addition to the said properties, the Simon property was also valued so the cost incurred for this valuation is to also be included since the Wife had requested in her written submissions for this to be included as part of the matrimonial assets. I have not been provided with the costs of the valuations by the Counsel for the Husband but my order for the Wife to pay one half of the costs of the valuations remains unchanged. I therefore order the Counsel for the Husband to provide the costs of the valuations with the appropriate supporting documentation to the Counsel for the Wife within seven days so that the one half of the Wife's cost can be calculated and deducted from the sum to be paid to the Wife.

Order

- [56] The Husband is to pay to the Wife 30% of the value of the matrimonial assets, which I have calculated to be the sum of \$544,500.00. This sum is to be paid as a lump sum payment.

- [57] No additional award for lump sum payment is made.
- [58] The Wife's one half costs of the valuations is to be deducted from the sum to be paid by the Husband to the Wife as set out hereinbefore. Counsel for the Husband is to provide this information to Counsel for the Wife within seven days from this order, if it has not already been provided.
- [59] The Husband to continue to pay the sum of US \$600.00 per month for Kweisi once he is undergoing undergraduate tertiary education.
- [60] The Husband to pay to the Wife one third of her costs of the instant application.
- [61] Liberty to apply.

Margaret Y. Mohammed
High Court Judge