

BETWEEN

TKB

Petitioner

AND

TEB

Respondent

Before: The Hon. Madame Justice J. Denise Lewis-Johnson
Appearances: Wendawn Miller-Frazer of Counsel for the Petitioner
Justine Smith & Ashley Sands of Counsel for the Respondent
Hearing Date: 22nd March 2023; 1st May 2023; 24th May 2023

JUDGEMENT

Family Law-Matrimonial Causes Act-Divorce-Ancillary Relief-Matrimonial Property-Division of Assets

Introduction

1. By a Notice of Intention to Proceed with Ancillary Relief filed 12 March 2021, the Petitioner sought a Property Adjustment Order in relation to the matrimonial property, namely, Crown Allotment No.113 situate on the Northern side of Cowpen Road and designated Lot F "the property".
2. By Affidavits of Means filed 12 March 2021, 23 March 2021 and Supplemental Affidavit filed 20 March 2023 the Petitioner and Respondent outlined their position as to interest in the property.

The Petitioner's Evidence

3. That the property was acquired during the marriage.

4. That the Respondent failed to make contributions toward the purchase of the property albeit the Deed of Conveyance is in both parties' names.
5. That he solely paid the down payment for the property in the amount of Five Thousand Dollars (\$5,000.00) and received a consumer loan for closing costs and legal fees.
6. That he solely made the mortgage payments prior to and after the breakdown of the marriage.
7. That he requested assistance from the Respondent for the down payment and closing costs of the purchase of the property and that the Respondent responded that as a man he was responsible for finding the money for the purchase of the said property and any structure built thereon.
8. That the Respondent has always made more money and has simply refused to assist with the mortgage payments.
9. That although he was responsible for household bills, he also contributed to paying for books, uniforms and school supplies which he continues to pay and he has been consistent in providing groceries for the family.
10. That during a period when TKB was sick, he covered expenses which were not covered by the medical insurance.

The Respondent's Evidence

11. That she and the Petitioner purchased the property in January of 2010.
12. That she and the Petitioner took out a mortgage with Commonwealth Bank for the purchase of the property, however that she is unaware of what is due and owing on the mortgage.

13. That in addition to being a full-time teacher, she cooked, cleaned and ironed for the Petitioner as well as watched the children after work.
14. That she depends on her sister financially to help her with the children of the marriage as she gets no support from the Petitioner and he fails to provide maintenance.
15. That she was forced to rely on family members to help care for the children.
16. That the children's school fees are deducted from her monthly salary and that the Petitioner paid registration for both children at the beginning of the year and purchased their school books with her discount.
17. That from 2010 she has been solely responsible for maintenance of TKB and from 2015 for TEB with no help from the Petitioner.
18. That she is entitled to a 50% interest in the matrimonial property and proposes that the Petitioner buys out her interest in the property.

The Issue

19. The issue to be determined by this Court is whether the Petitioner and the Respondent are entitled to an interest in the matrimonial property, and if, so what percentage.

The Law

20. The **Matrimonial Causes Act** "the MCA" S.29. states:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

- (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;*
- (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 contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;*
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either 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;*

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

S. 40. (1) of the MCA states:-

The court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit, on the application of either party made before the decree of divorce is made, make in lieu of any order under section 25(3) affecting the matrimonial home an order —

- 1. (a) subject to subsection (2) directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as*

the court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the court thinks fit; or

2. *(b) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the court thinks fair and reasonable in return for the contributions made by that other party.*

21. The Petitioner relied on the cases of **A v. B [2010] 2 BHS J No. 18, S v C 2006/FAM/DIV/478, Charman v Charman (2007) 1 FLR 1246 and DD v LKW (2008) 2HKC 134** indicating that the approach in which the Court must adopt is that of equal sharing unless evidence to the contrary is provided to depart from it.

22. The Respondent relied on the cases of **LMB v. CLB [2015] 1 BHS J No. 116, GB v. VB 2018 1 BHS No. 87, White v White [2001] 1 AC 596 and Collie v Collie 2012/FAM/div/00432** submitting that the Court must take into account the contributions of the Respondent throughout the marriage.

Decision

23. The Court when making property adjustment orders must have regard to statutory consideration of Section 29. The contribution made by both parties towards the property during the course of the marriage is but one factor, financial contributions and non-financial contributions must be considered.

24. The Petitioner is a Royal Bahamas Defence Force Officer earning a monthly salary of Two Thousand Nine Hundred and Twenty-One Dollars (\$2,921.00) and a AAS Life-flight Transporter part-time earning Twenty-Five Dollars (\$25.00) per call, which he asserts seldom occurs. The Respondent is a full time teacher and works part-time as an interpreter and tutor earning approximately Three Thousand and Thirty-Six Dollars and Sixty-Seven Cents

(\$3,036.67) monthly. The Respondent did not disclose the amount of her additional earnings as a tutor.

25. The Petitioner and Respondent purchased the property, for Eighty-One Thousand Dollars (\$81,000.00) in 2010. The lot remains vacant to date and the parties failed to provide the Court with an appraised value of the lot. This was essential and ought to have been provided.

26. Despite the parties holding the property as tenants in common, the Petitioner from the onset to date has solely made the mortgage payments.

27. The Court is of the view that although the Petitioner was solely advancing payments towards the loan, it was made possible due to the fact that the Respondent took on the other household duties and bills. This is a normal practice in marriages where parties agree roles and contributions to the home. These contributions are considered as a whole and thus entitle parties to an interest. I am satisfied that both parties contributed to family expenses such as rent, utilities, school fees, etc.

28. The Court when assessing property adjustments must consider Section 29 of the MCA and determine what is fair to both parties in all the circumstances of their particular case.

29. The Court relies on **Jupp v Jupp [2013] 1 BHS J No 131** where Retired Justice Anita Allen outlined the importance of Section 29 of the MCA stating,

"Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the

family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.”

I am satisfied that this is the standard to be applied.

30. Further, in **White v. White** [2000] 2 FLR 981 Lord Nicholls on the principle of fairness stated,

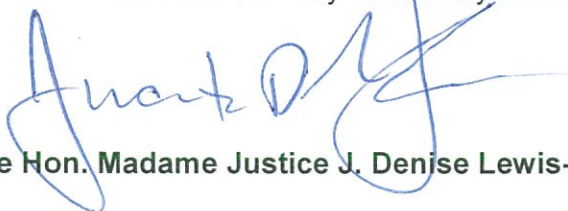
“In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering para (f), relating to the parties' contributions...”

31. The Court accepts that the Respondent has a higher earning capacity than the Petitioner and that the Respondent has other sources of income. I am satisfied that the Respondent contributed to the family expenses.

32. In these circumstances the Court is satisfied for the reason reflected above that both the Respondent and Petitioner are entitled to an interest in the property. While the Petitioner paid the mortgage, the Respondent nurtured and took care of the family and home. I am satisfied that under happy terms the parties agreed to the division of labour and payment of bills. I believe it was their intent that they would both have an interest in the property.

33. The Petitioner submitted that fairness in these circumstances require that the Respondent transfer her interest to him and he would continue to pay the mortgage on the property while the Respondent submits that she is entitled to half of the division of the property. The evidence suggests that neither party has an interest in purchasing the other's interest and as such the Court has the power to make an order for the sale of the property in the circumstances.
34. The Court finds that if the parties are unable or unwilling to purchase the other's interest in the property, the property is to be sold, the mortgage is to be satisfied, expenses paid and the net proceeds to be split between the parties in the interest amount as reflected below.
35. For all of the reasons stated above, the Court having considered the evidence, and the relevant law as follows:-
- i. The Petitioner's interest is 60%.
 - ii. The Respondent's interest is 40%.
 - iii. The Petitioner is to purchase the Respondent's interest within six (6) months. Failure to do so, the property is to be sold and the net proceeds divided as stated.
 - iv. Each party is to bear their own costs.

Dated this 30th day of January 2024


The Hon. Madame Justice J. Denise Lewis-Johnson