

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. M000338 OF 2003

LALCHAN JAWAHIR

PETITIONER

AND

MEENA JAWAHIR

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Dr. Charles Seepersad for the Petitioner

Mr. Gerard Raphael for the Respondent

JUDGEMENT

Before the Court is an application by the Respondent/Wife (hereinafter called “the Wife”) dated the 3rd December 2003 for an order that the Petitioner/ Husband (hereinafter called “the Husband”) make a lump sum payment to her.

The parties were married on the 16th day of May 1965 and separated in the year 1989 when the Wife left the matrimonial home. The marriage therefore lasted some 24 years. The Petition was filed on the 2nd April 2003 based on the fact of the parties’ separation for over 5 years. There are 4 children of the family all of whom are over 18 years.

The matrimonial home was constructed on tenanted lands in the year 1973. In the year 1995 a daughter and granddaughter of the parties, with the consent of the Husband, purchased from the landlord the land upon which the matrimonial home stands and according to the Husband the matrimonial home was also conveyed to them. The Wife has not sought to challenge the sale of the land or the transfer of the matrimonial home to the daughter and granddaughter. The Husband now lives in the downstairs of the matrimonial home as a licensee. He is however under threat of eviction from his daughter as a result of his cohabitation with his new spouse.

The Wife occupies a wooden house on lands owned by Caroni Ltd on which she is a squatter. She is 56 years old, unemployed and is in receipt of public assistance in the sum of \$320.00 a month. She claims to be suffering from arthritis.

The Husband aged 57 years is now unemployed having been retrenched from his employment with Caroni Ltd. He admits to the receipt of the sum of \$447,000.00 as severance benefits in the year 2003 from which he claims to have the sum of approximately \$200,000.00 left. He claims to be suffering from hypertension and diabetes. According to the terms of his separation agreement he will be entitled to a pension on his attainment of retirement age and priority to lease a lot of land in the future.

The Wife's case is that she is entitled to a lump sum payment in recognition of her contribution to the welfare of the family over the 24 years of marriage.

According to her although she never worked out of the home she performed all

the usual duties of a housewife as well as looking after the Husband's aunt for two years. With respect to the matrimonial home, she states that the tenancy of the land on which the home stands was transferred to them by her parents in or around the year 1971. She says that in 1973 the Husband borrowed the sum of \$25,000.00 and they retained the services of a builder and workmen to build the upstairs portion of the home. She says that the downstairs portion of the home was constructed some time later and she physically assisted in its construction. She states that when she left the matrimonial home she left all the household articles and furniture with the Husband. With respect to her delay in seeking any financial relief from the Husband she says that she always hoped for a reconciliation.

The Husband's case on his affidavits differs substantially from his evidence under cross-examination. These contradictions he attributes to his previous Attorney whom he claims to have fired. In his affidavits the Husband admits that the tenancy of the land on which the matrimonial home stood was originally the Wife's parents. He denies that the Wife made much contribution to the welfare of the family or any to the construction of the downstairs of the matrimonial home. According to him the Wife never worked and only performed household duties until the year 1978 when the children were old enough to take over. He denies that his aunt lived with them for more than a week. He claims that the Wife was a bad manager of money and was constantly borrowing money from friends and relatives causing him to always be in debt. According to his affidavits upon her leaving the matrimonial home the Wife took most of the household articles and

cleaned out their bank account. He denies that the Wife assisted in the construction of the downstairs of the matrimonial home. In cross-examination however the Husband denies that the Wife's parents were the tenants of the parcel of land on which the matrimonial home was built. Though still denying that she physically assisted with the construction of the downstairs of the matrimonial home he admits that the Wife cooked for the persons who assisted him and that she brought water for them to drink and for the mixing of the mortar. He admits that when she left the matrimonial home she left with only her clothes leaving all the household items in the matrimonial home where they remain to date. The Husband's case is that not only did the Wife not contribute to the welfare of the family in any substantial manner but that her conduct during and subsequent to the period of cohabitation was such that it ought to result in a reduction of her entitlement to financial relief. He claims that the Wife engaged throughout and after the breakdown of the marriage in adulterous associations with other men. With respect to his severance payment the Husband's evidence varies from affidavit to affidavit and in cross-examination. He claims on the one hand that most of the money was used by him to repay debts incurred by his Wife. He also claims to have given the sum of \$5,000.00 to each of his three daughters, the sum of \$40,000.00 to his son to purchase a home in Canada, purchased a motor car for the sum of \$60,000.00, paid off the loan on his house, repaid debts to his sisters in the sum of \$20,000.00 and paid Wasa and T&Tec bills for the matrimonial home. In his second affidavit the Husband claims to have given \$5,000.00 each to two of his daughters and \$10,000.00 each to his three brothers. He also claims to have

repaid the sum of \$20,000.00 borrowed from his brother in law which money he claims to have used to send to his son in the year 1990 to purchase a house in Canada and to have spent the sum of \$15,000.00 on the purchase of household articles, including an air condition unit. According to him he spent the sum of \$3,000.00 a month on his support during the period August 2003 to February 2004 and \$4,000.00 a month since that time to support his new wife and himself and the sum of \$25,000.00 on two trips to Guyana.

In his cross-examination however the Husband states that he gave his sisters \$15,000.00 and put \$100,000.00 in an “insurance” in his name and his son’s name. He denies giving his son the sum of \$40,000.00.

In my assessment of the evidence I do not find the Husband to be a witness of the truth and prefer the evidence of the Wife. I cannot accept the Husband’s attempt to lay the blame for the discrepancies in his evidence on his previous Attorney. I do not accept his evidence as to the lack of contribution by the Wife during the period that the parties lived together neither do I accept his evidence as to the Wife’s conduct.

Section 27 of the Matrimonial Proceedings and Property Act mandates the Court consider all the circumstances of the case including the matters identified in the section and so to exercise its 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 had the marriage not broken down and each had properly discharged his or her financial obligations and responsibilities

towards the other. Although not specified in the section one of the circumstances which falls to be taken into consideration is the length of time between the breakdown of the marriage and the claim for ancillary relief by the Wife. See **Lombardi V Lombardi [1973] 3 A.E.R. 625.**

According to the **Rayden on Divorce 14th edition, page 751 – paragraph 21.**

“Delay in presenting or prosecuting a claim and inability to show need when the claim is determined may rest in a smaller award than in a case where those elements are absent, or no award at all, depending on all the circumstances of the case.”

Attorney for the Wife submitted that delay was not relevant here because the claim was brought immediately after the decree nisi was granted. While accepting that the Wife’s claim was brought within a month of the granting of the decree nisi I am of the view that the fact that the Wife, whether through lack of need or otherwise did not make a claim on the Husband earlier is a circumstance that I must take into consideration see also **Gibson – v – Gibson H.C.A. No. 158 of 1996.** It may very well be that her perceived lack of interest may have led the Husband to make the disposition of the matrimonial home and other dispositions made by him prior to this application.

Attorney for the Husband submitted that the retrenchment benefit received by the Husband was a windfall acquired after the breakdown of the marriage and not a benefit which would be available for distribution in the normal course of events. While I am cognizant of the fact that under normal circumstances the Husband would not have received a severance payment, he would have received a gratuity

and pension on retirement. Whereas the quantum of the severance benefit received by the Husband would probably have been less than that now received by him as a severance benefit, I must also bear in mind that the Husband would have been in receipt of a salary for a longer period of time. I am of the view therefore that the severance benefit payment to the Husband falls into the category envisaged by **section 27(1) (h) of the Act**. Even if the said benefits were to be considered a windfall and not a benefit as envisaged by the section it is an available asset out of which a lump sum could be paid.

The issue of whether the Wife was a joint tenant of the land is to my mind irrelevant. The Wife was entitled to a share in the matrimonial home, which was at the time of the breakdown of the marriage the only capital asset of the parties, in any event, by virtue of her contributions in kind to the welfare of the family.

Attorney for the Wife has referred me to the case of **White v White [2001] 1 AER 1**. As I understand White's case it dealt with the practice of the Court where there are large family assets for distribution to give the Wife only such sums as would meet her 'reasonable requirements'. In rejecting the 'reasonable requirements' method of determining entitlement in these circumstances the Court determined that the approach of any Court when considering all the circumstances of the case, as mandated by the U.K. equivalent to our s. 27, should be from a starting point of equality but that this ought not to be treated as circumventing the provisions of the U.K. equivalent to s. 27.

“As a general guide, equality should be departed from only if, and to the extent that, there was good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the Court to focus on the need to ensure the absence of discrimination. That conclusion did not introduce a presumption of equal division, and indeed such a presumption would go beyond the permissible bounds of the interpretation of section 25. Nor was there a principle that in every case equality would be a starting point in relation to the division of assets. A ‘starting point’ principle of general application would carry a risk that, in practice, it would be treated as a presumption, with formal consequences regarding the burden of proof. In contrast, it should be possible to use equality as a form of check for the valuable purpose described above without being treated as a legal presumption of equal division.”

Page 2, letters c and e.

That is as I understand the effect of **White v White** with respect to a principle of general application in matters of financial relief.

In all the circumstances of this case including those identified by **section 27 of the Act** and the delay by the Wife in pursuing her application, I am of the opinion that a lump sum award in the sum of \$60,000.00 meets the justice of the case. By an order made by consent on the 18th of May 2004 the Husband undertook not to dispose of a sum of no less than \$200,000.00 of the funds remaining of his severance benefits. I am therefore satisfied that there is a sufficient fund available to the Husband to make this payment.

In the circumstances I order that the Husband pay to the Wife the sum of \$60,000.00 on or before the 30th November 2004. The Husband is to pay half of the Wife's costs of the application to be taxed in default of agreement.

Dated this 22nd day of October, 2004.

.....
Judith A. D. Jones
Judge