

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. M1241/2002

DEBORAH PHILIP

PETITIONER

AND

MICHAEL MARCEL PHILIP

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Ms. Gouveia for the Petitioner

Mrs. Scott for the Respondent

JUDGEMENT

Before the Court are two applications by the Petitioner/ Wife (hereinafter called “the Wife”). The first is an application pursuant to **section 11 of the Matrimonial Proceedings and Property Act** (hereinafter called “the Act”) and the second, an application pursuant to **section 24 of the Act** for a lump sum order. With respect to the section 11 application let me say from the outset that this section has no relevance to these proceedings. A section 11 application is one which can only be brought by a Respondent under certain conditions and cannot be brought by a Petitioner as in this case. In the circumstances I dismiss this application. Since however this application has made absolutely no difference to these proceedings and since in any event the Husband could not have applied for his decree absolute without applying to the Court for leave to do so, and he has not, he has suffered no prejudice by the application and I order no costs on its dismissal.

The facts of the case are by and large not in dispute. The parties got married in the year 1980 and separated in the year 2002, according to the Wife in the month of May, according to the Husband in the month of January. There is one child of the family who at the time of the separation was over the age of 18 years. The parties lived together for some 22 years prior to the separation. For approximately the last two years of that period the Husband lived and worked in St. Croix.

The Matrimonial Home, in the names of the parties and the Husband's mother, was sold by them in the year 2002. No evidence is given by either party as to its acquisition or the circumstances which led to the mother's name being placed on the deed. The purchase price of the home was used, it would seem, to pay off some of the outstanding mortgage. According to the Husband he is still paying off the balance of the mortgage loan. There has been no information given to the Court by the Husband as to what is outstanding on the said loan.

At the time of the sale of the matrimonial home some of the items of furniture were sold and the proceeds received by the Wife, the rest of the items remain in her possession.

The Husband now works in St. Croix as a maintenance mechanic at a rate of \$516.00 US net weekly. The Wife lives in Trinidad and is employed as a secretary with Daybreak Ministry at a monthly salary of \$2,200.00 after deductions.

According to the Wife, at the Husband's request she reluctantly agreed to sell the matrimonial home in anticipation of their migration to St Croix where the Husband then worked. No money was received by them on the sale as there was no equity in the home. Pursuant to their joint intention to migrate and in order to obtain a resident visa she was required to have her 10-year holiday visa to the United States cancelled. The parties were required to collect their resident visas on the 23rd May 2002. Three days before that date the Husband informed her that he wished a separation. According to her at that time he also informed her of his involvement with another woman. The Husband then informed the United States embassy of their separation and caused her resident visa to be revoked. Having

neither a holiday nor resident visa she is now unable to visit the United States. According to her the Husband's actions have left her without a home; without the ability to visit the United States and without adequate financial support. She is now 45 years and living with a friend. She has an insurance policy with Guardian Life the cash surrender value of which is \$632.00. She has a Unit Trust account in the sum of \$523.04 and an annuity with Guardian Life with a cash surrender value of \$5,269.27. With respect to the items of furniture and other household effects she says that she sold some and used the proceeds of sale for her support. The remaining items are distributed among her friends for storage purposes as she has no accommodation to house them.

According to the Husband the parties had been living separate lives since the month of January 2002 but had agreed that he would continue to pursue the visas for the family. He states that in the first week in January 2003 he informed the Wife of his intention to advise the embassy that they were no longer living together. He says that rather than being spiteful as the Wife claims he did this because he did not want to be charged with immigration fraud. He claims that after the separation the Wife remained with all the assets from the marriage, a pension plan and an insurance policy with Guardian Life Insurance Company. The premiums for the insurance policy he says he paid until the month of July 2001. According to him the Wife also had at that time the proceeds of an account with the Unit Trust Corporation. According to him in his affidavit deposed to on the 26th March 2004 at the time of the separation he had no assets, he had a credit card debt of \$15,000.00 and a balance owed on the mortgage. He claims to have accepted the responsibility for the liquidation of the debt to the mortgage company, a debt he claims still to be paying.

Of note is the fact that at no time has the Husband disclosed to the Court the amount still owing on the mortgage nor has there been put before the Court any documentary evidence with respect to same. Some attempt was made to lay some blame for this sad state of affairs on the Attorney who was acting for him in the negotiations with the bank. I do not accept this excuse. It cannot be that if the Husband were indeed paying the outstanding debt to the mortgage company he

would be unaware of the amount outstanding or lack the means to ascertain same from the mortgage company. Of even more importance is the fact, raised by the Wife in her first affidavit and left unanswered by the Husband in his, of a lump sum to be collected by the Husband from his previous employers in Trinidad and Tobago. In the cross-examination of the Husband it was revealed that the Husband did receive a lump sum of some \$95,000.00 in October 2003.

According to him none of this money remains he having paid out the whole amount in the settlement of debts. He claims to have paid the sum of \$12,000.00 to the Attorney who did the case for him; 10% of the remaining sum to the union; given the sum of \$20,000.00 to his mother to repay a loan to him made to pay the deposit on the matrimonial home and other loans made to him by her and the balance of \$50,000.00 to someone called Grace Baksh for moneys loaned to him over a period of two years. In support of this last payment he produces a receipt for the said payment purportedly signed by the said Grace Baksh dated the 12th January 2004. Upon the further cross-examination of the Husband it turns out that the said Grace Baksh is the sister of his "lady friend".

I do not accept the Husband's evidence of the disposal of the lump sum of \$95,000.00. It is reasonable to accept that he would have had to pay his Attorney's fees and perhaps some money to the union. I do not accept his evidence of the loan from or the need to repay his mother. If that were so he would have stated this when dealing with the matrimonial home in his affidavit. In any event in the said affidavit he deposes to the fact that his mother wanted to give to him her shares in the matrimonial home. No mention is made of her wishing to be repaid any monies which may have been spent by her on the acquisition of the home. I reject out of hand his evidence as to the debt and its repayment to the sister of his "lady friend". Neither am I prepared to take into consideration the outstanding mortgage loan. A party's duty to disclose is in respect of all financial matters. If the Husband wished the Court to consider his obligation to the repayment of this debt he ought to have placed all the relevant information before the Court. In any event the Husband having failed in his duty to disclose, the Court is entitled to make robust inferences of fact against him and

I have done so. Accordingly I find that the Husband has or ought to have the sum of at least \$75,000.00 left from the award made to him by the Industrial Court, which sum represents money acquired during the marriage and to which the Wife would have had a benefit had the marriage not broken down.

It is clear that the Wife is in a far worse position now than she would have been had the marriage not broken down and the Husband properly discharged his financial obligations and responsibilities towards her.

In the circumstances of the case and bearing in mind the provisions of **section 27 of the Act**, including the Husband's conduct in persuading the Wife to agree to the disposal of the matrimonial home and then abandoning her as it were in mid stream, the disparity in the income of the parties and the Wife's present financial position, I order that the Husband pay to the Wife the sum of \$40,000.00. The Husband is to pay this sum in two installments the sum of \$20,000.00 on or before the 30th November 2004 and the balance of \$20,000.00 on or before the 31st January 2005. The Husband is to pay the Wife's costs to be taxed in default of agreement.

Dated this 29th day of October, 2004

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Judith A. D. Jones

Judge