



[2018] JMSC Civ.104

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2014 HCV 00792

BETWEEN KERRY-ANN NEISHA THOMPSON CLAIMANT
AND GLENROY CARL SMITH DEFENDANT

IN CHAMBERS

Olivia Derrett instructed by Oswest Senior Smith & Company for the Claimant.

Rudolph N. Smellie instructed by Strathairn Chambers for the Defendant.

Heard: May 25, 2017 and January 25 and July 20, 2018.

Matrimonial Property - Division of Matrimonial Property - Variation of the Equal Share Rule - The Property (Rights of Spouses) Act

CRESENCIA BROWN BECKFORD, J

INTRODUCTION

[1] The relationship between the Claimant and the Defendant culminated, after a period of cohabitation, in marriage. There is one child of the marriage. The parties resided at what is accepted as the matrimonial home. These premises were owned by the Defendant prior to the marriage and remain solely owned by him. The marriage has broken down resulting in the Claimant bringing a petition for dissolution of marriage.

[2] By way of Fixed Date Claim Form, she now seeks under the Property (Rights Of Spouses) Act (PROSA) :

- a) A declaration that each party is entitled to fifty percent (50%) beneficial interest in the matrimonial property situate at Lot number 58 Charlton, in the parish of St. Catherine registered at Volume 1233 Folio 384 in the Register Book of Titles; and
- b) A declaration that the Claimant and the Defendant are each entitled to fifty percent (50%) of the net proceeds of sale of a motor truck bearing registration number 4623DG.

[3] The Defendant has made an application that it would be unjust and unreasonable that the Claimant be entitled to any share in the family home or the motor truck and has sought the following declarations:

- a) That the claim by the Claimant herein for a declaration that the Claimant and the Defendant are each entitled to fifty percent (50%) beneficial interest in the matrimonial property as described in paragraph 1 of her Fixed Date Claim Form, is rejected, and instead a declaration is hereby made that the Defendant is entitled to one hundred percent (100%) interest in, and ownership of, the said property.
- b) That the claim by the Claimant that the Claimant and Defendant are each entitled to fifty percent (50%) of the net proceeds of the sale of the motor truck as described in paragraph 2 of the Fixed Date Claim Form herein, is rejected, and that instead a declaration is made that the Defendant is entitled to one hundred percent (100%) of such proceeds.

CLAIMANT'S CASE

Family Home

[4] The Claimant's case is based on the statutory entitlement to an equal share of the family home under what has become commonly known as the equal share rule. In support of this position, she contends that the intimate relationship begun with the Defendant in 1991, advanced to their cohabitation in about September 1998 and culminated in marriage on March 6, 1999. It was during the course of this

relationship that the Defendant acquired the land and constructed the house which is now the family home.

- [5] Though she admits that the acquisition of the land and the construction of the house was by way of the sole financial resources of, and a mortgage repaid solely by the Defendant, she contends that she was responsible for the domestic duties and the majority of the household expenses. When the expenses became burdensome, she requested money from the Defendant but this only resulted in him declaring that he had the mortgage to pay.
- [6] It was their common understanding that the Claimant would take care of the household expenses while the Defendant would take care of the mortgage. She also bore the expenses relating to the child.
- [7] The Claimant's position is that she had laboured in the completion of the house to make it a home. She referred to furniture she had purchased and the décor she did to aid in the beautification of the matrimonial property. She treated the property like her own and at no time did the Defendant say she would not benefit from the property. She left the matrimonial home in March 2001, leaving the items she had bought, for the use and benefit of the Defendant.

Motor truck

- [8] Both parties are the joint owners of a motor truck which was purchased from a loan secured by them at the Bank of Nova Scotia for which the matrimonial home was used as collateral. The motor truck was rented and monies earned from the motor truck were presented in the form of cheques written out to the Defendant and collected by the Claimant on Fridays. She asserts that she had not received any of the monies he collected.
- [9] The Claimant asserts that when the truck was under repair, she undertook the greater portion of the expenses relating to the home.

DEFENDANT'S CASE

Family Home

- [10] The Defendant diverges factually and advanced that he did not meet the Claimant in 1991 but sometime in 1992. He recalls the visiting relationship started in 1997 and contends that the Claimant did not move into the matrimonial property until about the last week of November in the year 1998. The marital relationship lasted from 1999 to 2000.
- [11] The property the Defendant says was bought and the house was erected thereon without the help of the Claimant. The agreement to purchase and the subsequent purchase of the land he added was effected in mid-1996 from his own pocket and mortgage loans he secured himself. He acknowledges that the Claimant assisted him in monitoring the progress of the construction of the house.
- [12] The Defendant rejects that the Claimant contributed indirectly to the mortgage payments for the property and that she was responsible for the majority of the household expenses. His evidence was that he was the one who took care of the expenses such as light, water, landline telephone and grocery bills, as well as the mortgage payments. This he did since they started cohabiting in 1998. The Claimant only contributed to the groceries as that was the agreement made between them.
- [13] The Claimant, he admitted paid for the furniture she had bought on hire purchase which was used for the family. He says as well that she had to take care of herself and her family back home. The Claimant had also purchased a car from a loan she received. She was solely responsible for the upkeep of this car. These obligations made her unable to contribute to the household more than has been indicated.
- [14] The Defendant denies the fact that the Claimant did the majority of the domestic duties and said that most of the washing, cooking and cleaning was done by the Claimant's cousin who had resided with them temporarily. After which he paid for a helper to assist when the Claimant had a baby in August of 1999.

[15] She made no contributions to the mortgage payments and apart from purchasing a few flower pots, the Claimant made no other major improvements to the property to support her claim that she had made the house into a home. He likewise alleged that he repaid the Claimant for the furniture she had left at the matrimonial property. He denies that she had to take care of the child alone as the child resided with him from 2011 to 2014. The court has not been asked to make a ruling with respect to the custody or maintenance of the child.

Motor truck

[16] The Defendant claims he had actually bought the truck in late 1999 in his name and the Claimant was originally named as a guarantor of the said loan but was only added after she suggested her name be placed on the title as co-owner. The Defendant asserts that he paid the Claimant from the sums he received while the remainder of the money was used to maintain the truck. The Defendant sold the truck with the consent of the Claimant and took the monies gained to repay his loans.

FACTS IN DISPUTE

[17] The parties are at a dispute as to:

The period of cohabitation

[18] The Claimant contends that she met the Defendant in the latter part of 1991 and started a visiting relationship with him in 1996. They moved in together in September 1998 and got married in 1999. The Claimant contended that she left the family home in 2001.

[19] The Defendant on the other hand alleges that he did not meet the Claimant in 1991 but in 1992. He says that the visiting relationship started in the latter part of 1997 and they got married in 1999. He asserts that the Claimant left the family home in 2000.

- [20] When challenged with previous statements made by her that she left the matrimonial home in March 2000, the Claimant stated that she made a mistake and that she was not good with dates.
- [21] The Defendant asserts to have bought the motor truck in late 1999. The document of registration issued by the Inland Revenue Department indicating the motor truck was registered in April 2001 was produced as support for the Claimant's assertion. This however does not support the Claimant as she claims to have left the Matrimonial home in March 2001. Further, her evidence is that while the truck was rented, she collected the rental cheques on Fridays. This would have been some time before she left the matrimonial home.
- [22] On this ground, the evidence of the Defendant is preferable. Apart from the previous inconsistent statements made by the Claimant indicating that they were separated from March 2000, the Claimant's demeanour when challenged in cross-examination evinced someone seeking to conceal the truth. Her response that she *'was not good with dates'* seemed disingenuous. So then I find as a fact on a balance of probabilities that the Claimant left the family home in March 2000.
- [23] I will say something at this juncture about the difference in the demeanour of the parties. The Claimant evaded some questions, took a long time answering questions that should have posed no difficulties, and doggedly repeated some answers. On occasions, she seemed to be making up answers as she went along.
- [24] The Defendant on the other hand was more forthright and seemed to make a genuine effort to give his answers to the best of his recollection. Added to the inconsistencies in the Claimant's evidence and in cross-examination, I am inclined to accept the Defendant on areas where there is a dispute except where expressly stated otherwise.

The contributions made by each party

- [25] The parties have not found a common ground as to the contributions made to the household expenses. The Claimant gave evidence that up to the birth of the child,

equal contributions were made. After, she contributed to the majority of the household expenses as the Defendant was occupied with repairs for the truck and he still paid the mortgage. She alleges that she also contributed to the mortgage payments indirectly by beautifying the home with furniture she bought. She also claimed to be responsible for the utility bills but later said she contributed to the light when the Defendant fell short. She was unable to put a figure to her contributions.

[26] The Defendant rejects these claims and says that he paid for all the household expenses such as he paid light, water, landline telephone, grocery bills and mortgage instalments. He denies that the Claimant actually contributed in the ways she claims she did.

[27] He asserts that when the Claimant's cousin Odette had moved out of the matrimonial home, he assisted with the domestic affairs of the home by sharing the washing and cooking and hired a household helper.

[28] The Claimant left the matrimonial home to reside with her mother at the end of June 1999 in anticipation of the birth of the child. A live-in helper was hired after the Claimant returned to the matrimonial home two months following the birth of the child in August 1999. This helper assisted until the end of March 2000.

[29] The Claimant's delay in answering questions as to who undertook domestic duties in the household suggests that she was not the one who always took care of the domestic affairs of the home but was assisted by her cousin Odette and the household helper who worked once or twice weekly until the end of June 1999. Further, her shifting evidence as to her financial undertakings at the home suggests that it was more likely that the Defendant contributed to the greater share of the household expenses.

[30] The Court is however not minded to minutely examine the financial contributions of each party in the circumstances that the acquisition and the running of the home was undertaken as partners. The Defendant admits that his responsibility for the

greater share of the expenses came from his ability so to do. The Court bears in mind that a monetary contribution is not necessarily to be treated as of greater value than a non-monetary contribution.

ISSUES

[31] The Issues to be determined are:

- a) Whether the equal share rule should be varied in respect of the family home
- b) Whether the Claimant is entitled to a fifty percentage (50%) beneficial interest in the motor truck bearing registration number 4623DG.

THE LAW

Family Home

[32] By virtue of section 13 of the Property (Rights of Spouses) Act (PROSA) a spouse is at liberty to apply for a division of property. Where an application is made according to section 14(1) the Courts may :

- a) *make an order for the division of the family home in accordance with section 6 or 7 as the case may require;*

[33] As it relates to the family home, section 6 (1) stipulates that subject to sections 7 and 10, each spouse is entitled to a one-half share of the family home –

- a) *on the grant of a decree of dissolution of marriage or the termination of cohabitation;*
- b) *on the grant of a decree of nullity of marriage;*
- c) *where a husband and wife has separated and there is no likelihood of reconciliation.*

[34] The equal share rule is a presumption which may be rebutted. Section 7 of PROSA that states :

1) *Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half of the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court think relevant including the following –*

- a) that the family home was inherited by one spouse;*
- b) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;*
- c) that the marriage is of a short duration.*

2) *In subsection (1) “interested parties” means-*

- a) a spouse;*
- b) a relevant child; or*
- c) any other person within whom the Court is satisfied has sufficient interest in the matter.*

[35] In the case of **Graham v Graham** Cl. No. 2006 HCV 03158, McDonald Bishop J. (Ag) (as she then was), outlined the statutory basis for the equal sharing rule. This principle was later endorsed by Brooks JA in the case **Carole Stewart v Lauriston Stewart** [2013] JMCA Civ 47 where he said:

(19)...“She assessed the statutory basis for the equal sharing rule at paragraphs 15-16 of that case thus:

*15. By virtue of the statutory rule, the Claimant [applying under section 13 of the Act] would, without more, be entitled to [a] 50% share in the family home ...and this is regardless of the fact that the Defendant is [the] sole legal and beneficial owner. It is recognized that the equal share rule (or the 50/50 rule) is derived from the now well established view that marriage is a partnership of equals (See *R v R* [1992] 1 AC 599,617 per Lord Keith of Kinel). So, it has been*

*said that because marriage is a partnership of equals with the parties committing themselves to sharing their lives and living and working together for the benefit of the union, when the partnership ends, each is entitled to an equal share of the assets unless there is good reason to the contrary; fairness requires no less; Per Lord Nicolls of Birkenhead in **Miller v Miller; McFarlene v McFarlene** [2006] 2 AC 618,633.*

16. The object of this Act is clearly to attain fairness in property adjustments between spouses upon dissolution of the union or termination of cohabitation...”

[36] The provisions of the Act as to equal sharing was not intended to be a windfall for one party. It is intended to have persons equitably and fairly treated in the distribution of the fruits of their joint endeavours'.

[37] Brooks JA in the aforementioned case of **Stewart v Stewart** went on to establish three (3) factors that are applicable to the operation of section 7 which empowers the Court to vary the equal sharing rule by positing that:

(27) At least three things are apparent from section 7(1):

- a) The section requires the party who disputes the application of the statutory rule to, apply for its displacement.*
- b) The use of the “including” implies that the Court is entitled to considered factors other than those listed in section 7(1).*
- c) The equal share rule has to be shown to be unreasonable or unjust; equality is the norm.”*

[38] Brooks JA also went on to solidify the position taken by McDonald Bishop J. (Ag) (as she then was) in the case of **Graham** where she stated that there is no necessity for a party who is seeking relief by virtue of section 7 to vary the equal

share rule to proceed by way of formal Notice of Application for Court Orders. He postulated that in applications under section 7 and 13, it must be clear to both the Court and the Respondent, the relief that is being sought.

Other Matrimonial Property

[39] With respect to property other than the family home, section 14 provides that:

1) *Where under section 13 a spouse applies to the Court for a division of property the Court may-*

(a) make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or

(b) subject to section 17 (2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2),

or, where the circumstances so warrant, take action under both paragraphs (a) and (b).

2) *The factors referred to in subsection (1) are-*

(a) the contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;

(b) that there is no family home;

(c) the duration of the marriage or the period of cohabitation;

(d) that there is an agreement with respect to the ownership and division of property;

(e) such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.

3) *In subsection (2) (a), "contribution" means-*

- (a) the acquisition or creation of property including the payment of money for that purpose;*
 - (b) the care of any relevant child or any aged or infirm relative or dependant of a spouse;*
 - (c) the giving up of a higher standard of living than would otherwise have been available;*
 - (d) the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which-*
 - (i) enables the other spouse to acquire qualifications; or*
 - (ii) aids the other spouse in the carrying on of that spouse's occupation or business;*
 - (e) the management of the household and the performance of household duties;*
 - (f) the payment of money to maintain or increase the value of the property or any part thereof*
 - (g) the performance of work or services in respect of the property or part thereof;*
 - (h) the provision of money, including the earning of income for the purposes of the marriage or cohabitation;*
 - (i) the effect of any proposed order upon the earning capacity of either spouse.*
- 4) *For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.*

ANALYSIS

Family Home

[40] There is no dispute as to the Claimant's entitlement to claim a share of the property situate at lot number 58 Charlton, in the parish of St. Catherine registered at Volume 1233 Folio 384 in the Register Book of Titles under section 7 of PROSA since it was the family home.

- [41] The Defendant however made an application by way of a Notice of Application for Court Orders challenging this entitlement on the basis that it was unreasonable and unjust and has requested that the equal share rule be varied completely in his favour. The Defendant bears a burden of proof on a balance of probabilities to show that it would be unjust and unreasonable to apply the equal share rule.
- [42] It is not disputed that the property was owned by the Defendant and that construction commenced prior to cohabitation and marriage. It is agreed that the bulk of the construction was done prior to cohabitation as on the Claimant's words it was in a liveable state when they moved in. There was no dispute that this was done at the expense of the Defendant.
- [43] This of course is one of the grounds upon which the Court is empowered to consider on the application of the Defendant to vary the equal share rule.
- [44] In this regard the Court will take into account that there was no dispute that it was the intention of the Defendant when he acquired the property to cohabit with the Claimant at those premises as even then he had serious intentions concerning his relationship with the Claimant. He also accepted the full financial responsibility as he had the ability to do so while the Claimant who was still a student at a tertiary institution was unable to contribute financially. His evidence is that it was his intention that they should jointly benefit from using the house. To that extent she was involved albeit not financially, but in a supervisory role, in the construction. Both parties moved into the premises together.
- [45] Taken at its possible longest, the period of cohabitation (including marriage) ran from September 1998 to March 2000. The marriage itself lasted for just over a year.
- [46] In the case of **Gardner v Gardner** [2012] JMSC Civ. 54, Edwards J posited that the reasonable benchmark for short marriages is less than five years. This time period has not been departed from by a Superior Court. She goes on to say that in a short marriage fairness may dictate that a Claimant should not be entitled to a

share in a Defendant's property acquired prior to the marriage. If the family home was not acquired by the joint efforts of the parties then the brevity of the marriage may justify a departure from the yardstick of equality.

[47] This certainly must have been the contemplation of the Legislators who specifically included the *marriage of short duration* as a category where the equal share rule may be displaced. The Court is therefore satisfied that the Defendant has established a gateway factor for the displacement of the equal share rule.

[48] There is limited jurisprudence that defines the factors that must be taken into account or the weight to be given to each factor in determining whether and by how much the equal share rule may be displaced. A useful starting point, however, is an examination of cases where the equal share rule has been displaced.

[49] In **Gardner v Gardner** [2012] JMSC Civ 54, the Claimant sought a declaration that she was entitled to a one-half interest in the family home pursuant to the Property (Rights of Spouses) Act. The Court considered that the marriage was of a short duration lasting for four years from January 2006 to April 2010. The property was registered in the name of the Defendant only and he had lived in it since 1988; eighteen (18) years before his marriage to the Claimant. It is to be noted that the property in question was the subject of settlements between the Defendant and his two wives from previous marriages. The Court considered that the Claimant made no financial contributions to the acquisition, improvement or preservation of the family home, which was acquired by the Defendant. The Claimant's non-financial contribution to the household was considered *di minimis*. They had no children together but the Claimant's three children resided with them. The declaration was made that she was not entitled to any interest in the family home pursuant to the Property (Rights of Spouses) Act.

[50] The Court at paragraph [48] stated in plain terms the reason for the decision above as follows:

"I find that it would be unfair and unjust not to vary the equal share rule prescribed by section 6, in this case. The family home was not acquired by the common effort of the parties. There is no evidence that they considered or envisaged dividing this property during the happy years. It may well be asked why a court would impose on the parties at the end of a marriage, a sharing of this asset, not contemplated by them at the beginning or during the marriage. Separation or divorce is no reason for the court to depart from the principles by which the parties conducted themselves during the happier times."

[51] In the case of **Duncan v Duncan** [2015] JMSC Civ. 75 the marriage was of a short duration. The parties were married in November 2006 and separated in September 2008. The Court found that the property in dispute was not the family home at the time of separation, since they had moved in January 2008 and maintained no connection or 'visiting relationship' with the property.

[52] Batts J in handing down his ruling considered factors such as the marriage was of a short duration, the Respondent made no financial contributions to the property, the property was acquired before the marriage and the non-financial contributions were that which was reasonably expected of an ordinary wife in care of a household.

[53] He went on to say that those were not the only circumstances taken into consideration and made a comparison with the ruling in **Gardner** and found that the fact that the Respondent bore three children for the Petitioner in the course of the marriage was highly significant as the Respondent in **Gardner** bore no children for her husband. In light of all the circumstances of the case, he found that had the said property been the family home at the material time, he would have departed from the equal share rule and would have found that the Respondent was entitled to a one-third share in the property.

[54] In **Kelly-Lasisi v Lasisi** [2016] JMSC Civ 25, the parties were married in January 2013 and they separated September 2013 at which time the marriage had ended. Prior to marriage, the parties had cohabited for four (4) years but had separated.

The Defendant purchased the property with the assistance of a mortgage. He owned the property for approximately a year and two months before they started cohabiting. The court did not find that the claimant directly or indirectly assisted in mortgage payments. The Claimant made no significant contribution to the acquisition, conservation or improvement of the property prior to and during the marriage to support her claim for a 50% interest in the said property.

- [55] The Court also found no evidence that it was a marriage in which the parties were *'living and working together for the benefit of the union.'* The parties were considered as mature financially independent individuals. He pointed to the fact that the parties were intelligent and must have recognized, given the history of their relationship, at the time of marriage that there was a real risk that the marriage would fail.
- [56] The Court took into account that the parties had previously cohabited on the premises for four years, though in the circumstances finding that it did not have a significant impact on the award as it was a turbulent relationship. The Court found it reasonable to award the Claimant a ten percent (10%) interest in the property concluding that her financial contribution would not, by itself, justify the award considering the insignificance of the said contribution when expressed as a portion of the value of the property. The award was considered as a "composite figure looking in the round at all the circumstances examined.'
- [57] In the case of **Collie v Collie** [2016] JMCA App 37 the marriage was of seventeen (17) months duration. Cohabitation between the parties prior to marriage had lasted for less than two years. The property was owned by the Applicant sometime before the marriage and she made substantial improvements to it using her own resources. The Court considered the Respondent's financial contribution towards installing air-condition units, tiling the patio, paving sections of the yard and other general maintenance and award him a 20% interest in the family home.¹

¹ This case is currently under appeal.

- [58]** It can be seen from these cases that the Courts have considered the length of the marriage, the period of cohabitation, the extent of contribution to the expenses of the home, the presence of and the number of children, the contribution to the purchase and construction of the family home and the purpose for the acquisition of the family home.
- [59]** In light of the foregoing, the Court has accepted that the parties were married for a short duration as they were married in March 1999 and separated one year later in March 2000. The total period of cohabitation and marriage did not exceed sixteen (16) months. The marriage bore one child born August 1999. The house was acquired solely by the Defendant who made the mortgage payments for the property and also made the greater contribution to the household expenses. The contributions of the Claimant were of a minor nature but the Court recognizes that the Defendant agreed to bear the financial burden. As a result, it would be unreasonable in the circumstances, to expect the Claimant to give more than she did. The Court also finds that it was the intention of the Defendant to over time share the property equally with the Claimant as he envisaged that they would be together for an extended period.
- [60]** Taking all the aforementioned factors into consideration the Court finds on a balance of probabilities that it would be unjust and unreasonable to award the Claimant a 50% share of the family home and find that a just and reasonable award is 35% interest in the family home.
- [61]** By virtue of section 12 (1), the value of the property shall be the value at the date the order is made unless the Court decides otherwise. The uncontroverted evidence of the Defendant is that there have been substantial improvement to the premises since the Claimant left them. It is now eighteen years on. It would be unfair that the Claimant receive a percentage of the value of the premises as it now stands. Accordingly, I find that in the circumstances it is fair and just that the value of the property be reckoned as at the date of separation.

Motor truck

[62] In relation to the motor truck, both parties have a right to legal ownership when both names were added on the Certificate of Title. The Defendant contends that he had only placed the Claimant's name on the Certificate of Title when she had asked. However, he claims to be beneficially entitled to the entire interest in the motor vehicle. The behaviour of the parties toward the use and benefit of the motor truck suggest that it was the intention that they both or at the very least the union was intended to benefit from its use. The fact that the Claimant routinely drove to collect the cheques earned from the lease of the truck is substantial evidence that she has a beneficial interest in the motor truck. In this regard the presumption of advancement made in the Claimant's favour when her name was added to the title has not been rebutted.

[63] The Claimant is therefore entitled to a 50% share of the motor truck.

[64] The Defendant in his affidavit indicated that there was no surplus from the sale of the vehicle as the purchase price was used to defray loans and other expenses in relation to the truck. In cross-examination however, he contended that he gave a portion of the sale price to the claimant but could not recall how much. Given these divergent accounts, I find that the Claimant did not receive any of the proceeds of the sale of the motor truck.

ORDERS

1. It is declared that :

a) In relation to the family it is ordered that;

- i. The Claimant is entitled to 35% interest and the Defendant is entitled to 65% in the family home located at Lot number 58 Charlton, in the parish of St. Catherine registered at Volume 1233 Folio 384 in the Register Book of Titles .
- ii. The Defendant is at liberty to purchase the Claimant's interest in the family home at the market value as at March 30, 2000. The Defendant shall exercise his option by notice in writing from his

- Attorney-at-Law to the Claimant's Attorney-at-Law within thirty (30) days following the valuation of the property;
- iii. A reputable valuator to be agreed and a valuation of the Family Home be done;
 - iv. The cost of the valuation of the Property to be borne equally by both the Claimant and the Defendant;
 - v. If the Defendant should chose not to exercise the option to purchase the Claimant's interest in the Family Home, then same may be sold on the open market and proceeds divided in keeping with the parties' interest in the property;
 - vi. All taxes and cost associated with sale and transfer of the Family Home to be shared equally by the Claimant and the Defendant ; and
 - vii. The Claimant's Attorney-at-Law is to have Carriage of Sale of the Family Home.
- b) In relation to the motor truck;
- i. It is declared that the Claimant is entitled to 50% interest and the Defendant 50% interest in the motor truck;
 - ii. The Defendant is to give an account of the purchase price and loan repayment and to pay to the Claimant 50% of the balance.
- c) The Registrar of the Supreme Court is empowered to sign any and all documents necessary to bring into effect the orders of the Honourable Court if either party is unable or unwilling to do so;
- d) Both parties shall have liberty to apply; and
- e) Each party to bear their own costs.