

IN THE SUPREME COURT JUDICATURE OF JAMAICA

Judgment Book

SUIT NO. F. J. 050 OF 1999

BETWEEN DELMA PARTICK JAMES PETITIONER
AND ETHEL LETETIA FRANCIS-JAMES RESPONDENT

Ms. Gillian Johns instructed by Chandra Soares and Company for Petitioner

Ms. Judith Cooper instructed by Chambers, Bunny & Steer for the
Respondent

Heard: 05.11.03, 25.11.03 & 10.12.03

Straw, J. (Ag)

This is an application for Ancillary Relief by the respondent, Mrs. Ethel James against her husband, Mr. Delma James for an order for maintenance.

In the Notice of Application, it is requested that the husband/petitioner pay to the wife/respondent, a lump sum of \$1,000,000.00 as maintenance effective from the date of the grant of the decree absolute. There is no request made for further or other relief to be made by the Court. The application is made under section 20 (1) of the Matrimonial Causes Act which reads as follows:

“On any decree for dissolution of marriage the Court may, if it thinks fit, order the husband, to the satisfaction of the Court, to secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life, ...”

Section 20 (2) allows the Court to make an order for the husband to pay to the wife during their joint lives a monthly or weekly sum. This order can be made in addition to or as an alternative to the order for a gross sum under Section 20 (1).

The application in the present case is not for an annual or gross sum.

Ms. Cooper, the attorney for Mr. James has argued that the Court has no jurisdiction to grant an order for a lump sum and that a lump sum is not the same as a gross or annual sum. In support she has cited the following authorities:

Mills v Mills 1940 2 ALL ER at pg. 254.

Simmonds v Simmonds 1955 2 ALL ER pg. 481

Halsbury Laws of England, 3rd edition, pg. 290 and pg. 435

In **Mills v Mills** (supra), it was held that the Court had no jurisdiction to include in the order a direction for the payment of a lump sum to the

wife. If the parties wished to settle the matter with the payment of a lump sum, the order would recite such payment, and then, by consent discharge the existing order.

In **Simmonds v Simmonds** (supra), it was reiterated that the Court had no jurisdiction to order a lump sum payment and that such lump sum payment can only be consensual.

In **Halsburys Laws of England**, 3rd edition at pg. 290, paragraph 572, a secured provision is defined as a gross or annual sum which may be ordered to be secured to the wife.

Under the heading 'Principles Applying to Secured Maintenance' at paragraph 981, pg. 435, it is stated as follows:

'An order to secure is essentially different from an order to pay a regular sum. The wife prima facie takes the benefit of the security and must look to it alone, so that if it fails to yield the expected income she cannot call upon the husband to make good the deficiency; nevertheless, she may apply to have the order varied.'

I am of the opinion that the attorney for the petitioner is correct and I have no jurisdiction to make an order for a lump sum payment. Since no other relief was sought, the order is therefore refused.