



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN CIVIL DIVISION  
CLAIM NO 2010 HCV 02586

IN CHAMBERS

BETWEEN	DERRICK LUKE	CLAIMANT
AND	MURDEL DELORES LUKE (NEE ROBERTS)	DEFENDANT

Ms Catherine Minto instructed by Nunes Scholefield DeLeon and Co. for the Claimant

Ms Sophia Fraser-Binns instructed by Leroy Equiano for the Defendant

**Husband and Wife – Property division – Husband sending money to wife at her request for various matters – He sent the money to her to “take care of business” – Whether remittances secured an interest in the wife’s business enterprise or a motor car or other chattels purchased by the wife – Whether sale of the business enterprise precludes the court from making an order concerning same**

**27 JUNE and 29 JULY 2011**

**BROOKS, J.**

This is an application by Mr Derrick Luke for a declaration that he is entitled to an interest in certain assets which he says are ostensibly owned by his wife, Mrs Murdel Luke. These are:

- a. a business enterprise known as “Dell’s Place”, situated at Ocho Rios in the parish of Saint Ann;
- b. a Toyota motor car bearing registration number PP0364;
- c. two water tanks;
- d. a washing machine.

Mr Luke said that at the request of his wife he invested significant sums of money in the business enterprise and in the motor car. He stated that he also completely financed the purchase of the other chattels.

Mrs Luke has resisted his application. She accepted that Mr Luke, who ordinarily resides outside of the island, did send her money on a monthly basis but she asserted that these sums were mainly sent to her for her maintenance. She termed it; "for me to eat and drink". Mrs Luke also accepted that, on occasion, Mr Luke did assist her with sums over and above the norm. She said that he did so at her request for assistance for specific things. She stated, however, that there was no agreement that he would acquire any interest in either the business or any of the chattels in question.

Apart from the questions of fact raised by the differences in their respective stances, the court also has to consider the evidence of Mrs Luke that the business had been sold. If what Mrs Luke asserted is accepted as true, the question of law which arises is whether Mr Luke may be granted any relief in the context of this claim.

The evidence concerning the monies sent by Mr Luke is largely unchallenged. He produced numerous copies of money-transfer vouchers as well as a statement of account from Western Union Financial Services Inc, demonstrating his faithful use of their services on a monthly and sometimes more frequent, basis. The receiver of the money-transfers was Miss Murdel Roberts as she then was, and after the marriage, Mrs Murdel Luke.

The parties were married on 1 May 2004, but had formed an association some time before that. Mr Luke exhibited documents showing his transfer of monies to the then, Murdel Roberts, from as far back as June 2000. The monies sent were mainly in amounts varying between US\$100.00 to US\$200.00. There were however some in other amounts varying to as high as US\$999.00 and one in the amount of US\$3,000.00. The larger amounts, Mr Luke testified, were his investments in Mrs Luke's snack bar which she operated in Ocho Rios in the parish of Saint Ann, his investment in a motor car which she purchased to operate as a taxi, his purchase of a washing machine and two water tanks at premises which she had leased.

Mrs Luke proved to be a generally untruthful person. Miss Minto, acting for Mr Luke, described Mrs Luke as "savvy". I regard her as a deceitful person. She accepted in cross-examination, that she had misrepresented her financial situation to the bank in order to secure a loan to purchase the motor car. She also tendered a false job letter to support her loan application.

#### *The business enterprise*

Despite Mrs Luke's unreliability as a witness, I find that the general trend of their relationship was that she would ask him for money for whatever need she had at the relevant time and that he would send the money to her by money-transfer. I find that there was no agreement between them that he would have an interest in the things acquired or in the business which she operated. His evidence is that he sent money to her to "take care of business". In cross-examination he said that in return for his financial support he "required her loyalty

and duty as a wife” and that “whatever profit made in the bar should be lodged in the bank”. Tellingly, however, he said “there was no agreement as to this requirement between my wife and myself”. Without that agreement, in the context of his supporting his wife, I find that Mr Luke’s application, in respect of an interest in the business enterprise, must fail.

It is also of significance that Mrs Luke said that she has given up the business. She submitted a letter purporting to be signed by the secretary manager of the Saint Ann Parish Council, that she had operated a snack shop in the Ocho Rios Market between January 1990 and January 2010. Given Mrs Luke’s history of tendering false documents, I would regard the document with extreme suspicion, but there was no challenge mounted against it by Mr Luke.

Mr Luke did, however, challenge her testimony that she had given up the premises. I accept that there is a difference between giving up the premises and giving up the business enterprise. If she has in fact given up the business, then there is some scope, by virtue of section 11 of the Property (Rights of Spouses) Act, for this court to make any order concerning payments to be made pursuant to the sale of that business enterprise. I need not consider that aspect however, because I find that Mr Luke did not acquire any interest in the business enterprise.

#### *The motor car*

Although Mrs Luke accepted that she was prepared to lie in order to achieve her objectives, the evidence in respect of the motor vehicle supports her version of the events. It appears that Mr Luke’s financial input was in respect of

the down-payment for the car and for the payment of the insurance premium. I accept her evidence, primarily because it is partially supported by Mr Luke's testimony, that the sum of US\$3000.00 was sent by him to assist in the repair of the vehicle. The car was purchased in or about October 2006 and that money, which he initially sought to say, was toward the purchase price, was transferred in November 2007; a year later.

Similarly there is nothing to support Mr Luke's testimony that he should acquire any interest in Mrs Luke's operation of the vehicle. There is nothing to indicate that Mr Luke had anything to do with that operation and nothing to suggest any common intention concerning that operation.

#### *The other chattels*

Mr Luke also claimed an interest in a washing machine and two water tanks that he says that he also financed. I find that the evidence does not support any finding other than that the monies used to purchase these items were gifts to Mrs Luke. Mr Luke said in respect of these items that Mrs Luke asked him for the money to purchase the items and he sent the money. There was nothing to indicate that he intended to keep an interest in them. These aspects of the claim must fail. In any event I would be prepared to find that the presumption of advancement would apply to these monies sent by Mr Luke to Mrs Luke. He has not rebutted the presumption.

#### *The lease monies*

Although Miss Minto did not seek to support it in her submissions, Mr Luke also asked the court to order the refund of J\$175,000.00 which he says that he

had sent, at Mrs Luke's request, for her to pay the lease for premises at which she eventually lived. This aspect of the claim is certainly misconceived, as it does not fall within the ambit of the Property (Rights of Spouses) Act and there is no property in which an interest may be claimed. It is clear that, as with all the payments which demonstrate Mr Luke's devotion to supporting his wife, this payment was to ensure her comfort; there was no intention that he would acquire, by his payment, any interest in the leased property, and the payment was certainly not a loan.

### **Conclusion**

Based on all the above, I find that Mr Luke has not shown any agreement between his wife and himself, whereby the many remittances which he sent to her, were for the purposes of his acquiring any interest in any of the items which she purchased with the monies. I find that he sent these funds to support his wife, both in respect of her personal comfort and to generally support her in her endeavours. His claim must fail.

Judgment for the defendant with costs to be taxed if not agreed