BARBADOS

[Unreported]

THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No.160 of 2006

BETWEEN:

RONALD RICARDO LEACOCK **Applicant**

AND

ANGELA EUGENE LEACOCK **Respondent**

Before the Honourable Madam Justice Elneth O. Kentish, Judge of the High Court

2013: November 14

2014: February 28

Appearances:

Ms. Jessica Ashby for the Applicant

Ms. Fedelis St. Hill for the Respondent

DECISION

Background

[1] The Applicant, Ronald Leacock, and the Respondent, Angela Leacock, were married on 31 July 1999. On 11 May 2006 a *decree nisi* was granted under **s. 27 of the Family Law Act, Cap 214 ("the Act")**. An order under **s. 42** was also made on that day, there being no minor children of the marriage.

[2] On 7 March 2008 the Applicant filed an application, with supporting affidavit, for an extension of time in which to make an application for the alteration of the property interests of the parties in the matrimonial home situate at Lot 24 Oxnards Crescent, St. James. Para 1(a) of the application read:

> "That the Applicant be granted leave pursuant to section 23(3) of the Family Law Act, to apply for an extension of time to make an application under section 57 of the Family Law Act."

[3] This application was necessitated by the fact that more than 12 months had elapsed since the grant of the *decree nisi*. The application was heard by me on 7 October 2008.

[4] Having examined the circumstances and with the agreement of Counsel for the Respondent, the Applicant was granted leave conditionally, as hereinafter appears, to make the application. Counsel for the Applicant had carriage of the draft order. It was filed on 16 March 2009, some five months after the application was heard. Para 2 of the draft order read:

> "That effective the 28th day of October 2008 and until further Order, **the Applicant shall pay** the expenses of the water, electricity, gas, and one-half of the mortgage payment in relation to the house at Oxnards Crescent in the parish of Saint James."
>
> (Emphasis added)

[5] The order was not perfected and filed until 18 January 2010, some two years and three months after the conditional order was granted. However, as will appear, both the draft order and the order as entered did not reflect the order actually made. I shall return to this matter.

The Application

[6] On 22 April 2010 the Applicant filed the application, supported by his affidavit and statement of financial circumstances, in which he sought the following orders:

> (a) An order pursuant to section 57 of the Family Law Act, Cap 214 of the Laws of Barbados altering the interests of the parties in the matrimonial property situate at #24 Oxnards Crescent, in the parish of Saint James in this Island.
>
> (b) A declaration that the Applicant/Husband is entitled to a 50% share and/or interest in the said matrimonial property.
>
> (c) An order that the said property situate at #24 Oxnards Crescent in the parish of Saint James be valued by a competent valuer agreed between the parties.

[7] On 18 June 2010, the Respondent filed an affidavit in response to the application in which, at para 2 thereof, she deposed to her belief that on 7 October 2008 **Kentish J** granted the Applicant leave to file the application out of time on condition that the Applicant pays the utilities (water, gas and electricity) and one-half of the mortgage payments in relation to the matrimonial property.

[8] This prompted an investigation by the court into the order made on 7 October 2008. That investigation showed that para 2 of the draft order as approved did not accurately reflect the order made. The correct order was as follows:

> "Leave granted to the Applicant/Husband to file an application for an order under section 57 of the Family Law Act on condition that effective October 28th 2008 and until further order, the Applicant/Husband shall pay the expenses of water, electricity, gas and one-half of mortgage payment in relation to the house located at Lot 24 Oxnards Crescent, St. James."

[9] On 21 February 2012 the application came before **Goodridge J**, as she then was. It appears that the learned judge recommended that given the interpretation of para 1(a) of the application of 7 March 2008, an application for an extension of time should now be made.

[10] Against that background, almost one year later, on 28 January 2013 the Applicant filed an application pursuant to the recommendation of **Goodridge J** for an extension of time in which to file an application under **s. 57 of the Act** for the alteration of the interests in the matrimonial property. An affidavit in support of that application was filed almost five months later on 5 July 2013. On that same date the Respondent filed an affidavit in opposition to that application.

[11] On 18 September 2013 the Applicant filed an application to have the order made on 7 October 2008 and entered on 18 January 2010 rectified to reflect the actual order made. This application came before me on 14 November 2013. There was no objection by Counsel for the Respondent to the rectification and the order was therefore rectified as set out at para [8] above.

[12] In light of that rectification Counsel for the Applicant sought and obtained leave to withdraw the application filed 28 January 2013 and the supporting affidavit and an order was made that:

> "…notwithstanding the withdrawal of the aforesaid application, the Respondent/Wife shall be at liberty to rely on her affidavit filed 5 July 2013 in objection to the application of the Applicant/Husband filed herein on 22 April 2010."

The Issue

[13] As a result of the foregoing, the sole issue for the determination of the court is whether the Applicant should be allowed to proceed with his application filed 22 April 2010 given his failure to comply with the condition embedded in the order

made on 7 October 2008 that he pay the water, electricity and gas and one-half of the mortgage payment in relation to the matrimonial property. On 14 November 2013 I heard brief submissions from Counsel for both parties and ordered Counsel to file written submissions in this regard.

[14] In determining this issue it is necessary to examine the reasons for (a) the protracted delay in filing the application, leave having been granted on 7 October 2008 and; (b) the reasons for the failure of the Applicant to comply with the condition embedded in the order.

The Affidavit Evidence

[15] Much of the affidavit evidence filed in this matter concerned the respective contributions of the parties to the matrimonial home, during the marriage and after its dissolution. However, as I asked Counsel to make written submissions on the issue of whether or not the application should be heard, I shall recount the evidence as it pertains primarily to that issue.

The Applicant's Evidence

[16] The Applicant filed two affidavits in support of the application on 22 April 2010 and 17 February 2012 respectively. He asserts, in his affidavits, that he was not aware that the order made on 7 October 2008 was granted on the condition that he pay the water, electricity, gas and one-half share of the mortgage payments in relation to the matrimonial home. Nor was he aware that it was the Respondent's understanding that the said order was so granted.

[17] The Applicant also deposed that he withheld the making of the application because the Respondent had previously mentioned to the court that she was to undergo heart by-pass surgery. As a consequence, he did not wish to address the issue of alteration of the interests in the matrimonial property until the Respondent had recovered.

[18] In his affidavit filed 22 April 2010 he deposed that he left the matrimonial home in November 2008, whereas in his affidavit filed 17 February 2012 he deposed that he left the property on 5 October 2008. I shall address this inconsistency later.

[19] He stated that he commenced payments on the mortgage with the Barbados Mortgage Finance Co. Ltd ("the mortgage") in or around 1998 and that those payments continued until just prior to the divorce.

[20] He also deposed that he was the sole provider of natural gas to the entire matrimonial home and that he undertook the responsibility for the payment of that utility. However, he said, he discontinued that payment after he left the matrimonial home.

[21] The Applicant further stated that in 1993 he purchased land at Lot 5, Butcher's Land, Edgehill, St. Thomas ("the Edgehill property") and that he built a home there in or about the year 2006.

The Respondent's Evidence

[22] The Respondent filed two affidavits in opposition to the 22 April 2010 application on 18 June 2010 and 5 July 2013 respectively. She deposed to her knowledge of the conditional nature of the order of 7 October 2008 and that the Applicant failed to pay any of the utilities or one-half the mortgage as ordered. She accepted his evidence, later denied by him, that he left the matrimonial home in November 2008.

[23] As a result of the Applicant's failure to comply with the terms of the 7 October 2008 order coupled with the protracted delay in filing application after the grant of leave was ordered, it was her belief that the Applicant had abandoned his claim, primarily because, as she deposed:

> "I was able to produce to the court at the hearing in October 2008 a picture of the completed two-storey building, which he admitted in Court that he in fact owned and had been building while living at my house without paying utilities and even taking up my groceries to cook for himself. In his then Affidavit, he has claimed that he had nowhere to live."

[24] Mrs. Leacock deposed that she had been informed by her Counsel, Ms. St. Hill, that the latter had not received any correspondence which indicated that the Applicant intended to pursue the application for property settlement.

[25] As a consequence of her belief that the Applicant had abandoned his claim, she and her daughter took out a series of loans from various financial institutions which, together with the proceeds of her salary and income tax refunds, were used to complete the extension to the home to make it more comfortable and secure.

[26] The matrimonial property had been purchased by her prior to the marriage and since 2005 she was solely responsible for the payment of the mortgage and all other financial obligations relating to the matrimonial property including payment of utilities, except the natural gas, and the land taxes. As a result of these increased financial burdens, and other liabilities including medical expenses and expenses relating to her mother's funeral, she had fallen behind on her mortgage payments.

[27] Mrs. Leacock deposed that she did not believe that the Applicant's lateness in filing the application was due to his concern for her ill-health as the Applicant had previously caused her distress, even at the height of her illness. She cited as an example his disconnection of the gas supply to the matrimonial home on 19 December 2008, without her prior knowledge, just before her surgery in January 2009.

[28] She asserted that the Applicant did have alternative accommodation on 7 March 2008 when the application for the extension of time was made as the Edgehill property was complete notwithstanding the Applicant's claim that he had no alternative accommodation.

The Applicant's Submissions

[29] Counsel for the Applicant, Ms. Jessica Ashby, filed written submissions on 16 December 2013. For the reason stated at para [15] above, I shall not address Counsel's submissions insofar as they pertain to the division of the matrimonial property. In the balance of Counsel's submissions she raised the issue of the Applicant's likely contempt in failing to comply with the order of 7 October 2008. However, the Respondent has made no formal application for contempt pursuant to **Rule 106(4) of the Family Law Rules 1982**. As a consequence, I do not consider that the issue of contempt arises for my determination.

The Respondent's Submissions

[30] Counsel for the Respondent, Ms. St. Hill, submitted that, the purpose of s. 23 of the Act is to make time of the essence and to ensure that property settlement matters are dealt with promptly and with alacrity. She argued that the spirit of the section would be gravely undermined if the Applicant, having been granted leave to file an application for property settlement on 7 October 2008, and having filed that said application some one year and six months later, was permitted to have his application heard. The nature of s. 23 of the Act, she argued, does not permit an applicant to take the position that an applicant is entitled to file an application for property settlement following the *decree nisi* in the applicant's own time and at the applicant's own convenience. In support of this submission she referred to the Australian authority ***Whitford v Whitford* (1979) FLC 90-612** where the court said at 78,146:

> "…having regard to the nature of the jurisdiction which this Court exercises, this power should be exercised liberally in order to avoid hardship, ***but*** nevertheless in a manner, which **would not render nugatory the requirement that proceedings should be instituted within a year from the decree nisi**."
>
> (Emphasis supplied)

[31] Ms. St. Hill also submitted that the Applicant failed to proffer a satisfactory explanation for the delay in making the application. Counsel's argument was that a court order is effective from the date of pronouncement and therefore, the protracted delay in receiving the perfected order was not a valid excuse. In response to the Applicant's submissions regarding the ill-health of the Respondent, Counsel repeated the Respondent's evidence as outlined at para [27] above.

[32] She further argued that the court in exercising its discretion as to whether or not to hear the application should consider whether the Respondent would suffer prejudice if leave were granted. In support of this submission Counsel referred to ***Frost and Nicholson* (1981) FLC 91-051** ("***Frost and Nicholson***"). In that case the court had to determine whether to grant the wife leave to file an application for property settlement where the application for leave had been filed some 19 months after the relevant statutory period. Nygh J said at 76,425:

> "This leads me to the final question as to the exercise of my discretion, that is to say, whether in the circumstances the husband would suffer prejudice if leave to institute proceedings were granted to the wife. **Prejudice here means that a party is faced with an action which he or she had no reason to expect or had been led to believe would not be brought**."
>
> (Emphasis added)

[33] Counsel submitted that this ruling is equally applicable to the current application as, based on the actions of the Applicant, the Respondent had no reason to expect that the application would be pursued.

[34] It is said that the Respondent would suffer prejudice due to the protracted delay in making the application. In relation to the prejudice suffered by the Respondent, Counsel referred to the evidence of the Respondent recounted at paras [23] to [26] hereof. Further, Counsel submitted that the "evidence and changing financial circumstances can seriously prejudice the adjudication of such matters as time elapses." She argued that some eight years had passed since the dissolution of the marriage and that there is little evidence as to the value of the matrimonial home at the time of dissolution and that had the application been made in a timely manner, valuations would have been obtained of the matrimonial property as it then stood before any additional works were undertaken by the Respondent.

Discussion

[35] I do not accept the Applicant's evidence as it relates to his non-compliance with the condition attached to the order of 7 October 2008, the fulfillment of which was a prerequisite to his filing the application.

[36] Firstly, both parties were present at that hearing and both parties were represented by counsel. The Applicant was represented by his present Counsel Ms. Ashby.

[37] Secondly, the unchallenged affidavit evidence of the Respondent showed that except for the payment of the gas, the

Applicant had made no contribution to the other utilities or the mortgage since 2005. The non-contribution of the Applicant was fully ventilated on 7 October 2008 and it was against that background and the fact that the application was already out of time by some one year and nine months that the order granting leave was made conditional on the payment of those expenses.

[38] Even if I were to accept Ms. Ashby's submission that "The approval of the submitted Draft Order without amendment to include the conditional nature of the Order [gave] credence…" to the Applicant's mistaken belief, on any reading of the order, the Applicant was to commence payment on 28 October 2008 and it was not argued that he had any misapprehension in that regard.

[39] In this regard, the contradictions in the Applicant's affidavit evidence as they relate to the date on which he vacated the matrimonial home are significant. In his affidavit filed 22 April 2010 he stated that he vacated the matrimonial home in November 2008. However, in his affidavit filed 17 February 2012 he took issue with the Respondent's assertion in her affidavit filed 18 June 2010 that he had left the matrimonial home some time in November 2008 which assertion, in this regard, agreed with his affidavit of 22 April 2010.

[40] That contradiction suggests that the Applicant's evidence must be approached with caution. It seems to me that his hasty retreat from the matrimonial home was prompted by the order of 7 October 2008 and no doubt his belief that his obligation to pay these expenses would cease on his vacating the matrimonial property.

[41] That is not the only contradiction in his evidence. At para 8 of his affidavit filed on 7 March 2008, he deposed that he and the Respondent continued to reside in the matrimonial home as he had no "alternative accommodation at present". But at the hearing on 7 October 2008, when confronted with a photograph of a "mansion" at Edgehill, St. Thomas he acknowledged that it represented the Edgehill property and in his affidavit filed 17 February 2012 he conceded he had purchased the land in 1993 and had built a home thereon in or about the year 2006, while residing with the Respondent in the matrimonial home.

[42] In light of this blatant deception and the absence of any explanation as to why the Edgehill property could not be used as alternative accommodation at the material time, I find that his credibility has been impugned to such a degree that his evidence is wholly unreliable.

[43] The reason advanced by the Applicant for the failure to file the application in a timely manner following the order of 7 October 2008 is that he was concerned for the state of the Respondent's health. I find his evidence in this regard wholly disingenuous. On deciding to leave the matrimonial home he disconnected the supply of natural gas to the property without informing the Respondent and just before her surgery scheduled for January 2009 (see para 23 of the Respondent's affidavit filed 15 July 2013). The Applicant has not refuted this allegation. It is difficult to imagine an action more inconsiderate and it certainly cannot be reconciled with his claim that he was concerned for the Respondent's health given the serious nature of her illness.

[44] I therefore find that the Applicant's breach of the order of 7 October 2008 was flagrant and willful.

[45] What then, is the effect of this willful breach? The answer to this question is intrinsically linked to the issue of whether the application should be permitted to be heard. In essence, should the Applicant's willful breach deprive him of the opportunity to pursue his application for the alteration of property interests?

[46] In this regard and although the application for leave to file an application for property alteration has already been granted, it is useful to have regard to the relevant statutory provisions in relation to the grant of leave.

[47] Pursuant to **s. 23(3) of the Act**, where a *decree nisi* has been granted, proceedings for the alteration of property assets should not be instituted following the expiry of 12 months after the decree was made except by leave of the court.

[48] The purpose of **s. 23 of the Act** is to bring finality to residual matrimonial issues by requiring the former parties to the marriage to settle their financial affairs within a reasonable time and, in any event, no later than 12 months after the grant of the *decree nisi*. And I accept Ms. St. Hill's submission that, in effect, this provision makes time of the essence and it is for this reason that the section specifically provides that leave of the court must be obtained to institute proceedings out of time.

[49] In ***Althaus & Althaus* (1982) FLC 91-233** ("***Althaus***") Evatt CJ, in delivering the decision of the Full Court, said at 77,267 to 77,268:

> "The requirement that the applicant under sec. 44(3) give an explanation of the delay in bringing proceedings in my view requires a consideration of the whole period from the date of the decree nisi to the lodging of the application. **It requires the Court to consider whether the wife took all reasonable steps to pursue her claim or whether, on the other hand, she acted at any time as if she had no intention of proceeding or pursuing any claim at all against the husband. It requires the Court to consider whether it can reach conclusions as to why the proceedings were started beyond the time lodged and whether those proceedings are attributable to default on the part of the applicant.**"
>
> (Emphasis added)

[50] The case ***Whitford*** provides useful guidance on the issue of delay. In that case the Full Court of the Family Court of Australia had for its determination an application for leave, brought by the applicant wife, to file an application for maintenance and property settlement. The application for leave was brought some three years out of time. Having

referred to ss. 43(3) and (4) of the Australian Family Law Act 1975 (the equivalent of ss. 23(3) and (4) of the Act), the court addressed the issue of the exercise of a judge's discretion to grant leave. The court said at 78,146:

> "The determination how this discretion should be exercised, must depend on the facts of the particular case. **Due weight must be given to the expressed legislation intendment that ordinarily, proceedings should be commenced within a year from a date of the decree nisi, and** the general policy of the Act which appears from sec. 44(3) and sec. 81 that financial relationships between the spouses should, **wherever possible be brought to finality within a reasonable time after the dissolution of the marriage. Hence, such matters as the length of the delay, the reasons for the delay and prejudice occasioned to the respondent by reason of the delay, and the strength on the merits of the applicant's case, and the degree of the hardship which would be suffered unless leave were granted, are matters affecting the exercise of the discretion**…"
>
> (Emphasis added)

[51] As noted at paras [3] and [4] above, in granting the order of 7 October 2008 I had considered that the Applicant's application for leave was filed some one year and nine months out of time. It was for that reason, *inter alia*, that that order was made on condition. The Applicant has failed to advance any plausible or any good and sufficient reason as to why, given the circumstances surrounding the grant of that order, there was a further delay of one year and six months in filing the application.

[52] It therefore seems that a close examination of the periods of delay and the reasons for such delay is required.

[53] The following are the periods of delay from the grant of the *decree nisi* until November 2013.

1. 11 May 2006 - 7 March 2008 - From the date of the *decree nisi*, a period of one year and ten months elapsed before the filing of the application for an extension of time in which to file an application for the alteration of property interests. The explanation offered in respect of this period of delay was that the parties were attempting to settle the issue of the matrimonial property without intervention of the court.

2. 7 October 2008 - 22 April 2010 - A further period of two years and one month elapsed from the date of the order of 7 October 2008 to the filing of the actual application for alteration of property interests. Counsel for the Applicant sought to explain this delay on the basis that she did not obtain a copy of the final order until December 2009. This order was not filed until 18 January 2010.

3. 22 April 2010 - 13 February 2012 - A further period of approximately one year and nine months elapsed from the filing of the application to setting down of the matter by Take Notice filed 13 February 2012.

4. 21 February 2012 - 28 January 2013 - A period of approximately 11 months elapsed before compliance with the recommendation of **Goodridge J** made on 21 February 2012.

5. 28 January 2013 - 20 June 2013 - Matter was adjourned during this period and referred back to **Kentish J**.

6. 21 June 2013 - 20 September 2013 - On 21 June 2013 an order was made by **Kentish J** that an application for rectification of the order of 7 October 2008 be filed on or before 4 July 2013 and matter adjourned to 20 September 2013. The court vacation intervened in this period.

7. 20 September 2013 - 14 November 2013 - Matter adjourned on 20 September 2013 as Counsel for the Applicant only filed the application for rectification on 18 September 2013, two days before the adjourned date. Counsel sought to excuse the failure to comply with the terms of the order for rectification on the grounds that her legal clerk was unable to obtain the exact wording of the order as reflected in the court's file until 17 September 2013.

[54] These delays, when examined, are in the main solely attributable to the fault of the Applicant. They provide no sufficient or good reason for the protracted delays in the filing of the application for the alteration of property interests in pursuance of the order made on 7 October 2008.

[55] The delays in themselves are sufficient reason as to why the application should not be heard. However, the interests of justice require me to consider what prejudice the Respondent has suffered as a result of the delays and whether she is likely to suffer further prejudice if I were to permit the application to be heard. In this regard I accept the Respondent's evidence that as a result of the Applicant's conduct after the grant of the 7 October 2008 order, including the protracted delay in making the application, it was her genuine belief that the Applicant had abandoned his pursuit of property settlement.

[56] This belief was reasonable in the entirety of the circumstances and, guided by the dicta of Nygh J in ***Frost and Nicholson*** I find, and so hold, that the Respondent was prejudiced as a result of the protracted delay of the Applicant in filing the application and failing to prosecute it with due diligence.

[57] I also find that the Applicant's actions have caused the Respondent to suffer financial prejudice. I accept the Respondent's undisputed evidence that since 2005 she has been solely responsible for the maintenance of the matrimonial home, including the payment of the mortgage, land tax, water, electricity, and since December 2008, the natural gas. Her financial burdens have been compounded by factors unrelated to these proceedings, for example expenses related to her ill-health. The purpose of the order of 7 October 2008 was to allow the Applicant to proceed with his claim for property alteration on the condition that he make financial contributions to the matrimonial home. Had he

complied with that condition the Respondent undoubtedly would have been relieved of some of her financial burdens, as was the intention of the court. Moreover, I have no doubt that the Respondent would not have incurred additional financial obligations (involving the assistance of her daughter) to complete the home had she believed that the Applicant still intended to pursue an interest in the former matrimonial property.

[58] In this regard, I am mindful of the fact that the matrimonial property had been purchased by the Respondent prior to the mortgage and that the Applicant had ceased all contributions to the mortgage payments and other expenses of running the home (except gas) from 2005. I am also mindful of the fact that the Applicant whilst living at the matrimonial property had built a "mansion", in the words of the Respondent, on the Edgehill property.

[59] I therefore find, and hold, that the Respondent has been prejudiced by the protracted delays in prosecuting the application and through the Applicant's deliberate vacation of the matrimonial home and corresponding failure to pay the utilities and one-half mortgage payment pursuant to the order of 7 October 2008.

[60] Should I allow the application to be heard, the Respondent would endure further prejudice as she would be faced with further litigation on a matter she did not expect would proceed, the costs of defending such litigation and the likely prospect of having to pay the Applicant his share of any equitable interest he may have in the matrimonial home.

[61] In light of the foregoing, I am of the opinion that the interests of justice do not require that the Applicant's application for the alteration of property interests should be heard. I am therefore of the opinion, and so hold, that the Applicant should not be allowed to proceed on the hearing of the application.

[62] That ruling effectively disposes of the matter. However, I have considered that pursuant to **s. 60 of the Act** I am duty bound to make an order which would bring finality to the financial relationship of the parties. That section provides:

> "In proceedings under this Part, other than proceedings under section 56 or proceedings in respect of maintenance payable during the subsistence of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them."

[63] Such an order must be just and equitable in light of the particular facts and circumstances of each case. The undisputed evidence is that the Respondent has, since 2005, exclusively paid the mortgage and borne the cost of the utilities (except the gas) and maintained the matrimonial home. She had purchased that property prior to the marriage and the Applicant had only paid the mortgage installments from 1998 to 2005 when he ceased payments without notifying her.

[64] The Applicant built the house on the Edgehill property in 2006 while he was still residing at the matrimonial home and making no contribution thereto, except the payment of the gas. There is no evidence before the court to suggest that he no longer owns that property, that he no longer resides there or that he is without suitable accommodation.

[65] Given the totality of the evidence before me, I find that the only just and equitable method of concluding the financial relationship of the parties is to allow the Respondent to use and enjoy the former matrimonial property as the sole legal and beneficial owner thereof without allowing any interest therein to the Applicant.

[66] I make no order in relation to the Edgehill property. Firstly, there is no application before the court for a variation of the interests in that property. Secondly, any such application would now be time barred having regard to the provisions of s.23(3) of the Act.

Disposal

[67] In disposition of the application, I make the following orders:

1. The Applicant shall not be permitted to proceed with his claim for an order pursuant to s. 57 of the Act altering the interests of the parties in the matrimonial property situate at Lot 24 Oxnards Crescent, St. James.

2. The Respondent shall have the legal and beneficial ownership of the property freed from any interest of the Applicant therein.

3. Pursuant to **s. 94(1) of the Act**, each party will bear his or her own costs of these proceedings.

Elneth O. Kentish

Judge of the High Court