

Mrs. Beverley Waldron Q.C. for the Plaintiff

Mr. Chezley R. Boyce and Mr. Victor D. Hoppin for the Defendant

DECISION

Nature of the Action

- [1] The Plaintiff ("the Husband") in this action, is seeking sole possession of property situate at 1A Lisbon Ville, Silver Sands, Christ Church; an order that the Defendant ("the Wife") immediately, or within such time as the Court deems just, vacate the said premises; and an injunction restraining the Wife from removing from the premises any fixtures, fittings or contents save those brought to the premises by her.
- [2] It is the Husband's case that the property situate at 1A Lisbon Ville, Silver Sands, Christ Church as well as a property situate at Wanstead in the parish of St. Michael were not his properties but instead were bought and registered in the sole name of his deceased first Wife. Further, he alleges that the Wife has wrongfully entered into possession of the property at Lisbon Ville without licence or permission.
- [3] On the other hand it is the case of the Wife that she and the Husband had many fundamental pre-marital discussions and agreed arrangements on all matters including the use of the assets of the two parties before and during the marriage. There was a legally binding contract established between them at all material times. More specifically, they had decided to treat the property at Lisbon Ville as their matrimonial home.
- [4] Consequently the Wife was entitled to move into the property. She therefore denies the claim of the Husband and by way of counterclaim seeks the following orders:
1. the Husband be restrained from molesting, harassing, interfering with or abusing the Wife at anytime or;
 2. the Husband be restrained and/or prevented from gaining access and/or occupying the matrimonial home during the time that the Wife is in occupation of the matrimonial home situate at Lisbon Ville pending the settlement of all matrimonial matters in Barbados and the U.S.A;
 3. she be paid maintenance for herself as a matter of urgency;
 4. the Court declare that the matrimonial home situate at Lisbon Ville and at Wanstead and any other matrimonial property ("the property") are owned by the parties in equal shares or such other declaration or order as to the ownership thereof as may be just;
 5. an order altering the interest of the parties in all matrimonial property to give her at least half part share and interest of and in the property;
 6. alternatively, an order that the Husband pay to her such lump sum as represents her entire part share and interest of and in the property and her right to maintenance;
 7. the costs of and occasioned by the Application be provided for by the Husband.

The Parties

- [5] The Husband, a retired conductor with the city trains in New York, resides in Brooklyn, New York and was the husband of the late Marville King-Knight who at the time of her death is alleged to have been the legal owner of the property in dispute in this case.
- [6] The Wife presently resides at Lisbon Ville but is the owner of property situate at West Terrace Gardens, St. James.

Issues

- [7] Six issues arise for determination:
1. Does the court have jurisdiction to alter the property interest of the Husband under the **Family Law Act, Cap 214**?
 2. Does the Wife have a right to maintenance?
 3. What monies were expended by the Wife on renovations of the properties?
 4. What share or interest does the Wife have, if any, in (a) Lisbon Ville (b) Wanstead and (c) United States Property?

5. If the Wife has no share or interest in the matrimonial home, Lisbon Ville, does she have a right of occupation in relation thereto?
6. Should the Wife be made to bear the costs of the application in the event that she fails to succeed in her claim or alternatively, should the Husband bear the costs? (Do the normal rules in relation to costs need to be varied)?

Background

- [8] The Husband and his first Wife, Marville King-Knight, were married for 25 years before her death on 28 December 2001. During their marriage they resided in New York but would spend four (4) to five (5) months of each year in Barbados during winter.
- [9] On 17 May 1979, Marville King-Knight purchased property at Wanstead in her sole name. Similarly in 1984, she bought another property situate at 1A Lisbon Ville, Silver Sands, Christ Church. This too was registered in her sole name.
- [10] In 1985 Marville King-Knight and her husband entered into a contract to have a building constructed at the Lisbon Ville property, which was to be their home when they were in Barbados. An apartment was attached and tenanted.
- [11] Marville King-Knight died on 28 December 2001 intestate leaving the Husband as her spouse but no issue. The Husband applied for and was granted letters of administration to her estate by the Supreme Court of Barbados on 26 March 2004. The estate has not yet been settled.
- [12] On 12 June 2005 the Husband remarried. The ceremony was performed in Brooklyn. It was alleged by the Wife that they agreed that they would reside together between New York and Barbados. This was denied by the Husband. It appears however, that the Wife continued to reside in Barbados and the Husband in New York and intermittently they visited each other.
- [13] In June 2006 the Husband hired Basil Foster to carry out repairs on the property at Lisbon Ville. It was agreed that Foster would provide all the materials and labour for the project and that he would be paid by the Husband.
- [14] In or around September 2006 the Wife moved into the Lisbon Ville property with her aunt, allegedly without the Husband's knowledge or consent. The move prematurely ended the repairs that were being carried out on the property.
- [15] On 12 October 2006, while in New York, the Husband filed for divorce. The divorce was uncontested and became absolute on 9 January 2007.
- [16] The Husband returned to Barbados in December 2006 and on visiting the Lisbon Ville property he discovered that he was unable to gain access to the property. He informed the Wife that he wanted her to vacate the property and when she failed to do so he filed an application before the Court, on 10 January 2007, pursuant to **s. 91(1)** of the **Family Law Act**.
- [17] The Wife contested the Husband's application and filed a counterclaim seeking maintenance and at least an half share in all the Husband's property.
- [18] On 10 February 2009, the Husband, in his capacity as Administrator of the estate of Marville King-Knight, deceased, filed a summons for possession with regard to the Lisbon Ville property in the Civil Division of the High Court. This application was also contested by the Wife.
- [19] On 30 March 2009 both applications were consolidated.

Jurisdiction

- [20] It was submitted by Counsel for the Wife that the Court does not have jurisdiction in this case to alter the property interest of the Husband under the Family Law Act ("the Act") on the ground that the application for principal relief, the divorce, was made and granted in New York and therefore any application for ancillary relief should also be heard by a court in New York.
- [21] Counsel for the Husband agreed with this submission and referred to **s. 19 (1) (a) and (c)**, of the Act which state that the court only has jurisdiction in matrimonial causes instituted under this Act or in matters in which jurisdiction is conferred by or under another Act. Further it was submitted that though the Court cannot exercise its powers to vary vested interests, in this case, it can determine issues of property ownership.
- [22] In view of the fact that the proceedings for principal relief viz, the dissolution of the marriage, were commenced and determined in New York, I find that this Court has no jurisdiction under **s. 56** of the Act to make any declarations regarding the existing title or rights to property of a party to the marriage in respect of property owned by the other party or to vary or alter the interest of parties in any property of the parties to the marriage. (See definitions of matrimonial causes; proceedings for principal relief – **s. 2(1)**; and jurisdiction of the High Court – **s. 19 (1) (a) and (c)**).
- [23] Accordingly, the application of the Wife for a declaration that the properties are owned in equal shares under paragraphs 1(d) of the application filed on the 9 March 2009 and the application for an alteration of the interest of the parties in the matrimonial property so as to vest at least one half share in the Wife, under paragraph 1(e) of the second application filed are dismissed.

Maintenance

- [24] It is submitted by Counsel for the Wife that **s. 50(1)** of the Act establishes a right to maintenance and that she is entitled to maintenance based on the fact that she spent all of her money on the Lisbon Ville property.
- [25] Counsel for the Husband submitted that there is no absolute right to maintenance. As set out in **s. 50(2)** of the Act, the Wife is only entitled to maintenance if she is unable to maintain herself adequately and can prove this to the Court.
- [26] Under **s. 50(2)** of the Act, I am not satisfied that the Wife has shown that there is a liability on the part of the Husband for maintenance on the ground that she is unable to support herself adequately.
- [27] In arriving at this ruling I have taken into account the factors mentioned at **s. 53(2) (d), (g)** and **(i)**.
- [28] As regards to **s. 53(2) (d)** I have had regard especially to the fact that there is a disparity between the ages of the Wife and the Husband, she being some thirty (30) years younger and he being now retired and unemployed and also the ability of the Wife, as a qualified secretary, to obtain gainful employment. It seems to me that it would be manifestly unjust in a marriage as short as this one if I were to order the Husband to assume the financial needs and obligations of the Wife.
- [29] As to **s. 53 (2) (g)** again the short duration of this marriage and the fact that over a period of some sixteen (16) months the parties have not resided together for any meaningful period of time, also militates against making an order for her maintenance at the hands of the Husband.
- [30] In this regard I bear in mind that the Wife is herself the owner of a property at West Terrace Gardens, which is an income producing property. It also means that even if she were required to vacate the property at Lisbon Ville she would not be without a property in which to reside. In this regard her standard of living cannot be considered to have been so adversely affected as to justify an order for maintenance.
- [31] As to **s. 53(2) (i)**, it is clear that the Wife has not contributed in any way to the income or earning capacity of the Husband given the respective ages and the length of the marriage. Further, it is equally clear that the brief period of marriage could not have affected and did not affect the earning capacity of the Wife.
- [32] It has been argued that she made a substantial direct contribution in the sum of \$250 000.00 towards the renovations, maintenance and continued upkeep of the property and of the Husband himself.
- [33] In this regard I note first that in a prior hearing before this Court the Wife when asked approximately how much she had spent on the renovations replied about \$40 000.00.
- [34] On the basis of the affidavit evidence from Glenville Austin and the contractor, Basil Foster, and indeed the admission of the Wife at trial that the cost of the renovations was borne in the main by the Husband, (as supported by the duplicate cheques in the cheque book, produced and examined by the Court and counsel for the Wife), I reject the contention that the Wife spent \$40 000.00 or anything approaching that figure on repairs or renovation of the property.
- [35] Further the affidavit sworn to by the Wife on 9 March 2007 in support of the application for other relief particularises in great detail the monies expended by the Wife during the course of the marriage. In particular para (2) thereof sets out the monies spent for renovations and repairs which amount to \$2,897.39.
- [36] At the date of this affidavit divorce proceedings had already been initiated and completed in the U.S.A.
- [37] It therefore seems to me that if the Wife had indeed expended monies beyond those set out in that affidavit, those monies would also have been referred to.
- [38] It is significant that in the course of the trial counsel for the Wife, when pressed about the claim for the closure of the business and other expenses claimed in the same affidavit, stated, "exactly what she brought to the marriage is what she wants to take out," though he added that she did not plan for the marriage to breakdown or thought it would be so short.
- [39] Further in answer to the Court about how the \$250 000.00 was spent the Wife stated that the \$250 000.00 is what she had at the beginning of the marriage and that is what she told Counsel she brought to the marriage not that it was spent in the general maintenance and upkeep of the property.
- [40] In so far as the question of maintenance of the Husband by the Wife is concerned when pressed for details on this the Wife stated that these were the normal expenses of a marriage and what she could specifically remember was the purchase of two airline tickets for the Husband to travel to Barbados. In this regard the Husband recalls only one such ticket.
- [41] Of greater significance is the fact that the copies of the bank account maintained at CIBC in the joint names of the Husband and Glenville Austin (Exhibit 'LAK 6') show that throughout the marriage and at a time when the Husband was principally residing in the U.S.A. there were adequate funds in that account to maintain him. In particular the account shows that at the time of the marriage, in June 2005 the balance on the account stood at some \$92 535.48 and that the main withdrawals of \$30 000.00 and \$25 000.00 coincided with the repairs of the Lisbon Ville property. It seems to me that I should only accept the Wife's contention that she was maintaining the Husband if I were to accept that the Husband was being quite deceitful, when as the Wife maintains he told her that he could not afford to repair the property, described as being in a very dilapidated state by the Wife, or to maintain himself. There is nothing in the affidavit evidence before me that impels me to such a conclusion. I therefore find that the Wife was not entirely truthful in these matters and her honesty and

integrity have been impugned.

- [42] There is no evidence in the affidavits sworn by the Wife as to any monies spent on the alleged repairs and renovation of the property in New York.
- [43] It is contended by the Wife and strongly denied by the Husband that prior to the marriage the parties, in a confidential agreement, agreed that they would reside in both the U.S.A. and in Barbados at various times of a year and that she would while in New York work on a part time basis with elderly folk. Based on that agreement it was further agreed that she should close her existing business and they would move all of their possessions into Lisbon Ville.
- [44] Can I accept that these said agreements were made? I think not. In this regard I am particularly struck by some of the inconsistencies which appear on the affidavits filed by the Wife. For example her claim on the one hand for costs for overseas telephone calls made by her nightly to the Husband to report on renovations at Lisbon Ville and on the other hand, that the Husband was himself calling on a nightly basis to be updated with such reports (See affidavit filed 9 March 2007.); and by the assertion in her affidavit (filed on the 19 March 2009 in Suit No. 211 of 2009, at paragraph 2, that she expended personal funds in excess of \$250 000.00 in the renovation, maintenance and continued regular upkeep of the Lisbon Ville property and the Husband, which assertion certainly proved to be demonstrably false as it related to alleged expenditure on the renovations of the property.
- [45] Further in paragraph 3 of the second affidavit the Wife alleged that relying on promises made to her by the Husband that he had no available funds to do his business adequately and renovate the properties, she altered her future business plans and business relationships and spent all of her funds and those of her relatives on the Lisbon Ville property and other necessities for the Husband to her detriment.
- [46] In this regard I ask myself why would a person as intelligent and astute as the Wife, a former United Nations Programme Assistant (as she informed the Court) expend monies in excess of \$250 000.00 on properties known by her to be in legal dispute between the Husband on the one hand, as a beneficiary of the Estate of his deceased Wife and the parents of his deceased Wife the other beneficiaries of the Estate on the other hand? (See para 5 of the affidavit filed on the 9 March 2007).
- [47] To my mind such a course of action flies in the face of reason and I reject that she so expended such sums as alleged.
- [48] The allegation that she lost the sum of \$56 000.00 as a result of closing the business to join the Husband in New York is also rejected. First it is wholly unsubstantiated and the secondly her credibility has been so impugned as to cast grave doubts not only on the sum allegedly lost but also on the reason given for the closing. In this regard, it must also be borne in mind that alleged closing did not take place until July 2006 at the time when according to her she had not gone to the U.S.A after 20 November 2005.
- [49] Having regard to all these matters, the claim to the Wife for maintenance is rejected.

Money Spent on Renovations

- [50] It was submitted by counsel for the Wife that he was instructed that \$16 206.00 was spent from the Wife's personal monies on repairs and renovations executed at Lisbon Ville. At trial he produced receipts admitted as Exhibit "CK1" in support of this assertion. However, when these receipts were added together they totalled \$11 078.59. This total was agreed by Counsel on both sides.
- [51] Counsel for the Husband contended that there is no indication on the receipts to show that the monies were used on the Lisbon Ville property. Further, even if one were to accept that all of the receipts related to the property at Lisbon Ville, the Wife was paid and or tendered sums in excess of those receipts by Glenville Austin out of the account of the Husband.
- [52] The question of what sums of money were expended by the Wife on the Lisbon Ville property is not straightforward to determine. It has been rendered obscure by the unsubstantiated assertions of the Wife that she spent first \$250 000.00 on the repairs, renovations, etc of the property and maintenance of the Husband; by her admission that the costs of repairs were borne in the main by the Husband; from the uncontroverted affidavit evidence of Glenville Austin that she drew cheques totalling \$29 846.00 to Basil Foster, the contractor, and \$10 000.00 to the Wife supported by the statement of account admitted as Exhibit 'A' and the copies of the cheques produced for inspection to the Court and counsel for the Wife. In this regard the Wife was also given a cheque in the sum of \$2 338.01, which cheque according to affidavit evidence of Glenville Austin has not yet been cashed.
- [53] In an affidavit filed on the 9 March 2007 at paragraph 2, the Wife gave specific details of the monies spent by her on the repairs and renovations totalling some \$2 897.39. I have already found that if indeed the Wife had expended monies in excess of that sum, those monies would have formed part of the same affidavit.
- [54] There is nothing on the receipts admitted as Exhibit 'CK 1' (See para. [50]) to establish that in fact the materials purchased under them were either delivered, or related, to the Lisbon Ville property.
- [55] In any event the Wife received from Glenville Austin a cheque of \$10 000.00 drawn on the Husband's account, within the time period when the repairs were being executed as well as other cheques drawn for the repairs in favour of Basil Foster, the contractor.
- [56] Accordingly, I find that the Husband must be given credit for that sum of \$10 000.00 with the result that at the highest the monies expended by the Wife could not exceed \$2 897.39.
- [57] In the circumstances I am prepared to find that the Wife did expend some monies on the repairs but they may properly be described as "de minimis."

The Wife's interest in the Properties

a. United States Property

- [58] It was submitted by Counsel for the Wife that it was always within the Wife's knowledge that the property in which the Husband lives, in Brooklyn New York, was rented. Consequently, it is not an half share in the property itself that the Wife is claiming but instead an half share of the Husband's interest in this property.
- [59] In addition, Counsel submitted the Wife is claiming a refund on the monies spent in cleaning and the upkeep of this property. On the break-up of a marriage, he argued, a spouse can do an accounting and in these special circumstances, since the Wife came out with nothing, it was submitted that she is entitled to compensation for those services rendered and a refund of the monies expended by her. Counsel referred to **Harold Eastmond v. Ondoula Eastmond No. 449 of 1994 p. 6.** (unreported decision).
- [60] Counsel for the Husband submitted that there is no such claim known to the law within a marriage. The case of **Balfour v. Balfour [1918-19] All ER 860** was cited where Lord Justice Duke at page 864 of the judgment stated that in a marriage the parties do not usually intend, unless there is absolute clear evidence to the contrary, to enter into legal relations between them.
- [61] Further, Counsel submitted that when one is married and cleaning one's husband's house there is no liability which arises therefrom for which one can claim compensation. The Wife in this case, Counsel argued, was not hired as a cleaner so compensation does not arise. The factual situation is that the parties got married in June of 2005 and the Husband says she spent two weeks at the time of the marriage and she returned for about another period of two weeks. Even if she had stayed permanently between June 2005 and November 2005, this was not a significant amount of time. If it was a long marriage it would be different. Counsel contended.
- [62] I reject the claim of the Wife for compensation for services rendered in the cleaning of that property on the following grounds:
1. On the admission of the Wife, as contained in her affidavit (filed on the 9 March 2007 in response to the affidavits of the Husband, Glenville Austin and Basil Foster) in paragraph 8, that she did not travel to the U.S.A after the 20 November 2005, it means that effectively she spent a very short period of time in the USA property.
 2. Any services rendered by her during that short period would be such as one would normally expect a Wife to render in the context of a marriage and particularly one that had been entered into only some six (6) months prior to the 20 November 2005.
 3. In any event it is clear from **Balfour v. Balfour** that services such as those rendered by the Wife do not support an enforceable claim in law.
- [63] As to the claim for compensation or refund of monies expended on the upkeep of that property, no evidence has been provided of any such monies and in any event even if monies were indeed expended they could not have been significant given the fact that the property was rented.

b. Properties at Lisbon Ville and Wanstead

- [64] It was submitted by Counsel for the Wife that the Wife is entitled to an interest in the properties at Lisbon Ville and Wanstead based on alleged pre-marital and financial arrangements made between the parties. At the beginning of the marriage the Wife contributed certain monies amounting to gross sums totalling \$250 000.00 and these were her contributions right through the marriage. In this regard I bear in mind the response of the Wife to the Court at para. [39]
- [65] Counsel relied on the dicta of Lord Denning in **Central London Property Trust Ltd v. Hightrees House Ltd [1947] KB 130.**
- [66] In response, Counsel for the Husband stated that there is no factual basis on which a claim for either an agreement between the parties before or during the marriage or the spending of \$250 000.00 or any substantial sum by the Wife can be based.
- [67] Further counsel submitted that even if the Wife's assertion about any agreement (which was not accepted by the Husband) were accepted by the Court, it would have been an oral agreement in circumstances where the law would require writing: **Gissing v. Gissing [1971] AC 886.** This case makes it clear that there is not one law of property in relation to spouses and former spouses and another law of property for other persons. One cannot later acquire an interest in property just by some oral declaration allegedly made by the other party.
- [68] For clarification Counsel cited the case of **Petite v. Petite [1969] 2 All ER 385.** There it was held that it may be possible to acquire an interest in property where there has been substantial improvement in the property and consent by the other party.
- [69] As to the claim of the Wife to a beneficial interest in the properties called Lisbon Ville and the Wanstead Property, I find that the Wife has not established that she has any such claim in law.
- [70] First, following the principle in **Gissing v. Gissing** any claim to a beneficial interest in land by a person, whether spouse or stranger must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the beneficial interest of the claimant.
- [71] First, in this case the legal interest in the properties, were vested solely in the name of Marville King-Knight, the deceased Wife of the Husband. There was no argument or evidence advanced on behalf of the Wife that she in any way contributed to the purchase price of the

properties. In the absence of any such contribution the Court cannot find any trust, constructive or otherwise, by which to bind the conscience of the Husband.

[72] Secondly, it is also clear from **Gissing v. Gissing** that the relevant time for determining the interest of a party in a property is at the date of the purchase of that property and at that date the Court must find, a common intent, that the beneficial interest in the property should be shared, as it would be a breach of faith by the spouse in whose name the legal estate is vested to fail to effect to that intention.

[73] In this regard, it is clear that at the time of the purchase of both the Lisbon Ville and the Wanstead properties there was no joint intention between Marville King-Knight the person with the legal title to the properties and the Wife.

[74] In the case of **Petite v. Petite**, Lord Reid was of the opinion that if a spouse provides with the assent of the spouse who owns the house improvements of a capital or non-recurring nature, it was not necessary to prove an agreement before that spouse can acquire any right.

[75] On these facts the Wife faces insurmountable hurdles:

1. The Husband is not the spouse in whom the legal title to the properties, was vested at the time of the purchase.
2. I have rejected earlier the alleged confidential agreements referred to in paragraph three (3) of the affidavit of the Wife filed on the 19 March 2009(in Suit No. 211 of 2009).
3. I have also rejected the allegation of the Wife that she expended \$250 000.00 in relation to the renovation, repairs, continued maintenance and upkeep of the property and on the Husband and found that her contribution to the property at Lisbon Ville was 'de minimis'. As a result the Wife has failed to establish any expenditure on the properties which could entitle her in any event to a beneficial claim therein.

[76] Relying on the guidance and principles of **Gissing v. Gissing** and **Petite v. Petite** the claims of the Wife for a beneficial interest in the Lisbon Ville and Wanstead properties are rejected.

Right of Occupation

[77] Having regard to my rulings on issues 1, 2, 3 and 4, it follows that the Wife has not established any basis on which she could successfully claim a right to continued occupation of the property at Lisbon Ville.

[78] It is therefore ordered:

- i. that the Wife give up possession of Lisbonville on or before 6 June 2009;
- ii. that an inventory be taken of the furniture, goods and effects in the Lisbonville property belonging to the Estate or the Husband by the Husband and his agent, Glenville Austin in the presence of the Wife and such other person as the Wife may determine.
- iii. The Wife shall allow access to the Lisbon Ville property to the Husband and Glenville Austin for the purpose of taking the said inventory on Wednesday 15 April 2009 between the hours of 10:00 am and 4:30 pm.

Costs

[79] Counsel for the Wife submitted that the Husband should be made to bear all costs because the Wife spent all of her monies in the marriage and would be unable to pay.

[80] Counsel for the Husband submitted that when one looks at the facts, the pleadings and the way in which the matter was conducted, in that no admissions were made by the Wife and every allegation made by the Husband was put to strict proof, there was a lack of seriousness and bona fides. It was as if the Wife, Counsel argued, went on a frolic to see what she could get. All the matters lead to the conclusion that there was not any serious assessment made of the claim of the Wife within the context of the law. (See **Carr v. Carr 1983 FLC 91-329**).

[81] Counsel further argued that the family law matter is one in which the Husband should be granted costs as there was no basis on which the Wife could have received what she was asking for, as there was no jurisdiction under the Act. The application had no foundation in law, as the principal proceedings were conducted in the United States. The issues raised in Suit No. 9A of 2007 were repeated in Suit No. 211 of 2009 and consequently the costs should be consolidated as it would be very difficult to subdivide the costs.

[82] As regards the application of the Wife filed on 9 March 2007 in the Family Law Suit No. 9A of 2007, I find that there was no legal basis on which the application could have been sustained given that the application for principal relief was filed and determined in the United States of America.

[83] It ought to have been clear that the Court had no jurisdiction under the Family Law Act to make any of the orders sought other than the application for maintenance. Even that application was rejected by the Court on the basis that the Wife had not shown a liability on the part of the Husband for maintenance on the ground that she was unable to support herself.

[84] Any proper assessment of the Wife's claim in Suit No. 9A of 2007 ought to have made it apparent that it was doomed to fail.

- [85] It has resulted in a protracted litigation leading to the commencement of the proceedings in No. 211 of 2009.
- [86] Looking at the nature of the claims in No. 9A of 2007, I am satisfied that the Husband was subjected unnecessarily with legal proceedings and consequently the costs thereof.
- [87] He ought not to have been subjected to those proceedings and I consider it proper that the Wife ought to be made to bear the legal costs thereof.
- [88] On 20 March 2009, these proceedings in the Family Law Suit No. 9A of 2007 were consolidated with the proceedings in No. 211 of 2009.
- [89] It is the submission of Mrs. Waldron that the proceedings in No. 211 of 2009 as well as those in No. 9A of 2007 were vexatious and oppressive. Having regard to:
1. The fact that the proceedings in No. 9A of 2007 ought not have been contested in the first instance by the claims made therein;
 2. That in the application filed by the Husband as administrator of the Estate of Marville King-Knight (deceased) for possession of the Lisbon Ville property, the claims in No. 9A of 2007 were again incorporated thereby enlarging the area of dispute unnecessarily.
- [90] I had sought to segregate the question of costs as between the two suits however I consider in light of the consolidation I should not and that a single order should be made as to the costs in both suits.
- [91] Having regard to the fact that Suit No. 211 of 2009 was a claim under Order 92 of the Rules of the Supreme Court for summary possession and involved essentially whether the Wife had a licence or consent to occupy that property, to have incorporated and repeated by way of opposition, the rejected claims in No. 9A of 2007 rendered the manner in which the proceedings under No. 211 of 2009 were carried out as oppressive.
- [92] Accordingly I hold that the Wife should bear the costs of the consolidated action. And I so order.
- [93] I further order that
- a) the bill of costs of the Husband be quantified and filed with a copy served on the Wife's attorneys-at-law within 14 days of the date hereof; and
 - b) that within 14 days of such service, the bill of costs be referred back to the Court for determination.

Elneth O. Kentish

Judge of the High Court