

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
FAMILY DIVISION**

**No. 711 of 2006**

**BETWEEN:**

**SINCLAIR GRIFFITH**

**HUSBAND/RESPONDENT**

**AND**

**ORION GRIFFITH**

**WIFE/APPLICANT**

**Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court**

**Dates of Hearing 2016: October 4<sup>th</sup>,  
2017: February 13<sup>th</sup>,  
April 4<sup>th</sup>**

**Appearances:**

**Mrs. Dawn M. Shields-Searle Attorney-at-Law for the Wife/Applicant  
Ms. Verla De Peiza Attorney-at-Law for the Husband/Respondent**

**DECISION**

**Introduction and Background**

[1] This was a marriage of longstanding. While the Application for Dissolution of Marriage states 1988 as the date the Husband alleges that there was a

separation, both parties appear agreed (See Affidavits of October and November 2012 respectively, and the Husband's Affidavit of August 8<sup>th</sup> 2016), that the marriage ended around 2002, some 32 years later, and that the Husband moved out of the house around 2007/2008.

- [2] The parties married in 1970 at age 22, and together (the wife being the mother of another child born the same year the parties married) are the parents of three (3) children; but at the time of the dissolution of marriage in February 2007, there were no children under the age of 18.
- [3] They first resided with her parents for some six (6) years, during which period the children of the marriage were born (1971, 1972 and 1974 respectively). The Husband admits that he paid no rent to the Wife's family, but does (somewhat self-servingly) challenge her evidence (to be found in her Affidavit of October 15<sup>th</sup> 2012) that she contributed to the household by helping with the bills from her earnings as a maid, and later from her earnings from "smocking", and her work tying and loading canes during the cane season. This Court however accepts the Wife's evidence on this point.
- [4] The Wife alleges that the Husband gave her very little money (barely enough to feed them) and often accompanied her to the supermarket to see exactly how she spent it. The allegation by the Wife that the Husband was very "*tight*" with his money is corroborated by the Affidavit evidence of Greg

Griffith (see Affidavit of March 5<sup>th</sup> 2015), and even by the Husband himself, who thought it necessary to answer the challenge by saying that his earnings were small.

- [5] The Husband was never a father to her first child although she alleges in her Affidavit of October 12<sup>th</sup> 2012 that he claimed her as a dependent on his income taxes. There was no denial of this allegation.
- [6] The Husband was trained as a carpenter and was working as a construction foreman when the parties first met (he would work also as a cane-cutter during the cane season), but he obtained a job with the Transport Board as a driver around 1978, and worked there consistently until his recent retirement/severance. The Affidavit evidence of the Respondent indicated that he continued to earn as a carpenter after obtaining employment as a driver, but particulars of this income were not volunteered by the Respondent, and he was not cross-examined on it in his sworn evidence before this Court.
- [7] Around 1975/1976 the parties constructed a home on tenantry land at Lot 47 Proute Village, St. Thomas, into which they moved in 1976. They started with a two-bedroom wooden house, upgraded over time to a four bedroom wooden house with living and dining room, and with the bathroom and kitchen in wall. The evidence shows that the house was built from savings, cash purchases, credit, loans and personal labor. The accounts differ and in some cases conflict

(see Husband's Affidavit of November 2012 as compared to Greg Griffith's of March 5<sup>th</sup> 2015 that he assisted financially with the addition of a bedroom, bathroom and kitchen).

[8] The Wife hopes to be able to buy the land in due course under the aegis of the Tenancies' Freehold Purchase Act.

### **The Application**

[9] The Application, the subject of this trial, was filed on October 15<sup>th</sup> 2012 seeking:

- “(a) Leave from the Court to apply for property settlement out of time.
- (b) A declaration under section 56 of the Family Law Act that she is entitled to a one half share in the property at Mount Standfast in the parish of Saint James, the matrimonial home of the parties. (It is noted that this was evidently a mistake as the matrimonial home is located, as stated above, in St. Thomas and Mount Standfast is where the Husband now lives with his second wife: see Husband's Affidavit of November 2012 and Wife's Affidavit of January 25<sup>th</sup> 2013).
- (c) A variation under section 57 of the Family Law Act vesting 100 % of the property in her.
- (d) Exclusive possession of the matrimonial property.
- (e) Such further or other relief as to the Court may seem just.”

[10] The application for leave was heard as a preliminary issue by another judge, and such leave was granted by the Court sometime in 2014.

[11] The Application has been supported by the following affidavits considered by the Court:

1. Affidavit of Orion Griffith of October 15<sup>th</sup> 2012;
2. Affidavit of Sinclair Griffith of November 20<sup>th</sup> 2012;
3. Affidavit of Orion Griffith of January 25<sup>th</sup> 2013;

4. Statement of Financial Circumstances of March 27<sup>th</sup> 2015;
5. Affidavit of Greg Delisle Griffith of March 5<sup>th</sup> 2015;
6. Affidavit of Orion M Griffith June 30<sup>th</sup> 2016;
7. Supplemental Affidavit of Sinclair Griffith of August 8<sup>th</sup> 2016;
8. Statement of Financial Circumstances of Sinclair Griffith of August 8<sup>th</sup> 2016;
9. Appraisal Report of George Ramsay and Co. dated October 7<sup>th</sup> 2013;
10. Affidavit of Greg Griffith of September 21<sup>st</sup> 2016.

### **The Relevant Law – The Proper Approach**

[12] The provisions of **sections 56 and 57** of the **Family Law Act** (speaking to declarations and alterations respectively) have become trite law in this jurisdiction and need no further rehearsal here. These matters invariably centre on an assessment/evaluation of contribution to acquisition, conservation or improvement, be it direct or indirect; and particularly, more often than not (as it relates to women), contribution in the capacity of homemaker or parent.

[13] This Court continues to adopt and follow the Three Step Approach or Proper Approach to dealing with these matters adumbrated by **Simmons CJ** (as he then was) in **Proverbs v Proverbs Civil Appeal No.7 of 2001**, as follows:

- “(i) The net property of the parties must be identified and valued by the court.
- (ii) The respective contributions of the parties within the terms of section 57 (3) be considered and evaluated;
- (iii) The section 53 (2) factors as far as relevant, should then be considered.”

[14] As I have adverted to in previous decisions, there is what the Australians have referred to as the Fourth Step, to be found at **Section 57 (2)** of the **Family**

**Law Act**, which states that the court shall not make an order “... *unless it is satisfied that, in all the circumstances, it is just and equitable to make the order*”.

[15] This accords with the rationale of the fundamental importance of the role of judicial discretion in these matters, spoken to by **Simmons CJ** at **paragraph 4 of Proverbs v Proverbs (supra)** where he states:

“[4] One fundamental aspect of the several reforms introduced by the Act was the establishment of a regime for the exercise of judicial discretion as it relates to the division of the property of the parties to a marriage or union other than marriage. The Court is now empowered to alter the interests of parties in such property by the application of an equitable discretion guided by specific statutory criteria.”

**The Property of the Parties and its value (or “Asset Pool”)**

[16] The only identifiable property for these purposes is the former matrimonial home at Proute Hill, in the parish of St. Thomas, in this island.

[17] In this assessment, however, this Court has paid regard to all the resources of the parties, and made note of the fact that the Husband/Respondent was the recipient of a severance payment when his employment was terminated.

[18] The unchallenged Valuation Report admitted as Exhibit “OMG 3” and dated September 2016, places a value of \$55,000 on the home. It is in poor physical and functional condition (now some 40 years since the initial construction), as there is an allegation that the Husband has resisted attempts by the Wife

and the children to effect any repairs to the home. At paragraph 19 of the Wife's Affidavit of October 2012, the following statement was made:

"[19]. In 2007 the house was valued at \$84,000 but it has deteriorated since then. The house is in very bad condition. Hurricane Thomas caused quite a lot of damage and led to a wood ant infestation. We had to pull down the entire ceiling because of the wood ants. When Gail and Antonio wanted to make repairs, the Respondent complained bitterly and threatened to burn down the house if they dared to touch it. They decided not to risk getting into any confusion with him."

See also paragraph 11 of the Affidavit of Greg Delisle Griffith of March 5<sup>th</sup> 2015.

[19] After stoutly denying this, he eventually admitted in cross-examination:

"Why should I allow someone to do it when I can effect the repairs myself. I didn't allow anyone to do it."

[20] While a value of \$55, 000 has been placed on the property, the valuer states at page 7 of the Valuation that ..."*Generally the house is ripe for redevelopment*" and recommends ..."*the total removal of the existing structure ... in order to enable the full utilization of Lot 47*".

### **The Evidence of Contribution**

[21] The evidence of contribution can be found in the filed Affidavits, amplified by the oral evidence and cross-examination of the parties.

### **The Case for the Wife/Applicant (Orion Griffith)**

#### **The Affidavit Evidence**

[22] While the evidence speaks mainly to an indirect contribution, the Wife deposes to giving the Husband '*some of her cane money*' towards the funding of the construction, and also to buying the pipes for the plumbing and having a friend lay them for her (the husband in response stated that these were only the external pipes). But mostly, her direct contribution was manual, as the manual work was done primarily by the husband and he would tell her what to do and she would follow his directions. At paragraph 8 of the Affidavit of October 15<sup>th</sup> 2012 she states as follows:

“[8]. The Respondent and I did all the work in building the house. He would tell me what to do and I would follow his directions. We built the whole house this way, only having help putting on the roof. I even painted the galvanise and went up on the ladder to hand it to him. We worked on evenings and weekends. The two little boys helped with the flooring. The Respondent built much of the furniture in the house, although I bought wrought iron living room chairs on hire purchase. The Respondent bought the fridge on hire purchase and bought the stove as well.”

[23] She used her earnings from 'smocking' to further furnish the home, and the evidence shows that over the years she would work, wherever and whenever she could get a job, including at hotels (Casuarina and The Welcome Inn), going to Canada on the Farm Labour Programme, and the United States on holiday, and doing babysitting and housecleaning. Eventually, she obtained a job at the Electoral and Boundaries Commission around 2002, where she worked, off and on, for ten (10) years.

[24] Her earnings from employment over the years were used to buy food, clothing for the children and pay utility bills.

[25] She was a wife, parent and homemaker for 32 years. There has been no meaningful challenge to this.

### **The Oral Evidence and Cross-examination**

[26] The Applicant amplified her Affidavit evidence of having worked during the marriage by producing a copy of her NIS records which were admitted without objection as “OMG2”. While the Applicant was married from 1970, her NIS record of earnings commenced from 1978 showing \$300 in that year. The next entry is 1980; followed by 1986 showing earnings of \$1021 for the year; followed by January 1987 to January 1988 (13 months) when she worked at the Casuarina Hotel; after which she went to the USA to do babysitting work (about 3 times on jobs lasting about 4 weeks during the course of the marriage, to earn money to send barrels back to Barbados); that in the 90s she went to Canada on the Farm Labour Programme (1990); between 1991 and 1994 she worked at the Welcome Inn Hotel, but the chemicals made her sick; 1994 to 2004 she worked at the Electoral and Boundaries Commission, but it was not continuous employment, the evidence being that she worked when she was called or when she was not sick (it was put to the witness that she worked only

40 months over a 10 year period). Her employment ceased after she had a heart attack and couldn't work.

[27] This Court accepts that the National Insurance record does not reflect all employment earnings during this period and that she did odd jobs when she could get them.

[28] Currently, she maintains herself from a National Insurance pension of \$358 every two weeks, supplemented by the help of her children, one of whom lives with her in the matrimonial home (this child together with his spouse pays utility bills and land rent which was in significant arrears when he started, because the Husband/Respondent stopped paying rent in 2007, and she buys food and the gas with her pension.

### **The Issue of the construction of a basement in 2012**

[29] Much was made by the Husband/Respondent of work started and abandoned with respect to the digging of a foundation and purchase of blocks for the construction of a basement in 2012. Nothing in the evidence suggests any level of construction impacting the value of the matrimonial home. Consequently, little or no regard was paid to this evidence.

### **Other Evidence**

[30] The couple's eldest (of three) son was tendered for cross-examination as he had provided two affidavits in support of the Application (March 5<sup>th</sup> 2015 and September 21<sup>st</sup> 2016 respectively). These affidavits in a general way corroborated many of the allegations made by the Wife/Applicant. He was cross-examined extensively on his mother's work history, but was able to contribute little, as by his own admission he was a child during those years, although he can recall her working at Welcome Inn Hotel and Casuarina Hotel, he recalled that she went several times on the Canadian Farm Labour Programme, and that she worked in the US as a babysitter, and at the Electoral and Boundaries Commission. He was of no assistance on dates and time periods of these various employments. He admitted freely that, to his knowledge, whenever his mother was unemployed his father was the sole financial provider for the household, but as he and his siblings became adults, they all contributed financially to the household.

### **The Case for the Husband/Respondent**

[31] The crux of the Respondent's case is that he was the primary financial provider during the marriage. The funds for the construction of the house came from him: he purchased the materials and he built the house. To do so, he borrowed sums from the NHC through a Mr. Happy Bryan. He paid off this loan when he got his job with the Transport Board. The wooden section

of the house cost him \$1400 and he spent a further \$4650 on roof, flooring, windows and furnishing to a state that the family could move in. He borrowed money from the Bank of Nova Scotia to build on the wall back in the 1980s, the loan repayment being taken out of his salary. He did carpentry to earn a little something for himself, as after the loan repayment and groceries, there was nothing left of his salary.

[32] This evidence was not challenged by the Wife. The Wife in her Affidavit evidence additionally makes mention of the Husband's savings also being used to fund the construction of the matrimonial home.

[33] In his oral evidence, the Husband spoke of his re-marriage in 2009, his attempts to evict the Wife in 2011 and 2012 (ostensibly he wanted to replace the roof because his grandchild was getting wet), his forced retirement since 2013/2014 (he now receives a monthly pension of \$2034.50), and his receipt of a gratuity of \$84,000 (after payment of debts etc. he now has about \$50,000 left).

[34] His strongest point is that his money built the house, and that at the time of construction the Wife/Applicant was not working. Yet, in cross-examination, he agreed when it was put to him that she helped him paint galvanize, brought materials from her father's house when the house was being built, handed him

galvanize nails as he worked on the house. He made this significant admission in cross-examination:

“I built it physically and she helped me.”

[35] Yet later he denied that she did any manual work in the construction of the house, (she never helped to mix concrete, and the children never brought concrete in buckets to him as he worked); her only role was to cook for himself, his brother, his nephew and a neighbour (this gentleman’s wife was related to his wife at the time he told the Court), as they did the work. Her only financial contribution was a load of sand that she bought from a man named Clarke (despite also reluctantly admitting that she was responsible for the laying of the pipes on the outside of the house).

[36] In 1975 he was a cane cutter, and he agreed that during the cane-cutting period (approximately 3 months), she would bring him lunch and while he ate, she took his Collins and cut canes.

[37] He did not dispute her role as homemaker, wife and mother and admitted as follows in cross-examination:

“During the marriage she cooked for the entire family. After a certain time she stopped. She cleaned, washed and looked after the 4 children.”

[38] There is corroboration for this in the Affidavits evidence of Greg Griffith who at paragraph 6 of the Affidavit of September 2016 deposes that:

“... That during the marriage the Respondent (Wife) did all the cooking, washing and cleaning for the entire family...”

[39] He gave his wife \$25 per week to run the household and explained this small sum by saying that his earnings were small at that time (late 1970s to 1980s). He later said that he gave the Wife \$60 per week, and that his earnings were \$68.

[40] He sought to marginalize his Wife’s contributions as homemaker by stating further that he helped with cleaning, and that at Christmas he and his daughter made curtains and cushions. He suggested that the children were outfitted for school by his mother and later by himself (the Wife alleged that she acquired uniforms for the children by putting them on layaway and paid for them out of her smocking money initially and later from her paid employment (see Wife’s Affidavit of October 12<sup>th</sup> 2012); and that his wife had “plenty shoes”, but could not deny that she bought meat and vegetables for the household, and paid some of the bills:

“She contributed to the household only when she work, otherwise she did not pay...”

And later:

“I would say yes she sent foodstuff in barrels when she went away. She brought back clothes for the children when she travelled.”

[41] He admitted that the Wife did ‘smocking’, but deposed:

“It was never in quantities to permit savings or contributions to the provision of the matrimonial home. I therefore deny that the Applicant ever made any financial contribution to the construction of the matrimonial home.”

[42] He admitted that in addition to the babysitting done by the Wife in the United States, she did travel to Canada on the Farm Labour Programme.

[43] In short, the Husband reluctantly admitted, primarily in cross-examination, that the Wife did the things she alleged, but consistently sought to marginalize all her contributions.

[44] Having seen and assessed the parties, this Court is inclined to accept the evidence of the Wife that the Husband was very “tight” with his money and also finds her to be the more credible witness. This Court accepts the evidence/expression of opinion of the eldest son Gregg Griffith at paragraph 14 of his Affidavit of March 5<sup>th</sup> 2015 as follows:

“14. ... the Applicant made insignificant financial, or other, contributions to the matrimonial home and the Respondent depended on finding jobs wherever she could, her adherence to strict budgeting and the contributions of her children to maintain the matrimonial home.”

[45] Counsel for the Wife/Applicant made a submission relative to the Husband/Respondent’s non-disclosure of his savings account, urging the Court to take that into account when considering the means and assets of the parties. It was counsel’s opinion that this was an attempt on the Husband/Respondent’s part to hide that asset from the Court. The

Husband/Respondent admitted, without explanation, that he did not reveal his true financial position in his Statement of Financial Resources.

### **Findings of Fact**

[46] That this was a marriage of longstanding (1970 to 2002), with three (3) children.

[47] That the direct financial contribution to the matrimonial home came primarily from the Husband, but the indirect financial contribution of the Wife was on-going and substantial; as was her contribution as homemaker and parent. In the opinion of this Court, the circumstances of this case reflect the type of marginalization of the role of a homemaker and parent referred to by

**Simmons CJ in Proverbs v Proverbs** when he stated as follows:

“... The decision of the High Court of Australia in **Mallett v Mallett** (supra) is authority for the proposition the Court should not start with any presumption or rule that equality of division is necessarily a just and equitable result. At the same time, the High Court did not decide that the contribution of a wife as homemaker and parent was necessarily inferior to that of the husband as breadwinner. The contribution of such a wife must be assessed in a substantial and not merely a token way.

[41] It will be possible in some cases to arrive at the conclusion that in a marriage there has been equality of contribution by each of the parties within his or her own sphere: That of the wife as homemaker and parent and that of the husband as breadwinner.”

See also **Evatt CJ in Rolfe v Rolfe (1979) FLC 90-629 at p. 79,126.**

[48] That the direct financial contribution to the construction started with the savings generated by the Husband in the first six years of the marriage when the parties resided with the Wife’s family, during which time the Husband

admitted he never contributed to the household expenses. This Court accepts the Wife's evidence that he barely gave her enough to feed them, and that even though technically a homemaker when the children came, she did whatever she could to earn money to assist the household. In this regard, I accept and adopt the approach of the Australian Courts, already adopted by this judge and these Courts, as to how the Court should treat the contribution (direct and indirect) of parents and relatives. Counsel for the Wife/Applicant cited the case of **Rickaby v Rickaby (1995) FLC 92-642 at 82, 476** where **Lindemayer J** stated:

“The parties lived rent free with the wife's parents from marriage in 1971 until they moved into their North Haven property in 1978, a period of about 7 years. In the circumstances of this case, I regard that as a significant contribution to the welfare of the family on behalf of the wife...”

[49] It is noted, however, that the Court's treatment of these contributions varies from case to case, after taking into account such factors as the ultimate duration of the marriage, whether the gift/contribution was received early in the marriage, late in the marriage or even after separation: see **In the Marriage of Cleary [1976] 27 FLR 280**; **In the Marriage of Freeman [1979] FLC 90-693** (where the Court dealt with two such contributions differently); **In the Marriage of Gosper [1987] FLC 91-818**; **In the Marriage of Kessey [1994] FLC 92-495** (where the full Court held that the principle is that a contribution by a parent of a party to marriage to the

property of the marriage will be taken to be a contribution made by or on behalf of the party who is the child of the parent unless there is evidence which establishes that it was not the intention of the parent to benefit his or her child).

[50] See also on this point **Chisholm J. in Pellegrino v Pellegrino (1997) FLC 92-789 and Simmons CJ in Proverbs v Proverbs** that where inherited property is applied to the marriage, *“that would be treated as a contribution by that party or at least as a factor to be taken into account under section 75(2) (section 53(2) Barbados Act).”* This Court sees no distinction between this and contributions by parents and/or related third parties.

[51] That the wife worked assiduously to provide for the family throughout the course of the marriage until her health failed, despite the gaps in her National Insurance contributions (see Exhibit “OMG2”) which only show three (3) significant periods of employment (from 1978 to 1980, 1987 to 1988 Casuarina, Welcome Inn, Electoral and Boundaries Commission 1994 to 2004.

[52] That the wall structure at the back of the house (a proposed improvement project started by the Husband allegedly around 2012 after the divorce) added no value to the matrimonial property.

[53] That the value of the home is questionable, despite the Valuation Report, as it is clear that the house has been allowed to deteriorate to such an extent, that

there is a strong likelihood that future improvement may involve the complete removal of the existing structure. This Court accepts this to be the fault of the Husband/Respondent, who has consistently refused to allow the Wife/Applicant and the children to effect repairs on the home.

[54] On the strength of the findings above, this Court has no difficulty in making a finding (not a presumption) of a 50/50 ownership of the matrimonial home, the subject of this application, after assessing the respective contributions of these parties. See **Mallett v Mallett (supra); Bremner v Bremner (1995) FLC 92-560; Crawford v Crawford (1979) FLC 90-647; White v White (1982) FLC 91-365** cited by counsel for the Wife.

[55] And also **Proverbs v Proverbs Civil Appeal No. 7 of 2001 (supra); Carter v Carter Suit No 233 of 2002; Wilson v Wilson 1963 2 All ER 447; Cox v Cox Civil Appeal No. 19 of 2005; Mallett v Mallett 1984 FLC 91-507 (supra); Marshall v Marshall Civil Appeal No. 1 of 1993; Roberts v Roberts Suit No. 574 of 2003; Rice-Maynard v Maynard Suit No. 588 of 2014; Brewster v Brewster Suit No. 673 of 2003** all cited by counsel for the Husband.

### **Section 53(2) Matters**

[56] The question now becomes, whether there should be any further adjustment taking into account **Section 53(2)** matters. **Section 53 (2)** provides (accepted as relevant to the circumstances of this case) as follows:

“(2) The matters to be taken into account for the purposes of this section are as follows:

- (a) the age and state of health of each of the parties;
- (b) the income property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- ...
- (d) the financial needs and obligations of each of the parties;
- ...
- (f) the eligibility of either party to a pension allowance or benefit under any Act or rule or under any superannuation fund or scheme, or the rate of any such pension allowance or benefit being paid to either party;
- (g) where the parties have separated or the marriage has been dissolved a standard of living that in all the circumstances is reasonable;
- ...
- (m) the terms of any order made or proposed to be made under section 57 in relation to the property of the parties; and
- (n) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.”

[57] **Simmons CJ** pointed out in **Proverbs v Proverbs (supra)** that the

“section 53(2) factors come into play in situations where there is a disparity of resources, including a disparity in future earning capacity, or there are special needs on the part of one party such as the care and housing of the children. An adjustment is made because one has greater needs and the other has stronger means.”

[58] The Applicant has been unable to work since 2002 (when she had a heart attack, after which she could not work), and sustains herself by way of a pension (she is now 69 years of age) of \$358 every two weeks, and through the help of her children, one of whom resides with her in the matrimonial home with his girlfriend and child, and with whom she shares the household expenses. This son (Antonio Griffith) pays the land rent. He started by first clearing significant arrears left unpaid by the Husband who stopped paying from around 2007, but has been current for some time now.

[59] There is an allegation that her ill-health is as a result of the Husband's physical abuse (see Affidavit of October 2012 and that of Greg Griffith March 2015), but no medical evidence was produced to this effect and neither party addressed this issue in their oral evidence and cross-examination. Therefore, no weight could be given to this allegation. Medical evidence was, however, produced under cover of her Affidavit of June 30<sup>th</sup> 2016 which corroborates her allegations of serious health challenges resulting in her inability to work.

Dr. Thompson stated in his Report dated March 4<sup>th</sup> 2015 that,

“... She will require medical care for the rest of her life for heart disease, back pain and for control of her hypertension.”

[60] The wife enjoys extremely bad health and could not work even if she wanted to. She has neither income or financial resources to meet her medical needs should her condition worsen.

[61] The Husband is now 70 years of age and gave no evidence of any illness; he stated that he is a diabetic, but stated nothing additional to this. He produced no medical evidence confirming or espousing the status of his diabetes. He is retired and the recipient of a monthly pension with no allegation that it fails to meet his current needs and those of his current wife. He has savings, being the remains of a severance entitlement accrued predominantly during the years of the marriage (had he not been severed he would have received a gratuity), and has used his resources in the maintenance and improvement of his current wife's home. He is the owner of a motor vehicle of limited and unchallenged value. He has an undetermined interest in the home of his present wife, built on her family's land. His financial situation appears to be vastly superior to that of the Wife (\$8592 per year in contrast to \$24,408 per year).

[62] Stated differently, there is a significant disparity in their financial and personal circumstances and a potential (if not actual) lowering of the Wife's standard of living (this Court accepts that without the aid of her children the Wife would have fallen on dire circumstances long ago).

[63] Any repairs or improvements done to the matrimonial home in the future will be from the resources of the children of the marriage, who appear committed to ensuring that their mother has a home. The Wife has no resources other

than her bi-weekly pension, used by her primarily to feed the household and look after herself.

[64] It is, in the opinion of the Court, significant that the Wife has made no claim for spousal maintenance or claimed entitlement to a share of the Husband's severance/gratuity earned/accrued during the currency of the marriage.

[65] Cumulatively, these factors speak powerfully to an exercise of this Court's power of alteration under the **Family Law Act**.

### **Disposal**

[66] In light of the above, this Court orders as follows:

1. That pursuant to **section 56 of the Family Law Act, Cap 214** this Court declares that the Wife/Applicant is entitled to 50% of the matrimonial home.
2. That pursuant to **section 57 of the Family Law Act, Cap. 214** the interest of the parties in the property situate at Proute Hill, St. Thomas is altered so as to vest 70% in the Applicant/Wife and 30% in the Respondent/Husband;
3. It is just and equitable that the Applicant/Wife be given exclusive possession of the matrimonial home and that a lump sum be paid to the Respondent/Husband in satisfaction of his share and interest.

4. That the Wife/Applicant pay the Husband/Respondent on or by December 31<sup>st</sup>, 2018 the sum of \$16,500 after which date interest shall be payable on this sum.

[67] No order is made as to costs.

**MARGARET A. REIFER**  
Judge of the High Court