

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No. 257 of 2004

BETWEEN:

RALPH EDWARD SMITH

APPLICANT/HUSBAND

AND

MARLENE YVONNE SMITH

RESPONDENT/WIFE

Before Dr. The Hon. Madam Justice Sonia Richards, Judge of the High Court.

2011: September 22, 23

2012: May 21, 22, 23

2014: October 31, November 28

2015: January 16, December 11

Mr. Emerson Graham, Attorney-at-Law for the Applicant/Husband.

Mr. Clement Lashley Q.C. in association with Ms. Honor Chase, Attorneys-at-Law for the Respondent/Wife.

DECISION

Introduction

[1] Before the Court is an application for a property settlement, pursuant to the

Family Law Act, Cap. 214 (“the Act”). There is also an application by the Wife for maintenance.

Background

- [2] The parties were married on the 04 September 1993, and their divorce finalised on 04 October 2004 with the grant of decrees nisi and absolute by Blackman J. The first contact this Court had with this matter was on 06 March 2007, when a valuation of the matrimonial home was ordered. The file indicates that between March 2010 and May 2011, the matter passed through the hands of at least two other Judges. Notice of a change of lawyer was filed for the Husband on 30 April 2010. The next interface with this Court was in September 2011, when the trial commenced. In the interim period, the parties occupied themselves with the filing of several affidavits and other documents.
- [3] The parties met sometime in the late 1980s to the early 1990s. When they met, the Wife was a spinster who lived with her mother at Richmond Gap, St. Michael. The Husband was married but separated from his previous wife, and he lived in shared rented accommodation at Cave Hill, St. Michael. The Wife’s mother, Clotilda Worrell, appears to have played the role of matchmaker. Clotilda allowed the Husband to move into a house she

owned at Richmond Gap. This house was near to where she lived with her daughter the Wife.

[4] The parties began an intimate relationship, and lived together at Clotilda's house for a few months prior to their marriage in 1993. At the time of the marriage, the Wife was 53 years of age and employed as a cook at the Barbados Yacht Club. The Husband was 50 and divorced for less than a year when he remarried. He was employed as a security guard at the Caribbean Broadcasting Corporation (CBC).

[5] As a married couple the parties continued to live with Clotilda until the Husband moved into their newly constructed matrimonial home at Headley's Land, Deacons Road, St. Michael, between 1995 and 1996. The Wife followed the Husband to the matrimonial home, after her mother died in December 1997. She owned the land on which the matrimonial house was built. A chattel house is next door to the matrimonial home. It is also on the Wife's land, and was renovated prior to the marriage. In November 2001, the Husband registered the chattel house in their joint names at the Inland Revenue Department.

[6] In March 1996, the Wife won a Lotto jackpot of \$500,000.00. From the prize money a car was provided for the Husband; the Wife bought a house for herself and one of her daughters at Vauxhall Gardens, Christ Church; and

the matrimonial home was completed and furnished, among other things. In November 2002, \$180,000.00 was placed in a fixed deposit in the joint names of the parties. The Wife received the interest payments on the deposit until it was frozen by the bank.

[7] There is no agreement on the date of the breakdown of the marriage. The Husband left the matrimonial home, and took up residence at a house at Barkers Road, Haggatt Hall, St. Michael. This house was inherited from his father who died on 30 September, 2000. He shares the ownership of the house with a sister. The Wife continued to reside at the matrimonial home.

[8] There are no children of the marriage. However, the Wife maintains an adult daughter from a previous relationship. This daughter is mentally challenged.

The Property and Other Applications

[9] On 29 September 2004, the Husband filed an application asking for the following:

1. a declaration that he is entitled to a share of the matrimonial home at Headley's Road Deacons Road, St. Michael;
2. a declaration that he is entitled to a share of a joint account held at the Warrens, St. Michael branch of First Caribbean International Bank;

3. an order that the matrimonial home be sold by private treaty or by auction, and that he be paid an equitable share of the proceeds of sale; and
4. that he be paid an equitable share of the lottery money paid into the joint account.

[10] A lengthy amended application was filed by the Husband on 30 January 2009. In that application he sought expanded orders in relation to the matrimonial home; a lump sum payment; further orders pertaining to the fixed deposit with the Lotto winnings; and orders concerning the property at 70 Vauxhall Gardens, Christ Church.

[11] The expanded application for the matrimonial home requested, inter alia:

1. a declaration as to the existing title or rights to the matrimonial home; and
2. an order altering the interest of the parties in the matrimonial home so as to transfer to the Husband a one-half or other share of the beneficial interest in that property.

[12] The orders applied for with respect to the fixed deposit are:

1. a declaration that the Husband is entitled to a one-half share of the \$180,000.00 on this account; and
2. an order that the Wife pays to the Husband one-half of all the interest paid to her from the fixed deposit.

[13] The orders sought pertaining to the Vauxhall property were uplifted into a Take Notice filed by the Husband on 18 March 2009. The Husband gave

notice of his application for:

1. a declaration that the purchase of the property at 70 Vauxhall Gardens, Christ Church was made to defeat the rights of the Husband in the funds jointly owned by the parties;
2. a declaration that the Husband is entitled to the sum of \$62,500.00 being the value of the one-half share or interest of the sum of \$125,000.00 used for the purchase of the said property in the joint names of the Wife and her daughter, such sum being part of the proceeds of the monies won by the Husband and the Wife in a lottery in April 1996;
3. an order that the Wife pays to the Husband, within 3 months, the said sum of \$62,500.00, being the value of one-half share or interest in the sum of \$125,000.00 used for the purchase of the said property in the joint names of the Wife and her daughter;
4. an order setting aside the Conveyance dated 07 August, 1996 which granted a one-half share in the said property to the Wife, and a transfer of the one half-share to the Husband; and
5. an order that the Wife pays the Husband interest on the sum of \$62,500.00, calculated at 8 percent per annum for the period August 1996 until payment.

[14] By a supplemental application filed on 14 February 2011, the Husband applied for these additional orders:

1. a declaration as to the existing title or rights to a house adjoining the matrimonial home; and
2. an order altering the interest of the parties in the adjoining house and the rents collected therefrom, so as to transfer to him a one-half or other share of the beneficial interest in the said house and rent as the Court determines to be just and equitable.

[15] In her affidavit filed on 02 March 2007, the Wife asked the Court to make such orders as may be just pursuant to the relevant provisions of the Act. (See para.17). At paragraph 13 of this affidavit, she requested the Court to alter any share or interest it may find that the Husband holds in the fixed deposit, by returning that share or interest to her pursuant to section 57 of the Act.

[16] The Wife also filed an application on 03 February, 2009, requesting:

1. periodic maintenance pending the disposal of these proceedings; and
2. an order for maintenance, including a maintenance component in the property settlement.

[17] The parties filed a plethora of affidavits. The Husband filed affidavits on 28 September 2004, 12 October 2007, 14 April 2008, 24 November 2008, 30 January 2009, 13 March 2009, and 11 November 2014. Affidavits were filed by the Wife on 02 March 2007, 05 November 2007, 26 November 2008, 03 February 2009, and 20 March 2009.

[18] A number of statements of financial circumstances were filed over the years. The Husband filed four statements on 28 September 2004, 25 November 2008, 21 February 2011, and 07 November 2014. The Wife filed three statements on 02 March 2007, 13 May 2011, and 26 November 2014.

[19] Additional affidavits were filed by third parties. Mr. Allan Layne filed an affidavit on behalf of the Husband. And after the trial began, Mr. Earl Broomes, a former son-in-law of the Wife, filed a supporting affidavit on her behalf.

The Relevant Law and Guidelines

[20] The Court derives its jurisdiction to make declarations in relation to the property rights of married persons, or persons in a union other than marriage, from Section 56 of the Act.

[21] Further, Section 57 provides that:

“1. In proceedings in respect of the property of the parties to a marriage or union or of either of them, the court may make such order as it thinks fit altering the interests of the parties in the property including

(a) an order for a settlement of property in substitution for any interest in the property; and

(b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage or union, such

settlement or transfer of property as the court determines.

2. The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

3. In considering what order should be made under this section, the court shall take into account the following:

- (a) the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise, in relation to the property;
- (b) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;
- (c) the effect of any proposed order upon the earning capacity of either party;
- (d) the matters referred to in section 53(2) in so far as they are relevant; and
- (e) any other order that has been made under this Act in respect of a party.”.

[22] It was in **Proverbs v. Proverbs (2002) 61 WIR 91**, that our Court of Appeal

framed the guidelines for the determination and alteration of the interests of parties in matrimonial property. At paragraph [31] of the **Proverbs** decision, a tripartite approach was recommended when a court is considering a property application under section 57 of the Act.

[23] The Court of Appeal recommended that the “proper approach” of a court is to:

1. identify and value the net property of the parties;
2. consider and evaluate the respective contributions of the parties within the context of section 57 (3) of the Act; and
3. consider the factors identified in section 53 (2) of the Act, so far as relevant to the particular application.

[24] In a more recent case of **Kneen v Crockford [2011] FMCA(Fam) 372**, Lindsay FM spoke of four steps. The learned Federal Magistrate was referring to similar provisions in the Family Law Act 1975 of Australia. This legislation is recognised as the statutory model for the Barbados Act. (See **Proverbs** supra at para. [2] of the decision).

[25] Lindsay FM observed that:

“[13] The approach to the resolution of disputes relating to property settlement between married spouses is well settled. There is a four step process to be followed. The assets must first be identified and valued on a net basis. The court must then consider the contributions the parties

have made to the acquisition, improvements and maintenance of those assets, both financial and non-financial contributions, both direct and indirect. Having carried out that task the court is then to consider the application of those matters enumerated in s75 (2) of the Act [Barbados Act S.53 (2)] and to give weight to such of them as are relevant to the facts and circumstances of the case. This was formerly referred to in the cases as an adjustment on account of the needs of the parties but it is broader than that. Finally, the court has an overriding discretion to adjust or modify the operation of the orders so as to achieve an outcome that is just and equitable in terms of the demands of the legislation.”.

[26] Section 57 (2) of our Act directs the Court not to make an order or vary the property interests of the parties, unless satisfied that it is just and equitable to do so, in all the circumstances of the case. The fourth step referred to by Lindsay FM, is in reality the legislative directive in section 57 (2). In fact he concluded that he did not regard the fourth step as a substantive step:

“[14] There is ample authority for proceeding in this way (see **Pastrikos (1980) FLC 91-987**, **Lee-Steere (1985) FLC 91-626**, **Ferraro (1993) FLC 92-335**, **Clauson (1995) FLC 92-595** and **Whitely (1996) FLC 92-678**). There is a limited controversy as to the nature of the fourth step and whether it is truly a discrete fourth step or only involves an adjustment to form and balance of the orders. I do not need to resolve that disputation to determine this case but I respectfully adopt the explication of the nature of this so-called fourth step by Walters FM in **OSF v OJK (2004) FMCA fam 63** and do not regard this step as a substantive fourth step as such.”.

The Matrimonial Assets

[27] The Husband claims an interest in the chattel house, the matrimonial home at Deacons Road, and the Vauxhall Gardens property; a share in the remaining Lotto winnings held in the fixed deposit, and a share in all the interest paid on that deposit. The motor car is also treated by him as a matrimonial asset. Neither party included the Husband's inheritance from his father in the asset pool. However, counsel for the Wife included the furniture in the matrimonial home. The Wife made no specific claims to any of the assets except the fixed deposit. (See para.[15] supra). She requested "such orders as may be just", and she informed the Court that the Husband "should get very little from this whole thing."

The Chattel House

[28] In his closing oral submissions to the Court on 23 May 2012, counsel for the Wife indicated that the Husband had made no claim to an interest in the property adjoining the matrimonial home. He referred to paragraph 13 of the Husband's affidavit filed on 28 September 2004. This observation is accurate in relation to the 2004 affidavit. However, counsel overlooked the Husband's affidavit of 13 March 2009, and his supplemental application filed on 14 February 2011. (See para. [14] supra). It was in that 2011

application that the Husband staked his claim to an interest in the chattel house adjoining the matrimonial property, and to the rent.

[29] Counsel for the Wife also ignored the chattel house in his written submissions filed on 05 June 2012. At paragraph 49 of those submissions he lists the matrimonial assets as the matrimonial home, the motor car, the balance of the Lotto money, and the furniture in the matrimonial home.

[30] It was five years after he filed for the divorce in 2004, that the Husband claimed an interest in the chattel house. At paragraph 13 of his affidavit of 13 March 2009, the Husband indicated that the chattel house was built on the Wife's land, but that they owned it jointly. The chattel house was renovated prior to the marriage, but after the parties had developed a relationship.

[31] The Wife responded to the claim against the chattel house, and stated in her affidavit of 20 March 2009, that she repaired this house in the 1990s. (Para.12). The house was supposedly left to her by her father who died on 19 January 2003. The Court saw no will, assent or other documentary evidence to support such a testamentary gift to the Wife from her father.

[32] Furthermore, early in her cross examination, the Wife told the Court that, when she and the Husband became friendly, "At that time I owned a small house at Headley's Land that I rented out.". Therefore, when the parties

became involved, the Wife was exerting possessory and ownership rights over the chattel house. She received the rents from the original house and from the improved model. The Wife eventually admitted that the Husband gave some assistance with the alterations to this house. Therefore, the Court finds that the chattel house is a part of the asset pool from the marriage.

[33] The Husband recalled the rent as \$5.00 per week. But the Wife claims that the rent she received from the chattel house was more than \$20.00 per week for a small, wooden, two bedroom structure. According to her, the Husband made no contribution to the transformation of this house into a 3 bedroom, wood and wall house, with a rental value of \$500.00 per month.

[34] In her affidavit of 20 March 2009, the Wife asserted:

“I deny that the [Husband] assisted directly or indirectly in the repairs to the chattel house at Headley’s Road, St. Michael. There was Eddy Powlett a carpenter and the [Husband] would be around. The [Husband] made no contribution. I certainly never requested any assistance from the [Husband] in regard to the renovation of this house. All repairs and labour came from my savings and earnings and this was before marriage.”. (Para.13).

[35] The only assistance the Wife initially conceded that the Husband made to the improvement of this property, was “helping the carpenter on days and receiving stuff I sent home”. She then grudgingly detailed his assistance as helping her to replace the wooden floor with a concrete floor, and taking out

and replacing the old boards and all the uprights. Counsel for the Wife was inaccurate in his statement that the Husband's only input was painting this house. (See para.60 of the written submissions filed on 05 June 2012 (page 22)).

[36] The Wife could not recall if the Husband assisted her with putting in the marl before the floor was cast in concrete. She said that all the money for this project came from her earnings of \$400.00 per week, together with funds raised from meeting turns.

[37] The Husband is adamant that his contribution to this venture was significant in terms of his time and his labour. He said that it was his idea to demolish and rebuild the old chattel house, so that they could "achieve something from it.". To that end, he assisted through supervision, labour work, painting and carpentry. Counsel for the Husband suggested to the Wife that the Husband borrowed \$6,000.00 to complete the chattel house. However, nowhere in his affidavit or oral evidence has the Husband referred to any direct financial contribution to the improvement of the chattel house.

[38] The Court finds that the Husband made no direct financial contribution to the refurbishment of the chattel house. However, he contributed to its improvement by way of supervision, intense labour work, painting and carpentry. This would have reduced the Wife's financial expenditure. His

contribution also assisted with the transformation of the chattel house into a significant income producing asset. At least \$400.00 more per month became available to the Wife. This was approximately a quadruple return on her initial investment. In her most recent Statement of Financial Circumstances filed on 26 November 2014, the Wife declared annual rental income of \$6,000.00 or \$500.00 per month.

[39] The chattel house was valued in February 2011, by Mr. Alkins Kirton, at \$60,333.00. The land on which it is built was valued at \$109,290.00. On 31 October 2014 and 16 January 2015, this Court made orders for an updated valuation of the chattel house. To date, these orders appear to have been ignored, as a valuation has not been received by the Court. The Court assumes that since November 2014, the rental value remained at \$500.00 per month.

The Matrimonial Home

[40] As far as the Wife is concerned, she has nothing to share with the Husband except the matrimonial home. In her affidavit filed on 02 March 2007, the Wife said that she was “prepared to offer the Husband whatever interest he is entitled to for any assistance he made towards the construction of the matrimonial home.” (Para.14).

- [41] The matrimonial home is a 3 bedroom 2 bathroom wall house. It is located on the same plot of land as the chattel house. The Wife explained that she owns one spot with three houses on it. The third house is owned by a tenant who pays the Wife land rent. The Husband has never challenged the Wife's ownership of the land.
- [42] Construction of the matrimonial home appears to have started at the beginning of the marriage. The only area of agreement between the parties is that this house is a matrimonial asset. The dispute surrounds the level of contribution each made to the construction of the asset. The Wife told the Court that "No money from [the Husband] bought any materials for the house.". However, she also spoke of a joint decision to build a wall house. Her evidence was that they both paid the workmen and the mason who built the house. (See affidavit filed on 02 March 2007, para.6.).
- [43] The Wife's version is that she had a number of small Lotto wins before hitting the big jackpot in 1996. The Husband advised her how to spend this money. "All the money I won I did what he told me; to call COW Williams; buy blocks; put aside or go and credit from the Lumber Company.". She produced a number of bills for the purchase of materials in 1992 and 1993. (Affidavit 05 November 2007, Exhibit MWS2).

- [44] Four of the bills are invoiced by Ready-Block Limited to the Wife in her maiden name. They are for the purchase of 6 and 8 inch concrete blocks. These invoices are signed by the Husband as the customer who received the blocks when they were delivered to Deacons Road. The bills are cash bills. There are 3 cash bills from C.O. Williams Asphalt & Quarry Ltd. One of them bears the Wife's maiden name, and the address at Headley's Road, Deacons Road. There is no name or address on the other two bills exhibited.
- [45] A delivery note from the latter company is also in the Wife's name, and it bears the Husband's signature as the person receiving the material. The final bill for materials is a charge bill from Barbados Lumber Company Limited, again in the Wife's maiden name, but giving her address at Richmond, St. Michael. There is no information on this bill to indicate who paid for or received the materials.
- [46] The Court agrees with counsel for the Wife that there is a paucity of documentary evidence in this case. The Wife's bills cover a period from early 1992 to 1993; roughly one year. The bills are for the purchase of marl, stone, concrete blocks, cement and deal board. The Husband told the Court that these bills were for the chattel house. This is a plausible explanation, given that the marriage did not take place until September 1993. The Wife also informed the Court that the parties were boyfriend and girlfriend when

the chattel house was improved. What is noticeable is that neither party provided bills or invoices for windows, doors, roofing materials, tiles, bathroom fittings and fixtures, kitchen fittings and fixture, electrical fittings and fixtures, cupboards, trowel plaster or the purchase or installation of gates.

[47] The Husband alleged that his documents disappeared from his room at the matrimonial home around 2003. His version is that the Wife did not buy a single block, but that she contributed about ten percent of the money for the materials. (Para.8 of his affidavit of 12 October 2007). However, in his oral evidence he conceded that he knew that the Wife purchased concrete blocks from Ready-Block Limited.

[48] The Husband's other explanation for the invoices produced by the Wife is that he paid for some of the materials when they were delivered. He suggested that the receipts were written in her name because she was known in Headley's Land, and he was a stranger to that area. He claimed not to know that the Wife had made several purchases from the Lumber Company. He said that he knew for the first time that she had an account with that company when he was shown the charge bill.

[49] With respect to the actual construction of the house, the Wife said that her former son-in-law assisted with the filling in of the foundation and the

casting of the floor. Other workmen were engaged to dig the foundation. The Husband was around the workmen during the day. She came to the site in the afternoon, and assisted with the cleaning up and other things. She also cooked for the workmen on weekends. The mason built the house to ringbeam, and it was completed in 1996 using money from the Lotto winnings. (See the Wife's affidavit of 02 March, 2007, paras. 6, 8 and 9; and affidavit of 05 November 2007, para. 10).

[50] On the other hand, the Husband contended that the Wife did no work at the matrimonial property. It was he who was able to supervise the construction during the day because he worked at night. The entire foundation was dug by him in stages. He spread the marl himself. Half of the floor was cast on a Saturday morning by about 12 persons, including the Wife's son-in-law. The floor was completed the following day by 5 persons including himself and the mason, but not the son-in-law. The only weekend that work occurred at the site was when the floor was cast. (See Husband's affidavit of 28 September 2004, paras. 5 and 6; and affidavit of 12 October 2007, para.9).

[51] According to the Husband, the construction of the matrimonial home was a joint venture. His testimony was that the blocks, steel and sand were gathered before construction started. Both parties purchased concrete

blocks, and the house was completed in approximately late 1996. When the Lotto prize was won the roof was already on the house, and the doors and windows installed.

[52] The Husband said that he paid roughly \$5,500.00 for the cupboards, and that he purchased the bathroom fittings. He painted the ceiling, under the eaves, and the door jambs. The last thing he did was to dig and case a 6 foot square 22 foot deep well. The Husband insisted that all of the completion expenditure did not come out of the Lotto money. He believes that it was because of his time, labour and finances that the matrimonial home was built without a mortgage.

[53] Each of the parties presented a witness to the Court to bolster their respective claims about their contributions to the construction of the matrimonial property. Earl Broomes filed a brief nine paragraph affidavit on 22 May 2012. He is the former husband of the Wife's daughter Lorraine. Lorraine jointly owns the Vauxhall Gardens property with the Wife.

[54] Broomes informed that he was aware that the building of the matrimonial home was conceptualised by the Wife long before he knew the Husband. Broomes and several of his male friends are supposed to have worked at the site on weekends around 1991 to 1992. They started work from about 8.30 a.m. to 9 a.m., and continued to around 3 p.m. They filled in the floor area

with marl up to floor level, mixed concrete and poured the concrete floor. The concrete section took 2 days to complete, a Saturday and Sunday. There was voluntary labour, and the Husband was “just a helper like any other person”. The Wife cooked for the men and provided drinks.

[55] Broomes gave his oral evidence on the same day that his affidavit was filed. He admitted to a mistake in the affidavit concerning the date of his marriage to Lorraine. It was 1986 and not 1996. He further testified that:

“I am certain about other things in my affidavit. When I got there I think a section of foundation was already done. Work was done before the floor. I worked on the building before the floor. This is years that I have to go back. I am not clear what happened all them years. I am not sure. I am not sure if all the blocks were built up. I was working on the house from time to time on weekends. I don’t agree that I was not there. I was there. It is not true that I went only once to help cast the floor. I don’t recall the mason who cast the footings and foundation. I just went to do labour work. A mason was on the site. It took two days to cast the floor, a Saturday and a Sunday. After the floor was cast that was the end of my job. I did not build the house.”.

[56] When cross-examined by Counsel for the Husband, Broomes added:

“We put marl in some areas. I worked there for more than two days, but it was two days for the floor. It wasn’t too long before the floor was poured; just a weekend or two before the floor was poured.”.

- [57] The Court gathered from Broomes' fading memory, that at the most he spent 2 or 3 weekends working at the site. The last weekend was dedicated to pouring concrete for the floor. Paragraph 3 of his affidavit confirmed the Husband's evidence that materials were gathered prior to construction. When Broomes went there he saw concrete blocks, steel, sand, and other materials already on the site.
- [58] Broomes believed that, when he got to the site, a part of the foundation was already dug. He gave no evidence about he and his friends digging the foundation. His work was limited to filling in the foundation with marl, mixing concrete, and pouring the floor. He therefore challenged the Husband's evidence that the Husband had spread the marl himself, and that Broomes and his crew only worked for a half day casting the floor.
- [59] The evidence of the mason Allan Layne must now be added to the mix. The Husband and the Wife are agreed that Layne built the house from foundation to ringbeam. His affidavit was filed on 29 June 2009, and his oral evidence was heard on 21 May 2012. Layne worked on the house for about 9 to 10 months, sometime between 1993 and 1994.
- [60] Turning first to Layne's affidavit, he recalled being approached by the Husband who made arrangements with him to build the matrimonial home on behalf of the Husband and the Wife. In addition to masonry, Layne did

carpentry and labour work at the house. Layne was assisted by his nephew Philroy Layne. Work was done 5 days per week, from Monday to Friday between 8 a.m. and 4 p.m.

[61] The only weekend work was carried out on a single weekend when the floor was cast. Layne reported that about 10 persons worked on the Saturday. The additional hands came to assist the Husband and the Wife. However, these hands did not return on the Sunday, when the floor was completed by 5 persons including the Husband. His understanding was that the Husband had dug the foundation.

[62] Layne did the boxing, laid blocks, cast the ringbeam, plastered the walls and installed the windows. The Husband assisted Layne and his nephew with the labour work. They cleaned as they worked, and at the end of each day they did whatever cleaning remained to be done.

[63] The payment arrangements were also addressed in Layne's affidavit. He was paid \$80.00 per day, and his nephew received \$50.00 per day. Every Friday afternoon they were paid in cash by the Husband. Whenever material was required, Layne informed the Husband who made the arrangements for the delivery of the material. Layne saw material being delivered from time to time, and he observed the Husband pay for the material when it was

delivered. The carpenter who installed the roof was also paid by the Husband.

[64] With respect to the Wife, in the 9 or 10 months that Layne worked on the house, he only saw her there on about 3 occasions. All he saw the Wife doing was talking. He never saw her assisting with the work. The Wife never provided food for either Layne or his nephew. In fact, this was not necessary because they either brought their own food, or bought food from a nearby shop.

[65] The oral testimony given by Layne was just as revealing as his affidavit evidence. He informed the Court that the Husband was the one in charge of the house while it was being built. The Husband was there almost every day, and he told Layne when he was not going to be there.

[66] Layne itemised certain work that was not done by him prior to leaving the site. As noted earlier, he was not responsible for the roof. However, the work on the roof had started before he left to go to another job. Layne did not do the painting, tiling, cupboards, guard wall or trowel plaster. And, although he installed the windows, he had no knowledge where they came from.

[67] There was also additional insight into the payment arrangements. Mrs. Smith never paid Layne while he worked on the house. On Fridays when

Layne and his nephew were to be paid, the Husband took Layne's van and returned with their money. Layne did not know where the Husband got the money from. Also of interest is Layne's comment that he did not know "that someone won a sum of money on Lotto."

[68] There was no challenge to Layne's evidence by counsel for the Wife. It was never suggested to Layne that he was either mistaken or untruthful about the facts he alleged. In fact, counsel for the Wife did not comment on or refer to Layne's evidence in either his closing oral submissions on 23 May 2012, or in his written submissions filed on 05 June 2012. There was no evidence that Layne had any interest to serve in these proceedings. Therefore, Layne's affidavit and oral evidence, about the construction of the matrimonial home, are to be preferred, and are accepted by this Court as truthful and accurate accounts of what transpired.

[69] Layne's evidence has implications for the version of events rendered by the Wife and her witness Earl Broomes. Based on Layne's unchallenged evidence, the Court made the following findings of fact:

1. Broomes and his friends assisted with the casting of the floor for one day only. That day was a Saturday. Broomes was not at the site the following day when the floor was completed by a smaller group of persons, that included the Husband.
2. The Husband was the driving force behind the construction of the matrimonial home. He was there most days to supervise the

construction, and he assisted with the labour work. He was also the person who dug the foundation.

3. The Wife seldom visited the site, and when she did go she did no cleaning or other work at the site. The Wife never cooked or provided drinks for either Layne or his nephew. It is possible, however, that she fed and watered the large contingent that assisted with the casting of the floor on the Saturday.
4. Layne and his nephew were paid \$650.00 per week by the Husband. This is based on his evidence that he was paid \$80.00 per day, and his nephew \$50.00 per day. They received around \$26,000.00 calculated on approximately 40 five day weeks of work. The Husband also paid the carpenter who installed the roof, and for some of the materials delivered to the site.
5. When Layne moved on to another job, the house was not completed. The roof was in the process of installation, and tiling, painting, trowel plaster, cupboards, plumbing, guard wall and other finishes had to be done. Layne moved on before the Lotto money was won.
6. Based on Layne's evidence that he started to work on the house between 1993 and 1994, and that he worked there for 9 or 10 months, Layne completed his part of the job nearly two years before the Lotto win. His evidence was that he knew nothing about the Lotto win, although it was well publicised in the Daily Nation of 06 March 1996. Therefore, it would not be unreasonable to conclude that work continued on the house after Layne left, and before the Lotto was won.

[70] The Court appreciates that even though the Husband paid for materials and services provided for the construction of the matrimonial home, that does not mean that he paid for all the materials and all the services. In his affidavit filed on 28 September 2004, the Husband stated that both parties

contributed to the purchase of materials, and to the payment of workmen. (Paras.4 and 7).

[71] The Husband also contended that the building plan was paid for by the parties, and that they both funded the construction. He described it as a joint venture. The Wife referred to a joint decision to build a wall house, in her affidavit filed on 02 March 2007. (Para.5). She also confirmed that they both paid the workmen and the mason. (Para.6). But in her oral evidence she insisted that “No money from him bought any materials for the house.”.

[72] The Court finds that the Husband was in a position to make an equal financial contribution to the construction of the matrimonial home. The Court accepts that his net monthly salary began at approximately \$1,600.00 per month, and increased while he was employed with the CBC. And in 1993 his settlement from his first marriage was \$32,000.00. In addition, he received a personal injuries settlement of \$15,000.00. His claim to have had \$20,000.00 deposited with a credit union was not disputed.

[73] The Wife’s evidence is that her funds for the construction came from savings and her weekly wages. When they married she had a CIBC savings account with approximately \$10,000.00. In 1993 her net weekly earnings as a cook were said to be about \$200.00 per week. She also said that she

received an additional \$200.00 per week in tips from guests at her work place. (See affidavit filed on 02 March 2007, para.3).

[74] In her oral evidence the Wife referred to an enhanced weekly wage of \$275.00 to \$300.00 per week based on a points or commission system. Points were not the same as tips. She admitted that this oral evidence, which was given on 23 September 2011, was not reflected in her affidavit of 02 March 2007. She could give no reason for not mentioning either the points system, or her enhanced wages, in that affidavit. Neither could she say how much she made every week in terms of wages, points and tips.

[75] On 09 December 1997, the Wife filed a wrongful dismissal claim against her employer in civil suit No.2078 of 1997. In that suit she claimed that for a period of 104 weeks up to 05 February 1997 she was paid \$294.17 per week as wages. Therefore, between March 1995 and February 1997, the Wife's gross wages were at the maximum of \$294.17 per week. The Court has no documentary evidence of what her net wages amounted to after statutory or other deductions. As a matter of interest, the Court saw no reference to income from tips or points in the claim against the employer.

[76] The Court is not persuaded by the Wife's evidence about points and tips. There was no evidence about the working of the points or commission system. And there was no reference in any of her affidavits to a system that

increased her take home pay by \$75.00 to \$100.00 in some weeks. With respect to the tips, as a cook the Wife would have worked behind the scenes, and out of the sight of customers. Therefore, it is unlikely that she would have received tips directly from customers. She gave no evidence as to whether the tips were pooled and divided weekly between the employees; or whether her employer's weekly customer base supported weekly tips of a magnitude that provided \$200.00 per week to her as one of how many other employees.

[77] The Court finds that at the critical time the Wife took home a weekly wage of approximately \$200.00. With the addition of the rental income from the chattel house, her monthly income was slightly less than the Husband's. Prior to March 1996, when the Wife won the Lotto, the Husband had an additional \$67,000.00 at his disposal. This came from his credit union account, and his divorce and personal injuries settlements.

[78] The Wife's other evidence of additional income was \$10,000.00 on a savings account, a small amount for land rent, and meeting turns. No figures are stated for the meeting turns. She referred to her mother's pension, and remittances from her father, but again no sums are mentioned. There was also a claim that her daughter and the daughter's husband had to look after the Wife. But there are no details about this assistance. The Court also

noted that there is no evidence that the Wife liquidated any of her real property assets, or borrowed money to assist with construction.

[79] Even if the Court accepts the Wife's evidence of small periodic Lotto wins, the Husband had the means to make an equal or larger financial contribution to the construction of the matrimonial home. It is not disputed that the house was built without the assistance of a mortgage. The Court has not overlooked the Wife's evidence that approximately \$100,000.00 from her major Lotto win went towards the construction of the matrimonial home. The Court will pronounce on this evidence when the issues relating to the Lotto are considered. (Infra, at paras. [97] to [105]).

[80] The Court is also satisfied that, until early 2003, the Husband contributed \$400.00 per month to the Wife to assist with the purchase of food. He also assisted with the payment of utility bills. Having lived on his own before and after his second marriage, it is not difficult to accept that the Husband assisted with cleaning, washing and taking care of the matrimonial home. As the individual with the professional expertise, it would not be unreasonable for the Court to accept that the Wife was largely responsible for the preparation of meals.

[81] After the Wife was dismissed from her employment in February 1997, her weekly wages were no longer available. However, the rental income, the

Lotto winnings, and her Husband's financial and non-financial contributions were still available. Initially, she also benefitted from the interest paid on the fixed deposit. The Husband had moved into the matrimonial home at Deacons Road in 1995. But there is no specific evidence from the parties as to their domestic arrangements after the Husband moved, until the Wife followed him, consequent upon her mother's death in December 1997. Therefore, the Court cannot say with certainty that, when she lost her job, the Wife was performing the role of homemaker at one home, or between the two homes.

[82] During the marriage, the Husband added value to the matrimonial home by his direct financial contributions to its construction. His indirect contributions, in terms of his labour, supervision and other skills, also helped in the formation of this asset. There is no substance to the assertion by counsel for the Wife that the Husband "really "brought nothing to the table" ". (Written submissions at para.8). The Wife agreed with counsel for the Husband that her receipt of \$400.00 per month from the Husband gave her more spending power. She however denied that this money made it easier for her to buy materials for the house. The Court is driven to the conclusion that the evidence does not support the Wife's assertion that:

“[The Husband] was no use to me at all, none whatsoever. This was so from the time we left the church.”

[83] The Husband is entitled to a reasonable share and interest in the matrimonial home, given the extent of his direct and indirect financial contributions to its construction. Since leaving the matrimonial home in 2003 he has had no access or enjoyment of this asset for almost 13 years. And there has been no contribution by him to the conservation of this property during his absence therefrom.

[84] In February 2015, the market value of the matrimonial property was estimated by Felicity Limited at \$375,000.00. The site value of the land, using the contractor’s method, was determined as \$128,790.00.

The Lotto Jackpot

[85] A jackpot of half a million dollars was won in early March 1996 with a Lotto ticket purchased by the Wife. The Husband accompanied the Wife to collect the cheque, but it was written in her name alone. The Husband alleges that the cheque was deposited to a joint account in both names.

[86] The Husband believes that he is entitled to a share in the Lotto jackpot. His evidence is that although it was the Wife who purchased the winning ticket, he provided her with money to buy Lotto tickets. He described a system for purchasing these tickets whereby he gave the Wife money for this purpose.

According to the Husband, the Wife had access to a “garden tin” where he kept money from the sale of vegetables that he grew. She used money from this source to purchase game tickets. They usually purchased ten tickets weekly for \$20.00. (See affidavit filed 13 March 2009, paras.3 and 4). She also used her money and he used his, but it was a joint enterprise. In his words, they both hoped for a big win.

[87] From the Lotto monies, it is agreed that a motor car was purchased for the Husband, and the car insurance and road tax paid. The Vauxhall Gardens property was bought in the joint names of the Wife and one of her daughters. The Husband claimed that he was not aware of this transaction, and that he is entitled to half of the Wife’s interest in that property.

[88] The Husband also alleges that \$500.00 gifts were given to two individuals, \$60,000.00 was used to repair his mother-in-law’s house, and \$12,000.00 went to pay the expenses for his mother-in-law’s funeral. In his oral evidence the Husband could not say how much of the Lotto money was used to complete the matrimonial home. However, in his first affidavit filed on 28 September, 2004, he estimated that \$6,000.00 was used to complete the matrimonial home. A joint fixed deposit was allegedly opened with \$200,000.00, but the Husband says that he signed to allow the Wife to withdraw \$20,000.00. The Court noted some confusion on the part of the

Husband about the joint account and the fixed deposit. He expressed the opinion that the Vauxhall Gardens property was bought with money from the account with the fixed deposit. (See his affidavit filed 28 September 2004, para.13). However, the conveyance mentions a fixed deposit between the Wife and her daughter. The Husband appears to be mistaken, as there is documentary evidence of a fixed deposit of only \$180,000.00, with accrued interest.

[89] The Wife denies that the parties played Lotto together. She said that the winning ticket was purchased with her money unknown to the Husband. It was she alone who won the money, and she never intended for the Husband to have a half share in the winnings. The Wife also insisted that the Lotto cheque in her name was deposited to her savings account. From this money the Husband was gifted with a motor car, and the initial road tax and insurance paid. Thereafter, for about 3 years, the money to pay the car insurance came from the interest generated by the fixed deposit.

[90] The Wife said that she also advanced a total of about \$100,000.00 to the Husband for various things that he said he wanted, and as an absolute gift to him. She also purchased a property for her daughter and herself. The Husband's name was placed on the fixed deposit account as a matter of convenience. She decided to "put a little something aside in case the car

needed changing or for old age.”. She did not consider him to be a joint owner of the fixed deposit.

[91] The Wife was unable to say exactly how much of the Lotto money was used to build the matrimonial home. However, in response to counsel for the Husband, she estimated that it could be more than \$100,000.00. She also said that the Lotto money was used to buy furniture for the matrimonial home; to change the roof on her mother’s house; to take the Husband to England with her for 4 weeks when her father died in January 2003; and to visit her sick daughter in New York.

[92] Before considering the applicable law, the Court wishes to make a few observations about the evidence of the parties in relation to the Lotto money and the disbursements therefrom . Neither party produced any documentary evidence to prove or disprove that the Lotto cheque was deposited into a joint account. The Wife said she deposited the cheque directly to her personal account. However, no bank records were produced by her to either confirm this statement, or to support her evidence about the various payments made from her enhanced personal account.

[93] Both parties agree that the Vauxhall Gardens property was purchased with Lotto money. The conveyance for the property is dated 07 August 1996. (See Exhibit RS 3 annexed to the Husband’s affidavit filed on 30 January

2009). The third paragraph on page 1 of the conveyance provides some interesting information. That paragraph states as follows –

“NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of One hundred and twenty-five thousand dollars paid in full by the Purchasers [the Wife and her daughter] **out of moneys held by them on a joint account both at law and in equity** to the Vendor (the receipt whereof the Vendor hereby acknowledges)”.
(Emphasis my own).

[94] The conveyance purports that the Wife and her daughter paid the purchase price with money from a joint account held by both of them. The Wife never gave any evidence of transferring some of the Lotto money from her personal account to a joint account held with Lorraine. Why would the Wife have gone to the trouble of passing the purchase price into another account before paying for the property from that other account? This was never explained. Perhaps this is what led the Husband to believe that a joint account existed with more than \$180,000.00. (See para.[88] supra).

[95] And there is no evidence that Lorraine’s name was added to her mother’s personal account, either prior to, or after the deposit of the Lotto money. All the Wife said about the Vauxhall Gardens property was that the Husband knew that she had purchased it with Lotto money in the joint names of she and Lorraine. (See para.7 of her affidavit filed on 20 March 2009).

[96] Where then did the joint account mentioned in the conveyance come from? Is it the same joint account into which the Husband insisted that the Lotto cheque was deposited? Even if the Court accepts that the Wife and her daughter held a joint account, the money taken from that account to pay for the Vauxhall property was confirmed by the Wife to be Lotto money. The Husband filed a request for discovery on 29 January 2009, in relation to this joint account. This application was never heard, and the Court has not received specific documentary or oral evidence from the Wife in relation to this account.

[97] Another observation is that the Wife's evidence about the expenditure from the Lotto money is not credible. Based on her evidence, more than \$552,500.00 of prize money was utilized from a jackpot of only \$500,000.00. These are her figures :

Motor car	45,000.00
Insurance and road tax	2,500.00
Vauxhall Gardens property	125,000.00
Fixed deposit	180,000.00
Matrimonial home	100,000.00
Gift to Husband	100,000.00

Total	\$552,500.00

[98] Even if the interest the Wife initially received from the fixed deposit could account for the excess of \$52,500.00, the Wife's figures do not include the

purchase of furniture for the matrimonial home; the trip the parties took to England for 4 weeks; repairs to her mother's house; the trip to New York to see her sick daughter; legal fees for the purchase of the Vauxhall Gardens property; and insurance and road tax for another 3 years. Except for the legal fees, the Wife gave evidence that all the other expenditure came from the Lotto winnings, but she provided no estimates for these other payments.

[99] It was the Husband who gave an estimate of \$60,000.00 for the repairs to his mother-in-law's home, \$12,000.00 for her funeral expenses, and \$6,000.00 to complete the matrimonial home. The Wife did not deny that her mother's funeral expenses were paid from Lotto money. And the Husband's figures for the repairs and funeral expenses were not challenged by the Wife. Therefore, at least \$72,000.00 should be added to the figure of \$552,500.00. This gives a revised total of \$624,500.00 that, according to the Wife, was expended from winnings of \$500,000.00.

[100] During the cross examination by counsel for the Husband, the Wife was called upon to explain this expenditure from the Lotto monies that was higher than the Lotto prize itself. The Wife provided no explanation. However, she proceeded to identify a number of financial sources, including remittances from her father. There is no affidavit or oral evidence estimating the value or regularity of these remittances.

[101] Counsel for the Wife noted as follows at paragraph 3 of his written submissions:

“It was in cross examination that the Respondent/Wife asserted that her father in England assisted her as well as her daughter and son-in-law. She said her father would send approximately £50.00 per month.”.

The Court revisited its trial notes, and the FTR video recording of the proceeding, and found no reference to any specific sum of money that the Wife received from her father on a regular or monthly basis.

[102] Preferring to err on the side of caution, the Court requested counsel for the Wife to point out where in the evidence before the Court, a specific sum was mentioned in relation to the father’s remittances. In answer, counsel filed a document on 02 March 2015. In that document it is stated at paragraph (viii):

“Re: evidence of sums received from the father of Marlene Worrell Smith remitted from Britain over the years. The Court has to rely on the Affidavit evidence of the parties and the oral testimony of the parties on this aspect of the case. In the absence of any documentation. [sic] The overall conduct of the father of the Respondent/Wife not only in giving her the real property, which is not disputed but in sending remittances to her over the years cannot be disputed.”.

[103] There is indeed oral evidence from the Wife about remittances from her father. But it must be emphasised that there is no evidence about the

amounts or the regularity of these remittances. Therefore, this Court cannot draw any reasonable inferences that these remittances were large enough or regular enough to significantly enhance her finances on a monthly basis.

[104] The Court is also of the view that counsel for the Wife must have appreciated this incongruity in his client's evidence. In his written submissions, he suggested to the Court that:

“It is fair to accept that part of the sum to complete the house came from the \$100,000.00 which the Respondent/Wife states she advanced to the former Husband when he made such requests of her. In her evidence one can recall her to say when he made his request for advances, he would say: “*Mar, I want this etc.*” ”. (Para.33).

[105] With respect, there is not a scintilla of evidence from the Wife, from which the Court can draw a reasonable inference that any part of the \$100,000.00, allegedly gifted to the Husband from the Lotto money, was used to complete the matrimonial home. She never said how the Husband utilised any of the alleged advances. The Wife made no connection whatsoever between the Husband's gift of \$100,000.00, and the more than \$100,000.00 of Lotto money that she estimated was used to complete the matrimonial home. And, if the Court was moved to accept both the Wife's evidence that \$100,000.00 was gifted to the Husband, and her counsel's suggestion that

part of this gift was spent on the matrimonial home, it follows that such expenditure would be a contribution by the Husband alone, from his gift.

Windfall or Contribution?

[106] Lottery winnings have not been a major feature of family disputes before the Barbados Supreme Court. In **Moore v. King (Barbados High Ct., Suit No. 300 of 1991, decision dated 17 November, 1993)**, a Mazda motor car, valued at \$45,000.00, was won in a lottery by one of the parties after the termination of a union other than marriage. Waterman J. cited **Mackie v. Mackie (1981) F.L.C. 90-069**, and accepted the submission that the win was a windfall and not an asset acquired during the union of the parties.

[107] A decade later in **Crichlow v. Crichlow (Barbados High Ct., Suit No. 119 of 1999, decision dated 11 December 2001)**, the husband won \$33,000.00 on the lottery in 1994, and a substantial portion was spent on the matrimonial home. Payne J. treated this as a contribution by the husband to the matrimonial home. The learned Judge commented on the irony in that case: “Even with the windfall of \$33,000 from the lottery, the present value of the matrimonial home is still less than what the husband brought in.”.

[108] In his book “Family Law”, (5th ed., 2007), Anthony Dickey Q.C. writes:

“It sometimes happens that the fortune of spouses is unexpectedly improved by an unexpected or chance event. For example....a spouse might win a substantial amount of money

in a lottery. Until recent times, the common approach of the courts to such a fortuitous event was to treat the resulting windfall not as a contribution by either party, but simply as an increase in the property available for distribution between the parties. The Full Court of the Family Court has, however, now made it clear that any such unexpected or chance event should still be considered in the context of contributions by the parties. This is consistent with the terms of [s.57 (3)(a) and (b) of the Barbados Act]. The increase in fortune should thus be treated as a contribution by one or both of the spouses, depending on the circumstances.

So far as a lottery win is concerned, where the increase in wealth might be substantial, the Full Court has made it clear that this should be treated as contribution by both parties equally if the winning ticket was effectively paid for from family funds, even though it was purchased by one spouse alone.” (Pages 575-576).

[109] The groundbreaking case in this area of law is **Zyk v. Zyk [1995] FamCA**

135. In this case, the Full Court of the Family Court of Australia settled the approach to lottery winnings acquired during the course of a marriage. The facts surrounding the purchase of the lottery ticket in **Zyk** were not disputed. From the early 1970s the husband regularly purchased lottery tickets through a syndicate. The parties were married in 1985 and separated under the same roof in 1993. The syndicate won a large prize in 1987, and the husband’s share from the prize was \$94,907.00

[110] The Wife in **Zyk** was not a member of the syndicate, and she played no part in the purchase of the winning ticket. The Husband purchased tickets with money he had from time to time. It was customary for the Husband to hand over all his money to the Wife, who had practical control of the family finances. This procedure was followed with the lottery winnings.

[111] Against this background, a unanimous Full Court concluded that:

“From the time of the marriage the parties jointly shared their respective incomes. The Husband continued to purchase his share of the syndicate ticket each week, but from then on the purchases should be treated as coming from joint incomes. There was nothing in the circumstances here, other than that it was the continuance of the previous arrangement by the Husband which would cause one to distinguish this case from any other case of the general type to which we have referred. The circumstance that the Husband paid it to the wife and that she then applied it for their mutual benefit reinforces that view. Consequently, in our view..... the Lotto win....should have been treated as a joint contribution of the parties. It follows from what we have said that in most cases the amount derived from a lottery win or other similar activity during cohabitation should be regarded as a joint contribution of the parties.”.
(Para.58).

[112] The Full Court reviewed the case law, and posited that lottery winnings should be treated as contributions and not as a windfall; and that the court must determine by whom the contribution was made. With respect to the treatment of winnings as a contribution, the Full Court reasoned that:

“34....we prefer in these cases the approach which considers this issue in the context of “contributions” rather than as a “windfall” to which neither party has contributed. This may appear at first sight to be a matter of semantics but we think the more useful analysis is to consider it as a contribution, that is, a contribution of property to the relevant pool of property by one or both parties, rather than as a “windfall” or other equivalent term which isolates it into an apparently special category outside the traditional approach adopted in s.79 [B’dos. Act s.57] proceedings. Some of the cases use the terms “contribution” and “windfall” interchangeably and we think that adds a further dimension of confusion. Fundamentally the importance of the difference in terminology is that it can have important practical consequences,

49. In common parlance a windfall is used to describe a chance or unexpected benefit which the people involved neither anticipated or made any effort towards. The receipt of a substantial lottery prize may in general be referred to in that way. However, we doubt whether, for the purposes of the exercises under s.79 (B’dos. Act s.57), that is the correct analysis. The parties purchase a ticket and expend part of their earnings or capital for the express purpose of winning the prize or a prize. Whilst the chances of winning the major prize are remote, the reality is that somebody does and it is the expectation, or at least hope, of each entrant that he or she may be that person. It is not the product of any particular skill but it is the product of the chosen expenditure of a small sum of money. Contributions is, we think, the preferable description within s.79 (B’dos. s.57) because an acquisition of a prize contributes to the property of the parties. If it or part of it still remains in existence at the time of the trial or is represented

by other than existing assets that will constitute part of the property to which s.79 (B'dos. s.57) will apply. If it has been disposed of in the meantime in other ways that may or may not have been a contribution to property or the family depending on the circumstances.... The approach of treating it as a contribution is consistent with the treatment of gifts from family as a contribution by or on behalf of that party: see **Kessey (1994) FLC 92-495.**”.

[113] In a court's determination of the critical question of who made the contribution, the Full Court offered the following guidelines:

“50.....In the ordinary run of marriage a ticket is purchased by one or other of the parties from money which he or she happens to have at the particular time. That fact should not determine the issue. Where both parties are in receipt of income and where their marriage is predicated upon the basis of each contributing their income towards the joint partnership constituted by their marriage, the purchase of the ticket would be regarded as a purchase from joint funds in the same way as any other purchase within that context and would be treated accordingly: see **Anastasio [(1981) FLC 91-093]**. When one party is working and the other is not the same conclusion would ordinarily apply because that is the mode of partnership selected by the parties. The income of the working member is treated as joint in the same way as the domestic activities of the non-working partner are regarded as being for their joint benefit.....

51. In the sort of case to which we have referred above the conclusion would be that the ticket was purchased by joint funds and the contribution of the prize would be seen as a contribution by the parties equally. There may be cases where the

parties have so conducted their affairs and/or so expressed their intentions that this would not be the appropriate conclusion, but in the generality of cases with which this Court would normally deal this appears to us to be the correct approach and the correct outcome.

52. In some cases a distinction has been sought to be drawn because the ticket is purchased by one party to the marriage in a syndicate with third persons.....The only relevant point of distinction is that the party to the marriage purchased not the whole ticket but a share in a ticket (or group of tickets) with other persons. That share would ordinarily be treated as coming from joint funds with his or her married partner, and any resultant prize would be a joint contribution by them to the property of their marriage. Similarly, a distinction is sometimes sought to be drawn in cases where the purchase is the continuance of a pre-marriage practice by one party. However, in ordinary circumstances the above approach would apply, because from marriage the purchase would usually be treated as coming from their joint incomes.”.

[114] When the Lotto prize was won in March 1996, the parties were married for two and one half years, and had lived together before the marriage. Prior to the win, the Husband contributed time and labour to renovating the chattel house. He was investing his money, labour and time in building the matrimonial home as well. The parties spoke of the construction of the matrimonial home, on the Wife’s land, as a joint effort. They were both contributing to the payment of the various bills associated with their upkeep and the running of the home.

[115] The Court takes judicial notice of the happy couple photographed in the Nation newspaper of 06 March 1996, receiving the Lotto cheque. Although the cheque was written in the Wife's name, they collected that cheque together. There was no attempt to hide the win from the Husband. As soon as the Wife realised her good luck she contacted the Husband to share the news with him.

[116] The Wife told the Court that the marriage was already in trouble when she won the Lotto. For example, she said that:

“The marriage broke down before he got the car.... After the marriage he provided nothingWhen I won big we were not living good....He was of no use to me at all, none whatsoever. This was so from the time we left the church.”.

[117] The Court approached this evidence with a measure of scepticism, given that at the critical time the Husband continued to pour his resources into the construction of the matrimonial home, and he assisted with the household expenses. The Wife took his advice about the renovations to the chattel house and the construction of the matrimonial home; she involved him in the collection of the money; bought a new car; accompanied him to Nassco to collect the car; took him to England for four weeks in January 2003; opened a joint account in 2002 with \$180,000.00; and she would also have the Court

believe that she showered an additional \$100,000.00 of Lotto resources on her Husband.

[118] The Court observed the Wife's demeanour while she was on the witness stand, and formed the view that hers was a strong personality. It is unlikely that her will was so overborne by her Husband, that she was induced to lavish money and benefits on him even though they "were not living good". Her evidence appeared to be tailored to the sabotage of any claim the Husband made against the Lotto money.

[119] For these reasons, the Court prefers the evidence of the Husband about their joint approach to the playing of the Lotto game. They played together hoping for a big win. It mattered not who purchased the tickets, or with whose money. The relevant consideration for this Court is the nature of the relationship of the parties at the time the ticket was purchased by the Wife. (See **Eufrosin v. Eufrosin [2014] FamCAFC 191 (02 October 2014)**). The Court finds that at the critical time there was a pooling of resources by the parties, and the Smith marriage was a joint enterprise.

[120] In accordance with the **Zyk** guidelines, the Court concluded that the parties contributed their income towards the joint partnership constituted by their marriage. Therefore, the purchase of the winning Lotto ticket is to be regarded as a purchase from their joint funds; and the Lotto winnings, that

were spent on the matrimonial property, are to be treated as a joint contribution by the parties to the matrimonial property.

[121] The Court found no evidence to support the Husband's contention that the Lotto prize was paid into a joint account. However, the payment of the money into the Wife's account does not establish that "the parties conducted their affairs and/or expressed their intentions" in such a way that would lead the Court to conclude that the lottery ticket was not purchased from joint funds. (See **Zyk** para.51).

[122] Counsel for the Wife pointed to the fact that the Husband made no claim to a half share in the Wife's previous Lotto winnings. But on her clear evidence, she took his advice and used the money to purchase materials for their joint project, the matrimonial home. And, although the parties maintained separate bank accounts, according to the Wife's evidence, the Lotto proceeds were readily available to the Husband whenever he asked. The Court also accepts that they played the Lotto game together, and were pooling their resources for the purposes of the marriage when the Lotto ticket was purchased.

[123] Although the Toyota motor car was described as a gift to the Husband from Lotto money, the car was used for the benefit of both parties. The insurance was in the Husband's name, as a matter of convenience, because he was the

one with a driver's license. When he left the matrimonial home with the vehicle, there is no evidence that the Wife had become a licensed driver. The vehicle was and remains matrimonial property. Since the Husband's exit, the Wife has had no access to the vehicle. However, the Husband has had full responsibility for its upkeep, licensing, insurance and petrol consumption.

[124] The Husband's evidence is that approximately \$6,000.00 was utilised in the construction of the matrimonial home. There are no figures provided for the four week trip to England, or for the purchase of furniture for the matrimonial home. The Court makes an estimate of \$5,000.00 and \$10,000.00 respectively for the trip and the furniture. Counsel for the Wife should have no difficulty with the estimate for the furniture, as that was also his suggestion.

[125] According to the Wife's evidence, the fixed deposit of \$180,000.00 was intended for the purposes of the marriage. She told the Court that this money was set aside for their old age or the replacement of the motor vehicle. According to **Zyk**, the fixed deposit and the accumulated interest existed at the time of this trial, therefore these assets constitute property to which Section 57 of the Act applies. As this money was generated from joint funds, each party is entitled to one-half of the fixed deposit and the

accumulated interest. The Husband was also entitled to one-half of the interest that was paid to the Wife before the joint account was frozen.

[126] A total of \$243, 500.00 of the Lotto prize, was applied towards the assets of the marriage. The Court arrived at this figure as follows:

Motor car	\$ 45,000.00
Insurance	\$ 2,500.00
Matrimonial home	\$ 6,000.00
Furniture	\$ 10,000.00
Fixed deposit	\$180,000.00

Total	\$243,500.00

If the trip to England is included, a total of \$243,500.00, or just under fifty percent of the Lotto prize was plowed into the marriage. Each party is considered to have made a contribution of \$124,250.00 from the Lotto money to the matrimonial assets, and to the marriage in general.

[127] **Zyk** indicates that where part of the Lotto prize is disposed of, the circumstances of the disposal will determine whether that disposal was a contribution to the property of the parties. (See para.49 of decision at para.[112] supra). There is evidence that the money was used to donate two \$500.00 gifts to friends, to repair Clotilda's house (\$60,000.00), and to pay for Clotilda's funeral (\$12,000.00). There is no evidence that the Husband objected to any of these payments; and he has made no claim for part of the

money used for this expenditure. These payments amounted to \$73,000.00, and they do not constitute contributions to the property of the parties.

[128] Lotto money was also used to purchase the house at Vauxhall Gardens in August 1996. This was five months after receipt of the prize. The legal title to this property is held by the Wife and a daughter as joint tenants. The Husband's evidence is that he neither knew, nor was he consulted about the purchase of the house for the daughter. (See affidavit filed 12 October 2007, para.13; affidavit filed 30 January 2009, para.2; affidavit filed 13 March 2009 para.7).

[129] The Husband's evidence in chief was that:

“After the Lotto winnings she told me her daughter's husband was giving problems, and she was going to give her a house. I dismissed it. I didn't pay it any mind. A few weeks later she said to me that she bought a house at Vauxhall Gardens, Christ Church, for her daughter. Her daughter and her daughter's husband live in the house now. The daughter and her husband own a two storey house at Bagatelle Terrace, St. Thomas.”.

[130] And in cross examination, the Husband responded to counsel for the Wife as follows:

“There was a purchase of a property for \$146,000.00 for her daughter Lorraine Anthony. She did not tell me that she was going to give her daughter a house. I did not tell her “It is your

money, do what you want to do.” I knew after the house was bought. I am not sure of the date.”.

[131] The Wife said very little about the purchase of the Vauxhall house, or the circumstances surrounding its purchase, in either her affidavit or her oral evidence. Her only affidavit evidence was that the Husband knew that she had purchased the property. (See affidavit filed on 20 March 2009, para.7). And the single reference to the purchase in her oral evidence is that she could not remember the purchase price of the property.

[132] The Court finds that the Husband did not take his Wife seriously when she introduced the idea of purchasing a house for Lorraine. There is evidence of the discussion, planning and joint execution of projects by the parties. This is demonstrated in their approach to remodelling the chattel house, building the matrimonial home, playing the Lotto game and purchasing the motor vehicle. But there is no evidence of this co-operation when the Vauxhall Gardens property was purchased.

[133] There is no evidence that the Husband was aware of or involved in any aspect of the purchase. It was by and large a secret acquisition. The Wife’s evidence in this regard may at best be described as reticent. She presented no evidence of the Husband’s involvement in the transaction. The Husband was told of the completed transaction after the fact. Even when the Husband gave his evidence, he believed the property was purchased for Lorraine. He

did not indicate any appreciation of the legal consequence of the ownership of the property by the Wife and Lorraine as joint tenants.

[134] The Husband is asking the Court to grant him one-half of the purchase price, with interest at six per cent from the date of purchase to the date of payment. Lorraine was served with a copy of the Take Notice in which the Husband asked for declarations in relation to the Vauxhall property. The Acknowledgment of Service was filed on 20 March 2009. There is nothing on the Court's file to indicate that Lorraine ever entered an appearance in this matter, or filed any documents objecting to the Husband's requests.

[135] It is not disputed that the Wife used Lotto money to purchase the house. And in so far as the Court has determined that the Lotto money was held jointly by the parties, the Wife used matrimonial assets to purchase the house. The Husband knew of the purchase after the fact, and he did not consent to or acquiesce in the purchase. The Wife did not plead or allege either consent or acquiescence by the Husband. Therefore, he is entitled to half of the current value of the Vauxhall property.

The Duration of the Marriage

[136] Before pronouncing on the precise entitlement of the parties to the matrimonial assets, the Court wishes to address the vexed question of the duration of the Smith marriage. The parties cohabited prior to their

marriage. Both of them said in their affidavit evidence that they lived together as man and wife for a few months prior to the marriage. The Husband said that they lived at Clotilda's home from about April 1993. (See Husband's affidavit of 28 September 2004, para.3). This was a five month period of cohabitation before the marriage in September 1993.

[137] By the time the Husband filed his affidavit on 12 October 2007, he was alleging cohabitation for three years from September 1990. (Para.2). The three years included first living together at the house Clotilda made available to him, and then at the house where Clotilda resided. This October 2007 affidavit evidence runs counter to the Husband's oral evidence that:

“I was living in another house her mother provide for me. I lived in that house approximately one year. It was not longer than a year because I moved from there into her mother's house where Marlene was living.”

The parties could not have been cohabiting for three years if the Husband spent no more than a year at Clotilda's other house.

[138] The Wife also gave confusing affidavit evidence about the period of cohabitation. In her affidavit of 05 November 2007, she stated that “it was after marriage that we lived together at my mother's other house, certainly, not before.”. (Para.4). There is a preponderance of evidence that the parties cohabited before marriage and lived with Clotilda; and that after marriage

they lived at two houses, Clotilda's residence followed by the matrimonial home at Deacons Road, St. Michael. The Wife's oral evidence is that they lived together as boyfriend and girlfriend before marriage, but not for very long, and not for four years prior to the marriage. She told the Court that they were boyfriend and girlfriend when the chattel house was repaired.

[139] The Court is of the considered opinion that these parties probably enjoyed a visiting relationship after the Husband moved to Richmond Gap, St. Michael. Given the fond relationship between Clotilda and the Husband, it is unlikely that Clotilda would have been left to live on her own while the Wife moved in with the Husband at Clotilda's other house. So loyal was the Wife to her mother, that she did not move into the matrimonial home at Deacons Road until after Clotilda died in December 1997. Cohabitation began at Clotilda's residence five months prior to the marriage.

[140] The next question is how long did the marriage last? The Husband filed for divorce in May 2004. In that application for the dissolution of the marriage, he gave February 2000 as the date of separation. (Para.8). And in his affidavit of 12 October 2007, the Husband repeated that the marriage broke down around 2000. (Para.14). But there are a number of subsequent occurrences that point to a marriage that was subsisting after 2000.

[141] The Wife's evidence is that she opened the fixed deposit with \$180,000.00 in 1997. However, Exhibit RS1, annexed to the Husband's affidavit of 14 April 2008, reveals that the fixed deposit was opened on 27 November 2002, with a transfer of \$180,000.00 from another account. This is two years and nine months after an alleged separation in 2000. Why would a wife open a joint account with her husband after separating from him?

[142] The Wife deposed that she gave the Husband money to register the chattel house with the Inland Revenue Department. (Affidavit filed 20 March 2009, para.14). She was unaware that it was registered by him in their joint names. The Husband exhibited a copy of the Notice of intention to let premises, the Certificate of registration, and the receipt for \$2.00 from the Inland Revenue Department, to his affidavit of 13 March 2009. Registration occurred on 26 November 2001, a year and nine months after an alleged separation in February 2000. Why would the Wife involve the Husband in any matters relating to a property, in which she said he has no interest, after the parties separated?

[143] The parties spent four weeks together in England after the Wife's father died. Vernal Broomes died on 19 January 2003, therefore, the parties returned to Barbados around the middle of February 2003. This is three years after a supposed separation in February 2000. Again the Court asks,

why is the Wife using Lotto money to take her Husband to England for a month, three years after he says they separated?

[144] These three events are all the more surprising, when the Court considers the Wife's claim that the parties separated in December 1996, and that they lived separate and apart thereafter. (See her Answer filed 01 October 2004, para.2). This date is nine months after the Lotto win. Using her date of separation, she opened the fixed deposit six years after the separation; she sent the Husband to register the chattel house five years after separation; and he accompanied her for a one month stay in England more than six years after her separation date of December 1996. And let us not forget that the Wife moved into the matrimonial home with the Husband after her mother's death in December 1997. The evidence does not support a separation in December 1996.

[145] The Husband's affidavit evidence also said that the marriage worked well until about the end of 1996. (Affidavit filed 28 September 2004, para.10). The fact that a marriage is not working well does not automatically imply a separation. His oral evidence is also that their sexual relationship ceased before 1996, but that the marriage went well into 2000. This undermined his affidavit evidence that the marriage broke down in February 2000. The

Wife offered nothing in her oral evidence about a specific date for the breakdown of the marriage.

[146] The Court concludes that both parties are mistaken as to the date of separation. The Court finds that problems in the marriage probably began to manifest in late 1996. However, The Wife's move to the matrimonial home after December 19~~9~~⁹7, the opening of a fixed deposit in late 2002, and travel together to England in January 2003, are not events indicative of parties who were separated and living apart either in December 1996 or February 2000. These events demanded an explanation that the Court did not find in the evidence.

[147] The Court holds that the separation was post February 2003 when the parties returned from England, and at least one full year before the Husband filed for the dissolution of the marriage on 04 May 2004. This places the date of actual separation sometime between February and April 2003. This is buttressed by the Husband's oral evidence that he "left the matrimonial home in Headley's Road in 2003 because of the aggravation". The parties were together, through cohabitation and marriage, for approximately ten years.

[148] Counsel for the Wife made the following statements in his written submissions filed on 05 June 2015:

“The Applicant/Husband stated that the marriage broke down in 1996. See paragraph 10 of his affidavit dated 28th September 2004. In his evidence before the court the Applicant/Husband stated in cross examination: **“I left the matrimonial home in 1996 permanent.”** Therefore the marriage lasted some three years..... **“The marriage therefore was one of short duration.”** (Page 3, para.6).

[149] Counsel appears to have misread paragraph 10 of the Husband’s affidavit of 28 September 2004. This paragraph says that “The marriage worked well until about the end of 1996.” Paragraph 10 does not say that the marriage broke down in 1996. Problems in a marriage are not indicative of a breakdown of the marriage, or of a separation of the parties. Indeed, when the Husband was referred to this paragraph during cross examination, his reply was that:

“The marriage went on well beyond 1996. There is a likelihood that I made that statement. However, the marriage went well into 2000.”.

[150] Any statement by the Husband, that he left the matrimonial home permanently in 1996, must be viewed as a mistake on his part. If the Husband left permanently in 1996, how was the Wife able to join him at the matrimonial home after her mother died in December 1997? This was not disputed by the Wife, and Clotilda’s death certificate was submitted by counsel for the Wife as part of a document filed by him on 02 March 2015.

[151] Also of note is Counsel's own uncertainty about the duration of the marriage. In the above extract (supra para.[148]), the marriage is said to have lasted some three years. (See also para.17 of the written submissions). But at paragraph 58 of his written submissions, it is also stated that "This marriage lasted just over two (2) years".

[152] The Smith marriage was not one of short duration. In **Pierce v. Pierce (1999) FLC 92-844**, the Australian Full Court found a twelve year marriage to be a long marriage. More recently, in **Walters v. Smith-Walters (B'dos. H. Ct. No.541 of 2007, decision dated 05 December 2013)**, Cornelius J. described a twelve year marriage as "clearly a long one". (Para.57).

[153] It was Mohammed J. who considered the reality of a ten year marriage. He opined that:

"Given the increase in the number of divorces filed and granted in the Courts of Trinidad & Tobago for marriages only a few years in duration, a ten (10) year marriage can now be considered a relatively long marriage." (See **Martineau v. Reis, FH206 of 2010, decision dated 18 July 2012 at para.53**).

This Court takes judicial notice of a similar state of affairs in Barbados. By contemporary standards, the Smith marriage was a long marriage.

The Property Rights of the Parties

[154] In **Brewster v. Brewster (Suit No. 673 of 2003, B'dos. H.Ct., decision**

dated 09 January 2014), Worrell J. commented that:

“.....in long marriages...the initial contribution made by any party carries far less weight than in a short marriage as the value of such contribution erodes “not by the passage of time but by the offsetting contribution of the other spouse”: **In the marriage of Lee Steere [1985] FLC 91-626 at 80,078.**” (Para.[31]).

[155] The marriage in **Brewster** lasted for sixteen years, and was described as a long marriage. The Smith marriage of ten years was also a long marriage. The Wife brought into the marriage the real property on which the chattel house and the matrimonial home are built. However, the Court has found that the Husband contributed to the renovations to the chattel house and the construction of the matrimonial home.

[156] What the Court has to determine, is whether the Wife’s initial contribution to the matrimonial property was counterbalanced by the Husband’s subsequent contributions to the chattel house and the matrimonial home. (See the **Brewster** decision at para.[32]). The Court will attempt to balance the contributions of the parties in relation to these two assets.

(1) The Chattel House

[157] The Husband made an indirect financial contribution to the renovation of the chattel house. He conceptualised the idea to renovate, and the Wife was content to take his advice. During the six weeks that it took to complete the

chattel house, the Husband provided supervision, labour work, painting and carpentry skills. The Wife did not challenge the time frame for the renovations. Unfortunately, neither party offered any valuation of their respective contributions towards the chattel house.

[158] The Court of Appeal in **Wilson v. Wilson (Civ. Ap. No.5 of 2003, decision dated 22 March 2007)**, deprecated a husband for failing to provide detailed evidence about the cost of constructing the matrimonial home. The husband in **Wilson** was a builder, and the Court of Appeal reasoned that:

“He should have been in a position to describe and quantify the work that he did. In the absence of himself providing such evidence in support of his claim, he could have used the services of a quantity surveyor to cost the materials and labour and the use of plant, tools and equipment and to quantify the value of his services. The judge would then have had expert evidence on which to assess his financial contribution....”. (Para.32).

[159] A similar challenge arose in **Brewster**, where Worrell J. observed that:

“[47]...the Applicant has provided more than a mere allegation of his indirect financial contribution to the improvements made on the matrimonial property. He has given evidence of the services he has performed and called two witnesses who have been able to corroborate some of his evidence. He has, however neglected to give any evidence whatsoever of either the value of these services or the cost that would otherwise have been incurred had the parties been required to hire another person to perform them. This is despite the fact that he called a contractor and

mason of some experience to give evidence on his behalf. There was no effort made to inquire from either witness an estimated value of the work performed by the Applicant. In the absence of such evidence. It is not the responsibility of the Court to determine the value of these services. The Court can only make its decision on the evidence before it.

[160] Worrell J. was unable to fully evaluate or assess the husband's contribution in **Brewster**, or to attach any value to it. However, the learned Judge bore the husband's contribution in mind when determining the extent of the husband's entitlement to a share in the matrimonial property. (Para.[50] of judgment).

[161] In the case of the Smiths, there is no evidence that the Husband made a direct financial contribution to the chattel house. Therefore, the Wife would have been responsible for purchasing materials and paying the workmen. She too provided no estimate of her expenditure on the chattel house, or the pre and post renovation value of the house. However, the Husband informed the Court that the Wife said she was going to spend \$5,000.00 to repair the chattel house. The Wife did not challenge this evidence, and she had no recollection of how much she actually spent. She did produce bills totalling \$3,209.25 for expenditure between March and December 1992. (See her counsel's written submissions at para.55, items (1) to (8)). The Court has

also accepted the possibility that this expenditure was for the chattel house.
(See para.[46] supra).

[162] The Husband's oral evidence is that as soon as the chattel house was completed, he turned his attention to cleaning the spot and digging the foundation for the matrimonial home. The builder, Mr. Allan Layne, worked between 1993 and 1994. Mr. Layne brought along his nephew as a labourer, and the nephew was paid \$50.00 per day. The Court is prepared to credit the Husband at \$50.00 per day for the six weeks that the renovations took to be completed. This is approximately \$2,100.00 for forty-two days, at \$50.00 per day. There were no deductions for possible off days or Saturdays and Sundays. This was to balance the absence of any valuation for conceptualisation, supervision, painting or carpentry.

[163] Assuming that the Wife spent \$5,000.00 on the chattel house, she would have saved another \$2,100.00 of expenditure due to the Husband's non-financial contributions. Therefore, the Husband contributed approximately thirty percent of the value of the total outlay of \$7,100.00 on the chattel house. The Court believes that it would not serve the ends of justice to ignore the Husband's contribution because the parties failed to provide more comprehensive data to the Court.

[164] The Court is also mindful of the fact that the Husband made a claim for half the rent collected by the Wife. During the marriage, thirty percent of the monthly rent should be considered as an additional contribution by the Husband to the Wife. \$450.00 of rental income per month for ten years amounts to \$54,000.00. The Husband's thirty percent contribution was \$16,200.00. Between 2003 and 2015, the Wife would have received approximately \$72,000.00 in rental income. (\$6,000.00 annually by twelve years). The Court holds that the Husband is entitled to a thirty percent share in the chattel house, and thirty percent of the rent collected by the Wife from the date of his departure in 2003 to the present.

(2) The Matrimonial Home

[165] As with the chattel house, neither party has estimated a dollar value for their direct or indirect financial contributions to this asset. The Court found that this project was treated as a joint venture, and that the Husband had ample financial resources to enable him to match the Wife's contribution. His indirect contribution was also substantial. According to the mason, the Husband was at the site most days.

[166] The Court is of the view that despite its length, the marriage did not reach the threshold that would entitle the Husband to a share in the realty that the Wife brought into the marriage. He did not dedicate long years to raising

children and being a homemaker. But, based on his contribution to the construction of the matrimonial home, the Court determines that the Husband is entitled to a fifty percent share in the value of the matrimonial home, that is, \$123,105.00, or the market value (\$375,000.00) minus the value of the land (\$128,790.00), divided by two (\$123,105.00).

(3) The Lotto Prize

[167] (i) *The Motor Vehicle*: The car is a matrimonial asset, and is owned by the parties jointly. The vehicle was valued by Nassco at \$9,500.00 on 05 February, 2009. (See Exhibit RS5 attached to Husband's affidavit of 13 March 2009). By today's date, this asset would have further depreciated.

[168] (ii) *The Fixed Deposit*: Each party is entitled to one-half of the fixed deposit, or \$90,000.00 each, together with one-half of the accumulated interest. The Husband is also entitled to one-half of the interest received by the Wife, after he left the matrimonial home in 2003. At 20 November 2015, the renewal balance on the fixed deposit was \$206,347.90. The Court requires sight of a detailed bank statement for this account, from inception to present, in order to determine how much of the interest the Wife received after 2003.

[169] (iii) *The Vauxhall Gardens Property*: The Husband is entitled to one-half the value of this property. On 18 February 2011, Mr. A.N. Kirton valued this property at \$334,000.00, therefore, an updated valuation is required for this

property. The Court notes that the Husband is requesting an order for one-half of the original purchase price, at six percent per annum, from the date of purchase to the date of payment. (See para.[13] supra).

[170] *(iv) The Furniture:* The Court accepts that the furniture in the matrimonial home was purchased with Lotto money. Therefore the furniture belongs to the parties jointly, and each has a fifty percent interest therein. The Court attributed a value of \$10,000.00 to the furniture. But, like the car, the value of the furniture would have depreciated overtime.

[171] *(v) Additional Lotto Money :* The Court has had reason to wonder if all the Lotto money was accounted for. Counsel for the Wife mentioned a shortfall of \$32,500.00 in his written submissions. (Para.53). However, the Wife's evidence of expenditure, well beyond the prize of \$500,000.00, was not accepted by the Court. (Supra, at paras. [97] to [105]). The Husband's version was more credible. His figures are as follows:

Motor car	\$ 45,000.00
Insurance and road tax	\$ 2,500.00
Vauxhall Gardens property	\$125,000.00
Fixed deposit	\$180,000.00
Repairs (Clotilda's house)	\$ 60,000.00
Clotilda's funeral	\$ 12,000.00
Matrimonial home	\$ 6,000.00
Gifts to two individuals	\$ 1,000.00

Total	\$431,500.00

[172] These figures for the Husband do not include the Court's estimate of \$15,000.00 for the furniture and the London trip, the cost of the legal fees for the Vauxhall Gardens property, and the Wife's trip to New York. Neither party suggested figures for the legal fees or the New York trip. Therefore, using the Husband's figures as its basis, the Court was able to account for approximately \$446,500.00 of the Lotto money.

[173] Approximately \$53,500.00 of Lotto money was not accounted for. If this money was spent on the matrimonial home, or for other matrimonial purposes, it would be considered as a joint contribution by the parties. The various expenditures could have been verified by the Wife, as she held the account. But she produced no bank records for the Court's consideration. The Court will not pursue this issue further, given that the Husband made no claim for any additional Lotto funds.

The Section 53(2) Factors

[174] In any determination of what is just and equitable between the parties, the Court must consider the relevant Section 53(2) factors. Eleven of those factors are relevant to this case.

[175] **(1) The age and state of health of each of the parties.** (S.53(2)(a)).

The Husband celebrated his seventy-third birthday on Independence Day. He is diabetic with hypertension; conditions that require medication and a

strict diet. The Wife is 75 years of age, and the Court received no information on her behalf about any ongoing medical complaints.

[176] **(2) 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. (S.53(2)(b)).**

The Husband retired from the CBC in 2002, and from the UWI in 2007. He no longer receives a pension from the CBC. In his most recent Statement of Financial Circumstances, filed on 07 November 2014, the Husband declared an annual pension of \$16,452.40. He has a fifty percent interest in a house inherited from his deceased father Eustace Smith. On 06 November 2014, Michael Goodridge, a carpenter, valued the house at \$6,000.00. The Husband's interest is \$3,000.00. (See Husband's affidavit of 11 November 2014). It is not clear to the Court whether this house is built on rented land.

[177] The Husband is also awaiting a ruling by the Court as to his interest in the various matrimonial assets. The Court has found that he is entitled to:

- (i) thirty percent of the chattel house;
- (ii) thirty percent of the rent collected for the chattel house from when the Husband left the matrimonial home until 30 November 2015.
- (iii) fifty percent of the matrimonial home;
- (iv) fifty percent of the Vauxhall Gardens property;

- (v) fifty percent of the fixed deposit and the accumulated interest;
- (vi) fifty percent of the interest on the fixed deposit paid to the Wife between the time the Husband left the matrimonial home and the freezing of the account by the bank;
- (vii) fifty percent of the value of the Toyota motor car; and
- (viii) fifty percent of the value of the furniture purchased for the matrimonial home.

No order will be made for the payment of rental income or interest on the fixed deposit to the Husband, for the period before he left the matrimonial home in 2003. His share in these funds is considered to be a contribution to the marriage and the assets of the marriage. This contribution will also offset any rent free accommodation at Clotilda's home.

[178] The Wife declared \$14,904.00 of total annual income in her Statement of Financial Circumstances filed on 26 November 2014. This figure was made up of land rent (\$1,080.00), house rent (\$6,000.00), and pension (\$7,824.00). She is now the owner of her mother's property at Richmond, St. Michael; the land on which the chattel house, matrimonial home and a tenant's house are located; and three other pieces of land at Helen's Land, St. Michael. In addition, the Wife has a seventy percent interest in the chattel house, and a fifty percent interest in all the other matrimonial assets. Although the Wife

has \$1,548.40 less annual income than the Husband, she owns more real property assets than the Husband. Some of these assets are available to her for liquidation if necessary.

[179] Given their ages, neither party is expected to return to the job market. The Wife became unemployed in February 1997, when she was 57 years old. There is no evidence that she ever attempted to re-enter the workforce, prior to becoming eligible for a pension.

[180] **(3)The financial needs and obligations of each of the parties.**

(S.53(2)(d)).

The Husband declared total annual expenses of \$20,940.00. The three largest components are food and household supplies (\$10,000.00); car maintenance, running and registration (\$5,000.00); and telephone (\$2,040.00). Unlike his previous Statement of Financial Circumstances, filed on 21 February 2011, there is no component for house repairs. In November 2014, the Husband was carrying a credit card debt of \$7,000.00, and he had no apparent savings to his name.

[181] The Wife's total annual expenses, in her 2014 Statement of Financial Circumstances, amounted to \$79,696.00. She estimated \$36,000.00 for house maintenance, and \$35,400.00 for food and household supplies. Between May 2011 and November 2014 the Wife's household expenses rose

from \$29,500.00 to \$35,400.00 or by twenty percent. Her first Statement, filed on 02 March 2007, records expenditure of \$14,400 for food and household supplies. Therefore, between March 2007 and November 2014, this expenditure increased by two hundred and forty-five percent.

[182] Like the Husband, the Wife did not declare any existing bank accounts or available cash in November 2014.

[183] **(4) The responsibilities of either party to support any other person.**

(S.53(2)(e)).

The Husband has no offspring or other family members to support. The Wife assumed responsibility for an adult daughter who is mentally challenged. This daughter is not a child of the marriage, but she lived with the parties before they separated.

[184] The Wife swore in her affidavit filed on 03 February 2009 that:

“There is no other means of support for my daughter. My daughter who is 49 years old and is diabetic has to be supplied with special foods including meat, vegetables and vitamins. This expenditure is no less than \$1,000 per month. I expect that I will have to maintain her for the rest of her life.” (Para.4).

[185] The medical evidence provided to the Court indicated that Patricia Worrell suffers from depression and a thyroid dysfunction. She is incapable of either living an independent life or maintaining employment. In his oral evidence,

the Husband told the Court that he had no knowledge that Patricia was diabetic, or that she needed special foods. The medical evidence does not mention diabetes or the need for special foods. In addition, the special foods mentioned by the Wife, i.e., meat, vegetables and vitamins, may be considered to be a part of a normal diet.

[186] Patricia requires medication, but the Wife provided no information about the cost of the medication. What she gave was a global figure of \$1,000.00 per month to maintain Patricia. The Court accepts that the Wife will incur additional expenditure, in order to care for her sick adult daughter. However, the Court has insufficient evidence before it to support the level of monthly expenditure claimed by the Wife.

[187] **(5) The eligibility of either party for 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. (S.53(2)(f)).**

The Court has already noted that both parties are in receipt of a pension. The Wife also has a life insurance policy for which she pays \$900.00 annually. However, no information was provided as to the age, value or maturity date of this policy.

[188] **(6) Where the parties have separated or the marriage has been dis-**

solved, a standard of living that in all the circumstances is reasonable. (S.53(2)(g)).

Subsequent to their separation and divorce, the Wife remained in the comfort of the matrimonial home. She also has access to the wall house at Vauxhall Gardens, as a joint owner. In comparison, the Husband found himself downgraded to a rapidly deteriorating house valued at \$6,000.00.

[189] **(7) The extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income. (S.53(2)(h)).**

(8) The extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party. (S.53(2)(i)).

(9) The duration of the marriage or union other than a marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration. (S.53(2)(j)).

It would be convenient to consider these three factors together, bearing in mind that they touch and concern the issue of maintenance, and that this is a

case where one of the parties has an application before the Court for maintenance. Section 50 of the Act provides that:

“(1) A party to a marriage or union other than marriage is, subject to subsection (2), liable to maintain the other party, to the extent that the first mentioned party is reasonably able to do so.

(2) The liability of a party under subsection (1) arises only where the other party is unable to support herself or himself adequately, whether by reason of having the care or control of a child of the marriage or union who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment or for any other adequate reason having regard to any relevant matter set out in section 53(2).”.

[190] On 03 February 2009, the Wife filed an application requesting interim periodic maintenance and an order for maintenance, including a maintenance component in the property settlement. The basis for the application is contained in her affidavit filed on the same day. In 2009 the Wife was no longer receiving money directly from the Husband. By that time they had been divorced for five years. The Wife was unemployed with annual income of \$12,712,08, and expenses of \$20,788.00. A year earlier in January 2008, the Wife received a settlement of \$12,500.00, from her former employer, for wrongful dismissal.

[191] The Wife also relied on the fact that when the Husband retired from the CBC in November 2002, he received a gratuity payment of \$30,000.00, and a monthly pension of \$617.00. She also referred to his Statement of Financial Circumstances, filed on 28 September 2004, which revealed annual income of \$24,044.00 and annual expenditure of \$25,746.00

[192] It appears that when the Wife filed her maintenance application in February 2009, she was unaware that the Husband had filed an amended Statement on 25 November 2008. In his amended Statement the Husband's annual income of \$17,064.32 was derived solely from his pension. His annual expenditure was \$22,186.00, and his assets and liabilities included savings of \$28,000.00 with a credit union, and a debt to the credit union of \$11,900.00.

[193] The Wife's maintenance application was based on an erroneous understanding of the Husband's financial status. His annual expenses exceeded his annual income. And his available cash, after discounting the credit union loan, was \$16,100.00. The Husband was also living in a substandard house that required ongoing repairs.

[194] The financial statements provided by the parties in November 2014, were filed after the oral evidence in the case was concluded. When counsel for the parties appeared on 16 January 2015, neither counsel expressed a desire

to cross examine the parties on the content of their Statements. Therefore, the Court accepted these Statements on their face value. What the two Statements reveal is that both parties are pensioners, with the Husband's annual income exceeding the Wife's by \$1,548.40. As noted earlier the Wife claimed annual expenses of \$79,696.00, whereas the Husband's annual expenditure is \$20,940.00. (See paras.[180] to [181] supra).

[195] There is no evidence that the Wife wishes to retrain herself in order to re-enter the workforce. In so far as she provided the land and financial contributions for the chattel house and the matrimonial home, it may be said that she contributed to the income, property and financial resources of the Husband. The Husband made a similar contribution to the Wife. Although the marriage lasted for ten years, there is no evidence that the marriage negatively affected the earning capacity of the Wife. The Husband was not the cause of her loss of employment. And there is no evidence that he discouraged her from re-entering the work force.

[196] In terms of the Wife's finances, the Husband made a monthly financial contribution to the Wife until he left the matrimonial home in 2003. In addition, for sometime thereafter, the Wife was the sole recipient of approximately \$8,000.00 annually from the interest on the fixed deposit. The source of the fixed deposit was Lotto funds. She also benefitted from

all the rental income for a house in which the Court finds that the Husband has a thirty percent interest, inclusive of the rent.

[197] The Wife is asset rich, and the Husband is not in a position to support himself comfortably, farless provide maintenance for his former Wife. He appears to be in dire need of his portion of the matrimonial assets. For these reasons, the Court declines to award maintenance to the Wife, or to adjust the rights of the parties in the matrimonial assets, to include a maintenance component for the Wife.

[198] **(10) The terms of any order made or proposed to be made under section 57 in relation to the property of the parties. (S.53(2)(m)).**

The Court referred to its proposed order under section 57 of the Act at paragraph [177] supra.

[199] **(11) Any fact or circumstance that, in the opinion of the Court, the justice of the case requires to be taken into account. (S.53(2)(n)).**

On 28 November 2014, and 16 January 2015, counsel for the parties were asked by the Court whether there was any additional information that the Court should take into consideration, given the passage of time. Both counsel indicated that there was nothing further that they wished to place before the Court.

What is Just and Equitable?

[200] In the **Proverbs** case, Simmons CJ explained that:

“...the section 53(2) factors came into play in situations where there is a disparity in earning capacity, or there are special needs on the part of one party.....An adjustment is made because one has greater needs and the other has stronger means.” (Para.[38]).

[201] The Court is not persuaded, having considered the Section 53(2) factors, that there should be any major adjustments to the declared interests of the parties in the matrimonial property. Eleven years after their divorce, it is the Husband who has greater needs, and the Wife who has a stronger asset base. The Husband will be allowed to retain the motor vehicle, and the Wife will keep the furniture in the matrimonial home.

[202] The Wife’s entitlement to half of the money on the joint account will also be adjusted to make a larger cash settlement available to the Husband. This would allow the Husband, if he so chooses, to invest in a home for himself that is mortgage free. After all, it was significantly through his industry and finances that the matrimonial home was built without a mortgage. The adjustment of the Wife’s share and interest in the fixed deposit, in favour of the Husband, will correspondingly reduce his share and interest in the chattel house and its rental income.

The Quality of the Evidence

[203] Counsel for the Wife urged the Court to find that the Husband's evidence was "totally unreliable". (Written submissions para.46). Indeed, he detailed numerous inconsistencies in the Husband's evidence. (Paras.35 to 46 of written submissions). Counsel, however, ignored the inconsistencies in the Wife's evidence that seriously challenged her credibility.

[204] To be fair, some of the inconsistencies on both sides may be attributed to faulty memories occasioned by the seven year gap between the Husband's filing of the application for divorce, and the actual hearing of the evidence. But, despite the obvious challenges, the Court painstakingly reconstructed the various timelines, largely based on documents made available by the parties.

[205] There were instances where the parties were in agreement, or one party did not challenge the assertions of the other party. And the evidence of a disinterested third party, the mason Allan Layne, assisted the Court in determining issues of fact. This was because Layne's evidence was uncontested. It was after careful sifting and distillation of the evidence, that the Court made its many findings of fact, and drew reasonable inferences from those facts.

Disposal

[206] The Court makes the following orders in relations to the property rights of the parties:

(1) A declaration that the Husband is entitled to:

- (a) a thirty percent interest in the chattel house at Headley's Land,
Deacons Road, St. Michael;
- (b) a thirty percent interest in the rent collected for the chattel house for
the period 01 May 2003 to 30 November 2015;
- (c) a fifty percent interest in the matrimonial home at Headley's Land,
Deacons Road, St. Michael;
- (d) a fifty percent interest in the property at Vauxhall Gardens, Christ
Church;
- (e) a fifty percent interest in the fixed deposit and accumulated interest on
Account No.001000223999 at FirstCaribbean International Bank,
Warrens, St. Michael ("the Bank");
- (f) a fifty percent interest in the interest from the said fixed deposit that
was paid to the Wife between 01 May 2003 and the date that the said
account was frozen;
- (g) a fifty percent interest in the Toyota motor car; and
- (h) a fifty percent interest in the furniture at the matrimonial home.

- (2) The interest of the parties in the Toyota motor car and the furniture in the matrimonial home are altered so as to vest a one hundred percent interest in the motor car in the Husband, and a one hundred percent interest in the furniture in the Wife.
- (3) The interest of the parties in the fixed deposit and accumulated interest are altered so as to vest an additional sum of money in the Husband that would give him a lump sum payment of \$150,000.00.
- (4) The Bank shall pay the sum of \$150,000.00 to the Husband from the abovementioned joint account. The remaining balance on the joint account shall be paid to the Wife.
- (5) The Bank shall provide a detailed statement for the fixed deposit account, to the Husband, for the period 01 May 2003 to the date of payment to the Husband. The Husband shall file and serve a copy of the said statement within seven days of the receipt thereof.
- (6) The difference between the value of the Husband's fifty percent interest in the fixed deposit and accumulated interest, and \$150,000.00, shall be deducted from the value of the Husband's declared interest in the chattel house and the rental income.
- (7) The Wife shall pay for a valuation of the chattel house, and shall file and serve a copy of the same on or before 31 December 2015.

- (8) The Wife shall pay to the Husband the sum of \$123,105.00 within six months of the date of this order, failing which the matrimonial home and the land on which it stands shall be sold by public auction or private treaty, and the sum of \$123,105.00 shall be paid to the Husband from the net proceeds of the sale.
- (9) The interest of the Wife and Lorraine Anthony as joint tenants in the property situate at Vauxhall Gardens, Christ Church, is severed with immediate effect, and the parties shall hold the said property as tenants-in-common in equal shares absolutely. The Commissioner of Land Titles shall be given notice of this order.
- (10) The Wife shall pay for a valuation of the Vauxhall Gardens property, and shall file and serve a copy of the same on or before 31 December 2015.
- (11) The Wife shall pay to the Husband fifty percent of the value of the Vauxhall Gardens property within six months of the date of this order, failing which the property shall be sold by public auction or private treaty, and fifty percent of the net proceeds of sale shall be paid to the Husband.

(12) There shall be liberty to apply.

S. L. Richards
Sonia L. Richards
Judge of the High Court

