

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No. 689 of 2006

BETWEEN:

KATRINE SERIEUX

APPLICANT

AND

MERLA SERIEUX

RESPONDENT

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

2009: January 22, February 18, 19

2010: November 25

2011: November 11, December 02

2013: October 02, November 28

Ms. Monique Taitt, Attorney-at-Law for the Applicant.

Mr. Joseph Serrant, Attorney-at-Law for the Respondent.

JUDGMENT

Background

[1] The parties lived together from 1999 to 2001, prior to their marriage on 04 August, 2001. They separated in October 2005, but continued living at the same apartment, although separately and apart, until the

Wife moved out in November 2006. The Court granted a decree absolute on 08 June, 2007. The marriage was of a very short duration, lasting for a period just under 6 years, inclusive of nearly 2 years of separation. There is one minor child of the marriage, and a court order is in place with respect to her custody, care, control, maintenance and access.

[2] The remaining issues between the parties pertain to the matrimonial property. The Wife filed her application on 04 July, 2008, in which she claimed the following:-

- (1) An order, pursuant to section 57 of the Family Law Act, Cap. 214 (“the Act”), altering the interests of the parties in a property at Lot 102 Emerald Park, Six Roads, St. Philip, so that the existing joint tenancy be severed immediately.
- (2) An order pursuant to section 56 of the Act that the parties hold this property as tenants-in-common in equal shares absolutely.
- (3) An order pursuant to section 57 of the Act that the Husband transfers his entire share and/or interest in the said property to the Wife within 28 days of the date of the order.
- (4) A declaration pursuant to section 56 of the said Act that the Wife stands seized of the said property absolutely.

- (5) A declaration that all of the household effects contained in the said property are owned by the Wife absolutely.
- (6) An order pursuant to section 57 of the Act that the Husband transfers his entire share and/or interest in a 1999 Toyota Corolla motor car to the Wife on the payment to him of the sum of \$4,000 by the Wife.
- (7) A declaration that the said motor car is owned by the Wife absolutely.
- (8) Such further orders and/or declarations as the Court may deem fit.

[3] The Husband filed his answer to the Wife's application on 07 October, 2008. He claimed an interest in the property, the motor car, other personal items and wedding photographs as follows:

“(19) I am entitled to 50% of the cost of the car. I also claim 30% of the matrimonial home, but due to the house being obtained during the matrimony process and due to the collective salaries being the reason the loan was approved, I am entitled to my said 50%.....

(20) That on leaving the property, the [Wife] and the movers moved property out of the apartment without my consent. The only items that I am focussing on are a pair of Gold earrings purchased for \$200, payment for some of [the minor child's] items as all [were] moved from the apartment and I have had to rebuy everything. Half of the wedding

photos, or payment so I can get them back from the photographer. The [Wife] can keep the ones she is in.”

The Disputed Property

- [4] The major areas of contention between the parties relate to a 1999 Toyota Corolla motor car; real property at Lot 102 Emerald Park, Six Roads, St. Philip; and the furniture at that property. In his oral evidence before the Court, the Husband said that he was making no claim against the furniture.

“I am not claiming furniture. I would say that all the furniture in the St. Philip house belongs to [the Wife].”

Therefore, the Court will grant the Wife the declaration sought in relation to the furniture.

- [5] The undisputed evidence is that in 2004 the parties agreed to purchase a second hand motor vehicle. To this end they borrowed \$9,000 from the Wife’s step-father, and a further \$28,000 from the Barbados National Bank (BNB). The Husband alleged that he repaid all of the loan from the step-father. The Wife disputed this, and her evidence was that she repaid the step-father \$1,000, and the Husband repaid \$8,000.

- [6] Although the bank loan was to both parties, the Wife was solely responsible for the monthly payments of principal and interest in the sum of \$676.89. These payments were subsequently increased to \$767.33 per month. The Husband did not drive, therefore the Wife took him to work, and on occasions collected him from work. The vehicle was also used to transport the child of the marriage.
- [7] The Husband never occupied the St. Philip property. But it was conveyed to the parties as joint tenants on 07 November, 2006. Incidentally, the Court observed that the copy of the conveyance annexed to the Wife's affidavit filed on 04 July, 2008, as Exhibit KRS6, and signed by the Husband and the Wife, was witnessed by counsel for the Husband in this matter. The deposit of \$18,500 and the mortgage of \$185,257 were facilitated by loans from the BNB. The Husband's sister also facilitated a loan of \$10,000, to the couple, to pay the legal fees associated with the acquisition of the property.
- [8] The motor vehicle and the deposit loans were consolidated by the bank. Monthly repayments were made by the Wife through a direct debit from her personal bank account. She was also responsible for the monthly mortgage instalments of \$1,263. These instalments increased to \$1,314 monthly, with effect from January, 2009. The

Husband never contributed to the repayment of these loans. He accepted that he never refunded the Wife any monies paid by her towards the various BNB loans; and he denied making any payments toward the loan taken out by his sister.

- [9] The parties were required to secure life insurance as a condition of the mortgage. The Wife was unsuccessful in her application for life insurance because of her anaemic condition. However, the Husband effected a life insurance policy in the sum of \$200,000. This policy was used as the security for the mortgage. As the Wife's health improved, she obtained a life insurance policy on 28 October, 2007. The basic sum assured for her policy is also \$200,000.

The Relevant Law

- [10] When considering applications for the alteration of property interests under section 57 of the Act, the Court of Appeal established the guidelines in **Proverbs v Proverbs** ((2002) 16 W.I.R. 91). The **Proverbs** guidelines are referred to as "the three step approach".
- [11] The Court must first identify and value the matrimonial property. The Court has already identified the areas of dispute (supra at paras. [4] to [9]). And the parties are agreed as to what constitutes the matrimonial property for the Court's deliberations and orders.

- [12] No orders were made with respect to either the valuation of the motor vehicle or the St. Philip property. Had these valuations been undertaken in 2009, there is no doubt that by 2013, these valuations would have changed. Certainly in relation to the motor car, there would be further depreciation. There was no indication as to whether periodic valuations were provided to the BNB, as a condition of the car loan. And given the present volatility of the real estate market, it would be dangerous for the Court to estimate a current value for the St. Philip property based on its purchase price in 2006.
- [13] When counsel for the parties returned to court on 02 October, 2013, they were specifically asked if there were any additional circumstances which the Court should consider given the passage of time. Both counsel indicated that there was nothing further that they wished to place before the Court. However, it was agreed that the Court would be provided with copies of the life insurance policy contracts entered into by the Husband and the Wife.
- [14] If this Court should make any orders that require valuations of the disputed property, it would be appropriate to request the valuations when the orders are made. A valuation of the furniture is unnecessary as they will be vested in the Wife.

[15] The second step mandated by Proverbs is for this Court to consider and evaluate the respective contributions of the parties within the context of section 57(3) of the Act.

Section 57(3) refers to:

“(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 contributions 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;”.

[16] The Wife denied receiving monthly maintenance from the Husband “for household bills or anything like that”. She spoke of a household arrangement, after the motor car was purchased in 2004, whereby she was responsible for the car payments, groceries, telephone, cable and her personal expenses. She estimated that her monthly expenditure, after the vehicle was purchased, was in the region of \$1200 per month. Neither party gave any evidence as to who paid for the gas or the general maintenance of the vehicle.

[17] The parties appear to have contributed evenly to the needs of the child of the marriage. They both provided her, inter alia, with shoes,

clothing, food, snacks, and school tours. The Husband did not dispute the Wife's evidence that she spent more time with the minor child, given his work schedule.

[18] The parties agreed that the Husband paid the rent and electricity of approximately \$800 per month. The water was included in the rent. The Husband's evidence is that he paid for bottled gas every other month, and supplemented the purchase of groceries as the need arose.

[19] The Husband alleged that prior to and during the marriage he made a contribution to the household and personal expenses of the Wife in the sum of \$1,000 per month. The money was placed in a suitcase. This arrangement was instituted from 2000 and continued up to a few months before the parties were divorced in June 2007. Should the Court accept this evidence, it speaks to an additional financial contribution by the Husband, to the Wife and the household, of approximately \$84,000.

[20] The Wife agreed that the Husband placed money in the suitcase. However, she disputes the amount of money and the length of time this suitcase phenomenon continued. According to her:

“It is true that he had a suitcase where he kept his money. I had access to this suitcase. I could take money from it as the need arose. The amount of money in the

suitcase was not significant, and after a while he stopped putting the money in there. I am not certain how much money he used to put in there, and anytime I took anything I would tell him. It is not true that I would take money and not tell him. It became the norm for me to live off what I was making and not have to ask him for anything unless it pertained to our daughter.”.

[21] The Wife contended that the facility of money in the suitcase did not last for the duration of the marriage. She said that the money was put into the suitcase from the end of 2002 when they moved to Kendal Hill. It was also her evidence that the Husband continued to do this for “maybe a year or so”. The amount of money fluctuated between \$300 and \$1,000, and she never found more than \$1,000 in the suitcase at any one time.

[22] The Wife said that she never spent the suitcase money on herself. She took money every month for replenishing groceries, household expenses, and items required by the child of the marriage. Additionally, she told the Court that the rent money was a part of the suitcase stash. The rent money was kept there in case they did not see the landlord. The Husband’s evidence was that both parties also used the suitcase money for their personal expenses. The Wife’s version of the suitcase contributions suggests that they were not substantial, and

did not amount to the several thousand dollars over time as alleged by the Husband.

[23] When the St. Philip property was purchased in November 2006, the Wife assumed full responsibility for the mortgage payments. Even if the purchase was the result of a joint decision, the Wife singlehandedly negotiated the purchase. She was the one who found out that houses were for sale at Four-Square, St. Philip. She chose the particular lot, and initiated the negotiations with the vendor and the BNB.

[24] The Husband was not particularly enthused with the purchase of the property. He told the Court that he never wanted to live in St. Philip. When the Wife asked him which lot to choose, he left that decision entirely to her. He never assisted in the negotiations with either the vendor or the BNB. He claimed to be unaware of the loan from his sister to pay the legal fees. He made no contribution either to the down payment or to any of the mortgage payments.

[25] The property was never occupied by the Husband. He said that he was never granted access as the Wife refused to give him a set of keys. The Wife's version is that she collected the keys from the vendor on her own because the Husband told her that he was not

moving into the house, and that she could get the mortgage paid however she could. It is also her evidence that two days after collecting the keys the Husband requested duplicate keys. On the advise of her lawyer she declined to provide him with keys.

[26] According to the Wife, the paper work was going through while they were separated. The house was ready for occupation shortly before the divorce applications were filed. The Husband said that, despite the separation, the acquisition proceeded because the parties agreed to purchase the property as an investment to be sold at a later date. For this reason he signed the documents pertaining to the BNB loans. He also provided life insurance as security for the loan. The Wife's perspective is that the property was purchased for the family.

[27] The Court reconstructed the time lines based on the documentation filed by the Wife and her sister-in-law Bernadette Serieux. The Court also relied on the Wife's evidence in this regard. Neither the documentation or the Wife's versions of the time lines were disputed by the Husband. Sometime in 2005, the Wife began her negotiations with the vendor for the purchase of the property. The parties officially separated in October 2005. The following year, 2006, is

critical because of the events related to the purchase of the property and the completion of the divorce proceedings.

[28] According to the affidavit of Bernadette Serieux, filed on 09 March 2009, it was around April or May of 2006 that she negotiated a loan of \$10,000 with a bank. This money was used to pay the legal fees associated with the acquisition of the property. The Wife repaid a substantial portion of her sister-in-law's loan in the same year. Following the liquidation of this loan, the sister-in-law made three copies of the loan statement. One copy was given to the Wife, and Ms Serieux retained the other two copies. Ms. Serieux intended to provide the Husband with one of the copies she retained. In her affidavit she swore:

“12. That I think I may have informed the Respondent/Husband after the loan was paid off, and that I have a copy of the loan document for him. The said copy of [the document] is still in my care as I never remembered to give it to him.

13. That to the best of my knowledge I cannot recall ever discussing this matter with the Respondent/Husband again.”

[29] The Husband claimed to have had no knowledge of his sister's assistance. He denied that he agreed to contribute to the repayment of the loan, or that he made a single payment of \$201.50 to the Wife in

October 2006 as part of that agreement. The Court will refer to the Husband's oral evidence about this transaction.

"I understand that legal fees were included in the mortgage. I know my sister had to sign paperwork. I am unaware that my sister took a loan of \$10,000 to cover legal fees. I thought the paperwork was to assist us, but I did not know in what regard. It could have been a reference or so on..... It is not true that I was supposed to help repay this loan... .. I wouldn't be able to say if these legal fees were for the conveyance and mortgage transaction. [The Wife] did the negotiations. The Bank did not speak to me directly so they could not have indicated that we needed to pay legal fees. She did not tell me that we could not get money for legal fees. I have no recollection of discussing with [the Wife] the possibility of approaching my sister Leona to borrow legal fees because she worked at BNB. I would not know that Leona could not assist because she had an outstanding loan..... I don't recall considering going to Bernadette because Leona couldn't assist.... I don't recall these conversations... .. I can see my sister helping me in this way and my not knowing..".

[30] The Husband wishes the Court to accept that he was ready willing and able to assist with the mortgage payments, because acquiring the house was a "family decision". This did not occur because the Wife refused to provide him with keys to the property. He spoke of a deliberate decision made by the parties to continue with the acquisition of the house, even though there was "a slight separation in

the marriage". He did not want to live in St. Philip, so, according to him, they planned to sell the house in the future.

[31] The Husband willingly signed the documentation for the consolidation of the car loan with the loan for the down payment on the house. He also signed the documentation for the conveyance and the mortgage. He was asking for house keys to the property. And yet he would have the Court believe that he was unaware that this entire investment opportunity could be jeopardised if the legal fees were unpaid. A loan to pay these fees was negotiated by his sister in April or May of 2006. And the fees would have been paid a few months prior to the signing of the conveyance and mortgage documents in early November, 2006. His insurance policy to secure the mortgage took effect on 03 August, 2006.

[32] This Court does not accept that in these circumstances the Husband was blissfully unaware either of the frantic efforts by the Wife to find money for the legal fees, or that it was his sister who saved the day. Ms Serieux did not say specifically in her affidavit that her brother knew that she was negotiating a loan for the legal fees. However, paragraph 13 of her affidavit is instructive. It states that:

“to the best of my knowledge I cannot recall ever discussing this matter with the Respondent/Husband again.”

This suggests that they had previously spoken about the loan.

[33] And why indeed would Bernadette Serieux keep a copy of the loan statement for him if he was not in some way involved in the discussions surrounding her involvement? Her retention of this document for him tends to support the Wife’s evidence that initially the Husband had agreed to assist with the repayment of this loan.

[34] What is clear to the Court is that Mr. Serieux anticipated a future benefit, from the purchase of the house, without having to dig too deeply into his own pocket. But his insistence that he knew nothing about the role his sister played in securing the legal fees, strains the boundaries of credulity. And if the purchase of the property was indeed a shared investment venture, when was this investment to be realised? The property was mortgaged to the hilt; therefore it would have taken a number of years before any appreciable amount of equity was accumulated. The Court believes that the Wife’s evidence, of an agreement to purchase a home for the family, is more credible than the Husband’s version of an investment opportunity for the parties, with a view to a future sale of the property.

[35] There was a rapid succession of events after the conveyance and mortgage of the property on 07 November, 2006. The Wife and the minor child moved out of the apartment on 30 November, 2006 and moved into the St. Philip property. This date was provided by the Husband, and it was not challenged by the Wife. It is a date that was easy to recall because 30 November is Independence Day and a national holiday. The following week, on 06 December, 2006, the Wife filed for divorce. Two days later a similar application was filed by the Husband.

[36] Having raised questions about the Husband's credibility with regard to certain aspects of his evidence, the Court is inclined to accept the evidence of the Wife where there are areas of dispute. Therefore, the Court has made the following findings of fact:-

(1) *The Motor Vehicle*

At the time of its purchase in 2004, the car a 1999 Toyota Corolla, was a second hand vehicle and approximately 5 years old. In 2007, when the parties divorced, it was approximately 8 years old. To date this vehicle is about 14 years old. It was purchased for the purposes of the family and used as such. The

minor child and the Husband were transported to their various destinations by the Wife.

The purchase price of the vehicle was \$37,000, sourced through a loan of \$9,000 from the Wife's step-father, and a joint BNB loan of \$28,000. Both parties repaid the step-father; the Wife repaid \$1,000, and the Husband repaid \$8,000 out of his severance payment. The Wife repaid the BNB loan together with interest. There is no evidence of the total amount of interest the Wife paid on this loan. There is also no evidence as to who paid for the petrol, or as to the amount of expenditure for petrol. And neither party provided any evidence of their respective contributions towards the annual road tax and insurance, or to the conservation and maintenance of the vehicle.

Taking into account that the Wife would have paid interest to the BNB on the vehicle loan, and that she drove the family around, her contribution to this asset is assessed at 80 (eighty) percent, and the Husband's contribution is assessed at 20 (twenty) percent.

(2) *The St. Philip Property*

The original plan was for the purchase of a family home. It was not for grasping an investment opportunity. This plan remained in place during the separation, but the Husband changed his mind the night before the keys to the property were made available for collection. The Court accepts the evidence of the Wife that the Husband told her that he was not moving into the house, and that she could get the mortgage paid however she could. That is exactly what the Wife did. On 30 November, 2006, the Wife and the minor child moved into the property, and the Wife has made all the mortgage payments to date.

The Wife was the driving force behind the acquisition of the property. She told her sister-in-law "If I wait on your brother, we will never get anywhere". She found the property; negotiated with the vendor and the BNB; negotiated the consolidation of the car loan and a loan for the down payment; negotiated the conveyance and the mortgage; where possible brought the paperwork to the Husband for his perusal; took the responsibility for the repayment of all the loans associated with the purchase of the property. The repayment of the various

property loans would have included an interest element. Unfortunately, there is no evidence of the amount of interest paid by the Wife on the various loans.

The Court will not diminish the contribution of the Husband towards the acquisition of the property. Although his was a “laid back” approach, (as described by his sister in her affidavit), he did allow his salary to be taken into consideration by the BNB. Without his assistance, the parties would not have received the full amount loaned by the Bank. On her own, the Wife’s salary could not attract a mortgage of \$187,257. However, there is no evidence as to the amount she could have sourced without the Husband’s assistance. It is also very likely that, as an individual applicant, she would have been refused a loan, at that time, without life insurance of her own. Therefore, the Husband’s life insurance policy contributed significantly to the acquisition of the property. To date he has paid approximately \$2,624.50 in premiums for 87 months.

There is no evidence that the Husband in any way contributed to the conservation and maintenance of this property.

(3) *The Suitcase Stash*

The Court finds that the Husband withdrew \$1,000 monthly from his personal account, and kept that money at home in a suitcase. The rent was included in this amount; and it would explain the Wife's evidence that the money in the suitcase fluctuated between \$300 and \$1000. The Husband's testimony was that the money in the suitcase was never more than \$1000 at anyone time. He said that he made ATM withdrawals of \$1000 per month. None of the suitcase money was used by the Wife for her personal expenses. It was used to fund household expenses and the needs of the minor child.

The Husband made his suitcase contribution for approximately one year. He also used money from this source for his personal expenses. It is also more than likely that some of this money was used to pay the electricity bill. The Court accepts the Wife's evidence that "... the most the electricity was is \$100. Whenever he paid the rent he also paid our portion of the electricity."

At most, \$200 remained each month after the rent and the electricity bills were paid by the Husband to cover his personal

expenses and any additional needs of the household and the minor child. Therefore, the Court agrees with the Wife's assessment that the Husband's contributions from the suitcase stash were not substantial. His payments for rent, electricity, gas, groceries, and the down payment on the vehicle, were balanced by her overall financial contributions towards the purchase of the motor vehicle, her role as chauffeur for the family, and her contributions towards bottled gas, telephone and cable bills, and groceries. Although the Husband's salary was higher, their contributions to the marriage and the family, before the purchase of the house, were equal.

(4) Contributions As Parent

The minor child spent more time with the Wife. However, the Parties made an equal financial contribution to the needs of their daughter.

(5) Contribution As Homemaker

Neither party made any specific claims to making a contribution as a homemaker. There is an absence of evidence relating to whether the household responsibilities for cleaning,

maintenance, cooking and laundry were shared, or the responsibility of a particular party.

[37] The third step in the **Proverbs** guidelines is a consideration of the factors in section 53(2) of the Act, in so far as these factors are relevant. Section 53(2) provides that:

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

- (a) the age and state of health of each of the parties
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) whether either party has the care or control of a child of the marriage or union other than a marriage, who has not attained the age of 18 years;
- (d) the financial needs and obligations of each of the parties;
- (e) the responsibilities of either party to support any other person;
- (f) 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;
- (g) where the parties have separated or the marriage has been dissolved, a standard of

living that in all the circumstances is reasonable;

- (h) 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;
- (i) 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;
- (j) 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;
- (k) the need to protect the position of a woman who wishes only to continue her role as a wife and mother;
- (l) if the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation;
- (m) the terms of any order made or proposed to be made under section 57 in relation to the property of the parties; and
- (n) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.”

[38] Paragraphs (e), (f), (h), (i), (j), (k) and (l) are not relevant to this case.

This Court will take into account that the parties are in their late thirties, in good health and gainfully employed. Their marriage was for a short duration. The Wife has care and control of the minor child until she reaches her eighteenth birthday in another six years. The Husband provides maintenance for the child and the parties share her educational and medical expenses.

[39] The Wife has been paying the mortgage on the St. Philip property since 2006. The Husband continues to pay his insurance premium. Since the divorce, the parties have been responsible for providing their own food, shelter and other personal requirements. The Court is not aware that either party is responsible for supporting anyone other than the minor child.

[40] The Court proposes to make an order granting the Wife an eighty (80) percent share in the motor vehicle, and the Husband a twenty (20) percent share. After the divorce in 2006, she would have been solely responsible for the upkeep and maintenance of this vehicle, inclusive of the cost of petrol, insurance and road tax. In the Court's view, this order is also just and equitable.

[41] With respect to the St. Philip property, it cannot be said that the Husband's suitcase contribution allowed the Wife to apply her money to the acquisition of this property. However, the Husband's assistance assured them a higher loan from the BNB than she would have qualified for on her own. And his insurance policy provided the security for the mortgage. It was the Wife's resourcefulness that located the property, negotiated its purchase and secured the deposit, legal fees and mortgage. She eventually qualified for her own insurance policy.

[42] The financial cost to the Husband to date is \$2,624.50 for his insurance premiums. In comparison the Wife has already expended thousands of dollars to repay principal and interest on the various loans associated with the acquisition of the property. His monthly premium of \$104.98, represents less than ten percent of the Wife's monthly mortgage payment. And from 2006 to the present she has been solely responsible for the conservation and maintenance of the property.

[43] On 02 October, 2013, counsel for the parties were invited to address the Court on any additional information or changed circumstances that the Court should take into consideration given the passage of time.

Counsel indicated that there was nothing further to place before the Court except copies of the life insurance policies for the parties.

[44] Having perused the Husband's insurance policy, the Court noted that it is a term policy. That is, the sum assured of \$200,000 is payable only if he dies before his sixty-fifth birthday. As this policy is now tied to the mortgage, the BNB can apply its proceeds to the outstanding mortgage, should he die before age sixty-five. If the policy is removed as security for the mortgage, any future benefits would accrue to his estate.

[45] The Wife's policy may be substituted for the Husband's policy. The Husband does not have to surrender his policy and lose the premium income already paid. He can use the policy as security in the future. And he also has the option, under the policy contract, to convert the policy to a whole life endowment plan. The justice of the case requires this information to be taken into account by the Court.

[46] Since the divorce in 2006, there is no evidence that either the Husband has attempted to acquire his own property, or that he was prejudiced in so doing because the St. Philip property is jointly owned. Having assessed the value of his contribution to the acquisition of the

St. Philip property, should that value be translated into a percentage share in the property?

[47] After a careful consideration of all the relevant factors, the Court finds that there is no evidence of any real loss or prejudice to the Husband, either because of the joint application for the mortgage, or because of his monthly payment of an insurance premium for a policy used as security for the mortgage. Therefore, the Court proposes to make an order that the joint tenancy be severed, and that the Husband's entire share or interest in the property be vested in the Wife. The Court is also satisfied that, in all the circumstances, this is a just and equitable order. A valuation of this property is therefore unnecessary.

Disposal

[48] The Court grants the following orders:-

- (1) That the interests of the parties as joint tenants in the property situate at Lot 102, Emerald Park, Six Roads, St. Philip, be severed with immediate effect.
- (2) That the parties hold the said property as tenants-in-common in equal shares absolutely.
- (3) That the Husband shall transfer his entire share and/or interest in the said property to the Wife on or before the 31st day of January, 2014.
- (4) That the Husband shall execute and sign all documents that are required to transfer his entire share and interest in the said property to the Wife, failing which the Registrar of the

Supreme Court shall execute and sign such documents on behalf of the Husband.

- (5) That on the transfer of the Husband's share or interest to the Wife:
 - i. the Husband shall cease to have any rights, obligations or liabilities with respect to the property;
 - ii. the Husband's insurance policy shall be removed as security for the mortgage on the property; and
 - iii. the Wife's insurance policy shall replace that of the Husband as security for the mortgage.
- (6) That the 1999 Toyota Corolla motor vehicle is owned by the parties jointly, with an eighty (80) percent share or interest vested in the Wife, and a twenty (20) percent share or interest vested in the Husband.
- (7) That there be a valuation of the motor vehicle by NASSCO Ltd, the Wife to bear the cost of the valuation
- (8) That the Wife shall pay to the Husband twenty (20) percent of the value of the vehicle on or before the 31st day of January 2014. Thereafter, interest on any remaining balance shall accrue at the rate of eight (8) percent until paid in full.
- (9) That the furniture is owned by the Wife absolutely.

- (10) That a copy of this Order shall be served on the BNB as soon as possible.
- (11) That there be liberty to apply.

S. L. Richards

DR. SONIA RICHARDS
Judge of the High Court