

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**FAMILY DIVISION**

**No. 696 of 2008**

**BETWEEN:**

**PATRICIA ELIZABETH FELIX**

**APPLICANT**

**AND**

**RICHARD FELIX**

**RESPONDENT**

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

2009: February 12

March 03

May 19, 20, 21, 25

2010: July 05, 06

October 27, 29

November 26

December 03, 09

2010: December 30: Written submissions filed by Mrs. Walrond Q.C.

2011: October 24: Written submissions filed by Ms. Greene Q.C.

2012: June 13: Judgment delivered

Ms. Margot Greene, Q.C. for the Applicant/Wife

Mrs. Beverley J. Walrond, Q.C. for the Respondent/Husband

## JUDGMENT

### Background

- [1] Mrs. Patricia Elizabeth Felix and Mr. Richard Felix were married on May 28, 1994, at the Lewisham Registry, London, England. This was the Wife's third marriage and the second marriage for the Husband. They relocated to Barbados in February 2001, and separated in August 2005. It is agreed that the marriage broke down irretrievably, with no reasonable likelihood of the resumption of cohabitation. There are no children of the marriage.
- [2] On February 06, 2007, **Cornelius J.** granted orders under sections 27 and 42 of the Family Law Act, Cap. 214 ("the Act"). The decree nisi became absolute on March 07, 2007.
- [3] The only outstanding issue between the parties is the division of the matrimonial property. In this regard, the Wife filed an application on February 12, 2007, in which she sought the following orders:
- (a) an alteration pursuant to Section 57 of the Family Law Act transferring to the Husband a minimum of ten percent of the matrimonial home at Enterprise Coast Road, Christ Church.
  - (b) that she be at liberty to purchase the Husband's share and/or interest in the said property.

- (c) that upon payment of the purchase price to the Husband, the Husband transfers to her his entire share and/or interest in the property and immediately vacate the property.
  - (d) that should the Husband fail and/or refuse to execute the Conveyance to transfer his share and/or interest to the Wife, the Registrar of the Supreme Court be directed to execute the Conveyance.
  - (e) such other orders as the Court may think fit.
- [4] On July 05, 2010, counsel for the Wife sought leave to amend the Wife's property application. The Court approved an amendment to this application whereby an order was sought, pursuant to section 57 of the Act, for the transfer of a half-share in a Toyota Avensis motor car to the Wife.
- [5] The Husband filed his property application on December 05, 2007, asking for the following orders:
- (a) a declaration that the matrimonial home is owned by the parties in equal shares.
  - (b) that there be a valuation of the property by a named valuer.
  - (c) that the Wife be at liberty to purchase his half share or interest in the property within sixty days of the Order of the Court, and in default that the property be sold on the market and sold at a price not less than the appraised value.

(d) a declaration that the furniture in the matrimonial home is owned by the parties in equal shares.

(e) such further or other relief as the Court deems just.

[6] The Court also permitted an amendment to the Husband's property application on July 05, 2010. The Husband sought a declaration that the Toyota Avensis is his property; or alternatively an order under section 57 of the Act transferring ownership of the car to him.

[7] In his Further Affidavit In Response filed on July 18, 2008, the Husband stated that he wished to purchase the matrimonial home (paragraph 33). He also asked the Court to "grant me the right to purchase the house and in the event that the Wife does not agree that I should have the house, to place the house on the market to be sold to the highest bidder thereof." (paragraph 34).

[8] The following additional documents were filed by the parties:-

(i) November 20, 2007: The Wife's statement of financial circumstances  
and an affidavit in support of her application.

(ii) December 05, 2007: The Husband's statement of financial circumstances  
and an affidavit.

(iii) June 06, 2008: Affidavit of the Wife.

(iv) July 18, 2008: Further affidavit of the Husband.

- (v) August 20, 2008: The Husband's request for discovery and his notice to the Wife to produce documents.
- (vi) February 12, 2008: The Wife's affidavit in response to the request for discovery.
- (vii) February 03, 2010: The Husband's third affidavit.
- (viii) May 27, 2010: The Husband's Application in relation to the Toyota Avensis and an affidavit in support thereof.
- (ix) July 08, 2010: The Wife's affidavit in response to the Husband's application of May 27, 2010.
- [9] The areas of dispute between the parties centre upon the disposition of the matrimonial home, the furniture in the matrimonial home, and a Toyota Avensis motor car.

### **The Matrimonial Home**

#### **(1) The Evidence of the Wife**

- [10] Consistently in her affidavits and oral evidence, the Wife claimed that the Husband made no financial contribution to the acquisition, renovation or conservation of the matrimonial home. Her evidence was that the purchase price of the house was \$265,000. She said that Mr. Felix gave her no money either towards the deposit or the purchase price.

[11] In her evidence of February 12, 2009, Mrs. Felix said that “Mr. Felix did not give me any money towards the purchase price.” Again on May 19, 2009, she stated that “He did not contribute heavily, financially or directly to the purchase of the house at Enterprise Coast Road.” The Wife’s affidavit of December 05, 2007, deposed at paragraph 7 that “the ... property was acquired through [her] efforts and [her] finances.” Paragraph 20 of her affidavit of June 06, 2008, repeats that the Husband “did not make any monies available to pay the deposit in respect of the property nor did he pay anything towards the balance of the purchase price. All the funds used were mine.”.

[12] Mrs. Felix’s sources of money for the purchase of the house were said to be:

- (1) Bds \$37,000 from her savings account in England. This money was transferred to her local Barclays Bank account. The deposit of \$26,500 was paid from these funds.
- (2) two bank loans of £15,000 each. One loan was taken out by Mrs. Felix, and the other loan was taken out by Mr. Felix on her behalf. Both loans were paid off by Mrs. Felix after the sale of her London home.
- (3) the increase of an existing mortgage over her London home by an additional £20,000. Her affidavit of June 06, 2008, gives a figure of

£30,000 at paragraph 19. However, her affidavit of November 20, 2007 at paragraph 18 refers to a second mortgage of £20,000. In addition, her oral evidence of May 20, 2009 refers to a building society loan of £20,000.

(4) personal savings for the completion of the purchase.

[13] The abovementioned monies for the purchase of the matrimonial home were transferred to Barbados by way of sterling remittances from England. On November 06, 1998, the deposit of \$26,500 was paid by Mrs. Felix. The balance of \$238,500 was paid on 13 January, 1999. Both payments were made from Mrs. Felix's local account at Barclays Bank.

[14] Mrs. Felix's London home was sold on April 16, 1999, approximately three months after the purchase of the matrimonial home in Barbados. From the proceeds of the sale of the London house the mortgage was paid off, together with the two loans of £15,000 each from Barclays Bank. She was left with approximately £113,000.

[15] Mrs. Felix testified that she transferred part of this £113,000 to Barbados, and used that money to renovate and extend the matrimonial home. These renovations were undertaken for approximately eight weeks between October and December 2000. It is not disputed that she came to Barbados to engage the workmen and to supervise the work.

[16] The mason/builder, Mr. Albert Edwards, charged \$30,000 for the labour associated with the renovations. Mrs. Felix provided the materials. She further alleges that she completely financed the refurbishment of the matrimonial property. Her affidavit evidence is that her Husband "... never provided me with any money at the start of those renovations ... I used my own funds to start the renovations." (paragraphs 54 and 59 of affidavit of June 06, 2008).

[17] In her affidavit of November 20, 2007, Mrs. Felix swore that:-

"35. I estimate that the repairs and renovations to the house cost approximately \$100,000.

36. I financed this project solely. I used the funds realised from the sale of my said property in London.

37. [Mr. Felix] made no financial contribution either to the purchase of the property or the renovations and repairs carried out on the house.

38. In fact he refused to help financially."

## **(2) The Evidence of the Builder**

[18] Although giving his evidence nine years after the renovations were done, Mr. Edwards claimed to have an excellent memory. In his evidence of

October 27, 2010, he said "I recall what happened nine years ago. Nine years is just like yesterday to me."

- [19] Mr. Edwards testified that a team of men that included himself, three masons and two labourers, were responsible for the renovations to the matrimonial home, under his direction. A Mr. Trevor Greenidge, now deceased, was a member of this team. The work began in October 2000, and it was up to the ring beam in five weeks. It took another three weeks for the roof, windows and back door to be installed, walls plastered and the work secured.
- [20] According to Mr. Edwards, after Mrs. Felix returned to the island in February, 2001, there was another four weeks of work to be done. This included the plastering of a patio, building up of steps to the patio, and concreting of the yard. The extension to the house was completed within two weeks after Mrs. Felix came back to Barbados. However, this was not the end of the work. The concreting of the yard took another two weeks, and Mr. Edwards built a new soak away in two days.
- [21] Mr. Edwards was not responsible for the painting, tiling or electrical wiring. He was aware that Trevor Greenidge was personally responsible for the installation of a wire fence, and the construction of a shed. Mr. Greenidge also did the tiling, and accompanied Mrs. Felix to the bank to collect the money to pay the men.

[22] Mr. Edwards was adamant that the only person who paid him was Mrs. Felix. He charged her \$30,000 for labour, and Mr. Felix never paid him any of that money. In fact, according to Mr. Edwards, when Mrs. Felix returned to Barbados, Mr. Felix was not with her. He told the Court that Mr. Felix did not come back to the island within the two weeks that it took to complete the renovations to the house.

### **(3) The Evidence of the Husband**

[23] Mr. Felix did not mince his words in his response to his Wife's version of the acquisition of the matrimonial home. He vehemently refuted her claim that he made no financial contribution to the acquisition, renovation or conservation of the matrimonial home; and he described her evidence in this regard as untruthful.

[24] Paragraph 3 of Mr. Felix's affidavit in response of December 05, 2007, states his position:-

“... I have made substantial direct and indirect financial contribution to the [matrimonial] property ... as well as substantial contribution as a homemaker, including setting up the garden and physically doing landscaping and applying trowel plastic and undertaking the paving of the yard, sometimes with paid help.”.

- [25] His evidence is that after their marriage he placed his wife's name on his account at Barclays Bank, Willesden. After discussing the purchase of the Barbados house with her, he withdrew £24,000 from his share account with the Halifax Building Society and placed it on the Barclays Bank account. Mrs. Felix withdrew £26,000 from the latter account to assist with the purchase of the house.
- [26] Mr. Felix also facilitated the Wife by taking a Barclays loan of £15,000 on behalf of the Wife. She also accessed this money from his Barclays Bank account. This loan was repaid by Mrs. Felix when her house was sold. However, Mr. Felix said that he refunded \$45,000 to Mrs. Felix when they moved to Barbados, as a further contribution to the acquisition of the Barbados house.
- [27] Prior to their arrival in Barbados in February, 2001. Mr. Felix transferred \$147,693.41 to Barbados. The day after their arrival Mr. and Mrs. Felix went to the bank together. His evidence is that he withdrew \$36,000, and that "a lot of this money went into the house.". This money assisted with the renovations and other works associated with the house.

#### **(4) Evaluation of the Evidence**

- [28] The Court is persuaded that Mr. Felix did make a direct financial contribution to the purchase of the matrimonial home. There are a number

of reasons for this conclusion. Mr. Felix provided documentary evidence from his Willesden Barclays Bank account that indicated six withdrawals by his Wife, totalling £26,000. These withdrawals occurred on the same day, November 30, 1999, at a time when the purchase of the Barbados property was being negotiated.

[29] Mrs. Felix denied making these withdrawals, and claimed that the document was a forgery. She did not know how “P.E. Saunders”, her name prior to marriage, and the name she continued using on her Barclays account at Lewisham, appeared on Mr. Felix’s account. Interestingly, the name “Patricia E” also appears on his account on November 05, 1998, when she accessed the £15,000 he borrowed on her behalf on October 26, 1998.

[30] The document also confirms Mr. Felix’s evidence that his Wife’s name was placed on his account before November 1998. Mrs. Felix alleged that her name was placed on this account in 1998, solely to facilitate her access to the £15,000. The Court accepts that Mrs. Felix’s name was joined to her Husband’s account prior to November 1998. The transactions evidenced by the document begin at December 24, 1997, on a joint account between the parties. The document gives an address for the parties at Mrs. Felix’s London home “SINCE 23 OCT 95”. The Court also accepts Mr. Felix’s

evidence that the Willesden account became a joint account soon after their marriage in May 1994.

[31] The Wife admitted that the Husband tendered a cheque for \$45,000 to her after they settled in Barbados. She explained this cheque to be the result of a quarrel with the Husband. Mr. Felix had provided her with a Vauxhall motor car to drive, and he did not wish her son to use it. She told Mr. Felix that he was being unfair because she had spent all her money on the house. Mr. Felix's account differs. He said that when Mrs. Felix repaid his Barclays loan of £15,000, he promised to refund her when they moved to Barbados. The cheque was to honour that promise.

[32] It is clear from both versions that the cheque for \$45,000 was intended to reimburse Mrs. Felix for her financial outlay on the house. Having found serious issues of credibility with Mrs. Felix's insistence that her Husband did not contribute financially to the purchase of the matrimonial home, the Court accepts his explanation of the cheque as a reimbursement for her expenditure.

[33] Even though it was decided to place this money on a joint account for their medical expenses, the original intention was the financing of the matrimonial home. In any event, Mr. Felix only accessed approximately \$3,000 from this joint account for an eye operation. The balance was

utilised by Mrs. Felix. The Court accepts that Mr. Felix made a direct financial contribution to the acquisition of the matrimonial home of at least \$130,000. This is almost half of the purchase price of \$265,000.

[34] The agreement for the sale of the matrimonial home is dated November 16, 1998. That document describes Mr. and Mrs. Felix as the purchasers. Mr. Felix is also liable with Mrs. Felix for any acts of default on their part that contribute to the non-completion of the purchase. The document also acknowledges the receipt of the down payment of \$26,500 from Mr. and Mrs. Felix as the purchasers.

[35] The Conveyance provides more interesting information. It was signed by the vendor and the purchasers on January 29, 1999. Again Mr. and Mrs. Felix are described as the purchasers. The Conveyance also recites that, as purchasers, they paid the purchase price “out of funds held by them on a joint account both at law and in equity ...”.

[36] The permission of the Exchange Authority for the sale and purchase of the property is annexed to the Conveyance. It declares the method of payment of the purchase price and the source of funds in this way: “Both parties jointly transferred funds from England.”. The Court takes judicial notice of the fact that the Exchange Control application was made by Ms. M. Caroline Herbert, an attorney-at-law, on behalf of Mr. and Mrs. Felix. The application

form is signed by Ms. Herbert, after her declaration that she had verified the correctness of the information contained in the statements made on the form on behalf of the Felixes. In other words, Ms. Herbert verified the truth of the statement that the money to pay for the matrimonial home in Barbados came from monies jointly transferred by Mr. and Mrs. Felix.

[37] Both the Conveyance and the Exchange Control permission confirm Mr. Felix's evidence that part of the money for the purchase of the Christ Church property came from their joint account at Barclays Bank Willesden.

[38] The builder, Mr. Edwards, gave evidence on behalf of the Wife. He sought to bolster her story that Mr. Felix made no financial contributions to the renovations to the matrimonial home. Mr. Edwards said that Mr. Felix never paid him any money for the renovations. Mr. Edwards' memory proved to be faulty despite his assurances of an excellent memory regarding the facts of the previous nine years. He was wrong in his insistence that Mr. Felix did not return with Mrs. Felix in February 2001. Both Mr. and Mrs. Felix agree that they came back to Barbados together. They agree that they went to the bank together the following day.

[39] It follows then that Mr. Felix returned to Barbados when at least two weeks of work was still required to complete the renovations to the matrimonial home. Thereafter came another two weeks of work around the premises.

Even if the Court accepts that Mr. Edwards was paid only by Mrs. Felix, he admitted that he was not responsible for the painting, tiling or electrical wiring. It was Trevor Greenidge who did the tiling, installed a wire fence, and constructed a shed and a dog house.

[40] All the bills produced by Mrs. Felix are dated between October and November 2000, when she would have been in Barbados supervising the renovations. These bills are attached to her affidavit of June 06, 2008. They do not include electrical or plumbing items or trowel plastic.

[41] The Wife's affidavit of February 12, 2009, exhibits a statement from her local Barclays Bank account for the period October 12, 1998 to December 01, 2000. During October and December 2000, while Mrs. Felix was supervising the renovations, she withdrew \$50,400 from this account. This is just over half of her estimated total cost of \$100,000 for the labour and materials associated with the renovations. She did not produce any further bank statements for the period following her return to Barbados with Mr. Felix. Therefore, there is no documentary evidence to support a total expenditure by her of approximately \$100,000. She also told the Court that most of the renovations were completed by the time she returned to England in December, 2000. However, her bank statement only shows withdrawals

from her account amounting to half of an estimated expenditure of \$100,000 for the relevant period.

[42] Mr. Felix submitted a statement for his local account for the period March 01, 2000 to December 05, 2003. This statement was attached to his affidavit of December 05, 2007 as Exhibit RF4. It shows that Mr. Felix withdrew \$36,000 on February 22, 2001, the day after he and Mrs. Felix returned to Barbados. The Court accepts that a significant portion of this money went towards the ongoing renovations to the matrimonial home.

[43] Other sums of \$10,000 and \$6,000 were withdrawn by Mr. Felix on April 06 and June 22, 2001 respectively. The Court is satisfied that he used this money to enhance the surroundings to the house. The Court is also satisfied that Mr. Felix paid for the concrete walkway around the house, the driveway, the fence, the electronic gate and doorbell, a shed and a dog house. He was also responsible for planting grass, shrubs and fruit trees, painting the roof, trowel plastic and replacing a hot water tank. In short, Mr. Felix made an equal financial contribution to the renovation, enhancement and conservation of the matrimonial home.

[44] The Court is not persuaded by Mrs. Felix's efforts to minimize and trivialize her Husband's financial contribution to the matrimonial home. Except for the two Barclays loans totalling £30,000, which were verified by her

Husband, there is no documentary evidence to support her alleged sources of money that enabled her to pay cash on her own for the matrimonial home.

[45] The Statement of Account submitted by her London solicitor does not evidence the existence of a second mortgage on her London home. The documentation associated with the redemption of her mortgage was not presented to the Court. Neither was the Court shown any bank or other financial statements that established her cash reserves in England, prior to the purchase of the Barbados property. When this property was purchased, she still owned her London property. Therefore, the proceeds from the sale of that property did not assist with the purchase of the Barbados property.

[46] A fundamental aspect of Mrs. Felix's case was discredited when Mr. Felix produced documentary evidence showing not only a sizeable deposit on his Willesden bank account coming from his Halifax account, but also his Wife's withdrawals from the Willesden account. He also proved that it was a joint account prior to November 1998. She accessed his Barclays loan of £15,000, and withdrew a further £26,000 on November 30, 1999. Mr. Felix was the only source of the money deposited in the joint account.

[47] After the purchase of the matrimonial home, Mr. Felix also made his money available for the renovations to the house after he returned to Barbados with his Wife in February, 2000. He also refunded \$45,000 to Mrs. Felix in lieu

of the Barclays loan that she paid off on his behalf. The Court also accepted Mr. Felix's evidence that when the renovations were completed, he continued to spend his money on the improvement and upgrade of the matrimonial home.

[48] The Court has found that Mr. Felix made a direct financial contribution to the acquisition, renovation and conservation of the matrimonial home. And that contribution was an equal contribution.

#### **(5) Other Contributions**

[49] The Court had reason to distrust a significant part of Mrs. Felix's oral and affidavit evidence. Therefore, a careful approach was taken with her evidence in its entirety. The Court, however, accepted those parts of her evidence that were supported either by the evidence of Mr. Felix, or by convincing documentary evidence produced by Mrs. Felix. Given this crisis in credibility where Mrs. Felix's evidence was concerned, the Court was persuaded moreso by Mr. Felix's evidence.

[50] The evidence of Mr. Felix was not flawless. He corrected his assertion that the money taken from his Halifax account was handed directly to Mrs. Felix. This money was placed on his Barclays account and available to Mrs. Felix. He resiled from his position that Mrs. Felix had a local account with Carter and Company Ltd. His evidence was that he used this account to order

materials for the matrimonial home. After Mrs. Felix presented documentary evidence from this company to the effect that she never had a charge account there, Mr. Felix explained that “they had her information on the system, so I used her name to order things.”. Having heard and observed Mr. Felix in Court, the Court was of the opinion that his was not the path of deliberate and dangerous deception.

[51] With respect to the other contributions made by the parties to their marriage, the Court made the following findings of fact:-

- (1) Mr. Felix expended time and energy assisting Mrs. Felix with her London home prior to their marriage. His efforts in this regard improved and transformed this home, and contributed to its value at the time of its sale. Mrs. Felix was able to use money from the sale of this house for the improvements to the Barbados matrimonial home. Therefore, Mr. Felix contributed indirectly to the money Mrs. Felix used for the improvements to the matrimonial home.
- (2) After their marriage, Mr. Felix moved to Mrs. Felix’s home. Whilst living there, he paid the utilities and contributed to the food and other household expenses. Mrs. Felix paid the mortgage, insurance and other rates or taxes for this house. She also paid her personal insurance. Mr. Felix did most of the cooking, and Mrs. Felix was responsible for the washing. Most of the cleaning was done by Mr. Felix as Mrs. Felix had ongoing challenges with her knees.
- (3) When Mrs. Felix’s home was sold, the couple moved to rented accommodation. Mr. Felix paid the rent and the utilities there. This allowed Mrs. Felix to save her money towards the joint purchase of the Barbados home.

- (4) It was through Mrs. Felix's efforts that the matrimonial home was found and purchased. She was the driving force behind its acquisition. But she was not the sole financial contributor. The Court recognises her efforts in marshalling the workforce for the renovations between October and December 2009. She was alone in Barbados at that time, and solely responsible for ordering materials and paying workmen. Mr. Felix has not denied her contribution in this regard.
- (5) Mr. Felix paid for the shipping of furniture and two motor cars to Barbados. When these items arrived at the Bridgetown port, he paid to have them cleared and freighted to the matrimonial home. Mrs. Felix's duty free concessions as a returning national saved them over \$90,000 in duty on the new Toyota Avensis that Mr. Felix bought in England. The second car, a Vauxhall, was also owned by Mr. Felix and brought to Barbados for use by Mrs. Felix.
- (6) While living at the matrimonial home in Barbados, Mr. Felix paid the utility bills, and contributed \$800 per month towards food and other living expenses. Mrs. Felix paid the land tax, property and contents insurance. Mrs. Felix did the washing and they both cooked. Mrs. Felix's knee problems continued, therefore it is reasonable to assume that Mr. Felix was largely responsible for the cleaning. He paid a cleaning lady once a week.
- (7) Mrs. Felix had surgical procedures to her right knee in 2005 and 2006. In fact, the second operation was a total right knee replacement. During these periods of incapacitation, Mrs. Felix could not have been expected to drive, wash, cook, clean or to do any gardening. These responsibilities would have fallen solely to Mr. Felix.
- (8) After the matrimonial home was purchased, and prior to its renovation, the property was rented for about two years.. An agent collected the rent, and, after some deductions, the net proceeds were received by Mrs. Felix. She said it was about \$8,000. Mr. Felix never received any of these proceeds. He did not know where they went or how they were used.

(9) With the breakdown of the marriage in 2005, Mr. Felix discontinued his financial contribution to the household. He said that he took this action because he was doing everything for himself and paying the bills. He stopped paying the bills when he left the matrimonial home in early 2009. To date he has been out of the matrimonial home for over three years.

[52] What is clear to the Court is that Mr. Felix was the proverbial man about the house. His other contributions to the marriage were as an equal partner and homemaker with Mrs. Felix. When his financial and other contributions are assessed, the Court is moved to grant his request for a declaration that the matrimonial home is owned by the parties jointly.

#### **(6) Alteration of Property Interests in the Matrimonial Home**

[53] The Wife applied for an alteration of the property interests pursuant to section 57 of the Act. She has asked the Court to transfer to the Husband a minimum of ten percent of the matrimonial property. The Court of Appeal in **Proverbs v Proverbs** (2002) 16 W.I.R. 91, set out a three step approach for applications under section 57.

(54) First, the Court must identify and value the matrimonial property. This is a straightforward exercise in this case. The parties agree that the property situate at Enterprise Coast Road, Christ Church constitutes the matrimonial home. Two valuations were procured in June 2006. The Wife's valuation by Sunshine Real Estates determined a market value of \$450,000. Big Mac Enterprises Ltd. provided the Husband with a valuation of \$600,000. A

more up to date valuation will be required to assist with the final disposition of this matter.

[55] The second step is for the Court to consider and evaluate the respective contributions of the parties within the context of section 57(3) of the Act. The Court has already determined the extent of the financial and other contributions made by each party to the acquisition, conservation and improvement of the matrimonial property. Those contributions were found to be equal.

(56) The third step is a consideration of the factors in section 53(2) of the Act, in so far as these factors are relevant. The parties are retired and in their early seventies. The Wife has had knee operations. In 2009 she was said to be suffering from bronchial asthma and hypertension. The Husband is a diabetic who tries to maintain a healthy regime of diet and exercise. However, in recent times he has found it more difficult to keep his diabetes under control.

[57] Mr. Felix receives a larger pension than Mrs. Felix. When they moved to Barbados, they maintained separate bank accounts and fixed deposits. There was one joint account that no longer exists. Their largest investment is the matrimonial property.

- [58] The parties have been divorced for five years, and, given their ages and state of health, neither can be expected to work. During the marriage they were accustomed to a comfortable standard of living. If one party acquires the matrimonial home, it may prove difficult for the other party to acquire another property. A further consideration is that their individual need for housing, food, clothing, transport, medical services and medication will be constant.
- [59] In addition to the disposition of the matrimonial home, the Court was also asked to rule on the division of the furniture and a motor car. The parties have not made any claims against each other for maintenance or a share of any bank accounts or fixed deposits.
- [60] Despite following the three step guideline enunciated in **Proverbs**, this Court cannot alter the property interest of the parties “unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.” (section 57 (2)). This Court is of the view that, in all the circumstances of this case, it would be unjust and inequitable to reduce Mr. Felix’s fifty percent interest in the matrimonial property, and it declines to do so.

### **The Furniture in the Matrimonial Home**

- [61] The evidence of the Wife is that she purchased all the furniture in the matrimonial home. Some came from her London home, some was

purchased in England prior to their relocation, and the electrical items were purchased in Miami in 2001. The source of the money for the Miami purchases was money sent to her daughter just after the sale of her London home. It was noted earlier that Mr. Felix contributed to the improvements to this home.

[62] Mr. Felix never claimed to have purchased all the furniture. However, he spent his own money to ship the furniture to Barbados, he paid the port charges, and he paid the freight from the port to the matrimonial home. He spent his money on the property where all the furniture was eventually housed, and he paid to have the house (including furniture) cleaned once a week.

[63] In her evidence of May 21, 2009, Mrs. Felix declined to share specific pieces of furniture with Mr. Felix, who at that stage had moved out of the matrimonial home. Her only offer was the mattress on which he slept. In her words "If he wants the mattress he can have the mattress and I will replace it. He cannot have the bed."

[64] Mr. Felix expressed an interest in acquiring certain pieces of furniture. He said in his oral evidence on October 29, 2010, that:

"The furniture is not all hers. The furniture in the master bedroom I don't want. I would like the bed in my room, one glass cabinet, the three piece suite, one of the three rugs, one of the two CD players. I only want things that have more than

one. I would like the corner table in the sitting room. I would like one of the lamp tables ... . There is a lot of furniture left. There is the fridge, the cooker, a big freezer, washing machine. We brought a lot of electrical things from the USA. There is a breakfast table, a big dining table with eight chairs, two televisions, a settee. A lot of things are left.”.

[65] The Wife did not make a specific application in relation to the furniture. But in her evidence she asserted that all of the furniture was purchased by her. However, the Court accepts that Mr. Felix facilitated the acquisition of the furniture, and that he spent his money to get it to Barbados and to the matrimonial home.

[66] This marriage was a shared co-operative venture. Mrs. Felix gave evidence that they discussed his pension contributions and Mrs. Felix agreed to his increased contributions. She said that they agreed not to sell his Vauxhall in England, but to bring that car to Barbados as a second car. They discussed and shared the acquisition of the matrimonial home. Given Mr. Felix’s financial and other contributions to the acquisition of matrimonial assets, the Court grants him a declaration that the furniture is owned by the parties in equal shares. A valuation of the furniture should also be undertaken.

### **The Toyota Avensis**

[67] The Wife wishes a half share in the Toyota Avensis motor car pursuant to section 57 of the Act. This car was purchased new by the Husband and

shipped to Barbados. In order to circumvent certain import duties, the car was registered in the name of Mrs. Felix. However, Mr. Felix had sole use of the car, and he paid all insurance and taxes for the vehicle. He saved over \$90,000 by having the car registered in the Wife's name.

[68] Mr. Felix benefitted from a massive saving on this asset with the assistance of Mrs. Felix. She made an indirect contribution to this asset. Therefore, the Court will allow her a half share in the Toyota Avensis.

### **The Vauxhall**

[69] No applications were made with respect to the Vauxhall motor car. This vehicle was also owned by Mr. Felix, but it was used by Mrs. Felix until she abandoned it. She paid the insurance and taxes for this car. Mrs. Felix told the Court that it was falling apart and in need of repairs. No valuation was ever presented for this vehicle. The Court requires such a valuation in order to determine whether there is any value left in this vehicle that should be the subject of a court order.

### **Disposition**

X [70] The Court grants the following orders:- X

- (1) a declaration that the matrimonial property at Enterprise Coast Road, Christ Church, is owned by the parties in equal shares.

- (2) that there be a valuation of the property by Felicity Ltd. The parties will share the cost of this valuation equally.
- (3) that Mr. Felix be at liberty to purchase Mrs. Felix's half share or interest in the matrimonial property within sixty days of the Order of this Court.
- (4) that should Mr. Felix decline to purchase Mrs. Felix's share within the stipulated period, Mrs. Felix be at liberty to purchase his share or interest in the matrimonial property.
- (5) that should Mrs. Felix decline to purchase Mr. Felix's share, that the property be sold on the open market at a price not less than the appraised value.
- (6) that the furniture in the matrimonial home is owned by the parties in equal shares.
- (7) that there be a valuation of the furniture by an agreed valuer, and the cost of the valuation shared by the parties equally.
- (8) that the Toyota Avensis motor car is owned by the parties in equal shares.
- (9) that there be a valuation of the vehicle by NASSCO Ltd, and that Mr. Felix bears the cost of this valuation.

- (10) that Mr. Felix be at liberty to purchase Mrs. Felix's half share or interest in the vehicle within twenty-eight days of the Order of this Court.
- (11) that there be a valuation of the Vauxhall motor car by a valuer chosen by Mr. Felix and that Mrs. Felix bears this cost.
- (12) that there be liberty to apply.

**SONIA RICHARDS**  
Judge of the High Court