

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**(Sub-Registry, Tobago)**

**Claim No. M-9 of 2007**

**BETWEEN**

**NICOLE SOBERS**

**PETITIONER**

**AND**

**WADE LUCAS**

**RESPONDENT**

**Before the Honorable Mr. Justice V. Kokaram**

**Appearances:**

**Petitioner appeared in person**

**Mr. J. Leander for the Respondent**

**JUDGMENT**

1. **Introduction:**

- 1.1 Before the Court is the Respondent's application dated and filed 14<sup>th</sup> August 2009, for property settlement in relation to a parcel of land located at Signal Hill described in Deed DE20010187490D001 which the Respondent describes as matrimonial property ("the said property"). In this application the Respondent also sought an injunction to restrain the Petitioner from disposing of the proceeds of sale from the said property. However this relief was not pursued by attorney for the Respondent, the said property being sold in 2004.

- 1.2 The Petitioner was unable to retain an attorney at law and represented herself on the hearing of this application. She did not file any affidavits in response to the application. However she made oral submissions in opposition to the application which for the main part repeated allegations she had made in her affidavit filed in previous proceedings for ancillary relief.
- 1.3 In my judgment having regard to the factors outlined in section 27(1) of the Matrimonial Proceedings and Property Act Chapter 45:51 (“the Act”) and in an attempt to achieve a fair outcome which is fair and just to both parties I hold that this is a fitting case for the payment of a lump sum of \$78,000.00 by the Petitioner to the Respondent. The factors that the Court took into account in arriving at this order for settlement are set out hereunder.

## **2. The background facts:**

- 2.1 In this case a decree nisi was granted by Moosai J on 23<sup>rd</sup> May 2008. It is important to note that the grounds on which the Petition was granted was that the parties had lived apart for a continuous period of at least five years preceding the presentation of the Petition. The said property was purchased by the parties on or about December 2000, some months prior to the Respondent leaving the matrimonial home.
- 2.2 The evidence from the Respondent as to the acquisition of the said property is conflicting and unclear. He deposed in his affidavit, filed 14<sup>th</sup> August 2009, that he began the process of acquiring the said property from the Tobago Housing Authority at Signal Hill before he was married to the Petitioner. He does not condescend to particulars as to the details of this “process” of acquisition. He however gives credit to the Petitioner, acknowledging her assistance, in the acquisition of the said property. He states: *“At all material times in order to further consolidate our marriage during the process of acquiring the property the Respondent’s assistance was requested and sometimes given.”*

- 2.3 The only evidence of the Respondent's acquisition of the said property is a receipt dated 23<sup>rd</sup> November 2000 issued in the names of the Respondent and Petitioner for the sum of \$15,000.00 being "payment for land at Signal Hill Lot 61". Despite the fact that the receipt says on its face that the payment of the said sums were made by both parties he states that the property was acquired through his sole financial efforts without financial assistance whatsoever from the Petitioner. He also stated that the property was acquired with the express agreement that the property would be used for the construction of a matrimonial home. There is no deed annexed to this application evidencing any title in the said property in the name of the Respondent.
- 2.4 The said property was eventually conveyed by the Petitioner to one Wendel Thomas on 11th May 2004 by Deed of Conveyance No DE200801067599 for the price of \$210,000.00. The Respondent now seeks a lump sum payment in the form of 70% of the sale price.

### **3. Assessment of the facts:**

- 3.1 There is no valuation of the said property before this Court. This despite the fact that leave was granted to the Respondent to file a supplemental affidavit to produce a valuation report of the said property. The Court however must take into account the price at which the property was eventually sold in the sum of \$210,000.00 as evidenced by the Deed of Conveyance dated February 8, 2008.
- 3.2 The Respondent sets out his means of income and his expenditure. Based on his evidence it would appear that he is barely meeting his monthly expenditure. There is no affidavit filed by the Petitioner outlining her income or earning capacity. The Court however does take into account the fact that she had been granted custody of the two children of the family and is in receipt of maintenance in the sum of \$1,000.00 per month from the Respondent. The Respondent in paragraphs 12 and 13 of his affidavit attempts to set out the present means and earning capacity of the

Petitioner. However, very little weight can be placed on that evidence as it is hearsay and further the Respondent failed to indicate his source of information to support his belief of the Petitioner's means.

3.3 Further there is no evidence from either party as to their contributions to the welfare of the family during the marriage or the standard of living enjoyed by them prior to the divorce. However, the Respondent does indicate that he was forced to close down a car rental operation which he operated in Tobago. He also had to close another business which he operated for only one year because of his inability to secure alternative accommodation.

3.4 Section 27 mandates that the Court have regard to all the circumstances of the case in order to make a fair and just award under section 26 of the Act. The Court has applied the guidance of Lord Nichols of Birkenhead in *White v White* (2000) 3 WLR 571 in the assessment of the circumstances of this case.

3.5 It is fair in these circumstances to award a lump sum to the Respondent. This was advocated by the attorney at law for the Respondent. The Court has taken the following factors into account in determining a fair award:

(a) The property was acquired by the Respondent's sole financial contribution. The overall financial contribution towards the purchase of the land is a relatively small sum of \$15,000.00. It appears from the receipt that the funds were provided by both the Petitioner and Respondent. There is no evidence however as to the relative contributions made by both parties towards the purchase price.

(b) The Petitioner assisted the Respondent in the process of acquiring the property. The Respondent in his oral submissions admitted that the Petitioner did advance a sum of money towards the purchase of the land.

- (c) Title to the said land was in the name of the Petitioner only. It was acquired in December 2000<sup>1</sup> a few months prior to the Respondent leaving the matrimonial home.
- (d) The intention of the Respondent appears from the evidence to demonstrate a complete relinquishing of any of his rights to the property. By a statutory declaration made on 3<sup>rd</sup> November 2000 the Respondent indicated his desire not to be made a party to the Deed. Further in a letter dated 23<sup>rd</sup> November 2000 the Tobago House of Assembly indicated that the Respondent “no longer hold an interest in the property.” The Court notes that in an affidavit filed by the Respondent on 6<sup>th</sup> March 2009 in earlier proceedings, the Respondent stated “*I ensured that the entire property was conveyed to the Petitioner upon the consensual understanding that my share and interest shall be later vested in the names of my two children.*”
- (e) The property was sold for the sum of \$210,000.00 in 2008
- (f) The property was sold prior to the divorce without objection by the Respondent. He did say that he was informed in 2008 that the property was sold by the Petitioner. However there is an unexplained lull in the Respondents’ action to recover his just due between that date and the date of filing this application. The Respondent’s delay is a relevant factor to take into account. See *Chambers v Chambers* [1979] FLR 10.
- (g) There was no active interest in the said property by the Respondent for the period 2000 to 2008. It is safe to conclude that he did nothing with the said property and intended to have no interest in it although he states that it was acquired to build a matrimonial home. There is no evidence to support any activity towards the construction of such a home.

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<sup>1</sup> See the recitals in the Deed of Conveyance

- (h) The Respondent is a man of modest means both during and after the divorce. The Petitioner's means are unknown.
- (i) The earning capacity of the Respondent is moderate. He is self sufficient and enterprising.
- (j) The marriage was of a short duration.
- (k) The standard of living of the Respondent before and after the divorce appears not to have been adversely affected.

In these circumstances doing the best the Court can in light of the meagre evidence, it will order that a lump sum of \$78,000.00 be paid to the Respondent by the Petitioner.

The Petitioner shall pay to the Respondent the costs of the application to be taxed in default of agreement.

There be a stay of execution of 14 days from the date hereof.

Dated this 1<sup>st</sup> February 2010

Vasheist Kokaram  
Judge