

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FAMILY DIVISION

SUIT NO. F/D 2014 OF 2003

BETWEEN SONJA OWENA PRINCE-CAMPBELL APPLICANT/PETITIONER

AND CUNNINGHAM CAMPBELL RESPONDENT

Mrs. Andrea Bishop-Benjamin instructed by Grant, Stewart Phillips & Company
for the Applicant.

Miss D. Satherswaite for the Respondent.

Heard on 30th January 2008

***Application by wife to apply for maintenance
under the Maintenance Act 2005***

MORRISON, J (Ag.)

By way of Notice of Application for Ancillary Relief dated 1/2/2005 the Applicant enjoins the Court to order the Respondent to pay to her the sum of \$100,000.00 per month towards her maintenance. In this regard she has deposed in (3) affidavits giving reasons to buttress her claim.

The Respondent has sought to discredit the reasons advanced by his erstwhile wife by asserting in (2) affidavits the demerits of her attestations as well as by relying on his unemployment and his impecuniosity by his rejection of her claim.

The facts are of the utmost simplicity. The parties were married on the 1st day of January 1993. That marriage ended on 9th December, 2005. On

\$25, 000.00 per month to the Petitioner. His first payment was to commence on or before 31st December 2007.

In substance the Applicant avers that she was made redundant by her former employee, WINDALCO, in or about 1994. Consequent upon this event she supervised and managed a farm jointly owned by them. She also took on the responsibility of purchasing material for the farm and making deliveries of the farm's produce. This she did, along with other tasks, without ever been compensated therefor.

The parties cohabited for seventeen (17) years and for (12) twelve of those years they lived together as man and wife. The Petitioner worked for eleven (11) years on their joint farm without reward. The Petitioner is now homeless she having had to leave because of the Respondent's improbity. Earlier, she had in 1994 made to give up her position as secretary and thereafter retired to the matrimonial home which she looked after in tandem with the farm. She lost contact with the professional world since 1994 and has been unable to recapture or re-insinuate herself into that professional milieu despite her efforts owing to her near superannuated age of (51) years.

The marriage was to further deteriorate in or around 2001. She avers that the Respondent's deviation from rectitude resulted in her withdrawing from the matrimonial bed. He was lost to shame and dead to honour. The Respondent meanwhile ceased to contribute, monetarily to their expenses. He took over their banking transactions in relation to the farm thereby forcing her to exist on the generosity of neighbours and friends. She avouches that she has attempted,

without success, to find employment compatible with her secretarial skills. She, however, received temporary employment from which she earned \$22,418.33 per month for (23) months from August 2006 through to July 2007. She asserts that she was unable to meet her living expenses from these meager earnings.

At present, she says she has been living in Kingston with a friend as she is unable to commute between Ewarton and Kingston and Montego Bay due to the prohibitive cost of petrol. Her outgoings, as tabled, is some \$75,500.00 per month. This sum she has been able to meet through families' contributions and the highmindedness of friends. These expenses include \$10,500.00 for rent, utilities of \$9,500.00; groceries of \$20,500.00; household expenses of \$4,000.00, motor vehicle upkeep maintenance of \$23,000.00; personal grooming of \$4,000.00 and life and health insurance \$4,000.00. She contends that the Respondents has a substantial monthly income and is financially able to contribute to her living expenses in that-

- i). He operates a number of savings accounts;
- ii) He is a director and shareholder in a limited liability company named Wojo Limited.
- iii). He owns and lives rent-free in the former matrimonial house.

A number of exhibits were supplied by the Petitioner in support of her contention.

For the Respondent, apart from the flat denials to the assertions in the Petitioner's affidavit of 23rd July 2007, he has not addressed paragraph 17 thereof in a manner beyond being brusque.

Paragraph 17 of the Petitioner's affidavit speaks to the Respondent's earnings and ownership. In response thereto this is all that the Respondent has to say in his affidavit of 4th December 2007: "In reply to paragraph 17, she made reference to a company but what she hasn't said is that the company was started with a friend to run as a transportation business but that he ran away to the States owing me money that has never been repaid and that the company went nowhere." Further, "I am also currently unemployed as my contract with the Jamaica Urban Transit Company Limited was terminated on November 30, 2007." He prays finally, that this Honourable Court will not award the sum of \$100,000.00 towards the maintenance of the Petitioner.

A retracing of the affidavit evidence as sketched above yields in substance what each party has to say. I find that as between the two parties that the Respondent has not been forthcoming as he ought to. I prefer the presentation of the Petitioner and reject the presentation of the Respondent. This I did on the basis that the Respondent did not offer to this Court, for its deliberations, any documentary proof as to the state of his various savings accounts, nor any documentary proof as to his earnings in Wojo Limited. All that he has proffered is, instead, a slew of expenses for his monthly maintenance which expenses outstrip his monthly earnings, that is, \$265,982.00, together with his combined credit card debts which is in excess of \$250,000.00. In other words, the Respondent is living beyond his means. This no doubt was so presented to the Court to negate his ability to pay and thereby deny the Petitioner her application for maintenance.

The Law

The Maintenance Act 2005 provides that a Court on any decree for dissolution of marriage may order a spouse to secure to the other spouse, to the satisfaction of the Court such gross sum of money or such annual sum of money for any term not exceeding the life of the dependant spouse as having regard to the means of the dependant spouse, the ability of the contributing spouse and to all the circumstances of the case, the Court thinks reasonable.

The Court is vested with the power to make interim orders for such payments of money to the dependent spouse. The Court is also enjoined to direct the contributing spouse to pay the dependent spouse during their joint lives such monthly or weekly sum for the maintenance and support of the dependent spouse. In determining the amount and duration of the support the Court must have regard to the parties assets and means; the dependant's capacity to contribute to her support; the Respondent's capacity to contribute to his support; the mental and physical health and age of the parties; the measures available for the dependant to become able to provide for her own support and the length of time and cost involved to enable her so to do; any legal obligation to the parties to provide support for another person; the extent of which payment of maintenance to the Petitioner could increase her earning capacity by enabling her to undertake a course of education or training or to establish herself in a business or otherwise obtain an adequate income; the quality of the relationship between the dependant Petitioner and contributing Respondent and, finally, any

fact or circumstance which in the opinion of the Court, the justice of the case required to be taken into account.

The Court is obliged to take into consideration the length of time of the marriage, the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse; the effect of the responsibilities assumed during the marriage on the spouse's earning capacity; the spouse's needs, having regard to the accustomed standard of living during the marriage ; the eligibility of either spouse for a pension allowance or benefit under any enactment, rule superannuation fund or scheme and the rate thereof.

Since it is indisputable that the Applicant/Petitioner is in need of financial support and having regard to the requirements of the law I am to say that the Petitioner's application has to be viewed favourably. That this is the more so, as it is founded on the dearth of information surrounding the Respondent's assets and holdings or, else, their worth. He has failed to set out full particulars of his property and income. In this regard I am guided by the authority of **Hughes v Hughes** (1993) 45 WIR at 149 from which this principle is extracted: A court is entitled to draw inferences as to assets and income adverse to a party who fails to make full and frank disclosure of them. To quote from the judgment of Byron, J.A.; "What is clear from the evidence is that the Appellant gave much less than a full and frank disclosure of his assets and income. It was less clear that he had beneficial interests in property and businesses of value. The burden of proof could not be placed on the Respondent because this knowledge is peculiarly in

the possession of the Appellant and he was under a duty to make full and frank disclosure.

In the instant case absolutely no value of his assets was forthcoming from him. He is in denial. The matrimonial home is solely occupied by him. Together they own the farm; he is a director and shareholder in Wojo Ltd; he has savings accounts in his sole name. He owns a motor vehicle the value of which is unknown.

Overall, what the Respondent has done by his presentation is to present his defiance and not his defence. Even so, the applicant, assuming that she is able to get employment though temporary, that fact would have to be factored into the equation. She is asking this court to award her a monthly sum of \$100,000.00. She earned \$22,000.00 plus for some considerable time and as at 11th December 2007 her earnings have been further reduced to \$6,000 per fortnight or \$12,000.00 per month, as a result of the non-renewal of her contract.

Thus, this court is of the opinion that a reasonable sum for maintenance beckons having regard to all the circumstances. The Applicant has said that her reasonable monthly expenses total \$75,000.00. Bearing in mind that she earns \$12,000.00 per month. I am of the view that \$60,000.00 per month represents a reasonable figure to order the Respondent to pay to the Petitioner, and I so order. No order as to costs.