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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

B E T W E E N :-

JOYCE LYNCH Appellant
(Respondent)

- and -

10 JOSEPH CHRISTOPHER LYNCH Respondent
(Petitioner)

CASE FOR THE RESPONDENT, JOSEPH CHRISTOPHER LYNCH

Record

1. This is an appeal from an order of the Court of Appeal of Trinidad and Tobago (Hyatali C.J., Cross J.A. and Braithwaite J.A) dated the 11th December 1981, whereby it p.65

20 (a) allowed an appeal by the above-named Appellant ("the wife") from the decision of Warner J. sitting in the High Court of Justice (Matrimonial) of Trinidad and Tobago dated the 9th October 1978 and

(b) ordered the above-named Respondent ("the Husband") to pay to the wife a lump sum of twenty thousand Trinidad dollars on or before the 31st March 1982 and to pay her costs of the appeal.

30 2. The question for decision involves the application of Section 27(1) Matrimonial Proceedings and Property Act 1972 (Laws of Trinidad and Tobago).

This sub-section provides that:

"In deciding whether to exercise its powers to make orders in divorce proceedings for ancillary relief in relation to a party to the marriage and, if so, in what manner, the Court shall have regard to all the circumstances of the case, including the following matters:

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- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; 10
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) contributions made by each of the parties to the welfare of the family, including any contributions made by looking after the home or caring for the family; 20
- (g) any order made /granting one of the parties a right to occupy the matrimonial home/;
- (h)the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring, 30

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other." 40

3. The general background of the matter is that

- p.28 1.13 (a) the wife was born in about 1946;
- p.18 1.17 (b) the husband was born in about 1938;
- p.1 1.20 (c) they married on the 3rd June 1967;

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- (d) there was no child of the family; p.2 1.7
- (e) from May 1973 until the 25th September 1974 the parties lived apart albeit within the home; p.7 1.37
- (f) on the 25th September 1974 the wife vacated the home; p.12 1.51
- (g) on the 21st June 1976 cross-decrees nisi of divorce were awarded to both parties on the ground that the marriage had broken down irretrievably, that they had lived separate and apart since May 1973 and that both consented to the grant of decrees; pp.16 and 17
- 10 (h) on the 2nd September 1976 the decrees were made absolute; and p.15
- (i) by notice dated the 27th June 1977 the wife applied for orders against the husband for lump sum payment, periodical payments, secured periodical payments, settlement of property and transfer of property. p.14
- 20 4. The wife's said claims for ancillary relief were heard by Warner J. during seven days in August 1978. He read affidavits filed by both parties and heard each of them give oral evidence extensively. On the 9th October 1978 he gave judgment. pp.18,22,19 and 10 pp.25-55 pp.55-61
5. The following is a summary of the relevant facts which were put in evidence before the Learned Judge and which, where challenged, were accepted by him:
- 30 (a) the husband was and had been throughout the marriage a Police Officer, earning at the time of the hearings 1811 Trinidad dollars per month gross, inclusive of various allowances; by reason of the divorce the wife was no longer eligible for benefits as his widow under the Police pension scheme; p.56 1.15
- (b) following the divorce the husband had remarried; p.61 1.3
- 40 (c) throughout the marriage the wife had worked full-time as a junior clerk in the civil service; p.36 1.10 p.42 1.26
- (d) within days of her departure from the home in September 1974 the wife had become a law student, during which time she had p.35 1.6

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retained her status as a civil servant although she was unpaid save in vacations when she resumed active work;

- p.26 1.15 (e) at the time of the hearing in August 1978 the wife had just obtained an LL.B. degree and was about to pursue postgraduate legal study;
- p.23 1.1 (f) the only substantial capital asset owned
p.21 1.20 by either party was the home, which the husband held in his own name; 10
- p.28 1.46 to (g) the husband had bought the site of the
p.29 1.6 home prior to the marriage with his own money and had paid for the erection of the home prior to the marriage with the assistance of a mortgage;
- p.60 1.29 to (h) during the marriage the wife had made
49 various contributions out of her earnings towards the cost of improvements to the home and to the general benefit of the family; she had contributed to the construction of a garage and of drains, to burglar-proofing a bedroom and to minor repairs; and from 1971 she had paid for food and household items in order to enable the husband to service an increased mortgage taken out to fund the construction of an extra bedroom and to make payments for the purchase of cars; and 20
- p.20. 1.11 (i) the value of the home at the time of the
p.51 1.18 hearing was said by the wife to be not
p.23 1.6 less than 90,000 Trinidad dollars and by the husband to be about 60,000 Trinidad dollars; there was a debt of 10,500 Trinidad dollars borrowed against it on mortgage. 30
- pp.24, 25 6. By his order dated the 9th and 10th October 1978, Warner J. awarded the wife a lump sum of 3800 Trinidad dollars and further ordered the husband to pay her 800 Trinidad dollars in respect of costs.
- pp.62-64 7. The wife appealed to the Court of Appeal
pp.65,66 against the order of Warner J. aforesaid. 40
The Court of Appeal allowed her appeal and made the order referred to at 1(b) above, against which she now further appeals.
- pp.66-73 8. In the Court of Appeal the leading
p.73 judgment was given by Cross J.A. and the other

two learned Judges said no more than that they agreed with it.

9. In his judgment Cross J.A.

- (a) referred in detail to Section 27(1) of the 1972 Act aforesaid and sought to apply each of the matters specifically set out therein to the facts of the case; p.68 1.41 to p.71 1.6
- (b) observed that, as a matter of strong probability, the wife's future earnings as a lawyer would always exceed those of the husband as a police officer; 10 p.69 1.9
- (c) noted that the wife had had to maintain herself since her departure from the home, was in need of accommodation of her own and had to repay certain debts to her family; p.73. 1.20 p.69 1.35
- (d) held that Warner J. had given insufficient weight to the wife's contribution to the marriage, in particular her financial contribution to the marriage and to the improvement of the home, and that his award was clearly inadequate; 20 p.70 1.22 p.73 1.24
- (e) rejected as inappropriate the wife's claim to an order for the transfer of an interest in the home and for periodical payments; p.71 1.35 p.73 1.12
- (f) concluded that an order that the husband should pay to the wife a lump sum of twenty thousand Trinidad dollars was an order 30
- (i) with which the husband could comply by borrowing on second mortgage; p.73 1.30
- (ii) which would enable the wife to make a deposit on a suitable home of her own; and p.73 1.4
- (iii) which was appropriate in all the circumstances. 40 p.73 1.24
10. On the 18th January 1982 the Court of Appeal granted to the wife conditional leave to appeal from its aforesaid order to Her Majesty in Council, which leave was made final by its order dated the 19th May 1982. p.74-75 p.76

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11. The husband submits that this appeal should be dismissed with costs for the following amongst other

R E A S O N S

1. BECAUSE the judgment of the Court of Appeal represents an impeccable application of the relevant legal principles (Section 27(1) aforesaid) to the facts of the case;
2. BECAUSE the jurisdiction of the Court on an application for ancillary relief is discretionary and the discretion of the Court below (as exercised by the Court of Appeal in substitution for that of the trial Judge) can in no way be said to have been exercised upon wrong principles or so as to produce a result which was plainly wrong; 10
3. BECAUSE the Court of Appeal rightly placed emphasis upon the wife's financial contribution during the marriage but, against this, rightly weighed (in particular) the facts that the husband had acquired the home before the marriage, that the wife's future income was likely to exceed that of the husband and that it was desirable to make an order which, while enabling the wife to obtain a home, would not cause the husband to sell his home; 20
4. BECAUSE the Court of Appeal was plainly correct in choosing to fix a lump sum to be paid to the wife rather than to award her a proportion of the equity in the home; an award of a proportion of the equity would have been an arbitrary and pointless exercise, productive of yet further delay and argument and jeopardising the husband's just claim to be allowed to continue to occupy the home; 30
5. BECAUSE the judgment of the Court of Appeal was right.

NICHOLAS WILSON 40

