

IN THE SUPREME COURT OF BELIZE, A.D. 2008

ACTION NO. 449 OF 2004

IN THE MATTER of section 16 of the Married Women's Property Act - Cap. 176, Revised Edition 2000

TILVAN KING

Applicant

BETWEEN AND

LINDA AGUILAR

Respondent

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. E. Andrew Marshalleck along with Ms. Liesje Barrow for the applicant.
Ms. Lois Young SC for the respondent.

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JUDGMENT

The rendition of judgment in this case only now is very much regretted. But the reasons for the delay have been described in a judgment given on 10th October 2008 in another case. This is principally due to the caseload of the Court and the then unavailability of enough judges for the Supreme Court.

2. In this case, the applicant Mr. Tilvan King, by his summons dated 18th August 2004 seeks from this court the following:

(i) *A Declaration under section 16 of the Married Women's Property Act that the applicant is beneficially entitled to one half share or interest in the following property:*

All that piece or parcel of land situate in the Belmopan Registration Section, Block No. 20, Parcel No. 3437 containing 6.35 acres;

(ii) *An Order that the above-mentioned property be sold and the net proceeds of sale after payment of the sum due under a mortgage with First Caribbean International Bank (Barbados) Ltd., be divided equally between the Applicant and the Respondent.*

3. On 20th October 2004, the respondent, Linda Aguilar, took out in effect, in so far as the land in question is concerned, a cross-summons asking the Court for the following relief:

(i) *An order that the land specified (that is the 6.35 acres) which is subject to the statutory trust for sale created, do vest in the Respondent for all the estate and interest of the Respondent.*

(ii) *An order directing that the trustees for sale to give effect to a partition for the aforesaid property and to execute a conveyance or transfer to each of the two tenants of one-half thereof.*

4. The respondent's summons stated that her applications were made pursuant to sections 58(1)(a)(v) and 58(1)(d) of the Trusts Act – Cap. 202 of the Laws of Belize, Rev. Ed. 2000.
5. The respondent in the same summons made as well an application pursuant to the inherent jurisdiction of the court to order the applicant to pay her reasonable monthly maintenance.
6. Both the applicant and the respondent filed affidavits in support of their respective applications” one by the applicant and four in all by the respondent. There was as well an affidavit filed by one Mr. Roque Marin, a licensed surveyor, in support of the respondent's prayer for a partition of the land in issue in this case.

The Relationship between the parties

7. At the material times of the parties' respective summons in this matter, and presumably up to date of this judgment, they were married. I have not been advised otherwise. Nor has the Court been informed of any divorce proceedings between the parties. The parties' marriage was solemnized on 9th December 2000 in the Methodist Church in Belmopan. But the parties had each been married to other persons before. Quite exactly when they first met is not clear; but met they did; and this took place when the applicant, Mr. King, was posted from Barbados to Belize as the country manager for then Barclays Bank, from 1994 to 1998. The respondent, Ms. Aguilar, was also at the time, working for the said Barclays Bank as a supervisor. (I have in this judgment referred to the respondent who is really formally Mrs. King as Ms. Aguilar, her maiden name).

8. At the time of the parties' marriage in December 2000, Mr. King had been posted back to Barbados as the senior manager of Barclays Bank stationed at its head office in Barbados. Mrs. King gave up her own job with the bank in order to go live with Mr. King in Barbados as his wife. There they lived as husband and wife from 2000 to November 2003, when they returned to Belize. Between Christmas 2003 and the New Year 2004, the relationship unfortunately, deteriorated between the parties. Finally on 10th January 2004, Mr. King moved out of the home the parties had occupied as their matrimonial home in Belize on their return from Barbados. This house is No. 24A St. Joseph Street, Belize City, and is owned by Ms. Aguilar.
9. Since moving out, Mr. King, the applicant, has not returned. There are no children from the marriage.
10. I have recounted, in brief, the relationship between the parties because it is pursuant to it that Ms. Aguilar has, in her separate summons, prayed this court for an order of maintenance against Mr. King. More on this later.

But for now I turn first, to the property, the disposition of which is in contention between the parties.

The land in issue

11. The land that is in contention between the parties is said to comprise in total some 6.35 acres. It is situate in the Belmopan Registration Section and is Block No. 20 of Parcel No. 3437.
12. The land itself was bought in 2000. There is no agreed position between the parties as to how the purchase price for the land was provided. Mr. King states in paragraph 4 of his affidavit that -

“The land was purchased for \$87,000.00 with a loan from Barclays Bank PLC for \$75,000.00 and the fees and balance of the purchase price were paid from my account. I have been meeting all loan installments, land taxes and costs of upkeep since the land was acquired. The land was charged to Barclays to secure the repayment of the loan.”

Mr. King exhibited a copy of the charge to secure the loan by Barclays.

13. Ms. Aguilar on the other hand states in paragraph 9 of her first affidavit that -

“9. In the year 2000 the Applicant (That is Mr. King) and I decided to purchase the property jointly. The land is registered in our joint names as evidenced by Land Certificate No. 6750/2001 dated 18th September 2000 for Parcel 3437, Block 20 in the Belmopan Registration area.”

She further however states in paragraph 4 of her third affidavit that:

“4. Payments on the loan from Barclays were met by Petitioner (sic) (no doubt referring to Mr. King) because he told me that his wife will not work and that he wanted me to be a homemaker and to cater to him exclusively.”

14. It is therefore reasonable to conclude that Mr. King contributed substantially if not exclusively the purchase price of the land. But the undisputable fact, which is common ground between the parties, is that the land was registered in the joint names of both Mr. King and Ms.

Aguilar and pledged jointly by them, as chargors, to secure the loan by way of a mortgage in favour of Barclays Bank: see in particular **Exhibit T.K. 1** of Mr. King's affidavit.

15. It is, also, not in dispute between the parties that the land itself is subject to the provisions of the Registered Land Act – Cap. 194 of the Laws of Belize, Rev. Ed. 2000. Although for the purposes of her application, Ms. Aguilar relies on the provisions of the Trusts Act – Cap. 202 of the Laws of Belize.
16. However, on the disposition of the land, the parties have taken diametrically opposed positions, which simply put can be stated thus: **to sell and distribute equally between them the proceeds realised from such sale, after payment of the mortgage on the land; or simply to partition the land in almost equal halves between them.**
17. The former position was vigorously contended by Mr. Andrew Marshalleck, the learned attorney for Mr. King, while the latter course, that is to partition the land, was equally vigorously supported by Ms. Lois Young SC, the learned attorney for Ms. Aguilar.

To Sell or Partition the land?

18. The question for resolution on the respective applications of the parties in relation to the land is whether to sell it or partition it.
19. The applicant, Mr. King, in respect of the land has moved the court (to order a sale) pursuant to section 16 of The Married Women's Property Act – Cap. 176 of the Laws of Belize, Rev. Ed. 2000. He seeks first a declaration that under this section of the Act he is beneficially entitled to one half share or interest in the land in issue; and secondly, that the land

in question be sold and that the net proceeds of sale after payment of the sum due under a mortgage with First Caribbean International Bank (evidently the successor of Barclays Bank), be divided equally between him and the respondent, Ms. Aguilar.

20. The respondent, Ms. Aguilar, in respect of her application concerning the land, has moved the court under sections 58(1)(a)(v) and 58(1)(d) of the Trusts Act.

Determination in respect of the land

21. I listened with great care to the arguments and submissions, including the written submissions by both Mr. Marshalleck for Mr. King and Ms. Young SC for Ms. Aguilar, which I read with care, and carefully considered the affidavit evidence of the parties and I conclude that on that evidence and the applicable law, I must ineluctably, accede to Mr. King's application in respect of the land.
22. For understandable sentimental reasons such as the residence of her mother and her brother, David Aguilar, in Belmopan, which is not too far from the location of the land, and the fact that she had hoped to live in the area on her retirement, Ms. Aguilar is desirous that the land be partitioned so that she could still build her own retirement home on her own portion of the partitioned land which she seeks. But this partition, in my view, can only be done if the other co-trustee were agreeable.
23. It is an undeniable fact that the parties though married, do not live together any more and the land itself on which there is no building or residence could hardly be regarded as the matrimonial home. Yes, both parties had, in happier times, contemplated building their matrimonial and retirement home on the land. But this did not materialize.

24. Moreover, I am not convinced or satisfied that the circumstances present in this case would warrant me to order a partition of the land. The land was bought in 2000 and was, and still is, an empty land with no building on it. It is not the matrimonial home; and shortly after its purchase, the parties' marriage effectively began to unravel. This case is markedly, in my view, different from the English case of **Dennis v McDonald (1981) 1 WLR 810** which was decided under section 30 of the English Law of Property Act. In that case Purchas J as he then was, decided that since the circumstances in which the trust for sale originated, had envisaged as one of the primary objects the provision of a home for the family, it would not be right in the exercise of the court's discretion under section 30 to make an order for sale. In that case the defendant continued to live in the house that had been bought as the family house after the plaintiff walked out. The defendant was later joined by the three older of the children of the marriage to live in the house. The Court therefore did not consider it right in the exercise of its discretion to make an order for the sale of the house.

In the instant case before me, although the land was bought with a view to making it the location of the future matrimonial home, this did not, as I have pointed out, materialize. The applicant, Mr. King, had moved out soon after its purchase. In fact, the only matrimonial home, at least in Belize, from the evidence, that the parties occupied was the residence at St. Joseph Street, premises owned by Mrs King, from which the applicant moved out so far never to return.

25. I do not, therefore, taking all the circumstances of this present case into account, think that it is reasonable and fair to order a partition of the land as Ms. Aguilar wants me to do. The parties' marriage is virtually no more: to order a partition of their jointly owned land so as to facilitate one of them to build and stay on that land is perhaps to foster an illusion. The parties

never lived on the land. I think, in the circumstances, given the sate of their relationship, it is preferable for both of them to cut their losses, and give effect to the statutory trust for sale which is established on the land when they acquired it in 2000.

26. I agree with Mr. Marshalleck that the parties, as the joint proprietors of the land in question on its purchase and registration in their joint names, became, in law, trustees for sale of the land. Section 102(2) of the Registered Land Act provides, as far as relevant for present purposes, as follows:

“102(2) Except as provided by the Settled Land Act 1925, any land disposed to two or more persons shall be held on an expressed or implied trust for sale, whether such persons are joint owner or owners in common, and the trustees for sale shall be registered as the proprietors of the land.” (Emphasis added)

27. It is therefore clearly the position that where registered land is sold to or acquired by two or more persons, a statutory trust for sale, either express or implied, is batterned or affixed on the land.

28. I conclude therefore, that when the parties became in 2000 the co-proprietors of the land they accordingly held it on a trust for sale. Section 105(1) provides:

“Any land held under a trust for sale shall be held by the trustees upon a trust to sell it and stand possessed of the net proceeds of sale after payment of taxes, costs of insurance, repairs and other outgoings.”

29. I should point out here that although the application on behalf of Mr. King was moved under section 16 of the Married Women's Property Act, I am satisfied on the facts of this case that this section is expansive enough to accommodate his application in the circumstances. This section, again, so far as is material provides as follows:

“16(1) In any question between a husband and wife as to title to or possession of property, either party ... may apply by summons to a judge of the court who may make such order with respect to the application as he thinks fit ...”

30. From the evidence, it is manifest that there is a question between Mr. King and Ms. Aguilar as to the possession of the land. There is no question as to its title, there is only a question as to how it is to be possessed. He wants a sale of it; she wants it to be partitioned. I am therefore satisfied that Mr. King's application can properly be brought under the provisions of the Act.
31. Ms. Aguilar's application for partition of the land, on the other hand, is brought pursuant to the provisions of the Trusts Act, in particular, of section 58 of the Act. I however, have some misgivings about the applicability of the provisions of the Trusts Act for the purpose sought on behalf of Ms. Aguilar in the circumstances of this case. In my view, the statutory trust for sale created by section 102(2) of the Registered Land Act when land is disposed to two or more persons, is different from the generality of trusts to which the provisions of the Trusts Act are addressed. The latter are, for example, defined in section 2 of the Trusts Act and section 5 provides for the creation of what I prefer to call the generality of trusts. This is in contradistinction from the **statutory trust for sale** created by section 102(2) of the Registered Land Act. And

section 105 of the latter Act addresses the effect and operation of the statutory trust for sale.

32. Implicit in the statutory trust for sale of land is the **doctrine of conversion in equity**. By this the land notionally becomes money with the result that the interests of the beneficiaries (that is the co-proprietors) would be in the proceeds of sale and not in the land – see **Irani Finance Ltd v Singh (1971) Ch 59** at 90; **(1970) 3 All ER 199** at 203 per Cross LJ.
33. I have expressed my reservations about the applicability of the Trusts Act to ground Ms. Aguilar’s application. This I have done in the light of the fact that subsections (6) and (7) of section 105 of the Registered Land Act do provide for **dividing** land subject to a trust for sale by the trustees among the beneficiaries under the trust. But the subsections imply agreement between the beneficiaries. There is manifestly in this case, no agreement between the parties, who are the real beneficiaries of the trust for sale relating to the land in question. In any event, it is the Registrar of Lands who determines any objection a beneficiary might have to a proposed division of the land.
34. Section 107 of the Registered Land Act provides for the **partition** of land owned in common. But the application for this exercise may be made to the Registrar of Lands by the trustees for sale named on the register. This section to my mind imports an **agreement** between and among **the trustees**. This is lacking in this case. I seriously doubt therefore, that absent such an agreement, this Court can compel or order a partition of the land in the circumstances of this case.
35. Ms. Young SC for Ms. Aguilar correctly, I think, submitted that the Registrar can, pursuant to section 107, effect a partition. But this, it is clear from the section, may only be done on an application by **the**

trustees. I do not however, accept that because the Registrar may affect a partition **a fortiori**, this Court can, even in the absence of agreement by the trustees for sale, order a partition.

36. I am not, however, satisfied on the facts and circumstances of this case, that there is anything to warrant me to order partition of the land in question here.
37. The provisions of section 58(1)(a)(v) and (d) of the Trusts Act have been prayed in aid of Ms. Aguilar's application to have this Court order a partition of the land. This section speaks to the general powers of the Court, in my view, in relation to trusts **generally** and not expressly to a statutory trust for sale created by operation of law such as that present in this case in respect of the land in question.
38. The powers of the Court under section 58 of the Trusts Act are of course, discretionary.
39. Ms. Young SC valiantly relied on the case of **Re Thomas (1929) All ER 129**, as authority for the exercise of the Court's power to order partition. In that case Farwell J, after some reservation because of the lack of power vested in trustees by the trust instrument or by law to effect a partition, considered it expedient to authorize the trustees under section 57 of the English Trusts Act 1925 to apply for the partition of the trust land. In that case, unlike the instant one, all the trustees were desirous to effect the required partition for the benefit of all the beneficiaries. But cautiously, Farwell concluded his judgment thus:

“The trustees can either partition on their own responsibility or come again with full evidence to obtain the approval of the court to the particular partition.”

40. In the instant case before me, Ms. Aguilar is not seeking the approval of this Court for a proposed partition of the land but rather an order from this Court directing the trustees for sale to give effect to a partition of the property and to execute a conveyance or transfer to each of the parties of one-half. She manifestly also does not have the consent of her co-trustee.
41. Still undaunted, Ms. Young SC canvassed in support the decision of the English Court of Appeal in the case of **Re Buchanan-Wollaston's Conveyance, Curtis v Buchanan-Wollaston (1939) 2 All ER 302**. That case, I must point out, turned essentially on section 30 of the English Law of Property 1925, for which I can find no direct equivalent in either our Law of Property Act – Cap. 190 of the Laws of Belize nor in the Registered Land Act. Both these statutes import a trust of sale when land is disposed to two or more persons. The English section 30 enabled any person interested in land held on a trust for sale to apply to the Court for a vesting or other order for giving effect to a proposed transaction affecting the land or for an order directing the trustees for sale to effect a sale. The Court may make such order as it thinks fit. More fundamentally, the statutory trust for sale was not given effect to in that case because the parties when they bought the land in that case had entered into a written contract which seriously inhibited any subsequent sale without their concurrence. As the Master of the Rolls Greene stated:

“... the Court ... when asked to enforce the trust for sale, whether one created by settlement or a will or one created by the statute, must look into all the circumstances of the case and consider whether or not at the particular moment and in the particular circumstances when the application is made to it, it is right and proper that such an order shall be made. In considering a question of that kind ... the court is bound to look at the contract into which the parties have entered and to

ask the question whether or not the person applying for execution of the trust for sale is a person whose voice should be allowed to prevail.”

42. In the circumstances of the instant case before me, there is of course, no contract between the parties qualifying or inhibiting the statutory trust for sale. At most there might be the somewhat illusory intention that they intended, when they bought the land, that it would be the location of their matrimonial home. But the evidence shows that their relationship has unraveled. I ask therefore the rhetorical question: why in the circumstances feed into that illusory intent, by denying to order an execution of the statutory trust for sale? It is to be noted that Ms. Aguilar is actually asking for a partition of the land to enable her to build her retirement home on her own portion.
43. I am afraid I must decline any invitation to exercise any such powers to order or authorize a partition in this case. It is my considered view that in all the circumstances of this case it is preferable to have an execution of the statutory trust for sale of the land.
44. Moreover, although section 58 of the Trustees Act confers power on the Court, on the application of a trustee, a beneficiary or settlor or his personal representative, a protector, (in the case of a trust established for a charitable purpose), the Attorney General or with the leave of the Court any other person, to among other things

“(1)(a) make an order in respect of

- (i) ...*
- (ii) ...*
- (iii) ...*

(iv)

(v) *Any property, including an order as to the vesting, preservation, application, surrender or recovery thereof;*

(d) make such order in respect of the termination of the trust and the distribution of the property as it thinks fit,”

I am not convinced or satisfied that in the circumstances of this case and the available evidence, it is expedient, reasonable or proper for me to order a partition in virtue of any of the above provisions of the land in this case, which is the subject to the statutory trust for sale. I am inclined to the view that these provisions of the Trusts Act are more appropriate to trusts created by will or settlement and it is not easy to fit in the operation of a statutory trust for sale created by the Registered Land Act.

45. I am not persuaded that there is anything in these provisions that would warrant an order of partition of the land as Ms. Aguilar seeks.
46. I conclude therefore that in the absence of any agreement between Mr. King and Ms. Aguilar, to partition the land, the statutory trust for sale which is imposed on it must be effected as provided for by section 105(1) of the Registered Land Act.

On the issue of maintenance

47. The situation regarding the marriage of Mr. King and Ms. Aguilar is perhaps somewhat perplexing. Though formally married, they have been living apart since 10th January 2004, when Mr. King moved out of the matrimonial house and has, so far, not returned. Neither party has initiated proceedings either for judicial separation or divorce. But they are

still in law married to each other though in the circumstances, their union such as it is, can only be described as being in a state of betwixt and between.

48. Ms. Aguilar in her own separate application to this Court is requesting it to invoke its inherent jurisdiction to order Mr. King to pay her reasonable monthly maintenance.
49. From the affidavit evidence, it appears that as a part of discussions between the parties to resolve the land issue, a monthly sum of \$1,000.00 was provided by Mr. King to Ms. Aguilar as financial support for some three months in early 2004.
50. Ms. Aguilar in her first affidavit at paragraph 32 states:

*“32. The Applicant (that is Mr. King) does not give me maintenance. He gives me nothing, notwithstanding that I gave up a good job at Barclays Bank when I got married to him. I ask the Court to look at **Exhibits L.A.K 1 and 2** exhibited at paragraph 19 and 20. I was able to obtain a part time job with Provident Bank. I am asking the Court to exercise its discretion and order the Respondent to provide reasonable monthly maintenance.”*

51. Since 2004 there has not been paid any maintenance to Ms. Aguilar.
52. This I must confess is a troubling aspect of this case. Can a spouse, in particular the wife, who is still married but without any judicial proceedings for divorce or separation from the husband, be entitled to the payment of maintenance?

53. On behalf of Mr. King, the husband in this case, his learned attorney has staked his immunity from payment of any maintenance to Ms. Aguilar, his lawful wife, on the statutory provisions of sections 145 and 151 of the Supreme Court of Judicature Act – Cap. 91 of the Laws of Belize. The thrust of Mr. Marshalleck’s arguments and submissions in this connection is that in the face of those provisions, absent a petition for divorce or nullity of marriage, Ms. Aguilar is not entitled to any payment for maintenance.
54. I think however, that the pertinent provisions are in section 152 of the Act which states as follows:

“152-1(1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may think to be reasonable, and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order either in addition to or instead of an order under subsection (1), direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable:

Provided that –

- (a) if the husband, after any such order has been made, becomes from any cause unable to make the payments, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any*

part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fits, and

(b) where the Court has made any such order as is mentioned in this subsection and the Court is satisfied that the means of the husband has increased, the Court may, if it thinks fits, increase the amount payable under the order.

(3) On any petition for divorce or nullity of marriage the Court shall have the same power to make interim orders for the payment of money by way of alimony or otherwise to the wife as the Court has in proceedings for judicial separation.

(4) Where any decree for restitution of conjugal rights or judicial separation is made on the application of the wife, the Court may make such order for alimony as the Courts thinks just.

(5) In all cases where the Court makes an order for alimony, the Court may direct the alimony to be paid either to the wife or to a trustee approved by the Court on her behalf, and may impose such terms or restrictions as the Court thinks expedient, and may from time to time appoint a new trustee if for any reason it appears to the Court expedient to do so.”

55. Ms. Young SC on the other hand says that there is a prima facie duty on a husband, that is, Mr. King in this case, to maintain his wife unless the wife has behaved in such a way as to discharge the husband from this obligation. She therefore, urged that in the circumstances of this case, Ms. Aguilar is entitled to maintenance and that this Court has an inherent jurisdiction and a discretion to order maintenance in Ms. Aguilar’s favour.
56. This aspect of this case has not unnaturally caused me some anxiety, stemming largely from the perplexing relationship between the parties I referred to earlier: notwithstanding the state of affairs between them, neither has presented a petition for divorce.

57. After some anxious consideration and reflection, I have come to the conclusion that this Court has jurisdiction, in the circumstances of this case, particularly in the face of the undoubted status of the parties' relationships, that is, that they **are** legally married, to entertain an application for maintenance by Ms. Aguilar, the wife of Mr. King.
58. From the evidence, the facts of this case which have prompted the application by Ms. Aguilar for maintenance are that Mr. King moved out of the matrimonial home on 10th January 2004 and has not returned since. As Ms. Aguilar states in her first affidavit and that apart from the one-off payment in early 2004 of \$3,000.00 representing \$1,000.00 per month, Mr. King has not paid her any maintenance:

“14. One day the Applicant told me that he was fed up and would leave me. He then told me that he hoped that I would not give him any problem to sign the Belmopan property over to him. He told me that I know that in Barbados he does not have anything jointly with anybody.

15. A few days later the Applicant told me he was moving out to reflect on the marriage and again asked me whether I would or would not sign the Belmopan property over to him. I refused to do so.

16. On the 10th January 2004 the Applicant left me and moved out of the house. He never told me where he was going or gave me any contact number. I later found out that the Applicant was renting an apartment in Belmopan.

...

32. *The Applicant does not give me maintenance. He gives me nothing, notwithstanding that I gave up a good job at Barclays Bank when I got married to him. I ask the Court to look at **Exhibits L.A.K 1 and 2** exhibited at paragraphs 19 and 20. I was able to obtain a part time job with Provident Bank. I am asking the Court to exercise its discretion and order the Respondent to provide reasonable monthly maintenance.”*

59. Exhibits L.A.K. 1 and 2 contain the exchange of letters between the parties concerning in the main the provision of financial support for Ms. Aguilar of \$1,000.00 per month by Mr. King, although in Exhibit L.A.K. 1 he avers that it was only for three months during which time Ms. Aguilar would continue to seek out employment. Ms. Aguilar in Exhibit L.A.K. 2 on the other hand avers that the amount of \$1,000.00 was agreed between them and that the period of three months was suggested by Mr. King but never agreed to as he had stated that he was filing for divorce.
60. In her third affidavit, Ms. Aguilar itemized her income and expenses from which it seems that at the end of the month she is left with only \$189.96 as surplus.
61. It is against this backdrop the application for maintenance falls to be considered by this Court.
62. On the jurisdiction of the Court in this case, I take jurisdiction to mean the power to hear and determine matters in dispute. In **Board v Board (1919) AC 956** at p. 962-963, the Privy Council held that there is a presumption

that a superior court of general jurisdiction has authority to grant all available remedies even though jurisdiction to do so has not been specifically invested. I am therefore of the view that the statutory provisions in the Supreme Court of Judicature Act are not the exclusive and only basis for the Court to entertain, in a suitable case, an application for maintenance by a wife. There is as well the **common law** in which Ms. Young SC has sought to ground Ms. Aguilar's application.

63. In so far as the common law is concerned, it is accepted that it was and is the law of England as developed by the judges through their decisions over the centuries. Section 2 of the Imperial Laws (Extension) Act – Cap. 2 of the Laws of Belize specifically provides for the extension of the common law and some English statutes to Belize. Subsection (1) of this section provides:

“2.-(1) Subject to the provisions of this or any other Act, the common law of England and all Acts in abrogation or derogation or in any way declaratory of the common law passed prior to 1st January 1899, shall extend to Belize.”

64. Certainly, by 1899, the common law duty of the husband to maintain his wife had been established in England: see **Lush on the Law of Husband and Wife** (4th ed. by S. N. Grant Bailey 1933) at p. 33 cited in Principles of Family Law 7th ed. Stephen M. Cretney and others (Sweet & Maxwell 2003) at p. 73; and Stone, **Broken Lives: Separation and Divorce in England 1660 – 1857 (1993)** cited in **Bromley's Family Law**, 9th ed. (Butterworths, 1998) at p. 715.

65. One of the incidents of marriage is the **common law** duty of the husband to maintain his wife. Quaint and old-fashioned perhaps in this egalitarian age, but I think, with respect, Lord Denning correctly stated this common law position when he stated:

“The overriding duty of a man is to maintain his wife. His duty only ceases when she has been guilty of a grave fault such as adultery or desertion, by which she forfeits her right to maintenance” – **National Assistance Board v Parkes (1955) 2 QB 506** at p. 517; **(1955) 3 WLR 347**; **(1955) 3 All ER 1**.

66. This common law duty of a husband to maintain his wife was itself the result of the concept that by marriage the couple became **one**; and often the husband was the one. Indeed, in England a wife was until 1882, incapable at law, of owning or holding property in her own right. But this was changed by the Married Women Property Act of that year in England. It became the progenitor of Belize’s similarly intitled statute some 71 years later: The Married Women Property Act in Cap. 176 of the Laws of Belize, Rev. Ed. 2000, which became operational here on 8th August 1953.
67. The concept of the unity of the couple and the inability of the wife to own or hold property gave rise to the **agency of necessity** by which she could, at common law, pledge the husband’s credit for **necessaries**. Hence, the husband’s duty to maintain.
68. Lord Merrivale, the president of the former Probate and Admiralty Division of the English High Court gave an exposition of this common law right of a wife to maintenance by her husband in the cases of **Dewe v Dewe**; **Snowdon v Snowdon (1928) P. 113** at p. 119 when he stated:

*“It is necessary, then, to see what is the nature in point of law of a wife’s right to maintenance by her husband ... The right of a wife to maintenance as against her husband is not contractual in nature. It is an incident under the common law of the status or estate of matrimony, which is thus summarily expressed in **Bacon’s Abridgement** 7th Ed. vol. 1 titled ‘Baron and Feme p. 713: ‘A husband is obliged to maintain his wife and may by law be compelled to find her necessaries, as meat, drink, clothes, physic etc. suitable to the husband’s degree, estate or circumstances’.”*

69. See also the case of **Lilley v Lilley (1960) P. 158; (1959) 3 WLR 306; (1959) 3 All ER 283**, where it was held by a 5-man English Court of Appeal that in proceedings between husband and wife, a husband could not be found guilty of willful neglect to maintain unless he was a wrongdoer, and such wrong doing might consist of the very act of failure to maintain; and that the obligation of a husband to maintain his wife was not affected by an enforced separation so that unless the wife was herself in desertion, the husband would have committed the act of willful failure to maintain, subject to the relative means of the parties.
70. I am not aware of or convinced and satisfied that there is in Belize any statute that has abolished this common law duty of the husband to maintain his wife. In fact there is no comprehensive Matrimonial Proceedings Act as is to be found in some other jurisdictions. Instead, Part XI of the Supreme Court of Judicature Act (Cap. 91) is devoted to Matrimonial Causes and Matters. This Part provides in section 152, a discretion to the Court if it thinks it fit, to order alimony or interim payments to the wife. But this discretion only comes into play either on a decree for divorce or nullity of marriage, or on the presentation of a petition.

71. The question may, I think, legitimately be asked: what is the position of a wife who has been deserted, but is not willing or able for whatever reason, to present a petition? Should she be outwith of any protection from the Court for maintenance? In my view, it is no answer to say that she **must** present a petition. This would not be reasonable or fair, especially in a society where there is no national system or arrangement for assistance to which she may have recourse. The situation is not helped either by the provisions of the Families and Children Act – Cap. 173 of the Laws of Belize. Part VI of this Act makes provisions for family maintenance which include provisions for the maintenance rights and duties of members of the family between themselves. It provides, among other things, for the duty of a man to maintain his children and that of a woman to maintain her children. It also provides for every person born in wedlock a **moral obligation** to maintain his father or mother and grandfather and grandmother in case any of these persons are, because of old age or bodily or mental infirmity unable to maintain themselves (sections 48 and 50).
72. Ironically, even fatuously perhaps, from the wife's point of view, the obligation to maintain which this Act grants her (with a corresponding duty on her) is the liability of the husband to contribute towards her maintenance if she is a patient in a mental hospital, or hospital or an inmate in a house for the aged or in a rehabilitation center provided or maintained by the Government out of public funds.
73. Does Ms. Aguilar have to be a patient in a mental hospital or in a hospital or a home for the elderly before Mr. King can be required to contribute to her maintenance?
74. I am sure the Legislature did not intend to exclude a wife in the position of Ms. Aguilar from approaching the Court to secure maintenance for herself.

Of course, by presenting a petition for divorce she may be entitled to an order from the Court. But the fact that she has not, does not in my view, in the circumstances, disentitle her.

75. On the facts of the present case before me, I am prepared however to hold that Mr. King is obliged, as the husband of Ms. Aguilar, by his common law duty, to pay her a reasonable sum for her maintenance.
76. To his eternal credit, notwithstanding the arguments and submissions of his learned attorney, Mr. King himself is not averse to paying maintenance to Mr. Aguilar. He states commendably, in my view, in his own affidavit in these proceedings that:

“15. I am not adverse (sic) to meeting reasonable maintenance provided all working age occupants of the Respondent’s home meet their fair share of the relative expenses. I consider such a payment given the Respondent’s income and my own financial situation to be about \$300.00 per month.”

77. In making a determination of the amount for maintenance, the Court must have regard to the means and relative financial position of the parties and their conduct. From the evidence, Ms. Aguilar herself is not without means, and is not unemployable. Mr. King however, is in a stronger financial position of the two.
78. In all the circumstances, I think an award of \$1,000.00 per month for maintenance for Ms. Aguilar would be reasonable and fair. Accordingly I make an award of \$1,000.00 per month as maintenance from June 2004 when Mr. King moved out of the matrimonial home. The global figure on

this account will be discounted by \$3,000.00 already paid in early 2004 by Mr. King.

Conclusion

79. In the light of my findings and determination as set out above, I accordingly

- i) Declare that Mr. King and Ms. Aguilar are each entitled as beneficial owners to one-half share or interest in all that piece or parcel of land situate in the Belmopan Registration Section Block 20, Parcel No. 3437 containing 6.35 acres
- ii) Order that the above-mentioned property be sold and the net proceeds of sale after the payment of the sums due under a mortgage with First Caribbean Bank Ltd. be divided equally between Mr. King and Ms. Aguilar
- iii) Order that Mr. King pay to Ms. Aguilar the sum of \$1,000.00 per month as maintenance from June 2004.

Each side to bear its own costs.

A. O. CONTEH
Chief Justice

DATED: 21st October, 2008.