

IN THE SUPREME COURT OF BELIZE A.D. 2010

ACTION NO. 234 OF 2010

IN THE MATTER of an Application by June Pandy under Section 16 of the Married Women's Property Act (Chapter 176) of the Laws of Belize, R.E. 2000

AND

IN THE MATTER of Section 148(A) of the Supreme Court of Judicature Act (Amendment Act No. 8 of 2001)

	(JUNE PANDY	APPLICANT
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BETWEEN	(AND	
	(
	(DAVID PANDY	RESPONDENT

BEFORE THE HONORABLE MADAM JUSTICE LISA M SHOMAN

Trial Date: November 30, 2021

Appearances:

Mrs. DeShawn Arzu Torres for the Applicant

Ms. Liesje Barrow for the Respondent

Written Submissions:

January 25, 2022 for the Applicant

February 1, 2022 for the Respondent

JUDGEMENT

BACKGROUND

1. June Pandy and David Pandy (now deceased) were married on 18th January, 2002 and were divorced in 2015.

2. June Pandy claims that she contributed directly and indirectly to the acquisition and completion of the construction of the matrimonial property situate at Lake Garden, Ladyville, Belize and more particularly described as Parcel 5394, Block 16-113, Ladyville/Lords Bank Registration Section (hereinafter referred to as “the property”) since March, 5, 2002.
3. The property was purchased for the sum of BZD\$175,000.00 and the title was in the Respondent’s name alone; and a mortgage was taken out by David Pandy at the Holy Redeemer Credit Union (HRCU) for the sum of BZD\$150,000.00 in his sole name.
4. According to Ms. Pandy, it was agreed between her and Mr. Pandy that the property would serve as their retirement home and would be owned by them jointly.
5. At the time of purchase, the structure on the property was unfinished and contained 5 bedrooms, living room, dining room, bathrooms and kitchen area. June Pandy claims that the construction and completion of the property was undertaken by the parties during the course of their marriage.
6. According to Ms. Pandy, she remained in the United States to work and regularly visited her husband in Belize and purchased and shipped appliances, and material from the United States to Belize for use in their home. She also claims to have obtained loans from the HRCU and from St. John’s Credit Union (SJCU) for use towards completion of the property.
7. On December 2, 2010, Ms. Pandy filed for divorce and on December 29, 2014, filed this claim for a ½ share interest in the said matrimonial property. On May 15, 2015, the Decree Absolute was issued.

8. Regrettably, in March of 2015, David Pandy died, at a time when the parties discussing settlement of the claim. On April 26, 2018, Mr. Lloyd Pandy, brother of the deceased was appointed as the lawful representative of his estate.

THE APPLICANT'S CLAIM

9. The Applicant's application is for the following relief:
 - (a) A declaration that pursuant to Section 16 of the Married Women's Property Act Chapter 176 and Section 148(A) of the Supreme Court of Judicature (Amendment) Act No. 8 of 2001, the Applicant is beneficially entitled to one-half share or interest in the property described in the First Schedule below;
 - (b) A Declaration that the Respondent holds title in the property listed in the First Schedule in trust for and on behalf of the Applicant;
 - (c) An Order that the property described in the First Schedule should be sold and the net proceeds of sale be shared equally between the Applicant and the Respondent;
 - (d) An Order that a valuation be conducted of the property listed in the First Schedule;
 - (e) IN THE ALTERNATIVE, an Order that the property listed in the First Schedule be settled or transferred equally or equitably between the Applicant and the Respondent in such a manner as the Court may determine;
 - (f) A FURTHER Declaration that the Applicant is the owner of the Chattels described and listed in the Second Schedule;
 - (g) An Order that the Respondent shall forthwith deliver the listed chattels as described in the Second Schedule to the Applicant or alternatively, that the Applicant be paid an amount representing the value of her ownership interest in the chattels listed;

(h) Such further or other Order or relief as the Court may deem just and;

(i) Costs.

THE ISSUES FOR DETERMINATION

10. The Parties have agreed that the following are the issues for determination by this Court:
 - a. Whether the Applicant has a share or interest in the matrimonial property situate at Lake Gardens, Ladyville, Belize District?
 - b. If so, what is the extent of the Applicant's entitlement/share?

THE LAW

11. The Applicant brought this matter under Section 16 of the Married Women's Property Act, Chapter 176 and Section 148A of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize.
12. Section 16 of the Married Women's Property Act provides that:

"16.-(1) In any question between a husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body or society as aforesaid in whose books any stocks, funds or shares of either party are standing, may apply by summons in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he thinks fit."
13. Section 148A (5) of the Supreme Court of Judicature Act makes provision for the matters that a Court shall take into account in respect of an application for matrimonial property rights to the Supreme Court:

"(5) In considering whether it is just and equitable to make an order under subsection (3) of this section, the court shall take into account the following:

- (a) *the financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;*
- (b) *the non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;*
- (c) *the effect of any proposed order against the earning capacity of either the husband or the wife;*
- (d) *the age and state of health of both the husband and the wife, and the children born from the marriage (if any);*
- (e) *the non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage (if any);*
- (f) *the eligibility of either the husband or the wife to a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;*
- (g) *the period when the parties were married and the extent to which such marriage has affected the education, training and development of either of them in whose favour the order will be made;*
- (h) *the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;*
- (i) *any other fact or circumstances that in the opinion of the court, the Justice of the case requires to be taken into account.*

14. In the Belizean Supreme Court case of *Pitzold v Pitzold*¹ the Court said:

“The burden is on the applicant to prove, on a balance of probabilities, that the properties were acquired during the subsistence of the marriage for purposes of

¹ Action 31 of 2010 at paragraph 20

section 148A of the Act. Having identified such properties, the court is authorized by section 148A (2) to declare the title or rights of the husband or wife in respect of the Properties. The court is also authorized by section 148A (3) to make such order as it thinks fit to alter the interest and rights of either spouse in the Properties. But the court is not authorized to make such an order under section 148A (3), unless it is satisfied, that in all the circumstances it is just and equitable to make the order. Section 148A (5) of the Act provides in paragraphs (a) to (i) matters to be taken into account in considering whether it is just and equitable to make the order under subsection (3). Under section 148A the first task of the court is to identify the properties that were acquired during the subsistence of the marriage, jointly and individually by the spouses.”

15. The Pitzold case cites the Belizean Court of Appeal case of *Vidrine v. Vidrine*² in reference to S. 148A of the Supreme Court of Judicature Act. Justice of Appeal Barrow (as he then was) states that it is "*clear That it is only in respect of property acquired during the marriage that the court may exercise the newly conferred jurisdiction.*"
16. June and David Pandy were married on January 18, 2002. On March 5, 2002, the property at 352A Lake Gardens was obtained by a conveyance in the sole name of David Pandy. There is no dispute that the property was acquired during the marriage of the Applicant and the Defendant.
17. In the *Vidrine* case (supra), Barrow JA held that the objective of the Court when considering section 148A of the Act was to achieve a fair and just outcome in the division of such assets, having regard to considerations of fairness, equality and non-discrimination and held that a two step-process is to be followed in an application for property alteration under s. 148A (5) of the Act as follows:

² Civil Appeal No. 2 of 2010

- (i) *identify and value the property acquired during the subsistence of the marriage; and*
- (ii) *consider and evaluate the matters listed in subsection (5) where the factors are stated which the court shall take into account in considering whether it is just and equitable to make an alteration order.”³*

THE EVIDENCE

18. The matrimonial property in dispute is that property situate at Lake Garden, Ladyville, Belize, more particularly described as Parcel 5394, Block 16-113, Ladyville/Lords Bank Registration Section. According to the evidence, the property was purchased during the subsistence of the marriage, in 2002 for the sum of BZ\$175,000.00; and a mortgage was taken out by David Pandy at the Holy Redeemer Credit Union (HRCU) for the sum of BZ\$150,000.00 in his sole name.
19. The Applicant was cross examined as to the Valuation Report made by Clinton Gardiner which put the value of the land at BZ\$243,600.00 and the value of the house at BZ\$230,800.00. That Valuation Report, dated March 15, 2021 was prepared by Mr. Clinton Gardiner, the Court Appointed Expert and put the value of the land and the house at BZ\$424,480.00 Belize Dollars.
20. I turn therefore, to the next step in considering the evidence in terms of the factors listed at S. 148A(5) of the Supreme Court of Judicature Act which I am to consider in deciding “*whether it is just and equitable to make an alteration order*”. Each will be examined in turn.

³ Ibid, page 31 at paragraph 70

(a)The financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, or otherwise in relation to the property.

- 21 The evidence is that title to the property is in the Respondent's name, and the Respondent obtained a loan in the sum of BZ\$150,000.00 from Holy Redeemer Credit Union in his name alone for the acquisition of the property.
22. The Applicant claims that she made loans at St. John's Credit Union and Holy Redeemer Credit Union in her sole name for the improvement of the property. The HRCU loan receipts copies which were tendered by Ms. Pandey⁴ amounted to about BZ\$26,000.00, which the Applicant said was the amount of the loans obtained from HRCU for the purchase of material and payment of workmen at the construction site. There is no notation to the effect on the Loan receipts at the HRCU and nothing on the face of those receipts to show what the loans were intended for.
23. Although Ms. Pandey provided a plethora of documents from the SJCUC at her exhibit **JP 4**,⁵ many of which were copies of remittance receipts sent, and copies of cheques written by her in favour of the SJCUC, she was not able to provide receipts amounting to BZ\$19,000.00 that was allegedly obtained by the Applicant from St. John's Credit Union to assist in the completion of the property. The only bit of evidence provided was a copy of a Member's Statement from September 2003 to September 2007. There is however no nexus between this documentary evidence and the matrimonial property to show that there was in fact expenditure by the Applicant of these sums on the property.

⁴ First Affidavit of June Pandey, Paragraph 12, at Exhibit **JP 4**

⁵ Ibid

24. In her First Affidavit, Ms. Pandy also said that she purchased materials to finish the home, and that she purchased certain chattels. No receipts were provided, save for one for a set of Louvers.⁶
25. Also in her First Affidavit, Ms. Pandy says that she withdrew funds from her 401K with her Employer, Macy's and her 403B Plan with the University of California⁷ Under **JP 6**, there are two fund withdrawal notices from The Bank of New York. They total USD \$11,050.00 but there is no nexus between these funds, and expenditure by the Applicant on the matrimonial property. At Paragraph 17, documents attached as **JP 7** show loans amounting to some USD \$18,550.00 but again, there is no clear evidence of a nexus between these funds being withdrawn by the Applicant and any expenditure on or for the matrimonial property in Belize.
26. Ms. Pandy also claims that she sent monies via Western Union to her husband and exhibits receipts to David Pandy Jr. /David Pandy⁸. Some are duplicates. The total amount is about USD\$2,825.00. There is nothing on any of those receipts to indicate what the sums sent, nor what the funds were intended to be used for. Other copy receipts provided by the Applicant in her First Affidavit at **JP 8** were in poor to very poor condition, many were not legible and many were clearly overwritten by either Ms. Pandy or by someone else, and the Court cannot and will not rely on the same.
27. Furthermore, under cross-examination, Ms. Pandy testified that her total direct financial contribution to the property was BZD\$250,000.00 and said that her contribution came from "loans from my 401K and from my savings." When asked, under cross- examination, the Applicant was not able to provide a breakdown of how she arrived at the sum of USD\$250,000.00 as her direct contribution to the matrimonial property.

⁶ Ibid, Paragraph 14

⁷ Ibid, Paragraphs 15 and 17

⁸ Ibid, Paragraph 18 at **JP 8**

28. The burden of proving to the Court that the sums claimed by the Applicant were spent by her on the purchase, materials, construction or work to the improvement of the house which is situate on the matrimonial property or the acquisition of furnishings is squarely on the Applicant. She avers that she spent these sums on the matrimonial property, and therefore, it is the Applicant who must prove the same to the satisfaction of the Court.
29. This Applicant fell woefully short of being able to substantiate what she claims she spent on the matrimonial property, and I did not find her to be a convincing witness at all. She left much to be desired as a witness, and her credibility, especially in regard to the financial contributions which she claimed to have made in respect of the Lake Gardens property and house was severely undermined in cross examination. The Applicant's mode of providing evidence to prove her contentions consisted mainly making assertions that monies were spent and attaching a plethora of documents, relevant or irrelevant, to her Affidavit with no clear explanation as to what each one was for. The documents provided lacked any clear nexus to the matrimonial property, and this Court was left to try to see what was relevant in the circumstances and would be accepted as credible evidence of what the Applicant says she spent on the property. There was not even a simple breakdown or spreadsheet with calculations provided by the Applicant to the Court.
30. The Applicant did provide some other documentary evidence, but the Receipts attached as **JP 9** to the First Affidavit of June Pandy⁹ do not provide this Court with sufficient details or any nexus to show what particular item she claims was bought and shipped by her, was bought from which retailer, and do not in any event provide proof that any item bought was sent to Belize for furnishing the house on the matrimonial property. The same is true of the cancelled checks exhibited at **JP 9**. There are goods packing lists and receipts for shipments provided as **JP 10, JP 11,**

⁹ Ibid, Paragraph 20

JP 12, JP 13 and JP 14¹⁰. Some are illegible, and the receipts and lists do not provide this court with evidence to show what was shipped to furnish the house on the matrimonial property or what was shipped by the Applicant to sell in Belize. In the premises, the documents provided by the Applicant fall far short of being convincing evidence of financial contribution made directly or indirectly by the Applicant in the acquisition, conservation or improvement of the property at Lake Gardens .

31. The Respondent concedes that the Applicant did in fact purchase chattels for the house and does not seek to deny that she is therefore entitled, but the Respondent does not specify what those chattels are, or give a value therefor; and an assessment will therefore need to be conducted for the same or for the value thereof.
32. Aside from the purchase of those chattels however, I find that the Applicant made no other direct or indirect financial contribution to the acquisition, conservation or improvement of the property.

[b] The non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent.

33. Written submissions filed on behalf of the Applicant posit that she also made indirect contributions to the property **“by way of the usual cooking, cleaning and ironing when she came to Belize to spend time with her husband.”**
34. Under cross-examination, the Applicant conceded, that after the marriage, Respondent returned to Belize, and lived in Belize since 2002. She conceded further that she was living and working in the United States, and that she did not live here. She did claim that she came every 3 months or so for visits, and said that for about

¹⁰ Ibid, Paragraph

a month she paid a maid to come off and on. Mr. Pandey by the Applicant's own admission, never went back to the United States save for a visit to Los Angeles only for a month in 2005, but she does not claim that he went to live with her.

35. I do not find that this is sufficient to ground any claim for an interest under this heading on the basis that the Applicant was a housewife or homemaker, nor that she did any of the "usual cooking, cleaning and ironing when she came to Belize to spend time with her husband" as she claimed.

36. I accept that June Pandey was, for the most part, not living with David Pandey. She was working and living in the United States, with visits to Belize, until she came to live in Belize in 2009. There is no evidence provided to this Court that the Applicant then returned to live with the Respondent.

37. The Applicant has not provided the requisite evidence that she did any supervision of the completion of the property, and I cannot award credit for that.

[c] The effect of any proposed order against the earning capacity of either the husband or the wife

38. The Respondent is deceased. There is no evidence before me to show how any proposed order would affect the earning capacity of the Applicant who is the former wife. I do not find therefore that an assessment under this head is necessary in this case.

[d] The age and state of health of both the husband and the wife, and the children born from the marriage (if any);

39. The submissions on behalf of the Applicant are that she is in good health and is 60 years old. The Respondent is deceased. There are no children born from the marriage.

[e]The non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage (if any);

40. There are no children born of the union.

[f]The eligibility of either the husband or the wife to a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;

41. The Respondent is deceased therefore, no benefits are to be taken into account. The Applicant who was employed in the US is said to be entitled to Social security payment benefits.

[g] The period when the parties were cohabiting and the extent to which such marriage has affected the education, training and development of either of them in whose favor the order will be made;

42. The Parties were married for about a month in 2002 when the Respondent came to live in Belize and the Applicant was living and working in the United States, with visits to Belize until 2009. There is no evidence that the union has affected the education, training, and development of either party.

[h] The need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother; any other fact or circumstances that in the opinion of the court the justice of the case requires to be taken into account.

43. There are no children of the union, and this section does not apply in this claim.

CONCLUSION

44. Section 148A (2) of the Supreme Court of Judicature Act provides that the court can make an order for declaring the title or rights, if any, that the husband and wife have in respect of property.
45. Under Section 148A (3) of the Act, the court may, if it thinks fit alter the interest and rights of either the husband or wife in the property, but, Section 148A (4) states that the Court shall not make such an order unless it is satisfied that in all the circumstances, it is just and equitable to do so. The circumstances to which the Court must have regard are those which were set out and have been examined above.
45. I do not find that the Applicant was able to show the Court that there was in fact any agreement between herself and David Pandy that the completion of the construction of the structure on the property would be undertaken with monies contributed to by the Applicant from her employment and savings in the United States and furnished with items purchased and shipped by her from the US to Belize. Evidence of any such joint intention between the parties was not proven to the satisfaction of this Court.
46. I am not satisfied that the Applicant has shown, in all the circumstances of this claim, that it would be just and equitable to order an alteration in the property rights in respect of the Lake Gardens property in favour of the Applicant. Neither do I find that there is any ground on which to order that the said property is held on trust by the Respondent's estate for the Respondent and the Applicant, nor that this Court should make any order that the property should be sold and the proceeds of sale shared equally or otherwise between the parties.
47. But, since the Respondent does not deny that the Applicant purchased some of the chattels in the house, I do find that the Applicant should be compensated for her

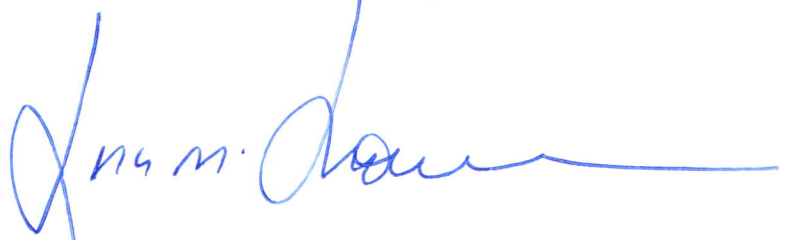
expenditure and the Applicant should be paid an amount representing the value of her ownership interest in the chattels listed in Schedule 2.

ORDERS

47. The following Orders are made:

- (1) The Applicant's application for a declaration for a one-half share or beneficial interest in the property described in the First Schedule is refused;
- (2) The Applicant's application for a declaration that the Respondent holds title in the property listed in the First Schedule in trust for and on behalf of the Applicant is refused;
- (3) The Applicant is declared to be the owner of the chattels listed in the Second Schedule, and the Applicant shall be paid an amount representing the value of her ownership interest in the chattels listed as agreed or assessed.
- (4) Costs shall be paid by the Applicant to the Respondent as agreed or assessed.

DATED THIS 31ST DAY OF MARCH, 2022.



LISA M SHOMAN

JUSTICE OF THE SUPREME COURT