



1 IN CHAMBERS  
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
3 CAUSE NO: D96 OF 2002

4 BETWEEN:  
5 NORMAN LEONARDI CARTER

Petitioner

7 AND:  
8 HILMA LINDA CARTER

Respondent

11 BEFORE: THE HON. MADAM JUSTICE LEVERS

13 APPEARANCES:

14 Counsel for the Petitioner: Ms. E. Nervik of  
15 Nervik & Co.

16 Counsel for the Respondent: Ms. K. Reid of  
17 McKinney Reid & Co.

19 Heard: February 14, 2005

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JUDGMENT

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22 **Levers J,**

24 The parties in this matter were married in 1994.

25 The marriage proved not to be a successful one and

26 in or about the 18<sup>th</sup> June 2002 on the grounds that

1 the Respondent had behaved in such a way that he  
2 could no longer live with her, the Petitioner filed  
3 for divorce.

4

5 The Respondent apparently was unhappy at the  
6 decision of the Petitioner to end the marriage and  
7 in or about July 2003, tried to kill the Petitioner  
8 by stabbing him more than 12 times. The Respondent  
9 was charged with attempted murder and found guilty  
10 of the crime by the Grand Court of the Cayman  
11 Islands. She was sentenced to serve 15 years in  
12 prison. She is presently serving time in prison.

13

14 The Petitioner now asks for a determination of the  
15 matrimonial assets, in order that this matter can  
16 be concluded and the divorce finalized. The only  
17 matrimonial property consists of undeveloped  
18 property described at Cayman Brac West Block 96E  
19 Parcel 126, which the Petitioner and the Respondent  
20 acquired during the marriage through a loan at

1 Barclays Bank. The property is in joint names as  
2 is the loan.

3

4 **The Evidence**

5

6 The Petitioner has filed two affidavits in support  
7 of his summons and alleges that he alone was solely  
8 responsible for all the monthly payments to the  
9 bank and that the Respondent contributed no capital  
10 towards the purchase of this property. Indeed, the  
11 Respondent herself acknowledges that her  
12 contribution was by assisting the Petitioner with  
13 household expenses. She further alleges that she  
14 baked cakes got an income. The Petitioner's answer  
15 to this is that any money that the Respondent made  
16 was sent back to her family in Honduras. The  
17 Petitioner further alleges that due to the failed  
18 attempt on his life, he has incurred tremendous  
19 hospital bills and that he is in fact responsible  
20 for \$5000CI not covered by his health insurance.

1 He further alleges that his health is not what it  
2 used to be and that he was put to such great  
3 expense, as a result of her conduct. That his  
4 expense is greater than 50% net equity of the land  
5 to which she made no contributions whatsoever.  
6 Both parties agree that the land is valued at some  
7 \$25,600.00. At the time of the filing of the  
8 Petition the loan outstanding was CI\$12,532.00.  
9 Therefore, the equity in the said property at the  
10 time of their separation was \$13,068.00. The  
11 Respondent urges this Court not to punish her twice  
12 for her attack on her husband, which she says, was  
13 due to his behaviour and abuse and that she alone  
14 was not responsible for the end result of what  
15 happened. That is the synopsis of the facts  
16 presented to the Court.

17

18 Section 19 of the Matrimonial Causes Law (1997  
19 Revision) provides as follows:

20

1           In dealing with all matters  
2           arising under this Law, the Court  
3           shall have regard first of all to  
4           the best interests of any children  
5           of a marriage and thereafter to  
6           the responsibilities, needs,  
7           financial and other resources,  
8           actual and potential earning power  
9           and the deserts of the parties.  
10

11   The term "deserts of the parties" means the conduct  
12   of the parties and the Court in this jurisdiction  
13   has wide discretion ultimately to do what is fair  
14   between the parties. In *Duty v Duty*, Cause No:  
15   D44/98, the Honourable Chief Justice held:

16

17           "The term deserts of the parties  
18           connotes an unrestricted  
19           obligation and discretion in the  
20           Court ultimately to do what is  
21           just between the parties. This is  
22           the result to be arrived at by  
23           reference to the other factors  
24           mentioned in the section and to  
25           the relative contributions to the  
26           marriage and family; relative  
27           benefits already enjoyed and to be  
28           enjoyed and, it seems to me - by  
29           parity of reasoning - the relative  
30           consequences of the conduct of the  
31           parties.  
32

1           Where, in the throes of the  
2           breakdown of marriage, the conduct  
3           of a spouse causes harm and  
4           results in the physical and  
5           financial impairment of the other,  
6           it must certainly be within the  
7           purview of the Court to adjust the  
8           awards to reflect that situation  
9           in terms of the "deserts of the  
10          parties."

11  
12       In this case, the conduct of the Respondent has  
13       been such that it would be inequitable to disregard  
14       it.   Whilst, the Court is aware that no person  
15       should be punished twice for an act, the court in  
16       deciding whether the Respondent is entitled to an  
17       interest in the matrimonial assets, namely the  
18       undeveloped land, must take into account several  
19       factors including, the contributions if any made  
20       and the conduct of the parties.   In this case there  
21       are no children of the marriage.   It is evident  
22       that the marriage was an unhappy one and that the  
23       conduct of the Respondent was such that the  
24       Petitioner could not live with her.   The stabbing  
25       incident took place whilst they were separated and

1 in the throes of divorce proceedings. The  
2 Respondent contributed no capital to the purchase  
3 of this land. The Petitioner's averment that the  
4 Respondent contributed nothing towards the  
5 matrimonial home or the improvement to the land is  
6 not to be disputed, as there is no affidavit in  
7 response to his allegation. In Kyte v Kyte [1987]  
8 3 All ER at page 1041, the wife's conduct was dealt  
9 with in the following manner:

10

11 For the purposes of section  
12 3(a)(g) of the Act, conduct of a  
13 party which it would be  
14 inequitable for the Court to  
15 disregard when determining an  
16 application for ancillary relief,  
17 included any relevant conduct  
18 during and after the marriage  
19 which might have contributed to  
20 its breakdown or which it would  
21 otherwise be inequitable to  
22 ignore, regardless of whether or  
23 not the other party's conduct was  
24 blameless. The wife's conduct,  
25 not only in actively assisting or  
26 taking no steps to prevent the  
27 husband's suicide attempts when she  
28 knew she would gain financially if  
29 he succeeded, but also in forming  
30 a deceitful relationship with

1 another man was gross and obvious  
2 conduct which it would be  
3 inequitable to disregard even  
4 taking into account the husband's  
5 conduct. The husband's appeal  
6 would therefore be allowed and the  
7 lump sum order reduced to 5,000.  
8

9 The English Courts can take account of conduct by  
10 reference to express statutory provisions. In this  
11 jurisdiction, section 19 governs the orders made by  
12 this Court and the court in fact has a wider  
13 jurisdiction.

14  
15 As I have already held that the wife made no  
16 contribution to the matrimonial property, the  
17 question is - is she still entitled to 50% of the  
18 equitable interest, as a result of the husband  
19 putting her name on the title? Mr. Collins argues  
20 that she is, that there is a presumption of a gift.  
21 Mrs. Nervik argues that the factors to be taken  
22 into account in the court exercising its discretion  
23 in deciding whether the Respondent is to receive a  
24 fair percentage in the division of this matrimonial

1 asset or any percentage at all militates against  
2 her receiving any sum of money.

3

4 It is difficult to attribute a percentage to the  
5 Respondent's exclusive efforts, as the Respondent  
6 herself does not allege that she contributed in any  
7 way to the improvement or the purchase of the land.  
8 What she says is that she paid towards the rent for  
9 the house in which they lived and bought groceries  
10 and paid some of the utility bills. I hold  
11 therefore that her contribution being nothing  
12 towards the purchase of this land and her conduct  
13 being so gross during the marriage and during the  
14 separation that it would be inequitable to give her  
15 more than 10% of the value of the land. I am  
16 hesitant to deny the Respondent any part of the  
17 land due to the presumption of a gift, but the  
18 reduction to 10% is I believe equitable both on the  
19 evidence of contribution and her conduct. I  
20 therefore order that she is entitled to only 10% of

1 the net value of the land. The motor vehicle  
2 remains with the Petitioner. The Respondent has  
3 made no claim to any other asset. No order as to  
4 costs.

5

6

7 Dated this 4<sup>th</sup> day of March, 2005

8

9

10 Judge of the Grand Court

