

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN DIVORCE

SUIT NO. F. 1989/S 123

BETWEEN	RUEL PHILLIP SAMUELS	PETITIONER
A N D	NORMA ELAINE SAMUELS	RESPONDENT

Mr. Dennis Goffe instructed by Myers, Fletcher & Gordon for the Petitioner.

Mrs. Shirley Playfair instructed by Playfair, Junior, Pearson & Company for the Respondent.

JUDGMENT

Heard: June 27 and July 31, 1991

W.A. JAMES, J. (AG.)

The parties who were married on the 21st February, 1970, had, on the husband's petition a decree nisi pronounced on the 5th May, 1991.

Before me is an application by Norma Samuels (hereinafter referred to as the respondent) for her maintenance by Ruel Samuels (hereinafter referred to as the petitioner).

By interim order made by Reid, J. on the 17th May, 1991 the petitioner was ordered to pay the sum of Two Thousand Dollars monthly to the respondent until the determination of this application, provided she be allowed to continue to reside in the house at Montrose Road, St. Andrew.

The petitioner by his affidavits states that, now at 82 years of age he is retired and the companies, Ruel Samuels Limited and Ruel Samuels Manufacturing Limited from which he received his sole means of support, ceased operations in October 1989. He further states that his only source of support is from his son Carlton and foster daughter Dr. Sutherland. He exhibited two Bank Statements which together showed balances amounting to just over Four Thousand Dollars (\$4,000.00) in early November, 1990. His allegation in his affidavit that the respondent committed adultery during the marriage is not relevant to these proceedings.

The respondent by her affidavits, states that her estimated monthly expenses amounts to Seven Thousand, Five Hundred and Ninety Five Dollars (\$7,595.00). She further states that because she is hypertensive and under doctor's treatment is

unable to work for protracted periods and do work but cannot earn enough for her support.

The respondent was cross-examined on her affidavit and the following emerged therefrom --

- (i) Her daughter Karen and her two children live at the house for about three (3) years.
- (ii) Karen does not pay rent.
- (iii) Karen shares all expenses.
- (iv) Part of the main house was rented to the Peruvian Embassy for a few months at a rental of Four Thousand Dollars (\$4,000.00) per month.
- (v) That six boarders each paying Six Hundred Dollars (\$600.00) per month stayed at the house for a month at a time over a period of a year to eighteen (18) months.
- (vi) That the boarding ceased when lawyers for the petitioner asked her to account for rent.
- (vii) Her daughter Caroline assists her financially to the extent of Five Hundred Dollars (\$500.00) to One Thousand Dollars (\$1,000.00) per month.
- (viii) Daughter Wendy assists financially occasionally.

When the petitioner was cross-examined he testified that since 1989 he has been living off contributions made by his son Carlton and foster daughter Dr. Sutherland to an account in Bank of Nova Scotia Jamaica Limited, Mandeville. From this account he draws the weekly amount of between Three Hundred Dollars (\$300.00) to Four Hundred Dollars (\$400.00)

From this sum he pays household helper, buys food and take care of other expenses. Mr. Goffe made the following submission:-

- (a) That there is no dispute that the petitioner is not actively engaged in any profit making enterprise and that the companies, Ruel Samuels Limited and Ruel Samuels Manufacturing Limited are heavily indebted to National Commercial Bank and have ceased operations.

- (b) That the house (occupied by respondent) could yield income in the form of rental.
- (c) That it is a form of maintenance for the respondent to be allowed to remain in the house and cottage and not rent out part of it.
- (d) That in relation to an agreement by the petitioner to pay the respondent Two Thousand Dollars (\$2,000.00) monthly in 1986 the fact that the respondent received rental of Four Thousand Dollars (\$4,000.00) per month is proof that there was an income thus relieving the petitioner of liability to pay.
- (e) That since the closure of the two companies the petitioner has no income except as derived from his children and cannot pay any maintenance to respondent.

Mrs Playfair submitted

- (a) That the petitioner seeks to relieve himself of the liability to maintain the respondent on the ground that
 - (i) the companies have ceased to operate
 - (ii) he is retired and is maintained by his children
 - (iii) that the respondent has committed adultery and is not entitled to any maintenance.
- (b) That the income of Three Hundred Dollars (\$300.00) to Four Hundred Dollars (\$400.00) per week from which the petitioner maintains house and other expenses are less than realistic.
- (c) That an order in terms of money be made and that the respondent be allowed to remain at Montrose Road unmolested and rent free even if it forms part of the maintenance order.

On an application such as this, the Court should have regards to the means of the applicant/respondent and the ability of the petitioner and to all the circumstances of the case as seems reasonable.

Having regards to the evidence and the submissions made I find the following:--

- (i) That there is no clear evidence regarding the means of either party, that is to say a specific and quantifiable sum received by both.
- (ii) That the respondent's monthly expenses are approximately Seven Thousand Five Hundred and Ninety- Five (\$7,595.00) Dollars.
- (iii) That she receives monthly sum of between Five Hundred Dollars (\$500.00) and One Thousand Dollars (\$1,000.00) from her daughter Caroline.
- (iv) That the respondent also received some financial assistance from her daughter Wendy but that such sums are not on such a regular basis or indeed in quantum to form part of her income.
- (v) That the respondent did rent part of the house at a rental of Four Thousand Dollars (\$4,000.00) per month but **that such rental was used to effect repairs and maintenance of premises.**
- (vi) That in the past the respondent had boarders who paid Six Hundred Dollars (\$600.00) per month.

There is no evidence as to the net result of having boarders.
- (vii) That the petitioner is the retired chairman of several companies.
- (viii) That the companies Ruel Samuels Limited and Ruel Samuels Manufacturing Limited have ceased operations since October 1989.
- (ix) That these companies have not been wound up.
- (x) That the petitioner is chairman of Harvey's Electronic Limited.
- (xi) That the petitioner has not disclosed his holdings in any of the above companies except that in Harvey's Electronics Limited he holds four (4) out of Ten Thousand (10,000) shares.
- (xii) That the companies Ruel Samuels Limited and Ruel Samuels Manufacturing Limited have assets - **the value of which is not stated.**
- (xiii) That the petitioner has assets.

- (xiv) That the petitioner enjoys an income from an account the source of which is supplied by his son Carlton and foster daughter Dr. Sutherland.
- (xv) I find and agree with the submission that the sum of Three Hundred Dollars (\$300.00) to Four Hundred Dollars (\$400.00) per week as stated by the petitioner as the sum for maintaining his house and other expenses to be unrealistic.
- (xvi) I find that there was an agreement in 1986 to give the respondent Two Thousand Dollars (\$2,000.00) per month and that the amount is not now being paid.

The house in which the respondent resides is owned by Norue Limited, a company in which the petitioner and respondent hold shares 70% and 30% respectively.

That by exhibit 1 the company has given notice to the respondent to vacate the house.

Any order made cannot contemplate the continued occupancy of the house as to the company which can decide such course.

Notwithstanding the monthly expenses as claimed by the respondent it would appear that in the absence of any evidence of income that there is either a projected lifestyle, or she has failed to disclose further source of income. Having regard to evidence of petitioner in cross-examination it would appear that his failure to pay the Two Thousand Dollars (\$2,000.00) per month is not due to inability but rather a refusal based on reasons put forward on the ground of infidelity.

In view of the foregoing I am of the view that an increase of 50% over the Two Thousand Dollars (\$2,000.00) is reasonable.

The order is that the petitioner pays to the respondent the sum of Three Thousand Dollars (\$3,000.00) monthly as maintenance with effect from 1st August, 1991. Costs to the respondent to be taxed if not agreed.