

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2005/HCV – 5509

BETWEEN            SHARON SURDEEN            CLAIMANT  
AND                    JOHN SURDEEN                    DEFENDANT

Mrs. Judith Cooper-Batchelor instructed by Chambers Bunny & Steer for  
Claimant.

Mr. Alexander Williams for Defendant.

Heard: March 26 and April 30, 2007

**McDonald, J (Ag.)**

On December 15, 2005, the claimant filed a Fixed Date Claim Form  
seeking the following orders:-

That the Defendant do pay to the Claimant the sum of \$127,000 per  
month for the maintenance of Sharon, Robert and Nikita Surdeen.

Robert was born on March 3, 1988 and Nikita on June 18, 1990.

At the commencement of the hearing, Counsel for the Claimant  
abandoned the claim in respect of Robert Surdeen.

Mrs. Cooper-Bachelor asked the Court to order the defendant to pay  
\$25,000 per month to the claimant for the maintenance of Nikita. It is undisputed  
that Nikita lives in Boston with her maternal uncle and his wife.

The defence does not seek to challenge the quantum requested for Nikita's maintenance, but urged the court to make such sum payable not to the claimant but to Nikita's guardian in the United States of America until she attains the age of 18 years.

At paragraph 7 of the defendant's affidavit dated October 9, 2006, he states that he has been paying all of Nikita's pocket expenses by sending her money on a routine basis.

The claimant in her affidavit in response dated October 17, 2006 challenges the defendant to provide proof of monies that he is sending to Nikita.

Mrs. Surdeen asserts that Mr. Surdeen does not support Nikita and as far as she knows the last two times that he sent money was in the sum of US\$5,000 for her birthday around May 2006 and in November 2005 to pay legal fees.

At this hearing, the defendant provided the Court with no proof of sending monies to Nikita on a routine basis.

Mrs. Bachelor submitted that the monies should be paid to the claimant for onward transmission to the uncle as she is the one who has an agreement with the uncle. In addition it is easier from a collection standpoint to have collection in her name, even though the child lives in Boston, and also that the defendant has proven himself to be unreliable when it comes to making payments.

The defendant has proffered no reason why payments should not be made to the claimant but instead made directly to the uncle in Boston.

I reject his request.

## **Maintenance of Mrs. Surdeen**

Section 3 (1) of the Maintenance Act 2005 states that:-

“subject to subsection (2), a person may apply to the Resident Magistrate’s Court in the parish in which the person resides, or, as the case may be, to the Family Court for a maintenance order in accordance with the provisions of this Act.”

Section 3(2) states:-

“In any case where an application is made for the division of property under the Property (Rights of Spouses) Act, the Court hearing the proceedings under the Property (Rights of Spouses) Act may make a maintenance order in accordance with the provisions of this Act.”

It is clear that the Supreme Court has no jurisdiction to hear this application under the Maintenance Act 2005. There is no application before the Court under the Property (Rights of Spouses) Act.

Section 20 of the Matrimonial Causes Act gives the Supreme Court power to make provision for the spouse. However the threshold requirement is that the application should be made on any decree for dissolution of marriage.

There is no affidavit evidence before the Court stating that there has been a decree nisi or absolute in relation to these parties; or that there are any pending proceedings for dissolution of marriage.

This section does not assist the claimant in grounding the courts jurisdiction to hear the application.

Section 23 of the Matrimonial Causes Act states that:-

- (1) The Court may make such order as it thinks just for the custody, maintenance and education of any relevant child or for the maintenance of a spouse;
  - (a) in any proceedings under section 10, or in any proceedings for dissolution or nullity of marriage before, by or after the final decree;"

Section 10 of the Matrimonial Causes Act deals with the Court's power to grant injunctions or make orders in relation to protection of parties, children or property.

I am of the view that section 23 of the Matrimonial Causes Act is not applicable and does not provide the Court with jurisdiction to make an order for maintenance of Mrs. Surdeen.

In the final resort, Mrs. Batchelor sought to rely on section 25 of the Matrimonial Causes Act. Section 25 (1) of the Matrimonial Causes Act 1989 reads where:

- (a) a husband has failed to provide reasonable maintenance for his wife or any child to whom this subsection applies; and
- (b) the court would have jurisdiction to entertain proceedings by either party to the marriage for an order under section 10, then, without prejudice to the provisions of subsection (2) of section 28, the court may, on the application of the wife, order the husband to make to the wife such periodical

payments hereafter in this section referred to as  
maintenance payments as may be just.

However, section 28(1) of the Maintenance Act 2005 has amended the  
Matrimonial Causes Act by deleting sections 21, 25 and 28.

The Maintenance Act 2005 repealing section 25 of the Matrimonial  
Causes Act came into effect on December 7, 2005 and the fixed date claim form  
was filed on December 15, 2005. Section 25 was no longer law at the time the  
fixed date claim form was filed and consequently this court has no jurisdiction to  
hear this aspect of the application for maintenance of spouse.

In summary, I find that this court does not have jurisdiction under sections  
20, 23 or 25 of the Matrimonial Causes Act to adjudicate on a claim for  
maintenance of Mrs. Surdeen.

It is hereby ordered that: -

- (i) application for maintenance of claimant dismissed.
- (ii) the defendant pays \$25,000 per month to the claimant for the  
maintenance of Nikita Surdeen. to commence on 31<sup>st</sup> May 2007  
and thereafter on the last day of each succeeding month until she  
attains the age of 18 years.
- (iii) liberty to apply.
- (iv) costs to the claimant to be agreed or taxed.