



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2011 No. 93

BETWEEN:

JENNIFER SUSAN MILLAR

Applicant

-AND-

**MINISTER OF LABOUR HOME AFFAIRS AND HOUSING
(NOW THE MINISTER FOR NATIONAL SECURITY)**

Respondent

Date of Hearing: 1st July and 14th October, 2011

Date Judgement Delivered: 8th December 2011

Mr. Ray De Silva for the Applicant
Mr. Melvin Douglas for the Respondent

1. This is an action initiated by the Applicant, Jennifer Susan Millar by way of Judicial Review of the Minister of Immigration's decision, seeking a declaration that she was at the date of her daughters'— Laura Ann Nisbet Millar born on the 27th August 1985 (hereinafter referred to as Laura) and Victoria Jean Nisbet Millar born on the 27th May, 1987 (hereinafter referred to as Victoria) - births domiciled in Bermuda. Therefore, pursuant to sections 18(2) and 18(5) of the Bermuda Immigration and Protection Act 1956 ("the Act") her daughters are deemed to possess Bermuda status from their respective dates of birth. During the proceedings Counsel for the Applicant Mr. Desilva abandoned his claim for *certiorari* and *mandamus*.
2. The Attorney General sought to resist the application on the ground that based on the evidence and the law the Applicant was more likely domiciled in the Bahamas at the date of her daughters' births. In the circumstances the court should refuse to grant the declaration sought.
3. I shall state briefly a few undisputed facts relevant to the issue to be resolved by the court.
 - (i) The Applicant possesses Bermuda status. She applied to the Department of Immigration (hereinafter referred to as the "Department") for confirmation that her daughters Laura and Victoria mentioned in paragraph 1 who were both born in the Bahamas were deemed to possess Bermuda status under section 18(2) and (5) of the Act.
 - (ii) Section 18(2) and 18(5) respectively stipulates that:-

"18(2) Where a person is, after 30 June 1956, and before 23 July 1993, born outside Bermuda, he shall possess Bermudian status if—

 - (a) *he is a Commonwealth citizen; and*
 - (b) *one of his parents was domiciled in Bermuda at the time of his birth and that parent possessed Bermudian status at that time.*

18(5) A person to whom sub-sections (1) or (2) of this section applies shall be deemed to have attained Bermudian status at the time of his birth."
 - (iii) In a letter dated 26th September 2005, the Department of Immigration informed the Applicant that in order to determine whether Laura and

Victoria acquired status at birth it needed to determine the Applicant's domicile at the time of each child's birth.

- (iv) A number of certified copies of documents were submitted to the Department among them a certified copy of an entry in the Register of Marriages of the Bahamas Registrar General's Department dated 14th June 2005 which verified the Applicants marriage to Michael Anthony Dorsett Millar on the 1st August 1983: certified copies of entries in the Register of Births in Nassau, Bahamas for Laura and Victoria: an affidavit contending the Applicants domicile sworn on 23rd May 2005. A number of letters were exchanged between the Department and the Applicant who provided the Department with additional information.
 - (v) Finally, in a letter dated 25th October 2010 the Department informed the Applicant that they had concluded that there is insufficient evidence in support of paragraph 18 (2)(b) of the Act. Therefore Laura and Victoria are considered restricted persons and require specific permission from the Department to continue to reside, own property, *et cetera* in Bermuda.
- 4. This Application before the court challenges the merit of the conclusion drawn by the Department. It is clear from the language of the statute, that any person who claims to be deemed to have Bermuda status at the time of their birth must prove that at the time of birth one of their parents was domiciled in Bermuda and possessed Bermudian status at that time.
 - 5. I shall now examine in microscopic detail the evidence presented. This evidence of the domicile of Mrs. Millar came from a number of sources which includes supporting documentation as well as the evidence of – Mrs. Millar's mother Elinor Anne Nisbet, the Applicant Jennifer Susan Millar her estranged husband Michael Anthony Millar and family friends Nancy Eileen Murphy and Mary Grosvenor Middleton Cook.
 - 6. The Applicant Mrs Susan Millar, nee Nisbet (whom I shall refer to as Mrs. Millar) was born in Bermuda on the 17th February, 1958 in Pembroke, Bermuda. Her father Thomas William Nisbet was born on 26th February 1933 in Pembroke, Bermuda. Her mother Elinor Ann Nisbet nee Stewart was born on the 10th February 1934, in Niagara Falls, Canada. Her mother moved to Bermuda in 1950 met and married Mrs Millar's father in 1953. Mrs Millar and three other siblings moved to the Bahamas with their parents when she was two years old.

Mrs. Elinor Nisbet's evidence

- 7. The Applicant's mother Mrs. Elinor Ann Nisbet swore an affidavit upon which she was cross examined by Mr. Douglas the acting Solicitor General.

In her testimony Mrs. Nisbet avowed that she has Bermuda status. Her mother was Bermudian and her father Canadian. She was born in Canada on 10th February 1934 and her family moved to the Bahamas in 1939 when she was about five years old. Shortly after they moved to the Bahamas World War II broke out and they were stranded in the Bahamas. During the war her father a travelling barber who travelled between the Bahamas, Bermuda and Cape Cod on the lady boats was unable to pursue his line of work.

8. Mrs. Nisbet testified that in 1950 when she was about 16 years old she visited Bermuda for a holiday. She liked it so much that she decided to remain living in Bermuda while her parents remained residing in the Bahamas. During this period she met and married, Thomas William Nisbet, Mrs. Millar's father.
9. Mrs. Nisbet said that her father died in 1956 and her mother in 1958. She was the only child and her parents left her the property in which they had been living in the Bahamas. The first two years after her parents' death she tried to have someone operate the property as a guest house. Thereafter, she unsuccessfully attempted to sell the property. Because of the difficulty trying to sort the property out long distance she and her husband made a decision to go to the Bahamas to sort things out.
10. In 1960 she and her husband moved their family to the Bahamas. The intention was to relocate temporarily, fix up the inherited property and sell it. Thereafter, return to and live in Bermuda. There was no intention to reside permanently in the Bahamas.
11. Mrs. Nisbet said as things worked out over the years they did not return to Bermuda to live permanently during her husband's lifetime. At first in order to provide the family with an income her husband began working for a local company in Nassau. Subsequently, he went into business with another Bermudian. This involved the manufacture and wholesale distribution of the Royall Lyme products. His employer operated the Bermuda end of the business while her husband operated the Bahamas end.
12. After several years of doing this his Bermudian employer sold the business and her husband opened up his own business in the Bahamas called Nisbet Stewart Limited. This was a wholesale business one line of which involved distribution of the Royall Lyme products.
13. Mrs Nisbet continued, that over the years they kept in close contact with their family and friends in Bermuda. They visited Bermuda regularly, particularly the children including Susan (Mrs. Millar) who would come to Bermuda for the school holidays.

14. Her husband, in his later years, when his health began to fail would travel back to Bermuda on his own more frequently to reconnect with old friends and family.
15. She says that she genuinely believes that had her husband not passed in 1991 and lived longer he would have travelled back with her to retire and live in Bermuda when she moved back to Bermuda in 1996. After his death she wanted to move back to Bermuda earlier but the delay in moving back after his death was because it took that long for her to sell the Bahamas property. When Mrs. Nisbet was cross examined by the acting Solicitor General she reaffirmed this position she said: “in 1965 they did not have a definite date but we always planned to return to Bermuda. We had the desire. However, circumstances didn’t allow this”. We were allowed to work we did not have work permits we could not vote in a general election.

The Applicant Mrs. Millar’s evidence

16. The Applicant Mrs. Susan Millar testified on her own behalf. She filed five affidavits with supporting documents and was subjected to a lengthy and thorough cross-examination by Mr. Douglas.
17. In 1960 Mrs. Millar moved to the Bahamas at the age of two to reside with her parents and three siblings. She left the Bahamas to continue her education in the UK when she was about eleven years old she graduated in 1976. After graduation she went back to Nassau Bahamas, but she could not work there.
18. She went back to the UK and commenced her work life as a Management Trainee at Harrods, Knightsbridge, London, England. After she left Harrods in 1980 she unsuccessfully tried to relocate to Bermuda.
19. In her cross-examination Mrs. Millar agreed that there is no stamp in her passport showing that she was here in Bermuda seeking employment between March and May 1980. However, the record dated 3rd May, 1980 clearly shows that she entered the Bahamas after leaving London. Thereafter, she left the Bahamas.
20. In cross-examination Elinor Nisbet corroborated her daughter’s evidence she said, “Jennifer Susan spent several years in England. She had a Management position at Harrods. She came to Bermuda to get a job here but she had to return to the Bahamas. I was not living in Bermuda at that time, but Susan told me. I do not recall the exact year she came back but I would think that she stayed with me until she found an apartment.” If I believe this evidence both of Mrs. Millar and her mother – and I do believe it – it would seem that after Mrs. Millar completed her education and training she tried to return to reside and work in Bermuda. I will return to the relevance of this evidence later when I discuss the question of Mrs Millar’s domiciled after she attained her majority.

21. In May 1980 the Applicant returned to the Bahamas sought employment and found a job in June 1980. She did not have Bahamian status but she did not need a work permit – she called this being in a “grey area”.
22. The Applicant worked in the Bahamas from 1980 to 2005 as a senior buyer at Solomon Brothers Limited. In August 1983 she and Michael Anthony Millar a Bahamian married. This marriage regularised her position as she was given permanent residency status. At first they lived in rented accommodation. After the birth of their first child in 1985 her husband’s mother gave him a piece of land. Eventually (1987-1989) he built a house in which they lived together. In December 2004 she and her husband discussed separation. She testified that the actual physical separation was in 2005 when she returned to Bermuda.
23. In response to a question from Mr. Douglas the Applicant said that between 1983 to 2005 she did not own property in Bermuda. To the best of her knowledge up to the time of her marriage her parents did not own property in Bermuda.
24. In 2008 Mrs. Millar purchased property in Bermuda she said that she needed to own her own property and as a result purchased her own property in which to live.
25. Her estranged husband is Bahamian born. His parents obtained citizenship after Bahamas attained Independence. He is a contractor with special expertise in kitchens and bathrooms.
26. In response to searching questions from Mr Douglas as to why she failed to return to Bermuda during her marriage she had this to say: “It was always my hope to return to Bermuda but circumstances made it necessary to stay in the Bahamas”. Financially her husband had his business, family and premises and is rooted in the Bahamian community. Any discussion of trying to come to live in Bermuda was always cut off by him. “I felt I had no choice but to remain in the Bahamas. The marriage was a difficult one. Looking back at the first two years of marriage I was pliable and accepting of where we would live but that changed.”
27. Mr. Douglas questioned, explain why you did not seek to obtain status for your daughters. The Applicant replied, “I automatically felt that through my birth they had status. I applied in 2005 because I intend to spend the rest of my life here and I want my children with me and I thought they had the right.”

Mr. Douglas further questioned, would it be fair to say that prior to that day you had not formed the intent to spend the rest of your life here. She replied “No, it would not be fair to say that but I was in a situation that prevented me from doing what I wanted to do. It was the marriage to my husband and the financial constraints the marriage put me under. My husband would make it very difficult

for me to have any contact with my children he would not have allowed me to see the children. The difficulties were there from early on in the marriage even before Tory was born. We had counselling and so forth. After the children were born and Tory turned 18 in 2004 I could leave without harming them or myself.” My husband and I are civil. The marriage has ended. He is living with another woman.

Mr. Millar’s Affidavit evidence

28. I will at this point refer to Mrs. Millar’s estranged husband’s affidavit in particular paragraph 2 where he said that from his experience with Bill Nisbet, Susan’s father, it appeared to him that as “a born Bermudian” it was always his intention if given the opportunity to return to live in Bermuda. He recalls that Susan’s family members regularly made return trips to Bermuda for holidays over years and Susan’s father was a part of that.
29. In paragraph 3 of his affidavit he states that “after his death when Susan’s mother returned to live there Susan travelled to Bermuda pretty much every year to see family and spend time on holiday.”
30. Mr. Douglas questioned Mrs Millar, “nothing in the affidavit says when you formed the view.” She replied, “from his point of view that is how he saw it, as to when I formed the view.” She added, “I have always considered myself a Bermudian it never occurred to me in the whole process that I had to prove that I was Bermudian.”

Mrs. Cook’s Evidence

31. Mary Grosvenor Middleton Cook was born in Bermuda on January 24, 1934. She swore an affidavit in support of Mrs. Millar’s application. She said that she knew Susan’s dad, Bill Nisbet since they both attended kindergarten class at the Bermuda High School for Girls which had a co-educational kindergarten at the time. She was a bridesmaid at Susan parents’ (Bill and Anne Nisbet) wedding and Susan’s other sister Betsy is her godchild. In 1960 she moved from Bermuda at about the same time as Bill and Anne to the Bahamas to live with her partner an English airline pilot who was based in the Bahamas. They had three children. Regularly over the years in the summer she returned to visit Bermuda from the Bahamas she recalls Bill and Anne doing the same. They would see family and friends; their children would usually stay with Nancy Murphie while in Bermuda.
32. In 1973 she moved from the Bahamas to England. When the Applicant and her siblings attended boarding schools in England they would spend some weekends

and school holidays with her as flying back to the Bahamas was expensive and impractical.

33. When the children arrived at Heathrow from the Bahamas she would collect them. They would overnight with her and she drove them to their school. During the time she spent living in England she would return most summers to Bermuda and would often see Anne and her children visiting Bermuda. She particularly recalls the summer when “The Deep” was being shot in Bermuda, Susan and her daughter Jennifer were working at their summer jobs in Bermuda to earn some pocket money.
34. In 1983 she flew back to the Bahamas to attend Susan’s wedding. She and her present husband, Walter Cook, married in 1984 and have continued to live in Bermuda for the past 27 years of marriage.
35. She has had various discussions with Anne over the years prior to Bill’s death and her subsequent relocation to Bermuda, and Anne always spoke about how she never really wanted to live long term in the Bahamas as she preferred to live in Bermuda.
36. In cross-examination she said that their friendship went back a long way. Her mother went to Sunday school with Anne’s mother. She and Bill knew each other growing up in Bermuda. When Anne came to work at the bank she was already there. She was a bridesmaid at their wedding. Bill Easy and Bill Neibet were friends — they drank together.
37. After Bahamas Airways where her partner was employed folded they went to Germany, Singapore et cetera. After she left the Bahamas in 1972 she would go back to the Bahamas to visit and she stayed with the Nisbets. She went to Susan’s wedding and Bill Nisbet’s funeral.
38. She has some fond memories of the Bahamas and some painful ones. She said, that it is quite true that Anne did not want to live long term in the Bahamas. She told her this in 1958. She had lived with them for a while. Anne made it quite clear that she did not like the Bahamas.

Nancy Eileen Murphy’s evidence

39. The final bit of evidence in support of the Applicant’s case came in the form of an affidavit from Nancy Ellen Murphy who stated that she grew up in Bermuda with Bill Nisbet, the Applicant’s father. The two families were very close. Susan’s mother has particularly adverse to the idea of moving to the Bahamas. She confirmed that after they moved to the Bahamas various members of the family would visit in particular Susan and her daughter Allison were born in the same

year (1958). When Susan and her sibling were in their teenage years she recalls their distinct reluctance to return to the Bahamas at the end of the summer holiday. For example, one time one of Susan's sisters jumped overboard near their house so that she could miss her plane that day. She worked as an auctioneer and she recalls giving Susan summer jobs as a teenager to assist with running the auctions.

40. She recalls, when Susan returned from training at Harrods that she tried to get a job in Hamilton working at the Department Stores. She was not successful and consequently moved back to the Bahamas. She recollects Susan's younger sisters, Gretchen and Catherine returned from University to live and work in Bermuda. It was her perception that the entire family wanted to relocate from the Bahamas to Bermuda.
41. I regard as important the letter dated October 4, 1990 which the Applicant's father Bill Nisbet wrote to his family. He began by saying "I have been putting this off for far too long. Procrastination is the thief of time..." In this letter he indicated what he "... would like to have happen to my remains after my demise." He requested that his body be cremated and his ashes placed in something biodegradable and "... at a time convenient, these remains should be placed in our grave in Pembroke Churchyard." Later on in the letter, he wrote, "It appears that I shall probably expire in Nassau, so some of me will drift around these islands where I have spent such an enjoyable time and the remainder will have a spot in the place of my birth." Should any future generations care, there will be a marker where lies one William Nisbet along with his father, mother and sisters. He went on to write about how over the past several months his own mortality has been effectively brought home to him starting with his sickness in Bermuda last April with its aftermath and now this bloody ulcer is a constant reminder that he is no longer a teenager. Before he ended the letter he wrote should funds be available and only if funds are available without any discomfort to my survivors, I would like some money left at my favourite 'watering holes' for my friends and acquaintances to have a drink or a few on me after I have gone. Thereafter, he requested that \$500 be sent to each of the following bars R.N.S.C. and Charlie Charlie's (Nassau) and M.R. Onions (Bermuda). Also, he ended by saying that he has had a discussion with mother (Mrs. Nisbet) who wants to be cremated and he requested that her remains be returned to Bermuda and be placed in the family grave in Pembroke. At the end he wrote that you will all get copies the original is lodged with James T. Knowles, Chambers. In my opinion if this letter is accepted, at face value, it goes a long way to show Bill Nisbett attitude in 1990. He considered Bermuda his permanent home; Mrs. Nisbet reiterated that he did not apply for citizenship in the Bahamas nor acquired the right to vote.

Counsel Submissions

42. Mr. Desilva submission may be summarised as follows:

- (i) there are three types of domicile they are domicile of: –
 - (a) Origin/birth,
 - (b) Choice and
 - (c) Dependency.
 - (ii) The burden of proof is on the party asserting that there has been a change of domicile. There is a two stage test to determine domicile. In order to prove a change of domicile it must be shown that the person had a fixed and determined purpose to make the place of his new domicile his permanent home. There must be a change of residence in addition to the requisite intention to make the place of the new domicile a permanent home.
43. When considering a domicile of dependency and how it affects the domicile of origin/birth the test is to determine the domicile of origin/ birth of the parents at the time of the child's birth.
 44. If there is a competing domicile of origin and choice the question which has to be resolved is whether there was an intention to acquire another domicile of choice it is not whether there was intention to retain the original domicile – see *Udny -v- Udny* [1869] HL.
 45. Mr. Desilva submitted that the Applicant was born in Bermuda. She was moved as a child at 2 years old to the Bahamas. It was her parent's intention to live temporarily in the Bahamas until they could renovate and sell the Bahamas family property which their mother, Mrs. Nisbet inherited from her deceased parents. The Applicant's parents remained living in the Bahamas until her father's death in 1991. Applying the authority of *Winans -v- Attorney General* [1904] HL Mr. Desilva submitted that although Mr. Nisbet may have lived in the Bahamas for a considerable period of time he never had the requisite intention to make the Bahamas his permanent home. He always regarded Bermuda as his permanent home. He wore Bermuda shorts, he made regular trips to Bermuda, he maintained bank and charge accounts, he maintained a family burial plot and had his remains interred there – see Mr. Nisbet's letter to his family dated October 4, 1990 and the Applicants Affidavit sworn on the October 6, 2009 of vary instructive.
 46. Mr. DeSilva continued as regards the Applicant, at age 22 years after her training at Harrods she moved back to Bermuda to seek employment. She was not successful and therefore returned to the Bahamas where she found employment. When her daughters were born in 1985 and 1987 she had maintained bank accounts in Bermuda and continued regular trips to Bermuda. Although the Applicant spent extensive time residing in the Bahamas she did not have the requisite intention of making the Bahamas her permanent home. When she returned permanently to Bermuda in 2005, although subsequent to the events of her daughters' births, affected the quality of the residential intention such to show that it was never that Bahamas was to be her permanent home. There was no

change in domicile of choice to the Bahamas from her domicile of origin in Bermuda. Taking all the evidence into consideration Mr. Desilva submitted that the Minister erred in law in applying the incorrect legal test to domicile and as such the Applicant ought to be granted the relief prayed.

Acting Solicitor General's submission

47. Mr. Douglas submitted that the letter dated October 25, 2010 is an opinion from the Department. Given the number of years that Mrs. Millar and her father spent away from Bermuda points the other way towards domicile in the Bahamas. He asked the court to be guarded against self-declaration. Mrs. Millar's actions closer to the event of her daughters' births are more indicative of her intent.
48. Mr. Douglas maintained that the relief which the Applicant is seeking is for a declaration that she was domiciled in Bermuda at the date of her daughters' births. In *Plummer v Inland Revenue Commissioners* [1988] 1 All ER p. 97 the court said at page 4 "Under the test of *Udny v Udny* 1869 LR 1 Sc & div 441 there are two elements in the acquisition of a domicile of choice. First, there must be physical presence in the new country, not casually or as a traveller but as an inhabitant of it to adopt a phrase used in an American case ... Second there must be an intention to make one's home in the new country permanently or indefinitely." From all the facts Bahamas was to be their home indefinitely. The evidence of intention can be inferred from the fact that there was no definitive date when they would be returning. The Bahamian home was his sole residence the children acquired Bahamian domicile by their father's choice. He never returned to Bermuda for any residential purpose.
49. Mr. Douglas further submitted that there is no evidence that Mrs. Millar abandoned her domicile of choice. No entry in the passport that she was here in Bermuda at age 21. No evidence that she sought employment prior to her marriage. She made her matrimonial home in the Bahamas and notwithstanding she visited Bermuda there was no intention to remain. Mr. Nisbit's letter to the family reflected on his own life and it is not probative of where he wanted to make his home. It simply stated what he wanted to happen to his remains. The number of years spent in the Bahamas is relevant.
50. Finally, Mr. Douglas submitted that based on the evidence and the law the Applicant was more likely domiciled in the Bahamas at the date of her daughters' births and as a result the court should refuse to grant the Applicant the declaration sought.

Court

51. The Court has to decide whether on the facts the Applicant was domiciled in Bermuda at the time of the births of her daughters – Laura and Victoria. This

question depends upon what shall be determined to have been the domicile of the Respondent's father, the late Bill Nisbet, at the time of the Applicant's birth, and at the time of the Applicant's marriage and at the time of the births of the Applicant's daughters.

52. In 1960 when the Applicant was two years old she and her other siblings her mother and father moved to the Bahamas. Her father, Bill Nisbet who was born in 1933 and her mother, Elinor Nisbet who was born in 1934 were domiciled in Bermuda. The Applicant received the domicile of her father at birth. This remains her domicile wherever she goes unless and until she acquires a new domicile of choice.
53. I am satisfied and find as a fact that when Mr and Mrs. Nisbet first went to the Bahamas their intention was to remain there temporarily in order to renovate and sell property which Mrs. Nisbet had inherited from her parents. They remained in the Bahamas until the Applicant's father's death in 1991.
54. One of the first questions is whether during the Applicant's minority her father had acquired a domicile of choice in the Bahamas. This is relevant because children acquire dependency domicile until they attain their majority. Consequently, the Applicant would have acquired her father's domicile of choice if he had acquired this before her majority.
55. The burden of proving that the Applicant's father change his Bermuda domicile of origin and acquired a Bahamian domicile of choice lies upon the Minister of Labour, Home Affairs, and Housing (now the Minister for National Security) represented by the Attorney General.
56. In my opinion this is a complex case from a factual standpoint as the law is very clear. It was found in *Winans and another v Attorney General* [1904] AC and HL that where it is asserted that a domicile has been changed the onus of proving that assertion lies upon those who assert that the domicile has been changed. At page 288 the court said:-

"Now the law is plain, that where a domicil of origin is proved it lies upon the person who asserts a change of domicil to establish it, and it is necessary to prove that the person who is alleged to have changed his domicile had a fixed and determined purpose to make the place of his new domicile his permanent home. Although many varieties of expression have been used, I believe the idea of domicil may be quite adequately expressed by the phrase – Was the place intended to be the permanent home?"

57. If the court is unable to come to a firm conclusion at page 289 the court said:-

"I must admit that I have regarded the whole history of Mr. Winans' life differently at different stages of the argument, and the conclusion I have come to is that I cannot say that I can come to a satisfactory conclusion either way; but then the law relieves me from the embarrassment which would otherwise condemn me to the solution of an insoluble problem, because it directs me in my present state of mind to consider upon whom is the burden of proof. Undoubtedly it is upon the Crown, and, as I cannot bring myself to a conclusion, either way, whether Mr. Winans did or did not intend to change his domicile, his domicile of origin must remain..."

And at page 290 the Court said: -

"In Munro v. Munro (1) Lord Cottenham observed that it was one of the principles adopted, not only by the law of England, but generally by the laws of other countries, "that the domicile of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile.... Residence alone," he adds, "has no effect per se, though it may be most important as a ground from which to infer intention." "The law," said Lord Cairns L.C. in Bell v. Kennedy (2), "is beyond all doubt clear with regard to the domicile of birth that the personal status indicated by that term clings and adheres to the subject of it until an actual change is made by which the personal status of another domicile is acquired." The onus of proving that a domicile has been chosen in substitution for the domicile of origin lies upon those who assert that the domicile of origin has been lost."

58. I have dealt with the details of Mr. Nisbet's life in my review of the witnesses' testimony. There is no real controversy about the facts. I do not propose to rehearse this evidence. The issue is what inference is to be drawn from these facts. In 1990 Mr. Nisbet's health deteriorated. Mrs. Nisbet said he probably knew that he did not have long to live. He travelled back to Bermuda on his own more frequently for holidays to spend time and reconnect with old friends and family.

59. In *Udny v Udny* [L.R.] 1 Sc.&Div.441 the court said:-

"Upon the question whether Colonel Udny ever acquired an English domicile which superseded his domicile of origin, there can be no doubt that his long residence in Grosvenor Street for the space of thirty-two years from 1812 to 1844, is calculated to produce a strong impression in favour of the acquisition of such a domicile. Time is always a material element in questions of domicile; and if there is nothing to counteract its effect, it may be conclusive upon the subject. But in a competition between a domicile of origin and an alleged subsequently-acquired domicile there may be circumstances to shew that however long a

residence may have continued no intention of acquiring a domicile may have existed at any one moment during the whole of the continuance of such residence. The question in such a case is not, whether there is evidence of an intention to retain the domicile of origin, but whether it is proved that there was an intention to acquire another domicile. As already shewn, the domicile of origin remains till a new one is acquired animo et facto. Therefore, a wish or a desire expressed from time to time to return to the place of the first domicile, or any looking to it as the ultimate home, although wholly insufficient for the retention of the domicile of origin, may yet amount to material evidence to rebut the presumption of an intention to acquire a new domicile arising from length of residence elsewhere.”

60. On the evidence before the court irrespective of the fact that Mr. Nisbet lived in the Bahamas for a significant number of years I can find no evidence that Mr. Nisbet at any time before his death had formed a “fixed and settled purpose a determination; a final and deliberate intention to abandon his Bermuda domicile and settle in the Bahamas.” His residence in the Bahamas began under circumstance which indicates no intention that it was to be permanent. Throughout his time in the Bahamas it was absent the intention to make it his permanent home. He never acquired Bahamian citizenship or the right to vote. He maintained a strong link with Bermuda – regular trips to Bermuda, wore Bermuda shorts, for a number of years worked with a Bermudian partner running the Bahamas end of the business, maintained a family burial plot and had his remains interred in that plot. His letter written to his family in 1990 shows he regarded Bermuda as his permanent home. In the circumstances I find that he retained his Bermuda domicile up to the date of his death.
61. If I retained any doubt and was vacillating because of the number of years Mr. Nisbet resided in the Bahamas the authority of *Winas* referred to in this judgement at paragraph 57 indicates that the law relieves me from the embarrassment which would otherwise condemn me to the solution of an insoluble problem. The law directs me if I was in such a state of mind, to consider upon whom is the burden of proof. Undoubtedly, it is upon the Crown and the Crown has not satisfied the court so that it is able to conclude on a balance of probability that Mr. and Mrs. Nisbet intended at any point to make the Bahamas his permanent home.
62. The Applicant acquired the dependency domicile of her parents until she attained her majority at the age of 21 years. After she attained her majority the Applicant continued to maintain her domicile of origin. She returned to Bermuda and fruitlessly tried to find work after she completed her education and training in the UK. Thereafter, she returned to the Bahamas where she secured work at Solomon’s jewellers until she returned to reside in Bermuda 2005.

63. I am satisfied and find as a fact that although the Applicant met and married a Bahamian in 1983 she had no intention of residing permanently in the Bahamas. She remained in a difficult marriage for financial reasons and to make sure she maintained contact with her children. After the Applicant's youngest child attained her majority she returned to Bermuda in 2005. She has a permanent job, has purchased a home and declares that she intends to spend the remainder of her life in Bermuda.
64. Has it been proved on a balance of probability that Mrs. Millar had at the time of the births of Laura and Victoria a "fixed and settled purpose"; "a determination"; "a final and deliberate intention" to abandon her Bermuda domicile and settle in the Bahamas?
65. Applying the law to the facts of this case I am satisfied that it is beyond per adventure that the Applicant was domiciled in Bermuda at the time of her daughters' birth – Laura and Victoria. Therefore, I grant the relief as prayed.
66. I intend to award the Applicant her cost of these proceedings unless I'm otherwise persuaded.

JUSTICE WADE-MILLER, PJ