# In The Supreme Court of Bermuda

**CIVIL JURISDICTION**
**2019 No: 62**

**BETWEEN:**

**KENNY MCCARTHY DOTTIN**

**Petitioner**

**And**

**SHEENA GRACE EILEEN DOTTIN**

**Respondent**

## JUDGMENT
## (REASONS)

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| Date of Trial: | Tuesday 27 August 2019 |
| Date of Decision: | Tuesday 27 August 2019 |
| Date of Reasons: | Wednesday 25 September 2019 |

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|---|---|
| Petitioner: | Mr. Edward Ishmael-King, Edward Ishmael-King |
| Respondent: | Ms. Cristen Suess, Wakefield Quin Limited |

*Claim for Partition of Land under Partition Act 1914 after final order in matrimonial proceedings made pursuant to section 28(1)(a) of the Matrimonial Act 1974 – Court has no power to vary or discharge section 28(1)(a) Property Adjustment Order – Doctrine of Res Judicata - Strike Out on Court's own Motion under RSC O. 18/19 at trial stage – Abuse of Process- Constructive Trust by operation of law*

JUDGMENT of Shade Subair Williams J

## Introductory

1. This matter came before the Court on the trial of an action for an order for partition of land under the Partition Act 1914. The land in question is situate at Seawall Drive Boaz Island Village, Sandys Parish ("the Property").

2. The parties to this action were formerly married and are the parents of three children, two of whom are twins. Their current ages are 21 years and 19 years ("the Children"). The dissolution of the parties' marriage on 14 September 2016, arrangements as to the Children and other ancillary relief orders were made by previous orders of the Court in its Divorce Jurisdiction.

3. The final order made in those matrimonial proceedings was made by the learned Justice Mrs. Norma Wade-Miller (now retired) on 12 November 2015 ("the 2015 Order"). In the 2015 Order, the learned judge gave directions on the occupation and ownership of the Property.

4. The Petitioner, without seeking a variation of the 2015 Order, filed a petition in this Court's Civil Jurisdiction for a partition order in respect of the Property.

5. At the close of the hearing, having heard submissions from Mr. King on behalf of the Petitioner, I dismissed the Petition. I also ordered that costs follow the event in favour of the Respondent. Having informed the parties that I would provide written reasons for my decision, I now provide those reasons herein.

## The 2015 Order made in the Court's Divorce Jurisdiction

6. Ms. Sheena Dottin was the Petitioner in the matrimonial proceedings culminating in the 2015 Order which provided as follows:

   *UPON HEARING A Justicia Law Chambers for the Petitioner and for the Respondent James & Associates*

   *IT IS ORDERED*

   *THAT the Petitioner has agreed for (the) children…to be relocated to the Island of Barbados West Indies.*

   *THAT the Petitioner will make contributions to the children's education in Barbados when she is gainfully employed*

*THAT a date is to be agreed when the children leave Bermuda. The Respondent is to finance the travel tickets back to Barbados.*

*THAT the Respondent shall give one (1) month's notice to the present tenants in the #11 Boaz Island Sandys property and to ensure that the property is in a tenable condition.*

*THAT the Petitioner shall take up occupancy in the #11 Boaz Island Sandys property on January 1st 2016*

*THAT the Petitioner have free access to all children of the family. All the children of the family be allowed to return to Bermuda for vacations and to visit the Petitioner.*

*THAT there are no travel restrictions for both Petitioner and Respondent.*

*THAT the #11 Boaz Island Sandys property to be place(d) in Trust for (the Children) only*

*IT IS ORDERED that Liberty to apply in respect of access and travel arrangements if the parties are unable to agree.*

7. It was an agreed fact between the parties that no further applications were made following the 2015 Order and that no trust instruments were executed in furtherance of Wade-Miller J's direction for the Property to be placed in trust for the Children.

## The Application for Partition of Land

8. By Petition filed in this Court on 13 February 2019, the Petitioner in these proceedings ("KD") prayed for a valuation Order and an Order for the sale of the property for equal apportionment between the parties.

9. The Petition was supported by an affidavit sworn by KD on 28 January 2019 outlining the history of how he and the Respondent ("SD") originally acquired the Property as joint tenants. KD deposed that the Property had not been placed in a trust due to the prohibitive related costs.

10. KD also stated that the Children all resided with him in Barbados without any financial contribution by the Respondent. At paragraph 6 of his affidavit he said:

"*The 3 adult children are desirous of furthering their education in England. I consider it incumbent on me to assist them financially, in achieving their goals, but as a retiree*

*dependent upon a pension, I cannot afford to do so without realizing my monetary share of the proceeds of sale of the Boaz Island Village property*."

11. SD filed a reply affidavit sworn in her name on 13 March 2019 confirming that she continues to occupy the Property and is solely responsible for all of its associated expenses which includes land tax and property maintenance fees. She exhibited to her affidavit the 2015 Order and the underlying summons in support of her submission that Wade-Miller J already disposed of KD's interest in the property by ordering that it be placed in trust for the Children only.

12. SD also explained in her affidavit that one of the Children ("KCD") is 'severely autistic' and has epilepsy. She said that this was one of the reasons why the Property should be held in trust. SD advised that KCD recently returned to Bermuda to reside with her in the Property under her care. She said that the sale of the property would not benefit KCD. SD also 'robustly' denied KD's assertion that she did not provide financial support to the Children.

13. At the concluding paragraph of SD's affidavit she invited the Court to dismiss KD's Petition on the grounds that it is an abuse of process. SD submitted that KD is fully aware of the 2015 Order and ought to have applied for a variation order instead of attempting to circumvent the 2015 Order which was final and binding.

14. By further affidavit evidence sworn on 28 March 2019, KD accepted that the KCD was diagnosed as epileptic in 2017 but said that he was unaware of any autism diagnosis.

15. In responding to SD's criticism that he should have sought a variation order and her submission on the effect of the 2015 Order, KD said at paragraph 8:

*The Respondent acknowledges that the cost of establishing the trust may have been prohibitive. Since the trust was never set up, there was no lesser obligation on the Respondent than on me to seek variation of the Order of 12th November 2015. The fact that the Order did not stipulate a time frame within which the trust was to be established did not grant the respondent indefinite leave to reside in the property. The Order did not dispose of my beneficial interest in the property (which is, to this day, still in our joint names). I venture to say that the Court did not order the property being put in trust for the children subject to a life tenancy to the Respondent. Further, had the trust been established, neither the respondent nor I would have retained a beneficial interest therein. The Respondent is under a misapprehension that upon her death or departure therefrom that the property would then be subject to be placed in trust for the children's benefit.*

*As the sole co-owner in occupation, it is not unreasonable that the Respondent should be solely responsible for the property and all expenses associated with it. How can she claim that the Order of 12th November 2015 disposed me of my beneficial interest in the property and yet raise an issue of sole liability for associated expenses?*

16. Paragraph 12 of KD's reply affidavit goes on to say:

*It cannot be denied that I require funds to assist the two children to further their education. The children's further education was not in the contemplation of us, parents, at the time of the making of the Order of 12th November 2015. Paragraph 5 of that Order could not be varied by consent, or otherwise, to provide for the costs of the children's education. I am not attempting, in bringing these proceedings, to circumvent that Order. The only clause in that Order touching upon the property was that it be placed in trust for the children.*

*The Order of 12th November 2015 made no provision for the children's travel costs…*

17. At the concluding paragraph, KD wrote in his affidavit:

*It is for the Court to determine whether my Application is an abuse of process. The property has not been placed in trust for the children (now all adults) but remains owned by the Respondent and me as joint-tenants. I, therefore, respectfully ask the Court to grant me the relief sought in my Petition under the Partition Act 1914.*

18. A further joint affidavit in support of the application was sworn by the two children who continue to reside in Barbados with KD. While the Court examined this evidence, I do not deem it necessary to recite any passages therein.

## Analysis

19. In matrimonial proceedings the Court has the power to make orders for ancillary relief which include property adjustment orders and variation orders. The Court's power to make property adjustment orders is pursuant to section 28(1)(a) of the Matrimonial Causes Act 1974 ("the 1974 Act") which reads:

***Property adjustment orders in connection with divorce proceedings, etc***
*28 (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders—*

*(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;*

*(b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;*

*(c) an order varying for the benefit of the parties to the marriage and of the children of the family or either of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;*

*(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement,*

*subject, however, in the case of an order under paragraph (a), to the restrictions imposed by section 33(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.*

*(2) The court may make an order under subsection (1)(c) notwithstanding that there are no children of the family.*

*(3) Without prejudice to the power to give a direction under section 34 for the settlement of an instrument by the Registrar, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.*

20. Section 29 of the 1974 Act requires the Court to have regard to all of the circumstances of the case in making an order under section 28. Such circumstances include:

*(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*

*(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*

*(c) the standard of living enjoyed by the family before the breakdown of the marriage;*

*(d) the age of each party to the marriage and the duration of the marriage;*

*(e) any physical or mental disability of either of the parties to the marriage;*

*(f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;*

*(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension);*

*(h) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring*

21. Section 29 places a duty on the Court to try and fairly place the parties in the financial position it would have been in if the marriage had not been broken down and each party had properly discharged his or her financial obligations and responsibilities towards the other.

22. Subsections (2) and (3) of section 29 of the 1974 Act sets outs the factors for consideration where a child of the family is involved:

*29 (2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d),(e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all circumstances of the case including the following matters, that is to say-*

*(a) the financial needs of the child;*
*(b) the income, earning capacity (if any), property and other financial resources of the child;*
*(c) any physical or mental disability of the child;*
*(d) the standard of living enjoyed by the family before the breakdown of the marriage;*
*(e) the manner in which he was being and in which the parties to the marriage expected him to be education or trained;*

*and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)(a) and (b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.*

*(3) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d),(e) or (f), (2) or (4) or 28 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)-*

*(a) to whether that party had assumed a responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such*

*responsibility and to the length of time for which that party discharged such responsibility;*

*(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;*

*(c) to the liability of any other person to maintain the child.*

23. The 2015 Order made provisions for a property adjustment in directing that SD take occupancy of the Property and that the Property be placed in a trust for the benefit of the Children only. Seemingly, the Court granted SD a life interest in the Property by permitting her to reside in the Property without an end date and a remainder fee simple interest in equal shares for the Children as beneficiaries of a trust. In making the 2015 Order, Wade-Miller J would have necessarily had regard to all of the circumstances required by section 29 of the 1974 Act.

24. Section 35 of the 1974 Act empowers the Court to vary or discharge certain orders for financial relief. However, property adjustment orders made under section 28(1)(a) are not included in the class of orders which may be subsequently varied or discharged under section 35. Fair to say, the 1974 Act contemplates that a property adjustment order of this kind is final. This perhaps explains why the learned judge in making the 2015 Order granted liberty to apply for some parts of the 2015 Order but did not grant liberty to apply in respect of the property adjustment order.

25. In her written submissions, Ms. Suess relied on the decision of the learned Chief Justice, Mr. Ian Kawaley (as he then was) in *Wilkinson v Wilkinson [2016] SC (Bda) 44 Div* who equally observed that section 35(2) does not permit the Court to review property adjustment orders made in divorce proceedings. Kawaley CJ cited with approval the English Court of Appeal decision delivered by Ormrod LJ in *Carson v Carson [1983] 1 ALL ER 478* where it is stated at paragraph 481h:

*This is a case where an attempt was being made to obtain a second property adjustment order in relation to the same capital asset and it is not necessary in this judgment to consider what the position might have been if some other capital asset was involved. In my judgment the learned judge in the court below was completely right in rejecting that application by the wife. If he had entertained it, he clearly would have been running counter to the provisions of section 31, which make it clear that the court has no power to vary a property adjustment order in any circumstances*.

26. (Section 35 of the 1974 Act largely parallels section 31 of the UK Matrimonial Causes Act 1973.)

27. RSC Order 18/19(1) provides that the Court may <u>*at any stage of the proceedings*</u> order to be struck out or amended any pleading or the indorsement of the writ in the action, or anything in any pleading or in the indorsement, on the ground that:
    a) it discloses no reasonable cause of action or defence, as the case may be;
    b) it is scandalous, frivolous or vexatious;
    c) it may prejudice, embarrass or delay the fair trial of the action; or
    d) it is otherwise an abuse of the process of the court

28. RSC Order 18/19(1) also empowers the Court to make an order for the action to be stayed or dismissed.

29. In <u>*D Tucker v Hamilton Properties Ltd. [2017] SC (Bda) 110 Civ (11 December 2017)*</u> I examined the various elements of the law applicable to strike-out applications and stated at paragraphs 14-16:

> ***Determination of a strike-out application is a component of active Case Management***
>
> *14. The Court's determination of a strike-out application is a component of active case management. Essentially, the Court is required to identify the issues to be tried at an early stage of the proceedings and to summarily dispose of the others. This is aimed to spare unnecessary expense and to ensure that matters are dealt with expeditiously and fairly.*
>
> *15. As a starting point, the Court must have regard to the Overriding Objective stated at RSC Order 1A:*
>
> *1A/1 The Overriding Objective*
> *(1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.*
> *(2) Dealing with a case justly includes, so far as is practicable-*
> *(a) ensuring that the parties are on equal footing;*
> *(b) saving expense;*
> *(c) dealing with the case in ways which are proportionate-*
>
> *(i) to the amount of money involved;*
> *(ii) to the importance of the case;*
> *(iii) to the complexity of the issues; and*
> *(iv)to the financial position of each party;*
>
> *(d) ensuring that it is dealt with expeditiously and fairly; and*

*(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases*

*1A/2 Application by the Court of the Overriding Objective*
*2 The court must seek to give effect to the overriding objective when it-*
*(a) exercises any power given to it by the Rules; or*
*(b) interprets any rule.*

*1A/3 Duties of the Parties*
*3 The parties are required to help the court further the overriding objective.*

*1A/4 Court's Duty to Manage Cases*
*4 (1) the court must further the overriding objective by actively managing cases.*
*(2) Active case management includes-*

- *a) encouraging the parties to co-operate with each other in the conduct of the proceedings;*
- *b) identifying the issues at an early stage;*
- *c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;*
- *d) deciding the order in which issues are to be resolved;*
- *e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;*
- *f) helping the parties to settle the whole or part of the case;*
- *g) fixing timetables or otherwise controlling the progress of the case;*
- *h) considering whether the likely benefits of taking a particular step justify the cost of taking it;*
- *i) dealing with as many aspects of the case as it can on the same occasion;*
- *j) dealing with the case without the parties needing to attend at court;*
- *k) making use of technology; and*
- l) *giving directions to ensure that the trial of a case proceeds quickly and efficiently*

16. In *Jim Bailey v Wm E Meyer & Co Ltd [2017] Bda LR 5 at paras 14-15* *the learned Hon. Chief Justice, Ian Kawaley, examined the impact of the new CPR regime and the Overriding Objective on strike out applications:*

"*…In Biguzzi v Rank Leisure plc [1999] 4 ALL ER 934 (CA), Lord Woolf explained that the CPR introduced an entirely new procedural code. It is true that he stated that pre-CPR authorities would not generally be relevant. But that was in the context of contending that the new regime imposed greater case management powers on the court to prevent delay than under the old Rules. Trial judges, post-CPR, were*

*expected to use these case management powers judicially, only striking out as a last resort. It is also important to remember that this reasoning was articulated in a statutory context in which an entirely new procedural code was in force. And the particular strike-out discretionary power which was under consideration in that case was an entirely new one, a power exercisable on grounds of mere non-compliance with the Rules. As Lord Woolf observed (at 939-940):*

*"Under the CPR the keeping of time limits laid down by the CPR, or by the court itself, is in fact more important than it was. Perhaps the clearest reflection of that is to be found in the overriding objectives contained in Part 1 of the CPR. It is also to be found in the power that the court now has to strike out a statement of case under Part 3.4. That provides that:*

*'(2) The court may strike out a statement of case if it appears to the court- (a) that a statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court's process…' [and, most importantly] (c) that there has been a failure to comply with a rule, practice direction or court order.'*

*Under Part 3.4(c) a judge has an unqualified discretion to strike out a case such as this where there has been a failure to comply with a rule. The fact that a judge has that power does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of case. The advantage of the CPR over previous rules is that the court's powers are much broader than they were. In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out*."

23. At paragraph 23 of <u>*Tucker v Hamilton Properties Ltd.*</u> I cited Lord Diplock's passage in <u>*Hunter v Chief Constable [1982] AC 529 at 536 C*</u> for some assistance on the meaning of the term 'abuse of process' in the context of procedural misuse:

> "*It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied…*"

24. <u>*Hunter v Chief Constable [1982] AC 529 at 536 C*</u> was relied on by the learned Mr. Justice Stephen Hellman in <u>*Michael Jones v Stewart Technology Services Ltd [2017] SC (Bda)*</u>.

25. *Hunter* is also cited in chapter 43 of Phipson on Evidence (Nineteenth Edition) on the subject of judgments which give rise to estoppels in subsequent proceedings. In the case of

*Hunter* the plaintiff in civil tort proceedings had formerly been convicted of carrying out IRA bombings in Birmingham, England. The plaintiff sought damages for assault by the police. This suit came after the delivery of a ruling by Bridge J in a voir dire under the collateral criminal proceedings that he was convinced beyond reasonable doubt that the police had not threatened or assaulted the claimant. In a unanimous decision of the Court, Lord Diplock found that the claim amounted to an abuse of process and described the suit as follows; "*the initiation of proceedings in a court of justice for the purpose of amounting a collateral attack on a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made*…"

26. At paragraph 43-45 of Phipson on Evidence:

*A previous judgment may preclude a subsequent claim in some situations even beyond the extended doctrine of res judicata. Thus a person may be barred from bringing a subsequent claim because he "could and should" have raised it during previous litigation. Further, a person may be barred from bringing a claim which amounts to a "collateral attack" on a previous judgment. Although these two forms of abuse of process share some common elements there are also important differences and they are best discussed separately*…

27. Generally, *res judicata* estoppels apply to legal disputes which have been finally adjudicated upon (as oppose to judgments in default of pleadings, for example) and are conclusive between the parties and their privies. This means that the conclusions made by the first Court cannot properly be re-litigated outside of an appeal scheme to a higher court or tribunal.

28. Wigram VC in <u>*Henderson v Henderson (1843) 3 Hare 100*</u> stated:

"…*where a given matter becomes the subject of litigation in, an of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of (a) matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time*."

29. In the concluding paragraph of the Respondent's written submissions, this Court was invited to make a declaration that the Property is under a constructive trust.

30. I am reminded of the well-known remarks of Edmund-Davies LJ in Carl Zeiss Stiftung v Hermbert Smith & Co. (No.2) [1969] 2 Ch. 276 at 300, CA: "*English law provides no clear and all-embracing definition of a constructive trust. Its boundaries have been left perhaps deliberately vague so as not to restrict the court in technicalities in deciding what the justice of a particular case might demand*." (See also Lewin on Trusts Nineteenth Edition para 7-010).

31. Lord Browne-Wilkinson is reported to have said in *Westdeutsche Landesbank Giroentrale v Islington L.B.C. [1996] A.C. 669 at 705, HL* that the constructive trust is imposed by law by reason of the unconscionable conduct of the legal owner of property. The learned editors of Lewin on Trusts quite rightly state that 'unconscionable conduct' will include instances where the legal owner denies the beneficial interest of another.

## Findings

32. As a primary position on the law, I find that this Court has no legal power to vary the property adjustment order contained in the 2015 Order. Having had regard to the finality of the property adjustment order contained in the 2015 Order and the *res judicata* doctrine against collateral attacks on previous judgments of the Court, I found that the Court was not only empowered but duty bound to strike out the Petition as an abuse of process in exercise of its powers under RSC O.18/19 and/or its inherent jurisdiction.

33. Alternatively, if I erred in finding that I am void of discretionary powers to vary or discharge the property adjustment order; I find that it would be a most improper exercise of any such discretion to make a partition order for the sale of land under the Partition Act 1914. This is because the property adjustment order was made with full regard to all of the factors outlined in section 29 of the 1974 Act.

34. Examining all corners, I have also considered how my discretion would be exercised if the application and relief sought was capable of being made under section 35 of the 1974 Act. (This is without prejudice to my primary findings that the Court has no power under section 35 to vary or discharge an order made under section 28(1)(a)). Notwithstanding, I did not find that the Petitioner discharged his burden on a balance of probabilities in establishing that a partition order would be in the overall best interests of the Children, particularly KCD who is vulnerable and continues to occupy the Property without a visible endpoint.

35. For all of these reasons, I struck out the Petition as an abuse of process in exercise of this Court's powers under RSC O.18/19 and/or under its inherent jurisdiction. However, I do not see it fit to make any declarations on the proprietary status of the Property in the absence of a formal application and full arguments from both sides.

36. I dare to say, as a provisional aside, however, that it appears to me that in these circumstances, a constructive trust by operation of law arises. Under the 2015 Order, the Court appears to have intended for the Property to be held in trust for the sole benefit of the Children but subject to a life tenancy for SD. It also seems that the 2015 Order disposed of the Petitioner's proprietary interest in the Property. The 2015 Order was not set aside and ought not to be overridden merely by the omission or failure of either or both parties to execute the requisite instruments to formalize the trust which was ordered to be put in place.

## Conclusion

37. The Petition was struck out on the grounds of abuse of process.

38. Costs followed the event in favour of the Respondent, to be taxed if not agreed.

Wednesday 25 September 2019

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**HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS**

**PUISNE JUDGE OF THE SUPREME COURT**