

1 **THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**

3 **CAUSE NO. FAM 0122 OF 2018**

4
5 **BETWEEN:**

KH

6 **PETITIONER**

7
8 **AND:**

9 **RH**

10 **RESPONDENT**



11
12 **Appearances:**

**Ms. Sheridan Brooks Q.C. of Brooks & Brooks
for the Petitioner**

14 **Respondent in Person**

15
16 **Before:**

The Hon. Justice Cheryll Richards Q.C.

17
18 **Hearing:**

13th and 23rd September 2019

19
20 **Draft Judgment Circulated:**

7th February 2020

21
22 **HEADNOTE**

23 *Family Law - Final Ancillaries, applicable principles, Inferences to be drawn*
24 *from non-disclosure*

25
26
27 **JUDGMENT**



INTRODUCTION

1. This is an application for a decision on Final Ancillaries following the filing of a Petition for divorce by KH, ("the wife") on the 27th April 2018. The Respondent RH, ("the husband") acknowledged service on the 5th May 2018 and indicated an intention not to defend. The Petition was ordered proved on the 17th May 2018.
2. Both parties are Jamaican nationals. They were married on the 18th December 2006 in Kingston, Jamaica. This is a marriage of some twelve years. The husband is now forty years of age. The wife is four years younger at thirty-six years of age. In 2008 they migrated to the Cayman Islands where the husband, who is a teacher by occupation, had secured employment. At that time the wife did not have a degree in teaching. Over the years she worked periodically at other jobs in schools, including as a Teaching Assistant, before completing her degree in teaching in early 2018.
3. The only child of the marriage is a daughter K who was born on the 27th August 2011. She is now 8 years old and attends a local public school. By Consent Order dated the 11th April 2019, made by Williams J., a sole residence order was made in favour of the wife with flexible contact with K to the husband. The terms and frequency of contact are to be agreed between the parties. By earlier Consent Order made by Carter J. Ag., on the 28th November 2018, the husband pays \$250.00 per month for maintenance of K, and one half of the monthly mortgage, strata fees and household expenses in respect of the former matrimonial home (FMH) at Block 20D Parcel 408H53, Silver Oaks Apartment in George Town, Grand Cayman.

1 4. In March 2018, the husband was granted Permanent Residency (PR) with the right to
2 work. The wife and child were named on his grant as his dependents. Following the
3 service upon him of the divorce Petition in May 2018, the husband advised the
4 Department of Immigration of the breakdown of the marriage. He says that he did so in
5 accordance with his duties under s.30 (19) of the Immigration law. Consequently, the
6 wife has been removed as a dependent of his, while his daughter remains so named.

7
8 5. The husband has two other children in Jamaica, a daughter A, born 13th January 1998,
9 now 22 years old and a son R, born 12th April 2005, now fourteen years old. A is in her
10 final year of tertiary education and R is in High School. These children reside with their
11 mothers in Jamaica and are each supported by the husband.

12
13 6. The wife does not seek spousal maintenance. The issues for determination are:

14 i. The appropriate level of maintenance for the child of the marriage K.

15 ii. The distribution of real property:

16 a. The FMH at Silver Oaks.

17 b. Two single family residences located at Bridgeport, St Catherine
18 Jamaica.

19 c. Property located at Riverside Drive, Harbour View, Jamaica.

20 d. An apartment on property located at Meadowbrook Estate,
21 Kingston, Jamaica.

22 iii. Distributions of pension entitlements and other assets.

23 iv. Distribution of motor vehicles.
24
25
26



1 **THE POSITIONS OF THE PARTIES**

2 7. The single item of agreement between the parties is that each should retain their
3 respective motor vehicles. There are disagreements in all other areas.

4
5 8. The wife's position is that the husband should pay \$800.00 per month for maintenance
6 of K; that subject to the husband paying any arrears of mortgage and strata payments,
7 the FMH should be transferred to her so that she can continue to reside there with K;
8 that the Bridgeport property should be transferred to her solely and if necessary she
9 would pay the husband his share of the equity in the property with both being responsible
10 for any arrears; and that the two other properties be retained by the husband with the
11 equity in each divided equally between them. It is her position that, should the above
12 arrangements be put in place, the respective pension amounts should be divided equally.
13 If the above arrangements are not put in place, her position is that the pension amounts
14 should be divided equally.

15
16 9. The husband's position is that given the level of earnings of the wife and the needs of
17 K., \$500.00 is a reasonable sum for the maintenance of K. He agrees that the FMH and
18 the property at Bridgeport are jointly owned by both of them and should be shared
19 equally between them by one paying the other. He says that the properties at Riverside
20 Drive and Meadowbrook are the properties of his family in Jamaica who have made
21 contributions to them and are not matrimonial property. The Riverside Drive property
22 was sold in early 2018 unknown to the wife and there is much dispute about the
23 circumstances of the acquisition and sale of this property.



1 10. The husband has made offers to resolve the matter. He has suggested to the wife that she
2 should retain the former matrimonial home and he would retain the Bridgeport property.

3
4 11. The wife argues that the husband's offer fails to take account of the fact that all the
5 properties are in fact matrimonial property and that it denies her the option of having an
6 income generating property in Jamaica which can be used by her to assist with the
7 maintenance of K presently and, even more so, once the mortgage payments are
8 completed. It is her position as suggested to the husband in cross examination that it
9 would be fair for her to have the Bridgeport property so that she would have an income-
10 producing property as he does. The husband counters with the fact that the mortgage
11 payments will not be completed until 2038 and that presently the surplus income after
12 the rental amounts are put towards the mortgage is about CI\$60.00.

13
14 12. With respect to pensions and other assets, including motor vehicles, the husband's
15 position is that each should retain their respective assets.
16

17 **THE STATUTORY PROVISIONS**

18 13. The Court's powers in respect of these ancillary proceedings are contained in s.19 and
19 s.21 of the *Matrimonial Causes Law* (2005 Revision).
20

21 14. Section 19 provides that in dealing with all ancillary matters arising under this Law, the
22 Court shall have regard, first of all, to the best interests of any children of a marriage
23 and, thereafter, to the responsibilities, needs, financial and other resources, actual and
24 potential earning power and the deserts of the parties.
25



1 15. Section 21 provides that at the time of pronouncing a decree under this Law, the Court
2 shall, as appropriate, make orders for:

- 3
- 4 “ (a) *the custody, care and control of the children of the marriage;*
5 (b) *the disposition of matrimonial property, including the matrimonial*
6 *home;*
7 (c) *varying any settlement of the property of the spouses made in*
8 *consideration of the marriage, whether such settlement was made*
9 *before or upon the treaty of the said marriage.*
10 (d) *varying any other settlement of matrimonial property;*
11 (e) *making financial provision from the property of either spouse for*
12 *the children of the marriage and for the other spouse;*
13 (f) *providing for periodic payments to be made by either spouse for the*
14 *benefit of the children of the marriage and for the other spouse; and*
15 (g) *costs.”*
16

17 16. The subsections which are most relevant to this application are (b) and (e).

18

19 17. There is guidance from the Cayman Islands Court of Appeal (CICA) in the case of
20 *McTaggart v. McTaggart*¹ as to the interrelationship between these two provisions of
21 the Law and their application. This includes that a court will need to consider whether
22 having regard to the s.19 factors, an order under s.21(b) of the Law for the disposition
23 of matrimonial property will make appropriate provision for the relevant party with
24 regard to their needs, the level of compensation and sharing. If disposition of
25 matrimonial property will not allow for the appropriate provision to be made, then the
26 court should go on to consider whether to make an order under s.21(e) that financial
27 provision be made from the property of either spouse. A court should not make an order
28 for periodic payments under s. 21(f) without good reason. Such good reason would arise

¹ *McTaggart v. McTaggart* [2011] (2) CILR 390



1 where the combination of orders under s.21(b) and (e) are insufficient to satisfy the three
2 strands of need, compensation and sharing².

3
4 18. Additionally the appellate Court made it clear that although the s.19 factors are less
5 extensive than those in England and Wales, in the *Matrimonial Cause Act 1973* as
6 amended by the *Matrimonial and Family Proceedings Act 1984*, the approach in the
7 Cayman Islands should be the same as in that jurisdiction.³ A court in exercising its
8 powers under the statutory provisions should therefore consider all the circumstances of
9 a case to include the following:

- 10
11 “(a) the income, earning capacity, property and other financial
12 resources which each of the parties to the marriage has or is likely
13 to have in the foreseeable future, including in the case of earning
14 capacity any increase in that capacity which it would in the opinion
15 of the court be reasonable to expect a party to the marriage to take
16 steps to acquire;
17 (b) the financial needs, obligations and responsibilities which each of
18 the parties to the marriage has or is likely to have in the foreseeable
19 future;
20 (c) the standard of living enjoyed by the family before the breakdown
21 of the marriage;
22 (d) the age of each party to the marriage and the duration of the
23 marriage;
24 (e) any physical or mental disability of either of the parties to the
25 marriage;
26 (f) the contributions which each of the parties has made or is likely in
27 the foreseeable future to make to the welfare of the family, including
28 any contribution by looking after the home or caring for the family;
29 (g) the conduct of each of the parties, if that conduct is such that it
30 would in the opinion of the court be inequitable to disregard it;
31 (h) in the case of proceedings for divorce . . . the value to each of the
32 parties to the marriage of any benefit which, by reason of the
33 dissolution or annulment of the marriage, that party will lose the
34 chance of acquiring.”⁴
35

² *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraphs 42 and 43

³ *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraph 39

⁴ Statutory Factors in England and Wales



1 **APPLICABLE PRINCIPLES**

2 19. In considering the division of matrimonial property pursuant to s.21 of the *Matrimonial*
3 *Causes Law* (2005 Revision) a court should first determine what constitutes matrimonial
4 property.⁵

5
6 20. The leading cases from England and Wales which have been cited with approval in this
7 jurisdiction are the cases of *White and White*⁶ and *Miller v. Miller, McFarlane v.*
8 *McFarlane*.⁷ In *White and White*, Lord Nicholls of Birkenhead stated that fairness
9 requires the court to take into account all the circumstances of the case. The learned
10 Judge under the heading of equality stated:

11 *"But there is one principle of universal application which can be stated with*
12 *confidence. In seeking to achieve a fair outcome, there is no place for discrimination*
13 *between husband and wife and their respective roles. Typically, a husband and wife*
14 *share the activities of earning money, running their home and caring for their*
15 *children. Traditionally, the husband earned the money, and the wife looked after the*
16 *home and the children. This traditional division of labour is no longer the order of*
17 *the day. Frequently both parents work. Sometimes it is the wife who is the money-*
18 *earner, and the husband runs the home and cares for the children during the day.*

19
20 *But whatever the division of labour chosen by the husband and wife, or forced upon*
21 *them by circumstances, fairness requires that this should not prejudice or advantage*
22 *either party when considering paragraph (f), relating to the parties' contributions.*
23 *This is implicit in the very language of paragraph (f): '... the contribution which each*
24 *has made or is likely ... to make to the welfare of the family, including any*
25 *contribution by looking after the home or caring for the family.' If, in their different*
26 *spheres, each contributed equally to the family, then in principle it matters not which*
27 *of them earned the money and built up the assets. There should be no bias in favour*
28 *of the money-earner and against the home-maker and the child-carer."*

29
30
31
32 21. This important principle that there is no place for discrimination between a husband and
33 wife and their respective roles in considering division of financial property was reiterated

⁵ See *Wight v. Wight* [2010] CILR 60 and *McTaggart v. McTaggart* [2011] (2) CILR 390 – paragraph 34, *B-H v. H.* [2009] CILR 185

⁶ [2000] UKHL J1026-3

⁷ [2006] UKHL 24

1 in the case of *Miller v. Miller, McFarlane v. McFarlane*. The homemaker role should
2 be given equal weight. Additionally a court should consider the three strands of need,
3 compensation and sharing which should guide the court in arriving at a fair division of
4 property on the dissolution of a marriage.

5
6 22. In his judgment in that case, Lord Nicholls of Birkenhead stated that fairness requires
7 that when a partnership ends, each partner is entitled to an equal share of the assets of
8 the partnership unless there is good reason to depart from equality. The learned Judge
9 emphasized that the yardstick of equality is not a rule but an aid.⁸

10
11 23. The learned Judge further stated that there is a real difference between matrimonial
12 property and non-matrimonial property and pointed to the difference being the source
13 of the acquisition. Property which is acquired during the marriage otherwise than by
14 inheritance or gift would usually be matrimonial property. Matrimonial property is the
15 “*financial product of the parties’ common endeavor.*” As to the matrimonial home, the
16 Learned Judge said this:



“*The parties’ matrimonial home even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.*”

25 24. The Learned Judge went on to say that the position is different with regard to non-
26 matrimonial property. This is property which the parties bring with them into the
27 marriage or acquire by inheritance or gift during the marriage. With respect to such
28 property, the duration of the marriage may well be relevant although this may take
29 second place to the needs of the parties.

⁸ *Miller v. Miller, McFarlane v. McFarlane* [2006] UKHL 24 - Paragraphs 16 and 17

1 25. In discussing the approach which should be taken to the question of contributions,
2 Baroness Hale of Richmond in her judgment in the said case concluded that these should
3 be approached in much the same way as conduct, to wit that it was of such a level that it
4 would be inequitable to disregard it. The learned Judge stated:

5
6 *“Coleridge J’s words were rightly influential in the later retreat from the concept*
7 *of special contributions in Lambert v. Lambert [2003] Fam 103. It had already been*
8 *made clear in White v. White [2001] 1 AC 596 that domestic and financial*
9 *contributions should be treated equally. Section 25 (2) (f) of the 1973 Act does not*
10 *refer to the contributions which each had made to the parties accumulated wealth*
11 *but to the contributions they have made (and will continue to make) to the welfare*
12 *of the family. Each should be seen as doing their best in their own sphere. Only if*
13 *there is such a disparity in their respective contributions to the welfare of the family*
14 *that it would be inequitable to disregard it should this be taken into account in*
15 *determining their shares.”*⁹
16

17
18 26. In *McTaggart v. McTaggart*¹⁰, the Appellate Court provided guidance as to the way in
19 which a Court should approach the issue of what is matrimonial property under s.21 of
20 the Law:

21 *“It can be seen that the section gives recognition to the concept of*
22 *“matrimonial property.” That concept is not defined in the Matrimonial*
23 *Causes Law, but it is generally understood in the sense described by Lord*
24 *Nicholls of Birkenhead in Miller v. Miller (5), that is to say, it comprises*
25 *“property acquired during the marriage otherwise than by inheritance or*
26 *gift” ([2006] 2 A.C. 618, at para. 22). Its distinguishing feature is that it is*
27 *“the financial product of the parties’ common endeavour”*¹¹
28

29 27. The Court further stated:

30 *“It is necessary therefore to identify those assets which are owned or under*
31 *the control of one or other (or both) of the parties as at the date when the*
32 *order is made and then to identify which of those available assets are*
33 *matrimonial property and so capable of being the subject of an order under*
34 *s.21(b).*¹²

⁹ Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - paragraph 146

¹⁰ [2011] 2 CILR 377

¹¹ McTaggart v. McTaggart, Supra at Page 376

¹² McTaggart v. McTaggart, Supra - Page 390





1 *"There may be cases (of which, as I shall explain, the present provides an*
2 *example in relation to the husband's potential retirement benefits) where an*
3 *asset which did exist at the date of final separation does not exist—or does not*
4 *exist in the same form—at the date of the hearing. In such cases it will be*
5 *necessary to consider whether the former asset can be traced into an after-*
6 *acquired asset which can itself be treated (in whole or in part) as matrimonial*
7 *property; and, if not, whether some other order (say, under s.21(e)) should be*
8 *made to reflect the fact that the former asset has ceased to exist.*

9 *The power conferred under s.21(b) of the Law is a power "to make an order*
10 *for the disposition of matrimonial property." There is no requirement under*
11 *the Law that the disposition should give effect to an equal division of the*
12 *matrimonial property as between the parties; and there is no invariable rule*
13 *that the power should be exercised in a manner which achieves that effect.*
14 *The requirement—imposed by s.19 of the Law—is that, in exercising the*
15 *power, the court shall have regard to "the responsibilities, needs, financial*
16 *and other resources, actual or potential earning power and the deserts of the*
17 *parties." It is plainly open to the court—if, having regard to those factors, it*
18 *thinks it appropriate to do so—to make an order which effects an unequal*
19 *division of the matrimonial property as between the parties. The order made*
20 *in Wight v. Wight (11)—and upheld in this court—provides an example of such*
21 *a case. In Miller (5) ([2006] 2 A.C. 618 at para. 16), Lord Nicholls observed*
22 *that "the yardstick of equality is to be applied as an aid, not a rule." But, as*
23 *Lord Nicholls had pointed out in White v. White (10) ([2001] 1 A.C. 596, at*
24 *605)—in a passage expressly adopted by Lord Cooke of Thorndon (ibid., at*
25 *615)—"as a general guide, equality should be departed from only if, and to*
26 *the extent that, there is good reason for doing so."*
27

28 28. In *Valerie Gordon v. Jefferson Watler*¹³, the Appellate Court stated:

29 *"The correct approach, as I have indicated, was to ask what provision*
30 *should be made for the wife in order to recognise the three strands of need,*
31 *compensation and sharing. If a division of the matrimonial property could*
32 *meet those needs, then it was unnecessary to go further. But if and so far as*
33 *a division of the matrimonial property could not meet those needs, then it*
34 *would be necessary to consider whether to make an order under section 21*
35 *(e) in respect of the husband's other assets."*
36

37
38 29. On the issue of contributions, the Court stated:

39 *"If she were going to take that course, she needed to have in mind the*
40 *observations of the Court of Appeal of England and Wales in Charman v*
41 *Charman (No 4). In the judgment of the court, delivered by Sir Mark Potter,*
42 *President of the Family Division, it was explained (at paragraphs [78]-*
43 *[80]) that special contribution cases were really limited to circumstances in*

¹³ CICA Civil 13/2014- 22nd August 20140

1 which the wealth was so large that there could be no question but that equal
2 division would more than provide for the elements of need and
3 compensation. In such a case it might be appropriate to depart from the
4 principle of equal sharing which would govern normally the approach to
5 the sharing element of the three strands in circumstances where equity
6 required some recognition to be given to the special contribution made by
7 one party or the other. The court referred to the decision of Lord Justice
8 Thorpe in *Lambert v. Lambert* [2002] EWCA Civil 1685, 2003, 1 Fam LR
9 139 at para. [52]; in which it had been pointed out that there may be cases
10 where the product alone justifies the conclusion of a special contribution,
11 but that, absent some exceptional and individual quality in the generator of
12 the fortune, a case for special contribution must be hard to establish....”
13
14

- 15 30. In the case of *B-H v. H*¹⁴, the parties had been married for 12 ½ years and had two
16 children. The issue for the Court was to identify what was matrimonial property in
17 circumstances where each party had brought properties of their own into the marriage
18 and had acquired more thereafter. They had maintained separate financial affairs during
19 the course of the marriage. Foster J. (Actg.) reviewed a number of local and English
20 cases and said this:

21 *“In my opinion, it is clear, both from the remarks made in the various*
22 *authorities and as a matter of common sense, that in determining whether*
23 *particular property is to be considered matrimonial property or the separate*
24 *property of one of the spouses for these purposes, the court must have*
25 *regard to all the circumstances relating to the property concerned. Such*
26 *circumstances include but are not confined to, the circumstances and timing*
27 *of its initial acquisition, the party by whom and how it was acquired, the*
28 *apparent intentions of the parties with regard to and the use of the property*
29 *during the marriage, amongst other factors. For example, it does not, in my*
30 *opinion, automatically follow that just because the property concerned was*
31 *acquired solely by one spouse prior to the marriage, whether by purchase,*
32 *gift or inheritance, and the title remained throughout the marriage in the*
33 *name of that spouse, the property may not nonetheless in some*
34 *circumstances be considered to have become matrimonial property—“put*
35 *into the melting pot of the marriage” (see Levers, J. at first instance in Wight*
36 *v. Wight (10) (2006 CILR 1, at para. 55)).”*
37

¹⁴ [2009] CILR 185





1 31. Foster J. (Actg.) held that the parties had seen their relationship as a partnership and that
2 viewed in that light the three properties brought into the marriage would be categorized
3 as matrimonial assets “*since they had both benefitted from them as matrimonial homes*
4 *and used them to raise money to finance purchase of other property and spent money on*
5 *them and generally treated them as assets for the benefit of both of them.*”
6

7 32. In the case of *Billes v. Anco*¹⁵, the sole issue was whether the husband had an interest in
8 the matrimonial home which had been purchased by the wife with her own funds and
9 was registered in her sole name. She contended that the husband had made no financial
10 contribution towards the purchase and that it had not been acquired by the common
11 endeavor of the parties. Smith J (Actg.) considered that although it had been purchased
12 with the inherited wealth of the wife, it was acquired during the marriage for the welfare
13 the family. Additionally, there was evidence from a pre-nuptial agreement that the
14 parties intended as at the date of separation to share the matrimonial home equally.

15
16 33. I now turn to consider the issues and facts in the instant case with the general principles
17 in mind while noting that each case must be decided on its own facts with the objective
18 being to arrive at financial arrangements which are fair to both parties.
19

20 EVIDENCE IN THE CASE

21 34. It is not disputed that for the most part, the wife was either unemployed or received a
22 much lower income than the husband. In the family, the husband was the main income
23 earner and the wife carried out the important role of home maker. For the duration of
24 the marriage she has taken care of the household without the assistance of a helper. The

¹⁵ [2011] 2 CILR 74

1 evidence is that while the husband did some of the cooking and they would share the
2 ironing chores, the cleaning chores were always her responsibility. With some assistance
3 from the husband, she has taken care of their daughter following her birth and continues
4 to do so. The husband agrees that she is a good mother to K. She will have the primary
5 care of her going forward.
6

7 35. In Jamaica while the husband was employed to a high school, she was employed at a
8 basic school. She describes her salary then as 'meager'. She was unable to and did not
9 contribute financially to their relocation to the Cayman Islands or their shopping trip to
10 the United States made on route. After their arrival in Grand Cayman in August 2008,
11 she was employed between November 2008 and June 2009. She commenced
12 employment again in 2010. This was at a pre-school where she worked until 2016. She
13 earned between \$1000.00 and \$2000.00 per month.

14 36. In 2016 she was employed as an Assistant Teacher and her salary increased. She was
15 able to complete her degree in 2018. She paid for her degree on a monthly basis from
16 her salary and did not have recourse to a student loan. In this it is clear that she was
17 strongly supported by the husband who says that he himself forwent furthering his own
18 education by not pursuing a Master's in education so that she could complete her studies.
19

20 37. The wife states that from her earnings, in addition to paying for her studies she also paid
21 K's school fees at the time and would sometimes send money to assist her mother who
22 is resident in another jurisdiction. She would buy food for the household and on
23 travelling, would purchase supplies for the family. She states that as her salary has
24 increased, she has made more financial contribution to the household. The husband
25 accepts that she did make some financial contribution but said that she spent most of the
26



1 funds which she earned on herself. He agreed in cross examination that had this not
2 been the case, he would have had to provide her with funds for these purposes.

3
4 38. The husband took care of all the household expenses and he it was who made
5 arrangements for the purchase of the various properties, in most cases making down
6 payments through loans from lending institutions and securing long term mortgages for
7 the payment of the balance. The wife acknowledged in her evidence that she made no
8 financial contribution to any of the properties except for the purchase of the Bridgeport
9 property in 2013. The husband's cross examination and submissions focused in many
10 respects on this agreed fact. For the husband's benefit, it might therefore be helpful to
11 advert again to the applicable legal principle as stated in the cited case of *Miller v. Miller*,
12 *McFarlane v. McFarlane*:

13 "150. *More difficult are business or investment assets which have been generated*
14 *solely or mainly by the efforts of one party. The other party has often made*
15 *some contribution to the business, at least in its early days, and has*
16 *continued with her agreed contribution to the welfare of the family (as did*
17 *Mrs Cowan). But in these non-business-partnership, non-family asset cases,*
18 *the bulk of the property has been generated by one party. Does this provide*
19 *a reason for departing from the yardstick of equality? On the one hand is*
20 *the view, already expressed, that commercial and domestic contributions*
21 *are intrinsically incommensurable. It is easy to count the money or property*
22 *which one has acquired. It is impossible to count the value which the other*
23 *has added to their lives together. One is counted in money or money's worth.*
24 *The other is counted in domestic comfort and happiness. If the law is to*
25 *avoid discrimination between the gender roles, it should regard all the*
26 *assets generated in either way during the marriage as family assets to be*
27 *divided equally between them unless some other good reason is shown to do*
28 *otherwise."*
29



30 39. It is against the background of these guiding legal principles that in considering all of
31 the circumstances of this case, I conclude that this marriage was very much a partnership
32 of equals and that it matters not for the purpose of determining whether or not property

1 is matrimonial property, whether the wife made any financial contribution from money
2 separately earned by her to the acquisition of these properties. I also conclude from the
3 circumstances that there is no proper basis to depart from the yard stick of equality in
4 respect of the sharing of any matrimonial property in this case. I do not consider that any
5 financial contribution made by the husband in the context of this case rises to the level
6 where it would be inequitable to disregard it.

7
8 40. Each side accuses the other of some kind of misconduct. The husband accuses the wife
9 of threatening violence, and mentions one incident where she threatened to hit him with
10 a perfume bottle. The wife accuses him of damaging the FMH. She produces pictures
11 and a police report which refers to any damage seen as minor. While I have considered
12 each and every allegation made, overall in considering the conduct of the parties, there
13 was no evidence of any conduct which rises to the level such that it would be inequitable
14 to disregard it. Indeed, neither side focused on these aspects of the Affidavit evidence in
15 the course of cross examination or oral evidence or submissions. To the extent that these
16 accusations bear upon this case they go more to showing the level of acrimony between
17 the parties and the clear need for a clean break.

18
19 41. It appears that matters between the parties came to a crisis point in January 2018. In
20 December of 2017, the husband had the commencement of an unrelated legal case
21 against him. This continued into late 2018. He was suspended from his employment as
22 a result of this but continued to receive his full salary. In the said January 2018, he
23 moved out of the FMH for a short period of time. He had a large legal bill of some
24 \$16,000.00. He indicated to the wife that he could no longer afford to make the financial
25 contributions which he previously made. He did not pay strata or mortgage payments for

1 the FMH for some months. This has led to a continuing dispute between the parties as
2 to who is responsible for these arrears.

3
4 42. He returned to the FMH, shortly after leaving it and both parties continue to reside there
5 in separate rooms. The wife describes his residence as being intermittent. However, in
6 accord with the Consent Orders made, he contributes to one half of the mortgage and
7 other expenses of the household.

8
9 **THE SUBMISSIONS**

10
11 43. By way of general submissions, Counsel on behalf of the wife submitted that the Court
12 in considering the three strands of needs, compensation and sharing, should note that the
13 wife has needs for herself and the minor child K. Counsel submitted that the husband
14 has also demonstrated that in the absence of a Court order he is not prepared to assist the
15 wife and child. This is evident because of the application which the wife had to make
16 when he left the FMH and refused to make any payment. Secondly Counsel asked the
17 Court to consider under the heading of compensation that the wife was the home maker
18 and also contributed funds to household expenses. On the sharing aspect Counsel asked
19 the Court to bear in mind both the actual earnings and potential earnings of the husband.
20 The husband asked the Court to consider each person's ability to pay, the actual needs
21 of K and the extensive contributions which he has made to the acquisition of the
22 properties in question.





1 **IDENTIFYING MATRIMONIAL PROPERTY**

2 **Silver Oaks Apartment (FMH)**

3 44. The FMH at Block 20D Parcel 408H53 (Silver Oaks Apartment) was bought on the 9th
4 April 2015 and is jointly owned by the parties as shown on the property title. In order
5 to purchase the two-bedroom, two-bathroom property, both parties obtained a mortgage
6 from a local bank in the amount of \$123,000.00. In order to complete the purchase, the
7 husband obtained an additional loan of \$13,080.80 in respect of which he paid \$500.00
8 per month for 40 months. The wife started contributing directly to one half of the loan
9 payments in January 2018, seven months before the completion of the additional loan.

10
11 45. The payoff amount on the mortgage as at the date of the hearing was \$111,706.24. A
12 valuation report obtained by both parties subsequent to the hearing shows that as at the
13 25th September 2019, the market value of the unfurnished property is CI\$215,000.00.
14 The potential equity in the home is therefore CI\$104,981.93. The husband has also
15 provided quotations from a local appliance center and a furniture store as at the 26th and
16 27th September 2019 respectively which indicate the approximate costs for *new*
17 appliances and furniture as being \$18,307.00.

18
19 46. There is no dispute between the parties that the FMH constitutes matrimonial property
20 and that they are each entitled to an equal share in the equity in this property.

21
22 47. The wife seeks the property to be transferred to her so that she and K will have a place
23 to live. The husband agrees to this and argues that the value of and equity in this property
24 is greater than that in the Bridgeport property.

1 **Riverside Drive**

2 48. The property at Riverside Drive, Harbour View, Jamaica was purchased for JMD 7.2
3 million in July 2011. A formal valuation report dated 6th October 2010 gave the market
4 value of the property as JMD 8 million. On the purchase, it was registered in the
5 husband's sole name. The wife produced documents indicating that it was advertised
6 for sale in 2018 at a price of US\$107,041.00, or JMD13.5 million. It is a 4-bedroom, 2-
7 bathroom property.

8
9 49. The husband's evidence in relation to this property is that it was purchased with a down
10 payment of some JMD 2 million which money came indirectly from his father. He says
11 that this money had been lent to him by his father in 2008 when he was first travelling
12 to Cayman to commence employment. In 2010 when he was about to repay his father,
13 his father declined to accept the repayment and told him to invest the money in a
14 residential property for the benefit of his grandchildren. The husband further says that
15 in 2018, his father asked him to sell the property because of a need for funds to defray
16 medical and other expenses related to the death of his wife and of his son in law. He sold
17 the property and gave all the money to his father. Some of the funds received were used
18 to defray the costs of work done to the Bridgeport property where amounts were
19 outstanding to workmen.

20
21 50. In cross examination it was suggested to the husband that this sale was in the middle of
22 these proceedings, that he knew that his wife was claiming the property, and, that he
23 nevertheless sold it. He denied this and said that he was served with the divorce Petition
24 on the 1st May 2018. The deposit on the sale of the property was received in February
25 or March of the same year. The sale was therefore effected before the divorce



1 proceedings commenced. He said that he had not known that the wife was going to serve
2 such papers despite being aware that things might not have been going well between
3 them. He said that he did not mention to the wife that he was selling property because it
4 had nothing to do with her. He said that *"from the get go she knew it had nothing to do*
5 *with her or with us. It was for both of my kids"*. His evidence was that the sole reason
6 for the timing of the sale was that his father had some difficulties, with his health, his
7 sister's husband's health, and deaths in the family.

8
9 51. It was suggested to him that he had been less than open about the sale when he had
10 appeared before the Court at the case management stage of this matter and that he had
11 not told the Court about the sale. He replied that he had not been asked whether he had
12 sold the property. He agreed that he had been asked by Mr. Justice Williams if he owned
13 property at Riverside Drive and he had replied that he did not. He then said:

14 *"I did not tell him it was sold. You started mentioning the property so that I had*
15 *made it known that the property is not matrimonial."*
16

17 52. He said that he did not have a Sales Agreement for the property. The sale price was JMD
18 13.5 million although the property had been insured for some 16 million. He explained
19 this discrepancy by saying that in Jamaica, property is usually insured for higher than
20 the actual value because of the 80% insurance recovery rule. He said that there had been
21 a mortgage on the property. He is not sure how much it was. He thinks that he had signed
22 a Power of Attorney either to his father or to the lawyer who handled the sale. He
23 repeated that he did not receive any of the proceeds of that sale.
24
25



1 53. He agreed that his father's name had not been on the property but said that his father had
2 been instrumental in him obtaining the property because of the deposit. Everything had
3 been in his sole name including the rental agreement and the insurance. He said that he
4 could try to obtain a copy of these documents. Subsequent to the hearing he produced
5 documents indicating that a cash offer on the property was received on the 28th March
6 2018 for JMD 13.5 million and a deposit of JMD 2 million had been paid.

7
8 54. His father gave oral evidence that he loaned the husband JMD 2 million dollars in 2008.
9 He said that he loaned him the money so that he "would not suffer" on his arrival in
10 Cayman and would have funds to settle in. At the point of being offered repayment, he
11 asked his son to invest the money in a property for his grandchildren rather than pay him
12 back. He explained that he had provided similar investment support for his daughter so
13 he felt that he should do the same for his son.

14
15 55. When questioned as to how he was able to have this money in the first place, the father
16 explained that he had previously resided and worked in the United Kingdom. Having
17 returned to Jamaica from the United Kingdom, he purchased rental properties. One such
18 property was at Nelson Road in Kingston, a building which had eleven apartments. He
19 sold this property and it was funds from this sale that he had been able to loan his son in
20 2008.



21
22 56. The father gave detailed evidence as to his need for funds in 2018. He himself had
23 medical bills from his fight with cancer. His wife had been ill. She had medical bills
24 which needed to be paid. His son in law became ill. Both his wife and son-in law died
25 in early 2018. This led to more expenses involving the burials. He said that he asked



1 the husband to sell the property and the husband did so, giving him funds. He does not
2 know how much the property was sold for and says that the son handled everything.

3
4 57. The wife's evidence is that the property was in the husband's sole name because of a
5 plan discussed between them to use her benefits by way of a loan entitlement from the
6 National Housing Trust of Jamaica towards the purchase of another property. As the
7 applicable principle for that institution is that such benefits are only paid to persons who
8 own a single home, and the husband did not want her to be on record as owning a
9 property, it was agreed that her name would not be included on the purchase of the
10 Riverside Drive property.

11
12 58. The wife's evidence is that at no point did the husband mention to her that the property
13 was for his father and of his father's statement that it was for his grandchildren. The first
14 time she became aware of this was on reading the Affidavit of his father which was filed
15 in these proceedings. The property was bought for the sole purpose of it being rented.
16 The wife said that she had been involved in the rental of the property because the
17 husband had asked her to do written agreements for some of the tenants. She was not
18 listed as a landlord on these agreements.

19
20 59. In my view, the issue is whether the property falls into the category of matrimonial
21 property such that the wife should receive a percentage of the equity in the home after
22 deduction of any funds paid towards the purchase on behalf of the father.

23
24 60. It was submitted by Counsel on behalf of the wife that it is matrimonial property and
25 was meant to be joint property and that the wife has given an explanation as to the reason
26 for the property being in the sole name of the husband. This was a purchase which was

1 made in 2010/2011 in the middle of the marriage. The presumption is that property is
2 matrimonial property if it is purchased during the marriage. It is urged that one half of
3 the proceeds on the sale of the property should be paid to the wife.

4
5 61. Counsel also pointed to a conflict between the evidence of the father and husband. The
6 husband gave evidence that he would try to obtain a copy of the Power of Attorney used
7 to effect the sale because his father was responsible for the sale. The evidence of the
8 father was that the husband was responsible for the sale and that he himself, has no
9 documents. The father denied knowing whether the wife was fully aware of the situation
10 with respect to the property. In contrast to the statement made in his undated Affidavit
11 filed 14th January 2019, his oral evidence was that he did not know whether she was
12 aware of this and had left it up to the husband as to the information provided to her. The
13 husband claimed in response to Requests for Further and Better Particulars that the father
14 was refusing to provide documents relative to the sale of the property and the disposal
15 of the funds obtained from the sale because this was his private affair. The father in his
16 evidence denied refusing to provide documents and said that his son took care of
17 everything and would have any documentation.

18
19 62. Counsel also drew the Court's attention to a number of emails sent by the husband to the
20 wife about the property. One email sent 10th May 2012 at 8:06 am, began with the
21 comment *"for the mash up house on Harbor drive that Mario took the pictures of.. they*
22 *are having a laugh,"* and copies to her an email about the market value of the property:

23 *"10th May 2012, 12:40pm*

24 *Market value of \$9,140,000.00. The forced sale value is \$7,312,000.00, the building*
25 *alone is valued at \$6,640,000.00*

26 *They might accept an offer of 8.5 million"*

1 63. On the 13th July 2011, at 9:57pm, the husband copied her in on correspondence from an
2 attorney indicating that letters of possession had been received for the property which
3 were to be handed over to him.
4

5 64. Counsel argues that these email discussions by which he was keeping her abreast of
6 ongoing arrangements, show that it was a joint acquisition. It is said that there was no
7 other reason for him to send these emails to her. The only reason he did so was because
8 it was a property being bought by both of them.
9

10 65. Counsel submitted that even if the father is correct as to the loan, any interest he could
11 have in the property would be limited to the extent of the deposit of JMD 2 million which
12 he is said to have provided. There is no documentation to indicate the percentage of the
13 purchase price which this amounted to. Counsel noted that a loan had to be obtained in
14 order to purchase the property and that the rent did not pay all the mortgage. Additional
15 funds would have therefore been required. Any supplemental funds put into the property
16 had to be matrimonial funds and any rental income was matrimonial income.
17

18 66. Counsel further submitted with some force that at the time of the hearing there was a
19 lack of information about the property. There was no evidence as to how much it had
20 been sold for, no documentary material was produced and there was no evidence that the
21 grandchildren received any funds from the property. Requests for Further and Better
22 Particulars including for a schedule of rental income and schedule of disbursements of
23 the proceeds had been refused by the husband on the basis that the documentation was
24 with his father who refused to provide any such documentation. This despite the fact that
25 the property had been registered in the sole name of the husband.



1 67. Counsel submitted that where there is non-disclosure, certain negative inferences can be
2 drawn Reliance was placed on the case of *Glennis Hydes v, Halfrank Hydes*¹⁶, in which
3 Foster J. stated:

4 *"In exercising its discretion pursuant to section 19, of the Law, it is clear*
5 *that where there is general failure by a husband to give full and frank*
6 *disclosure in the course of the case the Court may infer the existence of*
7 *assets denied by such husband to exist or which he has failed to disclose*
8 *(see Baker v. Baker[1995] 2 FLR 829). It is also clear that the Court may*
9 *take into account a husband's earning potential and fundraising capability,*
10 *on the basis of his apparent business acumen exhibited in the past, to make*
11 *a fair and proper provision for a wife. In such a case the Court does not*
12 *have to be in a position to quantify the assets dissipated or the existence of*
13 *which has not been disclosed or denied or to quantify the future prospects*
14 *but may draw on inferences made on this basis for the purpose of making a*
15 *fair and proper division between the parties (see Rye v. Rye [2000] 2 FLR*
16 *981 referred to in B. b. B. [2007] EWHC 594)."*
17

18 68. The husband submitted in reply that the property was bought with money from his father
19 and his evidence was that he kept the wife abreast of arrangements solely out of respect
20 and courtesy. He said that he has no documents to show the mortgage paid on that
21 property.
22

23 69. I accept the submissions of Counsel on behalf of the wife that there were clear
24 inconsistencies in the evidence between father and son. The husband claimed that his
25 father had handled at least some aspects of the sale. The father said it had all been
26 handled by the son. The entirety of these inconsistencies cannot be explained by possibly
27 poor memory on the part of the father. Notwithstanding his age, he presented as an
28 intelligent, coherent and thoughtful gentleman who gave definitive rather than vague
29 answers to questions asked.
30

¹⁶ Cause No. D23/2007, 4th March 2009





1 70. It is unfortunate that there was no evidence up to the time of the hearing to show the
2 actual sale price of the property and how much had been given to the father to defray
3 bills and how much if any funds had been retained by the son.

4
5 71. I did note that the wife was asked more than once in re-examination, what was the
6 intention in relation to this property. She stated that the intention was that the husband
7 would be the sole owner. It was to be registered in his name. She stated that at the time
8 he said to her that he wanted them to get another property in the future. He said that he
9 would get this property now and then in the future they would get others.

10
11 72. In resolving this issue, I considered the evidence of the father with some care. I noted
12 his explanation of how he came to acquire the funds to be able to lend money to the
13 husband in 2008. I also noted that it was agreed by the wife and by daughter A that the
14 husband had in fact lost money in an investment scheme known as Cash Plus, shortly
15 before he was to travel to the Cayman Islands. In these circumstances while the absence
16 of documentary material is noted, I accept that the father did lend him the money as
17 claimed. I also accept the father as a truthful and credible witness when he said that he
18 had told the son to use the funds to make a down payment on a home. In summary, I
19 came away with the distinct impression that funds belonging to the father had in fact
20 been invested in this property.

21
22 73. The timing of the sale of the property was referred to on behalf of the wife as being
23 suspicious. It was suggested to the husband that he had sold the property to avoid it being
24 taken into account as part of these proceedings. The husband denied this. Having
25 assessed both father and son in terms of their credibility, and the father in particular

1 bearing in mind the relationship and possible motive to simply support his son, I accept
2 that the need of the father was the reason for the sale of the property rather than it being
3 an attempt by the husband to circumvent these proceedings. I considered that the un-
4 denied and independently provable fact of the series of difficult circumstances faced by
5 the father in early 2018 supported his credibility on this point. I accept his evidence that
6 there was a need for funds and assessed him to be a credible witness when he says that
7 following the sale, he received funds from the husband.

8
9 74. While the father said he was aged 70 years at the time and would have been unable to
10 obtain a mortgage as a reason why his name would not have been involved with the
11 property, I do find it questionable that there is no mention of the grandchildren in any
12 document produced. The absence of accounting documentation is even more
13 questionable. I considered it significant that the emails which the wife produced do not
14 refer to the house being purchased for the children.

15
16 75. The fact that the subsequent purchase of the Bridgeport property was done with the wife
17 using her NHT benefits to effect the purchase, supports her account and the explanation
18 which she gives. That she was involved by being informed at the stage of the purchase
19 and subsequently dealing with tenants also supports her version of events. I found the
20 wife to be a credible witness on this aspect and preferred her evidence to that of the
21 husband. On balance I think it more likely than not that this was a joint project by the
22 two of them using the father's repayment money as the initial down payment. This would
23 have been some two years after their arrival in the Cayman Islands. There is no indication
24 of any separation between the parties at this time. In considering all the circumstances,
25 I conclude that this purchase was the common endeavor of the parties. My view of the



1 husband is that he likely thought that he could do as he wished because his name was
2 the sole name on the title. His focus throughout this case has been on measuring the
3 financial contribution of the wife.
4

5 76. I also accept the submissions made on behalf of the wife that any additional funds put
6 into this property by the husband constituted matrimonial funds. The property was sold
7 for almost twice the amount of the purchase price in 2010 and thus this must have
8 generated a significant amount following payment of the outstanding mortgage. It is
9 difficult to accept that the husband would not know the mortgage balance and the exact
10 amount received after payment of this.

11
12 77. By Consent Order dated 11th April 2019, the husband was to provide his replies to a
13 Request for Further and Better Particulars by the 2nd May 2019. By Order dated 23rd May
14 2019, which had a penal notice attached, the husband who had failed to provide his
15 replies was ordered to provide such replies by the 30th May 2019. On the 30th May 2019,
16 he provided some replies but not in relation to this particular issue. The inconsistencies
17 in the evidence, the failure to produce a schedule of accounts despite repeated requests
18 from the wife suggest that he is seeking to conceal the sum received. I do draw a negative
19 inference against him in this regard.

20
21 78. The wife is entitled to one half of the amount received by the husband following payment
22 of the outstanding mortgage and deduction of the contribution made by the father by
23 way of the loan repayment. Assessing this as best I can on the information provided, the
24 property was purchased at a price of JMD7.2 million with a down payment of JMD2
25 million contributed by the father, just under one third. It was sold for JMD13.5 million.
26 Allowing for mortgage repayment and thereafter deduction of the amount due to the



1 father of about one third, it is very likely that the husband received some JMD 5 million.
2 Allowing for payment of outstanding invoices for workmen as mentioned above and
3 taking a conservative approach, I would assess the entitlement of the wife as being JMD
4 2 million.

5 **Bridgeport Property**

6 79. This property was purchased in or about July 2013. The market value at the time was JA
7 \$7.8 million. Initially it was a 2-bedroom, 1-bathroom property A single one-bedroom
8 apartment was added to the rear of the property after the purchase. The cost of the
9 addition was approximately CI \$30,000.00 which the husband obtained by way of a loan
10 from the local Credit Union. He has been making loan re- payments of CI\$167.00 per
11 month towards this.

12

13 80. It was initially purchased with two loans. One of these was a loan obtained by the wife
14 using her benefits in the NHT. She had been contributing to the institution by salary
15 deduction in Jamaica and continued to make voluntary contributions while in the
16 Cayman Islands. This meant that she was able to obtain a loan of some JMD4.5 million
17 from that institution to assist with the purchase of the property. The second loan was
18 entered into jointly by the parties with another institution for the balance of the purchase
19 price. The mortgage is for 25 years and is scheduled to end in 2038. It has been rented
20 to tenants since the purchase and the rent pays the mortgage.

21

22 81. The wife says that at first, the husband dealt with the financial aspects of the property
23 but that in 2017 he asked her to take over the management of it. With his agreement, she
24 opened a bank account into which the tenants were to make direct deposits. On the
25 changeover of one of the tenants, she sent the new tenant an agreement which had only

1 her name on it as landlord. The husband complained about this and accused her of fraud
2 in sending out that tenancy agreement. The husband produces a number of past
3 agreements in their joint names and an agreement which is in the sole name of the wife
4 which is dated 1st June 2018. The wife sought to explain in her Affidavit evidence that
5 there was no need for him to make an allegation of fraud because the money for the rent
6 would be paid into the account as agreed between them. I did not find this to be an
7 entirely satisfactory response. I thought it surprising that after several rental agreements
8 in which their names had both been listed as the landlords, the wife should suddenly
9 determine that her name was the only name which should be on the agreement. I was
10 even less impressed with what she did next. Having been contacted by the tenant and
11 advised that the bank had closed the account, she did nothing and did not respond. She
12 said that she saw the message and did not respond because of the accusations made by
13 the husband against her in various correspondence to the tenants. The husband quite
14 rightly asked in the course of the hearing, how she expected the mortgage to be paid if
15 there was no intervention to ensure that the rent was received. He gives evidence that as
16 a result he had to make direct monthly mortgage payments in order to prevent the
17 property from going into foreclosure¹⁷.

18
19 82. CB was called by the husband to give evidence. She is one of the current tenants of the
20 property. Her evidence was that she entered into occupation of the property in February
21 2017 upon signing a rental agreement with the wife and husband as her landlords. For
22 the first eight months or so she was dealing with the husband and would pay the rent to
23 his sister. In November or December 2017, she was told that the wife would be the one
24 handling the tenancy and was given instructions to pay the rent to an account at a bank.

¹⁷ Paragraph 11 of Affidavit dated 5th September 2019

1 She did so until November 2018 when on going into the bank to pay the rent she was
2 unable to do so. She tried to get in contact with the wife to tell her that the account was
3 closed at the bank and was not able to do so. She then made contact with the husband
4 who after a day or two advised her to resume paying the rent to his sister.
5

6 83. The wife's evidence supported by bank documentation is that as at the 6th June 2019,
7 there are presently arrears on this loan of JMD \$149,227.68 and JMD \$175,463.83.
8 These arrears accrued during the period of their disagreement because of the accusations
9 of fraud against her.
10

11 84. All the evidence points to the fact that this property was obtained by way of the common
12 endeavor of the parties. This property constitutes matrimonial property and the parties
13 should share equally in the equity in the property. The outstanding arrears appear to have
14 been accumulated by the neglect of the wife to respond to the account issue raised by
15 the tenant. She should bear responsibility for payment of these arrears.
16

17 **Meadowbrook Apartment**
18

19 85. This wife's evidence is that the Meadowbrook property was purchased in 2017 at a sale
20 price of US \$125,395.40 or JMD 17 million. She asserts that this was bought with
21 matrimonial funds and that the husbands' assertions that it is the property of his family
22 cannot be true as members of the husband's family are not employed except for his sister
23 and do not have sufficient income to be able to assist with the purchase. She asks that
24 the equity in the property be taken into account for the purpose of the distribution of
25 matrimonial assets.



1 86. The husband's evidence is that this property belongs to himself and his family and is not
2 matrimonial property. He stated that in April 2017, he asked the wife to contribute to the
3 purchase of the apartment in Meadowbrook Estate in Kingston, Jamaica and she "*flatly*
4 *refused*". In his Affidavit of 14th January 2019, he says that instead of contributing to
5 the property she said that she would use her funds to go on a cruise which she
6 subsequently did¹⁸.

7
8 87. The wife accepted during her evidence that she refused to become involved in the said
9 purchase. It appeared that she sought to explain her refusal by saying that she was asked
10 to assist before her employment with another employer began and at a time when her
11 salary was only \$1200.00 per month¹⁹. In cross examination the husband drew her
12 attention to a letter exhibited to her Affidavit of 30th August 2019. This is a salary letter
13 dated 3rd January 2019 from that employer which indicated that her employment
14 commenced on the 26th September 2016. The wife then said in evidence that she was not
15 sure when the deposit was made toward the property and the husband had first put the
16 matter to her *before* she got that job. The husband suggested to her that the first time that
17 correspondence was sent to the vendor's attorney on the property was in April 2017 and
18 the wife started working with that employer in 2016.

19
20 88. It was at this point that the wife explained that she refused to become involved with the
21 purchase of the property because there had been a motor vehicle accident in August
22 2017. She and daughter K had been travelling in the only car which the couple owned at
23 the time when the accident occurred. The right front of the vehicle was damaged. She
24 said that she was surprised at the husband's reaction when she told him of the accident.

¹⁸ Paragraph 33

¹⁹ Email sent by wife on the 17th March 2018 at 4:49 pm exhibited to Affidavit of husband dated 11th September 2018, RH6

1 He had not even inquired as to whether they were both unharmed. Instead he told her
2 that she was going to have to repair the car. She felt that he was putting material things
3 over his family. She said that when thereafter he asked her to become involved in the
4 purchasing project, she told him she was not interested. She agreed that the first time she
5 heard about the project was in 2017.

6
7 89. The husband said that he paid the deposit on the property from a loan from the Credit
8 Union. He gave evidence that he had secured the loan in the latter part of 2016. He had
9 then been considering purchasing a different property. That property was not acquired.
10 He kept the money in his account. In April 2017, he saw the property in Meadowbrook.
11 He had \$4,600.00 from that loan and some cash he had, and he made the deposit which
12 he thinks was 10% of the purchase price. He paid the full deposit and was the only one
13 who paid anything in 2017. He was unable to complete the transaction in 2018 due to
14 financial hardship. He approached his family members, being his daughter A, his father
15 and his sister, G. Each paid JMD 200,000.00. The title was registered in the names of all
16 four persons on the 3rd September 2018. It has a 20-year mortgage in the sum of
17 JMD11.615 million which will end in 2038. The recency of the purchase means that
18 there is almost no equity in this property.

19
20 90. The husband's daughter, A was cross examined about her ability to provide JMD
21 200,000.00 when she is a student, in her final year at a University in Jamaica. Her tuition
22 cost for the year is \$246,000.00. She receives US\$500.00 per month from her father.
23 She explained that in addition to attending school full time, she does promotional work,
24 as a brand ambassador for companies. In the summers she does summer jobs after
25 practicums, and also works with Government agencies. In order to help with money, she
26 does cake sales, sells clothing on line, sells customized jewelry and snacks from her

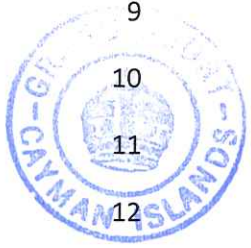


1 home. She says that she does anything that she can find to do. Her major source of
2 income is the money from her father. Her mother also supports her but she cannot
3 quantify this as she resides with her. She uses the money from her father to buy supplies.
4 Last summer she made JMD 55,000.00 working with Government agencies. Her
5 earnings vary, sometimes business is good, and sometimes it is bad. In her best month
6 she would earn JMD 180,000.00 to JMD 190,000.00 inclusive of all income streams.
7 From her earnings she invests in stocks.
8

9 91. She also gave evidence that she was told by her father that he was going to purchase the
10 apartment at Meadowbrook. She asked whether she could be a part of the purchase and
11 whether her name could be on the title for when she gets older. She said that she gave
12 \$200,000.00 to his lawyer. She thinks that this was earlier in 2019. She said that she
13 went to his lawyer's office which is on Oxford road, near to the Branch Library in
14 Kingston and signed a document there.

15
16 92. Counsel for the wife rightly highlighted an inconsistency in the evidence between the
17 husband and daughter in which the husband said that he had asked his family members
18 to assist him because he was in financial difficulty and the daughter said her father did
19 not and would never ask her for money, it was she who asked to be involved in the
20 project.

21
22 93. I accept that this is a clear inconsistency. However, while it may well be explained by
23 the nature of the approach made, whether it was direct or indirect, I did not consider that
24 it affected the important issue which is whether the daughter had the means and in fact
25 contributed to the purchase of the property. I found the daughter to be an entirely credible



1 witness. She appears to be a hardworking young lady who makes every effort to earn
2 what she can. I do not disbelieve that she would have been able to find the \$200,000.00.

3
4 94. Counsel for the wife suggested to her that she was merely returning to the father the
5 money which he had given to her. I think that her hardworking and creative efforts to
6 earn make her contribution far more than that.

7
8 95. The husband's father also gave evidence of contributing \$200,000.00 to this property.
9 While no documentation was produced as to how he could afford this, he explained that
10 in the past, he has invested in purchasing gold coins, which he is able to sell periodically
11 as and when the need arises. While I thought this ability to have funds from this means
12 possibly inconsistent with the need to sell the Riverside Drive property early in 2018, on
13 balance and weighing his evidence, I did not disbelieve him on this point.

14
15 96. It was submitted by Counsel on behalf of the wife that it is not conclusive that the wife
16 indicated that she was not interested in the purchase of the property and that such a
17 declaration does not mean that it is not matrimonial property. Counsel pointed to the fact
18 that notwithstanding the subsequent registration of title in the four names, the husband
19 was the only person listed as the purchaser on the initial documents.

20
21 97. I found the husband's father and daughter to be both credible witnesses. I accept their
22 evidence that they each contributed to the acquisition of the property. I accept the
23 evidence of the husband as to how the property came to be purchased with the loan
24 obtained from the local Credit Union. There is no evidence that the husband used the
25 funds from any joint savings account or other jointly owned asset. The fact that he was
26 faced with costs in relation to the legal issues which he had is supported by invoices
27 produced. These support his claim of what he describes as poor financial circumstances

1 by the time the closing costs and other fees were required to be paid on the property. It
2 is in this context that his claim that he turned to his family for financial assistance is
3 more likely than not to be true. The wife was employed with increased earnings than in
4 the past and could have assisted and chose not to do so. Indeed, she had made it very
5 clear to him that she did not want to be part of it and in essence told him that he was on
6 his own with the purchase of it.

7
8 98. A number of questions arise including as to the intention of the parties themselves and
9 the nature of the funds used to effect the purchase. This was not a property being
10 purchased with the agreement of both or with the intention that it would be used in any
11 way for the benefit of both. The funds used for the purchase came from a loan. The
12 purchase was completed after the separation of the parties with the divorce Petition
13 having been filed in April 2018. I have taken account of all the submissions made by
14 Counsel on behalf of the wife in respect of this matter. I cannot see how in considering
15 the entirety of the circumstances, the purchase of this property can be said to have been
16 the common endeavor of both parties. It is clearly not. I conclude upon weighing all of
17 the evidence that there was no common intention or common endeavour in relation to its
18 acquisition and thus that this property is not matrimonial property.

19
20 99. I conclude that three of the four properties constitute matrimonial property. Only two
21 of these remain available for distribution.

22
23 100. In the absence of agreement between the parties, the powers to be exercised by the Court
24 under section 21 of the Law are to be exercised so as to enable the Court to make

1 financial arrangements which are fair and which have regard as a first consideration to
2 the best interests of any children of a marriage.

3
4 101. In this case, it is in the best interests of K, first and foremost that she should have a stable
5 home. She is settled here and is attending school as a dependent of the father. The wife
6 should not have to search for a rental property to provide housing for her or face the
7 uncertainty of seeking to purchase a new home for them to reside. The provision of
8 stable housing for K. is the primary reason for my conclusion that the wife should with
9 the approval of the mortgagor remain in the FMH and acquire sole ownership of it. I will
10 consider below any payments which she should seek to make and the payment of
11 outstanding fees.

12
13 102. There remains then the Bridgeport property in Jamaica. While the wife seeks an income
14 producing property in Jamaica, there is only one such property available.

15
16 103. It hardly seems to me to be an equitable and fair distribution of the assets of the marriage
17 for the wife to have both of the matrimonial properties which remain.

18
19 104. I conclude that fairness requires that subject to the consent of the mortgagor, the husband
20 should retain the Bridgeport property but this should only be on payment to the wife of
21 one half of the equity in that home, less arrears on the mortgage. Secondly he should pay
22 to her a lump sum being the assessed sum of JMD 2 million in respect of the Riverside
23 Drive property. These payments would ensure that the wife has a lump sum which she
24 would be able to use to purchase an income producing property for herself.

25
26 105. I do note that it is the husband who will have to secure rental accommodation in the
27 Cayman Islands and seek to purchase another home here if he wishes to do so in the



1 future. Based on his higher level of income, despite his greater level of expenses, he
2 will have more resources to do so than the wife. More to the point, given his history of
3 investing in the property markets over the years, he clearly has the capacity and acumen
4 to recover more quickly than the wife.

5
6 **OUTSTANDING STRATA FEES**

7 106. The wife gave evidence that there is an amount of CI\$702.50 outstanding on the strata
8 fees for the FMH as at 29th August 2019 and that this was caused by the husband not
9 paying his half of the strata fees for some time. She states that her half was paid.

10
11 107. The husband's own evidence was that he stopped making strata and mortgage payments
12 because of his legal cost issues. He acknowledges that when he left the FMH in January
13 2018, he ceased to pay all contributions to the home. He said that his case took priority.
14 He asked the wife to "pick up the slack" during this period. He explains in exhibited
15 correspondence that having made all the financial contributions over the years; it was
16 not unreasonable for him to ask this of her. It appears that instead of doing so, the wife
17 filed an application for maintenance in Court which resulted in the second Consent Order
18 mentioned above.

19
20 108. The husband said that as long as supporting documentation is produced he will pay
21 arrears of strata. I accept the evidence of the wife on this aspect and conclude that the
22 husband has outstanding strata bills in the stated sum which he should now pay.



1 **OUTSTANDING MORTGAGE PAYMENTS**

2 109. There is also an amount outstanding on the mortgage for the FMH of \$2,894.81. The
3 wife says that this is because the husband neglected to pay his half of the mortgage over
4 the period of time referenced above. The husband in his oral evidence agreed to non-
5 payment for the reason stated above, but disputed this amount, saying that the figures do
6 not add up. He said that the mortgage of \$950.00 divided by one half for three months
7 would not equate to this and that if as much as a full three months is owed, this must
8 mean that the mortgage arrears are owed by both of them. He expressed a willingness
9 to pay one half of the amount stated. The bank account records subsequently produced
10 by the husband show that on the 27th August 2018, the balance in the savings account
11 which serviced the loan was \$269.91. The wife made deposits as follows:

Year	Date	\$
2018	25 th June	700.00
	25 th July	700.00
	26 th September	350.00
	26 th October	460.00
	28 th November	480.00
	19 th December	500.00
2019	16 th January	500.00
	23 rd January	380.00



12
13 The first deposit into the account other than by her over this period was on the 29th January
14 2019. Six, of these payments, June, July, September, October and December 2018, and
15 January 2019 correspond with receipts produced by the wife. The wife produces a seventh
16 receipt for 24th August 2018 for a deposit of \$475.00 to the loan account of the husband. This
17 is not a deposit to the savings account servicing the loan as are the other deposits and is not
18 reflected in the deposits to that account. Despite this, the factual position from the
19 documentation produced appears to be that other than the deposit made by the wife, between
20 the 25th July 2018 and April 2019, no other payments were made to the account servicing

1 the loan by anyone other than the wife. The carry forward balance on the accounts was
2 insufficient to cover the other half of the mortgage. Correspondence from the bank exhibited
3 to the Affidavit of the husband dated 27th November 2018 indicates that by the 26th October
4 2018, the account was already 2 months in arrears. The records appear to support the wife's
5 contention that the husband made no payments for a period well in excess of three months,
6 hence the cumulative balance. He is therefore responsible for payment of the outstanding
7 arrears of mortgage which are due to his non-payment during 2018 and early 2019. He should
8 now pay this amount.

9 **MAINTENANCE FOR K.**

10 110. The husband earns \$5,573.00 per month. He makes \$1027.00 per month more than the
11 wife who earns \$4,546 .00 per month. He offers to pay \$500.00 per month as
12 maintenance for K which he says that he can afford as it is one half of the excess of his
13 salary. The wife seeks \$800.00 per month. Her evidence is that no proper evaluation of
14 the husband's financial position was made at the time of the making of the Consent
15 Order. The amount of \$250.00 was accepted on the basis that the husband would also be
16 assisting with one half of the other bills. The wife's position is that going forward when
17 this assistance ceases, an increased level of maintenance will be necessary.

18
19 111. In response the husband states that although his earnings are greater than the wife, he
20 has more expenses. He said that he maintains two other children who are in Jamaica as
21 well as his elderly father who is suffering from cancer. His father requires a special diet
22 and a caregiver who has to be paid. While his sister sometimes assists with the care of
23 the father, she has her own challenges in having to care for two autistic children so most
24 of the responsibility falls on him. He points out that the wife does not have such



1 maintenance obligations and says also that he has repayments to make on a loan for a
2 car purchased for the wife in 2015 and will soon have the expense of rental
3 accommodation.
4

5 112. He says that the wife is earning at least 20 times more than the mother of his son in
6 Jamaica and that his daughter K. attends a public school which is almost free, and where
7 the costs are not as high as they would be for a private school. He urges that \$1000.00
8 per month would be a reasonable maintenance for her and that shared equally with the
9 wife, this would be \$500.00 each for her. He said that K's expenses are not greater than
10 \$400.00 per month and her needs do not rise to the level of \$1,600.00 per month.

11
12 113. Counsel on behalf of the wife suggested to him in cross examination that in arriving at
13 the figure of \$800.00, he had taken items from the wife's list of expenses in order to
14 arrive at an amount of \$302.00 which does not actually reflect the amount of money to
15 be spent on her. He agreed that this amount was essentially for K's extra-curricular
16 activities.

17 **THE INCOME AND EXPENSES OF THE HUSBAND**

18 114. The husband was cross examined as to the potential for him to earn extra income. In the
19 past he has been paid a duty allowance of \$500.00. He explained that he used to be paid
20 this amount in 2015 as a subject teacher. However in August 2015, he received a
21 promotion and became a part of the management team. Now he no longer receives a duty
22 allowance and receives a higher salary at a flat rate. It was also suggested to him that he
23 has the ability to provide lessons as a tutor and to make extra income if not now, in the
24 future. He explained that in the past he used to do additional work as a tutor but that
25 going forward as part of the conditions of his resuming employment following his

1 suspension from duties, this is work which he can no longer do. This will not change
2 even if he changes his assignment locations as his employer will remain the same. In
3 contrast the wife does not have a similar restriction and in the past she has and will be
4 able to earn extra income by providing tutorial lessons if she so wishes.
5

6 115. I assessed the husband to be credible and honest on this aspect. He gave some detail as
7 to the legal matters and circumstances surrounding his resumption of employment which
8 make clear the reason for the change in his earning potential. I accept his evidence as
9 truthful in its entirety on this point. I accept that the wife will have the capacity to make
10 extra money while he will not.

11
12 116. The evidence shows that the wife is well on her way to independent living. Following
13 the completion of her degree, she is in a good earning position financially. She has the
14 ability to maintain herself and to contribute towards expenses for K.

15
16 117. While the husband has urged that if the wife remains in the FMH and assumes
17 responsibility for the mortgage payments, he will be the one with increased expenses as
18 in the short term he will have to obtain rental accommodation and in the longer term
19 purchase another property if he is able. I take note that both will have increased expenses
20 as the wife will now have to bear the full cost of the mortgage and all the utility payments
21 for the home.

22
23 118. With an income of \$5,573.00 per month, the husband gives his monthly expenses less
24 contributions to the mortgage and strata fees for the FMH as follows.
25
26
27



1

Monthly Expenses of the husband:

	\$
Groceries	300.00
Water	50.00
Electricity	175.00
School fees for K	65.00
Gas	100.00
Car insurance	55.00
Car licensing	18.00
Phone	100.00
Personal grooming	150.00
Personal loan	167.00
Car loan	386.00
Daughter A	400.00
Son R.	400.00
Father	400.00
Credit card	250.00
Entertainment	150.00
MISC	100.00
	3266.00



2

3

119. To this amount, he seeks to add the amount of \$1400.00 as estimated rental expenses for the month. His total expenses would therefore be \$4,666.00 per month, leaving a possible surplus of \$907.00.

4

5

6

7

120. The husband's evidence as to his additional obligations is supported by evidence from his father and from his daughter A.

8

9

EVIDENCE OF SW

10

11

12

121. SW is the mother of the husband's 14-year-old son. They reside in Jamaica. Her evidence was that each month the husband provides her with US\$500.00 for maintenance for R. She testified that this is given to her by hand by various person,

13

1 friends or strangers sent to her by the husband. Whoever he finds to give it to her, it may
2 be the same person twice but not the same person all the time and that this is done every
3 month in cash. Sometimes he would give the person her number or give her the person's
4 number so that contact could be made and the funds collected. She could not remember
5 the date in December 2018 that she received a payment from the husband but she knows
6 that she received this money every month. Sometimes he pays in advance if he is not
7 going to be available thereafter.

8
9 122. The plans are for the son to migrate to the Cayman Islands to live with his father as he
10 is getting older and needs his influence and educational assistance. These plans which
11 have been made for some time now, have still not been finalised because the husband
12 has to be settled which he presently is not and no educational arrangements have yet
13 been made for the child.

14
15 **EVIDENCE OF THE HUSBAND'S FATHER**



16
17 123. The husband's father also gave evidence. He testified that the husband provides him with
18 US\$500.00 per month. He said that in the past, he would receive US\$400.00 but this has
19 been increased. He uses the money to pay a helper about JMD\$7,000.00 per week. He
20 attested to similar ad hoc delivery arrangements as did the witness SW. He said that he
21 does not receive money from any other source, as his daughter G, does not assist
22 regularly given her circumstances and responsibilities.

23
24 124. On balance I had some difficulty accepting the evidence as plausible that for every single
25 month of twelve out of each year and continuing over a period of years, the husband

1 sends the sum of CI \$1200.00 to three different members of his family in Jamaica. This
2 is not because of the sum stated but because of the alleged method of delivery. All three
3 recipients testified that this was by the hand of different people. The impression is that
4 it would be sent with various persons travelling to Jamaica from the Cayman Islands
5 which seems a less than certain method of delivery. I hope that the reference to this ad
6 hoc route was not designed to avoid the inevitable request for production of receipts had
7 the transfer method been more formal.

8
9 125. Nevertheless, having weighed all the evidence I accept that the husband does have these
10 responsibilities and endeavors to meet them from his income. The wife has mentioned
11 assisting her sisters but does not claim such assistance as being consistent financial
12 obligations which she meets.

13
14 126. Counsel on behalf of the wife drew the sharp distinction between the treatments of those
15 persons by the husband in that his evidence is that he made these payments consistently
16 over 2018 while he ceased making payments for K. and towards the FMH. I note his
17 explanation that he felt that the wife was in a position to meet these payments for a short
18 period given her financial circumstances compared to those of his elderly and ailing
19 father and the lesser financial circumstances of the mothers of his two other children.
20 While it is regrettable that he did not endeavor to meet his obligations here, I do not
21 consider that he was seeking to deny or avoid responsibility on a longer-term basis.

22
23 **THE INCOME AND EXPENSES OF THE WIFE**
24

25 127. With an income of \$4,546.00 per month the wife gives her expenses as follows:
26
27



1 **Monthly Expenses of the Wife:**

	\$
Extracurricular activities for K	107.00 ²⁰
Lunch for K	80.00
Hair Grooming for K	50.00
<i>subtotal</i>	237.00
Groceries/food	400.00
Mortgage	950.00
Strata	320.00
Gas	60.00
Electricity	200.00
Water	50.00
Internet	90.00
<i>subtotal</i>	2070.00
Credit card	400.00
Personal Loan	35.00
AC Servicing	28.00
Car servicing	40.00
Car insurance	70.00
Car license and inspection	20.00
Cell phone	40.00
Personal grooming	150.00
Entertainment	150.00
	3,305.00



2

3 128. In cross - examination, the husband highlighted that over the course of her Affidavit

4 evidence which she had provided on three occasions the wife has given different

5 amounts for the servicing of her car. She has also not provided any credit card statements

6 to evidence the claimed expenditure. He drew attention to the fact that she had initially

7 claimed cell phone use of \$25.00 and had increased this figure to \$40.00. The wife

8 explained that this was due to her having initially omitted the amount for internet data

9 on her phone.

²⁰ (The total of \$65.00, \$17 .00, and \$25.00)

1 129. Despite receiving an increase on her salary in late September 2018 or thereabouts, the
2 wife filed an Affidavit on the 19th November 2018, in which she gave her salary as being
3 at the original contractual figure rather than the correct figure at the time (She claimed a
4 salary of \$ 4,329.00 per month since September 2018).

5
6 130. She was cross examined and asked to explain why it was that on her statement of means
7 form C10 filed in Court on the 16th January 2018, she had given the balance in her bank
8 account as CI\$270.00 when the bank record which she subsequently produced showed
9 the balance at that date as \$2175.00. She acknowledged that the latter was the correct
10 balance and sought to explain that she did not deliberately lie to the Court but that the
11 “banks have their way of doing their figures in giving statements”. She acknowledged
12 that she had failed to provide her Credit Union savings account records although she had
13 been asked to provide them. She said that these had been requested but had not been
14 received from the institution. She had received some documents but the annual records
15 were not in the correct order.



16
17 131. I considered all of the discrepancies highlighted by the husband but did not find that they
18 were of such a nature as to cast doubt on the level of expenditure claimed by the wife or
19 on the amount of her savings.

20
21 132. With respect to the level of maintenance for K which she seeks, Counsel on her behalf
22 submits that the husband is currently paying one half of the household expenses, of some
23 \$785.00 per month. This will cease on the conclusion of these proceedings which will
24 be amount to less expenditure for him. It was also submitted that the wife's agreement
25 for him to pay \$500.00 on which the husband seeks to rely was made at the time that his

1 legal case was on going and that this was specifically referenced in the correspondence.
2 Copies of this correspondence has been provided in the trial bundle and support the
3 wife's contention.
4

5 133. In assessing the level of maintenance which should be set for K. I note that while the
6 husband has more expenses and responsibilities, his income is greater and he still has a
7 surplus at the end of each month. I have concluded that each has the ability and should
8 contribute to her maintenance in an equal proportion.

9
10 134. K requires shelter, food, clothing, school supplies and access to extracurricular activities.
11 In addition, as and when they arise there will be costs for her medical, dental, optical
12 visits over and above those covered by insurance. I have used the figure of one half of
13 the cost of her extra-curricular activities, lunch and hair grooming, which is \$118.50,
14 one half the figure for groceries which is \$200.00 and one half of each of the expenses
15 listed, gas, electricity, water and internet which may be classified as partial housing and
16 shelter expenses, of \$200.00 for a total of \$518.50. To this should be added a small
17 monthly amount of about \$55.00 for one half contribution towards clothing and
18 incidental medical and other expenses over and above those covered by insurance and
19 for entertainment and occasional treats. I therefore assess the monthly maintenance
20 amount to be paid by the husband as \$575.00. In addition, the husband should continue
21 to pay her school fee of \$65.00 as a deduction from his salary as presently obtains. The
22 wife should correspondingly have the responsibility for purchasing any necessary school
23 supplies and uniforms for her. This level of maintenance will leave the husband with a
24 small surplus of \$258.20 for savings which can be augmented by additional savings from
25 his budget.



1 **OUTSTANDING MAINTENANCE PAYMENTS**

2 135. In issue between the parties is whether the husband has an outstanding maintenance
3 payment of \$250.00 which should have been paid on the 30th December 2018. The
4 husband's evidence is that he made his first payment in January 2019. The wife's
5 evidence is that he still has not paid the December 2018 payment. I note that in his
6 Affidavit of 26th November 2018²¹, he states that having taken salary advances for
7 November and December 2018 in order to meet his legal fees, he would not receive a
8 salary until January 2019. He said when he paid in January his balance was zero and on
9 every occasion since then that he has paid, this is the balance which demonstrates that
10 there is nothing outstanding.

11
12 136. Given his evidence that he paid one month late and that he did not make a double
13 payment in January, he would have been outstanding by one month. The wife has
14 produced information from the Court's Office that the payments he made are on 18th
15 January, 20th February, 27th March, 29th April, 24th May, 2nd July, 5th August and 26th
16 August 2019. Given that information and the husband's own evidence as to when he
17 began making payments, I conclude that he has an outstanding maintenance payment of
18 \$250.00 which he should now pay.

19
20 **PENSION ENTITLEMENTS AND OTHER ASSETS**

21 137. Other than pension entitlements, there is no evidence that either party has any substantial
22 savings or other assets. Account records produced by the husband show that as at 23rd
23 September 2019, the balance in his savings account at the Credit Union was \$2,908.71.
24 Following the hearing the wife produced her savings account records which confirm her

²¹ Paragraph 14



1 balance as at the date of the hearing as being \$5,000.00 and show that as at the 26th
2 September 2019, she had a balance of \$7,619.71, held in two accounts at the said
3 institution. There is no evidence to support the husband's contention that she has
4 \$40,000.00 in savings. Additionally, I note the smaller level of savings of the wife as at
5 the date of separation in early 2018 which is the relevant date for the calculation of
6 amounts to be shared as well as the fact that in in his Affidavit of 14th January 2019 the
7 husband stated:

8 *"51. The Petitioner has been able to save a substantial amount of cash over the past*
9 *few years, due to me paying the mortgage, majority of the bills (up until lately),*
10 *buying K's clothes and paying for her extra-curricular activities.*
11 *52 I am happy for her to keep these funds, although it could be considered*
12 *matrimonial funds."*

13
14 138. As at October 2018, the wife's pension amounts were \$10, 651.09 and \$8,293.02. As at
15 the 16th September 2019, documentation from the husband's pension provider indicates
16 that the husband's pension entitlement is stated to be \$105,927.72. The combined
17 pension of the parties which is to be shared equally is therefore \$124,871.83. The wife's
18 position is that each should retain their respective pensions²². Counsel on her behalf
19 submits that this position is contingent on acceptance of her overall position with respect
20 to matrimonial property and the division of such property.



21
22
23
24

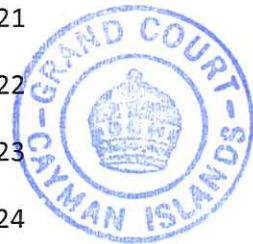
²² Affidavit of 29th August 2019 paragraph 21

1 **CONCLUSION**

2 139. The outstanding issue is whether the wife in acquiring the FMH, (subject to the
3 permission of the mortgagor), should pay to the husband one half the equity in the home.
4 The husband indicated that he is prepared to forego his share of the equity in the home
5 if instead of sharing pension entitlements, each party retains their own pensions. I
6 consider that this is a sensible solution given that the wife does not have access to a lump
7 sum and this will avoid the need for her to seek to secure a loan. It is a fair outcome
8 given that the husband has the larger share of the pension income as well as the fact that
9 the amount of one half of pension entitlement is roughly equivalent to one half of the
10 equity in the unfurnished home together with the possible value of furniture, appliances
11 and fittings.

12
13 140. Having considered the best interests of the child of the marriage, the three strands of
14 needs, compensation and sharing, and all the relevant factors as set out above, the
15 conclusions are as follows:

- 16
17 i. The husband is to pay the sum of \$575.00 as maintenance for K through the
18 Court Funds Office on or before the 28th day of each month commencing on the
19 28th February 2020 and is to continue to pay her school fees of \$65.00 per month
20 or such other sum as may obtain, through his salary deduction. In accordance
21 with section 22 of the Matrimonial Causes Law (2005 Revision), payments are
22 to continue until K reaches the age of 16 years or completes her education up to
23 the age of 21 years, whichever is the later.
24



- 1 ii. Any additional educational expenses and medical, dental and optical expenses
2 for K. not covered by insurance are to be borne equally by the parties.
- 3
4 iii. The husband is to pay the arrears of maintenance for K., in the sum of \$250.00
5 within one month of the date of this judgment.
- 6
7 iv. The husband is to pay the arrears of, strata fees of CI\$702.50 and of mortgage
8 payments of CI\$2,894.81, on the FMH, within one month of the date of this
9 judgment. Thereafter subject to the approval of the mortgagor the house is to be
10 transferred to the wife solely and she is to be responsible for paying all outgoings
11 and expenses related thereto.
- 12
13 v. The husband is to vacate the FMH within one month of the date of this judgment.
- 14
15 vi. Each party is to retain their respective pension entitlements.
- 16
17 vii. Subject to the approval of the mortgagor the Bridgeport property is to be
18 transferred to the husband solely and he is to be responsible for paying the
19 mortgage and all outgoings and expenses related thereto.
- 20
21 viii. The wife is to pay the arrears of mortgage payments on the Bridgeport property
22 of JMD \$149,227.68 and JMD\$175,463.83 by way of a reduction in her share
23 of the equity in the property.
- 24
25 ix. Prior to the said transfer of the Bridgeport property, the husband is to pay to the
26 wife, one half of the equity in the Bridgeport property less the amount of the
27 outstanding arrears within one month of the date of this judgment. In order that
28 the amount of the equity in the property is accurately determined, within seven



1 days of the date of this judgment, the parties are to agree on a Valuer who is to
2 be instructed to provide a valuation of the property and each party is to bear one
3 half the cost of the said valuation. The valuation obtained jointly by the parties
4 is to be used for the calculation of the equity in the property. Alternatively in the
5 absence of agreement as to a Valuer within the time frame specified, the wife is
6 to obtain her own valuation of the said property and is to bear the cost of same.
7 The valuation obtained by her is to be used for the calculation of the equity in
8 the property.

9
10
11 x. The husband is to pay to the wife a lump sum of JMD 2 million which is
12 representative of a percentage of the funds paid by the purchaser in respect of
13 the sale of the Riverside Drive Property. Payment is to be made within one
14 month of the date of this judgment.

15
16 xi. Each party is to retain the title to their respective motor vehicles.

17
18 xii. Each party is to retain the balances in their respective savings accounts.
19

20 **Dated this the 14th day February 2020**

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23 **Honourable Justice Cheryll Richards Q.C.**
24 **Judge of the Grand Court**
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