

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



3 **CAUSE NO: FAM 35 OF 2014**

4
5 **BETWEEN:** **DW**
6
7 **PETITIONER**
8 **AND**
9
10 **WW**
11
12 **RESPONDENT**

13
14 **Appearances:** **Mr. Philip Ebanks of Premier Solutions Group for the Petitioner**
15 **Mrs. Sheridan Brooks Q .C. of Brooks & Brooks for the Respondent**
16
17
18
19 **Before:** **The Hon. Justice Cheryll Richards Q.C.**
20
21
22 **Heard:** **7th - 8th June 2021, 10th June 2021, and 8-11th October 2021**
23
24 **Draft Judgment:** **24th August 2022**
25
26 **Further Submissions:** **2nd September 2022, 24th October 2022, 9th November 2022,**
27 **17th November 2022**
28
29
30

31 **HEADNOTE**

32 *Family Law - Section 19 and 21 of the Matrimonial Causes Act, (2005 Revision),*
33 *Final Ancillaries, Applicable principles.*



JUDGMENT

- 1
2 1. This is a second judgment in respect of a final ancillary hearing following upon the filing of a
3 Petition for divorce. The earlier judgment dated 7th April 2022 considered the issue of the
4 residence of the children of the marriage. It was thereby determined that the two children of
5 the marriage A.N., a daughter aged 14 years old and A.X. a son, 11 years old are to remain in
6 the house in Cayman Brac, the former matrimonial home (FMH) in the care of the Petitioner
7 (“the husband”).
8
- 9 2. This judgment relates to the identification of matrimonial property and the division of any such
10 property. The full details as to the marriage are set out in the earlier judgment. The husband is
11 43 years old. The Respondent (“the wife”) is 42 years old. The relationship between them began
12 in November 2001. Their eldest child was born in November 2003. She passed away in
13 September 2020 after a serious illness. The parties were married on the 30th April 2009. The
14 two younger children were born in 2007 and 2010.
15
- 16 3. The parties initially resided in property belonging to the family of the husband through to
17 October 2011. There was a separation at that time when the wife left the property to reside in
18 rental premises with the children. In mid-2013 the children went to live with the husband. In
19 March 2014 the husband filed for divorce. In June 2014 the husband with the assistance of a
20 mortgage from a local bank completed construction of a two bedroom house in Cayman Brac.
21 He moved into this house with the children. The husband’s evidence is that the house was built
22 so that the children would have a home. In 2015 the parties attempted to reconcile and the wife
23 moved into the house which became their matrimonial home. At the request of the husband the
24 Petition was ordered stayed in February 2015 pending the further action of the parties. The
25 attempt at reconciliation was not successful. In April 2018, a notice of intention to proceed was
26 issued on behalf of the husband. The parties remained in the home but lived in separate rooms.
27
- 28 4. This is thus a marriage of some nine years with an approximate period of separation of four
29 years when the parties lived apart. However, there is a lengthy period of prior cohabitation of
30 some eight years between 2001 and 2009.
31
32
33



1 5. The parties gave evidence on oath in addition to Affidavit evidence which consisted of :

- 2 i. Verifying Affidavit of the husband dated 3rd March 2014.
- 3 ii. Second Affidavit of the husband dated 29th July 2014.
- 4 iii. Affidavit of the husband dated 15th January 2020.
- 5 iv. Updating Affidavit of the husband dated 22nd January 2021.
- 6 v. The wife's Affidavit of Means dated 19th August 2014.
- 7 vi. The wife's updating Affidavit dated 4th February 2021.
- 8 vii. Affidavit of B.S. dated 31st May 2021.
- 9 viii. Supplementary Second Affidavit of the husband dated 15th July 2021.

11 **THE STATUTORY PROVISIONS**

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

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

19
20 8. Section 21 provides that at the time of pronouncing a decree under this Law, the Court shall,
21 as appropriate, make orders for:

22 “(a) *the custody, care and control of the children of the marriage;*

23 “(b) *the disposition of matrimonial property, including the matrimonial home;*

24 “(c) *varying any settlement of the property of the spouses made in*
25 *consideration of the marriage, whether such settlement was made before*
26 *or upon the treaty of the said marriage.*

27



- 1 (d) varying any other settlement of matrimonial property;
- 2 (e) making financial provision from the property of either spouse for the
3 children of the marriage and for the other spouse;
- 4 (f) providing for periodic payments to be made by either spouse for the benefit
5 of the children of the marriage and for the other spouse; and
- 6 (g) costs.”

7 **APPLICABLE PRINCIPLES**

- 8 9. The applicable principles are set out in the judgments of the Cayman Islands Court of Appeal
9 including in the leading case of *McTaggart v. McTaggart*.¹ In considering the division of
10 matrimonial property pursuant to s.21 of the *Act* a court should first determine what constitutes
11 matrimonial property.² A court will need to consider whether having regard to the s.19 factors,
12 an order under s.21(b) of the Law for the disposition of matrimonial property will make
13 appropriate provision for the relevant party with regard to their needs and the level of
14 compensation and sharing. If the disposition of matrimonial property will not allow for the
15 appropriate provision to be made, then the court should go on to consider whether to make an
16 order under s.21(e). This is that financial provision be made from the property of either spouse.
17 A court should not make an order for periodic payments under s.21(f) without good reason.
18 Such good reason would arise where the combination of orders under s.21(b) and (e) are
19 insufficient to satisfy the three strands of need, compensation and sharing.³
20
- 21 10. With regard to the factors to be considered under s.19, the Appellate Court made it clear that
22 although these factors are less extensive than those in England and Wales in the *Matrimonial*
23 *Causes Act 1973* as amended by the *Matrimonial and Family Proceedings Act 1984*, the
24 approach in the Cayman Islands should be the same as in that jurisdiction.⁴ A court in exercising
25 its powers under the statutory provisions should therefore consider all the circumstances of a
26 case to include the following:

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

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

³ *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraphs 42 and 43

⁴ *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraph 39



- 1 “(a) *the income, earning capacity, property and other financial resources*
2 *which each of the parties to the marriage has or is likely to have in the*
3 *foreseeable future, including in the case of earning capacity any increase*
4 *in that capacity which it would in the opinion of the court be reasonable*
5 *to expect a party to the marriage to take steps to acquire;*
6
7 (b) *the financial needs, obligations and responsibilities which each of the*
8 *parties to the marriage has or is likely to have in the foreseeable future;*
9
10 (c) *the standard of living enjoyed by the family before the breakdown of the*
11 *marriage;*
12
13 (d) *the age of each party to the marriage and the duration of the marriage;*
14
15 (e) *any physical or mental disability of either of the parties to the marriage;*
16
17 (f) *the contributions which each of the parties has made or is likely in the*
18 *foreseeable future to make to the welfare of the family, including any*
19 *contribution by looking after the home or caring for the family;*
20
21 (g) *the conduct of each of the parties, if that conduct is such that it would in*
22 *the opinion of the court be inequitable to disregard it;*
23
24 (h) *in the case of proceedings for divorce . . . the value to each of the parties*
25 *to the marriage of any benefit which, by reason of the dissolution or*
26 *annulment of the marriage, that party will lose the chance of acquiring.”⁵*

11. In **McTaggart v. McTaggart**⁶, the Court of Appeal also provided guidance as to the way in which a court should approach the issue of what is matrimonial property under s.21 of the Law:

“It can be seen that the section gives recognition to the concept of “matrimonial property.” That concept is not defined in the Matrimonial Causes Law, but it is generally understood in the sense described by Lord Nicholls of Birkenhead in

⁵ Statutory Factors in England and Wales

⁶ [2011] 2 CILR 377



1 *Miller v. Miller (5)*, that is to say, it comprises “property acquired during the
2 marriage otherwise than by inheritance or gift” ([2006] 2 A.C. 618, at para. 22).
3 Its distinguishing feature is that it is “the financial product of the parties’ common
4 endeavour”⁷

6 12. The Court further stated: -

7 “It is necessary therefore to identify those assets which are owned or under the
8 control of one or other (or both) of the parties as at the date when the order is
9 made and then to identify which of those available assets are matrimonial property
10 and so capable of being the subject of an order under s.21(b).⁸

11 “There may be cases (of which, as I shall explain, the present provides an example
12 in relation to the husband’s potential retirement benefits) where an asset which
13 did exist at the date of final separation does not exist—or does not exist in the same
14 form—at the date of the hearing. In such cases it will be necessary to consider
15 whether the former asset can be traced into an after-acquired asset which can itself
16 be treated (in whole or in part) as matrimonial property; and, if not, whether some
17 other order (say, under s.21(e)) should be made to reflect the fact that the former
18 asset has ceased to exist.

19 The power conferred under s.21(b) of the Law is a power “to make an order for
20 the disposition of matrimonial property.” There is no requirement under the Law
21 that the disposition should give effect to an equal division of the matrimonial
22 property as between the parties; and there is no invariable rule that the power
23 should be exercised in a manner which achieves that effect. The requirement—
24 imposed by s.19 of the Law—is that, in exercising the power, the court shall have
25 regard to “the responsibilities, needs, financial and other resources, actual or
26 potential earning power and the deserts of the parties.” It is plainly open to the
27 court—if, having regard to those factors, it thinks it appropriate to do so—to make
28 an order which effects an unequal division of the matrimonial property as between

⁷ McTaggart v. McTaggart, Supra - Page 376

⁸ McTaggart v. McTaggart, Supra - Page 390



1 *the parties. The order made in Wight v. Wight (11)—and upheld in this court—*
2 *provides an example of such a case. In Miller (5) ([2006] 2 A.C. 618 at para. 16),*
3 *Lord Nicholls observed that “the yardstick of equality is to be applied as an aid,*
4 *not a rule.” But, as Lord Nicholls had pointed out in White v. White (10) ([2001]*
5 *1 A.C. 596, at 605)—in a passage expressly adopted by Lord Cooke of Thorndon*
6 *(ibid., at 615)—“as a general guide, equality should be departed from only if, and*
7 *to the extent that, there is good reason for doing so.”*

8 13. The leading cases from England and Wales which have been cited with approval in this
9 jurisdiction are the cases of *White and White*⁹ and *Miller v. Miller, McFarlane v.*
10 *McFarlane*.¹⁰ In the latter case of *Miller v. Miller, McFarlane v. McFarlane*, the Court said
11 that in considering division of financial property, there is no place for discrimination between
12 a husband and wife and their respective roles. The homemaker role should be given equal
13 weight. A court should consider the three strands of need, compensation and sharing which
14 should guide the court in arriving at a fair division of property on the dissolution of a marriage.

15
16 14. Lord Nicholls in his judgment in that case stated that fairness requires that when a partnership
17 ends each partner is entitled to an equal share of the assets of the partnership unless there is
18 good reason to depart from equality. The learned Judge emphasized that the yardstick of
19 equality is not a rule but an aid.¹¹

20
21 15. The learned Judge further stated that there is a real difference between matrimonial property
22 and non-matrimonial property and pointed to the difference being the source of the acquisition.
23 Property which is acquired during the marriage otherwise than by inheritance or gift would
24 usually be matrimonial property as distinct from other property. Matrimonial property is the
25 “*financial product of the parties’ common endeavor.*” As to the matrimonial home, the learned
26 Judge said this:

27 *“The parties’ matrimonial home even if this was brought into the marriage at the*
28 *outset by one of the parties, usually has a central place in any marriage. So it*
29 *should normally be treated as matrimonial property for this purpose. As already*

⁹ [2000] UKHL J1026-3
¹⁰ [2006] UKHL 24
¹¹ *Miller v. Miller, McFarlane v. McFarlane* [2006] UKHL 24 - Paragraphs 16 and 17



1 *noted, in principle the entitlement of each party to a share of the matrimonial*
2 *property is the same however long or short the marriage may have been.”*

3 16. The learned Judge went on to say that the position is different with regard to non-matrimonial
4 property. This is property which the parties bring with them into the marriage or acquire by
5 inheritance or gift during the marriage. With respect to such property, the duration of the
6 marriage may well be relevant although this may take second place to the needs of the parties.

7
8 17. In discussing the import of the duration of the marriage, Baroness Hale of Richmond in a
9 judgment in the said case stated that it is recognized that where the starting premise is separate
10 property, there is still some scope for one party to acquire and retain separate property which
11 is not to be shared equally between them. The learned Judge said that in such cases, the nature
12 and source of the property and the way in which the couple have run their lives may be
13 considered in deciding how property should be shared¹².

14
15 18. In *Valerie Gordon v. Jefferson Watler*¹³, the Appellate Court stated:

16 *“The correct approach, as I have indicated, was to ask what provision should be*
17 *made for the wife in order to recognise the three strands of need, compensation*
18 *and sharing. If a division of the matrimonial property could meet those needs, then*
19 *it was unnecessary to go further. But if and so far as a division of the matrimonial*
20 *property could not meet those needs, then it would be necessary to consider*
21 *whether to make an order under section 21 (e) in respect of the husband’s other*
22 *assets.”*

23 19. In the said case of *McTaggart v. McTaggart*¹⁴, the Appellate Court also provided guidance as
24 to how a court should approach such applications where a primary issue was the date of
25 valuation of assets. The wife sought a share of property acquired after the parties had separated
26 and argued that the after acquired assets were the product of their joint contributions and should
27 be treated in the same way as matrimonial property. The Court held that matrimonial property
28 was to be identified as at the date of separation, but should be assessed on the basis of the values

¹² Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - paragraph 153

¹³ CICA Civil 13/2014- 22nd August 2014

¹⁴ 2011 (2) CILR 395



1 as at the date of allocation. The husband's after acquired assets did not constitute matrimonial
2 property and were not subject to the general principle of equal sharing.

3
4 20. With respect to the general approach, the Court stated:

5 *"It is not, I think, necessary to look further than the decision of the House of Lords*
6 *in Miller (5)—and, in particular, the speeches of Lord Nicholls and Baroness*
7 *Hale—in order to identify the principles. Leaving aside, in this context, the best*
8 *interests of the children (which, as I have said, are paramount), there are three*
9 *strands: need, compensation and sharing ([2006] 2 A.C. 618, at paras. 10–16 (per*
10 *Lord Nicholls); and at paras. 138–143 (per Baroness Hale)). The ultimate*
11 *objective, as Baroness Hale explained (ibid., at para. 144) is to give each party an*
12 *equal start on the road to independent living. She said this:*

13 *"Thus far, in common with my noble and learned friend, Lord Nicholls of*
14 *Birkenhead, I have identified three principles which might guide the court in*
15 *making an award: need (generously interpreted), compensation, and sharing. I*
16 *agree that there cannot be a hard and fast rule about whether one starts with equal*
17 *sharing and departs if need or compensation supply a reason to do so, or whether*
18 *one starts with need and compensation and shares the balance. Much will depend*
19 *upon how far future income is to be shared as well as current assets. In general, it*
20 *can be assumed that the marital partnership does not stay alive for the purpose of*
21 *sharing future resources unless this is justified by need or compensation. The*
22 *ultimate objective is to give each party an equal start on the road to independent*
23 *living."*

24 ...
25 43

26 *It seems to me reasonably clear (and I would so hold) that, if satisfied that an order*
27 *under s.21(b) of the Law (or the combination of orders under s.21(b) and (e))*
28 *would make appropriate provision for the relevant party in respect of the three*
29 *strands (need, compensation and sharing), the court should not (without good*
30 *reason) make an order for periodic payments under s.21(f). To make an order for*
31 *periodic payments—in circumstances where such an order is unnecessary because*
32 *appropriate provision can be made by the disposition of matrimonial property*
33 *(under s.21(b)) or by a capital adjustment from the separate property of the other*
34 *party (under s.21(e))—would be inconsistent with the principle of the "clean*
35 *break" to which Lord Scarman referred in Minton v. Minton (6) ([1979] A.C. at*
36 *608):*

37 *"There are two principles which inform the modern legislation. One is the*
38 *public interest that spouses, to the extent that their means permit, should*
39 *provide for themselves and their children. But the other—of equal*
40 *importance—is the principle of 'the clean break.' The law now encourages*
41 *spouses to avoid bitterness after family break-down and to settle their*
42 *money and property problems. An object of the modern law is to*
43 *encourage each to put the past behind them and to begin a new life which*
44 *is not over-shadowed by the relationship which has broken down. It would*
45 *be inconsistent with this principle if the court could not make, as between*
the spouses, a genuinely final order. . ."



1 21. I turn now to consider the evidence in this case in line with the statutory framework and with
2 the relevant principles in mind. The best interests of the children is at the forefront of my
3 consideration. I must identify the matrimonial and non-matrimonial assets and consider a fair
4 and equitable distribution of the matrimonial assets in light of the statutory factors taken as a
5 whole and of the three strands of needs, compensation and sharing. If the matrimonial assets
6 are not sufficient to meet the needs, I may then go on to consider whether any further
7 disposition should be made from non-matrimonial property. The desirable aim is for there to
8 be a clean break between the parties if this can be achieved in the circumstances of this case
9 and to give each party an equal start on the road to independent living.

10 **PROPERTIES**

11 22. It is agreed that the main properties which may constitute matrimonial property are the FMH
12 and a house in Honduras (12 A.4 Propriedad Raiz). The FMH is in the joint names of the parties
13 and the house in Honduras is in the name of the husband. An up to date valuation of the FMH
14 has been awaited for some time. On 26th May 2022, the husband provided a valuation which
15 was challenged by Counsel on behalf of the wife. However Counsel has also advised that the
16 wife is not in a position to contribute to the cost of a valuation. Given the time period which
17 has elapsed, it has been determined to proceed using the material available.

18
19 23. As to the house in Honduras, the husband has indicated that he cannot obtain a valuation or up
20 to date documents without travelling to Honduras. It has been agreed that the value at the time
21 of purchase will be used for the purpose of calculations.

22
23 24. The wife's pension balance as at the end of 2019 was on her oral evidence \$7,000.00 which
24 she withdrew and used towards the purchase of her motor vehicle. She presently has no pension
25 entitlements. The husband's pension balance as at the end of the year 2020 was valued at \$82,
26 255.29.

27
28
29
30



1 25. There are very small amounts shown on each of their bank accounts such as to be negligible.
2 Each party has a motor vehicle.

3
4 **THE POSITIONS OF THE PARTIES**

5 26. The husband estimates that the equity in the FMH is about \$16,000.00. He proposed that he
6 would remain in the home with the children and pay to the wife \$10,000.00 which is slightly
7 more than 50% of the equity. This could be used by her to pay a deposit on a home of her own
8 or as rental income for some 18 months.

9
10 27. As to the house in Honduras the husband's position is that he would transfer it into the wife's
11 name. He says that it can be sold for her benefit or alternatively rented to pay the mortgage in
12 the short term. On a longer term basis after the mortgage is paid off, there would be income of
13 \$250.00 per month from renting it which could be used to supplement the wife's income.

14
15 28. The wife's proposal was that the husband should vacate the FMH but continue to pay the
16 mortgage on this until A.X. reaches the age of 18 years or completes full time education.
17 Thereafter the house could be sold and the net proceeds be divided between them. She also
18 sought monthly maintenance for the children. She proposed that the house in Honduras be sold
19 or rented as no one is resident in it.

20
21 29. Both Counsel have been given an opportunity to make any final submissions.

22
23 **IDENTIFYING THE MATRIMONIAL ASSETS**

24 30. Family assets are defined by reference to the landmark case of *Wachtel v. Wachtel*:¹⁵

25 *"It refers to those things which are acquired by one or other or both of the parties,*
26 *with the intention that there should be continuing provision for them and their*
27 *children during their joint lives, and used for the benefit of the family as a whole."*

¹⁵ [1973] Fam. 72



1 31. I remind myself also of the nature of matrimonial assets as discussed by the Court in **Miller v.**
2 **Miller, McFarlane v. McFarlane**. In the case of **B-H v. H**¹⁶, the parties had been married for
3 12 1/2 years and had two children. The issue for the Court was to identify what was matrimonial
4 property in circumstances where each party had brought properties of their own into the
5 marriage and had acquired more during the course of the marriage. They had maintained
6 separate financial affairs during the course of the marriage. Foster J. (Actg.) reviewed a number
7 of local and English cases and said this:

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

23
24 32. In this case, the FMH had a central place in the marriage. This was a home built for the benefit
25 of the children of the marriage. This a marriage of medium term with a longer term prior
26 cohabiting relationship. The husband’s evidence is that he has always discharged the mortgage
27 and outgoings by himself without help from the wife except for a period of approximately six
28 months shortly after the house was built when the wife contributed to the electricity bill. He
29 says that the wife made no contribution to the upkeep of the house.

30
31
32
33

¹⁶ [2009] CILR 185



1 33. The evidence of the wife is that during the course of the marriage she contributed to the
2 household expenses to the best of her ability. She states that in 2014 she was employed to a
3 local restaurant as a bartender/waitress and earned approximately \$750.00 per month together
4 with gratuities. She contributed to the bills until she lost that job and was unable to contribute
5 financially.

6
7 34. While the husband contributed financially, the wife's contribution is reflected in her role as
8 home maker and in her care for the children and family which is of equal weight. The house in
9 Honduras was said to have been purchased by the husband because the eldest daughter fell in
10 love with it. The evidence of the husband is that the wife's mother lived in it rent free for some
11 time and that it would be available for the children to stay when they visited Honduras. It clearly
12 was purchased for the benefit of the family. The pension asset of the husband was earned and
13 accumulated during the time of the relationship and marriage. Indeed, the wife is listed as one
14 of three beneficiaries on it.

15
16 35. I conclude that the matrimonial assets in this case are the FMH, the house in Honduras, pension
17 assets and motor vehicles.

18
19 36. According to the valuer, the estimated value of the FMH is CI\$150,000.00. It is registered in
20 their joint names. This has an existing mortgage which was obtained by the husband from a
21 local bank in the sum of \$141,000.00 over 25 years to June 2036. The mortgage payment of
22 \$977.00 per month commenced in December 2013. As at June 2021 the mortgage balance was
23 \$130,070.51. The estimated equity in the property is about \$20,000.00.

24
25 37. The evidence as to the value of the Honduran property came from the husband. He says that
26 this is worth about US\$20,000.00. He was cross-examined about the document from a bank in
27 Honduras which he produced. He said that this is the first and only document which he has
28 received in respect of the loan to purchase it. He obtained a loan of lempira 440,000.00 after
29 paying lempira 110,000.00. The value of the house at that time was lempira 550,000.00. This
30 is about US\$22,000.00. He was given 15 years to pay off the loan and started paying in October
31 2008. He now pays on a monthly basis lempira 6,008.00, (US\$244.00). He said that he was
32 behind in the mortgage payments as there were months when he did not have the money to pay.

33



1 38. He testified in cross-examination that he did not know whether he would be able to obtain a
2 valuation of the property at this time. Obtaining this would require him to be physically present
3 in that country. He said that he is prepared for the purpose of these proceedings to use the value
4 as it was when he purchased the property.
5

6 **INCOME AND EXPENDITURE OF THE HUSBAND**

7 39. The husband gave evidence that his income is less than his monthly expenses. He said that he
8 struggles to make ends meet. Every month he has to leave something unpaid, for example the
9 mortgage for the house in Honduras. He always tries to balance something. When he is able to
10 earn additional salary for working overtime, this assists with paying the bills. He was cross-
11 examined in detail about his ability to earn from overtime work and to earn from part time
12 employment.
13

14 40. The husband has been in employment with the same entity since 2004. His gross monthly
15 income is \$3,111.48. There are deductions for medical insurance, pension and life insurance.
16 His net pay is \$ 2472.29.

17 **INCOME OF HUSBAND**

		\$	\$
	Gross Pay		3,111.48
	Medical Insurance	353.00	
	Pension	155.57	
	Life Insurance	30.62	
	Savings	100.00	
	Net Pay		2472.29

18
19 41. His evidence is that prior to March 2022 (pre-pandemic) he would earn from overtime work,
20 between \$400.00 and \$700.00 per month. He is also able on occasion to obtain work in the
21 construction industry as a painter. Sometimes he would earn an additional \$500.00 from this.



1 This additional work is dependent on time permitting from his regular job and the availability
2 of such work.

3
4 42. At the request of Counsel for the wife, he produced some of his pay slips. Over a four-month
5 period between November 2019 and March 2020¹⁷ (excluding for December 2019, December
6 being an extraordinary month), the average overtime payment he received was \$687.90.

7
8 43. The husband gave his monthly expenses as below:

9 **MONTHLY EXPENSES OF HUSBAND**

	\$
Mortgage for FMH	977.00
House insurance	143.78
Life insurance	46.00
Food and groceries	700.00
Children's activities	300.00
Clothing for children	50.00
School supplies	25.00
School uniforms	25.00
School lunches	240.00
Electricity	350.00
Cell phone	60.00
Internet	95.00
Netflix	14.00
Water	180.00
Propane gas	15.00
Vehicle Registration and Inspection	13.50
Motor Insurance	36.00
Petrol	175.00
Total	3445.28

¹⁷ Pay slips – 19th March 2022, \$770.14, 17th February 2020 \$643.15, December 2019, \$629.88, 21st November 2019, \$708.45



1 44. When overtime payments are factored in at the average monthly rate, there is a shortfall of
2 \$286.00. Additionally, the expense table which he provided does not include the mortgage
3 payment for the house in Honduras.

4
5 45. The husband has a credit card debt of just over \$1,800.00. Some of the bills which he produced
6 for example, for groceries, water and electricity show balances owing, being carried forward
7 over time with periodic partial payments. Bank account statements up to March 2021 show
8 negligible balances. There are salary deposits which are then immediately used for expenses.
9 A second account shows a small balance most of which is held towards a within share loan
10 leaving a credit balance of about \$200.00.

11

12 **INCOME AND EXPENDITURE OF WIFE**

13 46. The evidence of the wife was that she was then employed to a Government Department doing
14 work on the roads. She earned CI\$10.00 per hour with work hours from 7am to 3pm for a total
15 of \$1,400.00 per month. The employment is not permanent in nature and does not offer pension
16 or health insurance. She supplements her income by making craft items for sale and part time
17 jobs. From one part time job she earns about \$60.00 a month in addition to tips. This is twice
18 a week in the evenings. She will earn another \$60.00 from a part time delivery position working
19 perhaps four hours a week at minimum wage.

20

21 47. She testified that she would spend any monies earned on her own food, personal items, her car
22 and gasoline, when she is able, she sends money to her mother who is overseas.

23

24 **CONSIDERATIONS**

25 48. The first consideration in this matter is the needs of the children of the marriage and what is in
26 their best interest. They require housing and general ongoing maintenance which is sufficient
27 for their day to day, educational and other needs. The husband pays the mortgage on the home
28 and provides funding for their other needs. He is to continue to provide these as the primary
29 and steady income earner. The wife has no steady income and no savings. She will need
30 financial support in order to house herself and the children for the period of time that they
31 reside with her. In the absence of a better paying and permanent job she will need assistance



1 as she begins the process towards independent living. It is reasonable to expect that she will
2 take steps to acquire such a job in the near future, but I bear in mind the evidence that good job
3 opportunities for her skill sets are limited.
4

5 49. There is no evidence that the earning capacity of the husband will increase or decrease in the
6 future. However he is in the better earning position and will be able to supplement his income
7 when part time jobs are available and time permits. In addition to the obligation and
8 responsibility to house and maintain the children, he will have responsibility for a third child
9 with his new partner. The evidence was that his new partner is employed and would be
10 returning to employment following a period after the birth of that child. She may then be in a
11 position to provide some financial assistance to the husband.
12

13 50. Both parties are in their middle years and enjoyed a modest standard of living during their nine
14 year marriage. There is no physical or mental disability on the part of either party. Both have
15 made contributions to the welfare of the family and in the future there will be a shared residence
16 order by which the children will remain in the FMH with the husband. They will spend a part
17 of each week with the wife.
18

19 51. There does not appear to be conduct on the part of either party in this case which rises to the
20 level such that it would be inequitable to disregard it.

21 **CONCLUSIONS**

22 52. In respect of each item identified to be matrimonial property, given the way in which the parties
23 conducted their lives, I can see no good reason in this case to depart from the yard stick of
24 equality.
25

26 53. The wife is therefore entitled to one half the equity in the FMH. Based on the valuation
27 provided, the outstanding mortgage balance and the time which has elapsed, I would estimate
28 this amount to be one half of \$21,000.00. Thus an amount of \$10,500.00 to which the wife is
29 entitled. The husband should arrange for and make payment of this sum to the wife within sixty
30 days of the order arising from this judgment. In tandem, the wife should arrange for and
31 complete the transfer of the FMH into the sole name of the husband.
32



- 1 54. The husband has offered to transfer the Honduran property into the name of the wife. The
2 wife's position is that the property should be sold or rented. It appears that both would struggle
3 to make the mortgage payments. The husband has had difficulty paying the mortgage on
4 occasion. The wife cannot afford to pay the mortgage on her level of income. There is no
5 evidence as to the possible rental income and whether if transferred into the wife's name, the
6 income would be sufficient to pay the mortgage and provide some additional income for the
7 wife at the same time. However, given that the 15 year mortgage was obtained in 2008, it is
8 very close to completion. The husband gives the value of the property as about US\$20,000.00.
9 It was purchased when it was valued at about US\$22,000.00. The parties have agreed to use
10 the value at the time it was purchased. If the husband's offer is accepted, this would provide
11 the wife with an asset from which she would be able earn rental income, after the mortgage
12 payment is completed. She will also have the future option of selling the property if she so
13 wishes. This will be of long term benefit to her and will give her some financial independence.
14
- 15 55. I have considered the further submissions of the parties¹⁸ as to the interim arrangements which
16 are to be made in respect of this property. The concern is the likely inability of the wife to
17 obtain a mortgage even for the small balance which remains outstanding on the property. There
18 is agreement to the making of a hybrid *Mesher* order. The agreement is for the immediate
19 transfer of the property into the names of both parties and for it to be placed on the rental
20 market. The rental income would then be used to defray the outstanding mortgage loan. Upon
21 the youngest child reaching the age of eighteen years or upon completion of the payments on
22 the outstanding mortgage loan, whichever is the earlier event, the property is to be transferred
23 by the husband into the sole name of the wife.
24
- 25 56. Accepting the submissions of both parties, the conclusion is that the husband should transfer
26 the property into the joint names of the wife and himself within six months of the date of the
27 order arising from this judgment. This is an extended timeframe to allow for the necessary
28 arrangements to be made, involving as they do procedures in another country. The husband
29 who has more resources should pay any fees relative to the transfer and ensure on an ongoing
30 basis that any fees, taxes or other expenses in relation to the property are paid. If the house is
31 not rented immediately or there is any break in the rental income, the husband should continue
32 to pay the mortgage until it is discharged.

¹⁸ Written submissions of Petitioner dated 2nd September 2022; Respondent dated 24th October 2022



1 57. In the usual course following upon a determination that matrimonial assets are to be shared
2 equally, the wife would be considered for one half share of the husband’s pension balance.
3 However in this case the wife had her own pension though small and used it to purchase a
4 motor vehicle for herself. She will also receive the Honduran property in full. The amount
5 which she said that she received in respect of her pension is \$7,000.00. One half of this taken
6 together with one half the value of the Honduran property (US\$11,000.00 or CI\$9,240.00),
7 amounts to CI\$12,740.00. For clarification, the reasoning is that the two amounts combined
8 represent added benefit to her over and above the 50% entitlement. This is the rationale for
9 setting off, in calculating her entitlement with respect to the husbands’ pension. The husband’s
10 pension balance as of 31st December 2020 was \$82,255.29. By my calculations deducting
11 \$12,740.00 from one half of this (\$41,887.50) would mean that the wife would be entitled to
12 approximately 35%¹⁹. I have considered the further submissions of both Counsel on this aspect.
13 I accept the submissions of Counsel for the wife that in accordance with the dicta of the Court
14 of Appeal in the case of *McTaggart v McTaggart*, the value of the asset should be assessed on
15 current values as at the date of allocation. I accept also that the wife should benefit from what
16 Counsel describes as “passive” interest paid on 35% of the husband’s pension entitlements.
17 This contrasts with the submission of Counsel for the husband that the wife’s entitlement
18 should be framed as not exceeding a fixed sum.

19
20 58. I have considered the other strands of need and compensation with respect to the wife. The
21 evidence in this case does not suggest that there is relationship-generated disadvantage such
22 that a premium above needs or compensation is required. It is the strand of need which is of
23 significance in this case. I have considered whether some sort of periodic payment should be
24 made to the wife at least in the initial stages until she secures better employment. However, the
25 resources are severely limited. I do not see where the husband would have the ability to make
26 such payments except on an ad hoc basis on occasion when he is able to secure part time
27 employment in the construction industry. The alternative would be to delay payments on certain
28 of his expenses. This is something that he has already been doing to make ends meet. There are
29 no savings on which he can draw. He will have to make financial arrangements to ensure that
30 he will be able to pay to the wife the lump sum of \$10,500.00. Imposing an added monthly
31 financial burden on him at this time may be hard for him and may adversely affect the children

¹⁹ Calculations revised for accuracy on receipt of further submissions of the parties - \$82,255.29 divided by 2 = \$41,887.50 less \$12,740.00, (one half her pension and one-half the value of Honduran property), leaving a balance of \$29,147.50. This is approximately 35 % of the whole.



1 for whom he must provide. The husband should consider it his responsibility to provide the
2 food for the children irrespective of which household they may be residing at a particular time.

3
4 59. The wife will in a short time have a lump sum which she will be able to invest or put towards
5 her own housing accommodation and needs until her employment issues are resolved. She will
6 also have the longer term rental income or the option of selling and receiving the sale proceeds
7 from the Honduran property. If all these sums are carefully managed they would go some
8 significant way towards meeting her needs and placing her on the path to independent living.

9
10 60. Having considered all the evidence and submissions made in this case, some of which I have
11 not detailed herein and having also given due consideration to the general principles in s.19 of
12 *the Matrimonial Causes Act*, to the statutory factors in England and Wales and to the strands
13 of need, compensation and sharing, the conclusions are as follows:

14
15 i) The husband should arrange for and make payment of \$10,500.00 to the wife
16 within sixty days of the order arising from this judgment. This represents one half
17 share of the equity in the FMH.

18
19 ii) The wife should arrange for and complete the transfer of the FMH into the sole
20 name of the husband within sixty days of the order arising from this judgment.

21
22 iii) In relation to the Honduran property:

23
24 a) The Honduran property is to be placed on the rental market within thirty days
25 of the date of the order arising from this judgment.

26
27 b) The rental income is to be used to defray the outstanding mortgage on the
28 property and any fees or expenses relative to it.

29
30 c) During any period in which the property is not rented or in which rental income
31 is not received from the property or there is a shortfall in such income as
32 compared to the monthly mortgage payment due to the bank, the husband is to
33 pay the monthly mortgage payment. He is to continue to do so as the need
34 arises until the mortgage is discharged.

1 d) The husband should arrange for and complete the transfer of the Honduran
2 property into the joint names of himself and the wife within six months of the
3 date of the order arising from this judgment.
4

5 e) Upon the youngest child (A.X.) reaching 18 years of age or upon the discharge
6 of the mortgage, whichever is the earlier event, the husband is to transfer the
7 Honduran property into the sole name of the wife.
8

9 f) The husband is to pay any costs of the transfer of the Honduran property into
10 their joint names and on an going basis, if the rental income is insufficient to
11 meet the expenses for the property or there is no rental income, he is to pay
12 any expenses, taxes or fees relative to the Honduran property until the property
13 is transferred into the sole name of the wife.
14

15 iv) On the basis that it is intended by the Court that the wife will be the sole owner of
16 the Honduran property in due course and has had the sole benefit of her own
17 pension, the wife is entitled to thirty five percent of the husband's pension balance
18 as at the date of the order arising from this judgment. This amount shall be
19 transferred from the husband's Pension Plan to the Pension Plan of the wife within
20 fourteen days of the date of the order arising from this judgment.
21

22 v) Each party shall retain their own motor vehicles and bank account balances.
23

24 **Dated this the 5th day of January 2023**

25 

26 **Honourable Justice Cheryll Richards Q.C.**
27 **Judge of the Grand Court**