IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

FAM 144 OF 2019
(LACV 201/2018)

BETWEEN:

GEORGE WASHINGTON VAUGHAN

Petitioner

-&-

LOIS ADELLE HALL

Respondent

IN CHAMBERS

Appearances:	**Mr James Kennedy of KSG for the Petitioner (appearing via Video-link from HMP Northward)** **Ms Stacy Thompson for the Respondent**
Before:	**The Hon Mr Justice Walters (Actg)**
Heard:	**8 June 2022**
Draft circulated:	**24 June 2022**
Judgment Delivered:	**29 June 2022**

HEADNOTE

Final ancillaries, exercise of discretion under sections 19 and 21 Matrimonial Causes Act as to distribution of matrimonial estate, extent to which party may be denied share based on "obvious and gross" conduct.

JUDGMENT

Summary of background

1. These proceedings were commenced by way of petition dated 17 June 2019 (the "Petition"). The Petition was proved on 20 August 2019. This hearing is to deal with the final ancillary issues as between the parties. The parties were married on 28 January 2006 and have been separated since 27 December 2013 following an assault by the Petitioner on the Respondent.

2. There are no children of the marriage, although both parties have children from previous relationships. The only asset of the marriage is a property in Bodden Town registered with the Cayman Islands Land Registry as Block 44B Parcel 353. The Petitioner is Jamaican by birth and the Respondent is Caymanian. The question for the court is how that asset should be dealt with as between the parties. Both parties are legally aided.

3. Before turning to that question some further background is needed by way of context. Much of this can be drawn from the judgment of Dame Linda Dobbs in indictment number 0085/2014 and delivered on 15 December 2016. The judgment explains that from 2012 to 2014 the marriage deteriorated, culminating in the Defendant being charged with assault and damage to property in December 2013. The Respondent then moved out of the matrimonial home. Sometime in April 2014 the Respondent wrote a letter to the Caymanian Status and Permanent Residency Board in response to an application made by the Petitioner for Caymanian status, relying on his marriage to the Respondent. The Respondent refused to sign the Petitioner's application document on the basis that she had not lived with him since December 2013. On 11 July 2014 the Respondent made a complaint of harassment to the Royal Cayman Islands Police Service ("RCIPS") based on the Petitioner insisting that she sign the application form. Over the next few weeks it appears that the Petitioner persisted in contacting the Respondent. It appears that he found out where she was living and expressed the wish for her to return home so that they could try again. On 11 August 2014 the Petitioner sent a number of messages to the Respondent. He received no response and became increasingly annoyed.

4. On 12 August the Respondent, accompanied by some close friends and three young children went to the former matrimonial home. The Petitioner's car was not present leading the Respondent to believe that he was not home. She parked her car in the driveway and entered the house. She walked into the kitchen and then turned to the bedroom. She saw the Petitioner coming from the bedroom armed with a machete. She turned and ran back towards the front door. The Petitioner chased the Respondent and chopped her in the back of her neck. She felt the floor. He grabbed her by the left leg and chopped again and continued attacking her saying *"You love to run but you're not going to run this time."*

5. The Petitioner later slashed the rear tyres of the Respondent's car and fled into the bush still carrying the machete. He was located by the RCIPS. Beside him was a bottle of green liquid. The Respondent was being treated in hospital and the green liquid was observed oozing from her mouth. It was later

identified as a poison called paraquat. The Petitioner was arrested and on his arrival at the police station started to vomit the same green liquid telling the police that he had drunk paraquat and was immediately taken to hospital.

6. The Petitioner pleaded guilty to attempted murder and was sentenced to 14 years imprisonment. In her judgment Dame Linda Dobbs describes the Respondent's injuries as follows:

> *"A 7- 8 cm long and deep laceration on the left parietal region of the face; lacerations on the right ear and neck; a deep laceration on the back of the right side of the chest in the para-vertebral region; amputation of the left index finger; bone-deep lacerations on the 3rd and 4th fingers of the left hand; partial amputation of both legs and additional lacerations to the head and little left finger. She was also suffering from ingestion of poison."*

7. The Respondent underwent emergency transport for treatment in United States. The Respondent swore an affidavit dated 25 August 2021 exhibiting amongst other things a letter dated 24 February 2015 from Dr Andrew Schneider who treated her. He describes her injuries as follows:

> *"... open fractures of her lower legs involving bilateral tibia and fibulas with significant coexistent soft tissue injury including deep muscular lacerations and multiple peripheral nerve lacerations Mrs Hall-Vaughan also sustained a serious toxic ingestion injury that required prolonged intubation extensive respiratory and psychologic support by the trauma surgeons.*
>
> *[the Respondent] underwent emergent operative treatment for management of the open fractures of the lower extremities including removal of existing external fixated, irrigation and D Brightman of bilateral open fractures of the tibia and fibula and reduction an application of EBI tibial external fixated an extensive soft tissue repair."*

8. In an affidavit dated 25 August 2021 the Respondent explained that the injuries to her left hand has resulted in her permanent inability to use that hand normally. She explains that this has resulted in her not be able to touch type which is, as she describes it, *"... The very essence of my profession as a Corporate Secretary."* She says that her middle finger will never straighten out and her ring and pinky fingers will never bend completely again. She will never again be able to utilise fully all 10 of her fingers. In relation to her legs she says as follows:

"15. My legs were also chopped off by the Petitioner and even after reattachment and five surgeries, I will never be able to walk properly again. I have a permanent limp and one foot is noticeably shorter than the other. I will never be able to jog, swim, ride a bicycle, walk quickly, dance, or things I so love doing that I'll never be able to do again. My doctors have advised me that the incompatibility in the coordination of my gait likely result in me having hip issues as I get older. The toes on my right leg have been adversely affected as they have now turned inwards. I will wear an ankle foot orthotic (AFO) brace to help control the instabilities in my lower limbs for the rest of my natural life. I will never again wear high-heeled shoes. I no longer have sensation on the soles of my feet as my nerve endings there have been permanently destroyed.

16. In the attack I lost a piece of my ear and I am in constant pain from the scars which run from my ear across my neck down my back along my spine and deep in my shoulder muscle most of that shoulder muscle is now nonexistent as a result of the attack."

9. The Petitioner is still serving his sentence and is due to be released early next year. He gave his evidence from prison.

10. There has been some confusion about what happened at the Petitioner's sentencing hearing. There is reference in the judgment dealing with the question of compensation and a suggestion by the judge that compensation had been agreed between the parties and that no order needed to be made. The Respondent says that the question of compensation was a mitigating factor that led, in part, to a reduction in the sentence imposed on the Petitioner. The suggestion is that counsel defending the Petitioner offered compensation in the form of the Petitioner foregoing any interest in the former matrimonial home. The Petitioner has denied that he instructed his counsel to make any such offer and the Petitioner has repeated that position on oath during the course of this hearing. There was also some suggestion that the Petitioner had conceded his interest in the formal matrimonial home during court hearing in these proceedings on 6 September 2019, although, once again, the Petitioner denies that any such concession was made.

11. I referred earlier to the Petition which was filed by the Petitioner, acting in person. Paragraph 7 of the petition stated as follows:

"There is one piece of matrimonial property located at 44B 353 and the Petitioner is willing to sign a Transfer of Property to the Respondent's sole name and makes no claim against same."

12. On 18 July 2019 and amended petition (the "Amended Petition") was filed paragraph 7 was replaced with the following:

"There is one piece of matrimonial property located at 44B 353 and the Petitioner makes a claim of CI$10,000 against such property, being a minimal payment, bearing in mind the total value of the property."

13. During the course of the hearing I raised this with the Petitioner. He said that he had received assistance from a member of the court staff to draft the Petition and the Amended Petition and that although he had signed both the petition and the Amended Petition he has literacy issues and did not fully understand the contents. In view of the continued denial by the Petitioner that he had at any time intended to compromise his rights in relation to the former matrimonial home there was little further progress that could be made based on what may or may not have been intended or said in the past. The Amended Petition does however remain the Petitioner's formal position.

Relevant law

14. Sections 19 and 21 of the Matrimonial Causes Act (2005 Revision) (the "Act") provide as follows:

"19. In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.

21. At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for —
(a) the custody, care and control of the children of the marriage;
(b) the disposition of matrimonial property, including the matrimonial home;
(c) varying any settlement of the property of the spouses made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage.
(d) varying any other settlement of matrimonial property;
(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;
(f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and
(e) costs."

15. The court has a discretion in relation to how to divide matrimonial assets between the parties to the marriage and must take into account the wide array of factors set out in section 21.

The former matrimonial home

16. In this case there was little dispute between the parties as to the history of the former matrimonial home. The land upon which the former matrimonial home is situated was acquired by the parties on 27 September 2006 and financed by way of a loan from First Caribbean International Bank ("FCIB") in the name of the Respondent in the sum of CI$44,000. At all times the mortgage was repaid by the Respondent with the monthly payments being debited to her bank account with FCIB. The most recent mortgage statement exhibited by the Respondent to her affidavit dated 31 May 2022 shows an outstanding balance under the mortgage of approximately CI$10,700.

17. The Petitioner explained when giving his evidence that he had built the former matrimonial home using a variety of materials that he had either bought or acquired. When giving her evidence the Respondent was quite adamant that the Petitioner had never helped with the monthly mortgage payments but had, on occasion, helped with the payment of power bills. The Petitioner suggested that he had in fact given Respondent cash from time to time although his evidence was fairly vague. I am satisfied from the evidence that was given that on the balance of probabilities it is the Respondent who met the substantive financial obligations in relation to the house and the mortgage and that the limited assistance from the Petitioner was in relation to its construction and ocasional power bills.

18. The former matrimonial home was valued by DDL Studio on 27 September 2019 at CI$153,000.

19. The position of the Petitioner in relation to the former matrimonial home is that the court should first identify the matrimonial assets and then consider how they should be distributed in way that is as fair as possible in the circumstances so with a starting point that there should be an equal division of those assets[1]. There is powerful encouragement towards a clean break[2]. There are three essential principles that are relevant; needs, compensation and sharing.

20. The Petitioner says that both parties have housing needs. Whilst the Petitioner is incarcerated at present, apart from his interest in the former matrimonial home, he has no other assets with which to

[1] See e.g. *Whittaker v Whittaker* [2009 CILR Note 10].
[2] See e.g. *McTaggart v McTaggart* [2011 (2) CILR 366].

fund his housing needs. On that basis, his position is that he should receive ½ share of the interest in the form matrimonial home[3].

21. It is suggested on behalf of the Petitioner that the need for housing and the duty of the court to ensure that each of the parties has a roof over their head, is perhaps the most important circumstance to be taken into account in applying section 19 of the Act when the only available asset is the matrimonial home[4]. Counsel for the Petitioner referred to the case of *M v B*[5] in which Thorpe LJ stated as follows:

> *"In all these cases it is one of the paramount consideration is, in applying the s 25 criteria, to endeavour to stretch what is available to cover the need of each for a home, particularly where there are young children involved. Obviously the primary carer need whatever is available to make the main home for the children, but it is of importance, albeit of lesser importance, that the other parent should have a home of his own whether children can enjoy their contact time with him. Of course, there are rare cases where there is not enough to provide a home for either. Of course, there are cases where there is only enough to provide one. But in any case where there is, by stretch and a degree of risk-taking, the possibility of a division to enable both to rehouse themselves, that is an exceptionally important consideration and one which will almost invariably have a decisive impact on outcome."*

22. Much of the time in this hearing has been taken up with consideration of the financial position of the parties and, in particular, the ability of the Respondent to work. The Respondent has given evidence both by way of affidavits and orally. The Respondent who is 61 was employed by the National Roads Authority as the executive secretary to the Board of Directors from 7 November 2005 to 4 September 2017. She explained that despite her efforts to continue to carry out her functions as executive secretary she was unable to carry out many of her basic tasks such as typing, climbing stairs and organising refreshments for meetings. She said that prior to the attack as a typist she could touch type with an accuracy of 98% and at a rate of 100 words per minute. After the loss of her right index finger and the considerable damage to her fingers she was simply unable to continue to type in any efficient way. The damage to her legs and feet has meant that her stability and mobility has been severely impaired thus, again, making it virtually impossible for her to fulfil many of the tasks required of her work. Although the Petitioner was not assessed for retirement on medical grounds she gave evidence to the effect that she had reached a position where she was to be unable to continue

[3] This is despite the contents of the Amended Petition.
[4] *Martin v Martin* [1977] 3 All ER 762.
[5] [1998] 2 FLR 180.

to perform the tasks required of her and therefore felt she had no option other than to resign from her position.

23. Currently the Respondent survives on her pension which is approximately CI$1000 per month. The Respondent has no savings and no other income. Her son lives with her and pays his share of utility bills. It was put to her that she had built an additional room on the former matrimonial home which she was renting out. Her evidence was that the room is occupied by someone who helps maintain her property. That person does not pay rent but does pay utilities.

24. It was also put to the Respondent that she has an interest in some property in Jamaica. A similar issue was put to the Petitioner. In neither case was there any evidence that either had any legal or beneficial interest in any such properties and in the absence of such evidence these are not factors that I feel I can take into account.

25. The Petitioner (who is 51) confirmed in his evidence that he has no other assets apart from the former matrimonial home. In cross examination, he was asked about a pension fund in his name with Silver Thatch Pensions. A statement for the period 1 January 2018 to 31 March 2018 was produced and shown to him. It showed a value for his account at US$33,926. He rightly pointed out that he would not be eligible to draw any benefits from that account for some years.

26. Before being sentenced, the Petitioner had worked for the construction company McAlpine as a carpenter. There is no evidence to suggest that he is suffering from any disabilities or anything that would prevent him from returning to that occupation once he has been released from prison. During the course of giving his evidence, in a somewhat heated exchange with the Respondent, he stated that he had friends or acquaintances keeping an eye on the Respondent. He did not say that in what seemed to me to be a benevolent way but it did suggest that, when he is released from prison, he will have some support from others.

27. I have considered the evidence given by the parties and accepted that during the course of the marriage the Respondent bore the cost of mortgage and the upkeep of the former matrimonial home with little, if any, support from the Petitioner other than the occasional contribution to power bills. I am of the view that the interest claimed by the Petitioner in the former matrimonial home in paragraph 8 of the Amended Petition in the sum of CI$10,000 fairly represents his contribution to the former matrimonial home and his interest in it.

28. The position of the Respondent is that due to the Petitioner's conduct and its effect on the Respondent's ability to earn a living, the court should exercise its discretion and award the full share of the former matrimonial home to her. A number of authorities are cited on the half of the Respondent in relation to how a court should approach the question of conduct in the context of the division of marital assets.

29. In *Miller v Miller*[6] Baroness Hale said the following in relation to conduct in the context of ancillary relief hearings:

> *"145. But once the assets are seen as a pool, and the couple as equal partners, then it is only equitable to take their conduct into account if one has been very much more to blame than the other: in the famous words of Ormrod J in* Wachtel v Wachtel *[1973] Fam 72, at p 80, the conduct had been 'both obvious and gross'. This approach is not only just, it is also the only practicable one. It is simply not possible for any outsider to pick over the events of a marriage and decide who was the more to blame for what went wrong, save in the most obvious and gross cases."*

30. In *FS v JS*[7], Mr Justice Burton considered the question of conduct at some length.

> *"37. It is common ground that for conduct to be taken into account in the assessment of financial provision/property adjustment, either by way of enhancement of the position of the 'innocent' party, or reduction or elimination of the entitlement of the 'guilty' party, such conduct must be exceptional. The statutory provision in s25(2) I have already set out in paragraph 22 above, namely by reference to subsection (g) that the court shall have regard to conduct* "if that conduct is such that it would in the opinion of the court be inequitable to disregard it". *The exceptional nature of this course is referred to by Lord Nicholls in* ***Miller*** *at para 65, and again by Baroness Hale at para 145:*
>
> > "It is only equitable to take their conduct into account if one has been very much more to blame than the other: in the famous words of Ormrod J in Wachtel v Wachtel [1973] Fam 72 at 80 the conduct had been 'both obvious and gross' … It is simply not possible for any outsider to pick

[6] [2006] UKHL 24.
[7] [2006] EWHC EWHC 2793 (Fam).

over the events of a marriage and decide who was the more to blame for what went wrong, save in the most obvious and gross cases."

38. *I have been told by Counsel that there are only rare cases in the reports where this has occurred. I have been taken to what I believe must be all of them. The examples given include:*

i) ***Armstrong v Armstrong*** *[1974] SJ 579: wife shoots husband with his shotgun with intent to endanger life.*
ii) ***Jones v Jones*** *[1976] Fam 8: husband attacks wife with a razor and inflicts serious injuries: there are financial consequences (wife rendered incapable of working).*
iii) ***Bateman v Bateman*** *[1979] 2 WLR 377: wife twice inflicts stab wounds on her husband with a knife.*
iv) ***S v S*** *(1982) 12 Fam Law 183: husband commits incest with children of the family.*
v) ***Hall v Hall*** *[1984] FLR 631: wife stabs husband in the abdomen with a knife.*
vi) ***Kyte v Kyte*** *[1987] 3 AER 1041: wife facilitates the husband's attempted suicide.*
vii) ***Evans v Evans*** *[1989] 1 FLR 351: wife incites others to murder the husband.*
viii) ***K v K*** *[1990] 2 FLR 225: Husband's serious drink problem and "disagreeable" behaviour led to the forced sale of the matrimonial home and serious financial consequences to the wife.*
ix) ***H v H*** *[1994] 2 FLR 801: serious assault and an attempted rape of wife by husband: and financial consequences because the consequent imprisonment of husband destroyed his ability to support her.*
x) ***A v A*** *[1995] 1 FLR 345: husband assaults the wife with a knife.*
xi) ***C v C*** *(Bennett J 12 December 2001 unreported): wife deliberately drugged husband to make him very sleepy and then while he was in a somnolent state placed a bag over his head, which she held in such a way that the husband could not breathe. Although it was found that the wife did not have an intent to kill, Bennett J concluded that the husband did believe that she was trying to kill him, and that her aim was to make him so believe.*
xii) ***Al-Khatib v Masry*** *[2002] 1 FLR 1053: husband guilty of "very grave" misconduct in abducting the children of the marriage in contempt of court.*
xiii) ***H v H*** *[2006] 1 FLR 990: very serious assault by husband on wife with knife, leading to 12 years imprisonment for attempted murder and with financial consequences, namely destroying her Police career.*

39. *As will be seen, it is not suggested that there were any financial consequences from the conduct of which the Applicant complains in this case, which factor may have exacerbated, in the judgment of Scott Baker J, the facts in* ***K v K*** *referred to at (viii) above. However, that case apart, all of the conduct found in those cases appears*

of manifest seriousness. Apart from the statutory provision, and the words of Ormrod J in ***Wachtel*** *quoted by Baroness Hale above, there is a certain amount of recurrent phraseology:* "If the courts were in these circumstances not to discharge the order, the public might think that we had taken leave of our senses" *(per Balcombe LJ at 355 in* ***Evans*** *at (vii) above): Sir Roger Ormrod in* ***Hall*** *at (v) above describes (at 632) the conduct as* 'gross and obvious' which has "nothing to do with the ordinary run of fighting and quarrelling in an unhappy marriage" *and which the judge's* "sense of justice required to be taken into account": *Bennett J in* ***C*** *at (xi) above, asks whether* "it would be repugnant to any sense of justice for the wife to receive any award at all". *Mr Mostyn QC pointed to the words of Sir George Baker P in* ***W v W*** *[1976] Fam 107 at 110D when he referred to the sort of conduct which would cause the ordinary mortal to throw up his hands and* say "... surely that woman is not going to get a full award": *and, in the course of submissions, he suggested a test of applying what he called the 'gasp factor'.*

40. *There is no real guidance as to what would be the effect if I concluded that there has been such conduct by the Respondent as it would* be "inequitable to disregard"*: it is described by Mr Mostyn QC as a* "moral test involving no particular science". *The exercise of such a sweeping power, which could deprive a party of all entitlement, or multiply or magnify what would otherwise be the entitlement of the other party, is of concern to me. It seems to me that the use of what Coleridge J has, in the context of other adjustments that fall to be made pursuant to s25, called* "the sharp carving knife rather than the salami slicer" *(****Charman v Charman*** *[2006] EWHC 1879 (Fam) at para 125) ought to be regulated by guidance, such as has for example been given in relation to such much less drastic jurisdictions as the grant of exemplary damages (e.g.* ***Thompson v Commissioner of Police of the Metropolis*** *[1998] QB 498 CA) or of damages for injury to feelings in discrimination cases (****Vento v Chief Constable of West Yorkshire Police [No 2]*** *[2003] ICR 318 CA). In the 'conduct' cases I have referred to above, substantial increases and decreases of entitlement have been made without particular justification. I have been shown by Counsel two modern approaches of first instance judges, though with the caveat that they may neither of them comply with what the court is intended to do under s25. The approach of Munby J in* ***Al-Khatib***

at 105-7 and 123-6 ((xii) above) was to be persuaded that the husband's conduct could - though in the event it did not - drive him to "the very top end of the applicable discretionary bracket applicable to the case". *Coleridge J in* ***H v H*** *[2005] ((xiii) above) put his conclusion in this way:*

> "43. … it is, in my judgment, essential when considering this case to appreciate the gravity of the conduct which is involved. [Counsel for the wife] says that this is conduct at the very top end of the scale under subs(g). He says he cannot imagine anything worse short of actually having murdered the wife. I am inclined to agree with him about that.
> 44. How is the court to have regard to his conduct in a meaningful way? I agree with [Counsel for the husband] that the court should not be punitive or confiscatory for its own sake. I, therefore, consider that the proper way to have regard to the conduct is as a potentially magnifying factor when considering the wife's position under the other subsections and criteria. It is the glass through which the other factors are considered.""

41. *Concluding his review of the question of conduct in FS v JS, Burton J sais as follows:*

> *"If I had been satisfied that he had deliberately smashed her head against the shower pole, that might have had an effect on my conclusion, but I am not satisfied: indeed I am satisfied that he did not do so. It is plain that the Respondent was indeed absolutely furious, and that he did assault her by hitting her several times when she was lying on the floor in the middle of the room. However, although the whole sad history of the marriage, which I have sketched, and which Judge Hughes made unavailing attempts to save, may leave me with what might be called a 'gulp factor', arising out of what each of these two parties did to each other, verbally and physically, I am not left with Mr Mostyn QC's 'gasp factor'. I do not conclude that the conduct of the Respondent on the 27 December was such that it would be inequitable to disregard it in making my orders as to proper financial provision."*

31. The English cases mentioned above[8] deal with the wording of section 25 of the English Matrimonial Causes Act 1973 which refers specifically in section 25 (2) (g) to *"the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it"*. Although that particular wording does not appear in section 19 of the Act, conduct still stands to be considered. *Duty v Duty*[9], *was* a case which involved violent assaults by the husband against the wife

[8] See also the case of *N v N*[8], 19 May 2009 which is a decision of Master Bell in the High Court of Justice of Northern Ireland involving emotional, physical, sexual and financial abuse.
[9] [2002 CILR Note 5].

resulting in her inability to work. At the end of the marriage, the matrimonial home was the only remaining valuable capital asset. the Honourable Chief Justice said:

> *"…in dealing with an application for ancillary relief [under section 19], the court was entitled to take into account,* inter alia, *the deserts of the parties. Its consideration of the deserts of the parties involved an unrestricted obligation and discretion to do what was just between them, including adjusting the award to reflect physical and financial impairment to one party caused by the other's conduct. Conduct in this context was not limited to conduct taking place before the breakdown of the marriage. The court would first assess to what proportion of the matrimonial home the husband was entitled and then to what extent he should be denied it."*

32. In that case the Chief Justice found that the conduct of the husband deprived his wife (who had limited sources of income) of the opportunity to work to support herself. Accordingly, he awarded the wife the home entirely.

33. Conduct is clearly a factor to be taken into account by the court when assessing the fair division of matrimonial assets and it is also important to note the comment of Coleridge J in *H v H* quoted above by Burton J in *FS v JS* to the effect that when approaching this issue the court must not be punitive or confiscatory for its own sake. The question is whether the conduct is "obvious and gross" and whether the effect of the conduct is sufficient to displace what might otherwise be the fair division of the matrimonial assets.

34. There is no dispute between counsel in this case as to the applicable legal principles. As I have mentioned above, the parties had filed affidavits leading up to this hearing and both gave oral evidence. Hearing from the Respondent in person and seeing the physical effect of the attack on her was a sobering experience. In my view, there can be no question that when considering a discretionary bracket in cases of conduct, this case must be at or very close to the top. There is no doubt in my mind that the Petitioner's conduct was obvious and gross, with a stark and striking "gasp" factor. The Respondent was lucky to survive the attack and I have no hesitation in accepting the Respondent's evidence that her injuries are so debilitating that she was unable to continue her former employment with the National Roads Authority and, at her age, does not have any residual

earning capacity with no other sources of income other than her pension. On the contrary, the Petitioner appears to be able bodied, has a trade skill and is 51 years old.

35. In the circumstances, in the exercise of my discretion, I think that it is fair that the former matrimonial home is awarded to the Respondent in its entirety.

36. As both parties are legally aided there is no order for costs. If counsel for the Respondent wishes to address me in relation to any additional orders such as one under the Protection from Domestic Violence Act then she should do so promptly.

Hon Mr Justice Walters
Acting Judge of the Grand Court