

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

3 CAUSE NO. FAM 0032 OF 2019

4
5 BETWEEN:

WP

PETITIONER

6
7 AND:

8 VP

9 RESPONDENT



10
11 Appearances:

Mrs. Sheridan Brooks Q.C. of Brooks &
Brooks for the Petitioner

12
13 Mr. Lindsey Cacho of Cacho & Cacho
14 Attorneys at law for the Respondent

15
16 Before:

The Hon. Justice Cheryll Richards Q.C.

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18 Hearing:

4th September 2019

19
20 Draft Judgment Circulated:

5th February 2020

21
22 **HEADNOTE**

23 *Family Law – Final Ancillaries – Sharing of Matrimonial Assets – Intention of the*
24 *Parties, Common Endeavor*

25
26
27 **JUDGMENT**

1 INTRODUCTION

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1. This matter is before the Court for a decision on final ancillaries following the filing of a Petition for divorce by WP, (“the husband”). By Petition filed on the 7th February 2019, he seeks the dissolution of marriage between himself and VP, (“the wife”), on the basis that the marriage has irretrievably broken down as they have been living separate lives for a period in excess of five years. The wife filed an Acknowledgement of Service on the 20th February 2019 in which she indicated that she did not intend to defend the case. The Petition was ordered proved on the 28th February 2019.

2. The parties have been married for forty two years. They were married on the 22nd June 1977 in George Town, Grand Cayman. The wife was then aged 19 years and the husband aged 23 years. The husband is now over 65 years of age and the wife was 62 years old on the 3rd September 2019. The husband is an electrician by trade and the wife is employed as a clerical officer and part-time school janitor. There are two children of the marriage, a son, G, born 22nd June 1975 and a daughter, N, born 9th November 1976. Both are adults, aged 44 and 43 years respectively. The wife has a third adult child, RH, born 17th December 1986, now aged 33 years old. RH is not the biological child of the husband. He was born from the wife’s relationship with another person, during a period of separation from the husband. However he was raised in the family home, treated as a child of the family and continues to reside there. He is presently unemployed and has no income.

3. The husband is a Jamaican national who met the wife while on vacation here in Grand Cayman. Following their marriage in 1977, the couple initially resided at the home of



1 the wife's parents. Prior to the marriage there was association but not cohabitation as
2 they were in separate rooms in the home of the parents. There have been three periods
3 of separation between the couple. The first followed the incarceration of the husband
4 between 1982 and 1985 for an unrelated driving matter. Shortly after his release from
5 prison and his return to the home of the wife's' parents, the wife moved out of that home
6 with the two children of the marriage who were then aged 11 years and 10 years old
7 respectively. She lived with them in a rented studio apartment. RH was born in
8 December 1986. The couple reconciled after about two years. From rented
9 accommodation, the entire family moved into a mortgaged home in 1989. This is at
10 Registration Section, Lower Valley Block 38B Parcel 372. The parties continue to reside
11 in this home through to the present.

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13 4. The land on which the home was built, together with a partially constructed building,
14 was acquired by the wife shortly before the husband's release from prison. The property
15 was registered in the sole name of the wife on the 2nd May 1986. It continues to be
16 registered in her sole name.

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18 5. The second period of separation was in 2008. Amid accusations of infidelity against the
19 husband, the wife asked him to leave the home and he did. They remained separated for
20 about one year. The husband had previously filed divorce proceedings against the wife
21 on the 18th February 2009. Following their reconciliation, he did not proceed with that
22 application. A notice of discontinuance was eventually filed in those proceedings on the
23 6th February 2019.

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25 6. The third period of separation is presently ongoing with both parties occupying separate
26 rooms in the house. The husband contributes financially to the household but they are



1 not together as man and wife. The husband says that this has been ongoing for some
2 seven years since 2012. The wife says that it is for some eleven years. The issue of
3 disagreement between them has been the level of the husband's financial contributions
4 to the household. The wife being of the view that he "could do better", became frustrated
5 at the lack of consistency of his contributions and sought the assistance of the Summary
6 Court by way of a maintenance hearing. The husband thereafter filed for divorce.

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8 7. The primary issue between the parties is whether the husband has any interest in the
9 home in which they have resided for some 20 years.

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11 **THE POSITIONS OF THE PARTIES**

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13 8. The husband's position is that the ancillary matters to be determined are:

- 14 i. Distribution of the matrimonial home;
15 ii. Disposal of the respective pensions; and
16 iii. Disposal of the respective vehicles.



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18 9. He asserts that he is entitled to a share of the equity in the matrimonial home having
19 made general financial contributions to the household over the period of residence in the
20 home and that he has assisted by providing physical labor for the upkeep and
21 maintenance of the building. In his Affidavit evidence he states that each party should
22 keep their respective vehicles and pension entitlements¹, however Counsel on his behalf
23 submits that he should be entitled to one half of the combined pension entitlements².

¹ Affidavit of 3rd May 2019, paragraphs 30 and 32

² Written Submissions of 3rd September 2019, paragraphs 43-48

1 10. The wife’s position is that the matrimonial home is not a matrimonial asset and should
2 remain in her sole name, that there should be no order for spousal support and that the
3 husband should vacate the home. She asserts that in 1986, while the husband was
4 incarcerated, without any assistance from him, she purchased the land and partial
5 structure on which the matrimonial home was built for the amount of \$7,000.00. This
6 money came from her personal savings. She made improvements to the unfinished
7 structure on the land as and when she had the funds available to do so before obtaining
8 a mortgage to build the three bedroom home. It is her case that the husband has never
9 been a party to loan and mortgage arrangements for the property and has never asked for
10 his name to be added to the land register as part owner. The payments towards the
11 mortgage have always been drawn from her salary. Moreover she asserts that he has, on
12 many occasions, given verbal assurances that he would not seek to acquire an interest in
13 the home if he was not required to pay maintenance to her.



14
15 **THE STATUTORY PROVISIONS**

16 11. The Court’s powers in respect of these ancillary proceedings are contained in sections
17 19 and 21 of the *Matrimonial Causes Law* (2005 Revision).

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

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

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

- 7
- 8 “(a) *the income, earning capacity, property and other financial*
9 *resources which each of the parties to the marriage has or is likely*
10 *to have in the foreseeable future, including in the case of earning*
11 *capacity any increase in that capacity which it would in the opinion*
12 *of the court be reasonable to expect a party to the marriage to take*
13 *steps to acquire;*
 - 14 (b) *the financial needs, obligations and responsibilities which each of*
15 *the parties to the marriage has or is likely to have in the foreseeable*
16 *future;*
 - 17 (c) *the standard of living enjoyed by the family before the breakdown*
18 *of the marriage;*
 - 19 (d) *the age of each party to the marriage and the duration of the*
20 *marriage;*
 - 21 (e) *any physical or mental disability of either of the parties to the*
22 *marriage;*
 - 23 (f) *the contributions which each of the parties has made or is likely in*
24 *the foreseeable future to make to the welfare of the family, including*
25 *any contribution by looking after the home or caring for the family;*
 - 26 (g) *the conduct of each of the parties, if that conduct is such that it*
27 *would in the opinion of the court be inequitable to disregard it;*
 - 28 (h) *in the case of proceedings for divorce . . . the value to each of the*
29 *parties to the marriage of any benefit which, by reason of the*
30 *dissolution or annulment of the marriage, that party will lose the*
31 *chance of acquiring.”*⁷
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⁶ McTaggart v. McTaggart [2011] (2) CILR 390 - Paragraph 39
⁷ Statutory Factors in England and Wales

1 **APPLICABLE PRINCIPLES**

2 17. 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.⁸

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6 18. The leading cases from England and Wales which have been cited with approval in this
7 jurisdiction are the cases of *White and White*⁹ and *Miller v. Miller, McFarlane v.*
8 *McFarlane*.¹⁰ In *White and White*, Lord Nicholls of Birkenhead in considering
9 inherited money or property, and property owned by one spouse before the marriage said
10 this:



11 *“In fairness, where this property still exists, the spouse to whom it was given*
12 *should be allowed to keep it. Conversely the other spouse has a weaker*
13 *claim to such property than he or she may have regarding matrimonial*
14 *property. Plainly, when present, this factor is one of the circumstances of*
15 *the case. It represents a contribution made to the welfare of the family by*
16 *one of the parties to the marriage. The judge should take it into account. He*
17 *should decide how important it is in the particular case. The nature and*
18 *value of the property, and the time when and circumstances in which the*
19 *property was acquired, are among the relevant matters to be considered.”*

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22 19. The guidance from the case of *Miller v. Miller, McFarlane v. McFarlane* includes that
23 in considering division of financial property, there is no place for discrimination between
24 a husband and wife and their respective roles. The homemaker role should be given equal
25 weight. A court should consider the three strands of need, compensation and sharing
26 which should guide the court in arriving at a fair division of property on the dissolution
27 of a marriage.

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⁸ See *Wight v. Wight* [2010] CILR 60 and *McTaggart v. McTaggart* [2011] (2) CILR 390 – paragraph 34, *B-H v. H.* [2009] CILR 185

⁹ [2000] UKHL J1026-3

¹⁰ [2006] UKHL 24

1 20. In his judgment in the case, Lord Nicholls stated that fairness requires that when a
2 partnership ends, each partner is entitled to an equal share of the assets of the partnership
3 unless there is good reason to depart from equality. The Learned Judge emphasized that
4 the yardstick of equality is not a rule but an aid.¹¹

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6 21. The Learned Judge further stated that there is a real difference between matrimonial
7 property and non-matrimonial property and pointed to the difference being the source
8 of the acquisition. Property which is acquired during the marriage otherwise than by
9 inheritance or gift would usually be matrimonial property. Matrimonial property is the
10 “*financial product of the parties’ common endeavor.*” As to the matrimonial home, the
11 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.*”

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

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26 23. In discussing the significance of the duration of the marriage, Baroness Hale of
27 Richmond in her judgment in the said case stated that it is recognized that where the
28 starting premise is separate property, there is still some scope for one party to acquire

¹¹ Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - Paragraphs 16 and 17

1 and retain separate property which is not to be shared equally between them. The
2 Learned Judge said that in such cases, the nature and source of the property and the way
3 in which the couple have run their lives may be considered in deciding how property
4 should be shared.¹²

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6 24. In *McTaggart v. McTaggart*¹³, the appellate Court provided guidance as to the way in
7 which a Court should approach the issue of what is matrimonial property under s.21 of
8 the Law:

9 *“It can be seen that the section gives recognition to the concept of*
10 *“matrimonial property.” That concept is not defined in the Matrimonial*
11 *Causes Law, but it is generally understood in the sense described by Lord*
12 *Nicholls of Birkenhead in Miller v. Miller (5), that is to say, it comprises*
13 *“property acquired during the marriage otherwise than by inheritance or*
14 *gift” ([2006] 2 A.C. 618, at para. 22). Its distinguishing feature is that it is*
15 *“the financial product of the parties’ common endeavour”¹⁴*

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17 25. The Court further stated:-

18 *“It is necessary therefore to identify those assets which are owned or under*
19 *the control of one or other (or both) of the parties as at the date when the*
20 *order is made and then to identify which of those available assets are*
21 *matrimonial property and so capable of being the subject of an order under*
22 *s.21(b).¹⁵*

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

32 *The power conferred under s.21(b) of the Law is a power “to make an order*
33 *for the disposition of matrimonial property.” There is no requirement under*
34 *the Law that the disposition should give effect to an equal division of the*
35 *matrimonial property as between the parties; and there is no invariable rule*
36 *that the power should be exercised in a manner which achieves that effect.*
37 *The requirement—imposed by s.19 of the Law—is that, in exercising the*

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

¹³ [2011] 2 CILR 377

¹⁴ McTaggart v. McTaggart, Supra at Page 376

¹⁵ McTaggart v. McTaggart, Supra - Page 390

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power, the court shall have regard to “the responsibilities, needs, financial and other resources, actual or potential earning power and the deserts of the parties.” It is plainly open to the court—if, having regard to those factors, it thinks it appropriate to do so—to make an order which effects an unequal division of the matrimonial property as between the parties. The order made in *Wight v. Wight* (11)—and upheld in this court—provides an example of such a case. In *Miller* (5) ([2006] 2 A.C. 618 at para. 16), Lord Nicholls observed that “the yardstick of equality is to be applied as an aid, not a rule.” But, as Lord Nicholls had pointed out in *White v. White* (10) ([2001] 1 A.C. 596, at 605)—in a passage expressly adopted by Lord Cooke of Thorndon (*ibid.*, at 615)—“as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so.”

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26. In *Valerie Gordon v. Jefferson Watler*¹⁶, the Appellate Court stated:

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

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27. In the earlier case of *Wight v. Wight*¹⁷, the Appellate Court reaffirmed its acceptance of the principles of equality as expounded in the English cases. The Court held inter alia:

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- “(1) When ordering the distribution of matrimonial property pursuant to s.21(b) of the Matrimonial Causes Law, the court first had to determine which of the parties’ assets were matrimonial property. Property which was the product of their common endeavour, including assets acquired with the proceeds or income of such property, would be matrimonial property. Conversely, the earnings of a spouse after the date of separation which could not be attributed to the period of marriage would not be considered matrimonial property.
- (2) In exercising its broad discretion under ss. 19 and 21 of the Matrimonial Causes Law (2005 Revision) in the distribution of matrimonial property, the court would act in accordance with the modern view that a marriage was a presumed union of equals, and that there should be no bias or discrimination as to the nature of

¹⁶ CICA Civil 13/2014- 22nd August 2014
¹⁷ [2010] 1 CILR 60

1 *the role played by each spouse, e.g. breadwinner or homemaker.*
2 *Therefore, having provided for the needs of the parties (including*
3 *the needs of any children), the court would aim for equality and opt*
4 *for an unequal distribution only to the extent that inequality of*
5 *distribution was required in exceptional circumstances in order to*
6 *achieve a fair result. A special contribution to the marriage by one*
7 *spouse would constitute an exceptional circumstance justifying*
8 *departure from equality.”*
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11 28. In the case of *B-H v. H*¹⁸, the parties had been married for 12 ½ years and had two
12 children. The issue for the Court was to identify what was matrimonial property in
13 circumstances where each party had brought properties of their own into the marriage
14 and had acquired more thereafter. They had maintained separate financial affairs during
15 the course of the marriage. Foster J. (Actg.) reviewed a number of local and English
16 cases and said this:

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



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34 29. Foster J. (Actg.) held that the parties had seen their relationship as a partnership and that
35 viewed in that light the three properties brought into the marriage would be categorized
36 as matrimonial assets,

¹⁸ [2009] CILR 185

1 “Since they had both benefitted from them as matrimonial homes and used them to
2 raise money to finance purchase of other property and spent money on them and
3 generally treated them as assets for the benefit of both of them.”
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5 30. In the case of *Billes v. Anco*¹⁹, the sole issue was whether the husband had an interest in
6 the matrimonial home which had been purchased by the wife with her own funds and
7 was registered in her sole name. She contended that the husband had made no financial
8 contribution towards the purchase and that it had not been acquired by the common
9 endeavor of the parties. Smith J (Actg.) considered that although it had been purchased
10 with the inherited wealth of the wife, it was acquired during the marriage for the welfare
11 of the family. Additionally there was evidence from a pre-nuptial agreement that the
12 parties intended as at the date of separation to share the matrimonial home equally.
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14 31. In the more recent case of *Ebanks v Ebanks and Smith*²⁰, the husband’s case was that
15 he had brought the marital home into the marriage and there should be a departure from
16 the yardstick of equality. By reference to the cases of *McTaggart v. McTaggart* and
17 *Miller v. Miller, McFarlane v. McFarlane*, Mangatal J. thought it plain that given the
18 fact that the parties lived at the property as their matrimonial home, the property was to
19 be treated as matrimonial property and stated:

20 “96. In my judgment, the Court has to look at all the circumstances of
21 the case. The Property was property brought into the marriage by
22 the Husband. On the facts it is plain that the Wife made no
23 significant improvement or alteration to the Property. However as
24 stated in *Miller v Miller* the parties’ matrimonial home, even if this
25 was brought into the marriage at the outset by one of the parties,
26 usually has a central place in any marriage. So it should normally
27 be treated as matrimonial property for this purpose. It was also
28 noted that in principle, the entitlement of each party to a share of
29 the matrimonial property is the same however long or short the
30 marriage may have been.”



¹⁹ [2011] 2 CILR 74

²⁰ Fam 83 of 2013, 31st October 2016



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97. *However as recognized in **White v White**, the source of the assets may be a reason for departing from equality. In this case, there is also a need to take into account that both parties had been married previously, and indeed, the Property was owned by the Husband prior even to his second marriage to Eileen.”*

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

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11 **EVIDENCE IN THE CASE**

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33. Both parties gave oral evidence at the hearing. The documentary material before the Court consists of the Affidavit of the husband dated 3rd May 2019 and two Affidavits from the wife dated 3rd May and 15th August 2019. Both parties also provided additional documentation by way of responses to Requests for Further and Better Particulars.

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34. The undisputed facts include that the matrimonial home has an existing mortgage of CI\$216,242.49. The maturity date on the mortgage is 29th August 2040. At the request of the Court the parties obtained an up to date valuation which indicates that as at 11th October 2019, this house is valued at CI\$325,000.00 excluding chattels.

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35. From the evidence given, neither party has a robust financial position. The husband is already past retirement age. The wife is three years away from the retirement age. Neither party has savings of any volume. The wife has less than \$1,000.00 in savings in the Cayman Islands Civil Service Co-operative Credit Union (“Credit Union”), and the husband had \$6,577.20 as at the end of June 2019 and about \$8,000.00 at the time of the



1 hearing. He gave evidence that this is the only money which he has to his name. Both
2 have motor vehicles but the wife's vehicle has an outstanding loan for some CI
3 \$17,241.40, in respect of which she is making monthly payments of \$475.00. The
4 maturity date on this loan is the 26th January 2023.

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6 36. It is also not in dispute that both parties have serious health issues. The wife had heart
7 surgery in 2008 following a stroke in 2007 and has been diagnosed with type 2 diabetes.
8 She is also hypertensive. The husband has high blood pressure and an issue with his leg.

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10 **ACQUISITION OF THE MATRIMONIAL HOME**

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12 37. In cross examination, the husband agreed that he had made no contribution to the initial
13 purchase of the matrimonial home. He also agreed to the suggestion that he had not left
14 any savings with the wife for her use while he was away in prison. On his return from
15 prison in 1985, the wife had the land with the partial construction on it. Thus he agreed
16 that whatever funds were used to purchase the property were hers exclusively.

17
18 38. The wife's evidence is that she paid \$7,000.00 from her 'partner' savings towards this.
19 She was cross examined as to whether she had obtained a partial loan from the bank to
20 cover this down payment which loan was paid off in the course of the marriage and thus
21 during the time when she would have been receiving contributions from the husband. In
22 support of this suggestion, her attention was drawn to the fact that on the very day of the
23 registration of the property in her name, the 2nd May 1986, there was a charge against
24 the property to secure a loan of \$4,000.00. The wife's evidence was that to the best of
25 her recollection, this sum was borrowed using the property as collateral in order to assist
26 with expenses related to her daughter's illness. She maintained this position although

1 there was some lack of clarity as to which institution had granted the loan in respect of
2 the land as distinct from the loan of \$4,000.00. The wife explained that she recalls
3 having the cash down payment because she received the first and last allotments from
4 her partner savings. At that time she had been working at two jobs, one of which was
5 during the nights at a local restaurant in order to be able to save. Having assessed her as
6 a witness and in particular noting the level of detail of her explanation, I accept her
7 evidence as truthful and correct, that the down payment on the property came entirely
8 from her savings and did not include a loan.



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10 **CONTRIBUTIONS TO MORTGAGE PAYMENTS**

11 39. It is in dispute between the parties whether the husband made any financial contributions
12 towards the mortgage payments for the matrimonial home. The husband's account is
13 that the wife contracted to purchase the home at a time when he was incarcerated in
14 prison hence the reason that it is in her sole name. He says that throughout the marriage
15 he has been contributing to the expenses of the home but that the wife has refused to add
16 his name to the title to the property. He has always provided her with contributions
17 towards the expenses of the family. The husband's evidence is that other than when he
18 was incarcerated and times of unemployment, he has never stopped giving money to the
19 wife. In the early days he gave her \$100.00 per week which amount increased over time.

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21 40. Within about two months after the marriage in 1977, with assistance from the wife's
22 father, he secured employment in George Town. As the nature of the work involved
23 heavy lifting and was strenuous for him, he left that employment after about 3 or 4
24 months and entered an apprenticeship as an electrician. He has remained in this

1 occupation throughout his working life and for the most part has been self-employed
2 with a short period employed to a local company. His apprenticeship was broken whilst
3 he was in prison but about six weeks after being released in 1985, he secured new
4 employment. He was then earning about \$250-\$300.00 per week.

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6 41. He said that in order to build the house, a loan had to be obtained from a bank. It was
7 about \$150,000.00 and he cosigned the loan with the wife. After they moved into the
8 house, he would always provide the wife with funds. This was not a specific sum but
9 was based on his earnings at any given point in time. He said that he never "*dictated to*
10 *her what the money was to be spent on.*" The wife was free to do what she wished with
11 the money including paying the mortgage. He thought the mortgage payment was about
12 \$1,600.00 per month. The money he gave to her was to contribute to everything. On
13 average he would give her \$650.00 per fortnight, based on his earnings. His contributions
14 to her were not infrequent although they would be less sometimes. He denied that his
15 contributions used to be as little as \$350.00 every two weeks.

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17 42. Currently he provides the wife with CI \$600.00 each fortnight to assist her with paying
18 for the mortgage, food and maintenance. Since early 2019, on the advice of his Counsel,
19 he has been obtaining a receipt for these amounts. He did not previously obtain a receipt.

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21 43. He denied that there have been regular arguments between them throughout the years
22 regarding monetary contributions towards the upkeep of the house.

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24 44. The wife presented a different picture. Her Affidavit evidence was:





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“In as much as I concede that the Petitioner had made financial contribution towards the household expenses, these contributions were not on a regular basis, and the amounts varied from time to time. It is for this reason that I was always in arrears with my monthly expenses. The inconsistencies of the payments have usually caused several quarrels between us and it was for that reason why I applied for maintenance in the Summary Court last year.”²¹

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45. She said that initially he would give her \$200.00 per week. Then it went to fortnightly. While this changed from \$200.00 to \$250.00 and he kept adding, the payment of \$600.00 every two weeks only started in 2019. She said that it was only since she first filed the matter in Court that he started to do better.

46. Her evidence was that every time the husband gave her money he would give her less than the agreed or expected amount. She said that after he gets paid, he used to give her \$200.00, sometimes \$150.00, whatever he has left over, she would get. He used to say to her that he could not afford to give her \$500.00 every fortnight. He would say that he owes her the balance and she would never get the outstanding money. She told him that she was tired of it. She said that she went to Court in relation to maintenance and not because she was seeking a divorce. She said that it was the husband who told her that on the basis of legal advice, he was seeking to divorce her and not pay maintenance.

47. Having listened to both parties, I note that the issue between them is really one of quantum. It is not whether the husband provided her with funds with regularity but whether he provided funds at a particular level. I found it of significance that in cross examination the wife said that the husband had been self-employed from he was 50 years old and that when he goes and does a job, he would give her something from it, meaning

²¹ Affidavit of 3rd May 2019, paragraph 16



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that he would give her funds from his earnings. She said that he would give her money but not what she thought she should get. It may well be true that the husband had the ability to give her more money on occasion, but at the very least it appears to have been the case, that there was some consistency to his giving.

5

6

48. The husband said he gave her funds according to his earnings and seeks to shelter behind the variability of his earnings as justification for the level of funds given to her. For the last few years he was earning some \$3,356.00 per month or \$30.00 an hour. Even using the highest figure which he gave of \$600.00 every two weeks, this would have been just about one third of his income and there would be good reason to say that this was a woefully inadequate amount in light of his earnings and the mortgage commitments and expenses of the household. This would mean that he would be left with disposable income of more than \$2,000.00 while the wife had none. For the earlier years there are no figures for his income as a self-employed electrician. In the absence of same, it is difficult to assess whether he had the ability to pay more but I accept that it is likely the wife would have known the level of his earnings and would have been best positioned to determine whether or not he could pay more.

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49. Having listened to and assessed both parties, I accept that the husband contributed with some consistency to the household although the level of contributions varied over time and the wife was dissatisfied with them likely with good reason such that she felt compelled to approach the maintenance Court.

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NON-FINANCIAL CONTRIBUTIONS

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50. There was also an issue between the parties as to whether the husband did any unpaid work on the property. The husband's evidence was that at the time of the construction

1 of the house, he did the electrical work on it and over the years he has carried out all of
2 the miscellaneous repairs to the home and also maintained it by doing any necessary odd
3 jobs.

4
5 51. The wife's evidence on this point was that the husband did do the electrical work on the
6 property but she had to pay him to do the work. She produces copies of two cheques
7 paid to him in November and December 1996 in the total amount of \$725.00 and says
8 that in all he received some \$11,000.00. His evidence was that any sums he received
9 were used to purchase materials and to pay two of his work mates who assisted him after
10 hours to do the work. He says that he did not receive any payment for his own work.
11 There is no documentary evidence in support of either side on this point.

12
13 52. The husband says that recently he has installed cabling so that the wife can have internet
14 in her room and that he has installed fans and recessed lighting in the kitchen.

15
16 53. The wife stated that she purchases the materials whenever the husband does any work
17 around the house. She said that if a light bulb needs changing around the house, he will
18 do the work but she will have to buy the materials. One example is that she purchased
19 the recessed lighting for him to install.

20
21 54. It appeared that neither party was saying anything different from the other particularly
22 in relation to the later years. I accept that the husband contributed his own unpaid labour
23 but materials have to be purchased by the wife. This appears to have been the pattern
24 over the years and on balance, having assessed the husband, I accept his evidence that
25 this was what occurred on the construction of the house.
26



1 **WAIVER OF INTEREST**

2 55. In dispute between the parties, is whether the husband has over the years accepted that
3 he has no interest in the property. The wife's evidence is that the husband has never
4 asked for his name to be on the title or has on different occasions said that he will not
5 seek to have a share of the property.

6
7 56. The husband denied this and said that he asked her several times to put his name on the
8 title but she refused to do so. He said that there were early requests from him which lead
9 the wife to discuss the matter with "Bro. R." the contractor who built the property. He
10 alleges, which allegation is denied by the wife, that it was Bro. R. who advised her
11 against putting his name on the property.

12
13 57. The wife's evidence is that she has been solely responsible for the loan repayments and
14 has always paid the loan and mortgage payments directly from her salary. The husband
15 never paid the mortgage, which he could have done by depositing his share in the bank
16 account. Her daughter was diagnosed at the age of 15 with a major illness and had to be
17 referred overseas for treatment and surgery. She obtained various loans using the
18 property as collateral in order to pay for expenses relative to her daughter's treatment.
19 Additionally, over the years she has sought various adjustments (extensions) of the
20 mortgage to refurbish and repair the home. She did so in 2004, 2007, 2011 and in 2015.
21 In respect of the last refinancing in 2015, the bank obtained a deed of waiver from the
22 husband in which, having taken legal advice, he waived his interest in the property. The
23 document which is produced, states in part:





1 *“In consideration of the bank agreeing to enter into the Credit facilities with the*
2 *Principal Debtor, I hereby irrevocably waive and/all present and future overriding*
3 *interests which I may have in the Property or in any other land located in the*
4 *Cayman Islands to which the Credit Facilities relate (without acknowledging that*
5 *any such interest exist) for as long as any amounts are outstanding to the Bank.”*
6

7 58. The husband agreed that during the Summary Court proceedings he had indicated that
8 he was prepared to relinquish his interest in the matrimonial home in the interests of
9 settling the maintenance matter but says that he was not saying by that, that he did not
10 have an interest in the home.

11
12 59. As to his signing of the deed of waiver, he said that the wife took him to a lawyer for
13 him to sign it on the basis that if he did not do so, she would not get the loan from the
14 bank that she was seeking. She was seeking a loan of some \$60,000.00. He said that he
15 agreed to sign it based on an emotional plea from her. He did not obtain any benefit from
16 that loan. The wife used the money to put in new windows and guttering in the house.
17 In re-examination he said that he did not understand that he was giving up his interest in
18 the house. She told him that she wanted him to sign the document so she could get more
19 money. He had not understood the technicality around the deed of waiver. As far as he
20 was concerned he was not giving up his interest in the house. The wife said that it was
21 the Bank that made the determination for him to sign the waiver and not her. Her
22 understanding is that the Bank required him to sign the waiver as it required updated
23 customer information.

24
25 60. The husband said that earlier this year he had to call the Police as the wife said that she
26 wanted him out of the house and gave him written notice to vacate the premises in 30
27 days.
28



1 61. The impression which I had of the husband is that his general practice was to leave
2 paperwork and business documents up to his wife. I believe and accept his evidence that
3 when he signed the document, he did so because of the plea of the wife and to assist her
4 to get the loan which she said that she needed and not because he was genuinely wishing
5 to forego any interest which he may have in the house. The fact that he subsequently
6 raised the possibility of a set off in the Summary Court provides some evidence of his
7 belief that he has some interest in the property.

8 **THE WIFE'S CAR LOAN**

9 62. While both parties agree that each should keep their respective vehicles, an issue arises
10 with respect to the car loan taken out by the wife in order to acquire her relatively new
11 2016 Toyota Rav 4 SUV.

12
13 63. The wife's evidence was that despite the relatively high price, it was acquired during a
14 promotional event so was acquired for less than the usual purchase price. The husband
15 took issue with her assertion that the car loan was a separate loan from the house loan
16 and suggested that the property may have been used as collateral for the car purchase. If
17 this is the case then the outstanding loan amount for the car would be deducted from the
18 mortgage amount in order to arrive at the level of equity in the home. The husband
19 suggested that the car loan was part of the \$63,000.00 loan obtained in 2015.

20
21 64. The wife maintained that the loans were initially from two separate institutions although
22 they were subsequently taken over by a single institution. The documentation which she
23 produced appears to support this. The extended mortgage was obtained on the 14th

1 August 2015 and the car loan was obtained on 1st August 2016²². The wife said that the
2 car loan was initially obtained from the Credit Union, hence the reason for a salary
3 deduction of \$475.00 payable to that institution which continues to date. The last charge
4 on the property is shown on the land register as entry #15 and is dated 3rd September
5 2015 for an increase of \$63,750.04. This seems to be in line with the mortgage
6 information which is on the documentation produced. There is no further charge
7 reflected after 2015 to show an increased charge to correspond with the 2016 note in
8 respect of the car loan.

9
10 65. On balance, the husband has not satisfied me that the car loan was obtained using the
11 property as collateral. I accept the evidence of the wife that these were and remain two
12 separate loans. On reviewing the documents produced there does not appear to be a
13 proper basis to conclude that the amount of the car loan should be deducted from the
14 outstanding amount of the mortgage.

15
16 **PROPERTY IN JAMAICA**

17 66. The husband is the only child for his parents who are now deceased. They have left
18 behind the home in which they resided. There is no title for the property. Neither left a
19 will but the husband did not disagree that he would have a valid claim under Letters of
20 Administration.

21
22 67. Over the years, particularly after hurricanes, the husband has expended sums on the
23 home to repair it. He says that in 2008 while his mother was still alive, he obtained a
24 loan from a bank in order to do so. He says that the wife has never spent any money on

²² Affidavit of the wife, dated 3rd May 2019, exhibit VJP 6, documents for accounts 178792 and 178426



1 this property, she has visited the house and one child attended school in Jamaica and
2 resided there for a time and was cared for by his mother. He said that the wife has
3 discussed sharing this property with him if she has to share the matrimonial home.

4
5 68. The wife said that she assisted the husband in a non-financial way to obtain the loan to
6 repair the house. Her evidence was that he “used her papers” and that she had to see that
7 he paid back the loan. She denies telling him that she wants anything from the house.

8

9 **THE SUBMISSIONS**

10

11 69. Counsel on behalf of the husband submitted that it is only in exceptional circumstances
12 that a matrimonial home is not a matrimonial asset. It is urged that in this case the marital
13 home although not in the names of both parties was bought during the marriage and was
14 put into the melting pot of the marriage. The only non-family member who has ever
15 lived there is a short term paying tenant sent by the Government’s Needs Assessment
16 Unit for about three months. Counsel invited the Court to consider the following:

- 17 i. If part of the initial down payment was obtained by a loan of \$4,000.00 then it
18 would have been paid off over the period of the marriage with funds from the
19 marriage.
- 20 ii. The husband co-signed on the mortgage.
- 21 iii. This is an unusual case where the parties have been separated for 11 years but
22 are still living together. The husband has continued making contributions.
23





- 1 iv. Although the wife is paying the mortgage, there is a short fall during each month,
2 where the only income which the wife has is the income which is coming from
3 the husband.
4
5 v. Based on the case of *Whyte v. Whyte*, even if the asset is acquired post
6 separation, the maximum allowable sharing ratio is 66.66 % and 33.33%.

7
8 70. Counsel also submitted:

9 *"It must be noted that the Respondent cannot receive the financial contribution from*
10 *the Petitioner, choose to spend it on other household expenses, and then decide that*
11 *because she choses to spend the financial contribution on expenses other than the*
12 *mortgage, this means that the Petitioner made no contribution to the mortgage and*
13 *as such he is not entitled to an interest in the home.*
14 *..irrespective of how the Respondent chose to use the funds provided by the*
15 *Petitioner, .. it is clear that he financially assisted her with expenses which she would*
16 *otherwise have had to bear; had he not assisted her. It follows therefore that because*
17 *of his financial assistance, she was able to afford to make the mortgage payments*
18 *from her salary, whilst he took care of other household expenses."*
19

20 71. It was urged that the concept of equality should not be departed from and that the Court
21 should look at the three strands of needs, compensation and sharing in relation to each
22 party.

23
24 72. Counsel on behalf of the wife submitted that the wife has always been the sole beneficial
25 owner of this property. She purchased the property without financial assistance from the
26 husband who has not made any contribution to its purchase or development costs.
27 Counsel further submitted that the husband has never asked that the title be transferred
28 into both their names neither has he ever registered an interest at the Land Registry by
29 way of a caution. He is not entitled it is said to any interest in the property. In the
30 alternative it is submitted that if the Court finds that he has an interest, this should be

1 assessed at less than 50 % given that the husband, although contributing to the household
2 expenses, has been doing so in an inconsistent and sporadic manner, such that the
3 percentage of his contribution is inadequate to warrant a 50/50 share of the asset.

4
5 73. Counsel also points to the fact that the first home was at the parents' house. When the
6 wife moved to a rented apartment, this was a matrimonial home but not a matrimonial
7 asset. The property in question was acquired at a time when the parties were separated,
8 they were living separate and apart from each other. Given the principle in the cited case
9 of *Wight v. Wight* as to property acquired during a period of separation, this property
10 cannot be a matrimonial asset.

11
12 74. Having considered Counsel's submission on this point, it is noted that the period
13 discussed in the cited case of *Wight v. Wight* was *after* the breakdown of the marriage.
14 In the instant case the property was acquired during a period of forced separation while
15 the husband was incarcerated. This was followed by a period of agreed separation. The
16 parties then reconciled. Construction commenced and continued over a period time,
17 while the parties were reconciled and over which time, payments were made towards the
18 property.

19
20 75. Counsel for the wife placed significant reliance on the case of *Millwood v. Seymour -*
21 *Ebanks*²³ as being on all fours with this case while Counsel for the husband sought to
22 distinguish the case.



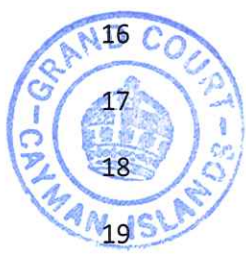
²³ Cause No. FAM 171/2011, 4th February 2015

1 76. Counsel for the wife submitted that one has to look at the conduct of the parties in this
2 case throughout their married life. The Court should consider a number of matters
3 including that they did not have a joint account, there was no pooling of resources, the
4 fact that the husband did not request that his name be placed on the Register, the parties
5 handled their financial affairs separately and that there was no direct contribution from
6 the earnings of the husband to pay the mortgage.

7
8 77. Counsel for the wife relied on these as factors as all being in line with the cited case
9 which it is said means that it should be followed unless there is good reason to depart
10 from it.

11
12 78. Counsel on behalf on the husband submitted that the cited case of *Millwood v Seymour*
13 - *Ebanks* can be distinguished for the following reasons:

- 14 i. There was a third party involved, the mother of the wife. There is no third party
15 in this case.
- 16 ii. There was a history of transfer to child and transfer back.
- 17 iii. The property in the instant case was acquired during the marriage and not before.
- 18 iv. The Court had two properties when it was considering need in that case.
- 19 v. There is only one parcel in the instant case so that monies given to the wife
20 would relate to only the one property.
- 21 vi. In that case, the husband built a second property on another parcel of land.
- 22 vii. The wife was claiming on the second home but it was clear that the intention
23 was that it was not going to be a matrimonial home.
- 24 viii. The question of common endeavor was a live one which was whether or not the
25 property was intended to be a matrimonial home.
- 26



1 ASSESSMENT

2 79. In the case of *Millwood v Seymour-Ebanks*, MacMillan J. was concerned with
3 determining the status of two properties, neither of which had been registered in the joint
4 names of the parties. Each party claimed an interest in both properties. One property was
5 the former matrimonial home at Block 25 B, Parcel 477 in which the couple had resided
6 for some 12 years. This property, was purchased prior to the 1998 marriage. It had been
7 registered in the sole name of the wife from June 1987 until September 1998, before
8 being registered in the names of the wife, her mother and DS. It was transferred into the
9 sole name of the wife in order for her to obtain a favorable staff loan rate on a mortgage.
10 The mother was re- added to the title in 2006. The learned Judge found that although the
11 husband made financial contributions to the household and engaged in some
12 maintenance and decorating activities there was no evidence of any direct link between
13 his contributions and the mortgage itself.

14

15 80. The second property, Block 25 B Parcel 401, was purchased by the husband in 1987 also
16 prior to the marriage. When the relationship of the parties deteriorated the husband
17 constructed a home on this property.

18

19 81. The Court was concerned to identify the shared intentions of the parties. In doing so the
20 Court noted that at no time had the names of both parties appeared on both registers. The
21 Court rejected the husband's allegation that the mother's name had been re-added to the
22 first property in an attempt to thwart the characterisation of the property as matrimonial
23 property as being contradicted by the banking correspondence and documentary
24 materials. This showed that there had been a historic record of involvement of the mother

1 with this property. The learned Judge concluded that there was no common endeavor
2 between the parties in respect of the ownership of Parcel 477.

3
4 82. Similarly in relation to Parcel 401, the learned Judge noted the basis upon which the
5 husband began construction and concluded that this property had never been
6 matrimonial property.

7
8 83. Having considered all the circumstances of both cases, I accept the submissions of
9 Counsel on behalf of the husband that there are a number of distinguishing features of
10 the cited case from the instant case.

11 IDENTIFYING THE MATRIMONIAL PROPERTY

12
13 84. In assessing this matter and seeking to identify the matrimonial property I have regard
14 to the judgment of the Court in *Miller v. Miller, McFarlane v. McFarlane* in which
15 Lord Nicholls stated:-

16 *“The parties’ matrimonial home, even if this was brought into the marriage at the*
17 *outset by one of the parties, usually has a central place in any marriage. So it should*
18 *normally be treated as matrimonial property for this purpose.”* (paragraph 22)
19
20

21 85. Family assets are defined by reference to the landmark case of *Wachtel v. Wachtel*²⁴ :-

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



²⁴ [1973] Fam. 72

1 86. In the instant case, notwithstanding the periods of separation, this was still a marriage of
2 some considerable length. The wife obtained an initial mortgage loan in 1992 and used
3 the funds to effect work on the home and for their daughter’s medical expenses. She
4 obtained further refinancing in 1996 to continue with construction of the home. She says
5 that thereafter the family moved into the home in September 1996 in an unfinished but
6 livable condition as the family had been living under a lease arrangement in rented
7 accommodation²⁵. Having moved into the matrimonial home in 1996 the couple
8 remained together for about 12 years until 2008 when there was a second period of
9 separation of about one year. Following reconciliation according to the husband they
10 remained together for at least another 3 years.

11
12 87. From all the evidence it is undoubtedly the case that the home, though purchased with
13 an initial down payment by the wife was placed into the melting pot of the marriage.
14 This was the family home for some 23 years. While the husband made no direct
15 payments towards the mortgage, from the wife’s, own account, his financial
16 contributions were integral to the financial stability of the household. The clear inference
17 from the wife’s written and oral evidence is that she would not have been able to pay her
18 other bills had there not been financial contribution from the husband. I believe the
19 husband in his evidence in part because he is supported by the wife’s own account. She
20 could have chosen to put the monies received from him towards the mortgage. He did
21 not as he said “*dictate to her*” how to spend the money.

22
23
24



²⁵ Affidavit of Wife dated 3rd May 2019, paragraph 14

1 88. There is every indication that the parties pooled what little resources they had. After the
2 purchase of the land, the construction of the home took place over a period of years
3 during which time the husband was contributing to the household. He co-signed on the
4 construction loan thus assuming some responsibility for it. This must have been because
5 the parties contemplated that this was their family home and that he was an equal partner
6 in the building project. This is a significant factor in indicating the intention of the
7 parties. The fact that he left it to the wife to spend the money which he gave to her,
8 however she wished rather than making direct payments towards the loan does not in my
9 view detract from this.

10
11 89. Given all the circumstances including that this was the matrimonial home which had a
12 central place in the marriage and that it appears that the construction and maintenance
13 of the home was the common endeavor of the parties, this property is a matrimonial
14 asset.

15
16 90. I have considered whether there are circumstances of such a nature that there is a proper
17 and clear basis to depart from the yardstick of equality in this case. In this regard, I have
18 considered the fact that the wife made the initial down payment at a time when the
19 husband would have been unable to contribute because of his incarceration. I have noted
20 that the level of the down payment was not extensive. This is not a case where one party
21 personally paid the whole or a significant portion of the acquisition or construction costs
22 of the property such that it would be inequitable to disregard it. I have also noted that
23 this was the start of the project which continued over time. I have considered the wife's
24 complaints, some of which I accept as truthful, that the husband could have contributed
25 more. However I do not think that it is possible to try to measure and weigh every dollar
26 of contribution to such a nicety such that one is able to arrive at an approximate much



1 less a mathematical calculation. Indeed I consider that it may well be unwise to do so
2 particularly looking through the lens of the past and in the absence of documents and
3 records. I am guided by the approach of McMillan J. in the cited case, that what one is
4 seeking to discern is the shared intention of the parties with respect to the particular
5 property.

6
7 91. Having considered the length of the marriage, the pooling of the couples' resources albeit
8 in an indirect way, the cosigning of the construction loan, the regularity of the indirect
9 contributions of the husband, the fact that those contributions were used to fill a shortfall
10 in the wife's income, the contributions of labour by the husband over the years, and the
11 absence of any exceptional circumstances, there is in my view no good reason to depart
12 from the yardstick of equality.

13
14 92. I conclude on this aspect that each party is entitled to one half share in the equity in this
15 property.

16
17 93. The issue of the existence of the bank waiver which the husband signed is a live one.
18 The waiver document appears to suggest that the Bank will not agree to recognise any
19 interest which he may have in the property *until the loan is fully repaid*. Thus the Bank
20 may object to the transfer of the property into the joint names of the parties at this time.

21
22 94. There is no evidence that the home in Jamaica is other than an inheritance by the
23 husband. The wife made no contribution to it although she supported the husband to
24 obtain repair loans. It does not constitute matrimonial property.



1 **THE INCOME, ASSETS AND EXPENSES OF THE PARTIES**

2 95. On the 20th February 2019, the husband’s contractual and regular employment with a
3 local company ceased and while he still does some electrical work for the company, this
4 is on an ad hoc basis, as and when work is available. He previously earned CI \$3,356.24
5 per month or CI \$30.00 per hour. Now his earnings are variable depending on the jobs
6 undertaken. From his bank records his recent earnings on a bi-weekly basis have been
7 as follows:

Date in 2019	Bi-weekly earnings CIS
22 nd March	2,848.99
5 th April	1,909.50
17 th April	2,394.00
3 rd May	2,123.25
17 th May	2,280.00
31 st May	1,109.00
3 rd June	1,000.00



8

9 96. He has a very small pension because there were no contributions prior to employment
10 by the last company for which he has worked. He had been mostly self-employed and
11 did not enter into a pension plan. Having only signed up in 2017 for the last two years
12 of his regular employment, the account value is CI\$9,723.67 as at 28th February 2019.
13 He owns a truck which is old which he is prepared to retain. He gives his expenses as
14 follows:

- 15 i. Groceries/food purchases - \$50.00 per day
- 16 ii. Gas bills \$45 to \$50.00 per week - \$200 per month
- 17 iii. Clothes/personal expenses - about \$250.00 per month

18 He says that on average this amounts to a total of about \$1,200.00 per month.

19

- 1 97. The wife is employed as a filing clerk since 1st December 1998 earning CI\$3,518.86 per
 2 month. After deductions of \$1217.04 including statutory deductions, savings at the
 3 Credit Union of \$417.00 and life investment savings of \$194.00, her take home pay is
 4 \$2,301.82.
- 5
- 6 98. She supplements her earnings by employment as a part-time school janitor from which
 7 she earns CI\$1,045.00 per month during the school year. From this is deducted CI\$52.25
 8 for pensions contributions leaving a balance of CI\$992.75 per month.
- 9
- 10 99. Her disposable income is thus CI \$4,494.57 per month when the husband's contribution
 11 of \$1,200 per month is included. Her monthly expenses are:



Mortgage	\$1429.00
House Insurance	271.00
Gasoline	100.00
Car loan	475.00
Car Insurance	100.00
Tithes	335.00
Personal Care	200.00
Yard Maintenance	200.00
Vehicle licensing and propane gas	31.53
Electricity	300.00
Water	34.00
Groceries	300.00
Internet	250.96
Television	121.50
Phone	177.35
Total	4,325.34

13

14

1 100. She explained that the last six items shown above in bold are met using funds from the
2 husband. The money spent on groceries is for the entire household. She supplements this
3 with her own funds when needed.

4
5 101. Her assets and liabilities are stated by her to be as follows:
6

Assets	
Bank Account	\$264.44
Share Account	\$700.42
Savings Account	\$306.42
Life investment Policy	(value unstated)
Pension 1	\$10,792.09
Pension 2	\$59,099.90 <i>(maximum commutation lump sum)</i> <i>monthly payment would be \$956.26</i>
2016 Toyota Rav 4	\$20,144.00

7

Liabilities	
Car loan (as at 23 rd April 2019)	\$17,241.40
Mortgage loan	\$216,242.49

8
9
10 102. In oral evidence she said that she has no savings and is left in a negative position at the
11 end of each month. She said that she overcomes this by trusting in God and living among
12 people who help. In cross examination she said that it is correct that there are periods
13 during the month when the only money she has is what she receives from the husband
14 until paid by her part time employment on the 26th of the month. Whatever he gives to
15 her is used to pay the bills. Additionally she does not earn from the part time
16 employment during school holidays.
17



1 103. She said that if she were to keep the house, she would have to try to continue paying for
2 it and she could seek a paying tenant if this has to be done. She said that she is not in a
3 position to pay the husband if he has an interest in the house. With retirement being only
4 three years away, she will be trying to work for as long as she is able. She has no other
5 assets here or elsewhere. If the house had to be sold she does not know what she would
6 do. She said that she would have to start over.

7
8 104. In cross examination, she was questioned about the choice made by her to buy a new
9 rather than used car which has resulted in her having a second bank loan which she can
10 ill afford to pay. She explained that on initial purchase her son had then been employed
11 and had been assisting with one half of the loan payment. She has not thought about
12 getting a cheaper car.

13
14 105. Neither party seeks a share in the other's pension or in their respective motor vehicles.
15 In any event, the purchase of the wife's vehicle occurred during the separation of the
16 parties. There is no evidence that it was acquired for the benefit of both or that it was
17 intended to be used by both. It does not constitute matrimonial property. The benefit and
18 liability for this asset should fall solely to the wife.



19
20 **THE NEEDS OF THE PARTIES**

21
22 106. The circumstances and needs of the parties are of concern to this Court. Both require
23 housing and sufficient funds to meet their day to day expenses to be able to live
24 independently of each other. While the wife can acquire a less expensive vehicle, she
25 will still need a vehicle to get to and from her two jobs.
26

1 107. Even if the husband were to walk away from the property as the wife is encouraging him
2 to do and she waives any claim for spousal maintenance, this would not necessarily be
3 the best outcome in terms of meeting her needs. Presently she cannot pay the entirety of
4 the mortgage and her car loan on a monthly basis and thereafter meet her regular living
5 expenses including food without the maintenance contribution from the husband.

6
7 108. The equity to be divided from the property is approximately \$108,757.51, less realtor's
8 costs. Neither party has the funds to be able to pay for the other's share of the property.
9 Both would have to seek loans. It would not be in the best interest of the wife for her to
10 further borrow against the property at such a high level. If this option is pursued, the
11 likely result would be increased loan payments and a continued need for spousal
12 maintenance for the reason given above.

13
14 109. The usual alternative option would be for the property to be sold and the parties share
15 the proceeds after deduction of expenses. While this will achieve the objective of a clean
16 break, it may well be the worst outcome in meeting the needs of the parties in the instant
17 case. Two difficulties are likely to arise. The wife referenced the first which is the
18 limited amount of equity in the home.

19
20 110. The wife stated in her Affidavit:
21 *“..that I verily believe that the equity in the house will be insufficient to share*
22 *between us. It is my view that if the house is to be sold that any funds, if any, remains*
23 *following the clearing of the mortgage and the Relator's commission, the remaining*
24 *balance to share will be inadequate to allow both to start all over again.”²⁶*
25

26



²⁶ Affidavit of 3rd May 2019, paragraph 42



1 111. I have taken note of their respective ages and health issues. If the house is sold, with the
2 wife having only three years to go until retirement and the husband having already
3 retired, I cannot see either party being able (without much difficulty) to secure new
4 mortgages to purchase small apartments much less similar homes. The likely result is
5 that each will be in rented accommodations if not for the rest of their lives, for an
6 extended period.

7

8 112. At the request of the Court, the recent valuation report includes the following estimates:

9 *“We have been asked to indicate the potential cost to build a self-contained one-*
10 *bedroom apartment on the property. We have therefore made the necessary*
11 *assumptions for the building size to be approximately 576 square feet and the*
12 *finishes to be moderate as the main building. As such, the building cost for this*
13 *potential apartment unit is CI \$95,000.00 in our opinion.*

14

15 *We have also been asked to indicate the potential cost to have the existing structure*
16 *divided into 2 self-contained apartments. We have therefore made the necessary*
17 *assumptions for the finishes to be of moderate standard and accommodation to be 2*
18 *bedrooms and 2 bathrooms to each unit. As such, the associated cost for the*
19 *proposed work is approximately CI \$72,000.00.”*

20

21

22 113. In my view the option which may best meet the needs of both parties is for the property
23 to be divided between them at the lesser cost with each party contributing equally to such
24 cost. While there will be an outlay of funds required, this can be done periodically over
25 time. Each party will have a home and there will be no need for either party to seek to
26 secure a new mortgage. For the most part, they have lived separately and peacefully at
27 the same premises for many years. They are both to be commended for the maturity of
28 their approach.

29

30 114. The husband should contribute on a monthly basis one half of the mortgage. Presently
31 this is \$1,429.00, thus his contribution should be \$714.50. He should contribute one half
32 of the payments required for house insurance, regular maintenance and yard

1 maintenance. Pending the installation of separate meters, he should also contribute one
2 half of each utility payment where there is a joint use, such as water, electricity, internet
3 and television and others. Using the figures provided by the wife, in her Affidavit, I
4 assess the total monthly payment which he should make as being \$1,303.00 per month.²⁷
5 In oral evidence the wife advised of a recent increase in the electricity bill of \$100.00.
6 As this may be variable I do not propose to increase the monthly payment by this amount.

7
8 115. If these contributions are made by the husband, the wife would then have surplus income
9 to be able to meet her need for living expenses and would not require spousal
10 maintenance.

11
12 **CONCLUSION**

13
14 116. Having given due consideration to the responsibilities, needs, financial, and other
15 resources of the parties, the age of the parties, the duration of the marriage, all the
16 evidence in the case and the submissions made, I conclude that each party has an equal
17 interest in the property, subject to the outstanding mortgage. The property is to be
18 physically divided so that each party may reside therein separate from the other. The
19 husband is to make the specific monthly contributions noted above. Neither party is to
20 seek to place any further charges on the property without the express written consent of
21 the other. Each party should retain their respective pensions and motor vehicles as well
22 as any balances in their savings accounts.



²⁷ One half of mortgage, 135.50 for house insurance, 100.00 for yard maintenance, \$150.00 for electricity, \$17.00 for water, \$125.00 for internet, \$60.00 for television.

1 117. In order to protect the interest of the husband in the property, an Inhibition pursuant to
2 section 124 of the Registered Land Law (2018 Revision) is to be registered on the title
3 to the property. This should remain in place until cancelled by Order of the Court
4 pursuant to section 126 (d) of the said Law. The Inhibition should state that it has been
5 granted in divorce proceedings in acknowledgement of the husband's one half interest
6 in the property and that it may be cancelled upon payment of the outstanding Charge in
7 full and the consequent registration of the husband as the one half owner, unless prior to
8 this occurrence, the property is sold by the Chargee pursuant to the terms of the current
9 Charge or alternatively by Order of the Court. The husband is to bear any costs attendant
10 upon registration of the Inhibition and its cancellation.

11

12

13 **Dated this the 14th day of February 2020**

14 



15 **Honourable Justice Cheryll Richards Q.C.**
16 **Judge of the Grand Court**