

1 THE GRAND COURT OF THE CAYMAN ISLANDS
2 FAMILY DIVISION

3 CAUSE NO. FAM 0107 OF 2015
4

5 BETWEEN: SC

6 PETITIONER

7
8 AND:

9 LC

10 RESPONDENT
11

12 Appearances:

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

14 Ms. Keva Reid of McKinney Reid Attorneys
15 for the Respondent

16
17 Before:

The Hon. Justice Cheryll Richards Q.C.

18
19 Hearing:

14th August 2019

20 Draft Judgment Circulated:

11th September 2019
21

22 **HEADNOTE**

23 *Family Law- Final Ancillaries, applicable principles, conduct of one party,*
24 *concealment of assets, Mesher Order.*
25

26 **JUDGMENT**
27
28

1 INTRODUCTION

2 1. This matter is before the Court for a final ancillary hearing following the filing of a
3 petition for divorce on the 9th June 2015 by SC, the Petitioner wife (“the wife”). On the
4 22nd June 2015, LC, the Respondent husband (“the husband”) filed an Answer and Cross
5 Petition. By written consent filed on the 19th July 2019, he agreed to an Amended
6 Petition which was filed by the wife on the 10th July 2019. He consented to an order for
7 the dissolution of the marriage on the grounds of separation for a continuous period of
8 over two years and has withdrawn his Answer and Cross Petition. The wife’s Petition
9 was therefore ordered proved shortly before the commencement of this hearing on the
10 14th August 2019.

11
12 2. The Parties were married on the 12th May 2007 and there is agreement that there was a
13 period of continuous cohabitation of about one year prior to the marriage. This is a
14 marriage of about 8 years. The wife is 33 years old, a Jamaican national who has been
15 resident in the Cayman Islands from she was about 17 years old. She has an Associate’s
16 degree in accounting and a bachelor’s degree in business administration, both obtained
17 from a local college. Over the years through to October 2016, she was steadily employed
18 in various jobs, either in an accounting or administrative capacity. The husband is a
19 Caymanian Status holder and is 48 years old. He is a carpenter by trade who since
20 Hurricane Ivan in 2004 has operated a local construction business.

21
22 3. By Order of McMillan J. dated 26th October 2015, there are two children of the marriage,
23 neither of whom are the biological children of the husband. The older child, a son L,
24 aged 17 years was born on the 29th March 2002 and is from a prior relationship which



1 the wife had before the marriage. L has Jamaican nationality. He also has Caymanian
2 Status until age 18 years. He resided with the parties from he was one year old. The
3 younger child is a son LL, aged six years who was born on the 3rd January 2013. He has
4 American nationality and he also has Caymanian Status. The wife says that this child
5 was conceived during a period of temporary separation from the husband. The wife says
6 further, that after their reconciliation the husband well knowing the child's paternity due
7 to knowledge of his own medical issues, agreed to welcome the child as part of the
8 family. The husband denies this and says that he was deceived and that it was not until
9 he received the results of a DNA test dated 10th September 2015, that he became aware
10 that he was not the biological father of the child.

11
12 4. By the said Order of 26th October 2015, sole residence of the children was awarded to
13 the wife and the husband was required to make child maintenance payments of \$375.00
14 per month for each child beginning at the end of November 2015. The husband
15 contended then as he does now that the father of L who is resident in Jamaica provides
16 for L financially and that he should not have to pay maintenance for this child. At the
17 time of the making of the Order he sought no contact with the children and a no contact
18 order was made at his request. His position on contact has changed. He now says that he
19 loves the children dearly and that they are distraught at his absence. He asks to be
20 allowed reasonable contact with them.

21
22 5. During the marriage the parties resided in a home in George Town. By Consent Order
23 made on the said 26th October 2015, the husband was ordered to vacate the home by the
24 31st October 2015. The wife was to reside there with the children and pay the mortgage
25 of \$1,077.00 per month.



1 6. In the course of his vacating the home, there was a physical altercation between the
2 parties. The wife alleged further that on vacating the home, the husband removed a
3 number of items of furniture and appliances from the home and that the family had no
4 bed to sleep on, leading to them having to seek shelter at the Crisis Centre. By Order of
5 McMillan J., made on the 11th November 2015 the husband was ordered to return all
6 items removed from the home.

7
8 7. At the time of the making of the Orders relative to the matrimonial home, the wife
9 had then been employed in an administrative capacity at a local office earning a salary
10 of CI \$2,916.00 per month. As the spouse of a Caymanian the wife had the right to work
11 without a work permit and to acquire Caymanian Status after some years of marriage.
12 She lost her job on the 28th October 2016 and was unable to make the mortgage and
13 strata payments. As a result of nonpayment of the mortgage the home was placed into
14 foreclosure by the mortgage lender. By Order made on the 9th August 2018, the lender
15 was ordered to pay into Court the net proceeds of the sale of the property and paid into
16 Court the amount of CI\$37 266.73.



17
18 8. On the 4th October 2018, by Order of Mangatal J., the sum of \$18,633.37 was approved
19 to be paid to the wife out of the funds paid into Court following the sale of the former
20 matrimonial home. This sum is to be taken into account upon determination of final
21 ancillaries.

22
23 9. By letter dated 14th July 2018, the Immigration Department revoked the wife's right to
24 be Caymanian which had been granted on the grounds of her marriage.

25
26

1 **THE WIFE'S POSITION**

2 10. The wife asserts that the husband earns substantial sums of money from contractual
3 employment with a local Quantity Surveying company, his janitorial business, building
4 contractor business and the importation of cars for sale and profit. She is presently
5 unemployed. In light of her circumstances and the passage of time which has elapsed
6 since the initial maintenance order, the wife seeks the following:

- 7 i. An increase in the amount of child maintenance from \$750.00 to \$1,200.00 per
8 month an increase of \$250.00 per child.
- 9 ii. Payment of one half of the health insurance and educational expenses for the
10 children until they reach the age of 18 years.
- 11 iii. Spousal support in the sum of \$1,000.00 per month for a period of 3 years.
- 12 iv. Payment of the balance of the funds being held by the Court or alternatively title to
13 the house in Jamaica in order to provide a home for herself and the children.

14
15 11. It is her position that the matrimonial assets which are to be considered for distribution
16 are:

- 17 i) Mini warehouse at George Town East Block 20 B Parcel 243 H14.



18 This is registered in the sole name of the husband but the wife contends that
19 it was acquired some months after the marriage and that the financing to
20 secure the purchase was by means of a mortgage which was paid off during
21 the marriage with matrimonial funds. Additionally that it was used to store
22 matrimonial items during the marriage.

- 23 ii) Two bedroom house in St. James, Jamaica, Volume , Folio 579, Lot 129

- 1 iii) Construction Business
- 2 iv) Janitorial Business
- 3 v) Bank Accounts - two for the wife, held in Cayman and Jamaica
- 4 vi) Bank Accounts – three for the Husband held in Cayman and Jamaica and
- 5 USA
- 6 vii) Pensions
- 7 viii) Motor vehicles



9 12. The wife’s proposal is that if she is allowed an increase in child maintenance, temporary
10 spousal support and title to the house in Jamaica as well as the balance of the proceeds
11 from the sale of the matrimonial home held in escrow by the Court, then the Respondent
12 may keep the warehouse, various businesses, his bank accounts, pension and vehicles.
13 She further seeks a contribution towards her costs to the Legal Aid fund.

15 13. In support of the wife’s position, Counsel on her behalf relies on the case of *AK v. TK*.¹
16 The Court’s attention was drawn to the factual circumstances of that case in so far as
17 there may be similarities and to the detailed exposition of the Law and applicable
18 principles by Williams J. as set out at paragraphs 24 to 32 of that judgment. At paragraph
19 31 of that judgment the Learned Judge summarised the approach to be taken by a court
20 on ancillary applications as follows:

21 *“The position is that the Court should determine, whilst reminding itself that*
22 *it must have regard to the best interests of the children first at the outset as*
23 *well as when then considering the other factors in s. 19 of the Law, what the*
24 *matrimonial assets are and their value and then deciding how they should*
25 *be fairly divided.”*

¹ Cause No. Fam 39 of 2015 Judgment of Williams J. dated 7th February 2017

1 14. The wife also raises issues as to the conduct of the husband with respect to his assault
2 upon her in the course of the marriage, actions taken against her and his role in the loss
3 of her Caymanian Status which it is said has directly impacted her ability to work and
4 provide for the children.

5 **THE HUSBAND'S POSITION**

6 15. The husband's position is that the following issues arise for determination on this
7 hearing:

- 8 i) Whether the maintenance should be continued for the older child of the
9 marriage.
10 ii) Whether maintenance should be varied for the children of the marriage.
11 iii) Whether an order should be made for spousal support in the short term.
12 iv) How the remaining assets should be distributed.
13 v) Whether a contact order should be made.

14
15 16. The husband's position is that he should not be responsible for maintaining the older
16 child and that this should be the responsibility of the child's biological father. He is
17 willing to maintain the younger child, LL. In respect of both children, he does not
18 challenge the sole residence order previously made, but asserts that he is closely bonded
19 with the children and should have some contact with them. As to the request for spousal
20 maintenance, his position is that the wife is young and fully capable of maintaining
21 herself. He says that there should be no order to maintain her in these circumstances.
22



1 17. He refers to the contributions which he made to the acquisition of the assets in question
2 and urges that there should be a variation from the equality check point such that he
3 should be allowed up to sixty percent of certain of the assets. As to the former
4 matrimonial home, he submits that this was a property which he bought prior to the
5 marriage, that he made the down payment on the initial purchase and during the marriage
6 made all the mortgage payments. He submits that he should be given some credit above
7 the usual fifty percent for his significant contribution to that asset. He submits further
8 that the Court must take into consideration the wife's failure to obey the Court order to
9 make the payments which resulted in the forfeiture of that asset and asks that the
10 remaining funds should be given to him as the only equitable conclusion to this matter.

11
12 18. While the husband agrees that the house in Jamaica is owned by both and has no
13 outstanding mortgage, his position is that this house should be sold and that he should
14 be given sixty percent of the sale proceeds. He says that he should receive this higher
15 amount in order to compensate him for the loss of the former matrimonial home and in
16 light of his greater contributions to the realisation of that asset. As to the warehouse, he
17 says that this was never used or intended for family use. It was used entirely for the
18 construction business.

19
20 19. He asked the court to take into account funds removed from his bank accounts by the
21 wife and used to effect purchases on Amazon and or to pay utility bills in the course of
22 the early period of their separation.

23
24



1 20. Counsel on behalf of the husband sought to distinguish the cited case of *AK. v. TK* on
2 the basis that the facts are quite different in terms of the limited financial resources of
3 the parties in this case. Counsel submitted that this is a marriage of medium length and
4 placed reliance on the dicta of the Court of Appeal in the case of *W.v. W²*. In that case
5 the Appellate Court held that:-



6 *“The factors to be considered depended upon the length of the marriage, with*
7 *fairness requiring in a short marriage that a party should not normally be entitled*
8 *to a share of such property. In a longer marriage, the court would have to consider*
9 *the nature and value of the property, the circumstances in which it was acquired and*
10 *how the parties organized their financial affairs. Consequently, as this was not a*
11 *short marriage (being over 20 years), the Grand Court should have considered the*
12 *source of the various assets owned by the husband’s business and the way in which*
13 *the parties had treated those assets during the marriage when determining whether*
14 *the business was a matrimonial asset.”*

15
16 21. In closing submissions, it was submitted on behalf of the husband that it would be
17 unconscionable and inequitable for the wife in effect to have the two houses owned by
18 the parties and that while there is undeniably some need, the husband would be hard
19 pressed to meet the maintenance payments at the levels requested by the wife. Counsel
20 urged that any living arrangements with respect to the house in Jamaica should be only
21 for a very limited period and should not deprive the husband of his share of the house
22 for an extended period of time.

23 **THE STATUTORY PROVISIONS**

24 22. The Court’s powers in respect of these ancillary proceedings are contained in sections
25 19 and 21 of the *Matrimonial Causes Law (2005 Revision)*.

² [2009] CILR 255

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

5
6 24. Section 21 provides that at the time of pronouncing a decree under this Law, the Court
7 shall, as appropriate, make orders for:

- 8 “(a) *the custody, care and control of the children of the marriage;*
9 (b) *the disposition of matrimonial property, including the matrimonial home;*
10 (c) *varying any settlement of the property of the spouses made in consideration*
11 *of the marriage, whether such settlement was made before or upon the treaty*
12 *of the said marriage.*
13 (d) *varying any other settlement of matrimonial property;*
14 (e) *making financial provision from the property of either spouse for the*
15 *children of the marriage and for the other spouse;*
16 (f) *providing for periodic payments to be made by either spouse for the benefit*
17 *of the children of the marriage and for the other spouse; and*
18 (g) *costs.”*
19

20
21 25. There is guidance from the Court of Appeal in the case of *McTaggart v. McTaggart*³
22 as to the interrelationship between these two provisions of the Law and their application.
23 This includes that a court will need to consider whether having regard to the s.19 factors,
24 an order under s.21(b) of the Law for the disposition of matrimonial property will make
25 appropriate provision for the relevant party with regard to their needs and the level of
26 compensation and sharing. If disposition of matrimonial property will not allow for the
27 appropriate provision to be made, then the court should go on to consider whether to
28 make an order under s.21(e) that financial provision be made from the property of either
29 spouse. A court should not make an order for periodic payments under s. 21(f) without

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

1 good reason. Such good reason would arise where the combination of orders under s.21
2 (b) and (e) are insufficient to satisfy the three strands of need, compensation and
3 sharing.⁴

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

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

⁴ McTaggart v. McTaggart [2011] (2) CILR 390 - Paragraphs 42 and 43

⁵ McTaggart v. McTaggart [2011] (2) CILR 390 - Paragraph 39

⁶ Statutory Factors in England and Wales

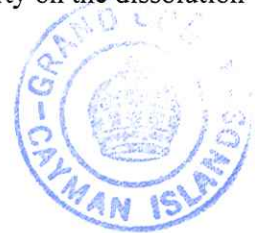


1 **APPLICABLE PRINCIPLES**

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

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

18
19
20 28. The guidance from the case of *Miller v. Miller, McFarlane v. McFarlane* includes that
21 in considering division of financial property, there is no place for discrimination between
22 a husband and wife and their respective roles. The homemaker role should be given equal
23 weight. A court should consider the three strands of need, compensation and sharing
24 which should guide the court in arriving at a fair division of property on the dissolution
25 of a marriage.



⁷ See *Wight v. Wight* [2010] CILR 60 and *McTaggart v. McTaggart* [2011] (2) CILR 390 – paragraph 34, *B-H v. H.* [2009] CILR 185
⁸ [2000] UKHL J1026-3
⁹ [2006] UKHL 24

1 29. It is noted also from the case that the third strand of sharing applies to a short marriage
2 just as it does to a long marriage although for the former, this may have an impact on the
3 quantum to be shared.

4
5 30. Lord Nicholls in his judgment in that case stated that fairness requires that when a
6 partnership ends each partner is entitled to an equal share of the assets of the partnership
7 unless there is good reason to depart from equality. The Learned Judge emphasized that
8 the yardstick of equality is not a rule but an aid.¹⁰

9
10 31. The Learned Judge further stated that there is a real difference between matrimonial
11 property and non-matrimonial property and pointed to the difference being the source
12 of the acquisition. Property which is acquired during the marriage otherwise than by
13 inheritance or gift would usually be matrimonial property as distinct from other property.
14 Matrimonial property is the “*financial product of the parties’ common endeavor.*” As
15 to the matrimonial home, the Learned Judge said this:

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

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

¹⁰ Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - Paragraphs 16 and 17



1 33. In discussing the import of the duration of the marriage, Baroness Hale of Richmond in
2 her judgment in the said case stated that it is recognized that where the starting premise
3 is separate property, there is still some scope for one party to acquire and retain separate
4 property which is not to be shared equally between them. The Learned Judge said that
5 in such cases, the nature and source of the property and the way in which the couple
6 have run their lives may be considered in deciding how property should be shared.¹¹

7
8 34. In *McTaggart v. McTaggart*¹², the Cayman Islands Court of Appeal provided guidance
9 as to the way in which a Court should approach the issue of what is matrimonial property
10 under s.21 of the Law:

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

18
19
20 35. The Court further stated:-

21 *“It is necessary therefore to identify those assets which are owned or under the*
22 *control of one or other (or both) of the parties as at the date when the order is made*
23 *and then to identify which of those available assets are matrimonial property and so*
24 *capable of being the subject of an order under s.21(b).*¹⁴

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

¹¹ Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - paragraph 153

¹² [2011] 2 CILR 377

¹³ McTaggart v. McTaggart, Supra - Page 376

¹⁴ McTaggart v. McTaggart, Supra - Page 390

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other order (say, under s.21(e)) should be made to reflect the fact that the former asset has ceased to exist.

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

21 36. In *Valerie Gordon v. Jefferson Watler*¹⁵, the Appellate Court stated:

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

28
29 37. In the said case of *McTaggart v. McTaggart*¹⁶, the Appellate court also provided
30 guidance as to how a court should approach such applications where a primary issue was
31 the date of valuation of assets. The wife sought a share of property acquired after the
32 parties had separated and argued that the after acquired assets were the product of their
33 joint contributions and should be treated in the same way as matrimonial property. The
34 Court held that matrimonial property was to be identified as at the date of separation, but

¹⁵ CICA Civil 13/2014- 22nd August 2014
¹⁶ 2011 (2) CILR 395

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

4
5 38. That case did not involve a pre-nuptial agreement and the Court stated: -

6 “32 Nor has there been any suggestion, in the present case, that the parties
7 entered into any nuptial or pre-nuptial settlement which should be varied
8 under the power conferred by s.21(c); or that there is any other settlement
9 of matrimonial property in relation to which the power conferred by s.21(d)
10 could be exercised. For the purposes of this appeal, the court can proceed
11 on the basis that the powers which the judge could exercise in this case were
12 those conferred by s.21(b), (e) and (f). In the exercise of those powers he
13 could make an order for the disposition of matrimonial property; he could
14 make an order for financial provision out of the property of one party (on
15 the facts in this case, out of the property of the husband) for the benefit of
16 the other (the wife); and he could make an order that periodic payments be
17 made by one party (again, on the facts in this case, the husband) for the
18 benefit of the other.”
19

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

21 “It is not, I think, necessary to look further than the decision of the House of
22 Lords in *Miller (5)*—and, in particular, the speeches of Lord Nicholls and
23 Baroness Hale—in order to identify the principles. Leaving aside, in this
24 context, the best interests of the children (which, as I have said, are paramount),
25 there are three strands: need, compensation and sharing ([2006] 2 A.C. 618, at
26 paras. 10–16 (per Lord Nicholls); and at paras. 138–143 (per Baroness Hale)).
27 The ultimate objective, as Baroness Hale explained (*ibid.*, at para. 144) is to
28 give each party an equal start on the road to independent living. She said this:
29

30 “Thus far, in common with my noble and learned friend, Lord Nicholls
31 of Birkenhead, I have identified three principles which might guide the
32 court in making an award: need (generously interpreted),
33 compensation, and sharing. I agree that there cannot be a hard and fast
34 rule about whether one starts with equal sharing and departs if need or
35 compensation supply a reason to do so, or whether one starts with need
36 and compensation and shares the balance. Much will depend upon how
37 far future income is to be shared as well as current assets. In general,
38 it can be assumed that the marital partnership does not stay alive for
39 the purpose of sharing future resources unless this is justified by need



1 or compensation. The ultimate objective is to give each party an equal
2 start on the road to independent living.”
3

4 41 Two of those three strands—need and sharing—require little, if any,
5 elaboration. But it is, I think, necessary to say something of the third:
6 compensation. Lord Nicholls explained the concept in these terms (*ibid.*, at
7 paras. 13–15):

8 “Another strand, recognised more explicitly now than formerly, is
9 compensation. This is aimed at redressing any significant prospective
10 economic disparity between the parties arising from the way they conducted
11 their marriage. For instance, the parties may have arranged their affairs in
12 a way which has greatly advantaged the husband in terms of his earning
13 capacity but left the wife severely handicapped so far as her own earning
14 capacity is concerned. Then the wife suffers a double loss: a diminution in
15 her earning capacity and the loss of a share in her husband’s enhanced
16 income. This is often the case. Although less marked than in the past, women
17 may still suffer a disproportionate financial loss on the breakdown of a
18 marriage because of their traditional role as home-maker and child-carer.
19

20 When this is so, fairness requires that this feature should be taken into
21 account by the court when exercising its statutory powers. The Court of
22 Appeal decision in *SRJ v. DWJ (Financial Provision)* [1999] 2 FLR 176,
23 182, is an example where this was recognised expressly.
24

25 Compensation and financial needs often overlap in practice, so double-
26 counting has to be avoided. But they are distinct concepts, and they are far
27 from coterminous. A claimant wife may be able to earn her own living but
28 she may still be entitled to a measure of compensation.”
29

30 Baroness Hale said this (*ibid.*, at para. 140):

31 “A second rationale, which is closely related to need, is
32 compensation for relationship-generated disadvantage. Indeed,
33 some consider that provision for need is compensation for
34 relationship-generated disadvantage. But the economic
35 disadvantage generated by the relationship may go beyond need,
36 however generously interpreted. The best example is a wife, like
37 Mrs McFarlane, who has given up what would very probably have
38 been a lucrative and successful career. If the other party, who has
39 been the beneficiary of the choices made during the marriage, is a
40 high earner with a substantial surplus over what is required to meet
41 both parties’ needs, then a premium above needs can reflect that
42 relationship-generated disadvantage.”
43
44

45 42 In this jurisdiction a court will need to consider whether—having proper
46 regard to the s.19 factors—an order under s.21(b) of the Law for the
47 disposition of the matrimonial property will make appropriate provision for



1 the relevant party in respect of the three strands: need, compensation and
2 sharing. If not, then the court will need to go on to consider whether to make
3 an additional order under s.21(e): that is to say, an order making financial
4 provision for that party out of the property of the other party.
5
6

7 43 It seems to me reasonably clear (and I would so hold) that, if satisfied that
8 an order under s.21(b) of the Law (or the combination of orders under
9 s.21(b) and (e)) would make appropriate provision for the relevant party in
10 respect of the three strands (need, compensation and sharing), the court
11 should not (without good reason) make an order for periodic payments
12 under s.21(f). To make an order for periodic payments—in circumstances
13 where such an order is unnecessary because appropriate provision can be
14 made by the disposition of matrimonial property (under s.21(b)) or by a
15 capital adjustment from the separate property of the other party (under
16 s.21(e))—would be inconsistent with the principle of the “clean break” to
17 which Lord Scarman referred in *Minton v. Minton* (6) ([1979] A.C. at 608):
18 “*There are two principles which inform the modern legislation. One*
19 *is the public interest that spouses, to the extent that their means*
20 *permit, should provide for themselves and their children. But the*
21 *other—of equal importance—is the principle of ‘the clean break.’*
22 *The law now encourages spouses to avoid bitterness after family*
23 *break-down and to settle their money and property problems. An*
24 *object of the modern law is to encourage each to put the past behind*
25 *them and to begin a new life which is not over-shadowed by the*
26 *relationship which has broken down. It would be inconsistent with*
27 *this principle if the court could not make, as between the spouses, a*
28 *genuinely final order. . .”*
29



30
31 40. I turn now to consider the evidence in this case with these principles firmly in mind. The
32 best interests of the children is at the forefront of my consideration. I must identify the
33 matrimonial and non-matrimonial assets and consider a fair and equitable distribution of
34 the matrimonial assets in light of the statutory factors taken as a whole and of the three
35 strands of needs, compensation and sharing. If the matrimonial assets are not sufficient
36 to meet the needs, I may then to go to consider whether any further disposition should
37 be made from non-matrimonial property. The desirable aim is for there to be a clean

1 break between the parties if this can be achieved in the circumstances of this case and to
2 give each party an equal start on the road to independent living.

3 **EVIDENCE IN THE CASE**

4 41. At the time of this hearing, the wife was in what can only be described as dire financial
5 straits. Following the revocation of her Caymanian Status, her status on Island is as a
6 visitor. She has been receiving monthly extensions of permission to remain on Island on
7 submission to the Immigration Department of letters from her Attorney. These advise
8 that these proceedings are still pending. Once these proceedings are completed, unless
9 she is able to find employment, the likelihood is that she will not be able to remain in
10 the Cayman Islands. Her oral evidence is that after the most recent extension which is
11 to the 18th September 2019, her only option will be to go the house which they jointly
12 own in Jamaica. She has nowhere else to go.

13
14 42. Having lost her job in October 2016, with the exception of temporary employment for
15 three months at a local company she has remained unemployed for almost three years.
16 She has submitted numerous applications and has had some interviews but has received
17 no job offers. She attributes this to the uncertainty of her immigration status. She has
18 not been able to register with the National Works Development Agency because of her
19 lack of Caymanian Status. She has never worked in Jamaica and has no source of income
20 there.

21
22 43. All the funds released by the Court to her in October 2018 have been exhausted in living
23 expenses for herself and the children. In June of this year she obtained assistance from



1 the Cayman Islands Government Needs Assistance Unit and they have been paying her
2 rent for a three month period. This was scheduled to end on the 31st August 2019.

3
4 44. The older child, L. is now attending a local college on a government scholarship and is
5 not required to pay tuition fees at this time. However this may change in March 2020
6 when he reaches 18 years old and his Caymanian status is lost. The wife's evidence is
7 that there would be no basis for continuation of his status into adulthood. This is because
8 the initial grant to him was based on the fact that he was the dependent of a Caymanian
9 Status holder and she as his mother no longer holds such Status. Prior to his attendance
10 at the college and public school, he was attending a private school. She had to enroll him
11 in public school because she could no longer afford the tuition fees. There continues to
12 be outstanding tuition fees which have accrued due to non-payment. As at July 2015 the
13 amount outstanding is \$8,267.00 and she has not had the means to make any payments
14 towards this bill.

15
16 45. The younger child LL is enrolled at a local public school. In so far as credibility issues
17 arose on this hearing as to whether or not the husband was deceived as to the paternity
18 of LL, I considered the evidence of the wife to be preferable on this point. I did not find
19 the husband to be a credible witness on this aspect. After being pressed in cross
20 examination he finally accepted that as a couple they had difficulties in having a child.
21 He agreed that this led both of them to consult a medical practitioner but denied being
22 told the outcome of the consultation in the presence of his wife. This did not appear to
23 me to be a truthful account.



1 **FACTUAL ISSUES BETWEEN THE PARTIES**

2 **MAINTENANCE OF L.**

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46. The husband urges that L should be maintained by his biological father. It is his evidence that over the years the wife has collected money sent by L's biological father from Jamaica through money transfer services. He says that he has taken her to collect these monies and that she has told him that it is usually US \$100.00 that she receives.

47. The wife denied that she often told the husband that she needed to collect money from transfer services from L's father and stated that she has provided documents from the Remittance Service named by the husband which indicate that there is no record of her collecting money.

48. She says that she has been the only source of income for L over all the years that L has been living with them. The last time she had communication with L's father was in December 2014. He was then in Jamaica. She does not have any contact details for him. She was able to contact him then because she spoke to his wife on social media and managed to obtain his telephone number. She has not made an attempt to enforce maintenance for L from his father. The husband states that he believes that the wife knows how to contact L's father and that she is in regular communication with him. He said that on several occasions they would speak on the phone in his presence.

49. The husband's evidence further is that on one occasion when the family traveled to Jamaica, L's father met them at the airport in Montego Bay and he handed over L to him. This was either in 2013 or 2014. He thinks that there was one other time but he is



1 not certain. The wife denied that there are occasions when the husband travelled to
2 Jamaica and handed over L to his biological father. She said that L did travel to Jamaica
3 but spent time with her relatives rather than with his father.

4
5 50. Both parties seemed to place some emphasis on their own evidence on this aspect and
6 the husband relies on it to justify his claim that he should not pay any maintenance for
7 L. Even if the husband's evidence is accepted over that of the wife, whatever support
8 may have been provided has been intermittent and inadequate. Contact has been limited.
9 It can hardly be said to be in the best interests of the child to discontinue the maintenance
10 order and to have his well- being and his needs subject to uncertainty and possible
11 inadequacy. Moreover and significantly there is an Order in place from this Court that L
12 who has lived with the parties from the age of one year is a child of the marriage. This
13 is the defining factor which must be understood by the husband. The husband is therefore
14 required to maintain L in so far as he is able to do so.



15
16 **ACQUISITION OF THE MATRIMONIAL HOME**

17 51. The husband's evidence is that he met the wife for a second time in 2004, having met
18 her casually when she was first visiting the Island in 2001 or 2002. This second meeting
19 was shortly after Hurricane Ivan when persons had been displaced from their homes. He
20 invited her to live in his home which she did for a short period thereafter. She moved out
21 and then subsequently moved back in with him. They were already living together when
22 they got married in May 2007. He says that he purchased the home by making an initial
23 deposit of \$1,000.00 and thereafter paying the mortgage. He does remember that there

1 was a time when he was not working for a few months in 2011/2012 and the wife helped
2 to pay the mortgage.

3
4 52. The wife's evidence is that they lived in the home before they were married and
5 throughout the marriage. She says that at the time of the purchase they were together but
6 had not yet married. The property was placed in the husband's name only, because they
7 were not married and he was rushing to acquire the property in order to be able to apply
8 for his Caymanian Status. They got married shortly after the property was purchased.

9

10 **LOSS OF THE MATRIMONIAL HOME**

11 53. In October 2015, the wife consented to an Attachment of Earnings Order with respect to
12 mortgage payments for the matrimonial home. She was responsible thereafter for the
13 mortgage and strata payments on the property in which she resided with the two children.
14 The husband was ordered to vacate the property which he did.

15

16 54. On the day he was leaving, he took all the furniture and appliances. She had to seek an
17 Order for him to return the items taken. That Order was dated 11th November 2015. The
18 husband's evidence is that he removed a number of items from the home at the time of
19 his departure but that this was a limited number of his personal items including
20 television, refrigerator, bed, pillow cases and towels which he had purchased and not the
21 items listed by the wife in her application.

22

23 55. It is the wife's evidence that following the loss of her job in 2016 and payments on the
24 property going into arrears she contacted the husband and told him of her changed



1 circumstances. She says that she offered to pay one half of the mortgage payments from
2 the money which she was receiving for maintenance.

3
4 56. She asserts that the husband's response to her was that he didn't care about any mortgage
5 because he did not live there. When she called him subsequently he did indicate to her
6 that he had paid \$2,100.00. She thought that he was trying to clear up the arrears and
7 was shocked when the bank listed the house for sale. The bank did not communicate
8 with her as her name was not on the title or mortgage and the husband had not told her
9 what was happening.

10
11 57. She denied that she had not cared about the mortgage because she knew that it would be
12 the husband's credit which would be destroyed and that it would take some time for the
13 sale to be effected. It was also put to her that she did nothing for some two years while
14 unemployed when she could have made a further application to Court for assistance with
15 the payments.



16
17 58. She explained that she would not have responded in an uncaring way because when they
18 had to leave the property they had nowhere else to go. She was not working, had no
19 money and could not pay the amounts due.

20
21 59. On the husband's account the wife told him that it was his place and did not volunteer
22 to pay half of the mortgage as she says that she did. He says that he paid something on
23 the mortgage arrears but that he could not afford to keep paying the mortgage based on
24 his earnings. He said that it was not true that he refused to make other payments because
25 he wanted the wife evicted from the home.

26

1 60. I was inclined to believe the wife on this aspect. I found her to be credible and the reason
2 which she gave was a factor in my assessment of her. I accept her evidence that she
3 would have done everything she could to try to save the only roof over their heads at a
4 time when she was unemployed.

5

6 **THE HOUSE IN JAMAICA**

7 61. The parties both own a house in Jamaica which was purchased in 2006. It is agreed that
8 both made contributions towards the purchase. There is some minor dispute as to
9 whether the initial down payments were made solely by the wife and the amount of the
10 initial contributions made by her. She gave evidence that she was working at the time of
11 the purchase and saving by way of a “partner” saving scheme. She said that she paid the
12 first three down payments on the property, which were J \$340,000, then after 30 days
13 another J\$340,000.00 and finally she paid J\$690,000.00, 60 days after that. Before the
14 handover of the keys for the property, they both had to pay the balance of
15 J\$3,071,000.00. It was at this point she says that she and the husband came together and
16 paid that balance. Their intention on the purchase was that they would have a place to
17 stay when they visited Jamaica.

18

19 **THE CONSTRUCTION BUSINESS**

20 62. Prior to and during the marriage, the husband operated a construction business which he
21 started in 2004 around the time of Hurricane Ivan. I note that this timing would have
22 coincided with his meeting of her, and with the commencement of their relationship. He
23 had a trade and business license trading as C construction.

24



1 63. There is sharp disagreement between the parties as to the extent of the wife's assistance
2 to and role in the business. It is the wife's contention that the business was operated by
3 both of them working together as a team. The husband maintains that the wife assisted
4 in the business from time to time but not to the extent which she asserts.

5
6 64. The wife's evidence is that she assisted him from the inception of the business in 2005
7 through to 2015. She was the one doing all the invoices, all the paperwork and all
8 applications for Immigration for the business. She said that she was not paid for this
9 work. She detailed the work as also including preparing estimates for jobs, invoices to
10 collect payments from clients and every administrative and accounting task for the
11 business.

12
13 65. In response to suggestions to her that she could not have had time to do this because she
14 was working full time and was also a student at college at the material time, she
15 explained that she would stay up nights and get up early mornings and do everything.
16 She gave evidence that the husband cannot do an invoice on his own, and cannot prepare
17 a job estimate. She was the one who communicated with suppliers.

18
19 66. It was put to her that with LL having been born on 3rd Jan 2013 that they were having
20 marital issues from then and serious problems in the marriage and she was not helping
21 in the business at that time. Her answer was that even while overseas shortly before
22 giving birth to LL, she was on the phone about doing paper work and all the
23 administration for the business.

24
25 67. On this aspect, I prefer the evidence of the wife as to the level of her involvement in the
26 business. I assessed her as being truthful and credible on this point. Additionally, not



1 only did I have concerns about the honesty and credibility of the husband with respect
2 to his assets for reasons which I shall explain further below but I also noted that his
3 evidence on this included the following:

4 *“After we got married she assisted me sometime with the business. Not on a*
5 *continual basis*

6 *Some time she goes off with this attitude that I have to do it myself*

7 *At the point she feel I couldn't do it because I always asked her to help*

8 *When she realise I could do it myself, she just walked out one day and she was*
9 *surprised that I do it myself. She would help me to do payroll*

10 *TE would do estimates, sometimes he didn't get a chance to do it and I would ask*
11 *my wife to help.*

12 *During the time together she would always help now and then when T can't do it.”*
13
14
15

16 68. It appeared to me from this that the only reason which could have led to surprise on the
17 part of the wife that he was capable of doing administrative tasks for the business, is that
18 in fact she had always been the one doing it.

19
20 69. Secondly I consider that it is significant that the husband added her name to the bank
21 account of the business. The wife said that she was able to write cheques and deposit
22 money to the business account. The documentation in the trial bundle¹⁷ confirms this
23 and shows this to be the case for about five years. Included therein is a mandate
24 authorizing the wife's access to the account dated 17th April 2009 and her removal, on
25 the 11th July 2014.
26

¹⁷ H's Affidavit of 8th March 2016



1 70. It is the wife's evidence which I accept, that the earnings from the business was used to
2 pay the bills including the mortgage for the matrimonial home and the loan which had
3 been used to purchase the warehouse as well as groceries. She used her money from her
4 job to pay electricity and other bills. The account statements for the business produced
5 by the husband for 2015 show utility payments and grocery store payments suggestive
6 of general use of the account. It is accepted by both, although there is dispute as to the
7 length of time, that there was a period in 2011 to 2012 when the wife was the one who
8 paid all the bills as the husband had been ill from a pulmonary embolism and was unable
9 to work for a period of time.

10
11 71. From all the evidence which I have heard and seen, I conclude that the construction
12 business was a joint effort by the parties. The wife contributed her administrative skills
13 and the couple pooled their labour to run the business. The earnings therefrom were then
14 used to defray their mortgages and living expenses.

15
16 72. I find on the evidence that the construction business was the joint business of the parties
17 and the earnings obtained therefrom constituted matrimonial property.

18 **THE MINI WAREHOUSE**

19 73. The wife's evidence is that this was purchased after they were married. She says that it
20 was initially rented by the husband at the time he had the security and construction
21 company. Payment for it was made from the construction business. She says that each
22 month the bank did a direct debit from the business account and that the cost for the
23 property was subsequently paid off. The land Register document indicates that it was
24 transferred to the husband on 24th October 2007. The husband says that the warehouse



1 had nothing to with the wife. He says that it was purchased prior to the marriage and
2 paid for shortly after the marriage. The wife made no contribution towards this and it
3 was never treated as a matrimonial asset. It is small about 9 'by 12' and he uses it as a
4 small office for the construction business and it stores his tools and equipment.

5
6 74. This is property which even on the husband's account was used for the construction
7 business, which business was in my view the joint business of the parties. He
8 was at pains to point out that the construction business was his only source of income
9 which leads me to accept the evidence of the wife that payment for the warehouse was
10 completed with proceeds from the business. I consider that the warehouse played a
11 central role in the operation of the business, which business was the joint business of
12 both parties and that it was therefore property which was placed into the melting pot of
13 the marriage.

14
15 75. The husband has produced a formal valuation for this property in the sum of
16 CI\$28,000.00 as at inspection date of 20th June 2016. The wife in evidence said that it is
17 valued at \$39,000.00 but has not produced a formal valuation.

18
19 **THE WIFE'S MOTOR VEHICLE**

20 76. The wife is without a motor vehicle because shortly after the divorce petition was served
21 on him in June 2015 the husband sold the car which he had bought for her. The evidence
22 of the wife is that this was done without her knowledge. Having driven it home one
23 evening, the next day when she came out to go to work, it was gone from where she had
24 parked it. When she asked the husband about the car, he told her that he did not know
25 where it was. She reported it to the Police as missing, only to discover that it had been



1 legitimately sold by the husband. The resulting effect is that as LL is too young to be
2 allowed to take the school bus, the wife has to walk with him to school, borrow the car
3 of a friend or ask for rides in order to take him to school.
4

5 77. In his oral evidence, the husband sought to explain that he had sold the car which he had
6 previously bought for the wife, because the wife did not want to license or insure it and
7 he could not afford to pay anything more on it. He also said that it required repairs and
8 had been parked there for a long time. He said the Strata said that he could not park it
9 there. He said that far from receiving a substantial sum on the sale as the wife claimed,
10 the purchaser had to tow the car away and only gave him about \$1500.00 for the car. He
11 denied selling the car because he was angry that the wife had filed for divorce.

12
13 78. One of the two must not be telling the truth. It is either that the car was in a drivable
14 condition so that the wife was using it to go to and from work or it was not. The
15 overwhelming impression I have from the husband's explanation which appeared to be
16 padded was that this may well have been an act of spitefulness on his part. I believe the
17 wife when she said that the sale was effected without her knowledge. If the sale was
18 based on good reason as the husband sought to explain, it is surprising that he would not
19 have told her about the pending sale or the fact of the sale in the immediate aftermath of
20 it.

21 **CONDUCT OF THE HUSBAND**

22 79. On the evidence of the wife, which I accept as a truthful account the husband did a
23 number of acts following the filing of the divorce. The husband does not deny the facts
24 of these matters for the most part but seeks to justify his actions.

1 80. In addition to selling her car as is described above, he reported her to the Immigration
2 Department that they were not together and that she had forged his signature on her
3 application for Caymanian status. His signature had not been forged. He reported her to
4 the United States Consulate here in Cayman. She says that he did so in order to affect
5 her travel to that jurisdiction. He says that it was because she had punched the younger
6 child so hard that he cried and the child is an American citizen. He did not report this
7 incident to the child and family authorities in this jurisdiction or to the police. She says
8 that he also reported her to the Canadian Embassy. He says that he cannot recall doing
9 so. He agrees that he reported her to the Jamaican Authorities. He says that this was
10 because she had made a report that he had threatened her, to the Cayman police which
11 might have affected certain of his licenses held in Jamaica.

12
13 81. He was convicted by the Summary Court of an assault against her and on her account
14 denuded the matrimonial home on his departure from it. He permitted the foreclosure of
15 the said home, claiming that he was unable to continue to assist to make the payments
16 on the mortgage. Notably these were the very same mortgage payments which he had
17 been able to make from the earnings of the business during the marriage and in
18 circumstances where he told this Court that where his income is less than his earnings
19 he would do side jobs to cover the shortfall.

20
21 82. It very much appears to me that in the heat of the moment following the separation he
22 engaged in a series of deliberately spiteful actions against her. Whether or not his
23 conduct rises to the level that it would be inequitable to disregard it, is the issue for
24 assessment.
25



1 83. Counsel on behalf of the wife has urged that consideration be given to the conduct to the
2 husband in two respects. Firstly the assault committed on her. In response Counsel on
3 behalf of the husband submits that this was a minor assault of scratches to her body and
4 not one which resulted in major injuries. Counsel for the husband also advised the Court
5 that there had been additional cross charges laid against both parties which had been
6 withdrawn following both completing a period of counselling.

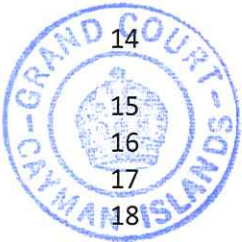
7
8 84. The general principles which apply to conduct cases were set out by Williams J., in the
9 cited case of *AK. v. TK*. The Learned Judge noted that the type of conduct usually seen
10 in such a case is conduct which has financial implications such as, non-disclosure,
11 dissipation of assets, improperly leaving employment to deliberately reduce income
12 capacity or injuring a spouse and thereby reducing her income capacity.¹⁸ The Learned
13 Judge cited with approval the judgment of the Court in *S. v. S.* [2006] EWHC in which
14 it was stated:

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

20
21
22 85. Applying the general principles to the instant case, there is nothing which suggests that
23 the conduct of the husband in assaulting the wife was so manifestly serious or that there
24 were financial implications for the wife from it. There is no evidence of inability to work
25 and no evidence of financial impact upon her. I have regard to the case of *H. v. H.*
26 *(Financial Relief: Attempted Murder as Conduct)*¹⁹ in which the wife received serious

¹⁸ Paragraph 35

¹⁹ [2006] 1FLR 990



1 knife injuries which led to her being unable to work after the incident. The Court held
2 that while there should not be a punitive or confiscatory approach to the husbands'
3 conduct, it was proper to have regard to that conduct as a potentially magnifying factor
4 when considering the wife's position under the relevant criteria. As a magnifying factor
5 it placed her needs as a much higher priority to his because he bore responsibility for her
6 current situation.²⁰

7
8 86. Secondly it is submitted on behalf of the wife in the instant case, that the husband's
9 conduct in reporting her to the Immigration Department and causing her to lose her
10 Caymanian Status is a factor in this case to which the Court should have regard. It is
11 submitted that this has had a significant impact on her financially, in that it has led to her
12 inability to secure employment.

13
14 87. The wife states that the husband falsely reported to that Department that she had forged
15 his signature on the application form for Caymanian status which she had not. The
16 husband does not deny filing the complaint but states that the revocation is substantively
17 as a result of the information which the wife had placed on the application form.

18
19 88. Both Counsel pointed to the basis upon which the Immigration Department must have
20 revoked her status. Counsel for the wife submitted that it must have been because the
21 separation of the parties was coupled with the allegation of forgery. Counsel for the
22 husband submitted that the separation of the parties by itself would have provided
23 legitimate grounds for revocation. There was no evidence from Immigration on this
24 point.



²⁰Supra –paragraph 44

1 89. The wife produced as an exhibit to her Affidavit of 27th September 2018, a letter from
2 Immigration dated 14th July 2018. This states that “*her right to be Caymanian is revoked*
3 *due to false representations as to the state of the marriage at the time of the application.*”

4
5 90. Unfortunately what was painfully clear from the wife’s own oral evidence is that the
6 information submitted to the Immigration Department was different from the
7 information in the Petition for divorce.

8
9 91. Her evidence was that she submitted an application for Caymanian status in May 2014
10 at a time when they were still together. She petitioned for divorce in 2015. She accepted
11 that at the time of the filing at Immigration the representation had been made that they
12 were together but that her divorce Petition asserted that they had been separated for some
13 two years which would include a period of separation going back to 2013. This would
14 mean that the representation made to Immigration in 2014 was incorrect or untrue. She
15 says that at the time of the filing of the Petition they had been occupying separate rooms
16 for about one month before then. She sought to explain the differing representations by
17 saying that their relationship had been up and down and they had separated from time to
18 time although they were always in the same house and bed. She said further that at the
19 time of the submission to Immigration they had been on good terms.

20
21 92. In the absence of direct evidence on this point I am not able to conclude, as was urged
22 on behalf of the wife, that it was the report of the forgery of the signature rather than the
23 erroneous information as to the state of the marriage which lead to the revocation.

24
25 93. Indeed I am left with the unfortunate impression that the wife has been less than truthful
26 in one forum in respect of this aspect of the matter. It cannot be said with any degree of



1 confidence that it was the actions of the husband as distinct from the reality of the
2 separation or the erroneous information provided which led to the loss of her Caymanian
3 Status and thus her unrestricted right to work.

4
5 94. It follows that while the husband's reporting actions may have been motivated by spite,
6 I do not find that it is his conduct which lead to her inability to work on an unrestricted
7 basis. I cannot conclude in the light of this that his conduct rises to the level of conduct
8 which would be inequitable to disregard.

9
10 **ALLEGATION OF HIDING OF ASSETS AND INCOME**

11 95. The wife maintains that the husband has other sources of income than the construction
12 business. She states that he has been selling cars 'on the road' and that she has seen him
13 importing vehicles. It is not true that it is only his daughter's car that he has imported
14 because she has seen e-mail correspondence relating to the cars. She says that he has
15 numerous vehicles including a truck which he has just bought from Vampt Motors. It is
16 in his friend's name and every day he drives it.

17
18 96. The husband denies these assertions by the wife. His evidence is that the only source of
19 income which he has is his construction and janitorial businesses. His oral evidence was
20 that during the separation the wife was saying to him that she wanted the business C
21 construction. Hi response was that he was not going to fight over it. Thus he abandoned
22 the trade and business license for C construction leaving it to her and in January 2018
23 he formed a limited liability company together with his daughter which operates a
24 construction business. The new business has the same major client as the old business
25 and has acquired a second major client causing his income to increase.





1 97. He produces bank statements for the old company up to 18th April 2016 when the balance
2 on the account was \$942.65 and bank statements for the new entity beginning on the 19th
3 April 2016 with an opening balance of \$2,500.00. There is a gap in the records produced
4 and more recent statements for the new business account are for 2018 and show an
5 opening balance on the 2nd January 2018 of \$126,000.00. He explains this balance by
6 saying that it was a deposit on a contracted project and not money from the old company
7 as suggested by the wife. When it was pointed out to him that there is a lacuna in the
8 records which he produced so that there is no evidence of what the closing balances were
9 for the old business, he said that the old business had no funds. By the 22nd October
10 2018, the balance on the new company's account was \$15,401.39. He said that the
11 monies withdrawn had been used in the running of the business to work on contracted
12 projects.

13
14 98. His construction and janitorial businesses employ some 22 employees with a monthly
15 payroll of \$45,000.00 to \$50,000.00. He pays himself a maximum of \$4,000.00 per
16 month which is about \$500.00 more than his foreman, who is his highest paid employee.
17 The minimum which he pays himself is \$2,500.00.

18
19 99. He explains that the business does not own a truck now so he uses the truck of his cousin
20 D, who also works with him in the company.

21
22 100. With respect to vehicles he says that he used to have two work trucks but now only has
23 a small Honda Fit motor car. He provides valuations for the two vehicles which he used
24 to own, these were a Ford Ranger valued at \$2,300.00 and a Mazda vehicle valued at
25 \$2,000.00. He said that these were old and in need of extensive repairs.

1 101. He agreed that he has imported two cars but says that both were imported by him on his
2 daughters' behalf. The first vehicle which he imported for her was a Nissan which she
3 did not like so he imported a BMW motor car which is registered in his name. It is in
4 his name because his daughter had an accident previously and he is able to get a better
5 rate of insurance if the car is in his name rather than hers.

6
7 102. There is a third car which in his name but is said by him not to be his. This one is an
8 Infinity motor vehicle which is in the United States. This he said belongs to his niece
9 MS who resides and works in that country. She is a nurse by profession and also works
10 in the real estate market. As it turned out, MS features in this case in a major way. At
11 the start of her oral evidence, the wife was asked and indicated that she objects to the
12 husband travelling with LL to the United States as he had asked to be allowed to do. This
13 initially appeared to be unconnected to this financial hearing. The reason which the wife
14 gave for her objection is that the husband and MS entered into an arrangement by which
15 they have claimed LL as a dependent of MS for tax purposes. The wife fears that they
16 are seeking to have LL in the United States so that they can support their claim by
17 demonstrating (if only for a temporary period) that he is resident in the United States.
18 The wife's evidence is that as a result of the claim, the husband received some
19 US\$2,500.00.

20
21 103. The husband's evidence is that it was the wife who entered into this questionable
22 arrangement with MS. He says that she went to stay with his niece in the United States
23 and that together they completed the application process because it is the wife has the
24 relevant papers for LL. He says that at the time, he had an account in the United States
25 and he told MS to put the money for LL into that account. He had about US\$5,000.00



1 in the bank at the time. This was money from his savings here and the US \$2,500.00 for
2 LL. The account was generally used by them to order items from Amazon. His evidence
3 was that when the wife found out that he was serious about the separation from her, she
4 went into the account and took all the money from it, leaving it dormant. He said that
5 she took the money and used it to buy items on Amazon, taking just under \$6,000.00.
6 He reported it to the United States Consulate and to his bank.

7
8 104. It did seem to me that the husband's version of what occurred was on balance more
9 plausible. That as the mother of the child, the wife was more likely to have all the
10 relevant details required for presentation for any tax refund claim. However I thought it
11 more likely than not that this was a scheme that had been agreed to by both parties at a
12 time when they were on good terms. I noted that on the husband's own account he spoke
13 to MS and willingly agreed to have the money obtained placed in his account. Given the
14 small amount and the distinctly unfortunate implications of what can only be described
15 as a dishonest scheme by both, I do not propose to take into account any funds removed
16 or taken by the wife from the account referred to. I do take note that the husband's
17 practice was to place some of his savings into a US account in his name.

18
19 105. Unfortunately the involvement of MS in this matter is not limited to this and may more
20 directly impact the assessment of the assets and resources of the parties. On the 3rd
21 October 2018 the husband filed an Affidavit in which he stated:-

22 *"I have no bank accounts in the United States, nor do I deposit any money there.*

23 *During the course of the marriage, I did have a US account which the Petitioner*
24

1 *emptied and as a result I expect that it was closed and I have had no dealings with*
2 *that account since.”*

3
4 106. On the same day the wife filed an Affidavit in which she stated that it was not true that
5 the husband does not have a US account. She produced a transaction record from a
6 United States bank addressed to the husband showing that on the 13th January 2018, he
7 had deposited US\$15,000.00 in cash into an account. She also produced records relative
8 to his importation of a motor vehicle and purchase of freight insurance.

9
10 107. On the 9th November 2018 in response to the wife’s Affidavit the husband stated that
11 while the documents produced by her would tend to show that he has not been
12 forthcoming with the Court he can explain this. He stated:

13 *“Firstly I did state that I do not have an account in the United States (except the one*
14 *I had previously) but in fact there is an account which my niece MS asked me to*
15 *open for her. I do not consider that as my account as she is the one who deposits*
16 *funds in it not me. Those funds belong to my niece, NOT me. I was only trying to*
17 *help her out of a difficult situation by having my name on the account. I apologize,*
18 *but in fact I do not consider that account as mine because it is M’s funds.”*

19
20
21 108. The husband produced a notarized letter from MS dated 25th October 2018 in which she
22 states that the money in that account belongs to her and that she deposited \$15,000.00
23 into an account which she opened with her uncle. The explanation of MS in the letter is
24 as follows:
25



1 *"I got to understand that my information has been used in my uncle's case which it*
2 *shouldn't have. A year and a half ago I have been going through some financial*
3 *dispute with my business partner/boyfriend, we are jointly the owner of several*
4 *properties, fix (sic) and rented out... The reason for this letter is to explain why I*
5 *had to use my uncle LC's information to deposit my money and open an account. In*
6 *October of 2017 my business partner started to become a problem with when and*
7 *how I used my own funds as he's thinking that part of my regular earnings belongs*
8 *to him because it's been deposited in our account."*

9
10
11 109. She says that the \$15,000.00 is the balance of money received from an informal savings
12 scheme called "partner". She received payout of these savings in two tranches for a total
13 of \$20,600.00. In proof she attaches a notarized letter dated 3rd November 2018 from the
14 banker for the scheme, "B", and three invoices. B's letter states that MS received a total
15 of \$26,000.00 from the scheme. He produces three invoices, one dated 30th November
16 2017 for \$10,300.00, a second dated 15th December 2017 for \$10,300.00 and a third
17 dated 30th November 2017 for \$7,500.00. The three invoices are for a combined total of
18 \$28,100. 00. Neither MS nor B were called to give evidence or provided formal
19 Affidavits.

20
21 110. The husband in cross examination was asked to explain the inconsistency between the
22 letter of MS and the invoices. He said that he could not explain why there were three
23 invoices and not the two to which MS refers and that he does not know what happened
24 to the \$7,500.00.



1 111. The husband produced a bank statement for the said account which begins on the 6th
2 August 2018 with a balance of \$19,842.39. There was a deposit of \$10,000.00 on the 7th
3 September 2018 and small withdrawals with a balance on the 26th October 2018 of
4 \$25,265.99. He gave oral evidence that the balance in the account is now about
5 \$9,000.00. The account statement which he produced had his name and the name of a
6 female AE. When asked, the husband said that AE is his mother.

7
8 112. I accept the submissions of Counsel for the wife that there are circumstances about this
9 account which do not make sense. There was no reference by MS to the fact that the
10 mother's name was also on the account. There was no reference by the husband in his
11 Affidavit that his mother's name was also on the account. There are also differences in
12 the amounts.

13
14 113. When asked why MS needed his name to be on the account if his mother was available,
15 he said that his mother is elderly and does not travel to the United States very often
16 unlike himself who travels very often.

17
18 114. He tried to explain the reason for his participation in this arrangement with MS but I
19 found his explanations weak. He did not answer to whether or not he knew that the
20 partner of MS was or was not entitled to the funds but said that because of his drinking
21 and behaviors, both himself and MS were trying to help the said partner.

22
23 115. When asked why the Infiniti motor car had to be in his name rather than the name of MS
24 to whom he said it belonged, he said that it was because MS did not want to put it into
25 her name because the partner put a truck which he had bought into his daughter's name.
26 MS asserts that she has been paying the loan amounts for the Infiniti vehicle.

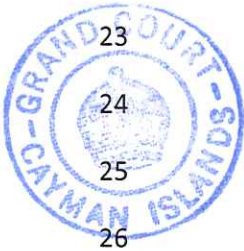
1 116. The husband said that MS has a son and sister who were both under age and of the other
2 relatives which she has in the United States, MS does not get along with her mother and
3 that her other sister is not resident in the same State as MS.

4
5 117. It was suggested to him that the amount placed in this account was his money and that
6 he had obtained the letter from MS in order to justify the amount. Further that he did so
7 in order that there would be no tracing of it for the purpose of these proceedings.

8
9 118. The husband explained that MS is able to withdraw money from the account by using a
10 card in the name of his mother at ATM machines. He gave this card to MS instead of
11 giving it to his mother.

12
13 119. Suffice it to say I found the entirety of his explanation to have dishonest overtones.
14 Assessing him as he gave evidence, I did not find him to be a credible witness on this
15 serious matter. I did not believe him. The explanation which he gave was implausible.
16 For what reason was he chosen as against other relatives and persons who actually reside
17 in the United States. The explanation for the Infiniti motor car, being in his name simply
18 makes no sense.

19
20 120. More significantly, the fact of his admitted participation in such an unsavoury scheme
21 to assist MS to hide funds from her partner, betrays his own willingness to be less than
22 honest when it comes to asset arrangements. In short the pattern of his behavior since
23 the filing of the divorce and the admission of his willingness to participate in such
24 dishonest arrangements makes it clear to me that he would have no hesitation in hiding
25 his own assets.
26





1 121. Indeed from all I have seen of him and from the evidence of the wife which I accept on
2 this point supported as it is by the documentation which she produced, it is clear to me
3 that the husband has been engaged in a systematic scheme to divest himself of all his
4 traceable assets before this hearing. It defies belief that a construction and janitorial
5 company that employs some 22 workers which once had two trucks could go from that
6 to relying on a Honda Fit motor car and borrowing an employee's truck, a truck which
7 according to the wife, the husband drives regularly.

8
9 122. Further the closure of the earlier business in the middle of these divorce proceedings and
10 the establishment of a limited liability company to operate the very same business is a
11 signpost to his intentions. He was undoubtedly truthful when he gave evidence that he
12 abandoned the earlier trade and business license because the wife wanted the business.
13 I thought the absence of ending bank account information for the earlier business was
14 not surprising fitting right in with his concealment actions. I noted that he initially said
15 that was not the case, claiming that he had produced all the records before having to
16 accept that the information simply was not there,

17
18 123. I am not able to quantify what the husband has hidden but there is documentary evidence
19 of the amount which was deposited to the US account which I find on the evidence to be
20 his money and his account. I reject the explanations given for it as being the property of
21 MS to be untrue and patently orchestrated to deceive this Court. I find that this is an
22 attempt to hide money so that it cannot be taken into account in these proceedings.

23
24 124. I have insufficient information to be able to conclude that this amount was earned during
25 the marriage prior to the separation of the parties and thus is matrimonial property.

1 However I do propose to take it into account in considering the assets of the husband as
2 distinct from the very small amounts which he purports to show on his local bank
3 statements. It means that he has other funds available to him.

4
5 **IDENTIFYING THE MATRIMONIAL ASSETS**

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

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

10
11
12 126. I remind myself of the nature of matrimonial assets as discussed by the Court in *Miller*
13 *v. Miller, McFarlane v. MacFarlane*. In the case of *B-H v. H*²², the parties had been
14 married for 12 1/2 years and had two children. The issue for the Court was to identify
15 what was matrimonial property in circumstances where each party had brought
16 properties of their own into the marriage and had acquired more during the course of the
17 marriage. They had maintained separate financial affairs during the course of the
18 marriage. Foster J. (Ag.) reviewed a number of local and English cases and said this:

19 *“In my opinion, it is clear, both from the remarks made in the various authorities*
20 *and as a matter of common sense, that in determining whether particular property*
21 *is to be considered matrimonial property or the separate property of one of the*
22 *spouses for these purposes, the court must have regard to all the circumstances*
23 *relating to the property concerned. Such circumstances include but are not confined*
24 *to, the circumstances and timing of its initial acquisition, the party by whom and*
25 *how it was acquired, the apparent intentions of the parties with regard to and the*
26 *use of the property during the marriage, amongst other factors. For example, it does*
27 *not, in my opinion, automatically follow that just because the property concerned*
28 *was acquired solely by one spouse prior to the marriage, whether by purchase, gift*
29 *or inheritance, and the title remained throughout the marriage in the name of that*
30 *spouse, the property may not nonetheless in some circumstances be considered to*

21 [1973] Fam. 72

22 [2009] CILR 185

1 *have become matrimonial property—“put into the melting pot of the marriage” (see*
2 *Levers, J. at first instance in Wight v. Wight (10) (2006 CILR 1, at para. 55)).”*

3
4 127. In this case, the former matrimonial home had a central place in the marriage which was
5 of medium term. Further I accept the evidence of the wife that there was a joint working
6 relationship where they each contributed their skills to the construction business. The
7 mortgage for the home was paid from the earnings of the business. The fact that the
8 husband paid the initial deposit is of little significance given that the home was
9 purchased at a time when they were living together and that thereafter they both worked
10 in the business to which each contributed in their own way. There was no separation of
11 the business from the wife or indeed any evidence that it was intended to be separate
12 from her.

13
14 128. I conclude that the matrimonial assets in this case include the following:

- 15 i. The former matrimonial home
- 16 ii. The construction business
- 17 iii. The warehouse valued at \$28,000.00
- 18 iv. The house in Jamaica



19
20
21 129. In respect of each item, given the way in which the parties conducted their lives, I can
22 see no good reason to depart from equality. I do not find on the evidence that there was
23 any special contribution by the husband such that he should be awarded more than an
24 equal share. While the loss of the matrimonial home was due to the wife's
25 unemployment, I do not accept that fault lies with her such that he should be
26 compensated in some way. I say this against the background of the view which I have

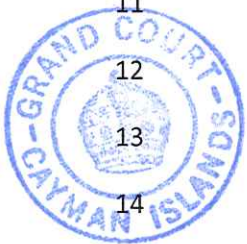
1 taken that despite his protestations to the contrary, he could have done more to assist
2 with the arrears of mortgage payments. He had an ongoing business and vehicular assets.

3
4 130. The wife has already received one half of the proceeds from the sale of the matrimonial
5 home. She is entitled to one half share of the value of the warehouse, which would be
6 \$14,000.00 and one half of the value of the house in Jamaica. There is no valuation for
7 the business which is now dormant and the last amount shown in 2016 in the account for
8 the business was less than one thousand dollars.

9
10 131. The wife's pension balance as at the 30th September 2014 was \$18,808.82. The
11 husband's pension balance as at 31st July 2018 was \$16,266.44. There is agreement
12 between the parties that each should be allowed to keep their respective pension
13 entitlements and the husband may keep his motor vehicle. There are very small amounts
14 shown on personal accounts such as to be negligible. Each should keep the amounts in
15 their respective personal accounts.

16
17 **CONSIDERATIONS**

18 132. The first consideration in this matter is the needs of the children of the marriage and
19 what is in their best interest. They require housing and general ongoing maintenance
20 which is sufficient for their day to day educational and other needs. The wife's
21 Immigration status is uncertain. It is not likely that she will be able to remain on Island
22 if she does not secure employment, which she has so far been unable to do for close to
23 three years.





1 133. The wife is responsible for the day to day care of the two children and she will have this
2 responsibility well into the future as the younger child is only six years old. She needs
3 financial support in order to house herself and the children and to provide for their needs.
4 The husband does not have responsibilities or needs of a similar nature. He however has
5 lost his home and is in rented accommodation. He would be looking to re-establish his
6 credit and work towards owning another home. Unlike the wife he is in an established
7 business and his potential for earnings in the immediate future is significantly better than
8 hers who must now re-enter the working world after a period of absence. It is likely in
9 the foreseeable future that he will be able to rebuild quickly while she will take some
10 time to get back on her feet. She is only 33 years old so that there is time for her once
11 she is able to find a job to begin the process towards independent living. I have indicated
12 above that I do not consider that the conduct of the of the husband rises to the level that
13 it would be inequitable to disregard it. The issues raised with respect to the wife's
14 conduct are as to taking funds from the husband's account and also do not rise to such a
15 level.

17 134. The wife has no financial resources at present and is not likely to have this in the
18 immediate future. While it is reasonable to expect that she will find employment in the
19 accounting or administrative field, all indications are that this will be a slow process. If
20 she does return to Jamaica where she has not lived for the past 17 years, this will take
21 some adjustment and planning in order to get into the job market there.

23 135. There is no evidence that the earning capacity of the husband will increase or decrease
24 in the future. However he is in a better earning position than he was during the marriage.

1 Both parties enjoyed a modest standard of living during their eight year marriage. There
 2 is no physical or mental disability on the part of either party. The dissolution of the
 3 marriage has meant that the wife has lost the right to work freely in the Cayman Islands.

4
 5 **THE INCOME AND EXPENSES OF THE WIFE**

6 136. The wife has no income and no independent assets. She gives her expenses as follows:-

	CI \$
Groceries	600.00
Electricity	208.00
Water	76.00
School lunches	640.00
Telephone	102.00
Transport	200.00
Barber for children	40.00
	\$1866.00



7
 8 **THE INCOME AND EXPENSES OF THE HUSBAND**

9 137. In his oral evidence the husband said that his income has increased since 2016, he now
 10 does work on an on ongoing basis for two companies rather than one. He says that he
 11 pays himself about \$4000.00 per month after paying his workers. There is no
 12 documentation to support this. His expenses as set out in his more recent Affidavit of
 13 3rd October 2108 are as follows:-

	CI \$	Possible Reduction to
Rent	675.00	
Electricity	160.00	
Internet	79.00	
Cell phone	110.00	
Grocery/Lunch	650.00	
Helper	600.00	300.00
Car Expenses/Gas	450.00	200.00
Life insurance	71.00	
Mother	200.00	

Health Insurance	256.00	
Pension	250.00	
Water	130.00	
Daughter in Jamaica	100.00	
Cable	40.00	
Personal	50.00	
Sub- Total	\$3781.00	\$3231.00
Present Maintenance payments	\$750.00	
	\$4,531.00	

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138. I found the amount of \$600.00 per month spent on paying a helper to be unusually high given that the children do not reside with him and he lives in a small one bedroom apartment. He said that the helper comes in three or four times per week and he pays her \$200.00 per week. My view is that this amount can be reduced significantly to save costs and I would estimate a reasonable sum to be paid to be no more than \$300.00 per month. I also inquired about his spending on car expenses of \$450.00 per month when his evidence was that he now only has a small Honda Fit motor car. He agreed that in fact he now spends only \$200.00 per month on transport. A reduction in these two items would reduce his expenses by \$550.00. He did indicate that he now has the younger child on his own insurance for which he is paying an additional \$180.00 per month.

139. He was asked about how he was able to manage, when he has over the years said that his income is consistently less than his expenses. He said that in the past he would do 'side jobs' now and then. He said that more recently despite increased earnings he would still be short but all his bills are not due at the same time so he would owe and pay when he is able to do so.



1 140. The type of hand to mouth existence which he sought to describe appeared inconsistent
2 with the owner of two companies with 22 employees with a payroll bill of close to
3 \$50,000.00 per month and one who has been in operation in the community for close to
4 15 years. It also seemed inconsistent with someone who says that he travels so regularly
5 to the United States that he has no difficulty opening accounts there for other people.
6 One would have expected with the financially strapped existence which he described
7 that travel would be curtailed severely in order to save money.

8
9 141. From his own evidence he has the potential to supplement his earnings by doing other
10 jobs. I propose to take a broad view of his budget. I have in mind the guidance from the
11 case of *SS v. NS (Spousal maintenance)*²³ in which the Court stated:

12
13 *“But the essential task of the judge is not to go through these budgets item*
14 *by item but stand back and ask, what is the appropriate proportion of the*
15 *husband’s available income that should go to support of the wife? This*
16 *decision should not be taken to mean that the individual items of a budget*
17 *are irrelevant. Rather it emphasizes that in the exercise it is important that*
18 *the court should clearly survey the wood as well as the trees.”*
19

20 **CONCLUSIONS**

21 142. I have considered all the evidence and submissions made in this case, some of which I
22 have not detailed herein. Having also given due consideration to the general principles
23 in section 19 of the Matrimonial Causes Law, to the statutory factors in England and
24 Wales and to the strands of need, compensation and sharing, it is the strand of needs
25 which is of significance in this case.
26



²³ [2014] EWHC 4183 (Fam)

1 143. I am particularly concerned about housing for the children and the wife. The house in
2 Jamaica which is jointly owned by the parties, should be divided equally between them
3 based on the assessment above. However it is the only home which is available for the
4 children to reside and their needs must first be considered. An immediate sale of this
5 property would mean an interim period of no certain housing for the children and a
6 transfer to the wife would deprive the husband of his half share in the property.

7
8 144. The husband is in rental accommodation and has been able to pay the rental from his
9 earnings. The evidence points to him having the ability to amass savings and to save in
10 the United States. It is more likely that he will be able to get back on his feet and rehouse
11 himself from his own efforts. The wife has had to resort to Government support and must
12 start from the beginning. I consider that it would be appropriate in the circumstances of
13 this case to make an order as described in the case of *Mesher v. Mesher*²⁴.



14
15 145. Counsel on behalf of the husband urges that any period of occupation of the house should
16 be as short as is possible and for no more than six months. My view is that this would
17 be too short a time given the fact that the wife will have to resettle in Jamaica and begin
18 a job search. The younger child is only six years old and further disruption of his life
19 must be minimized. I am conscious of the criticisms which have been made in respect
20 of such types of orders in decided cases.²⁵ I recognize that such an order will not give
21 the parties a clean break. In this case it is hoped that it will have the benefit of providing
22 housing for the children and the wife while allowing her the breathing space to find
23 employment and work towards independence. The time frame ought not to be such as to

²⁴ [1980] 1 ALL E.R. 126

²⁵ E (R) v. D (C) 2016 1 CILR 56, Dorney-Kingdom v. Dorney- Kingdom [2000] 2 FLR 855

1 disrupt the lives of the children by requiring them to move from one place to another
2 after resettling in Jamaica. Neither should it be such as to cause anxiety and desperation
3 if the wife's job search takes longer than hoped or if a job in a starting position is
4 obtained by her which does not initially pay very much. There should be time for her to
5 build her resources.

6
7 146. I would order that the house in Jamaica should not be sold until the younger child reaches
8 the age of 16 years or until further order of the Court. In effect this would be for a period
9 of ten years. The wife and children are to reside in the house with the wife having the
10 first option to purchase it at the end of the period should she so choose. Purchase is to
11 be effected by her by paying to the husband one half of its value at that time. The wife
12 is to be responsible for the ongoing upkeep of the house during the period of residency.
13 The taxes are said to be in arrears on the property. The husband should pay any
14 outstanding arrears of taxes up to the date of this hearing. Should circumstances change
15 such that the wife is able to purchase the house prior to the expiration of ten years or
16 there are other unanticipated changes in circumstances an application may be made to
17 the Court.

18
19 147. The indications from the trial bundle are that all the furniture which had been in the
20 house had been removed. There is a need for travel and resettlement assistance for the
21 children and the wife. The husband should pay the amount of \$2,000.00 towards this.
22 This is assessed on the basis of travel costs for three persons and a small amount for the
23 acquisition of any essential items.
24



1 148. I turn now to the day to day needs of the children. In considering the ability of the
2 husband to pay and the needs of the children as set out in the budget of the wife the
3 interim maintenance is increased from \$375.00 per child to \$475.00 per child, a total of
4 \$950.00 per month. This would cover school lunches, barber costs and close to one half
5 of the cost of groceries.

6
7 149. The husband should also pay on an ongoing basis one half of the health insurance and
8 educational expenses for the children until they reach the age of 18 years. The
9 educational expenses are presently minimal as the children attend Government schools.

10
11 150. From the evidence and assessment detailed above, the wife is to receive from the
12 husband, a lump sum payment of \$14,000.00 representing her share of the value of the
13 warehouse.

14
15 151. Together with the resettlement expenses of \$2,000.00, the lump sum payment should be
16 deducted from the amount held in escrow and the balance after deduction paid to the
17 husband.

18
19 152. I have considered whether this lump sum payment would be sufficient such that spousal
20 support is not necessary. I note that the wife has outstanding debts for L's schooling of
21 \$8,267.00. She has no other assets, no motor vehicle and no contingency fund for illness
22 or other unexpected costs. I consider that while a clean break is desirable and should be
23 the aim, the financial state of the wife means that some temporary monthly support is
24 needed while she begins her search for employment.

25



1 153. I have again reviewed the husband's income and expenses and consider that he is able
2 and should pay spousal maintenance of CI \$500.00 per month for a period of 24 months.
3 This is a reasonable period for the wife to secure employment now that the uncertainty
4 of these proceedings is resolved. The amount is much less than the wife has asked for
5 but is more in line with the husband's assertions as to his ability to pay. Both the husband
6 and the wife will have to do their best to save on costs as much as is possible.

7
8 154. The husband will be paying a total of \$1,450.00 which with the identified savings above
9 will take his expenses to just \$150.00 more than the total which he gives and a total of
10 \$320.00 more when the medical insurance (of \$180.00) which he has now obtained for
11 LL is added. The amount of \$1,450.00 is just over one third of his declared income which
12 is in my view a fair and appropriate proportion. I bear in mind that he will also have to
13 meet one half of the costs for the children's education as the need arises. In 24 months
14 the monthly payments will be reduced to \$950.00.

15
16 155. The approach which I have taken will mean that the husband will not receive the full
17 sum which is held in escrow by the Court. I have considered whether this is a fair
18 outcome. For the reasons which I have outlined above, I consider that he has other funds
19 and assets available to him. Even if this were not the case, given his ongoing businesses
20 and his unabated ability to earn from them, he continues to be in a much better position
21 than the wife. I conclude that overall this is a fair outcome in light of the needs of the
22 children and of the wife, the entitlement of the wife to a share of the matrimonial assets
23 and in light of all the circumstances of this case.

24



1 156. The payments of child and spousal maintenance should be made through the Court Funds
2 Office commencing on the 1st day of October 2019 and continuing thereafter on a
3 monthly basis.

4
5 157. The wife does not oppose the husband's request that he has contact with the children.
6 Paragraph 6 of the Order of 26th October 2015 is varied such that the husband is
7 permitted liberal contact with the children at such times as may be agreed between the
8 parties.

9 **COSTS**

10 158. The wife has applied for a contribution towards the Legal Aid Fund. Counsel are invited
11 if they so wish, to make submissions on costs within fourteen (14) days of receipt of the
12 perfected judgment.

13
14

15 **Dated this the 24th day of September 2019**

16

17 

18 **Honourable Justice Cheryll Richards Q.C.**
19 **Judge of the Grand Court**

20

