

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

3
4 **CAUSE NO. 249/2011**

5 **BETWEEN:**

6 **CHRISTINE ONRTINE ANGEL**
7 **Petitioner**

8 **AND:**

9 **RUPERT GEORGE ANGEL**
10 **Respondent**

11 **AND:**

12
13 **Appearances:**

Ms. Stacy Parke of Brooks & Brooks for the
Petitioner

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16 **Mr. Irvin Banks for the Respondent**

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19 **Before:**

Hon. Mr. Justice Richard Williams

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21 **Heard:**

28th May, 29th June, 4th October 2012

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23 **Date of Written Closing Submissions:**

4th October 2012

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25 **Date of Circulation of Draft Judgment:**

9th January 2013

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27 **Date of Judgment:**

16th January 2013

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30 **JUDGMENT**

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32 1. This is an application for financial provision made by Christine Onrtine Angel,
33 against her husband, Rupert George Angel, with final orders in relation to the
34 children having been agreed on 28 May 2012. She did not file a summons for final
35 ancillary relief orders, but at paragraph 9 of her Petition for Dissolution of the
36 Marriage sought ancillary orders in general terms.

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38 2. Leave was given to both parties to file updating affidavits during the course of the
39 part-heard hearing. I have considered the affidavits which have been filed. In

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addition to the written evidence, I have received written and oral closing submissions from the attorneys on both sides and I am extremely grateful to them for their assistance by those written documents. Over the two to three-day hearing I also had the benefit of hearing oral evidence from Mr and Mrs Angel.

3. I hope that the parties will not be offended if from now on I refer to them for convenience as husband and wife.

BACKGROUND

THE PARTIES



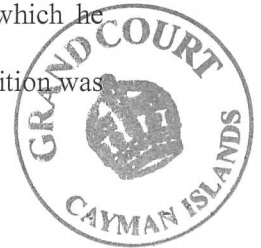
4. The wife is a 39 year old Caymanian national and the husband is a 58 year old Jamaican national who came to Cayman in 1980. Although, the wife states that husband currently has a right to work certificate due to the marriage, he says that he has had permanent residency since 1995. There is a permanent resident stamp dated 17 December 1999 on a passport page exhibited to the husband's affidavit sworn on 28 June 2012.

5. The wife is in receipt of legal aid. Ms Parke informed the court that there is no condition attached to her grant of legal aid, and therefore no claw-back provision.

6. The parties married on 18 November 1995, when the wife was 23 years old and the husband 42 years old, and they have lived together in rented accommodation in West Bay until their separation in around May 2011.

1 7. The wife petitioned for divorce on 9 November 2011 on the ground of the
2 husband's unreasonable behaviour. The Petition and a number of the wife's
3 affidavits make reference to allegations of physical and mental abusive behaviour
4 from the husband towards her. Ms Parke makes it clear that the wife does not raise
5 conduct to seek an increased percentage in disposition of any matrimonial asset but
6 asks the Court to "*take notice of the claim of abuse when considering the matter as*
7 *a whole to appreciate the Petitioner's current situation.*"

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10 8. The husband filed an Acknowledgement of Service of the Petition in which he
11 indicated an intention to defend. However, as no Answer was filed, the Petition was
12 proved on 9 January 2012.



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14 9. Despite a number of affidavits setting out in some detail allegations of alleged
15 abusive behaviour and replies to the allegations, they were not explored in any real
16 detail during the hearing. Having regard to this, and the position taken by the wife
17 in relation to her submitted purpose for raising the allegations, I remind myself of
18 the approach taken by Thorpe LJ in *Re F (Shared Residence Order* [2003] EWCA
19 Civ 592, [2003] 2 FLR 397. Thorpe LJ stated that one of the functions of the judge
20 in family proceedings is to make findings and another function is to be selective
21 and to make findings that are necessary for the disposal of the issue. I am not
22 required to make findings on every area or issue that has been presented to me or
23 which has become apparent during the hearing. I must determine the factual issues
24 that have implications for the decisions that I have to take. Therefore, in the
25 circumstances of this case and the submissions made on behalf of the wife, I am not
26 required to make findings in relation to the alleged conduct of the husband.

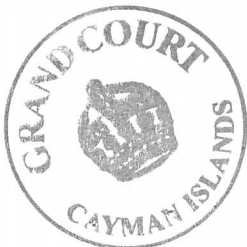
1 and that they are a drain on her resources when I consider what her needs and
2 responsibilities are.

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4 14. Having regard to the disparity in the parties' ages, the fact that the wife had their
5 first child when aged only 17, the fact that she had another child before they
6 married and the fact that they were in effect a family unit for 7 years prior to
7 marriage, in addition to the 16 ½ years post marriage to separation, makes me
8 regard this as being a lengthy marriage. The husband characterises their association
9 in this way at paragraph 9 of his affidavit sworn on 24 January 2012,

10
11 *“The Petitioner and I had a long relationship before marriage during which the*
12 *two older were born. Altogether our relationship lasted 22 years before the*
13 *Petitioner decided to move out. This is a long time to have a relationship with*
14 *someone.....”*

15
16 15. On 28 May 2012, the first day of this part-heard hearing, the parties commendably
17 agreed that the following orders should be made in relation to the relevant children,
18 namely:

- 19 i. Joint custody of the two relevant children with care and control to the
20 wife;
21 ii. The said children to have access with the husband on alternate
22 weekends from Friday 6pm to Sunday 7pm, on alternate public
23 holidays and such other times as may be agreed between the parties.



- 1 iii. The husband to continue to pay child maintenance in the sum of
2 CIS\$100 per relevant child per week¹ until the respective child attains
3 the age of 16 or completes education (up to the age of 21) whichever
4 may be the later.
- 5 iv. The parties are to share educational, medical, dental and optical
6 expenses of the relevant children.
- 7 v. It was made clear that no variation was sought by either party to this
8 order when the part heard hearing returned to court in October 2012.

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*HUSBAND - HIS EMPLOYMENT, INCOME AND BANK ACCOUNTS HELD IN HIS
NAME*



13 16. The husband is self-employed, running a garden service business called R&C Lawn
14 Garden Services. The Trade and business licence issued on 27 April 2010 was in
15 the name of the wife, 'Rupert and Christine's Law Services.' This is in the same
16 form as the first business licence which was taken out back in November 1998. The
17 husband accepts that this was done as the licence would be more easily obtained
18 due to his wife having Caymanian status. The husband stated at paragraph 28 of his
19 affidavit sworn on 24 January 2012 and paragraph 3 of his affidavit sworn on 29
20 February 2012 that his average income from this employment was CIS\$2,000 per
21 month.

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17. The wife does not accept the husband's figure for his income. She stated that before
their separation he would work Monday to Saturday, leaving home at 7/8a.m. and

¹ Continuing an interim order commencing on 18 November 2011 made by the Summary Court

1 not return until 8 or 9 pm. The husband said in his oral evidence that he left the
2 home at 9 to 9.30 returning at 10-10.30 in the evening.

3
4 18. At paragraph 28 of his affidavit of 24th January 2012, giving the impression that he
5 has had to scale down his operations, the husband stated that he now works on
6 ‘almost a part time basis.’ It does appear that husband has an income earning
7 capacity greater than the ‘rough’ figures that he gives to the court as being his
8 income in the schedule set out a paragraph 3 of his affidavit sworn on 29 February
9 2012. Despite requests, he has still failed to provide a proper accounting for his
10 income. His excuse for not presenting such accounts, namely his claim that he does
11 not keep records as he does not know how to do so, is weak and questionable.

12
13 19. I accept the wife’s evidence at paragraph 31 of her affidavit dated the 30th March
14 2012 that she specifically recalled him being fully responsible for the daily running
15 of the business and that he kept a record of work done, always travelling with his
16 paperwork in his vehicle. In examination in chief the wife said that he had files and
17 books in which he kept his records. She went on to confirm that he carried them out
18 with him during the day and would bring them back at night, when he would work
19 at his books at the table.

20
21 20. I am satisfied that the husband has access to information to provide better records
22 of his income, but has failed to give full disclosure of his income to the Court.
23 Therefore, especially when placed in context of the husband’s reluctance to provide
24 timely and full disclosure touching on potential matrimonial assets, I do not accept
25 his figures, and inferences will be drawn as to his income and income capacity.



1 21. From the detail in his schedule, the husband appears to be stating that he has no
2 other significant income save from only ten regular clients, seven of whom reside
3 on the same street (Nelson Quay in Governor's Harbour) and two of whom he
4 cannot be doing much work for as they pay him only \$75 a month. I accept the
5 evidence that prior to separation he was out of the home with his equipment for
6 most of the working day, sometimes on 6 days of the week. His poorly presented
7 accounting and unsubstantiated figures do not support a claim that he is working at
8 his full income capacity, even taking into account a downturn in the economy, nor
9 that he is giving accurate disclosure of his true income.

10

11 22. His evidence is that he has outgoings of \$2,300 and an income of \$2,000. He says
12 that he can make ends meet by carrying out additional work (sufficient details of
13 which have not been provided by him) and by dipping into his savings.

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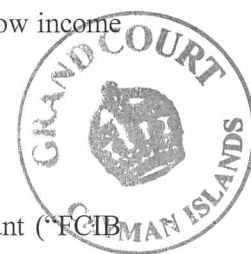
15 23. The husband has provided some detail about his bank accounts. Despite filing
16 updated affidavits the husband chose not to provide therein any bank statements
17 containing information of transactions post January 2012.

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19 24. On 20th December 2011, the same day that the husband filed his Acknowledgment
20 of Service, he had CI\$6,252.66 in his RBC Royal Bank (Cayman) Limited, Cayman
21 dollars, regular savings account ("RBC Account"). A balance of CI\$6,232.26 was
22 in that account on 30 April 2010 and until December 2011 that balance remained
23 fairly consistent, save that it dropped to CI\$5,032.49 in April 2011 until rising back
24 to a similar figure in August 2011. On reviewing the statements provided this is not



1 an account from which the husband withdrew funds to supplement any low income
2 months.



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4 25. When looking at his First Caribbean International Bank Savings Account ("FCIB
5 Account"), it is evident that in 2010, excluding bank charges, he paid in CI\$6,425
6 and withdrew CI\$7,100. He made no payments into that account for 8 of the 12
7 months. The low and infrequent payment-in entries (if made at all, did not
8 ordinarily exceed two in any given month) tend to show that the husband does not
9 pay in the majority (if any) of the monies that he receives from his gardening
10 business into this account. This could mean that he paid the receivables into an
11 undisclosed account² such as to his RBC US dollar account or that he is paid in
12 cash. I note that in January 2010 he paid in CI\$3,000. No explanation was given for
13 the payments in made in January, March, August and November 2010.

14
15 26. In 2011, excluding bank charges, the husband paid in only CI\$7,807 and withdrew
16 CI\$9,300. Again he made no payments into the account for 8 of the 12 months. I
17 note that in October 2011 he paid in CI\$3,250 and has not given an explanation for
18 that payment in, as well as for the ones made in July, August and November 2011.
19 The same conclusions may be drawn as those mentioned in paragraph 25.

20
21 27. On 20th December 2011 the husband would have been aware that in her summons
22 dated the 10th November 2011³ his wife was seeking a divorce and orders for child

² The wife also contends at paragraph 28 of her affidavit sworn on 30 March 2012 that the husband had an account with the Bank of Nova Scotia and that he has failed to disclose it – Husband does not specifically deal with this specific contention in his affidavits. The wife repeated her belief in her evidence in chief.

³ Personally served on the husband on 9 December 2011

1 and spousal maintenance. With that in mind, I note with great interest that on 21
2 December 2011, the very next day after he filed his Acknowledgment, he withdrew
3 the substantial sum of \$4,000 and, on the 29th December 2011, he withdrew a
4 further sum of \$2,000, leaving a balance of only \$252.66 in that account.

5
6 28. When studying the history of the usage of this account and the timing, these were
7 very unusual withdrawals. The amount and timing of them in the context of these
8 proceedings require close scrutiny. The husband stated at paragraph 10 of his
9 affidavit sworn on the 29th February 2012 (only a couple of months after the
10 transaction) that the \$2,000 he had withdrawn from this account was primarily
11 used to pay for insurance on his two vehicles, vehicle licensing for both vehicles,
12 household expenses and child maintenance over Christmas. At “RG3” attached to
13 his affidavit sworn on 29 February 2012 he exhibits a certificate of insurance for
14 \$437 and another for \$441.69, as well as receipts for licensing fees for two vehicles
15 totalling \$556.67. What is interesting to note is that documents at “RG3” reflect
16 that the insurance payments were made on the 19th December 2011 and the
17 licensing payments on the 3rd December 2011, so in advance of the withdrawal of
18 the CI\$2,000 later on the month on the 29 December 2011. These payments could
19 not have been made from the CI\$2,000 withdrawn from that account. These
20 payments could not have been made from the CI\$4,000 taken out on the 19th
21 December 2012 as the husband is adamant that sum was taken out to lend to a
22 friend. Therefore a question raised is where else did the funds come from to make
23 these payments?

24



1 29. The \$4,000 withdrawal is not adequately explained or supported by verifying
2 evidence. In the absence of satisfactory detail about the purported loan
3 arrangement, and proper evidence of repayment to the husband by the borrower,
4 there is a possibility that there was no loan at all and the sum has simply been
5 dissipated by the husband. This leads me to believe that the husband, cognisant of
6 the wife's applications and, after realising he had to produce bank statements and
7 justify entries therein, was at best trying to arrange his finances in such a way so as
8 to portray a picture that he only had the funds shown therein or at worst, if there
9 was no loan at all, he had deliberately dissipated potential matrimonial assets.

10
11 30. Despite repeated requests, the husband has failed to provide any statements for the
12 RBC US dollar account. It is important to note that in his affidavits sworn on 24
13 January 2012 and 29 February 2012, although referring to the other accounts he
14 makes no specific mention of the US dollar account. This gave the impression that
15 he held no other bank accounts over and above those disclosed. At paragraph 29 of
16 his affidavit sworn on 25 May 2012 the husband said he had not mentioned the
17 account because he had opened it in 1980, before the marriage, and he viewed the
18 contents of the account as being his own money.

19
20 31. It was only after the wife stated at paragraph 11 of her affidavit dated 18 May 2012
21 that she believed that he held that account, that the husband specifically refers to it
22 in an affidavit dated 26 May 2102. In his affidavit sworn on the 28th June 2102 the
23 husband says said that he had repeatedly asked the bank to provide him with the last
24 24 months' statements, only to be told that they were waiting for them to come
25 back from the Bahamas. He said he was only able to exhibit a one-page computer



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printout showing the account balance to be US\$2,777.75 as at the 26th June 2012. In his affidavit of the 2nd August 2012 the husband gave a similar explanation for his continued non-disclosure of the statements.

32. In this day and age the bank would have been reasonably expected to be able, during the significant period between him eventually acknowledging he had the account and the end of the part-heard hearing, to download and provide the husband with statements for the past two years. This Court has frequently been provided with such information obtained by a party on very short notice if requested, even during the course of a final hearing. The husband has produced no written evidence from the bank to verify why he states he has been unable to produce the material in the significant time that he has had to do so. In the absence of such evidence, in light of his failure to readily disclose the existence of the account in his earlier affidavits and not not acknowledging existence of the account until after the wife mentioned it in her affidavit, I do not accept the husband’s explanation for the failure to disclose the statements. Additionally, the husband’s explanation for not disclosing the existence of the account in any of his affidavits until the wife mentioned it is not acceptable. Regrettably I regard this as another example of the husband’s failure to give full and frank disclosure in these proceedings.

33. The balance of the RBC Accounts at the time of separation and/or when the petition was issued may be viewed as being a matrimonial asset, especially as I feel that there has been deliberate dissipation or transferring of funds in an attempt to defeat the wife’s possible claim to these potential assets. I note that in December 2011 the balance of the Cayman dollar account was CI\$6,252.66. The husband says



1 that the \$4,000 that he lent out in December has since been returned into the
2 account, although he has used \$500 of that amount. On the evidence before me,
3 these long terms savings were acquired during the marriage when, due to the wife's
4 contribution in running the home and caring for the children, the husband was
5 thereby free to concentrate on running the gardening business licensed also in the
6 wife's name.



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8 34. I note that as of June 2012 the balance of the RBC US dollar RBC was
9 US\$2,777.75. There is no evidence to show that this balance has since reduced. I
10 also note that as of December 2011 there was a balance of CI\$2,687.50 in his FCIB
11 account and that on 15 December 2011 he withdrew the substantial sum of \$2,000.
12 This sum could not have been used to pay his vehicle costs as his evidence is that
13 those payments came from another source, namely the RCB Account. In addition
14 the licensing fees were paid at the beginning of December prior to the withdrawal.
15 No proper explanation backed up with verifying evidence has been given for that
16 considerable withdrawal. Accepting Ms Parke's submissions, I view these bank
17 accounts as being matrimonial assets for the same reasons as stated for the RBC
18 Cayman dollar account.

19
20 35. In his affidavit sworn on the 24th January 2012, the husband stated that he uses the
21 money in his bank accounts to pay bills when he is not receiving "a good wage",
22 and that he will try and save when he has a good month. From his own evidence in
23 his affidavit of 29th February 2012 he states that, on a monthly basis, he receives
24 CI\$2,000 from the listed homeowners. If these regular payments were all he
25 received in a particular month, then that must be what he characterises as being a

1 month when he is ‘not receiving a good wage.’ If his outgoings are accurate he
2 would have a shortfall of CI\$300 per month. He accepts that he will save when he
3 has a good month. In order for him to save, a good month must be one in which he
4 has other jobs over and above these regular clients. In those months the husband
5 will have to earn at least \$300 per month more to break even for that month and
6 more on top of that to enable him to save. The husband provides no detail of the
7 income earned in the good months.
8

9 36. The husband’s case appears to be that he ‘lives from month to month’, has limited
10 earning capacity and resources and, therefore, he should not be expected to pay any
11 additional child maintenance or any spousal maintenance. This is a rather
12 unattractive position for him to take, but sadly is one that reflects his whole
13 unsupportive attitude to his wife and his failure to recognise the contribution that
14 she has made from her mid-teens and throughout her adult life to the family. He
15 seems to forget that when he was 35 years of age he, out of wedlock, impregnated
16 Mrs Angel who was then aged just 16.
17

18 37. It appears that shortly after her first pregnancy the husband had no regard for the
19 effect of his questionable actions on her life and her long term security, for to his
20 discredit, on his evidence, he was already manoeuvring to try to ensure that this
21 naive and vulnerable young mother would not be able to claim any interest in assets
22 he was investing or had invested in. A trend and pattern of self- centred behaviour
23 that would continue thereafter, even after she bore him three more children.
24



1 38. He was aware, from the contents of his wife’s affidavit sworn on 25th November
2 2011, that she was caring for all 4 of their children (albeit only two of a relevant
3 age, but still a drain on her finances) and that she had to seek assistance from the
4 Department of Children and Family Services to pay her rent and to provide food
5 vouchers. Rather displeasing is that on his evidence in December 2011, knowing
6 that his wife and children were in such dire financial straits, he felt able and felt it
7 right to prioritise his finances in such a way so as to lend a friend \$4,000 rather than
8 help his own family. The inequity in his approach having regard to the wife’s
9 unfortunate financial circumstances is compounded by the fact that at paragraph 25
10 of his affidavit sworn on the 24th January 2012 he felt it appropriate to criticise the
11 type of accommodation which the wife was able to provide for the children. That
12 purported loan, the veracity of which is questionable due to lack of any proper
13 evidence, at best has the hallmark of a rather informal arrangement.

14
15 39. On his evidence, which I do not necessarily accept, he says that he was able to raise
16 sufficient funds in his RCB account to lend CI\$4,000 to a friend and shortly after
17 withdraw a further CI\$2,000 primarily to pay for vehicle expenses⁴ as well as
18 withdraw a further CI\$2,000 for an unexplained purpose from his FCIB account in
19 December 2011 and maintain a longstanding balance of around \$2000 in his RBC
20 US dollar account. These are further indicators – when looking at his purported
21 outgoings of \$2,300 per month (leaving a shortfall of at the very least \$300 per
22 month) as well as studying the entries in the statements on these accounts – that (i)
23 he is working more than he says, that (ii) he is generating an income greater than
24 he discloses and that (iii) his income capacity is greater than he contends.

⁴ See paragraph 28 above highlighting that the evidence tends to show he actually made the CI\$2,000 withdrawal after he made the vehicle expense payments

1 *THE WIFE AND HER EMPLOYMENT*

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3 40. The wife is unemployed. She is actively seeking employment and has applied for

4 posts as a helper or cleaner. She is waiting to hear back from Macdonald's

5 Restaurant as well as The Pines Retirement Home. The wife contends that during

6 the marriage the husband discouraged her from working, requiring her to remain at

7 home to care for the household and children. This has resulted in a lack of work

8 experience and in her being able to only secure occasional domestic type

9 employment which is paid at below the minimum wage, earning CI\$60 to CI\$100

10 per week. The husband during his oral evidence said that he asked her to work '*lots*

11 *of times*', did not stop her from working and that she did not want to work. I prefer

12 the wife's evidence on this issue. I also am satisfied that the wife is doing the best

13 she can, but due to lack of experience she can only seek very low paid work and is

14 having real difficulties even finding such employment.

15 41. Despite the order for \$200/week child maintenance, the wife has been forced to

16 seek and receive financial assistance for her rental payments (CI\$900) and Food

17 vouchers (CI\$125/week) from the Department of Children and Family Services

18 ("DCFS"). In the wife's affidavit sworn on 30 August 2012 she stated that she had

19 been informed that this assistance would only be paid for a further three months,

20 until December 2012.





ISSUES AND PARTIES' POSITIONS

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42. In the closing written submissions presented for the wife, Ms. Parke contended that the issues that require consideration by the court are: (i) Whether the land known as and situate at George Town Block 14D, Parcel 344 is a matrimonial asset; (ii) How any interest in that property is to be divided; (iii) How to distribute other matrimonial assets including bank accounts in the husband's name, vehicles and the business; and (iv) whether there should be a clean break.

43. In the written submissions Ms Parke elaborated contending that, as the land should be regarded as being a matrimonial asset, it should be placed on the market immediately through the MLS system. The property should then be sold at the most reasonable price and the proceeds of sale divided equally. If this is done then it is submitted that there should be a clean break. Ms Parke further submitted that all of the other assets should be divided equally, save for the business which would remain with the husband. No claim was made in relation to the land in Jamaica acquired back in 1980 by the husband for US\$300-\$400.

44. In her closing oral submissions Ms Parke further clarified her client's position in relation to orders sought. She maintained her position in relation to the land as well as to the business.

45. Ms Parke in her closing oral submissions stated that no claim was being made in relation to the two vehicles⁵ that the husband possesses. I take this submission to

⁵ Despite the wife seeking them to be considered as matrimonial assets at paragraph 32 of her affidavit sworn on 30 March 2012

1 mean that the wife is not seeking the sale of the vehicles especially as they may be
2 used by the husband in his trade from which he will pay maintenance. However, I
3 regard the vehicles, even if they be in the husband's sole name, as purchased during
4 the course of the marriage and, due to the wife's valuable contribution as
5 homemaker, as being matrimonial assets. Therefore if they are retained by the
6 husband, I will consider what effect they have on the proportionate distribution of
7 any other item, for example sums assessed to be in the bank accounts, which I find
8 to be a matrimonial asset.

9
10 46. In her closing Ms Parke submitted that, due to the wife's continued unemployment
11 and likely termination of financial assistance from DCFS, spousal maintenance was
12 sought. Ms Parke told the court that "*she needs spousal maintenance until able to*
13 *get employment, so we say that should be for a period of one year but she would let*
14 *him know sooner as that would be a change of circumstances.*"

15
16 47. Mr Banks for the husband contends that the land should not be regarded as a
17 matrimonial asset. Mr Banks unattractively submits that despite the wife's dire
18 financial position, the length of the marriage (including the wife becoming pregnant
19 at just 16 when the husband was 19 years older than her), and her income capacity,
20 there should be a clean break with no provision being made for spousal support.
21 The husband was not willing to consider the prospect of a payment of a lump sum
22 which he may have been able to raise against the land on a clean break basis. He
23 made no submission about whether the bank accounts should be regarded as being
24 matrimonial assets. The husband's case, simply put, is that this wife should leave
25 the marriage with absolutely nothing, no capital and no maintenance and that his



1 responsibility starts and ends with periodical payments for the youngest two
2 children.

3
4 *THE LAW*

5
6 48. The Law pertaining to the making of periodical payment orders and to the division
7 of matrimonial assets is governed by Section 19 of the Matrimonial Causes Law,
8 which reads as follows:

9 *“In dealing with all ancillary matters arising under this Law the court should*
10 *have regard first of all to the best interests of any children of the marriage and*
11 *thereafter to the responsibilities and financial and other resources, actual and*
12 *potential earning power and deserts of the parties.”*
13

14 49. It must be read in conjunction with s. 21 of the Law, of which the relevant parts for
15 my consideration in this matter provide as follows:

16 *“At the time of pronouncing a decree under this law, the court shall, as*
17 *appropriate, make order for:*

- 18 (a) ...
- 19 (b) the disposition of matrimonial property, including the matrimonial home;
- 20 (c) ...
- 21 (d)
- 22 (e) making financial provision from the property of either spouse for the
- 23 children of the marriage and for the other spouse:
- 24 (f) providing for periodical payments to be made by either spouse for the
- 25 benefit of the children of the marriage and for the other spouse: and
- 26 (g) costs.”
- 27
- 28

29 50. As highlighted by Sir John Chadwick P. at Para. [32] in *McTaggart v McTaggart*
30 CICA 14 of 2010 (“*McTaggart*”), the court when exercising those powers could
31 make an order for the disposition of matrimonial property; could make an order for
32 financial provision out of the property for one of the parties for the benefit of the
33 other; and could make an order that periodic payments be made by one party for
34 the benefit of the other.



GENERAL PRINCIPLES APPLIED

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51. Section 19 and s.21 of the Law gives the court a wide discretion when it comes to financial provision and any awards made to the parties.

52. The courts in the Cayman Islands, in deciding whether to exercise its powers under ss.21 and, if so, in what manner has, when considering what is fair in all the circumstances of the case, traditionally had regard not only to the matters set out in section 19, but also the relevant factors raised in s.25 (1) of the Matrimonial Causes Act 1973, and now s.3 of the Matrimonial and Family Proceedings Act 1984 in England and Wales.⁶ The factors to be considered include:

- (i) The income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (ii) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (iii) The standard of living enjoyed by the family before the breakdown of the marriage;
- (iv) The age of each party to the marriage and the duration of the marriage;
- (v) Any physical or mental disability of either of the parties to the marriage;
- (vi) The deserts of the parties, including contributions made by each of the parties to the welfare of the family (to include contributions made by



⁶ Doak v Doak and Riley [2002] CILR 224, [17], [21], [22], Wight v Wight CICA 6 of 2006 [62] (“Wight”), Wood v Wood [2009] CILR 255, [12] and McTaggart v MacTaggart (supra) [39]

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1 each of the parties to the accumulation of matrimonial assets as well as
2 non matrimonial property) and any contribution made by looking after
3 the home caring for the family;⁷

4 (vii) The value to either of the parties to the marriage of any benefit (for
5 example, a pension) which, by reason of the dissolution of the
6 marriage, that party will lose the chance of acquiring;

7 (viii) The conduct of each of the parties. If that conduct is such that it would
8 in the opinion of the court be inequitable to disregard.

9

10 53. Lord Nicholls of Birkenhead in *White v White* [2001] 1 AC 596 (“*White*”) held
11 that

12 *“The purpose of these powers is to enable the court to make their financial*
13 *arrangements on or after divorce in the absence of agreement between the*
14 *former spouses.”*
15

16 54. Lord Nicholls dealing with the concept of fairness stated that:

17 *“Divorce creates many problems. One question always arises. It concerns*
18 *how the property of the husband and wife should be divided the*
19 *outcome ought to be fair in all the circumstances....”*
20

21 55. In *Wight v Wight* 2010 (1) CILR 60 at 61 the Headnote sets out principles which
22 the Court of Appeal states are to be applied, as follows:

23 *“In exercising its broad discretion under ss. 19 and 21 of the Matrimonial*
24 *Causes Law (2005 Revision) in the distribution of matrimonial property, the*
25 *court would act in accordance with the modern view that a marriage was a*
26 *presumed union of equals, and that there should be bias or discrimination as to*
27 *the nature of the role played by each spouse, e.g. breadwinner or homemaker.*
28 *Therefore, having provided for the needs of the parties (including the needs of*
29 *any children), the court would aim for equality and opt for an unequal*
30 *distribution only to the extent that inequality of distribution was required in*
31 *exceptional circumstances in order to achieve a fair result.”*
32



⁷ Deborah M. Wight v Ian A.N. Wight, CICA 6 of 2006 Zacca P at para 33

1 56. When identifying and adopting the principles to be applied following *White v*
2 *White* and *Miller v Miller* I respectfully follow the approach taken to the case law
3 emanating from England and Wales by Sir John Chadwick P. in *McTaggart*.⁸ With
4 this in mind I have regard to what Lord Nicholls stated, when he was dealing with
5 fairness, at page 605 in *White v White*:

6
7 *“As a general guide, equality should be departed from only if, and to the extent*
8 *that, there is good reason for doing so. The need to consider and articulate*
9 *reasons for departing from equality would help the parties and the court to*
10 *focus on the need to ensure the absence of discrimination. This is not to*
11 *introduce a presumption of equal division under another guise. Generally*
12 *accepted standards of fairness in a field such as this change and develop,*
13 *sometimes quite radically, over comparatively short periods of time. The*
14 *discretionary powers, conferred by Parliament 30 years ago, enable the courts*
15 *to recognise and respond to developments of this sort. These wide powers*
16 *enable the courts to make financial provision orders in tune with current*
17 *perceptions of fairness. Today there is a greater awareness of the value of none*
18 *financial contributions to the welfare of the family.”*
19

20 *LAW IN RELATION TO ISSUE OF WHAT CONSTITUTES MATRIMONIAL PROPERTY*

21
22 57. In deciding whether to make an order under s.21(b) Matrimonial Causes Law, and
23 from where any such order should be made, I am required to consider and decide
24 which of the parties’ assets are matrimonial property. In the combined House of
25 Lords appeals of *Miller v Miller* and *McFarlane v McFarlane* [2006] UKHL 24,
26 [2006] 2AC 618, 634 (*“Miller”*) Lord Nicholls of Birkenhead described
27 matrimonial property as:

28 *“Property acquired during the marriage otherwise than by inheritance or gift.”*
29 *Its distinguishing feature is that it is “the financial product of the parties’*
30 *common endeavour.”*



⁸ See also Forte J in *Wight* (supra) para, 53, 62 and Sir John Chadwick P in *W v W* [2009] CILR 255 at para.12

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1 58. In the case of *Laurie Kaye Jackson v Jack Harwood Jackson* Fam 55/2010, Quin
2 J, in a very thorough judgment, helpfully again analysed the law applicable when
3 dealing with the issue of whether interest in a property is disputed, having done so
4 already in the case of *DLF VDLK* FAM 56/2010.

5
6 59. Quin J. referred to the following guidance given by Sir John Chadwick, P at
7 paragraph *W v W* (2009) CILR 255 as to what constitutes matrimonial property:

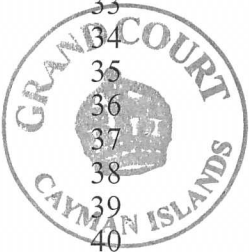
8
9 *“It is pertinent, therefore, to note the guidance given in the English cases in*
10 *respect of property which has been brought into the marriage by one of the*
11 *parties: that is the same property which is not “the financial product of the*
12 *parties’ common endeavour”, to adopt a phrase used by Lord Nicholls of*
13 *Birkenhead in Miller (2) ([2006] 2 A.C. 618, at paragraph 22). In relation to*
14 *property of that nature Lord Nicholls said this in White (3) ([2001] 1 A.C. at*
15 *610):*

16 *“plainly, when present, this factor is one of the circumstances of the case. It*
17 *represents a contribution made to the welfare of the family by one of the*
18 *parties to the marriage. The judge should take it into account. He should*
19 *decide how important it is in the particular case. The nature and value of*
20 *the property and the time when and circumstances in which the property*
21 *was acquired, are among the relevant matters to be considered. However,*
22 *in the ordinary case, this factor can be expected to carry little weight, if*
23 *any, in the case where the family’s financial needs cannot be met without*
24 *the course to this property.””*
25

26 60. Quin J. went on to say that at paragraph 14 Sir John Chadwick, P posed the
27 question :

28 *“But what of property brought by one party into what turned out to be a long*
29 *marriage? Lord Nicholls said this (ibid., at para 25):*

30 *“With longer marriages the position is not so straightforward. Non-*
31 *matrimonial property represents a contribution made to the marriage by one of*
32 *the parties. Sometimes, as the years passed, the weight fairly to be attributed to*
33 *this contribution will diminish, sometimes it will not. After many years of*
34 *marriage the continuing weight to be attributed to modest savings introduced*
35 *by one party at the outset of the marriage may well be different from the weight*
36 *attributable to a valuable heirloom intended to be retained in specie. Some of*
37 *the matters to be taken into account in this regard were mentioned in the above*
38 *citation from the White case. To this non-exhaustive list should be added, as*
39 *relevant matter, the way the parties organised their financial affairs.””*
40



1 61. Quin J. highlights that at paragraph 15 of *W v W* Sir John Chadwick P stated:

2 *“Lord Nicholls went on (ibid., at para.26) to point out that it was wrong to*
3 *think that, in every case, a clear and precise boundary should be drawn*
4 *between the categories of matrimonial property and non-matrimonial property*
5 *because as he observed; “Fairness has a broad horizon.” Nor did the “equal*
6 *sharing” principle require that, in every case, each of the party’s assets must*
7 *be separately and exactly valued. The costs involved could quickly become*
8 *disproportionate. When it became necessary to distinguish matrimonial*
9 *property from non-matrimonial property the court could do so with a degree of*
10 *particularity or generality appropriate in the case. And the judge may then give*
11 *to the contribution made by one party’s non- matrimonial property the weight*
12 *he considers just, with such generality of particularity as he considers*
13 *appropriate in the circumstances of the case.”*

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16
17 **POTENTIAL ASSETS**

18 **LAND - GEORGETOWN BLOCK 14D PARCEL 344**

19
20 62. In this case there is an issue whether this land should be treated as being a
21 matrimonial asset. Both parties now agree that the land was purchased in 1992, two
22 years after the parties started courting, one year after the birth of their first child,
23 but three years prior to the date of their marriage. The property was conveyed into
24 the sole name of the husband and cost CI\$20,000. The parties have never resided on
25 the land. The land, which has never been built on and is unencumbered, has a
26 market value of seventy eight thousand dollars (CI\$78,000) assessed by DDL
27 Quantity Surveyors on the 17th July 2012

28
29 63. The wife claims in her written submission that the land is matrimonial property
30 because:



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- (i) it was purchased by the husband with the intention of building a home for the family after the birth of Jessica, their first child. Ms Parke is inaccurate in her submission when she states that the land was purchased when their second child was “on the way”. Rupert was born on 22 July 1993 and the extract from the Land Register shows the registration to the husband as being on 11 March 1992 and the transfer of Land form shows the transfer as being on 5 March 1992;
- (ii) the length of the marriage and the wife’s contribution to the home, presumably by being the homemaker and her status assisting the husband in getting a trade and business licence;
- (iii) the land is the only major asset between the parties in which the court can use to make an award;
- (iv) of the ability of the wife to care for herself and the children after the divorce- in other words their needs; and
- (v) of the conduct of the husband during the marriage and the need for the court to consider the deserts of the parties.

19 64. In her oral submissions Ms Parke refers to the fact that, during the marriage, the
20 land was used to acquire another loan. When looking at the charge entries exhibited
21 to the wife’s affidavit sworn on 30th August 2012 it appears that this loan was for
22 CI\$2,500 and was taken out in September 2000 with CIBC Bank & Trust
23 Company. It appears to have been discharged in October 2001. In her August 2012
24 affidavit the wife pointed out that there had been an earlier loan for CI\$8,000 with
25 CIBC Bank & Trust Company in March 1992. The loan was repaid in October



1 1995, just over a month before the parties were married. I note that in her earlier
2 affidavit sworn on 29th June 2012 the wife wrongly stated that the 1992 loan was
3 for CI\$2,500 and the 2000 loan was for CI\$8,000.

4
5 65. The husband stated that he purchased the land using CI\$18,000 – saved in his
6 Royal Bank account – and CI\$2,000 which he borrowed and soon paid back. The
7 husband was unable to offer any explanation for the two loans evidenced by the
8 charges exhibited to the wife’s August 2012 affidavit. However if the property cost
9 CI\$20,000, the husband would have needed to borrow money to purchase it. A
10 figure of CI\$8,000 for a loan would make sense in the circumstances where he only
11 had CI\$18,000 available and would need to make up the shortfall in the purchase
12 price, as well as cover incidental costs of purchase including stamp duty and fees.

13
14 66. I am satisfied that the CI\$8,000 loan was to enable the husband to purchase the
15 property. I am satisfied that it was repaid prior to the marriage, albeit not “*well*
16 *before the*” the marriage as contended at paragraph 25 of the husband’s affidavit
17 sworn on 26 May 2012. The fact that it was repaid prior to the marriage supports
18 the husband’s contention that he did not intend it to be a matrimonial asset and his
19 seeking to maintain a veil of secrecy over his ownership the land.

20
21 67. I have carefully considered the effect of the \$2,500 loan. If a wife, as is here,
22 contributes by remaining at home as the homemaker thus enabling the husband to
23 go out to work and progress his career, and if the husband invests his income in an
24 asset (even one acquired pre-marriage) the wife, especially in a marriage of the
25 length of this marriage, may be entitled to claim that she has also contributed and



1 that the property should be considered as being a matrimonial asset. There is
2 nothing before me to show that this relatively small loan was used in any way to
3 enhance the land, it appears that it was for an unrelated purpose and the land was
4 simply used as collateral. I am not satisfied that this loan, even though one taken
5 out during this fairly lengthy marriage, in itself would enable the court to view the
6 land as being a matrimonial asset.

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68. Before moving on from the loans, I would like to comment on the husband's failure to give full and frank disclosure about the same. He made no mention of them until they were brought to his attention by the wife and his excuse was that he claimed no knowledge of them despite fact that they show on the Land Register. The husband showed an unwillingness to investigate the loans after they had been brought to his attention, claiming that he had insufficient funds to carry out a search. The wife carried out a search and paid only \$7 for each first page. This lack of timely disclosure forms part of a pattern including, but not limited to, a belated valuation of the land, lack of proper details of the Jamaican property, lack of proper business accounts, incomplete provision of bank statements and lack of proper evidence in support of his contention that he lent \$4,000 loan to a friend. This questionable approach to the requirement for proper disclosure enables inferences to be drawn concerning the husband's contentions, for example what the husband says is the true position about his income and earning capacity. It is also a factor that I must consider when considering both parties' evidence about their intention concerning the land.



1 69. The wife contends that the land was purchased by the husband with the intention of
2 building a home for the family. Regrettably, her evidence is not consistent on this
3 point. She contends she first knew about the land before they were married when he
4 showed the plans to her stating his intention to build apartments. She said that he
5 told her that they could live there and they could rent out parts also. However, at
6 paragraph 25 of her affidavit sworn on 25 November 2011 the wife gives
7 inconsistent evidence stating that she did not know whether the land was purchased
8 before or during the course of the marriage. If she did not recall this, then it follows
9 that she would not be able to recall any discussion about any land he might have
10 owned prior to the marriage. The wife was uncertain in her affidavit despite at the
11 same time exhibiting to the same affidavit the extract from the Land Register
12 showing the date of registration as being 11/03/92, a date prior to the marriage. This
13 tends to show that there was no pre-marital discussion or expressed intention about
14 the land and that her later evidence about these purported discussions may have
15 been influenced by the detail on the face of the Register rather than what she
16 recalled.

17
18 70. The wife later went on to say that she tended not to raise anything about the land
19 with the husband during the marriage because he would get angry if she did and she
20 did not want a problem. If she is right, then this tends to show that there was no
21 intention to treat the land as being a matrimonial asset.

22
23 71. The wife also confusingly gave the impression in her oral evidence that she only
24 got to know about the land about 4 to 5 years before divorce when she went to a
25 church and a lady spoke to her about it. This is more consistent with the uncertainty

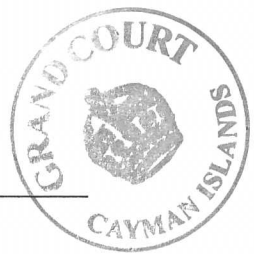


1 as to the date of purchase contained in paragraph 25 of her affidavit of 25
2 November 2011.⁹ The husband’s evidence is that this was probably the first that the
3 wife knew about the land.
4

5 72. The husband denies promising the wife that the land would be built on to provide a
6 family home or that he did anything to lead her to believe that it was to be treated as
7 being a matrimonial asset. It is submitted by Mr Banks that his client always looked
8 at the property as being a *“future asset, something to have in event that economic*
9 *support could eventually be required at some time in the future.”*
10

11 73. It is contended by the husband that this property was never put into a “melting pot”
12 of matrimonial assets and as there was no clear evidence of an agreement or
13 understanding one must look at their conduct to see if their intention can be
14 established. The husband’s conduct prior to the marriage and the limited
15 unsupported evidence about any discussion concerning the land pre- marriage,
16 coupled with the wife’s evidence stating that it was not raised by her during the
17 marriage (due to her concerns about the husband’s reaction) save for following her
18 discussion with a lady at her church, leads to a conclusion that there was not an
19 intention to treat this property (which was acquired and paid for prior to the
20 marriage) as being a matrimonial asset. I am also mindful that in her affidavit
21 evidence the wife initially stated that she was not sure if the property had been
22 acquired before or during the marriage. Regretfully, and I advisably use that word
23 as the wife is in need, I am unable to treat the property as a matrimonial asset.
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25

⁹ See paragraph 69 above



BANK ACCOUNTS AND OTHER ASSETS

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74. The wife has no bank accounts, loans or credit cards. She owns no vehicles, has no investments and is not a member of any pension scheme.

75. The husband has at least the aforementioned Bank accounts, namely the RBC Cayman dollar account, the RBC US dollar account and the FCIB account. It is difficult to ascertain what the up to date balances in those accounts are due to the husband's failure to provide recent bank statements. On the husband's evidence there appears to be at least C\$6,000 in the bank accounts, being approximately C\$4,000 in the RBC Cayman dollar account¹⁰ and USD\$2,777.75 in RBC US dollar account. I am unable to deduce any figure for the FCIB account.

76. As already stated, I am of the view that the monies in the accounts were amassed during this lengthy marriage and relationship. I am satisfied that the husband was able to raise these sums due to the wife's unselfish contribution as homemaker for the family and children throughout, thereby freeing him to work. The accounts are matrimonial assets, even though they are in the husband's sole name. I assess, on the limited disclosure, the balance to total at least \$6,000 in the accounts.

77. The only other potential matrimonial assets seem to be the two motor vehicles. These were acquired during the marriage and for the same reason as the bank accounts I view them as being matrimonial assets¹¹. Although there are no valuations for the vehicles placed before me and no other evidence about the same,

¹⁰ The husband having indicated that the purported \$4000 loan had been repaid into the account and despite fact he said he has used \$500 of that amount on other expenses since
¹¹ See also paragraph 45 above



1 I am satisfied that I can regard them as having a joint valuation in excess of
2 CI\$6,000. The husband is to retain those vehicles as the wife does not seek to have
3 them sold.

4
5 78. I am satisfied that in all the circumstances the wife's obvious needs dictate and it be
6 just and fair that the husband pay CI\$6,000 to the wife forthwith. The Husband will
7 have the benefit of his land and the vehicles.

8
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10 *SPOUSAL MAINTENANCE*

11
12 79. The wife seeks periodical payments. She is currently unemployed and relies upon
13 child maintenance of \$200 per week (an average of \$866/month) and Department of
14 Child and Family Services allowances of \$900 to cover her rent and \$125 food
15 vouchers and school lunches which were due to come to an end around December
16 2012. When able to find employment her income has been in the region of \$60-
17 \$100 per week. She receives a small amount from Jessica, her daughter, who has
18 some part time-employment. Her monthly outgoings (excluding cost of school
19 uniforms) set out at paragraph 12 of her affidavit sworn on 30th March 2012 total
20 CI\$2,175. The figures the wife gives for each item are reasonable. Her needs, if
21 able to find work with an income of \$400 per month, in the absence of any financial
22 aid, would be in the region of \$909. This does not take into account any monies
23 paid to her by Jessica as a contribution to her upkeep. It would be a flawed
24 submission for the husband to suggest that the wife be entitled to ongoing financial
25 aid from the Government and that this devolves him of any responsibility he may
26 have.

27



1 80. In light of my earlier finding concerning the husband's lack of proper disclosure,
2 that his figures for his income are unreliable and that inferences were to be drawn
3 that his income and earning capacity are greater than he suggests, I must look to see
4 if it is appropriate for him to support the wife and assist her needs to be met. She
5 clearly needs ongoing maintenance and this will be for the foreseeable future and
6 not time limited. Due to the husband's wishes, she has been the homemaker and
7 mother for the family's children since the age of just 17 in this lengthy marriage
8 and as a consequence has not gained any significant work experience. This makes
9 her employment prospects limited. Her employment will never be well paid. On the
10 other hand the husband has been able to pursue the gardening business, a business
11 set up in both parties' name using the wife's status to get the business licences. The
12 husband claims his outgoings including child maintenance are CI\$2300. He claims
13 that his income is CI\$2000. I am not satisfied for reasons already given herein that
14 this is an accurate or reliable income figure and that he earns and has a capacity to
15 earn in excess of that amount. On his own evidence the husband is able to make
16 savings in this bank accounts.

17
18 81. Most helpfully, Sir John Chadwick, P. at para [43] of *McTaggart* set out the
19 following considerations when considering whether to make periodical payments
20 orders that this court must have, when he stated:

21
22 *"[43] It seems to me reasonably clear (and I would so hold) that, if satisfied*
23 *that an order under paragraph (b) of section 21 of the law (or the combination*
24 *of orders under paragraphs (b) and (e) of that section) would make appropriate*
25 *provision for the relevant party in respect of the three strands (need,*
26 *compensation and sharing), the court should not (without good reason) make*
27 *an order for periodical payments under paragraph (f) of that section. To make*
28 *an order for periodical payments – in circumstances where such an order is*
29 *necessary because appropriate provision can be made by the disposition of*



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matrimonial property (under paragraph (b)) or by a capital adjustment from the separate property of the other party (under paragraph (e)) -would be inconsistent with the principle of "clean break" to which Lord Scarman referred in Minton v Minton [1979] AC 593, 608."

82. The President of the Court of Appeal highlighted that there was no provision in the Matrimonial Causes Law similar to the clean break provision, s.25A (1) of the Matrimonial Causes Act 1973 in England and Wales. However, it is clear from his approach at para. [45] that he felt it commendable for the courts in Cayman to recognise the undesirability of continuing ties after divorce and to do this by adopting the modern approach of, where appropriate, seeking to make orders enabling a clean break.

83. Therefore, I have to consider whether this is a case in which a clean break is feasible having regard to the wife’s needs and factors set out in Section 19 of the Matrimonial Causes Law and Section 25 (1) the Matrimonial Causes Act 1973. I find that it is not, as it is clear that appropriate provision cannot be made for the wife from disposition of the matrimonial assets. The wife actually suggested there be a clean break if the husband was willing to pay a lump sum equivalent to 50% of the net value of his land. The husband, on advice, chose not to accept this option. Due to the arguments successfully raised by the husband concerning the land and his unwillingness to voluntarily make any offer of a lump sum there is no property from which appropriate provision for the wife can be made and I am unable to find that this is a case in which there is a clean break order could be made. This is a case in which a periodical payment order must be made in favour of the wife.



1 84. The husband will need to pay periodical payments for the wife. Having regard to
2 both parties' needs and responsibilities I set the figure at CI\$130 per week
3 (approximately CI\$563/month). The child maintenance order made on 28 May
4 2012 will remain and for avoidance of doubt is confirmed as being the final order.

5
6 85. Accordingly I order that;


7 (i) The sum of \$6,000 be paid to the Petitioner forthwith as a lump sum
8 payment

9 (ii) From the 11th day of January 2013 the Respondent do pay or cause to
10 be paid to the Petitioner periodical payments at the rate of CI\$130 per
11 week payable weekly in advance during their joint lives until the
12 Petitioner shall remarry or further order.

13 (iii) All payments are to be paid into the Court Funds Office.

14 (iv) There be no order as to costs.

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16
17 **Dated this the 16th day of January 2013**

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21 **Honourable Mr. Justice Richard Williams**
22 **Judge of the Grand Court**
23