

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division**

**2023
FAM/div/No. 00671**

BETWEEN

HERBERT WILSON

Petitioner

AND

OPAL FAYMIN WILSON (nee Robinson-Johnson)

Respondent

JUDGEMENT

Before: The Hon. Madame Justice J. Denise Lewis-Johnson MBE
Appearances: Deane Pyfrom-Robinson for the Petitioner
Moses Bain for the Respondent
Hearing Date: 28th October 2024

Family Law-Matrimonial Causes Act-Divorce-Ancillary Relief-Matrimonial Property- Division of Assets

Introduction

1. The parties were married on the 29 September 2020 and was granted a Decree Nisi on the 18 March 2024. By a Notice of Intention to Proceed with Ancillary Relief filed 28 June 2024, the Petitioner sought a Property Adjustment Order in relation to the matrimonial property, namely, Lot.12547 Pinewood Gardens Subdivision in the Southern District of New Providence.
2. By Affidavits of Means filed 16 May 2024 and the 3 July 2024, the Respondent and Petitioner outlined their respective interest in the matrimonial property.

The Petitioners Evidence

The Petitioner avers that:

3. He is a retired Defense Force officer and is currently employed as a Security Guard with Priority Security Company Ltd. earning a salary of Fourteen Hundred Dollars (\$1,400.00) per month.
4. The Respondent is employed as a housekeeper earning Sixteen Hundred Dollars (\$1,600.00) per month.
5. His monthly expenses total One Thousand Two Hundred and Twenty Nine Dollars (\$1,229.00).
6. After marriage, the Respondent refuses to pay any bills or purchase groceries for the household.
7. The Respondent when asked to assist with paying bills always indicated that she had to take care of her mother in Jamaica which was not communicated to him before the marriage.
8. He paid the full cost of the roof and other renovations to the home with no assistance from the Respondent.
9. All the renovations to the home took place during the first year and a half of the marriage and the Respondent did not pay the sum of Thirty Eight Thousand Dollars (\$38,000.00) towards the renovation of the home as she would not have earned that sum in the time span of the renovations.
10. He asked the Respondent to move out and she refuses and has made false claims against him at the police station.
11. The home was purchased by the Petitioner and his first wife in 1997 and he eventually purchased his first wife interest via a mortgage in 2007 which was paid off in 2023.
12. He intends to transfer title of the home to his son.

The Respondents Evidence

The Respondent avers that:

13. She is employed as a housekeeper earning Sixteen Hundred Dollars (\$1,600.00) per month.
14. She resides in the country on a Spousal Residency Permit.

15. Her monthly expenses total Two Thousand Eight Hundred and Fifteen Dollars (\$2,815.00).
16. She assists with funds to support her sick mother in Jamaica.
17. She contributed funds to the repair of the matrimonial home by credit card payment and she paid half of the cost for labor and materials along with provided funds for the refurbishment of the two (2) bathrooms in the home.
18. She purchased two (2) air conditions, a washing machine, a refrigerator, two face basins, fixtures and a toilet for the matrimonial home.
19. She purchased all of the furniture in the home when she moved in.
20. She has expended over Thirty Eight Thousand Dollars (\$38,000.00) on items necessary for the home and from time to time rely on assistance from family members.

Issue

21. Whether the Respondent is entitled to an interest in the matrimonial home and if so, what percentage.

Law and Decision

22. Section 29 of the **Matrimonial Causes Act** “the MCA” Chapter 125 provides as follows:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

23. In applying this Section, the Court seeks to be fair in all the circumstances of the case.

24. In this case the parties were married for about 18 months, they lived together prior to the marriage, for how long is disputed by the parties. The Petitioner says two years and the Respondent eight years. This marriage does not fall in the category of long marriages as advanced by *Sir Michael Barnett* then Chief Justice in *A v B* 2008/FAM/div/00132, where the period of 10 years was considered a long marriage and a period that would place the parties at a 50/50 sharing.

25. While that case advanced fairness and “an equal sharing of property unless there is a compelling reason to depart from that equality” the Court is bound by the Statute Laws of The Bahamas, particularly Section 29 of the MCA that sets out clearly what the Court must consider in making a determination.

26. Both parties are employed and earn about the same amount, the Petitioner is retired and is age 67 and the Respondent age 49. The Respondent has at least 15 more years prior to the retirement age. She has a greater earning capacity. They both have the same basic financial needs and obligations, the Respondent noted that she financially supports her mother in Jamaica.

27. The Court notes that there is no mortgage on the matrimonial home, which was acquired in 1997 by the Petitioner and his first wife and later conveyed solely to the Petitioner in 2007. The Petitioner alleges he solely satisfied the mortgage in 2023, the Respondent says she contributed to the mortgage payments. The Petitioner states he intends to convey the home to his son of the first marriage.
28. The evidence of the parties are diametrically opposite as it relates to their contributions to the home, its maintenance, repairs and upkeep. This is usual when the parties are divorcing. Each one exaggerates their contribution. Having regard for the stated salary and the monthly expenses, the Respondent's allegation of her contributions are mathematically an impossibility. Items listed as monthly expenses are not accepted as accurate by the Court. For example, \$320.00 monthly for vehicle insurance, this amounts to \$3,840.00 annually for car insurance. The Respondent failed to say what year and model car she owns. Equally the licence and inspection for her vehicle is listed a \$200.00 monthly for an annual total of \$2,400.00. She failed to state the amount sent to her mother monthly.
29. While the Petitioner's monthly expenses are moderate, he alleges that the Respondent contributed nothing to the monthly expenses of the home, its maintenance and upkeep or to the mortgage.
30. I do not accept that he was unaware of her support of her mother, nor do I accept that the Respondent contributed nothing to the monthly expenses.
31. By all accounts these are working class persons with no mental or physical disabilities. The Decree Nisi was granted to the Petitioner on the ground of the Respondent's cruelty.
32. The only asset is the matrimonial home. I accept the Petitioner's evidence that it is his intent to leave this home to his son. I do not accept that the Respondent contributed to the mortgage payments. The mortgage was taken out more than 10 years prior to the marriage and the parties' involvement. The Petitioner qualified solely and serviced the mortgage prior to his marriage to the Respondent.
33. I find the Respondent's evidence contradictory at best and generally unreliable. She alleges that "over the eight (8) years in the matrimonial home I have expended over Thirty-eight Thousand Dollars (\$38,000.00) on purchasing items, materials, labour and the other necessary things that is needed in the said home." No supporting evidence/proof

was exhibited. Considering her salary combined with the monthly expenses listed, the contribution to her mother, makes this assertion of \$38,000.00 untenable.

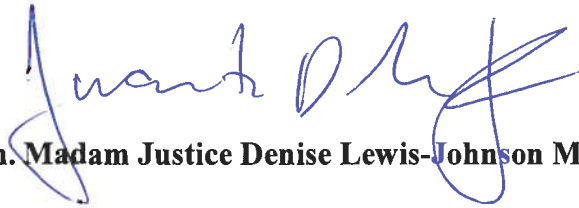
34. After claiming to have contributed significantly to the repairs of the home, the Respondent states “I have to rely on assistance from family members.” How is it that the Respondent is capable of the extensive contribution and purchases but also claim to require financial assistance from family members.
35. I do not find this is a case for equality of division of assets.
36. In **TM v PCM** 2010/FAM/div/00216 the parties were married in 2005 and they filed for divorce in 2010, they met in 2003 and lived together for one year prior to marriage. The wife had property prior to marriage and the parties moved into it. The husband alleged he contributed \$35,093.00 to the construction of the property. The Court accepted that he contributed to the home as he had receipts to support his averment. The husband sought reimbursement. There were no children. This case is almost on all fours with this present case.
37. *Sir Michael Barnett CJ* as he then was stated:-

“In my judgment the contributions made by the Husband were not made with a view of giving him an interest in his Wife’s property. They were payments made by him for the benefit of his girlfriend and/or spouse out of love and affection. Nor, in my view was the marriage sufficiently long that the Husband should be regarded as having acquired an interest in the Wife’s property as a result of contributions made by him; no more so than by permitting the Husband to live in her property, should the Wife be regarded as having acquired an interest in the Husband’s property.”

38. Similarly I find that any contribution made by the Respondent to the home were so nominal and made as a wife out of love and affection. Further as to her alleged maintenance of the house, there is insufficient evidence to quantify a sum, I do not accept it was near \$38,000.00 as alleged.
39. Any contribution made by the Respondent is not of a nature to create a beneficial interest or any entitlement to the Petitioner’s property.

40. The marriage was a short one and there are no children, no disabilities and the Respondent is young enough to enjoy a clean break and start over.
41. Having regard to all the circumstances of this case, I find it fair and just to refuse the Respondent's application for a percentage interest in the Petitioner's property. Each party to bear their own cost.

Dated ^{5th} February 2025



Hon. Madam Justice Denise Lewis-Johnson MBE