

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
FAMILY DIVISION**

**2018**

**FAM/div/00195**

**BETWEEN**

**TRISTAN C. DARVILLE**

**Petitioner**

**AND**

**PRIADASHNI A. A. DARVILLE**

**Respondent**

**Before: The Hon. Madame Justice J. Denise Lewis-Johnson MBE**

**Appearances:** Bandele LaFleur of Counsel for the Petitioner  
Romona Farquharson-Seymour of Counsel for the Respondent

**Hearing Dates:** 22<sup>nd</sup> March 2023; 19<sup>th</sup> April 2023; 23<sup>rd</sup> January 2024; 14<sup>th</sup> March 2024; 27<sup>th</sup>  
January 2025;

*Areas of Law – Mesher Order – Property Adjustment – Marital Asset – Short Marriage – Equal  
Sharing*

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**JUDGMENT**

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**Background**

1. The parties were married on 10<sup>th</sup> January 2015 and there is one child of the marriage being, L.A.M.D. born on 10<sup>th</sup> June 2015.

2. Decree Nisi was granted on the 20<sup>th</sup> November 2018 by His Lordship Mr. Justice Keith Thompson on the grounds of the Petitioner's cruelty.
3. Notice of Intention to Proceed with Ancillary Relief was filed 10<sup>th</sup> May 2019. All matters relating to the child were addressed by an Order of Mr. Justice Keith Thompson dated 3<sup>rd</sup> December 2019.

### **The Petitioner's Evidence**

4. That in 2015 upon the insistence of the Petitioner, the Respondent left the matrimonial home.
5. That the Parties separated in 2017 and divorce proceedings commenced 16<sup>th</sup> March 2018.
6. That the home was acquired prior to the marriage by the Petitioner by Deed of Gift from his father on terms that it would always remain the family homestead, open to siblings who fall on hard times.
7. That when the Parties moved into the home the Petitioner's father and brother resided in the home.
8. That the brother moved in and out of the home numerous times during the marriage.
9. That the home was where the Petitioner and his siblings were raised.
10. That the property was not acquired in contemplation of marriage and was not intended to be the matrimonial home.

### **The Respondent's Evidence**

11. That the Petitioner told her it was the matrimonial home and when they moved in, they lived alone. That the brother moved in for a period.
12. That she contributed to the upkeep of the home, the Petitioner made more than her so he paid more.
13. That the Petitioner has not contributed to the home since he left in 2017.
14. That she has solely done significant renovations to the home after the Petitioner left such as roof, renovations, bought new appliances, electronics, fixed the bathroom, add in additional bathroom, maintain the yard and pays the utilities.
15. That she does not live with her mother.

### **Issues**

16. Is the home located on Wiseman Avenue a marital asset?
17. If it is, does the Respondent have an interest in the property and at what percentage?
18. Should the Court grant a Mesher Order until the child attains the age of eighteen (18)?

### **Law and Analysis**

19. Section 29 of the Matrimonial Causes Act (“MCA”) lists the factors the Court must consider where determining distribution of marital assets. It provides that:-

*“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.*

Issue 1: Whether property is marital asset?

20. While the Respondent did not address this issue, the Petitioner submitted that the Court should not consider the home a marital asset, as it was not intended to be, the conditions (request of his father) upon which it was gifted to him and that the parties had a very short marriage.

21. The Petitioner relied on a number of cases, all of which addressed how the Court ought to treat “non-marital” property, but they were not helpful in determining what was marital property.
22. The property in question was the home the parties moved into upon marriage. It is the only place they lived at as husband and wife. It is the only place their son has lived.
23. The Court finds that the home in question was the matrimonial home as it was the place they lived as a family. This designation applies regardless of ownership, as it can be rented property, solely owned by one party or jointly owned. For it to become a marital asset other factors than mere occupation will apply, primarily ownership at least by one of the parties, acquired before or during the marriage. I find that the Wiseman home is a marital asset, as it is owned by the Petitioner, the parties lived in the home and they not only maintained it but they invested in upgrading the property.

Issue 2: What interest, if any should the Respondent have in the marital asset?

24. I agree with the Petitioner that the marriage was short and thus generally the interest acquired by the non-owning party is limited. He referred to Lord Nicholls in the case of **Miller v Miller UKHL 24** where he stated “*my lords....the answer is the same as that given in White v White in connection with premarital property, inheritance and gift. The source of the assets may be taken into account but its importance will diminish over time. Put the other way around, the court is expressly required to take into account the duration of the marriage: a 25(2) (d) [this section is equivalent to s.29 1(d) of the Bahamian Act]. If the assets are not “family assets” or not generated by the joint efforts of the parties, the duration of the marriage may justify a departure from the yardstick of equality division*”.
25. That quote must be considered, in the context of the facts of this case. While a short marriage, the Petitioner moved out and the Respondent continued to reside and maintain the home. By his own evidence, the Petitioner accepted that after moving out of the matrimonial home he has not contributed to the upkeep or upgrade of the asset. By this action and the Respondent’s investment in the maintenance and upgrade of the property,

she has acquired an interest more than what may have been given based solely on a short marriage.

26. The Petitioner asked the Court to consider the case of **LKW v DD [2010] HKEC 1727** where it stated “*where it is a short marriage, the court may well be inclined to regard as excludable non matrimonial property, assets acquired by one of the parties before the marriage.*” This case while a judgment from Hong Kong has been relied on in many rulings in this jurisdiction. I am of the view that it is not helpful to the Petitioner’s case as it can be distinguished based on the facts of this case. The property in question is matrimonial property, the only marital property, in addition to all the considerations and circumstances I stated above.
27. The Respondent invited the Court to depart from the equal sharing principle in favour of the Respondent by granting her an 80% interest in the matrimonial home she based this on her contributions to the maintenance and upgrade of the property. She referred the Court to the case of **White v White [2001] 1 All EK1** as authority for departing from the equal sharing principle and to the case of **Telesford v Telesford GD 2007 HC7** where Henry J stated “*One of the considerations in the search for fairness between the parties is the contributions each party made to the family. Lord Nicholls stated: “A point of similar nature concerns the approach to be adopted when evaluating the contributions each party made to the welfare of the family.” Having considered all the circumstances of the case, the Court is of the view that the contribution of the respondent of substantially all of the award to acquiring this property amounts to a special contribution and a good reason for, departing from the equality principle. It would be inconsistent with the objective of achieving fairness for the Court to hold otherwise.*”
28. The case of **Charlton v Charlton 2009/FAM/div/00314** was also relied on for the Court to consider when there is “*evidence provided that there was an unequal distribution of responsibilities between the parties in that the Petitioner had greater financial and household duties during and after the marriage.*” This case is distinguishable from the present as the parties in **Charlton** were married for seven years (a short marriage) and acquired the property during the marriage, in this case the Petitioner owned the home solely prior to the marriage. In this case the Respondent acknowledged that the Petitioner, during the marriage, made greater contributions to the

home as he made more than her, this was not the case in Charlton. In this case the Respondent's greater contribution came after the Petitioner left the home. The Court notes that and will consider all the circumstances of this case to come to a fair and just division.

29. The Court was not provided with an appraisal of the home. There is no mortgage. The Court accepts that the Respondent is solely maintaining the home, she and the child reside there; she has made upgrades to the property, that it is a marital asset, that this was a very short marriage and that the matrimonial home was an asset of the Petitioner prior to marriage. I have considered the evidence of the Petitioner as to the wishes of his father in relation to the gifting of the property. Unfortunately, those desires, (and that is all that they are,) do not create a restriction on the use and disposition or title of the property. I find that in all the circumstances of this case, having regard for the law, it is fair that the Respondent has a 30% interest in the home and the Petitioner a 70% interest in the home. This distribution is greatly determined on the basis that the Court is minded to grant a Mesher Order.
30. The Respondent resides, mortgage and rent free in the matrimonial home, the Petitioner has found other accommodation at some cost to him.
31. A Mesher Order permits one party to occupy the matrimonial home generally with a child or the children for a fixed period of time before the parties receive their respective interest in it. The status quo is preserved, so as to provide consistency in the living arrangements for the child.
32. In Mesher v Mesher and Hall [1980] All ER 126 the court stated "*I would set aside the judge's order so far as concerns the house and substitute instead an order that the house is held by the parties in equal shares on trust for sale but that it is not to be sold until the child of the marriage reaches a specified age or with the leave of the court.*"
33. Further Retired Justice Diane Stewart in H.M. v J.P.F.M v K.A.O 2017/FAM/div/00489 stated: "*By virtue of S. 28 of MCA, the court is empowered to make various types of orders which include ordering a party to relinquish his or her interest to the other or postponing the sale of a matrimonial home until certain events occur as in a Mesher Order. There is also the Martin Order which is similar to the*

*Mesher Order but applicable when there are no children and where the order for sale is postponed until a certain event occurs."*

34. There is no evidence that the Respondent could afford comparative living accommodations for her and the child if she is removed from the home. I accept it is the only home known to the child and he has the comfort of a grandparent next door. While the child has to adjust to his parents divorcing, I will not remove him from his home to a place of uncertainty.

### **Conclusion**

35. For all of the reasons stated above, the Court having heard the evidence, having observed the demeanor of the witnesses and having considered the relevant law finds as follows:

- I. The home located on Wiseman Avenue is a marital asset.
- II. That the Petitioner has a 70% interest in the property and the Respondent has a 30% interest.
- III. A Mesher Order is granted allowing the Respondent to reside in the matrimonial home [Wiseman Avenue] until the minor child L.A.M.D. attains the age of 18.
- IV. That when the said child turns 18 an appraisal of the matrimonial home is to be done by a BREAA approved appraiser, the cost to be shared equally between the parties.
- V. While occupying the home the Respondent is not to commit waste.
- VI. That the Petitioner is to be allowed to purchase the Respondent's 30% interest in the home within 90 days after the child's 18th birthday.
- VII. Should the Petitioner fail to purchase the Respondent's interest then the Respondent shall have 90 days thereafter to purchase the Petitioner's 70% interest.
- VIII. If either party is unable to purchase the other's interest, the home is to be sold and net proceeds divided in the percentages stated above.
- IX. There is no order as to cost.

Dated this 12<sup>th</sup> day of September, A.D. 2025

  
The Hon. Madam Justice J. Denise Lewis-Johnson MBE