

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2019/FAM/div/00022**

**BETWEEN:**

**J.G.**

**Petitioner**

**AND**

**N.R.G. (nee S)**

**Respondent**

**Before: The Honourable Madame Justice C.V. Hope Strachan**

**Appearances: Gia Moxey-Lockhart for the Petitioner**

**Marylee Braynen-Symonette for the Respondent**

**Hearing date: 6th May 2024; 14th November 2024; 26th March 2025; 27th March 2025; 28th July 2025; 21st October 2025.**

*Matrimonial Causes, Ancillary Matter, Custody, Financial Provision, Arrears of Maintenance, Property Adjustment, Disparate Contributions to Family, Principle of Fairness, Departure from Equality.*

**RULING**

**Background Facts:**

[1.] This decision arises out of divorce proceedings and an application by the Respondent ("the Wife") for ancillary relief consequent upon the dissolution of the marriage. The Wife was granted a Decree Nisi on 23 July 2019 on the ground of the Petitioner's ("the Husband") cruelty. By Notice filed on 6 October 2022, the Wife sought the Court's determination in respect of custody and access arrangements for the sole child of the marriage, namely ISMG (M) born on 18 December 2009 and adopted by the parties; financial provision for the said child; a lump sum payment; the transfer of the legal and beneficial interest in the matrimonial property to her; and an order that each party bear his or her own costs of these proceedings, together with any transfer fees arising from a property adjustment order. In order to finally dispose of the ancillary matters, the Wife further sought a declaration pursuant to section 73(1)(b)(i) of the Matrimonial Causes Act.

[2.] The proceedings were highly contested, and both parties filed several affidavits in support. The Wife filed and relied on Affidavits filed 30th September, 2022; Affidavit filed 5th December, 2023; Affidavit filed 19th February, 2024 and a Supplemental affidavit filed 18th June, 2024

[3.] In support of his position, the Husband filed and relied upon an Affidavit of Means and Reply filed on 24 July 2023; a further affidavit filed on 8 September 2023; an Affidavit in Reply filed on 5 January 2024; a second affidavit filed on 29 October 2019; and a further affidavit in Reply filed on 2 May 2024

[4.] The wife laid out the specifics of the order she was seeking in the Affidavit she filed on the 30th of September. 2022, which included;

- a. That she be granted custody of ISMG with the husband having reasonable access;
- b. That the husband pays **Seven Hundred Dollars (\$700.00)** per month toward the maintenance of ISMG together with one half ( $\frac{1}{2}$ ) of his educational, extracurricular activities, medical, dental, and optical expenses.
- c. That the husband do repay to the wife various lump sums within thirty (30) days of the order being;
  - i. **Six Thousand Dollars (\$6,000)** Customs duty for his 2006 Coaster Bus
  - ii. **One Thousand Five Hundred Dollars (\$1,500)** repossessed car;

- iii. **Sixteen Thousand One Hundred Dollars (\$16,100.00)** total monies withdrawn/transferred from savings accounts 6312403 and 6576133 from May-August 2016 while the wife was at the Cleveland Clinic, Ft Lauderdale, Florida.
- d. That the husband settles all arrears and late fees over the Venito Condo Unit within Thirty (30) days of the Order.
- e. That all monies collected in excess of the mortgage from 2014 to the present be transferred to the mortgage payment itself (not the arrears incurred by the Husband with the Covid assistance program), applied to the principal of the mortgage, or put on an account for ISMG.
- f. The Husband do within thirty (30) days of the Order transfer to the wife on trust for ISMG his interest in and to the Venito Condo Unit, which was acquired solely for the interest of ISMG, and thereafter the wife is to be responsible for the payment to Brickell Management and the management of the investment property.
- g. The Husband is made solely responsible for the overdraft and fees incurred at the Royal Bank of Canada for the purchase of his coaster bus.
- h. The husband pays all outstanding maintenance and school fees that were delinquent since the Court Order in 2019.
- i. That each party be responsible for his/her own legal fees of these Proceedings & the transfer.

[5.] In response, the Husband set out the orders he sought in an affidavit filed on 24 July 2023. The particulars of his application were as follows:

- a. That he and the wife share joint custody of ISMG, with the wife having care and control and he having liberal access;
- b. That he pays the wife **Two Hundred and Fifty Dollars (\$250.00)** monthly towards the maintenance of ISMG;
- c. That he and the wife share equally all reasonable tuition fees and educational, medical, dental, and optical expenses for ISMG equally until he completes tertiary level education or reaches the age of 23 years, whichever is sooner;
- d. The wife purchases the Husband's interest in the former matrimonial home situated in Gleniston Gardens, Nassau, The Bahamas;
- e. The wife shall purchase the husband's interest in the Venito Apartment situated at #20 Atlantic Drive, Westridge, Nassau, The Bahamas.
- f. The wife pays to the Husband a Lump Sum payment;

- g. Each party bears their own costs of the proceedings.

## **THE CHILD OF THE FAMILY**

### **Custody and Financial Provision**

[6.] There is one child of the family, namely ISMG, a male born on 18 December 2009 and adopted by the parties in or about 2010. He is presently sixteen (16) years of age and attends a private fee-paying school. The Wife seeks sole custody of the child with reasonable access to the Husband, while the Husband seeks joint custody with defined terms of access.

[7.] By virtue of the powers conferred by section 74(1) of the Matrimonial Causes Act, the Court is empowered, in the course of divorce proceedings, to determine matters relating to the custody and education of a child of the family. Further, pursuant to section 27(1) (d) of the Matrimonial Causes Act, the Court may make financial provision for a child by ordering one party of the marriage to make periodical payments to another person for the benefit of that child for such term as the Court considers appropriate. The relevant statutory provisions are set out below;

- s. 74. (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen - (a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);
27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say ---
- s. 27(1)(d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;

[8.] In exercising its discretion under section 27(1)(d) of the Matrimonial Causes Act, the Court is required to have regard to the matters set out in section 29(2) of the Act. Those considerations are as follows;

- s. 29(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family 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 financial needs of the child;
- (b) the income, earning capacity (if any), property, and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained; and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

[9.] As neither parent has asserted that ISMG suffers from any mental or physical disability, the consideration set out in section 29(2)(c) of the Matrimonial Causes Act does not arise. Having regard to the evidence filed by both the Husband and the Wife concerning their respective contributions to the child's upbringing, as well as their attestations as to their lifestyles and professional and business achievements, I am satisfied that ISMG has enjoyed a relatively high standard of living.

[10.] ISMG resides with the Wife and is wholly dependent upon his parents for financial support, having no income or assets or earning capacity while in full-time education. Excluding school fees, medical, dental, and optical expenses the Wife contributes **Two Thousand Two Hundred and Fifty Dollars (\$2,250.00)** per month to the child's maintenance, within her total stated monthly expenses of **Sixteen Thousand Nine Hundred Five Dollars and Seven Cents (\$16,905.07)**, covering insurance, school savings, living, transportation, recreational, and miscellaneous costs. The Husband has advanced an itemized schedule of broadly comparable expenses totaling **Seven Hundred and Seventy Dollars (\$770.00)** per month.

[11.] The Wife, a medical doctor, earns a monthly salary of **Seven Thousand Sixty-Eight Dollars and Sixty-Five Cents (\$7,068.65)** from her employment with the Public Hospitals Authority, works part-time at FMC, and undertakes two additional jobs, yielding a net monthly income of **Two Thousand Five Hundred Dollars (\$2,500.00)**. She has also established a private clinic, which presently operates at a deficit with expenses of **Six Thousand One Hundred Thirty-one Dollars and Sixty-six Cents (\$6,131.66)** exceeding income of **Six Thousand Dollars (\$6,000.00)**. Her total monthly earnings of **Fifteen Thousand Five Hundred Sixty-eight Dollars and Sixty-five Cents (\$15,568.65)** before expenses, demonstrate her capacity to contribute to the maintenance of ISMG and to sustaining his standard of living.

[12.] The Husband is a self-employed business owner who initially stated that his monthly income was **Four Thousand Five Hundred Dollars (\$4,500.00)**, together with approximately **Four Hundred Dollars (\$400.00)** in tips and average commissions of **Two Hundred Dollars (\$200.00)** from work as an apprentice at a real estate company. Under cross-examination, however, he revised his evidence and acknowledged earning between **Eight Thousand Dollars (\$8,000.00)** and **Ten Thousand Dollars (\$10,000.00)** per month, in certain months, namely November, March, and April. In his affidavit, he listed expenses attributable to ISMG in the sum of **Seven Hundred Fifty Dollars (\$750.00)**.

[13.] The parties' expenditure schedules show that ISMG enjoys a relatively high standard of living, with monthly expenses of **Three Thousand Twenty Dollars (\$3,020.00)**, which both parties are able to maintain notwithstanding the divorce. The wife's proposal that the husband contribute **Seven Hundred Fifty Dollars (\$750.00) per month**, representing one-third of the child's general expenses, is reasonable and consistent with **section 29(2)** of the Matrimonial Causes Act, and accords with the amount identified by the husband as his own monthly expenditure for ISMG. The parties agree, and I so order, that educational medical, dental, and optical expenses be shared equally.

[14.] The parties have agreed to a joint custody order with respect to ISMG, with care and control to the wife and reasonable access to the husband. Notwithstanding that the wife alluded to an incident where the husband visited corporal punishment upon ISMG, it appears that it might have been a single incident that did not extinguish her trust in the husband as a suitable or fit parent. Having regard to the fact that ISMG is a 16-year-old male child, who would require the male guidance of his father, I am satisfied that a joint custody order is appropriate and in his best interest. I therefore grant joint custody to the husband and wife with care, and control of ISMG to the wife, and reasonable access to the husband on terms to be defined hereunder.

### **Maintenance Arrears**

[15.] The Wife has particularized arrears owed by the Husband under the Interim Order of *Thompson J* dated 5 December 2019, supported by bank statements. Those records establish unpaid maintenance in the sum of **Four Thousand Six Hundred Fifty Dollars (\$4,650.00)**, which has not been convincingly challenged by the husband. I accept the Wife's evidence in that regard. The Wife has also demonstrated, through bank records, that between January 2020 and June 2023, the Husband accrued arrears of **Three Thousand Two Hundred Fifty-nine Dollars and Twenty-five Cents (\$3,259.25)** in respect of his one-half ( $\frac{1}{2}$ ) contribution to ISMG's school fees. The total arrears therefore amount to **Seven Thousand Nine Hundred Nine Dollars and Twenty-Five Cents (\$7,909.25)**. The Husband's admission of arrears in the lesser sum of **Two Thousand Seven Hundred Fifty Dollars (\$2,750.00)** is unsupported by the evidence, and I prefer the Wife's documentary accounting to the Husband's bare assertions.

[15.] The question, therefore, arises whether the arrears having accrued more than one-year prior to these proceedings, are enforceable in light of the provisions of section 36 of the Matrimonial Causes Act.

36. (1) A person shall not be entitled to enforce through the court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance, or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun. [Emphasis Minse]
- (2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the court thinks proper, or may remit the payment of the arrears or of any part thereof.
- (3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.

[16.] The Wife does not rely on section 36(1) of the Matrimonial Causes Act, but submits that the arrears arose under an Interim Order made to meet the child's financial needs, and that the Court's powers under section 27(1) (c) remain unexercised. She therefore contends that the arrears may be addressed by way of a lump sum order, relying on section 25(1) of the Act.

25. (1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 27 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation and under section 31 (6) on proof of neglect by one party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say ---
- (a) --
- (b) --
- (c) any order for lump sum provision in favour of a party to a marriage under section 27(1) (c) or 31 (6) (c) or in favour of a child of the family under section 27(1)(f), (2) or (4) or 31(6)(f); and references in this Act to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or

of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say ---

(a) --

(b) --

(c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified.

[17.] The Husband's failure to provide adequately for ISMG is apparent from the 2019 Interim Order requiring monthly maintenance of **Two Hundred Fifty Dollars (\$250.00)**. Although he cited financial hardship during the COVID-19 pandemic, he failed, under cross-examination, to disclose substantial severance pay received when furloughed. The evidence also shows that rental income from the Venito Condominium, collected by the Husband, was applied solely for his own benefit. Since the Interim Order, the Husband has substantially increased his earnings as a self-employed entrepreneur, but made no effort to regularize the arrears. I am therefore satisfied that the arrears should be discharged by way of a lump sum payment to the Wife.

## **PROPERTY ADJUSTMENT**

[18.] At the commencement of these proceedings, there were two properties capable of constituting matrimonial property within the meaning articulated in **Miller v Miller; Macfarlane v Macfarlane** [2006] UKHL 24, namely the Venito Condominium and Lot No. 22, Gleniston Gardens, being the former matrimonial home. As stated in that authority, "matrimonial property means the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance."

[19.] The former matrimonial home at Lot No. 22, Gleniston Gardens, is jointly owned and subject to a mortgage with First Caribbean Bank. The Wife and the child reside there, while the Husband vacated the property in or about 2022. The Wife seeks to retain the home and assume full responsibility for the mortgage upon a transfer of the Husband's interest; the Husband seeks a lump sum in respect of that interest.

[20.] The Venito Condominium was an investment property and is no longer owned by the parties. Its disposition is addressed later in this judgment

## **THE RELEVANT STATUTE**

[21.] The Wife's application is made pursuant to section 28(1) of the Matrimonial Causes Act,

**s. 28. (1)** on granting a decree of divorce, a decree of nullity of marriage, or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of

divorce or of nullity of marriage, before or after the decree is made absolute). The court may make any one or more of the following orders, that is to say;

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child, such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

(b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them, any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;

(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement.

[22.] The Husband's application is made pursuant to sections 25 and 27(1)(c) of the Matrimonial Causes Act. It is also noted that section 40 of the Act provides for the making of lump sum payments.

s.40 (1)(a) The court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit, on the application of either party made before the decree of divorce is made, make in lieu of any order under section 25(3) affecting the matrimonial home an order; -

a) subject to subsection (2) directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the court thinks fit; or

b) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the court thinks fair and reasonable in return for the contributions made by that other party. [Emphasis Mine]

## The Issues

- a) Whether the Court should exercise its powers to order the Husband to transfer his title and interest in the former matrimonial home to the Wife;

- b) If so, whether it would be just to Order an outright transfer without compensating the Husband for an interest he may have;
- c) Whether either party qualifies for a lump sum payment pursuant to sections 25(1) and 27(1)(c) of the Matrimonial Causes Act and;
- d) Whether the Husband has made a substantial contribution to the former matrimonial home within the meaning of section 40(1) of the Act to entitle him to a lump sum payment.
  - a. Whether the court should exercise its powers to cause the husband to transfer his title and interest in the matrimonial home to the wife?
  - b. Since the wife is seeking an outright transfer without compensating the husband for any interest he might have, the question is whether it is just to do so?
  - c. Whether the husband or wife qualifies under s. 25 (1) and 27(1) (c) to a lump sum payment?
  - d. Whether the husband has made a substantial contribution pursuant to s.40(1) MCA to the matrimonial home entitling him to a lump sum payment from the wife?

[23.] In determining whether to order a transfer of the Husband's interest in the former matrimonial home, the Court must consider all the circumstances of the marriage. The Wife bears the burden of satisfying the Court that her contributions justify such a transfer under section 28(1)(a) of the Matrimonial Causes Act. In this regard, guidance is found in **Jupp v Jupp** SCCR App. No. 37 of 2011. where *Allen J* stated;

*It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law that they can apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the Trial Judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances. [Emphasis Mine]*

[24.] Lump sum orders under sections 25(1)(c) and 27(1)(c) of the Matrimonial Causes Act arise where the circumstances of the case require an adjustment of the parties' financial positions, or where one party neglects to make proper provision for the other or for a child of the family.

[25.] Lump sum orders are also available under section 40(1)(a) of the Matrimonial Causes Act. The Wife submits that, as the Husband does not qualify under section 27(1)(c), he must establish a substantial contribution to the former matrimonial home within the meaning of section 40. She contends that the Husband fails to meet that threshold on the facts.

[26.] While section 40(1) concerns substantial contributions to the former matrimonial home and section 29(1) addresses contributions to the family, both require an assessment of contributions, with particular regard to section 29(1)(f). For completeness, the remaining factors in section 29(1)(a) – (e) will also be considered.

s.29 MCA;

"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."

[27.] Section 29 of the Matrimonial Causes Act is directed towards achieving fairness between the parties by requiring the Court to consider all the circumstances set out in section 29(1)(a) - (g). This objective is well established both in English law and in this jurisdiction, as reflected in the exposition of *Allen J* in **Jupp v Jupp** (supra) and in a number of other authorities. In **A v B 2008/FAM/DIV/132**, *Sir Michael Barnett CJ* (as he then was) provided guidance for Bahamian courts in determining property adjustment in matrimonial disputes, reaffirming the principle articulated in **Charman V Charman** [2007] 1 FLR 1246.

*"The objective of the court is to be fair. In my judgment, the modern-day approach to a division of property in a marriage is that fairness is an equal sharing of property unless there is a compelling reason to depart from that equality."*

[28.] Notwithstanding the specific relief set out in his Notice, the Husband stated repeatedly under cross-examination that he sought "whatever the Court considers fair."

[29.] An examination of the factual circumstances of the marriage in light of the factors set out in section 29 is central to determining a fair division of assets, particularly in relation to the former matrimonial home.

[30.] s. 29 (1)(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.

For much of the marriage, the Wife assumed primary responsibility for the family's finances. The parties met while the Wife was studying medicine in Trinidad, where they married. The husband, a citizen of Trinidad and Tobago, initially lived rent-free in the Wife's apartment. For financial advantage, he later relocated to The Bahamas in August 1998 while the Wife continued her studies in Trinidad, and he resided with her parents rent and utility free in New Providence. He was employed at the Wife's family service station earning approximately **Four Hundred Dollars (\$400.00)** per week, and by November 1998 was earning about **Two Thousand Dollars (\$2,000.00)** per month as a manager at Columbian Emeralds International.

[31.] The Wife returned to Trinidad to complete her studies after arranging for the Husband to reside with her parents in New Providence. The Husband admitted that he provided no financial support to the Wife during that period. Upon her return, the parties lived in a rented apartment in Stapledon, where the Husband paid rent for approximately one year at about **Five Hundred Dollars (\$500.00)** to **Five Hundred Twenty Dollars (\$520.00)** per month while the Wife purchased the furnishings. They thereafter returned to live with the Wife's parents with the intention of acquiring a home. The Husband later held various positions, including at Mount Tabor Church, the Riu Hotel, and on two occasions as Night Manager at the Shell Service Station, West Bay.

[32.] The parties' financial circumstances have evolved significantly over the course of the marriage. The Wife now earns approximately **Fifteen Thousand Five Hundred Sixty-Eight Dollars (\$15,568.00)** per month as a medical doctor, while the Husband earns **between Eight Thousand Dollars (\$8,000.00)** and **Ten Thousand Dollars (\$10,000.00)** per month as a business entrepreneur, reflecting broadly comparable earning capacities. I note, however, the wife's income is derived from working four jobs, raising concerns as to its sustainability given her role as primary carer for their son. Apart from the former matrimonial home, the Venito Condominium was intended as an investment for ISMG but has since been lost. with no alternative investment identified. The Venito Condominium is addressed further below.

[33.] s. 29 (1)(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;

The Wife's financial obligations flow primarily from her role as ISMG's primary carer. Her combined household and clinic expenses of **Six Thousand Nine Hundred Five Dollars and Seven Cents (\$16,905.07)** per month exceed her income, resulting in a monthly deficit of over **One Thousand Dollars (\$1,000.00)**, with a further shortfall of approximately **One Thousand**

**Five Hundred Dollars (\$1,500)** arising from the Husband's obligation to contribute one-third (1/3) of the child's expenses. The Husband has provided no evidence of his personal expenses and admits to arrears in court-ordered maintenance. The evidence indicates a reluctance to meet family obligations, absent compulsion, and apart from housing and utilities, there is no reliable evidence of his present or foreseeable financial commitments notwithstanding his residence with his "intended."

[34.] s 29. (1)(c) the standard of living enjoyed by the family before the breakdown of the marriage;

The Husband earns up to **Ten Thousand Dollars (\$10,000.00)** per month as a business entrepreneur, and the Wife is a medical doctor employed by multiple entities and operating her own clinic. The parties' ability to maintain a mortgage, educate their child privately, and provide annual vacations reflects a stable, middle-class standard of living reinforced by the acquisition of the Venito Condominium as an investment property.

[35.] s. 29 (1) (d)The age of each party to the marriage and the duration of the marriage;

The Wife is fifty-six (56) years old, and the Husband is fifty-two (52). The parties were married in July 1998, and the marriage endured for twenty-one (21) years. This can be considered a long marriage.

[36.] s. 29 (1)(e) Any physical or mental disability of either of the parties to the marriage;

Throughout the marriage, the Wife suffered serious health issues, including hypertension, diabetes, kidney disease requiring dialysis and transplant, a fractured hip with partial replacement, multiple surgeries, and a coma in 2016. She incurs average monthly medical expenses of **Two Hundred Thirty-five Dollars (\$235.00)**, not covered by insurance. The Husband reports no health issues.

[37.] s. 29(1)(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;

In this case, the parties dispute contributions in relation to the matrimonial home, the Venito Condominium, alleged loans by the wife to the husband for customs duties on a Coaster bus (2015) and a repossessed vehicle (November 2019), interest on an RBC overdraft of **Twenty-two Thousand Three Hundred Seven Dollars (\$22,307.00)** allegedly incurred to finance vehicle purchases, and the recovery of sums the wife claims the husband withdrew from her bank account without permission in 2016 and 2017.

## **DISCUSSION AND ANALYSIS**

### **The Matrimonial Home**

[38.] It is undisputed that the wife has paid the mortgage on the Gleniston Gardens matrimonial home since its acquisition in 2003, including all up-stamps, directly from her

Hospital Authority salary. The original mortgage of **One Hundred Eighty-five Thousand Five Hundred Dollars (\$185,500.00)** included **Twenty-eight Thousand Dollars (\$28,000.00)** for the husband's business, and monthly payments have increased to **Thirty-one Hundred Dollars (\$3,100.00)**. The wife states she has paid a total of **Six Hundred Forty-One Thousand Forty-seven Dollars and Twelve Cents (\$641,047.12)** toward the mortgage.

The only dispute concerns the **Nine Thousand Seven Hundred Fifty Dollars (\$9,750.00)** down payment and **Nine Thousand Dollars (\$9,000.00)** in legal fees. The wife claims these were paid by her with assistance from her parents, while the husband contends the funds were a gift from the wife's father to the parties after a joint cheque was dishonored. Although the wife produced a cheque from a joint account with her parents, it does not establish the intended recipient of the gift. In the circumstances, I give the husband the benefit of the doubt.

[39.] The wife asserts that she paid the majority of the household utilities and supported this with cheques, online transfer receipts, debit and credit card invoices to BPL and the Water and Sewerage Corporation, corroborated by bank statements from her personal savings account (#6576133) and the joint chequing account (#100195602) covering 2004-2023. These payments continued even during periods when the wife was hospitalized abroad. A letter to First Caribbean Bank from the wife authorizing the husband access for a limited time to her account while she was ill further supports her evidence.

Despite access being restricted to January-March 2017, the wife alleges that the husband continued accessing her accounts, resulting in misappropriation of **Eight Thousand One Hundred Dollars (\$8,100.00)** in ATM withdrawals and **Nine Thousand Two Hundred Dollars (\$9,200.00)** in transfers to the joint account between June and August 2016 funds which he used for his sole purpose. The wife substantiated these claims with documentary evidence.

[40.] As it relates to the payment of the utilities, the husband prevaricated. In one instance, he claimed the utilities were paid from a joint account he and his wife had at First Caribbean Bank. In another instance, he also claimed that he solely paid the utilities for the first five (5) years of the marriage, and after that time, he assisted with payments up to 2018. Another scenario he offered was that he deposited money into the joint account he held with the wife, from which the utility bills were paid. However, when pressed on the matter, the husband was less than forthcoming and contradicted himself repeatedly.

[41.] Monies held in a joint account but deposited solely by one account holder may nevertheless be regarded as the property of that depositor: **Heseltine v. Heseltine** [1971] 1 All ER 953 per *Lord Denning and Megaw J.* The inconsistencies and contradictions in the husband's evidence on this issue undermine his position and instead bolster the wife's evidence. I therefore accept the wife's evidence regarding the payment of utilities.

[42.] The husband contends that during the wife's kidney illness he bore the household expenses and that the parties jointly paid for the wife's medications, medical tests, doctors' visits, and periodic treatment trips to the Miami Hospital, Florida Hospital, and the Cleveland Clinic. He further asserts that any withdrawals from the wife's account were made with her consent for family expenses. However, the documentary evidence does not substantiate these claims, save

for the aforementioned letter dated 23rd October 2008, granting him access to her account for a limited period of two months.

[43.] The husband contends that after the mortgage was transferred to RBC and payments increased, he met additional household needs, including gas, a special diet, and a live-in maid, allegedly from his salary in cash. He also claims that during the wife's Peritoneal Dialysis, he bore primary responsibility for maintaining family stability during her illness.

[44.] The husband asserts that the wife's treatment at the Cleveland Clinic, valued at approximately **One Hundred Thousand Dollars (\$100,000.00)**, was facilitated through his medical insurance, as she had none at the time. He further states that between 2003 and 2018, the parties traveled abroad for the wife's medical treatment approximately four times per year, and that he accompanied her on those trips. Following the wife's hip fracture in 2016, further treatment abroad was required, along with home modifications, which he says were jointly funded.

[45.] While the wife produced documentary evidence in support of nearly all her claims, the husband failed to do so. He asserted that he performed various acts and made contributions. However, these claims were largely unsupported by independent evidence. He said:

*"All repairs and upkeep of the house, groceries, and landscaping, groceries, all repairs and upkeep of the house and maintenance of the vehicles. I worked day and night to take care of our family. I have also repaired the roof of the former matrimonial home twice after hurricanes."*

The receipts produced by the husband consisted of a single invoice for building materials dated 2016 in the sum of **Three Thousand Five Dollars and Eighteen Cents (\$3,005.18)**, and several receipts dated between January and October 2018 totaling **One Thousand One Hundred Forty-nine Dollars and Fifty Cents (\$1,149.50)**, which the wife maintains related to funds provided by her father for roof repairs. The issue that therefore arises is the weight to be attached to these alleged contributions in the overall assessment.

### **The Venito Condominium**

[46.] It is uncontroverted that the Venito Condominium was foreclosed by the mortgagee bank after the commencement of these proceedings and after *Newton J* ordered that the rental receipts be paid into a joint account and managed by the husband. As a result, the wife's prayers relating to the settlement of arrears, application of excess rental income, transfer of the husband's interest to her on trust for ISMG, and management of the property, are rendered moot and must fall away. The wife nevertheless seeks A lump sum arising from the circumstances surrounding the loss of the Venito Condominium, which she attributes to the husband's conduct.

[47.] It is Common Ground that the husband had sole management of the Venito Condominium, including the collection of rental income and payments to the developer, Brickell

Management. The condominium was acquired as an investment property intended to benefit ISMG. Although the husband disputes that the wife paid **Thirty-one Thousand Dollars (\$31,000)** down payment on the **Three Hundred Nineteen Thousand (\$319,000.00)** purchase price, even accepting the husband's version of events, the down payment was facilitated through the existing mortgage on the matrimonial home, which the wife serviced, resulting in an increased monthly mortgage payment of **Two Thousand Five Hundred Sixteen Dollars and Thirty-four Cents (\$2,516.34)**.

[48.] The purchase contract for the condominium required monthly installments to be paid from rental income and a final payment of approximately **Two Hundred Fifty Thousand Dollars (\$250,000)** to Brickell Management. Although the husband collected the rent, he failed to apply it as required, resulting in mortgage arrears. The evidence suggests that approximately **Nine Hundred Dollars (\$900)** per month in excess rental income was retained by the husband for his personal use. When Brickell Management demanded the final payment, the husband sought to have the wife borrow not only the outstanding balance but an additional **Eighty Thousand Dollars (\$80,000)** to buy out his alleged interest, which she refused. The husband made no attempt to raise the funds himself and, by that time, had left the matrimonial home and was residing with his "intended." For a significant period, rental income from the condominium was therefore used to support the husband's separate household. The husband also removed furniture from the condominium without the wife's consent and continues to retain the benefit of those items.

[49.] Upon becoming aware that the condominium was at risk of foreclosure, the wife sought to preserve the property by applying to the court, and on 24th July 2023, obtained an order directing that rental proceeds be paid into a joint account pending the determination of the ancillary matters. Despite this intervention, the husband failed to comply with the order, and the condominium was ultimately foreclosed.

[50.] The wife placed before the court invoices evidencing her contribution of **Thirty-six Thousand Nine Hundred Dollars (\$36,900)** toward the purchase of the condominium. The husband, however, put forward no credible proof of the rental income received during the relevant period and failed to account properly for any management expenses, save and accept receipts totaling less than **Six Thousand Dollars (\$6,000)** for yard maintenance and minor repairs. The evidence shows that the husband retained approximately **Forty-Seven Thousand Dollars (\$47,000)** in rental income, which was not applied towards the mortgage, while the wife was left to bear the loss of **Thirty-six Thousand Nine Hundred Dollars (\$36,900)** in respect of the deposit.

[51.] It is fair to say that the husband reaped the benefits of the Venito condominium to the exclusion of the wife. He made no financial contribution toward the property and, instead, depleted any Equity that could have accrued had he applied the rental income as mandated in the contractual lease agreement between Brickell Management and the parties. The wife presented cogent evidence, corroborated in every material particular. The husband's assertion that the loss of the condominium resulted from the wife's refusal to borrow **Two Hundred Fifty Thousand Dollars (\$250,000)** is rejected. While there was an agreement that the husband would manage

the condominium, there is no evidence of any agreement as to which party, if either, was solely responsible for raising the **Two Hundred Fifty Thousand Dollars (\$250,000)** required to complete the transaction. The fact remains that both parties executed the contract and were jointly obligated to make payment. Accordingly, the failure to pay was a shared responsibility.

[52.] The wife submits that, although the condominium is no longer available for Relief under Section 28 of the MCA, the court retains jurisdiction to make an order for financial provision pursuant to Section 27 of the MCA. This submission is grounded in the principle articulated in **Rosemary Edith Borrows v Sylvester John Borrows SCCIV App No. 58 of 2021**, where the **Court of Appeal** held:

*“68. The legal principle is that the date when the marriage broke down, and mutual support ended, is the point in time at which the property and financial resources of the parties, which are and will be available for equitable distribution, are to be assessed. That overarching principle is, in our view, well established.”*

[53.] There is no evidence that, as at 23rd July 2019, when the wife obtained the Decree Nisi, the condominium was in financial difficulty. The husband had been, and continued to be, in receipt of the rental income, including after the court order that such income be paid into a joint account. Applying **Burrows** supra, the husband ought to account to the wife for all sums collected after the court's order, save for any amounts he can prove were paid to Brickell Management in respect of the foreclosure. As the condominium was required as a long-term investment for the benefit of ISMG, section 27(1)(c) of the MCA is engaged. A lump sum award is therefore appropriate to adjust the parties' financial positions and to address the husband's failure to make an adequate contribution, in circumstances where he utilized the property for his sole benefit and failed to safeguard the asset in accordance with the parties' common intention.

#### **Reimbursement for the customs duties on the purchase of Coaster Buses For The Husband**

[54.] The husband disputes the wife's assertion that the mortgage was, on one occasion, up-stamped in the sum of **Fifty-eight Thousand Seven Hundred Thirteen Dollars (\$58,713)**. The documentary evidence produced by the wife records that **Forty-one Thousand Two Hundred Six Dollars and Seventeen Cents (\$41,206.17)** was applied towards the discharge of her car loan, with a further **Twenty-eight Thousand Dollars (\$28,000)** used to finance the husband's business ventures and to settle credit card debts. The evidence further shows that the wife remained responsible for the repayment of the up-stamp.

[55.] The wife claims that she loaned the husband **Six Thousand Dollars (\$6,000)** in 2015 to pay customs duty for the purchase of a 2006 coaster for his business, producing a check written to him in support. She loaned him **One Thousand Five Hundred Dollars (\$1,500)** in 2017 toward the purchase of a repossessed vehicle. At the same time as the **Six Thousand Dollars (\$6,000)** loan, the wife guaranteed a loan in the sum of **Twenty-two Thousand Three Hundred Seven Dollars (\$22,307)** for the husband, although that loan was never approved by the bank,

the husband nevertheless withdrew those funds from the party's joint account, thereby creating an overdraft for which the wife, as guarantor, became liable. It is telling that these sums all relate to the husband's entrepreneurial Pursuits in transport. The husband has been able to establish a relatively successful business and now makes a relatively comfortable living. There is no reason why you should not bear the responsibility for the monies from which he alone benefited. The wife should be repaid the **Six Thousand Dollars (\$6,000)** for the coaster bus, the **One Thousand Five Hundred Dollars (\$1,500)** for the repossessed car, and the husband should repay the overdraft, together with all interest accrued thereon.

The reimbursement of the funds removed from the wife's bank account Nos. 6312403 and 6576133 from May to August 2016 while the wife was at the Cleveland Clinic, Fort Lauderdale, Florida.

[56.] I am satisfied that the husband misappropriated funds from the wife's bank account while she was hospitalized in 2016 and again in 2017. The documentary evidence shows that any authority granted in 2016 was expressly limited to a period of 2 months, and no permission was given in 2017. Despite this, the husband continued to withdraw funds, asserting that they were used to repair his bus, an assertion the wife refuted, and which I accept, as the bus was not repaired and remained at the matrimonial home until recently. The wife's claim for reimbursement of **Sixteen Thousand One Hundred Dollars (\$16,100.00)** misappropriated by the husband is therefore allowed.

[57.] I accept the wife's evidence that the sums paid for customs duty on the coaster bus and for the repossessed vehicle were loans voluntarily made to the husband, and that the monies removed from her personal account were taken without her consent. The husband's businesses were established during the marriage and now support his lifestyle, yet he failed to provide any disclosure as to their origin or financial status, notwithstanding his duty of full and frank disclosure. The evidence shows that funds including part of the **Twenty-eight Thousand Dollars (\$28,000)** obtained from CIBC First Caribbean Bank and monies withdrawn from the wife's account, were applied to the husband's business ventures from which he alone benefited, while the wife remains liable to pay. I am therefore satisfied that these sums are to be reimbursed to the wife by the husband.

## CONCLUSION

### The Matrimonial Home

[58.] It is Undisputed that the wife paid all mortgage installments on the matrimonial home from inception to the present, directly from a bank account into which her public Hospital Authority salary is deposited. Those payments included sums relating to the up-stamping undertaken for the husband's business ventures and the purchase of the coaster bus. The documentary evidence further shows that even during her hospitalization, the wife continues to meet the family's financial obligations.

The husband failed to provide financial support for the parties' son, necessitating a court order, and remains in arrears notwithstanding that order. As a result, the wife has borne and continues

to bear the child's expenses alone. These matters plainly constitute significant contributions by the wife to the welfare of the family.

[59.] The husband's contributions, when compared to the wife's, were limited. He claims to have paid rent for approximately 1 year early in the marriage at \$520 per month, totaling about **Six Thousand Dollars (\$6,000)**, and asserts that certain household expenses and support during the wife's illness were paid from his salary in cash. He characterizes medical expenses, overseas travel, and general living costs as joint efforts, and attributes household maintenance and vehicle upkeep to himself. "I worked day and night to take care of our family," he said.

[60.] The husband failed, in many instances, to particularize or corroborate the source of the funds he claimed to have expended. Notwithstanding this, I accept the submission of the council that, given the wife's medical condition, she could not have managed the household without the husband's physical, emotional, and some financial support, and that it would be unfair to disregard the husband's contribution solely by reason of the breakdown of the marriage.

[61.] There's no discrimination at law regarding any contributions at all to the welfare of the family;

In **Wachtel v. Wachtel**, the court of appeals Civil Division [ 1973] 1 all ER 830, aptly describes it, and because of its continued relevancy, I adopt it:

*"The phrase "family assets" refers to things acquired by one or other or both parties with the intention that they should be a continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole. Family assets include (a) capital assets, such as the matrimonial home and the furniture in it, and (b) revenue-producing assets, such as the earning power of the husband or wife. When the marriage ends, the Family Assets have to be reallocated. Section 5(i)(f) of the 1970 Act recognizes that a wife who has looked after the home and family for many years is entitled to a share in the matrimonial home if the court concludes that the home has been acquired and maintained by the joint efforts of the husband and wife.*

[62.] Although the authority cited concerns a wife who cared for the home and family, no distinction arises when those rules are reversed. consistent with the principles of fairness articulated in **Charman, Miller/ McFarlane, and A v B**, the husband's contributions to the matrimonial home must be taken into account, notwithstanding that he did not seek relief under Section 28 of the MCA.

[63.] Council for the wife submits that the marked disparity in the parties' respective contributions demonstrates the absence of a true marital partnership, and that the application of the principle of fairness to the division of assets is premised upon the existence of such a partnership between husband and wife.

A. per *Lord Nichols of Birkenhead* in the case of **Miller v Miller; McFarlane v McFarland** [ 2006] UKHL 24 - ... This 'equal sharing principle ' derives from the basic concept of equality permeating a marriage as understood today. Marriage it is often said to be a partnership of equals. In 1992, *Lord Keith of Kinkel* approved *Lord Emslie's* observation that "*husband and wife are now for all practical purposes equal*

*partners in marriage..... when their partnership ends, each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less.”* But I emphasize the qualifying phrase, “*unless there is a good reason to the contrary.*” The yardstick of equality is to be applied as an aid, not a rule.”

[ 64.] Asserting that the principle of fairness favors her client, counsel reiterated that, in accordance with the authorities, the court is not bound to any particular division of property but is vested with a broad discretion to consider all the circumstances of the case, each matter turning on its own facts. See **B v B** (ancillary relief) (2008) 2 FLR 1627, **White v White** [ 2001] 1 AC 596; and **Miller/ McFarlane** Supra, where *Lord Nichols* acknowledged that: “[4] *fairness is an elusive concept. It is an instinctive response to a given set of facts.*”

[ 65.] Counsel Braynen- Symonette submits that, in this marriage, the wife was the chief financier, while the husband derived significant benefit yet made minimal contribution to the welfare of the family. In support, she points to the husband's misappropriation of funds from the wife's account during her hospitalization in 2016; his borrowing of money is for personal use which were never repaid; his receipt and expenditure of the net rental income from the Venito condominium for his sole benefit; his appropriation of all rental income in 2020, resulting in mortgage arrears; on his retention of the Venito furniture without regard to the wife.

[ 66.] Partnerships are not invariably equal. By virtue of the fact that the authorities espouse that there can be a departure from the equal sharing principle is itself a testament to that fact.

[ 67.] Council for the husband submits that the parties intended to join in an equal ownership of assets and an equal sharing of household expenses, as evidenced by their joint account, and accordingly seeks equal division. I am not persuaded. Even if such an intention existed at the outset or during the marriage, the husband did not act in accordance with it. I accept the submission of counsel Braynen-Symonette as to the parties' respective roles as they in fact materialized during the marriage.

[ 68.] The marked disparities in the parties' respective contributions to the mortgage on the matrimonial home, the husband's appropriation of the Venito rental income for his sole use, the wife's sole responsibility for maintaining ISMG, her payment of household expenses, and the loans made to the husband under pressure constitute compelling reasons to depart from equality. In the circumstances of this case, fairness can only be achieved by such a departure, having regard to the authorities cited herein, including **Sherwin Anthony Dames v Levette Sabrina Dames** SCCivApp. No. 64 of 2021.

[ 69.] I am satisfied that this disparity in the parties' contribution to the welfare of the family justifies an eighty percent (**80%**) interest in the matrimonial home being awarded to the wife, with the husband retaining **Twenty Percent (20%)**. The husband's share reflects his care of the wife and of ISMG during periods of the wife's hospitalization, the benefit of the doubt afforded in respect of roof repairs, and his limited household contributions. However, the wife clearly bore the substantial financial burden of the family. Accordingly, I accede to the wife's request for an order transferring the matrimonial home to her. The percentage division is fair, consistent

with the authorities, and accords with the husband's own submission that he should receive only what is fair.

[70.] On the question of the method of calculation of the husband's **Twenty Percent (20%)** interest in the matrimonial home, which arose, Counsel Braynen-Symonette submitted that the principle in **White v White** [2001] 1 AC 596 applies and that the date of calculation is the date of the breakdown of the marriage, when the mutual support of the couple ended. I accept that to be the case based on the cases cited **GB v VB** [2018] 1 BHS J. No. 87 and **Burrows v Burrows** SCCivApp. No. 58 of 2021, and acknowledge that the date of calculation is therefore December 2018.

[71.] Counsel Braynen-Symonette further submitted that the calculation should be based on the net value of the property, which is calculated at **Forty-four Thousand Eight Hundred Forty-four Dollars and Ten Cents (\$44,844.10)**. She suggested that, based on the principle in **White** supra, the estimated costs likely to be incurred if the former matrimonial home were sold must be deducted. On that calculation, the husband's entitlement would be reduced from **Eight Thousand Nine Hundred Sixty-eight Dollars and Eighty-two Cents (\$8,968.82)** to **Three Thousand Sixty-nine Dollars and Two Cents (\$3,069.02)**, representing **Twenty Percent (20%)** of the net value of the home after deductions.

[72.] Counsel Moxey-Lockhart argued that the decision in **White** does not always apply, particularly in this jurisdiction, based on *Allen J's* judgment in **Jupp v Jupp** SCCivApp. No 37 of 2011 and the provisions of s.29 of the MCA that, in all the circumstances, the court is mandated to be fair to the parties. The use of the formula adopted in **White** for the calculation of the wife's interest does not necessarily fit into the circumstances of this particular case. *Justice Allen's* admonished against the strict adherence to the use of UK authorities, stating that they may not always be appropriate when she said:

*“[9] It must be remembered that authorities for the United Kingdom cannot trump what the statute law of the Bahamas says. It is only if these cases are consistent with the statute law that they can apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under Section 27, 28, or even Section 25 of the Act. Any sharing principle enunciated in case law must be construed in this light. The statute requires you to look at all circumstances, and you make the order which puts the parties in the financial position so far as it is practical that they would have been in if the marriage had not broken down. The division of assets must be fair in its entirety. It is not the role of the judge to list the assets of the family and divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.”*

[73.] In deciding fairness in this case, I emphasize the fact that **White** was what was described as a “big money case.” One of the main considerations was the fact that the wife would have a considerable lump sum that she could invest, while the husband would be receiving only the net value of the farm at the relevant date. This is not what can be described as a “big money case.” Here, the husband is receiving what can only be described as a small to moderate sum. I also do not see the opportunities for investment in this jurisdiction as on equal footing with the UK.

Moreover, *Lord Nicholls of Birkenhead*, in his opening paragraphs of **White**, went to great pains to explain that there are a myriad of standards of fairness in different jurisdictions and that “one approach is for the legislature to prescribe in detail how property shall be divided with scope for the exercise of judicial discretion added on.”

*“So what is the best method of seeking to achieve a generally accepted standard of fairness? Different countries have adopted different solutions. Each solution has its own advantages and disadvantages. One approach is for the legislature to prescribe in detail how property shall be divided, with scope for the exercise of judicial discretion added on. A system along these lines has been preferred by the New Zealand legislature in the Matrimonial Property Act 1976. Another approach is for the legislature to leave it all to the judges. The courts are given a wide discretion, largely unrestricted by statutory provisions. That is the route followed in this country. The Matrimonial Causes Act 1973 confers wide discretionary powers on the courts about how the courts should exercise these powers in so-called “big-money cases, where the assets available exceed the parties’ financial needs for housing and income.”*

[74.] Bearing this in mind, I am mindful of the Matrimonial Causes Act, in this jurisdiction where the legislature has prescribed in detail the formula for arriving at a decision on property adjustment and the added discretion thereby conferred. I also rely on *Lord Birkenhead’s* opening paragraphs in **White** and *Allen J’s* exposition in **Jupp**, confirming the court’s discretion in property adjustment matters. In all the circumstances of this case, I am of the view that to deduct the notional expenses related to a sale of the matrimonial home would be unfair to the husband, given the history of the marriage and his contributions to the family.

[75.] In the interest of fairness, the husband shall be paid **Twenty Percent (20%)** of the net value of the matrimonial home as at December 2018, which has been calculated at Eight Thousand Nine Hundred and **Sixty-Eight Dollars and Eighty-two cents (\$8,968.82)**.

[76.] **The lump sum payment to the husband**

Notwithstanding my findings on the division of the matrimonial home, the husband's application for a lump sum payment falls for consideration. Counsel Braynen-Symonette opposes the application, submitting that it properly arises, if at all, under section 40 of the MCA, requiring proof of a substantial contribution to the matrimonial home pursuant to section 40(1)(a), Counsel Moxey-Lockhart, for the husband, relies on sections 25(1)(c) and 27(1)(C) of the MCA in support of the claim.

[77.] The husband's alleged contributions to the matrimonial home are confined to roof repairs and landscaping, supported by receipts totaling **\$4,154.68**, with no meaningful detail. When measured against the wife's contribution of **\$641,047.12**, this cannot justify an adjustment under s.25(1)(c) and S. 27(1)(c) nor, in fact, can it be regarded as ‘substantial’ as required under section 40 of the MCA. The husband has also failed to establish any special extraordinary contribution

warranting relief under section 25(1)(c) or s. 27(1)(c) of the MCA. His application for a lump sum payment is therefore refused.

### **Disposition**

Having considered the evidence, the relevant statutory provisions, the applicable authorities, and having submissions of counsel, I make the following orders:

As it relates to ISMG: -

1. The husband and wife have joint custody of ISMG with care and control to the wife and reasonable access to the husband in the following manner;
  - a. On alternate weekends from Friday, when the husband shall collect ISMG from school until Sunday evenings at 7:00 p.m., when the husband shall deliver ISMG to the wife, but during the times when I SMG is not at school, he shall be collected from his home from 3:00 p.m. on Fridays to 7:00 p.m. on Saturdays.
  - b. one half of all holidays with Christmas and New Year's holidays alternating between the parties.
2. The husband pays to the wife the sum of **Seven Hundred and Fifty Dollars (\$750)** per month towards the maintenance of ISMG. The payments are to commence on or before the last day of April, 2026, and continuing on or before the last day of each succeeding month, until ISMG attains the age of **Eighteen (18)** years or completes a first degree of tertiary education, whichever is the later, provided ISMG is enrolled in a tertiary institution within **Six (6)** months of graduating high school.
3. The husband and wife share all reasonable School tuition, school-related expenses, extracurricular activities, medical, dental, and optical expenses of ISMG.
4. The husband shall pay to the wife, by way of a lump sum, all arrears of maintenance and school fees in the sum of **Seven Thousand Nine Hundred and Nine Dollars and Twenty-five Cents (\$7,909.25)**, being arrears calculated to the end of November 2023, together with any further arrears accrued up to the date of this order.
5. The husband's claim for a lump sum payment is refused.

### **Reimbursement of Monies Owed**

6. The husband do pay to the wife the sum of **Six Thousand Dollars (\$6,000.00)**, being reimbursement for money he spent for payment of the customs duty for the coaster bus.
7. The husband does pay to the wife the sum of **One Thousand Five Hundred Dollars (\$1,500)**, representing money that the husband used to purchase the repossessed vehicle.

8. The wife's claim for the reimbursement of **Sixteen Thousand One Hundred Dollars (\$16,100.00)** representing monies withdrawn/ transferred from the wife's savings account 6312403 and 6576133 from May to August 2016, while the wife was at the Cleveland Clinic, Fort Lauderdale, is allowed. The husband do pay to the wife the sum of **Sixteen Thousand One Hundred Dollars (\$16,100.00)** as reimbursement.
9. The husband shall pay off the overdraft, interest, and fees incurred at Royal Bank of Canada for the purchase of his coaster bus

### **The Venito Condominium**

10. The wife's application: all sums collected in excess of the mortgage from 2014 to the present be applied towards the mortgage (excluding arrears incurred under the husband's COVID-19 assistance program), credited to the principal, or placed in an account for ISMG is refused.
11. The husband shall, within 30 days of the date of this order, pay to the wife all rental income collected from Venito Condominium No. 102, Atlantic Drive, after 24th July 2023, being the date of *Justice Newton's* order. Such sums shall be held by the wife on trust for ISMG in a dedicated bank account.

### **The Matrimonial Home**

12. The wife is entitled to an **Eighty Percent (80%)** interest in the matrimonial home, and the husband to **Twenty Percent (20%)** interest. In the matrimonial home situated at lot no. 22 Gleniston Gardens, Eastern District, New Providence.
13. The husband shall, within **Ninety (90)** days of the date hereof, execute all necessary conveyancing documents to transfer Lot No. 22, Gleniston Gardens, to the wife, who shall thereafter assume sole responsibility for the mortgage. In default of execution by the husband, the Registrar of the Supreme Court is authorized to execute the conveyance.
14. Upon execution of the documents of transfer of the matrimonial home by the husband, the wife shall pay to the husband the sum of **Eight Thousand Nine Hundred Sixty-eight Dollars and Eighty-two Cents (\$8,968.82)**, being the sum equivalent to **Twenty Percent (20%)** of the net equity appraised value of the said property, save that she may offset against that sum any monies due to her pursuant to paragraphs 4, 6, 7, 8, and 11 of this order. The costs associated with the transfer of the matrimonial home to the wife shall be borne by the wife as to **Eighty Percent (80%)** and the husband as to **Twenty Percent (20%)**.

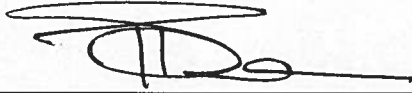
**The Declaration**

15. The Court Grants a Declaration Pursuant to 73(1)(b)(i) of the Matrimonial Causes Act, chapter 125 Statute Laws of the Bahamas.

**Costs**

16. Each party to bear their own costs.

Dated the 16<sup>th</sup> day of April, A.D., 2026



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**The Honorable Justice Hope Strachan**

