IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2021/FAM/div/00742

BETWEEN:

D.M.M. (nee W)

Petitioner

AND

M.C.M.

Respondent

BEFORE: **The Honourable Justice C.V. Hope Strachan**

Appearances: **Marylee Braynen-Symonette, Counsel for the Petitioner**

Pro Se, Respondent

Hearing Dates; **30th October 2024; 6th March 2025; 3rd July 2025; 16th December 2025; 24th March 2026 and 25th March 2026.**

Matrimonial proceeding, custody, access, maintenance, property adjustment, fairness is equality, compelling reasons to depart from equality.

INTRODUCTION

[1.] This case involves the ancillary matters in divorce, including custody, access, and maintenance of the minor child of the marriage and property adjustment. However, it also involves a subject that is somewhat peculiar to the matrimonial jurisdiction: a request by the husband for the court to order a mistrial.

BACKGROUND

[2.] The parties were married on 28 April 2001, when the husband was 28 years old and the wife 29 years old. The marriage endured for some 25 years. They are now aged 52 years old and 53 years old, respectively. On 21st July 2022, the wife was granted a decree nisi on the ground of the husband's cruelty.

[3.] The relevant marital circumstances appear from the affidavits filed by both parties. The wife filed affidavits on 5 May 2023, 20 November 2023 and 15 January 2026. The husband filed affidavits on 31 October 2023, 6 February 2024, 10 February 2026 and 27 February 2026.

[4.] There is one child of the marriage, MM, a daughter born on 20 April, 2010 and now aged Sixteen (16) years old. The wife seeks custody, care and control of the child, together with maintenance and contribution to shared child-related expenses.

[5.] As it relates to property adjustment, she seeks transfer of the matrimonial home to her and reimbursement of expenditure she made solely on the mortgage and loans taken out during the course of the marriage. The husband is seeking an arrangement for he and the wife to remain in joint ownership of the home or alternatively a sale of the home and that he be paid his equity.

[6.] The matrimonial home is located at St. Andrews Beach Estates. It is a duplex built on a lot formerly purchased from the wife's father purportedly at a discount. The couple and their child occupied one of the units of a duplex. The duplex is subject to a loan initially obtained for the sum of **One Hundred and Fifty-five Thousand and Seventy-five Dollars ($155,075.00)**. That mortgage and other loans have fallen into arrears at the various financial institutions and largely form the basis for much of the dispute between the parties.

[7.] The husband after dismissing several attorneys, during the proceedings, ended up as a Pro Se litigant. He complained orally about the granting of the Decree Nisi in his absence but made no formal application respecting the same. Right before the ancillary matters were scheduled for completion he demanded that the court order a mistrial of the proceedings. The concept of a mistrial is addressed later in this ruling.

FACTUAL MATRIX

[8.] Just about every fact and issue is in dispute between the parties. Every aspect of the couple's property, the level of their debt, custody of the child of the marriage, and whether the husband should have access to the child of the marriage and/or to what degree or under what conditions. The husband's recalcitrance proved obstructive on many fronts and caused significant delay in the final determination of the case. As it relates to property adjustment, she seeks transfer of the matrimonial home to her and reimbursement of expenditure she made solely on the mortgage and loans taken out during the course of the marriage.

[9.] The matrimonial home is located at St. Andrews Beach Estates. It is a duplex built on a lot formerly purchased from the wife's father purportedly at a discount. The couple and their child occupied one of the units of a duplex. The duplex is subject to a loan initially obtained for the sum of **One Hundred and Fifty-five Thousand and Seventy-five Dollars ($155,075.00)**. That mortgage and other loans have fallen into arrears at the various financial institutions and largely form the basis for much of the dispute between the parties.

[10.] The husband, after dismissing several attorneys during the proceedings, ended up as a Pro Se litigant. He complained orally about the granting of the Decree Nisi in his absence but made no formal application respecting the same. Right before the ancillary matters were scheduled for completion, he demanded that the court order a mistrial of the proceedings. The concept of a mistrial is addressed later in this ruling.

The Child

[11.] The maintenance of the child of the marriage going forward is at issue and both parties in defending their positions have provided affidavits to rationalize their respective positions.

[12.] As it relates to the child of the marriage, the husband disagreed with the wife that MM is in her de facto custody, notwithstanding that she and the child have been living together without the husband since 2021. He seeks immediate access/visitation with the child notwithstanding the wife's reasoned objections that the child has been traumatized in the past when he has had access to her and as a result she has had to have professional counselling. The wife stated that the child experiences extreme anxiety and depression when scheduled to visit the husband. The wife notes that this is all partly due to the physical and verbal abuse unleashed on both the wife and the daughter over the years. The wife notes that in addition to continuous verbal insults, the husband choked her and kicked her with his boots. Sometimes these incidents occurred in the presence of the child. The husband is also alleged to have frequently used profanity to and at the child, calling her swear names. The behaviour exhibited towards the child caused the wife to seek help for the child with a

Therapist, Dr. Lisa Bowleg at The Resolution Center. Dr. Bowleg's Report was exhibited to the wife's Affidavit. She diagnosed MM with severe anxiety and depression but attributed much of her situation to issues in her relationship with her father. She recommended reigniting the relationship but on MM's terms. It was revealed during those sessions that the child's issues were related to her relationship with her father and their interaction in the past. The wife is of the view that a reintroduction to the child should be gradual and professionally supervised.

[13.] The wife avers that, post Dr. Bowleg's Report, and in the interim, the child has changed her mind and now is not inclined to see her father. The husband is also accused by the wife that, instead of bonding with the child, he has used the time negatively, as an opportunity to denigrate both her and the wife.

[14.] The wife in her Affidavit of Means indicates that her job during the marriage was as a croupier of table games at Atlantis Hotel here on Paradise Island. Before being furloughed during the pandemic in 2020. She specified that her monthly earnings, inclusive of tips was about **Four Thousand Six Hundred and Fifty-seven Dollars and Ninety-two cents** ($4,657.92). She lists her total monthly expenses at **Ten Thousand Eight Hundred and Fifty-One Dollars and fifty-three cents ($10,851.53)** of which she attributes **Seven Thousand Nine Hundred and eighty-nine ($7,989.00)** to expenses related to the couple's daughter, MM.

[15.] The wife avers that the husband has failed to financially support the child for the past five (5) years. The wife attributes expenditure of **One Hundred and Twenty Thousand Eight Hundred and Sixty-two Dollars and Eighty cents ($120,862.80)** to expenses related to MM. The husband vehemently disputes that this sum was expended on the child and said if that amount was spent it is because of the wife's extravagance. To disprove her contention that he failed to support MM for the last Five (5) years he exhibited to his affidavit statements for the months of October, November and December 2022 and January, March, June and July of 2023 showing a total of Seven (7) payments of **Two Hundred and Fifty Dollars** ($**250.00**). He now offers to pay the sum of **One Hundred Fifty Dollars ($150.00)** monthly to maintain MM going forward together with a clothing allowance of **Two Hundred and Fifty Dollars ($250.00)** annually. The wife is seeking the sum of **Five Hundred Dollars ($500.00)** monthly together with all other expenses related to half school tuition and expenses, medical, dental, optical and extra-curricular activities.

[16.] The husband objects to MM attending Queens Collage High School where the wife enrolled her "without consultation in violation of his parental rights." He strongly protested the fact that he was not listed as a parent at the school which has prevented him from accessing information about his daughter. He requests a court order for the wife to notify the school of his parental status. The husband is of the view that while he is interested in reconnecting with his daughter financial support should not be expected while his visitation rights are being violated.

[17.] The Husband noted a reduction in income due to illness. He says he was forced to take another less paying job and is unable to assist with educational expenses for the child and suggests that she be enrolled in a government school.

[18.] The Husbands' claim of a lesser income is disputed by the wife, she claims that the Husband is not a Jitney Driver as he averred. She asserts that he earns a significant income through a tour company which he operates. She continued that additionally, the husband has sold assets, inclusive of a High Vista property in 2006, which coupled with the rental income, should enable him to be financially stable. In affidavit filed later in the proceedings the husband now contends that he is employed with Sivananda Ashram Yoga Retreat where he earns **Two Thousand Four Hundred Ninety-six Dollars ($2,496.00)** per month after National Insurance and lists his expenses at **Two Thousand Two Hundred and Sixty-seven Dollars and Ten cents ($2,267.10).** It is noted that none of his stated expenses included anything for the child. He revised his offer from earlier from **Two Hundred and Fifty Dollars ($250.00)** per month now to **One Hundred and Fifty dollars ($150.00)** per month for the said child.

The Matrimonial Home

The wife's account of the circumstances regarding the home and the household;

[19.] The wife's case is that the matrimonial home was a partial gift from her father who conveyed it to her and the husband at a discount of **Thirty Thousand Dollars ($30,000.00)**. An Affidavit sworn by her father supports the wife's' contention. The husband disputes this and says they paid her father **Forty-two Thousand Dollars ($42,000.00)** for the property. The property is located St. Andrews Beach Estates here on the island of New Providence and it is in both party's name as evidenced by the Conveyance exhibited by both parties. The couple built a duplex on the property through proceeds obtained from Finco Bank by mortgage. One unit comprised the matrimonial home. The other was rented and the initial idea was to utilize the rents received from the second unit to pay the mortgage installments. However, there was a shortfall of **about Two Hundred Dollars ($200.00)** and it is disputed who paid this shortfall the wife said she did. The husband said he did. However, during the Covid Pandemic in 2021, the wife says she was furloughed and the mortgage fell into arrears. At that stage, the husband allegedly insisted that the parties move out of the unit and rent it so that the rental income could cover the mortgage repayments.

[20.] The wife says she complied and moved with the child of the marriage to her father's home, where they shared a bedroom and a single bed. The husband was supposed to follow her there, making it possible to rent both units and keep the mortgage current. She contends that, contrary to the parties' plans, the husband did not apply the rental income to the mortgage but used it for his own purposes. He later allegedly evicted the tenants from the portion of the duplex previously occupied by the parties and returned to live there alone. As a result, the mortgage arrears increased while the wife and child remained at her father's home until after the Court's order of **27 November 2023** requiring the husband to vacate the unit. Once he did so, the wife and child returned to live in the matrimonial home.

[21.] It is important to note at this juncture that on 27th November, 2023 Newton J ordered that the husband vacate the matrimonial home in St. Andrew's Beach Estate. Further, that the wife and child was given leave to reside there. The wife was ordered to collect the rent from the rental units and to pay the mortgage from those proceeds effective the 1st day of February 2024 until further order from the court. This is material to the wife's claim for the husband to pay a portion of the arrears due and owing on the mortgage as will be discussed later in this ruling.

[22.] The wife further alleges that during the marriage the husband coerced her into taking out several loans against her salary, the proceeds of which were used by him for business or personal purposes. These included loans connected to a bus service and tour company, the purchase and sale of property at High Vista, a 2012 RBC loan exceeding **Twenty Thousand**

Dollars ($20,000), a 2018 Sunshine Finance loan exceeding **Twenty Thousand Dollars ($20,000)**, and a 2019 Commonwealth Bank loan exceeding **Thirty Thousand Dollars ($30,000)**. These loans all fell into arrears and by May 2023 when she filed her initial affidavit in these proceedings, the mortgage was in arrears some **Thirty-eight Thousand Six Hundred Fifty-three Dollars Seventy-eight Cents ($38,653.78).** The wife states that she bore the responsibility to repay these loans herself, even during the period that she and the daughter were residing with her father. However, she was unable to keep the mortgage and loans going, and arrears continued to accumulate.

[23.] To add fuel to the fire during the continued furlough from her job, in addition to bearing the responsibility for the mortgage, the wife asserts that she carried the principal financial burden of the family. This included the mortgage, insurance, utilities, household expenses, vehicle expenses, school-related costs, medical and dental expenses, clothing, entertainment, vacations, and extracurricular activities for the child. She says these obligations, combined with her responsibility for caring for the child and maintaining the home, prevented her from building savings, a position she seeks to support by reference to her bank statements. This was the existing circumstance, notwithstanding that the husband was collecting the rents from the duplex but failing to apply it to the mortgage.

[24.] The wife revealed in her evidence that the couple has a significant history of borrowings from various banks and financial institutions starting form 2012, again in 2018, 2019 and finally the mortgage over the matrimonial home in 2000 plus a further charge in 2013. Right up to 2023. The year the wife filed this Petition for divorce she and the husband appears as joint borrowers, on all of the other loan documents, including a loan document from Sunshine Finance for **Seventeen Thousand Two Hundred Seventy-eight Sixty-two Cents ($17,278.62)**. She claims that she was coerced by the husband into these borrowings by his threats to leave her and their daughter. She says was solely responsible for repayment. She said the husband "*has not paid $1.00 of these loans.*" However, she says the funds were used solely by the husband and mostly to purchase buses for his transportation business which he later sold.

[25.] The wife's evidence in her Affidavit filed 2023 provided a financial snapshot of the equitable value of the matrimonial home. An appraisal commissioned by RBC, from JM Appraisers reference to the husband's name, but exhibited by the wife gives the appraised value of the matrimonial home as **Three Hundred Forty-one Thousand Dollars ($341,000.00).** The wife in seeking to assist the court to determine the state of the couples' finances, uses a value of **Three Hundred Forty Thousand Dollars ($340,000.00)**. Against that value, she identifies liabilities including RBC mortgage arrears **of Fifty-seven Thousand Five Hundred Twenty-two Dollars Eighty-eight Cents ($57,522.88)**, an RBC loan balance of **One Hundred Sixteen Thousand Two Hundred Thirty-two Dollars Seventeen cents ($116,232.17),** real property tax of **Fourteen Thousand Seven Hundred Fifty Dollars Eighty-five Cents ($14,750.85)**, and Sunshine Finance/Commonwealth Bank liabilities of **Seventy-nine Thousand Three Hundred Ninety-three Dollars Eighty-one Cents ($79,393.81)**, producing total deductions of **Two Hundred Sixty-seven Thousand Eight Hundred Ninety-nine Dollars Seventy-one Cents ($267,899.71)**. On that calculation, the apparent remaining equity would be approximately **Seventy-two Thousand One Hundred Dollars Twenty-nine Cents ($72,100.29)**, before any further adjustments or findings by the Court.

[26.] Over the course of the Three (3) years that it took for this matter to come to trial the financial position as it relates to the matrimonial home worsened. As at 15th January, 2026, the debt obligations for the mortgage and the loans of the couple increased. The home remains in foreclosure with a payoff balance of **One Hundred and Seventy-three Thousand Six Hundred Eighty-four Dollars Fifty Cents ($173,684.50)**. The arrears are **Fifty-Seven Thousand Five Hundred and Twenty-Two dollars and Eighty-eight cents ($57,522.88)** and the sum due and owing on the loans at Sunshine Finance and Commonwealth Bank is **Seventy-nine Thousand Three Hundred and Ninety-three Dollars and eighty-one Cents ($79,393.81)**. When added together the total indebtedness is **Three Hundred and Ten Thousand Six Hundred One Dollars Nineteen cents (310,601.19).** The property is valued at Three Hundred and Forty-one Thousand dollars ($341,000.00). The joint equity of the parties is therefore **Thirty Thousand Three Hundred Ninety-Eight Dollars Eighty-one cents ($30,398.81).**

THE HUSBAND'S ACCOUNT OF THE SIRCUMSTANCES REGARDING THE HOME AND THE HOUSEHOLD

[27.] The husband disputes the wife's account concerning the matrimonial home and household finances. He challenges the description of the St. Andrews Beach Estates property as the "former matrimonial home" and denies that it was acquired at a discounted price, asserting instead that the parties paid the wife's father **Forty-two Thousand Dollars ($42,000.00)** for it. He also challenges the wife's financial documents and appraisal, contending that the appraisal valuing the property at **Three Hundred Forty-one Thousand Dollars ($341,000.00)** is unreliable due to the appraiser's alleged relationship with the wife. He seeks the opportunity to obtain an independent appraisal.

[28.] The husband does not accept the wife's position that the home is in serious arrears or foreclosure, although he admits that approximately **Fourteen Thousand Dollars ($14,000.00)** is owed in real property tax. He places the net value of the property at **Two Hundred Nine Thousand Dollars ($209,000.00)** and seeks an arrangement where the parties remain in joint ownership and occupation of the duplex and join in paying the mortgage, or either to be bought out by the wife or for the Court to order a sale of the property, with the net proceeds divided equally.

[29.] While maintaining that he is a **Fifty Percent (50%)** owner, the husband says he did not consent to renovations or upgrades carried out by the wife. He denies that he failed to apply rental income to the mortgage. His evidence is that the monthly mortgage payment was **One Thousand Seven Hundred Dollars ($1,700.00)**, with a monthly shortfall of **Two Hundred Dollars ($200.00)**, which he says he paid personally. He states that, after evicting a problematic tenant in 2021, the property was vacant until April 2022 and therefore produced no rental income during that period. He says he later secured a new tenant who paid **One Thousand Five Hundred Dollars ($1,500.00)** per month, which was paid directly into the bank.

[30.] The husband further asserts that he has carried responsibility for the property for about three (3) years without financial assistance from the wife. He relies on bank statements showing several mortgage payments of **One Thousand Seven Hundred Dollars ($1,700.00)** and one payment of **One Thousand Nine Hundred Dollars ($1,900.00)** during 2022 and 2023. He also disputes the wife's assertion that she was the sole breadwinner during the marriage.

[31.] At the beginning of the proceedings, the husband described himself as a self-employed Jitney driver which is a cash-based business. While failing at that time to disclose any income, he offered that his monthly expenses totaled **Seven Thousand Eight Hundred Six Dollar Sixty-six Cents ($7,806.66)** which included Mortgage payment of **One Thousand Two Hundred Dollars ($1,200.00)**; Diesel Jitney Automobile at **One Hundred Twenty Dollars ($120.00)** per day and Payments for the couple's daughter MM in the sum of **One Thousand Twenty-two Dollars ($1,022.00)**. By the culminating hearing dates, the husband had revised his particulars considerably. He now says he is employed as a Boatman at Sivanando Asram Yoga Retreat. He earns a net salary of **Two Thousand Five Hundred Sixty Dollars ($2,560.00)**. Instead of offering to pay **Two Hundred Fifty Dollars ($250.00)** per month for general maintenance for MM he has revised it down to One Hundred Fifty Dollars ($150.00).

[32.] The husband also alludes to the fact that he has suffered significantly in his health, a stroke, which has affected his ability to work as before and consequently has reduced his earning capacity from **One Hundred Forty Dollars ($140.00)** per day he earned as a jitney driver. His financial situation is affected by the cost of medication. In fact, he has had no income from the jitney since December 2022. He describes himself as having financial woes.

[33.] The husband's last Affidavit in which he insisted on a mistrial being declared by the court contains much of the shenanigans he employed during the court proceedings, which caused significant delays in concluding the matter. He crowned his antics with an affidavit denigrating his counsel, the court, the judge, court staff, the court filing system, and the wife.

Financial Position of the Matrimonial Home

[34.] Notwithstanding that the husband had ample opportunity to obtain an appraisal of the matrimonial home, he failed to do so. This has not stopped him from criticizing the wife's appraisal accompanied by scurrilous unsubstantiated accusations of bias. This court will utilize the wife's appraisal as a basis for this assessment.

[35.] By the wife's calculations, between the mortgage and the several loans the couple's indebtedness is **Three Hundred Ten Thousand Six Hundred One Dollars Nineteen Cents ($310,601.19).** Using her calculations, the remaining equity is **Thirty Thousand Three Hundred and Ninety-Eight Dollars Eighty-One Cents ($30, 398.81)** before any further adjustments or findings by the Court. This would normally be subject to a division upon the determination of the parties' respective interests in the matrimonial home after application of the s. 29 MCA considerations. However, the matter does not end there. In addition to the indebtedness to financial institutions as set out by the wife, she has also claimed that over the last five (5) years she has had to pay for home repairs, insurance, and utilities approximated at **Thirty Thousand Dollars ($30,000.00)** and for expenses related to the child in the sum of approximately **One Hundred Twenty Thousand Eight Hundred Sixty-two Dollars Eighty Cents ($120,862.80)** for a grand total of **One Hundred Fifty Thousand Eight Hundred Sixty-two Dollars Eighty Cents (<u>$150,862.80</u>)**. When this is divided equally between the parties, the husband would be liable to pay **Seventy-five Thousand Four Hundred Thirty-one Dollars Seventy Cents ($75,431.70). <u>These claims are addressed more particularly further in this ruling.</u>** [Emphasis Mine]

[36.] An equal division of the indebtedness to the bank would be **Three Hundred Ten Thousand Six Hundred One Dollars Nineteen Cents ($310,601.19),** divided by 2, which would amount to **One Hundred Fifty-five Thousand Three Hundred Dollars Fifty-nine Cents ($155, 300.59)** payable by each party. An equal division of the home repairs and child expenses would mean each party's total indebtedness to their bank and family obligations is **One Hundred Fifty-five Thousand Three Hundred Dollars Fifty-nine Cents ($155,300.59)** plus **Seventy-five Thousand Four Hundred Thirty-one Dollars Seventy Cents ($75,431.70)** which adds up to **Two Hundred Thirty Dollars Seven Hundred Thirty-two Dollars Twenty-nine Cents ($230,732.29).**

[37.] The wife initially described her total indebtedness and/or expenditure over the years, taking the appraised value of the property at **$340,000.00** as putting her underwater by minus **Four Hundred Eighteen Thousand Seven Hundred Sixty-two Dollars Fifty-one Cents**

($418,762.51) She calculates that this deficit is a deficit **(- $78,762.51)** for which the parties are both responsible. However, given the latest figures in connection with the couples bank and finance debts that has worsened considerably.

[38.] The husband has denied that the mortgage balance is **One Hundred Seventy-three Thousand Six Hundred Eighty-four Dollars Fifty Cents ($173,684.50)**. He disputes that the mortgage is in arrears or in foreclosure. He alleges that the wife obtained the Finco Further Charge, the RBC loans, and the loan from Sunshine Insurance from the banks and the finance company fraudulently. That the loan proceeds were not used for the purchase of the buses, the funds were used by the wife alone, and were as a result of her mismanagement and reckless spending. Moreover, he said that he was not aware of any restructuring or attempt to restructure the couple's debts. He did not agree to the wife carrying out any renovations to the home; that decision she made on her own, and she should be responsible for paying the same on her own. The husband says he simply wants **One Hundred Forty Thousand Dollars ($140,000.00)** for his portion of the matrimonial assets. He puts the wife to strict proof of her claims.

ISSUES

[39.] The issues raised include the following:

1) Whether there can be a mistrial declared?
2) Who should be granted custody, care and control of the child of the marriage?
3) Who should be granted access to the said child?
4) Should conditions be attached to the access provisions?
5) Whether /who should be provided with maintenance for the child?
6) What are the parties respective interest in the matrimonial home?
7) What should happen upon division of their respective interests?

LAW AND DISCUSSION

MISTRIAL / REHEARING/SETTING ASIDE DECREE NISI

[40.] I first address the husband's request for a "mistrial", as it has implications for the remainder of the ruling. In matrimonial proceedings, there is generally no separate remedy of "mistrial". The appropriate routes for challenging a decree nisi are those provided by the **Matrimonial Causes Rules** ("MCR") and the **Matrimonial Causes Act ("MCA").**

[41.] Under **Rule 34 of the Matrimonial Causes Rules**, an application for rehearing, where no error of the court is alleged, must be made by notice of motion stating the grounds relied upon, filed and served within six weeks after judgment. The husband did not make such an application.

[42.] Further, **section 61 of the Matrimonial Causes Act** provides that a decree nisi is not to be made absolute until the prescribed period has expired, during which any person may show cause why it should not be made absolute, including on the basis of collusion or material facts not before the court. The court may then make the decree absolute, reverse the decree nisi, require further inquiry, or make such order as justice requires.

[43.] The relevant principles are considered in **Kearly v Kearly [2010] 1 FLR 619**, which provides guidance on applications to set aside a decree nisi. In **Mitchell v Mitchell [1984] Fam 1**, applying **Stevens v Stevens [1965] P 147**, the Court of Appeal distinguished between cases where a party had no knowledge of the proceedings, or was deceived, and cases where the party knew of the proceedings but chose not to defend. In the latter class, the applicant must show that it is more probable than not that the decree was obtained contrary to the justice of the case. A further category was identified in **Nash v Nash [1968] P 597**, where a party knew proceedings were ongoing and wished to defend, but through ignorance or lack of advice failed to take the necessary procedural steps. In such cases, rehearing is not automatic, but the court also need not be satisfied that a different outcome was more probable than not.

[44.] In the present case, the husband did not make a formal application to set aside the decree nisi, nor did he file an affidavit in evidence explaining his or his counsel's absence from the hearing. This is material. He was represented by counsel, who is deemed to know the applicable procedure, including the proper steps for seeking an adjournment. Those steps were not followed.

[45.] The amended **MCR**, by Rule 68, permit the application of the **Supreme Court Civil Procedure Rules** where the matrimonial rules do not adequately provide for a procedural issue. The relevant provision is **CPR Part 11.20**, which allows a party who was absent when an order was made to apply to set aside or vary that order. Such an application must be made within 14 days of service and supported by affidavit evidence showing both a good reason for the failure to attend and that, had the applicant attended, some other order might have been made.

[46.] The decree nisi hearing was listed for **21 July 2022**. The husband says he was unable to obtain the Zoom link on the morning of the hearing, made enquiries of his attorney and the court, and later learned that the decree nisi had been granted. His attorney states that he requested an adjournment the day before the hearing due to another court commitment but received no response from chambers and did not attend.

[47.] The court regards timeliness and notice as critical. Fixed hearing dates are set in advance to allow preparation and to protect the interests of both parties. A last-minute adjournment request, made the day before trial and without confirmation from chambers or alternative arrangements for representation, does not discharge the duty owed to the court and the opposing party. It remained the responsibility of the husband and/or his counsel to ensure attendance, confirm any adjournment, or arrange substitute representation.

[48.] The husband has not filed a timely application under CPR Part 11.20, nor has he provided adequate affidavit evidence establishing a good reason for non-attendance. He has also failed to show that, had he attended, a different order was likely. The wife's evidence of cruelty was found to be credible, grave and weighty, and sufficient to establish that she should not reasonably be expected to endure the husband's conduct. The husband's Answer seeking dismissal of the petition was not sufficiently compelling to displace that evidence.

[49.] Accordingly, the husband has not satisfied the requirements of CPR Part 11.20. There is no timely or properly supported application, no adequate explanation for non-attendance, and no real prospect that his attendance would have led to a different order. In any event, the husband has acknowledged in affidavit evidence that he respects the wife's decision to seek a divorce and objects only to the ground on which the decree was granted. His request for a "mistrial", in substance an attempt to set aside the decree nisi, is therefore refused.

Whether the wife should be granted primary care with reasonable access to the wife?

Custody of the Minor

[50.] The wife by her Notice made the following request: -

1) To be granted custody of the minor with reasonable access to the husband.
2) That the husband pay **$500.00** in maintenance of the minor juvenile on or before the 1st day of each month until the juvenile obtains 18 years of age or completes tertiary education, whichever is later.
3) The parties share equally, education expenses for the minor juvenile up to and including tertiary level.
4) The husband and the wife share equally, all medical, dental and optical expenses for the minor juvenile until she completes her tertiary level education.

5) Within thirty (30) days of the date of the Order, the husband to vacate the matrimonial property and transfer all his right, title and interest to the wife and be responsible for the outstanding balance owing on the mortgage held over the matrimonial home.
6) Alternatively, the husband's interest in the matrimonial property be declared as 20% of the net value and the wife be made to pay to the husband a sum equivalent to the 20% net value less the following: -
7) $30,000.00 being the reduced purchase price from the wife's father
8) $31,942.30 – being accrued arrears owing on the mortgage
9) $7,104.00 – Real property tax owing
10) $41,500.00 – Balance owing on the husband's various loans.
11) A declaration pursuant to Section 73 of the Matrimonial Causes Act.

The Husband seeks the following relief: -

1) Joint custody of the child of the marriage with care and control to the wife and liberal access to the child of the marriage (Each Tuesday, Thursday, Friday, Saturday, and Sunday each week or at any time with the agreement of both parties) to the Husband.
2) Overnight staying access to husband on Father's Day, his birthday.
3) That the parties alternate access to the child on her birthday.
4) The husband pay maintenance for the Child in the sum **of Three Hundred Dollars ($300.00)** per week with **Two Hundred Fifty Dollars ($250.00)** general clothing allowance.
5) That the wife pays to him a **Fifty Percent (50%)** share in the matrimonial home and/or that this Honourable court order the sale of the matrimonial property with the proceeds of same being split between the wife and the husband 50/50.
6) Costs
7) Each party bear own costs
8) Each party have liberty o apply.
9) A Declaration s 73(1)(b)(i) MCA.

A later Affidavit sought that the court allows him to give the wife **$150.00** per month for maintenance for the child of the marriage instead of the **$300.00** previously offered.

[51.] During a Hearing on 27th November, 2023 for Interim Relief before *Newton J,* the parties were granted the following interim order; -

> *"1) The Respondent shall vacate the matrimonial property situate St. Andrews Beach Estates in the Eastern District of the Island of New Providence on or before 31st January, 2024. The Petitioner and minor juvenile of the marriage shall thereafter enter and remain in the matrimonial home until further ordered. The Petitioner shall be solely responsible for collecting the rent from the duplex unit annexed to the matrimonial home situate St. Andrew's Beach Estates and shall apply the funds to the repayment of the mortgage.*
>
> *2) The Petitioner shall be solely responsible for the repayment of the mortgage effective 1st February, 2023 until further ordered. The Respondent shall not vandalize and/or destroy the premises of the matrimonial home in any manner.*
>
> *3) The order was to remain in force until the substantive Ancillary application is determined."*

The husband complied with the Court's order to vacate the matrimonial home, although based on the wife's evidence, the home was vandalized.

[52.] This order by *Newton J* is extremely important to the final determination of this matter, as the possible effects of such an order on the parties' respective interests in the matrimonial property could be affected by the order.

As Between Husband and Wife

[53.] The family court can order, as part of an occupation order, that one party pay the mortgage or other outgoings. Under the **S. 39 (3) MCA**, when making an occupation order under **S. 39(1) MCA**, the court may impose obligations on either party for;

S. 39 (1) - The court may, if it thinks fit, on granting a decree of divorce or at any subsequent time, instead of or in addition to making any financial provision or property adjustment orders make an order against the husband or the wife, or his or her personal representative, granting to the wife or husband, as the case may be, for such period and on such terms and subject to such conditions as the court thinks fit, the right personally to occupy the matrimonial home.

S. 39 (3) - The court may make such other orders and give such directions as may be necessary or desirable to give effect to any order made under subsection (1).

The court may make such an order if it "thinks fit." That statutory power to give directions as may be necessary or desirable to give effect to any order supports an order requiring the wife, while occupying the property and collecting rents, to apply those rents toward the mortgage. Such an order also contemplates the couples' obligation to the mortgagee.

In **Re Barcham**, the court confirmed that where one co-owner remains in occupation, the court may offset that occupation benefit against mortgage payments made by the occupying co-owner: **Re Barcham** [2008] EWHC 1505 (Ch).

[54.] This matters in this case because the husband did not voluntarily decline to live there. He was ordered to vacate. That strengthens the argument that the wife's sole occupation/use must be considered before any mortgage-payment credit is deducted from his interest.

[55.] If the court ordered the wife to pay the mortgage from rents she collected, that may indicate that the court intended the mortgage to be serviced from the property's income stream while she had occupation/control. It would be difficult for her simply to say later: *"I paid the mortgage, therefore deduct all those payments from the husband's interest,"* if the payments were exactly what she was ordered to do in exchange for occupation or receipt of rent. The court recognizes that payments from rental income may not be treated the same as payments from the wife's own funds if the wife paid the mortgage from rents generated from the rental unit, the husband can argue that those payments were not purely her personal contribution. They were paid from an income-producing part of the matrimonial/joint property. While it may be argued that those payments the wife made while the husband was out of the home should be subtracted from his interest this is not necessarily the case. The more acceptable approach is that the time during which the husband was ordered to vacate <u>should be factored in</u>. But it should be factored in as part of a balanced accounting and fairness exercise. It does not justify a simple subtraction of all post-vacation mortgage payments from the husband's interest. Moreover, the husband's continuing obligation to the mortgagee might be a factor that is considered in balancing the scales. [Emphasis Mine]

In **Birch v Birch** [2017] UKSC 53 the Supreme Court recognized that a spouse may remain prejudiced by continued mortgage liability even where the other spouse undertakes to pay the mortgage and indemnify him. The husband's continued liability under the mortgage covenants was treated as a real prejudice. That supports the husband's argument that his exclusion from the property did not eliminate his mortgage exposure. If the mortgage fell into arrears, he remained at risk to the lender. That continuing risk can be relevant when assessing fairness.

[56.] There is no evidence from the wife as to whether or not she received rents from the rental unit once the husband vacated under the court order and she took up occupation. For that reason alone, the court is ill-equipped to subtract any amount from the husband's interest in the home or to give the wife credit for any such payments.

[57.] **Whether the wife should receive primary care, custody and maintenance for the minor?**

The Court is empowered by **s. 74. (1) of the MCA** to decide matters concerning the custody, care and maintenance of the child of the marriage;

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)."

[58.] Additionally, by **s. 27 (1) MCA** - 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 either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;

(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;

(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; [Emphasis mine]

[59.] This court as required is guided by **s. 29 (1) (MCA) which** mandates that he Court assess the entire circumstances of the parties. In making an order in divorce proceedings, the **MCA S.29** provides the following guidance-

> "(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;"

[60.] When making provision for children s. 29 (2) MCA is invoked "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."

s. 36. (1) MCA - 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. 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.

s. 31. (1) MCA - Either party to a marriage may apply to the court for an order under this section on the ground that the other party to the marriage (in this section referred to as the respondent) — (a) being the husband, has willfully neglected — (i) to provide reasonable maintenance for the applicant, or

(ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;

s 31 (3) MCA - This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to provide or towards whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.

[61.] The primacy of the interests of the child has statutory authority. **The Child Protection Act, (CPA)** requires the Court to always make decisions in the best interest of the child. - **S.3 (1) Child Protection Act** requires that;

> "(1) Whenever a determination has to be made with respect to — (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the paramount consideration."

Having regard to all of the provisions of s.3 but in particular s. 3 (3) the court is also mandated to have regard to the ascertainable wishes of the child;

> "(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to — (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding; (b) the child's physical, emotional and educational needs; (c) the likely effects of any changes in the child's circumstances; (d) the child's age, sex, background and any other circumstances relevant in the matter; (e) any harm that the child has suffered or is at the risk of suffering; (f) where relevant, the capacity of the child's parents, guardians or other persons involved in Guiding principle the care of the child in meeting his or her needs."

[62.] This court, in exercise of the powers conferred by s. 74 MCA regarding the custody, care and control of MM, is mindful of the acrimonious relationship between the husband and wife and the tenuous relationship that exists between the husband and the minor child. It is particularly concerning that the child was impacted so negatively in her relationship with her father because of the way he chose to treat his wife in her presence, as well as the abusive language and treatment he used with the child. The husband continues to speak about the wife in derogatory terms. It is obvious that the minor and her mother have a close relationship. It is hard to ignore the fact that there have been allegations of immense physical and mental abuse towards the minor. The Court accepts the evidence that the child and the wife experienced violent episodes while in the husband's presence. The incident described in which the child and her mother (the wife) was chased from room to room, all in an effort to escape the hands of the husband is impossible to ignore. The Report produced by Dr. Lisa Bowleg, child psychologist clearly lays the cause for the minor's traumatization anxiety and depression at the feet of the husband. I am of the view this child needs further counselling before a complete reunification of her relationship with the husband with whom she has not interacted in years. A joint custody order for the husband and wife does not seem appropriate in the circumstances.

[63.] In an interview conducted by the court with the child, she indicated extreme reluctance towards the father having any access to her. Further she has intimated that she has no desire to continue tennis lessons which began with enthusiasm for her but which eventually was spoiled by the father's over exuberance and anger displayed towards her whenever the matches did not go the way he desired. She has no desire at all to reunite with her father, whom she has not interacted with for the past Five (5) years.

[64.] These findings are significant, as they directly impact the child's safety and best interest and justify protective conditions on access. Bearing in mind the applicable provisions in the MCA and the CPA and the Court having considered both the child's right to safety and the husband's parental rights the Court is of the view that the best way they can be balanced is by imposing supervised access rather than exclusion.

[65.] A supervised schedule of visitation narrowly tailored to allow the husband contact with the child while minimizing risk is proposed. The Court orders supervised visitation with the husband. The visitation will take place on a limited basis on Fridays between 4 pm and 7 pm. The visitation will be held in a public place and will be supervised by a court-appointed representative or Family liaison from the Department of Social Services. The Court is open to recommendations from the parties for a supervisor. The visitation will require strict adherence, and any variation to this order must be supported by clear, contemporaneous evidence of changed circumstances. During this time, the child will be mandated to continue to undergo psychological assessment paid for by the husband.

Whether the wife should be provided with maintenance assistance.

[66.] The wife seeks **Five Hundred Dollars ($500)** per month for the child's maintenance, contribution to educational, medical, dental, and optical expenses, and reimbursement of past expenditure of **One Hundred Twenty Thousand Eight Hundred Sixty-two Dollars Eighty Cents $120,862.80**, or half thereof. The claim for reimbursement is refused: it is disputed, insufficiently evidenced, no prior maintenance order was obtained, willful neglect has not been proved, and any arrears exceeding one year would require leave under **s.31 MCA**, which has not been sought.

[67.] The husband produced limited evidence of payments of **Two Hundred Fifty Dollars ($250 per month)** for some months in 2022 and 2023, but there remain substantial gaps thereafter. Futuristically, his obligation to maintain the child remains, whatever the dispute as to his employment. It is significant that he did not include the child in his particulars of means.

[68.] Under **s.29 (2) MCA**, the Court must consider the child's present and foreseeable needs and the parties' respective means. The child has been in the wife's de facto care for five (5) years and requires continuing educational, medical, dental, optical and counselling support. Her academic ability and extracurricular interests, including tennis, should be supported so far as reasonable and proportionate. The child's wishes as to continuing tennis should be respected.

[69.] Both parents have the capacity to contribute. The wife bears the day-to-day care; the husband remains financially responsible. Having regard to the evidence, the husband's means, **s.29 MCA** and **s.3 CPA**, the Court orders the husband to pay **Four Hundred Dollars ($400) per month** for general maintenance, payable by the first day of each month into an account nominated by the wife, continuing until the child reaches Eighteen (18) or completes tertiary education.

[70.] The husband shall also contribute **Fifty Percent (50%)** of tuition, educational, medical, optical, dental and reasonable extracurricular expenses, continuing until the child reaches Eighteen (18) or completes tertiary education.

[71.] The parties shall maintain records and receipts for shared expenses and exchange documentation to verify the same.

[72.] The wife shall direct Queens College or any other educational institution MM becomes enrolled in to add the husband to the communications list for MM.

[73.] The Husbands submission that he should not be required to pay maintenance if he has no access is rejected.

[74.] The court will grant liberty to apply to the parties to apply should the necessity arise for a review to determine compliance with the access provisions and any changes to the visitation rights.

Interest in the Matrimonial Home

[75.] **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;

[76.] **s 40 (1) MCA** - 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 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.

[77.] Determining what order should be made in relation to the matrimonial home does not end with being empowered to do so; it is only the starting point. Application of the s. 29 MCA considerations is well established in **Jupp v Jupp** [2013] 1 *BHS J.* No. 131 per *Allen J.*

> "the considerations to be taken into account are to be found in s. 29 of the MCA for guidance for deciding the issues. The Court of Appeal also laid done a guideline that should be followed in determining the issue clearly articulated as follows;
>
> "In her ruling the learned trial judge correctly stated the law and referred to numerous cases from the United Kingdom which she deemed applicable. Her main focus was the case of **Charman v Charman** (2007) EWCA Civ 503 in which the court emphasized that, "property should be shared in equal proportions <u>unless there is good reason to depart from such proportions."</u> The court there further described the evaluation process a distributing court should undertake when determining what share of matrimonial assets a party should receive. In the eyes of the court in **Charman** it is a two stage process, the first stage being computation, the latter distribution. Distribution should take place around three distributive principles that of need, compensation and sharing." [Emphasis mine].

[78.] The objective when applying the s.29 considerations is to be fair. *Barnett J* gave guidance in **A v B 2008/FAM/div/132** when he reiterated the principle expounded 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."

[79.] The wife seeks a declaration that the husband's interest in the matrimonial home be limited to **Twenty Percent (20%)**. She relies on evidence that loans paid from her savings funded the mortgage and other debts, including vehicles from which the husband had the sole benefit. She also says the husband retained much of the rental income for himself, while she bore the financial burden of paying the debts while being deprived of the use of her own income. The Court also takes into account the husband's harsh treatment in requiring the wife and child to leave the home and live with her father, where they shared one bed, while the wife continued as the child's primary carer from 2021 until Court order in 2023.

[80.] The husband seeks either payment of **Fifty Percent (50%)** of the net value if the wife retains the home, or sale and equal division of the proceeds. His alternative proposal that each party occupy one side of the property and share expenses is rejected. In light of the findings of cruelty towards the wife and child, such an arrangement would be unworkable and contrary to the need to achieve a clean break between the parties.

Baroness Hale of Richmond in the case of **McFarlene vs. McFarlene [2006] 3 All England Report 1, Miller vs. Miller [2005] 2 FCR 713** dealt with what seems to be the approach on this vexing problem of ancillary relief. She said:

> "It simply was not possible to enable two households to continue to live as if they were one. Nor in many cases was it desirable to perpetuate their mutual interdependence. The whole point of a divorce is to enable people whose lives were previously bound up with one another to disentangle those bonds and lead independent lives. But at least the discredited objective had encouraged a sort of equality..........."

[81.] Applying the rule of distribution in **Charman** supra that "Distribution should take place around three distributive principles that of need, compensation and sharing."

[82.] Having reviewed the affidavit and oral evidence, I prefer the wife's evidence. She was the more credible witness, and her account was substantially supported by documents, statements, and invoices. By contrast, the husband's evidence was in part inconsistent with his claimed contributions. I accept that the wife largely met the mortgage, property expenses, taxes, and family obligations, while the husband pursued business ventures for his own benefit. The wife makes no claim against those businesses.

[83.] I further accept that the husband pressured the wife to leave the matrimonial home with the child and move in with her father. He then occupied the home, collected rent from the second unit, and failed adequately to service the mortgage, as reflected in the arrears. These findings justify treating his beneficial interest as significantly less than equal.

[84.] Having regard to s. 29 (1) (a) to (g), I am of the view that the respective contributions made by the respective parties to the marriage are the main consideration pivotal to the decision. While the husband alluded to having experienced a stroke, there were no visible, audible, or psychological signs evident in his numerous appearances before the Court. Additionally, he adduced no cogent medical evidence that his health was a significant factor. The circumstances of the parties' finances dominated their marriage and contributed greatly to the breakdown when one considers the grave financial burden the wife bore relative to the mortgage and loans but also the fact that the husband made negligible contributions towards the maintenance of their daughter.

[85.] Applying the principles of fairness, compensation and sharing in **Charman** and **Miller/Macfarlane** supra, the husband should not receive a greater return than his contribution warrants. The wife's financial and caregiving contributions far exceeded his. She also bore primary responsibility for the child after separation and protected the child from the husband's abusive conduct.

[86.] Based upon the foregoing I therefore accept the wife's proposed division of the parties' respective interests. The husband's interest in the matrimonial home is assessed at **Twenty Percent (20%) of the net equity**, calculated on **Thirty Thousand Three Hundred and Eighty-Nine Dollars and Eighty-one cents ($30,389.81)**, giving a nominal entitlement of **Six Thousand and Seventy-seven dollars and Ninety-six cents ($6,077.96)**. However, that entitlement must be set against his share of the parties' accumulated liabilities and expenditure, assessed at **Three Hundred and Ten Thousand Six Hundred and One**

Dollars and Nineteen cents ($310,610.19) including mortgage arrears, loans, and insurance. However, this figure would've been proffered by the wife.

[87.] The past child related expenses for the specific sum of **Hundred and Thirty Thousand Eight Hundred and Sixty-two Dollars an Eighty Cents ($130,862.80)** is denied for the reasons stated above. However, the court recognizes that the husband offered to pay the sum of **Two Hundred Fifty Dollars ($250.00)** per month since 2023 as maintenance for the child of the marriage. Nothing was paid since the offer was made. It is clear that the wife had to financially support the child on her own since. The husband should be made to reimburse her some of that expenditure in the form of a lump sum payment pursuant to s. 31(1); s. 31 (3), and s. 27 (1) (c) of the MCA. A years' worth or **Three Thousand Dollars ($3, 000.00)** of those monthly sums offered is considered reasonable in the circumstances.

[88.] I am of the view that the wife's claim for **Thirty Thousand Dollars ($30,000.00)** for home upkeep, maintenance and renovations is disallowed, the documents of expenditure provided by the wife did not support the **Thirty Thousand ($30,000.00)** she sought. Some of them indicated that much of the so called renovations were cosmetic in nature. Moreover, it is my view that the value of these improvements are or should be reflected in the overall value of **Three Hundred Forty-one Thousand ($341,000.00)** as appraised.

[89.] I accept the wife's financial documents and appraisal. The husband's allegation of bias in the appraisal is rejected; he had ample opportunity to obtain his own valuation and did not do so. His mortgage payments were negligible; particularly given that he was receiving rental income.

[90.] The wife's claim for an additional **Thirty Thousand Dollars ($30,000)** said to represent a discount on the purchase price is rejected, as any such benefit is already reflected in the appraised value of the property. Moreover, the discount given by the wife's father appears to have been a gift to the couple, not just the wife.

[91.] Given the wife's wish to retain the home, her greater contribution, and the husband's failure to meet the financial obligations attached to it, it is appropriate that he relinquish his interest, access and rights in the property to the wife, subject to the offset identified above.

CONCLUSION

The Court has concluded that on the question of the:

MISTRIAL

[92.] The Court has determined that the husband's oral application to have the court declare a mistrial (set aside the decree nisi) is refused for failure to comply with **CPR Part 11.20** – no timely application, inadequate affidavit evidence, and no real prospect that attendance would have altered the result).

THE CHILD

[93.] Under **s. 3 (1) CPA** requires the Court to ensure that in all decisions before the Court, the child's welfare remains paramount. The Court found significant evidence of physical and psychological harm connected to the husband's conduct. In this regard, the Court is obligated to ensure the safety and protection of the child, MM through various safeguards. The wife shall have primary care, custody and control, of the child of the marriage while the husband will have supervised visitation with a Court appointed representative or Court liaison present at all times.

[94.] As the child has suffered serious trauma, the husband shall pay for the necessary counselling which the child requires.

[95.] The Court also finds that both parents have the capacity to contribute to the child's needs. Having regard to the **s.29 (1) and (2) MCA and s 3 CPA** considerations the Court is of the view that the sum of **Four Hundred Dollars ($400.00)** per month maintenance for MM is appropriate for the husband to pay to the wife.

[96.] Under **s.3(1) CPA**, the child's welfare is the Court's paramount consideration. In light of the evidence of physical and psychological harm arising from the husband's conduct, protective safeguards are necessary. The wife shall have primary care, custody and control of MM, and the husband shall have supervised contact only, with a Court-appointed representative or liaison present.

[97.] Given the trauma suffered by the child, the husband shall meet the cost of the counselling required.

[98.] Both parents have capacity to contribute to MM's needs. Applying **s.29(1) and (2) MCA** and **s.3 CPA**, the husband shall pay the wife **Four Hundred Dollars ($400) per month** for MM's maintenance.

DISPOSITION

IT IS HEREBY ORDERED That:

THE CHILD

1. The Wife do have custody, care and control of MM (F) born 20th April, 2010 with reasonable, access to the husband supervised by a court approved supervisor, every other Friday between 4 p.m. to 7 p.m. beginning on the last Friday in July, 2026 and every other Friday thereafter until the said child attains the age of Eighteen (18) years.

2. The Husband do pay the sum **of Four Hundred Dollars ($400.00)** per month towards the child's general maintenance, on or before the 1st day of each month beginning the 1st July 2026 until the child attains the age of Eighteen (18) years or completes a first degree of tertiary education, provided she is enrolled in a tertiary level institution within Six (6) months of graduating High School. The monthly sum shall be paid into an account designated by the wife.

3. The Husband do pay one Half (1/2) of all expenses with respect to the child's tuition, educational, dental, medical, optical, and extracurricular expenses commencing 1st July, 2026 until the child attains the age of Eighteen (18) years or completes a first degree of tertiary education provided she is enrolled in a tertiary level institution within

Six (6) months of graduating High School. The monthly sum shall be placed in an account to be designated by the wife.

4. The husband do pay the cost of the counselling required for MM.

5. The husband do pay to the wife by way of a lump sum payment the sum of **Three Thousand Dollars ($3,000.00)** representing one (1) year's contribution towards the past expenses of the child of the marriage and being based on the offered contribution made by the husband of **Two Hundred Fifty Dollars ($250.00)** per month during the course of the proceedings and pursuant to s. 31(1) an (3) MCA.

6. The court declares that pursuant to s. 73 (1) (b)(i) MCA that MM is the only child of the family and that arrangements made for her welfare are the best that can be devised in the circumstances.

THE MATRIMONIAL HOME

1. The Home situated Lot No. 126, Zenadia Drive, St. Andrews Beach Estates, New Providence, The Bahamas ("the Matrimonial Home") is declared to be the only matrimonial asset for distribution between the parties.

2. The value of the said home is declared to be **Three Hundred Forty-one Thousand Dollars ($341,000.00)**.

3. It is declared that the said home is encumbered by a mortgage with RBC and, in addition, there are several loans with RBC, Commonwealth Bank and Sunshine Finance Ltd. that are joint loans of the parties and they have a joint responsibility to pay them back.

4. The outstanding mortgage and loan indebtedness of the parties is declared to be **Three Hundred Ten Thousand Six Hundred Ten Dollars Nineteen Cents ($310,610.19)** as at the 15th January 2026 but at the time of the execution of the terms of this order may have changed. The parties shall abide by the sums proven to be owed to the bank in this regard.

5. The net equity in the said home is declared to be **Thirty Thousand Three Hundred and Eighty-Nine Dollars and Eighty-one cents ($30,389.81).**

6. The wife is entitled to an **Eighty (80%)** interest of the net equity in the said matrimonial home. The husband is entitled to a **Twenty percent (20%)** of the net equity interest in the said matrimonial home.

7. The wife is given the first option to purchase the husband's interest in the said matrimonial home. The wife shall pay a sum equal to **Twenty Percent (20%)** of the appraised value of the said matrimonial home to the husband within **One Hundred and Twenty (120)** days of the date hereof, whereupon the husband shall transfer all his right title and interest in the said home to the wife.

8. The Husband shall within **One Hundred and Twenty days (120)** days of the date hereof execute the necessary Conveyance transferring the said matrimonial home, to the Wife who thereafter shall assume sole responsibility for the repayment and/or satisfaction of the mortgage.

9. The wife shall be at liberty to offset any sums of money due to her under this order.

10. Should the wife fail or refuse to purchase the husband's interest within **One Hundred and Twenty (120)** days of the date hereof then the husband shall have **One Hundred and Twenty (120)** days from that date expires to purchase the wife's interest for a sum equal **to Eighty Percent (80%)** of the appraised value of the said matrimonial home, whereupon the wife shall transfer all her right, title and interest in the said matrimonial home to the husband who thereafter shall assume sole responsibility for the repayment and/or satisfaction of the mortgage.

11. The costs associated with the transfers in either No. 3 or 4 shall be divided on the same **Eighty Percent (80%)** to **Twenty Percent (20%)** ratio.

12. Further or in the alternative to [3] and [4] if after the expiration **of Two Hundred and forty (240)** days neither the wife or the husband has purchased the others interest then in that event the matrimonial home shall be sold and the net proceeds therefrom shall be divided between the husband and wife as to **Eighty Percent (80%)** to the wife and **Twenty Percent (20%)** to the husband.

13. Should either party fail or refuse to execute the necessary documents to effect the relevant transfer then the Registrar of the Supreme Court is appointed to execute the said documents.

14. Should a sale of the said property occur the costs associated with the conveyance shall be divided between the wife and the husband as to **Eighty (80)** percent to the wife and **Twenty (20%) percent** to the husband.

15. The Wife's claim for in the sum of **Thirty Thousand Dollars ($30,000.00)** for maintenance, upkeep, insurances for the matrimonial home is denied.

16. Each party shall bear their own costs of these ancillary proceedings.

Dated this 22nd Day of July, A.D 2026

The Honourable C.V. Hope Strachan J.