

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2023/FAM/div/00152

B E T W E E N:

K.M.D.

Petitioner

and

M.E.D

Respondent

and

S.H. aka V.M.

Woman-Named

Before: The Honourable Justice C.V. Hope Strachan

Appearances: Sean Moree K.C. with Peteche Mitchell for the Applicant/Respondent

**Gail Lockhart Charles K.C. with Tatyanna Maynard for the
Petitioner**

Hearing date: 24th July, 2026

Rule 11 of the Matrimonial Causes (Amendment) Rules, 2025, Rule 26.1 (2)(v) of the Supreme Court Civil Procedure Rules, 2022 (as amended), Divorce proceedings, property adjustment, interpretation of S. 25 (3) Matrimonial Causes Act.

DECISION

C.V.H. STRACHAN, J

Background Facts:

[1.] The parties are involved in contested ancillary proceedings. One of the issues outstanding is property adjustment. The property involved is C House in Albany, Nassau, Bahamas. The current value of the property is suggested by the husband to be **Forty Million Dollars (\$40,000,000.00)**. Notwithstanding, that there is consensus between the parties that C House should be sold, the application for property adjustment has not been heard and that application is at the stage where the parties are involved in disclosure, discovery and interrogatories. MED (“the husband”) has applied to the court on an urgent application for an order that KMD (“the wife”), who resides in C House with the minor children of the marriage, be made to allow a prospective buyer of the home to access and view the home on 26th July, 2026, later revised to 28th July, 2026. The wife is opposed to the viewing.

[2.] The urgent application was made pursuant to Rule 11 of the Matrimonial Causes (Amendment) Rules, 2025 (“the MCAR”) and Rule 26.1 (2)(v) of the Supreme Court Civil Procedure Rules, 2022 (as amended) (“the CPR”) which can be invoked in proceedings under the Matrimonial Causes Act (MCA) by virtue of that amendment. The Applicant relied on the Second Affidavit of Ian W.A. Cargill filed 20th July, 2026 which exhibited the Second Affidavit of Charles Fussell, the next friend/guardian ad litem of the husband. The wife relied upon First and Second Affidavits of Kara Neely, Legal Assistant in Gail Lockhart-Charles and Co., which exhibited an affidavit intended to be sworn by the wife. Both Mr. Fusesel and the wife were out of the jurisdiction, and given the urgency of the application, did not, and would not have been able to return to the jurisdiction to swear the affidavits in time for the hearing on 24th July, 2026.

[3.] The husband’s rationale for the urgent application is that an ultra-high net worth individual is travelling to Nassau this weekend and wants access to the property for a viewing, with the possibility of an offer to purchase. He says that the International realtors “Savills” whom he has consulted, suggest that this viewing, if missed, would result in a lost opportunity, limited legitimate offers in the future, and significant upkeep costs while awaiting a sale. Notwithstanding that the wife and the children are expected to be out of the home when the viewing takes place, the wife objects to the viewing. One of the initial reasons for her objection was that the 18-year-old daughter would be in the home on 26th July, 2026, which could potentially be traumatic. She provides a medical report to that effect. This precipitated the proposed purchaser rescheduling his visit to 28th July, 2026, two (2) days later.

[4.] Invoking the CPR in Matrimonial Causes now has legislative authority by Rule 11 of the MCAR;

Rule 11 MCAR - Revocation and replacement of rule 68 of the principal Rules. Rule 68 of the principal Rules is revoked and replaced with the following as a new rule 68 —

“68. Application of the Supreme Court Civil Procedure Rules. (1) Subject to these Rules and the provisions of any enactment, where — (a) these Rules do not adequately provide for a matter of practice or procedure; and (b) there is no practice direction issued covering the matter of practice or procedure pursuant to rule 68A, the Supreme Court Civil Procedure Rules shall apply with the necessary modifications. (2) Notwithstanding rule 2.4 of the Supreme Court Civil Procedure Rules, the court shall where the circumstances permit follow the practice and procedure observed in civil proceedings commenced in the court under the Supreme Court Civil Procedure Rules.”

Rule 26.1 CPR - Court's general powers of management.

- (1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions or any enactment.
- (2) Except where these rules provide otherwise, the Court may-;
 - (v) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation, or directing that such a hearing take place before a Court-appointed neutral third party, with the aim of helping the parties settle the case.

MCA s. 25 (2) - The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say — (a) any order under subsection (1)(a) of that section for a transfer of property; (b) any order under subsection (1)(b) of that section for a settlement of property; and (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

MCA s. 25 (3) - Where the court makes under section 27 or 28 a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be

specified in the order, being property in which or in the proceeds of sale in which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion. [Emphasis Mine]

MCA s. 40. (1) 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, 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;

THE ISSUE

[5.] The only issue to be determined by the court is whether to allow a viewing of the C House by a prospective purchaser at this stage of the divorce proceedings and in light of the wife's (the occupier of the home) objections.

COUNSELS SUBMISSIONS

Mr. Moree for the Husband

[6.] Counsel Moree has provided comprehensive submissions in support of the husband's application. He emphasized that he was not seeking an order for the sale of the property at this time. He commended to the court the case of **Bhargava v Bhargava** [1989] Lexis Citation 1392 ("**Bhargava**"). The facts are notable as somewhat comparable to the present factual circumstances in that the former matrimonial home was jointly owned. In ancillary-relief proceedings, the court had already made orders requiring its sale. The wife failed to permit valuers and prospective purchasers access to the property. A judge found her in contempt, ordered her to give vacant possession before completion of the sale, and made compliance with that requirement a condition of suspending committal. The Court of Appeal allowed the wife's appeal on the possession issue. It held that an order for sale, and the court's ancillary powers in relation to it, did not authorize the court to require a beneficial joint owner to give up possession while the property remained unsold. The condition requiring vacant possession was therefore discharged. The Court distinguished between a limited interference necessary to effect a sale—such as requiring access for valuation and viewings—and an order that wholly ended a co-owner's right to occupy.

[7.] Counsel Moree also relied on the case of IN v CH [2024] EWFC 233 to support his application for the viewing. The case is discussed further on in this Ruling.

Mrs. Lockhart-Charles for the Wife

[8.] It is counsel Lockhart-Charles' position that:

- i. The husband's application is premature and should be dismissed.
- ii. There is no urgency to the situation.
- iii. The evidence presented about the urgency of the matter is hearsay
- iv. The welfare of the children is paramount, and the viewing as applied for is not in their best interest.
- v. The cases relied on by the husband do not assist his application.
- vi. The husband's reliance on Rule 26.1 (2)(v) is misplaced.
- vii. There are inadequate safeguards in place regarding the husband's offer to notify the wife within three (3) days of an offer to purchase the home.
- viii. Prior to those applications, the wife has engaged constructively.
- ix. She suggests what the proper course should be.

[9.] Counsel Lockhart-Charles suggested that Mr. Moree's reliance on Rule 26.1(2)(v) is misplaced. She submits that the rule relates to case management powers which exist for the purposes of "managing the case and furthering the overriding objective;" they are not a freestanding basis to compel a viewing of the matrimonial home before any determination has been made as to whether the property should be sold.

[10.] Further, Counsel Lockhart-Charles submits that Rule 26.1(4)(e), which permits the court to impose a condition "that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party," must be exercised in accordance with the substantive law. The MCA provides the framework for financial relief and property orders. The case management powers cannot be used to circumvent the statutory framework.

[11.] Her further argument was that the husband's application is not a case management step; it is a substantive application seeking to pre-empt the court's determination of the ancillary relief proceedings. It is, in effect, an application for partial summary judgment on the issue of sale, dressed up as a case management direction.

[12.] Counsel Lockhart-Charles' submissions prompted the court's close examination of the MCA and a determination that adherence to the MCA is a prerequisite for any decision to be made on property adjustment. The first thing that strikes me with this application is the sequence in the proceedings in which the application is brought. While Rule 11 MCAR and Rule 26.1

(2)(v) CPR are being applied by the husband in making this urgent application, regard must be had to the fact that a property adjustment application is extant and how this application should be treated in those circumstances. For ease of reference, I have set out at paragraph 4 above, the relevant provisions of the MCA that relate to property adjustment.

[13.] Counsel Lockhart- Charles did not introduce any new or different authorities to support her client's views. However, she did offer critiques of Mr. Moree's submissions and his authorities. At para 43 of her submissions she said:

"In the present case no order for sale has been made, no substantive ancillary relief determination has occurred and no hearing on the sale of the house or division of assets has been held. In the present case, the Respondent is not seeking to enforce a court order, he is seeking to pre-empt the court's determination."

Counsel Lockhart -Charles volleyed **Bhargava** back at Counsel Moree by Quoting a passage from page 3 of **Bhargava**, the case relied on by the husband in support of her position as follows:

"Mr. Pointer said, and I see some force in the argument, that it is possible to conceive of orders which the court could make under these provisions and which would yet have the effect of interfering with the rights or interests of one or other party in the property. He particularly instanced the order that the wife in this case should admit surveyors to inspect the property and prospective purchasers to view it, and he said that that was an interference with the wife's right to occupy the property. I do not wish to suggest that the court has not got power to make such an order. I am quite sure that it has. But the minimal interference with the wife's rights is completely different from an order which would determine altogether her right to occupy the property while it was retained."

She submitted, "However, this observation was made in the context of an existing order for sale, where the court's primary determination had already been made. In the present case, no such determination has occurred."

[14.] In demonstrating that **IN v CH** is also distinguishable from the present case, Counsel Lockhart-Charles quoted *Trowell J* at paragraph 89;

".... that the wife should be kept informed of all material developments in the sale of the matrimonial home. That includes being kept informed as to the response of the bank to the application for the extension of the mortgage and being told who is instructed as selling agent and their advice as to what can realistically be achieved on a sale."

She commented that "this was in the context of an existing sale process ordered by the court. There was no suggestion that a viewing could be compelled before any determination of financial relief had been made."

DISCUSSION AND ANALYSIS

[15.] The way I see it is that Counsel Moree has failed to refer to the most critical provision in the MCA, which guides the process between the pronouncement of a sale and the consequential orders or directions flowing therefrom. An interpretation of s. 25 (3) MCA, as I see it, is that only at the time of the making of a property adjustment order (s. 28) or sometime after a sale of the property has been made, can such an application for viewing the property be made. Until then, the court has no legislative authority to order the viewing.

[16.] It also stands to reason that if the court has not yet ordered a sale, any orders or directions possible as flowing from an order for sale are also contrary to legislative authority: -

MCA s. 25 (4) Any order made under subsection (3) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include —

- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order. [Emphasis Mine]

Based on my interpretation of this provision, any orders whatsoever regarding the disposition of the property are only possible as a result of, subsequent to or following, an order for sale of the property. Alternatively, it would have to be made as an addition to, complementary to or added on to an order for sale.

[17.] Counsel Moree for the applicant made it pellucidly clear that he was not seeking an order for the sale by this application whether pursuant to s. 28 or s 40 MCA. Obviously that application is reserved for the substantial application for property adjustment that has yet to be determined. It is at the time of considering the respective interests of the parties in the marital assets (providing there is no settlement agreement) that the provisions of s. 29 MCA must then be applied.

[18.] Addressing the last discussed submission, Rule 11 of the Matrimonial Causes (Amendment) Rules, 2025 (“the MCAR”) and Rule 26.1 (2)(v) of the Supreme Court Civil Procedure Rules, 2022 (as amended) (“the CPR”). Rule 26.1(2)(v) – is unequivocal in its objective which is managing the case and furthering the overriding objective. In my view this is a discretionary power granted by those provisions, but which must be exercised judicially and always with regard to legislative authority.

[19.] I turn now to assessing the cases counsel has provided in support of the application. It is my view that **Bhargava** does not support an order requiring a beneficial co-owner to vacate the former matrimonial home merely to facilitate an anticipated sale. It establishes the opposite proposition: even after an order for sale had been made, the court's powers to make consequential or supplementary provision for that sale did not authorize an order which brought the co-owner's occupation to an end before completion. In the present case, no order for sale has yet been made. There is therefore no existing sale order to which a consequential or supplementary provision could attach. Any order for possession would consequently require a separate and legally sustainable basis; it cannot be justified simply as a step ancillary to a possible future sale.

[20.] Mr. Moree also commended to this court the case of **IN v CH** [2024] EWFC 233 ("IN v CH") and to assess its applicability to the present circumstances it is helpful to summarize the facts of the case;

The husband sought an order under s 33(3)(e) **Family Law Act 1996** to terminate the wife's matrimonial home rights so that the former matrimonial home could be sold. The home was legally owned by a company, but the husband asserted that he was its sole beneficial owner. The wife and the parties' children were living there. The property was heavily mortgaged; the husband contended that an orderly sale was necessary because of the mortgage position and liquidity pressures. The wife contended that she had a beneficial interest in the home, relying on an alleged common intention constructive trust and proprietary estoppel. After focused oral evidence, the court rejected that case. The court found that the wife had not established a beneficial interest in the property.

[21.] **IN v CH** does not lay down a general proposition that a matrimonial home may be sold whenever sale appears financially advantageous. The court's conclusion rested on the specific finding that the wife had no beneficial interest in the property, enabling consideration of termination of her statutory home rights under s 33(3)(e) of the Family Law Act 1996 (UK Legislation). The discretion was then exercised only after considering the factors in s 33(6), and with safeguards that preserved occupation until completion and secured alternative housing.

[22.] In the present case, the absence of a prior order for sale is not, in and of itself, determinative, because **IN v CH** concerned an application to enable a future sale. However, the decision is distinguishable unless the court has first determined the applicant's entitlement to sell, resolved any asserted beneficial interest, established that termination rather than merely suspension or restriction of home rights is legally available, and assessed the statutory s 29 (1)(a) – (g) factors. Without those findings, **IN v CH** cannot properly be treated as authority for immediate termination of home rights or a direction that the property be sold or in fact viewed. [Emphasis Mine]

[23.] This court finds that notwithstanding that MCAR 11 is the correct provision under which the application by the husband was brought, this is not an application that can in any way be

described as a case management issue subject to determination under the provisions of Rule 26.1 (2)(v) the CPR.

CONCLUSION

[24.] s.25 (3) of the MCA gives the legislative authority for an application for the viewing which the husband is seeking and upon its interpretation an order for viewing can only be made after the court makes an order for the sale of the home pursuant to S. 25 (4) MCA.

[25.] Consistent with Counsel Lockhart-Charles' submissions:

- i. The husband's application is premature.
- ii. That while there was urgency in bringing the application because the prospective purchaser was coming to the jurisdiction within 2 days and wished to view Carlyle House, there is no basis upon which the urgency misplaces the Court's obligation under S.25 (3) and in circumstances where the property adjustment issues have not been heard and properly ventilated by the court.
- v. The cases relied on by the husband does not assist his application.
- vi. The husband's reliance on Rule 26.1 (2)(v) is misplaced

DISPOSITION

1. The Husband's application for a viewing of C House, Lot No. 9, Woods Drive, Albany, New Providence, Bahamas is refused.
2. Costs of the application to the wife to be assessed on a summary basis after receipt of brief submissions by counsel due on or before 16th September, 2026.

Dated the th4 day of August, 2026



The Honorable Justice C.V. Hope Strachan

