COMMONWEALTH OF THE BAHAMAS **2023**

IN THE SUPREME COURT **FAM/Div/00508**

FAMILY DIVISION

BETWEEN

J L S

Petitioner

AND

S S S

Respondent

Before:	The Hon. Madame Justice J. Denise Lewis-Johnson MBE
Appearances:	Lenise R. Flowers-Bethel, of Counsel for the Petitioner
	Christina Galanos, of Counsel for the Respondent
Hearing Dates:	16th August 2022, 26th November 2024, 26th February 2025
	1st July, 2025, 7th November 2025, 10th November 2025

Matrimonial Causes Act – Long Marriage - Property Adjustment - Equal Sharing – Purchase prior to marriage

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JUDGMENT

Background

1. The parties were married on 13th February 2010. There are three (3) children of the marriage, two (2) are sui juris and one is a minor.
2. A Decree Nisi was granted on the 16th August, 2022.
3. By Notice of Intention to Proceed with Ancillary Relief filed on the 30th day of April A.D. 2024, the Petitioner made application for custody and maintenance of the minor child and for property adjustment.
4. The parties filed Affidavits of Means, a Reply, a Supplemental Affidavit, and Notices to Cross-examine at trial.
5. The parties obtained a Section 73 Declaration, and the Decree Nisi was made Absolute on the 19th March, 2025.
6. The only matrimonial asset is Lot No. 80 located at No. 24 Water Street in the Big Pond Subdivision.

The Petitioner's Evidence

7. That the Petitioner is employed as a Heavy Equipment Operator at the Atlantis Resort and earns a bi-weekly salary of $869.25. The Petitioner also receives additional income of approximately $500.00 per year as a disc jockey on a "sporadic basis".
8. That the Petitioner, by way of a mortgage, solely purchased the property at Big Pond. The purchase was made approximately two years prior to the marriage.
9. That the Petitioner solely enlisted help and renovated the home, making it habitable.
10. That from the time of purchase of the home, the Petitioner has been entirely responsible for making all mortgage payments, electricity bills, cable bills (until payment was transferred to the last child), land phone bills, and expenses pertaining to the maintenance and upkeep of the matrimonial home.
11. That, from the date of the marriage until approximately 2013, the Respondent was not consistently employed and made little to no financial contributions to the family. The Petitioner provided for all the family's needs. After the Respondent's "consistent" employment, the Petitioner still carried the brunt of the finances for the home.
12. That the Petitioner paid for vacations, spent money for vacations, purchased uniforms, supplies, and other necessities for the children up until the breakdown of the marriage, when the Respondent then shared the expenses.
13. That when the Respondent obtained consistent employment, she became responsible for purchasing groceries and providing the children's lunch money, although the Petitioner frequently assisted when she experienced shortfalls.
14. That the Petitioner conducted and paid for all major repairs and renovations, although help was sometimes enlisted.
15. That the payoff amount on the mortgage at the Bahamas Islands Resorts & Casinos Cooperative Credit Union Limited (BICCU) is $59,911.28 as at 8th March, 2024.

16. In or about 2022, the Petitioner was ordered to vacate the matrimonial home and resided in the efficiency/shed on the property. The Petitioner continued to upkeep the home and pay all utility bills except the cable bill.
17. That in an effort to expedite ancillary matters, the Petitioner stated that both he and the respondent were entitled to half of the equity in the matrimonial home. That after settlement was not made and following the breakdown in negotiation, the Petitioner honestly believed that "the Respondent is not entitled to one half of the equity in the home."

The Respondent's Evidence

18. That she is self-employed as a lunch vendor at C.R. Walker Senior High School and realizes income of $1500.00 to $1800.00 per month.
19. That she supports both the minor child and the second child of the marriage, who was attending the University of The Bahamas at the time.
20. That the Petitioner pays the mortgage and electricity bills only. That since the most recent Court Order for the Petitioner to vacate the home, she and the second daughter pay the bills for the home.
21. That she would prefer to purchase the matrimonial home, given that all of her equipment for her lunch vendor business is installed in the kitchen, and that the two youngest children have resided in this home all of their lives.
22. That she contributed $5,000.00 to the down payment for the marital home, although she was unaware of the amount of the deposit required. That the matrimonial home was fully furnished and there was no requirement to make it habitable. That she and the Petitioner moved into the home approximately one month after receiving the keys. The delay in moving in was due to the need to wait for the power company to provide electricity.
23. That the parties jointly agreed that the Petitioner would pay the mortgage and that the couple would jointly pay the light bill, whilst the Petitioner would pay the BTC bill. That the Respondent and the Petitioner agreed that the Respondent would purchase the groceries and pay all expenses in relation to the children.
24. That the Respondent assisted with major renovations, which commenced around 2013, when the Respondent insisted that the kitchen should be expanded. That the expansion involved window replacement and the addition of walls and tiles.
25. The renovations were completed "out of pocket" and in stages. As a lunch vendor, the Respondent provided cash monies to the Petitioner. The Respondent did not have a bank account, and all work was undertaken via cash transactions. That the Petitioner would instruct the Respondent of the amount, and she would, in turn, provide the necessary cash to cover the work being done in phases.
26. That the Respondent equally shared the costs of family vacations. The Respondent also regularly purchased groceries and food, which are always in the family home, since the

Respondent is a lunch vendor. That it was only on two occasions that the Petitioner assisted with the children's lunch money.

27. That on one occasion, the Respondent broke into the Petitioner's safe to access money to purchase groceries for her and the children.
28. That after the breakdown of the marriage, and with the exception of the receipts provided to the court, the Petitioner made no contribution to the home.
29. That the Respondent has no receipts to show as evidence for her contributions because the funds were always placed in the hands of the Petitioner.
30. That the matrimonial home at the time of the purchase was ready to move in, although it has since been converted from wood to stucco.

Agreed Issues

31. Whether the Petitioner and the Respondent are entitled to an equity in the matrimonial home?
32. If so, what percentage equity in the matrimonial home ought to be attributed to each party?
33. Which of the parties shall be entitled to purchase the other party's interest right and title in the matrimonial home?

Statute Law

34. **Section 28 Matrimonial Causes Act Ch. 125 (1a)** ("the Act") provides as follows:-
"On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion; (b)An order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them; (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties of the marriage: d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement:

Subject, however, in the case of an order under paragraph (a) to the restrictions imposed by Section 33 (1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen".

35. **Section 29 Matrimonial Causes Act** lists the factors to which the court must consider when determining the issue of property adjustment, it states:-

"(1) It shall be the duty of the court in deciding whether to exercise its powers under Section 25 (3) or S.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 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; Any physical or mental disability of either of the parties to the marriage; the contribution made by each of the parties to the welfare of the family, including any contributions made by looking after the home or caring for the family; (e) any physical or mental disability of either of the parties to the marriage; (f) the contribution made by either of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; (g) In the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring. And so to exercise those powers as to place the parties, so far as it is practicable and , having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other."

36. **Section 3** of the **Child Protection Act**. Provides as follows:-

3. (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.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare 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 the care of the child in meeting his or her needs.

Decision

37. There is one minor child of the marriage, who presently resides with the Respondent. A Section 73(1)a Declaration has been granted.
38. The contentious issue before the court is property adjustment. The only matrimonial asset is the home located at #24 Water Street, Big Pond Subdivision. The court must determine whether both parties are entitled to an interest and if so in what proportion. Finally, who should be allowed to purchase the other party's interest?
39. **Section 29** of the **Matrimonial Causes Act** directs the court as to what should be considered in property adjustment cases. After considering these factors, the goal is to determine what is fair and equitable in all the circumstances. Dame Anita Allen, then President of The Court of Appeal provided the appropriate guidance when she stated in **Jupp v Jupp SCCr App No. 37 of 2011** *"It must be remembered that authorities from the United Kingdom cannot trump what the Statute Law of The Bahamas says. It is only if these cases are consistent with the statute that they apply.* ***Section 29*** *is very clear as to what a judge must take into consideration when considering whether to exercise her powers under* ***Section 27 or 28*** *or even* ***Section 25 of the Act****. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reason for the same."*
40. The parties were married for more than 10 years, this is considered a long marriage, in these cases the starting point of 50/50 in the division of assets. In **White v White [2001] AER 1** the court held *"as a general guide, equality should be departed from only if, and to the extent that, there was good reason for doing so...The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination".*

41. There is no consensus between the parties as to their contribution toward the family and the home. The Petitioner claims that he purchased the home solely before the marriage, however by residing there with his wife and children for more than ten (10) years he made it a matrimonial home and thus an asset to which the Respondent is entitled to an interest. The assertions of the parties as to their financial contributions to the purchase of the property and its upkeep are only one of many factors to be considered by the court. Respondent asserts that she assisted with the down payment and other bills.
42. The court acknowledges the evidence of the parties as to which bills they paid for the maintenance of the family. It is usual that at divorce proceedings, parties' recall of their contributions are inflated and that of their spouse is deflated. While there is little consensus on who did what, it is clear that for more than ten (10) years, they amicably managed their financial affairs, acquired a home, and met their expenses. The court notes the Petitioner's evidence that he assisted with the Respondent's responsibilities when she was short financially, that is what couples do in a marriage, and there is no evidence to lead the court to the conclusion that he did not do so happily as a husband.
43. The law is clear, in **Miller v McFarlane [2006] VKHL 24, Lord Nicholls** held that a home purchased prior to the marriage becomes the matrimonial asset and therefore one to which the parties have equal entitlement, regardless of how "long or short the marriage" was.
44. The court accepts that the Petitioner was the primary breadwinner, conducting the major renovations, improvements, and bill payments, and that the Respondent served as the primary homemaker up until 2013 when she gained steady employment and commenced financial contributions to the home.
45. The law makes no distinction between financial and non-financial contributions to the home; the weight attributed to the home maker is the same as that of the income earner. A review of **Miller v McFarlane** and **White v White** supports this position. Lord Nicholls declared both types of investments to be equal contributions. It is to be noted that the parties' contributions are but one factor to be considered by the court under **Section 29 of the MCA**.
46. In further application of **Section 29** of the **MCA** the following factors have been considered by the court:-
    a. Both parties earn a modest income from their employment, they are young (42 years old), and there is no evidence of any physical or mental disability. They have the potential for continued employment at a working-class standard of living. They both have entrepreneurial drive and are engaged in other small-business ventures to increase their income. The court is of the view that the Petitioner has the potential for greater earning capacity as the operator of heavy equipment and disc jockey, versus the Respondent, who is a school lunch vendor.
    b. The financial needs and obligations of the parties at present and in the future are likely to be the same, as the last child will soon be sui juris and the obligations to her will cease unless she enrolls in tertiary education. In the event of a college enrollment, this

cost will be shared equally between the parties. They will both be left with basic living expenses, housing, food, transportation, etc.

c. The contributions of the parties were discussed above; no evidence was given that either party was entitled to a pension. The court granted joint decrees, as by their conduct, both parties were cruel to each other.

47. Having considered the above, the court must now make a fair and just division of the assets, having regard for all the circumstances of this case. While the parties' contributions to the home were different, the court finds that they were equal. The Petitioner acquired the matrimonial home, paid the mortgage, and paid the majority of the bills; he did this at the time, particularly when the Respondent was not working outside the home.
48. The Respondent was a homemaker; she cared for her husband, children, and home. They agreed to these terms, and when the Respondent commenced working outside the home, she contributed to expenses of the family as best she could. The court finds that the parties found a formula that worked for their family, and for more than ten (10) years, there was no descent.
49. In **Miller v. Miller 2022 FAM/div/00411** the court held that, *"the person paying the mortgage or going to work is not in a more favourable or preferential position than the homemaker, taking care of the children, cooking, cleaning and equally contributing to the mental and physical wellbeing of the family, their contribution may very well be equal."*
50. Along with the Court's findings on each of the **Section 29 MCA** considerations as listed above, the court finds no reason to give either the Petitioner or the Respondent a greater interest than 50%. The court finds that the parties pooled their resources, worked together as a team to take care of the family's financial needs. While both parties vehemently stressed that they made greater contributions, the court finds that their intention during the marriage was for their joint benefit; no evidence was led to suggest otherwise.
51. In considering the welfare of the minor child and the impact this property adjustment may have on her care and maintenance, the court takes note of her age, likelihood for tertiary education and thus an extended period for maintenance and a place to reside. The overriding objective is always what is in the best interest of the child. **Section 3 of the Child Protection Act** admonishes that the welfare of the child is most important. The minor is 14 years old and currently lives with the Respondent in the matrimonial home. The property has been the only place where the minor has lived for her entire life. It can also be presumed that this long familiarity comes with emotional and physical attachments to the home and the community over the years. Providing stability for her is a consideration of the court. This factor tilts the scales in favor of the Respondent, to grant her the right to purchase the 50% interest of the Petitioner in the matrimonial home.
52. The court finds no good reason to depart from the equal sharing of the marital asset having regard for all the factors discussed above. Lord Nicholls in **Miller v Miller**; **McFarlane v McFarlane [2006] VKHL 24** stated: *"In the search for a fair outcome it is pertinent to*

have in mind that fairness generates obligations as well as rights. Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of fairness in the particular case." Lord Nicholls further stated: *"this 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that 'husband and wife are now for all practical purposes equal partners in marriage': R v R [1992] 1 AC 599. 617. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends, each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase, 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule".*

53. **The matrimonial home is subject to a mortgage. The outstanding balance as of 8th March 2024, was $59,911.28. The property was appraised at $90,000.00 in September 2022. Both the mortgage balance and the appraisal will need to be updated. The conveyance and the mortgage remain in the sole name of the Petitioner. The property was acquired prior to marriage, although the parties were in a relationship at the time. The parties continue to reside at the property, the Petitioner with restricted access to a shed/efficiency at the rear of the property and the Respondent in the main home.**

CONCLUSION

54. Having heard the evidence of the parties, having observed the demeanor of the witnesses, and considered the applicable law, the Court makes the following property adjustment Order:-

I. That the Petitioner and Respondent have a fifty percent (50%) interest each in the matrimonial home.

II. That there is to be an updated appraisal by a BREA-approved appraiser, the cost of which is to be shared between the parties. If the parties cannot agree an appraiser, the court will appoint an appraiser, the cost to be shared equally between the parties.

III. The Consent Order regarding the minor child dated the 26th November A.D., 2024 is affirmed.

IV. The Petitioner to obtain an updated printout of the balance of the mortgage.

V. The Respondent is at liberty to purchase the Petitioner's interest in the matrimonial home within 120 days of the date hereof, failing which, the Petitioner is at liberty to purchase the Respondent's interest in the matrimonial home within 120 days after the Respondent's time has lapsed. If either party is unable to purchase the other's interest, the home is to be sold, and the net proceeds are to be shared equally between the parties. The Petitioner is at liberty to conduct such sale.

VI. The purchase of either party's interest is subject to the satisfaction of the mortgage or the release of the selling party from the existing mortgage over the property. At the closing of the purchase, the selling/vendor party shall execute and deliver all documents necessary to transfer to the other his/her interest, title, and rights in the property. Where the selling party does not sign the conveyance, the Registrar is authorized to sign on his/her behalf.

VII. Vacant possession is to be provided 30 days after closing.

VIII. The Petitioner is to pay fifty percent (50%) of the Respondent's cost to be taxed if not agreed.

Dated this 18TH day of June, A.D. 2026

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