

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
BETWEEN

2015/FAM/div/00416

D.O

Petitioner

AND

K.O

Respondent

Before: The Hon. Madam Justice G. Diane Stewart
Appearances: Ms. Maria Daxon for the Petitioner
Ms. Latia Williams for the Respondent
Ruling Date: 1st March, 2023

RULING

BACKGROUND FACTS

1. The Petitioner, D. O and the Respondent, K.O were married on 6th June 2002. There are five children of the marriage, namely M.O (female) born 17th November 1999, J.O (female) born 21st July 2003, T.O (female) born 22nd February 2009, T.O (female) born 22nd February 2009 and E.O (male) born 10th November 2011. The last three of the children are minors, the second daughter reached the age of majority before the hearing was completed.
2. The Petitioner is a citizen of The Bahamas and the Respondent is a Permanent Resident of The Bahamas.
3. A Decree Nisi was granted to the Petitioner dissolving the marriage on 25th October, 2018 on the ground of the Respondent's cruelty.
4. In her petition filed July 30th, 2015, the Petitioner sought an order that:-
 - i. She be granted custody of the children of the marriage and reasonable access to the Respondent;
 - ii. Maintenance
 - iii. Costs

5. The Petitioner filed a Notice of Intention to proceed with financial provisions on the 13th November, 2015.
6. By Notice to Proceed with Ancillary Relief filed November 20th 2018, the Respondent sought an order that:-
 - i. The Petitioner and the Respondent have joint custody of the minor children of the marriage with custody care and control to the Petitioner and reasonable access to the Respondent as defined as:-
 - a. Every other Friday 5:00pm to Sunday 5:00pm;
 - b. Every Father's Day
 - c. Half of the long summer holiday
 - d. Alternating holidays
 - ii. That the Petitioner and the Respondent share equally the educational, medical and dental expenses relative to the said children
 - iii. A declaration that the Petitioner and the Respondent shall hold the equity in the matrimonial home located at Lot 7 and 8 in Block 1 on a plan of subdivision of Fincastle in the Southern District of New Providence in the percentage 30% to the Petitioner and 70% to the Respondent
 - iv. An Order that the Petitioner purchase the Respondent's 70% share in the matrimonial home within 30 days failing which the matrimonial home is to be listed with a licensed real estate agent and sold with profits of the sale being divided equally between the Petitioner and the Respondent
 - v. Variation and/or clarification of the Court's interim order dated 4th December 2015
 - vi. Declaration that both the Petitioner and the Respondent hold equity in the matrimonial business 'YSG Tyres' in the percentages of 30% to the Petitioner and 70% to the Respondent.
 - vii. An Order that the Petitioner do pay to the Respondent the lump sum of \$151,900 or such other sum as the Court deems just as reimbursement for 70% of the profits from YSG Tyres from the period of March 2016 to October 2018 and such other sum until determination of the ancillary application
 - viii. An Order that the Petitioner do account to the Respondent in relation to YSG Tyres
 - ix. And Order that the Petitioner do turn over control of the business YSG Tyres and be restrained from the business premises.
 - a. That in the event that the Court accedes to this, the Respondent do make periodical payments to the maintenance of the said minor children
 - b. They the Court do assess the Petitioner's 30% equity in the matrimonial business of YSG Tyres and that the Respondent pay the Petitioner's equity in relation thereto
 - x. That the Petitioner do indemnify the Respondent with regards to the credit card debt owed to RBC Bank accrued during the marriage in the sum of \$8,762.18
7. By ex parte summons the Petitioner sought an injunction restraining the Respondent from withdrawing funds from any of his bank accounts in the Bahamas until further notice.
8. By Summons filed November 13th 2015 the Petitioner sought maintenance pending suit.
9. On the 4th December 2015 the Court made an interim order ordering the Respondent to pay the Petitioner \$300.00 per week by way of maintenance.

10. By further Notice of application for Ancillary Relief filed January 20th 2016 the Petitioner sought:-
 - a. Custody of the children of the marriage
 - b. Respondent do pay maintenance to the Petitioner in the sum of \$6,000.00
 - c. Petitioner be responsible for all dental, medical and optical expenses.

11. On 4th December 2015, by interim order it was ordered that:-
 - i. \$300 per week be paid by the Respondent to the Petitioner to take care of the children of the family;
 - ii. That the further sum of \$750 is to be paid by the Respondent to the Petitioner to assist with the Petitioner's maintenance until final disposition of this matter;
 - iii. The van used in the business is to be returned to the Respondent by the Petitioner;
 - iv. The Business is to be operated by the Respondent until this matter is finalized; and
 - v. The Petitioner is not to be allowed on the premises until this matter is finalized

Both this order and the order referred to in Paragraph 9 relate to the same application and appears to have been filed in duplicate but with additional provisions in the second filed order.

12. Upon a review of the Judge's notes, it appears that the Court made the order as set out in Paragraph 11 hereof. Further the Court refused the freezing of the Respondent's bank account.

13. By Consent Order dated 27th February 2019, it was ordered inter alia that:-
 - i. The Petitioner and the Respondent are to have joint custody of the minor children of the marriage with custody care and control to the Petitioner and reasonable access to the Respondent defined as follows:-
 - a. Alternating weekends as agreed by the Petitioner and the Respondent
 - ii. The Petitioner and the Respondent and their attorneys are both authorized to inquire as it relates to bank accounts held in the names of the Petitioner and/or the Respondent and/or YSG Motors and/or YSG Tyre and Autoshop and/or YSG Tyre and Battery and/or any other business accounts

14. The only outstanding issues are property adjustment of the matrimonial home and the businesses and maintenance.

PETITIONER'S EVIDENCE

15. The Petitioner filed her Affidavit of Means on 13th November 2015. The Petitioner is co-owner of and was previously employed at YSG Tyre Shop and YSG Motors. She earns a monthly gross salary of \$1,500.00. The Petitioner asserts that she is unable to maintain and provide for herself and the minor children of the marriage without employment and assistance from the Respondent.

16. The two businesses of the family are YSG Tyre shop, which sells tyres and YSG Motors, which sells motor vehicles and parts.

17. The Respondent is the other co-owner of YSG Tyre Shop and YSG Motors and earned a gross monthly salary of \$45,000.00- \$50,000.00 and additionally earned an average

\$10,000.00- \$12,000.00 per month selling tyres wholesale to other tyre shops for a total monthly income of \$55,000.00- \$62,000.00.

18. The Petitioner's monthly expenses are:-

Monthly:

a. National Insurance	\$142.00
b. Furniture Plus	\$70.00
c. Tithes/ Offering	\$150.00
d. Electricity (BPL)	\$250.00
e. Rent (as of September 2016)	\$1,000.00
f. Water & Sewage	\$40.00
g. Telephone & Internet	\$150.00
h. Credit Card (Scotiabank)	\$200.00
i. Grocery	\$800.00
j. Gasoline (petrol)	\$350.00
k. Gasoline (propane)	\$30.00
l. Lunch for 5 minor children	\$600.00
m. School Fees (E.O)	\$200.00

Yearly:

a. School uniform for 5 minor children	\$1,000.00
b. School supplies for 5 minor children \$	1,000.00
c. Clothes for 5 minor children	\$3,000.00
d. Car Insurance	\$500.00
e. Doctor's visits	\$250.00
f. Dental visits	\$400.00

19. The Petitioner further seeks an order that the Respondent pay the Value Added Tax owed to the Bahamas Government in the sum of \$7,692.33 for YSG Tyre Shop.

20. The Respondent is a holder of several bank accounts established with money which are the profits derived from businesses such as YSG Tyres and YSG Motors. The Petitioner states that she is a legal co-owner and also the sole provider of the initial start-up capital used to start the businesses.

21. The Petitioner received information that the Respondent had opened several other bank accounts and began transferring the profits from the business accounts to his now personal bank accounts. The Petitioner believes that the Respondent is actively trying to transfer all of his funds out of the Bahamas and to Nigeria, his birth country.

22. The Petitioner filed an Affidavit again on 25th February 2019 outlining a change in her circumstances. The Petitioner's monthly gross salary has increased to \$8,000.00. The Petitioner's monthly expenses are now:-

a. Royal Bank of Canada Loan	\$350.00
b. Bahamas Power & Light	\$253.27
c. Rent	\$1,000.00
d. BTC	\$247.01
e. Water & Sewage	\$183.33
f. Gas	\$640.00

g. School Fees:	\$823.00
h. Groceries	\$1,200.00
i. Medication	\$150.03
j. Scotia Bank Credit Card	\$250.00
k. BAF Insurance	\$295.63
l. Housekeeper	\$252.00
<u>TOTAL</u>	<u>\$5,644.27</u>

23. The Petitioner confirmed that in 2006 the mortgage was being deducted from the Respondent's salary until he was terminated sometime in 2007 or 2008. After that, the Petitioner started the business independent of the Respondent and YSG Motors was used to pay the mortgage.
24. The Respondent subsequently abandoned the matrimonial business since the divorce proceedings commenced. He has also made several attempts to sever the lease agreement with the landlord for the business but was unsuccessful.
25. The van which was used to operate the business was purchased for \$8,000.00 and was sold for \$5,000.00 and the proceeds as used to pay a large debt of the company left by the Respondent when he was in charge of managing the company.
26. The Petitioner maintains that both she and the Respondent were in charge of the day to day operations of the business but took responsibility for different tasks. The Petitioner dealt with payroll and administration while the Respondent dealt with suppliers and inventory.
27. The Respondent failed to give an account for \$420,000.00 of the average net profits of the business during the time he was in charge. After the Petitioner regained control of the business, she noticed a lot of discrepancies within the business accounts, namely the accounts showed no deposits for several months however after conducting inventory it was discovered that a lot of tyres were missing.
28. In cross-examination, the Petitioner confirmed that the maintenance payment stopped in 2016. The parties after reconciling in 2015 moved to rental accommodations in Fire Trail Close, but her two oldest sons who are not children of the family remained in the Fort Fincastle matrimonial home.
29. YSG Motors is located on East Street and YSG Tyre Shop is located on Carmichael Road.
30. She confirmed that both she and the Respondent were responsible for purchasing inventory for the businesses. They purchased the tyres from Charles Osaremen. She only became aware of the signed agreement in April of 2016.
31. LB was employed with the tyre business. He started around February/March 2016.
32. The original business closed after the confrontation in March 2016, but she restarted it again in April 2016.

33. The inventory was checked by LB before she restarted the business by Mr. Bain. There were approximately 11,000 tyres in inventory,
34. In reexamination, she signed a promissory note with JN without legal advice in April/May 2016. C.O did not continue to supply tyres.
35. She was unaware of the lease of the premises to K.M. She had to go and obtain all the necessary information to file the NIB returns and she also had to obtain a new business licence, and both the licence and the VAT receipt was registered in her name alone.
36. LB averred that he worked for the tyre business since 2015. He did not know J.N only M.D. He did not oversee the business but he was employed by J.N.
37. He along with J.N conducted an inventory of the tyres. He discovered that at least 50% of the tyres had been sold and not accounted for. He presently works or the Petitioner at her business Tyre Works at the same location as YSG Tyres.

RESPONDENT'S EVIDENCE

38. The Respondent in his Affidavit of Means filed 20th November 2018, set out his monthly expenses are set out as:-

Monthly:-

a. Rent	\$600.00
b. Utilities	\$200.00
c. Groceries/Food	\$400.00
d. Petrol	\$400.00
e. Phone, cable & internet	\$67.00

Yearly:-

a. Vehicle License	\$210.00
b. Vehicle insurance	\$320.00

39. The Respondent maintains that he does not hold any legal title to any property, shares or any other fixed assets. The matrimonial home is in the sole legal name of the Petitioner however, he has contributed to the purchase of the house. He and the Petitioner are both named on the mortgage. He also maintains that he primarily paid the mortgage on the matrimonial home through salary deductions.
40. Prior to the commencement of the divorce proceedings he founded and operated a business with the Petitioner, namely YSG Tyre & Autoshop. The Respondent also states that at all times prior to the divorce, he was in charge of the day to day operations of the business.
41. The Respondent was unable to be employed from 2016 to 2018 due to being arrested as a result of a complaint made by the Petitioner, accordingly he has been unable to comply with the order for payments to the Petitioner.

42. He has never made attempts to have the Petitioner and/or the children of the marriage evicted.
43. In cross-examination he confirmed that he started working with K.M., a Nigerian on his car lot while he was employed substantively with Doctor's Hospital.
44. He admitted to transferring the lease of the business premises to K.M because he had been operating an illegal business and because the Petitioner was not renewing the business licence.
45. The profits from the business were \$2,000.00 to \$3,000.00 a month after paying the staff and expenses.
46. C.O. is a permanent resident of the Bahamas.
47. He lived on the premises and was earning \$500.00 a week while working. The Petitioner never worked at the business until J and C.O came to work there. She was a house mother.
48. He denied transferring or instructing anyone to transfer any funds out of the country.
49. It took him two years to obtain a job after being imprisoned.
50. He maintained that he received the loan to renovate the matrimonial home and not the Petitioner. They both obtained the loan for the business.
51. He started the auto parts business in Africa since 1993. They both started the car lot together.
52. The tyre business started in 2010, but he has not been on the premises since 2016.
53. The auto business was making a profit but he used the profit to make the tyre shop and to maintain the children. He would spend approximately \$1,000.00 to \$1,200.00 a week on the children.
54. They never sold brand new tyres. He was paying for the tyres but did not have any receipts.
55. C.O took over the business and he requested that they count the tyres and they discovered that there were only 12,000 left.
56. He accepted that the NIB were not paid up to date in December 2015.
57. C averred that he worked for the tyre business for approximately four years before he was terminated by the Petitioner. He was present during the altercation between the Petitioner and the Respondent over missing tyres.

ISSUES

58. The issues to be determined are:-
- i. Property Adjustment
 - ii. Maintenance

DECISION

59. Custody of the minor children of the marriage has been determined by the Consent Order made 27th February 2019.
60. There is an interim order made on the 4th December 2015 for maintenance which has not been complied with.

PROPERTY ADJUSTMENT

61. **Section 28 of the Matrimonial Causes Act (MCA)** enables the Court to make property adjustment orders. The assets which fall for consideration are the matrimonial home and family businesses, namely, YSG Tyres. The parties have confirmed to the court that the YSG Motors business closed in or around 2013.

MATRIMONIAL HOME

62. The matrimonial home is held in the name of the wife, but the mortgage over the same was in the name of both parties. The starting point is the equal sharing principle unless there is a compelling enough reason to depart from the same. The Court must take into consideration the guidelines as established in **Section 29 of the MCA** when making property adjustment orders.
63. Section 29 provides:-
- “29. (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;

(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.

(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it 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.”

64. The Court may depart from this principle based on the need and contributions of the parties, in order to maintain fairness, but it must exercise its powers so as to place the parties, as far as practicable, and having regard to their conduct in the financial position they would have been in if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities to each other,

65. In White v White [2001] 1 All ER Lord Nicholls stated:-

“Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. States in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or by court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differ in each case. And sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder.”

66. Barnett CJ in A v B, reaffirmed White v White (supra) by holding that the modern day approach to the division of assets in the Bahamas is equal sharing principle of property, unless there is a compelling enough reason to depart from it.
67. The home has been appraised at \$67,000.00 in 2014. There is no recent appraisal produced by either party.
68. The Respondent seeks a larger interest because he paid the majority of the mortgage and because he made a greater financial investment toward the renovation and maintenance of the house. This has not been disputed by the Petitioner.
69. The Petitioner on the other hand submitted that she took care of the household expenses and took care of the home. This fact was disputed by the Respondent as he maintained that she was primarily a stay at home mom and had a housekeeper.
70. In Miller v Miller and McFarlane v McFarlane (2006) 3 All ER 1 the House of Lords stated:-
“This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account wide range of matters such as the parties ages, their future earning capacity, the family’s standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.”
71. Any sharing as set out in Jupp v Jupp may only occur after considering Section 29. In Jupp v Jupp the Court of Appeal held:-
“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of the Bahamas says. It is only if these cases are consistent with the statute law can 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 you to 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 reasons for the same.”

72. In reviewing the statutory guidelines, the evidence and submissions presented, I accept the following:-

- i. The parties were married for 16 years before the marriage was dissolved. This was a relatively long marriage.
- ii. The matrimonial home is in the sole name of the Petitioner. The mortgage on the home is in the name of both parties. The Respondent made financial contributions to the home and mortgage by way of salary deductions before being terminated from his job. The marital business was then used to pay the mortgage and take care of the family.
- iii. Both parties contributed to the marital business. The Petitioner dealt with the administrative side of the business while the Respondent dealt with inventory and suppliers.
- iv. The matrimonial home is presently in a state of disrepair.
- v. There is no evidence of any disability of either party.
- vi. There is no evidence of any pension.
- vii. Neither party is living in the home. There is no need to give one party the right to remain in the home.
- viii. The house was remortgaged to assist with the tyre business which both parties claim an interest in.
- ix. The Petitioner was primarily responsible for raising the family until she assumed control of the business in 2015. The Respondent was primarily responsible for paying the mortgage on the home, but with the approval of the Petitioner who signed the main loan documentation, albeit as a witness. He was primarily responsible for running the day to day activities of the business until 2015.
- x. Only three children are now minors. The Respondent admitted to spending up to \$1,200.00 a week on the children.
- xi. There is no evidence of any disability suffered by any child. Further there is no evidence of any particular need of any child; or of any income earned by any of them.

73. The consideration for the distribution of the matrimonial property begins at the breakdown of the marriage and when mutual support ended. This was enunciated in **Rosemary Edit Burrows v Sylvester John Burrows SCCivApp No. 58 of 2021** where Crane Scott JA held:-

“The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute.”

74. I am satisfied that both parties assisted with the acquisition of the matrimonial home both financially and otherwise. The parties have acknowledged that the initial mortgage payments were deducted from the Respondent's salary. After the Respondent's termination, the proceeds from the marital business were used to maintain the family and the home.

75. I do not find any good reason why the Court must depart from the equal sharing principle in these circumstances and accordingly, I order that the equity in the matrimonial home be shared equally between the parties. Either party may purchase the other party's interest as established in the appraisal within 90 days, failing which the home shall be listed for sale by each side and the highest offer is to be accepted and the home is to be sold.
76. The party whose offer is accepted shall be responsible for managing the sale and the net proceeds after deductions of any real property tax, mortgage, sales commissions, VAT shall be divided equally.
77. Each party shall be responsible for their own legal fees incurred for the sale.

THE MARITAL BUSINESS

78. Matrimonial assets was described by Lord Denning in **Wachtel v. Wachtel 1973 1 All ER 829** as:-

“1. ... It refers to those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole.”

79. Both parties have acknowledged that the two businesses were marital assets. There is a dispute as to who was the founder of the businesses and who made the greater financial contribution, etc. The Respondent submits that he holds a greater interest in the marital business. The parties have confirmed that the auto business no longer exists.
80. The financial statements of the tyre business were reviewed as at December 2016 on behalf of the Petitioner when the parties separated. Based on this review, the equity in the business at that time amounted to \$131, 171.00 and the liabilities approximated \$4,000.00.
81. Again considerable time has elapsed since this review.
82. **In Rossi v. Rossi [2006] EWEC 1482 (Fam)**, Judge Nicholas Mostyn QC provides useful guidance on the distinction between non-matrimonial and matrimonial property:-

“1. the matrimonial property is likely to be divided equally, although there maybe departure if (i) the marriage is short, and (ii) part of the matrimonial property is "non-business partnership, non- family assets' or if the matrimonial property is represented by autonomous funds accumulated by dual earners; and

2. the non-matrimonial property is not in fact quarantined or excluded from the court's powers. It simply represents an unmatched contribution by the party who brings it to the marriage. The court must decide whether it should be shared and, if so, the proportions in which it is to be shared. In reality, the longer the marriage, the more likely the non-matrimonial property will

become merged with matrimonial property. By contrast, in a short marriage, non-matrimonial assets are not likely to be shared unless needs dictate.”

83. Henry P in Dean v Dean 1991 BHSJ No. 164, from the Court of Appeal of The Bahamas defined family assets,

“... it is clear that it is not every capital asset acquired by the party to the marriage either before or during the subsistence of the marriage that will automatically become a family asset. The intention of the party acquiring the asset is vital if one of the spouses acquire a house and meets the purchase and furnishing expenses exclusively but nonetheless use the house as the matrimonial home, the house acquire the attribute of family assets because of the intention of the spouse in whom the legal ownership resides and because the house is being used for the benefit of the family as a whole.”

84. Very little of the evidence of both parties relating to the management of the business aligned. The Petitioner accused the Respondent of selling or removing 50% of the tyres without accounting for it. The Respondent vehemently denies this.

85. The Respondent alleges that the Petitioner forced a hostile takeover of the business by the false accusations of sexual misconduct which resulted in his incarceration. During this period she fired the staff, changed the lock, obtained a business licence in her sole name, and locked him out of the business.

86. I accept that the tyre business was owned jointly by both parties until 2016, when the Petitioner assumed control of the business albeit under a new name. I am satisfied that at that time the Respondent had a 50% interest in the business which was valued at \$65,585.50. There is no evidence that the Petitioner sought separate financing for her new business.

87. As the Petitioner continues to operate the business, the Respondent's interest would have either improved or declined based on the present market value.

88. The Petitioner is ordered to obtain an updated appraisal of the tyre business which would reflect the present day value of the same.

89. I am satisfied that the Petitioner has borne the brunt of managing the business on her own since 2017 without the assistance of the Respondent. He of course would state that this was as a result of the Petitioner's behavior as he was locked out.

90. The tyre business was always a joint venture and I see no reason to depart from the equal sharing principle. Each party is entitled to one half of the present day value of the business to be paid as hereinafter set out.

91. The Petitioner shall have the first option to purchase within 90 days the Respondent's interest in the tyre business. Should the Petitioner fail to pay the Respondent as ordered, the Respondent shall then have the option to purchase the Petitioner's interest in the tyre business within the following 90 days.


92. Should either party fail to pay the other party, their interest in the tyre business, the business shall be sold by an agreed agent and the net proceeds shared equally.

93. Should any party fail to sign any document necessary to give effect to this ruling the Registrar of the Supreme Court is empowered to sign the same.
94. The Respondent shall be made to pay to the Petitioner one half of the Value Added Tax arrears in the sum of \$7,692.33.

MAINTENANCE

95. The Respondent shall pay the arrears of child maintenance as owed under the interim order. Such payment shall be deducted from his interest in the business.
96. The maintenance for the minor children shall be \$900.00 per month representing \$300.00 per child per month until each child shall attain the age of eighteen years.
97. There will be no maintenance or alimony payments for the Petitioner.
98. The court hereby grants a declaration pursuant Section 73 (1) (b) (1) of the MCA that arrangements have been made for the minor children which are satisfactory.
99. Each party shall bear their own costs.

Dated this 1st day of March 2023



Hon. Madam Justice G. Diane Stewart