

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Division

2022  
FAM/div/No. 00334

BETWEEN

MML

Petitioner

AND

NAT

Respondent

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JUDGEMENT

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**Before:** The Hon. Madame Justice J. Denise Lewis-Johnson  
**Appearances:** Chaunece Saunders of Counsel for the Petitioner  
The Respondent appeared Pro Se  
**Hearing Date:** 2<sup>nd</sup> February 2023; 15<sup>th</sup> February 2021; 28<sup>th</sup> March 2023

*Family Law-Matrimonial Causes Act-Divorce-Ancillary Relief-Matrimonial Property-Division of Assets*

**Introduction**

1. By a Notice of Intention to Proceed with Ancillary Relief filed 8 December 2022, the Petitioner sought a Property Adjustment Order in relation to the matrimonial home, namely, Lot 60, Dreamers Lane, East Park Estates Subdivision “the home”.
2. By Affidavit of Means filed 7 December 2022 and Supplemental Affidavit filed 22 March 2023 the Petitioner outlined her position on her interest in the matrimonial home.
3. On the 28 March 2023, at the adjourned hearing of this application, the Respondent provided viva voce evidence on his interest in the matrimonial home.

**The Petitioners Evidence**

4. The Petitioner averred that she acquired the subject property prior to her marriage to the Respondent.
5. The Petitioner claimed that the Respondent failed to assist with bills in the home and that the Conveyance and the mortgage for the matrimonial home are both in her name solely.

6. The Petitioner alleges that the property which the home sits was purchased for the sum of \$33,250.00 derived from her savings and assistance from her father.
7. The Petitioner further stated that the mortgage on the property was \$188,700.00 and she obtained a Further Charge of \$73,000.00 with the Respondent as she had reached her debt service ratio limit. However, she solely made and continues to make payments on the mortgage and further charge on the home.
8. The Petitioner avers that because of her financial hardship over the years, she defaulted on the loan payments and in 2021 sold her vehicle to bring the mortgage current to avoid foreclosure of the home.
9. The Petitioner contends that the Respondents position has always been, "let the bank take the house" while she continues to sacrifice and find solutions to save the home from foreclosure. The Petitioner avers that she assigned her salary to Royal Bank FINCO paying the sum of \$2,300.00 per month toward the mortgage & further charge without any assistance from the Respondent.
10. The Petitioner further claimed that the Respondent's only contribution to the matrimonial home during the marriage was landscaping and maintenance of the yard while she was left with purchasing groceries and paying utility bills.
11. The Petitioner alleged that she gave the utility companies instructions to disconnect the services, however, the Respondent found a way to reconnect the services which remains in her name.
12. The Petitioner avers that the matrimonial home was appraised at \$360,000.00 to which \$279,000.00 is still owing to the bank leaving an equity of \$81,000.00.
13. The Petitioner states that she has moved out of the matrimonial home due to the mental abuse of the Respondent and she fears for her health and safety. It appears that the Respondent has no intentions of leaving the matrimonial home.
14. The Petitioner claims that she is entitled to a 90% interest in the matrimonial home and avers that she is financially stretched and is incapable of purchasing the Respondents interest.

### **The Respondents Evidence**

15. The Respondent avers that he breeds dogs, paint and landscape for a living making approximately \$800 to \$30,000.00 per annum.
16. The Respondent avers that his monthly bills totaling in excess of \$530.00.

17. The Respondent acknowledges that the subject property is in the Petitioner's name
18. He states that he built the matrimonial home and the Petitioner bought the materials.
19. The Respondent avers that he would from time to time provide the Petitioner with money, that he gave the Petitioner \$900.00 towards the mortgage and gave the Petitioner half of the funds he collected from breeding dogs.
20. The Respondent claims that he is entitled to a 65% interest in the matrimonial home and is not prepared to purchase the Petitioner's interest in the matrimonial home.

### **The Issue**

21. The issue to be determined by this Court is whether the parties are entitled to an interest in the matrimonial home, and if, so at what percentage.

### **The Law**

22. The **Matrimonial Causes Act** "the MCA" S.29. states:-

*(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.*

S. 40. (1) of the MCA states:-

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

- 1. (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*
- 2. (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.*

## **Decision**

23. The Court when making property adjustment orders must consider all of the factors pursuant to S. 29 of the MCA.
24. The Petitioner is a Dental Hygienist and medical coder earning a salary of \$3,500 per month. The Respondent is landscaper, painter and dog breeder and claims to make between \$8,000-\$30,000 per annum.
25. The Petitioner acquired the property, which the matrimonial home sits, for \$33,250.00 prior to the marriage and from 2000-2007 spent an estimated sum of \$6,000.00 to commence construction of the home.

26. The Court notes, that the Respondent evidence that he built the home after the purchase of the material by the Petitioner, the labour was not quantified in his evidence. The Petitioner accepted this evidence.
27. While the Conveyance and the Mortgage of \$188,700.00 for the home are both in the Petitioners name solely, a further charge of \$73,000.00 was taken out on the home on the 19 June 2009 by the parties funds from the further charge was used to purchase two vehicles for the parties.
28. The Court accepts the evidence that the parties faced extreme financial difficulties during the course of marriage. The Petitioner fell into arrears with the mortgage and was forced to sell her vehicle for \$3,500.00 and consolidate her mortgage with the Bank. The Petitioner assigned her salary to Royal Bank Finco to negate foreclosure on the home.
29. There is no evidence before the Court that during the time of intended foreclosure the Respondent assisted the Petitioner with the mortgage payments.
30. I accept that the Respondent during the threat of foreclosure took out another loan, which was not used towards the mortgage.
31. While the Respondent's contribution were not financial The Court is satisfied that the Respondent contributed to the home in other ways. The Respondent's landscaping and maintenance of the yard, contribution towards utility bills, and groceries entitles him to some interest. However, The Court accepts the majority of the burden rested on the Petitioner.
32. Both parties have an equal earning capacity albeit the Petitioner is stretched in finances due to the mortgage, further charge and other bills she is solely currently paying. Both parties in their respective fields can ensure steady income in the future. While considering Section 29 factors The Court must ultimately be fair to the parties.
33. In **White v White UKHL 54** Lord Nicholls sought to give an overview of what is deemed to be fair stating: -

*“In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles... that fairness require that the respective roles chosen by them should not prejudice either party when considering subsection (f), relating to the parties contribution.”*

34. . Further, the case of **Floyd Hamilton Sawyer v Flora Pappas Sawyer BS 2018 CA 58**, Sir Michael Barnett JA (Actg) observed the Hong Kong case of **DD v LKW [2008] 2 HKC 134** stating:-

**On divorce the principle and spirit underlining the union should be reflected in the divisions of the family assets. The division should proceed on the basis of fairness. And this necessarily means that there is no room for discrimination between the husband and wife. The starting point is equality in division unless there is a good reason to depart from it.”**

35. In these circumstances the Court is satisfied there are compelling reasons to depart from the equal sharing principle as the Petitioner’s sacrifices to keep the home by meeting the mortgage obligations outweighs that of the Respondent. I accept the evidence that the Respondent was prepared to have the Bank foreclosure on the home. He ought not benefit largely from the Petitioner’s singular contributions.

36. In **Charman v Charman [2007] 1FCR 1246** postulates,

*“Even if, however, a court elects to adopt the sharing principle as its "starting point", it is important to put that phrase in context. For it cannot, strictly, be its starting point at all. ... the starting point of every enquiry in an application of ancillary relief is the financial position of the parties. The enquiry is always in two stages, namely computation and distribution; logically the former precedes the latter. Although it may well be convenient for the court to consider some of the matters set out in s. 25(2) other than in the order there set out, a court should first consider, with whatever degree of detail is apt to the case, the matters set out in s. 25(2)(a), namely the property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable future. Irrespective of whether the assets are substantial, likely future income must always be appraised for, even in a clean break case, such appraisal may well be relevant to the division of property which best achieves the fair overall outcome.”*

37. The Court notes both parties have stated that they are not able to purchase each other interest in the property as such the Court has the power to make an order to proceed with a sale of the home. The option to purchase the interest of the other party is always available.

38. The Court is however bound by the Court of Appeal Decision in **Jupp v Jupp SCCrApp No.37 of 2011** where Justice Anita Allen President of the Court of Appeal of the Bahamas (as she then was) states:

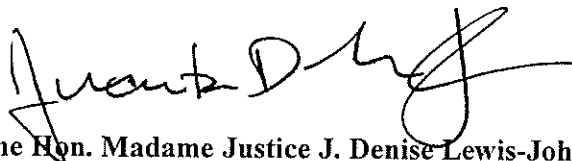
**“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise 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 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 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.”

39. In all the circumstances of the case, the Court having heard the evidence of the parties and having considered the relevant law finds as follows:-

- i. Both parties have an interest in the matrimonial home.
- ii. The Petitioners interest is 75%.
- iii. The Respondent interest is 25%.
- iv. The Petitioner has the option to purchase the Respondent’s interest in the home within 6 months of the date of this order. Failing which the matrimonial home is to be sold, the net proceeds shared between the parties in the percentages noted above.
- v. The Respondent is to vacate the home within 45 days and the Petitioner is to have access and possession of the home thereafter.
- vi. Each party is to bear their own cost.

Dated this 11<sup>th</sup> day of October 2023



The Hon. Madame Justice J. Denise Lewis-Johnson