IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
2013/FAM/div/FP/00159

B E T W E E N

MLHG

Petitioner

AND

SHG

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Constance McDonald, KC for the Petitioner
Paul Wallace-Whitfield for the Respondent

Hearing date(s): 16 December 2025 and 19 March 2026

RULING

DELANCY, J

[1.] This is the Petitioner's application for an order for property adjustment of the matrimonial assets. The parties filed Affidavits and were both cross-examined on the contents thereof.

Background

[2.] The parties were married on 25 May 1997, the Petitioner was a bachelor age 35 years and the Respondent was a Widow age 27 years, mother of 2 children from a prior the marriage. The parties had 2 children together. All of the children are now *sui juris*.

[3.] The Petitioner, aged 64 years, is a retired civil servant. The Respondent is currently aged 56 years, and a Sales and Marketing Manager at a local business. The parties were married for 16 years prior to the pronouncement of the Decree Nisi on 1 April 2014 (and made Absolute 2 February 2026).

[4.] The current assets held by the parties consist of the following:

i. A home located in Hudson Estates Subdivision, Grand Bahama ("*the Hudson property*") held in the Respondent's name which was the primary residence of the family; and
ii. A vacant lot located in Lucayan Knoll Subdivision, Grand Bahama ("*the Lucayan property*") held jointly by the parties.

Issues

[5.] The Court must determine whether the Hudson and Lucayan properties are matrimonial assets; and whether the Court ought to depart from the equal sharing principle as it relates to the matrimonial assets.

Evidence

[6.] Both parties filed Affidavits in which they identified properties and assets which they regard as the matrimonial assets and were both cross-examined by Counsel for the respective parties.

[7.] The Petitioner's evidence is found in his Affidavit of Means filed 15 October 2024 and Supplemental Affidavit filed 17 December, 2025. The Petitioner's evidence may be summarized as follows:

a. The Petitioner avers in his Affidavit of Means that he is a retiree and receives a monthly pension of $1,188 under cross-examination he conceded that at the time of the swearing thereof he was not yet receiving his pension which he did not start receiving until 2025 due to the time it time taken to process the same;
b. That after the marriage in 1997 the Respondent informed him that she had difficulty paying the mortgage on the Hudson property. That he then assumed the responsibility of paying the mortgage on the Hudson property by paying $880 to $900 in cash over the counter at Scotiabank until 2007 when he moved out following altercation with the Respondent's eldest son and court order obtained by the Respondent;
c. That he was unable to produce any records to prove such payments towards the Hudson property mortgage as he unable to access the mortgage account not being listed as an owner of the property. Further that his records were destroyed in Hurricane Dorian. Under cross-examination he stated that he did have some receipts which were faded but failed to produce the same to his Counsel or as evidence in Court;
d. That the Lucayan property was purchased by the parties in 2002 and the contributing equally to the purchase price and that there is no outstanding mortgage relation to the property;
e. That the Lucayan property was intended for the parties to build their "dream home";
f. That the Petitioner's approximate monthly expenses are $1,270 and approximate annual expenses of $7,500 (inclusive of vacation of $5,000).

[8.] The Respondent's evidence is found in her Affidavit of Means filed 10 June 2025 and Second Affidavit of Means filed 30 January, 2026. The Respondent's evidence may be summarized as follows:

a. The Respondent came to the marriage with the Hudson property, which she purchased 10 May 1993 from the proceeds derived from the life insurance policy of her deceased first spouse and a loan with Scotiabank;

b. That mortgage was serviced via deductions from her salary;
c. That the Hudson property served as the family residence during the marriage was always intended to be for children from her first marriage;
d. That during the subsistence of the marriage, the Petitioner paid the electrical bill, land-line telephone bills, cable and internet bills and regularly suspended such payments whenever he was upset with household members. The Petitioner ceased making the aforementioned payments and left the Hudson property 28 October 2007 following an altercation with her eldest son;
e. The Respondent refutes that the Petitioner's claim that he solely paid the mortgage as alleged;
f. That the Lucayan property was purchased on 25 January 2002 financed by a loan from Commonwealth Bank which was acquired in joint names of the parties to assist the Respondent with regularizing his immigration status and to build their home;
g. That the loan with Commonwealth Bank was also serviced via deductions from her salary;
h. That she incurred debts to assist with tertiary level educational expenses related to 4 children; acquisition of vehicles (a Isuzu Trooper for the Petitioner and a Nissan Altima for the Respondent);
i. That she borne the burden of financing the 4 children's tertiary level education save and except for a partial scholarship granted to the eldest child of the marriage. Further that she financed her education with the assistance of the Police Benevolent Fund (a benefit from her first spouse's employment);
j. The Respondent avers that she earns an annual salary of approximately $47,100 or approximately $3,925 per month and lists her recurring monthly expenses as being approximately $3,949 and recurring annual expenses as being approximately $4,570 (inclusive $3,600 home insurance on the Hudson property);
k. That the Respondent constructed an addition to the Hudson property after the Petitioner's exit from the home;
l. The Respondent listed her produced copies of her expenses and bank statement to support her assertion of deductions from her salary.

[9.] Both properties were appraised to ascertain the current market value as follows:

Hudson Property

a. Appraised market value of $219,000 as of 9 December 2025;
b. Single family dwelling concrete block stucco with 4 bedrooms, 3 bathrooms and a wooden storage shed;
c. The value of the original portion (about 35-years-old) inclusive of the land is $121,400;
d. The value of the addition (1-year-old) is $135,400.
e. Property sustained water due the passage of Hurricane Dorian in 2019

Lucayan property

a. Appraised value as of 9 December 2025 of $25,275

Law and Discussion

[10.] Section 25 of the Matrimonial Causes Act (MCA) provides that the Court has the power to make property adjustment orders:

> (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;
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> (b) any order under subsection (1)(b) of that section for a settlement of property; and
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> (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.
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> (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.**
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> (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 —
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> (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
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> (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order. [Emphasis added]

[11.] Section 28 of the MCA provides a list of the types of orders available on ancillary applications:

> (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), **the court may make any one or more of the following orders**, that is to say —
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> (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;
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> (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 postnuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
>
> (d) **an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement**; [Emphasis added]

[12.] Whenever the Court has to exercise its powers to make a determination on the redistribution of matrimonial assets post-divorce it is enjoined by the provisions of Section 29 MCA:

> (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 –
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> (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**;
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> (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**;
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> (c) The **standard of living enjoyed by the family before the breakdown of the marriage**;
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> (d) The **age of each party to the marriage and the duration of the marriage**;
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> (e) Any physical or mental disability of either of the parties to the marriage;
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> (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;**
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> (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**;
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> and so **to exercise those powers as to place the parties, so far as 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 towards the other**….
>
> [Emphasis added]

[13.] It is not disputed that the Hudson property was acquired by the Respondent prior to the marriage and that the parties resided there prior to their separation in 2007. It is also not disputed that the Lucayan property was acquired during the subsistence of the marriage in the parties' joint names.

[14.] Assets owned by parties to a marriage may deemed matrimonial or family assets if the parties' intended to utilize those assets to benefit the family as stated in **Wachtel v. Wachtel** [1973] 1 All ER 829 per *Lord Denning MR* at page 836:

> …**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**.
>
> [Emphasis added]

[15.] In the Court of Appeal case of **Collie v Collie** SCCivApp. No. 19 of 2015 as per *Crane-Scott, JA* at paras. 58, 59 and 65-67 thereof stated:

58. It now appears from the decision of the English Court of Appeal in **Charman v. Charman** [2007] 1 FLR 1246 that **where a court elects to adopt the "*yardstick of equality of division*"** first identified in **White v. White** [2001] 1 AC 596 **or the "*equitable sharing principle*"** coined by *Lord Nicholls of Birkenhead* in **Miller v. Miller; McFarlane v. McFarlane** [2006] UKHL 24, **the equal sharing principle is not restricted only to matrimonial assets, but applies to all the parties' property unless there is good reason to depart from those proportions.**

59. Delivering the Court's decision in **Charman**, *Sir Mark Potter P* explained the approach to the statutory exercise required by section 25(2)(a) of the English Act [corresponding to our section 29(1)(a)] in the following terms:

[65] …. It is clear that the court's consideration of the sharing principle is no longer to be postponed until the end of the statutory exercise. We should add that, since we take **'the sharing principle' to mean that property should be shared in equal proportions unless there is good reason to depart from such proportions, departure is not from the principle but takes place within the principle**.

[66] **To what property does the sharing principle apply**?... We consider…the answer to be that, subject to the exceptions identified in **Miller** to which we turn in para [83] - [86], below, **the principle applies to all the parties' property but, to the extent that their property is non-matrimonial, there is likely to be better reason for departure from equality**. It is clear that both in **White**, at 605 F-G and 989 respectively, and in **Miller**, at paras [24] and [26], *Lord Nicholls of Birkenhead* approached the matter in that way; and there was no express suggestion in **Miller**, even on the part of *Baroness Hale of Richmond*, that in **White** the House had set too widely the general application of what was then a yardstick.

[67] 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 inquiry 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)(a) …**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**…." [Emphasis added]

[16.] The Court is guided by the dictum of *Allen, P*. in in **Jupp v Jupp** SCCrApp No. 37 of 2011 where she cautioned about the reliance of authorities outside of our jurisdiction when engaging in a redistribution of matrimonial assets at para. [9] thereof:

> 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 statue 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 has not broken down. The division of assets must be fair in its entirely. 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.** [Emphasis added]

[17.] Counsel for the Petitioner submits that he ought to receive some benefit from the Hudson property as he avers that he made payments towards the mortgage on the same.

[18.] Counsel for the Respondent argues that the Hudson property ought to be exempt from the equal sharing principle given (i) the length of the marriage of 10 years prior to the breakdown in 2007 (ii) that Lucayan property was purchased with the intention of building a home together (iii) the servicing of the loan by the Respondent and (iv) large addition post Hurricane Dorian. Counsel invites the Court to consider the dicta in **Miller v. Miller; McFarlane v. McFarlane** [2006] U.K.H.L. 24.

[19.] The Court is guided by the dictum of *Lord Nicholls of Birkenhead* in **Miller, supra** at para. [22] thereof:

> This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. **The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property**. **The former is the financial product of the parties' common endeavour; the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in the marriage**. **So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same, however long or short the marriage may have been.** [Emphasis added]

[20.] Counsel for the Respondent submits that the Petitioner failed to produce any evidence to support his claims that he made payments towards the mortgage on the Hudson property. That his evidence was inconsistent in that he claimed that his records were lost due to the passage of Hurricane Dorian and then contradicted himself by saying he had some receipts but they were faded but failed to produce the same. Further that the Petitioner stated that he paid the alleged payments up to 2014 when he moved out of the Hudson property but conceded that he actually moved out in 2007. Therefore, the Petitioner has not presented any evidence to refute the Respondent's claim that the Hudson property was always intended to be for her children from first marriage.

[21.] There is no dispute between the parties that the Lucayan property was purchased with the intention of building their "dream house". They appear content that the same be sold and the proceeds be divided between the parties.

[22.] The Court having considered the evidence, the submissions and authorities laid over by the parties, finds that the Hudson and the Lucayan properties fall within the scope of matrimonial assets and therefore subject to the Court's property adjustment powers. Specifically, the Hudson property was treated as the matrimonial home and used for the benefit of the family during the course of the marriage.

[23.] The Court finds that when considering the length of the marriage prior to its breakdown in 2007 the parties had been married for some 10 years. Further that during that period the Hudson property was the parties' primary residence, that is, the matrimonial home. The Court notes that the Hudson property was acquired by the Respondent by her prior to the marriage and significantly improved due to her efforts. The Court also notes that the Petitioner prior to his departure from the Hudson property in 2007 did make some contribution to the property.

Disposition

[24.] The Court having consider the evidence of the parties and submissions advanced by Counsel hereby orders:

(i) The Petitioner is entitled to 30% interest and the Respondent is entitled to 70% interest in the Hudson property;

(ii) The Respondent has 120 days from the date of this ruling to purchase the Petitioner's interest the Hudson property;

(iii) In the event that the Respondent is unable to purchase the Petitioner's interest in the Hudson property it to be sold and the net proceeds to be distributed in the proportions as set out in sub-para. (i) hereof;

(iv) The Petitioner is entitled to 50% interest and the Respondent is entitled to 50% interest in the Lucayan property;

(v) The Lucayan property to be sold and the net proceeds shall be distributed in the proportions as set out in sub-para. (iv) hereof;

(vi) Each party to bear their own costs.

Dated the 24 day of June, 2026

[Original signed and sealed]

Constance Delancy
Justice