

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 FAMILY DIVISION
3

4 CAUSE NO. FAM 0225/2014
5

6 BETWEEN:

JML

PETITIONER

7
8 AND:

9 RL

10 RESPONDENT
11

12 Appearances:

Mr. David Holland of KSG Attorneys at Law for the
Petitioner

Ms. Crister Brady of Brady, Attorneys at Law for the
Respondent

17 Before:

The Hon. Justice Cheryll Richards Q.C.

19 Hearing:

13th July 2020

20 Draft Judgment Circulated:

17th August 2020
21

22 **HEADNOTE**

23 *Family Law – Final Ancillaries - Sharing of Matrimonial Assets, Child*
24 *Maintenance, Sections 19 and 21 of the Matrimonial Causes Law (2005 Revision).*
25
26

27 **JUDGMENT**
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29
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1 INTRODUCTION

1. This is an application by the Petitioner JML (“the wife”) for final ancillary orders pursuant to s.21 of the *Matrimonial Causes Law* (2005 Revision), (“the Law”).
2. The Parties were married on the 30th April 2009 in Nicaragua. This was the first marriage for the wife and the third marriage for the Respondent RL, (“the husband”). His second marriage ended in divorce. The wife was 27 years old and the husband 55 years old, (date of birth 1st May 1954) at the time of their marriage. She is now 38 years old and he is 66 years old.
3. Prior to the marriage they resided together from late 2005 in the former matrimonial home (FMH) at Hope Drive in George Town, Grand Cayman, (Block 14 D, Parcel 98). They separated in 2014. The wife filed a petition for divorce on the 27th October 2014. The Petition was ordered proved on the 7th September 2015.
4. The only biological child of the marriage, a daughter J. was born on the 4th April 2007 and is now aged 13 years old. A second child, a son JS, born 29th March 2003 is a child of the wife from a previous relationship. He resided with the parties in Grand Cayman for a period of time. By Order dated 21st November 2016, JS was declared a child of the marriage in accordance with s. 2(1) of the Law and for the purpose of making an ancillary order. A sole residence order was made in respect of both children in favour of the wife. At the husband’s request at that time, a no contact order was made in respect of JS and a liberal contact order in respect of daughter J on such terms as may be agreed between the parties. The wife is therefore the primary caregiver for both children. J continues to reside with her mother on Island and attends a public school in Grand Cayman. In

1 December 2017 the son, JS returned to Nicaragua where he remained for a time. He is
2 now back on Island and resides with his mother. He is over 17 years old and there is no
3 information as to whether he is in school.

4
5 5. On the 25th July 2014, the Court made an Occupation Order in respect of the FMH in
6 favour of the wife. Additionally the husband was ordered to make interim maintenance
7 payments of \$1,200.00 per month commencing on the 1st August 2014. The orders were
8 to conclude on the 25th January 2015.

9
10 6. By Affidavit dated 19th January 2015, the wife attested that almost all the maintenance
11 payments had been made up to that point, with the only amount then outstanding being
12 CI\$400.00. By Order dated 29th April 2015, the Occupation Order was extended by
13 agreement to the 29th October 2015 and the maintenance payment was reduced to CI\$
14 700.00 per month to continue until the said date. By Order dated 3rd September 2015,
15 the Occupation Order was made an Interim Order in the divorce proceedings and was
16 extended to 6th November 2015 on which date it was further extended until the
17 conclusion of ancillary relief proceedings. The Order for maintenance payments at the
18 level of \$700.00 per month in two installments of \$350.00 has continued through to date.

19
20 7. By Summons filed on the 16th July of 2019, the wife sought injunctive relief to prevent
21 the sale of the FMH. The hearing was on the 19th July 2019. During the *inter partes*
22 hearing, it was revealed that without the sanction of the Court and unknown to the wife,
23 the husband had already sold the FMH.



1 8. The wife and children were required to vacate the home by the 31st July 2019 in
2 accordance with the sale contract. Urgent arrangements were required for alternative
3 accommodations for them. A restraint order was placed on the bank account containing
4 the balance of the proceeds of the sale and the husband was ordered to pay \$4,200.00 to
5 the wife to allow her to secure rental accommodations for her and the children and
6 \$700.00 for maintenance payments due for the month of July 2019.

7
8 9. In tandem, the husband was ordered to provide, within 14 days, an affidavit to give a full
9 accounting and proof of the amounts received in respect of the sale. Almost 2 months
10 later on the 6th September 2019 he filed an Affidavit in which he stated that the FMH
11 had been sold for CI \$185,000.00 by transfer effected on the 26th June 2019. He stated
12 that the funds had been dispersed as follows:

- 
- 13 i. \$35,000.00 to his second wife M with whom he bought the house.
14
15 ii. \$35,000.00 to his son JL in return for loans received from him to pay the mortgage
16 on the FMH and other small personal loans which he borrowed from time to time.
17
18 iii. \$19,453.02 for outstanding strata fees on the FMH.
19
20 iv. \$8,000.00 to the mother of his two other children in Nicaragua (born 2014 and 2015)
21 for their maintenance.
22
23 v. \$10,000.00 to each of three other children, (two of whom are the daughters of his
24 ex-wife M, now adults).
25
26 vi. \$15,000.00 to his mother for contingent funeral and burial costs.
vii. \$8,000.00 on outstanding rent which he owed for his own accommodations.

10. The balance then remaining in the account was about \$35,000.00

1 11. On the 23rd October 2019 and 17th January 2020, the Court ordered the release of two
2 further sums of \$6,000.00 and \$8,000.00 in respect of interim spousal maintenance.
3

4 **THE POSITIONS OF THE PARTIES**

5 12. The primary issue in dispute before the Court on this hearing is whether the wife had an
6 interest in the FMH. The husband's position is that he built a house for her in Nicaragua
7 which he placed in her sole name on the understanding and agreement that she would
8 have no interest in the FMH. It is his position that the home belonged to him and his
9 second wife M which position was well known to the wife even before they were
10 married.

11
12 13. The wife's position is that there was no such agreement or understanding as to the FMH.
13 The wife also says that there are two other properties owned by the husband which
14 should be considered - a house in Jamaica, and land in Northside (49 B Parcel 222)
15 which land is in the name of the husband and his son from a previous relationship, JL.

16
17 14. The two further issues are the amount for child maintenance going forward and the
18 quantum of the arrears of maintenance. The husband's position is that his employment
19 is uncertain as he is 66 years old and cannot work as he was accustomed to doing in the
20 past. He also says that the \$700.00 was initially for two children and despite the Court
21 Order, he is not responsible for JS who should be maintained by his biological father.
22 He offered \$350.00 per month initially. At the end of the hearing he offered \$500.00 per
23 month and school expenses.
24
25
26



1 15. Secondly, the husband says that he does not owe as much as \$48,000.00 for maintenance
2 arrears as the wife claims he does. He asserts that he has been paying consistently over
3 the years albeit that he has sometimes paid less than the Court ordered amount. He says
4 that he paid less on occasion because there were times when he could not afford to pay
5 at the level ordered. This would depend on the level of his earnings which varied,
6 depending on the jobs and overtime worked.

7
8 16. The wife's position is that he is more than an employee of the local business where he
9 says that he is employed. He is a part-owner of it with his son JL and he thus has some
10 security of earnings. She also states that over the years he has consistently paid less than
11 he should and that this has led to frequent remonstrations between them.
12

13 THE LAW

14
15 17. The Court's powers in respect of these ancillary proceedings are contained in sections
16 19 and 21 of the *Matrimonial Causes Law* (2005 Revision).

17
18 18. Section 19 provides that in dealing with all ancillary matters arising under this Law, the
19 Court shall have regard first of all to the best interests of any children of a marriage and
20 thereafter to the responsibilities, needs, financial and other resources, actual and
21 potential earning power and the deserts of the parties.

22
23 19. Section 21 provides that at the time of pronouncing a decree under this Law, the Court
24 shall, as appropriate, make orders for:
25
26





- 1 “(a) the custody, care and control of the children of the marriage;
2 (b) the disposition of matrimonial property, including the matrimonial home;
3 (c) varying any settlement of the property of the spouses made in consideration
4 of the marriage, whether such settlement was made before or upon the treaty
5 of the said marriage.
6 (d) varying any other settlement of matrimonial property;
7 (e) making financial provision from the property of either spouse for the
8 children of the marriage and for the other spouse;
9 (f) providing for periodic payments to be made by either spouse for the benefit
10 of the children of the marriage and for the other spouse; and
11 (g) costs.”
12

13
14 20. There is guidance from the Court of Appeal in the case of *McTaggart v. McTaggart* ¹
15 as to the interrelationship between these two provisions of the Law and their application.
16 This includes that a court will need to consider whether having regard to the s.19 factors,
17 an order under s.21(b) of the Law for the disposition of matrimonial property will make
18 appropriate provision for the relevant party with regard to their needs and the level of
19 compensation and sharing. If disposition of matrimonial property will not allow for the
20 appropriate provision to be made, then the court should go on to consider whether to
21 make an order under s.21(e) that financial provision be made from the property of either
22 spouse. A court should not make an order for periodic payments under s.21(f) without
23 good reason. Such good reason would arise where the combination of orders under s.21
24 (b) and (e) are insufficient to satisfy the three strands of need, compensation and
25 sharing.²
26

27 21. Additionally the appellate Court made it clear that although the s.19 factors are less
28 extensive than those in England and Wales, in the *Matrimonial Causes Act 1973* as
29 amended by the *Matrimonial and Family Proceedings Act 1984*, the approach in the

¹ *McTaggart v. McTaggart* [2011] (2) CILR 390

² *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraphs 42 and 43

Cayman Islands should be the same as in that jurisdiction.³ A court in exercising its powers under the statutory provisions should therefore consider all the circumstances of a case to include the following:

- “(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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (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 contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) in the case of proceedings for divorce . . . the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.”⁴

APPLICABLE PRINCIPLES

22. In considering the division of matrimonial property pursuant to s.21 of the *Matrimonial Causes Law (2005 Revision)* a court should first determine what constitutes matrimonial property.⁵ The leading cases from England and Wales which have been cited with approval in this jurisdiction are the cases of *White and White* ⁶ and *Miller v. Miller, McFarlane v. McFarlane*.⁷ In *White and White*, Lord Nicholls of Birkenhead in



³ McTaggart v. McTaggart [2011] (2) CILR 390 - Paragraph 39

⁴ Statutory Factors in England and Wales

⁵ See Wight v. Wight [2010] CILR 60 and McTaggart v. McTaggart [2011] (2) CILR 390 – paragraph 34, B-H v. H. [2009] CILR 185

⁶ [2000] UKHL J1026-3

⁷ [2006] UKHL 24



considering inherited money or property and property owned by one spouse before the marriage said this:

“In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property. Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered.”

23. The guidance from the case of *Miller v. Miller, McFarlane v. McFarlane* includes that in considering division of financial property, there is no place for discrimination between a husband and wife and their respective roles. The homemaker’s role should be given equal weight. A court should consider the three strands of need, compensation and sharing which should guide the court in arriving at a fair division of property on the dissolution of a marriage.

24. Lord Nicholls in his judgment in that case stated that fairness requires that when a partnership ends, each partner is entitled to an equal share of the assets of the partnership unless there is good reason to depart from equality. The Learned Judge emphasized that the yardstick of equality is not a rule but an aid.⁸

25. The Learned Judge further stated that there is a real difference between matrimonial property and non-matrimonial property and pointed to the difference being the source of the acquisition. Property which is acquired during the marriage otherwise than by inheritance or gift would usually be matrimonial property as distinct from other property.

⁸ Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - Paragraphs 16 and 17



Matrimonial property is the “*financial product of the parties’ common endeavor.*” As to the matrimonial home, the Learned Judge said this:

“*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 any 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.*”

26. The Learned Judge went on to say that the position is different with regard to non-matrimonial property. This is property which the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. With respect to such property, the duration of the marriage may well be relevant although this may take second place to the needs of the parties.

27. In discussing the import of the duration of the marriage, Baroness Hale of Richmond in her judgment in the said case stated that it is recognized that where the starting premise is separate property, there is still some scope for one party to acquire and retain separate property which is not to be shared equally between them. The Learned Judge said that in such cases, the nature and source of the property and the way in which the couple have run their lives may be considered in deciding how property should be shared.⁹.

28. In *McTaggart v. McTaggart*¹⁰, the Cayman Islands Court of Appeal (CICA) provided guidance as to the way in which a Court should approach the issue of what is matrimonial property under s.21 of the Law:

“*It can be seen that the section gives recognition to the concept of “matrimonial property.” That concept is not defined in the Matrimonial Causes Law, but it is generally understood in the sense described by Lord Nicholls of Birkenhead in Miller v. Miller (5), that is to say, it comprises “property acquired during the*

⁹ Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - paragraph 153

¹⁰ [2011] 2 CILR 377

1 marriage otherwise than by inheritance or gift" ([2006] 2 A.C. 618, at para. 22). Its
2 distinguishing feature is that it is "the financial product of the parties' common
3 endeavour"¹¹
4
5

6 29. The Court further stated:-

7 "It is necessary therefore to identify those assets which are owned or under the
8 control of one or other (or both) of the parties as at the date when the order is made
9 and then to identify which of those available assets are matrimonial property and so
10 capable of being the subject of an order under s.21(b).¹²

11 "There may be cases (of which, as I shall explain, the present provides an example
12 in relation to the husband's potential retirement benefits) where an asset which did
13 exist at the date of final separation does not exist—or does not exist in the same
14 form—at the date of the hearing. In such cases it will be necessary to consider
15 whether the former asset can be traced into an after-acquired asset which can itself
16 be treated (in whole or in part) as matrimonial property; and, if not, whether some
17 other order (say, under s.21(e)) should be made to reflect the fact that the former
18 asset has ceased to exist.

19 The power conferred under s.21(b) of the Law is a power "to make an order for the
20 disposition of matrimonial property." There is no requirement under the Law that
21 the disposition should give effect to an equal division of the matrimonial property
22 as between the parties; and there is no invariable rule that the power should be
23 exercised in a manner which achieves that effect. The requirement—imposed by s.19
24 of the Law—is that, in exercising the power, the court shall have regard to "the
25 responsibilities, needs, financial and other resources, actual or potential earning
26 power and the deserts of the parties." It is plainly open to the court—if, having
27 regard to those factors, it thinks it appropriate to do so—to make an order which
28 effects an unequal division of the matrimonial property as between the parties. The
29 order made in *Wight v. Wight* (11)—and upheld in this court—provides an example
30 of such a case. In *Miller* (5) ([2006] 2 A.C. 618 at para. 16), Lord Nicholls observed
31 that "the yardstick of equality is to be applied as an aid, not a rule." But, as Lord
32 Nicholls had pointed out in *White v. White* (10) ([2001] 1 A.C. 596, at 605)—in a
33 passage expressly adopted by Lord Cooke of Thorndon (*ibid.*, at 615)—"as a
34 general guide, equality should be departed from only if, and to the extent that, there
35 is good reason for doing so."
36

37 30. In *Valerie Gordon v. Jefferson Watler*¹³, the Appellate Court stated:
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¹¹ McTaggart v. McTaggart, Supra - Page 376

¹² McTaggart v. McTaggart, Supra - Page 390

¹³ CICA Civil 13/2014- 22nd August 2014



1 *“The correct approach, as I have indicated, was to ask what provision should be*
2 *made for the wife in order to recognise the three strands of need, compensation and*
3 *sharing. If a division of the matrimonial property could meet those needs, then it*
4 *was unnecessary to go further. But if and so far as a division of the matrimonial*
5 *property could not meet those needs, then it would be necessary to consider whether*
6 *to make an order under section 21 (e) in respect of the husband’s other assets.”*

7
8 31. In the said case of *McTaggart v. McTaggart*¹⁴, with respect to the general approach, the
9 Court stated:

10 *“It is not, I think, necessary to look further than the decision of the House of*
11 *Lords in Miller (5)—and, in particular, the speeches of Lord Nicholls and*
12 *Baroness Hale—in order to identify the principles. Leaving aside, in this*
13 *context, the best interests of the children (which, as I have said, are paramount),*
14 *there are three strands: need, compensation and sharing ([2006] 2 A.C. 618, at*
15 *paras. 10–16 (per Lord Nicholls); and at paras. 138–143 (per Baroness Hale)).*
16 *The ultimate objective, as Baroness Hale explained (ibid., at para. 144) is to*
17 *give each party an equal start on the road to independent living. She said this:*



18
19 *“Thus far, in common with my noble and learned friend, Lord Nicholls*
20 *of Birkenhead, I have identified three principles which might guide the*
21 *court in making an award: need (generously interpreted),*
22 *compensation, and sharing. I agree that there cannot be a hard and fast*
23 *rule about whether one starts with equal sharing and departs if need or*
24 *compensation supply a reason to do so, or whether one starts with need*
25 *and compensation and shares the balance. Much will depend upon how*
26 *far future income is to be shared as well as current assets. In general,*
27 *it can be assumed that the marital partnership does not stay alive for*
28 *the purpose of sharing future resources unless this is justified by need*
29 *or compensation. The ultimate objective is to give each party an equal*
30 *start on the road to independent living.”*

31
32 41 Two of those three strands—need and sharing—require little, if any,
33 elaboration. But it is, I think, necessary to say something of the third:
34 compensation. Lord Nicholls explained the concept in these terms (ibid., at
35 paras. 13–15):

36 *“Another strand, recognised more explicitly now than formerly, is*
37 *compensation. This is aimed at redressing any significant*
38 *prospective economic disparity between the parties arising from the*
39 *way they conducted their marriage. For instance, the parties may*
40 *have arranged their affairs in a way which has greatly advantaged*
41 *the husband in terms of his earning capacity but left the wife*
42 *severely handicapped so far as her own earning capacity is*
43 *concerned. Then the wife suffers a double loss: a diminution in her*

¹⁴ 2011 (2) CILR 395

1 *earning capacity and the loss of a share in her husband's enhanced*
2 *income. This is often the case. Although less marked than in the*
3 *past, women may still suffer a disproportionate financial loss on the*
4 *breakdown of a marriage because of their traditional role as home-*
5 *maker and child-carer.*

6
7 *When this is so, fairness requires that this feature should be taken into*
8 *account by the court when exercising its statutory powers. The Court of*
9 *Appeal decision in SRJ v. DWJ (Financial Provision) [1999] 2 FLR 176,*
10 *182, is an example where this was recognised expressly.*

11
12 *Compensation and financial needs often overlap in practice, so double-*
13 *counting has to be avoided. But they are distinct concepts, and they are far*
14 *from coterminous. A claimant wife may be able to earn her own living but*
15 *she may still be entitled to a measure of compensation."*

16
17 *Baroness Hale said this (ibid., at para. 140):*

18 *"A second rationale, which is closely related to need, is*
19 *compensation for relationship-generated disadvantage. Indeed,*
20 *some consider that provision for need is compensation for*
21 *relationship-generated disadvantage. But the economic*
22 *disadvantage generated by the relationship may go beyond need,*
23 *however generously interpreted. The best example is a wife, like*
24 *Mrs McFarlane, who has given up what would very probably have*
25 *been a lucrative and successful career. If the other party, who has*
26 *been the beneficiary of the choices made during the marriage, is a*
27 *high earner with a substantial surplus over what is required to meet*
28 *both parties' needs, then a premium above needs can reflect that*
29 *relationship-generated disadvantage."*



42 ...

43 *It seems to me reasonably clear (and I would so hold) that, if satisfied that*
44 *an order under s.21(b) of the Law (or the combination of orders under*
45 *s.21(b) and (e)) would make appropriate provision for the relevant party in*
46 *respect of the three strands (need, compensation and sharing), the court*
47 *should not (without good reason) make an order for periodic payments*
48 *under s.21(f). To make an order for periodic payments—in circumstances*
49 *where such an order is unnecessary because appropriate provision can be*
 made by the disposition of matrimonial property (under s.21(b)) or by a
 capital adjustment from the separate property of the other party (under
 s.21(e))—would be inconsistent with the principle of the "clean break" to
 which Lord Scarman referred in Minton v. Minton (6) ([1979] A.C. at 608):
 "There are two principles which inform the modern legislation. One
 is the public interest that spouses, to the extent that their means
 permit, should provide for themselves and their children. But the
 other—of equal importance—is the principle of 'the clean break.'
 The law now encourages spouses to avoid bitterness after family

1 *break-down and to settle their money and property problems. An*
2 *object of the modern law is to encourage each to put the past behind*
3 *them and to begin a new life which is not over-shadowed by the*
4 *relationship which has broken down. It would be inconsistent with*
5 *this principle if the court could not make, as between the spouses, a*
6 *genuinely final order. . .”*
7

8 32. I now turn to consider the issues and facts in the instant case with the general principles
9 in mind while noting that each case must be decided on its own facts with the objective
10 being to arrive at financial arrangements which are fair to both parties and which assist
11 them on the road to independent living.

12 **IDENTIFYING THE MARITAL PROPERTY**

13
14 33. There are four properties in issue in this case:

- 15 i. The house in St. Ann, Jamaica,
16 ii. Property in Northside,
17 iii. The FMH and
18 iv. The house in Nicaragua



19
20 34. The first two may be dealt with briefly. The evidence of the wife was that the house in
21 Jamaica was built by the husband during the course of their relationship. She states that
22 she had travelled with him to Jamaica and been present with him at hardware stores
23 where materials were purchased for the building of the house. The husband's evidence
24 is that the house was built on land belonging to his family and that other siblings have
25 houses on the same property.
26
27

1 35. The husband produced a letter from an Attorney in Jamaica and the will of his father
2 who died in 1990. Both indicate that the grant to the husband was part of a grant to all
3 seven siblings and that there is no identifiable portion of land which belongs to the
4 husband.

5
6
7 36. While there may well have been some matrimonial funds expended on the construction
8 of this house, it is undoubtedly the case that this land was an inheritance of the husband.
9 There is nothing to suggest that this was ever intended to be matrimonial property. There
10 is also insufficient evidence to quantify the funds spent on construction.

11
12 37. With respect to the purchase of the land in Northside (Block 49 B, Parcel 222) which
13 was in the name of the husband and son JL, the husband asserted in oral evidence and in
14 his more recent Affidavit of 16th January 2020 that this was entirely the property of his
15 son. He said that the property in “Breakers” with his son JL was purchased when his son
16 was young and asked that his father’s name be added to the title. He contributed nothing
17 to that purchase but caused his name to be added to the land documents.

18
19 38. In her oral evidence, the wife stated that the husband told her that the land was “selling
20 for cheap”. He was going to make much out of it. He was excited. He told her that the
21 land was his. He never mentioned the son’s name in respect of this land. She said that
22 she went with the husband and the children to see the land. When it was bought she knew
23 someone and they were able to purchase gravel at a low cost so that the land could be
24 leveled.



1 39. I noted that in his earlier Affidavit of 21st July 2014, the husband stated:

2 *“My only assets are my properties, I own half of the marital home, the other half it*
3 *has been agreed with my ex-wife will go to our children. I own a lot of land with*
4 *my son in East End and the property in Nicaragua (which is in my wife’s name).”*

5 40. My impression of the husband was that he was doing his best by the time of the hearing
6 to minimize his assets. He repeated throughout his oral evidence that he has nothing, had
7 used up all his savings and owned nothing. He repeatedly said throughout the hearing
8 that he would have to be locked up, because he had nothing more to give.

9
10 41. I accept the evidence of the wife that he was in fact the purchaser of this property and
11 his role was more than just in title only. The transfer document produced in respect of
12 this land is dated 2010. The husband’s evidence is that this land has since been sold.

13
14
15 42. This evidence is insufficient to allow me to conclude that this land constituted
16 matrimonial property. There is insufficient information as to when and how it was sold.
17 More information would be required in order to enable me to identify and quantify any
18 interest. Nonetheless, I bear in mind the assertions as to non-ownership made by the
19 husband which do not appear to be truthful.

20 **THE FMH**

21 43. In his Affidavit dated 25th September 2015, the husband stated that he was married to M
22 in Jamaica in 1994 and the union produced two daughters born 1991 and 1994. He
23 further stated that sometime in 2004, he bought a house at 41 Hope Drive in George
24 Town which became their matrimonial home where they lived with the two daughters.



1 He also stated that the house was bought partially from a bank loan and their joint savings
2 and that the loan was for 15 years and he began paying it on the 3rd May 2004. He states
3 that the marriage broke down and he and M divorced in June 2006. He met the wife in
4 about late 2005. He said that the wife was aware before they got married, that the FMH
5 at Hope Drive was the property of his ex-wife and himself. He said that he told her this
6 and that as a consequence he built the house in Nicaragua for her and placed it into her
7 sole name.

8
9 44. M provided an Affidavit dated 23rd September 2015 in which she averred that the house
10 had been bought from their personal savings, that upon their divorce they agreed that the
11 husband and the children would continue living in the house and that she has never
12 abandoned her interest in the house. She stated:

13 *“That when we divorced, “R”. and I agreed that he and the children would*
14 *continue to live at the house, that we would not sell the house or divide the money*
15 *and pay back the bank, because (and) it would have been very inconvenient for*
16 *him and the children and they were still young.”*

17
18 45. The house was in the sole name of the husband. The loan facility letter exhibited to his
19 Affidavit is dated 25th March 2004. There is no explanation in the evidence as to why
20 the purchase, having been made by both, was nevertheless in his sole name.





1 46. In his most recent Affidavit of 16th January 2020, the husband stated that having met the
2 wife, she explained to him that she was having employment problems and he offered her
3 employment as a live-in helper to look after his children and that eventually a
4 relationship developed between them.

5 47. He stated that he had told her and it was known to her that the house belonged to himself
6 and M, his ex-wife. He said that the reason it had not been disposed of at the time of
7 their divorce was because they had come to an agreement that since he would keep the
8 children they would need a permanent home. He said that in pursuance of that
9 understanding with the wife, he bought the land in Nicaragua and built the house that in
10 case he died his daughter would have a house to live in if they had to return to Nicaragua.
11 He explained that he sold the FMH because of the pressure from unpaid bills such as
12 strata fees and his own rent. He said that he simply could not afford to pay what was
13 owing.
14

15 48. The husband in his Affidavit evidence and in cross-examination of the wife sought to
16 establish that the relationship between the two (on the wife moving into the FMH) was
17 one of employer /employee only. This proved to be an emotive issue during the hearing.
18

19 49. The wife's evidence was that she first came on Island in 2005 as a temporary employee
20 of a local bar. While so employed she met the husband who was a patron of the bar.
21 They became friends as he visited the establishment every evening after his work. When
22 the day came that she indicated that she was returning home because of the difficult
23 employment situation at the bar, he offered to secure a work permit for her so she could
24 remain on Island. Ostensibly the permit was for her to care for his two children. In
25

1 reality the children only visited on weekends because they were living on Crewe road
2 with M who had already moved out of the home.

3
4 50. The wife stated that the husband told her that he was separated from M. She said that
5 she had started being in a romantic relationship with the husband from when she was
6 working the bar. She was not working for him when she went to live with him. She
7 moved in with him as his romantic partner and took care of and kept house for him. He
8 did give her funds on a bi-weekly basis to send back home to Nicaragua or to purchase
9 supplies for the house in which they lived. She gave evidence that he told her that it was
10 his house, that M had been in England and they had already separated. He told her that
11 M had no access to the house, she had not contributed to it and that the wife need not be
12 afraid of M because it was his house. He told the wife that a previous girlfriend of his
13 had also lived in the house before her - MC also from Jamaica - and that she had just
14 moved out a couple months ago. MC had been employed at a gas station on Walkers
15 Road. The wife denied that there was an understanding that the FMH on Hope Avenue
16 would be his and M's and their children. She stated that "they did not come under any
17 agreement about the house in Hope Drive". There was none.

18
19 51. In cross-examination, the husband stated that he married M in Jamaica and got divorced
20 from her there. He accepted that there was no evidence in relation to the divorce
21 agreement, Court order or any other agreement dealing with that property. He said that
22 he has no document that records what he says is the agreement between himself and M.
23 He said that he is not a reader or a man with brains and never thought that he would have
24 to prove this.
25



1 52. It was suggested to him that he has no document because no agreement existed between
2 himself and M. He denied this. He was also cross examined as to why no notice had been
3 served on M at the time of the making of the Occupation Order.

4
5 53. While the issue of absence of some sort of divorce agreement may or may not be telling,
6 I considered the husband's oral evidence to be of significance in assessing this issue.
7 Towards the end of his oral evidence, he stated that there had been separation from M
8 when she went to England. She spent 2 years there and returned and was living at Crewe
9 road. He said that she left just about the same time that he had bought the house. She
10 spent a couple days at the house and left. He said the \$35,000.00 he gave her was a
11 contribution for his children. The money which he gave to his son was because his son
12 had been helping him to pay the mortgage. He then said that his son had made
13 contributions because he was living in the house – and these included helping him to pay
14 the mortgage and bills and purchasing a car for him from Japan. He said that he helps
15 his children because if he dies, they would bury him.

16
17 54. In his First Affidavit of 21st July 2014, the husband stated:

18 *"My only assets are my properties, I own half of the marital home, the other half it has*
19 *been agreed with my ex-wife will go to our children."*
20

21 55. In the absence of any divorce order or document evidencing such agreement, it is
22 difficult to see how in 2019, the second wife could be entitled some 15 years later to a
23 house which she had only lived in for a couple days before she left and in respect of
24 which there is no evidence of continued contributions over the years. Even if the wife
25 had an interest it can only have been limited to that portion of savings which was





1 contained in the initial purchase cost, about which there is no evidence. I find it doubtful
2 that she would have waited some 15 years for reimbursement.
3

4 56. The reason M gives for leaving the husband with the house was that the children were
5 living with him. The husband said that it was agreed that the house would be kept so that
6 the children would have a permanent home. The wife's evidence is the children were not
7 living in the home. They were living with M on Crewe road prior to them all leaving the
8 Island when M went to reside in the United States.

9
10 57. The timing of the separation from M and the living arrangements of the children do not
11 appear to lend support to the husband's assertions.

12
13 58. The husband states that it was agreed that M's one half interest would go to the children,
14 yet distributions were made in 2019 to both M and the two daughters as well as a number
15 of other persons. The range of distributions made does not appear to be in line with what
16 the agreement was said to be.

17
18 59. Having assessed the husband as he gave evidence and considering all the circumstances,
19 I do not accept the husband's evidence that M had an interest in this property. On this
20 point I find the evidence of the wife to be preferable and that his own indication to her
21 in 2005 when she moved in, which was that the property belonged to him and that M did
22 not have any rights in the property is the correct factual position.

23
24 60. I accept the evidence of the wife that she resided in the FMH with the husband as a
25 couple from the latter part of 2005. They thus resided in the home through to 2014 for
26 some 9 years. The wife resided therein for a further 5 years until it was sold. She was

1 the primary carer for the children and took care of the husband and the home. The house
2 had been bought less than 2 years before she first moved in. It was placed into the melting
3 pot of the marriage. Noting the length of the relationship, the length of the marriage, and
4 the attendant circumstances, there is nothing in this case which would suggest that there
5 should be a departure from the yardstick of equality. I conclude that the parties are
6 entitled to an equal share in the FMH.

7
8 **THE NICARAGUA PROPERTY**

9
10 61. The second issue is whether there was an agreement that the wife would relinquish her
11 interest in the FMH for the Nicaragua house (Number 32,494, Folio 271, Volume 162).

12
13 62. Counsel on behalf of the husband submitted that this agreement could be the only reason
14 why that house was built. He argued that it would make no sense for the husband to
15 build a house in another country. It had to have been done in the context of an
16 understanding. Counsel on behalf of the wife submitted that the position of the husband
17 as to the agreement or understanding is a relatively new one. He submitted that it had
18 not been mentioned in his earlier Affidavit as a quid pro quo.

19
20 63. I note that in his September 2015 Affidavit the husband does mention building the house
21 for the wife in Nicaragua and also that he built this because there was an understanding
22 that the Hope Drive house belonged to himself and M.

23
24 64. Counsel on behalf of the wife highlighted in cross-examination of the husband that the
25 Nicaragua house was built prior to the marriage between the parties and asked how then



1 could there have been an agreement that this house could cancel out her interest in Hope
2 Drive.

3
4 65. In oral evidence the husband said that the house in Nicaragua was the first house in that
5 area with hurricane straps. This was because he was protecting his little girl. He said that
6 he built the house for her. When it was suggested to him that there was no agreement
7 with the wife about it, he disagreed adding:



8 *"When I met her I was an old man. I took all that I save and help this little girl in*
9 *case I die she not outside, I do it with a good heart. I built it because she got*
10 *pregnant."*
11

12
13 66. The evidence of the wife was that the land on which the house was built belonged to her.
14 At the time it was being sold by Ms. R, she was unable to return to Nicaragua to complete
15 the purchase and the husband offered to go in her place. It was agreed between them that
16 she would stay and look after the child. The husband paid to build the house. The
17 understanding was that if something happened to him, she and daughter J would have
18 somewhere to live. She said after J was born, the husband said he would help her to get
19 a house back home for her and J.
20

21 67. The impression which I had from all the evidence was that the husband was seeking to
22 provide for the wife's future needs and that of the child. The driving force behind his
23 actions was the birth of his daughter. Marriage and possible stability on Island for the
24 wife had not yet taken place and he envisaged that they might have to return home to
25 Nicaragua. I do not accept the husband's evidence that it was agreed or intended to be

1 in return for her interest in the FMH. It was intended for the wife and daughter to have
2 the future use and benefit of this property should adverse circumstances arise.

3
4 68. The purchase of the land was entered into by both of them, each carrying out an agreed
5 role. The house was built following discussion and agreement between the two of them.
6 It is clear that it was due to the common endeavour of both, each in their own way. It is
7 matrimonial property.

8
9 69. I accept the submissions of Counsel on behalf of the husband on the point as to how this
10 property should be divided. I do not consider that it would be a fair outcome for the wife
11 to have the sole interest in the Nicaragua property as well as one half interest in the FMH.
12 I also do not consider that there would be a fair distribution of property were the two
13 properties to be distributed by country where the properties are of unequal value. In my
14 view the combined equity should be equally divided.

15
16 70. The wife has provided a valuation dated 7th February 2017 for the Nicaragua property
17 indicating that this property is valued at \$83,597.46. The husband has provided a more
18 recent valuation dated 14th September 2018 indicating that this property is valued at
19 US\$105,669.16 or CI\$88,762.09.

20
21 71. The husband received \$185,000.00 from the sale of the FMH from which outstanding
22 strata fees of \$19,453.00 would be deducted leaving a balance of net sale proceeds of
23 \$165,547.00. The wife would have had a half share of about \$82,773 as her interest in
24 the FMH. If she were to keep the Nicaragua property as intended, this would reduce the
25 amount to which she is entitled by \$44,381.00. She would be entitled to receive
26 \$38,392.00. I note that the husband had initially offered her \$40,000.00 in full settlement





1 of all property interests and maintenance arrears in this matter. The wife has no home
2 and limited income. A lump sum payment would meet her needs by providing her with
3 a small down payment on a home on Island or some financial security while she cares
4 for J.

5
6 72. I have considered the husband's ability to pay this sum in light of his claim that he has
7 nothing and no funds. Exhibit RL 3 to the husband's Affidavit of 3rd September 2019
8 shows two bank transfers of \$35,000.00 which were made on the 18th July 2019 to M
9 and to his son JL. This was one day before the hearing for injunctive relief. This against
10 the background that the sale had been effected as far back as the 26th June 2019. The
11 timing of these transfers is startling and suggestive. The fact that it was the same sum to
12 both is questionable as is the absence of any accounting for the mortgage payments and
13 personal loans he said had been made by his son JL. The circumstances have the hall
14 marks of round figure distributions rather than repayments. It is difficult to avoid the
15 conclusion that this was an attempt to dispose of funds prior to appearing in Court on
16 the following day. I do not think that it is unreasonable to infer from the circumstances
17 that these were amounts to be held by the recipients until they could safely be returned
18 to the husband, likely when this matter is over.

19
20 73. As to the disbursement made to his son JL, the bank document describes this as a gift.
21 While the initial statement made by the husband was that he was repaying his son in part
22 for mortgage payments made, his oral evidence was that his son had made these
23 payments because he had been helping out because he was resident in the house. The
24 husband then said that he wanted to help his children that in case of his death they would
25 bury him. His evidence did not support the claim that these were legitimate
26 disbursements in respect of mortgage payments previously made on the property.

1 74. It appears therefore that the husband proceeded to distribute funds as gifts in disregard
2 of the ongoing Court process and without awaiting a determination of the final ancillary
3 issues. He did so at his own risk.
4

5 **THE INCOME AND EXPENDITURE OF THE PARTIES**

6
7 75. The wife has been employed by a local hotel as a housekeeping room attendant since
8 October 2014. On a 40-45-hour work week she earns US\$6.85 per hour plus gratuities.
9 Her regular pay is approximately \$1200.00 per month. The husband stated in his
10 Affidavit that the Nicaragua property may have been rented and that he has not been
11 receiving any income from it. However there are no details as to whether the wife has
12 any additional income from this property.
13

14 76. The wife is in rented accommodations at a cost of \$1,700.00 per month. No recent
15 outgoings statement has been provided. Her Affidavit of 2015 gave the following:-

Expense	Monthly Cost \$
Electricity	200
Phone/internet	225
Water	150
School items for J, lunch, snacks, water	154
Groceries/food	650
Pharmacy	50
Child's entertainment	150
Clothing	100
Car loan and gas	550
Total	2229



16
17 77. The husband is a carpenter and a mason by trade. He is employed to an Industrial
18 Services business in respect of which he was at one point a co-owner. He says that it is
19 now solely owned by his son. In the past he attested that his earnings from this business

1 was approximately \$5,500.00 per month. His most recent income statements produced
2 for May to August 2019 show him as having earnings for sequential two week pay
3 periods of:

- 4 • \$2608.87
- 5 • \$2418.16
- 6 • \$1731.00
- 7 • \$2019.50
- 8
- 9



10 78. Taking the lowest figure, he would earn on average \$3,400.00 per month. He gave
11 evidence about the ongoing pandemic and the impact on his earnings but it appears that
12 this is likely to be temporary and there will be less impact once the economy reopens.
13 However, he also gave evidence that in the longer term, given his age, his earnings will
14 continue to decline as he is less capable of doing manual work and that a significant
15 portion of the work which he does requires physical labour. He said that now at 66 years
16 old, he has difficulty bending and finds doing so painful. The wife is correct that he is
17 always talking about his eventual death. He did so several times in the course of his oral
18 evidence. There was however no evidence placed before the Court that he is suffering
19 from any medical condition.
20

21 79. In his earlier Affidavit of 21st July 2014, the husband stated that in or about 2012, he was
22 made redundant from his job at a local company. He used the money from his
23 redundancy package and set up a small construction business with his son known as J
24 and R Industries¹⁵. He stated that he used to be a 50 % shareholder in this company but
25 has on several occasions sold his shares and then held 15%. He stated:
26

¹⁵ Paragraph 15 of Affidavit dated 21st July 2014

1 *“The money from the sale of my shares was used to build a property in Nicaragua.*
2 *This property is built for my wife who is originally from Nicaragua. I built this in*
3 *case anything happened to me so that her and my baby would always have*
4 *somewhere to live. I would still be willing for her to live in this property”*

5
6 80. At that time he said that his income was on average CI \$4,000.00 per month.
7

8 81. In 2015 he had a small pension valued at \$7,604.66. No recent statements have been
9 provided. He stated in his oral evidence that the mistake he made was not to have
10 commenced contributions at an earlier date. He has provided no evidence of his
11 outgoings.
12

13 **CHILD MAINTENANCE**

14 82. The wife seeks a child maintenance order in the sum of \$700.00 per month to be paid by
15 way of an attachment of earnings.
16

17 83. The husband offers \$500.00 per month together with funds on an as needed basis for all
18 school related expenses, such as books, lunches, trips and projects.

19
20 84. In suggesting this lower sum, Counsel on his behalf urged the Court to bear in mind his
21 age and that in the usual course one would expect the younger partner to look after the
22 older. Counsel further submitted that the husband is now on a downward trajectory. He
23 can no longer afford to pay \$700.00 per month.

24
25 85. Counsel on behalf of the wife points to the fraught history between the parties which
26 involved the issue of protection orders and the involvement of the Police and other





services. He noted that they do not communicate well and that a fixed sum would be the optimal course.

86. In light of the history of the parties I accept his submission that a fixed sum would be a sensible approach.

87. I have considered the submissions of Counsel on behalf of the husband with some care and accept that because of his age, his income may well be declining. However I do not accept his evidence that he no longer has an interest in the business with his son and is merely an employee. My impression from his repeated declarations that he has nothing and nothing more to give was again that he sought to minimize what he owns and earns.

88. It is deeply unfortunate that he sold the FMH in the way he did, an action which deprived the children of a home and which forced the wife to seek rental accommodation.

89. While the rental being paid by the wife is high and she is encouraged to seek more affordable accommodation if it can be found, it is undoubtedly the case that her level of income is already less than the rent. I accept that as is urged on her behalf, she is in need of child maintenance funds and cannot afford to support J. on her own.

90. The best interests of the child require that she be provided with adequate accommodation where mother will not face the possible threat of eviction because she cannot afford to pay the rent. Even if the 2015 figures as to the wife's possible expenses are outdated, a reasonable amount must be allowed for food, clothing and supplies for the child.

91. I have taken into account that the husband has expenses of his own, he is said to have two other children in Nicaragua who require to be maintained and he has to pay rent and

1 living expenses here. He describes his rental accommodations as a 10 by 10 room but
2 did not provide the level of expenditure on it. The overall indication from him was that
3 he keeps his costs as low as is possible. Notable is the fact that even at its lowest, his
4 income, is more than twice the earnings of the wife.

5
6 92. I have considered the needs of the child, which must now include housing on Island.
7 While the second child is older, the younger child has increased needs. Thus, any
8 decrease in maintenance can only be a modest one. I have also considered the husband's
9 responsibilities as well as his possible declining income and his age. Taking into account
10 all the circumstances. I consider that the amount of \$600.00 per month is a reasonable
11 sum for him to pay by way of monthly child maintenance.

12 **CHILD MAINTENANCE ARREARS**

13
14 93. The wife's position is that there are outstanding maintenance payments of a significant
15 sum. She asserts that this is because the husband usually paid less than the \$350.00
16 required on a bi- monthly basis, sometimes as little as \$150.00 such that a large backlog
17 has built up over time. While maintaining in his oral evidence that he never paid a s little
18 as \$150.00, he stated that he would pay what he could and that there were occasions that
19 he could not afford to pay the full sum.

20
21 94. Following the hearing, there has been clarification of the sums owing. The records
22 provided indicate that the sum of \$1200.00 per month was paid consistently through to
23 December 2015.





1 95. From 2015 onwards the payments were usually less than \$350.00. Very rarely were they
2 as little as \$150.00 (on 4 occasions). It is a significant issue between the parties that
3 between 2018 and the injunction hearing in July 2019, the husband did not make
4 payments consistently. The record shows that between the 1st October 2018 and the 18th
5 July 2019, no payments were made to the Courts Funds Office. The husband says that
6 the wife stopped him from making these payments and asked him to pay them to their
7 daughter. The wife agrees that this was because it was difficult for her to have time off
8 from her work during the work week in order to travel to the Court's office. However
9 she was adamant that he made only four payments in cash on four occasions. She also
10 gave evidence that during the pandemic she has received four cheques from him.

11
12 96. By way of totals, the Court's office record indicates that the amount due under the
13 Court's Orders was \$53,485.00. The total sum paid was \$32,915.00. The outstanding
14 arrears would therefore be CI \$20,570.00.

15
16 97. The wife gave evidence that she received four cash amounts from him in 2019 in the
17 sums of \$200.00, \$250.00, \$200.00 and 250.00, and four cheques in 2020. The total of
18 the four cheques is \$900.00. He made two further cash payments during May and June
19 2020 totaling \$700.00.

20
21 98. There is no evidence to support his claim that he made other direct payments in 2019. I
22 accept and prefer the evidence of the wife on this point. My impression of her is that she
23 is particular and detailed about money and reliance can be placed on her recollection. In
24 contrast my impression of the husband was that he had an ad hoc approach and he could
25 say only that he had given money to J and that he thought it was more than the wife said.
26

1 99. From the outstanding arrears figure given by the Court's Office, I would deduct
2 \$2,500.00 plus the \$700 released from the restrained account for a total deduction of
3 \$3,200.00. This would leave an outstanding balance of \$17,370.00.

4
5 **CONCLUSIONS**

6 100. Having considered the best interests of the child of the marriage, the three strands of
7 needs, compensation and sharing, the responsibilities, needs and resources of the parties,
8 and all the relevant factors as set out above, together with the evidence and submissions
9 made, the conclusions are as follows:

- 10
11 i. The husband is to pay the amount of \$600.00 per month by way of monthly child
12 maintenance for J. This is to be paid twice per month by way of an attachment of
13 earnings order.
- 14
15 ii. It is declared that the wife had one half interest in the FMH at Hope Drive.
- 16
17 iii. It is declared that the husband has one half interest in the house in Nicaragua.
- 18
19 iv. The wife as intended by the parties will take the entirety of the house in Nicaragua
20 which will reduce the level of payment to which she would be entitled from her
21 interest in the FMH.
- 22
23 v. From the total combined equity in the two properties, one being more valuable than
24 the other, the wife is entitled to receive a lump sum payment of \$38,392.00 in respect
25 of her interest in the FMH.
- 26
27 vi. The husband must either secure the return of the funds distributed by him following
28 the sale of the FMH or arrange for the payment to the wife by other means.



vii. The outstanding maintenance arrears balance is \$17,370.00. However the wife has also had significant sums of \$14,000.00 for spousal maintenance between July 2019 and now. Some of those funds would have been used for accommodation for herself and their child and for general maintenance. In my view it is fair that some credit be given to the husband for this amount. On a 60/40 split, \$5,600.00 would have benefitted the child. I therefore assess the arrears to be paid as \$11,770.00. This is to be paid forthwith from the restrained account

viii. A further \$3,000.00 is to be paid from the restrained account to the wife in respect of her interest in the FMH. The balance of \$35,392.00 is to be paid by the husband to the wife within 30 days of this judgment.

COSTS

101. Counsel on behalf of the wife has invited the Court to consider making an order for costs against the husband on the basis that the wife is legally aided, (Regulation 10 of the Legal Aid Regulations, 2016). Counsel for the husband has responded that the husband is also legally assisted. In all the circumstances, no order for costs is made.

Dated this 8th September 2020



**Honourable Justice Cheryll Richards Q.C.
Judge of the Grand Court**