IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN

31/05/11

Cause No: FAM 0056/2010

BETWEEN:

DLF

PETITIONER

AND:

DKF

APPLICANT/RESPONDENT

Appearances: **Mr. Philip Boni and Ms. Kate Palfrey of Higgs & Johnson for the Applicant/Respondent**

Ms. Sheridan Brooks of Brooks & Brooks on behalf of the Petitioner

Before: **The Hon. Mr. Justice Charles Quin**

Heard: **7th March 2011**

Preamble

This Judgment is distributed on the strict understanding that in any report of this kind no persons other than the counsel or the attorneys instructing them (and other persons identified by name in the Judgment itself) may be identified by name or location and, in particular, the anonymity of the children and the adult members of the family must be strictly preserved.

JUDGMENT

1. On the 24th September 2010 the Respondent filed a Summons for Orders pursuant to s.19 and s.21 of the Matrimonial Causes Law (2005 Revision) in respect of:

   i. Custody, care and control and access to the minor child of the marriage, namely 'B';

ii. The disposition of matrimonial property including the former matrimonial home;

iii. Such other ancillary Orders as this Honourable Court shall deem appropriate to finalise the ancillary matter;

iv. Costs

History of the Marriage

2. On the 8th September 1990 the parties were lawfully married in Boca Raton, Palm Beach, Florida, U.S.A.

3. Following the celebration of the marriage the parties lived and cohabited at West Bay North East Block 9A Parcel 455 (the "*former matrimonial home*").

4. There are three (3) children born to the marriage namely 'N' who is over 18 years of age, 'E' who is 16 years of age and still at school, and, 'B' who is 13 years of age and still at school.

5. The Petitioner filed her Petition for the dissolution of the marriage on the 26th February 2010 and at that time all three children resided with the parties at the former matrimonial home and all the children were involved in fulltime education.

6. On the 12th March 2010 the Respondent filed an Answer and Cross Petition.

7. On the 19th April 2010 the parties agreed to proceed by way of mutual Petitions and the Petitioner's Petition and the Respondent's Cross Petition were proved by consent on the 19th April 2010.

8. On the 1st June 2010 the parties entered into an interim Consent Order whereby the Petitioner was to have day to day care and control of the two minor children of the marriage, namely 'E' and 'B'. The Respondent was to have access to the two minor children at such time and on such conditions as the parties would agree between themselves. The Respondent was also ordered to pay interim maintenance to the Petitioner in the sum of $375.00 per month per child ($750.00 per month) and continue to make voluntary payments for the eldest child of the marriage.

9. The issues relating to the care, custody and control and access to the minor child have been agreed between the parties and, accordingly, the ancillary matters to be determined are:

i. The amount of maintenance which the Respondent should pay for the two relevant children of the marriage, namely 'E' and 'B';

ii. The disposal and distribution of the matrimonial assets.

10. For the purpose of the determination of the Respondent's Summons the following material was put before the Court:

i. The Petitioner's Affidavit of Means dated the 6th July 2010;

ii. The Respondent's Affidavit of Means dated the 12th July 2010;

iii. The Respondent's Reply to the Petitioner's Affidavit of Means dated the 27th July 2010;

iv. The Petitioner's Affidavit in Response dated the 6th September 2010;

v. The Respondent's Fourth Affidavit dated the 14th March 2011;

vi. The affidavit of Owen William Farrington filed on the 14th March 2011;

vii. The affidavit of Owen Farrington Snr. filed on the 14th March 2011;

viii. The affidavit of the Petitioner in response filed on the 24th March 2011;

ix. The Petitioner's written submissions filed on the 2nd February 2011;

x. The Respondent's skeleton submissions with Schedule 1 (Matrimonial Property) and Schedule 2 (Non Matrimonial Property);

xi. Further submissions from counsel for the Respondent dated the 14th March 2011.

Disposal and Distribution of Matrimonial Assets

11. In this case there is a fundamental dispute between the parties as to what assets are to be regarded as matrimonial assets, with the Respondent claiming that under the Matrimonial Causes Law the bulk of the properties referred to in the affidavits are not matrimonial assets and the Petitioner claiming that they are matrimonial assets.

Agreed Matrimonial Assets

Derek Farrington Construction Ltd. ("DFC")

12. DFC is a Cayman Islands company which is jointly owned by the parties and it is agreed between the parties that the Court should take this asset into account when it comes to the division of the matrimonial assets. As it relates to the Respondent's livelihood, the Respondent contends that DFC's ownership should remain with the

Respondent. DFC has one bank account with First Caribbean, namely #1637281 which currently has between CI$400 and CI$500.

Block 9A Parcel 455

13. It is agreed that the former matrimonial home, which is registered in the parties' joint names, is a matrimonial asset. The parties have agreed that the Petitioner should keep and hold the former matrimonial home, but that the value should be taken into account when dividing the assets. The matrimonial home is debt free. The Respondent voluntarily vacated the home to live in his sister's home.

14. The former matrimonial home is currently occupied by the Petitioner and the three children of the marriage and has a market value of CI$741,000.00. The Court notes that the former matrimonial home has a "special assumption valuation" in the sum of CI$590,000.00. The Petitioner would like to retain this home as it is the children's home and she has requested that the value which the Court attributes to it should be set off against any other assets to which she is entitled in the distribution.

15. The Respondent contends that he is not averse to this suggestion, although he has stated in his affidavit evidence that an additional CI$25,000.00 (approximate value) should be added to the value to ensure that the furniture is taken into account.

16. On the other hand, the Petitioner submits that most of the furniture is quite old and, save for some of the new furniture for the children, is the same furniture they had when they started living in the matrimonial home. The Petitioner values the furniture at approximately CI$15,000.00.

Block 8A Parcel 157

17. Block 8A Parcel 157 was purchased in 1997. It had been agreed between the parties that although this property is in the Respondent's name it was purchased from matrimonial funds. This property is valued at CI$242,000.00.

Maine Property

18. Lot 1 Map 3 Enfield, Maine, U.S.A. was purchased by the parties in 2005 at a cost of US$55,000.00. The current valuation of this property is approximately CI$44,539.00

Disputed Property

Block 9A Parcel 298H2

19. Block 9A Parcel 298H2 is registered in the name of the Respondent and his two siblings. The Respondent contends that this was property owned by his parents who take a small income from the property. The Respondent submits that the property is valued at CI$208,000.00. The Respondent's evidence is that he purchased this property in 1994 and built a four-bedroom duplex on it in 1997. The Respondent's evidence is that the beneficial owners of this property are his parents, although initially it was registered in his name only. On the 13th June 2007 the title to this property was transferred into the Respondent's name and the names of his two siblings, and the property remains registered in the names of the three of them. It is agreed between all concerned that the Respondent's parents should receive the rental income from this property to assist them with their medical bills.

20. The Petitioner's evidence is that the four-bedroom duplex (*supra)* was built and paid for by both her and the Respondent with matrimonial funds. The Petitioner claims that they used the income from the apartment to repay the Respondent's parents for a debt which the Respondent incurred prior to the parties' marriage.

21. The Petitioner contends that this property should have remained in the Respondent's name and it should be available to her, the Respondent, and their children as a matrimonial asset.

Block 9A Parcel 465

22. The Respondent contends that this land was owned by the Farrington family for many generations. The Respondent contends that the land was transferred in 2007 as a gift to him from his parents and registered in his sole name. The Respondent contends there was never any intention for the property to be considered matrimonial property. The Respondent values the property at CI$139,000.

23. The Petitioner's position is that she is entitled to a half of the value of this property.

Block 4D Parcel 478

24. This property was transferred to the Respondent and his siblings on the 6th July 2000. The Respondent contends that it was owned for many generations by the Farrington family and was transferred in 2000 as a gift to the three Farrington children in 1/3rd shares from their parents. The divided properties were registered in each of the siblings' sole names and they were never intended to be matrimonial property. The Respondent contends that his 1/3rd interest in this property is valued at CI$95,333.

25. The Petitioner contends that as the property was transferred to the Respondent on the 6th July 2000 – approximately ten (10) years after they were married – she should be entitled to a half share of the Respondent's 1/3rd share of this property.

Block 5B Parcel 141

26. The Respondent contends that this land has been owned for many generations by the Farrington family. Again, the Respondent contends that this was land transferred in 2000 as a gift to the three Farrington children in 1/3rd shares from their parents. The Respondent avers that his 1/3rd interest in this property is worth CI$500,000.00 and that it was never intended to be matrimonial property.

27. It is the Petitioner's position that the 1/3rd interest in this property was gifted to the Respondent and the Petitioner as a family asset, and as a consequence, she should be entitled to 50% of the Respondent's 1/3rd interest in this property.

Block 4E Parcel 12

28. Again, the Respondent contends that this land was owned for many generations by the Farrington family. It was transferred in 2000 as a gift to the three Farrington children in 1/3rd shares from their parents. The Respondent in his first affidavit dated 12th July 2010 admits that his 1/3rd interest in this property is worth CI$696,660.99. The Respondent contends that this was never intended to be matrimonial property.

29. The Petitioner contends that this was transferred to the Respondent and the Petitioner as a family asset, and accordingly she should be entitled to 50% of the Respondent's 1/3rd interest in this property.

Block 9A Parcels 769 REM1; 770-771 and 773-792

30. The Respondent contends that Block 9A Parcels 769 REM1; 770-771 and 773-792, described as the Mahogany Hill Land, was owned for many generations by the Farrington family. In 2008, ¼ share of the Mahogany Hill land was transferred to each of the three Farrington children as gifts. The Respondent contends that although the Land Register shows 1/3rd share for each child it is agreed between the Respondent and his siblings that a beneficial ¼ share of the Mahogany Hill land remains with the Respondent's parents. The Respondent contends that the intention behind the gift was to start a Farrington family development project.

31. The Respondent contends that this property was developed by a corporation, namely Mahogany Holdings Ltd., which is owned by himself, his siblings and his sister's husband. The Respondent further deposes that he owns 33,000 shares in this corporation, which is known as the Farrington family business, and it is worth $9,526.11, which amount represents the amount of funds currently in the bank account.

32. The Petitioner contends that the value of the raw properties without development is as follows:

i. Block 9A Parcel 769 REM1 – CI$760,000.00

ii. Block 9A Parcel 770-771, 773-792 – CI$1,679,000.00

33. The Petitioner maintains that in order to have the one large parcel subdivided, the titles to the properties were allocated as to 1/3rd share to each of the siblings and their respective spouses and not as joint proprietors.

34. The Petitioner maintains that each of the siblings and their respective spouses invested a sum of CI$100,000.00 to facilitate the subdivisions and the ancillary requirements of the Planning Department. The Petitioner maintains that this is not disputed by the Respondent, except that the Respondent submits that the CI$70,000.00 that was paid from their joint account was his funds from their joint account, and the balance of CI$30,000.00 was credited for work carried out by him, although it would appear to have been through their construction company, DFC. However, counsel for the Petitioner highlights the fact that the flowchart exhibited by the Respondent shows the contribution of CI$70,000 coming from "Derek and Denise Farrington".

35. The Petitioner deposes in her Affidavit of Means that in addition to her and the Respondent's contribution of CI$100,000.00 she acted as a "data entry clerk" in relation to the Development and was never paid for her services.

36. The parties agree that only one parcel of the subdivision has been sold for CI$80,000.00, and further that:

> "*The profit from this sale was distributed as follows:*
>
> *(a) $10,000.00 to Owen M. Farrington (Respondent's father);*
>
> *(b) $10,000.00 to Jean Farrington (the Respondent's sister);*
>
> *(c) $10,000.00 to Owen Farrington (Respondent's brother);*
>
> *(d) $10,000.00 to me (the Respondent), which was deposited in the current account of myself and the Petitioner; and;*
>
> *(e) $5,000.00 to the business to pay company fees*"

37. The Petitioner maintains that, bearing in mind the investment of matrimonial funds in relation to Mahogany Holdings Ltd., and the distribution of the initial profits to the Petitioner's and Respondent's joint accounts, and, what the Petitioner describes as her "sweat equity" which she and the Respondent put into the development to a value of CI$30,000.00, that the 1/3rd interest in this matrimonial property should be distributed equally between the parties.

38. Although the Petitioner accepts that there is an element of risk with this investment, she would like to retain her interest in the development, and is prepared to make whatever further cash injections are necessary in order to have the development completed.

39. If necessary, the Petitioner is prepared to have her interest in this property deferred until the development is complete.

Bank accounts

40. Both parties claim that the other has other accounts which have not been disclosed.

41. There is a small business account, #1644032. The value of this account at the date of the respective Affidavits of Means was $57,651.67 and now, apparently has an updated value of $2,674.46.

42. There is a fixed deposit account with First Caribbean Bank, with a current balance of CI$24,143.71.

43. There is a joint savings account #3431419 with First Caribbean, which currently has US$2,624.00 and is owned jointly.

Pensions

44. The Respondent's pension is with Silver Thatch and is valued at approximately $24,760.50.

45. The Petitioner's pension is valued at approximately $50,000.00.

46. The parties have agreed that they should each retain their own pensions for the sake of convenience.

Other assets

47. There is a Toyota Prado 2005 valued at approximately $17,000.00 held in the Respondent's name but driven by the Petitioner. It is agreed between the parties that the Petitioner should keep this vehicle.

48. There is a GMC Truck 2003 valued at $9,000.00 held in the Respondent's name and driven by the Respondent. It is agreed that the Respondent should keep this vehicle.

49. There is a 17' boat valued at approximately $5,000.00 owned by the Respondent as a family boat for the benefit of the children. It is agreed between the parties that the Respondent should retain this asset and ensure that the children have continued access to it.

The Law

50. Section 19 of the Matrimonial Causes Law (2005 Revision) sets out the general principles to be followed by the Court in ancillary matters and reads:

> *"In dealing with all ancillary matters arising under this law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties."*

51. The Cayman Islands Court of Appeal in ***Wight v. Wight*** CICA 6 of 2006 dated 30th November 2007 reviewed the equivalent English legislation, namely the Matrimonial Causes Act 1973, and referred to Lord Nicholls' Judgment in ***Miller v. Miller*** 2006 2 A.C. 618 at page 630 where Lord Nicholls stated:

> *"In **White v. White** (2001) 1 A.C. 596 Your Lordships' House sought to assist judges who had the difficult task of exercising the wide discretionary powers conferred by Part II of the Matrimonial Causes Act 1973. In particular the House emphasised that in seeking a fair outcome there is no place for discrimination between a husband and a wife and their respective roles. Discrimination is the antithesis of fairness. In assessing the parties' contributions to the family there should be no bias in favour of the money earner and against the home-maker and child-carer. This is a principle of universal application. It is applicable to all marriages."*

52. Forte J.A., in ***Wight v. Wight***, at paragraph 54, observed that s.25(1) of that (UK) Act (now substituted by s.3 of the Matrimonial and Family Proceedings Act 1984) provides:

> *"It is the duty of the Court, in deciding whether and how to exercise these powers to have regard to all the circumstances of the case."*

53. Forte J.A. set out the relevant English provisions and in particular s.25(2)(f):

> *"The contribution 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."*

54. Forte J.A. cited with approval the English decisions of ***Charman v. Charman*** [2007] EWCA Civ. 503 which followed ***White v. White*** in which Sir Mark Potter P. delivering the Judgment of the English Court of Appeal spoke (at paragraph 64) of the "*yardstick of equality of division*" having its origins in s.25(2) of the Act, and specifically in s.25(2)(f). Forte J.A. referred to Lord Nicholls' dicta at page 605 paragraphs D-E in ***White v. White*** where he stated:

> "*The yardstick reflected is a modern non-discriminatory conclusion that the proper valuation under s.25(2)(f), of the parties' different contributions to the welfare of the family should generally lead to an equal division of their property unless there is good reason for the division to be unequal. It also tallied with the overarching objective: a fair result.*"

55. The Cayman Islands Court of Appeal in ***Doak v. Doak and Ridley*** 2002 CILR 224 adopted and applied the principles in ***White v. White*** and Taylor J.A. delivered the judgment and stated at paragraph 17 on page 230:

> "*The decision of* ***White v. White*** *has already been relied on in the Grand Court in* ***Barrett v. Barrett*** *2001 CILR 65 and* ***Uzzell v. Uzzell*** *2001 CILR 12. In the latter case Sanderson J. compared the provisions of s.19 and s.22 of the Matrimonial Causes Law of these Islands with those of s.25(1) and (2) of the Matrimonial Causes Act 1973 dealt with by the House of Lords, and concluded that: "the discretion given to the Court by the Cayman legislation is, on balance, even broader than that granted by the English statute.*"

Sanderson J. referred particularly to the requirement of s.19 of the Cayman statute that in all "*ancillary matters*" regard be had to "*the responsibilities, needs, financial and other resources actual and potential earning power and the deserts of the parties.*"

Taylor J.A., in ***Doak v. Doak and Ridley***, noted that, included in s.22 among such ancillary matters is:

"(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse."

Taylor J.A. then said:

"We agree that the principles established by English authorities and particularly the decision of the House of Lords in ***White v. White*** *are applicable here."*

56. In ***Wight v. Wight*** Forte J.A., at paragraph 62 stated that:

"There is no reason to depart from what this Court has said in ***Doak v. Doak and Ridley*** *(supra). I agree that the discretion given to the Court by the provisions of the English legislation is "on balance even broader than that granted by the English statue."*

Forte J.A. continued:

"Consequently, these provisions are to be construed on the basis of the new approach to the institution of marriage and the fact that it is a union of equal partners. Each therefore would be entitled to an equal share of assets acquired in the marriage, unless there is good reason to depart from that principle. In coming to this conclusion I would reiterate that the principles espoused in the (UK) cases of ***White v. White, Charman v. Charman*** *and* ***Miller v. Miller*** *(supra) are as applicable to this jurisdiction as they are to the English jurisdiction."*

57. In this case the Court has to decide what is and what is not matrimonial property. The Petitioner maintains that this Court should presume that the intention must have been that properties donated and or gifted to one party, namely the Respondent, would be for the use of the family, especially since at the time of the donation the marriage had lasted for such a long time, and it would therefore be expected by the donors that the marriage and the family would continue and that the properties would be viewed and used as matrimonial assets for the benefit of the family.

58. On the other hand, the Respondent submits that Block 9A Parcel 298 and Block 9A Parcel 465 are not matrimonial property but his alone. Furthermore, the Respondent submits that what he describes as the "Shared Land", namely Block 4D Parcel 478, Block 5B Parcel 141 and Block 4E Parcel 12, and the "Mahogany Hill Land" are not matrimonial property. The Respondent maintains that this land has been in the Farrington family for generations. These were gifts to him and his siblings as part of the family inheritance and not intended to become matrimonial property.

59. The Respondent argues that the Court should only look at inherited and gifted property if the wife's needs cannot be met by the division of the matrimonial property, and cites ***Menkes v. Menkes*** 2005 CILR Note 25 and ***H v. H*** 2007 CILR 135. Furthermore, the Respondent submits that the rights of the third parties should be rigorously respected and relies on the decision in ***T L v. M L (Ancillary Relief: Claim Against Assets of Extended Family)*** [2006] 1 FCR 465.

60. The Cayman Court of Appeal in ***W v. W*** 2009 CILR 255 looked at the question of what is and what is not matrimonial property and the President, Sir John Chadwick, stated at paragraph 13 on page 260:

> *"It is pertinent, therefore, to note the guidance given in the English cases in respect to property which has been brought into the marriage by one of the parties: that is to say property which is not "the financial product of the parties' common endeavour", to adopt a phrase used by Lord Nicholls of Birkenhead in* ***Miller(2)*** *([2006] 2 A.C. 618, a paragraph 22). In relation to property of that nature Lord Nicholls said this in* ***White (3)*** *([2001] 1 A.C. at 610):*
>
> > *"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. However, in the ordinary case, this factor can be expected to carry little weight, if any, in the case where*

the family's financial needs cannot be met without recourse to this property.""

61. At paragraph 14 Sir John Chadwick poses the question:

> *"But what of property brought by one party into what has turned out to be a long marriage? Lord Nicholls said this (ibid., at para 25):*
>
> > *"With longer marriages the position is not so straightforward. Non-matrimonial property represents a contribution made to the marriage by one of the parties. Sometimes, as the years pass, the weight fairly to be attributed to this contribution will diminish, sometimes it will not. After many years of marriage the continuing weight to be attributed to modest savings introduced by one party at the outset of the marriage may well be different from the weight attributable to a valuable heirloom intended to be retained in specie. Some of the matters to be taken into account in this regard were mentioned in the above citation from the White case. To this non-exhaustive list should be added, as relevant matter, the way the parties organised their financial affairs.""*

62. At paragraph 15 of ***W v. W*** Sir John Chadwick stated:

> *"Lord Nicholls went on (ibid., at para. 26) to point out that it was wrong to think that, in every case, a clear and precise boundary should be drawn between the categories of matrimonial property and non-matrimonial property because as he observed; "Fairness has a broad horizon." Nor did the "equal sharing" principle require that, in every case, each of the party's assets must be separately and exactly valued. The costs involved could quickly become disproportionate. When it became necessary to distinguish matrimonial property from non-matrimonial property the court could do so with a degree of particularity or generality appropriate in the case. And the judge may then give to the contribution made by one party's non-matrimonial property the weight he considers just, with such generality or particularity as he considers appropriate in the circumstances of the case."*

63. Sir John Chadwick continued at paragraph 16:

> *"As I have said, the judge's approach was to categorize the husband's interest in the company and whatever assets it (sic) [he] had as non-matrimonial property and to hold that, on the basis of that categorization, the wife could have no claim upon that interest, her needs having been provided for from matrimonial property. That is not the correct approach. This was not a short*

marriage, as the judge recognized. The judge needed to give much closer attention to the source of the various assets owned by the company; and to the way in which the parties had treated those assets during the marriage."

Conclusion

64. To adopt Lord Nicholls' dicta, there is no clear or precise boundary between the categories of matrimonial property and non-matrimonial property, and fairness does have a broad horizon.

65. It is not challenged that all the property which the Respondent claims to be non-matrimonial property was acquired by the Respondent during the marriage.

66. The Petitioner was the mother and prime carer for the children, and she also took an active role in DFC and the Respondent's interest in property and property development.

67. It would appear to this Court that the financial needs of both parties can be met quite easily from the assets acquired during the marriage. However, the overriding principle to be followed is to achieve a division of assets which is fair to both parties.

68. All the gifts of land to the Respondent were transferred to him during the marriage and therefore it would be difficult to describe them as anything other than a contribution made to the welfare of the family. It is recognised that the discretion given to this Court by the Matrimonial Causes Law is broader than the equivalent English legislation and therefore I view all the property as property which has been brought in to the marriage.

69. Accordingly, as the parties' 20-year marriage can be properly described as a long marriage, and because of the active role both parties played in DFC, I find that the Court should consider the property gifted to the Respondent as being gifted to the Respondent and the Petitioner as matrimonial property, and to be considered as such when dividing the assets.

70. Having reviewed the evidence of both parties and read, and listened to, the submissions of their counsel, it is my view that the following distribution is fair and reasonable to both parties and meets the yardstick of equality of division after, what can properly be described as, a long marriage. Accordingly, I Order:

i. That the Petitioner do transfer her interest in DFC to the Respondent;

ii. That the Respondent do transfer to the Petitioner his interest in the former matrimonial home, namely West Bay North East Block 9A Parcel 455;

iii. That the Respondent do transfer to the Petitioner his interest in Block 8A Parcel 157;

iv. That the Respondent do transfer to the Petitioner his interest in the property in Enfield, Maine – Lot 1 Map 3;

v. That the Respondent do retain his sole interest in Block 9A Parcel 298, and Block 9A Parcel 465;

vi. That the Respondent do retain his sole interest in the property known as the "Shared Land" namely his 1/3rd share in:

a) Block 4E Parcel 12;

b) Block 4D Parcel 478;

c) Block 5B Parcel 141.

71. The only outstanding asset in which both parties claim an interest is the Mahogany Hill Land.

72. The main dispute between the parties centres on whether or not the Petitioner has an interest in the Mahogany properties.

73. It would appear that in 2008, during the currency of the parties' marriage, the Respondent and the Petitioner, and each of the Respondent's siblings and their spouses received a gift of ¼ share of the Mahogany land. There is no evidence before this Court to suggest that this gift was not a normal gift to the Respondent and the Petitioner and the Respondent's siblings and their spouses and families. In other words, the evidence would appear to this Court that the gift was made to the Respondent whilst he was married to the Petitioner for the benefit of the Respondent, the Petitioner and their three children. Should the marriage not have broken down irretrievably, the Petitioner would have shared in whatever benefits resulted from the Respondent's share of this property, with the Respondent's other siblings, their respective spouses and their families.

74. In addition, I find that the Respondent and the Petitioner have invested CI$100,000.00 – being CI$70,000.00 from their joint account, and the balance of CI$30,000.00 credited for work done by their construction company DFC. What is also of particular significance is that when the first (and I believe only) parcel of the Mahogany Land subdivision was sold, the profit was divided up and, as the Respondent deposed in his affidavit, as set out in paragraph 36 above, "$10,000.00

to me (the Respondent), which was deposited in the current account of myself and the Petitioner".

75. The Petitioner has deposed in her Affidavit of Means that she acted as a data entry clerk in relation to the development of the Mahogany property. Although she was never paid for her services, her work benefitted the development and it appears to this Court that the Petitioner and the children of the marriage should benefit from any increase in value of this development in later years.

76. Both parties accept that this is a commercial development, and therefore the investment is one which is subject to the vagaries of the property market and the economy generally. There is no guarantee that the development will be a commercial success and, should the Petitioner retain her interest, it may be that she will be asked to provide a further injection of cash.

77. However, I find that she has invested matrimonial funds and time in the Mahogany development project, and, in my view, she is entitled to retain her interest in this development. It is, of course, open to the Respondent to put a monetary value on the Petitioner's interest and to buy her out at any time. In addition to granting the Petitioner an interest in the Respondent's share of Mahogany Holdings Ltd. the Court notes that the Respondent will still retain a significant interest. Furthermore, as a result of the division of matrimonial assets set out in paragraph 70 above, his sole interest in the other properties gifted to him will remain undisturbed.

78. I am attracted to the suggestion which was adopted in ***Wight v. Wight***: that the re-distribution of the parties' interests in this property may take some time to come to fruition and therefore would have to be deferred. However, in an effort to achieve a

fair division I do find for the Petitioner and allow her to retain a 50% interest in the Respondent's shareholding of Mahogany Holdings Ltd.

Other Assets

79. Having read the affidavits of the parties and the submissions of their respective counsel I make the following Order in relation to the following matrimonial assets:

i. the Toyota Prado is to be transferred to the Petitioner;

ii. the GMC truck is to be transferred to the Respondent;

iii. the 70' boat is to be transferred to the Respondent;

iv. each of the parties is to be allowed to retain the proceeds of their respective pension; and

v. the funds in the bank accounts of the parties including any DFC bank account are to be divided 50:50 between the parties.

Maintenance and Educational Expenses for the Children of the Marriage

80. Section 21 of the Matrimonial Causes Law reads:

> *"21. At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make order for-*
>
> *(a) ...*
>
> *(b) ...*
>
> *(c) ...*
>
> *(d) ...*
>
> *(e) making financial provision from the property of either spouse for the children of the marriage...;*
>
> *(f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage...;*
>
> *(e[sic]) ..."*

81. On the 1st June 2010 the parties entered into an interim Consent Order. The material paragraphs relevant to this current application were at paragraphs 3, 4 and 5, which read as follows:

> *"3. That the Respondent shall pay interim maintenance to the Petitioner for the two minor children of the marriage, namely ['E' and 'B'] in the amount of $375.00 per month per child ($750.00 per month) and shall make voluntary payments for the older child of the marriage ['N'] in the same amount, which payments shall commence on the first day of each month commencing on the 1st July 2010 and being paid thereafter on the first business day of each month.*
>
> *4. That the above Order for maintenance shall remain in place as long as the children are receiving fulltime education and are under the age of 21 years.*
>
> *5. That the Respondent shall bear the full costs of the three children's educational expenses, if any, until the final Order of the Court in the ancillary matters is made."*

82. The eldest child of the marriage, 'N', received a scholarship which covers her college fees and expenses. 'E' is attending college fulltime and may also be successful in receiving a scholarship, so the educational expenses for 'N' and 'E' may be minimal.

83. The Petitioner submits that the interim Order should be made into a final Order, and should the Respondent have to pay no educational expenses, he could increase the maintenance for the two younger children of the marriage.

84. The Respondent complains that he bears the major share of the expenses for the children because of the costs of the educational expenses. He further argues that he

currently pays initially between 66% and 72% of the children's overall costs on an interim basis. The Respondent submits that this is unfair because he argues that the current incomes of both the Petitioner and the Respondent are the same, therefore the Petitioner should pay 50% of the overall costs for the children, including education.

85. The Respondent acknowledges that his earning power is greater, particularly if the economy picks up and he has confirmed in his affidavit that he is willing to pay more, should his income improve.

86. Accordingly, in order to be fair to both parties, and, bearing in mind the needs of the children, I make the following Order:

i. That the Respondent shall pay maintenance to the Petitioner for the two younger children of the marriage, 'E', 'B', in the amount of CI$400.00 per month per child until 'E' and 'B' reach the age of 21 years or complete their tertiary education, whichever occurs sooner;

ii. That the Respondent will continue to make voluntary payments for the eldest child of the marriage, namely, 'N', in the sum of CI$400.00 per month whilst 'N' lives with the Petitioner.

iii. That the costs of the children's educational expenses be borne 50:50 by the Petitioner and the Respondent.

87. Finally, I make no order as to costs. However, I will of course consider either oral or written submissions if counsel decide to make submissions on the question of the costs of the hearing.

Dated this the 31st day of May 2011

Honourable Mr. Justice Charles Quin
Judge of the Grand Court