THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
CLAIM NO. DOMHCV2017/0015

BETWEEN:

NATHANIEL GEORGE **Petitioner**

and

ZILIA APHINIA GEORGE **Respondent**

Before Her Ladyship, the Honourable Madame Justice Zainab Jawara-Alami

Appearances:

Mrs. Hazel Johnson, Counsel for the Petitioner
Mrs. Zena Moore-Dyer, Counsel for the Respondent

2025: February 27th (Trial)
July 08th (Submissions), (Hearing)
2026: July 29th (Decision)

JUDGEMENT

Ancillary relief

Background

[1] **Jawara-Alami. J-** The petitioner and the Respondent were married in 1993 and last lived together on the 4th November 2011, when the Petitioner left the matrimonial home. In 2017, the

Petitioner filed an application for a divorce and a decree absolute was granted to the parties on the 22nd June 2018.

[2] The Respondent who is the Applicant herein, brings this application for ancillary relief for reliefs as follows:

1. That ⅔ of the matrimonial home be transferred to the Respondent
2. That the Respondent's ½ share of the land at Batali be transferred to the
3. Respondent Such further and other relief as the Court deems fit

The Facts

[3] The Respondent/Applicant is 59 years old, and is currently the Manager of Vibes Radio. She resides in the matrimonial home with the adult children of the marriage and her grandchildren.

[4] The Respondent states that, on 2 October 1992, prior to the parties' marriage, she obtained a loan in the sum of $22,917.20 from the then Roseau Co-operative Credit Union. She deposes that the loan proceeds were applied as follows: $6,105.00 for improvements to the house, $2,362.20 to repay a pre-existing loan incurred before the marriage, and $14,450.00 to meet expenses associated with the marriage. At the time, the Respondent was employed as an Accountant with ABC Containers, earning a monthly salary of $4,000.00, while the Petitioner earned a substantially lower income. She states that the loan was repaid through monthly salary deductions of $752.00. The co-makers of the loan were the Petitioner and Ms. Rosanne Pringle.

[5] The Respondent states that, after ABC Containers ceased operations in Dominica, she received severance pay and remained at home to care for the parties' first child. She further states that she purchased most of the child's necessities, while the Petitioner contributed only a few items. Thereafter, she obtained employment with the National Bank of Dominica but subsequently resigned due to pregnancy-related illness.

[6] She claims that she was primarily responsible for purchasing food for the household and that produce from her mother's inherited family estate supplemented the family's needs. While the Petitioner contributed some groceries, he also shared produce with his family.

[7] The Respondent maintains that, although she did not repay the loan secured for the Salisbury property, she was responsible for repaying the loan relating to the Fond Cole property while employed at Courts as an Internal Auditor from 1997 to 2008, earning a monthly salary of $2,950.00. She further maintains that she repaid loans obtained to finance groceries, household items, the children's school fees, and their other personal expenses. The Respondent also states that she declined an offer of employment as a Regional Auditor because the position required extensive travel at a time when the parties' children were still young.

[8] The Respondent maintains that, at some point during her employment, she was offered the position of Regional Auditor for the Caribbean but declined the opportunity because the role would have required her to be away from Dominica frequently. She explains that, at the time, the parties' children were young and the Petitioner was often absent, leaving her with primary responsibility for their care.

[9] The Respondent explains that she obtained several loans to meet expenses relating to groceries, clothing, household needs, and refinancing. Although the Petitioner paid the electricity bill, she was responsible for the water and Marpin bills. She adds that she and the children now contribute towards the household expenses, with one of the daughters also making contributions towards the mortgage.

[10] The Respondent maintains that she made significant financial and personal contributions to the care of the children and the household, including purchasing clothing and personal items, paying school expenses, providing health insurance coverage, and contributing towards household needs. She states that she incurred expenses for furniture, appliances, and other household items, and obtained several loans which she repaid. She further asserts that, although the Petitioner made some financial contributions after separation, these were later reduced or discontinued.

[11] The Respondent disputes the Petitioner's claim regarding a $40,000.00 loan account transferred towards the mortgage and maintains that the Petitioner retained possession of a vehicle purchased

for her after leaving the matrimonial home. She also states that she later earned income through employment and a small business venture, which was closed due to COVID-19. Finally, she maintains that the Petitioner occupies part of the Batali property, constructed a house there without consulting her, and that she has limited knowledge of the property arrangements.

[12] The Petitioner maintains that, before the marriage, he occupied land at Glasgow, Fond Cole, where he built a one-bedroom house with the assistance of small loans, which later became the matrimonial home. He states that he was employed by AC Shillingford & Co. Ltd. as a Data Processing Manager in 1991, earning $2,300.00 per month, and that he obtained a $20,000.00 loan to finance the wedding. He further maintains that, after the birth of their first child in 1994, the parties agreed that the Respondent would remain at home to care for the child, although this is disputed by the Respondent.

[13] The Petitioner asserts that he later operated an Amway business from the matrimonial home, purchased household and baby items through the business, and incurred a debt of over US$10,000.00 when the business failed. He also states that he financed family vacations to Miami and St. Lucia. In 1997, he purchased the Salisbury property with a loan from the Roseau Credit Union, which was registered in their joint names, but asserts that the Respondent made no contribution towards the loan and was unaware of the property's location until 2015.

[14] The Petitioner also asserts that he was responsible for the family's expenses, including groceries, utilities, cooking gas, clothing, insurance, childcare, school fees, books, uniforms, graduation expenses, and allowances for the children. He also asserts that he remained actively involved in the children's academic and social lives.

[15] He outlines his employment progression from AC Shillingford to Domlec, where he received several promotions and salary increases. He states that he purchased vehicles, insured the family under his employer's health plan, and paid the associated expenses. He further states that because of his existing debts, the parties agreed that the Respondent would obtain the loan to purchase the Glasgow property, which was registered in their joint names.

[16] In 2005 the parties demolished the wooden house at Fond Cole and constructed a concrete house financed through separate loans of $150,000.00 each. He claims that because the Respondent's income was insufficient, he paid his own loan installment together with a substantial portion of hers, although this is disputed by the Respondent.

[17] The Petitioner states that he purchased a jeep in 2007, completed a master's degree in 2009, and financed a graduation trip for himself and the Respondent. He further states that after the parties jointly purchased furniture on hire purchase, he assumed responsibility for the payments when the Respondent stopped contributing.

[18] He maintains that after leaving the matrimonial home in 2011, he continued paying utilities, providing groceries and household supplies, carrying out maintenance, and later provided monthly financial support to the Respondent and their son. He also states that he regularly supplied produce from his garden for his grandchildren.

[19] The Petitioner denies instructing the Credit Union to sell the house but states that approximately $40,000.00 from his savings was eventually applied to the mortgage arrears.

[20] He also gives the Respondent's employment history, disputes her account of the Salisbury property, and states that he occupies one half of the land while the other half remains vacant. He sets out his present income and expenses and asks the Court to transfer the Glasgow property to the Respondent and the Salisbury property to him, with each party assuming responsibility for the mortgage and transfer costs relating to the property awarded.

The Evidence

[21] Under cross-examination, the Respondent accepted that the Petitioner had occupied the Fond Cole property before the marriage, that it had been allocated to him, and that she made no contribution to the original house. She also agreed that the mortgage obtained after the original house was demolished consisted of two equal loans, that the Petitioner paid his full mortgage installment and contributed $536.00 towards hers. She further accepted that the Petitioner told her about the

Salisbury property, although she maintained that she regularly visited it with the family. She also agreed that the Salisbury land was surveyed into two equal half-acre portions.

[22] The Respondent further accepted that the household benefited from the Petitioner's Amway business, that they jointly paid his sister to care for the children, and that the Petitioner contributed to the children's education, including Denzel's secondary school expenses. She also agreed that the Petitioner purchased household groceries while employed at ACS and occasionally thereafter.

[23] She also agreed that the Petitioner delivered the insurance proceeds following discussions about repairing the roof, that the parties had engaged in settlement discussions before proceedings were filed, and that after the hurricane he checked on the children, assisted with cleaning, secured the house, and covered part of the roof with tarpaulin. She further accepted that the Petitioner purchased several household items, including a bed, table, television, drawer set, mirror, and dressing table. Finally, she stated that when the Petitioner left the matrimonial home he initially took both vehicles but later returned one at her request, which she eventually sold for parts.

[24] Under cross-examination, the Respondent made several admissions which were inconsistent with the impression created in her evidence-in-chief. While she portrayed herself as having been primarily responsible for the children's maintenance and the household expenses, she accepted that the Petitioner contributed towards the payment of school fees, uniforms, books, after-school care, groceries, furniture, and household appliances

[25] Further, although the Respondent stated that she decided to place the matrimonial home in both parties' names after purchasing it from the Government, she accepted during cross-examination that the property had been allocated to the Petitioner and that he was the person required to make the application to the Ministry of Housing for her name to be added to the allocation.

[26] Under cross examination the Petitioner maintains that after leaving the matrimonial home, he lived in rented accommodation but, after resigning from Domlec in 2015, he could no longer afford the rent and moved to the property at Salisbury. He stated that he constructed a small, unfinished

structure on the land closest to the access road, consisting of a single room with a washroom, toilet, living area, and kitchen combined. He also stated that he cleared and planted the entire property.

[27] In relation to the financial documents, the Petitioner testified that the cheque stubs were original documents from approximately 10 to 15 years ago, they had not been altered, and were in numerical sequence.

[28] The Petitioner confirmed that the Salisbury property no longer had a mortgage and that he was no longer making payments towards the matrimonial mortgage once his savings and retirement funds held at the credit union were exhausted.

[29] The Petitioner's documentary evidence comprised of twenty-six exhibits, marked NG1 to NG26, including receipts for expenditures incurred during and after the marriage, employment contracts, and valuation reports for both properties

The Issues

[30] The issue arising for determination in these proceedings is how the respective shares in the matrimonial assets should be apportioned between the parties

The law and Discussions

[31] It is well established that, upon the dissolution of a marriage, the matrimonial assets, including the matrimonial home and other real property, are to be distributed equitably between the parties. In in determining the appropriate allocation of capital and income, the Court's objective is, so far as practicable, to place the parties in the financial position they would have occupied had the marriage continued and each had properly discharged his or her financial obligations and responsibilities to the other.

[32] Applications for financial provision and property adjustment in Dominica are governed by the **Matrimonial Causes Act 1973 of the UK**. **Sections 23 and 24** empower the Court, upon granting a decree of divorce and in certain other circumstances, to make financial provision and property adjustment orders. Section 23 authorises orders requiring one party to make payments to the other,

while section 24 empowers the Court to order the transfer of real or personal property and to adjust ownership irrespective of legal title. **Section 24A** further empowers the Court to make ancillary orders for the sale of property

[33] **Section 25(1)** requires the Court, in determining whether and how to exercise these powers, to have regard to all the circumstances of the case, giving first consideration to the welfare of any child of the family under the age of eighteen.

[34] In exercising its powers, **section 25(2) requires the Court to consider:**

> **(a) the income, earning capacity, property and other financial resources of each party, both present and foreseeable;**
> **(b) the financial needs, obligations and responsibilities of each party, both present and foreseeable;**
> **(c) the standard of living enjoyed by the family before the breakdown of the marriage;**
> **(d) the age of each party and the duration of the marriage;**
> **(e) any physical or mental disability of either party;**
> **(f) the contributions made by each party to the welfare of the family, including contributions as homemaker or caregiver; and**
> **(g) in proceedings for divorce or nullity, the value of any benefit, such as a pension, which either party will lose the opportunity to acquire by reason of the dissolution or annulment of the marriage.**

[35] These statutory factors must be considered alongside the objective contained in the concluding words of **section 25(1), namely:**

> **"...as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other."**

[36] It is noteworthy that the "tailpiece" of section 25 continues to apply in Dominica, which has not adopted the Matrimonial and Family Proceedings Act 1984. It reflects the "reasonable requirement" approach to ancillary relief, requiring the Court to make an equitable adjustment having regard to what is fair in the circumstances rather than striving for equality. As was observed in **Toussaint v Toussaint**[1] **, "Equality is not to be found in S25 of the Act and is not the concept."**

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[1] DM 1985 HC 2

[37] Against this statutory framework, the Court now turns to the evidence by reference to the factors set out in section 25 in determining the appropriate ancillary relief. These factors include the parties' respective financial resources and needs, the standard of living enjoyed during the marriage, and the contributions made by each party to the welfare of the family.

Income, earning capacity, property financial needs, obligations and responsibilities of each party, both present and foreseeable and other financial resources

[38] The starting point in resolving the issues between the parties is to identify the matrimonial assets of the marriage. The matrimonial assets were described in **Watchel v Watchel** [2]as;

> **"…..these things which are acquired by or other or both of the parties with the intention that they should be continuing provision for them or their children during their joint lives, and used for the benefit of the family**"

Once identified, the matrimonial home and any other matrimonial assets must be distributed equitably, having regard to the parties' respective earning capacities and contributions.

[39] The Matrimonial Assets include the following:-

(i) The former matrimonial home situated at Fond Cole, in the Parish of St George, in the Commonwealth of Dominica and registered in Book of Titles F15 folio 73 in the names of Nathaniel George and Zilia George as Joint Tenants.

(ii) 1 acre of land, part of Batalie Estate, (Grand Savannah) in the Parish of St Joseph, in the Commonwealth of Dominica, registered in Book of Title K12 folio 95 in the joint names of Nathaniel George and Zilia George as Joint Tenants.

[40] In this case instant, the certificates of title[3] establish that the Petitioner and the respondent hold the properties as joint tenants. it is therefore the presumption that both parties have equal shares to both the properties. Now, the legal effect of this according to **Tolleys Estate Planning**[4] is, where property is held as joint tenants, each joint tenant is entitled to the whole of the asset in equal shares

[2] (1973)1 ALL ER 829
[3] Exhibit 1Register book of titles F15 folio 73
Exhibit 2 Register Book of titles K12 Folio 95
[4] (LexisNexis Butterworths), Chapter 12, "Lifetime Planning," para. 2.89 ("Jointly held property").

and, on death, the deceased's share of the property automatically passes by survivorship to the surviving joint tenant.

[41] In **Goodman v Gallant**, it was established that severance of a joint tenancy results in the division of beneficial ownership into equal shares unless otherwise agreed. This principle applies irrespective of the original contributions to the purchase price of the property. Accordingly, upon severance, each party would hold their share as tenants in common, and the court may then determine how these shares are distributed or adjusted under **Section 24 property adjustment orders**

[42] In **Standish v Standish**[5], the court held the position that equal division is the default starting point for the matrimonial home. However, departures from the 50:50 division may be justified based on factors such as unequal financial contributions, or differing needs, as long as the property qualifies as matrimonial.

[43] Similarly in **Stack v Dowden**, Baroness Hale observed that;

> **"When a couple are joint owners of the home and jointly liable for the mortgage, the arithmetical calculation of how much was paid by each is likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. At the end of the day, having taken all this into account, cases in which the joint legal owners are taken to have intended that their beneficial interests should be different from their legal interests will be very unusual."**

[44] In applying the foregoing principles to this case, it is obvious that the starting point is that the parties' interest in the matrimonial property is presumed to be equal unless there is a strong reason to depart from that. The evidence demonstrates however, that the Petitioner bore a significant financial burden of servicing the mortgage not only during the marriage but, significantly, for a period

[5] 2022 EW FC-128

exceeding five years following the breakdown of the marriage and the parties' separation. This continued payment is a factor to which the court attaches considerable weight..

[45] By continuing to discharge the mortgage on a property which the Petitioner no longer occupied, the Respondent preserved and maintained an asset from which both parties stand to benefit. The Court must therefore take this contribution, together with the contributions made by the Petitioner, into account when determining whether an adjustment to the presumed equal division is warranted.

[46] Under section 24 of the Matrimonial Causes Act 1973, the Court has the power to make property adjustment orders, including orders for the transfer of property from one party to another, the settlement of property for the benefit of a party or any child of the family, and the variation or extinguishment of interests in property. The exercise of this discretion is directed towards achieving a fair financial arrangement between the parties, having regard to the factors set out in section 25.

[47] In determining what constitutes a fair adjustment in this case, the Court must consider the parties' respective circumstances, contributions, and the present use and value of the matrimonial assets. The salient facts include that the Respondent continues to reside in the matrimonial home with the adult children of the marriage and her grandchildren

[48] The Petitioner left the matrimonial home in 2011, rented a property until about 2015 when he constructed a one bedroom property on the Batali property where he currently resides. He solely finances the acquisition and development of that property and completed payment in 2022. The property was valued by G S Surveyors Ltd at $530,000.00.

[49] There is presently no outstanding mortgage on the 1 acre of land at Batalie Estate, Grand Savannah. The Respondent unilaterally paid off the property and has divided the property in half. The Petitioner alleges that he has taken the most valuable half (1/2) share of the land, valued at EC$326,700.00 on which he has constructed a dwelling house on his half (1/2) share of the land and has given half (1/2) share of less value to the EC$283,000.00.

[50] The evidence further establishes that the mortgage over the matrimonial home at Fond cole was structured so that the Respondent was to pay EC$800.00 a month towards her share of the loan and the Petitioner was required to contribute EC$1,200.00 a month towards his share of the loan. This was the arrangement when the mortgage for the matrimonial home was obtained from the National Cooperative Credit Union Ltd. The Petitioner also paid an additional $536.00 monthly towards the Respondent's share of the mortgage. He continued making this contribution of $536.00 until 2022 when he ceased payments. The petitioner asserts thatapproximately EC$40,000.00 from his savings savings was applied towards the mortgage. The Court will consider this evidence in assessing the parties' respective contributions to the matrimonial property

[51] The mortgage statement from the National Cooperative Credit Union Ltd as at February 2025 reflects the following position: In respect of the Petitioner's mortgage account: arrears of EC$97,803.05; principal balance of EC$128,771.32; and pay-off balance of EC$180,933.26. In respect of the Respondent's mortgage account:arrears of EC$63,310.00; principal balance of EC$78,215.65; and pay-off balance of EC$94,462.94.

[52] The combined pay-off balance required to discharge both mortgage accounts is therefore EC$275,396.20. Against the valuation of the matrimonial home of EC$455,634.00, the approximate equity in the property is EC$180,237.80.

[53] The Court has carefully considered the Petitioner's greater financial contributions towards the acquisition and maintenance of the properties. His sole financing of the Batali property, notwithstanding that it was held in the parties' joint names, together with his larger contribution towards the matrimonial home mortgage and his continued assistance with the Respondent's mortgage obligations until 2022, are matters to which the Court attaches significant weight under section 25(2)(f) of the Act.

[54] However, those contributions are not the sole consideration. Section 25 requires the Court to consider all the circumstances of the case, including the parties' respective incomes, earning capacities, financial needs and resources. The Court must also have regard to the Respondent's

contributions, both financial and non-financial, throughout the marriage. The evidence demonstrates that she made significant contributions to the welfare of the family, including caring for the children, meeting their educational and personal needs, maintaining the household, and making contributions towards the mortgage and other household expenses. These contributions cannot be measured solely in monetary terms and are relevant considerations under section 25(2)(f) of the Act. The Court must therefore assess the parties' respective contributions in the round, recognising that the preservation and welfare of the family unit involved both financial input and unpaid domestic responsibilities.

[55] In **Dart v Dart** [6] Butler-Sloss L.J articulated that the jurisdiction to make ancillary relief orders applies to all classes of persons. However, the underlying principle is that there ought to be no discrimination between husband and wife in the performance of their respective roles. His Lordship's dicta at page 1578 is worth reproducing. He said at Letters E - G:

> **"Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife or forced upon them by circumstances, fairness requires that this should not prejudice or advantage elther party when considering paragraph (f), relating to parties contributions...If in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money earner and against the home-maker and the child"**

[69] The Court must therefore consider the parties' financial positions as a whole. While the Petitioner's financial contributions are significant,they do not justify an order that would leave the Respondent with the burden of a heavily encumbered matrimonial home while the Petitioner retains the benefit of a mortgage-free property. Such an outcome would not achieve the objective of section 25, nor would it accord with the tailpiece, which requires the Court, so far as practicable and just, to place the parties in the financial position they would have occupied had the marriage not broken down and

[6] **DART** [1996] 2 F.L.R. 286, 303

each properly discharged his or her financial obligations. On this point, the court In **Martin v Martin**[7] observed that

> **"it is of primary concern in these cases that on the breakdown of the marriage the party should, if possible, each have a roof over his or her head. That is perhaps the most important circumstance to be taken into account in applying section 25 of the Matrimonial Causes Act 1973…It is important that each party should have a roof over his or her head whether or not there are children of the marriage."**

[70] The starting point therefore in the assessment of the matrimonial assets remain equality. As recognised in **Stonich** v Stonich**,** applying the principles expressed in **Lambert v Lambert**[8] and **white v white** [9] the court observed that;

> **"In such a case I see no reason why the assets acquired during the marriage ought not to be equally divided. As Lord Nicholls states, each in their different spheres contributed equally to the family and, as a general guide, equality in the distribution of matrimonial assets should be departed from only if, and to the extent that, there is good reason for it"**

[71] Thus, equality in the distribution of matrimonial assets should only be departed from where, and to the extent that, there is good reason to do so. The Court's task is therefore not to apply a rigid formula but to determine whether the circumstances of this case justify a departure from the equal division principle

[72] In considering whether such a departure is warranted, the Court must have regard to the factors set out in section 25 of the Matrimonial Causes Act 1973, including the parties' respective financial and non-financial contributions, their needs, resources, and the circumstances in which the assets were acquired and maintained. While equality provides the starting point, it does not prevent the Court from recognising substantial differences in contribution where the evidence demonstrates that a different allocation would produce a fairer outcome.

[73] In applying these principles, due regard must be had to not only the Petitioner's contributions but also to the needs of the Respondent. As explained in **Miller v Miller; McFarlane v McFarlane**[10], the exercise under section 25 involves consideration of the concept, needs, compensation, and sharing.

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[7] [1977] 3 All ER 762 at 765.
[8] (2002) EWCA Civ 1685
[9] White vs. White (2001) 1 A.C. 596
[10] [2006] UKHL 24

[74] In **Standish v Standish** [2025] UKSC 26 The supreme court reaffirmed that, the source of property remains relevant and that unequal division may be justified where contributions are unmatched. The principle established in this case was that even where property forms part of the matrimonial property, the Court may depart from equality where the circumstances justify it.

[75] In assessing the parties' respective contributions to the acquisition, preservation, and maintenance of the matrimonial assets, I have also considered the evidence concerning the insurance proceeds in the sum of EC$132,867.00 received by the Respondent following hurricane damage to the matrimonial home. Although those funds were paid for the repair and restoration of the property, the evidence establishes that a portion of the proceeds was applied to mortgage payments and other expenditure unrelated to the repairs. While the payment of the mortgage ultimately benefited the matrimonial asset, the Respondent has not satisfactorily accounted for the entirety of the insurance proceeds or explained the increase in the cost of the repairs. This is a relevant consideration in evaluating the parties' overall financial stewardship of the matrimonial assets.

[76] These contributions must, however, be balanced against the Respondent's considerably lower earning capacity, her continued occupation of the matrimonial home, and her financial needs. Section 25 requires the Court to consider all the circumstances of the case, and the exercise is not one of reimbursement for financial contributions alone. Rather, the Court must arrive at a result that is fair and just, having regard to the statutory factors and the objective contained in the tailpiece of section 25.

[77] Weighing the parties' respective financial resources, needs, obligations, and contributions, and considering the parties' property portfolio as a whole, I am satisfied that fairness is achieved by recognising the Petitioner's substantially greater financial contributions while also protecting the Respondent's housing needs and financial circumstances. In the exercise of the Court's discretion under sections 24 and 25 of the Matrimonial Causes Act 1973, I therefore conclude that the parties' beneficial interests in the net matrimonial assets should be adjusted in the proportion of 60% to the Petitioner and 40% to the Respondent. This division gives appropriate weight to the Petitioner's

financial contributions while remaining consistent with the statutory objective of achieving a fair outcome.

[78] The parties have expressed their opinion in how the division pf the assets should be made. They have both agreed in principle that the Respondent retain the matrimonial; home and the Petitioner the Batali estate. In saying this, I recognise that any order transferring the matrimonial home to the Respondent must also address the outstanding mortgage liability. The Court cannot ignore that the Petitioner remains liable to the National Cooperative Credit Union Ltd unless the lender agrees to release him from his obligations. The issue of the outstanding mortgage remains unresolved and as such the parties cannot achieve a true clean break if they remain jointly liable to the Credit Union. The difficulty is that the matrimonial home is jointly owned, but the mortgage liability is divided into two separate loan accounts. The Court must decide whether the Respondent should assume responsibility for the home and its mortgage, whether the Petitioner should remain liable, or whether the property should ultimately be sold.

[79] Hence, is important at this point to determine the Total net pool of the matrimonial assets. This is EC$710,237.80 being the Batali Property Value of EC$530,000; the Matrimonial Home Value of EC$455,634 But subject to mortgages of EC$275,396.20 giving a Net value of EC$180,237.80

[80] A 60/40 division would result in the Petitioner receiving EC$426,142.68 and the Respondent: EC$284,095.12. The Batali Estate property, which is valued at EC$530,000.00, exceeds the Petitioner's 60% entitlement by EC$103,857.32. Conversely, if the Respondent were to retain only the equity in the matrimonial home, valued at EC$180,237.80, she would fall short of her 40% entitlement by the same amount.

[81] The Court must therefore consider the most practical means of achieving a clean break while ensuring that the overall division remains fair. The appropriate course is to vest the Batali Estate property in the Petitioner and the matrimonial home in the Respondent, subject to a balancing adjustment to account for the difference between the value of the properties and the parties' respective entitlements under a 60:40 division.

[82] Having considered the evidence, the submissions of the parties, the factors set out in section 25 of the Matrimonial Causes Act 1973, and the circumstances of this case, the Court is satisfied that this is an appropriate case to depart from the principle of equality. In furtherance of the objective contained in the tailpiece of section 25, namely to achieve a fair adjustment and place the parties, so far as practicable, in the financial position they would have occupied had the marriage not broken down, the appropriate division of the matrimonial assets is 60:40 in favour of the Petitioner.

[83] **It is hereby ordered and directed as follows;**

1. The Petitioner shall, pay to the Respondent the sum of EC$103,857.32 within three (3) months of this order as financial adjustment necessary to give effect to the 60:40 division of the net matrimonial assets;

2. The Respondent shall retain the former matrimonial home situated at Fond Cole, in the Parish of St. George, in the Commonwealth of Dominica, registered in Book of Titles F15, Folio 73, in the names of Nathaniel George and Zilia George;

3. The Respondent shall assume sole responsibility for and shall continue to discharge all outstanding mortgage obligations attached to the said property;

4. The Petitioner shall retain the 1 acre of land, part of Batalie Estate, (Grand Savannah) in the Parish of St Joseph, in the Commonwealth of Dominica, registered in Book of Title K12 folio 95 in the joint names of Nathaniel George and Zilia George

5. The parties shall, within three (3) months of the date of this Order, take all necessary steps to effect the transfer of the respective properties into their names, with each party bearing the costs associated with such transfer; and

6. Each party shall bear their own legal costs.

Justice Zainab Jawara-Alami

High Court Judge

BY THE COURT

REGISTRAR

The court office is at Dame Eugenia Charles Blvd., Roseau Telephone Number ext. 266 3029, 4526, 3388 and 4528. The email address is registrydominica@gmail.com.