

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
FAMILY DIVISION
BETWEEN**

**2019
FAM/div/00633**

R.L.H

Petitioner

AND

T.O.H

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

**Appearances: Cheryl Bazard for the Petitioner
Marylee Braynen Symonette for the Respondent**

Judgment Date: 2nd December 2022

JUDGMENT

Background Facts

1. The Petitioner, R.L.H and the Respondent T.O.H were married on 7th February 2009. There are three children of the marriage. J. H. (female) born 9th January 2003; A. H (female) born 7th March 2014 and R. H (female) born 29th December 2017. The Petitioner filed a Petition 11th November 2019 and an Amended Petitioner on 10th December 2019 seeking the dissolution of the marriage on the ground that the Respondent has treated the Petitioner with cruelty since the celebration of the marriage.
2. Joint Decrees Nisi were granted on 15th March 2021 by Justice R. Bowe Darville by reason that since the celebration of the marriage the Respondent had treated the Petitioner with cruelty and that the Petitioner had treated the Respondent with cruelty. Ancillary matters were adjourned to Chambers.
3. The Petitioner's application for ancillary relief seeks an Order that:-

- i. The Petitioner and Respondent be granted joint custody of the minor children of the marriage, namely A.T.R.H and R.T.N.T.H with care and control to the Petitioner and liberal access including staying access to the Petitioner;
- ii. The Respondent pay the sum of \$500.00 per month towards maintenance of the said minor children of the marriage
- iii. The Petitioner and the Respondent be equally responsible for the educational expenses of the said minor children of the marriage inclusive of books, uniforms and school supplies until the children attain the age of eighteen years or completes secondary education, whichever is latter;
- iv. The Petitioner and the Respondent be equally responsible for the educational expenses and books of the adult daughter of the marriage, namely J.O.H until she completes her first degree at the University of The Bahamas;
- v. The said children of the marriage spend Father's day with the Petitioner;
- vi. The said children of the marriage spend Mother's days with the Respondent;
- vii. The parties share alternate weekends with regards to access of the said children of the marriage;
- viii. The parties share alternate holidays with regards to access to the children of the marriage;
- ix. The parties share equally all Easter and Summer Breaks;
- x. The Christmas holidays be shared alternately with the Respondent having access to the Children for Christmas 2021;
- xi. The New Year's holiday be shared alternately with the Petitioner having access to the children for New Year's 2022;
- xii. The Petitioner is to pay the Respondent one- half of the value of the home, less one- half of the outstanding mortgage balance in full and final satisfaction of her interests in the matrimonial home located at Lot Number 14 in Block Number 2 of Pride Estates section 3;
- xiii. The Respondent shall release all her share title and interest in the said property, with cost of the transfer being borne by the Petitioner and the Respondent shall execute the necessary documentation failing which the Registrar is empowered to sign the Release on behalf of the Respondent

4. The Respondent in turn seeks an order that:-

- i. The Petitioner do contribute one half ($\frac{1}{2}$) of the financial needs of the children, such payments to commence on the 1st day of the month following the Order to be made herein and to continue thereafter on the 1st day of

each succeeding month until the youngest child attains the age 18 years or complete tertiary education, whichever is the later.

- ii. The Petitioner and the Respondent to share equally all educational expenses for the children, up to and including tertiary level to a Bachelor's Degree.
- iii. The Petitioner and the Respondent to share equally all medical, dental, and optical expenses for the children until each child attains the age of 18 years or completes tertiary education up to a Bachelor's Degree, whichever is the later.
- iv. The Petitioner shall within Six (6) weeks of the Order to be made vacate the matrimonial home and shall within the said Six (6) weeks transfer to the Respondent all his right title and interest in and to the matrimonial home.
- v. Upon the transfer of his interest in the matrimonial home, the Respondent shall thereafter be solely responsible for the repayment of the balance owing on the Mortgage over the matrimonial home held by the Bahamas Mortgage Corporation and shall indemnify the Petitioner against any action and/or claims arising therefrom.
- vi. The Petitioner and the Respondent shall each bear their respective costs of the transfer and these proceedings.
- vii. A Declaration pursuant to Section 73 (1)(b)(i) of the Matrimonial Causes Act.

5. By Consent Order dated 19th November 2021, it was ordered by the Court that:-

- i. The Petitioner and Respondent have joint custody of the minor children of the marriage, namely A. H and R. H;
- ii. The said children of the marriage spend Father's day with the Petitioner;
- iii. The said children of the marriage spend Mother's days with the Respondent;
- iv. The parties share alternate weekends with regards to access of the said children of the marriage;
- v. The parties share alternate holidays with regards to access to the children of the marriage;
- vi. The parties share equally all Easter and Summer Breaks;
- vii. The Christmas holidays be shared alternately with the Respondent having access to the Children for Christmas 2021;
- viii. The New Year's holiday be shared alternately with the Petitioner having access to the children for New Year's 2022;

6. The issues outstanding are:-

1. Care and control of the minor children;
2. Maintenance, inclusive of educational expenses;

3. Property adjustment

Petitioner's Evidence

7. The Petitioner, R.L.H. filed his Affidavit of Means on 25th May 2021. At the time of the filing of the affidavit he was employed with Kerzner International Bahamas Ltd. at Atlantis Resort as a doorman and earned a net bi-weekly salary of \$542.93. He was also employed as a courier at Mickyle's Enterprise since December 2016 earning a monthly salary of \$2,000.00.
8. He describes himself as the primary provider of the home and of the children of the marriage, having paid the school fees in full for the minor children.
9. During the time when the eldest child, J. H was in high school, she attended both Jordan Prince William High School and Akhepran International Academy. The Petitioner during those periods made regular payments to those schools.
10. J. H is currently attending the University of The Bahamas and the Petitioner maintains that he has been making payments towards her tertiary education.
11. He has purchased all the furniture for the matrimonial home and has obtained and made regular payments on life insurance policies with Colina for himself, A.H and R. H. He also paid the electricity bills for the home and has been responsible for paying the water bill. He has consistently paid for cooking gas refills for the home and that all home repairs have been his responsibility. He also recalled numerous times that he has purchased groceries for his family
12. He has contributed \$450.00 per month towards mortgage payments at The Bahamas Mortgage Corporation. On 9th February 2021, the Petitioner had the matrimonial property appraised incurring a cost of \$450.00. The home was valued at \$164,613.39. Both the Petitioner and the Respondent are named in the conveyance and likewise the mortgage. The mortgage balance outstanding as at January 2021 was \$95,402.96. By a subsequent print out the mortgage balance as at March 24th 2022 was \$93,091.17.
13. The Petitioner's monthly expenses are:-

a) Mortgage	\$450.00
b) Electricity	\$350.00
c) Water	\$134.00
d) Insurance	\$109.00
e) Insurance for 2 vehicles	\$75.00
f) Inspection for 2 vehicles	\$65.33

g) Telephone/ Cable/Internet	\$120.00
h) Groceries	\$250.00
i) Yard Maintenance	\$100.00
j) House Maintenance	\$75.00
k) Gas for the cars	\$180.00
l) Loans (Furniture Plus)	\$150.00
m) Grooming for myself	\$80.00
n) Grooming for the Girls	\$150.00 (every 2 months)
o) Entertainment for the Children	\$100.00
TOTAL	<u>\$2,388.33</u>

14. The Petitioner states that since the birth of the children of the marriage, he has been the primary caretaker of the children despite the fact that they are females.

15. Since the start of the pandemic in March 2020, the Petitioner was furloughed by Atlantis. He has received a net sum of \$15,865.22 for the year ending 24th December 2020. He also sent a resignation letter to Atlantis in January of 2022 and no longer works there. He was awaiting a payout sum from them.

Respondent's Evidence

16. The Respondent filed her Affidavit of Means on 22nd June 2021. She is employed as a Security Officer with the Ministry of Education stationed at Sadie Curtis Primary School. Her monthly gross salary is \$1,700.00. During the later years of the marriage she assumed part time employment to make ends meet as the Petitioner was not meeting his financial obligations to the family. She worked part time at James A. Carey & Associates earning an average of \$500.00 per month.

17. In or about May 2021, she gave up her part time job to spend more time at home with the minor children of the marriage so that the eldest child of the marriage would be able to focus on her tertiary education.

18. The Respondent's monthly expenses are:-

<u>Description</u>	<u>Self</u>	<u>Children</u>	<u>Total</u>
Groceries	\$250.00	\$600.00	\$850.00
Mortgage	\$480.00		\$480.00
Batelco	\$75.00	\$75.00	\$150.00
Cable & Internet	\$100.00	\$150.00	\$250.00
Car Maintenance	\$75.00	\$75.00	\$150.00
Car Insurance (prorated)	\$27.66	\$331.92	\$359.58
License & Inspection (prorated)	\$14.16		\$14.16

School Uniform (6yrs old) (prorated)		\$21.00(August)	\$21.00
Lunch (myself)	\$60.00	\$200.00	\$260.00
Clothing (prorated)		\$83.33	\$83.33
Hair care & Personal grooming		\$50.00	\$50.00
School projects & incidentals, books & supplies		\$100.00	\$100.00
Medication		\$60.00	\$60.00
Medical, optical, dental	\$60.00	\$150.00	\$150.00
Vacations (1 per year- prorated)	\$83.33	\$166.67	\$250.00
Life Insurance	\$50.00		\$50.00
School Fees (UB- prorated)		\$225.00	\$225.00
<u>Total</u>	<u>\$1,275.15</u>	<u>\$2,287.92</u>	<u>\$3,563.07</u>

19. The Respondent maintained that she also regularly cooked, cleaned and cared for the home and the children of the marriage. She has always been the primary caregiver of the children and still continues to be. She takes them to clinic appointments, helps with homework and school assignments and always ensures that they are prepared for school each day. She also ensured that the Petitioner was prepared for work each day.
20. Prior to the breakdown of the marriage, all of her earnings went to the maintenance of the family and the home. She has paid one half of all the utilities and one half of the mortgage.
21. The Respondent alleges that she and the Petitioner purchased their home from the Ministry of Housing for \$109,309.00. The down payment of the property was \$7,000.00. Both parties had to obtain a loan for the down payment, however, the loan was granted to her alone and the proceeds were used for the down payment. Both parties later agreed to consolidate their respective loans with Commonwealth Bank totaling \$50,701.00. Again the loan ended up being issued in her name alone for a term of 6- 8 years. The parties agreed that she would pay \$462.00 monthly on the loan and the Petitioner would pay \$111.00 weekly on the loan.
22. In or about 2017, she took out a hurricane relief loan in the sum of \$5,000.00 for a five year term at a rate of \$86.00 per month. She gave the Petitioner \$3,000.00 from the loan to construct a front wall with gates on the matrimonial home. The balance of the loan was used to fund a vacation for the Respondent and the minor children.
23. In or about 2019, the Respondent alleges that she was forced to re-write the joint loan which was in both parties names so that she would be able to finance the purchase of a vehicle for herself. The Respondent had refused to assist her in obtaining the loan for a car. The balance on the joint loan at the time was

\$12,577.69. She paid off the balance on the joint loan as the Petitioner was not paying his portion as previously agreed.

24. The Respondent has been informed by the Mortgage Corporation of The Bahamas, that the Petitioner has not made any payments on the mortgage account since 2019. The monthly mortgage payments are \$767 of which \$400.00 per month is deducted from her salary. The Petitioner was to be responsible for paying the balance of \$367.00 per month. The balance outstanding on the mortgage as at February 2021 was \$96,233.76.
25. The Respondent maintains that save for the matrimonial home, she and the minor children of the marriage have nowhere else to live and she is unable to afford alternate accommodations due to her limited income and her various loans.
26. The Respondent maintains that she and the Petitioner both paid for groceries for the family and that they both contributed to the tuition fees of the eldest child J. H. The Respondent also states that she also paid for maintenance work done to the matrimonial home along with refrigerator repairs. She also assisted with the purchasing of furniture for the matrimonial home, a washing machine and for maintenance to the same, and she also assisted with the purchase of screen doors, locks and doors for the bedrooms. She and the Petitioner would split the costs of repairs to most items in the matrimonial home. The Respondent affirms that she paid the cable/internet bill alone.
27. Both parties laid over submissions in support of their respective positions with the supporting law.

DECISION

Day to Day Care & Control

28. The Court in determining day to day, care and control must consider the statutory considerations contained in **Section 29 of the Matrimonial Causes Act**, which states:-
 - “29. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —**
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;**
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;**

- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

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

(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it to say —

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.”

29. It has already been ordered by this Court that both the Petitioner and the Respondent will share joint custody of the two minor children, leaving to be determined the day to day care and control of these two minor children.

30. The paramount consideration of the Court when having to adjudicate issues relating to children, is the welfare of the child. Balancing the considerations

outlined in Section 29 and the evidence as presented by both parties, it is important to consider the young age and sex of the minor children.

31. I interviewed the three children of the marriage in order to ascertain their wishes on day to day care and control, which of course I am not bound to heed. However, the interview provided valuable insight concerning what is in the paramount interest of the children. The children love both of their parents.

32. **Section 3 of the Child Protection Act provides:-**

“3. (1) Whenever a determination has to be made with respect to —
(a) the upbringing of a child; or
(b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the paramount consideration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to —
(a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
(b) the child's physical, emotional and educational needs;
(c) the likely effects of any changes in the child's circumstances;
(d) the child's age, sex, background and any other circumstances relevant in the matter;
(e) any harm that the child has suffered or is at the risk of suffering;
(f) where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs.

33. The court in determining what's in the paramount interest of the welfare of the child, must consider the wishes of each parent, the rights of the child, the means of each parent, and the needs of each child. I accept that because the children are girls it may be presumed that they should be with their mother. This presumption as set out by Dame Butler-Sloss in **Re S (A Minor) (Custody) [1991] F.L.R. 390:-**

“There are dicta...to the effect that it is likely that a young child, particularly perhaps a little girl, would be expected to be with her mother, but that is subject to the overriding factor that the welfare of the child is the paramount consideration. When there is a dispute between parents as to which parent should take the responsibility of the care of the child on a day-to-day basis, it is for the justices or for the judge to decide which of those parents would be the better parent for the child, who cannot have the best situation since they

are (not?) together caring for her. I would just add that it is natural for young children to be with mothers but where it is in dispute, it is a consideration but not a presumption.”

34. Also in **Edwards v Edwards [1990] 27 J.L.R. 374** Rowe P. stated:-

“It would seem to be self-evident that a young female child should be reared by her mother if that can be accomplished without harm to the child.”

35. I accept that the Respondent worked two jobs at one stage during the marriage to assist with the upkeep of the home and the maintenance of the children. I also accept that the mother's employment ends at the same time as the children's school day which would enable her to be with the children after school. I also accept that the Petitioner has started a new job and in the process of building this business, may not have as much flexible time as he may think. He is also employed full time with an existing courier company. These facts militate against his being as available as compared to the Respondent.

36. The two minors are young girls, a factor which this Court must consider. The authorities are replete with the desirability unless there are obvious reasons not to, that young children should maintain a very close connection with their mother who is the initial nurturer of the family unless there is evidence to the contrary. I have not been provided with any evidence to refute this statement. I do not, by this statement, in any way intend to cast any aspersions on the ability of the Petitioner to nurture his children. In fact, I am satisfied that he does love and care for his children, but I am satisfied that this mother, by her evidence has provided ample evidence of her unchallenged nurturing and taking care of her children.

37. I am satisfied that it is in the best interest of these children, being young females that they remain in the day to day care and control of their mother, the Respondent, who has more available time to spend with them, and I so order. It is further ordered that liberal access to the children, including but not limited to alternate weekends, be granted to the Petitioner.

Maintenance

38. I am now tasked with determining what is the appropriate maintenance to be paid by the Petitioner for these children. I am still guided by the principles as laid out in **Section 29 of the Matrimonial Causes Act.**

39. Both parties have outlined in their various affidavits, their income, earning capacity and financial obligations and responsibilities. These include the needs of the children. It is evident that both parties have exhausted their monthly income. It is clear that both the Petitioner and the Respondent shared the financial burden both

having contributed to the welfare of the home and the family. However, I do not believe that it is fair that the Petitioner should solely maintain the minor children. It is the financial obligation of both parties to financially maintain their children to the best of their abilities.

40. The evidence of the Respondent clearly states what her income is. She has no additional income. It also states what her expenses are. The evidence of the Petitioner is not as straightforward. There is evidence of his working at Atlantis, of being laid off from Atlantis, of working a 40-hour week with Mickyle's Enterprise, and earning \$2,000 a month. Finally he has advised the Court that he had started his own SUV Errand business but did not advise the Court of what his income was from this new business.
41. The only evidence of expenses for the children in the Petitioner's affidavit is the grooming and entertainment for the children which totals \$175.00 per month.
42. The Petitioner is seeking an order that the Respondent pay him \$500 a month toward the maintenance of the children. The Respondent is seeking one half of the financial needs of the children which by her affidavit would equate to \$1,100.00 per month.
43. I have reviewed all of the evidence and order that the Petitioner shall pay to the Respondent the sum of \$400 for each minor child per month, totaling \$800 for both minor children. The monthly maintenance payments shall continue until each child reaches the age of 18 and shall be payable on or before the 28th day of each month.
44. The Petitioner and the Respondent shall equally share all the expenses associated with the tertiary education at the University of The Bahamas of the eldest child of the marriage, J. H, until she completes a first degree.

Property Adjustment

45. **Section 28 of the Matrimonial Causes Act** enables the Court to make property adjustment orders in divorce proceedings. The parties jointly own the matrimonial home. The property is mortgaged. The Court's starting approach in these type of proceedings is the equal sharing principle unless there exists a compelling reason to depart from it. The Court again must take into consideration the established guidelines as set out in **Section 29 of the Matrimonial Causes Act** when making property adjustment orders.
46. These provisions are mandatory statutory guidelines to be considered when making orders under Sections 27 and 28.

47. Under the MCA, the objective of the Court in ancillary proceedings is to achieve a fair result between the parties based inter alia on a number of factors. The equality principle as established in this jurisdiction in **A v B #320 of 2008** is considered the starting point when dealing with property adjustment. This principle however may be departed from in order to ensure that the matrimonial assets are distributed to each party of the marriage based on need, contributions made and to ensure fairness.

48. Any sharing as set out in **Jupp v Jupp** may only occur after considering Section 29. In **Jupp v Jupp** the Court of Appeal held:-

“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires you to look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.

49. Further, in **White v White [2001] 1 AER 1**, Lord Nicholls states:-

“Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or by court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differ in each case. And sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder.”

50. In **A v B [2010] 2 BHS J No.18**, Barnett CJ, reaffirmed **White v. White** by holding that the modern day approach to the division of assets in The Bahamas is equal sharing of property unless there is a compelling reason to depart from it.

51. Further in **Miller v Miller**; and **McFarlane v McFarlane (2006) 3 All ER 1** the House of Lords stated:-

“This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rises to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account wide range of matters such as the parties ages, their future earning capacity, the family’s standard of living, and any disability of either party. Most of these needs will have been generated by the

marriage, but not all of them. Needs arising from age or disability are instances of the latter.”

52. In reviewing the statutory guidelines, I accept the following:-

1. The parties were married for twelve years. This was not a short marriage.
2. The parties both paid their respective portions of the mortgage with the Petitioner claiming to have paid \$450 and the Respondent to have paid \$480. The printout the Respondent produced from 2020 reflects her paying \$400 monthly. The Respondent stated that sometime in 2019, the Petitioner stopped making any financial contribution to the mortgage payments. It is evident that their monthly contributions to the mortgage loan although unequal, reflected that both parties were financially vested in the matrimonial home.
3. Both parties maintained that they have contributed to the maintenance and upkeep of the matrimonial home over the course of the marriage.
4. There is no evidence that any party suffers from any physical or mental disability, therefore their earning capacity is not hindered in any way by disability. I have addressed previously what the earnings of the parties are. The evidence of the Petitioner is contradictory but there is evidence of earning capacity as he left his employment at Atlantis and started his own business.
5. He confirmed that he was earning \$2,000 per month from Mickyle's Enterprise, but also had his own new business. The Court assumes that there is income being produced from this new business in addition to what he was earning from Mickyle's. Further the Petitioner would have received a "payout" from Atlantis, the amount however was not disclosed in evidence. This is a benefit which would have enured to the parties but for the breakdown.
6. The Respondent is employed as a Security Officer with the Ministry of Education earning \$1,700 per month. Despite her working part time previously in the marriage, she no longer does and her income therefore is less than that of the Petitioner.
7. The wife is 35 and the husband is 41.

53. It is the Respondent's prayer that the Petitioner shall vacate the matrimonial home within six weeks of an Order being granted and he shall transfer his title and interest in the property to the Respondent. The Respondent has indicated that once the title has been transferred to her name, she will be solely responsible for any payment of the outstanding mortgage against the matrimonial home.

54. It is the Petitioner's prayer that he wishes to pay to the Respondent's one-half of the value of the property, less one half of the outstanding mortgage balance in full and final satisfaction of her interest in the matrimonial home. The Respondent shall then relinquish all her share title and interest in the property with the cost of the transfer to be borne by the Petitioner himself.

55. The consideration for the distribution of the matrimonial property begins at the break down of the marriage and when mutual support has ended. This was confirmed in **Rosemary Edith Burrows (nee Knowles) v Sylvester John Burrows SCCivApp No. 58 of 2021** where Crane Scott JA held:-

"68. The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute."

56. I am aware and accept that the Respondent's income is limited. I am also aware that she will have the day to day care and control of the children, which places a greater financial burden on her. I am also aware that the children must have a home. Finally, I am aware that both parties until 2019 contributed substantively to the mortgage on their home. The Respondent based on her expenses and her income would not be able to afford to pay the full mortgage on the matrimonial home or any new home.

57. The balance owing on the mortgage is greater than the individual equity of each of the parties. To order a sale of the home now or to order that the Respondent pay the Petitioner a sum to represent his one-half equity would result in the Court ignoring the needs of the children and the income of the Respondent. See *Charman v Charman* [2007] 1 FLR 1246.

58. I am also cognisant of the financial interest of the Petitioner and his substantial contribution to the matrimonial home at least to 2019.

59. In all the circumstances I order that, the Respondent shall be allowed to remain in the matrimonial home with the children of the marriage until the youngest child reaches the age of 18. Both parties shall continue to pay one half of the mortgage on the property. Once the youngest child reaches 18, the parties shall each obtain an appraisal and advertise the property. The house shall be sold at the best price obtained and the net proceeds be shared equally between the parties. The party whose offer is accepted shall control the sale. Should the Petitioner not pay his one half share of the mortgage on the home for at least three months, his interest will be fixed at \$35,750 which represents his half equity in the home to date and upon the sale he shall receive that sum less his half of any outstanding taxes owed

on the home. The Petitioner shall vacate the matrimonial home within thirty (30) days of the date of this judgment.

60. Alternatively, each party shall have the option as hereinafter set out to purchase the other's interest in the matrimonial home as appraised within sixty (60) days after the youngest child shall reach the age of 18 with the Respondent having the first option. Should she fail to purchase within the first sixty (60) days, the Petitioner shall have a subsequent sixty (60) days to purchase the Respondent's interest.

61. Each party is to bear its own costs.

Dated this 2nd day of December 2022

A handwritten signature in blue ink, appearing to read "G. Diane Stewart", is written over a horizontal line.

The Hon. Madam Justice G. Diane Stewart