

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Division  
BETWEEN**

**2013  
FAM/DIV/00053**

**AK**

**Petitioner**

**AND**

**LK**

**Respondent**

**Before:**                   **The Honorable Madame J. Denise Lewis-Johnson**

**Appearances:**       Anthony Thompson for the Petitioner  
                          Lenise Flowers-Bethell for the Respondent

**Hearing Date:**       10 May 2022

**RULING**

**LEWIS-JOHNSON J:**

**Introduction**

A Decree Nisi was granted on 2 October 2013 to the Respondent on the ground that the Petitioner has since the celebration of the marriage treated the Respondent with cruelty.

The Respondent filed a Notice of Intention to Proceed with Ancillary Relief on 2 June 2021 seeking, inter alia, property adjustment over all that piece parcel or lot of land comprising 43,548 square feet situated in the Western District of the said island of New Providence being Lot Number 76 in the Subdivision called and known as "Westridge Estates", The Bahamas.

The Respondent seeks an Order that the Petitioner release his right, title and interest to the Respondent and that the Respondent assumes all financial responsibility for payment of all rates and expenses attached to the home as well as a mortgage or loan secured thereby.

The Petitioner seeks an Order that assets including the matrimonial home be sold and 50% of the sale proceeds be paid to him, or such other order as the Court deems just.

### **Background Facts**

1. By virtue of an Indenture of Conveyance dated 10th day of June A.D., 1988 the Respondent became the fee simple owner of all that piece parcel or lot of land containing 43,548 square feet and being Lot 76 in the subdivision called and known as Westridge Estates situated in the Western district of the island of New Providence ("the property"). The property was purchased prior to the marriage by the Respondent utilizing the proceeds of a mortgage to Citibank, N.A.
2. The parties were married on 21 April 1990 and there are two children of the marriage both of whom are now sui juris. Following the marriage the parties resided rent free in an apartment attached to the home of the Respondent's mother for four years.
3. On 21 July 1993 by virtue of a Deed of Gift the Respondent transferred title of the property into the joint names of herself and the Petitioner to facilitate a mortgage to construct the matrimonial home on the Property.
4. By mortgage dated 31 July 1993 from the parties to Finance Corporation of The Bahamas ("FINCO"), the property was lodged as security to secure sums to commence construction of the matrimonial home. By Further Charge dated 22 June 1994 from the parties to FINCO, additional sums were advanced for the construction of the home.
5. On 11 May 2009 a mortgage from the Petitioner and the Respondent to FINCO was further executed for the sum of \$380,000. This sum was used for debt consolidation.
6. In 2009, the Petitioner vacated the matrimonial home.
7. In 2013, a Decree nisi was granted in this cause.
8. In dispute is the extent to which each party contributed to the upkeep and maintenance of the matrimonial home and contributions made toward the maintenance of the children and family.

### **The Petitioner's Evidence**

9. The Petitioner by his Affidavit of Means dated 16 August 2021 alleges that he contributed substantially to the mortgage payments from 1991 until 2009 when the Petitioner forced him to leave the matrimonial home. He claims that he was advised

by his attorney to stop contributing to the mortgage as he had to pay for new living accommodation.

10. He stated that contrary to the Respondent's contention she could not have been solely responsible for payment of the mortgage facility from 1999 as he did not move out of the matrimonial home until 2009.
11. The Petitioner also refutes the Respondent's claims that he is unable to maintain steady employment. The Petitioner claims that he was always employed, consistently earning a relatively attractive salary and never spent money outlandishly or improperly. While he did undergo brain surgery in June 1999, he claims that he was only off from work for a short period of time. After approximately three months of recuperation he returned to active employment.
12. Further, he stated that during the marriage he ensured that the Respondent received the bulk of his income to pay household bills. When he received his salary, he would generally keep enough funds for lunch, gas, bus fare and a small extra for potential emergencies.
13. The Petitioner averred that he paid school fees in the amount of \$120,000 between the years of 2010 to 2017. Also, between the years 2013 and 2014 he provided medical coverage for both children via a group insurance scheme provided through the National Insurance Board and administered by General Worldwide Insurance Company.
14. The Petitioner stated that the Respondent does not share the income from the rental units with him. He claims that the Respondent over the years found unnecessary means to balloon the family indebtedness by borrowing for vacations, shopping abroad, purchasing vehicles and purchasing home amenities.
15. Although the Respondent alleged that he paid for a vacation in Europe, the Petitioner clarified that Kiwanis sponsored his trip as he represented them as then President of the organization.

### **The Respondent's Evidence**

16. The Respondent's primary contention is that although the home is jointly owned by the parties all loans attached to the property have been predominantly serviced by her. She claims that the Petitioner only assisted with the payment of the mortgage for the first five years of the facility.

17. She states that several improvements have been made to the property at her expense. For instance, there is a garage apartment which was converted in 2019 for approximately \$15,000 using money from her retirement pension fund. A storage shed was also constructed in 2019 for approximately \$5,000.00 using money from personal savings. There is also a cottage on the property which was built and paid for her by her mother.
18. In June 1999, the Petitioner required brain surgery and thereafter was unable to work as he continued to receive medical treatment in the United States. The Respondent claims that she was responsible for the costs not covered by group health insurance associated with travel inclusive of airfare, accommodation, rental car, food and any other expenses.
19. The Respondent contends that the Plaintiff failed and/or refused to provide any tangible assistance with the education, medical dental and optical expenses of the minor children prior to the institution of the action. For instance, the Respondent asserted that the Petitioner provided no assistance for expenses relating to three separate surgeries for their son in April 2007, June 2008 and June 2009 which were all done internationally.
20. The Respondent mentioned that the Petitioner also developed a history of writing cheques without having the necessary funds resulting in returned cheques. In most cases, she was presented with bad cheques and forced to make the relevant payment.
21. In response to the Petitioner's assertion that she ballooned the family indebtedness, the Respondent claims that the vacations were to Florida with the entire family and were strategically planned during the summer to facilitate back to school shopping. She states that it was the Petitioner who was able to travel the world without the family but instead with his Kiwanis group to various destinations including a trip to Asia.
22. The Respondent submits that the Petitioner's failure to make any meaningful contributions towards the mortgage during the period 2000-2009 and his conscious decision not to make any contributions towards the mortgage after leaving the matrimonial home in 2009 to present is conduct which should not be disregarded by the Court in determining his lack of interest in the matrimonial home.

**Issue**

23. What is a fair property adjustment in these circumstances? The court is to determine percentage interests in the matrimonial property of each party.

## **Law**

24. In determining the disposition of the matrimonial property the court has to take into consideration the provisions of **Section 29 of the Matrimonial Causes Act, Chapter 125, Statute Laws of The Bahamas** which provides:-

**“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.”**

25. A considered approach to the division of assets is the equal sharing of assets between the parties unless there were compelling reasons to depart. If the parties have been married for a long time generally more than 10 years the parties start as having equal interest, that is 50 – 50. As the court considers other factors the scale of interest could shift giving one party a greater interest and thereby reducing the interest of the other.

26. In the case of **A v. B [2010] 2 BHS J No. 18** Chief Justice Michael Barnett stated:  
**“In my judgment, the modern-day approach to a division of property in a marriage is that fairness is, an equal sharing of property unless there is a compelling reason to depart from that equality.”**

27. The comprehensive statement of law applicable to property adjustment in the Bahamas was stated by President of The Court of Appeal of The Bahamas Justice Anita Allen in **Jupp v Jupp SCCrApp No.37 of 2011** where she stated:

**“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 that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the 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.”**

28. In **H v. H [2007] EWHV 459**, Charles J in his ruling states that the yardstick of equality should be applied as an aid, not a rule and that each case should be examined on its merits.

29. For the purposes of this case where the marital asset was acquired prior to marriage the case of **Miller v Miller [2006] UKHL 24** is instructive as Lord Nicholls of Birkenhead observed that:-

**“[a] matrimonial home should normally be treated as matrimonial property even if one for the parties had brought it into the marriage at the outset”.**

30. Important elements for consideration are the duration of a marriage, whether the property was inherited, a gift or premarital property, i.e. where the property was brought into the marriage at the outset. There was a suggestion made in **Miller** by Lord Nicholls that where a marriage was short, a sharing of non-matrimonial property might not be fair. He stated:-

**“My Lords, while I do not think that these arguments can be ignored, I think that they are irrelevant in the great majority of cases. In the very small number of cases where they might make a difference, of which Miller may be one, the answer is the same as that given in White's case in connection with pre-marital property, inheritance and gifts. The source of the assets may be taken into account but its importance will diminish over time. Put the other way round, the court is expressly required to take into account the duration of the marriage: s 25(2)(d). If the assets are not 'family assets', or not generated by the joint efforts of the parties, then the duration of the marriage may justify a departure from the yardstick of equality of division. As we are talking here of a departure from that yardstick, I would prefer to put this in terms of a reduction to reflect the period of time over which the domestic contribution has or will continue.”**

### **Decision**

31. In determining the appropriate division of assets between the parties the Court is guided by Section 29 of the MCA, the overriding objective to do what is right and just in an effort to achieve a fair outcome for all involved.
32. The parties resided in the matrimonial property for nearly 15 years before the breakdown of the marriage. They agree that the family maintained a middle-class standard of living. The Petitioner is 58 years old and the Respondent is 61 years old. The Respondent is a retired banker whose income is primarily derived from National Insurance benefit and rental income. The Petitioner is a qualified certified chartered accountant by profession, who is self-employed and does not have a current monthly income.

33. The parties were married in 1990 and separated in 2009 for these purposes this is considered a long period. There is no evidence that the Petitioner or the Respondent suffers from any physical or mental disability.
34. The parties are joint owners of the matrimonial home. The property, however, was purchased prior to the marriage and all loans attached to the property are in the joint names of the parties. No other real property forms part of the matrimonial assets. The court is of the view as stated in *Miller v. Miller* that little weight is to be given to the fact that the Respondent acquired the property prior to marriage in her name solely. The fact that the parties were married for a long period, the mortgages are in the joint names of the parties and they both enjoyed the benefit and burden of the home puts them on equal footing.
35. The Petitioner contends that he contributed to the mortgage payments during marriage for 20 years until 2009, that he took sole responsibility of the FINCO loan from 2010-2017 which was used to pay the school fees for the children. The Respondent maintains that she was responsible for the majority of the expenses during the course of the marriage inclusive of mortgage payments, utility payments, upkeep and maintenance over the matrimonial home, school fees, recreational and medical expenses for the children of the marriage. The court accepts that both cannot be true.
36. The court takes note of the evidence of the parties, however, it is common for parties to over-state their contribution to the maintenance of the family and their financial contribution to the matrimonial home. I am of the opinion that the parties for 19 years worked together as a team on an agreed method of maintaining the family, each contributing as best they could. I find that during that period it was their intent to share equally having no regard to the level of financial contribution of either party.
37. What is in dispute between the parties is whether the Petitioner made any significant contributions towards the mortgage during the period of 2000 to 2009 and after he left the matrimonial home.
38. The Respondent requested a deviation from the equal sharing principle as her contributions to the mortgage and welfare of the family was greater than those of the Petitioner throughout the marriage. From the evidence presented and taking into consideration all of the circumstances mentioned above, I accept the Respondent's evidence as presented. I do believe that a greater burden was placed upon her to sustain the family and by extension the matrimonial home for a significant period of time.

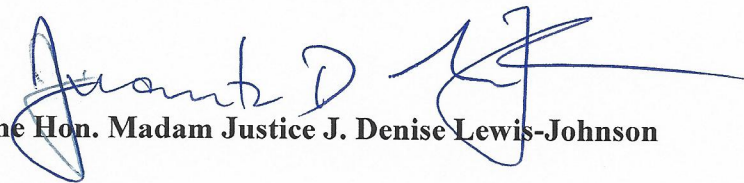


39. I equally accept that the Petitioner made contributions toward the mortgage for a period however I cannot ignore his evidence that he deliberately and consciously stopped making any contributions to the mortgage for more than 10 years. The Petitioner acknowledged that prior to leaving the matrimonial home he was challenged financially in comparison to the Respondent. He admitted to not contributing to the upgrade of the property being the construction of the garage apartment, storage shed or the cottage. The Petitioner's lack of contribution and the excess burden to the Respondent must be addressed with fairness.
40. There is no doubt that it is difficult to sustain a family financially, especially with children who pursue tertiary education. I find that the Respondent had an unfair burden placed upon her, especially after the Petitioner left the home, to ensure that the children were provided for while simultaneously ensuring that the matrimonial home was intact.
41. As the Respondent still resides in the matrimonial home, she still experiences an unfair degree of financial responsibility and benefit. Maintaining the home does not stop at satisfying the mortgage payments. The upkeep of the property is essential to maintain its value, which will benefit both parties. To this end her expenses far outweigh those of the Petitioner who is primarily responsible for his rental payments.
42. Applying the approach in **A v. B** above, the equal sharing approach is what should be used unless there is a compelling reason to depart from that equity. The court finds the Petitioner's deliberate and intentional actions from 2009 to present toward the maintenance of the matrimonial property is a compelling reason to depart from the equal sharing and to give a greater interest to the Respondent. Having regard to all the evidence lead and the circumstances of this case and the law as stated above, this is an appropriate case for such a departure.
43. As each case must be determined on its merits, I find therefore that in order to achieve fairness between the parties there is reason to depart from the equal sharing principle. I have applied the considerations of Section 29 of the MCA and in all the circumstances of this case and there can be no equal interest between the parties.
44. Having regard for the authorities cited above and all the circumstances of this case I find as follows:
- i. The Petitioner is awarded 30% of the equity in the matrimonial home and the Respondent is awarded 70%. As there is no appraisal of the home on record,

one must be completed with the costs thereof to be shared equally between the parties.

- ii. The Respondent can purchase the interest of the Petitioner, failing which the matrimonial home is to be sold and the net proceeds divided between the parties as to the percentages stated.
- iii. Each party shall bear their cost associated with any transfer of interest to the other party.
- iv. No order as to cost.

Dated this 1<sup>st</sup> day of December 2022

  
The Hon. Madam Justice J. Denise Lewis-Johnson