

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No. 21 of 2013

IN THE MARRIAGE OF:-

KATHERINE TATEM of “Kinmont”
Rockley New Road, Rockley in the parish
of Christ Church in this Island
APPLICANT/WIFE

AND

LARRY PIERRE TATEM of “Strong Hope”
In the parish of St. Thomas in this Island
RESPONDENT/HUSBAND

Before the Honourable Mr. Justice William Chandler, Judge of the High Court

**Dates of Hearing: 2013 January 22nd, April 8th, May 7th
2014 September 2nd**

Date of Decision: 2017 July 26th

Mrs. Marguerite Woodstock-Riley Q.C. Attorney-at-Law for the Applicant/Wife
/Wife

Mrs. Dawn Shields-Searle, Attorney-at-Law for the Respondent/Husband/Husband

DECISION

Introduction

[1] The parties to this action are seeking orders in relation to maintenance. The Applicant/Wife seeks compliance with orders made previously for spousal

maintenance as well as the maintenance of the child of the marriage. The Respondent/Husband has failed to comply with the orders and has applied for a variation of the orders made.

The Wife's Application

[2] The Wife filed an application on 16 January 2013 for, *inter alia*, maintenance for herself and the then minor child of the marriage. On 22 January 2013 the Court ordered by consent (the consent order) that the Husband pay to the Applicant/Wife the sum of \$2,400.00 per month payable in equal installments on the 1st and 15th days of each month.

The Husband's Application

[3] On 26 April 2013 the Husband applied for orders, *inter alia*, that the order made 22 January 2013 be varied so that he be ordered to pay a lesser sum and that the said order be suspended until further order.

The Contempt Application

[4] The Applicant/Wife filed an application to commit the Respondent/Husband for his alleged willful disobedience of the consent order which is still outstanding. It is not the subject matter of this application.

Background

[5] The Applicant/Wife and Respondent/Husband were married on the 5th day of August 1995. There is one child of the marriage, Karina Tatem born on the

23rd day of August 1996. The Respondent/Husband is a certified architect. The Applicant/Wife previously owned and operated her own school, and taught for some time during the marriage. She remained at home during the majority of the marriage and is presently unemployed.

[6] The parties purchased a home in 1997 from a member of the Applicant/Wife's family at a reduced cost. The property was purchased for the sum of \$370,000. The Applicant/Wife invested \$100,000 into the purchase from an inheritance that she received. The conveyance was taken in the sole name of the Applicant/Wife.

[7] The parties lived in that property for three years. The Respondent/Husband paid the mortgage, assisted by the Applicant/Wife on the odd occasion when necessary.

[8] The parties moved to Canada in 2000, as the Respondent/Husband had secured a job there. The property was sold and some of the proceeds was used to purchase a home in Canada, in both their names. As a result of the move, the Applicant/Wife closed her school. A child of the Applicant/Wife, from a previous relationship, also resided with the couple in Canada.

[9] The Applicant/Wife was unable to work in Canada as she did not have the requisite status to do so. She assisted with transporting her husband and children as well as managed the home during this time in Canada. The

Applicant/Wife also used her savings to assist with providing for the household.

[10] The parties returned to Barbados in 2005 and the Respondent/Husband continued his architectural business Tatem Architects Inc.

[11] The parties lived in the Respondent/Husband's step mother's home rent free for approximately 2 years. The Respondent/Husband purchased a property which required renovation and which the Applicant/Wife deposed that she shared concerns about. He was the sole income earner from 2000 and therefore the Applicant/Wife depended on him for financial support. The Applicant/Wife remained responsible for the running of the home and the care of their daughter. The Respondent/Husband operated his business from the home and the Applicant/Wife alleges that she also functioned as his assistant, even during the years the Respondent/Husband pursued his Master's Degree in Jamaica.

[12] On the 14th day May 2014 the Court pronounced a decree nisi of dissolution of the marriage consequent upon an application filed 24th March 2014.

Applications and Orders made

[13] An urgent application for maintenance was filed on the 16th day of January 2013, and the consent order was granted by this Court on the 22nd day of January 2013.

- [14] On the 26th day of April 2013, the Respondent/Husband filed an application for variation of the order of the 22nd of January 2013.
- [15] On the 7th day of May 2013, the Applicant/Wife filed an application for enforcement of the order made on the 22nd of January 2013.
- [16] On the 23rd day of May 2013, the matter came on for hearing and was adjourned as the Respondent/Husband's counsel was unable to attend, and the same occurred on the next occasion, the 5th day of June 2013.
- [17] On the 18th day of October 2013, the Applicant/Wife filed a Certificate of Urgency. **Kentish J.** on the 29th of October 2013, heard the matter and made a forthwith order addressing the payment of outstanding rent.
- [18] On the 13th day of November 2013 the Respondent/Husband filed an urgent application in the Court of Appeal to stay the Order of **Kentish J.**, pending the Appeal. The Respondent/Husband sought an order that (i) the Order of **Kentish J.** be set aside and/or discharged and/or varied, (ii) the Order for the Respondent/Husband to pay rent to Charles Armstrong be rescinded pending determination of the Suit, and (iii) the Wife pay the Appellant's costs of and incidental to the Appeal.
- [19] The full panel of the Court of Appeal heard the matter on the 12th day of February 2014 and affirmed the Order of **Kentish J.** and dismissed the application with costs to the Applicant/Wife and ordered that the matter be heard in March 2014.

- [20] Orders were made for disclosure by the parties, as well as an order for third parties to disclose the particulars of the Respondent/Husband's bank accounts, contracts and earnings.
- [21] The matter was heard on the 29th day of July 2014, scheduled to continue on the 26th day of November 2014, adjourned at the request of the Respondent/Husband, heard on the 3rd day of December 2014, set for the 4th day of February 2015, and adjourned to the 14th day of April 2015 and concluded on the 21st day of April 2015.
- [22] The Respondent/Husband is currently in arrears of maintenance in excess of \$130,000.00, in respect of the consent order.

Applicant/Wife's Submissions

- [23] The Applicant/Wife submits that she is entitled to maintenance from the Respondent/Husband; he has a duty to assist in her care having regard to the history of their marital relations as well as her health conditions which preclude her from obtaining meaningful gainful employment.
- [24] Further the Applicant/Wife submits that the Respondent/Husband should maintain their daughter until she completes her tertiary education, as it was always in the contemplation of the parties that she would attend university.
- [25] The Applicant/Wife urges the Court to find that the evidence shows that the Respondent/Husband is in a financial position to pay the maintenance ordered as he has income earning skills, which pay him sufficiently to

facilitate these payments. Counsel submitted that the Respondent/Husband has a legal obligation to pay the arrears of maintenance. The Respondent/Husband, she opined, has willfully disobeyed the Orders of the Court and is in contempt of court.

[26] The Applicant/Wife submits that the Court in making its final Order can decide on the amount of maintenance the Respondent/Husband should contribute and in so doing dispose of the Order for Variation applied for by the Respondent/Husband.

[27] Counsel relied upon **sections 50, 51, 52, 53 and 54** of the **Family Law Act Chapter 214** of the **Laws of Barbados (the FLA)** and **In the marriage of Mitchell (1995) FC. 292 (Mitchell) (Australia)**.

Respondent/Husband's Submissions

[28] The Respondent/Husband submits that the Applicant/Wife must show that she is unable to support herself adequately, which is a prerequisite for spousal maintenance, as set out in **section 50** of the **FLA**. She has not done so since she is reasonably able to support herself as she has financial resources as well as the earning capacity to do so. If she is unable to overcome that threshold then her application must fail. It is also the Respondent/Husband's submission that, although he has earning capacity, he has not been able to secure work to enable him to support the

Applicant/Wife, which was the basis for the application to vary the consent order for maintenance.

[29] Counsel also submitted that the Applicant/Wife had alleged that she had no monies yet she was able to pay credit card debts of Cdn \$7,778.50, in January 2014, \$3,644.19 in March 2014 and \$12,910.21 and \$3,533.54 between November and December 2013 that she was also able to withdraw monies from a US account with a balance of \$293,975.71 (She admitted under cross-examination). Counsel for the Respondent/Husband makes an application, that the Order of the Court be vacated and the Applicant/Wife's case dismissed. Reliance was placed on sections 50, 52, 53, 54 and 62 of the **FLA** and several Australian authorities and the Barbados decision of **L. A. E.** and **J. B. E Fl 436 of 2003.**

Issues

[30] The parties are not far apart on what the issues to be determined in this matter are. They are:

- i. Whether the Applicant/Wife is entitled to be maintained by the Respondent/Husband? This will require a consideration of whether she has established that she is *'unable to support herself adequately'* from her own resources by reason of any of the statutory matters set out in **Section 50 (2)** of the FLA;
- ii. Whether the Respondent/Husband is liable to maintain the child of the marriage?

- iii. Whether, if the maintenance order is upheld, the amount ordered is a reasonable amount or should be varied?

Discussion

Issue 1

[31] Whether the Applicant/Wife is entitled to be maintained by the Respondent/Husband?

The Law

[32] **Section 50** of the **FLA** sets out the law with respect to spousal maintenance and provides that:

“(1) A party to a marriage or union other than a marriage is, subject to subsection (2), liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so.

(2) The liability of a party under subsection (1) arises only where the other party is unable to support herself or himself adequately, whether by reason of having the care or control of the child of the marriage or union who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment, or for any other adequate reason, having regard to any relevant matter set out in section 53(2).”

[33] We must therefore analyse the relative financial positions of both parties.

[34] The Applicant/Wife gave evidence that she worked prior to and during the marriage. It is undisputed that she was the primary caregiver to the child during her minority whilst the marriage subsisted. The evidence is that the family travelled, stayed in paid accommodation and lived a comfortable lifestyle for which the Respondent/Husband paid or utilised his credit facilities to pay for. One such trip cost around \$30,000.00.

[35] I saw and heard the parties give evidence in chief under oath and under cross-examination and I am satisfied from the evidence that it was by mutual arrangement between the parties that the Applicant/Wife ceased to work during the marriage. I am also of the view and hold that the Respondent/Husband was working for sufficient funds to adequately support the family. Some of the major projects on which he worked included two phases of the building housing Guildan Activewear and Chefette Restaurants. He also used credit facilities to assist in this regard.

[36] It is only after the breakdown of the marriage that the Respondent/Husband complained that he could no longer support his family adequately.

[37] The Applicant/Wife gave evidence that she suffers from clotting of the blood caused by an abnormal gene, which affects her legs. This, she averred, materially affected her ability to obtain gainful employment. It was also her evidence that she was thinking of establishing a school at the property where she resides in order to save costs. She asked for and obtained her landlord's permission to do so. That project has not materialized.

[38] The Applicant/Wife is now 53 years old, she does not suffer from any mental disabilities. The only evidence of any physical incapacity to work is the evidence in relation to her medical issues as above outlined.

[39] The Respondent/Husband is 46 years old. The Applicant/Wife expressed a desire to open a school, which indicates that she can work. She gave evidence

that she sought the Respondent/Husband's assistance in establishing the school. None has been forthcoming.

[40] The child of the marriage is now 19 years old and is continuing her education. Though she continues to reside with the Applicant/Wife, the Applicant/Wife can no longer have care and control of her, as she is no longer a minor. In the circumstances, I hold that the Applicant/Wife has a limited capacity for gainful employment and that the Respondent/Husband is liable to maintain her to the extent that he is reasonably able to do so. Before considering the extent to which the Respondent/Husband is reasonably able to maintain the Applicant/Wife, I consider it expedient to dispose of the following issue.

Issue 2

[41] Whether the Respondent/Husband is liable to maintain the child of the marriage?

The Law

[42] The relevant sections of the **FLA** are now reproduced:

Sections 51, 52 and 54 of the FLA provides that:

"The parties to a marriage, or union other than a marriage, are liable, according to their respective financial resources, to maintain the children of the marriage or of the union who are unmarried and have not attained the age of 18 years."

Section 52:

“In proceedings with respect to the maintenance of a party to a marriage or union, or of a child of a marriage, or of a union, the court may make such orders as it thinks fit for the provision of maintenance in accordance with this Part.”

Section 54:

(1) In determining whether to make an order for the maintenance of a child of a marriage or of a union; or the period for which such an order should continue in force or the amount of any payment to be made under such an order, the court shall take into account, in addition to the matters set out in section 53(2), the following:

- (i) the income, earning capacity, property and other financial resources of the child,*
- (ii) the financial needs of the child; and*
- (iii) the manner in which the child is being, and in which the parties to the marriage or union expected the child to be, educated or trained.*

(2) Subject to subsection (3), an order for maintenance shall not be made where the child has attained the age of 18 years; and ceases to be in force when the child attains the age of 18 years.

(3) The court may

- (a) provide in an order for the maintenance of a child who has not attained the age of 18 years that the order shall continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age; or*
- (b) make an order for the maintenance of a child who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period, specified in the order, if the court is satisfied that the provision of the maintenance is necessary to enable the child to complete his education (including vocational training or apprenticeship) or because he is mentally or physically handicapped, and, in that case, the order continues in force until that day or the expiration of that period, as the case may be (emphasis added).*

Discussion

[43] On the 8th day of August 2014 an order was made by consent before **Weekes J.** that the maintenance of the child of the marriage, including ancillary expenses should continue until the child completes her secondary education or until further order. Counsel for the Respondent/Husband submitted that the only issue on this aspect of the case is that there is currently no information before the court relating to Karina's future educational plans other than that Karina would be completing Secondary School in 2015 and wanted to go to Canada to pursue studies.

[44] Therefore the court is not in a position to make any order under **section 54(3) (b).**

[45] Counsel further submitted that the Respondent/Husband did make enquiries about whether Registration was still open to Barbadian students for the University of the West Indies for the academic year 2015/2016 due to start in September, 2015 in the Faculty of Social Sciences having been informed that Karina was interested in pursuing studies in Psychology but to date the Respondent has no knowledge of whether this offer will be taken up by Karina.

[46] There appears to have been some discussion during the subsistence of the marriage about the child pursuing further study in the Dominion of Canada. The Respondent/Husband was then earning substantial monies. At the present time, the Respondent/Husband has given evidence that his

business is not doing as well as before and his earnings have decreased significantly. Having regard to the fact that the Applicant/Wife alleges that she cannot maintain herself adequately and is not in gainful employment, it seems to me fanciful to expect that the child can be educated in Canada without a dramatic change in the parties' financial status.

[47] It appears to me that the parties are considering a comparable programme at the University of The West Indies (UWI) and this I consider to be reasonable given the altered financial circumstances of the parties. In the circumstances, I hold that the parties are liable to maintain the child of the marriage until she completes her undergraduate studies at the UWI. In view of the Applicant/Wife's financial situation occasioned by her medical condition, I am of the opinion and hold that until further order of this Court, the Respondent/Husband, which is solely responsible for the maintenance of the said child.

[48] That level of maintenance has not been separately qualified in light of the global nature of the consent order. The Respondent/Husband will therefore be ordered to pay her university fees, cost of books and the necessary expenses of her attendance of the UWI.

Issue 3

[49] Whether, if the Court holds that the Respondent/Husband is liable to maintain the Applicant/Wife, the amount of maintenance previously ordered is a reasonable amount or should be varied?

The Law

[50] Section 53 and 54 of the FLA provides for the factors to be taken into account in determining the quantum of maintenance.

Section 53 is as follows:

- (1) *“In determining the amount of maintenance, if any, under section 52, the court shall take into account only the matters in subsection (2).*
- (2) *The matters to be taken into account for the purposes of this section are as follows:*
 - (a) *The age and state of health of each of the parties;*
 - (b) *The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;*
 - (c) *Whether either party has the care or control of a child of the marriage or union other than a marriage, who has not attained the age of 18 years;*
 - (d) *The financial needs and obligations of each of the parties;*
 - (e) *The responsibilities of either party to support any other person;*
 - (f) *The eligibility of either party for a pension, allowance, or benefit under any Act or rule, or under any superannuation fund or scheme, or the rate of any such pension, allowance, or benefit being paid to either party;*
 - (g) *Where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;*
 - (h) *The extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity*

of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

- (i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;*
- (j) the duration of the marriage or union other than a marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;*
- (k) the need to protect the position of a woman who wishes only to continue her role as a wife and mother;*
- (l) if the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation;*
- (m) the terms of any order made or proposed to be made under section 57 in relation to the property of the parties; and*
- (n) any fact or circumstance that, in the opinion of the court the justice of the case requires to be taken into account.*

(3) The obligation to maintain the other party to the marriage or union exists without regard to the conduct of either party, but the court may, in determining the amount of maintenance, have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of their relationship.”

Section 54:

(1) In determining whether to make an order for the maintenance of a child of a marriage or of a union; or the period for which such an order should continue in force or the amount of any payment to be made under such an order, the court shall take into account, in addition to the matters set out in section 53(2), the following:

- (i) the income, earning capacity, property and other financial resources of the child,*
 - (ii) the financial needs of the child; and*
 - (iii) the manner in which the child is being, and in which the parties to the marriage or union expected the child to be, educated or trained.*
- (2) Subject to subsection (3), an order for maintenance shall not be made where the child has attained the age of 18 years; and ceases to be in force when the child attains the age of 18 years.*
- (3) The court may*
 - (a) provide in an order for the maintenance of a child who has not attained the age of 18 years that the order shall continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age; or*
 - (b) make an order for the maintenance of a child who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period, specified in the order, if the court is satisfied that the provision of the maintenance is necessary to enable the child to complete his education (including vocational training or apprenticeship) or because he is mentally or physically handicapped, and, in that case, the order continues in force until that day or the expiration of that period, as the case may be.”*

The Law and its application to the facts - Section 53 (2) Factors

[51] The FLA outlines clearly the factors that the court ought to take into consideration in determining whether an award of spousal as well as child maintenance should be made.

[52] I have already set out **Subsection (2) of Section 50** of the FLA and my findings under that section. I now consider the **section 53(2)** factors.

The age and state of health of each of the parties:

[53] The Applicant/Wife is 53 years of age, while the Respondent/Husband is 46 years of age. The medical report of DR. G. Stephen Duncan dated 02 May 2013 shows that the Applicant/Wife suffers from a thrombophilic condition, Factor V Leiden, that affects her ability to use her left leg. That condition means that she has a tendency to form blood clots, especially deep venous thrombosis which can be life threatening especially if it leads to pulmonary embolism. In 1996 and 2002 she suffered two episodes of deep venous thrombosis. The doctor opined that her condition is an impediment to employment, which requires prolonged standing or extensive amounts of walking.

[54] The Applicant/Wife claims that this condition inhibits her ability to seek gainful employment. The Respondent/Husband has stated in the written submissions filed May 29th 2015 (paragraph 60) that the Applicant/Wife disclosed in cross-examination, that she last saw her physician in 2008. The medical report states however that her condition should be considered a permanent one, which has only one treatment, namely anticoagulation which carries the risk of hemorrhage and which the Applicant/Wife has not stated she has undergone. In the absence of any medical or any other evidence to

contradict the medical evidence that the Applicant/Wife is suffering from a condition, which is an “impediment to any kind of activity or employment that involves prolonged standing or walking.” I accept this evidence and find that she does suffer such an impediment.

The income, property and financial resources of each of the parties and the physical, mental capacity of each of them for gainful employment:

[55] The law is that the court must be satisfied that the spouse claiming spousal maintenance is unable to provide for him/herself adequately. In **L. A. E. v J. B. E. FL 436 of 2003, (pg. 12)**, it was stated that “*in order to determine whether a spouse is unable to adequately maintain herself, the Court does not look at whether the spouse receives sufficient funds, but whether she can generate funds from her own resources and/or earning capacity so as to be able to enjoy a standard of living that is reasonable in all the circumstances.*” In **In the Marriage of Tiley (1980) FLC 90-898** the Court held that “*‘financial resources’ is a widely embracing term and indicates a source of financial support which a party can reasonably expect will be available to him or her to supply a financial need or deficiency...*”.

[56] It is clear from the case law that ‘financial resources’, is not limited to income from employment. It is the evidence of the Respondent/Husband, as borne out by the Applicant/Wife’s Affidavit of Disclosure, that she does have access to an account in another jurisdiction as well as an interest in the estate

of her mother. The Applicant/Wife is also entitled to a one half share and interest in the matrimonial home. The Applicant/Wife is however not employed and has not been in the work force for many years as a result of her having care and control of the child of the marriage and the home. The Applicant/Wife is also inhibited in relation to employment due to her physical ailment as discussed above.

[57] The Respondent/Husband is a qualified architect and has no known health issues. The evidence of earnings has shown that the Respondent/Husband earned considerable sums during the marriage and remains capable of earning considerable income through his architectural firm. The Respondent/Husband however, claims that he has been unable to secure work in recent years. I am not convinced on the evidence that the Respondent/Husband's inability to earn considerable sums of money has arisen as a result of a downturn in business. He continues to maintain his apartment, his car and his office. He continues to pay his business out goings and his staff. He continuously refused to proffer any figure when asked what amount he could reasonably afford. In spite of his protestations of impecuniosity he consented to continue to maintain the child of the marriage without putting any figure on the maintenance.

[58] When vigorously cross-examined by Mrs. Woodstock-Riley Q. C. he admitted that, in the face of a subsisting Court Order for maintenance, which

he was not honouring, he continued to pay his personal bills and the outgoings of his architectural business. I saw and heard the Respondent/Husband give evidence in chief and under cross-examination, he was not forthright in answering questions and I concluded that the reasons given for not paying maintenance as ordered were insincere.

Whether either party has care and control of a child of the marriage or union other than marriage, who has not attained the age of 18 years:

[59] Karina Tatem is the only child of the marriage and is now 19 years of age. Though Karina is above 18 years she remains enrolled in secondary school, and desires to pursue tertiary education. The Applicant/Wife cannot be said to have care and control of an adult. She continues to reside with the Applicant/Wife. As a student she continues to require the financial assistance of both parents.

The financial needs and obligations of each of the parties:

[60] Both of the parties submitted Statements of Financial Circumstances outlining their expenses, which the court has assessed.

The responsibility of either party to support any other person:

[61] Apart from the child of the marriage, neither party has any such responsibility.

The eligibility of either party for a pension, allowance, or benefit under any Act or rule, or under any superannuation fund or scheme, or the rate of any such pension, allowance, or benefit being paid to either party:

- [62] The Applicant/Wife has no eligibility for any such payment and no health insurance. It may be that she may become entitled to a contributory old age pension but that has not been established. The Respondent/Husband however, has indicated that he pays NIS contributions, and would therefore be entitled to a pension.

Where the parties have separated or the marriage has been dissolved, a standard of living that in all circumstances is reasonable:

- [63] The parties have enjoyed a comfortable standard of living for the duration of their marriage. They lived in rented accommodation at \$6,000.00 and \$4,000.00 a month at various times during the marriage. They dined out regularly as a family and travelled as a family at least once a year. The parties drove luxury vehicles during their marriage. The child of the marriage was engaged in extra-curricular activities such as archery, horse-back riding and paddle boarding. This shows the standard of living which the parties enjoyed and expected that their child would enjoy. The author Findlay states in 'Family Law in Australia' pg. 288 - paragraph 751, "*in general the wife and children should not be relegated to a significantly lower standard of living than what the husband enjoys...*" I agree with that opinion and accept it as a

correct statement of the purport and intent of the provisions relating to maintenance under the **FLA**.

The extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income:

- [64] The Applicant/Wife has indicated that she has considered reopening a school in an effort to generate income, but cannot now afford to do so, on her own. She has limited earning capacity, however, the establishment of such a school would increase her earning capacity and lessen her dependence on the Respondent/Husband. It would also provide her with an independent source of income from which she could possibly maintain herself and assist with the maintenance of the child of the marriage.

The extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party:

- [65] The Applicant/Wife has at all times facilitated the employment and educational opportunities taken by the Respondent/Husband, whether by moving or maintaining the home during the Respondent/Husband's overseas studying. The Applicant/Wife also made contributions to the first

matrimonial home. She was the primary caregiver to the child of the marriage.

[66] The husband admitted under cross-examination that the Applicant/Wife closed her school to move to Canada with him; that his career took priority over hers, and that she looked after shipping the container to Canada. He also agreed that she had bought a house for \$370,000.00 and that it was sold 3 years later for \$650,000.00. The property was in her name only. The money from that sale went to buy a house in Canada in both their names. She was unable initially to work in Canada and this affected her earning capacity. I consider that, in all the circumstances, she made a significant direct contribution to the earning capacity of the Respondent/Husband and contributed both directly and indirectly to their property and financial resources.

The duration of the marriage or union other than a marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration:

[67] The parties were married for 20 years, during which time the Applicant/Wife took care of the child of the marriage and the home. This homemaking facilitated the advancement and must be considered in determining an equitable economic distribution after separation. The Applicant/Wife was not working from 2000 when the parties moved to Canada to allow the

Respondent/Husband to take an employment opportunity. The Applicant/Wife remained in this role for the remainder of the marriage. This ought not to be to her disadvantage at this stage.

The need to protect the position of a woman who wishes only to continue her role as a wife and mother:

- [68] The Applicant/Wife continues to care for the child of the marriage. This role should not be disparaged and the Applicant/Wife ought not to suffer if it is her desire to continue to devote her time to this role whilst the child completes her tertiary education.

If the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation:

- [69] There is no evidence that either of the parties is cohabiting with any other person.

The terms of any order made or proposed to be made under section 57 in relation to the property of the parties:

- [70] The parties own property jointly, which has been advertised for sale. No evidence has been given of its value or of the net proceeds of sale coming to the parties. It seems unlikely that there will be any such proceeds.

Any fact or circumstance that, in the opinion of the court the justice of the case requires to be taken into account:

[71] The court takes into account the Respondent/Husband's non-compliance with the consent order. Also to be noted is that the Applicant/Wife's financial resources were not brought to light until an order for disclosure was made. At all times when asked by counsel for the Applicant/Wife what figure he could afford for maintenance, the Respondent/Husband neglected and/or refused to put forward any amount, his only response was that he had no money.

Is the Applicant/Wife unable to support herself adequately?

[72] The question to be answered on the basis of an analysis of the section 53 factors remains, whether the Applicant/Wife has established that she is *'unable to support herself adequately'* from her own resources. On the basis of the Affidavit of Disclosure, the Applicant/Wife has access to funds, though her indebtedness outweighs these resources. Further, the standard of living, which the Applicant/Wife and the child of the marriage were accustomed to, cannot be supported for any extended period of time on the financial resources of the Applicant/Wife. I also find that the Applicant is unable to maintain a reasonable standard of living for herself and the child or household. As such I do find that the Applicant/Wife is unable to support herself adequately in the circumstances.

Is the Respondent/Husband reasonably able to provide maintenance for the Applicant/Wife?

- [73] The second question to be determined is whether the Respondent/Husband is *'reasonably able'* to provide maintenance for the Applicant/Wife?
- [74] The Respondent/Husband has not complied with the order of this court, or that of **Kentish J.**, or that of the Court of Appeal. The Respondent/Husband is in arrears of \$130,000.00. This is an unsatisfactory state of affairs, which cannot go on without notice or reprimand. The orders of the court must be complied with.
- [75] The Applicant/Wife gave evidence, which remains unchallenged that the rent was paid for November, December and January of the year following the husband's departure from the home. Except for the phone bills, utility payments were up to date. In January he paid some of the utilities. Up to the date of hearing, the Respondent/Husband had made no payments under the order of court, and he had paid no money towards the child's counselling.
- [76] The Applicant/Wife had recourse to an account in Canada in her mother's name to assist with her general upkeep and that of the child. She gave evidence that the balance outstanding to that account belongs to her mother's estate. There is evidence that she is entitled to monies under her mother's estate. There is no evidence as to the exact amount or when that estate will be settled. Counsel referred the Respondent/Husband to the wife's inheritances, and the fact that she did banking for her mother. He responded "I know that the money in that account was not from monies earned by Mrs. Tatem."

[77] The Respondent/Husband confirmed that while they lived in Canada the Applicant/Wife had her own funds.

[78] An outstanding loan of \$100,000.00 is not being repaid.

[79] It is the Respondent/Husband's evidence that he paid the rent up until he left the matrimonial home in 2012. His office rent was \$1057.50 per month and he shared a receptionist. The Husband under cross examination gave evidence that he made no cash payments towards maintenance, apart from a cheque of \$500 in 2014, and in 2015 he paid a cheque for \$1000.00 and the last time he paid rent in accordance with the order of court was in August of 2013.

[80] He also gave evidence that he paid his rent every month in 2013 at \$2500.00 a month up until November of that year, and that he had stopped paying rent for his wife and child. The Respondent/Husband admitted receiving a payment of \$174, 596.00 from TD Re-Insurance from October 2012 to 2013 pursuant to a contract (Exhibit 3). He said that a percentage of those funds were paid to consultants hired on behalf of the client, and that \$10,000.00 of it was a refundable retainer, which would be returned to the client. He explained that there would be \$10,000.00 to be paid out but that he would be short paid that amount at the end of the contract. He was paid about \$80,000.00 in 2009, for work on the interior of the Gildan building. A second building was completed by the beginning of 2014 for which he was paid

\$30,000.00. He admitted that **Kentish J.** on the 29th October 2013, made an order for him to pay his wife's rent forthwith. At that time he had \$24,000.00 in an account. The order was \$18,000.00, but he gave further evidence that his company could not function on \$6,000.00. He averred that the company was a separate entity to himself and that he was the sole director and sole shareholder.

[81] Under further cross-examination, he agreed that he paid his personal expenses (rents, utilities and visa card) from the company's account. When counsel suggested that he chose not to make the payment of the order from the account, he responded "Yes, Sir." He admitted that he paid for an examination and glasses and his rent from the said account, and \$1145.63 to Forde's auto service ltd for a car, which he was driving, among other expenses.

[82] The Respondent/Husband agreed that on the 1st of November 2013, he wrote a cheque for \$2,500.00 to Ruth Williams for his rent. The following exchange is instructive.

Suggestion: that with a forthwith order you paid your rent?

Answer: At that time I was no longer in my office, if I did not pay my rent I would be evicted.

Suggestion: At the time of the court order Mrs. Tatem's landlord had threatened to evict Mrs. Tatem and your daughter?

Answer: Yes, Sir

Suggestion: you paid \$1181.74 to Signia Finance on the 1st November 2013?

Answer: Yes, it was one of the last few payments I could make before I could not pay anymore. I made a payment of \$1253.00 to Consolidated Finance for a car for Mrs. Tatem to drive. I paid \$1145.63 to Forde's Auto Service Ltd for a car which she was driving. On the 11th of November 2013 I agree I paid Mrs. Shield-Searle \$4000.00.

Suggestion: On the 6th November 2013, after the court order you paid \$1636.28, to Going Places Travel?

Answer: Yes, that was in relation to a potential job. I had to go to a seminar in Orlando. It was reimbursed.

[83] It is clear from this evidence that the Husband/Respondent has made little effort to honour the order of Court or to pay any part of the said order even when funds were available.

[84] I now turn to consider the parties' respective statements of financial circumstances (SOFC). The Applicant/Wife filed her SOFC on 06 May 2013.

She listed her income as nil and the following as her monthly expenses:

Expenses – Monthly

Medical and hospital expenses	\$150.00
Rent	\$3,000.00
Food and Household supplies	\$2,200.00 E
Electricity, gas and fuel, MCTV	\$600.00 E
Telephone (house)	\$213.08
Cell	\$238.99
Child care and education	\$600.00 E
Entertainment (movies, dinners)	\$500.00

Car

Maintenance (800 per year)	\$67.00
(Extra lessons, extracurricular, school supplies)	
Gas	\$650.00
Registration (400 per year)	\$34.00
Insurance (1,953.12)	\$162.76
Car Loan	\$1253.00
Travel (\$9,000.00 a year)	\$750.00
Personal care (hair, clothes etc)	\$500.00
Accra Membership	\$300.00
Total Monthly expenses	\$11,218.83

Her liabilities are \$35,000.00 estimated cost of proceedings, \$1,615.00 for medical bills and \$5,000.00 for family loans.

[85] The Respondent/Husband filed his SOFC on 08 April 2013 listing a total sum of \$180,000.00 as his annual income from his business as a self-employed architect. The following are his annual expenses:

Income Tax	\$ 1,700.00
National Insurance	\$ 4,800.
Rate & Taxes	\$ 1,600.
House Insurance	\$ 1,476.
House Rent	\$30,000.00
Office Rent	\$12,690.00
Wages	\$33,999.96
Food & Household Supplies	\$ 6,000.
Electricity	\$ 2,160.
Water Rates	\$ 960.00
Telephone & Internet	\$ 6,600.
Direct TV	\$ 1,740.
Internet	\$ 1,836.
Laundry & Cleaning	\$ 5,200.
Clothing	\$ 2,000.
Entertainment	\$ 2,400.
Loan Payments	\$14,180.88

Credit Card Payment	\$ 6,000.00
Monthly Payments to	\$69,000.00

His total annual expenses are \$241,120.96.

[86] I have already outlined the Respondent/Husband's submission that the Applicant/Wife is able to maintain herself. The Applicant/Wife submitted that the Respondent's Statement indicates an annual income of \$180,000.00. His rent is \$30,000.00 a year. In cross-examination and in his Affidavits the Respondent indicated he no longer has office rent of \$12,690 or wages of \$33,999.96. Without these expenses he has a disposable income, on his evidence of \$91,347.12 per year and therefore on his evidence could pay \$7000.00 a month. He has made provision for \$69,000.00 a year to the Applicant, which works out to roughly \$5,750.00 a month. Counsel also submitted that paying zero is not an option. Further the evidence discloses earnings in excess of \$180,000.00 a year and some of his expenditure should not take priority over maintenance for eg. laundry of \$5,200.00.

Discussion

[87] The Respondent/Husband's credit card payment of \$14,180.00 annually appears to be in respect of a credit facility of \$10,000.00, which ought to have been discharged by now if it had been paid as he alleged. I agree with the submission that the Respondent/Husband gave evidence that he had given up his office and no longer had staff which would suggest that he no longer

has those expenses which total \$67,469.96. If that sum is deducted from his total annual expenses (inclusive of his obligations to his family) his annual expense is \$173,651.00.

[88] It has been my experience in most cases coming before this Court, that the annual expenses of each party outweigh the annual income. Dissolution of marriage necessarily brings about a diminution in the lifestyles of the parties where there are limited financial resources. Each party must be prepared to make appropriate sacrifices by trimming his/her individual expenses so as to meet his/her legal commitments to each other and to the child or children of the marriage. This case is no exception. The Respondent/Husband must shoulder his responsibilities, however, the Applicant/Wife cannot expect that spousal maintenance can continue forever. Having regard to my observations, I make the following findings of fact:

- a. The Applicant/Wife is unable to support herself adequately in the present circumstances having regard to her medical condition and having regard also to the fact that she must still provide support for the child who requires counseling.
- b. The parties envisaged that the child would continue her education to the tertiary level.
- c. The Respondent/Husband is capable of providing reasonable maintenance for the Applicant/Wife and child in the terms of the consent order made by me on the 22nd day of January 2013 having regard to his statement of financial circumstances and his earning capacity as a qualified architect.

Disposal

[89] In the circumstances, it is ordered as follows:

1. The application by the Respondent/Husband for a variation of the court order made on the 22nd day of January 2013 is dismissed.
2. The application for contempt is adjourned until the 23rd of October, 2017.
3. The Respondent/Husband to pay costs of Karina Tatem's admission to the University of the West Indies.
4. Authorities on costs to be submitted by counsel on both sides by the 28th of July 2017.
5. The decision on costs is reserved.

William J Chandler

High Court Judge