

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

FL No. 89 of 2011

BETWEEN:

ZELMA EVALYN LUCAS

APPLICANT/WIFE

AND

RUDOLPH McDONALD LUCAS

RESPONDENT/HUSBAND

Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High Court.

2013: December 06

2014: March 12

April 03, 10

June 10

2016: June 30

Mr. Emerson Graham, Attorney-at-Law for the Applicant/Wife.

Mr. Arthur Holder, Attorney-at-law for the Respondent/Husband.

DECISION

Introduction

[1] Before the Court is an application by the Wife for a property settlement. On 10 June 2014, counsel for the parties agreed that the Court would resolve the

matter based on written submissions. Counsel for the Wife filed his written submissions on 25 February 2015. By letter dated 13 October 2015, counsel for the Husband was requested to forward his written submissions no later than 23 October 2015. No submissions were received. The Court is proceeding to issue this judgment without the benefit of submissions on behalf of the Husband.

The Factual Background

- [2] The parties were married on 13 December 2008, and separated on 27 December 2009. Master Keith Roberts granted decrees nisi and absolute on 28 March 2011.
- [3] The Wife alleges that, prior to the marriage, the parties lived together at her daughter's property at Ruby Park, St. Philip. The Husband only admits to an initial visiting relationship, and to an occasional sleep over. According to him, they began living together at the matrimonial home at No. 23 Rices Gardens, St. Philip from December 2005.
- [4] What the parties agree on is that they lived together before the marriage in December 2008. The evidence indicates that the Husband was still married to another person until shortly before his marriage to the Wife. Therefore, no issues of law arise that would necessitate a determination of the approximate period of time the parties lived together before marriage.

[5] The Wife filed her application for a property settlement on 29 November 2012. She sought the following orders:

1. a declaration that she is entitled to a share in the matrimonial home;
2. an order that the Husband pays her an equitable share of the value of the said matrimonial home or that the matrimonial home be sold by private treaty, or by auction, and that the Wife be paid an equitable share of the proceeds of the sale;
3. a declaration that the Wife is entitled to a share of the Mazda Familia motor car P2212; and
4. An order that the Husband pays the Wife an equitable share of the said motor car.

[6] Two affidavits were filed by the Wife, in support of this application, on 29 November 2012 and 11 April 2013. On 15 March 2013, Adrian Wharton and Harold Lucas also filed affidavits in support of the Wife's application. The Husband filed his affidavit in answer on 16 January 2013. A total of five affidavits are before the Court. Neither party filed a Statement of Financial Circumstances.

The Applicable Law

[7] In accordance with the Court of Appeal guidelines in **Proverbs v. Proverbs (2002) 61 WIR 91**, this Court will ascertain the extent of the matrimonial

property and its value; consider the contributions of the parties within the context of section 57 (3) of the Family Law Act, Cap.214 (“the Act”); and examine the section 53 (2) factors in the Act, in so far as they are relevant to this matter. Finally, the Court will satisfy itself that the proposed outcome is just and equitable in all the circumstances. (See s.57(2) of the Act).

The Matrimonial Property

[8] The Wife identified two items of matrimonial property, the home at Rices Gardens, St. Philip, and a motor car. The Husband asserts that the Wife has no interest in either the home or the motor car. He identified a property at Ruby Park, St. Philip, and alleged that the Wife has an interest in this property. The Husband wishes the Court to declare that he has a share or interest in the Ruby Park property.

1. The Rices Gardens Property

[9] The parties lived in this house for approximately three years prior to the marriage. They continued living there until their separation in December 2009. This was the matrimonial home, and the Court has to determine what interest, if any, the Wife has in this property.

2. The Ruby Park Property

[10] The Court is satisfied that, at the time of the marriage, the Wife had no interest in the property at Ruby Park. She confirmed documentary evidence

which proved that in 2007 her interest in this property was transferred to her two daughters. The Husband provided no evidence to show that he made any direct or indirect contributions to the upkeep or maintenance of this property. And he did not allege that the Wife's transfer of this property was fraudulent. The Ruby Park property is not a matrimonial asset.

3. The Motor Vehicle

[11] At paragraph 4 of her first affidavit, the Wife swore that she owned a small Suzuki motor vehicle when the parties lived together at Rices. She lent the Husband her vehicle, to travel to and from work, because he had no car of his own. The vehicle was also used to transport small items to finish the matrimonial home.

[12] The Wife expanded on this evidence during her oral testimony. She told the Court the following:

“I was once the owner of a Suzuki vehicle. That vehicle was subsequently sold when I was living with Mr. Lucas. I cannot recall when it was sold. Mr. Lucas was not at any time the owner of a Suzuki. When I met Mr. Lucas he did not have any vehicle”.

[13] The contractor for the matrimonial home confirmed to the Court that the Wife owned a Suzuki vehicle. The only reference the Husband made to this car was during his oral evidence. He informed the Court that, before the

parties lived at Rices Gardens, the Wife sometimes picked him up at his workplace at the prison at Station Hill, St. Michael, and they would drive home together. He added that “I would go back at her house.....Some nights she would leave her home and come for me at the prison”.

[14] The Husband’s affidavit contains a blanket denial of the contents of paragraph 4 of the Wife’s first affidavit. (Para.5). Neither this affidavit nor his oral evidence descended into specifics about the use of the various vehicles owned by the parties while they lived together.

[15] The Court again resorts to the Wife’s oral evidence, and her response to a document shown to her by counsel for the Husband. The Wife further informed the Court that –

“Mr. Lucas sold the Suzuki to a Rasta guy for \$600. We went together to Pegasus and we bought a Toyoto Vitz together. That Toyota Vitz was in our name[s] jointly. I cannot remember if I paid the insurance or road tax. I cannot recall exactly, that was so long. I contributed monies because I loved this man and I just would do things as a wife or woman would do. I did not document these things. I do not recall if I paid contributions towards the purchase of the car. I did not purchase the Vitz from Consolidated Finance. The Mazda he has now is from Consolidated that he bought unknown to me.....both Mr. Lucas and I went to Pegasus together and bought the Toyota Vitz. I would like to ask whose name was on the insurance for that Toyota Vitz.

[Shown a document by Mr. Holder].

I am not aware that Mr. Lucas got a loan from Consolidated Finance to purchase the Toyota Vitz.....That car burn up in the driveway.

I am aware that he purchased another vehicle. He did not carry me to buy that vehicle. I do not know when he bought that vehicle. I cannot remember the year. I was living with Mr. Lucas when he bought it. I do not know how he got the Mazda. I did not pay any monies towards the purchase of that vehicle.

....I would...put gas in the car etc”.

- [16] There are no specific denials from the Husband that he used the Wife’s vehicle, or that he sold it for \$600.00. While the Court accepts that the Husband purchased both the Toyota Vitz and the Mazda Familia, he has not refuted the Wife’s evidence that she assisted with the purchase of petrol. The reasonable inference is that, during the course of their relationship, and the marriage, all three vehicles were used for the benefit of the parties. There is no evidence to suggest otherwise. Therefore the Court finds that the Mazda Familia is matrimonial property.

4. Valuation of the Matrimonial Property

- [17] The assets to be valued are the Rices Gardens property and the Mazda Familia motor vehicle. The property was valued in January 2004 with an estimated market value of \$325,000.00. This valuation was completed twelve years ago, and it is obviously outdated. There is no valuation for the motor car.

Contributions

[18] Section 57 of the Act provides that:

“(3) In considering what order should be made under this section, the court shall take into account the following:

(a) The financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;

(b) The contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;”.

[19] The Wife conceded that she made no direct financial contributions to the payment of the mortgage on the matrimonial home. According to her evidence, she played the role of homemaker by cooking, washing, preparing meals “and all the other necessary things associated with married life”. She referred to financial contributions towards the completion of the matrimonial home; to assisting with the purchase of groceries; to paying for bottled gas; and to assisting with the payment of the electricity bill.

- [20] The Wife also spoke of purchasing items for the house, and of making payments to the contractor who worked on the matrimonial home. In her words “I used to give Mr. Lucas money when there [were] things to be done”. Her car was also used to transport small items used in the construction of the matrimonial home.
- [21] The contributions towards the completion of the matrimonial home were estimated at \$25,000.00. Bills and invoices were produced totalling \$4,758.10. These bills represented the purchase of tiles, cement, grout, household items, doors and lumber. A payment to the contractor was also included. One of the receipts refers to a gas account that was paid off.
- [22] The financial contributions by the Wife came from her wages, and a monthly allowance said to be received from her daughter. She was not employed for the duration of the marriage. After brief stints at Super Centre’s deli and Lucky Horseshoe, her last place of employment was at Crane Beach Hotel as a staff cook.
- [23] In her affidavit of 29 September 2012, the Wife stated that her weekly wages at the hotel were \$500.00 per week. Then her oral evidence indicated a weekly wage of between \$500.00 and \$600.00. She could not recall the amount of wages received at the other establishments.

[24] The Wife left the hotel with a disability, and received a disability pension of approximately \$1,000.00 per month. This pension was supplemented by an allowance of \$350.00 per month from one of her daughters. Additional income was earned through the sale of pudding and souse on Saturdays. This income was used to benefit the home as well, but no figures from this venture were presented to the Court.

[25] The Husband is the legal owner of the matrimonial property. He purchased the land, and negotiated a mortgage to complete construction of the house, prior to the marriage. He brought this asset into the marriage, and he contends that the Wife has no interest whatsoever in the matrimonial property.

[26] In his affidavit filed on 16 January 2013, the Husband specifically refuted statements made in paragraphs 3 to 6 of the Wife's first affidavit. Therefore, he denied that:

1. the Wife made any financial contribution to the completion of the house; or that she contributed up to \$25,000.00 in this regard;
2. he used the Wife's motor car to and from work; or that this vehicle was used to transport small items needed to finish the house;
3. the Wife borrowed \$3,000.00 from BNB to pay for work on the house;
4. the Wife performed any marital role as a homemaker;

5. the Wife used her wages to assist with her household duties;
6. he had any knowledge that the Wife received an allowance from her daughter; or
7. the Wife purchased groceries or contributed to the payment of any household bills.

[27] The Husband continued his denials in his oral evidence. He contended that the Wife paid no bills in relation to the construction of the house, and emphasized that she never paid the contractor. He also told the Court that the parties never lived together or cohabited at Ruby Park. The Husband wished the Court to believe that he had full financial responsibility for the home. His evidence was that:

“My salary at the prison was four or five thousand [dollars] per month. I was repaying thirteen something on my mortgage, paying for a motor car, purchasing all food and paying all bills. After paying bills and after deductions I don’t know what was left”.

[28] Despite these denials of any contributions by the Wife, the Court noted that the Husband also admitted that the Wife made a “minimal contribution” by putting in a few tiles and cutting a door for an apartment. He further conceded that she paid the telephone and gas bills. His most far reaching admission was that the Wife spent about \$6,000.00 on the house.

[29] The Husband's credibility was undermined, therefore, out of his own mouth. His oral testimony supported a financial contribution by the Wife towards the completion of the matrimonial home. The Court's role will be to assess the value of this direct contribution. Despite his denial that the Wife performed the role of a homemaker, the Husband offered no evidence to suggested that he was the homemaker, or that he paid someone to perform the household duties.

[30] The Wife paid two of the household bills. And there is the possibility that she contributed to other bills, given the Husband's evidence that: "I might give her a bill to hold". There is also the evidence of the witness Adrian Wharton, that satisfied the Court that the Wife made a direct financial contribution to the completion of the matrimonial home.

[31] As the contractor for the matrimonial home, Wharton confirmed that the Wife paid him approximately \$4,100.00 for various work he did on the matrimonial home on her behalf. This work included:

".....plastering the exterior of the house, building two steps, one at the side and the other at the back of the house, tiling the studio room and the installation of concrete pedestals". (Para.6 to affidavit filed on 25 March 2013).

[32] The Wife produced one receipt from Wharton in the sum of \$3,200.00. Counsel for the Husband suggested to her that it was a fictitious receipt,

concocted between herself and Mr. Wharton. Interestingly, this accusation was never put to Mr. Wharton when he gave his oral evidence. And counsel for the Husband did not take up the opportunity to file an affidavit in response to Mr. Wharton's affidavit. That opportunity was by way of an order made by the Court on 05 December 2013.

[33] In the absence of an opposing affidavit, and given the brevity of Wharton's cross-examination, it is reasonable for the Court to infer that both Wharton's affidavit and oral evidence were not seriously opposed by the Husband. The Court has reached the same conclusion in relation to the evidence of Harold Lucas.

[34] Harold Lucas is the Husband's brother. In his affidavit, filed on 25 March 2013, he swore that the matrimonial home was incomplete when the parties began to live together. This contradicted the Husband's evidence to the contrary. (See para.7 of Husband's affidavit). The Husband told the Court that there was bad blood between himself and Harold Lucas, and that there were untruths in his brother's affidavit evidence. However, as with Wharton, Harold Lucas was not asked about these alleged untruths when he gave his evidence in Court.

[35] Having considered all the evidence, the Court finds that the Wife made a

direct financial contribution to the completion of the matrimonial home. The available receipts verifying the following:

Tiles	\$ 442.98
Tiles, tile cement, grout	\$ 448.27
Doors, lumber etc	\$ 405.64
Tile cement	\$ 32.95
Contractor	<u>\$3,200.00</u>
TOTAL	\$4,529.84

[36] To this total sum of \$4,529.84 should be added the additional payment of \$900.00 to the contractor. Therefore, there is evidence that the Wife contributed at least \$5,429.84 towards the completion of the home. The Court is also reminded of the Husband's testimony that the Wife spent about \$6,000.00 on the house. So that there should be a further uplift of the Wife's expenditure to a minimum of \$6,000.00, if her receipts are less than this sum.

[37] The Wife produced several receipts from DaCosta Mannings for payments she made to three charge accounts numbered 974351, 0060809 and 9265630. These payments were made mostly during the period when the Wife occupied the matrimonial home. The Court was unable to add all of these payments to the \$4,429.84 found to have been spent on the house by the Wife. The reason for the omission of some of the payments is based on the Wife's response to a question posed by counsel for the Husband.

[38] Mr. Holder asked the Wife whether she used the DaCosta Mannings credit facility to pay for items on the three invoices from that establishment. The invoices are for sums of \$442.98, \$228.34 and \$448.27. The Wife responded that all those arrangements were in place. The Court understands her reply to be in agreement with the suggestion that the tiles and other purchases, mentioned in the three invoices, were paid for over time using the credit facility. This is confirmed by the “Conditions of Charge Sale” appearing on all three invoices. Therefore, having already accounted for these three payments at paragraph [35], supra, the Court cannot engage in a process of double accounting.

[39] Another relevant consideration is that invoices for the charge accounts total approximately \$3,910.60. This is more than the amounts represented on the three invoices mentioned above. These invoices total \$1,119.59, that is, \$2,791.01 less than the amount paid to the charge accounts. The Court considers it reasonable to add \$2,791.01 to the \$5,429.84 of expenditure already credited to the Wife at paragraph [36], supra, to arrive at a total expenditure of \$8,220.85. It should be appreciated immediately that this is over \$2,000.00 more than the \$6,000.00 of expenditure conceded by the Husband.

[40] The Court accepts that the Wife was the homemaker, and that she undertook the major responsibility for the washing, cooking and cleaning at the home. The Husband gave no evidence of undertaking these duties regularly or at all. He offered no evidence to contradict her oral evidence about making pudding and souse on weekends. The sale of this food to customers supplemented the Wife's income. And her income was used to purchase food, pay the electricity, telephone and the gas bills, and to assist with other household needs.

[41] The Court also finds that the Wife assisted with the purchase of petrol for the various motor cars. These vehicles were used for the benefit of both parties. There is no evidence that the Wife contributed directly to the purchase of, or the insurance for, either the Toyota Vitz or the Mazda Familia. However, the Husband never responded to the Wife's charge that he sold her vehicle for \$600.00, or that her vehicle was used to get him to and from work, and to transport small items used in the construction of the house.

Value of Wife's Contribution

[42] This marriage was a short marriage of one year's duration. It did not last long enough for the Wife's contributions to increase while the Husband's contributions decreased. His major contributions were the matrimonial property and the Mazda and Toyota motor cars. (See **Bovell v Bovell, Suit**

No. 431 of 1993, decision dated 27 October 1995; In the Marriage of Crawford (1979) 35 F.L.R. 489; and in the Marriage of Lee Sterre [1985] F.L.C. 91, 626).

[43] Given a short marriage where there are no dependent children, the primary issue before the Court is the actual financial contribution of each party. In this case neither party offered any documentary evidence of their employment income. The Wife claimed to have worked for \$500.00 to \$600.00 per week at her last place of employment. This was allegedly supplemented by an allowance of \$350.00 per month by her daughter. Unfortunately, there was no evidence from the daughter confirming this contribution.

[44] The Husband said that, prior to his retirement as a prison officer, he worked for “four or five thousand dollars per month”. The Wife did not challenge these figures. She agreed that the Husband paid the mortgage from his salary. What she disputed was his allegation that he purchased all the food and paid all the bills. He could not recall what money remained after paying the mortgage and all the bills.

[45] The Wife ceased working because of a disability. Her wages were replaced by a disability allowance of approximately \$1,000.00 per month. But there is no evidence that her ability to contribute to the completion of the house and

to the household expenses was compromised. She completed payments on charge account No. 0060809 on 24 September 2009. There is also a notation on account No. 9265630 that the gas account was paid off in December 2008. However, her liability for account No. 974351 continued beyond the breakdown of the marriage. This account had a balance of \$73.00 at 11 May 2010. This makes the possibility of a monthly allowance from her daughter appear to be more credible.

[46] The Husband had a higher earning capacity than the Wife. This enabled him to take full responsibility for the mortgage payments while completing the matrimonial home. However, the financial and non-financial contributions of the Wife would also have enabled him to make additional payments towards the purchase of two consecutive motor vehicles, and to their upkeep. There is no evidence that the Husband contributed to the Wife's expenses, or that he gave her money to assist with the running of the household. The only financial contribution to the Wife is a sum of \$1,000.00 that was donated after the Husband received his retirement gratuity of \$97,000.00.

[47] In **Tasker v. Tasker, Suit No. 166 of 2004, decision dated 10 June 2004**, Cornelius J. observed that in short marriages:

“...the court is required to examine the respective contributions with more rigour than in unions of greater length. In fact in **Bushby v. Bushby [1988] F.L.C. 91-**

919 Baker J. makes it clear that in short marriages where there are no dependent children involved ... the primary issue is the actual financial contribution of each of the parties. Thus, he held that where the income (and thus contribution) of the husband “substantially exceeded that of the wife” it would be a “grave injustice” to the husband to confer any further benefit on the wife other than what she had already received”. (Para. [41]).

[48] In the **Tasker** case, Cornelius J. found that the Wife had contributed approximately \$30,000.00 to the acquisition of the sole matrimonial asset, which was a parcel of land. In September 2012, the land was valued at \$240,250.00. The Wife’s financial contribution to the asset was determined to be “in the region of 10%”. (Para. [60]). After a consideration of the section 53(2) factors, the Wife was awarded fifteen percent of the value of the asset.

[49] What was also relevant in **Tasker**, was that the Husband’s salary covered almost all the expenses for the Wife’s two children from a previous marriage; rent for the matrimonial home; payment of some utilities; and the provision of furniture and appliances. It was accepted that the Husband “covered by far the greater share of the household running expenses”. (Para. [23]).

[50] In this case, it appears to the Court that the Husband carried the major responsibility for the mortgage, the completion of the matrimonial home, and the purchase of two consecutive motor vehicles. On the other hand, the Wife

was fully responsible for the running of the household through the purchase of food, payment of utility bills, and her duties as the homemaker. She also made a financial contribution to the construction of the matrimonial home; and she was the owner of the first motor car that was available to the parties. However short the marriage, it was a shared venture.

[51] Whereas there is some indication of the Wife's financial outlay towards the construction of the matrimonial home, there is a paucity of evidence regarding her other direct contributions towards the provision of food and payment of utilities. It was in her oral evidence that the Wife spoke of paying approximately \$100.00 per month for electricity. There are no other estimates for the payment of other utilities or for the purchase of food. And no Statements of Financial Circumstances were provided for the Court to use as a guide in estimating either the past or current expenditure of the parties.

[52] In addition to her proven expenditure of \$8,220.85, the Court will credit the Wife with approximately \$1,500.00 for electricity payments. The Court will also consider a conservative figure of \$300.00 per month for food and other household expenses, and add a credit of \$4,000.00. The Wife's non-financial contribution as homemaker "must necessarily be a value judgment". (See **Proverbs**, supra at para. [64]).

[53] The Court was guided by the observations of Simmons C.J. in **Proverbs**, where he opined as follows:

“[61] The wife has made a contribution to the home and family and the Act clearly intends that her contribution “should be recognised not in a token way but in a substantial way” - per Evatt CJ in **Rolfe v. Rolfe [1979] FLC 90-628** at p.78, 272.

[62] “What the Act requires is that in considering an order that is just and equitable the court shall take into account any contribution made by a party in the capacity of homemaker or parent. It is a wide discretion requiring this Court to assess the value of that contribution in terms of what is just and equitable in all the circumstances of a particular case” - per Wilson J in **Mallet v. Mallet [(1984) FLC 91-507** at p. 79, 126]”.

[54] The provision of homemaking expertise by the Wife would have saved the parties from additional financial outlay for domestic services. The Court considers that domestic assistance for two or three days per week would have cost the parties (again conservatively) about \$150.00 per week. A credit of \$5,000.00 is added for the Wife’s homemaking contribution during the marriage.

[55] The Court computes the value of the Wife’s direct and indirect contributions to the marriage as follows:

Completion of matrimonial home	\$ 5,429.84
DaCosta Mannings charge accounts	\$ 2,791.01
Electricity	\$ 1,500.00
Food	\$ 4,000.00
Homemaker	\$ 5,000.00
Sale of vehicle	\$ <u>600.00</u>
TOTAL	\$19,320.85

[56] In the absence of oral, affidavit or other documentary financial information pertaining to the Wife’s additional expenditure, the Court did not include sums for other utility payments such as telephone, gas and water bills. Any contributions to the upkeep of the vehicles purchased by the Husband were also omitted from the above calculation for the same reason. However, due regard will be given to this additional expenditure, when the Court considers what is just and equitable in all the circumstances.

The Section 53(2) Factors

[57] Section 57(3)(d) of the Act further directs this Court to take into account “the matters referred to in section 53(2) in so far as they are relevant”. In

Proverbs, Simmons C.J. opined that:

“... the section 53(2) factors come into play in situations where there is a disparity in earning capacity, or there are special needs on the part of one party ... An adjustment is

made because one has greater needs and the other has stronger means.” (Para. [38]).

[58] The relevant factors in this case are as follows:

(1) The age and state of health of each of the parties (s.53(2)(a)).

The Husband is now approaching or is in his 67th year, and the Wife her 68th year. There is no evidence of health challenges associated with the Husband. On the other hand the Wife is a diabetic. There is no evidence about the cost of her medication or any special diet, if any.

[59] **(2) 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 (s.53(2)(b)).**

The Husband retired during the marriage, and received a gratuity of \$97,000.00. There is no evidence of his monthly pension figures, or whether he continues to pay a mortgage. He is the legal owner of the matrimonial property, and he continued to live there after the divorce.

[60] The Wife retired early with a disability. In 2014 the amount of her disability pension was approximately \$1,000.00 per month. She was also receiving a monthly allowance of \$350.00 from one of her daughters. The Wife had no property of her own, and after the breakdown of the marriage, she returned to

live with her daughter. It is not known whether she is receiving an old age or any other pension.

[61] Neither party gave any evidence of owning shares, bonds or life insurance policies.

[62] **(3) Whether either party has the care or control of a child of the marriage or union other than marriage, who has not attained the age of 18 years (s.53(2)(c)).**

There are no children of the marriage.

[63] **(4) The financial needs and obligations of each of the parties (s.53(2)(d)).**

There is no evidence before the Court relating to the financial needs or obligations of the parties.

[64] **(5) The responsibilities of either party to support any other person (s.53(2)(e)).**

There is no evidence that either party contributes to the support of any other person.

[65] **(6) 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 (s.53(2)(f)).**

This information was provided at paragraphs [59] and [60], supra.

- [66] **(7) Where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable.**

There is no evidence that, since the dissolution of the marriage, either party has a standard of living that cannot be described as reasonable in all the circumstances.

- [67] **(8) The terms of any order made or proposed to be made under section 57 in relation to the property of the parties.**

The Court proposes to grant the Wife a share in the matrimonial property that approximates the value of her contributions.

- [68] **(9) Any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.**

No additional facts or circumstances were brought to the attention of the Court by the parties. The Wife's undocumented expenditure will be addressed when the Court considers what is just and equitable between the parties.

What is Just and Equitable?

[69] Section 57(2) of the Act provides that:

“The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.”

[70] Because the marriage did not subsist beyond one year, and in view of the fact that there are no children of the marriage, the Wife is only entitled to the value of her direct and indirect contributions to the marriage. There is no evidence before the Court which gives her any entitlement to the forty-nine percent of the property that she asked the Court to settle on her. The Court made a preliminary assessment of the value of her contributions to the marriage as \$19,320.85.

[71] Due to the lack of financial evidence, the Wife was given no credits for some utility payments, or for her contribution to the upkeep of the various motor vehicles. But the Court accepted her oral evidence that she undertook this financial responsibility, although she was unable to produce bills or invoices to substantiate her expenditure. In many instances she would have provided cash to the Husband to assist with household expenses.

[72] Hogan J. stated in **In the Marriage of Marinko** that:

“No exhaustive definition of the matters to be considered to do justice between the parties is possible nor can guidelines be laid down to provide for the evaluation of those matters or the weight

to be given to them either individually or collectively. All the circumstances of each case require consideration and upon such consideration a judicial exercise of discretion should be made to achieve a result which is just in all those circumstances.”
([1985] F.L.C. 91-609 at 79, 944).

[73] Having considered all the circumstances of this case, the Court is of the view that some credit should be given to the Wife for her undocumented contributions. In this regard, the value of her contributions will be uplifted to \$22,000.00. The Court also took into consideration that the Wife brought a vehicle to the marriage that was heavily used by the parties. She then left the marriage without any independent means of transportation.

[74] The Court considers it just and equitable to alter the Husband’s interest in the matrimonial property at Rices Gardens, St. Philip, so as to vest in the Wife a share in that property to the value of \$22,000.00. There will be no alteration to the Husband’s interest in the Mazda Familia.

Disposal

[75] The Court makes the following orders in relation to the property rights of the parties:

- (1) The interest of the Husband in the matrimonial property is altered so as to vest an interest in the Wife to the value of \$22,000.00.
- (2) The Husband shall pay the Wife a lump sum of \$22,000.00 in full satisfaction of her interest in the matrimonial property.

- (3) The sum of \$22,000.00 shall be paid on or before the 30th day of September 2016, and shall bear interest at the rate of eight (8) percent per annum from the date of this order until payment in full.
- (4) On payment of the sum of \$22,000.00, and any accrued interest thereon, the Wife shall relinquish all interest in the matrimonial property.
- (5) Ownership of the Mazda Familia motor car is vested solely in the Husband.
- (6) There shall be liberty to apply.

Sonia L. Richards,
Judge of the High Court.