



In the Supreme Court of Bermuda

DIVORCE JURISDICTION

2017: No. 155

B E T W E E N:

V

Wife

- v -

V

Husband

Before: Justice Nicole Stoneham

Appearances: Mrs. Simone Smith-Bean, Smith-Bean & Associates, for Wife
Mrs. Alma Dismont, of Marshall Diel & Myers Limited, for Husband

Dates of Hearing:
24 & 26 February 2021
1,2,4,5,12 & 13 March 2021,

Date of Judgment: 14 April 2023

JUDGMENT

Ancillary Relief

STONEHAM J:

Preface

Let me apologize for the delay in producing this decision. I take full responsibility for the delay and accept that a delay of two (2) years is a gross oversight and failure of my judicial responsibilities.

A. Introduction

1. Following the presentation of a divorce petition, parties to a marriage may apply to the Court for the purpose of determining the division of assets (ancillary relief). There are two such applications before the Court:-

a. The Wife's Notice of Application for Ancillary Relief dated 13 March 2018 seeking, *inter alia*, that:-

- i. The Husband shall transfer his interest in the ½ acre lot of land to the Wife and the cost of the transfer will be paid by the Wife;
- ii. The Husband shall transfer his interest in the ¼ acre lot of land to the Wife and the costs of the transfer will be paid by the Wife
- iii. The Husband shall retain the gold coin collection
- iv. The Wife shall retain the silver coin collection
- v. Each party shall retain their individual pension
- vi. The Husband shall return the sum of \$100,000 to the Wife
- vii. The Husband shall retain:
 - (a) All property he inherited from his mother
 - (b) Monies in his accounts overseas
 - (c) His jeep motor vehicle overseas
 - (d) His Kia Rio motor vehicle
 - (e) His motorbike
- viii. The Wife shall retain:
 - (a) Monies in any account in her sole name in Bermuda and any other jurisdiction worldwide; and
 - (b) The Kia Soul motor vehicle
- xi. There shall be no order as to costs

b. The Husband's application made by way of Notice of Application for Ancillary Relief dated 4 July 2018 seeking, *inter alia*, :-

- i. Lump sum provision;
- ii. Property adjustment order in relation to the ½ acre lot of land located outside of Bermuda ("the ½ acre lot of land") and the ¼ acre lot of land ("the ¼ acre lot of land"); and

iii. An order that the Wife shall be responsible for the costs of the ancillary relief application.

B. CHRONOLOGY OF PROCEEDINGS

2. The chronology may be summarized as follows:-

- On the 8th March 2018 the Wife filed an application for Ancillary Relief seeking an Order for both parties to be 50% responsible for the expenses of the minor child.
- By way of consent order dated 19th April 2018 directions for the hearing of the ancillary application was agreed.
- On the 4th July 2018 the Husband applied to the court for determination the assets of the marriage seeking a property adjustment order and further order relative to the maintenance of the child of the Marriage.
- By way of consent order dated 1st August 2018 the parties agreed to consolidate their ancillary applications.
- By order dated 4th September 2018, the Wife and Husband were ordered to respond to the outstanding rule 77(4) requests on or before 7 September 2018.
- On the 6th November 2018, the Registrar ordered the Wife to provide all outstanding rule 77(4) request on or before 20th November 2018.
- On the 7th February 2019 the Wife filed an application in person seeking an order that the Husband be ordered to pay 50% of all school and care expenses for the minor child. Additionally, the Husband filed an application seeking an order pursuant to paragraph 1 of the Order dated 6th November 2018 regarding disclosure.
- On the 9th April 2019 the Registrar ordered that the party's respective summons to be heard on the 25th April 2019. The matter was not heard until the 1st October 2019, when the Court ordered the Wife to provide the requested disclosure within 21 days of the date of the Order.

3. Upon the listing of this matter, the world was in the midst of the global pandemic and travel in and out of Bermuda was restricted. Mrs. Smith-Bean, Counsel on her behalf of the Wife was positioned in America. She and the Wife appeared via remote means. The Husband, who had since returned to his home country, appeared via remotes means. His home country was in a state of emergency lock-down. Mrs. Dismount, Counsel on his behalf appeared physically before the Court. The Court is most grateful to the Court's IT team for ensuring, so far as possible, the continuity of this hybrid

hearing format. For various unforeseen reasons, the hearing lasted far longer than originally estimated.

4. The Wife filed affidavit evidence:-
 - i. First Affidavit sworn 15 May 2018
 - ii. Second Affidavit sworn 25 July 2018
 - iii. Third Affidavit sworn 2 February (filed without leave of the Court days prior to the scheduled hearing). The Court permitted reliance on its contents and the Wife was permitted to update her position at the hearing.
5. The Husband filed one affidavit sworn 4 July 2018 and updated his position during examination in chief during the hearing. Mrs. Smith Bean and Mrs. Dismount each had opportunity to cross-examine the Wife and Husband including various other witnesses.
6. The Court has considered all of this evidence.

C. ESSENTIAL FACTS

7. At the time of the hearing the Wife was 38 years old and the Husband was 43 years old. In or about 2002 the Wife and Husband met in their home country, where she lived with her parents and the Husband shared accommodations with his mother. The Wife described their relationship as a 'long-term relationship' whilst the Husband described it as 'on and off' for a number of years.
8. In 2007 the Wife pursued further education overseas which included qualifying as professional accountant in the United Kingdom. In 2008 the Wife secured employment within Bermuda's international financial services industry earning approximately \$8,000.00 per month. The following year, in 2009, the Husband relocated to Bermuda to join the Wife.
9. He soon obtained employment as an audio technician, and remained with this employer throughout the marriage earning on average an income of \$4,467.72 per month with a discretionary annual bonus in the sum of \$3,000.00. The Husband's salary was deposited into the parties' joint savings account and used by the parties to cover the lion share of their household expenses including the rent payable for matrimonial accommodations at the rate of \$2,800 per month, utilities and other

related expenses. The Wife's salary was used to pay any shortfalls and the balance deposited into the parties' joint US dollar savings account.

10. In 2011 the parties travelled to the United States of America to marry. At about this time, the Wife's monthly salary was \$10,675.00 per month. The following summer, 2012, the parties jointly purchase two lots of land in their country of origin (i) ½ acre and (ii) ¼ acre. The ½ acre lot was purchase for \$440,000.00 EC (\$162,809.20BMD). The Husband contributed \$100,000.00 EC into an investment account which he then grew to \$200,000.00 EC and the Wife contributed \$212,000.00 to the balance and covered all closing costs for the purchase. The ¼ acre lot was purchased for \$132,975.00EC (\$49,203.53 BMD) by way of Mortgage agreement in the joint names of the Wife and Husband.
11. In the fall of 2012 the Husband's mother passed away leaving him an inheritance. The parties agreed that the Husband would use a portion of his cash inheritance to satisfy the outstanding mortgage on the ¼ acre lot. Throughout the marriage the Wife regularly transferred large sums of money overseas to her parents to assist in paying off their debts. In 2013 the Wife's parents sold their home and gave the proceeds of the sale to the Wife and Husband to place in a high interest yielding savings account. This account was held in the joint names of the Wife and Husband.
12. In 2014 the parties celebrated the birth of the one child of the family. In early 2017 difficulties beset the marriage. At this point, the Wife and Husband had amassed a joint USD savings of \$181,355.71.
13. During the period 2015 to 2017 the Wife had saved in her sole account the sum of approximately \$98,000.00. By mid-2017 the Husband moved out of the rented matrimonial accommodations. However, prior to moving out, the Husband withdrew USD \$100,000 from the parties' joint account. At the time of separation the parties divided the motor vehicles purchased during their relationship.
14. During the period June 2017 through 2018, the Wife transferred large sums of money to her parents, who reside outside of Bermuda.

15. After the parties separated, the Wife travelled extensively. In late 2017 the Wife petitioned for divorce. Decree Nisi was pronounced November 2017 and made Absolute January 2018. During the period April 2017 through to July 2018 the Wife spent approximately \$284,000.00.
16. At the time of the hearing the Wife had changed employers and was now earning a salary of \$11,295.00 per month. In March 2020 she received a bonus in the sum of \$32,175.00 for her performance in the year 2019. The Wife and one child of the family reside in rental accommodations together with her new partner. The Wife receives \$500.00 per month from the Husband for the benefit of the one minor child of the family.
17. At the time of the hearing, the Husband had not yet secured employment as a direct consequence of the global Covid-19 Pandemic and the existing emergency lock down in his home country. He resides with his finance in the main unit of his inherited property, and is hopeful of securing employment.

D. THE ASSETS IN ISSUE

18. At the time of the hearing, the evidence of assets is as follows:-

Description	Value (Bermuda dollars)
½ acre Lot of land located in St Lucia	\$162,963.00
¼ acre Lot of land located in St Lucia	\$49,203.53
Gold and Silver in New York	\$30,353.49
Savings in Wife's sole account as at March 2017	\$98,608.00
Husband's withdrawal from parties' joint account in or about March 2017	\$100,000.00
Wife's Pension as at May 2018	\$154,493.59
Husband's Pension as at June 2018	\$29,320.58
Funds from Wife's parents held in investment account in the joint names of the Wife and Husband	\$174,982.00
Husband's inheritance:- Home in country of origin	\$336,070.00
Balance of funds as at date of separation	\$29,694.00

Land measuring 10 thousand square feet Derelict property in Europe	\$77,778.00 Unknown value
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E. THE POSITION OF THE PARTIES

The Wife's Position

19. At the hearing, the Wife's position is that she should receive the vast majority of the assets acquired during the marriage, namely the ½ acre lot and the ¼ acre lot together with the coin collection and a claw back of the joint savings retained by the Husband in the sum of \$100,000. The Wife contends that her contribution as a home maker and income earner is a special contribution to the marriage. The Wife's evidence is that the \$100,000 withdrawn by the Husband is her money and was stolen from her by the Husband.
20. Moreover, she contends that the Husband's inheritance was not his alone. At paragraph 13 of her third affidavit sworn 2 February 2021, she asserts that the Husband's "*inheritance came very early in our marriage and afforded him independent wealth*", and that "*we received funds from her insurance policy which we used to pay the loan facility and the mortgage on the inherited property that consisted of his mother's home and apartments immediately. The Respondent never indicated that his inheritance was just for him alone. He looked at the inheritance as a start for our family as we used the funds to liquidate the mortgage for our land*".
21. The Wife's evidence is that throughout their relationship in 2002 – 2007 she resided at the Husband's inherited home on a week-on-week-off basis caring for his ill mother. Moreover, that during their subsequent marriage, they enjoyed extended periods staying in the Husband's inherited home including during their vacations from Bermuda.
22. The Wife's states at paragraph 16 of her Third Affidavit that it would be "*wholly unequitable if the Husband is allowed to enjoy full credit of his inheritance in addition to receiving 50% of all our marital assets effectively creating an uneven financial position between us*".
23. When questioned about her expenditure of \$284,000.00 between April 2017 through to July 2018, equating to expenditure averaging \$23,000.00 per month, the Wife's evidence was simply "*that sounds about right*". The Wife admitted that she was, indeed, "*depleting*" her pension account and savings account, but denied that such expenditure was "*reckless depletion of funds*". The Wife's evidence is that "*It was {her} way of coping with stress, depression within the marriage*" and assisted "*in finding*" herself.

24. When questioned regards the numerous travel stamps in her passport, as much as thirteen stamps for the year 2017, and related expenses, the Wife admitted that she travelled extensively with her new partner and was spending from all accounts. She explained that she paid for his travel expenses because “*he could not afford it*” and “*for booking purposes*”.
25. The Wife’s evidence regarding whether her partner contributed to her current monthly expenses of \$3,500 per month on groceries, \$4,000 per month on rent, \$2,500 per month on legal fees, and \$750 per month on private school fees, together with the expense of fuel, household utilities and other day-to-day expenses totally some \$12,000 per month, the Wife’s evidence is that her partner, with whom she resides, does not contribute to their household expenses nor is he employed in Bermuda. When questioned about various banking transfers, the Wife further admitted that she paid, albeit on a temporary basis, her partner’s child support obligation and transferred such sums overseas on his behalf.
26. Mrs. Dismont extensively cross-examined the Wife on multiple transfers of money outside of Bermuda. The Wife’s evidence included assertions that she paid-off various debts of her parents including a business loan. And, that she sent money to various people including the Husband’s mother. In respect of multiple large sum withdrawals from her pension after the parties separated, each in excess of \$30,000, the Wife admitted that she had significantly depleted her pension. The reason she said was to cover expenses including the child’s school fees.
27. During cross examination she asserted that the gold and silver coins were purchased for their child’s future but could not offer any explanation for omitting this position from her earlier affidavit evidence including her most recent Third Affidavit.
28. Mrs. Smith Bean on behalf of the Wife argued, *inter alia*, that the Court should view the Husband’s inheritance as a significant contribution to the family’s net worth during the marriage and that there was a need for compensation in favour of the Wife, as a result of the benefit derived from the Husband’s inherited assets.
29. Mrs. Smith-Bean further argued that to achieve equitable division of the assets, the Court must depart from the usual course of dividing the matrimonial assets in equal shares, and invited the Court to give the Wife credit in her “*dual role of caregiver and main financial provider*” throughout the marriage.

The Husband's Position

30. In a nutshell, the Husband's position is that the assets acquired during the marriage should be divided on an equal basis which will allow both parties to meet their respective needs, and as such he should be able to retain his inheritance.
31. At the hearing the Husband agreed that the Wife should retain the funds held in an investment account in their joint names notwithstanding his earlier assertion that the Wife's parents had gifted them the money. His evidence is that the Wife could have it "*as he had not worked for it*".
32. His position regards his inherited property is that it was never used during the marriage to fund the parties' lifestyle. His evidence is that at all times, the rental income received from the inherited property remained in his home country for the purpose of property maintenance, and as such always remained separate and apart from the matrimonial assets.
33. As regard the Husband's current liabilities, his evidence is that after the parties separated in June 2017, he had mounting legal fees in Bermuda. As a result, his land lady assisted him by allowing his rent of \$1,200.00 to accrue as a debt to her. The Husband confirmed that he is expected to pay this back once the legal proceedings were finalised. The Husband gave evidence that the outstanding rental income due to his landlord stood at approximately \$36,000.00. He also owes her about \$50,000.00 for her assistance with meeting his legal fees.
34. When cross examination by Mrs. Smith Bean, on profits earned from the sale and purchase of Bitcoins, the Husband's evidence is that in November 2020, after separation, he transferred \$2,000.00 to his fiancé, who then transfer the bitcoins for him and gifted him an extra \$500.00. The Husband confirmed that the value of bitcoin increased to \$7,825.10 as at February 2021 but that the notional return of \$1,500.00 could decrease in the same way that the value has increased.
35. Mrs. Dismont, on behalf of the Husband argued, *inter alia*, that the Husband's purchase of Bitcoin cannot be regarded as an income stream for the Husband given the volatile nature of the market. Moreover, that any return that the Husband obtains on his purchase is non-matrimonial given that the bitcoins have been purchased post-separation.

36. Mrs. Dismont on behalf of the Husband invited the Court to take into account the Wife's "recklessly/and or extravagant frittering away" of the matrimonial savings from the US savings account and her pension in relation to which the Husband, she contends is entitled to an equalisation and that these sums should be included as matrimonial funds available for distribution between the parties.

F. THE LAW

37. The Court is most grateful to Counsel for their submissions on the developments through the years, or might I dare say 'confusion' regards, *inter alia*, the treatment of inherited assets in the context of ancillary relief applications. Mrs. Smith-Bean relied on various UK authorities including *Norris v Norris* [2002] EWCHC 2996 (Fam) (2003) 1 FLR 1142, and *P v P (Inherited Property)* [2004] EWHC 1363 Fam (2005) 1FLR 576, to persuade the Court to take a different approach in the all the circumstances of this case and in so doing depart from the yardstick of equality.

38. The Court's jurisdiction to grant ancillary relief is found in the Matrimonial Causes Act 1974. When deciding what, if any, financial order to make pursuant to Sections 27 and 28 of the Act, the Court must have regard to all the circumstances of the case including the statutory factors specified in paragraphs (a) to (g) of Section 29(1). Inherited assets fall within paragraph (a) of Section 29 (1) namely 'other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future'.

39. Most importantly, the 'tail -piece' (as it has become to be known) of Section 29(1), directs the Court to place the parties so far as it is practicable in the position they would have been in had the marriage not broken down and each had discharged their respective financial obligations to the other. It is well established that this 'tail-piece' in our legislation means that the Court must make an order it considers to be fair in all the circumstances of the particular case. This concept of fairness was enunciated in the House of Lords decision of *White v White* and later developed in *Miller v Miller, McFarland v McFarland* [2006] UKHL 24, [2006] 2AC 618. Whilst fairness is an elusive concept, it is well recognized that in achieving a fair outcome, there is no place for discrimination between husband and wife and their respective roles.

40. Lord Nichols in his opening speech in *Miller v Miller, McFarland v McFarland* [2006] UKHL 24, [2006] 2AC 618, said:-

“When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account a wide range of matters such as the parties ages, their future earning capacity, the family’s standard of living.....most of these needs are generated by the marriage, but not all of them.....in most cases the search for fairness largely begins and ends at this stage”.

41. A key component of fairness requires the Court to distinguish between matrimonial and non-matrimonial property. In the case of *Hart v Hart* [2017] EWCA Civ 1306, the UK Court of Appeal exploring the seminal decisions on this topic, provides a helpful definition of matrimonial and non-matrimonial property:-

“[2] ...In White v White [2001] AC 596, Lord Nicholls used the expression, "from a source wholly external to the marriage" (p. 994) when referring to non-matrimonial property. He defined matrimonial property in Miller v Miller; McFarlane v McFarlane [2006] 1 FLR 1186 (paragraph 22) as "the financial product of the parties' common endeavour". Lady Hale used the expression "the fruits of the matrimonial partnership" in Miller (paragraph 141). In Charman v Charman (No 4) [2007] 1 FLR 1246 matrimonial property was described as "the property of the parties generated during the marriage otherwise than by external donation" (paragraph 66). Non-matrimonial property can, therefore, be broadly defined in the negative, namely as being assets (or that part of the value of an asset) which are not the financial product of or generated by the parties' endeavours during the marriage. Examples usually given are assets owned by one spouse before the marriage and assets which have been inherited or otherwise given to a spouse from, typically, a relative of theirs during the marriage.”

42. Unless there is good reason to do otherwise, there will be an equal capital division of the matrimonial property between the parties. Exceptions are rare.
43. This is in contrast to the treatment of non-matrimonial property which is regarded as distinct in character given that it originates from sources external to the marriage. Non-matrimonial property includes assets that are pre-owned, gifted or inherited during the marriage. It is recognised that non-matrimonial property should be retained by the person who obtained it unless the other parties’ needs cannot be met from the matrimonial property.
44. The Privy Council decision of *Scatliffe v Scatliffe* [20017] 2 WLR provided further clarity

“So in an ordinary case the proper approach is to apply the sharing principle to the matrimonial property and then to ask whether, in the light of all the matters specified in section 26(1) and of its concluding words, the result of so doing represents an appropriate overall disposal. In particular it should ask whether the principles of need and/or of compensation, best explained in the speech of Lady Hale in the Miller case at paras 137 to 144, require additional adjustment in the form of transfer to one party of further property, even of non-matrimonial property, held by the other”.

45. The Court is guided accordingly.

G. THE SECTION 29 DISCRETIONARY EXERCISE

46. The Court has considered all of the evidence of the circumstances of the marriage including evidence of the Wife’s mother, AA, WF, JD, LR and EO.

47. The Court has had regard to the statutory factors specified in paragraphs (a) to (g) of Section 29(1). In my judgment, the parties’ marriage was a true partnership. They shared domestic responsibilities and financial vision to accumulate savings to fund their retirement aspirations. Sadly, the marriage was not long. However, the Wife and Husband are still young in age. At the time of the hearing, each had moved on with their lives and now reside with new partners.

48. On the evidence, it is clear that the Wife and Husband enjoyed a good standard of living in Bermuda and were able to afford a nanny, among other amenities, to assist with the one child of the family. The parties met these joint needs by utilizing their respective employment incomes and were still able to amass considerable surplus in joint savings whilst residing in rental accommodations. The parties were able to enjoy regular vacation travel outside of Bermuda and other good quality experiences. The Court is satisfied that the Husband’s inheritance was not used to support the parties’ lifestyle during the marriage.

49. The Wife’s evidence is that she is now earning a greater salary than earned during the marriage. The Court is satisfied that the Wife’s current monthly earnings nearly total the combined earnings of her and the Husband during the marriage. In my judgment, this is a significant income. Such a significant income may have attached the benefit of even larger annual bonuses than those received by the Wife during the marriage. The Court has little doubt that the Wife’s increased earnings place her in a very secure position to meet her ongoing monthly expenses and other financial responsibilities. In my judgment, should the Wife’s new partner make a contribution to their household expenses, the Wife’s position would be even greater.

50. At present the Wife is completing additional professional certifications which, in my judgement, will position her in the foreseeable future, in an even stronger earning capacity. As such, her earnings will be far superior to the Husband's and she will, in my judgment, continue to grow her savings from surplus income as demonstrated throughout the marriage. So too, will the Wife's pension grow given these increased earnings and the many number of years before her retirement. The Court has little doubt that in the near future the Wife will be able to amass sufficient savings, and certainly prior to retirement, to build or purchase a dream home in her home country, if that remains her desire.
51. The Wife did not challenge the Husband's evidence that one of his inherited properties had most likely been repossessed by the French Government. Nor did she challenge the Husband's belief that the property had no value. The Wife accepted the Husband's evidence that rental income received from the Husband's other inherited property in has always been deposited into the Husband's account and used to maintain the property. The Wife also accepted during cross – examination that these funds have never been intermingled with matrimonial assets nor have they been used to supplement the parties' lifestyle.
52. In my judgment, witnesses WF, JD, LR, DV and EO were all credible witnesses. JD, who lived in the rental unit of the Husband's mother's home during 2002 – 2007, his evidence is that the Husband's mother had great principles and would have never permitted pre-marital living within her home. LR's evidence was that the Wife may have slept there on occasion, but that she certainly did not reside there. Both DV and EO had life-long relationships with the Husband's mother. Their evidence was that throughout the many years of their life long relationship with the Husband's mother, including attending her house, and caring for her throughout her illness, the Wife did not reside in the house. They too said the Husband's mother was extremely private and would never have permitted the Wife to reside there. The Wife's own mother's evidence confirmed that the Wife lived elsewhere. The Court is satisfied that the Wife assertion that she had lived in the Husband's inherited home is simply unfounded.
53. At the time of the hearing the Husband was unemployed but hopeful that he would commence employment within the automotive industry. There is no evidence of his earning capacity within this industry, nor his likely income given the uncertainty of the economy in his home country in the

context of the global pandemic and global supply chain. The Court has no reason to doubt this circumstance.

54. Whilst unemployed, the Husband's evidence is that he receives EC\$1,400.00 (BDA\$520.00) in rental income from the two-bedroom apartment within the inherited property.
55. The Husband resides in the main unit with his fiancé, who assists him with meeting the household expenses. The Husband was unable to confirm the contributions made by her to the household expenses, but his evidence is that often times they would both contribute to groceries and entertainment (which is currently limited given the lock-down). The Husband's estimated his monthly expenses to be US\$2,173.49, which he was currently meeting from savings. His evidence included that he had recently withdrew his pension in Bermuda and had sold his car and bike.
56. In my judgment, the Husband's current needs are far greater than the Wife's given his unemployment and that he is meeting his housing needs from his inheritance alone.

H. CONCLUSION

57. In the Court's judgment, the legal principles and evidence support the following:-

Matrimonial

- a. The following assets were acquired through the common endeavours of the Wife and Husband, and as such should be shared equally:-

i)	The ½ Acre lot of land	\$162,963.00
ii)	The ¼ Acre lot of land	\$49,203.53
iii)	The Gold and Silver coin collection	\$30,000.00
iv)	The savings in the Wife's account as at march 2017	\$98,608.00
	Total	\$341,128.02
	÷ 2 =	<u>\$170,564.01</u> each

v)	Pensions:	Wife	\$154,493.59
		Husband	\$29,320.59
		Total	\$183,814.17
		÷ 2 =	<u>\$91,907.08</u> (50%)

58. Moreover, the legal principles and evidence support that the assets acquired by the Wife and Husband via gift or inheritance are, indeed, non-matrimonial property:-

i)	Money held on behalf of Wife's parents -		\$174,982.00
ii)	The Husband's inheritance	Total	\$443,542.00

59. The Court is satisfied having had regard to the statutory factors specified in Section 29(1) of the Act that an equal division of the matrimonial assets would adequately provide for the capital and income needs of the Wife and Husband. In this circumstance, the Wife and Husband shall retain their respective non-matrimonial property. In this circumstance, the Court's search for fairness should end there.

60. However, the Court cannot ignore the evidence of the Wife's admitted dissipation of extraordinary large sums immediately after separation, in excess of the usual expense of \$4,000 per month during the marriage. In my judgment, the Wife's reasons for doing so are indefensible. Such conduct on the Wife's part is reprehensible and, in my judgment, was deliberately carried out in anticipation of entering divorce litigation against the Husband to mislead the Court as to what is available for distribution. To use the words of the UK Court of Appeal in *Martin v Martin 1976 Fam 335*: -

"One spouse could not fritter away family assets by extravagant living or reckless speculation and then claim as great a share of the remaining assets as if he had behaved reasonably".

61. Thus, in such circumstance, the Court is satisfied that to achieve equality of the dissipated matrimonial assets each party shall have the benefit of :-

Pension	\$ 91,906.00
Capital	<u>\$170,564.00</u>
	\$262,470.00

62. In exercise of the Court's discretion, a fair distribution, in my judgment, is as follows:-

Wife		Husband	
Pension as at separation	\$154,493.59	H Pension as at separation	\$29,320.00
Less transfer of balance to H	(\$43,000.00)	W's Pension	\$43,000

Cash to H (pension shortfall)	(\$19,586.00)	Cash from W (pension shortfall)	\$19,586.00
Matrimonial Savings	\$98,608.00	Cash from W (mat shortfall)	\$91,007.00
Cash to H (mat shortfall)	(\$91,007.00)	Gold and Silver	\$30,353.49
½ acre Lot of land	<u>\$162,963.00</u>	¼ acre Lot of land	<u>\$49,203.53</u>
	\$262,470.00		\$262,470.00

63. The parties shall be responsible for all costs including legal and conveyancing costs incurred pursuant to this distribution and such related other incidental costs.
64. When called upon to do so, the parties' shall sign the necessary documents to execute the transfer of ownership, and in default, the Registrar of the Supreme Court, shall be empowered to sign any document in the absence of the either party doing so.
65. I shall hear Counsel on costs.



STONEHAM J