Neutral Citation Number: [2024] CA (Bda) 21 Civ

Civil Appeal No. 35 of 2022

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS ORIGINAL CIVIL JURISDICTION**
**BEFORE THE HON. JUSTICE STONEHAM**
**CASE NUMBER 2022: No. 035**

Sessions House
Hamilton, Bermuda HM 12

Date: 22 /11/2024

**Before:**

**THE PRESIDENT, THE RT HON SIR CHRISTOPHER CLARKE**
**JUSTICE OF APPEAL THE HON GEOFFREY BELL**
**and**
**JUSTICE OF APPEAL THE RT HON DAME ELIZABETH GLOSTER**

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**Between:**

**GARETH FINIGHAN**

**Appellant**

**- and -**

**KATHERINE MARGARET LILLA ZUILL**

**Respondent**

**Appearances:**
Mr. Gareth Finighan, Appellant in person
Mr. Adam Richards of Richards Limited for the Respondent

**Hearing date**: 6 November 2024
**Date of Judgment:** 22 November 2024

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## JUDGMENT

*Family law – ancillary relief – claim for lump sum based on (i) compensation for applicant's assets being dissipated during marriage and (ii) capitalised child maintenance for periodical payment amounts yet to be determined – failure of judge to give reasons for decision*

**BELL JA:**

### Introduction

1. This appeal arises from an application for ancillary relief made by Mr Finighan ("the Appellant") on 7 October 2021. The application itself followed a notice of intention to apply for ancillary relief made by the petitioner in the divorce proceedings, Ms Zuill ("the Respondent"). In the event, the Respondent did not pursue her application, and before Stoneham J ("the Judge"), the Respondent's counsel made it clear that that application, which had sought periodical payments for the child of the family and a lump sum payment, was not being pursued.

2. The proceedings before the Judge ultimately took place in the absence of the Appellant. This was because when the matter first came before the Judge, the Appellant advised the court that his computer did not enable him to participate fully in the proceedings, which were scheduled to take place via Zoom, and rather than accept alternatives put forward with a view to resolving the problem, the Appellant chose not to participate. He did advise this court during the hearing that he had in fact watched the proceedings, although he did not of course participate because he could neither be seen nor heard. His appeal against the fairness of the Judge's decision to proceed in his absence ("the Fair Hearing Appeal") has been the subject of a decision given by the court on 27 June 2024, in which the court dismissed that appeal.

3. The matter came before the Judge on 28 March 2022, after the efforts to enable the Appellant to participate in the hearing of the ancillary relief proceedings had failed, and after the Appellant had failed to appear for the substantive hearing. There is, helpfully, a transcript of those proceedings before the Judge, which shows that the entire proceedings took no more than 20 minutes. The Respondent was sworn and her two affidavits, sworn on 25 July 2021 and 10 December 2021, were formally put in evidence. The Respondent's counsel referred to the affidavit sworn by the Appellant on 1 October 2021, but did not refer to its contents. On the basis of counsel's submission that it was unclear what the Appellant was seeking (a view which the Judge echoed), counsel submitted that there should be no order in relation to the provision of any form of ancillary relief. At the conclusion of counsel's submissions, the Judge expressed herself to be "satisfied, in all the circumstances, to grant (sic) the orders in the terms that have been sought". She carried on to note that she had reviewed the papers and was

of the view that the order sought by the Respondent (namely that there should be no order in relation to the provision of any form of ancillary relief to the Appellant) was "a fair order in all the circumstances".

## The affidavits

4. I will refer relatively briefly to the three affidavits mentioned above, since they are the basis on which the Judge felt able to come to the view that the order sought by the Appellant was fair. The Respondent's first affidavit was a comprehensive document of some 121 pages. It set out the history of the parties' marriage in 2007, including the periods of their residences abroad, their respective work histories (which included the Respondent's qualification as a barrister and attorney), and their financial position. Significantly, she stated that at the time the parties separated in July 2017, they had no real assets, and their cash at the bank was under $5,000. She detailed the parties' efforts to achieve financial settlement, and went into considerable detail regarding her earnings from her law practice. The child of the family was attending private school in Bermuda, the fees for which the Respondent was paying, as she was for the child's extra-curricular activities, health insurance, summer camp and the like, all of which the Respondent calculated to cost almost $60,000 per year. I pause to note that affidavits of 120 pages are likely to be more effective if cut down in size, and often lead to similarly overly long affidavits in reply (though not in this case), all of which add to legal fees.

5. In relation to the Appellant's earnings, the Respondent complained that she did not have any clear understanding of the Appellant's income, which was derived from his employment as a senior reporter with the Royal Gazette, and part time employment with a grocery delivery business. The impression one has from this affidavit is that the Respondent earned significantly more than did the Appellant, but also had substantial expenses, since she paid for the child of the family, as referenced above, as well as making substantial payments for another, older child from her previous marriage.

6. I will refer to the Appellant's affidavit sworn on 1 October 2021 in more detail than the Respondent's two affidavits, principally because of the comment made by counsel for the Respondent to the Judge on 28 March 2021 that it was unclear what the Appellant was seeking. And, as mentioned, the Judge had echoed this complaint, saying that that was one of the questions that arose for her, adding "It is not clear to me. What exactly (is) he seeking?"

7. The Appellant's affidavit comprised 11 pages. At paragraph 24, he stated that the Respondent in her affidavit had ignored the role that he had played during the marriage, and the contribution that he had made. He referred to a property in England which he had bought from his parents for £50,000, before the parties' marriage, and described how that had been sold in 2010, realising some $130,000, which sum had been used to

cover the parties' living expenses. The parties lived in London while the Respondent studied for her law exams, and returned to Bermuda at the end of August 2012. One of the financial matters to which the Appellant referred was the fact that the Respondent had a savings account into which she placed the proceeds of sale of some shares in Reuters, for which company she had worked in New York from June 2006 (before their marriage) until the parties left New York at slightly different times in 2010.

8. The affidavit then covered the period when the parties lived in Hong Kong from September 2016, by which time the Respondent had qualified, and was now earning significantly more than the Appellant was able to, in consequence of which he looked after the child of the family while the Respondent worked. Then the Respondent's career took another turn, and she returned to Bermuda in January 2017, while the Appellant and the child remained in Hong Kong for another three months or so before returning to Bermuda. Although the Appellant referred to the state of the marriage at that time, he provided very little detail regarding their respective financial positions. While he had become employed at the Royal Gazette in November 2017, he said that he had quit that job at the Respondent's insistence – this, presumably, at a time after the parties' separation. He described how he had been employed at a delivery driver for Dropit (the grocery delivery business) between March and November 2020, and had returned to work at the Royal Gazette in November 2020, providing details of his earnings and basic expenses.

9. The affidavit closed by saying that the Respondent had not made sufficient effort to resolve the dispute and "to agree a lump sum payment to assist in meeting his needs", as the Respondent's career had gone from strength to strength. But the reality is that the parties had almost nothing at the end of the marriage. It is as well to remember that applications for lump sum payments are typically concerned with the division of joint matrimonial property acquired during the course of the marriage; there was no such property at the time that this marriage came to an end. The Appellant's notice of application for ancillary relief sought an order for a lump sum payment. But usually one sees that application fleshed out in the claimant's affidavit, having regard to the assets accumulated by one or other of the parties during the course of the marriage, with details of their respective contributions. That there is no such further detail is hardly surprising given the paucity of assets in this case.

## The parties' written submissions

10. The Appellant filed written submissions with the court on 19 August 2024, that is to say after this court had dealt with the Fair Hearing Appeal. He divided the topics covered into four headings, being first, the relief that he sought, secondly, why he thought the Judge had been in error on 28 March 2022, thirdly, matters that the Judge had failed to take into account, and lastly, identifying the material which was before the

Judge on which he relied. In doing so in this manner, the Appellant clearly had in mind the words of the President at paragraph 16 of the judgment on the Fair Hearing Appeal.

11. As to the first topic, the Appellant put the cost of improved accommodation for him at $2,000 per month, or $24,000 per year, until such time as the child of the family was no longer a dependent. This sum was largely based on the cost of suitable accommodation to enable him to rent a two bedroomed apartment, suitable for the child when she stayed with him, as compared to the one bedroomed apartment which he currently occupied. The cost of such an apartment, he said, would represent 60% of his current monthly salary. Next as part of this head, the Appellant referred to those assets of his which had been sold off during the marriage. He also referred to the period from September 2008 until February 2013, when the parties had lived off one salary, or, for a ten month period, on no salary at all. He referred to previous offers which had been made by the Respondent, before settling on a figure of $210,000, as the dollar equivalent of the house which he had bought in the late 1990s and sold in 2010. He also explained that during the marriage the parties had felt no need to "get on the property ladder" because the Respondent's father owned a handsome house situated in a prime Bermuda location, which the Respondent could expect to inherit. He next referred to the parties' comparable pensions, the Respondent's being of much greater value than his. Then there was a life insurance policy which the Appellant and his siblings had maintained which was cashed in and used in part to cover the expenses of shipping the parties' furniture from New York to Bermuda, in a relatively modest amount. Finally was the fact that the Appellant had borrowed funds from his mother from time to time because of his low income between November 2018 and November 2020, the debt he owed to her being approximately $50,000 when the submissions were filed.

12. The Appellant then added the constituent sums up, to reach a figure of $404,000, representing the lump sum for property of $260,000, and the maintenance figure calculated for enhanced accommodation at the rate of $24,000 per year over six years. He was not seeking reimbursement for the loss of pension funds or loss of rental income on the property which had been sold. He felt this was a fair figure and said that he had received advice from his previous lawyer to this effect.

13. The submissions then moved on to identifying the Judge's errors. In doing so, the Appellant focused on counsel's submissions, rather than the Judge's comments, no doubt because, as appears from paragraph 3 above, the Judge actually said very little. The position was the same with regard to costs. The Appellant said that he could not understand why he should be responsible for "any expenses she accrued bringing the matter to court in the first place" having referred to the fact that the onus should have been on the Respondent to justify her claim for ancillary relief. But the Respondent did not pursue that claim and the order for costs was in relation to the Appellant's claim for ancillary relief.

14. But at this point in the submissions, the Appellant referred to the costs order, saying that the Judge had not explained why she had agreed with counsel regarding the costs order, carrying on to say that neither had the Judge explained why she had agreed with counsel that the order dismissing his application for a lump sum payment was fair. The Judge should, he said, have set out how she came to her conclusions. It was for this reason that the court notified the parties that it took these comments in the submissions to represent a complaint that the Judge had failed to give adequate reasons for her decision, advising that they should be prepared to argue the point at the hearing of the appeal.

15. The submissions then moved to the third of the matters referred to in paragraph 10 above, namely the matters which the Judge should have taken into account. But the first detail given was in relation to the welfare of the child of the family, which has no relevance for the purposes of deciding whether there should be a lump sum payment, and, if so, in what amount. The second matter mentioned was in relation to the various sacrifices, financial and other, which the Appellant maintained he had made, particularly regarding the support he had given to the Respondent in furtherance of her legal career. He downplayed the Respondent's case based on the fact that the parties had no assets at the time of separation, saying that this dismissed the role that the Appellant had played in the Respondent's success. He commented that since the Judge had made no reference to the issue in her ruling, he could only assume that she did not consider it a factor, whereas, he submitted, she should have done. Lastly under this head, the Appellant referred to what he said were false and misleading statements made by the Respondent. But conflicts on the evidence can only be resolved if the parties give live evidence by way of cross-examination, which did not happen because of the Appellant's non-attendance at the substantive hearing. The Appellant referred to the quantity of documents which had been delivered two working days ahead of the hearing, and queried whether the Judge had had sufficient time to read, digest and understand the material before the hearing. The reality is that judges are experienced in reading substantial pre-hearing material, and the Judge in this case noted that she had reviewed the papers before the hearing.

16. The last of the Appellant's submissions concerned the material that was before the Judge, and the Appellant referred to binder D, comprising many inter partes emails, as well as some narrative describing the parties' relationship.

17. The one thing that is clear from a review of the Appellant's affidavit (the document that was before the Judge) and his submissions to this court (which were not) is that the points made in the latter document regarding the Appellant's difficulties with suitable accommodation for himself and the child of the family, by then, in the Appellant's words "developing from a child into a teenager / young woman" were simply not before the Judge. The Appellant can hardly complain that the Judge did not have regard to the

detail which he gave concerning the inadequacy of his accommodation if that was not addressed in his affidavit, and so was not part of his case before her.

18. The Respondent's submissions dated 5 June 2024 (ie before the Fair Hearing Appeal, the hearing of which took place on 19 June 2024) started by making the point that the order made by the Judge on 28 March 2022 dismissed the Appellant's claims for lump sum and property adjustment orders. The Judge did not dismiss any claim for periodical payments, although counsel acknowledged that the Appellant might yet have hurdles to overcome if he chose now to pursue such a claim. The form of order signed by the Judge confirms that this is correct. The submissions set out the principles to be applied on the hearing of ancillary relief proceedings. They are no doubt uncontroversial. And in this case it was submitted that there were no assets created during the marriage capable of being shared. The basis on which the Appellant contended that a lump sum order should be made was unclear. While it was accepted that the court had a discretion to take non-matrimonial assets into account in small money cases, the Appellant had failed to demonstrate relationship-generated needs.

19. Finally, the submissions dealt with costs, with the general principle and starting point being that costs should follow the event, citing *Gojkovic v Gojkovic (No. 2)* [1992] 1 All ER 267.

20. The Respondent also filed supplemental submissions in response to the Appellant's filing. They repeated the fact that the Appellant had not made any claim for spousal maintenance and that such claims had not been dismissed by the Judge. In any event, it was submitted that there is no power for the court to make a capitalised child maintenance order, reliance being placed on *AZ v FM* [2021] 2 FLR 1371. As to the lump sum claim based on the reimbursement of the Appellant's property sold during the marriage, it was submitted that there was no principle of reinstatement or compensation for funds utilised during the marriage, and the case of *Miller v Miller; McFarlane* [2006] 1 FLR 1186 was cited. That case emphasised the basis on which the court was concerned with the redistribution of resources from one party to another following divorce, with an emphasis on sharing or needs. There is, it was submitted, no legal basis for the Appellant's claim.

## Argument

21. Before the court, the Appellant accepted that there were no joint family assets at the time of separation. He referred to the fact that his assets had been spent during the course of the marriage, largely because he had supported the Respondent's change of career. During the period when the Respondent was studying, the parties had lived on the proceeds of sale of the Appellant's UK property, and because of this, he submitted, the Respondent should buy a replacement property for him. The Appellant accepted

that he had not specified the amount he sought from the Respondent, saying that he thought this was a matter for the Judge. And he said that the first time that he appreciated that the Respondent was not making a claim against him was when he watched the proceedings of 28 March 2022 on Zoom. This led Mr Richards, for the Respondent, to advise that the Respondent's application for ancillary relief had been abandoned at a directions hearing in November 2021. The position in that regard is not as clear as Mr Richards had suggested, but could perhaps be inferred from the directions hearing which occurred on 7 December 2021.

22. The Appellant was asked whether he had any authority for the proposition that he was entitled to a lump sum by way of compensation for the proceeds of the sale of his house having been spent during the marriage, and said that he did not. There were other minor points that the Appellant made regarding what the Respondent's counsel had said to the Judge, and minor inaccuracies in the Respondent's affidavits, but these were not significant or material.

23. In his submissions, Mr Richards stressed that on the appeal the court had to look at what was before the Judge, bearing in mind the deference that should be given to the Judge's decision, and that it was only where that decision exceeded the generous ambit within which disagreement was possible that a court should intervene. This is relevant because the submissions which the Appellant filed before this court set out his case much more clearly than had his affidavit, the only document of his before the Judge.

24. Although Mr Richards referred to the funds which had been in the Respondent's law firm by the time of trial, in regard to the Respondent's income he said that if a claim for periodical payments were now to be pursued by the Appellant (and such a claim was said to be the basis for the second constituent element of his claim for a lump sum, see paragraph 12 above), the figures previously given would have to be updated. They were two and a half years out of date and whereas the Respondent had previously been receiving a substantial salary, she was now a sole practitioner. The need for current figures is obvious.

25. In relation to the Judge's failure to give reasons for her decision, Mr Richards submitted that the Judge had accepted what had been submitted to her by the Respondent's counsel, and those submissions represented the Judge's reasons. But where the Judge's reasons were not adequately given, the proper course to be followed (see *Re B* [2003] 2 FLR 1035) was to seek a hearing before the Judge at which any matter arising from the judgment could be ventilated. That did not happen in this case, no doubt because the complaints raised in the Appellant's submissions regarding lack of reasons had not been made in the grounds of appeal. But in any event, Mr Richards said, the position as found by the Judge was so clear that there was no benefit in remitting the matter. And he covered the principles of needs and sharing as bases for the distribution of assets, per *Miller*, referred to above.

26. Mr Richards did accept in terms that the Appellant could still pursue a claim for periodical payments, and said that he would not object to his ability to do so. While he accepted that spousal maintenance could be capitalised, he maintained that child maintenance could not be, per *AZ v FM*. A review of this case led to questions from the court, such that further submissions on the point were required, and these were duly filed.

27. On costs, we were told that these had not been taxed, although it seems that the process had started, and an appearance before the Registrar had taken place, at which she had queried certain of the amounts claimed. The result was that a revised bill of costs had been submitted, which reduced the amount claimed from approximately $137,000, to approximately $100,000. Given that this is the amount for one side, and the Appellant was also represented by counsel at one stage, the expenditure by the parties on lawyers seems difficult to justify, given the extent of the parties' assets. But in relation to costs, Mr Richards accepted that the Respondent's former counsel had been wrong to inform the Judge that, there had been "no open or closed offers, no WP offers in the case" regarding costs. This clearly meant that the Judge had made her costs order on the basis of inaccurate information, leaving it open for review by this court. Mr Richards undertook to and did file the relevant correspondence in relation to the offers which had been made.

## Findings

28. I will start by addressing the claim based on compensation for the dissipation of the proceeds of the sale of the Appellant's house, owned prior to the marriage. It should first be said that decisions taken by both parties regarding their financial affairs during the marriage with the expectation that the marriage would continue for many years do not fall to be reviewed after the marriage has broken up. The Appellant undoubtedly made a significant contribution to the success which the Respondent has achieved since her career change during the marriage. He was fully supportive of that decision, and proud of the success his wife achieved. He contributed not just in financial terms, but in terms of looking after the child of the family for extended periods without himself working (as when the parties lived in Hong Kong), where the Respondent did work. In his submissions he said, talking of the fact that he had "sold off or cashed in every asset he had in order to support (the Respondent's) ambitions", that he "had no regrets about this" and that he was immensely proud of what the Respondent had been able to achieve. That was said while he was in fact seeking to be reimbursed for the very lost assets to which he had referred.

29. But property adjustment is not about compensation for the voluntary loss of an asset used up in furtherance of a common cause while the marriage saw better times. It is

intended primarily as a just division of assets accumulated during the marriage, to which both parties may or may not have contributed in one way or another, not always financially. And while assets acquired after the separation may be taken into account, this is not the usual course; the exercise to achieve a fair outcome is usually conducted in relation to assets acquired before the breakdown of the marriage. There are of course examples of windfalls of one party being brought into the calculation, but I know of no case where, as here, the parties had no appreciable assets at the time of separation, still relatively modest assets at the time the matter came before the judge, (and those tied up in the newly operated law firm of one of the parties), and yet a claim to a share of those assets was upheld. The case of *FT v JT* [2023] EWFC 250 refers to some observations by Mostyn J, a most experienced family law judge, in the case of *JL v SL (No 2)* [2015] 1 FLR 1202, where he observed that a key component of fairness was to draw a distinction between matrimonial and non-matrimonial property. The equal sharing principle could not, he said, apply to any non-matrimonial property on any moral or fair basis.

30. Bearing these matters in mind, the question to be answered in this case is whether the Judge erred in dismissing the Appellant's claim for an unquantified lump sum, based on the use of the proceeds of sale of the Appellant's property during the marriage for day to day living expenses. I do not see how it can properly be said that the Judge did err and should have ordered a lump sum of the order which the Appellant now seeks. And this is said without addressing the concern expressed by the Judge in regard to the Appellant's failure to specify the extent of his claim, as was done in the submissions to this court, which were not available to the Judge.

31. I now turn to the claim for $144,000, representing six years of child maintenance at $24,000 per year. And while the Appellant explained how he reached the annual figure, basically the difference in rent between the apartment he now occupied and the cost of a two bedroomed apartment where the child of the family would have her own bedroom, he assumes that a judge would make an order in this amount. That of course has not yet happened, and an order could not be made without a detailed analysis of the parties' respective financial positions. There are no current figures from which to work, so that this court could not conduct the necessary exercise even if it were minded to do so. And the Appellant also assumes that capitalisation of the annual amount would be appropriate.

32. Turning to that question, I referred at paragraph 26 to the court's ability to capitalise periodical payments by way of child maintenance. In his post-hearing submissions, Mr Richards effectively backed off the position he had taken in his earlier submissions, that this was not permissible – see paragraphs 20 and 26 above. While such a course is highly unusual, it is not impossible, as was submitted in the Respondent's skeleton. In fact, the judge in *AZ v FM* made it clear that he was satisfied that the jurisdiction to order capitalised child maintenance did exist. But he described the making of such an

order as being "a very rare bird". The Respondent's recent submissions accepted that the jurisdiction to capitalise child maintenance existed, and did so outside the ambit of a variation order, the original submission. But they did maintain, as *AZ v FM* made clear, that to follow such a course would require exceptional circumstances.

33. So far as this case is concerned, the basis upon which the Appellant premised his claim was flawed, insofar as the claim for periodical payments so that the Appellant could rent more spacious accommodation had yet to be determined by a judge. There is no order in place capable of being capitalised. And because the figures appearing in the record for the Respondent's income have changed significantly, it is not possible for this court to undertake the necessary exercise itself. So the notion of capitalising maintenance is premature. Accordingly, I would reject the Appellant's claim to be entitled to an award in the sum of $144,000, and would hold that the Judge did not err in declining to award this or any amount to the Appellant by way of lump sum. The only other comment that I would make is that it does not seem to me that the Appellant was well served if, as he submitted, he had been advised by counsel that his claim for a lump sum represented a "fair figure" – see paragraph 12 above. The basis for the claim to be compensated for the sale of his UK property was legally flawed, and the claim for capitalised child maintenance was premature when no entitlement to periodical payments had been established.

## The Judge's failure to provide reasons for her decision

34. Let me start by saying that I do not accept Mr Richards' argument that the Judge effectively gave reasons because she accepted the submissions of counsel. She did not even go so far as to say that in making her order. In her very brief comments, she said no more than that it was fair to make the order sought by counsel. With respect to the Judge, what she did say was not enough, and that is particularly the case where the subject of the order is a litigant in person. If there were any reasonable prospect of another judge making a lump sum award in favour of the Appellant, I would have sent the matter back, to be determined by another judge. But I am completely satisfied that there is no realistic prospect of another judge making an award in the Appellant's favour. To send the case back would waste time, and cause the parties to incur yet more legal fees, all in a lost cause so far as the Appellant is concerned. So I would accept the submission made by Mr Richards as set out in paragraph 25 above, and hold that no useful purpose would be served by taking that course.

## Costs

35. As in indicated in paragraph 27, the Judge was in fact misled in regard to the position regarding offers to settle the matter. We have now been given all the relevant

correspondence, and have reviewed this. The Appellant said in his submissions that after legal proceedings began in 2019, there had been extended negotiations as to what constituted a fair settlement, and indicated what his lawyer at the time thought a fair settlement would be. The true position is that there were extensive communications between the parties, generally marked without prejudice save as to costs, starting with a lump sum cash offer made by the Respondent to the Appellant in September 2019. After a pause, correspondence between the parties' attorneys resumed in November 2020, culminating in an increased offer in March 2021. No offer was ever accepted, and the counter offers made on the Appellant's behalf were not accepted either. I have no doubt that if those communications had been made known to the Judge, they would not have affected the order she made. There is therefore no basis upon which the Judge's order on costs of the proceedings below should be varied.

36. As to the costs in this court, there are no offers which might affect the position. In those circumstances, the Appellant having failed in his appeal, the appropriate order is that the Respondent should have her costs of the appeal, to be taxed on the standard basis, and I would so order. I might add that in her initial offer letter of 16 September 2019, the Respondent made it absolutely clear what the effect of without prejudice correspondence was, and how the Appellant would be at risk financially if he failed to secure a court order greater than the amount of her offer. And that is what has occurred.

**Postscript**

37. Finally, I would just say that the court is not without sympathy for the Appellant, principally because he finds himself in the position where he has failed to secure any lump sum, after a very great expenditure on legal fees by the parties, when he had apparently acted on the basis of legal advice. The breakdown of the marriage was not his wish, and while this has no relevance for the purpose of determining ancillary relief, it will no doubt have contributed to his feeling that he was entitled to be compensated for his support for the Respondent's career change, and the sacrifices that he made, financial and otherwise, to assist her in this endeavour, which of course have now put her in a much superior financial position than that enjoyed by the Appellant. But it would have served his interests much better if he had been advised that he was not entitled to succeed in the claims which he made, and had not then embarked on his claims before the Judge and on this appeal.

**GLOSTER JA:**

I agree

**CLARKE P:**
I, also, agree.