

**COMMONWEALTH OF THE BAHAMAS  
IN THE COURT OF APPEAL  
SCCivApp No. 141 of 2021**

**B E T W E E N**

**LASHONA TAMEKA SMITH (née Dean)**

**Appellant**

**AND**

**RODNEY LUTHER SMITH**

**Respondent**

**BEFORE:**           **The Honourable Mr. Justice Jones, JA**  
                          **The Honourable Mr. Justice Evans, JA**  
                          **The Honourable Madam Justice Bethell, JA**

**APPEARANCES:**   **Lady Sharon Wilson, QC, Counsel for the Appellant**  
                          **Mr. Alton McKenzie, Counsel for the Respondent**

**DATES:**           **22 March 2022; 16 May 2022; 23 June 2022; 11 August 2022**

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*Civil Appeal – Family Law – Divorce – Ancillary Proceedings – Matrimonial Assets – Property Division – Non Matrimonial Property – Assets acquired before the marriage – Property Division – Equal sharing – Fairness – Sections 25, 27 & 29 of the Matrimonial Causes Act Ch. 125 – Rule 10 of The Court of Appeal Rules*

The parties were married on 18 May 2013. The Respondent filed a Petition for divorce and a Decree Nisi was granted on 4 March 2022. During the ancillaries hearing, the issue of property adjustment arose concerning the homes acquired by the Appellant and the Respondent before the marriage, which remained in their sole names and A-1 Car Rental business, which the Respondent owns jointly with a third party. The trial judge found that both homes were not matrimonial assets available for distribution to either party and awarded the Appellant \$7,500.00 as compensation for her contribution to the Respondent’s home during the marriage.

The Appellant now appeals part of the trial judge’s decision concerning the compensation award.

*Held:* Appeal dismissed. Cost to the Respondent to be taxed if not agreed.

The amount of the compensation awarded is a matter for the trial Judge. As an appellate Court reviewing the exercise of the trial Judge discretion, the only basis on which the Court could set aside the award is if the Court were to find that it was made on the wrong basis in law or that it is manifestly wrong. On the material provided to the Court, it cannot be said that the award was wrong in principle or manifestly wrong in amount.

*Jupp v Jupp* SCCR App No 37 of 2011 considered  
*Miller v McFarlane* [2006] 2 WLR 1283 considered  
*White v White* [2001] 1 AC 596 considered

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## J U D G M E N T

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### **Judgment delivered by the Honourable Mr. Justice Evans JA:**

1. This is an appeal from that part of a judgment in the court below whereby it was adjudged that the Respondent (the husband) shall pay to the Appellant (the wife) the sum of seven thousand, five hundred dollars (\$7,500.00) as compensation for her contribution to his home at Sans Souci during the marriage years.

### **BACKGROUND**

2. The parties were married on 18 May 2013 and the husband filed for a divorce in August 2019. The wife filed an Answer and Cross-Petition on 9 September 2019 which was amended on 5 November 2019. The marriage of the parties was dissolved by grant of a Decree Nisi on 4 March 2020 on the grounds of the husband's cruelty to the wife.

3. The wife in her Cross-Petition sought as one of her prayers an order for property adjustment and by Notice filed on 6 January 2021 sought Orders in the following terms:

**“(i) The Petitioner be ordered to pay to the Respondent a lump sum payment to enable the Respondent to carry-out necessary repairs to her house and to adequately furnish and appoint her house and to reduce the mortgage on it;**

**(ii) The Petitioner pay to the Respondent one-half of the value of his interest in A-1 Auto Rental;**

**(iii) That there be a declaration made under Section 73(1) (b) of the Matrimonial Causes Act; and**

**(iv) The Petitioner be condemned in the costs of these proceedings.”**

4. The application was heard by Bowe-Darville, J. on 23 February 2021 and 4 March 2021. The husband produced as his evidence Affidavits filed on 2 June 2020, 3 March 2021 and 18 March, 2021. The wife, in support of her application, filed the Affidavits on 13 July, 2020, 6 January 2021 and 1 April 2021.

5. In the court below the trial Judge determined the following issues:

**“a. Is Kyshonna Bethel a child of the marriage?**

**b. Is the Petitioners interest in A-1 Auto Rental the property of the marriage?**

**c. Should the Respondent be awarded a lump sum payment?**

**d. Should the Petitioner be made to pay the costs of this application/proceedings?”**

6. It is apparent that the learned Judge did not deal individually with the Affidavit evidence in her Judgment, but her factual findings are mixed in with her findings on the issues which were before her for determination. In this regard it is, in my view, more effective to set out her combined findings as she identifies them in her Judgment as follows:

**“6. This is a marriage of short duration, barely six (6) years. Both parties worked during the marriage. Both parties owned homes individually prior to the marriage. The Petitioner at Sherwood Drive, San Souci and the Respondent at Adastra Gardens. Upon marriage the parties lived together at the Petitioner’s residence in Sans Souci together with the Respondent’s daughter. The Petitioner is now aged forty-seven (47) and the Respondent aged thirty-nine (39).**

**7. The Court has for its consideration the question of property adjustment. The assets comprised the following:**

**1 Petitioner’s home at San Souci**

**2. Respondent home at Adastra Gardens**

**3. Business - A-1 Car Rental**

**4. Entertainment Business**

**8. The parties are both gainfully employed. The Petitioner’s monthly salary is Six Thousand Seven**

**Hundred and Ninety-Nine Dollars (\$6,799.00) and he also derives Four Hundred and Sixteen Dollars (\$416.00) monthly as his profit from the car rental business. The Respondent earns Four Thousand Three Hundred and Thirty-four Dollars (\$4384.00) monthly. The parties pay their respective mortgages. Their salaries go towards their individual maintenance.**

**9. The Respondent's mortgage commitment was Eight Hundred Dollars (\$800.00) monthly. The Petitioner contends that in 2013 the Respondent and her daughter moved into his home while repairs were being done to the Adastra Gardens' home. The Petitioner collected rents from 2013-2018 of Ninety-Two Thousand Four Hundred Dollars (\$92,400.00) which he gave to the Respondent. The Petitioner also assumed responsibility for the yard maintenance. The Respondent claimed the Three Hundred Dollars (\$300.00) excess from the rent was spent on the family. The Respondent also claimed that she paid for maintenance repairs to her property. The balance on the mortgage is Ninety-One Thousand Five Hundred and Sixty-Five Dollars (\$91,565.00) and the house repairs claimed are Twenty-Five to Thirty Thousand Dollars (\$25-\$30,000.00).**

**10. The Court has taken note of the repairs and costs of the same for the Respondent's home. The Court has also noted that the Respondent has a savings of Six Thousand Dollars (\$6,000.00).**

**11. The Petitioner's home in Sans Souci is in his sole name. The Petitioner's position (and admission) is that the parties contributed equally to the maintenance of this property which was considered the matrimonial home. He concedes that the Respondent paid for a housekeeper, a bedroom set and additional furniture for the living room. While the Respondent purchased groceries for the family (Petitioner, Respondent and Respondent's daughter), the Petitioner paid for all the expenses associated with her shopping, Miami excursions and shipping and handling at Nassau. At the Petitioner's behest the Respondent's car was upgraded after the sale**

of her car and to which the Petitioner contributed and continued it licensing, insurance and maintenance. There is no doubt that the Respondent made her best efforts to improve the home to make it family friendly and to enhance the basic bachelor home. It was as she stated she put her “personal touch”. She puts a value of no less than **Thirty Thousand Dollars (\$30,000.00)** on the improvements, but no account was given of her having lived in this home without contributing to the mortgage or utilities and while she collected rent from her property.

**12. The Petitioner is partner in a business with a Third Party. The business A-1 Car Rentals was started in 2018, shortly before the breakup of the marriage. The Petitioner made an initial investment of Five Thousand Dollars (\$5,000.00) with no contribution from the Respondent. None of the Affidavits speak directly to this investment as to nature/cars/income/profit/banking etc. The submissions speak to a complement of eight (8) cars but no substantiated income or profit sharing, it any.**

**13. Save for the Respondent’s mention of the Petitioner’s other business, Hypermedia Entertainment, the Court has no information to consider**

...

**16. In reviewing the Affidavits, it is clear that there are no clear matrimonial assets save that the Respondent wishes compensation for her contribution to the considered “matrimonial home”. The Court must be mindful, however, that on vacating the said home, the Respondent removed several items of furniture and other accoutrements. The Court must also be mindful that the Respondent had a household prior to marriage and to which she, no doubt returned. The Respondent claims compensation for her contribution to the “matrimonial home” so that she will be able to repair her own home.**

...

**18. While the Affidavits provide no details as to how the parties conducted their marriage it can be concluded that they both maintained individual properties. The parties maintained their individual properties brought into the marriage as distinct and separate in ownership despite each contributing in some way to the upgrading and preservation of the two homes. While certain aspects of their “marriage home” may have been shared property ownership was never affected.**

**19. Should the Respondent be compensated from what she claimed is an economic disparity? She maintained her home in Adastra Gardens. She earned rent and had a sum after the mortgage to do with as she wanted and did so in maintaining her property. The fact that the Petitioner has a home and paying a larger mortgage does not in and of itself account for a disparity. The Respondent has not been called upon to assist the Petitioner in any way. The Petitioner will suffer a prejudice if his situation must be considered.**

...

**21. Likewise, the business, A-1 Car Rentals was not intended to be a family asset and as such the Respondent has no claim.**

**22. In reviewing the Respondent’s claim for a contribution to the repairs to her home the Court noted that the repairs were beyond the repairs of normal wear and tear on rental premises. The estimates presented call for extensive repair and almost the construction of a new home. The Court noted particularly the building of a boundary wall, columns and certain change orders. This estimate was Twenty-Five Thousand Dollars (\$25,000.00) while another (without the noted enhancements) was Twenty-Eight Thousand Dollars (\$28,000.00). It seemed without more the Respondent wishes to restore her home at Adrastea Gardens to the standard to which she claims to have brought the Sans Souci home.**

**23. The photos of the Sans Souci house improvements are impressive. The total of receipts produced is Three Thousand, Six Hundred and Seventy-One Dollars and Three Cents (\$3,671.03). The Petitioner agreed that the Respondent also bought a bedroom set and other enhancements for the living room. While credit must be rightly given, account must be had of the Respondent and her daughters' enjoyment of the same and their residing in the home without a demand for payment or contribution to its maintenance, utilities or mortgage. From what has been shown it is very unlikely that the Respondent ever spent Thirty Thousand Dollars (\$30,000.00) as her contribution to the Petitioner's home at Sans Souci.**

**24. From the photographs shown of the Adastra Gardens house, the estimates given and the Respondent's account of what she considered needed to be repaired and her accounts of repairs done and the utility payments since 2013, it is unlikely that this house requires the claimed repairs.**

**25. The Court does not consider both homes as matrimonial assets available for distribution and neither party has asserted such a claim.**

**26. The Court then is left to determine the Respondent's compensation for her contribution to the improvements to the Petitioner's home in Sans Souci during the marriage and should the Petitioner be made to contribute to the Respondent's refurbishment/renovations of the Respondent's home. The Court is constrained to point out that the Respondent lost nothing when she removed to the Petitioner's residence. In fact, she gained and was able to save. She benefited from the move.**

**27. The Court does not accept the Respondent's submission/explanation on the idea of disparity of income. Both parties maintained their separate incomes and properties during the marriage as they had before the marriage. There was never any "coming together" or**

any manifested intention that their individual assets be for the benefits of the family. Nothing in the Affidavits ever suggested matrimonial income.

28. The Court therefore orders:

1. Each party retain absolute ownership of their respective properties.
- 2- In the exercise of the Courts discretion the Petitioner shall pay to the Respondent the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) as compensation for her contribution to his home at Sans Souci during the marriage years.
3. There shall be no order as to costs.
4. Declaration that there are no children of the marriage to whom the Section 73(1) applies.”

#### **THE APPEAL**

7. On 7 December 2021 the wife filed a Notice of Appeal. The said Notice specifically stated that it was an appeal:

“from that part of the Judgment herein of the Hon. Madam Justice Ruth Bowe-Darville given at the trial of Supreme Court Action 2019/FAM/div/00460 on the 29<sup>th</sup> day of October, A.D., 2021 whereby it was adjudged that

—  
In the exercise of the Court’s discretion the Petitioner shall pay to the Respondent the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) as compensation for her contribution to his home at Sans Souci during the marriage years.” [Emphasis added]

8. The Orders sought in the Notice of Appeal were as follows:

“(1) The Petitioner pay to the Respondent a lump sum of \$107,649.00 to enable the Respondent to carry-out necessary repairs to her house and to adequately furnish and appoint her house and to reduce the mortgage on it;

**(ii) The Petitioner pay to the Respondent one-half of the value of his interest in A-1 Auto Rental;**

**(iii) The Petitioner be condemned in the costs of these proceedings.”**

**9. The grounds upon which the wife based her claims in the appeal were set out as follows:**

**“1. In the Judgment aforementioned, the Learned Judge erred in fact and in law in her finding at:-**

**(i) Paragraph 8 that**

**The salaries of the parties “... go toward their individual maintenance”.**

**(ii) Paragraph 11 that**

**“...no account was given of her [the Respondent] having lived in this home [the matrimonial home] without contributing to the mortgage or utilities...”**

**(iii) Paragraph 19 that**

**“The Respondent has not been called upon to assist the Petitioner in any way”.**

**(iv) Paragraph 23 that**

**“...account must be had of the Respondent and her daughter’s enjoyment of the same [the matrimonial home] and their residing in the home without a demand for payment or contribution to its maintenance, utilities or mortgage.”**

**(v) Paragraph 26 that**

**“The Court is constrained to point out that the Respondent lost nothing when she moved to the Petitioner’s residence. In fact, she gained and was able to save. She benefited from the move.”**

**(vi) Paragraph 12 (Re: A-1 Car Rental) that**

**“None of the Affidavits speak directly to this investment as to nature/cars/income/profit/banking etc. The**

submissions speak to a complement of eight (8) cars but no substantiated income or profit sharing, if any.”

(vii) Paragraph 24 that

“From the photographs shown of the Adastra Gardens house, the estimates given and the Respondent’s account of what she considered needed to be repaired and her accounts of repairs done and the utility payments since 2013, it is unlikely that this house requires the claimed repairs.”

(viii) Paragraph 16 that

“...there are no clear matrimonial assets...”

(ix) Paragraph 19 that

“The circumstances of the present case does not lend itself to the sharing principles...”

(x) Paragraph 21 that

“...the business, A-1 Car Rental was not intended to be a family asset...”

(xi) Paragraph 27 that

“Both parties maintained their separate incomes and properties during the ‘marriage as they had before the marriage. There was never any “coming together” or any manifested intention that their individual assets be for the benefit of the family. Nothing in the Affidavits ever suggested matrimonial home.”

The collective errors above undermined the marriage which existed between the parties.

2. The Learned Judge had no proper regard for the fact that Kyshonna Bethel born on 24 October, 1998 was 14 years old when the parties married and was a child of the marriage of the parties.

**3. The Learned Judge erred in fact and in law in limiting the Respondent's application for a lump sum to "compensation for her contribution to his home".**

## **DISCUSSION**

**10.** It is important to note the terms of rule 10 (2) and (3) of the Court of Appeal Rules which provides as follows:

**"10 (2) A notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below and every such notice shall specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the court to make.**

**(3) Except with the leave of the court, the appellant shall not be entitled on the hearing of an appeal to rely upon any grounds of appeal, or to apply for any relief, not specified in the notice of appeal." [Emphasis added]**

**11.** Implicit in the wording of the Notice of Appeal was the fact that the appeal was intended to be limited to the specific order made by the Judge that the husband was to pay to the wife the sum of \$7,500.00 as compensation for her contribution to his home during the marriage. It is, therefore, obvious that there is an inconsistency between the ambit of the appeal, the Orders sought and the grounds relied thereon. In my view, the ambit of the appeal must determine the sustainability of the Orders sought as well as the grounds relied upon.

**12.** The learned Judge, at paragraph 7 of her Judgment, set out the terms of her consideration as follows:

**"7. The Court has for its consideration the question of property adjustment. The assets comprised the following:**

- 1 Petitioner's home at San Souci**
- 2. Respondent home at Adastra Gardens**
- 3. Business – A-1 Car Rental**
- 4. Entertainment Business"**

**13.** As noted from her Judgment, the learned Judge made specific findings relative to each head which she identified and made specific Orders as a result thereof. The Judge found that:

**“there was never any intention of the parties to have either property considered a family asset...Likewise, the business, A-1 Car Rentals was not intended to be a family asset and as such the Respondent has no claim.”** (See Paragraphs 20-21 of the Judgment).

With regard to the other business, Hypermedia Entertainment, she opined that save for the Respondent’s mention of that business she had no information for consideration. In my view, none of these findings fall under the scope of the appeal as limited by the Notice of Appeal. In any event, as the husband’s involvement in the rental business occurred shortly before the breakdown of the marriage, I do not think that it should be considered a 'matrimonial asset'.

**14.** The Notice of Appeal reveals a challenge to *that part* of the Judgment whereby it was ordered that:

**“2- In the exercise of the Courts discretion the Petitioner shall pay to the Respondent the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) as compensation for her contribution to his home at Sans Souci during the marriage years.”**

There was no application for an amendment to the Notice and as such in my view this appeal can only be properly considered against that finding and subsequent order.

**15.** By her Notice filed on 6 January 2021, the wife sought an Order that:

**“(i) The Petitioner be ordered to pay to the Respondent a lump sum payment to enable the Respondent to carry-out necessary repairs to her house and to adequately furnish and appoint her house and to reduce the mortgage on it.”**

Although the claim was made for a lump sum the claim contained two distinct elements. Firstly, funds to repair and refurnish her house and secondly funds to reduce her mortgage on the said house.

#### **THE REPAIR AND REFURNISHING OF THE HOUSE**

**16.** The wife, in her written submissions before the court below set out her claim for mortgage assistance as follows:

**“6. When the parties married they each owned a home. The Petitioner owned a 5 bed bedroom 3 bath home located in Sherwood Drive, Sans Souci, Eastern District and the Respondent owned a 3 bed, 2 bath home located**

**in an area called Adastra Gardens in the Western District of New Providence.**

**7. After the marriage the Respondent moved into the home of the Petitioner and her home was placed on rent.**

**8. Upon moving into the Petitioner's home, the Respondent immediately engaged in assisting with creating a family home environment and making new the Petitioner's home. While the Petitioner paid for repairs and renovations as were required, the Respondent paid for most of the furniture and housewares to enhance the décor and comfort of the matrimonial home.**

**9. Throughout the marriage while the expenses of Kyshonna were known to both parties, the Respondent paid the lion's share of these — which included school fees and expenses through university.**

**10. Throughout the marriage the Respondent expended her income on the family providing necessities as well as comforts...**

**11. After the breakdown of the marriage the Respondent moved from the matrimonial home and it has been an implicit agreement that each party would retain the home they had before the marriage.**

**12. The Respondent now returns to a home which is in need of repair and the Petitioner has the benefit of the work done by the Respondent on his house which by the efforts of the Respondent is well maintained and well appointed.**

**13. In respect to the need for repairs at her home, the Respondent asks that the Court accepts the quotes of reputable contractors which she has placed in her Affidavit and which have not been controverted.”**

**17. In her Affidavit of 13 July 2020 the wife testified as follows:**

**“23. The house is in need of repair which is estimated to cost between \$25,000.00 to \$30,000.00. There is now produced and shown to me marked Exhibit “LS-2” a**

**true copy of Estimates from Baha Homes Development Co. and Arnett's Custom Carpentry.**

**24. It is also necessary that I paint the house and purchase furniture and amenities for the house which I estimate will cost some \$15,000.00."**

**18. The learned Judge in her Judgment observed as follows:**

**"22. In reviewing the Respondent's claim for a contribution to the repairs to her home the Court noted that the repairs were beyond the repairs of normal wear and tear on rental premises. The estimates presented call for extensive repair and almost the construction of a new home. The Court noted particularly the building of a boundary wall, columns and certain change orders. This estimate was Twenty-Five Thousand Dollars (\$25,000.00) while another (without the noted enhancements) was Twenty-Eight Thousand Dollars (\$28,000.00). It seemed without more the Respondent wishes to restore her home at Adrastea Gardens to the standard to which she claims to have brought the Sans Souci home.**

**23. The photos of the Sans Souci house improvements are impressive. The total of receipts produced is Three Thousand, Six Hundred and Seventy-One Dollars and Three Cents (\$3,671.03). The Petitioner agreed that the Respondent also bought a bedroom set and other enhancements for the living room. While credit must be rightly given, account must be had of the Respondent and her daughters' enjoyment of the same and their residing in the home without a demand for payment or contribution to its maintenance, utilities or mortgage. From what has been shown it is very unlikely that the Respondent ever spent Thirty Thousand Dollars (\$30,000.00) as her contribution to the Petitioner's home at Sans Souci.**

**24. From the photographs shown of the Adastra Gardens house, the estimates given and the Respondent's account of what she considered needed to be repaired and her accounts of repairs done and the utility payments since**

2013, it is unlikely that this house requires the claimed repairs.”

## THE MORTGAGE ASSISTANCE

19. In articulating her claim on the mortgage issue the wife in her written submissions in the court below stated as follows:

### “II. The Mortgage commitment of the Parties

(a) Both parties throughout the marriage were and are now faced with independent mortgage commitments. The parties entered marriage with these commitments, The income of the parties — which we submit comprises a matrimonial asset ~ was used to make monthly payments on the mortgage amounts due from both parties on their respective obligations;

(b) The conduct of the affairs of the parties was such that the sum of \$800.00 per month was paid on the mortgage property which now reverts to the Respondent and more than \$2,000.00 2,12 per month was paid on property which now reverts to the Petitioner.

(c) This disproportionate payment which was made to the mortgages of the parties now places the Respondent at a disadvantage. The fact that the Petitioner benefitted more than the Respondent from matrimonial income used on their respective mortgages is an unfair outcome of this marriage. The Respondent submits that in order to correct this disadvantage the Petitioner should pay to the Respondent a sum equal to the difference paid on their respective mortgages over the years of marriage, being:

\$2,129.00 x 81 months	\$172,449.00
\$800.00 x 81 months	\$64,800.00
Difference	<u>\$107,649.00</u>

d) The Respondent submits that this sum would equitize the amount invested in their respective homes and assist

**in bringing parity between the amounts by which the mortgage of each party was reduced over the marriage.”**

20. In dealing with this claim the learned Judge observed as follows:

**“18. While the Affidavits provide no details as to how the parties conducted their marriage it can be concluded that they both maintained individual properties. The parties maintained their individual properties brought into the marriage as distinct and separate in ownership despite each contributing in some way to the upgrading and preservation of the two homes. While certain aspects of their “marriage home” may have been shared property ownership was never affected.**

**19. Should the Respondent be compensated from what she claimed is an economic disparity? She maintained her home in Adastra Gardens. She earned rent and had a sum after the mortgage to do with as she wanted and did so in maintaining her property. The fact that the Petitioner has a home and paying a larger mortgage does not in and of itself account for a disparity. The Respondent has not been called upon to assist the Petitioner in any way. The Petitioner will suffer a prejudice if his situation must be considered.”**

It is clear, therefore, that this limb of the wife’s claim was rejected.

## **THE LAW**

21. Lady Wilson both in the court below and before us, grounded the wife’s claim for a lump sum payment on sections 27(1) (c) and 29(1) of the Matrimonial Causes Act Ch. 125 which respectively provide:

**“27 (1) (c) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute, the court may make any one or more of the following orders, that is to say —**

...

**(c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be specified;**

...

**29. (1). It shall be the duty of the Court in deciding whether to exercise its powers under Section 25 (3) or 27(1) (a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following that is to say-**

**(a) the income, earning capacity, property and to the financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;**

**(b) the financial needs obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;**

**(c) the standard of living enjoyed by the family before the breakdown of the marriage;**

**(d) the age of each party to the marriage and the duration of the marriage;**

**(e) any physical or mental disability of either of the parties to the marriage;**

**(f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;**

**(g) in case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;**

**and so to exercise those powers as to place the parties, so far as is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each**

**had properly discharged his or her financial obligations and responsibilities towards the other.”**

22. Learned Counsel submits that the wife was entitled to compensation having regard to the disparity that arises between the parties as a result of the manner in which they conducted the financial affairs of their marriage. She contends that while the wife moved into the home of the husband and used her income to make it fully acceptable to the parties, her own premarital home was rented. As a consequence of this, the home of the husband is in good order and well appointed. The wife’s home is in need of repair and in need of furnishing.

23. Lady Wilson further submits for our consideration the principles as summed up in **Miller v McFarlane** [2006] 2 WLR 1283 at pg 1288 by Lord Nicholls that:

**“In 1992 Lord Keith of Kinkel approved Lord Emslie’s observation that “husband and wife are now for all practical purposes equal partners in marriage”: *R v R* [1992] 1 AC 599, 617. This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary.”**

24. Whereas **Miller v McFarlane** has its value and has often been utilized as guidance in our courts we are, in my view, to be guided by principles derived from the case of **Jupp v Jupp** SCCiv App. No. 37 of 2011 where Allen, P said at paragraph 9:

**“It must be remembered that authorities from the United Kingdom cannot trump what the statue law of The Bahamas says. It is only if these cases are consistent with the statue law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole,**

**examine the entire context of the case and make an award accordingly, - stating sufficient reasons for the same.” [Emphasis added]**

25. In **White v White** [2001] 1 AC 596 Lord Nicholls of Birkenhead, referring to the English Legislation dealing with property adjustments in divorce settlements, observed as follows:

**“... the legislation does not state explicitly what is to be the aim of the courts when exercising these wide powers. Implicitly, the objective must be to achieve a fair outcome. The purpose of these powers is to enable the court to make fair financial arrangements on or after divorce in the absence of agreement between the former spouses: see Thorpe LJ in **Dart v Dart** [1996] 2 FLR 286, 294. The powers must always be exercised with this objective in view, giving first consideration to the welfare of the children.” [Emphasis added]**

In our jurisdiction section 29(1) of the Matrimonial Causes Act provides the guidance to assist our courts in arriving at a fair and just position in resolving family settlement cases.

## **RESOLUTION**

26. It is important to note that at paragraph 25 of her Judgment the learned Judge opined that:

**“The Court does not consider both homes as matrimonial assets available for distribution and neither party has asserted such a claim.”**

There has been no challenge to that finding of the trial Judge and at no point has section 25 (3) of the Matrimonial Causes Act been raised for consideration. Section 25(3) provides:

**“25 (3) Where the court makes under section 27 or 28 a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale in which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.”**

The wife instead based her claim on the premise that the \$219,075.00 paid into the two mortgages is an asset of the marriage which should be equally divided between the parties. The Judge has clearly rejected that claim and made no award relative thereto.

27. I must confess that this seems to me to be a novel claim and no authority has been presented where such an Order has previously been made. I fail to see how such a claim can properly fall within the scope of a property adjustment by the court. In any event, I have searched the documents provided to the Court and I can find no indication as to the value of either of the homes, nor what the current mortgage indebtedness is. It would seem to me to be more rational, if the evidence was that the parties agreed or the Judge had found, that the properties formed a part of the matrimonial assets. The court would then be in a position to determine how the division was to be effected, keeping in mind the need for fairness. In the absence of knowledge as to the value of the property and the extent of the mortgage indebtedness on both properties it is not possible to ascertain the true equity in the properties.

28. In the circumstances I cannot say that the learned Judge was wrong to reject the claim for mortgage equity. Even if such a claim was maintainable there is not sufficient evidence to show that such an Order would be fair in the circumstances of this case.

29. The one award which the learned Judge did make was the Order that the husband is to pay to the wife the sum of \$7,500.00 as compensation for her contribution to his home at Sans Souci during the marriage. It should be noted that the specific order which the wife had sought was that:

**“The Petitioner be ordered to pay to the Respondent a lump sum payment to enable the Respondent to carry-out necessary repairs to her house and to adequately furnish and appoint her house and to reduce the mortgage on it.”**

This was not the Order sought on appeal and the outcome for which the arguments on the wife’s behalf before us were based.

30. We must not lose sight of the fact however that in resolving applications of this nature a trial Judge is mandated to be guided by section 29 of the Matrimonial Causes Act and the aim is to do justice between the parties. As such, whereas the court is required to give consideration to specific claims made, the ultimate Order must be based on a proper assessment of all the circumstances of the case. In this case the trial Judge was of the view that the payment of \$7,500.00 by the husband to the wife as compensation for her contribution to his home at Sans Souci during the marriage was adequate to meet the justice of the case.

31. In arriving at the sum awarded the learned Judge observed as follows:

**“The photos of the Sans Souci house improvements are impressive. The total of receipts produced is Three Thousand, Six Hundred and Seventy-One Dollars and Three Cents (\$3,671.03). The Petitioner agreed that the Respondent also bought a bedroom set and other enhancements for the living room. While credit must be**

**rightly given, account must be had of the Respondent and her daughters' enjoyment of the same and their residing in the home without a demand for payment or contribution to its maintenance, utilities or mortgage.**  
From what has been shown it is very unlikely that the Respondent ever spent Thirty Thousand Dollars (\$30,000.00) as her contribution to the Petitioner's home at Sans Souci." [Emphasis added]

32. Lady Wilson took issue with this finding on the basis that the reference by the trial Judge to the child of the family as "the respondent's daughter" did not have regard to section 33 of the Child Protection Act which provides that:

**"33. Subject to the other provisions of this Act, every man is hereby required to maintain his own children and also every child, whether born in wedlock or not, which his wife may have living with her at the time of marriage to him so long as such children are unable to maintain themselves."**

Learned Counsel contends that this was an indication that the Judge did not consider funds spent by the wife on the upkeep of the child as a contribution to the family.

33. In his Affidavit dated 2 June 2 2020 the husband testified as follows:

**"30. At the start of our marriage the Respondent asked me how she could contribute to the home. At the end of our discussions it was agreed that the Respondent would take care of the following, i. Groceries; ii. Water & Sewerage; iii. Phone; and iv. Cable. I would take care of: v. Mortgage; vi. Home insurance; vii. Electricity; viii. Vehicle maintenance; ix. Home maintenance, repairs and replacement; and x. Yard maintenance;**

**31. Eventually the Respondent hired a housekeeper who came on an as needed basis; she also paid for this service.**

**32. The Respondent in the first year of our marriage purchased a bedroom set and the following year she purchased additional furniture for the living room area.**

**33. Regarding the groceries, the Respondent would plan a trip to the US with her family members and associates to purchase groceries and other household items. For**

**most of these years of the marriage I did not contribute to the purchase groceries on these excursions because it was the Respondent's responsibility. I would however cover the Respondent's expenses, like air fare, and her portion of the hotel and car rental and when the items arrived in Nassau I would take care of the customs duty and freight. This continued up to about 2017 and 2018 I contributed to the groceries and maintained the other expenses."**

**34.** In his submissions before the court below the husband stated that **"both parties made equal contributions to the maintenance of the matrimonial home more or less."** In referring to the assertion by the wife that she spent almost \$30,000.00 on his home, the husband stated as follows:

**"44. The Respondent also makes the point that she very early in the marriage about 8 years ago, spent almost \$30,000.00 on furnishings for the home. We submit that the Respondent did have the benefit of the furnishings for the entire duration of the marriage and that she insisted on many of the choices made with respect to the décor. It is further submitted that the furnishings are chattel and as such because of the amount of time that has passed at present have very little value."**

**35.** In these circumstances there was evidence before the court to support the Judge's finding that in the six years of marriage the wife contributed to the improvements of the husband's home, in which she also benefited by having lived in it during the marriage. As such, I am of the view that it was reasonable for the Judge to resolve the property adjustment by giving the wife compensation for her contribution to the improvement of the husband's property in Sans Souci during the marriage.

**36.** The amount of the compensation awarded was a matter for the trial Judge. The husband has filed no challenge or objection to the Order made. The judge rejected the suggestion that the wife's contribution to the improvement to the home in Sans Souci was anywhere near \$30,000, noting that **"the total of receipts produced is Three Thousand, Six Hundred and Seventy-One Dollars and Three Cents (\$3,671.03)."**

**37.** As an appellate Court, reviewing the exercise of the trial Judge's discretion, the only basis on which we could set aside the award is if we were to find that it was made on the wrong basis in law or that it is manifestly wrong. On the material provided to us I cannot say that the award was wrong in principle or manifestly wrong in amount. In these circumstances, I would dismiss the appeal in its entirety.

**38.** I would also award the costs of the appeal to the Respondent/husband, such costs to be taxed if not agreed.

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**The Honourable Mr. Justice Evans, JA**

**39.** I agree.

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**The Honourable Mr. Justice Jones, JA**

**40.** I also agree.

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**The Honourable Madam Justice Bethel, JA**