

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(Matrimonial)**

FH No. 00185 of 2006  
H.C.A. No. M-422 of 2001

**BETWEEN**

**PHILLIP VILAIN**

*Petitioner*

**AND**

**SHIRLEY VILAIN**

*Respondent*

**RAY GOMES**

*Co-Respondent*

**Before the Honourable Madam Justice Dean-Armorer**

**Appearances:**       **Mrs. Ruth Van Lare assisted by Ms Marcelle Ferdinand for  
the Petitioner;  
Mrs. Seebaran-Suite for the Respondent.**

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## **JUDGMENT**

### ***Introduction:***

1. This is an application for financial relief, initiated under the *Matrimonial Causes Rules*, Ch. 45:51. The Wife seeks both a lump sum payment as well as periodical payments.
2. The parties, Phillip Vilain, the Petitioner (“the Husband”) and Shirley Vilain, the Respondent (“the Wife”) had been married on the 6<sup>th</sup> June 1992.
3. On the 10<sup>th</sup> October 2002, the Honourable Justice Tiwary-Reddy granted a decree nisi in respect of the marriage.
4. The decree nisi was granted on the ground of adultery, being the fact pleaded in the Husband’s petition and the ground of unreasonable behaviour, the fact pleaded in the Wife’s Answer and Cross-Petition.
5. At the time of the grant of the decree nisi, the Court declared that there were three (3) children to whom s. 47 of the Matrimonial Proceedings and Property Act applied.  
There were:

- i. Adam Seedansingh born on 30<sup>th</sup> September 1985.
- ii. Mark Vilain born on the 5<sup>th</sup> May 1993.
- iii. Matthew Vilain born on the 18<sup>th</sup> May 1996.

By the date of the hearing of the Wife’s application Adam had completed school and was engaged in part-time employment.

6. There is no dispute that the first child, Adam, as well as his older brother, Johnathan, who was not caught by s.47 were the fruit of the Wife’s previous marriage.

7. An interim arrangement was made for maintenance whereby the Husband would pay to the Wife \$4,000.00 to assist her with rental expenditure, as well as \$800.00 for each of the younger children of the family. The Husband agreed to pay medical dental and optical expenses. By consent, Justice Archie (as he then was) ordered that the parties share custody, care and control and that each have access on alternate weekends.
  
8. Ancillary to the divorce proceedings was the Wife's application by Notice filed and dated the 13<sup>th</sup> September 2002 for the following relief:
  1. *maintenance pending suit, periodical and lump sum payments for her support and the support of the children of the family namely Mark Vilain born on the 5<sup>th</sup> May 1993 and Matthew Vilain born on the 18<sup>th</sup> May 1996;*
  2. *a property adjustment order in relation to:*
    - a) *the matrimonial home situate at No. 51 Pinta Drive, Westmoorings;*
    - b) *the pirogue "Family"*
    - c) *the Petitioner's shares in Baker Hughes*
  3. *Costs.*
  
9. It was the Wife's Notice for Ancillary Relief which now engages my attention.

### ***The Evidence***

1. The evidence before the Court consisted mainly of affidavit evidence:
  - affidavit filed on 9<sup>th</sup> April 2003 by the wife in support of her Application by Notice of 13<sup>th</sup> September 2002.
  - affidavit of Husband in response filed 23<sup>rd</sup> October 2003.
  - affidavit of Wife in reply filed 31<sup>st</sup> October 2003.

On the 11<sup>th</sup> December 2003, the Husband filed an affidavit which was supplemental to his principal affidavit.

2. The parties, through their Attorney-at-Law sought and obtained my leave to read and use affidavits which had been filed in respect of an earlier application on the part of the Husband for care and control of the children of the family. The filing dates of these affidavits were:
  - the affidavit sworn by the Husband and filed herein on 17<sup>th</sup> July 2001.
  - the affidavit sworn by the wife and filed on 23<sup>rd</sup> November 2001.
3. Both parties were in turn cross-examined on their affidavit evidence.
4. In the course of their cross-examination, the parties, through their Attorneys-at-Law sought and obtained the Court's leave to adduce oral evidence-in-chief with a view to providing evidence to update evidence supplied in their affidavits. The Wife supplied evidence as to changes in her health but never availed herself of the opportunity to update her statement of monthly expenses.
5. The Court heard the *viva voce* evidence of Ms. Sheena De Mattos, an employee of Baker Hughes Inteq. Ms. De Mattos, who testified qua Human Resource Generalist, gave evidence of the terms and conditions enjoyed by the Husband.
6. An affidavit was also sworn by Christopher Fojo and filed on 5<sup>th</sup> December 2003 on behalf of the Wife. Mr. Fojo testified as an expert in matters of Real Estate and supplied the Court with prices of properties in the Western Peninsular. Mr. Fojo was also cross-examined.

#### **Evidence of Ms. Sheena De Mattos**

1. Ms. Sheena De Mattos attended Court in this matter in obedience to a subpoena issued upon the application of Attorneys-at-Law for the Wife.

2. Ms. De Mattos produced a letter signed by herself and dated 1<sup>st</sup> December 2003. In her letter Ms. De Mattos confirmed that the Husband had been employed with the firm of Baker Hughes (Trinidad) Limited INTEQ Division since 1<sup>st</sup> November 1993, approximately one and a half years after the commencement of the marriage.
3. By her letter, Ms. De Mattos testified that the Husband earned a base salary of TT\$40,050.00 per month as well as a travel allowance of TT\$7,315.00 to compensate him for the use of his personal vehicle to conduct business on behalf of the company. See the exhibit "S.D. 1".
4. Annexed to the letter exhibited as "S.D.1" was a summary of allowances and benefits pertaining to the employment of the Husband with the company, Baker Hughes (Trinidad) Limited. These are:

<b>Hire Date:</b>	<b>1<sup>st</sup> Nov. 1993</b>
<b>Base Salary</b>	\$40,050.00
<b>Taxable Travel Allowance</b>	<u>\$ 7,315.00</u>
Incentive Bonuses <i>(discretionary dependent on company performance paid at 15% of base salary)</i>	<u>\$47,365.00</u>

Personal Contributions to:

<b>Company stock plan</b> <i>(for the year 2003. Stock price as at 28-Nov-03 at 1:40 p.m. was \$28.66 per share)</i>	<b>\$23,217.59</b>
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Personal Contributions to     *(for the year 2003.*

<b>Pension Plan</b> <i>Plan commenced April '03 (1,925./mth)</i>	<b>\$17,325.00</b>
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Company Contributions to  
**Pension Plan**

**\$32,426.10**

**\$49,751.10**

Company paid Health Plan (*100% paid by*

*Company. Group*

*Health Plan with*

*Caribbean Home*

*Ins. Co.)*

\$ 283.00

Personal Term Life

Insurance Plan (Coverage of TT\$200.00 paid

by employee)

\$ 56.00

5. Ms. De Mattos told the Court in her evidence-in-chief that the Husband, at the time of the hearing of this application, had been employed as a Drilling and Evaluations Manager and was based at the St. Clair offices of the Company.
6. Ms. De Mattos testified that the Husband's contribution to the company stock plan for the year 2003 was \$23,217.59.
7. Ms. De Mattos, when asked to describe how the stock plan functioned, told the Court, that all eligible employees were entitled to opt to contribute 10% of their basic salary. The agreed sums were deducted monthly and at the end of the year, the accumulated fund was used to purchase stock at a preferred rate of 15% less than the market value. The Husband would have the option to dispose of his stocks at any time at their market value. Ms. De Mattos told the Court that at the material date (December, 2003), the value of the Husband's stockholding was \$50,000.00.

8. Ms. De Mattos told the court that the Husband had set aside \$17,325.00 as his personal contribution to the pension plan for the year 2003.
9. Ms. De Mattos told the Court that the Husband made a contribution of \$1,920.00 per month, and that he held two (2) pension plans, one being with Guardian Life.
10. In respect of the Guardian Life Plan, Ms. De Mattos produced a Quotation prepared by Ashvin R. Akal, Executive Agent of Guardian Life of the Caribbean. This document was tendered by consent and marked "S.D. 2".
11. Ms. De Mattos told the Court that "S.D. 2" provided information on two (2) plans i.e. the "Top Hat" plan and the "Life Style" plan. "S.D. 2" showed projected maturity values in respect of both plans at different ages of the Husband.
12. Ms. De Mattos told the Court of an incentive scheme, whereby the Company rewards incentive. In April 2003, the Husband received \$30,995.26 representing the incentive for the previous year.
13. This witness deposed further that the Husband received no entertainment allowance or foreign travel allowance, but was allowed to claim re-imbusement for legitimate business expenses in entertaining clients or traveling on company business.
14. Under cross-examination, Ms. De Mattos told the Court that the benefits accruing to the Husband were transferable in the event that he left the company.

## **Evidence of the Wife**

### **Affidavit filed 23<sup>rd</sup> November 2001**

1. This affidavit, which was sworn by the Wife was addressed principally in answer to the Husband's application for care and control of the four (4) children of the family. It is relevant to the instant application in so far as it contains allegations as to the unreasonable behaviour of the Husband in his neglect of the intimate life of the marriage and his failure to correct his mother and the house-keeper Zahaida in their verbal harassment of the wife.
2. The Wife's affidavit of the 23<sup>rd</sup> November 2001 is also relevant in providing evidence of contribution.

## **Evidence as to contribution**

- The Wife, throughout the marriage worked as a Flight Attendant. She deposited her entire salary of some \$3,000.00 into a joint account for use by the family.
- The Wife's job often took her away from home, but she stated that she was in Trinidad for an average of twenty (20) nights per month.
- The Wife deposed that when she was in Trinidad, she collected the younger children from school, supervised their homework and took them to extra-curricular activities.
- The Wife also deposed that she took extended periods of vacation, during which she took the children on outings and vacations.
- the Wife deposed that she breast fed all her children, taking a breast pump with her when she had to fly.
- The Wife deposed that she initiated remedial lessons for Mark and attended Rugby games and purchased Rugby equipment, attended swimming practices, baked cakes for birthdays and cake sales. She attended Parent Teacher's meetings

threw birthday parties for the children and sewed carnival costumes for the children.

- The Wife testified that she designed the matrimonial home, planted the lawn and trees and shrubs in the garden. She purchased items for the home on her trips abroad.
- The Wife testified that she liased with school teachers and lobbied for donations for school events.

### **Wife's Affidavit of 9<sup>th</sup> April 2003**

This affidavit was filed in support of the Wife's application for ancillary relief. The salient aspects of the affidavit are:

- An allegation that the Husband deposits a portion of his salary into a joint account in Florida.
- The Wife was, at the time of swearing of the affidavit in receipt of \$3,300.00 as her salary and an overnight subsistence allowance of US\$140.00.
- The Wife alleges, that the land on which the matrimonial home stands had been purchased during their courtship and had been purchased in contemplation of marriage. (See para. 9).
- The Wife deposed that she made significant contributions to the design of the home as well as to the décor.
- She re-iterated her earlier testimony that she habitually deposited her entire salary in the family joint account.
- As to assets held by the Husband, the Wife has deposed, that the Husband holds shares in Baker Hughes, as well as in the Unit Trust Corporation. She deposed further that the Husband held accounts at RBTT, Republic Bank Limited and owned a Pirogue, which he had purchased for \$50,000.00.
- At para 13, the Wife itemised her monthly expenditure during the marriage:
  - ✓ Food inclusive of market items - 4,000.00

✓ Electricity	-	800.00
✓ Telephone & Internet	-	1,500.00
✓ W.A.S.A.	-	200.00
✓ Cable	-	200.00
✓ Maid Services	-	1,200.00
✓ Car Loan for Wife's vehicle	-	1,700.00
✓ Maintenance for Wife's vehicle	-	500.00
✓ Gas for Wife's vehicle	-	800.00
✓ Insurance for Wife's vehicle	-	300.00
✓ Upkeep of the home	-	200.00
✓ Gardener	-	200.00
✓ Life Insurance	-	200.00
✓ Wife's medication	-	50.00
✓ Clothing and shoes for the two younger children	-	300.00
✓ Clothing and shoes for Wife	-	300.00
✓ Hairdresser	-	200.00
✓ Nails	-	160.00
✓ Entertainment	-	500.00
✓ Vacations	-	1,000.00

- At para. 14, the Wife itemised her monthly expenses following her separation from the Husband. (See para. 14):

✓ Food	-	1,000.00
✓ Mobile bill	-	300.00
✓ Insurance for vehicle	-	300.00
✓ Car Loan for vehicle	-	1,700.00
✓ Gas for vehicle	-	600.00
✓ Maintenance for vehicle	-	300.00
✓ Life Insurance	-	200.00
✓ Medication	-	50.00

✓ Hairdresser	-	200.00
✓ Entertainment for the Children	-	300.00

- At para. 15, the Wife identifies the figure of \$10,000.00 as her projected monthly need if she left the matrimonial home.
- At para. 16, the Wife deposed that upon retirement she would be entitled to a pension of \$34,000.00 as a lump sum with a monthly stipend of \$500.00.

The Wife's affidavit in Reply re-iterated many of her earlier assertions. It was of value in asserting the rapidity with which the parties became intimate, after having commenced their relationship and in alleging that at an early stage in their relationship, the parties and the older sons of the Wife engaged in activities together such as vacationing in Disney World.

### **Cross-examination of the Wife**

- The cross-examination of the Wife began on the 11<sup>th</sup> December 2003 and was conducted by Mrs. Van Lare, learned Counsel for the Husband. The salient aspects of her cross-examination are set out hereunder.
- The Wife admitted that she had lived in rented accommodation at #17 Commodore Court, West Moorings, prior to her marriage to the Husband.
- She admitted further that she continued to live at #17 Commodore Court after her marriage to the Husband until the couple moved into the matrimonial home in 1995.
- The Wife described the accommodation at #17 Commodore Court as a Town House comprising three (3) bedrooms, two (2) bathrooms, one (1) washroom, a living and dining room, a kitchen, porch and car port.

- The Wife admitted that prior to moving to the matrimonial home, she lived at #17 Commodore Court with her two children and was comfortable there.
- Mrs. Vilain was questioned as to the time of the breakdown of the marriage. She denied that the breakdown became apparent in August 2000 and insisted that it took place when her husband presented her with an Attorney's letter to vacate the matrimonial home. The letter dated the 14<sup>th</sup> November 2000 and signed by Ms. Marcelle Ferdinand, learned Attorney-at-Law for the Husband, was tendered in evidence by consent and marked "A".
- The Wife also identified the letter dated 15<sup>th</sup> November 2000, whereby Messrs. Montano & Company, on her behalf, responded to the letter of Ms. Ferdinand. The letter of Montano and Company was tendered in evidence and marked "B".
- The Wife admitted that by the 15<sup>th</sup> November 2000, the marriage had broken down and that following that date the Husband had closed their joint account, and the parties began living separate lives.
- The Wife was cross-examined as to her romantic relationships and told the Court of a person whom she had been dating for the past six (6) months. She admitted that this person, who was not named, dropped her at and collected her from the matrimonial home. She told the Court that he was very interested in the lives of her children and took them fishing, to the movies, to the savannah, the beach and for pizza.
- The Wife was questioned concerning her relationship with the Co-Respondent, Mr. Ray Gomes, and indicated that she terminated the relationship shortly after receiving the letter of the 14<sup>th</sup> November 2000. She told the Court further that she had been involved with Mr. Gomes between September 2000 and November 2000.
- The Wife denied that the relationship was an intense romantic association and described it as a short relationship.

On the 15<sup>th</sup> December 2003, when the cross-examination of the Wife continued, both learned Counsel Mrs. Van Lare and Mrs. Suite told the Court that they had agreed that cross-examination on matters concerning conduct would be reserved pending the Court's adjudication on submissions by learned Counsel, Mrs. Suite, for orders striking out portions of the filed affidavits.

At the request of both learned Counsel, I gave directions for the filing and exchange of Skeleton Submissions. It is fair to say that the promised skeleton submissions were never filed. If prepared they were never brought to the Court's attention.

The question of the relevance of questions in cross-examination on conduct continued almost one (1) year later on the 2<sup>nd</sup> November 2005, when learned Counsel appeared to have forgotten completely about the earlier direction.

On this occasion, both learned Counsel agreed to rely on the Wife's admissions in the pleadings. The interchange between Counsel on the issue of conduct on the 2<sup>nd</sup> November 2004 is critical. It exerted its influence on the remaining cross-examination and oral submissions. It is therefore, in my view essential that I set out this exchange verbatim:

*"Mrs. Suite: My understanding is that the Respondent has made certain admissions in respect of the allegations of adultery. The admissions were made in both the pleadings and affidavit . We can leave issues of law to the Court in submissions.*

*Mrs. Van Lare: Agreed. I will not go any further. I will rely on everything she said before including her admission that the marriage finally broke down when the relationship with Mr. Gomes came to the fore...."*

## **Cross examination of Wife on issues other than conduct**

In the course of being cross-examined on the 15<sup>th</sup> December 2003, the Wife told the Court that her monthly salary was \$3,000.00 and that she received this salary thirteen (13) rather than twelve (12) times per year, because she worked on a twenty eight (28) day roster.

The Wife stated further that she received an average per diem allowance of \$500.00 US for travel abroad.

The Wife was questioned as to the way in which her allowance was spent. Her answers were consistent with her affidavit evidence, that is to say that she used her allowance to purchase items for the home and for the children.

The Wife re-iterated that she deposited her salary into the family joint account. The Wife told the Court that the joint account was used to fund the purchase of groceries and household items as well as her hairdresser bills, repayment of her motor car loans, as well as insurance for and maintenance of her motor car.

Other expenses paid out of the joint account included:

- utility bills,
- housekeeper;
- gardener
- medicines,
- school books and uniforms,
- entertainment

The Wife told the Court that she was in Trinidad fifteen (15) to twenty (20) nights per month. At such times she would organize the children's meals and drop them to school. She would also cook on an average of three (3) times per week. The Wife also told the Court that when in Trinidad she spent her afternoons with the children, checking their homework, eating and playing with them.

It emerged from the cross-examination of Mrs. Vilain that at the date of hearing (November 2004) the two (2) older children of the family were employed. Mrs. Vilain told the Court that their income was small and that in the case of Jonathan, his occasional contribution to the home was \$300.00 while Adam gave nothing to the home.

Mrs. Vilain confirmed that the custody arrangements for the two (2) younger children were shared equally with Mr. Vilain. This was pursuant to the order of Justice Archie (as he then was) on the 24<sup>th</sup> May 2002 that the Petitioner and the Respondent have staying access to the children for alternate five (5) day periods.

Mrs. Vilain was cross-examined as to her allegations of unreasonable behaviour against the Husband.

Mrs. Vilain told the Court that her Husband became a work-a-holic after Mark was born in 1993.

She denied that she tolerated his addiction to work for nine (9) years, telling the Court that she pleaded with him every night.

She stated that she did not leave the home because she loved her Husband.

Mrs. Vilain admitted that all allegations in her Cross-Petition existed before 2001, when it was filed.

Mrs. Vilain denied that the question of leaving the home only arose with her adultery. She recounted that there were days when she wanted to end the marriage but admitted that her desire to make the marriage work prevailed.

The Wife was cross-examined as to her contributions to the matrimonial home. She admitted that her suggestions were given to a draughtsman, but emphasized that she gave actual plans and not mere suggestions.

Mrs. Vilain was cross-examined as to her ability to earn her living by interior decorating. She admitted that interior decorating was something which she could do if she was not employed full time as a flight attendant.

Mrs. Vilain told the Court that she had no investments.

In cross-examination, Mrs. Vilain told the Court that she lived in Cascade, which she would describe as a comfortable residential area.

When questioned about the proportion of time which she spent out of Trinidad, Mrs. Vilain told the Court that it was less than one half of the month.

She denied that by virtue of her absence from home the major responsibility for the care of the children fell to the Husband.

She was questioned concerning transportation of children to extra-curricular activities. Her response revealed a lack of certainty – “*I believe between Phillip.....he or his mother....*”

The Wife did not appear to know. This response belied her strident assertions about Rugby and Swimming in her affidavit.

Homework, according to Mrs. Vilain, was checked by the maid, in her absence.

Mrs. Vilain was questioned in respect of her allegation that the matrimonial property had been purchased in contemplation of marriage. Mrs. Vilain admitted that their relationship began in September 1989 and that the Husband made his down-payment towards the purchase of the land in April 1990.

Learned Counsel obtained the Court’s leave to adduce *viva voce* evidence in order to update the affidavit evidence.

Mrs. Vilain supplemented her affidavit evidence in late November 2004. She told the Court of three (3) health issues:

- i) bleeding cysts and fibroids which require surgery,
- ii) a build up of cartilage on her elbows as a result of pulling trolleys,
- iii) the loss of the tip of the middle finger on her left hand by an accident at work.

### **Further evidence for the Wife**

By consent, Learned Counsel Mrs. Suite tendered a document showing bonuses paid to the Husband. This document was marked “C”. It provided evidence that the Husband receives an allowance for local travel of \$5,120.50.

The document reveals further that Mr. Vilain is eligible to receive an “Incentive Compensation Programme.” This payment is variable, the minimum being \$11,853.42 in 2004 and the maximum being \$111,859.05 in 2002.

On behalf of the Wife, learned Counsel Mrs. Suite also tendered an updated Valuation Report by Messrs. Linden, Scott and Associates. The value placed on the land

was \$2,000,000.00 and on the building and site improvements \$1,000,000.00. The total estimated value of the matrimonial home as at the 15<sup>th</sup> December 2004 was \$3,000,000.00.

### **Evidence of Mr. Fojo**

On behalf of the Wife, Mr. Christopher Fojo swore to an affidavit, which was filed herein on the 5<sup>th</sup> December 2003. In his affidavit he established himself as an expert by virtue of his expertise in the real estate market in Trinidad and Tobago for over fourteen (14) year.

Mr. Fojo identified price ranges for three (3) bedroom/two (2) bathroom homes and town houses in five (5) comparable areas in the Western peninsular of Trinidad.

More than a year later on the 21<sup>st</sup> January 2005, Mr. Fojo was presented to give *viva voce* evidence on updated prices for the named areas.

Mr. Fojo told the Court that the general trend of price rises between 2003 and 2004 was 15% to 20%.

This witness supplied updated prices as follows:

	<b>Area</b>	<b>Houses</b>	<b>Town Houses</b>
1.	Westmoorings (North)	2.5 – 4 million	2.1 – 2.5 million
2.	Westmoorings (South)	2.0 – 2.8 million	0.8 – 1.2 million
3.	Westmoorings (East)		
4.	Regents Gardens	2.3 – 3.4 million	None
5.	Victoria Gardens	2 – 2.9 million	1.7 – 2 million

Mr. Fojo testified further that closing costs had not been included but that they were approximately 10% of the cost of the property.

There had been at the Court's request, an attempt to recall Mr. Fojo to testify as to property prices in other residential areas. This led to an adjournment of one month between 23<sup>rd</sup> June and 27<sup>th</sup> July 2005. Mr. Fojo was unavailable and no effort was made by either side to assist the Court with the testimony of a comparable expert.

### **Evidence of the Husband**

#### **The Affidavit filed on the 17<sup>th</sup> July 2001**

This affidavit was originally intended to support the Husband's application for care and control of the children of the family. It is relevant to the instant application in so far as it contains allegations of mis-conduct on the Wife's part. These allegations include:

- allegations of infidelity;
- allegations of the Wife's prevarication as to her itinerary;
- allegations of neglect of the children.

#### **Affidavit of 23<sup>rd</sup> October 2003**

By his affidavit, the Husband deposed:

- he received a monthly salary of \$40,050.00, with a travel allowance of \$4,700.00;
- he holds a US bank account which initially held \$11,000.00US. Between the years 1986 and 2002, the Husband deposited 40% of his salary into the US Account.
- deductions are made at source from the Husband's salary. These deductions include: P.A.Y.E., N.I.S., Health Surcharge, Pension,

Stock Ownership and Group Plan. His net salary after deductions, by his testimony, is reduced to \$30,687.66.

- His other expenses, including Mortgage payments, Car loan, groceries, school books, vacations amount to \$24,511.44.
- The Husband denied that the land on which the matrimonial home stands had been purchased in contemplation of marriage. The Husband exhibited the Deed of Conveyance to prove that the land was purchased in his name alone.
- The Husband asserted that the land had been purchased early in their relationship and that the Wife made no contribution to the purchase price of the land. According to the Husband, the purchase price of the land was \$110,000.00, \$90,000.00 of which was borrowed and secured by a Mortgage.
- The Husband deposed that the parties became engaged to be married in February 1992.
- He testified that construction of the matrimonial home began in 1994 and was completed at a cost of \$780,000.00.
- The Husband deposed that the construction of the matrimonial home was financed by a loan from Sagicor of \$450,000.00.
- It is significant that the Husband has testified that the income of the Wife was taken into account as additional security.
- As at 30<sup>th</sup> September 2003, the sum which remained owing on the mortgage was \$367,906.00.
- The Husband identified additional sacrifices which he made to meet the cost of construction:
  - disposing of his motor car;
  - surrender of his insurance policy;
  - sale of a property at Gulf View;
  - withdrawal of savings from the UK and US accounts.

- The Husband has vehemently denied that the Wife contributed to the design of the home, saying that her contributions were no greater than his own and were submitted to an architect who completed the final design.
- The Husband denied that the Wife sacrificed meals to purchase household items, but admitted that the Wife’s salary was deposited into their joint account.
- Significantly, the Husband declared that this salary was always available to the Wife.
- The Husband accused the Wife of overspending, of sustaining an overdraft of \$10,000.00 on the joint account and of depleting his overseas savings.
- At paragraph 14 of his affidavit, the Husband set out his bank accounts and share holdings:

	<b>Institution</b>	<b>Amount Held</b>	<b>Share Value</b>
1.	Baker Hughes	284 shares	\$28.00 U.S. per share
2.	Unit Trust	\$1,512.00	
3.	RBTT (Current)	\$5,925.34	
4.	RBTT (Savings)	\$64,635.00	
5.	National Westminster Bank (U.K.)	£ 12.51	
6.	National Westminster Bank (U.K.) (Savings)	£ 7,328.94	

- The Husband gave evidence of his motor vehicle and his Pirogue.
- He asserted that he paid the mortgage instalment and was responsible for the maintenance and up-keep of the home.
- He alleged further that the Wife’s contribution to the home was limited to its decoration.

### **The Supplemental Affidavit**

In this affidavit the Husband provided details of his purchase of the land on which the matrimonial home stands.

### **Examination-in-Chief of the Husband**

Learned Counsel sought and obtained the Court's leave to update his evidence-in-chief by *viva voce* evidence.

The Husband told the Court of his efforts to secure a loan with a view to paying a lump sum to the Wife. The loan application had been made eight (8) months prior to his evidence and the available sum was \$695,000.00 - \$685,000.00.

Mr. Vilain also told the Court that his gross salary had been increased to \$41,251.50.

He testified further that he had suffered kidney failure in October 2003 and had been hospitalized for two (2) weeks at the dialysis unit at the St. Clair Nursing Home.

The Husband told the Court that he was dialysed twenty two (22) times at a cost of \$45,000.00, \$19,000.00 of which he recovered from health insurance.

The Husband told the Court that at the time of the hearing he was fine. He was told to keep himself healthy and to be careful about medications.

### **Cross-examination of the Husband**

- The Husband admitted that the first matrimonial home was the Wife's town house at 17, Commodore Court, and that he lived with her there from the 6<sup>th</sup> June 1992.
- The Husband was questioned as to whether the matrimonial property had been purchased in contemplation of marriage.
- The Husband admitted that at the time that the land was purchased he had already begun a relationship with the Wife. He stated that

the relationship began in September 1989 and that they had become intimate one month later. Within two to three months he began taking occasional meals at her home and occasionally spent the night at her home.

- The Husband admitted that by April the following year, he accompanied Mrs. Vilain and her sons to a vacation in Disney Land.

Mr. Vilain narrated the events which led to the purchase of the matrimonial property. The Husband told the Court that a friend of his suggested that he purchase the land. He visited the Westmoorings office to see what was available. This was prior to the infrastructural development of the land. Mr. Vilain admitted that he discussed the proposed purchase with Mrs. Vilain.

Mr. Vilain denied vehemently that Mrs. Vilain had any input in selecting the plot which he eventually purchased. He also denied that he selected one of two plots to accommodate a design which Mrs. Vilain had in mind.

He admitted that his intention was to build a home, but denied that it was a home to be shared with Mrs. Vilain and the children.

Mr. Vilain admitted that he purchased the parcel of land and got married two (2) years later, during which time he had a continuous relationship with Mrs. Vilain. Mr. Vilain admitted that the house was built some two (2) years after the marriage to the Wife.

He admitted that by the time construction began, the house was intended to be used as a home for the family.

The Husband denied that Mrs. Vilain decided on the style of the house, saying that they decided on it together but he was unable to recall whose was the idea of the Victorian wrap around porch.

Mr. Vilain admitted that they had not hired an architect, but a draughtsman and that they hired a structural engineer to design the structure of the home. He admitted further that he had decided against hiring a contractor and decided to manage construction himself.

Mr. Vilain made the following admissions as to Mrs. Vilain's contributions:

- the design of the wrought iron on the perimeter wall was Mrs. Vilain's design;
- Mrs. Vilain hunted down a tradesman who designed the wrought iron to her design;
- Mrs. Vilain designed the windows – she was particular about how she wanted them built;
- The house had a special style of tiling requiring an in-lay, some of which were brought in by Mrs. Vilain and some of which the parties bought together;
- She supervised the latter part of the interiors when construction was being done. He recalled a problem with a wall in a powder room.
- Mrs. Vilain had the greater in-put in choices concerning decorative elements;
- Much of what was commissioned was done to Mrs. Vilain's design;
- Mrs. Vilain planted the lawn, the trees, flower beds and plants in the yard;
- Mrs. Vilain painted the interior rooms;
- She painted floral designs making freizes along the walls and painted an ocean scene in the children's room.
- Mrs. Vilain did the moulding around the porch doors herself.
- Mrs. Vilain did faux finishes and was vigilant to maintain the decorative finishes, doing the work herself.
- Mrs. Vilain baked twice per week, for the children's birthdays and for school events.
- Mrs. Vilain was involved in the school lives of the children and from time to time would be required to supervise classes.
- She often took lunch to school for the boys when they were little;

- She sewed carnival costumes for the children;
- Threw birthday parties for the children, organizing them to the finest detail;
- Mrs. Vilain was involved in the children's sporting activities and attended far more Rugby matches than the Husband.
- Mrs. Vilain organized a 40<sup>th</sup> birthday party for Mr. Vilain.

Mr. Vilain denied that Mrs. Vilain supplemented the groceries, saying that she only bought specialty items. He re-iterated that he looked after the home when Mrs. Vilain was abroad, in paying bills and supervising the house-keeper, of whom Mr. Vilain admitted was in need of little supervision.

Mr. Vilain denied that Mrs. Vilain was remorseful following the breakdown of their marriage. He suggested that she only sought reconciliation some ten (10) months following the breakdown. He admitted that he was not prepared to reconcile.

Mr. Vilain admitted that Mrs. Vilain, persevered in the marriage for a lengthy period prior to the breakdown, although she had complained to him about aspects of the marriage.

Learned Counsel Mrs. Suite drew the husband's attention to the wife's allegations against him. He admitted that during the period 1994 to 1998, he worked at Galeota and that he left home at 5:15 a.m. and returned at 6:30 p.m.

Mr. Vilain was questioned concerning his work times at Baker Hughes. He told the Court that he left home early enough to get to work for 7:00 a.m. and denied that he did not return before 6:30 p.m. or 7:00 p.m.

In response to questions about his attendance of dinners, Mr. Vilain stated that he attended dinners about once per month.

At the request of Learned Counsel, Mrs. Suite, Mr. Vilain told the Court that he held four (4) policies of insurance.

- The first was a life policy with a small cash surrender value and that he could not remember who was the beneficiary.
- The second was tied to the mortgage for the sum of \$450,000.00.

- Mr. Vilain referred to a \$500,000.00 policy. Mr. Vilain told the Court that this was a combination policy, with a saving element of close to \$900.00.
- He had a million dollar coverage with the last policy, with a portion going to term and a portion going to investment. Being only 8 months old at the time of Mr. Vilain's cross-examination, this policy had minimal cash surrender value. Mr. Vilain did not seem to believe that it had a surrender value. The beneficiary was his estate.
- Mr. Vilain was cross-examined about his motor vehicle, PBO 8083 and told the Court that his loan was repayable within three (3) years.
- Mr. Vilain told the Court that, as at October, 2003, the sum outstanding on the mortgage for the matrimonial home was \$367,906.00. He had not recently checked the figure but he had been paying the mortgage every month.
- Mr. Vilain was cross-examined about items of his expenditure as shown on his affidavit. He told the Court that school fees for Mark had been increased to \$5,000.00, but were payable every term and not every month. He agreed that he spent \$1,100.00 per month on Mark's school fees, and \$312.50 on Matthew's school fees. These figures were added and put to Mr. Vilain. He agreed that the total figure was \$1,412.00 and that he had overstated it in his affidavit by \$437.50.
- Mr. Vilain admitted that the item for lessons should be \$1,050.00 and not \$2,000.00. He admitted that the lessons regime was going to change and that Matthew's lessons ended the previous term.
- He was questioned concerning his expenditure on the boat. Mr. Vilain, admitted that he had bought another pirogue at the price of \$172,500.00. The second pirogue was more powerful than the last one. Mr. Vilain told the Court that he intended to sell the first one.
- Mr. Vilain was questioned as to Mrs. Vilain's income. He admitted that her net monthly basic salary was \$3,575.00 per month and that the allowance which she received could be as high as \$900.00 per month.
- Mr. Vilain admitted that the allowance in question was a subsistence allowance specifically for meals, but that she spent very little on meals. He did not admit

- that her allowance was spent entirely on family purposes. Mr. Vilain admitted that as a flight attendant, Mrs. Vilain was required to maintain a high standard of grooming.
- Mr. Vilain was questioned as to the value of the matrimonial home. He admitted that the value placed on it at the end of 2002 was \$2.1 million and at December, 2003, its value was \$2,475,000.00. He admitted that Mrs. Vilain was named in the mortgage but not on the deed which he held in respect of the matrimonial home.
  - Mr. Vilain told the Court that he never thought of allowing Mrs. Vilain to live in the matrimonial home. He also denied that the standard of living at the matrimonial home was far higher than at the premises which Mrs. Vilain occupied.
  - Mr. Vilain was questioned about his proposal for settlement and agreed that he was intent on holding on to the matrimonial home.
  - Mr. Vilain agreed that Mrs. Vilain was a wonderful homemaker and mother. He agreed as well that her contribution, though not to the financial extent that he had made, was to the fullest extent of her ability.
  - Mr. Vilain also confirmed that after he terminated the marriage in 2000, he was not prepared to give Mrs. Vilain a chance.
  - Mr. Vilain denied that Mrs. Vilain's contribution was exceptional in terms of design and execution, but admitted that her contribution was exceptional in terms of the quality control of the finishes.

### **Re-Examination of Mr. Vilain**

In re-examination, Mr. Vilain explained that he described himself as more frugal than Mrs. Vilain because it had been his goal to keep this mortgage to a minimum. He told the Court that he had difficulty getting Shirley to be frugal, and that the couple had frequent arguments about expenditure on clothes, food and personal items.

Mr. Vilain told the Court how they came to be married. He recounted that Mrs. Vilain had remarked that they were going out for a year and that they should get married. Mr. Vilain told the Court that he responded by saying that he was not ready.

### **Allegations of Conduct on the Pleadings**

In the course of her cross-examination, Mrs. Van Lare, Learned Counsel for the husband agreed to restrict herself to:

- (i) the admissions of the wife on the pleadings
- (ii) the allegations that had been established in cross-examination by the 2<sup>nd</sup> November, 2004.

Mrs. Vilain made admissions at both paragraphs 2 of the Answer and Cross-Petition filed herein on the 17<sup>th</sup> September 2001, as well as paragraphs 3, 6 and 7 of the same pleading.

At paragraph 2 of her Answer and Cross-Petition, the wife admitted that the marriage had broken down irretrievably.

At the second paragraph 2 of the Answer and Cross-Petition, the wife admitted that she committed adultery with the Co-Respondent, Mr. Ray Gomes during the period September, 2000 to December, 2000.

At paragraph 3 of her pleading, the wife admits telling the Co-Respondent that “*last night was great*”. She contended however that “*last night*” referred to an outing at the Pelican.

At paragraph 6, the Respondent admitted that she admitted to the Petitioner and in the presence of the housekeeper that she was having an adulterous relationship with Mr. Gomes.

At paragraph 7 of the Answer and Cross-Petition, the Respondent admitted that the Petitioner found a letter which she had written to the Co-Respondent referring to herself as his “*wife for life*” and in which she professed her love and her willingness to leave the Petitioner, if the Co-Respondent wanted her to.

### ***The Facts***

1. The parties embarked on their pre-marital relationship in September, 1989.
2. By that time, the husband was a 31-year-old bachelor who shared accommodation with his brother in Cascade.
3. He was and continues to be a geologist by profession. He had worked in Singapore between the years of 1983 and 1986, when he accumulated savings in the sum of \$11,000.00 US, which he deposited into a US Savings Account.
4. In 1986, he had taken up employment with Petrotrin and continued to be so employed until 1993. From his employment with Petrotrin he is entitled to receive a pension at the age of 60 for an unquantified sum. No attempt was made on either side to assist the Court with the likely quantum of the pension.
5. In September 1989, the Wife was a flight attendant with BWIA. She was residing in a town house in Westmoorings with her two sons, Jonathan born on 1<sup>st</sup> May 1983 and Adam, born on 30<sup>th</sup> September 1985. At that time she was still married to her first husband, William Seedansingh. It is unclear whether in 1989 she was separated from her first husband. However, at the material time, neither the decree nisi nor the decree absolute had been made in respect of her first marriage.
6. Divorce proceedings had been filed by the Wife’s first husband in 1989. The decree nisi was granted in March 1990 and was made absolute one year later, in March 1991.

7. Within one month of the commencement of their relationship, the parties became intimate. After two (2) to three (3) months, the Husband would take an occasional meal at the Wife's home and would overnight occasionally.
8. The relationship grew between the Husband and the Wife's sons. They vacationed together in Disney World in April 1991. Mrs. Vilain had deposed that the trip took place in 1990. In the course of her cross-examination of the Husband, her Counsel accepted the correction of the date and omitted to put to Mr. Vilain that the trip took place in 1990 and not, as he asserted in April, 1991. I therefore accept that the Disney World vacation took place in 1991, one year after the land was purchased.
9. The Wife alleges that as early as April 1990 the Husband declared his intention to marry her. The Husband denied this, stating that it was after one (1) year of courtship that he had his first discussion with the Wife about marriage and that they got engaged around Carnival 1992 and married in June of the same year.
10. I accept the narrative of the Husband that the issue of marriage arose for the first time in the first quarter of 1992. The Husband provided the Court with a detailed narrative of how the parties became engaged. There was no attempt either to cross-examine him or to adduce further evidence to contradict his narrative.
11. In the midst of their courtship, the Husband's attention was drawn by a friend to land in Westmoorings which at the material time was infrastructurally undeveloped. He selected the lot in February 1990 and made the down payment in respect of the purchase price for the land on 18<sup>th</sup> April 1990.
12. An issue of fact has been canvassed as to whether the Wife selected the plot which the Husband eventually purchased. The suggestion that the Wife had made the final selection of the plot which was eventually purchased was not made in her evidence-in-chief. It surfaced for the first time when it was suggested to the Husband in the course of cross-examination. I accept that he may have discussed his intention to purchase the land with the Wife, who was then his girlfriend. I also accept his forthright assertion that there was only one

choice, which was his own. I also accept his forthright denial that the land was purchased to build a home to be shared by Mrs. Vilain and her children.

13. The burden of proving that the land was purchased in contemplation of marriage falls on the Wife who has made the allegation. The maxim that "*he who alleges must prove*" is equally applicable to family proceedings as it is to other branches of the law. In my view the Wife has failed to prove that the land was purchased in contemplation of marriage.
14. The parties got married in June 1992. Their first matrimonial home was the Wife's town house at Commodore Court, Westmoorings. No information was supplied as to whether Commodore Court belonged to the Wife and what became of the Commodore Court townhouse.
15. Construction of the matrimonial home at 51 Pinta Drive began in November 1994 and was completed in May 1995.
16. Mrs. Vilain made significant contributions to the design of the home. I accept that the idea of the Victorian style wrap around porch was hers. I also accept that she together with the Husband directed the draughtsman in completing the plans which would obviously have been required for building permission.
17. Mrs. Vilain also designed the wrought iron work and found a suitable tradesman. She chose and commissioned the decorative elements of the building.
18. Mrs. Vilain also painted the interior herself, designed and painted freizes on the walls, mouldings around the doors, and subsequently a mural in the room of the younger children.
19. Mrs. Vilain designed and executed the landscaping.
20. I accept that in this way, Mrs. Vilain contributed to the value of the property by maintaining its high standard of decoration. I disagree with learned Counsel Mrs. Van Lare that this contribution would be made by the average wife and mother.
21. I accept as well that she contributed to the construction of the matrimonial home by allowing her salary to be taken into account for the purpose of the mortgage which facilitated its construction.

22. I accept also that for the greater part of the marriage, Mrs. Vilain was a devoted mother, notwithstanding the nature of her chosen vocation which required her to be abroad frequently. Notwithstanding the subsequent breakdown of the relationship with Zahaida, it was not disputed by the Husband that Zahaida required little supervision. The provision of a reliable house-keeper was one of the Wife's contributions to the well-being of the family. I find however that her contribution as a mother was diminished by her absence from the home for at least one third of every month. At these times parental responsibility was carried by the Husband.
23. The Wife's contribution in baking for school events is also over and above what, in my view, the average diligent mother would do.
24. In respect of her participation in sporting events, in my view, her contribution was not exceptional.
25. The Wife accused the Husband of being a "workaholic" during the marriage. In my view, the Husband's devotion to his work obviously redounds to the benefit of the family in the largesse of the salary that he contributes. In my view no fault could be attributed to the Husband in this respect.
26. Detailed allegations of the Husband's neglect of marital intimacy were made in the Cross-Petition, filed on behalf of the Wife on 17<sup>th</sup> September 2001. The Answer and Cross-Petition contained a prayer for a decree. There was no Reply. Learned Counsel Mrs. Van Lare contended that the absence of a Reply should be construed as a denial. The relevant rule is Rule 17(2) of the *Matrimonial Causes Rules*, which stipulates that the absence of a Reply is deemed to be a denial "...unless the answer prays for a decree....". In this case the Answer contained a prayer for a decree. The presence of this prayer takes the case outside of Rule 17(2). The absence of a Reply ought therefore to be construed not as a denial but as an admission. The Wife's allegations contained in the cross-petition must therefore be regarded as admitted by the Husband.
27. It has been accepted that the Wife committed adultery in late 2000 and that as a consequence, the marriage broke down.

28. In the course of her relationship with the Co-Respondent, the Wife admitted the adulterous relationship in the presence of the maid. She also wrote a letter, expressing her devotion to her new lover and facilitated its discovery by the Husband. Following the break down of the marriage, the Wife, while still residing at the matrimonial home participated in an amorous relationship with an unknown person who met and dropped her at the matrimonial home.

**The Arithmetic: the Wife's means**

29. The Wife now lives in rented accommodation at Cascade. Her means include her basic gross salary of \$4,560.00. Her net salary amounts to \$3,595.00. She receives this salary thirteen (13) times per year, as well as a subsistence allowance, which she only receives when she flies.
30. Upon retirement, the Wife will receive a gratuity of \$34,000.00 as well as a monthly pension of \$500.00.
31. The Wife is skilled in interior decorating. The only reason why she does not work as an interior decorator is that her time is taken up flying.
32. The Wife has suffered health problems. She appears to have damaged her elbow. She lost the tip of one of her fingers in the course of her duties and has experienced gynaecological problems. At the age of forty three (43), however, the Wife is not disabled and has at least twenty (20) working years ahead of her. Unlike most women at her age, she has the career option of interior decorating, in the event that the work of a flight attendant becomes either impractical or undesirable.

### **The Wife's Obligations**

33. The Wife's monthly financial needs, as set out in her affidavit of 9<sup>th</sup> April 2003, amount to approximately \$10,000.00. This will be reduced to \$5,000.00 if she acquires a home.
34. It is critical to emphasise that the Wife does not carry the entire burden of caring for the infant children of the family. According to the interim arrangement, she would be responsible for only one half of the daily needs of the children, because they spend each alternate week with the Husband. The Husband also provides for all their medical, optical and educational needs as well as agreed extra-curricular activities. See "P.V. 2", exhibited to the Husband's affidavit of 23<sup>rd</sup> October 2003.
35. Moreover, the older children of the family are in my view no longer the Wife's obligation. They are both adults and in employment. The Wife may, like any mother, desire to provide comforts for them. This however, cannot be regarded as an obligation.
36. The Wife will have the financial need of caring for herself in her old age and in meeting medical expenses.

### **The Means of the Husband**

37. The Husband entered the marriage with approximately four (4) times the earning capacity of the Wife. At present he earns approximately \$42,000.00 monthly and has the capacity to enhance his monthly income by earning cash incentives. In the year 2002, the cash incentive which the Husband received achieved its highest in five (5) years at \$111,859.05.
38. At source, the Husband's salary is reduced by a deduction which he has directed towards savings. He has participated in his company's stock option plan and at the date on which Ms. De Mattos was cross-examined, the Husband had accumulated stocks valued at \$50,000.00.

39. The Husband holds four (4) life insurance policies and savings, which according to his affidavit totalled approximately \$180,000.00TT.
40. The Husband, at the time of his cross-examination owned two (2) boats, the older of which he planned to sell. The new boat was purchased at a price of \$172,500.00.
41. The Husband at the time of his cross-examination in November 2004, owned a fairly new motor vehicle.
42. It is fair to say that the assets held by the Husband reflected both his inclination to industriousness and his prudence in managing his assets.
43. The largest asset of the Husband is the matrimonial home. Two (2) valuations were provided by the Wife. The first was dated 9<sup>th</sup> January 2003 and was prepared by professional valuation surveyors and property consultants, Lindon, Scott and Associates Limited. The first valuation, exhibited as "S.V. 2" to the affidavit which was filed on the Wife's behalf on 9<sup>th</sup> April 2003, placed value of \$2.1 million.
44. The updated valuation report, which was tendered by consent on the 21<sup>st</sup> January 2005 was valued at \$3 million.
45. At the time of his cross-examination, the sum outstanding on the mortgage was \$397,906.00. The equity on the home in November 2004, stood at \$2,702,194.00.

### ***Law and Submissions***

Submissions were oral, in spite of my direction for the filing of Skeleton Submissions. Moreover, the Court did not have the benefit of submissions in reply by learned Counsel for the Wife.

## **Submissions of Mrs. Suite, learned Counsel for the Wife**

Learned Counsel, Mrs. Suite, summarised the agreed facts and then addressed the Court on each of the factors identified at s. 27 (1) of the *Matrimonial Property and Proceedings Act*.

### **List of Cases referred to by Mrs. Suite:**

Dove v Dove – H.C.A. M-622 of 2001  
West v West [1977] 2 AllER 705  
Bateman v Bateman [1979] 9 Fam. 86  
Harnett v Harnett [1973] 2 AllER 593; [1974] 1 AllER 764  
W. v W. [1975] 3 AllER 970  
Robinson v Robinson [1983] 1 AllER 391  
Robinson v Robinson [1981] 2 FLR 1  
Browne v Pritchard [1975] 3 AllER 721  
Martin v Martin [1977] 3 AllER 762  
Sharpe v Sharpe [1984] FLR 752  
Chand v Chand [1979] 9 Fam. 84  
White v White [2001] 1 AllER 1  
Northrop v Northrop [1968] P. 74  
Wachtel v Wachtel [1973] 1 AllER 113  
Ackerman v Ackerman [1972] 2 AllER 420

### **List of cases referred to by Mrs. Van Lare:**

Backhouse [1978] 1A.E.R. 1158  
Bothe v Amos [1975] 2All E.R. 321  
P v P [1978] 3AllER 70  
Minton v Minton [1979]A.C. 593

K v K [1988] 1 FRL 468  
Jones v Jones [1975] 2 AllER 12  
Cuzner v Underdown [1974] 2 All E.R. 351  
Leadbeater v Leadbeater [1985] FLR 789  
Roberts [1986] 2All E.R. 483  
K v K [1988] 1 FLR  
GW v RW [2003] 2 FLR 108  
M v M [2002] 1 FLR 654  
Petit [1969] 2 AllER 385  
Lambert v Lambert [2003] 4 All E.R. 342  
Cowan [2001] EWCA 679  
S v S [2001]  
N v N[1928] 138 L.T. 693; 44 T.L.R. 324

## ***Law***

1. Section 24(1) (a), ***Matrimonial Property and Proceedings Act*** Ch. 45:51 empowers the Court *inter alia* to order that either party make periodical payments to the other and/or that either party pay a lump sum to the other.
2. Section 27(1) provides the guidelines by which the Court exercises its power under s. 24:

*“In deciding whether to exercise its powers under section 24 or 26 in relation to a party to the marriage and, if so, in what manner, the Court shall have regard to all the circumstances of the case including the following matters:*

- a) *the income, earning capacity, property and other 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) *contributions 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) *any order made under section 53;*
- h) *in the 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 it 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.”*

## **2. Rule 17 of the Matrimonial Cases Rules:**

*“1) A Petitioner may file a reply to an answer within fourteen (14) days after he has received a copy of the answer pursuant to rule 21. If the Petitioner does not file a reply to an answer he shall unless the answer prays for a decree, be deemed on making a request for directions for trial to have denied every material allegation of fact made in the answer....”*

The rule is silent as to the consequence of an omission on the part of the Petitioner to Reply where the Answer prays for a decree.

### **3. *Wachtel v Wachtel* [1973] 1 All E.R. 113**

Lord Denning remarked that this case provided the first opportunity for the Courts to determine principles to be applied in granting ancillary relief pursuant to powers conferred by the UK 1970 Matrimonial Property Proceedings Act, s.5(1) of which is identical in its terms to s. 27 (1) of our ***Matrimonial Property Proceedings Act***.

In this case (which is referred to later under the heading “Law on Conduct”) Lord Denning provided guidelines for the grant of a lump sum and decreed that the payment of lump sum should not have the effect of crippling the husband. At p. 840, Lord Denning is reported to have said:

*“One thing is however obvious. No order should be made for a lump sum unless the husband has capital assets out of which to pay it without crippling his earning power.”*

In ***Wachtel***, Lord Denning provided guidelines for the grant of the lump sum, which are still relevant. See the summary contained in the headnote, at page 830 f:

*“Where the matrimonial home is the principal or only capital asset.....and where the wife has left the home and the husband remains in it....the wife should be compensated for the loss of her share in the house by the award of a lump sum....that sum should be such that the Husband can raise by a further mortgage on the matrimonial home.....”*

### **4. Increase in the value of the Matrimonial Home**

In the case of ***Wachtel***, Lord Denning considered as well the apportionment of an increase in the value of the matrimonial home.

Lord Denning said at p. 840 j:

*“In these days of rising house prices (the Wife) should certainly have a share in the capital assets which she helped to create. The windfall (I interpolate to say that this is a reference to the increase in value due to rising prices) should not all go to the Husband.”*

This finding of Lord Denning was quoted and considered by Balcombe J, in ***Backhouse v Backhouse*** [1978] 1 AllER 1158 (referred to below). At p. 1168 f to g, Balcombe J, is reported to have regarded the ***Wachtel*** formulation as “the usual case”.

*“Now that would be the usual case. It seems to me that justice can best be done here by giving the Wife a share in the capital asset, the house which she helped to create, but not in the windfall created by rising property values since she left.”*

The facts of ***Backhouse*** are summarised later under the heading of conduct.

It seems to me that a Wife will usually be entitled to a share in the enhanced value of the property, following her departure from the matrimonial home. The Court is entitled to deny her a share in the increased value if the justice of the case so demands.

Learned Counsel, Mrs. Van Lare submitted the case of ***Bothe v Amos*** [1975] 2 AllER as authority for her contention that I ought not to consider the third valuation, dated the 15<sup>th</sup> December 2004, which had been prepared after the Wife left the matrimonial home.

With the greatest respect to learned Counsel, this case was not supportive of her submission and was concerned principally with the issue of the partnership between the parties.

In accepting professional valuations however the case of ***P v P*** [1978] 3 AllER 70 cautions that the sum fixed by a valuation report is different from the very sum in liquid assets. At p. 73, Omerod, LJ said:

*“The first point to be considered is the value of the farm. It is necessary at this juncture once more to urge in these cases judges exercising this jurisdiction must be realistic in dealing with figures for valuation.”*

## 6. Need for a home

Numerous authorities were cited by learned Counsel, Mrs. Suite, in support of her submission that the Court ought not to cause a party to be homeless. See for example *Chand v Chand* [1978] 9 Fam. Law 84.

In the case of *Sharp v Sharp* [1984] FLR 752, the English Court of Appeal held:

*“The first consideration of the court in the circumstances of the case was the provision of a suitable home for minor children....”*

## 7. Clean break and periodical payments:

It is now an entrenched principle in family law that the court attempts to facilitate a clean break between the parties. See *Minton v Minton* [1979] 593/608.

It has been observed, however, by Justice Rajnauth-Lee in *Nicholson v Nicholson* FH00712/2004 that the Court ought not to follow the clean break rule slavishly. See page 16 of 24 of the unreported judgment.

## Pensions

In the case of *Roberts v Roberts* [1986] 2 AllER 483, the Court refused to adjourn the Wife’s application for a share in the Husband’s gratuity, to which he would become eligible in six (6) years.

One of the distinguishing features of the case of *Roberts* was that the Husband was entitled to an army gratuity that could not be assigned.

Significantly however, the Court observed that the Husband earned the gratuity over a forty year (40) period, twenty eight (28) years of which were outside of the marriage.

Learned Counsel, Mrs. Van Lare submitted this case as authority for the proposition that “foreseeable” meant four (4) to five (5) years. With respect, the authority does not support her submission. The case was not at all concerned to construe the meaning of “foreseeable.”

The learned Judge in *Roberts* distinguished *Richardson v Richardson* [1979] 9 Fam. Law 86.

In *Richardson v Richardson* the parties had been married in 1945. The Wife obtained a decree nisi on the ground of the Husband's adultery. The Husband, a senior civil servant had a new home and investments, including a monthly savings plan scheme. He was entitled to retire in three (3) years and to receive a lump sum of £9,000. Had the marriage survived the Wife would have been entitled to a lump sum of £1,000.

The trial judge concluded that he should set aside the projected lump sum payment and leave it in the husband's hands.

Omerod, LJ found that the trial judge was wrong to say that the sum was to be left out of account:

*"It was as the Judge said a sum that was being provided in order that the Husband's pension would be supplemented. Had the marriage subsisted the Wife would have had the benefit of that as well as the Husband...."*

In the case of *Roberts*, Woods, J distinguished *Richardson* by saying:

*"The major distinction between that case where a lump sum was payable and the present one is that in that case capital was available out of which an order could be paid and the Court had merely taken into account the fact that in three (3) years....a substantial sum would be payable...."*

From the case of *Roberts*, the following principles are discernible:

- i. The Court would be inclined against adjourning the application for a number of years, until a gratuity became available.
- ii. The Court would be inclined against taking account of a pension the greater part of which was earned outside of the marriage.
- iii. The Court is more inclined to take account of the pension if there is adequate capital from which the award could be paid.

## **Power of Sale**

The unanimous decision of the Court of Appeal in CA #117/85 *De Freitas v De Freitas*, is that the *Matrimonial Property Proceedings Act* gives the Court no power of sale. By this decision I am bound.

## **White ([2001] 1 All E.R. 1) and Post-White cases**

It is widely known that in the case of *White v White* introduced the “yardstick of equality” as a guard against discrimination.

The direction of Lord Mc Nicholls of Birkenhead at p. 9 e with whom the majority of their Lordships agreed, was:

*“Before reaching a firm conclusion and making an order along these lines a judge would always be well advised to check his views against the yardstick of equality of division. As a general guide equality should be departed from only if and to the extent that there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the courts to focus on the need to ensure the absence of discrimination....”*

It appeared to have been accepted by Counsel in the instant case that *White* and indeed those authorities that followed it were distinguishable in that they were big money cases.

## **Cowan v Cowan [2001] EWCA Civ 679.**

In this case, the Court of Appeal considered the apportionment of remarkable wealth which had been generated during a marriage of thirty five (35) years. As a matter of fact, the trial judge found that the Wife’s contribution to the family wealth, while not insignificant had not been particularly important by comparison with the Husband’s entrepreneurial flair and drive.

As in the case of *White*, *Cowan* is distinguishable from the case which now engages my attention in two material ways:

- the length of the marriage of thirty five (35) years,
- the abundance of wealth generated during the marriage.

*Cowan*, like *White* is relevant only in its guidelines as to principles.

The Court of Appeal held:

- “1. The ratio in White was not equality but fairness.*
- 2. The reasons justifying a departure from equality would inevitably prove too many and too varied to permit listing or classification, but did include acquisition of wealth by more than special skill and care.”*

*Cowan* is useful in establishing that the date of the trial and not the date of separation is the relevant date for assessing the value of assets. See para. 4 of headnote at p. 192.

*G.W. v R.W.* [2003] FLR 108.

This was a case of affluence in which the Husband, a successful financier had amassed a fortune of approximately £12 million.

Taking into account the period of pre-marital co-habitation of eighteen (18) months and excluding period of separation before the final divorce the length of the marriage was twelve and one quarter (12¼) years.

At para. 33 of his judgment, Nicholas Mostyn, Q.C., sitting as Deputy High Court Judge stated that in assessing the duration of a marriage the de facto rather than the de jure date was relevant.

It was held to be fundamentally unfair to be required to find that a party who had made domestic contributions during a marriage of twelve (12) years should be awarded the same proportion of assets as a party who had made domestic contributions for twenty (20) years. Accordingly, some departure from equality should be allowed on this ground.

## Law on Conduct

1. The starting point of every discussion of the issue of conduct in proceedings of this kind is the case of *Wachtel v Wachtel* [1973] AllER 830, where Lord Denning described the pre-1970 English Matrimonial law which ascribed matrimonial guilt to one party:

(p. 835 d) “When Parliament in 1857 introduced divorce by the courts of law, it based it on the doctrine of matrimonial offence. This affected all that followed....”

At p. 835e, Lord Denning is reported to have said:

*“All that is altered. Parliament has decreed: If the marriage has broken down irretrievably let there be a divorce.....It is a misfortune which befalls both.”*

At p. 835 g

*“...In most cases both parties are to blame – or, as we would prefer to say – both parties have contributed to the breakdown. It has been suggested that there should be a ‘discount’ or ‘reduction’ in what the wife is to receive because of her supposed misconduct, guilt or blame (whatever word is used). We cannot accept this argument. In the vast majority of cases it is repugnant to the principles underlying the new legislation, and in particular the 1969 Act. There will be many cases in which a wife (although once considered guilty or blameworthy) will have cared for the home and looked after the family for very many years. Is she to be deprived of the benefit otherwise to be accorded to her by s. 5 (i) (f) because she may share responsibility for the breakdown with her husband? There will no doubt be a residue of cases where the conduct of one of the parties is in the judge’s words ‘both obvious and gross’, so much so that to order one party to support another*

*whose conduct falls into this category is repugnant to anyone's sense of justice."*

At p. 836 a

*"...But, short or cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life.....But in the financial adjustments consequent on the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place."*

The words of Lord Denning have reverberated through the ensuing three (3) decades up to the present time. It has been treated in some cases almost as a statutory formula. Its treatment as statutory has been frowned upon. See *Robinson v Robinson* (1981) per Lord Scarman. It has been used by Courts to determine the extent to which conduct should influence a financial award.

2. Recently in this jurisdiction, in H.C.A. No. M-622 of 2001, *Natasha Dove -v- Eric Dove*, Justice Jones considered *Wachtel* and authorities which followed it and wrote at p. 11 of 21 of her Unreported Judgment:

*"It would seem therefore that in financial relief applications in this jurisdiction the test to be applied in determining whether the conduct is relevant conduct or conduct to which some weight should be attached in financial relief applications is, whether the conduct of either party to the marriage is such that it would offend a reasonable person's sense of justice to disregard same when dealing with the question of financial relief...."*

I respectfully adopt the formulation of Jones, J as the correct statement of the law.

It is useful to add that in *Dove v Dove*, Justice Jones considered allegations of misconduct on the part of both the Wife and the Husband. It was alleged that the Wife had been dishonest in financial dealings in the marriage, both in her extravagance and in the concealing same from her husband. It was alleged also that she had engaged in an improper association with a former boyfriend.

The Husband had also been accused of participating in an improper association. The Wife alleged further that he failed to disclose his own sterility and acquiesced silently while she went through numerous painful and intrusive tests to ascertain why they were childless. Additionally, he refused to participate in a simple procedure which would have resulted in her achieving a pregnancy.

At page 12 of 21 of her Unreported Judgment, Justice Jones held that the allegations on both sides do not amount to relevant conduct.

3. The formulation of Lord Denning has been enhanced by the construction of later courts.

In *Harnett v Harnett* [1973] Fam. 156 at 165, Bagnell J, interpreted “*obvious and gross....*” as meaning:

*“...the party concerned must be plainly seen to have wilfully persisted in conduct or a course of conduct, calculated to destroy the marriage in circumstances in which the other party is substantially blameless....”*

In the case of *West v West* [1978] Fam. 1, Sir John Pennycuick opined that “gross” meant “....of the greatest importance....”

4. *Leadbeater v Leadbeater* [1985] FLR 789.

Learned Counsel, Mrs. Van Lare cited and relied on this case, in which Balcombe J, considered the case of a couple, in their mid-forties. Both had previously been married and both their former spouses married each other.

They enjoyed a high standard of living. The Wife brought with her two (2) adopted children from the former marriage.

The Wife suffered from a drinking problem. When the Husband brought a teenaged friend of the adopted daughter to live with them, the Wife reacted by going to Cyprus and committing adultery with different persons. The Husband offered to take her back on the condition that the friend of her daughter be permitted to stay in the house.

In this case, Balcombe J, found that the deplorable conduct of each party cancelled the effect of the other.

5. ***Backhouse*** [1978] 1 AllER 1158.

The case of ***Backhouse*** was also cited by Learned Counsel, Mrs. Van Lare. I found this case to be very useful.

In ***Backhouse***, the parties had two (2) daughters almost ten (10) years apart. Both Husband and Wife worked and made contributions to the family pool. The parties purchased the matrimonial home in their joint names.

The Wife had a secret armouros relationship for two (2) years. She eventually left the matrimonial home, the Husband and the younger child who was eight (8) years old at the time.

The Husband prevailed on her to transfer her share in the matrimonial home for nothing and with no independent legal advice.

The Wife applied to have the transfer set aside. The value of the property was rising.

Justice Balcombe held that the Wife's behaviour was the substantial cause of the breakdown of the marriage.

Preferring the test of repugnancy to one's sense of justice Balcombe, J held:

*"It would be repugnant to my sense of justice to deprive the Wife of all interest in a house, to the initial purchase of which she very substantially contributed. It would be equally repugnant to my sense of justice if notwithstanding her contribution to the initial purchase price, her share or interest were now such that she could require the Husband to sell the house, which is home both of himself and the daughter who is now aged thirteen (13)."*

Justice Balcombe quoted the words of Sir George Baker in *W v W* [1975] 3 AllER 970. With respect I do not find the words of Sir George Baker helpful as they formulate a test which is variable according to the personal morality of the person charged with the task of adjudication.

It is significant that Balcombe, J distinguished the case of *Cuzner v Cuzner* [1974] 2 AllER 351, holding that the difference was that Mrs. Cuzner had made no contribution.

The Learned Judge also took into account the fact that Mrs. Backhouse had a roof over her head.

In respect of the enhanced value of the matrimonial home, Balcombe, J, quoted from Lord Denning's judgment in *Wachtel*:

*"The windfall (I interpolate to say that this is a reference to the increase in value due to rising prices) should not all go to the Husband...."*

Balcombe J, said at p. 1168 f:

*"Now that would be the usual case. It seems that justice can best be done.....by giving the wife a share in the capital asset, the house which she helped to create but not in the windfall created by rising prices...."*

It seems to me that the general rule is that the Wife, who receives a lump sum in compensation for her share in the matrimonial property, is entitled to a share in increases in its value, unless to do so is offensive to the justice of the case.

From the case of *Backhouse*, it is also clear that the power of the court to reduce awards, having regard to conduct, includes the power to dull the cutting edge of the reduction having regard to circumstances such as whether an adulterous wife is already securely housed.

6. *K v K* [1988] 1FRL 469, was a decision of the English Court of Appeal.

The statute under consideration was the British 1973 Act as amended by the Family Proceedings Act 1984. The Court of Appeal held that in considering conduct, the

Court was not restricted to considering conduct that contributed to the breakdown of the marriage.

At. P. 478 A-B, Lord Justice Purchas said:

*“Again under the old authorities, the conduct did not necessarily have to be conduct contributing to the breakdown of the marriage and frequently conduct subsequent to the breakdown was taken into account....”*

Then at p. 478 c:

*“The Court is entitled.....to look at the whole picture including the conduct during the marriage and after the marriage which may or may not have contributed to the breakdown of the marriage or which in some other way makes it inequitable to ignore the conduct of each of the parties....”*

### ***Reasoning and Decision***

Although the Wife’s Notice of the 13<sup>th</sup> September 2002, sought property adjustment orders, her application, according to her evidence and the submissions of her attorney-at-law, has been confined to an application for a lump sum and periodical payments. On behalf of the Wife, Mrs. Suite has submitted that an appropriate lump sum would be equivalent to one half (½) of the equity in the matrimonial home, as it stood at the end of 2004. This according to learned Counsel stood at \$2.5 million.

It is trite that the Court is required to consider all the circumstances of the case and in particular the circumstances itemised in s. 27 of the ***Matrimonial Property Proceedings Act***.

The Court is exhorted to preserve the utmost elasticity and to deal with each case on its own facts. See ***Martin v Martin*** [1977] 3 AllER 762 per Omerod, LJ.

Guidelines for ascertaining the extent of the lump sum payment were supplied by Lord Denning in *Wachtel*. Although his one-third ( ? ) rule has been jettisoned by the House of Lords in *White* it is my view that the philosophy which informed his decision is still alive. It is therefore correct in this case for the Husband to remain in the matrimonial home and be fully responsible for future mortgage payments while the Wife is given a lump sum, which is adequate to enable her to purchase a new home.

No serious contradiction was put forward in respect of the principle that the housing of the wife was a matter of priority.

The burning question in this case is as to the percentage of the matrimonial assets and more specifically the exact sum to which the Wife is entitled.

The family assets, as defined by Lord Denning in *Wachtel* (and frowned upon in a later case of *P v P* [1978] 3 ALLER) include the matrimonial home, the joint incomes, a pirogue entitled “the Family”, the investments of the Husband, including his savings, and stock holdings.

Mrs. Van Lare argued with tenacity that the appropriate date at which a value should be placed on the matrimonial home was the date of separation. With great respect, it appears to me that the authorities the last of which was *Cowan v Cowan* (supra) support the opposite view.

I therefore hold that the date of the hearing of the application is the appropriate date for the valuation of the matrimonial home. The latest updated valuation of Messrs. Linden Scott in December 2004, placed a value of \$3 million on the matrimonial home.

In his affidavit of the 23<sup>rd</sup> October 2003, Mr. Vilain deposed that the sum outstanding on the mortgage was \$367,906.00. In cross-examination, in November 2004, Mr. Vilain repeated this figure stating that he had not recently checked it. No attempt was made by attorneys-at-law for the Wife to obtain an update on the outstanding mortgage and I am bound by the evidence before me.

Additionally, the pirogue was a family asset. I am of the view that the new pirogue is not a family asset, since it was purchased after the breakdown of the marriage.

The first pirogue was purchased for the sum of \$50,000.00. No evidence was led as to the depreciation of this asset and I will accept \$50,000.00 as its value. At the date of the Husband’s cross-examination, he still had possession of the pirogue. Even if it has

been sold by the date of this judgment, Mr. Vilain would now hold the proceeds of its sale.

The third substantial family asset is the shareholding of Mr. Vilain in Baker Hughes. At the date on which Ms. De Mattos gave evidence, Mr. Vilain's shareholding was valued at \$50,000.00. The Husband also holds savings amounting to approximately \$135,000.00.

On the evidence, before me which is obviously dated, the family assets amount to \$2,935,000.00:

Equity matrimonial home	\$2,700,000.00
Shareholding	\$ 50,000.00
Pirogue	\$ 50,000.00
Savings	\$ <u>135,000.00</u>
	<u>\$2,935,000.00</u>

I will disregard Mr. Vilain's pension entitlements. No value was placed on his Petrotrin pension and the Court ought not to act on conjecture. Moreover, the greater part of his pension rights accrued prior to the marriage between the years 1986 to 1993. In keeping with the authority of *Roberts* (supra) it would be unfair to deprive him of the benefit of this pension.

The second pension, according to Ms. De Mattos accrued from April 2003, after the breakdown of the marriage. Similarly, it would be unfair to the Husband to require him to share any part of this sum with his former Wife.

I now turn to consider the factors itemised at s. 27 (1) of the *Matrimonial Property Proceedings Act*. The Wife commands approximately one tenth of the income of the Husband. This imbalance is also reflected in the current property, savings and investment of the parties.

On the other hand the Wife holds an income earning capacity as an interior decorator to which she can turn when the life of the flight attendant either becomes too strenuous or unavailable.

The Wife at this time is in dire need of a home of her own. Save for the need of the house, the financial needs, obligations and responsibilities of the parties appear to be on par. By virtue of their interim arrangement, they share the care of the two (2) minor

children of the family. The Husband voluntarily bears the greater part of the financial burden for the boys, paying the full amount of the medical, dental and educational expenses. He also takes care of them for one half of each month and pays \$800.00 to the Wife for the other half. Their obligations include meeting their medical needs as middle-aged persons and providing for their eventual retirement.

The standard of living enjoyed by the family was upper-middle class.

Both parties are in their forties – middle years. Whereas neither is young, they can both look forward to some fifteen (15) years of working life.

The duration of the marriage has been accepted as intermediate. In this case the duration of the marriage was less than that considered in *GW v RW* (supra).

With no reference to authority, Mrs. Suite submitted that the presence of minor children minimised the influence of the shortness of the marriage.

Even if I were to accept this unsupported submission, it is clear that Mrs. Vilain is responsible for providing for substantially less than half (½) of the children's financial needs.

The contributions of Mr. Vilain, far exceed those of the Wife. When he entered the marriage he was already a trained professional and a high income earner. His obvious discipline and foresight facilitated the accumulation of savings, insurance policies and stocks. He also brought the land, which I have already held had not been purchased in contemplation of marriage.

In the course of the marriage, Mr. Vilain contributed by being present when Mrs. Vilain was abroad. Even if there was a house-keeper, he would have borne the ultimate responsibility for the security and well-being of the family. Mr. Vilain also contributed 100% of his earnings to the welfare of the family. There is no evidence to suggest that all his savings and stockholdings were accumulated for any thing but the welfare of the family.

By contrast, the Wife brought very little to the marriage. Although I accept that she gave 100% of her income, this was a small fraction of what was required to run the home.

I recognise that she provided the first matrimonial home at #17 Commodore Court, while the later matrimonial home was being designed and constructed.

She also made sterling contributions to the design and decoration of the matrimonial home. In my view her contribution to the construction and maintenance of the matrimonial home may have been approximately 20% and was over and above what the average wife was capable of.

Her contribution as a home-maker and mother, while valuable is obviously to be diminished by virtue of her regular absences for approximately one third ( ? ) of the month.

In my view the appropriate value of Mrs. Vilain's contributions should be about 33? %.

I am of the view that the allegations of conduct do not meet the test of repugnancy to one's sense of justice. By virtue of the Husband's lack of intimacy, Mrs. Vilain may have grown vulnerable and stumbled and fell. Her remorse in my view is manifest from her termination of the relationship with Mr. Gomes, immediately following Mr. Vilain's letter.

The authorities suggest that post break-down conduct is also relevant. I do not however find the allegations repugnant to one's sense of justice.

Her armorous relationship, after the breakdown, appeared to have been no more than an attempt to salvage her life.

Accordingly, in my view there should be no reduction of Mrs. Vilain's entitlement on account of conduct.

I am required by *White* to employ the yardstick of equality and to consider and articulate reasons for departing from this yardstick.

The authority of *G.W. v R.W.* provides one with authority for advancing two (2) reasons:

1. The shortness of the marriage;
2. The differences between the respective contributions of Husband and Wife.

This is not the typical case which gave rise to the decision in *White*, where the Wife was slaving inside the home with dirty dishes and diapers for the best years of her life while the Husband amassed the family fortune. Only eight (8) years of Mrs. Vilain's

best years were given and much of it was spent away from the matrimonial home and the children. In the circumstances, it is my view that a lump sum amounting to one third ( ? ) of the family assets would meet the justice of this case.

One third ( ? ) of the family assets would yield a total of \$960,000.00. According to the evidence of Mr. Fojo, this would enable her to purchase a town house in Westmoorings South. In my view it would also not be crippling to the Husband.

He has testified that he can borrow approximately \$700,000.00. He can raise the remaining portion by liquidating one of his other assets.

I will refuse the Wife's application for periodical payments. In my view, the Wife assuming that she acquires a home is adequately equipped to take care of herself.

In keeping with the clean break principle, the Wife would be best encouraged to look ahead and to minimise her dependence on the Husband. The periodical payments for the care of the children ought however to continue.

### ***Orders***

1. The Husband to pay to the Wife the sum of \$960,000.00.
2. The Husband to continue payments to the Wife of \$800.00 per month for the maintenance and support of the two (2) children of the family as long as the joint care and control arrangement subsists.
3. The Husband to continue payments of the educational, medical, dental, optical and agreed extra-curricular costs of both children.
4. Payments in respect of the children are to continue until the completion of their secondary education or until further order.

**Dated this 27<sup>th</sup> day of January, 2006.**

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**Mira Dean-Armorer  
Judge**