



**IN THE SUPREME COURT OF BERMUDA**  
**DIVORCE JURISDICTION**  
**2012 No: 61**

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**BETWEEN**

**K. J. T.**

**Petitioner**

**AND**

**G. K.C.T.**

**Respondent**

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**JUDGMENT**

**(In Chambers)**

Date of Hearing: 24 October 2017 & 27 November 2017

Date of Judgment: 30 March 2018

Mrs. Georgia Marshall and Mrs. Alma Dismont, Marshall Diel & Myers, for the  
Petitioner

Mr. Ray De Silva, Moniz and George Ltd., for the Respondent

**Introduction**

1. The parties in this matter come before the Court after some 23 years of marriage.
2. In or about April 2012 the Petitioner (who I shall refer to as 'the Wife') petitioned for the dissolution of the marriage. Decree Nisi was granted on 29 June 2012.
3. By way of Notice of Application for Ancillary Relief filed on 3 April 2012 the Wife seeks the following:-
  - a. maintenance for herself, lump sum provision, and a property adjustment order in relation to the former matrimonial home;

- b. a declaration that her grandchild 'K' is a child of the family to whom Section 45 of the Matrimonial Causes Act 1974 ('the Act') applies;
  - c. periodical payments for K;
  - d. Decree Nisi pronounced in her favour to be made absolute.
4. By Judgment Summons dated 21 March 2017, the Wife also seeks payment of arrears arising from an Order of the Registrar dated 22 May 2012 and an Order of Stoneham, J dated 30 March 2017.
5. The Wife's application is supported by 3 affidavits:-
  - i. Petitioner's affidavit and Exhibit dated 1 August 2012
  - ii. Petitioner's affidavit and Exhibit dated 29 November 2012
  - iii. Petitioner's affidavit and Exhibit dated 21 March 2017
6. By Summons dated 27 March 2017, the Respondent (who I shall refer to as 'the Husband') seeks:
  - a) a reduction in the monthly payments backdated, variation of ongoing payments;
  - b) an order that the former matrimonial home be placed on the market for immediate sale and until then that the mortgage be placed on interest only; and
  - c) a Declaration that there are no children to whom Section 45 of the Matrimonial Causes Act 1974 applies and in particular that the said section does not apply to his grandson K.
7. The Husband's summons is supported by one affidavit:-
  - i. Respondent's Affidavit and Exhibit dated 26 September 2012
8. I am grateful to both counsel for their submissions and bundles which included a number of legal authorities and Rule 77 (4) correspondence. I have reviewed them all.

## **The issues**

9. Essentially, the Wife's case is based on her 'needs' and in relation to the former matrimonial home ('FMH') and what property adjustment order, if any, ought to be made in relation to it. There is an additional issue concerning whether or not the child K is a child of the family.

## **Background facts**

10. The parties were married in 1989. At the time of the marriage the Wife had a 3 year old child from a prior relationship, 'L'. It is not disputed that during the subsistence of the marriage L was treated as a 'child of the family'. L is now an adult with her own child 'K'.
11. For some 20 years after the celebration of the marriage, the parties together with L resided in a home located in Devonshire parish. They resided in this house for approximately 14 years enjoying a good standard of living, without the obligation of paying rent. The house is owned by the Husband's father.
12. The Husband paid for the majority of the household expenses whilst the Wife paid for groceries. However in 2003, for reasons that are not relevant to these proceedings, rent was charged and paid by the Husband to his father.
13. Sometime in 2008, the Husband's father required this house to meet his own housing needs. As a result, the Husband and Wife pooled their resources and purchased a home in Warwick parish ('the former matrimonial home').

## **The matrimonial assets**

14. The former matrimonial home ('FMH') is a single unit home consisting of three bedrooms, two and one half bathrooms, over two storeys with basement storage, garage and an external pump room.
15. The legal title to the FMH was taken jointly between the Wife, Husband and L, who at the time of purchase was over the age of 21 years, employed and pregnant with K. They are jointly and severally liable for the mortgage.
16. The purchase price of the FMH was \$1,000.000 BMD ('\$1 million').

17. The closing costs on the purchase of the FMH amounted to \$102,000. The Wife used all of her savings to pay \$70,000 of the closing costs. The Husband contributed \$16,000 toward the closing costs. The Husband, Wife and L obtained a \$30,000 loan to meet the remaining closing costs. \$1 million was borrowed by way of mortgage amortized over 30 years.
18. The mortgage payments amount to \$6,620 per month. There was an additional \$456 per month payable on the loan. Altogether, the monthly financial obligation on the FMH is \$7,076.
19. It was agreed between the Husband, the Wife and L that neither of them could individually meet the monthly financial obligations resulting from the purchase. Thus, it was agreed between them that the Husband and Wife would each contribute \$3000 per month and L would contribute the balance of approximately \$1,100 per month.
20. In March 2010 the Wife's brother, who is mentally disabled, came to live in the FMH. In September 2010, the Husband left the FMH leaving all the household contents, including the motor car, and moved into an apartment paying \$1,800 per month in rent.
21. One year later, the Husband moved in an apartment owned by his mother located in Devonshire parish ('the LH property')
22. In February 2012 the Husband ceased making his monthly contributions toward the mortgage payment and loan.
23. On 22 May 2012 the Wife obtained an Order against the Husband compelling him to (i) pay \$3,000 per month toward the joint mortgage until further order of Court, and (ii) pay \$500 per month against arrears which had accrued since in respect of the non-payment of his share of the mortgage payments until such time as the arrears are extinguished.
24. As at Decree Nisi, the outstanding balance on the mortgage was \$954,539.10. The outstanding balance on the loan was \$11,908.69. Thus, the combined debt secured against the FMH as at 29 June 2012 was \$966,447.79.
25. By Order of the Registrar dated 23 April 2013 a valuation of the FMH was ordered to be completed, amongst other things, including proof of the Husband's current income and monthly statements for all bank accounts. The Husband failed to do so.

26. In or about July 2013 the Husband unilaterally started making reduced payments toward the mortgage payments in breach of the Court Order dated 22 May 2012. This has resulted in the accumulation of mortgage arrears.
27. A valuation of the FMH prepared by Bermuda Realtor, as at June 10, 2013, estimates a fair market value of the FMH to be \$775,000. However, at the time of the hearing the Wife believed the value of the FMH to be less.
28. In or about July 2013 the Husband unilaterally reduced his monthly contribution toward the mortgage payment from \$3000 to \$2400 per month in contravention of the Order dated 22 May 2012.
29. By letter dated 26 September 2016 the bank holding the mortgage on the FMH confirmed that the combined debt service ratio of the Wife and L is not supportive of the Husband being removed from the mortgage.
30. At the date of the hearing, the Wife continues to reside in the FMH together with her mentally challenged brother, daughter L and grandchild K.
31. The FMH has no net equity. It is 'under water' resulting in the Husband, the Wife and L each having debt obligations.
32. The former matrimonial motor car is 17 years old and the household furnishings are over 15 years old.

### **The Parties Positions**

#### ***The Wife***

33. The Wife is now aged 57 years. She is a fulltime laundry attendant.
34. The basis of the wife's claim against the husband is money amassed during the 23 years of marriage namely the Husband's (i) Superannuation lump sum received on retiring (ii) cashed in investment and insurance policies (iii) the value of the VH property to be transferred to the Husband per Order of 4 November 1992, and (iv) the Husband's 1/3 interest in the FMH.
35. The Wife's position is that she should be awarded a lump sum by instalments.
36. In relation to the child K the Wife contends that at the time of purchasing the FMH the shared intention was to provide 'a roof over the family's head' including a home for K.

37. The Wife contends that the Husband's contributions toward the general household expenses including his mortgage contribution were necessary to maintain a roof over K's head and as such K, at all material times, was treated as a child of the family.

***The Husband***

38. The Husband is now aged 62 years. Throughout the marriage the Husband was the economically dominant party. During the early years of the marriage he earned some \$4,500 per month which eventually increased to more than 9,000 per month.
39. In or about April 2010 the Husband retired after some 36 years of continuous employment.
40. It is the Husband's case that he should no longer be required to contribute \$3,000 per month toward the monthly mortgage payment and that the sole remaining matrimonial asset is, if any, the net equity in the FMH, split 1/3 to each party including L.
41. The Husband contends that the Court should only consider the Wife's needs and that if she lived in a smaller property whether rented or purchased her needs would be adequately met without contribution from him.
42. In relation to K, the Husband contends that he has never treated K as a child of the marriage.

**The Matrimonial Causes Act 1974 ('the Act')**

43. An appropriate starting point is Section 45 of the Act which provides that:

*(1) The court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied—*

*(a) that for the purposes of this section there are no children of the family to whom this section applies; or*

*(b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—*

- (i) *arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or*
- (ii) *it is impracticable for the party or parties appearing before the court to make any such arrangements; or*

*(c) that there are circumstances making it desirable that the decree should be made absolute or should be granted, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b).*

44. In deciding whether to exercise such discretionary powers in relation to a child, it is important to note that such powers only extend to children of the family. Accordingly, an appropriate starting point would be to first consider the question of whether or not K is a ‘child of the family’ for the purposes of Section 45 of the Act.

#### **Who is a child of the family?**

45. It is well established that when determining this question the Court must apply an objective test on the basis of all the facts.

46. Ormrod LJ, in *D v D (Child of the Family)* [1984] FLR at 97, said:

*‘The independent outside observer has to look at the situation and say: Does the evidence show that the child was treated as a member of the family?’*

47. The Wife in these proceedings recalled that the Husband often purchased gifts for K and would take K on outings including playing various sports with him. At the time that the Husband moved out of the FMH K was some 19 months old.

48. During her oral evidence the Wife described the bond between the Husband and K as “*like grandfather just like he took L as his daughter*”. The Wife stated that K referred to the Husband as “Papa”.

49. In relation to the maintenance and upbringing of K, the Wife said at paragraph 11 of her affidavit sworn 1 August 2012 that K’s father contributes approximately \$600 each month toward K’s expenses. As at the time of the hearing, the Wife’s

evidence was that K now attends a public primary school and that his monthly expenses are approximately \$1,225 per month.

50. The Husband's evidence at paragraph 13 of his affidavit sworn 26 September 2017 is that:-

*“K is the son of the Petitioner's daughter....The Petitioner has stated in her affidavit that {X} contributes \$600 monthly toward K's maintenance. L is 28 years old and has always had care and control of K. I have never adopted K or expressed an intention to adopt K. K is not a child of my marriage. When I left the matrimonial home in September 2010 K was approximately 16 months old. I have never paid for K's nursery fees, clothes, doctor's visits, dentist or, haircuts. K's mother and father take care of his expenses. I have gifted K items when I have travelled overseas but have not provided much outside of these gifts. Further, I have at no time treated K as a child of the family. He has always been L's son.”*

51. During his oral evidence, the Husband denied ever changing K's diaper and feeding him. He stated: -

*“His mother did all that”.*

52. It is clear that K's formative years were enjoyed living in the same household as the Husband, Wife and his mother 'L'. There is no doubt on the evidence that K was treated as a member of the family.
53. However, I do not however accept on the facts of this case that the Husband's actions of entering into a joint mortgage for the purchase of the FMH objectively demonstrate that the Husband treated K as a child of his family. I am satisfied on the evidence that home ownership unless purchased jointly with the Wife and L, would have been near impossible for this family.
54. In my judgement, the Husband's treatment of K was no more than natural affection grandparents have for a grandchild and the associated legacy of a family homestead in the context of Bermudian society.
55. Furthermore, there is no evidence that the Husband and Wife assumed any parental responsibility whatsoever for K.



56. Consequently, I am satisfied to declare that there are no children of the family to whom Section 45 of the Act applies. Accordingly, Decree Nisi granted on 29 June 2012 is now made absolute.

### **Financial Provision**

#### ***The Law***

57. When determining an application for financial provision on divorce the Court has power pursuant to Sections 27 and 28 of the Act to make any one or more of the following orders before or after the decree is made absolute:

- Periodical payments for such a period of time as the court determines
- Lump sum or sums provision
- Lump sum provision for the benefit of a child
- Transfer of property to the other party, to a child of the family, or to a third person for the benefit of a child of the family
- Settlement of specific property for the benefit of the other party and or children of the family
- Variation of any nuptial settlement or trust which was established for the benefit of a party to the marriage

58. In deciding how to exercise such powers it is the duty of the Court to have regard to all the circumstances of the case having particular regard to those matters set out in Section 29(1) paragraphs (a) to (g) of the Matrimonial Causes Act 1974.

59. Furthermore, Section 29(1) provides that it is the duty of the Court 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”. This provision has become to be known as the ‘tail piece’.*

60. In *Green v Green [2001] Bda LR 67*, Meerebux, J stated at page 10:-

*“I think that in light of the tailpiece it is clear that the Act explicitly states what is to be the aim of the courts when exercising the wide powers. The objective in my view must be to meet the justice of the case, that is “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 toward the other.”*

*“I think that in meeting the justice of the case “the objective must be to achieve a fair outcome”.*

61. In White v White [2001] 1 AC 596 at 605, under the heading ‘Equality’, Lord Nicholls said:-

*“Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely....But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles....*

*Sometimes, having carried out the statutory exercise, the judge’s conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge’s decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge will always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should only 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 court to focus upon the need to ensure the absence of discrimination”*

62. In second significant authority in terms of the ‘sharing principle’ is the House of Lords decision in the cases of *Miller v Miller; McFarlane v MacFarlane* [2006] UKHL 24; [2006]2 AC 618. The House of Lords stated that fairness has three limbs, the first being needs, the second being compensation and the third being equal sharing. Lord Nicholls said:-

*“This ‘equal sharing’ principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals....parties commit themselves to sharing their lives. They live and work together.*

*When the partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase “unless there is good reason to the contrary”. The yardstick of equality is to be applied as an aid, not a rule.”*

63. Since the *Miller and MacFarlane* case it has become clear that the cases in which compensation will be relevant are “*as rare as a white leopard*”. The cases also have highlighted that the best that the court can do is to try to meet the needs of the parties as most cases do not have surplus income or assets to get beyond the needs of the parties.
64. In such cases, parties also have a duty to give full and frank disclosure of their financial affairs. If one party fails to do so, this may give rise to adverse inferences against that party.

**The Evidence – *All the circumstances of the case including Section 25 factors***

65. I do not propose to set out the subparagraphs of Section 29 (1) but I confirm that I have had regard to them all.

***The Wife’s foreseeable income, earning capacity, property:***

66. The Wife is a full time laundry attendant. From this position she earns an approximate net income of \$900 per week. Of this sum, \$520 is deducted weekly and deposited into the Wife’s Credit Union account. After usual deductions are made the Wife is left with \$196.17.
67. The Wife is also employed on a part time basis providing housekeeping services from which she earns a regular net weekly pay of approximately \$340.
68. The Wife’s combined weekly income is approximately some \$1,240 net per week i.e. \$5,373.33 per month.

Upon the breakdown of the marriage, the Wife retained the former matrimonial car and household furnishings.

***The Wife’s medical condition:***

69. The Wife has been diagnosed with a long term inflammatory medical condition which materially impacts her physical wellbeing. The Wife said in her oral evidence that : -

*“I can hardly walk after working all day due to pain. I struggle.....I have to take off my shoes and drag my feet at night. It takes a toll”.*

70. A medical report dated 24 February 2017 of Dr. Viviane Bunin, Consultant Rheumatologist confirmed the Wife’s diagnosis and medication regime.

***The Wife’s need for income and accommodation:***

71. Mrs Marshall argued that the Wife has put all of her savings into the purchase of the FMH and has also paid \$3000 per month of her income over the last 8 years into this property. If sold, Mrs. Marshall argued, the Wife would lose everything; namely her savings, all funds she has paid toward the mortgage, and her home which provides a roof over her head, her brother, L and K.

***The Wife’s Obligations & Responsibilities:***

72. In addition to the mortgage obligation of \$3000 per month, the Wife’s monthly expenditure includes:-

Electricity	400
Telephone	132
Groceries	\$1000
House maintenance	\$200
House Insurance	\$258 (\$3,098 per annum)
Land tax	\$55.40 ((\$664.52 per annum)
Car license	\$110.25 (\$1323.05 per annum)
Car maintenance	\$41.67
Car gas	\$240
Water	\$41.67 (\$500 per annum)
Internet	\$100
Wow	\$165.74
<b>Total</b>	<b>\$2744.73</b>

73. The Wife made clear that she does not seek the Husband to contribute to her brother’s monthly expenses as government financial assistance is provided for him.

***The Husband’s financial resources:***

74. Upon retirement the Husband received from his employer a lump sum of some \$118,033.50.

75. Soon after receiving this lump sum the Husband was rehired by his former employer for a period of nearly two years, earning a base salary of more than \$5,000 net per month, not including overtime.
76. In addition to these earnings, the Husband received a pension payment of approximately \$2,300 per month. The Husband's combined monthly income for nearly two years post retirement namely September 2010 – July 2012 exceeded more than \$7,000 per month.
77. In addition to this combined income, the Husband cashed in a number of investments which he had made during the subsistence of the marriage, including insurance policies:-

CD	\$ 10,000
Colonial	\$ 30,000
Colonial	\$ 25,443
Colonial	\$ 15,000
Colonial	\$ 4,000
<b>Total</b>	<b>\$ 84,443</b>

78. Moreover, the Husband periodically secures contracts of employment performing messenger related services earning approximately \$800 per week.
79. The Husband owns the three following timeshare properties: -
- a) Westgate, Florida
  - b) Orange Lake, Florida
  - c) World Golf Village, Florida
80. Under cross examination by Mrs. Marshall regarding numerous large cash withdrawals from his bank account during the period 2010 through 2016, (including an aggregate sum of \$114,000 in 2010), the Husband said '*I used that money for personal expenses and travel*'.
81. Likewise, when questioned about a \$17,000 transfer to a named female, the Husband replied "*She needed it for her son who was in school*". He also denied transferring other large sums of money to this female for safe keeping.

82. The Husband denied syphoning off money on a monthly basis. He said that he used the money every month on “*personal stuff – whatever I choose to entertain myself with*”.
83. When questioned about the purpose for a \$75,000 withdrawal in December 2016, the Husband responded “*It was my money. I paid for it. Yes, why should I be paying for a house that I have no benefit?*” Moreover, when questioned whether he had frittered the money away, the Husband replied “*Yes, all that money – I certainly did fritter away*”.
84. In response to the question of why he withdrew so much cash, the Husband replied “*I was having a good time enjoying my life. I had retired and did what I done.*”
85. The Husband contends that as of January 2017 he has run out of money and that he is now reduced to his pension sum per month and a weekend part-time job as a hotel bellman, and occasional jobs as a security guard and messenger.

***The Husband’s needs - Accommodation:***

86. During his oral evidence, the Husband stated that he pays rent to his mother at the rate of \$1,600 per month. In response to a question put by Mr. DeSilva, the Husband responded:-

*“I did not pay rent for February, March and April 2017 due to financial difficulties”.*

***Property and other financial resources of the Husband:***

87. By Consent Order of the Court dated 4 November 1992, settling matters between the Husband’s parents, the Husband upon the death of his father will receive the VH property; the same property in which he and the Wife resided during the first 20 years of their marriage. This property consists of a main unit with two bedrooms and two one bedroom apartments.
88. By that same Consent Order, the Husband’s sister, upon the death of their mother, will receive the LH property in which the Husband currently resides.
89. Mr. De Silva for the Husband argued that even though the Husband’s father is currently aged 81 years, it is not necessarily foreseeable that the Husband will outlive his father to see the terms of the Consent Order come to fruition; more specifically that the Devonshire property would be transferred to the Husband absolutely.

90. Mrs. Marshall for the Wife argued that it is not likely that the Husband's current accommodation will change or that he will be required to vacate it. Mrs. Marshall argued that there is a real likelihood that this property will eventually devolve to the Husband, as the Husband's sister is afflicted with a debilitating medical condition, is not married, has no children of her own and he is her next of kin.

### **A Fair Outcome**

91. I have considered the evidence in light of all the circumstances including the matters set out in Section 29 of the Act. Section 29(1) obliges the Court to exercise its 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”.*

92. I have also reflected on the submissions of Counsel and my observations of the Husband and Wife as witnesses. Both parties gave oral evidence and I had a good opportunity to assess each as a potential witness of truth.
93. I have no doubt that the Husband is fully capable of explaining his actions and has had the opportunity to do so. In this regard, I found the Husband less than forthright. In my judgment, the Husband was evasive and recalcitrant during cross examination particularly in answer to questions concerning what had become of cash monies received from investments, insurance policies and superannuation sums.
94. I am satisfied that all these sums of monies were amassed during the marriage. This has been a reasonably long marriage. I am satisfied that the Husband has had the sole benefit of the cashed in investments, insurance policies and superannuation monies.
95. Moreover, I do not accept the Husband's contention that he spent these monies on personal expenses, and entertaining himself post retirement. These unexplained monthly cash withdrawals and transfers of money lead me to infer that the Husband has gone through some lengths to preserve these monies.

96. I have no doubt that the Husband and Wife each worked hard during the marriage and each carried out their respective roles.
97. I am satisfied that the Wife's medical condition will impact her ability to work. It is likely that she will not be able to work such long hours as she may have in the past. Consequently, it is likely that her foreseeable income and earning capacity will be negatively impacted.
98. In respect of the former matrimonial car and household furnishings retained by the Wife, I am satisfied that they are of nominal value.
99. It is noted that the Husband will receive his Social Insurance Pension when he reaches the age of 65 years. The Wife will not receive a pension for another eight years.
100. Consequently, a fair outcome in my judgment demands a 50% sharing of the monies amassed during the marriage as follows :-

a. Savings -

Husband's CD	\$10,000
Colonial	\$30,000
Colonial	\$25,000
Colonial	\$15,000
Colonial	\$ 4,000
Wife's savings	\$20,000
<b>Total</b>	<b>\$104,000</b>
	<b>÷ 2 = \$52,000.00</b>
	<b>Less \$20,000 (wife's savings) = \$32,000.00</b>

Accordingly, the sum of \$32,000.00 is payable to the Wife forthwith.

b. Superannuation monies

The Wife has worked throughout the duration of the marriage and will receive a pension in due course. Bearing this in mind, the Wife is entitled to 25% of the Husband's Superannuation namely the sum of \$47,000. This sum is payable forthwith.



c. Arrears of mortgage

The sum of \$37,900 representing arrears owed to the Wife as consequence of the Husband's failure to meet his agreed contribution to the monthly mortgage payment pursuant to Order of court dated 22 May 2012. This sum is payable forthwith.

101. In relation to the other property resources that the parties are likely to have in the future, I do not accept Mrs. Marshall's contention that it is likely that the Husband is his sister's next of kin and therefore positioned to inherit the LH property. In my judgment such a contention is speculative and in any event wills may be changed.
102. However, it would be wrong of this court to ignore the Consent Order of this court dated 4 November 1992 settling the affairs of the Husband's parents. Accordingly, I am satisfied that the Husband will acquire the VH property and thus the Court can take account of this resource that the Husband is likely to have in the foreseeable future.
103. Accordingly, it would be fair in my judgment that the Wife receive 35% of the Husband's interest in the value of the VH property less the value of the Husband's 1/3 interest in the FMH. It is important to note that this cannot be quantified until such time that the VH property is transferred to the Husband. This of course presumes that the Husband survives his father.
104. In the circumstance, fairness requires the calculation of the aforementioned lump sum to be adjourned to a date to be fixed by the Registrar. Should the Husband survive his father, either party may by letter apply to the Registrar seeking calculation of the lump sum and transfer of the Husband's interest in the FMH to the Wife. The costs of doing so must be shared 50/50 by the parties.
105. In relation to the Husband's contribution toward the mortgage, it is noted that the Wife is prepared to attend at the bank jointly with the Husband and L for the purpose of seeking to re-amortize the mortgage over a period of 30 years. The effect of so doing would be to reduce the monthly payments on the mortgage. Whether or not the bank will agree to re-amortization of this mortgage is entirely a matter for the bank. Therefore, this aspect of these proceedings and the Husband's desire to have a reduction in his monthly mortgage contribution is adjourned to a date to be fixed by the Registrar pending the Wife's application to the bank.

106. Lastly, the Husband has prayed in his summons that this Court make an order for the sale of the FMH. In the absence of consent, the Act does not empower the court to order the sale of property.
107. I shall hear from the parties as to costs and as to any further directions which may be required for the implementation of this judgment.

Dated this 31 day of March, 2018

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Stoneham J