

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO: SVGHMT2021/1007

**IN THE MATTER OF THE PETITION OF ELDENE HOMER NEE BOBB FOR DISSOLUTION OF
MARRIAGE**

BETWEEN

[1] ELDENE HOMER nee BOBB of Peter's Hope

Petitioner/Respondent

and

[2] MERVIN HOMER of Peter's Hope

Respondent/Applicant

and

[3] KAYSHORN HOMER

Interested Party

Before:

The Hon. Mde. Cybelle Cenac-Dantes

Judge of the High Court

Appearances:

Paula David counsel for the petitioner/respondent, Nicholas Providence counsel for the
Respondent/Applicant, Charmaine Walters counsel for the interested party

2025: December 18
January 15 [closing submissions]
February 25

JUDGMENT

Background Facts

1. **CENAC-DANTES, J.:** The Petitioner and the Respondent met as teenagers while attending the Barrouallie Secondary School and were married on 21 December 2002. At the time of the marriage, neither party owned assets of significance. The marriage endured for approximately nineteen years and produced two sons.
2. The elder son, Kayshorn Homer, is the adopted son of the parties by way of an informal adoption in the family and is accepted by both parties as a child of the family for the purposes of these proceedings. He is now thirty-one years old, has special needs, is permanently disabled, and is incapable of self-support. By a consent order made on 26 July 2024, the parties agreed that the Respondent would have custody, care, and control of Kayshorn and would assume full financial responsibility for his maintenance. The younger son, Kevin Junior, is the biological child of both parties. He is twenty-one years old, resides with the Petitioner in Canada, and is a full-time university student as of September 2024 and is maintained by her.
3. The marriage broke down irretrievably, and a decree nisi was granted on 18 March 2022. These proceedings concern the Respondent's application for ancillary relief pursuant to section 32 of the Matrimonial Causes Act, Cap. 239 Laws of Saint Vincent and the Grenadines 2009 Revised Edition ("the Act"), following the dissolution of the marriage.
4. The Petitioner is currently unemployed. She was previously employed as a civil servant and resigned on 13 March 2023 from her position as a Senior Clerk, at which time her gross salary was EC\$2,472 per month. Following a loan deduction implemented in December 2021, her take-home pay was EC\$673.83. The Petitioner now resides in Canada, where her monthly living expenses amount to approximately CAD\$1,680. She is currently assisted by the Ontario Government as well as by family and friends. Prior to receiving such assistance, she lived off personal savings, which are now substantially depleted, save for approximately EC\$4,000. There was no challenge to this evidence.
5. The Respondent is presently employed with the Bermuda Police Service and earns a monthly salary of BMD\$8,043.87, which is approximately EC\$21,777.35. He reported monthly expenses of approximately EC\$16,333.44. This evidence was also unchallenged.
6. The parties are in sharp dispute as to the identification of the matrimonial asset pool, the valuation of certain assets, and the manner in which those assets should be distributed.
7. The evidence disclosed that during the marriage the parties engaged in multiple income-generating activities, including small businesses, vehicle trading, short-term rentals, and accident investigation services conducted under the business name M & H Accident Investigation Reconstruction and General Investigation.
8. Central to the dispute is the former matrimonial home at Peter's Hope and a parcel of land at Pembroke, also referred to in the evidence as Penniston. The Respondent contends that the matrimonial home is no longer available for distribution, having been conveyed by him by way of a Deed of Gift to himself and the parties' two sons in January 2022, shortly before the grant of

the decree nisi. The Petitioner challenges the validity and effect of that disposition and contends that it should be disregarded for the purposes of ancillary relief.

9. The Court heard oral evidence from the Respondent Mr. Mervin Homer, the Petitioner Mrs. Eldene Homer, and from the parties' elder son, Kayshorn Homer. Both parties relied on affidavits of means and documentary evidence, including valuation reports, some bank records, and the Deed of Gift affecting the matrimonial home. Kayshorn Homer was represented separately by counsel as an Interested Party.
10. The Respondent and Petitioner were both cross-examined on their sworn evidence. The Court, having satisfied itself that Kayshorn Homer was unable to understand the nature of an oath or affirmation, permitted him to give unsworn evidence and indicated that such weight would be attached to it as the Court considered appropriate in light of his capacity.
11. The Court therefore had before it sharply conflicting accounts as to the nature and extent of the matrimonial assets, the parties' respective contributions, the handling of income and proceeds of sale, and the purpose and effect of the Deed of Gift. Resolution of these matters requires careful assessment of credibility, consistency, and the documentary record.
12. The Court is therefore required to identify the assets properly forming part of the matrimonial estate, to determine the legal effect of the Deed of Gift in light of **section 47 of the Act**, and to fashion a fair and just distribution of the matrimonial assets, having regard to the statutory factors, including the welfare of a disabled adult child of the family under **section 34 of the Act**.
13. In resolving the disputed factual issues, the Court has considered the internal consistency of each party's evidence, its consistency with contemporaneous documents, and the inherent probabilities.

Issues for Determination

14. Against that background, the principal issues which arise for determination are:
 - a) **The Matrimonial Asset Pool**
What assets properly form part of the matrimonial estate for the purposes of section 32 of the Act, including the former matrimonial home, the Pembroke/Penniston property, business interests, motor vehicles, bank funds, and rental income.
 - b) **The Deed of Gift and Section 47**
Whether the Deed of Gift executed by the Respondent in January 2022 in respect of the former matrimonial home constitutes a reviewable disposition within the meaning of section 47 of the Act, and whether it should be disregarded for the purposes of ancillary relief.
 - c) **Children of the Family and Section 34**
The legal effect of the Deed of Gift on the position of the Interested Party, a disabled adult child of the family, and the extent to which section 34 of the Act requires the Court to take his welfare into account.

d) **Pembroke/Penniston Property**

Whether the parcel of land at Pembroke/Penniston, together with any improvements thereon, constitutes matrimonial property and, if so, its value.

e) **Non-Disclosure, Dissipation, and Dealings with Assets**

Whether the Respondent dissipated, concealed, or failed to fully disclose matrimonial assets or income, including proceeds of sale of motor vehicles, bank funds, rental income, or business income, and the relevance of any such conduct to the overall distribution.

f) **Fair Distribution**

What distribution of the matrimonial assets is fair and proportionate in all the circumstances, having regard to:

- I. the length of the marriage;
- II. the parties' respective financial and non-financial contributions;
- III. their present and future needs and resources; and
- IV. the welfare of the disabled adult child of the family.

Peter's Hope Property and the Deed of Gift

15. A central issue in this case concerns the former matrimonial home at Peter's Hope and the Respondent's execution of a Deed of Gift in January 2022 purporting to convey that property to himself and the parties' two sons.
16. It is common ground that the property at Peter's Hope was acquired during the subsistence of the marriage, approximately two years after the parties married. Neither party brought property into the marriage. The Peter's Hope property was acquired and used as the family home in which the parties resided together with their children for the duration of the marriage.
17. The evidence demonstrates that although the property was registered in the sole name of the Respondent, it was acquired with the benefit of mortgage financing obtained in the joint names of both parties. The deed of conveyance is dated 29 April 2004 and reflects a purchase price of \$66,762.50. The mortgage deed, executed shortly thereafter on 6 May 2004, was in the principal sum of \$71,000.00.
18. The Respondent contended that he serviced the mortgage from his income. The Petitioner, however, gave evidence that financial decisions within the marriage were taken jointly and that her contributions, including her assumption of domestic responsibilities, childcare, and participation in the parties' income-generating activities, facilitated both the acquisition and retention of the property. She further stated that it had been agreed between them that, given the Respondent's higher income, he would meet the mortgage payments while she would assume responsibility for groceries and utilities. That arrangement, she said, continued until the Respondent commenced employment in Bermuda around 2008.

19. The Petitioner also testified that notwithstanding this arrangement, her salary was assigned as security for repayment of the mortgage, and on occasions when the Respondent was late in forwarding payments, her salary was frozen until the arrears were satisfied. Her salary was then being deposited into the parties joint account. This aspect of her evidence went largely unchallenged by the Respondent.
20. The Petitioner further testified that all subsequent mortgage facilities in respect of the matrimonial home were obtained in the joint names of the parties. She stated that the mortgage was initially held with GECCU, thereafter transferred to the bank formerly known as NCB, and subsequently to the Bank of Nova Scotia, where it was ultimately discharged in or about 2017 or 2018. This evidence was not challenged by the Respondent.
21. She also explained that after the Respondent commenced employment in Bermuda, and given that his income remained substantially greater than hers, it was agreed that he would continue servicing the mortgage and assume responsibility for the greater share of the family's financial obligations. From the sum of \$3,500.00, together with an additional \$500.00 which he remitted monthly, the Petitioner stated that she met the household expenses, including groceries, utilities, insurance, and costs relating to their sons. She described this as the parties' working financial arrangement until late 2018, when serious marital difficulties arose. Thereafter, she said, the Respondent's financial contributions diminished progressively, reducing by February 2021 to approximately \$1,000.00 to \$1,500.00 per month, and by July 2022 ceasing altogether. This evidence likewise remained unchallenged.
22. The husband advanced a narrative that he alone worked hard to provide for the family and that the wife merely "*reaped the benefit*". In cross-examination "*[he] stated that he worked hard, not Mrs. Homer*", and that she simply benefited from his efforts.
23. This portrayal is inconsistent with the broader evidential record. It was evident that the parties jointly operated multiple income-generating ventures during the marriage and that the wife was involved in those ventures. It was also evident that the wife was the primary caregiver for the children and managed the household, particularly during the periods when he worked abroad.
24. The Court finds that the husband's evidence on this issue was exaggerated and dismissive, and appears coloured by hostility rather than objective recollection.
25. Having regard to the length of the marriage and the parties' respective contributions, both financial and non-financial, the Court is satisfied that the Peter's Hope property is properly characterised as matrimonial property.
26. The finding that the Peter's Hope property is matrimonial property does not conclude the matter. The Court must now examine the legal effect of the Deed of Gift executed by the Respondent and determine whether it displaces that conclusion for the purpose of ancillary relief.

The Deed of Gift

27. On 31 January 2022, the Respondent executed a Deed of Gift purporting to convey the matrimonial home at Peter's Hope to himself and the parties' two sons. The Deed was registered on 1 March 2022, shortly before the decree nisi was granted on 18 March 2022. The Petitioner's evidence was that the Respondent had previously threatened to transfer assets so as to prevent her from benefiting from them and that she only became aware of the Deed of Gift after it had been executed and registered. The Respondent's evidence was that the Deed reflected a long-standing intention that the property should belong to the children. Under the terms of the Deed, the Respondent holds the share purportedly conveyed to Kayshorn Homer upon trust for him, with the result that the Respondent retains control of three-quarters of the legal and beneficial interests in the Peter's Hope property.
28. The Respondent sought to support that narrative by relying on a WhatsApp message exchange between himself and the Petitioner, which he characterised in his affidavit evidence as relating to the transfer of the matrimonial home. The Court does not accept that evidence. When the sequence of acquisition of the parties' properties was put to the Respondent in cross-examination, he accepted that the WhatsApp exchange related to discussions concerning the Pembroke/Penniston property, not the matrimonial home at Peter's Hope. The Pembroke/Penniston land had not yet been acquired at the time of the exchange and was the subject of discussion between the parties. The Court therefore finds that the WhatsApp message was mischaracterised by the Respondent in his affidavit evidence. It did not evidence any agreement or settled intention to transfer the matrimonial home to the children. The manner in which it was advanced was misleading and was designed to give the impression of the Petitioner's consent to a transaction which, on the evidence, she did not agree to and was not consulted about.
29. The timing of the Deed of Gift is highly significant. The Respondent accepted that the marriage had irretrievably broken down and that divorce proceedings were already underway when the Deed was executed: *"The deed of gift to my two sons was registered on the 1 March, 2022 but the lawyer registered it on that date, not me. I gave it to the lawyer in January. The deed was always in my name as sole legal owner. I transferred ownership to me and my sons. I signed the deed in January 2022 but it started way before that. Mrs. Homer filed for divorce on the 25 November 2021 and the process started September or October the year before being 2021."* He also accepted that he did not discuss the transfer of the matrimonial home with the Petitioner prior to executing it. The Court finds this omission telling. The matrimonial home was the central asset of the marriage and the principal source of housing security for the family. If the transfer truly reflected a benign and agreed family arrangement, the absence of any contemporaneous discussion with the Petitioner at such a critical juncture is difficult to reconcile with that explanation.
30. The timing of the Deed of Gift, executed shortly before the decree nisi, lends considerable support to the wife's evidence, both in her petition for divorce and in her oral testimony before this Court that the husband had threatened to transfer assets in order to defeat her prospective entitlement. Although the husband sought to suggest that the process had begun some months prior to the grant of the decree nisi, the undisputed evidence is that the marriage had been in evident decline since approximately 2011, notwithstanding intermittent efforts at reconciliation, and had effectively reached an irretrievable stage by 2021. It was in that same year, and within approximately one month before the wife filed her petition for divorce, that the husband commenced the impugned transfer process. In the circumstances, the Court accepts the wife's evidence on this issue.

Kayshorn Homer's Evidence and Its Proper Weight

31. Kayshorn Homer gave unsworn evidence. He was able to identify both parents and confirmed that he lives at the property at Peter's Hope with the assistance of a carer. He stated that his father had told him that the house belonged to him, Kayshorn, and that he was in charge of it. He expressed negative feelings towards the Petitioner arising from past interactions when they lived together.
32. The Court accepts that the Respondent likely told Kayshorn that the house at Peter's Hope was "his", and that he had an interest in it. Kayshorn's evidence was consistent on that point, and the Court has no reason to doubt that such representations were made to him.
33. However, Kayshorn demonstrated a limited understanding of legal concepts, including ownership and the effect of legal instruments. While he understood that his father had taken steps which he believed gave him an interest in the home, the Court is satisfied that he could not have understood the legal implications of the transfer, nor the significance of its timing in relation to the breakdown of the marriage. The Court therefore treats Kayshorn's evidence as probative of family dynamics and of what he was told by his father, but not as evidence capable of establishing the Respondent's intention in executing the Deed of Gift or of validating the transaction itself.

Statutory Framework

Section 47 of the Act

34. The Court's jurisdiction on ancillary relief arises under section 32 of the Act. In exercising that discretion, the Court must have regard to all the circumstances of the case, including the duration of the marriage, the parties' resources, needs, and contributions.
35. The objective of the court is not to punish one party or to reward the other, but to achieve a result that is fair in all the circumstances.
36. Section 47 empowers the Court to intervene where a spouse has made a disposition of property with the intention of defeating or substantially reducing the other spouse's claim. The Court is required to determine intention as a matter of fact, drawing inferences from the timing, circumstances, and surrounding conduct.
37. In determining what orders are just, the Court must also have regard to section 34 of the Act, which requires consideration of the welfare of a child of the family, including an adult child incapable of self-support by reason of disability.
38. The section recognises that, once the breakdown of a marriage is in contemplation, a spouse may seek to place assets beyond the reach of the Court. Section 47 of the Act exists to ensure that the Court's jurisdiction is not undermined by such conduct.
39. The Court's task under section 47 of the Act is a factual one. It must consider:
 - the timing of the disposition,
 - the circumstances in which it was made,
 - whether it was made for full value, and

- whether, viewed objectively, the disposition was intended to defeat or prejudice the other party's claim.
40. Where the Court is satisfied that a disposition falls within section 47 of the Act, it may set aside or otherwise disregard the transaction for the purposes of ancillary relief, or make such consequential orders as are necessary to give effect to a fair outcome.
41. The section does not operate automatically. The Court must evaluate intention and purpose, drawing inferences from the evidence and the surrounding circumstances.

Section 34(2) – Children of the Family

42. Section 34 of the Act requires the Court, when exercising its powers of ancillary relief, to have regard to the welfare of any child of the family.
43. The expression “child of the family” is not limited to the biological children of both parties. It includes any child who was treated by the parties as a child of their family during the marriage.
44. Where a child of the family is a minor, or is an adult who is incapable of self-support by reason of physical or mental disability, the Court is entitled to consider that child's housing and financial needs as part of the overall assessment of fairness.
45. The Court must therefore strike an appropriate balance between:
- the entitlement of the parties to a fair distribution of matrimonial assets, and
 - the need to ensure that a vulnerable child of the family is not left without adequate provision.

Application of Section 47 to the Facts

The Deed of Gift Affecting the Matrimonial Home

46. The relevant question under section 47 of the Act is not whether the idea of transferring property to the children may have been discussed at some earlier point, but whether the disposition was executed at a time and in circumstances that objectively demonstrate an intention to defeat or substantially reduce the wife's claim. The Court accepts that the Deed was signed by the husband in January 2022 and registered on 1 March 2022, and that discussions about provision for the children pre-dated the decree nisi. It also accepts that the administrative act of registration was carried out by his attorney-at-law and that the property had previously stood in his sole name. However, by the time the Deed was executed the marriage had irretrievably broken down, divorce proceedings had been commenced, and the parties' financial claims were plainly in contemplation. The execution of a gratuitous transfer of the principal matrimonial asset at that stage, without consultation with the wife and in circumstances of ongoing matrimonial litigation, is a highly material fact. The absence of contemporaneous communication with the wife, notwithstanding that the property was the family home and the central asset of the marriage, is inconsistent with the transparency one would reasonably expect if the transfer were merely a benign family arrangement.

47. The Court is not required, for the purposes of section 47, to make a definitive finding that the husband threatened to transfer assets. The husband denied doing so, and the Court does not rest its conclusion solely on rejecting that denial. However, the timing of the disposition, coupled with its unilateral nature and the lack of consultation, objectively corroborates the wife's account and weakens the plausibility of the husband's explanation. Viewed cumulatively, the Court is satisfied that the execution of the Deed of Gift in January 2022 was carried out in contemplation of the wife's financial claims and with the intention of defeating or substantially reducing those claims. The fact that discussions about provision for the children may have occurred earlier does not displace that conclusion, nor does the fact that the property was registered in the husband's sole name prior to the transfer.

Conclusion on Section 47

48. The Court therefore finds that the Deed of Gift affecting the matrimonial home falls within section 47 of the Act.
49. The Court is accordingly entitled to disregard the disposition for the purposes of ancillary relief, subject to the need to consider the welfare of the parties' elder son under section 34(2).

Interaction Between Sections 47 and 34

50. Where a disposition of property is said to have been made for the benefit of a child of the family, sections 47 and 34 may intersect.
51. In such cases, the Court must be careful not to treat section 34(2) as a shield for transactions that were, in substance, designed to defeat a spouse's claim. Equally, the Court must ensure that any relief granted under section 47 of the Act does not operate in a way that unjustly prejudices the legitimate welfare interests of a child of the family.
52. The proper approach is therefore a contextual one, grounded in the factual findings made by the Court as to intention, timing, disclosure, and credibility.

Balancing Exercise and Distribution of Assets

53. Having identified the matrimonial asset pool and applied sections 47 and 34(2) of the Act, the Court must now determine what distribution of those assets is fair and just in all the circumstances of the case.
54. This was a long marriage. Neither party brought assets into it. The assets were acquired during the marriage through the combined efforts of the parties, albeit in different forms. The Court has also made clear findings as to the husband's lack of candour and his unilateral disposition of the matrimonial home at a critical stage of the marital breakdown.
55. In determining the appropriate relief, the Court is mindful of two competing considerations. On the one hand, the wife is entitled to a fair share of the matrimonial assets and should not be left in a position of prolonged financial uncertainty or dependence on arrangements controlled by the husband. On the other hand, the Court must take proper account of the welfare of Kayshorn Homer, a disabled adult child of the family who resides at the matrimonial home and requires ongoing care.

56. The obligation imposed by section 34(2) of the Act is a mandatory one in the sense that the Court must turn its mind to the child's welfare. However, the section does not prescribe any particular outcome. It does not confer proprietary rights on a child of the family, nor does it require the Court to earmark or allocate matrimonial property for the benefit of a child as a matter of course. Rather, the child's welfare is one of the factors to be weighed in the overall discretionary exercise under section 32 of the Act, the objective of which remains the achievement of a fair and just outcome between the parties.
57. The Court has considered whether the wife's interest in the matrimonial home should be deferred by way of postponed sale, life interest, or long-term occupation arrangements. The Court has concluded that such orders would not be appropriate in this case.
58. Given the Court's findings under section 47 of the Act, arrangements which would allow the husband to retain exclusive occupation of the matrimonial home indefinitely would risk undermining the substance of those findings. They would also leave the wife's proprietary interest unrealised for an uncertain period and effectively place control of her entitlement in the hands of a party who has already acted unilaterally and without transparency.
59. The Court therefore considers that a clean break, so far as practicable, best accords with fairness in this case.
60. In the present case, the Court has given careful consideration to Kayshorn Homer's circumstances. He is permanently disabled, incapable of self-support, and resides at the former matrimonial home at Peter's Hope. His welfare is therefore a matter of real and continuing importance.
61. The Court has also considered whether fairness nonetheless requires that additional provision be made for Kayshorn out of the matrimonial assets, including by deducting a portion from the Petitioner's share. The Court is not persuaded that such a course would be fair or proportionate in the circumstances of this case.
62. The Court has also considered the existing arrangements made for his care and maintenance. By a consent order made on 26 July 2024, the parties agreed that the Respondent would have custody, care and control of Kayshorn and would assume full financial responsibility for his maintenance. That consent order was entered into freely by both parents and approved by the Court. In approving it, the Court must be taken to have been satisfied that the arrangements made were appropriate and adequate, having regard to Kayshorn's needs and the parties' respective circumstances.
63. There is no evidence before this Court that those arrangements are inadequate, that they have broken down, or that there has been any material change of circumstances since the consent order was made. Nor has either party applied to vary that order or suggested that it fails to meet Kayshorn's welfare needs.
64. In those circumstances, the Court is satisfied that section 34(2) of the Act has already been substantively engaged and addressed through the consent order. Section 34(2) of the Act does not require the Court to make further or additional provision for a child of the family where adequate provision has already been made and approved, absent evidence that such provision is insufficient.

65. The consent order places full financial responsibility for Kayshorn on the Respondent. The Petitioner is the financially weaker party, is currently unemployed, resides abroad, and has limited resources and financially maintains the younger son of the marriage at University. She has no day-to-day control over Kayshorn's care or expenditure. To require her to make additional proprietary provision for Kayshorn, over and above the arrangements already agreed and approved, would risk imposing a disproportionate burden on her and would amount, in effect, to double provision.
66. Moreover, a property adjustment order is not the usual or appropriate mechanism by which to revisit or supplement child maintenance or care arrangements that have already been resolved by consent and judicially approved. Section 34(2) of the Act does not operate as a licence to re-engineer settled arrangements in the absence of demonstrated necessity.
67. The Court is mindful of the need to ensure that its orders do not operate in a way that leaves a vulnerable adult child without protection. However, that concern is adequately addressed in this case by the existing consent order and by the Respondent's ongoing obligations thereunder.
68. Accordingly, while the Court has given full and anxious consideration to the welfare of Kayshorn Homer in compliance with section 34(2) of the Act, it finds that no further proprietary or financial provision is required or justified in the distribution of the matrimonial assets. The Court will therefore proceed to determine the parties' property claims on the basis of fairness between them, while recognising that provision for Kayshorn has already been made and remains in place.

Conclusionary findings as to Peter's Hope and the Asset Pool

69. Taking these matters cumulatively, the Court finds as a fact that, notwithstanding the Deed of Gift, the matrimonial home at Peter's Hope forms part of the matrimonial asset pool for the purposes of these proceedings. The purported transfer does not alter the character of the property as matrimonial property acquired during the marriage through the joint efforts of the parties.

Matrimonial Home: Buy-Out or Sale

70. The matrimonial home at Peter's Hope is the principal asset of the marriage, with valuation reports placing its value in the range of approximately EC\$370,000 to EC\$450,000 with no existing mortgage.
71. The Court considers it appropriate to afford the husband the first option to retain the matrimonial home, having regard to the fact that Kayshorn resides there and that the husband has assumed responsibility for his day-to-day care. However, retention of the property must be achieved in a manner that recognises and satisfies the wife's full proprietary entitlement.
72. The Court will therefore order that the husband may elect to buy out the wife's interest in the matrimonial home at a value to be determined by an agreed valuer, or failing agreement, a valuer appointed by the Court, within a specified period. Upon payment of the wife's entitlement of 50%, the wife shall transfer her interest and the matter shall be brought to finality as between the parties.

73. In the event that the husband does not elect, or is unable, to complete the buy-out within the time specified, the property shall be sold on the open market and the net proceeds divided between the parties in accordance with the Court's orders.

Motor vehicles and proceeds of sale.

74. The evidence disclosed that during the marriage the parties owned several motor vehicles, some of which were sold prior to the breakdown of the marriage:
- (a) Vehicle number HK982 sold by the Petitioner for \$30,000.00. The Petitioner's evidence is that she deposited \$25,000.00 on to the joint account which was subsequently transferred by the Respondent to his personal account. The Petitioner's share of \$12,500.00 remains unaccounted for.
 - (b) Vehicle number P5233 in the custody of the Respondent which the Respondent states is valued at \$19,131.87.
 - (c) Vehicle number PH162 in the custody of the Respondent which the Respondent states is valued at \$22,680.00.
 - (d) Vehicle number RB20 admitted by the Respondent as sold by him for \$12,000 or \$13,000 and said by him to have been invested in the Pembroke property. No evidence was provided by the Respondent concerning the use of those funds and the court draws the inference that the said funds were applied to personal use and therefore the half share of the Petitioner remains unaccounted for.
 - (e) Vehicle number PK259 sold by the Respondent for \$22,000.00. No accounting provided for the said sum and the Petitioner's half share remains unaccounted for.
 - (f) Vehicle number PE338 sold by the Respondent and proceeds unaccounted for including the half share of the Petitioner.
75. The Respondent gave evidence concerning the sale of 5 of the 6 motor vehicles during the marriage and asserted that the proceeds of two, amounting to approximately \$32,500.00 were invested in the foundation constructed on the Pembroke/Penniston property.
76. When confronted with valuation evidence showing that his valuation report showed the value of the foundation to be no more than \$16,000.00, which was significantly lower than the proceeds he claimed to have invested, the Respondent suggested that the valuation was arbitrary. The Court does not accept this explanation. It is inherently implausible that a professional valuation commissioned by the Respondent would understate the value of improvements by such a margin without comment.
77. Further, as no documentary evidence was produced to establish whether the proceeds of sale were applied to the construction of the foundation, to other matrimonial liabilities, or towards the Respondent's personal use, in the absence of such records, and having regard to the Respondent's control of the relevant information, the Court is entitled to draw the inference that the proceeds were not applied towards the improvements claimed.
78. For the reasons already given in the Court's credibility findings, the Court does not accept the Respondent's explanation. While the Court accepts that the vehicles were sold and that some

proceeds may have been applied towards family purposes, the evidence does not support the Respondent's assertion as to the full extent or exclusive application of those proceeds.

79. In ancillary relief proceedings, parties are under a duty of full and frank disclosure. Where disclosure is deficient and the relevant information lies within the control of one party, the Court is entitled to draw such inferences as are appropriate and to proceed on a broad-brush basis. The House of Lords in **Livesey (formerly Jenkins) v Jenkins**¹ recognised the centrality of full and frank disclosure in financial remedy proceedings. In circumstances where precision has been rendered impossible, the Court's objective remains fairness rather than arithmetical exactitude, consistent with the approach in **White v White**².
80. The Court therefore finds that the motor vehicles owned during the marriage form part of the matrimonial asset history.
81. The Court also considers it material that the evidence disclosed a pattern of unilateral control and incomplete disclosure by the Respondent in relation to these and other matrimonial resources.

Joint bank accounts

82. While the Respondent suggested that the parties maintained two joint bank accounts, no documentary evidence was produced to satisfy the Court of that assertion. The only fact consistently established on the evidence was that there was at least one joint bank account operated during the marriage.
83. The Petitioner's evidence was that substantial sums were withdrawn from the joint account by the Respondent over time without her consent. The Respondent accepted that transfers were made but maintained that they were motivated by concerns regarding the Petitioner's expenditure and not by any intention to defeat her financial claims. No documentary material was produced to substantiate that allegation. The Court finds the Respondent's explanation to be self-serving and unsupported by objective evidence. In any event, even if the Respondent believed he was acting to preserve matrimonial funds, he remained under a duty to account for the use and disposition of monies held jointly. The Petitioner's entitlement to a fair share of matrimonial funds cannot be displaced by unilateral withdrawal or control.
84. It was not seriously disputed that the Respondent transferred substantial sums from the joint account over time. His position was confined to contesting the quantum, asserting that the total withdrawn was approximately \$50,000 rather than the \$70,000 alleged by the Petitioner.
85. The pattern and timing of the transfers, as described in the Petitioner's affidavit and not materially contradicted in cross-examination, support her evidence that the withdrawals were made unilaterally and without transparency.
86. The Court finds that the funds held in the joint bank account during the marriage constituted matrimonial assets. To the extent that those funds were withdrawn and are no longer available

¹ Livesey (formerly Jenkins) v Jenkins [1985] A.C. 424

² White v White [2001] 1 AC 596

for distribution, the Court proceeds on the Respondent's admitted figure of \$50,000.00. The Petitioner is therefore entitled to one-half of that sum, namely \$25,000.00.

Rental income

87. The Respondent accepted that the matrimonial home at Peter's Hope generated rental income, including income derived from leasing the property to the Government of Saint Vincent and the Grenadines and from short-term rentals. In his affidavit of means, he disclosed rental income in the sum of EC\$13,500. However, in cross-examination he accepted that he earned additional rental income thereafter, in the region of EC\$7,000, and further acknowledged that the property had been used for short-term rentals, including Airbnb-type arrangements.
88. The Court finds that the Respondent failed to make full and frank disclosure of the rental income derived from the matrimonial home. No reliable accounting records were produced in relation to the Government lease or the short-term rentals. The omission cannot be regarded as inadvertent. The absence of proper records and the incremental nature of the admissions in cross-examination are relevant to the Court's assessment of disclosure, credibility, and the weight to attach to the Respondent's evidence as to his financial resources.
89. The evidence establishes that at least EC\$20,500.00 was received from the lease of the property to the Government. The Petitioner would therefore be entitled to one-half of that sum. In relation to the additional income derived from short-term rentals, the evidence does not permit precise quantification. However, the Court is satisfied that rental income was received and not fully disclosed. That non-disclosure warrants an order for full and frank disclosure. The Respondent will be required to give a full accounting of all rental income received from the Peter's Hope property, including Government leases and all short-term rentals, together with supporting documentation. In the event that the Respondent fails to provide satisfactory documentary records, the parties shall have liberty to apply, and the Court reserves the right to make a global assessment of the undisclosed income on a broad-brush basis.

The Pembroke/Penniston Property

90. The parties also acquired a parcel of land at Pembroke, also referred to as Penniston, during the marriage. There was evidence that a foundation had been constructed on the land. Competing valuation evidence was placed before the Court as to the value of the land and the extent and value of the improvements.
91. Unlike the matrimonial home at Peter's Hope, the Pembroke/Penniston property was not used as the family residence. At the time of the hearing, the land remained undeveloped save for the construction of a foundation.
92. The Respondent's evidence was that he funded the acquisition of the land and the construction of the foundation primarily from his own resources, including the proceeds of sale of several motor vehicles. The wife accepted that the land was acquired during the marriage but disputed the Respondent's assertion that it was funded solely by him or that it should be treated as his

alone. In support of her position, the wife produced documentary receipts evidencing two cash deposits of EC\$10,000 each made towards the property on 20 June 2018 and 28 March 2019.

93. As already found, the WhatsApp message relied on by the husband related to discussions between the parties concerning the Pembroke/Penniston property. At the time of that exchange, the land had not yet been acquired and was the subject of discussion between the parties as a possible future investment or provision.
94. The Court accepts that the evidence supports the conclusion that the Pembroke/Penniston property was discussed between the parties as a potential asset to be developed or held for the benefit of the family, including the children. In this respect, the WhatsApp exchange is consistent with the Respondent's concession in cross-examination and with the timing of the acquisition of that land.
95. However, the fact that the parties discussed the Pembroke/Penniston property as a future investment does not establish that it was intended to be excluded from the matrimonial asset pool. On the contrary, the joint registration of the land is consistent with the wife's evidence that financial and investment decisions were made jointly during the marriage.

Funding and Improvements

96. The Respondent asserted that the proceeds from the sale of several motor vehicles were invested in the construction of the foundation on the Pembroke/Penniston land. This evidence seemed to have been deployed for the sole purpose of asserting a claim that the improvements represented an exclusive or predominant contribution by him. However, no documentary evidence was produced to establish whether the proceeds of sale were in fact applied towards the construction of the foundation, towards other matrimonial liabilities, or for the Respondent's personal use. In the absence of such evidence, and having regard to the Respondent's control of the relevant information, the Court is entitled to draw the inference that the proceeds were applied for his personal benefit rather than exclusively towards the improvements claimed.
97. As previously found, the valuation evidence commissioned by the Respondent assessed the value of the foundation at approximately EC\$16,000. This figure is materially lower than the combined proceeds the Respondent claimed to have realised from the sale of the vehicles. The court has already made findings on that evidence.
98. The Court therefore finds that the husband's evidence as to the extent of his alleged exclusive financial contribution to the Pembroke/Penniston property is unreliable. The Court accepts that it is likely that some portion of the proceeds of sale of motor vehicles was applied towards the construction of the foundation. However, the absence of documentary proof as to the quantum so applied, coupled with the husband's own valuation evidence placing the value of the improvements at approximately EC\$16,000 materially lower than the sums he claimed to have invested significantly undermines the assertion of a substantial exclusive contribution. Further, even if the Court were to accept, in the husband's favour, that the entirety of the proceeds of sale of the vehicles was applied to the foundation and that this was proved, those vehicles have

already been found to constitute matrimonial assets. In that event, the application of proceeds derived from matrimonial property towards improvements on jointly owned land would amount to both parties contributing, albeit indirectly, to the Pembroke/Penniston property. It would not justify any displacement of the equal sharing principle in favour of either party. In the context of a long marriage, joint registration of the land, and the wife's proven direct deposits towards its acquisition, the Court is not satisfied that fairness requires an award in excess of 50 per cent to the husband.

Business Interests – *M & H Accident Investigation Reconstruction and General Investigation*

99. The evidence establishes that during the subsistence of the marriage the parties operated a business under the name **M & H Accident Investigation Reconstruction and General Investigation** ("the M & H business"). The existence of the business, and the fact that it generated income during the marriage, were not disputed.

The Petitioner's Evidence

100. In her affidavit of means, at paragraphs 12 to 14, the Petitioner gave detailed evidence of her involvement in the operation of the M & H business. She deposed that she was responsible for the administrative and operational aspects of the business, including, but not limited to:
- a) preparing and issuing invoices;
 - b) typing, editing, and finalising investigation reports prepared by the Respondent;
 - c) liaising with insurance companies and other third parties;
 - d) managing records and correspondence; and
 - e) performing day-to-day organisational functions necessary for the business to operate.
101. Her evidence was practical, specific, and internally consistent. It was directed not merely to incidental assistance, but to sustained and ongoing participation in the business as a joint economic activity of the marriage.
102. Significantly, this evidence was hardly challenged in cross-examination. The Respondent did not seriously dispute that the Petitioner carried out the tasks she described. Nor did he produce documentary material contradicting her account of the role she played in the business.

The Respondent's Evidence

103. A significant credibility issue arose in relation to the business operated under the name *M & H Accident Investigation Reconstruction and General Investigation*.
104. In his affidavit of means, the Respondent initially described the business as jointly owned. However, in oral evidence he sought to retreat from that position and asserted that the business belonged to him alone.

105. The Respondent accepted that he was the primary technical practitioner, preparing accident reconstruction reports and dealing directly with insurers. He nonetheless denied that the Petitioner had any ownership interest in the business.
106. When pressed as to the current value of the business, the Respondent's evidence was that the business was now "nil". No financial statements, accounts, tax records, invoices, or bank statements were produced to support that assertion. The Respondent did not provide any documentary explanation as to when, how, or why the business ceased to generate income.

Assessment of the Evidence

107. The Court prefers the Petitioner's evidence on this issue.
108. At the outset of cross-examination, the husband accepted that the wife was also known as "Hannah" and that he referred to her by that name. Despite this, he later denied that the "H" in the business name referred to the wife and asserted that it stood for "Homer". He further stated in his oral evidence that the name of the business was conceived spontaneously while he was conducting research and that no particular significance attached to the letter "H" beyond its coincidence with his surname.
109. The Court does not accept that explanation. The reservation and registration of a business name is ordinarily a deliberate act. The name "M & H" is entirely consistent with the parties' given names, Mervin and Hannah, and aligns with the Respondent's earlier position that the enterprise was operated jointly during the marriage. The suggestion that the name was chosen casually and without reference to the wife is inherently implausible. It bears the hallmarks of retrospective reconstruction rather than contemporaneous intention.
110. This inconsistency is not trivial. It reflects a willingness on the part of the Respondent to adjust his evidence when it suited his present case. It further strengthens the Court's preference for the Petitioner's account of the nature and ownership of the business.
111. First, the Petitioner's account of her role in the business is consistent with the nature of the enterprise. A business providing professional services to insurers necessarily requires administrative support, invoicing, document preparation, and record-keeping. The Petitioner's evidence demonstrates that she performed those functions on a regular and organised basis.
112. Secondly, the Respondent's attempt to characterise the Petitioner's role as insignificant is inconsistent with his own affidavit evidence and with his concessions in cross-examination. The Court has already found that the Respondent was not a reliable witness where his evidence shifted to suit the forensic needs of the case.
113. Thirdly, the Respondent's bare assertion that the business was "nil", unsupported by any accounting or contemporaneous records, is insufficient to displace the Court's obligation to treat the business as a matrimonial asset. Where a party asserts that an income-generating enterprise has no value but fails to account for its operations or cessation, the Court is entitled to treat that assertion with caution.

Characterisation of the Business

114. The M & H business was operated during a long marriage and formed part of the parties' joint economic activity. The Respondent's performance of the technical work does not negate the Petitioner's substantial contributions to the running and profitability of the business.

115. The Court therefore finds that the M & H business was a matrimonial asset.

Valuation and Distribution in the Absence of Accounting

116. The Court is satisfied that there is no reliable accounting of the business and that any records that may once have existed are unlikely to be produced or capable of verification. In these circumstances, the Court is not required to decline relief or to accept the Respondent's assertion that the business had no value.

117. The Petitioner gave unchallenged evidence as to the scale of the business during its operation. On her assessment, the business undertook an average of approximately five jobs per month, at an average fee of EC\$1,200 per job. If taken on the Respondent's conservative estimate of 3 jobs per month that would yield a gross monthly income of approximately EC\$3,600, or EC\$43,200.00 per annum. The Petitioner also gave evidence of annual expenses incurred in the operation of the business of \$150.00 per annum.

118. One half of that income therefore represents the Petitioner's share subject to deduction of legitimate business expenses. In the absence of audited accounts, and having regard to the Respondent's control of the business and exclusion of the Petitioner from its operations since April 2021, the Court is entitled to proceed on a broad-brush basis.

119. The Court therefore finds it appropriate to assess the Petitioner's entitlement by taking one half of the estimated annual gross income attributable to the business during the relevant period and deducting the reasonable annual expenses identified by the Petitioner in her affidavit of means, thereby awarding the Petitioner the sum of \$21,525.00

120. This approach reflects the reality that precision has been rendered impossible by the absence of accounting and by the Respondent's unilateral control of the business. Fairness, not mathematical exactitude, is the Court's objective.

Overall assessment of the Respondent's evidence

121. The husband was the principal witness on matters relating to the parties' finances, business affairs, and dealings with the matrimonial assets. Much of the relevant information lay peculiarly within his knowledge. The Court therefore expected his evidence to be full, candid, and consistent.

122. Having considered his affidavit evidence alongside his oral testimony, the Court finds that the husband was not a reliable witness. His evidence was marked by internal inconsistency, selective recall, and a tendency to adjust his account when confronted with documentary material or prior statements.

My orders are as follows:

1. The Court declares that the matrimonial asset pool comprises:
 - a. the matrimonial home situate at Peter's Hope;
 - b. the Pembroke property registered in the joint names of the Respondent and the Petitioner;
 - c. the business operated during the marriage under the name *M & H Accident Investigation Reconstruction and General Investigation*;
 - d. motor vehicles owned and/or disposed of during the marriage;
 - e. funds held in the joint bank account during the marriage; and
 - f. rental income derived from the matrimonial home, including income from Government leasing and short-term or Airbnb-type rentals.
2. The Deed of Gift executed by the Respondent in January 2022 in respect of the matrimonial home at Peter's Hope is disregarded for the purposes of ancillary relief pursuant to section 47 of the Act.
3. The Deed of Gift shall have no effect in conferring any proprietary rights on any third party for the purposes of these proceedings.
4. The matrimonial home at Peter's Hope shall be valued by a single joint valuer agreed between the parties within **60 days** of the date of this Order, or failing agreement, by a valuer appointed by the Court.
5. The Respondent shall have the first option to buy out the Petitioner's interest in the matrimonial home at 50% of the net market value, such option to be exercised within **60 days** of receipt of the valuation report.
6. Upon payment of the Petitioner's entitlement, the Petitioner shall execute all necessary documents to transfer her interest in the matrimonial home to the husband.
7. In the event that the Respondent does not elect, or is unable to complete the buy-out within the time specified, the matrimonial home shall be sold on the open market and the net proceeds of sale divided equally between the parties.
8. The Pembroke property is declared to be matrimonial property. The parties shall retain their joint and equal interests therein, or alternatively the property may be sold and the net proceeds divided equally.
9. The Respondent shall pay to the Petitioner the sum of EC \$21,525.00, being her one-half share of the income derived from the M & H Accident Investigation Reconstruction and General Investigation business.
10. The Respondent is to pay the Petitioner the sums of \$12,500, \$6,500 and \$11,000 representing her half-share of the vehicles identified as HK982, RB20 and PK259 respectively.

11. The Court finds that records relating to the motor vehicles P5233, PH162 and PE338 owned or disposed of during the marriage, and rental income derived from the matrimonial home are within the possession, custody, or control of the Respondent. The Respondent is therefore required to make full and frank disclosure of such records.
12. Within **60 days**, the Respondent shall disclose all documents relating to motor vehicles owned or disposed of during the marriage, including purchase documents, sale agreements, receipts evidencing proceeds of sale.
13. Within **60 days**, the Respondent shall disclose all documents relating to rental income derived from the matrimonial home, including rental payments received from Airbnb or other short-term rental listings and payout statements, and bank statements evidencing receipt of such income.
14. Notwithstanding order 13 above, the Respondent is to pay to the Petitioner the sum of \$10,250.00 representing her half-share of the proceeds of rental income under the government lease.
15. In the event that the Respondent is unable to produce complete documentary records in respect of the vehicles or Airbnb rental income, or where such records are materially incomplete, the parties shall have liberty to apply to the Court for directions. In such circumstances, the Court may, if satisfied that precision is not reasonably achievable, adopt a global or broad-brush assessment of those assets for the purpose of achieving a fair and just outcome.
16. The Respondent is to pay to the Petitioner the sum of \$25,000 representing her half-share of their joint bank account.
17. Save as expressly provided in this Order, each party is barred from making any further claim against the other in respect of property, income, or capital arising out of the marriage.
18. Liberty to apply is reserved solely in respect of:
 - compliance with disclosure obligations;
 - implementation of valuation, sale, or buy-out.
19. The Petitioner is to take carriage of the order after judgment.

BY THE COURT

REGISTRAR