



Civil Appeal No. 20 of 2025

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS
DIVORCE JURISDICTION
BEFORE THE HON. ACTING JUSTICE ALEXANDRA WHEATLEY
CASE NUMBER 2024: No. 52**

Dame Lois Browne-Evans Building
Hamilton, Bermuda HM 12

Date: 17 July 2026

Before:

**THE PRESIDENT, JUSTICE OF APPEAL IAN KAWALEY
JUSTICE OF APPEAL RT HON DAME ELIZABETH GLOSTER
And
JUSTICE OF APPEAL RT HON SIR JULIAN FLAUX**

Between:

BC

Appellant

- and -

WD

Respondent

Mrs Alma Dismont of Marshall Diel & Myers Limited on behalf of the Appellant
Ms Nicole Cavanagh of Carey Olsen Bermuda Limited on behalf of the Respondent

Hearing date(s): 9 June 2026
Draft Judgment circulated: 1 July 2026
Date of Judgment: 17 July 2026

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Decision of judge to set aside previous judgment of another judge without an application to do so was made without jurisdiction and/or was procedurally unfair so that it should be set aside

JUDGMENT

FLAUX JA:

Introduction

1. The appellant (to whom I will refer as “the husband”) appeals against the judgment of Acting Justice Alexandra Wheatley (“the judge”) dated 6 November 2025. The judge had heard an application by the respondent (to whom I will refer as “the wife”) for child maintenance on 23 October 2024. By the judgment, the judge effectively found that an earlier judgment of Stoneham J in the divorce proceedings dated 7 November 2023 (“the ancillary relief judgment”) had been obtained on the basis of non-disclosure by the husband in relation to his assets and included orders which the Court had had no jurisdiction to make, so that the ancillary relief judgment should be set aside. The judge reached these conclusions notwithstanding that there was no application by either party to set aside the ancillary relief judgment and no submissions were made by the wife at the hearing on 23 October 2024 (at which she represented herself) to the effect that there had been non-disclosure by the husband before Stoneham J or that Stoneham J had not had jurisdiction to make various orders.
2. The appellant’s Notice of Motion to the Court of Appeal raises no fewer than thirteen grounds of appeal, although they fall into four broad categories: (i) that the judge did not have jurisdiction to reach the conclusions she did; (ii) that there was procedural unfairness and breach of the rules of natural justice; (iii) that the judge exhibited an appearance of bias and of pre-judgment and (iv) that there was excessive delay in the production of the judgment.

Factual Background

3. The parties were married in April 2007 and have two children together who are now fifteen and thirteen years old. The husband filed a Petition for Divorce on 3 September 2021. Decree Nisi was granted on 26 November 2021 and made Absolute on 12 January 2022.
4. The husband was the sole beneficiary of his father’s estate, the father having died in early 2021. The estate consisted of two real properties and various bank accounts. It was administered by Kim White of Cox, Hallett & Wilkinson (“CHW”). At the time of

the ancillary relief hearing before Stoneham J on 25 and 26 July 2023, probate had not been granted. The husband had exhibited to his second affidavit, which was before Stoneham J in the ancillary relief proceedings, a letter from Mr White dated 28 February 2023. That letter stated as follows:

“[The husband] is the sole beneficiary of the estate.

1. The estate consists of real property located at [Smith’s] and [Warwick, a unit of which was the matrimonial home]. These properties are in the process of being valued.

2. Known deposit accounts at banks of approximately \$146,599.64, we are awaiting replies from 2 banks.

3. Personal effects.”

5. The two real properties were to be valued by a jointly agreed valuer pursuant to an order of Stoneham J in the divorce proceedings dated 10 February 2023. On 31 March 2023, Fulcrum Property Consultants Limited valued the two properties, and the values were disclosed to Stoneham J in the written submissions of Mrs Dismont on behalf of the husband for the ancillary relief hearing on 25 and 26 July 2023. Those written submissions also stated that the estate had cash of approximately \$800,000, although that value had not been confirmed. The submissions stated that probate of the estate was being handled by CHW who had confirmed a known deposit account of \$146,599.64 and that there were two further accounts, but CHW had not yet received confirmation of the total balance. The submissions noted that the estate was still under probate and that the value of the estate was subject to stamp duty, fees and expenses. A stamp duty calculation of \$409,500 was set out, based on an estate value of \$2,775,000 although it was said that the stamp duty figure would be reduced if one of the real properties was designated as the primary homestead.
6. In his oral evidence before Stoneham J, the husband identified three HSBC accounts, one with just under \$750,000 in it, the account with \$146,599.64 in it and a third account with what he thought was \$53,000 in it. He confirmed that the probate process had not yet been completed.
7. The information set out at [5] and [6] above was also confirmed by Mrs Dismont in her oral submissions before Stoneham J. In her oral submissions about needs, Mrs Dismont indicated that the husband was prepared to agree an unequal split of the matrimonial assets in favour of the wife giving her 75% with the husband retaining 25%. Mrs Dismont referred to the fact that the matrimonial home was a unit in one of the properties which had been owned by the husband’s late father (and so part of the husband’s inheritance) but that the husband agreed to the wife and the two children continuing to live there until the children completed their secondary school education. Although the wife’s position was that the husband should share his inheritance with her, Mrs Dismont submitted that there was no fair basis on which the inheritance should be treated as matrimonial assets and shared, as the wife’s and children’s needs could be met from the matrimonial assets.

8. Stoneham J handed down her ancillary relief judgment on 7 November 2023. She noted at [36] that, at the time of the hearing, the wife earned some \$11,000 per month after deductions, whereas the husband earned significantly less, some \$5,000 per month after deductions. At [59] she said that in accordance with the principle of fairness, on an equal division of savings, the wife (having greater savings) would need to transfer a significant portion of her savings to the husband to achieve parity. Similarly on an equal division of pensions, the wife, having a larger pension value, would need to transfer from her pension to his to achieve parity. The judge noted at [60] that, however, the husband was agreeable to the unequal distribution of the matrimonial property giving the wife 75% so that she retained her savings, her pension and the resultant interest acquired due to the large sums she had put towards renovations at her parents' home. Stoneham J described this proposal as: "not only extremely generous but affords the wife to meet her needs and those of the children over and beyond that contemplated to be fair in the circumstances of this case."
9. At [61] Stoneham J said the law was very clear that the Court should only look at the husband's non-matrimonial property if the wife's needs could not be met from an equal division of the matrimonial property. On the evidence, the wife could clearly meet her needs and those of the children if there were an equal division of the matrimonial property. The Court had no doubt whatsoever that, on the husband's proposal, the wife could more than meet her needs and those of the children and amass further savings. At [62] she said that, consequently, the Court did not need to consider the husband's inherited assets. In any event they were received at the end of the marriage, remained separate and apart from the matrimonial assets and were never intermingled with the matrimonial property.
10. At [62] Stoneham J concluded that she was satisfied that a Mesher order permitting the wife and children to reside in the matrimonial home rent free until the younger child completed secondary education was appropriate and more than fair in all the circumstances including the factors under section 29(1) of the Matrimonial Causes Act 1974 (which she had considered earlier in her judgment).
11. Stoneham J did not deal expressly in her judgment with child maintenance. In her second affidavit, the wife had said that she was responsible for one child's school fees and the husband paid the other child's fees. The husband also paid half of the cost of camps and activities when he could afford it. She said that she met the expenses for the children when they were in her care, which was the majority of the time, and she did not seek financial support from the husband for these. Mrs Dismont referred to this evidence in her written submissions before Stoneham J, noting that the wife did not seek any further maintenance for the children and saying that the issue of the maintenance for the children was resolved and was not the subject of an application before the Court.

12. However, at the end of her oral submissions at the ancillary relief hearing, the wife indicated that she had had to make a lot of financial arrangements to ensure the children's needs were met and indicated that she was setting out a schedule of maintenance. Mrs Dismont intervened and said that, if the wife wished to make an application for maintenance, that was a matter for her but there was no application before the Court and no evidence. Stoneham J agreed that there was no application for child maintenance before the Court but said that should the wife wish to make an application at another time, that was open to her.
13. On 5 January 2024, the wife filed a Notice of Motion for Leave to Appeal against the judgment of Stoneham J. In [1] she said that it was never her position that the husband should share his \$800,000 plus cash inheritance with her but she had only ever asked that the children be guaranteed a secure roof over their heads after the age of 18 by the husband transferring the matrimonial home, valued at \$750,000, to them. Having heard counsel for the husband and the wife in person, on 2 February 2024, Stoneham J made an order that the wife did not require leave to appeal her order of 7 November 2023 and that, should she wish to pursue her appeal, she should file an application for an enlargement of time within which to appeal. Stoneham J also awarded the husband his costs of that hearing. The wife did not pursue the appeal, but abandoned it.
14. On 23 April 2024 the wife then filed the summons which came before the judge in which she sought an order for child maintenance to support the two children of \$750 per child per month. That summons did not seek any other relief or order. In particular, the summons did not seek an order setting aside the ancillary relief judgment of Stoneham J. Directions were given on 23 May 2024 which again made no reference to any set aside application.
15. As already noted above, the application for child maintenance was heard by the judge on 23 September 2024. Both parties gave evidence. At the conclusion of the hearing the judge reserved her judgment. She had also asked about the position with probate and requested further evidence of the value of the inheritance as recorded at [21]-[22] below.

The judgment below

16. More than a year after the conclusion of the child maintenance hearing, on 1 October 2025, the Court emailed the parties with the draft Ruling or judgment of the judge, with the customary rubric asking for typographical or other editorial input but stating that the parties should not comment on the substance of the Ruling. Apart from any typographical corrections, the judgment eventually handed down on 6 November 2025 was in the same terms as that draft except that in the final judgment the judge added a section at the end headed "Post Distribution of Draft Ruling" from [51] to [58] to which I will refer in more detail later.

17. In the Introduction section, the judge described the application for child maintenance and at [2] she recorded the husband's reasons for resisting the application: "(i) he continues to provide rent-free accommodation for the Wife and children in the upper apartment of the former matrimonial home (the FMH); (ii) his payment of associated outgoings for the FMH; and (iii) the parties' historical agreement that no further maintenance would be pursued while the Wife remained in the FMH." At [3] she noted that Mrs Dismont had referred the Court to the ancillary relief judgment which found that the wife and children's needs were met by allowing the wife to remain in the FMH until the youngest child reached the age of 18. Accordingly, the husband also resisted the child maintenance application on the basis that the wife was obtaining the benefit of what would be the equivalent of renting a property similar to the FMH of \$3,000 per month. Mrs Dismont also argued that the wife would have to show that there had been a change in the financial circumstances since the ancillary relief judgment.
18. At [4] the judge noted that the wife argued that, when the issue of child maintenance was raised by her at the ancillary relief hearing, Stoneham J had said there was no application before her to consider child maintenance and so no determination would be made. The wife also argued that she was clear in her position at the ancillary relief hearing that she only agreed to forego seeking child maintenance on the basis that the FMH was transferred to the children, alternatively to her. As she was not successful in obtaining the FMH, she submitted that she was now moving forward with the child maintenance application.
19. The judge acknowledged the lateness of giving her decision. Then at [7] she said:
- "More significantly, I have encountered considerable difficulty in reaching a decision in this application. The challenge arises not so much from the legal framework, which is well established, but from the evidentiary position before the Court which I will address in the remainder of this ruling. The areas that I will be referencing fall into two categories: (I) Duty of Full and Frank Disclosure; and (II) Jurisdiction and Legal Principles."
20. The next section of the judgment is headed "Duty of Full and Frank Disclosure". It is clear from this section that the judge had conducted her own researches into the Court file from the ancillary relief hearing and that, on the basis of her own assumptions, drew certain conclusions unfavourable to the husband. At no stage before producing the draft ruling did she inform the parties that she was engaged in these researches or afford them an opportunity to make submissions or correct her assumptions where those were incorrect.
21. The judge referred to the applications made in the ancillary relief hearing before Stoneham J and the judgment of 7 November 2023. She set out at [8] the relief granted by the Court in the ancillary relief judgment. At [9] she then said that, at the hearing before her, the parties were referring to different totals of sums of cash which the

husband had inherited and that, as a result of that discrepancy, the judge had requested that Mrs Dismont produce the evidence that was before Stoneham J to support the inherited cash sum of \$800,000. At [10] she recorded that the evidence produced by Mrs Dismont was the letter from CHW of 28 February 2023 and she quoted the passage I have set out at [4] above, adding underlined emphasis to paragraph 2 in that passage.

22. The judge said at [11] that it was therefore evident that that letter provided an incomplete picture of the husband's inheritance and the judge subsequently asked Mrs Dismont to produce the Affidavit of Value filed in the probate jurisdiction which was then produced. The judge noted that this was dated 17 August 2023 and recorded that it had been confirmed that this was not produced to the Court at the ancillary relief hearing nor disclosed to the Court after the ancillary relief hearing.
23. The judge then said that she had reviewed the affidavits relied upon at the ancillary relief hearing and she quoted [34] of the husband's affidavit sworn on 1 March 2023, emphasising the underlined passages:

"I understand that I have also inherited funds from my father's estate. I have contacted the attorney dealing with the probate of my father's estate to provide me with an affidavit of value, which I will produce as soon as this becomes available. As at the date hereof I have not received the said Affidavit of Value. I received a letter from CHW outlining the assets on the estate in broad terms which I attach herewith...."

24. The judge then said at [13]-[14]:

"13. Therefore, it was immediately apparent that the evidentiary material relied upon in the Ancillary Relief Hearing which directly related to the value of the Husband's assets was inaccurate. This development has complicated my task, because the Ancillary Relief Judgment contained specific factual findings and determinations that were made based on that inaccurate evidence. Moreover, as a result of this discovery, I had a duty to delve further into the evidence relied on for the Ancillary Relief Hearing as there are several anomalies that have heightened my initial concern further.

14. I am now faced with the tension that arises between respecting the finality and authority of the Ancillary Relief Judgment and addressing the reality that those findings rested on evidence which is no longer reliable. This has required careful consideration of how to proceed fairly considering the new information, while ensuring consistency with principles of justice and the proper administration of the Court's processes. Moreover, given that the Wife appeared as a litigant in person at the Ancillary Relief Hearing as well as in the Child Maintenance Application, the need to ensure that there is a fair hearing is even more paramount."

25. The judge then addressed each of specific discrepancies and concerns she had identified, starting with the inherited cash sums. She noted that the disclosure of the husband at the ancillary relief hearing placed his total assets at \$2,900,860.47 including an undifferentiated category of “inherited cash sums” of \$800,000. At [17] she quoted the passage in Mrs Dismont’s written submissions for the ancillary relief hearing which I have summarised at [5] above, continuing at [18] that it was unclear how Mrs Dismont presented the figure of \$800,000 to the Court when the supporting evidence only highlighted the known sum of \$146,599.64 and that there were two further accounts. The judge continued at [19]:

“By contrast, the AOV which itemises the Husband’s inherited assets, values the Husband’s assets at \$3,117,808.34. The difference of over \$200,000 is attributable to additional estate accounts and chattels that were not reflected in the Husband’s hearing disclosure. Notably, the total cash value of his father’s estate was \$950,084.50 and not \$800,000 as was submitted in the Ancillary Relief Hearing and which was never corrected by Counsel despite the Ancillary Relief Judgment not yet having been issued by the date on which the AOV was sworn.”

26. I should emphasise here that, if the judge had raised with the husband and his counsel this concern before drawing that conclusion, she would no doubt have been informed about the evidence of the husband before Stoneham J about the approximate amounts in the other two accounts to which I have referred at [6] above, which was to the effect that the total amounts in the bank accounts could be as much as \$950,000.

27. Next the judge referred to her noting that the husband had not disclosed his joint interest in the father’s BNTB Term Deposit account which was shown in the Affidavit of Value and meant an interest of \$45,940.08 was undisclosed which would have increased his cash savings position to \$89,470.09. The judge then quoted [59] of the ancillary relief judgment (to which I referred at [8] above) and said that this finding was plainly incorrect since, on the basis of what she described as “the new evidence” shown in the Affidavit of Value, he had \$16,180.53 more in cash savings than the wife. The judge concluded at [23]:

“Moreover, this is most troublesome as the Husband would have known that this was not in fact true as he disclosed all other joint accounts held with this father save for this one.”

28. Again, the judge reached these conclusions without affording the husband any opportunity to provide an explanation. In fact, the BNTB Term Deposit formed part of the \$146,599.64 referred to in the CHW letter of 28 February 2023. Although the funds were held jointly with his father, the funds were solely his father’s and the husband was only added for estate-planning purposes and had no access to the funds at the time of

the ancillary relief hearing. A letter dated 14 October 2025 from Mr White of CHW confirms that the BNTB Term Deposit formed part of the \$146,599.64 and that the estate did not have access to these accounts until probate was granted on 3 February 2025.

29. The judge had also researched Mrs Dismont's submissions for the ancillary relief hearing to identify her next supposed discrepancy which was in relation to stamp duty payable. She noted that the written submissions had said that the total stamp duty payable was \$409,500 which could be reduced if one of the real properties was designated as the primary homestead and that, in her oral submissions at the ancillary relief hearing, Mrs Dismont had said that if a property was designated the primary homestead, the reduction could be approximately one half. The judge then noted at [26] that the actual stamp duty payable as evidenced in the Affidavit of Value was considerably less than either figure, at \$81,448.42.
30. The judge next dealt with the valuation date for the real properties, concluding at [27] that a key factor regarding those valuations had not been drawn to the attention of Stoneham J. This was the date to which the valuations related, rather than the date on which they were obtained. The judge said that the Affidavit of Value sets out the assets of the deceased at the date of death which was March 2021 not March 2023. At [28] the judge said that, whether or not this was an error on counsel's part, it was trite law in matrimonial proceedings that assets were valued at the date of hearing whereas in relation to estates the date of value of assets is the date of the deceased's death. There had been no legal argument or even mention that the valuations being relied on by the husband were based on valuations conducted in March 2021. The wife was given no opportunity to make any submissions that up-to-date valuations should have been obtained.
31. Again, these assumptions by the judge were simply incorrect. As set out at [5] above the two real properties were valued by valuers jointly agreed by the husband and wife pursuant to the order of Stoneham J of 10 February 2023. Fulcrum Property Consultants Limited valued the properties on 31 March 2023 and it was agreed by the parties that these valuations would be used for the ancillary relief proceedings. There is no question of up-to-date valuations not having been obtained.
32. The judge then set out the law on the duty of full and frank disclosure in ancillary relief proceedings, citing the Financial Remedies Handbook and the judgment of Mostyn J in *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270; [2012] 1 FLR 1211. At [31] the judge said that that case and the case of *Goddard-Watts v Goddard-Watts* [2023] EWCA Civ 115 both discuss the manner in which a rehearing or otherwise should proceed, in circumstances where a decision is set aside. She said she would distribute electronic copies of those cases to the parties when the Ruling was circulated. At [32] she also referred to counsel's duty to raise with the Court not only the legal positions and case law supporting their client's case but principles and authorities adverse thereto.

This was to ensure the parties were on an equal footing, particularly where one party is unrepresented and has no legal qualifications. The judge cited Rule 44 of the Barrister's Code of Professional Conduct 1981.

33. The next section of the judgment is headed "Jurisdiction and Legal Principles." At [33] the judge said the lack of jurisdiction to make a *Mesher* order should have been raised with the judge. At [34] she said the concept of such an order was first established in the Court of Appeal decision in *Mesher v Mesher and Hall* [1980] 1 All E.R. 126 where the Court ordered the matrimonial home to be held on trust for sale in equal shares between the parties, but that the property not be sold until the child of the family reached 17 or further order of the Court. The wife was permitted to occupy the home rent-free.
34. The judge noted at [35] that at the time *Mesher* was decided in 1973, the Court of Appeal did not have a statutory power under the UK Matrimonial Causes Act 1973 to order the sale of property. That jurisdictional gap was closed when the Matrimonial Causes Act was amended to include an explicit power of sale under section 24A, which came into effect on 1 October 1981. The judge referred to the Law Commission Report of 13 February 1980 before that amendment, highlighting the difficulties faced by the courts in redistributing capital assets without an express power of sale and she said that, in such cases, courts would often order one party to pay a lump sum to the other which in practice forced the sale of the property. The judge queried on what basis the Court had made a *Mesher* order here when that connotes that, on the relevant date of termination set by the Court, the property would be sold. She referred to the case of *J v T* [2024] SC (Bda) 42 Div which "highlighted the court's lack of jurisdictional power to enforce an order previously made by the Court for possession of the former matrimonial home where an order had been made for the property to be sold."
35. The judge then said at [39] that since the husband's father's estate had still been in the probate process it was surprising that counsel had not raised the basic legal principle that the Court would not have jurisdiction to require the estate to allow the wife to reside in the property at all, let alone rent-free. The executor was not joined as a party nor was the executor's consent submitted to the Court.
36. The judge then said at [40] that there was no legal principle that a party's income should be looked at in comparison with capital assets. The submission of Mrs Dismont accepted by Stoneham J was that, given the wife's greater income, she could save money for eight years due to her not having to pay rent in order to raise a capital sum of \$288,000. The judge said: "This determination has no basis in law. Effectively, the wife's future earnings are being capitalized now to say that her needs will be met from her future earnings by using those savings to purchase a home." The judge considered this error impacted her ability to determine the wife's true financial position when her future income had purportedly been earmarked by the Court to meet her needs after she vacated the FMH. This was a prime example of why future income cannot be treated as a matrimonial capital asset.

37. The judge referred to the decisions of the English Court of Appeal in *Waggott v Waggott* [2018] 2 FLR 406 and *Jones v Jones* [2011] EWCA Civ 41, [2012] Fam 1, where the proposition that future earning capacity was to be considered as a capital asset was rejected. At [44] she recorded her view that the ancillary relief judgment effectively used the wife's future earnings to meet her needs. At [45] she said that ultimately the wife did not understand that the "needs" of the parties being met does not equate to her being provided temporary housing and that thereafter she would have to rely on any savings accumulated in the eight years she was not required to pay rent, whereas the husband would continue to have his needs met beyond her vacating the FMH, not only by his ownership of the FMH but also the second property.

38. The Conclusion section of the judgment at [46] to [50] is of sufficient significance that it should be cited in full:

"46. The Child Maintenance Application is intrinsically enmeshed with the Ancillary Relief Judgment. Given the discrepancies raised above, my ability to make the necessary findings is impeded. Accordingly, I see no room for either party to contest that the Ancillary Relief Judgment should be set aside, not only due to the circumstances surrounding the Husband's non-disclosure but also as it relates to the jurisdictional irregularities.

47. Having, said this, however, I will give leave for the parties to file submissions within seven days from the date hereof addressing why the Ancillary Relief Judgment should not be set aside and the matter will subsequently be listed for a short hearing.

48. Should the parties be in agreement with the Ancillary Relief Judgment being set aside, this matter should be listed for mention on a priority basis to address how this matter should be resolved. I offer my following suggestions as they relate to my initial thoughts on how this matter can be determined:

(i) This matter be listed for a re-hearing with an estimated length of two days. The said hearing will address all issues of ancillary relief, inclusive of child maintenance, and shall be a priority listing.

(ii) There shall be a case management hearing to determine if any further evidence should be filed by the parties.

49. In the event that I do not have conduct of the rehearing, I will say that I am strongly of the view that careful consideration must be given to the full parameter of the case law surrounding the issues of the distinction between matrimonial and non-matrimonial property as well as the full ambit of case law regarding 'needs' cases. As it relates to 'needs', consideration must be given to

what exactly ‘needs’ entails, and whether those needs can or cannot be met. In circumstances where needs cannot be met and there are other assets, albeit non-matrimonial, consideration must also be given to whether there precedent as to how those non-matrimonial assets should be distributed to meets the parties’ needs.

50. For the avoidance of doubt, I very much appreciate that Counsel for the Husband will say that prior to issuing this decision I should have reached out to the parties to hear from them further. Whilst I generally agree that would be the normal course, I am of the view that any explanation given for the discrepancies in evidence, as well as why the additional evidence was not subsequently disclosed to the Court prior to the Ancillary Relief Judgment being handed down is of no consequence. As it relates to the facts regarding the values of the Husband’s assets, I am satisfied as follows:

- (1) The true value of the Husband’s assets were not fully disclosed to the Court at the Ancillary Relief Hearing or thereafter, as evidenced by the fact that the Husband’s joint term deposit account with his father at BNTB valued at approximately \$45,000 was not disclosed to the Court;
- (2) The values submitted to the Court were incorrect, given that the inheritance sum was valued at \$800,000, compared to approximately \$950,000;
- (3) That there is a vast discrepancy in the sums of stamp duties Counsel for the Husband said were payable in her submissions; i.e. \$400,000 but possibly half of this (\$200,000) if primary family homestead exemption given, compared to the \$81,000 that was actually due and payable;
- (4) The Court had no jurisdiction to grant a Mesher Order;
- (5) The Court had no jurisdiction to make an order against an estate or its executor who is not a party to the proceedings; and
- (6) The Wife’s future income was deemed to be utilized by way of monthly savings in order that she could provide a roof over her head once the youngest child reaches the age of 18 years old, i.e. the capitalization of income.”

39. After the Conclusion there is a section headed “Postscript” in the first paragraph of which the judge said:

“As with any judicial determination, there remains the possibility that I may have erred in my reasoning or conclusion. If that is so, it will be a matter for the Court of Appeal to correct in due course. However, I am bound by the oath I

have taken to administer justice according to law and conscience. That oath requires me to act consistently with the principles of natural justice, and it is by adherence to those principles that I have arrived at this decision. To have done otherwise would have been to abdicate both my moral and ethical responsibilities as a judge and to risk allowing a fundamental breach of natural justice to stand.”

40. In the second paragraph of the Postscript the judge strongly encouraged any party engaged in litigation of this nature to seek independent legal advice.

Events after draft judgment circulated

41. In the judgment as eventually handed down on 6 November 2025, the judge added a further section at [51] to [58] headed “Post Distribution of Draft Ruling”. In [52] she records that Mrs Dismont had requested extensions of time of the deadlines for editorial comments and for consideration of filing submissions in accordance with [47] of the judgment. The judge records that she granted an extension until 13 October 2025 to submit editorial comments and until 27 October for filing submissions.

42. At [53] the judge referred to the letter Mrs Dismont wrote to the Court on 13 October indicating that the draft Ruling raised a number of alleged contraventions of the Bermuda Constitution, specifically the right to a fair hearing and that the only remedy was a constitutional claim which had been filed that day. The letter also sought a stay of publication of the judgment pending the outcome of that constitutional claim. At [55] the judge records that Mrs Dismont wrote to the Court on 27 October confirming that submissions would not be filed, given that the constitutional claim had been filed. At [56] the judge noted that Ms Cavanagh had written to the Court on 13 October saying that she was instructed for the wife and had no editorial comments. No submissions had been filed either. At [57] the judge said that as of 6 November she had not been advised that the constitutional application had been listed or that a stay had been granted specifically prohibiting the publication of the ruling.

43. The judge concluded at [58]:

“It is trite law that a Judge can amend a Judgment/Ruling until such time it has been issued. It was therefore anticipated that submissions filed by counsel could have had this impact. Accordingly, as Counsel were given ample opportunity to file submissions for consideration and chose not to do so, I have directed that this Ruling be published in its final form.”

44. The Originating Summons commencing the Constitutional Claim against the Attorney-General was in fact filed on 24 October 2025. It is not necessary to record the detail of that save to note that in essence it raised the same complaints and sought the same relief as subsequently set out in the Grounds of Appeal.

45. On 26 November Ms Cavanagh's then firm asked the Court to list the matter for case management. It was then listed for directions on 11 December 2025. At the request of Mrs Dismont's firm that directions hearing was adjourned until 22 December.
46. On 10 December 2025 the husband issued a summons in the constitutional proceedings seeking a stay of the Ruling of the judge pending the determination of the constitutional claim. That application was heard in effect *ex parte* on notice (with counsel for the Attorney-General in attendance) by Martin J the same day. He refused the application, giving *ex tempore* reasons which were expanded in a written judgment handed down on 17 December 2025. He held that the Court of Appeal provided adequate means of redress so that under the proviso to section 15 of Schedule 2 of the Constitution, the Court should not exercise its powers under that section.
47. Following Martin J's *ex tempore* refusal, on 12 December 2025, the husband filed his Notice of Motion to appeal to the Court of Appeal. On 18 December 2025, the wife filed a summons in the Divorce Jurisdiction seeking interim child maintenance. On 19 December 2025 the Court emailed the parties saying that it was minded to list both the directions hearing and the application for interim maintenance on 22 December, but it was equally minded to adjourn the hearing given that the appeal had been filed. The husband's attorneys supported an adjournment, but the wife's attorneys did not. On 22 December, the husband's attorneys filed a summons seeking the recusal of Wheatley AJ, also to be listed that day. On that day the Court adjourned all the applications in the divorce proceedings pending the determination of the leave to appeal application.
48. No order reflecting the terms of the judgment was ever drawn up. During Mrs Dismont's oral submissions, the Court queried why there was no order, to which there was no satisfactory answer. This is unfortunate. Appeals are against orders rather than reasons and the absence of an order made it more difficult to assess to what extent the judgment was intended to be determinative.

The grounds of appeal

49. The grounds of appeal set out in the Notice of Motion are, in summary, as follows:
 - (1) That the judge acted in breach of section 6(8) of the Bermuda Constitution which gives the right to a fair hearing;
 - (2) That by initiating a set-aside exercise *suo motu* the judge exceeded her lawful authority under the Supreme Court Act 1905 and the Matrimonial Causes Act 1974. She had no jurisdiction to re-open or set aside the ancillary relief judgment without a properly constituted application by a party and without satisfying the established legal tests;

- (3) That the judge determined a set aside application *suo motu* without notice and without affording either party the opportunity to file evidence, give oral evidence or make submissions. The statement at [50] that any such evidence would be “of no consequence” demonstrates that the husband was denied a meaningful opportunity to be heard and that the judge had pre-determined the issue. This was a breach of the *audi alteram partem* rule of natural justice and of section 6(8) of the Constitution;
- (4) That in declaring that the ancillary relief judgment should be set aside unless the parties could persuade her otherwise, the judge unlawfully reversed the burden of proof, presuming the invalidity of a final order and requiring the husband to justify its continuation;
- (5) That the judgment reveals that, without notice to the parties, the judge conducted her own investigations by reviewing and relying on materials outside the child maintenance proceedings. This violated the principles of open justice, equality of arms and the right to a fair hearing;
- (6) That the judge assumed an advocacy role inconsistent with judicial impartiality in a number of respects;
- (7) That without notice or opportunity to respond, the judge made adverse findings and commentary against the husband’s counsel;
- (8) That the judge made adverse findings of fact and adverse credibility determinations against the husband without giving him the opportunity to be heard in breach of natural justice;
- (9) That the cumulative effect of the judge’s actions gave the appearance of bias;
- (10) That the judge’s statements in [49], [50] and the Postscript demonstrate pre-judgment undermining the husband’s right to a fair trial before an independent and impartial tribunal;
- (11) That the judge published the judgment prematurely despite being on notice of the constitutional proceedings, improperly pre-empting the Court’s supervisory jurisdiction and undermining the integrity of constitutional remedies;
- (12) That there was excessive judicial delay between the hearing on 23 September 2024 and the draft judgment being produced on 1 October 2025, a further violation of the husband’s right to a hearing within a reasonable time;
- (13) That the husband should be entitled to enlarge time to appeal or be allowed to appeal out of time. The appeal was filed 21 days late so the delay is short and the wife has suffered no prejudice.

The submissions of the parties

50. The written submissions of Mrs Dismont for the husband, after setting out the chronology, began logically with the application for an extension of time. She pointed out that the husband was faced with the novel procedural situation of a draft judgment proposing, of its own motion, to set aside the ancillary relief judgment of a different judge. No appeal was available because the judgment had not been published, so the only apparent remedy was constitutional relief which the husband sought promptly. When the judgment was published on 6 November the husband had reasonably continued to pursue the constitutional route because it remained genuinely unclear whether the appropriate remedy was constitutional proceedings or an appeal. Once Martin J had ruled on 10 December, the Notice of Motion was filed promptly. Mrs Dismont submitted that the other condition for an extension of time, that there were *prima facie* good grounds for the proposed appeal, was clearly satisfied.
51. At the outset of Mrs Dismont's oral submissions, the President pointed out that the Court wished to be addressed principally on grounds 2 and 3, namely absence of jurisdiction and procedural unfairness. He also pointed out that Mrs Dismont would not need to resort to the Constitution to establish the proposition that, as a matter of the common law rules of natural justice, a party was entitled to be heard before a decision was made.
52. Mrs Dismont submitted that the application which was before the judge was for child maintenance and no other relief was sought. Specifically, there was no application to set aside the ancillary relief judgment. The wife had originally appealed that judgment but abandoned that appeal. In the absence of a formal application to set aside the ancillary relief judgment, if the judge had considered that there was some evidential discrepancy which should be answered, the proper thing for her to have done was to call the parties back in to Court and indicate her concerns. The husband would then have had an opportunity to address those concerns. If the wife had been so advised she could then have issued an application to set aside the ancillary relief judgment.
53. Mrs Dismont submitted that the judge had not maintained judicial impartiality and had assumed an advocacy role. It was quite clear from the judgment that, without any application before her and without notice to the parties, she had conducted her own investigation into the ancillary relief proceedings. The judge recorded at [13] of the judgment: "I had a duty to delve further into the evidence relied on for the Ancillary Relief Hearing as there are several anomalies that have heightened my initial concern further." At [25] she referred to oral submissions from the ancillary relief proceedings, so it appears she reviewed documents in the Court file and transcripts or audio recordings. As Mrs Dismont put it in her written submissions: "Whatever the source, [the judge] relied upon materials from a hearing at which she did not sit, in proceedings that were not before her, to make adverse findings against the Appellant without telling him what she was reviewing, what she was concluding, or giving him any opportunity

to respond.”

54. Mrs Dismont submitted that the contrast between the proportionate response that was open to the judge (of raising her concerns at a further hearing before determining anything) and the course she actually adopted illustrates the scale of the procedural departure and the extent to which the judge assumed an advocacy role. Mrs Dismont contended that the judge’s conduct satisfied the test for apparent bias derived from *Porter v Magill* [2002] 2 AC 357, that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.
55. Mrs Dismont submitted that, to the extent that the judge was concerned that there had been non-disclosure by the husband in relation to his inherited assets, she should have afforded him the opportunity to explain the position to her. Had the judge done so, it would have been apparent that what she thought was non-disclosure was nothing of the kind and her findings of non-disclosure would have been corrected. Mrs Dismont explained why the assumptions the judge had made about the inherited cash sums and the BNTB Term Deposit were incorrect. I have set out the correct position as she explained it at [25] to [28] above.
56. In relation to the stamp duty position, Mrs Dismont pointed out that the Court had been informed in written and oral submissions that the stamp duty estimate was subject to reduction, so there was no misleading of the Court. In the event, the Affidavit of Value showed that, in calculating the stamp duty, there was deducted from the gross amount the value of one of the real properties which attracted primary family homestead exemption, so that the net estate assessed for stamp duty was only \$964,484.23 not the \$2,775,000 originally estimated. Although the Affidavit of Value had not been provided to Stoneham J when it was produced on 17 August 2023, this was explained by the husband in his affidavit in support of the appeal. As the ancillary relief hearing had taken place and probate had not concluded, he said it simply did not occur to him to provide it to counsel at that stage or inform her that it was available. There was no intention to mislead the Court.
57. Mrs Dismont submitted that the judge’s criticism in relation to the valuation date was simply incorrect, for the reasons I have set out at [30]-[31] above. She submitted this example was the clearest possible demonstration of the harm caused by the procedure which the judge adopted.
58. She submitted that, perhaps because there was no application before her, the judge’s approach was wrong in law. The burden would be on the wife to prove non-disclosure and not on the husband to disprove it. Mrs Dismont referred to the judgment of Lord Neuberger in *Gohil v Gohil* [2015] UKSC 61 at [49]:

“The issue whether there has been non-disclosure is a question of fact which

involves an evaluative assessment of the available admissible evidence. Such a question is, of course, common in civil and family litigation, and under our common law system the rule is that it can only be answered by a judge after hearing from live witnesses as well as looking at the documents.”

59. She also drew attention to the distinction drawn at [44] of that judgment between the situation where non-disclosure was inadvertent and where it was deliberate:

“...where a party's non-disclosure was inadvertent, there is no presumption that it was material and the onus is on the other party to show that proper disclosure would, on the balance of probabilities, have led to a different order; whereas where a party's non-disclosure was intentional, it is deemed to be material, so that it is presumed that proper disclosure would have led to a different order, unless that party can show, on the balance of probabilities, that it would not have done so.”

60. It would have been for the wife to allege and prove that there was non-disclosure and that it was deliberate. There had been no allegation here that there had been non-disclosure, let alone that it was deliberate. The judge had not heard evidence from the husband on the issue and the effect of her findings of non-disclosure was to reverse the burden of proof. Mrs Dismont also pointed out that, even if there had been non-disclosure, the Court still had to determine whether it was materially causative of the wrong order being made. She submitted that the judge had not suggested that the non-disclosure was deliberate, so the burden remained on the wife to prove materiality. She had not attempted to and could not do so. Stoneham J had found that the wife's needs were clearly met from the division of the matrimonial assets so that it was not necessary to consider the inherited assets at all. Even if the inherited assets had been understated or misstated, they were non-matrimonial and would have been excluded in their entirety so that there was no question of a different order being made.
61. In response to the suggestion in the submissions of Ms Cavanagh on behalf of the wife that the judge had given the parties the opportunity to file evidence and make submissions in relation to the set-aside application, because in [47] of her judgment she had given the parties leave to file submissions within 7 days, subsequently extended to 26 days, Mrs Dismont submitted that, from a number of places in the judgment, specifically [46] and [50], it was clear that the judge had determined the issue and had a closed mind.
62. In relation to the alleged errors of law by Stoneham J identified by the judge, that is making a *Mesher* order, binding the executor of the estate and ordering the capitalization of future income, Mrs Dismont submitted that the judge had no jurisdiction to correct these alleged legal errors. Only the Court of Appeal would have had such jurisdiction and the wife had abandoned her appeal. In any event, there were no errors of law. The order made by Stoneham J was not a *Mesher* order strictly

speaking, but a *Mesher*-type order or, more accurately, an occupation arrangement for the benefit of the children which she had jurisdiction to make. Mrs Dismont submitted that it followed that the case of *J v T* which the judge cited as an authority recognizing the Court's lack of power to order a sale of the property was irrelevant to the ancillary relief judgment. Rule 44 of the Code of Conduct would not have required her to inform Stoneham J of the case and in any event, it was not published until September 2024, ten months after the ancillary relief judgment was handed down.

63. Mrs Dismont submitted that the point made by the judge that the executor should have been joined to the proceedings and his consent provided to the Court was a technical implementation point that turned on nothing. Probate was completed on 3 February 2025 and the FMH passed to the husband as sole beneficiary. The husband has at all times been willing and able to honour the arrangement under which the wife and children continue to live in the FMH.
64. In relation to the judge's criticism about capitalisation of income (referred to at [36]-[37] above) Mrs Dismont submitted that the 75/25 division of the matrimonial assets met the wife's needs. Stoneham J's reference to saved rent was illustrative of the additional benefit the wife would derive from it. There was no submission that the savings she could achieve from rent-free occupation of the FMH were to be treated as a capitalisation of her future earnings. The ancillary relief judgment does not treat future income as a capital asset and there is no suggestion that the saved rent was to form part of her capital award towards her future needs. Mrs Dismont submitted that *Waggott v Waggott*, to which the judge referred, concerned an entirely different question of the sharing of post-separation earning capacity as a matrimonial asset, which was not an issue in this case.
65. Accordingly, she submitted that there were no errors of law and nothing which required counsel to make any disclosure to the Court under Rule 44 of the Code of Conduct.
66. Mrs Dismont pointed out that the judge had not in fact dealt with the child maintenance application which was the only application actually before her. She accepted that, if the wife could have demonstrated a change of circumstances from the position as it was at the time of the ancillary relief hearing before Stoneham J and the ancillary relief judgment, the wife had a right to apply for periodical payments for the benefit of the children under section 27 d and e of the Matrimonial Causes Act 1974. However, there was no change of circumstances which could be demonstrated.
67. Mrs Dismont submitted that, in taking 13 months between the hearing and production of the draft judgment, there had been excessive delay by the judge. She referred to *Cobham v Frett* [2000] UKPC 49 where the Privy Council said at [35]:

“In their Lordships’ opinion, if excessive delay, and they agree that 12 months would normally justify that description, is to be relied on in attacking a

judgment, a fair case must be shown for believing that the judgment contains errors that are probably, or even possibly, attributable to the delay. The appellate court must be satisfied that the judgment is not safe and that to allow it to stand would be unfair to the complainant.”

68. She submitted that a delay of 13 months in a child maintenance application involving the financial needs of children was excessive and that the second limb of *Cobham* was satisfied, since the judgment depended not just on documents but on oral evidence. The judge recorded that she had encountered “considerable difficulty” in reaching a decision because of the evidentiary position before the Court which demonstrated that the delay was not harmless.
69. Mrs Dismont also submitted that the publication of the judgment was premature and an independent breach of section 6(8) of the Constitution. The husband had filed a constitutional application seeking an injunction restraining publication and despite that application being pending and the injunction not having been heard, the judge published the judgment on 6 November 2025. The justification in the Postscript that “Counsel were given ample opportunity to file submissions for consideration and chose not to do so” is wrong. Counsel had filed the constitutional proceedings seeking to restrain publication. She submitted the publication of the judgment containing adverse findings against the husband and his counsel while that constitutional application was unheard deprived the husband of his only remedy and effectively rendered the constitutional proceedings nugatory.
70. In her submissions on behalf of the wife, Ms Cavanagh argued that the parties had had ample opportunity to respond to the terms of the judgment following circulation of the draft and the extension of time granted. If the husband had filed submissions the matter would have been dealt with appropriately with a further hearing listed as indicated in the judgment. In relation to grounds 2 and 3, namely want of jurisdiction and procedural unfairness, she agreed that some clarity was needed as to whether the judgment was indeed setting aside the ancillary relief judgment. She submitted that the judgment was adopting an interim position with the parties being able to come back and persuade the judge to reconsider her preliminary view. The judge had expressly contemplated the possibility of a further short hearing.
71. The President suggested to her that it was difficult to see what her answer was to the question why it had been appropriate for the judge to consider the merits of the ancillary relief judgment at all. She referred to [50(6)] of the judgment which she submitted showed the intermingling between the two judgments. As the President pointed out, the husband’s argument was that child maintenance had been intended to be wrapped up in the ancillary relief judgment. Ms Cavanagh pointed out that the wife had raised the issue of child maintenance at the hearing before Stoneham J and the judge had said that there was no application before her and that, if the wife was not satisfied, she would have to issue a fresh application.

72. There was some discussion at the appeal hearing as to whether the application for child maintenance before the judge was a fresh application for maintenance or an application to vary the ancillary relief order. Ms Cavanagh submitted that there had been no order for child maintenance by Stoneham J, so it could not be a variation application. As the President pointed out, this was a rather technical point, because child maintenance had been implicitly dealt with in the ancillary relief judgment.
73. In answer to the point put to her by the Court that there had been no application before the judge to set aside the ancillary relief judgment and that the judge had embarked on a review of that judgment of her own motion, Ms Cavanagh relied upon the relief sought at [8c] of the husband's Divorce Petition dated 3 September 2021 which sought "Such further and other relief as may be just." She submitted that the prayers in the Petition were not extinguished until the remarriage of either party, so that the Court had jurisdiction to grant whatever relief it considered just, including setting aside the ancillary relief judgment.
74. She relied upon two English decisions to support her submission that the prayer in the Petition gave the Court jurisdiction to make whatever orders were just in the circumstances, including an order setting aside the ancillary relief judgment. *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB); [2016] 4 WLR 69 concerned injunctions sought against defendants who were persons responsible for publishing a website defaming the claimant firm as "solicitors from hell". Warby J was originally concerned that mandatory orders sought went beyond the relief sought in the Particulars of Claim which claimed a negative injunction but noted that there was a prayer for "further or other relief" which would include the claim for mandatory orders.
75. *Park v Hadi* [2022] EWCA Civ 581; [2022] 4 WLR 61 concerned an application for relief from sanctions under Part 3.9 of the Civil Procedure Rules where the application was only made informally. The appellants argued that it should only be in exceptional cases that relief is granted without a formal application. The Court of Appeal rejected that argument. Ms Cavanagh relied upon this passage in [49] of the judgment:

"The principles applicable to this case, which we extract from the rules and case law referred to earlier in this judgment, can be shortly stated. An application for relief from sanctions should be made (and usually is made) by a Part 23 application notice supported by a witness statement. It is, however, clear that the court has a discretion to grant relief from sanctions in two situations: where (as in the present case) no formal application notice has been issued, but an application is made informally at a hearing; or where no application is made, even informally, but the court acts of its own initiative. The discretion must of course be exercised consistently with the overriding objective. The court, therefore, should initially consider why there has been no formal application notice, or no application at all; whether the ability of another party to oppose

the granting of relief (including, if appropriate, by the adducing of evidence in response) has been impaired by the absence of notice; and whether it has sufficient evidence to justify the granting of relief from sanctions (though the general rule in CPR r32.6 does not impose an inflexible requirement that the evidence be in the form of a witness statement). It follows, from the need for those initial considerations, that the discretion will be exercised sparingly...”

76. Ms Cavanagh also relied on [66] of the judgment of Kowalew JA in *Mount Saint Agnes Academy v AB* [2025] CA (Bda) 13 Civ. As the President pointed out in argument, that case concerned whether the Court had jurisdiction to set aside an interim order in the absence of a specific provision equivalent to Rule 3.1(7) of the Civil Procedure Rules in England & Wales. The judge in that case held that an inherent jurisdiction existed in a situation where an application was made to set aside an interim order and there was full argument on the point at an inter partes hearing.
77. In her written submissions, Ms Cavanagh sought to answer the criticism that the judge had conducted her own research into the evidence in the ancillary relief proceedings by pointing out that, at the hearing before the judge, Mrs Dismont referred repeatedly to the evidence in the ancillary relief proceedings and cross-examined the wife about that evidence. Ms Cavanagh submitted that, in the circumstances, it could not be argued that the judge did not have authority to review the pleadings and evidence from the ancillary relief proceedings.
78. In relation to the complaint about unfair adverse findings by the judge against Mrs Dismont, Ms Cavanagh submitted that Mrs Dismont had been given the option to respond by way of submissions but had chosen not to. She submitted that it might be that the adverse findings were inaccurate and could be explained but they were reasoned and based on the evidence before the Court.
79. In relation to the point about apparent bias, Ms Cavanagh submitted that the proper procedure would have been to make an application to the judge and invite her to recuse herself. This had not been done. She also submitted that this was not a case where the judge had made a predetermination. She had afforded the husband the opportunity to put his case by offering in [47] leave to file submissions and list for a short hearing to show why the ancillary relief judgment should not be set aside.
80. There was discussion between counsel and the Court as to what course the Court should adopt depending on whether the appeal was allowed. The wife’s position, as articulated by Ms Cavanagh, was that this Court should uphold the judge’s decision to set aside the ancillary relief judgment and order that the wife’s interim maintenance application be dealt with by the Supreme Court, albeit she accepted by a different judge. On the other hand, Mrs Dismont’s position on behalf of the husband was that this Court should allow the appeal and determine the wife’s application for maintenance so that there was a final determination.

Discussion

81. Logically, the first question to be considered is whether the husband is entitled to an extension of time to bring his appeal. I consider that he clearly is. The delay in issuing the Notice of Motion was short and can be explained by the husband having pursued the constitutional proceedings initially because, until the judgment was published, he could not have launched an appeal. The only possible criticism is that, once the judgment was published, the husband did not abandon the constitutional proceedings and issue a Notice of Motion before this Court but I consider there is not much force in that criticism since the grounds and the relief sought in the constitutional proceedings are essentially the same as sought in the grounds of appeal. Furthermore, once Martin J refused the relief in the constitutional proceedings, the Notice of Motion was issued only two days later.
82. There is no question of the wife suffering any prejudice by reason of the delay, since, as I have said, the grounds and relief sought in the constitutional proceedings and the grounds of appeal are essentially the same. It is no answer to say, as Ms Cavanagh did in her written submissions that the wife was prejudiced because the husband sought to prevent her pursuing her application for interim maintenance pending the outcome of this appeal. An inevitable consequence of the appeal is that the application for maintenance would be stayed until this appeal was determined, so there is no question of any prejudice the wife may suffer through that application not being determined having been caused by the short delay in filing the Notice of Motion seeking to appeal.
83. Looking at the appeal generally, there are a number of fundamental problems with the procedure the judge adopted. First, if the ancillary relief judgment was going to be set aside, that was really a matter for the Court of Appeal, not another Supreme Court judge. The wife had launched an appeal against the ancillary relief judgment but that was abandoned. Even if the judge had jurisdiction to set aside the judgment of a judge of concurrent jurisdiction, which I very much doubt, save possibly where there was a material change of circumstances since the ancillary relief judgment was handed down, she should not have done so without requiring a formal application by the wife on notice to the husband, so that he had an opportunity to make submissions and, if necessary, produce evidence. At the very least, if the judge had the concerns she expressed about the ancillary relief judgment, the correct and fair course would have been to communicate those concerns to the parties and invite them to attend a further hearing at which the husband's counsel could have explained the evidence at the ancillary relief hearing and allayed the judge's concerns.
84. Second, the judge made findings that had the effect of setting aside the ancillary relief judgment without affording the husband a proper opportunity to make submissions or file evidence. In my judgment, there is nothing in Ms Cavanagh's suggestion that the judge adopted some sort of interim position in her judgment which contemplated there

being a further hearing to determine whether to set aside the ancillary relief judgment. What the judge said in the Conclusion section of the judgment made it quite clear that she had made up her mind that the ancillary relief judgment should be set aside. Thus, at [46] she said: “Accordingly, I see no room for either party to contest that the Ancillary Relief Judgment should [*sic* “not” omitted] be set aside, not only due to the circumstances surrounding the Husband’s non-disclosure but also as it relates to the jurisdictional irregularities.” Equally at [50] she said: “I am of the view that any explanation given for the discrepancies in evidence, as well as why the additional evidence was not subsequently disclosed to the Court prior to the Ancillary Relief Judgment being handed down is of no consequence.”

85. Whilst it is true that at [47] she gave leave to the parties to file submissions addressing why the ancillary relief judgment should not be set aside and said there could be a further short hearing, I consider that, in the light of what she said at [46] and [50] quoted in the previous paragraph, that was an empty formality. Furthermore, as the President pointed out in argument, the six findings at the end of [50] are just that, not preliminary views but a judicial determination, hence their being prefaced by the words: “I am satisfied as follows”. I consider that Mrs Dismont is right that this is indicative of a judge who has made up her mind without having heard argument on the point. It also shows apparent bias on the part of the judge in that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased. The *Porter v Magill* test is satisfied. It was open to the husband to raise this point in his grounds of appeal without first making a recusal application to the judge.
86. Third, there is also nothing in Ms Cavanagh’s suggestion that the absence of any formal application by the wife to set aside the ancillary relief judgment could be cured by reliance on the prayer in the husband’s divorce petition: “Such further and other relief as may be just.” Quite apart from the fact that that was relief being sought by the husband not by the wife, it was relief being sought at the outset of the divorce proceedings, not relief in relation to a subsequent judgment handed down in those proceedings.
87. None of the authorities relied on by Ms Cavanagh is of any assistance to her on this point. *Brett Wilson* simply confirmed that a mandatory injunction, although not specifically pleaded in the Particulars of Claim, fell within the prayer. The facts of that case are a long way from the present. *Park v Haidi* confirmed that the Court had an inherent jurisdiction to grant relief from sanctions even without a formal application. However, it is to be noted that the sentence in the Court of Appeal judgment immediately following the passage cited by Ms Cavanagh (which I have set out at [72] above) provides as follows: “That is particularly so where there has been no application at all, and the court is contemplating acting of its own initiative, because in such a situation there may well be prejudice to an opposing party and/or an absence of relevant evidence.” That aptly describes the situation here and demonstrates why the judge’s

approach was unfair.

88. As the President pointed out in argument, his decision in *Mount Saint Agnes Academy v AB* concerned whether there was an inherent jurisdiction to set aside an interim order following a full hearing of argument *inter partes*. There was no such hearing here. Furthermore, the passage from *Gee on Injunctions* quoted in [66] of that judgment made clear the limited circumstances in which the Court will allow an application to set aside an interim order made after a hearing *inter partes*.
89. Fourth, the judge's conclusion that there was non-disclosure by the husband in the ancillary relief proceedings or the provision of incorrect evidence was unfair and, in any event, wrong. Before reaching such a serious conclusion, the judge ought to have alerted the husband and Mrs Dismont to the fact that she was concerned that there might have been non-disclosure or incorrect evidence, which would have afforded them the opportunity to provide explanations which would have demonstrated that her assumptions were wrong.
90. Taking them in turn: in relation to the judge's conclusion that the figure for the inherited cash sums of \$800,000 was incorrect, had she raised that point with counsel, she would no doubt have been informed of the husband's evidence in the ancillary relief proceedings that the amounts in his late father's bank accounts were approximately \$950,000 (see [6] and [26] above); in relation to what the judge perceived as the husband's failure to disclose his joint interest in the BNTB Term Deposit account, if the judge had raised this concern, the husband would have been able to explain that, although the funds were held jointly with his father, the funds were solely his father's and the husband was only added for estate-planning purposes and had no access to the funds at the time of the ancillary relief hearing; and that he did not have access to the funds until probate was granted in February 2025 (more than a year after the ancillary relief proceedings) as confirmed in the letter from CHW of 14 October 2025 (see [28] above).
91. The judge's next criticism related to the stamp duty payable on the real properties which Mrs Dismont's submissions in the ancillary relief proceedings had said could be \$409,000 whereas the actual figure in the Affidavit of Value was \$81,448.42. As Mrs Dismont pointed out in her submissions to this Court, the Affidavit of Value showed that there was deducted from the gross amount the value of one of the real properties which attracted primary family homestead exemption, so that the net estate assessed for stamp duty was only \$964,484.23 not the \$2,775,000 originally estimated. Had the judge queried why the Affidavit of Value had not been provided to Stoneham J after the ancillary relief hearing, she would have received the husband's innocent explanation referred to at [56] above.
92. The judge's criticism in relation to the valuation date of the two real properties was simply incorrect for the reasons I have already given at [30]-[31] above.

93. Overall there was no allegation by the wife in the child maintenance proceedings that there had been non-disclosure by the husband and the judge did not provide the husband with any opportunity, before she made the findings summarized at [50] of her judgment, to provide an explanation or give evidence about the matters which concerned the judge. Had she done so, she would have realized, as I have set out above, that her criticisms were unwarranted.
94. The judge did not make any express finding that the non-disclosure she thought she had identified through her researches was deliberate, although the way in which she expressed her concerns and her conclusions suggests that she thought that it was deliberate. If that was what she thought, it was all the more incumbent on her to inform the parties so that the husband could refute any suggestion that there had been non-disclosure, let alone that it had been deliberate. Of course, as Mrs Dismont pointed out, if any non-disclosure was not deliberate, the burden of proof was on the wife to show that it was material, in the sense identified by Lord Neuberger in *Gohil* in the passage set out at [59] above, that if disclosure had been made, the Court would have made a different order. The judge did not address this issue of materiality at all. In fact, wherever the burden of proof lay, any non-disclosure in relation to the inherited estate (to which the judge's concerns related) could not have led Stoneham J to make a different order since (as Stoneham J found at [60] of her judgment) the 75%/25% division of the matrimonial assets "affords the wife to meet her needs and those of the children over and beyond that contemplated to be fair in the circumstances of this case", from which it followed that the inherited assets were not only non-matrimonial but did not need to be considered in determining those needs, as Stoneham J found at [62]. It follows that, as Mrs Dismont submitted correctly, even if the inherited assets had been understated or misstated, they were non-matrimonial and would have been excluded in their entirety so that there was no question of a different order being made.
95. As for the alleged errors of law which the judge thought she had identified, Mrs Dismont was correct in her submissions that only this Court and not another judge sitting in the Supreme Court had jurisdiction to overturn Stoneham J if she had made errors of law, and in any event the wife had abandoned her appeal to this Court. However, I am firmly of the view that Stoneham J did not make the errors of law alleged. In relation to the suggestion that Stoneham J had made a *Mesher* order which she had no jurisdiction to make, I agree with Mrs Dismont's submission that the order was in effect an occupation arrangement for the benefit of the children which Stoneham J had jurisdiction to make. In any event, even if it was a *Mesher* order, at the time it was made the Court had jurisdiction to make such an order and the cases casting doubt on the jurisdiction all post-date the ancillary relief judgment. Only a proper appeal to this Court, rather than to another judge of the Supreme Court, could have led to the judge's order being reversed.
96. The point about whether the Court could bind the executor is an entirely technical point

of no significance whatsoever, and I am satisfied that the judge's point about the capitalisation of income is a false point for the reasons Mrs Dismont gave. It follows that the criticisms the judge levelled against Mrs Dismont herself were unwarranted.

97. Although there undoubtedly was excessive delay in the judge producing her judgment, particularly given that the ancillary relief hearing only lasted one day and that what the judge should have been dealing with was the wife's application for child maintenance, which required a prompt judicial response, I cannot see that that delay was causative of the errors the judge made in her judgment. Those errors were caused by the unfairness of the procedure the judge adopted for the reasons I have given above.
98. In relation to the complaint that publication of the judgment was premature, once the judge was aware of the constitutional proceedings which the husband had issued, I consider that the judge should have delayed publication of the judgment until those constitutional proceedings had been heard.
99. Overall, I consider that the appeal must be allowed and the judgment and the findings made by the judge should be set aside. So far as the wife's application for child maintenance is concerned (whether the application of 23 April 2024 or the more recent application for interim maintenance of 18 December 2025), Stoneham J concluded that the division of matrimonial assets 75/25 agreed by the husband at the hearing before her more than met the needs of the wife and the children as that judge found. The wife would only be entitled to make an application for further maintenance for the children if she could show a material change of circumstances from the position as it was before Stoneham J which negated that conclusion. On the evidence before the Court, she cannot currently show such a material change of circumstances. In the event that, notwithstanding that conclusion, the wife wishes to persist with an application for child maintenance, that must be heard by a judge other than Wheatley AJ and must proceed on the strict basis: (i) that it is not open to the wife to challenge the judgment and findings of Stoneham J; and (ii) that the burden is on the wife to show a material change of circumstances from the position as it was at the time of the judgment of Stoneham J which would justify a variation of her order.

Gloster JA

100. I agree.

Kawaley P

101. I also agree.