



In the Supreme Court of Bermuda

DIVORCE JURISDICTION

2021: No. 86

BETWEEN:

B

Petitioner/Husband

- and -

B

Respondent/Wife

RULING

Before: **Hon. Alexandra Wheatley, Acting Justice**

Appearances: **The Respondent/Wife, In Person**

**Alma Dismont of Marshall Diel & Myers Limited, for the
Petitioner**

Date of Hearing: **23 September 2024**

Date Draft Circulated: **1 October 2025**

Date of Ruling: **6 November 2025**

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Child Maintenance; Duty of both Counsel and Parties to Provide Full and Frank Financial Disclosure; Barrister's Code of Professional Conduct 1981; Subsequent Discovery of Inaccurate Asset Position; Ability of Court to Make Orders Against Third Parties; No Jurisdiction Under the Matrimonial Causes Act 1974 to Order Sale of Property; Re-Hearing of Previous Ancillary Relief Judgment

RULING of Acting Justice Alexandra Wheatley

INTRODUCTION

1. The application that is before me is the Respondent's (hereinafter referred to as the **Wife**) application for child maintenance, which was filed in April 2024 (the **Child Maintenance Application**). The Child Maintenance Application is seeking a monthly payment of \$1,500 (\$750 per child) for the two children of the family. The Wife says this sum would be put toward what she says are escalating day-to-day costs that she shoulders as the primary carer.
2. The Petitioner (hereinafter referred to as the **Husband**) resists the application for the following reasons: (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.
3. Counsel for the Petitioner, Mrs Dismont, referred the Court to the ancillary relief judgment in these proceedings dated 7 November 2023 (the **Ancillary Relief Judgment**), in which it was 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 years old. Therefore, in addition to the reasons set out above, the Husband resists the Wife's Child Maintenance Application on the basis that the Wife is obtaining the benefit of what would be the equivalent of renting a property similar to the FMH at a value of \$3,000 per month. Mrs Dismont further argued that the Wife would have to show there has been a change in financial circumstances since the making of the Ancillary Relief Judgment.
4. In contrast, the Wife argued that when the issue of child maintenance was raised by her during the Ancillary Relief Hearing, she was informed by the Judge hearing the matter that there was

no application before her to consider child maintenance and so no determination would be made in this regard. The Wife further 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 (or alternatively to her). As the Wife was not successful in obtaining the FMH, the Wife submitted that she is now moving forward with the Child Maintenance Application.

5. Both parties filed affidavits of means and exhibited bank statements, budgets, and rental-valuation evidence. Oral testimony was taken over a day-and-a-half and each side was cross-examined.
6. Firstly, I wish to acknowledge the lateness of giving my decision in this matter. Unfortunately, circumstances arose over the course of last year which have directly impacted my ability to produce this decision sooner.
7. 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 referenceneing fall into two categories: (I) Duty of Full and Frank Disclosure; and (II) Jurisdiction and Legal Principles.

(I) DUTY OF FULL AND FRANK DISCLOSURE

8. By way of background, the parties' respective applications for ancillary relief were heard before another Judge on 25 and 26 July 2023 (the **Ancillary Relief Hearing**). The issues before the Court included the Wife's application seeking that the FMH be transferred to children, or alternatively herself on the basis that the property would be left to them. Additionally, the Husband filed an application for ancillary relief seeking that the Wife's application for a property adjustment order and lump sum be determined by the Court. The judgment was issued on 7 November 2023 (the **Ancillary Relief Judgment**). The relief granted by the Court in the Ancillary Relief Judgment was as follows:

- “1. Save as provided hereunder, the [Husband] and the [Wife] shall retain all property held in their names as their property absolutely with no claim thereon by the other party.*
- 2. The [Husband] shall retain his inherited property as his sole property with no claim thereon by the [Wife].*
- 3. The [Wife] shall be granted a Mesher Order in relation to the upper apartment of*

the [FMH]. in the following terms:-

(1) The [Wife] and the Children shall reside in the upper apartment of the FMH until the happening of the first of the following events, that is:

- (i) Both Children reach the age of 18 respectively or complete their high school education, whichever shall first arise; or*
- (ii) Upon the [Wife] remarrying or permanently cohabitating with a third party; or*
- (iii) If circumstances arise whereby the [Wife] moves into and resides in an alternative property prior to the happening of the events set in item 3(I)(ii) above; or*
- (iv) Such earlier time as the parties may mutually agree.*

(2) The [Husband] shall meet the cost of land tax, insurance, and maintenance of the FMH structure and will pay for costs of gardening.

(3) The [Wife] shall meet the cost of all utilities and all internal repairs to the upper apartment of the FMH.”

9. During the hearing of the Child Maintenance Application the parties were referring to different totals of sums of cash which were inherited by the Husband from his father’s estate. As a result of this discrepancy, I requested that Mrs Dismont produce the evidence that was placed before the Judge in the Ancillary Relief Hearing to support the inherited cash sum of \$800,000.

10. The evidence produced by Mrs Dismont a was letter from CHW dated 28 February 2023 (the **CHW Letter**) which confirmed the following:

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

- 1. The estate consists of real property located at [Smith’s] and [the FMH]. 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.” [Emphasis added]*

11. It was therefore evident that the CHW Letter provided an incomplete picture of the Husband’s inheritance, and I subsequently requested Mrs Dismont produce the affidavit of value that was filed in the court’s probate jurisdiction for the father’s estate. The affidavit of value sworn on 17 August 2023 (**AOV**) was then produced to the Court. It was then confirmed that the AOV was not provided to the Court for consideration in the Ancillary Relief Hearing, nor was it disclosed to the Court after the Ancillary Relief Hearing.

12. Notably, the AOV was sworn on 17 August 2023, which was just three weeks following the Ancillary Relief Hearing. Most significantly, having reviewed the affidavits relied on for the purpose of the Ancillary Relief Hearing, paragraph 34 of the Husband's affidavit sworn on 1 March 2023 states as follows:

"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 at page 107."

[Emphasis added]

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.
15. The below will address each specific discrepancy and/or concern that has made be reach my decision in this matter.

Discrepancy in Husband's inherited cash sums

16. The Court observes that the Husband's disclosure at the Ancillary Relief Hearing placed his total assets at **\$2,900,860.47**, which included an undifferentiated category of "*inherited cash sums*" of \$800,000.
17. Mrs Dismont's written submissions in the Ancillary Relief Hearing (**Ancillary Relief Submissions**) at paragraph 56 confirmed this position (as does the CHW Letter) as follows:

“56...(c) The estate also has cash of approximately \$800,000 although this value has not been confirmed. The estate is being probated by Cox Hallet & Wilkinson Limited (CHW) who have confirmed that the [estate] has a known deposit account of \$146,599.64 and there are two further accounts but CHW have not yet received confirmation of the total cash balance.” [Emphasis added]

18. As it relates to the cash value of the estate, it is 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 there are two further accounts”.
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.

Husband’s undisclosed cash savings

20. Of further note, is the fact that the Husband did not declare his joint interest in the Father’s BNTB Term Deposit account which was disclosed in the AOV as having a value of \$91,880.15. This means that the Husband’s undisclosed interest was **\$45,940.08**. This would have increased his cash savings position from \$43,530.91 to totaling **\$89,470.99**.
21. At Paragraph 59 of the Ancillary Relief Judgment, the Judge addresses the findings made as it relates to the parties disparity in cash savings:

“In accordance with the principle of fairness, on an equal division of savings, the Wife (having greater savings) would need to transfer to the Husband significant portion of her savings to bring him to parity. Similarly, on an equal division of the pensions accumulated during the marriage, the Wife (having the larger pension value due to her significantly larger income) would need to transfer from her pension to the Husband’s pension by way of pension-to-pension transfer to bring him to parity.”

22. Having now uncovered the Husband’s true cash sum position at the time of the Ancillary Relief Hearing and taking into consideration the Wife’s savings at the time of that hearing being \$73,290.46, the factual finding that the Judge made at paragraph 59 of the Ancillary Relief Judgment is plainly incorrect. The new evidence shown in the Affidavit of Value shows that the Husband had \$16,180.53 more in cash savings than the Wife.

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.

Discrepancy in stamp duties payable

24. Mrs Dismont's Ancillary Relief Submissions also set out what the value of the real property of the estate was as well as its potential liability in stamp duties at paragraphs 57 to 59:

"57. On 31 March 2023, the real property was valued by Fulcrum Property Consultants Limited. The market value and net values of the property are set out below:-

<i>[FMH]</i>	<i>\$725,000.00</i>
<i>...</i>	<i>...</i>
<i>Net equity</i>	<i>\$673,825.00</i>
<i>[Second property]</i>	<i>\$1,250,000.00</i>
<i>...</i>	<i>...</i>
<i>Net equity</i>	<i>\$1,158,575.00</i>

58. As noted above, the estate is still under probate and the value of the estate is subject to government stamp duty, fees and expenses including legal fees to CHW. The stamp duty liability can be calculated as follows pursuant to Head 2 of the Stamp Duty Act 1976:

<i>...TOTAL STAMP DUTY PAYABLE</i>	<i>\$409,500</i>
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59. The above sum will be reduced if one of the Husband's father's properties was designated as the primary homestead."

25. Regarding the stamp duty payable by the father's estate, it was submitted in Mrs Dismont's oral submissions that if one of the properties obtained the primary family homestead designation that the stamp duty could be reduced to be approximately half, i.e. about \$200,000.
26. However, the actual stamp duty payable as evidenced by the AOV was \$81,448.42. This figure is sizably less than the \$400,000 submitted by Mrs Dismont and even her fall-back position of \$200,000.

Valuation date of real properties

27. Additionally, one key factor regarding the valuations of the estate properties was not drawn to the attention of the Judge. That is the date the valuations were in relation to, rather than the date the valuations were obtained. In the probate jurisdiction, when estates are submitted for

probate the affidavit of value sets out the assets of the deceased as of the date of death. Therefore, as the Husband's father passed away on 8 March 2021, the valuations for the FMH and the second estate property were for March 2021, and not March 2023.

28. Whether this was an error or not on Counsel's part, it is trite law that in matrimonial proceedings the value of assets is the value at the date of the hearing. No reference was made to the accepted legal principle set by the seminal case of *Miller; Macfarlane* that the values of assets should be as at the time of the hearing. In this instance, as the law provides in relation to estates, the date of value of deceased's assets are as at the date of death. There was no legal argument or even mention made that the valuations being relied on by the Husband in relation to his two inherited properties 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 so that the Court would have both valuations to consider. Given that the Wife was a litigant in person it is unsurprising that she would not know the ins-and-outs of probate law or the legal position regarding the value date of assets in matrimonial proceedings.

The Law

29. The duty of full and frank financial disclosure is trite law; however, the below summary from the *Financial Remedies Handbook*, 11th Edition, Bird and Exton at page 18 for the benefit of the Wife who is a litigant in person:

“The duty of full disclosure

1.64 *The exercise by the court of its statutory powers will be frustrated if either is less than frank. The parties are therefore under an obligation to make full and frank disclosure of all relevant circumstances.⁴⁶ It is not appropriate to give partial disclosure, nor to wait for the other party to demand certain information. The information must be given voluntarily and completely. Failure to give full disclosure may result in the court exercising its powers to make interlocutory orders, for example for disclosure and production of documents,⁴⁷ will probably lead to the offender being condemned in costs, and, in extreme cases, may be regarded as conduct of a financial nature which it would be inequitable to disregard...”*

30. In the case of *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270; [2012] 1 FLR 1211 at 1213 Mostyn J eloquently summarized the duty of the parties to be full and frank with their respective disclosure to each other, but also to the Court in ancillary relief proceedings. At paragraphs [1] to [3] Mostyn J stated as follows:

“[1] The law of financial remedies following divorce has many commandments but the greatest of these is the absolute bounden duty imposed on the parties to give, not merely to each other, but, first and foremost to the court, full frank and clear disclosure

of their present and likely future financial resources. Non-disclosure is a bane which strikes at the very integrity of the adjudicative process. Without full disclosure the court cannot render a true certain and just verdict. Indeed, Lord Brandon has stated that without it the court cannot lawfully exercise its powers (see *Jenkins v Livesey* (Formerly *Jenkins*) [1985] AC 424, [1985] 2 WLR 47, [1985] FLR 813). It is thrown back on inference and guess-work within an exercise which inevitably costs a fortune and which may well result in an unjust result to one or other party.

[2] In *Lykiardopulo v Lykiardopulo* [2010] EWCA Civ 1315, [2011] 1 FLR 1427 Thorpe LJ stated:

'[36] However ancillary relief proceedings are marked by features absent in other civil proceedings:

(i) The proceedings are quasi-inquisitorial. The judge must be satisfied that he has, or at least that he has sought, all the information he needs to discharge the duty imposed on him to find the fairest solution.

(ii) The parties owe the court a duty, a duty of full, frank and clear disclosure. The duty is absolute.

(iii) Sadly the duty is as much breached as observed. The payer's sense of the obligation is distorted by the emotions aroused by the payee. Breaches take many forms.

(iv) Breach by omission is commonplace. A bank account or some other asset is not declared. That tactic gives rise to the counter, filching and copying the contents of desk, briefcase or computer (now proscribed by the decision of this court in *Tchengui v Imerman* [2010] 2 FLR 814, the effects of which have yet to be worked out).

[37] Breaches by commission are more serious. An omission once detected can be excused as an oversight. A breach by commission is plain perjury and thus risks serious consequences. The present case is a good example. The conspiracy within the family to protect the family business resulted in the presentation to the court of forged and back-dated documents.'

[3] As Thorpe LJ observes, the phenomenon of non-disclosure is regrettably commonplace. Its treatment in the authorities stretches back at least to the famous decision of *Sachs J* in *J v J* [1955] P 215, [1955] 3 WLR 72. From that case can be identified the origin of the duty of the court to consider drawing adverse inferences where non-disclosure is found. That duty has been reiterated in many subsequent decisions. *Sachs J* memorably stated:

'In cases of this kind, where the duty of disclosure comes to lie on a husband; where a husband has – and his wife has not – detailed knowledge of his

complex affairs; where a husband is fully capable of explaining and has had opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference – especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative.”

31. *NG v SG (Appeal: Non-Disclosure)* as well as 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. Electronic copies of these cases will be distributed to the parties for their consideration when this ruling is circulated.
32. I also remind myself of Counsel’s duty to raise with the Court not only the legal positions and case law in support of his or her client’s case, but also those principles and authorities adverse thereto. Again, this is to ensure that both parties are on equal footing, particularly when one party is unrepresented and has no legal qualifications. Rule 44 of the Barristers’ Code of Professional Conduct 1981 (**Barrister’s Code of Conduct**) states as follows:

“44 In both civil and criminal cases, a barrister must ensure that the court and opposing counsel are informed of any relevant decision on a point of law or any legislative provision, of which he is aware and which he believes to be immediately in point, whether it be for or against his contention.” [Emphasis added]

(II) JURISDICTION AND LEGAL PRINCIPLES

Lack of jurisdiction to grant a Mesher Order

33. Just as Mrs Dismont raised the Court’s lack of jurisdiction to transfer the FMH into the children’s names, the lack of jurisdiction to grant a Mesher Order should have also been raised with the Judge. Also, the fundamental concept behind the granting of such an order, if there had hypothetically been jurisdiction, was clearly not explained to the Wife.
34. The concept of a *Mesher Order* was first established in the Court of Appeal decision of *Mesher v Mesher and Hall* [1980] 11 All ER. In that case, the court ordered that the matrimonial home 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 the age of 17 or until further order of the court. The wife

was permitted to occupy the home rent-free, subject to her responsibility for the outgoings, while both parties were to contribute equally to the capital repayments on the mortgage.

35. At the time of the *Mesher* case in 1973, the Court of Appeal did not have an express statutory power under the UK Matrimonial Causes Act 1973 to order the sale of property. The court in *Mesher* did not address its jurisdiction to compel a sale, likely because the order in question was not for an immediate sale but for the property to be held on trust for sale. This jurisdictional gap was later closed when the UK amended the Matrimonial Causes Act to include an explicit power of sale under section 24A, which came into effect on 1 October 1981.
36. Before this amendment, the Law Commission Report of 13 February 1980 highlighted the difficulties faced by courts in redistributing capital assets without an express power of sale. 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 to raise the necessary funds.
37. The question then arises, on what basis did the Court make a “Mesher Order” when this connotes that upon the relevant date of termination set by the Court that the property would be sold?
38. The recent case of *J v T* [2024] SC (Bda) 42 Div. (18 September 2024) 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 sold¹.

Lack of jurisdiction to bind a third party

39. As the Husband’s father’s estate was still in the probate process, it is surprising that Counsel for the Husband did not raise the basic legal principle that the Court would not have jurisdiction to require the father’s estate to allow the Wife to reside in the property at all, let alone on a rent-free basis. The estate/executor was not joined as a party to the proceedings and the executor’s consent was not submitted to the Court.

Future income cannot be considered as a capital asset

40. There is no legal principle that a parties’ income should be looked to in comparison to capital assets. The submission made by Mrs Dismont (which was ultimately accepted by the Judge) was that given the Wife’s greater income she could save money for eight years due to her not having to pay rent at the FMH in order to raise a capital sum of \$288,000. 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.

¹ See paragraph 8 of *J v T*

41. Accordingly, this error directly impacts my ability to determine the Wife's true financial position when her future income has purportedly been earmarked by the Court to meet her needs after she vacates the FMH. These principles are in direct contention with each other and thus a prime example as to why future income cannot be treated as a matrimonial capital asset.
42. The well-known UK Court of Appeal case of *Waggott v Waggott* [2018] 2 FLR 406, addressed the proposition that future earning capacity was to be considered as a capital asset was rejected. Lord Justice Moylan said the following at paragraph 128:

“[128] In my view Miller and the subsequent decisions referred to above, in particular Jones and Scatliffe [2016] UKPC 36, [2017] AC 93, [2017] 2 WLR 106, [2017] 2 FLR 933, do not support the extension of the sharing principle to an earning capacity. The sharing principle applies to marital assets, being 'the property of the parties generated during the marriage otherwise than by external donation' (Charman v Charman (No 4) [2007] EWCA Civ 503, [2007] 1 FLR 1246, at para [66]). An earning capacity is not property and, in the context advanced by Mr Turner, it results in the generation of property after the marriage.”

43. More significantly is the reference made of another UK Court of Appeal case, *Jones v Jones* [2011] EWCA Civ 41, [2012] Fam 1, [2011] 3 WLR 582, [2011] 1 FLR 1723. Lord Justice Wilson stated as follows at paragraph 27:

“[27] In [23] above I questioned whether Mr Mostyn's approach also required capitalisation of any such established earning capacity as still subsisted at the date when the financial proceedings were heard. Were we to overrule his decision, my question would not need to be answered. There is, however, a separate, wider question whether it is ever necessary or appropriate for the court to attempt to capitalise the earning capacity which a party has at the date of the hearing. There is no denying the extreme importance of an inquiry into the earning capacity of each party at that date: indeed s 25(2)(a) of the Matrimonial Causes Act 1973 makes it mandatory. A spouse's earning capacity will usually be a central foundation of an order for periodical payments, and thus of any order by way of capitalisation thereof, pursuant to the principles of need and/or of compensation. Even if, however, an earning capacity may also sometimes be relevant to a fair distribution of the assets pursuant to the sharing principle, it does not follow that the earning capacity should itself be treated as one of those assets, still less that an attempt should be made to capitalise it. Today I have as little appetite for such costly artificiality as when, in 2007, I subscribed to the judgment of this court in Charman v Charman (No. 4) [2007] EWCA Civ 503, [2007] 1 FLR 1246, and thus to the reservations in this respect which the court expressed at the foot of [67] of it.” [Emphasis added]

44. Therefore, my view is that the Ancillary Relief Judgment effectively utilized the Wife's future earnings to meet her needs. The Wife's projected future income was considered when distributing the matrimonial capital assets, as the Judge determined that her and the children's needs would be adequately met through that income.
45. The Wife ultimately 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 that the court deems she could have accumulated during the eight years she wasn't required to pay rent. Whereas, the Husband would continue to have his needs met beyond her vacating the FMH, not only by his ownership in the FMH but also in the second property.

CONCLUSION

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.

POSTSCRIPT:²

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.

Additionally, I will also strongly encourage any party engaged in litigation of this nature to seek independent legal advice. Whilst it may, at first glance, seem sensible to avoid the expense of instructing an attorney, the potential consequences of proceeding without professional representation are far more significant. The costs saved in the short term rarely outweigh the risk of misunderstanding complex legal principles, overlooking critical evidence, or failing to protect one's long-term interests. The ultimate outcome of the proceedings will almost always carry greater weight than the initial savings, and parties should therefore regard legal advice as an essential safeguard rather than an optional expense.

POST DISTRIBUTION OF DRAFT RULING

51. This section has been added to the Ruling to acknowledge and address events which have occurred subsequent to the distribution of its draft version to Counsel on 1 October 2025.
52. In response to Counsel receiving the draft ruling, Mrs Dismont wrote to the Court via email this same day asking for extensions to respond to the Court as she was involved in an ongoing hearing before myself. The extensions were requested in relation to providing editorial comment of the Ruling (deadline of 7 October) as well as for an extension for taking instructions and consideration of filing submissions in accordance with paragraph 47 above (deadline of 14 October). I granted an extension for Counsel to submit editorial comment by 13 October and for submissions to be filed by 27 October 2025.
53. On 13 October 2025, Mrs Dismont wrote to the Court (**MDM's 13 October Letter**) indicating after reviewing the draft version "*it raises a number of alleged contraventions of the Bermuda Constitution, specifically the right to a fair hearing...The only remedy is a constitutional claim which we have filed today.*"

² This postscript was initially placed after the signature space in the draft ruling; however, it has been moved to this section given my addition of the new section titled 'Post Distribution of Draft Ruling' as I believe it would have been confusing given the circumstances highlighted in this new section.

54. MDM's 13 October Letter further stated:

“The consequence in relation to the draft ruling is that the publication must be stayed pending the outcome of the outcome of the constitutional claim. As observed in Jaymo Durham & Keiva Durham v Attorney General (2025) SC (Bda) 66 Civ), where a constitutional claim is raised, the court must consider precedence of that issue and should stay or prevent further steps until its resolution.”

55. On 27 October 2025, the extended deadline for submissions, MDM wrote to the Court (**MDM 27 October Letter**), confirming that they would not be filing submissions given that their client had commenced constitutional proceedings. I highlight that the MDM 27 October Letter states as follows:

“...,we have not filed submissions, but of course our client clearly objects to the Ruling and his grounds are clearly made out in the constitutional summon. It is also our humble view that it would be a further breach of the Constitution for any hearing of the set aside application to be listed prior to the determination of the constitutional complaint.”

56. As it relates to the Mother, on 13 October 2025, Mrs Cavanagh of MJM Limited wrote to the Court confirming that a Notice of Appointment of Attorney had been filed by her firm and indicated that she had no editorial comments to provide for the draft ruling. No submissions have been filed either.

57. As of today, I have yet to be advised that the constitutional application has been listed and nor do I believe that the Supreme Court sitting in another jurisdiction has made an order granting a stay in these proceedings, which specifically prohibits the publishing of this ruling.

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.

DATED this 6th day of November 2025



ALEXANDRA WHEATLEY
ACTING JUSTICE OF THE SUPREME COURT