In The Supreme Court of Bermuda

DIVORCE JURISDCITION

2014 No: 63

BETWEEN:

J. L. B.

Mother

and

P. E. B.

Father

JUDGMENT

Before:	**Hon. Alexandra Wheatley, Assistant Justice**
Appearances:	**Ms Bailey, the Mother, In Person** **Mr David Kessaram of Cox Hallett Wilkinson, for the Father**
Dates of Hearing:	27, 28 and 29 June 2022
Date of Submissions:	18 July 2022
Date Draft Circulated:	8 February 2023
Date of Ruling:	15 February 2023

Application for Cessation of Child Maintenance; Distinction between Child and Spousal Maintenance; Change of Financial Circumstances; Variation of Child Maintenance; Earning Capacity; Backdating of Variation Order

JUDGMENT of Assistant Justice, Alexandra Wheatley

INTRODUCTORY

1. The Father (hereinafter referred to as **the Father**) made an application dated 3 June 2021 (**the Father's Application**) wherein he was seeking the maintenance payable to the Mother (hereinafter referred to as **the Mother**) in the sum of $1,500 per month be terminated which should take effect retroactively from 1 February 2021. After further consideration by the Father, Mr Kessaram confirmed in his submissions and by way of filing a further application which was returnable on 18 July 2022 that the retroactivity being sought was actually from January 2019.

2. The Father's current obligations are in accordance to my Ruling as the Registrar of 31 July 2018 wherein I made determinations regarding the Father's application to obtain a reduction in maintenance and the Mother's application seeking enforcement of the arrears of maintenance as well as an increase in child maintenance. The relevant terms of the Ruling were encompassed in an Order dated 31 July 2018 (**July 2018 Order**) which are as follows:

> "*1. [The Father] shall pay to [the Mother] $1,156 per month in child maintenance for the two children of the family who remain in fulltime education. This represents $578 per child, per month and shall be effective from 1 August 2018.*
>
> *2. [The Father] shall pay to [the Mother] $578 per month with effect from 1 June 2019 upon the second child of the family's completion of her university education. In the event, the said child graduates on a date after May 2019, [the Mother] shall have liberty to submit evidence supporting this position at which time the Court may vary the effective date of this provision on the papers.*

> 3. *The periodical payments payable by [the Father]to [the Mother] in the sum of $1,500 per month as per the Order dated 3 August 2016, amended on 9 March 2017 ("the Previous Order") shall not be varied.*"

3. The Father's Application was initially determined by the Learned Justice Stoneham on 23 July 2021; however, the Father appealed this decision which was heard by the Court of Appeal on 15 March 2022. Such appeal was allowed by the Court of Appeal in its Judgment dated 25 March 2022 (**COA Judgment**) in that the matter was remitted to the Supreme Court to be determined by another Judge.

4. On 27 January 2022, the Mother made an application requesting an increase in child maintenance in respect of the youngest child of the family (hereinafter referred to as **Z**) from $578 per month to $1,950 per month (**the Mother's Variation Application**). The Mother is seeking that this increase be backdated to 1 February 2021. The Wife's Variation Application had been filed subsequent to Justice Stoneham's Judgment, but prior to the Court of Appeal hearing.

5. The Mother's Variation Application was subsequently, *inter alia*, consolidated at the first case management hearing with the Father's Variation Application by way of my order dated 28 April 2022.

6. In support of the respective parties' applications, the Father relies on two affidavits in support of the Father's Application, the first on the 27 May 2021 (**the Father's First Affidavit**) and the second on 6 May 2022 (**the Father's Second Affidavit**). The Mother relies on an affidavit responding to the Father's First Affidavit on 11 June 2021 (**the Mother's First Affidavit**). The Mother also relies on her affidavit in support of the Mother's Variation Application on 20 January 2022 (**the Mother's Second Affidavit**) as well as an affidavit which was filed on 10 June 2022 (**the Mother's Third Affidavit**) and further in support of the Mother's Variation Application and in response to the Father's Second Affidavit.

7. In addition to the increase in the level of maintenance being sought in the Mother's Variation Application, she is also seeking enforcement of paragraph 45 of the Learned Justice Hellman's Judgment dated 3 August 2016 (**Justice Hellman's Judgment**) which states as follows:

> "*45. [AKAYO] is a potential source of income to help fund the children's university education. I am satisfied that H should pay W additional child maintenance to the value of any dividends or salary which he receives from the business, and I so order. Thus until further order of the Court it is the children and not H who will benefit from any income generated by the company.*"

8. As the Mother made no application to the Court during the six-year time period from Hellman J's Judgment until the Mother's Variation Application, she was directed to file the required application to enforce this provision of child maintenance outside of the twelve-month statutory period in accordance with Section 36 of the Matrimonial Causes Act 1974 (**MCA**). The Mother filed her leave application on 13 June 2022 which was returnable on 14 June 2022 (**the Mother's Leave and Enforcement Application**). Given the very narrow issue relating to leave to enforce as well as the unusual terms of the order, I directed for this portion of the Mother's Variation Application as well as the Leave Application to be addressed in a separate hearing. However, the Mother subsequently confirmed by way of letter dated 14 November 2022 that she will no longer be pursuing the Mother's Leave and Enforcement Application.

PRELIMINARY ISSUE

Hellman J's Judgment

9. The Mother's substantive application for ancillary relief dated 11 September 2014 was heard by the learned Justice Hellman over a period of three days in 2016. Hellman J delivered his Judgment on 3 August 2016 (**Hellman J's Judgment**).

10. The terms of paragraph 42 of the Hellman J's Judgment set out the sums the Father is to pay to the Mother as follows:

> "*42. These provisions supersede the Court's order of 31st March 2015 regarding maintenance payments. Although the division is somewhat arbitrary, for purposes of classification I shall treat the monthly $1,500 payments as maintenance to [the Mother], which is available to apply towards the mortgage, and the quarterly $5,200 payments as child maintenance. However, precisely how these payments are allocated between the various expenses relating to [the Mother] and the children is a matter for [the Mother].*" [Emphasis added]

11. There is also reference in paragraph 42 of the Judgment to an Order dated 31 March 2015 (**March 2015 Order**). The terms of the March 2015 Order, *inter alia*, provided the following interim provisions:

> "*2. The [Father] shall pay to the [Mother] $400.00 per month for maintenance commencing, April 15th 2015, as an interim measure pending the determination of the full ancillary relief hearing.*
>
> *3. The [Father] shall continue paying one-half (1/2) of the mortgage in the sum of $1,750.00 on the former matrimonial home including any payments in arrears.*"

12. There has been a great deal of uncertainty surrounding whether the $1,500 payable by the Father in accordance with the Hellman J's Judgment was defined as either spousal or child maintenance. This issue was addressed in the COA Judgment.

13. The COA Judgment provided an analysis of the findings of Hellman J's Judgment (and subsequent orders). It found that the $1,500 per month Order was child maintenance and premised on the continued occupation of the former matrimonial home (**FMH**) by the Mother with the children and that she was making the monthly mortgage payments.

14. Fundamental to its decision, Justice of Appeal Bell found that the Mother would not have been entitled to spousal maintenance since she was earning substantially more than the Father. The following findings were made at paragraph 32:

> "[32] *Fixing maintenance is not an exact science, and while I do recognize that Hellman J ordered monthly maintenance and top ups to reflect the fact that the Husband's take home pay fluctuated from month to month, his*

> *references to the $1500 being available to apply towards the mortgage no doubt led to the unusual situation of those payments being regarded as payments of spousal maintenance, when it was clear that the Wife earned substantially more than did the Husband. It would have been preferable to make it clear that the payments were in respect of child maintenance, although, as always, it would be for the Wife as payee to determine how to operate her budget.*" [Emphasis added]

15. The COA Judgment appeared to conclude that Hellman J intended the $1,500 per month to be child maintenance; but did not make this clear. Mr Kessaram submitted this position is reinforced by the finding of Bell JA at paragraph 20 where he stated:

> "*And the Wife can certainly be forgiven for having thought that the $1,500 figure represented spousal maintenance*".

16. Furthermore, at paragraph 18, Bell JA found that Hellman J considered that "*not all the expenses of raising children can be identified and segregated, and in this regard the major item to which* [Hellman J] *had regard was the costs of the mortgage on the FMH, by which means the family had a roof over its head*".

17. The Mother submitted that the payments were spousal maintenance payments and in any event despite its characterization, was not tied to the monthly mortgage obligation. Her position being the Father had a continued obligation to make monthly mortgage payments in accordance with the March 2015 Order.

Findings

18. Further to the COA Judgment, it is clear that the $1,500 allotment of maintenance awarded by Hellman J in his Judgment, was intended to cover maintenance for the children of the family.

19. In my view, the distinction Hellman J confusingly gave between describing the $1,500 payments as "maintenance" and the $5,200 "quarterly top up payment" as "child maintenance" was rather a characterization Hellman J was making between the children's indirect and direct expenses. The indirect expenses for the children would have been

expenses to maintain the household such as the mortgage, electricity, etc. The direct expenses would have been largely made of the children's educational expenses and in my view is in relation to the $5,200 quarterly payments. Furthermore, the fact that Hellman J defined the $5,200 payments as "top up payments", one can only conclude there was another payment awarded to "top up". Therefore, as the only other payment ordered was the $1,500 monthly payment, it can reasonably be surmised that the $1,500 payments were also child maintenance payments.

20. Additionally, I find there was no obligation of the Father to continue to pay half of the monthly mortgage payments towards the matrimonial home since the Judgment. This is clear given the terms of the March 2015 Order which specifically required the Father to pay $1,750 towards the monthly mortgage payments, but did not subsequently in his Judgment direct this to be a continuing obligation of the Father.

21. Furthermore, given the Father's earnings at the time which were on average $6,399.12 net per month with overtime and a base salary of $4,900 net per month without overtime[1], it would have been unreasonable and disproportionate for him to have been paying $1,500, plus $5,200 per quarter (i.e. $1,733 per month) as well as in addition to half of the mortgage payments (or even $1,750) as this would have resulted in the Father paying the Mother $4,983 per month. This would have amounted to seventy-eight percent of his monthly earnings when he received overtime and would have represented more than his monthly base salary in the event he did not work any overtime.

22. As a consequence, I find that the Father is currently deemed to be paying a total of $2,078 ($1,500 plus $578) per month in child maintenance to the Mother for the youngest child of the family.

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[1] Paragraph 10 of the Judgment: "*10. H is employed as a firefighter. His average net monthly salary was $6,003.85 in 2014 and $6,794.39 in 2015. The precise figure varies from month to month. Without overtime H's net monthly salary would be only $4,900. These figures are net of deductions for pension and health insurance...*"

THE FACTS

Father's evidence

23. The Father has continued his employment in the Bermuda Fire Service; however, he confirmed he has received a promotion since 2018 which resulted in an increase of his base salary. His current base monthly, gross salary is $7,805.44. His salary fluctuates monthly based on the amount of overtime that he works. In 2020 his annual net salary was $100,283.77 which is an average of $8,356.98 per month and for 2021 his annual net salary was $96,304.26 which is an average of $8,025.36 per month. For the first five months of 2022, the Father has received significant payments for over-time which provided him a net average salary of $10,827.94 per month[2]. It should be noted that all of the monthly averages do not include the attachment of earning deductions for child maintenance of $2,078 per month. If the average monthly earnings for these periods were calculated as an overall average, this would be $9,070.09.

24. Mr Kessaram submitted the Father's overtime should not be considered as part of his income as it is not guaranteed and varies significantly. The Father is not required to work overtime. However, in order to make ends meet he says that he has been extending his working hours when the opportunity to do so is offered to him. The Father is able to increase his earnings not only by working overtime[3], but also by working on his vacation days.

25. Therefore, Mr Kessaram submitted that it is unreasonable to assess the Father's earning capacity considering the extraordinary number of overtime hours he works in order to stay afloat financially. He also averred that the Father's need to work such extensive overtime exists because his monthly commitments which include having to pay $1,500 per month under the Order of Hellman J; pay the debts related to AKAYO Group Limited (**AKAYO**) which he became solely responsible for following the 3 August 2016 Order of Hellman J;

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[2] The Father's gross Year-To-Date salary as of 30 May 2022 was $65,245.13 which means his net salary was $54,139.71 (exclusive of the $10,390 deducted for child maintenance).

[3] The Father's pay statements show that he worked 714.50 hours of overtime in the period March 2020 to March 2022 giving an average of 59.54 hours per month.

as well as pay his debts incurred for legal fees. It would be punitive to expect him to carry on working at the pace he has been and assessing his earning capacity at that level for the purposes of these applications.

26. The Mother challenged this stating that whether the Father's income included overtime or not, the reality is that he is obtaining these sums each month so they must be taken into consideration.

27. Additionally, the Mother attempted to challenge the Father's position as it related to income from AKAYO. The Mother extensively cross-examined the Father in relation to payments from both his personal bank account statements as well as AKAYO's bank account statements. The Father's position remains as it did in 2018, in that he does not receive a salary from AKAYO. The Father's evidence is that he pays a number of expenses for AKAYO from his personal account as AKAYO frequently cannot afford to cover the expenses. He stated that he does not get reimbursed for these expenses, particularly as AKAYO suffered losses over the last couple of years due to Covid-19.

28. The Father accepted that at times his personal expenses have been paid from AKAYO's account, but stated that this does not occur regularly. The Mother helpfully prepared spreadsheets showing items she put to the Father that were paid from AKAYO's savings account as well as its credit card account.

29. For the period January to December 2021, the Mother averred $40,696.32 had been paid by AKAYO which were actually personal expenses for the Father. Under cross-examination the Father provided explanations for each transaction and confirmed that out of all these transactions, 17 were for his personal expenses. These personal transactions totaled $22,501.31. The majority of this sum was made up of a $15,000 payment to the Father's lawyers. Additionally, the Mother questioned the Father regarding a total sum of transactions in the AKAYO account which she said totaled $16,259.81 for the period January to April 2022. The Father again provided confirmation of the numerous transactions the Mother referenced as to whether they were personal or business-related

expenses. Adding up the sums of the transactions the Father says were personal, gives a total of $6,061.93. Of this, $2,500 was paid for legal fees and disbursements (revenue stamps).

30. For the period January through May 2022, the Mother raised queries about transactions on AKAYO's credit card which totaled $3,038.40. Of these transactions, the Father's evidence is that $1,283.75 were personal expenses.

31. The Mother also suggested to the Father that he uses cash received from AKAYO to use for his personal expenses and suggested that Hellman J made a finding of this in his Judgment which she says should be accepted now. This allegation was firmly denied by the Father.

32. At paragraph 6 c. of the Father's Second Affidavit he set out his monthly as follows:

Expense	**Amount ($) per month**
Rent	900.00[4]
Groceries	471.03
Medical Expenses	205.89
Electricity (Belco)	102.71
Telecommunications (Internet, mobile)	394.99
Entertainment (Dining Out, Recreation)	504.48
Clothing, gifts	298.23
Loan Repayments	2,000.00[5]
Incidentals	123.33
Bank charges	6.00
Transportation (gas, license fees, repairs)	249.46
Total	**$5,256.12**

33. The Father confirmed during his cross-examination that he resides with his girlfriend and that she contributes towards the household expenses by paying half of the rent. The Mother

[4] The total monthly rent is $1,800.
[5] Reduced from $3,366.67 on the Father's confirmation part of debt is now extinguished.

criticized the Father for not disclosing this in his affidavit evidence and queried whether or not there were additional expenses the girlfriend contributed towards. The Father confirmed the only household expense included in his listing of expenses which his girlfriend contributes towards is the monthly rent. The Father also noted that his listing of expenses also does not include payments towards his outstanding legal fees which are evidenced as being $15,000 to his current attorneys and $80,000 for his previous attorneys.

34. The Mother also queried the Father's monthly expense of his loan repayments. The Father confirmed he was paying offs loans given to him by two of his family members for AKAYO which amounted to approximately $3,366.67 per month; however, since filing his affidavit, one of these loans has now been extinguished, so therefore he is paying between $1,500 and $2,000 towards the second loan which is outstanding in the sum of approximately $100,000.

35. In addition to the above, the Mother took issue with the Father's non-payment of the mortgage since Hellman J's Ruling submitting that this is an expense he was still obligated to pay in accordance with the Order of March 2015. The Father disagreed that he had any requirement to pay towards the mortgage as well as pay the sums he has been required to pay for child maintenance. Moreover, the Mother criticized the Father's alleged non-cooperation with having the monthly mortgage payments reduced when she requested him to do so in 2017. The Father was firm in his position the agreement between the parties in relation to their debts was twofold. The first being that the Mother would transfer her shares in AKAYO to the Father and he would indemnify the Mother against all debts of AKAYO which stood at approximately $226,000 in 2017; and the second that the Mother would have the FMH transferred into her sole name in order that she would be solely responsible for the outstanding mortgage. It was noted by Hellman J in 2016 that AKAYO's "*liabilities exceeded its assets by very nearly $210,500*[6]" and there was a "*negative equity of roughly $73,9990*[7]" in relation to the FMH.

[6] Paragraph 28 of Hellman J's Judgment.
[7] Paragraph 11 of Hellman J's Judgment.

Mother's evidence

36. The Mother was previously employed at Swiss Edge with her evidence being that she earned approximately $164,000 gross per annum; i.e. $11,500 net per month. She also received annual bonuses from Swiss Edge, which were of varying sums over the years. The Mother's bonus received on 3 February 2021 was $10,000. The Mother's position at Swiss Edge was made redundant with effect from 1 October 2021, from which she received a redundancy payout of $74,879.04 on 30 September 2021. It should be noted this sum did not include the Mother's September monthly salary as this was paid to her on 24 September 2021 in the usual monthly sum of approximately $11,500. Therefore, during her employment at Swiss Edge, taking into account annual bonuses, her net monthly earnings were approximately $12,333.33. In addition, she was receiving $2,078 from the Father, which increased her monthly income to $14,411.33.

37. Under cross-examination the Mother confirmed she was first informed by her former employer in or around April or May 2021 of her anticipated redundancy; however, the formal notification was not obtained until June 2021. Therefore, the Mother was aware of her redundancy approximately six months prior to it being effective.

38. From the approximate $75,000 redundancy pay, the Mother deposited $23,000 from this into her Bermuda Credit Union account on 1 October 2021. The total balance was approximately $6,259.50 before this deposit was made. Prior to this date, the previous activity on this account was a $4,000 deposit made on 19 August 2019. There was no activity on this account between these periods. As of 2 June 2022 (which is the most recent balance provided) the balance for this account was $2,272.50.

39. As of 23 May 2022, the Mother commenced employment with Bermuda Motors Limited and is earning $80,000 gross per annum; i.e. $5,360.80 net per month. In addition, the Mother has also been working part-time at Rosewood Bermuda as a Front Desk Concierge in 2022. As of 17 June 2022, the Mother had earned a total net salary of $4,027.38; i.e. an average of $167.81 per week or $727.17 per month. The Mother states that her position at

Rosewood Bermuda is minimal and that the hours she is requested to work are dependent on whether full-time staff are available to work extra hours as they are given first option. Therefore, the Mother's total monthly income is approximately $6,087.97 (exclusive of child maintenance payments).

40. Whilst the Father had requested the Mother provided confirmation of her attempts to obtain gainful employment from the date she was notified of her redundancy until she obtained her current employment which commenced in May 2022, the Mother did not provide any explanation or produce any evidence detailing her efforts to obtain employment. In cross-examination, the Mother stated that the job market was difficult and despite her best efforts to obtain employment during the nine months after her redundancy she was unsuccessful up until that point.

41. Mr Kessaram submitted there should be weight given to this non-disclosure by the Mother when considering if she was able to obtain a higher earning position. Mr Kessaram further averred that whilst the Mother's current actual income from her full-time employment is less than half of what it was at Swiss Edge, that her earning capacity should be accepted as being the same as it was when she was employed at Swiss Edge; i.e. $164,000 per annum plus a bonus structure.

42. It was further submitted that as the Mother has failed to provide evidence that she took reasonable steps to find alternative employment comparable to her position at Swiss Edge either before (i.e., when she first became aware of her impending redundancy) or after becoming redundant on 30 September 2021. On the evidence of the Mother, Mr Kessaram submitted that the Mother is fully capable of obtaining comparable employment in Bermuda at a salary equal to or reasonably close to what she was earning in basic salary at Swiss Edge. In those circumstances, the Father's position is that it would be inequitable, unfair and wrong to order him to shoulder half of the cost of maintaining the youngest child of the family.

43. In addition, during cross-examination, the Mother was asked to identify the source of the following credits (totaling $5,820) to her HSBC bank account, but was unable to confirm the sources of these deposits:

31 December 2020	$950
31 March 2021	$1200
30 April 2021	$1300
7 May 2021	$1000
28 July 2021	$400
28 July 2021	$550
31 August 2021	$200
30 September 2021	$220

44. The Mother set out her monthly expenses for child Z at paragraph 90 of her Second Affidavit as follows:

Expense	Amount ($) per month	Z's Portion
Rent	3,000.00	1500.00
BELCO	350.00	175.00
One Communications		112.00
Car – gas	280.00	140.00
Food	1,200.00	600.00
School Expenses (2021/2022)		233.32
Medical		725.00
Clothes		300.00
Entertainment		150.00
Contingencies		200.00
Total		**$4,135.32**

45. One of the most significant items of conflict regarding the Mother's expenses is that in relation to her purported rent. As noted above, the Mother's evidence is that she pays $3,000 per month for rent. By way of a disclosure request made by Mr Kessaram, the Mother was required to produce a copy of her lease as well as to provide proof of her alleged arrears of rent by providing a letter from her landlord confirming this position. The document the Mother exhibited to the Mother's Second Affidavit is titled "Leasing Agreement" and is dated 4 January 2021 (**the Lease**). The Lease purports to be an agreement between the owner of the premises who is the Mother's grandmother as landlord

and the Mother as tenant. The document purports to give the Mother the right to occupy the property for $2,500 per month until she has been reimbursed the monies which were paid for the renovation of the property. The sum stated to have been incurred in such renovations expenses is $172,810.09. The Mother provided no documentary evidence as to a breakdown of how the expenses were incurred for the renovations.

46. When questioned about the execution of the Lease it was revealed that the Mother signed the document for herself as tenant as well as on behalf of the owner, her grandmother, as landlord. When asked whether there was a power of attorney giving her the authority to enter into such a transaction or whether there was an agency agreement in writing between herself and her grandmother, the Mother confirmed there was neither.

47. It also emerged in the Mother's cross-examination that her grandmother was living in a seniors' home in the United States and is now deceased (having passed away a month and half after the date of the Lease). When asked whether there was any independent evidence to substantiate the knowledge and approval by her grandmother of the Lease, the answer was again in the negative.

48. Tied into the Lease, the Mother produced a letter from someone by the name of Michael Davis dated 3 June 2022 addressed "*TO WHOM IT MAY CONCERN*". In the letter Mr Davis describes himself as a contractor; however, in cross-examination the Mother stated that Mr Davis' occupation is as a sound engineer and does not own or work in a contracting business. The Mother also confirmed Mr Davis is a friend of hers who agreed to help her as a side job to his regular work activities.

49. The letter states that Mr Davis has a "*special arrangement*" with the Mother (not with the owner of the property, the grandmother) "*to make monthly payments in the sum of $3,000 to* [him], *in exchange for services rendered*". When asked whether the "*special arrangement*" was in writing, the answer from the Mother was "*No*". The Mother also confirmed there was no independent evidence to substantiate her grandmother's knowledge of the "*special arrangement*".

50. Mr Davis' letter states that he is owed as of 1 June 2022, the sum of $31,000. At the rate of $3,000 a month, this would suggest ten months of "rent" have not been paid.

51. Mr Kessaram submitted that the Mother's occupation of the current property follows a similar pattern to her occupation of the FMH in that she has not paid "rent" just as she had not made any mortgage payments whilst she still resided at the FMH for the period January 2019 to 31 January 2021.

52. Furthermore, Mr Kessaram averred that the Lease as well as the purported agreement between the Mother and Mr Davis are both shams. He stated is it highly unlikely that the Mother had any authority to enter into any agreement on behalf of her grandmother and as such the monies that the Mother may have spent on renovations of her current residence, were not spent pursuant to any agreement with the owner of the property. Mr Kessaram further suggested that it is highly unlikely that the grandmother even knew that the Mother was occupying the property.

53. As it relates to school expenses, the Mother set out in paragraph's 79 to 86 of the Mother's Second Affidavit the breakdown of the annual expenses which are as follows:

Laptop (one off payment)[8]	$1,446.95
Registration Fee:	$300.00
Acceleration Fee	$250.00
Summer School Uniform	$329.00
Winter Uniform	$178.00
School shoes	$129.00
Gym shoes	$115.00
Alterations	$50.00
Total	**$2,797.85 per annum or $233.16 per month**

[8] It should be noted that it is a requirement of the school for each student to have a laptop.

54. The Father disputes that the laptop which was purchased should be included in these expenses as he argues this was a one-off payment. He therefore, submitted that the annual expenses for the school should total $1,351.00; i.e. $112.58 per month.

55. The expenses in relation to the car and food were also disputed by the Father. The Mother has claimed half of the cost of petrol for her motor car, namely, $140 per month. Mr Kessaram submitted that it is unreasonable to attribute half of the total cost for the child. A more realistic fraction would be a third, i.e., $93.33 per month.

56. In relation to the household expense for food, Mr Kessaram submitted that it is most likely includes an excessive amount for dining out or take-out food and the Mother admitted in her cross-examination that she does not like to cook and loves to eat out. An analysis undertaken by Mr Kessaram of the Mother's bank statements shows what Mr Kessaram stated as "extraordinary" amounts being spent on take-out food and restaurant dining. The following figures were produced:

Pre-Redundancy Dining/Take Out Expenses (January 2021 to March 2021):	**$3,317.67**
Post-Redundancy Dining/Take Out Expenses (October 2021 to December 2021):	**$3,049.90**

57. Based on these figures, Mr Kessaram submitted that these evidence the Mother's extravagant lifestyle and irresponsible spending habits. It was therefore submitted by Mr Kessaram that the household food bill ought, therefore, to be reduced substantially. A more reasonable amount would be to reduce the food bill by twenty percent. This would produce a figure of $960 per month for the entire household. The child's share of this bill should not be calculated at half, but rather at a third of the total, i.e., $320 per month.

58. Mr Kessaram also referenced other examples of the Mother's alleged excessive spending which were confirmed by her during her cross-examination as follows:

a) On or about 1 March 2021, the Mother travelled to the USA for her grandmother's funeral. While in the USA she purchased goods and services totaling $3,920. The duty she paid to HM Customs on her arrival back in Bermuda was $720 and she was required to pay an excess baggage fee of $225 to the airline.

b) On 4 and 15 November 2021 the Mother purchased cryptocurrencies in the sums of $1,004.30 and $1,068.21 respectively. The Mother confirmed this investment was lost.

c) On 11, 13 and 19 October 2021, the Mother purchased furniture from Wayfair in the USA for $1,077.21, $2,510.50 and $974.44 respectively. The shipping costs for this furniture was paid on 17th November 2021 by the Mother in the sum of $3,030.09. The Mother's evidence is that when the child who was residing with her moved out of her current residence, that the daughter took all of the bedroom furniture with her, so she was required to buy more furniture otherwise she would "*have to sleep on the floor*". The Mother was very emotional when giving her evidence about these purchases.

d) On 15 December 2021 she spent $995.55 for jewelry at Crissons which she confirmed were Christmas presents for her mother and children.

e) In the nine month period from 1st January 2021 to 30th August 2021 the Mother spent $6,210 (i.e., $690 per month) to store inflatable castles (which she had purchased at a cost of between $15,000 and $17,000 with the intent of starting a business). The inflatables are now stored in someone's garage at no cost. No money was earned using the inflatables.

f) The Mother has been funding the living/educational expenses of other family members, namely:

i. Her grandson, in respect of whom she paid $5,700 in the period from 1st January 2021 to 31st May 2022 for babysitting services (to Account No. 004-078184-011) and $7,948.13 to the child's mother, J1 (to Account No. 010-697886-011); but received reimbursement from J1 (from Account No. 010-697886-011) of $8,463 leaving a shortfall of $5,185.13.

ii. Her nephew, who was overseas attending university, to whom she paid $7,536.01, but did not appear to receive full reimbursement based on deposits made into her account.

59. The monthly sum of $725 for Z's medical expenses which she averred were co-payments per month for medical services was also disputed by the Father. Under cross- examination she retracted her previous testimony and admitted that it was in fact the cost per month of a separate policy of medical insurance for Z based on quotes obtained by the Mother from private insurance companies. The child's medical expenses are now covered under the Mother's employer's group health insurance plan. In the circumstances, the $725 monthly figure is no longer relevant. The actual figure will be one based on the co-pay amounts that the Mother pays under the group health plan. There is no evidence before the Court as to the co-pay amounts the Mother may have to make for Z in the future under her existing health insurance. The Mother sought to base the calculation on the co-pay amounts paid in 2021 when she was employed by Swiss Edge. The assumption underlying this calculation is that the co-pay amounts the Mother paid under her previous employer's group health plan will be the same as what she will have to pay under her current policy.

60. During the Mother's cross-examination she estimated that she would incur the following co-pay expenses for Z which I have calculated on a monthly basis in accordance with the evidence she provided:

a. Psychologist: 2 times per month at $100 per visit		$200.00
b. Vision: $350 p.a. (two visits per year at$175 per visit)		$29.17
c. Chiropractor (8 visits in 2021 at $22 per visit)		$14.67
d. Dental ($122.25 per visits, twice per year)		$20.38
e. GP ($55 per visit)[9]		$55.00
	Total	**$319.22**

61. Mr Kessaram submitted the following would be reasonable medical expenses for Z on a monthly basis:

a. PsyNeu: 6 visits p.a. @ $100 per visit		$50.00
b. Vision: $350 p.a. (two visits p.a. @ $175 per visit)		$29.17
c. Chiropractor $180 p.a.		$15.00
d. Dental ($122.25 p.a.)		$10.19
	Total	**$104.36**

62. The Father's position is that taking into account what he says represents the true and reasonable position as it relates to Z's monthly expenses should be accepted as follows:

Rent	Nil
Belco	$175.00
One Communications	$112.00
Car Gas	$93.33
Food	$320.00
School Expenses	$112.58
Medical	$104.36
Clothes	$300.00
Entertainment	$150.00
Contingencies	$200.00
Total	**$1,567.27**

63. Based on the above expenses, the Father submitted that his reasonable contribution would be one-third due to the discrepancies between the parties' earning capacities and would total $522.42 per month. Therefore, the monthly sum of $578 should be reduced to $522.42 and the $1,500 should be discharged with this order being effective when the Mother ceased paying the mortgage in January 2019.

[9] The Mother was unable to estimate how many visits are required; however, she stated the child has had ongoing medical issues which has caused her to visit her GP more frequently. I have therefore, estimated 1 visit per month based on this.

64. The Mother's position was diametrically opposed to the Father's which, based on the expenses and the Father's higher monthly salary, the monthly payments of $578 should be increased to $1,950 in addition to the Father continuing to pay what she considered spousal maintenance of $1,500 per month; i.e. a total of $3,450 per month.

THE LAW

65. Section 35 of the Matrimonial Causes Act 1974 (**the Act**) provides the Court with the statutory jurisdiction to vary an order in relation to ancillary relief applications. Section 35 sets out the following:

> "***Variation discharge, etc., of certain orders for financial relief***
>
> 35 *(1) Where the court has made an order to which this section applies, then subject to this section, the court shall have the power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.*
>
> *(2) This section applies to the following orders:*
> ...
> *(b) any periodical payments order;*
> ....
>
> *(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.*"

66. Now addressing the circumstances in which the Court will exercise its powers under Section 35 of the Act, in the case of *A v A* [2016] Bda LR 2, Hellman J summarized at paragraph 26 of his judgment as follows:

> "*26. ...Where, as in the present case, the order is very recent, the Court is unlikely to exercise that jurisdiction unless there is a good reason to do so, e.g. because there has been a material change in circumstances or material non-disclosure by one of the parties. If the Court does decide to reopen the order, then it may do so in whole or in part, giving such weight to the existing order as it sees fit.*" [Emphasis added]

67. If accepted there has been significant change in circumstances which would cause me to consider varying the sum of child maintenance, there is a statutory obligation to have regard to all the components set out in Section 29 of the Act. The first consideration is given to the welfare whilst a minor of any child of the family. When assessing "needs" courts will have regard, in particular, to the matters set out in section 29(2):

> *"29 ...*
> *(2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—*
>
> *(a) the financial needs of the child;*
> *(b) the income, earning capacity (if any), property and other financial resources of the child;*
> *(c) any physical or mental disability of the child;*
> *(d) the standard of living enjoyed by the family before the breakdown of the marriage;*
> *(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;*
>
> *and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)(a) and (b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him."* [Emphasis added]

68. In addition to the factors taken into consideration in relation to the child set out in Section 29(2) of the MCA, I must then consider the circumstances of the parties, the elements of which are set out at Section 29(1) as follows:

> *"29 (1) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters -*
>
> *(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*

(b) *the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*

(c) *the standard of living enjoyed by the family before the breakdown of the marriage;*

(d) *the age of each party to the marriage and the duration of the marriage;*

(e) *any physical or mental disability of either of the parties to the marriage;*

(f) *the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contributions by looking after the home or caring for the family;*

.....

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other." [Emphasis added]

69. However, the case *Morris* v *Morris* [2016] EWCA Civ 812 confirmed the court does not have an obligatory duty to carry out the exercise of considering each factor set out in Section 29 afresh. Paragraphs 90 and 92 of *Morris* v *Morris*, state as follows:

> "*90. Further, although not referred to during the course of the hearing, the overriding objective requires the court to deal with cases proportionately. Thus, although section 31(7) requires the court to have "regard to all the circumstances of the case", this is not the same as requiring the court to undertake the section 25 exercise de novo...*
>
> ...
>
> *92. The court has "enormous flexibility" to determine the "nature" of the substantive hearing. This includes, as Mr Duckworth accepts, focusing on the relevant factors and in my view also, where appropriate, conducting a light touch review. Specifically, to require the court to undertake the exercise de novo would be contrary to the overriding objective and the obligation for a case to be dealt with proportionately...*" [Emphasis added]

70. In the case of *Buehrlen v Buehrlen* [2017] EWHC 3643 (Fam) the High Court of England and Wales (Family Division) dealt with an appeal against a case management decision which refused the husband's application to adduce expert evidence as to the wife's earning capacity. The High Court found that it was not necessary to adduce expert evidence. The Court explained in its judgment how it assesses earning capacity at paragraph 20:

"*20. On any application for financial remedies, the judge has to apply s. 25 of the Matrimonial Causes Act and has to make an assessment of the earning capacity of both parties, including any increase in such earning capacity as it would be reasonable for the litigant to take steps to acquire in the foreseeable future. That is what judges do every single day of the week. How do they do it? They do it by listening to cross examination; by the provision of advertisements for suitable jobs; by the results of job applications; by considering the CVs of the parties and the like. They assess all this evidence*".

71. Regarding the question of how child maintenance payments should be apportioned between parents, the Court of Appeal in *M v W* [2010] Bda LR 87 considered this issue on appeal as it related to the apportionment granted in the Supreme Court. The case concerned wealthy parents who enjoyed a high standard of living, albeit the application was made under the Minors Act 1950 and the Children's Act 1998, it is accepted that the same principles are applied to applications under the Act. It was held that neither adherence to a rigid principle of proportionality, nor a contribution by each parent on the basis of equality should be strictly followed. The Court of Appeal confirmed that when exercising its discretion, the court must consider all the circumstances. Justice of Appeal Ward concluded as follows:

"*17. ... the Court has to consider more than the needs of the child. The Children Act 1998 section 36.1C(4) lists a number of factors which must be taken into account apart from needs, namely assets of parents, capacity to provide support, age, physical and mental health, other legal obligations, etc.*

18. When those factors are taken into account, we are of the opinion that neither adherence to a rigid principle of proportionality nor a contribution by each parent on the basis of equality should be strictly followed. In exercising its discretion the Court must consider all the circumstances.

...

40. Pursuant to section 36.1C(3) of the Children Act 1998 both parents have a joint financial responsibility to maintain the child and the Court must apportion that obligation between the parents according to their relative abilities to contribute to the performance of their obligations.

41. As it is a joint obligation, the correct starting point is a 50/50 split. But that has to be adjusted, as necessary, after all the listed factors have been taken

into account. Nor is the apportionment to be done according to a rigid mathematical formula or calculation based on the percentage that one parent's income bears to the other. Rigid application of such a formula would be to ignore the other considerations mentioned in section 36.1C(4) of the Act and the broad discretion given."

72. In relation to the jurisdiction to backdate variation orders, Mr Kessaram relied on the UK Court of Appeal case of *Grey v Grey* [2009] EWCA Civ 1424. Whilst this case largely dealt with the legal principles of co-habitation post-separation and post-divorce, Lord Justice Wall addressed the legal principle for the backdating of a variation as follows:

> "***[60]*** *My second area of puzzlement relates to the forthcoming application to vary. My understanding has always been that the court has an unfettered discretion to backdate any variation – if necessary, beyond the date of the making the application to vary: - see Warden v Warden [1982] Fam 10, [1981] 3 WLR 435 at 14A to D and 438 respectively per Ormrod LJ (Warden). I am fortified in this view by para 18.25 of the current edition of Rayden & Jackson on Divorce and Family Matters (Butterworth's, 18th edn, 2005) which states:*
>
> > *The court, in so far as its own orders are concerned, has an almost unrestricted power to vary them retrospectively and, moreover, to backdate any variation which it makes in a pre-existing order beyond the date of the application for variation.*" [Emphasis added]

FINDINGS

73. I fully have considered all of the affidavit evidence, the parties' *viva voce* evidence as well as their respective submissions. I accept there has been a significant change in the financial circumstances of both parties since this matter was last considered by the Court in 2018 and as such warrants there to be a variation of the child maintenance. Notwithstanding there not being a requirement that the issue of maintenance be considered *de novo* (see *Morris* v *Morris*) the significant change of income of the parties as well as the expenses for the child, required nothing less than to consider all of the statutory factors set out in Section 29 of the Act.

74. The Father's evidence was helpful and I found him to be truthful when being cross-examined by the Mother. The Mother on the other hand presented a great deal of evidence

that was irrelevant to this application which appears to be fueled by her clear disdain for the Father. This was made even more apparent given the content of her submissions which included allegations of abuse against the Father. I found the Mother overall, to be unnecessarily defensive and difficult during her cross-examination which did not give me comfort in the accuracy of her answers.

75. I accept that the Father's monthly income from his employment at the Bermuda Fire Service should include the hours of overtime he works. Whilst the Father's overtime hours may not be guaranteed, the reality is that his overtime has been regular and consistent since January 2021. As such, I accept that the net monthly income which should be attributed to him is $9,070.09[10]. In the event that the Father's monthly overtime drops significantly and consistently, this matter can be reviewed.

76. As it relates to AKAYO, I accept that the Father does not receive a salary and that no dividends have been distributed since 2018. However, it is clear that he derives a benefit from the time he works for AKAYO given the payments of some of his personal expenses from AKAYO's savings account as well as on AKAYO's credit card. On the flip side, I accept the Father pays a number of expenses from his personal account for AKAYO from which a review of the disclosed bank statements confirm he has not been reimbursed by AKAYO. As such, I do not accept AKAYO should be considered as a source of income for the Father. I would, however, encourage the Father to be more diligent regarding the accounting for AKAYO so there is a clear distinction between his personal expenses and that of the business.

77. Having received evidence of the reduction of the Father's rent and loan repayment during the hearing, I find the Father's monthly expenses of $5,256.12 to be reasonable. I also acknowledge the debts owed by the Father of $100,000 for AKAYO and $95,000 in outstanding legal fees.

[10] See details of calculation at paragraph 23.

78. The Mother's current monthly income from both her full-time and part-time positions total $6,087.97[11]. I do believe there is teeth in Mr Kessaram's submissions with respect to the Mother's earning capacity and as such accept the Mother's earning capacity is significantly higher than this. The Mother produced no evidence of her attempts to find comparable employment. It is reasonable for the Father to expect that she would adduce evidence of her job searches, copies of advertisements of jobs that she applied for, a copy of her resume, etc. None of those things were produced in evidence. Indeed, the Mother was either unable or unwilling to provide any information as to how many jobs she had applied for, when she commenced her job search during her cross-examination. It is implausible for someone to not be able to recall this information.

79. The evidence presented regarding the Mother's spending does not appear to have changed since the hearing before me in 2018, in that the Mother's expenditure continues to be frivolous and quite frankly irresponsible. I reiterate my findings from my Ruling at paragraphs 30 to 32 as follows:

> "*30. The stark reality is that when parties' divorce it is often the case, that the end result is the family is in a worse off financial position. Parties are required to support two households on two incomes rather than one household on two incomes. At paragraph 35 of the Judgment, Hellman J stated as follows:*
>
> > "*35. Section 29 contains a legislative steer requiring the Court to exercise these powers so as to place the parties and the children of the marriage, so far as it is practicable and just to do so, in the financial position in which they would have been if the marriage had not broken down and the parties had properly discharged their financial obligations and responsibilities towards each other. Often, the parties and the children of the marriage will be in a worse financial position as a result of the divorce that they would have been had they remained together."*
>
> *31. The circumstances of this case clearly evidence the consequential financial detriment both parties have experienced following the divorce. The combined income of the parties are far from capable of covering their chosen lifestyle expenses for the three children of the family let alone their own household expenses as well as his and her own personal expenses. This*

[11] See breakdown and calculation at paragraph 39.

was undoubtedly the same position the parties were in when they appeared before the Courts in 2016.

32. *It is apparent the Mother has not accepted the reality of the parties' financial tribulations. Whilst I am most sympathetic of her frustrations and her desire to fully fund her children's tertiary education, in some instances this is not achievable. Both parties are doing their best with his and her respective financial resources based on the evidence presented. Having said this, the Mother's use of $7,000 for a trip when there are arrears of a mortgage, an outstanding education loan and ongoing education expenses for the children is not the best allocation of these funds when resources are limited.*" [Emphasis added]

80. It is inexplicable that the Mother has neither made any mortgage payments, nor "rental" payments since January 2019 to date, when she had a net, monthly salary of $12,333.33, plus an additional $2,028 in child maintenance from the Father which amounts to $14,411.33 per month. Albeit, the Mother was unemployed from 1 October 2021 to 23 May 2022, she did receive a redundancy payment of approximately $75,000 in September 2021.

81. Furthermore, the Mother's assertion that a third party with no interest in a property would carry out renovation costs at his or her own expense to the sum of almost $180,000 and to not receive any repayment of this sum for a period of ten months (at $3,000 per month) is far-fetched to say the least. Based on the Mother's evidence of her non-payment of the mortgage since January 2019 as well as her non-payment of the alleged sum owed to Mr Davis, I accept there is no contractual obligation on the part of Mother to pay $3,000 per month for "rent" or any amount for that matter for her use and occupation of the property. Now that the property is habitable, it is likely that no further amounts will be paid for the use and occupation of the property. I fully accept Mr Kessaram's submission that the monies were spent to make the property livable because the Mother knew she would sooner or later have to vacate the FMH for non-payment of the mortgage payments. She started to fix up the property in 2020 acting on her own initiative for her own benefit knowing that she would be able to reside there for an extended period of time without payment, if not indefinitely. Moreover, I find the Lease Agreement is a sham in that, the Mother had no authority to enter into that agreement on behalf of her grandmother and I reject the notion

that the grandmother had any knowledge of the Lease Agreement. Therefore, I do not accept the Mother's evidence in relation to her "rental" payments and as such remove this as an item in her expense listing.

82. The other expenses which I accept are excessive are in relation to the child's monthly medical payments as well as food. I set out below the monthly expenses which in my view are fair and reasonable to be attributed to the child:

Expense	Amount ($) per month	Child's Portion
Rent	Nil	Nil
BELCO	350.00	175.00
One Communications		112.00
Car – gas	280.00	140.00
Food	1,000.00	500.00[12]
School Expenses (2021/2022)		233.32
Medical		320.00[13]
Clothes		300.00
Entertainment		150.00
Contingencies		200.00
Total		**$2,130.32**

CONCLUSION

83. Applying my findings to the legal principles cited, I dismiss the Mother's Variation Application seeking an increase in the monthly child maintenance payments. I will grant the Father's Variation Application to the extent that the monthly child maintenance shall be reduced to $1,065. For absolute clarity, this calculation is derived as follows:

i) The finding that both payments to the Mother by the Father ($578 and $1,500 respectively) are child maintenance payments which bring the Father's current monthly obligation to $2,078).

[12] Reduced from $600 per month.
[13] Reduced from $725 per month.

ii) Notwithstanding the Father is currently earning more than the Mother by approximately $3,000 per month, I have taken into account the Mother's earning capacity is significantly more than what she is currently earning. As such, it is fair and reasonable that Z's expenses are shared equally between the parties; i.e. $2,130[14] divided by 2, equals $1,065.

iii) The Mother continued to earn $12,333.33 net per month until September 2021 as well as received a redundancy payment of $75,000 at that time. The redundancy payment is the equivalent of six months of her salary which must be considered that the Mother was effectively still receiving an income through March 2022. Therefore, the only period where the Mother was not receiving an income was for the period 1 April to 23 May 2022 which is when she commenced her current employment.

84. Furthermore, in accordance with my unfettered discretion to backdate a variation of payments[15], the reduced sum of child maintenance shall be backdated to be effective from January 2019 which is when the Mother ceased paying the mortgage altogether and also was not paying for her current living accommodations. The Mother cannot be allowed to benefit from representations made to the Court in 2018 in respect of the variation of maintenance being which was determined on the Mother's evidence that she was making payments of $2,275.00 per month towards the mortgage and shortly thereafter ceased payments altogether.

85. Moreover, I note that at paragraph 37 of my 2018 Ruling, I also suggested that the parties reconsider the level of periodical payments with effect from 1 June 2019:

> *"37. As an application was not made for the variation of the periodical payments of $1,500 per month, I am not making any variation to these payments. The*

[14] See paragraph 82.
[15] *Grey v Grey*

level of periodical payments for the benefit of the Petitioner may be a matter the parties should consider revisiting after the next reduction in child maintenance payments to take effect on 1 June 2019." [Emphasis added]

86. Albeit, my interpretation of the $1,500 monthly payment was incorrectly defined as spousal maintenance for the benefit of the Mother in 2018, I still contemplated that this should be reviewed in June 2019. Notably by that time, the Mother had ceased paying the mortgage altogether for the previous five months; i.e. from January to May 2019. The fact that the Mother at no time advised the Father from January 2019 that she ceased paying the mortgage in my view demonstrates the Mother's conscious intention to be deceptive, not only to the Father, but as well to the Courts as this evidence was not disclosed until after the hearing before Justice Stoneham. The Mother's point that the Father has the ability to obtain information regarding the mortgage as it is joint, is irrelevant. There is no onus on the Father to have to continually verify the Mother's payment of the mortgage.

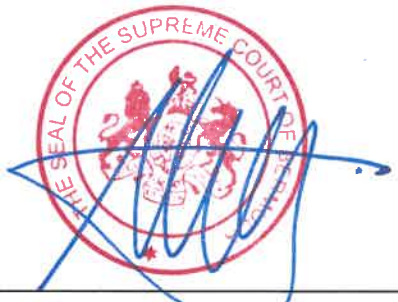
87. The result of the backdating to January 2019 will be that the Father will be owed monies by the Mother for the difference in payments. This sum, which I will leave in the hands of parties to calculate and agree between themselves, shall be set off against the Father's monthly child maintenance payments moving forward until such time as the off-set is extinguished.

88. Considering all of the above in relation to the Mother's spending habits, her conduct as it relates to her lack of disclosure of the non-payment of the mortgage, and the findings surrounding her current living circumstances, there can be no other option, but to award costs to the Father in respect of both applications. Costs are therefore awarded to the Father on a standard basis, to be taxed if not agreed. Once the sum of costs has been determined to be owed to the Father, this should also be set-off against his monthly child maintenance payments until the sum has been paid in full.

89. Furthermore, I will discharge the Father's attachment of earnings until such time as the child maintenance payments will recommence having cleared the set-offs awarded in paragraphs 87 and 88 above.

90. I invite Counsel for the Father to prepare the order reflecting the terms of this ruling for my review and consideration.

15 February 2023



ALEXANDRA WHEATLEY
ASSISTANT JUSTICE OF THE SUPREME COURT