IN THE SUPREME COURT OF GRENADA

AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

GDAHMT2017/0137

BETWEEN:

NEIL BATCHELER

Petitioner

and

TRACY BATCHELER

Respondent

APPEARANCES:

Ms. Afi Ventour de Vega and Ms. Nicole St. Bernard for the Applicant/Petitioner
Ms. Shireen Wilkinson and Ms. Rosana M. John for the Respondent

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2019: May 20th
2019: June 6th

JUDGMENT

[1] **SMITH J**: This is not the typical property adjustment application in that, save for a few minor household effects, there is no matrimonial property for distribution between the parties. The respondent admits that she is able to live comfortably on her salary and rental income from a property she co-owns with a third party. It raises an issue that is still an evolving area of matrimonial proceedings, namely, whether, in a situation where there are no matrimonial assets, one party can claim a share of the other's pre-marital asset, not on the basis of need but on the basis of the sharing principle. Although the parties have already been divorced, I shall,

for convenience, refer to the petitioner as “the husband” and the respondent as “the wife”. I shall also use the terms “non-matrimonial property” and “pre-marital assets” interchangeably.

Background

[2] The parties are both originally from the United Kingdom and were married there on 27th March 1999. They have no children. Prior to the marriage, they each separately owned property in the United Kingdom. The husband owned a house at Hadrian Street, Greenwich, London and the wife co-owned a flat in Brixton, London, with a third party. Neither party’s name appears on the other’s title deed or on property insurance documents. Prior to the marriage, the wife was employed at the husband’s business and they resided at his house on Hadrian Street for two years but never resided there after their marriage. It appears that shortly after their marriage, the wife quit her job, the husband sold his share of the business and they spent the next twelve years living on a boat and sailing around Europe and the Caribbean. Theirs was therefore not the typical married couple’s path of making a matrimonial home, raising children, pursuing a career path and accumulating marital assets. Their boat was their matrimonial home. Neither was employed during the period 2009-2011 when they were travelling the world. They both lived off their respective savings and income generated from the rental of their respective properties, which they pooled into a joint account to meet their expenses.

[3] They both looked after the maintenance and operation of the boat during that period of their marriage. The couple’s life of leisure ended sometime in 2011; the boat was sold for EC$473,123.20; they moved onshore in Grenada and eventually obtained employment; the proceeds of sale of the boat was used (for the most part) to pay for their living expenses, the rental of an apartment, the purchase of two vehicles and occasional trips back to the United Kingdom. They shared equally in the proceeds of sale of their only marital asset – their maritime

matrimonial home. They separated in April 2015 and were granted a decree absolute on 8th December 2018.

[4] Upon separation, they entered into a financial arrangement whereby the husband agreed to pay the wife the monthly sum of £750 from his rental income and she in turn agreed to pay him £200 from hers. In these proceedings, they attribute different reasons for this arrangement. According to the husband, this was done to ensure that neither party would suffer financial hardship from their separation. According to the wife, this was consonant with their treatment of their respective rental incomes as fruits of the marriage and the intermingling of their assets.

[5] The parties had not, however, agreed on how long the said financial arrangement would last. The husband, consequently, filed ancillary proceedings on 17th May 2018 for a lump sum maintenance sum to be paid by him to the wife so as to achieve a clean break from her.

[6] By order dated 9th November 2018, the husband was ordered to pay to the wife the sum of £550 per month commencing on the 30th day of November 2018 and continuing thereafter on the last business day of every month until the 30th day of November 2020. No order was made in respect of the parties' respective property in the United Kingdom. On 16th November 2018, the husband applied for declarations that: (1) there is no matrimonial property to be divided between himself and the wife which could be the subject of a property adjustment order under section 24 of the **Matrimonial Causes Act 1973** ("the Act"); (2) the wife has no legal or equitable interest in the property situate at Hadrian Street in the United Kingdom and held in the sole name of the husband; and (3) the husband has no legal or equitable interest in the property situate at Brixton in the United Kingdom which is co-owned by the wife and a third party.

[7] The wife admits that she and the husband separately acquired their respective properties in the United Kingdom prior to their marriage and neither contributed to

the acquisition of the other's property, but denies the husband's assertion that the properties were treated as separately owned and never considered matrimonial assets. She does not claim to be entitled to one-half of the husband's property. Her contention is that, given the length of their marriage and their respective contributions towards the welfare of the family, she is entitled to a half share in the accrued equity in the husband's property and he is likewise entitled to a half share in the accrued equity of hers. Specifically, her claim is to a half share in the increase in value of the property from the time of the marriage to the time of their separation. She contends that this approach to distribution is fair and aligns with the principle of sharing the fruits of the matrimonial partnership. She therefore asks the court to order an evaluation of their respective properties.

Issues

[8] The following issues arise for court's determination:

(1) Can pre-marital assets be the subject of a property adjustment order?

(2) In what circumstances can pre-marital assets be made the subject of a property adjustment order?

(3) Where there are only pre-marital assets, does the sharing principle apply?

(4) Do the circumstances of this case justify the making of an order in respect of the parties' pre-marital assets?

(5) If yes, how should the parties' respective interest in the pre-marital assets be computed and distributed?

[9] The unusual circumstances of this case necessitate a departure from what Sir Mark Potter, P. of the English Court of Appeal in **Charman v Charman (No. 4)**,[1] described as the starting point of every inquiry in an application for ancillary relief, namely, the financial position of the parties. The learned president stated that the inquiry is always in two stages, namely, computation and distribution. A court should first consider the property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable

[1] [2007] EWCA Civ 503.

future. In the case at bar, it seems to me that some of the issues raised in this application have to be determined before proceeding to computation and distribution.

The Statutory Framework

[10] Sections 24 and 25 of the Act are the applicable law to be considered by the court on an application for ancillary relief. They provide as follows:

> "**Property adjustment orders in connection with divorce proceedings, etc**.
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> 24. - (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say –
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> (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
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> (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
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> (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage …;
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> (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement …;
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> subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders, for a transfer of property in favour of children who have attained the age of eighteen.
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> (2) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.
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> (3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.

Matters to which court is to have regard in deciding how to exercise its powers under sections 23 and 24.

25. - (1) It shall be the duty of the court in deciding whether to exercise its powers … to have regard to all the circumstances of the case … the court shall in particular have regard to 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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
(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 contribution made by looking after the home or caring for the family;
(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;"

What is the Judicial Objective?

[11] It is settled law that, in matters of this nature, the ultimate judicial objective is to achieve a fair outcome. But in cases like this what is fairness?

[12] In **White v White**,[2] Lord Nicholls stated:

> "Features which are important when assessing fairness differ in each case. And sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder."

[2] [2001] 1 AC 596, at p 599.

[13] In the English House of Lords decision of **Miller v Miller; McFarlane v McFarlane**,[3] Lord Nichols stated:

> "Fairness is an elusive concept. It is an instinctive response to a given set of facts. Ultimately it is grounded in social and moral values. These values or attitudes can be stated. But they cannot be justified or refuted, by any objective process of logical reasoning. Moreover, they change from one generation to the next. It is not surprising therefore that in the present context there can be different views on the requirements of fairness in any particular case."

[14] A critical component of fairness is the sharing principle. In paragraph 16 of **Miller**, Lord Nicholls stated:

> "This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that 'husband and wife are now for all practical purposes equal partners in marriage': R v R [1992] 1 AC 599, 617. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

Distinguishing matrimonial from non-matrimonial property

[15] If each party to a marriage, upon separation, is entitled to an equal share of the assets of the partnership of marriage, the question which naturally arises is: what is considered as the assets of the partnership of marriage? At paragraph 22 of **Miller**, Lord Nicholls defined matrimonial property as "the financial product of the parties' common endeavor", while Lady Hale, at paragraph 141 of that same judgment, used the phrase "the fruits of the matrimonial partnership".

[16] In the English Court of Appeal decision of **Charman v Charman (No. 4**),[4] matrimonial property was described as "the property of the parties generated during the marriage otherwise than by external donation". Moylan LJ, in the

[3] 2006] UKHL 24 at para 4.
[4] [2007] EWCA Civ 503 at para 66

English Court of Appeal decision of **Hart v Hart**,[5] defined non-matrimonial property "as being assets (or that part of the value of an asset) which are not the financial product of or generated by the parties' endeavors during the marriage. Examples usually given are assets owned by one spouse before the marriage and assets which have been inherited or otherwise given to a spouse typically from a relative during the marriage."

Can pre-marital assets be ring-fenced?

[17] In **K v L**,[6] Wilson L.J. tersely stated, at paragraph 2 of that judgment: "We know that non-matrimonial property belonging to one spouse can be awarded to the other to the extent that the other needs it…"

[18] In **Charman v Charman**, Sir Mark Potter P stated at paragraph 66 of his judgment:

> "To what property does the sharing principle apply? The answer might well have been that is applies only to matrimonial property, namely the property of the parties generated during the marriage otherwise than by external donation; and the consequence would have been that non-matrimonial property would have fallen for redistribution by reference only to one of the two other principles of need and compensation to which we refer in para [68], below. Such an answer might better have reflected the origins of the principle in the parties' contributions to the welfare of the family; and it would have been more consonant with the references of Baroness Hale of Richmond in *Miller* at paras [141] and [143] to 'sharing …the fruits of the matrimonial partnership' and to 'the approach of roughly equal sharing of partnership assets'. We consider, however, the answer to be that, subject to the exceptions identified in *Miller* … the principle applies to all the parties' property but, to the extent that their property is non-matrimonial, there is likely to be better reason for departure from equality."

[19] The above authorities clearly demonstrate that pre-marital assets cannot be ring-fenced and can be the subject of a property adjustment order.

In what circumstances can pre-marital assets be transferred?

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[5] [2017] EWCA Civ 1306 at paragraph 2.
[6] [2011] EWCA Civ 550

[20] The answer to this question seems to be: when it has acquired the character of matrimonial property. In the English High Court decision of **JL v SL (No. 2)**,[7] Mostyn J stated as follows:

> "18. Matrimonial property is the property which the parties have built up by their joint (but inevitably different) efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination.
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> 19. These arguments do not apply to property received or created outside the span of the partnership, or gratuitously received within the partnership from an external source. Such property has little to do with the endeavor of the partnership and the equal sharing principle as explained by Lord Nichols just cannot apply to it on any moral or fair basis. However, as I will explain, <u>pre-marital property not uncommonly becomes part of the economic life of the spousal partnership and thus acquires a matrimonial character giving rise to a (not necessarily equal) sharing claim in relation to it</u>. (Underlining mine)
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> …
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> 21. … In my decision of S v AG [2011] 3 FCR 523 [2011] EWHC 2637 (Fam) I in effect updated my compendium in N v F. I stated as para 7:
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> > "Therefore, the law is now reasonably clear. In the application of the sharing principle (as opposed to the needs principle) matrimonial property will normally be divided equally …By contrast, it will be a rare case where the sharing principle will lead to any distribution to the claimant of non-matrimonial property. <u>Of course an award from non-matrimonial property to meet needs is commonplace, but as Wilson LJ has pointed out we await the first decision where the sharing principle has led to an award from non-matrimonial property in excess of needs</u>."
>
> 22. <u>Given that a claim to share non-matrimonial property (as opposed to having a sum awarded from it to meet needs) would have no moral or principled foundation it is hard to envisage a case where such an award would be made. If you like, such a case would be as rare as a white leopard</u>." (Underlining mine)

[21] How does a court determine if pre-marital assets have acquired the character of matrimonial property? The answer is in the statement of Mostyn J – when it becomes part of the economic life of the spousal partnership. The learning in the

[7] [2015] EWHC 360 (Fam).

case of **JL v SL**[8] is that a court looks to see whether the non-matrimonial property has become part of the economic life of the marriage, utilised, converted, sustained and enjoyed during the contribution period. The court considers the duration of the marriage and looks to see whether there has been a mingling of the non-matrimonial property with the matrimonial property.

[22] In **Miller**, Lord Nicholls stated as follows:

> "[23] The matters stand differently regarding property (non-matrimonial property) the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding non-matrimonial property was summarised in **White v White** [2001] 1 All ER 1 at 14, [2001] 1 AC 596 at 610:
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> > 'Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property.
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> ….
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> [25] … To this non-exhaustive list should be added, as a relevant matter, the way the parties organized their financial affairs. (Underlining mine)

[23] It would appear, from the learning above, that there are no hard and fast principles to apply to non-matrimonial property. It is for the judge, in each case, to decide what weight should be attributed to the fact that assets were owned by a spouse before the marriage. The following factors are relevant:

(1) When and where did the asset originate from and what is its nature and value?

(2) How have the parties treated the asset over the course of the marriage?

[8] supra, n 4 at para 28.

(3) Can the parties' needs be met without recourse to the asset?

[24] I must therefore examine the evidence to find the answers to the questions set out above that will inform my final disposition. In her affidavit filed 28th February 2019, the wife states as follows:

> "14. …I am currently employed as an Office Manager at Island Dreams Yacht Services. I earn a decent income from which I can adequately cover my living expenses. I also receive monthly maintenance from the Petitioner in the sum of Five Hundred and Fifty Pound Sterling which I have been ordered by this Honourable court to receive until 30th November 2020. Moreover, while I receive rental income from the property, which I co-own in the UK, about one third of this sum is used towards paying the mortgage on the property.
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> 15. …the marriage produced no children, thus my needs are in respect of myself only. As it pertains to our standard of living, we lived a simple but comfortable lifestyle. We spent the majority of our marriage sailing throughout Europe and the Caribbean and in the last five years of our marriage we lived on shore in rented accommodation in Grenada.
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> 16. I am currently 52 years old and the Petitioner is 56 years old… There are no special physical or mental disabilities of either party to the marriage and there was no bad conduct by either party throughout the marriage."

[25] It is readily apparent from the wife's affidavit that her claim to a share of the accrued value of the Hadrian Street property is not based on need. This is acknowledged in the written submissions filed on her behalf, which states:

> "The Respondent does not establish her case predominantly on the pillar of need as she is 52 years old and gainfully employed as an Office Manager in Grenada. She is able to live comfortably on her current salary and receives rental income from her UK property. Given that herself and the Petitioner moved onshore prior to the breakdown of the marriage, her current standard of living is not very different from that enjoyed prior to the breakdown of the marriage. Moreover, she has no physical or mental disability. While need is a determinative factor in cases involving pre-matrimonial assets, it is not the sole factor in distribution."

Where there is only pre-marital property, does the sharing principle apply?

[26] If, as the wife acknowledges, there is no matrimonial property to be divided, she can live comfortably on her salary and rental income, has no disabilities and

currently enjoys the same standard of living as she did prior to the breakdown of the marriage, can she claim a share in the accrued value of the husband's pre-marital property based on the sharing principle?

[27] Mostyn J's statement in **JL v SL** (No. 2) bears repetition. He stated that given that a claim to share non-matrimonial property (as opposed to having a sum awarded from it to meet needs) would have no moral or principled foundation it is hard to envisage a case where such an award would be made. If you like, such a case would be as rare as a white leopard. He stated that there was no decided case in which the sharing principle has led to an award from non-matrimonial property in excess of needs. The concept that non-matrimonial property should only be resorted to in order to meet needs resonates, in my view, with fairness, principle and practicality. But it runs counter to the 2007 House of Lords judgment in **Charman v Charman** which suggests that the sharing principle applies to non-matrimonial property.

[28] The 2011 English Court of Appeal decision of **K v L**[9] concerned the application of the sharing principle to non-matrimonial property. Wilson LJ stated:

> "What was much more interesting was the moment during the hearing when we asked Mr. Pointer to show us a reported decision in which the assets were entirely non-matrimonial and in which, by reference to the sharing principle, the applicant secured an award in excess of her or his needs. He confessed to be unable to do so. Such a decision will no doubt be made – but not in this court today."

It appears that, notwithstanding the statement in **Charman** that the sharing principle applies to all property, the court in **K v L** declined to apply it in circumstances where (a) such an award would be in excess of needs; and (b) the property was entirely non-matrimonial.

[29] In the 2017 Court of Appeal judgment of **Hart v Hart**, Moylan LJ examined (without resolving) the conflict between **Charman** and **K v L**:

[9] [2011] EWCA Civ 550.

“63. The court's approach to non-matrimonial property has developed in the years since the decision in *White*. In that case such property was viewed as a contribution made by one spouse. The weight to be given to it would depend on the circumstances – such as the "nature and value of the property, and the time when and the circumstances in which the property was acquired": Lord Nicholls (p. 994).

64. The introduction of the sharing principle in *Miller* raised the issue of what property was within the scope of this principle. The House of Lords did not directly answer this question but approached the exercise of the statutory discretion from the same perspective as that set out in White, namely whether the existence of such a contribution justified a departure from equality. It is, however, clear from *Miller* that, as expressed by Lord Nicholls, "there is a real difference, a difference of source, between" matrimonial and non-matrimonial property. Accordingly, when exercising the statutory discretion, the court did not have to "treat all property in the same way": Lord Nicholls (paragraph 22). Lady Hale observed that, in *White*, "it was recognised that the source of the assets might be a reason for departing from the yardstick of equality" though "the importance of the source will diminish over time" (paragraph 148).

65. A possible interpretation of *Miller* could have been that the sharing principle applied only to matrimonial property. This was, however, not the conclusion reached by this court in *Charman*. The principle applies to "all the parties' property but, to the extent that their property is non-matrimonial, there is likely to be better reason for departure from equality" (paragraph 66).

66. Having said that, I am not aware of any case decided since *Charman* in which a spouse has been awarded a share of non-matrimonial property by application of the sharing principle. In *K v L (Non-Matrimonial Property: Special Contribution)* [2011] 2 FLR 980 Wilson LJ, as he then was, noted the absence of any such decision before commenting that: "Such a decision will no doubt be made – but not in this court today" (paragraph 22). There has still been no such decision and, during the course of the hearing before us, this led to a brief discussion about the "white leopard" referred to by Mostyn J in JL v SL (No 2) (paragraph 22). However, because this issue does not arise directly in this appeal it is not necessary to consider it further. The question of whether, if it is open for this court so to decide, the sharing principle only applies to matrimonial property must await another case although I note, in passing, what Wilson LJ said in *K v L* about the "ordinary consequences" of the application of the sharing principle (paragraph 21) and what he said in the Privy Council's decision of *Scatliffe v Scatliffe* [2017] AC 93 (paragraph 25) about the sharing principle being applied to the matrimonial property in the "ordinary case".

[30] The scope and application of the sharing principle, it would appear, cannot yet be considered settled law. **Charman**, on the one hand, is authority for the proposition that it applies to both matrimonial and pre-marital property while **JL v SL**, on the other hand, states that there was neither moral nor principled foundation for applying the sharing principle to pre-marital assets (except to meet needs) and that such a case would be as rare as the white leopard. In **K v L**, Wilson LJ conceded that such an award would be made some day, but not in his court that day. There had still been no such decided case on the issue by the time of **Hart v Hart** in 2017 – and none has been presented to this Court in the case at bar.

Should the sharing principle apply in this case?

[31] This would therefore be one of the first cases in which the sharing principle is applied in circumstances where there is only pre-marital property, the wife acknowledges that she is living comfortably and enjoys the standard of living she did before the breakdown of the marriage. Lord Denning famously identified two classes of judges: the timorous souls and the bold spirits. Progressive development of the law could be credited to the creativity and courage of the bold spirits; timorous souls showed blind allegiance to rules and precedent – the 'dead hand of the past' – and, in so doing, served a sterile, not a constructive role in the law. Much as I might wish to be regarded as among the bold spirits, I do not think the circumstances of this case justify the application of the sharing principle.

[32] The wife contends that it is true that they both separately acquired properties in the United Kingdom prior to their marriage, but denies the husband's assertion that those properties were treated as separately owned and never considered matrimonial assets. Her contention is that the rental income of both properties became fruits of the marriage. She stated that while they lived together at the Hadrian Street property prior to the marriage, they equally shared bills and costs and it was

> "highly probable that we would have continued to live there had we not quit our respective jobs to pursue the Petitioner's dream of living on a boat. The combined rental income from our respective properties enabled

us to afford this lifestyle. The rental income went into a Joint Account which we had at Nationwide Bank in the UK. At no point did we separate each other's rental income to cover our individual needs."

[33] She went on to state:

> "…it is correct that we did not contribute towards the acquisition of each other's property. However, I did contribute towards the maintenance of the Hadrian Street property. In fact, one particular instance when I made both financial and non-financial contributions towards the Petitioner's property was when in approximately 2008, I flew to the United Kingdom alone from where we were living and spent a protracted time renovating and redecorating the Hadrian Street property which was at the time between tenancies. Contrary to the Petitioner's allegations that the properties were dealt with strictly separately, with respect to the said refurbishment of the Hadrian Street property, I did all the work entirely by myself except for where it was necessary for me to engage contractors for the specialized works such as installing new doors and other exterior work, which I oversaw. Additionally, I met with several estate agents to select one suitable for listing the property and worked with them to find potential tenants."

[34] The husband denies any contribution by the wife to the maintenance of his property. In his affidavit he states:

> "I say that it was in the year 2010 and not 2008 that the Respondent travelled back to the United Kingdom. At that time, I was employed at Island Water World in Grenada. The Respondent was unemployed and so she decided to visit her family in the United Kingdom. It is true that while she was in the United Kingdom, my property was not occupied by tenants and was in need of repairs. However, it is absolutely false for the Respondent to say that she made any financial contribution whatsoever to finance those repairs. I transferred money from my savings account into the said joint account to finance the said repairs. I admit that the Respondent did withdraw the said money from our joint account to pay the contractors working on my property but at no time did she contribute any of her personal money whatsoever to fund those repairs."

[35] The wife creates the impression that she actually did the renovation and redecoration entirely by herself, except for specialized work like the installation of doors and exterior work, but provides no details of what exactly she did or of the skills she possessed that might have enabled her to do this. She says she made financial contribution to this but provides no details whatsoever of what such

contribution might have been. Generally, I find that the husband set out his evidence comprehensively, in detail and with precision, which gave credibility to his narrative, while the wife's evidence tended to be vague and generalized. For example, she states that upon their separation, the husband "was in possession of all household material and goods that we accrued during our marriage …some smaller items were divided but the Petitioner remained in possession of other higher value items such as furniture and vehicles." She provides no further detail. The husband, in contrast, responded that "there are not assets of the worthy of mention that were acquired during our marriage …The only assets I can think of that we can consider matrimonial assets are a wardrobe, 2 chests of drawers and a bookcase all of which were bought by me as second-hand at the cost of EC$4,000.00." He stated that the wife has items stored at his mother's home and at his sister's home in the United Kingdom and he likewise has possessions like books at her parents' home.

[36] The husband's appeared, from his affidavit evidence, to be more forthcoming. He provided details of how much the boat was sold for how the proceeds of sale were used; he provided details of his monthly income and a breakdown of his expenses; she provided no details of her income and expenses. For these reasons, I prefer the evidence of the husband. I do not believe that the wife has put forward evidence to satisfy the court that she in fact made a financial contribution to the maintenance of the husband's house. Neither am I convinced that one instance of paying contractors on behalf of the husband for work on the Hadrian Street property and meeting with real estate agents for the rental of the property can rise to level of being considered a contribution.

[37] Did the parties arrange their economic life or order their financial affairs in such a way that the Hadrian Street property acquired the character of matrimonial property. The wife contends that there was intermingling of that property with their spousal affairs during their marriage. Her evidence of this was the pooling of their rental income into a joint account to meet their expenses. But can the pooling of

rental income from their respective houses in which the married couple never lived (as a married couple) in a jurisdiction where they do not reside be characterised as intermingling of assets. If either party had separate fixed deposits in their sole names, which they never touched or combined but merely pooled the respective annual interest into a joint account which they used to meet their expenses, can the fixed deposits be said to have intermingled? I think not. This is not to suggest that the court could not make an order to transfer a sum from one party's fixed deposit to the other in circumstances where the needs of one party requires it. But this is not the case here.

[38] So, in the normal run of cases, the proper approach is to apply the sharing principle to the matrimonial property and then to ask whether the result of doing so represents an appropriate overall disposal. In particular, I must ask myself whether the principles of need and/or compensation require additional adjustment in the form of transfer to the wife of further property, even of non-matrimonial property belonging to the husband. We have already seen that, by the wife's own admission, the principle of need does not apply. What about the principle of compensation?

[39] As stated by Baroness Hale at paragraph 140 of Miller, the principle of compensation relates to prospective financial disadvantage which upon divorce some parties face as a result of decisions which they took for the benefit of the family during the marriage, for example in sacrificing or not pursuing a career. Has the wife suffered financial disadvantage arising out of entry into the marriage?

[40] The wife asserts that she gave up her job in order to allow the husband to pursue his dream of sailing the world. The husband contends that it was their joint decision and she was not coerced. The wife stated that, prior to the marriage, she worked at the husband's business. This is the job she quit. She provides no details of what kind of work she did, any opportunities for advancement or the career path she had hoped to take or had planned for. Her evidence tends to be

speculative. The married couple made a lifestyle choice. They both opted, upon marriage, to forego career paths and travel the world. The typical couple, upon marriage, works hard, sets aside savings and travels a few times a year or upon retirement. In this case, upon divorce, the wife is no more disadvantaged than the husband. Both had to seek employment. On the evidence, neither enjoys a lifestyle higher than the other. Both suffered financial disadvantage arising from their conscious and deliberate lifestyle choice. This is therefore not an appropriate case for the application of the compensation principle.

[41] In the circumstances, this case does not justify redistribution of accrued value in the Hadrian Street property on the principles of need, compensation or sharing.

[42] It is therefore ordered and declared as follows:

1) The Respondent has no legal or equitable interest in the property situate at Hadrian Street in the United Kingdom and held in the sole name of the husband.
2) The Petitioner has no legal or equitable interest in the property situate at Brixton in the United Kingdom which is co-owned by the wife and a third party.
3) No order as to costs.

Justice Godfrey P. Smith SC
High Court Judge

By the Court

Registrar