



[2013] JMSC Civ 25

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATRIMONIAL DIVISION

CLAIM NO. 2009 M 00655

BETWEEN IVOR ALLEN FRANCIS PETITIONER/RESPONDENT

AND PEARL FRANCIS RESPONDENT/APPLICANT

Mrs. Rosemary Neale-Irving for the Respondent/Applicant.

Ms. Saverna Chambers for the Petitioner/Respondent.

April 5 & 14, 2011; February 19, 2013.

**Application by Wife for Maintenance – Wife receiving pension and has significant savings – Whether previous receipt of a lump sum from a division of matrimonial property should affect award – Divorce not yet complete – Applicability of Maintenance Act specifically sections 5, 9 & 14 by virtue of section 23 (1) (a) & (2) of the Matrimonial Causes Act**

**Fraser J**

**THE BACKGROUND TO AND THE APPLICATION**

- [1] On March 23, 2009, Mr. Ivor Francis the petitioner/respondent filed a Petition to divorce Mrs. Pearl Francis the applicant/respondent, his wife of then 37 years.

- [2] The parties lived in England after marriage for several years and together raised three children who are all now adults. They returned to Jamaica in 1999 after purchasing a home in Cheapside district in the parish of Saint Elizabeth.
- [3] Sometime between 2005 and February 2007 the former matrimonial home situate at 35 Aberdeen Road, Harrow, Middlesex, England was sold by the parties and each received £112,500.00. In or around April 2007 when they separated, Mr. Francis paid to Mrs. Francis the sum of £7000.00. On his version this sum was paid pursuant to an agreement whereby he would maintain her for a limited period until December 2009 when Mrs. Francis would begin receiving her nurse's pension. Mrs. Francis however denies such an agreement and maintains that, notwithstanding her receipt of the half proceeds of sale for the house at Harrow and the further sum of £7000.00 paid to her, Mr. Francis had an obligation to maintain her for the rest of her life.
- [4] Therefore, on October 9, 2009, Mrs. Francis by Notice of Application for Court Orders sought maintenance from Mr. Francis of £40,000.00 as a one-time lump sum payment for the duration of her life, and costs. The grounds on which Mrs Francis sought the orders were that she:
- (i) Suffers from chronic disorders of hypertension, asthma, diabetes, poor circulation and high cholesterol;
  - (ii) Expends approximately \$10,000.00 per month to obtain medication, diagnostic tests and medical supervision to monitor these conditions. Added to this expenditure is the fact that she is placed on a special dietary regime which includes fresh fish, fresh fruits, vegetables and special diabetic drinks;
  - (iii) Is not in receipt of a pension and is now surviving solely on her savings.

- [5] Mrs. Francis asserts that Mr. Francis has the ability to pay the sum sought as he has more savings than her, has higher pension benefits and his expenditure is considerably less than hers.
- [6] Mr. Francis on the other hand maintains that Mrs. Francis has no need for maintenance from him and that she has reneged on the agreement they had arrived at when he paid her the £7000.00 pounds. Apart from the sums Mrs. Francis received from the sale of the house and from Mr. Francis, he pointed out that Mrs Francis receives three pensions from England; has substantial savings and investment accounts; receives rental income monthly; has sole use of a Honda CRV which was purchased by both parties for the use of the family; and is entitled to half share in a vacant lot of land in the same community of Cheapside District where they live. Mr. Francis reiterated in evidence what he had stated in his affidavit of July 23, 2010, that he was prepared to transfer his interest in that lot to Mrs. Francis. He explained that it was purchased by her mother and his name was put on the title.
- [7] The court therefore has to determine whether Mrs. Francis would be entitled to a lump sum payment for maintenance. If so, how much?

#### **THE LEGAL BASIS FOR THE APPLICATION**

- [8] At the commencement of the hearing, counsel for Mr. Francis submitted that the court had no jurisdiction to entertain the application as counsel for Mrs. Francis had initially indicated that the application was being made under the Maintenance Act instead of the Matrimonial Causes Act. In subsequent submissions which persuaded the court, counsel for Mrs. Francis indicated that the application was actually being made pursuant to the Matrimonial Causes Act as that Act was being used to dissolve the marriage. However the factors for consideration were outlined in the Maintenance Act.

[9] I ruled that the application could proceed by virtue of section 23 (1) (a) of the Matrimonial Causes Act, as proceedings were in being for the dissolution of the marriage between the parties. Section 23 (2) empowers the court to make the maintenance order sought, which if granted should be made in accordance with the factors outlined in the Maintenance Act.

**THE RELEVANT PRINCIPLES AND FACTORS FOR CONSIDERATION UNDER SECTIONS 4, 5(2) AND 14(4) OF THE MAINTENANCE ACT**

***The mutual obligation of spouses to maintain each other***

[10] Section 4 of the Maintenance Act 2005 removed the former presumption in favour of the husband having an obligation to maintain his wife and replaced that with a mutual obligation. Therefore, each spouse so far as he or she is **capable**, has an obligation to maintain the other spouse to the extent that such maintenance is **necessary** to meet the **reasonable needs** of the other spouse, where the other spouse **cannot practicably** meet the whole or any part of those needs, having regard to the circumstances specified in Section 14(4) or any other circumstance the court is of opinion the justice of the case requires to be taken into account.

[11] Sections 5 (2) and 14 (4) list a number of practical matters, considerations and circumstances that should guide the court in determining whether maintenance should be awarded, and if so how much and where relevant, for what period.

**The Applicable Section 5(2) considerations**

***The duration of the marriage***

[12] By any measure the marriage endured for a long time. The parties lived the better part of their lives together and raised three children who are now all adults, with the oldest being over 40 years old.

***Mrs. Francis' contribution to the relationship and the economic consequences of the marriage for her, particularly for her earning capacity***

- [13] The evidence is that both parties were employed during the marriage before retirement. Mr. Francis worked as a Factory Worker and Mrs. Francis worked as a Nurse in a nursing home and as a Conductress with London Transport. The evidence of Mr. Francis is that Mrs. Francis also worked with an agency for overtime. When the agency called she would decide what hours she worked for.
- [14] Mr. Francis acknowledged that he would give Mrs. Francis money and she would do everything to look after the household. He couldn't remember if Mrs. Francis was the one who had identified the house at Harrow, told him about it and then they went and looked at it together. He however acknowledged that for 13 years she paid the mortgage with his money. His evidence was that he was happy in the marriage and he thought she treated him fairly. Mr. Francis denied the suggestions that because Mrs. Francis had to work at different places her pension was less and that the multiplicity of jobs she had held had compromised her health. He also maintained that it was a joint decision for them to return and retire in Jamaica. His evidence was that he did not induce Mrs. Francis to return to Jamaica prior to her retirement age with a promise that he would maintain her for the rest of her life. On his account which is denied Mrs. Francis wished to return to Jamaica to retire and to be close to her ailing mother.
- [15] From the evidence it would appear that the fact that Mrs. Francis was able to work during the marriage and at times earned income from more than one job, would seem to suggest that the marriage did not adversely affect her earning capacity.

***Mrs. Francis' needs having regard to the accustomed standard of living during the marriage***

[16] The evidence is that the parties while in England lived first at 33 Wildway, Wembley, Middlesex, England and then at the house in Harrow which they purchased. It was this latter house which was eventually sold after their return to Jamaica and the proceeds shared equally between them as previously indicated. There is no indication whether or not they owned a vehicle while in England.

[17] Mrs. Francis in her affidavit dated April 13, 2010 indicated her monthly expenses amounted to \$155, 220.00. She was stoutly challenged by counsel for Mr. Francis on several of these items; it being suggested to her that her lifestyle was extravagant and not commensurate with someone who was having trouble making ends meet and in need of maintenance.

[18] Under cross-examination Mrs. Francis indicated that she would give tithes and make charitable gifts to persons worse off than her. She also testified that she would drive regularly to Kingston, Manchester, Clarendon and Milk River where her relatives live to see them, as her relatives were not allowed to come to her house. Further her evidence was that she would go to England yearly, but that she did not really check on the frequency of her travel as if she needs to go she would go. Each trip to England would last 3 – 6 months; she would reside with one of her daughters there and might contribute to some of that daughter's expenses during her stay. The sum listed in her affidavit of \$20,750.00 for airfare she said was a significant error as she spent \$83,000.00 the last time she had travelled to England the year before. (It appears however that Mrs. Francis was not making allowance for the fact that monthly expenses were being outlined, in which case the amount for airfare would have to be reduced as it was averaged over a year. Viewed in that light, the sum of \$20,750 for airfare would seem to be high.) While in England for that visit she had stayed with her

daughter Marva. Marva was ill and had to be institutionalised for 10 weeks during which she stayed in Marva's flat and paid all the bills.

[19] Mrs. Francis testified that while in London she would get specialised diabetic foot and nail care. She also indicated that when she had gotten an infection in her toe she had gone to a Dr. in Santa Cruz and up to the time of the hearing had been going for three months. She however had no receipts for any of these instances of specialised care. In respect of her medical conditions Mrs. Francis exhibited two letters one from a doctor in Jamaica and another from a doctor in England. They spoke to Mrs Francis suffering from hypertension, diabetes, hyperlipidemia, asthma, osteoarthritis and circulatory disorder of both legs. There was nothing in the medical reports which spoke to her long term prognosis in relation to any of these ailments. No receipts for the cost of her medical care in relation to any of these conditions were placed before the court.

[20] Concerning her monthly telephone bill estimated at \$10,000.00, Mrs. Francis' evidence was that she had an international call plan on her landline which costed \$1,250.00 per month. However there were additional costs for local calls. She also had a cellular phone. Concerning communicating with her children in England she said she spoke daily to one of her daughters, twice a week to her other daughter and once a fortnight to her son. She did not think that \$10,000.00 was too much for someone who was unemployed to spend on telephone bills and when questioned about possibly curtailing her phone usage responded, "Why should I speak less on the telephone for my telephone bill to be reduced?" When referred to her initial affidavit in support of her application for maintenance in which she had stated that her monthly telephone cost was \$2,500.00 per month, she said that was accurate, but that did not take into account the Digicel credit.

[21] Mrs. Francis evidence is also that she went to the hairdresser roughly every two weeks. The cost varied but if she wanted a "hot style" it could

be \$4000.00. She indicated she purchased cosmetics and clothing every month. She said that she shopped in England for both shoes and clothes and that she wore a mixture of European and Jamaican clothing. The cost for clothing she indicated was a lot more than the \$12,000.00 per month indicated in her affidavit. Her evidence was she had a regular dressmaker that made her clothes. She therefore wore a mixture of clothes made by her dressmaker and those bought ready-made. She testified that if she was passing a store and saw something she would pop in and buy it if she fancied it.

[22] On that evidence counsel for Mr. Francis submitted that Mrs. Francis had inflated her expenditure as some of the items listed should be reduced or omitted and that, in any event, her lifestyle did not betray proof of someone in need of maintenance. Having considered the evidence I do find that the items for airfare, and telephone costs appear inflated and that there has been inadequate justification for the medical costs claimed. I therefore find that the sum listed for monthly expenses is above that which is reasonable in all the circumstances. While the court would not label Mrs. Francis' lifestyle demonstrably extravagant, I do agree with counsel for Mr. Francis that Mrs. Francis has not shown any credible evidence of curtailing her expenditure. There is no indication of diminution up to the point of the hearing in her accustomed standard of living. However the questions of whether there is actually the need for maintenance, and the ability of Mr. Francis to so maintain, will have to await consideration of the totality of the evidence and in particular the respective assets and means of the parties.

[23] Mr. Francis indicated his monthly expenses were \$103,000. He was not challenged on that. It was also not challenged that he was suffering from prostate cancer and that he was scheduled to undergo surgery that would cost \$230,000.00 plus hospital and other miscellaneous expenses.

***The housekeeping, child care or other domestic service provided by Mrs Francis for the family***

[24] Under cross-examination Mr Francis indicated that during their time together he would give Mrs. Francis money she would buy groceries and look over the children. He however went on to say that he did the cleaning and washed the children's nappies. Mrs Francis went to work and when she came home she helped. Further the evidence from Mr. Francis was to the effect that they shared the childcare as they both worked on shift and on occasion each had to change shifts to ensure that someone was at home with the children. He indicated that he as well as his wife encouraged the children to do well in school, however as he could not read she looked in their books.

**The division of property between the parties**

[25] Under Section 5 (2) (h), the court is mandated to take account of any order made under the Property (Rights of Spouses) Act in relation to the property of the parties. In this case no such order was made. However the aim of that sub-section is to take account of any division of property between the parties. The court will therefore note here that the parties sold their house in Harrow England and divided the proceeds equally so that each received £112,500.00. This is a significant factor which the court will take into account in arriving at the final decision in this matter.

***The eligibility of the spouses for a pension, allowance or benefit under any superannuation fund or scheme***

[26] Mrs. Francis is in receipt of three pensions from London Transport, NHS nurse's pension and a Government State pension. In her affidavit dated October 21, 2010 she deponed that the total of these three pensions amount to **£629.03** per month.

- [27] Mrs. Francis however acknowledged that when she had filed her affidavit dated October 9, 2009 in support of this application, she had said nothing about any of these pensions even though at that time she was in receipt of the pension of £83.00 from London Transport which she commenced receiving in 2007 and was aware that in December 2009 she would commence receiving her other two pensions. Her explanations for these omissions were that she didn't think it was important to tell the court that she was getting a pension and that she didn't have experience of court to know that she should say to the court that she would be receiving other pensions. She said, "The time is now when I would have said when everything is before you". This evidence was given in a context of Mrs. Francis having previously made an application to the Resident Magistrate's Court for Saint Elizabeth holden at Santa Cruz for maintenance which based on the notation in the Court Sheet dated 20<sup>th</sup> July 2009 was denied as having been "made prematurely based on affidavit evidence and upon hearing the parties." This initial lack of forthrightness is a factor which the court will have to take into account in coming to a decision in this matter.
- [28] Mr. Francis is in receipt of two pensions. One from H. J. Heinz Company Ltd and the other from the Department of Work and Pensions. From the information in his affidavit sworn to on April 7, 2010 together these pensions amount to **£849.52** per month. Mr. Francis acknowledged in cross-examination that if he was to remain married to Mrs. Francis and then he died, she would be entitled to receive a widow's pension from H.J. Heinz Company Ltd. However if they were divorced at the time of his death she would lose that entitlement.
- [29] Mr. Francis therefore receives **£220.49** more than Mrs. Francis per month in pension benefits.

## **The Applicable Section 14 (4) considerations**

### ***The assets and means of the respective parties***

#### **Mrs. Francis**

[30] Mrs. Francis' assets as revealed in her affidavit of January 3, 2011 and through cross-examination are as follows:

- (i) Account number 10933994 at Jamaica National Building Society (JNBS) which at 23 July 2010 had a balance of J\$22,282.98. Under cross-examination it was disclosed that Mrs Francis was unsure when she had opened the account and could not remember from where the initial deposit of J\$22,130.00 had come. She would take money out when she wanted to, but from January to July 2010 the period covered by the documentation exhibited, no funds had been withdrawn and the account was inactive;
- (ii) Account number 10933966 at JNBS which at 9 November 2010 had a balance of £2,462.41. This account received her Government pension. Mrs Francis testified that this is the only account in Jamaica that she withdraws her pension money from
- (iii) Account number 10072241 at JNBS a Certificate of Deposit account which at 24 September 2010 had a balance of J\$138,577.70. Mrs Francis explained that she had inherited this money from her mother and it rolls over every three months. She could not recall drawing any money from this account.
- (iv) Account number FRA0020755 at Fund Managers Limited that is an investment which at 22 October 2010 stood at J\$3,890,005.02 with expected interest earnings after tax of \$15,442.79 due 29 October 2010 that would have carried the value to J\$3,904,608.52. Mrs Francis indicated that this investment was renewed every month and that she could take

out of it when she pleased and that she had done so. She did however also testify that between April and October 2010 it had been renewed every month and rolled over, together with the interest, into a new month.

- (v) Account number 617049 at Scotiabank which at 29 October 2010 had a balance of \$31,898.45. Mrs Francis explained that after her mother died herself and her brother opened two accounts but they had not been used much. She indicated that the sum of \$507,850.45 deposited on 18 January 2006 was from her mother. Account number 617024 at Scotiabank with a balance at 29 October 2010 of \$76,771.91 was also exhibited but Mrs. Francis indicated this was her brother's account.
- (vi) Account number 12518026 at NatWest which at 23 July 2010 stood at £5,961.18. This account receives her pension from London Transport and from her Nurses pension. Mrs. Francis indicated that her daughter sends down money from her pension lodged in this account when she needs it. She testified that she has children and grandchildren in England and she would use the money for "presents and such the like for them."
- (vii) Critically under cross-examination Mrs. Francis admitted that she had two NatWest accounts though the documentation exhibited to her affidavit only revealed the one previously mentioned. The omission was significant. She testified this second previously undisclosed account was an investment account into which she had deposited £45,000.00 two years prior to the hearing and which in her words was "locked up for four years". She could not say how much it was worth at the time of the hearing. Mrs. Francis had therefore failed to disclose in any of her affidavits a major financial investment which was more than all her other liquid financial assets combined.

[31] Mrs Francis also owns a house jointly with her brother at Pratville from which in 2010 she was earning \$5,000 per month, being half the rental sum of \$10,000. She indicated when asked under cross-examination that she was aware that the rental sum could be increased yearly.

Mr. Francis

[32] In addition to his pension benefits Mr. Francis' assets as revealed in his affidavit of 6<sup>th</sup> January 2011 and through cross-examination were that he had accounts at National Westminster Bank (NatWest) in London, England, one at NCB Capital Markets Limited, one at NCB Limited Junction Branch and one at Jamaica National Building Society Limited. He acknowledged that the money he received from his half share of the proceeds of sale from their house in Harrow was placed in the NatWest account. Documentary evidence indicating the state of his financial holdings was exhibited to his affidavit dated 6<sup>th</sup> January 2011. Those records revealed that up to October 25, 2010 the balance in his NatWest account was £15,191.21. He was however unable to state how much money was in the account at the time of hearing. An exhibited letter from NCB Capital Markets Limited dated 29 October 2010 showed that as at that date there was an investment of £50,331.98 held in the names Iver A &/or Derwent A. Francis. The balance in his Jamaica National Building Society account as at August 23, 2010 as revealed by the records was £19,211.55. He also indicated he had another account with his sister, Mrs. Wiltshire, with about £8,000.00. As at 11 November 2010 the money he had in the NCB Junction Branch was J\$52,660.97.

[33] He also stated that his mother had died and left him 3½ squares of land at Delightful St. Elizabeth but that he was unsure of its value and that he owned a vacant plot of land with Mrs. Francis at Cheapside District St. Elizabeth in respect of which he was prepared to transfer his half interest to Mrs. Francis as it had been bought with her mother's money and his name was "put on it".

***The assets and means that the parties are likely to have in the future***

- [34] There is no indication that either party will acquire further assets. If any other asset is to be acquired from the evidence it would appear that would have to be done using some of their existing assets so to do. The only likely increase in assets may be possible increases in pension benefits for one or both parties due to inflation adjustments. No evidence of this possibility was however given and the court will therefore not speculate on that possibility.
- [35] It should be noted however that in cross-examination Mrs. Francis acknowledged that they lived in a split level house on the upper floor. The lower floor has three rooms a kitchen, and 1½ bathrooms. Mrs. Francis said if the house were hers she would be prepared to rent it but their three children own the house. She indicated she had not thought about asking them to allow her to rent the lower floor. This is therefore one other avenue of potential revenue, subject to the approval of the children, should the need arise.

***Mrs. Francis' capacity to contribute to her own support***

- [36] From the evidence Mrs Francis has a monthly pension amounting to approximately £631.38 which using an exchange rate of J\$138 to 1£ amounts to J\$87,130.44. She also had monies held in savings and investment accounts up to late 2010 amounting to approximately £53,423.59 and J\$4,159,535.90. Additionally from 2010 she has been earning \$5000 per month for rental income from the house she jointly owns with her brother and in respect of which house she is entitled to half the value. The rental income may well have increased by now. Further she has sole use of the Honda CRV which was purchased by Mr. Francis and registered in her sole name. At the time of hearing that vehicle was estimated to be valued between J\$800,000 and J\$1.2M. Mrs. Francis also jointly owns with Mr. Francis a lot of land situate at Cheapside District in St. Elizabeth. Mr. Francis has indicated he is

prepared to transfer his interest in this lot of land to Mrs. Francis. Mrs. Francis also enjoys rent free accommodation living in the house at Cheapside District which was purchased by herself and her husband and which they transferred to their three children. Mr. Francis who also lives at the premises pays for electricity and gas consumed by them both.

[37] Mrs. Francis therefore has significant liquid and fixed assets which she can apply towards her own maintenance.

***The capacity of Mr. Francis to provide support***

[38] Mr. Francis has two pensions which yield £849.52 monthly equivalent to J\$117,233.76. He also had as disclosed up to the time of the hearing savings and investments totalling J\$52,660.97 and £92,734.80 including the £8000 he said he had in an account with his sister Mrs. Wiltshire. There is however no indication that he would have sole right to the entire sum in that account.

[39] He also co-owns a plot of land at Cheapside district with Mrs. Francis and he has indicated his willingness to transfer his interest in that property to her.

***The respective ages and health of the parties and their capacity to secure gainful employment***

[40] At the time of hearing Mr. Francis was 69 and Mrs Francis 61. Both have health challenges and they came to Jamaica to retire. There is no indication that either party will seek further employment.

***Other factors raised in section 14 (4)***

[41] The other factors outlined in section 14 (4) do not appear to be relevant to the determination of this matter.

#### THE CASE LAW RELIED ON BY COUNSEL

- [42] Counsel for Mrs Francis submitted that a lump sum payment was appropriate in this case as the financial circumstances of the parties were unlikely to change in the near future. She cited in support a Family Law text from Australia **Monahem and Young** 6<sup>th</sup> Edition pages 376-378 para 8.35 where the case of **Marriage of Clauson** (1995) 18 Fam LR 693 was referred to. Counsel also cited on this point **Tye v Tye** (No. 2) 1976 FLC 90-048 and **Davidson** (1994) 17 Fam LR 656.
- [43] Counsel also relied on **Paul Collins v Melanie Collins** Suit No. F 1994/C 021 (25.11.97) where a summons by the husband to vary a maintenance order was dismissed as there was no evidence that his means had decreased since the order was made. On the contrary his means had increased.
- [44] Further counsel relied on **Headley Binns v Doris Maud Binns** Suit F 1998/B133 (29.10.1999) where the court found that the liabilities of the applicant wife exceeded her income and that her husband a business man earned and was worth significantly more than her as in St. Elizabeth he owned 8 acres of land and another property with a three bedroom house as well as a bus and pick up van. On that basis he was order to pay maintenance to his wife.
- [45] I find that apart from the fact that they were decided prior to the amendment to the Maintenance Act in 2005 the facts of both **Collins v Collins** and **Binns v Binns** are unhelpful for application to the instant matter.
- [46] Counsel for Mr. Francis relied on the cases of **Hughes v Hughes** [1993] 45 WIR 149; **Downer v Downer** Suit No. E – 400 of 2002 (May 24, 2007); and **Gloria Magdaline Maragh v Eric Maragh** Claim No. 2005 F.D. 2343 (February 9, 2009).

- [47] ***Hughes v Hughes*** was cited by counsel for Mr. Francis for the proposition that where a party has failed to make full and frank disclosure of income and assets the court is entitled to draw inferences adverse to that party, although such inferences must bear a genuine relationship to the available assets.
- [48] In ***Downer v Downer*** after 20 years of marriage a wife who solely owned 6 properties with a net worth of \$90M was ordered to pay \$100,000 per month to her husband who was indebted by \$17.5M in a context where he was seeking \$450,000 per month and where the court found that the wife could sell and invest her assets in such a way as to earn J\$10M per year.
- [49] In ***Maragh v Maragh*** both the principles discussed and the facts are helpful. The parties were divorced after 39 years of marriage. Mrs. Maragh sold her half share in the matrimonial home to Mr. Maragh. During the marriage Mrs. Maragh had only worked temporarily and Mr. Maragh had been maintaining her. He received a significantly higher pension than she did, and had other assets including real estate holdings while the only asset she had was the proceeds of the sale of her half share to Mr. Maragh and what the court described as a derisory pension from NIS. Even after the purchase of her half interest Mr. Maragh was paying her maintenance. The court ordered Mr. Maragh to pay Mrs. Maragh a monthly sum of \$35,000 which represented the sum he was paying before and was the cost of Mrs. Maragh's rent.
- [50] The court found this case to be of greatest assistance given the similarities to the instant case in the duration of marriage and the fact of each party having a half share in the matrimonial home. The notable differences relate to the work history of Mrs Francis compared to Mrs. Maragh as well as the relative difference in available assets when the situations of Mrs. Maragh and Mrs. Francis are compared.

## ANALYSIS AND DISPOSITION

- [51] It is clear that the parties invested the better part of their lives in marriage together. Unfortunately, as occurs from time to time, that marriage broke down. Prior to the breakdown, the parties seemed to have had a happy marriage working in partnership for the good of the entire family including their children.
- [52] Mrs. Francis maintains that she was induced to return to Jamaica by Mr. Francis and that her having done so, prejudiced her ability to earn a higher pension than she is earning now. She says that she returned to Jamaica on the agreement with Mr. Francis that she would not have to work anymore and that he would maintain her for the rest of her life. Mr. Francis disagrees that there was this agreement and says Mrs. Francis voluntarily agreed to leave England as she wanted to retire in Jamaica and be close to her ailing mother.
- [53] I find having considered the evidence and listened to the parties that there was no such inducement on the part of Mr. Francis. However, even if I had found that there had been such inducement, the fact is that Mrs. Francis made no complaint that she was not adequately maintained in the years between 1999 when they returned to Jamaica and 2007 when the parties separated, even though they continue to reside in the same house. Further, after their separation Mr. Francis paid her the sum of £7000.00 which he said and I accept was to cover the period from their separation up to December 2009 when she would be in receipt of all her monthly pension benefits. Even if Mrs Francis had been induced to leave England when otherwise she would not have, she has failed to show in dollars and cents how that earlier departure would have affected the amount and duration of her current pension. Further, in any event, she has obtained the benefit of years of earlier retirement during the marriage up to the time of separation.

- [54] The central questions at this point surround the reasonable needs of Mrs. Francis considered against her ability to meet those needs and Mr. Francis' ability to meet any shortfall in her ability, in light of all the relevant circumstances in the case.
- [55] I have already expressed the opinion that the outline of Mrs. Francis' expenditure was somewhat inflated. Conversely Mr. Francis' expenditure was not challenged and I find it to be reasonable. A comparison of the assets of Mr. and Mrs. Francis shows that their financial assets are almost equal, with Mr. Francis having somewhat more in terms of higher pension receipts and slightly higher savings if the £8000.00 he has in an account with his sister Mrs Wiltshire is included. However, Mrs. Francis has the Honda CRV and also co-owns a property with her brother from which she is receiving rental income and in respect of which she is entitled to half the value. In keeping with ***Hughes v Hughes***, I also bear in mind the initial lack of full and timely disclosure of Mrs. Francis in relation to her pension entitlements and the existence of an investment account of £45,000.00; material non-disclosures which had they not been remedied, could have impelled the court to erroneously arrive at a different conclusion.
- [56] This all has to be considered against the background of the fact that the proceeds from the sale of the house in Harrow were divided equally. No evidence was elicited concerning whether or not the sums held in Sterling by Mr. Francis, apart from his pension receipts, were totally or largely the proceeds of his half of the sale. If they are, as indicated in ***Maragh v Maragh***, it would not be fair for Mr. Francis to be asked to maintain Mrs. Francis from his half proceeds of the sale when she had also received a half. Additionally concerning medical expenses, both parties have ailments and both will have medical costs for the rest of their lives.
- [57] In the face of that evidence Mrs. Francis has neither demonstrated how she arrived at the lump sum figure of £40,000.00 for maintenance to

which she claims she is entitled, nor her need for that sum. Her lifestyle has not been affected and based on the fact that the assets base of each party to this action is fairly similar in value, it does not appear to this court that it would be appropriate for the application to succeed.

[58] There is however one matter on which the parties are *ad idem* which the court will recognise and honour. Mr. Francis has consistently maintained that he would be willing to transfer his half interest in the vacant lot of land he owns jointly with Mrs Francis situate at Cheapside District which was purchased with money from her mother.

[59] Accordingly in disposition of this matter I make the following orders:

- (i) Mr. Francis is to transfer his interest in the vacant land situate at Cheapside District in the parish of Saint Elizabeth jointly owned by Mrs. Francis and Mr. Francis to Mrs. Francis within 120 days of the date of this order, failing which the Registrar of the Supreme Court is empowered to take all steps necessary to effect the transfer of his interest in that lot to Mrs. Francis;
- (ii) Notice of Application for Court Orders for Maintenance dated and filed October 9, 2009 dismissed;
- (iii) Each party to bear his or her own costs.