



[2016] JMSC Civ. 221

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012M01418

BETWEEN CARVEL LEVERMORE PETITIONER /RESPONDENT

AND MAQUEDA CLARKE-LEVERMORE RESPONDENT/APPLICANT

**Mr. Oraine Nelson and Ms. Tosya Francis instructed by Austin L. Francis & Co.
for the Applicant**

Mrs. Leone Hines-Smith instructed by Hines-Smith Law for the Respondent

Heard: 14th March, 10th May, 15th July and 19th of December 2016

**Maintenance – Matrimonial Causes Act – Maintenance Act – Whether the
Applicant can practicably meet the whole/part of her reasonable needs.**

IN CHAMBERS

STRAW J

BACKGROUND/ RELEVANT CHRONOLOGY

[1] The parties, Mr. and Mrs. Levermore, were married on the 17th of March 2001. At the time of their marriage, both parties had children from their prior relationships, Akeem (Mrs. Levermore) and Carvel (Mr. Levermore). Shortly after they were married they had a daughter, Toni-Ann Levermore, who was born on the 12th of November 2001.

[2] Some 11 years later a petition for the dissolution of marriage was filed by Mr. Levermore on the 17th of May 2012. It is noted that there appears to have been an earlier petition filed in 2008 which has not been pursued (2008M02792). In response, Mrs. Levermore filed an answer and cross-petition in which she sought the following -

1. Custody of Toni-Ann Levermore;
2. **“Child Support”** - Maintenance in the sum of fifteen thousand dollars (\$15,000.00) monthly for the maintenance of the child (Toni-Ann);
3. **“Spousal Maintenance – Lump Sum”** Maintenance in the sum of One Hundred and Seventy-Six Thousand Dollars (\$176,000.00) for herself from the date of separation;
4. **“Spousal Maintenance – Monthly”** Maintenance in the sum of Ten Thousand Dollars (\$10,000.00) per month until the Decree Absolute is granted; and
5. **“Option to Purchase”** – the option to purchase Mr. Levermore’s half share in the matrimonial property located at Lot #32 St. Jago South, Spanish Town in the parish of Saint Catherine.

[3] A Consent Order was filed on the 17th of February 2015 which dealt with *inter alia* custody and child support (the matters in items 1 and 2 (above)). A provision was also made for Mr. Levermore to pay Mrs. Levermore three Thousand Dollars (\$3,000.00) monthly as a contribution towards utility bills. It was agreed that this obligation would commence on the 27th of February 2015.

[4] What remains to be dealt with are spousal maintenance and the option to purchase (the matters in items 3, 4 and 5 above). This is duly reflected in Mrs. Levermore’s amended Answer and Cross Petition filed on the 29th of October 2014. It is to be noted that the original and amended Answer and Cross Petition speak to Mrs. Levermore’s son, Ackeem Williams, who she contends is a “child of the home”, however no relief has been sought in relation to him. It is to be noted also that the issue of the option to purchase is not before this court for consideration.

PROCEDURE/HOW THE APPLICATION WAS MADE

[5] In the instant matter as indicated, spousal maintenance was included in the relief sought. Therefore this application was not made by way of a Notice of Application as contemplated by CPR 76.6 (which expressly recognizes that Part 11 applies to all applications for court orders) but rather in the response to claim (see: CPR 76.11). However Counsel for Mr. Levermore, Mrs. Leone Hines-Smith does not appear to be disputing this seemingly inconsequential procedural irregularity. The parties are relying on the following documents -

- (a) Mrs. Levermore's Affidavit in Support of the Respondent's Answer and Cross Petition filed on the 16th of September 2014;
- (b) Mrs. Levermore's affidavit in support of her application for spousal maintenance as well as a supplemental affidavit filed on the 15th and 17th of April 2015.
- (c) Mr. Levermore's affidavit in response to the Mrs. Levermore's Answer and Cross Petition filed on the 15th of April 2015; and
- (d) Mrs. Levermore's affidavit in response to (c) filed on the 30th July 2015.

[6] By putting the application for spousal maintenance in the Answer and Cross-Petition the court (which has jurisdiction because the petition has been presented) is hearing the said application prior to the decree nisi and decree absolute. The timing of the application is critical as far as it relates to the court's jurisdiction and the factors to be considered. Both of these will be discussed subsequently.

JURISDICTION OF THE COURT LIMITED TO MAKING INTERIM ORDERS

[7] Since a petition was filed, this court has jurisdiction to entertain Mrs. Levermore's application and make orders for spousal maintenance pursuant to sections 20 and 23 of the **Matrimonial Causes Act ('MCA')**, section 22 is also relevant:

20. (1) On any decree for dissolution of marriage, the Court may, if it thinks fit –

(a) order a spouse (hereinafter in this section referred to as the contributing spouse) to secure to the other spouse (hereinafter in this section referred to as the dependant spouse), to the satisfaction of the Court –

(i) such gross sum of money; or

(ii) such annual sum of money for any term not exceeding the life of the dependant spouse;

as having regard to the means of the dependant spouse, the ability of the contributing spouse and to all the circumstances of the case, the Court thinks reasonable;

(b) ...

(c) ...

and on any petition for dissolution of marriage the Court shall have power to make interim orders for the payments of money to the dependant spouse as the Court thinks reasonable.

(2) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1), direct the contributing spouse to pay to the dependant spouse during their joint lives such monthly or weekly sum for the maintenance and support of the dependant spouse as the Court may think reasonable.

(3) ...

(4) An order under subsection (1)(a) or (2) shall have regard to the matters specified in section 14(4) of the Maintenance Act.

22. When a petition for dissolution or nullity of marriage has been presented, proceedings under section 20 or section 23(2) may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition:

Provided that no order under any of the sections referred to in this section (other than an interim order for the payment of money under section 20) shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument, and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute. (emphasis added)

[8] Further sections 23 (1) and (2), which must be read in conjunction with sections 20 and 22, provide:

23. (1) The Court may make such order as it thinks just for the custody, maintenance and education of any relevant child or for the maintenance of a spouse –

(a) in any proceedings under section 10, or **in any proceedings for dissolution or nullity of marriage before, by or after the final decree;**

(b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal,

And in any case in which the Court has power by virtue of paragraph (a) to make an order in respect of a child the Court may, if it thinks fit, direct that proper proceedings be taken for placing the child under the protection of the Court.

*(2) **An order under subsection (1) for the maintenance and education of any relevant child or for the maintenance of a spouse shall be in accordance with the provisions of the Maintenance Act.** (emphasis added)*

- [9] My brother, Fraser J considered the court's jurisdiction or as he put it, the legal basis for a maintenance application in a case relied on by the Applicant i.e. in **Ivor Allen Francis v Pearl Francis** [2013] JMSC Civ. 25, at paragraphs [8] and [9] –

[8] At the commencement of the hearing, counsel for Mr. Francis submitted that the court has 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 Maintenance Act.

- [10] The judgment in **Ivor Allen Francis** was delivered on the 19th of February 2013 and the decree nisi was subsequently granted by Brown G. J on the 3rd of October 2013. While not expressly acknowledged in the judgment, the records of the court indicate that the decree nisi had not been pronounced when Fraser J heard the application for maintenance. Although the application for maintenance was dismissed, there was no discussion in relation to the effect of section 22.
- [11] Similarly, in the instant case a decree nisi has not been pronounced, but it is apparent that the jurisdiction of this court is limited to the grant of an interim order for the payment of money based on section 22. Support for this view is found in another case cited by the Applicant, **Margaret Gardener v Rivington Gardener** [2012] JMSC Civ. 54, at paragraph [83] of the judgment of my sister Edward J (as she then was):

[83] By virtue of section 22 whilst proceedings may commence under section 20 or section 23 (2) once a petition for dissolution of marriage has been presented, no order other than an interim order can be made until a decree nisi has been pronounced, and no such order has any effect until a decree absolute has been pronounced.

[12] This was also pellucidly stated the recent decision of Brown E. J in **Suzette Ann Marie Hugh Sam v Quentin Chin Chong Hugh Sam** [2015] JMMD: FD 1, at paragraph [53] he opined –

*[53] The court's power to make financial provisions on any decree for dissolution of marriage is derived from section 20 of the **Matrimonial Causes Act (MCA)**. Under section 22 of the **MCA** proceedings under section 20 may be commenced at any time after the filing of the petition for dissolution of marriage. However, under the proviso to section 22 only an interim order may be made, prior to the pronouncement of the decree nisi. **No decree nisi has been pronounced in the instant case. Therefore, I am in agreement with learned counsel for the contributing spouse that the court is presently confined to make only an interim order for maintenance.** (emphasis added)*

[13] For completeness, it should be noted that in **Hugh Sam v Hugh Sam**, Brown E. J made several interim orders which were to be made final upon the grant of the decree absolute. The orders included a lump sum payment within six (6) months.

[14] In light of the foregoing, it is apparent that where the decree nisi has yet to be pronounced, the court can only make interim orders for the payment of money.

[15] Initially, Mrs. Levermore was seeking a lump sum payment as well as a monthly sum (which also includes a computation for a lump sum for retroactive payments) as follows –

- (i) One Hundred and Seventy-Six Thousand Dollars (\$176,000.00) from the date of separation (May 2011) to the date of filing the petition (May 2012);
- (ii) Three Hundred and Sixty Thousand Dollars (\$360,000.00) for outstanding monthly maintenance since the filing of the petition to the present date (which was 15th of April 2015 when the affidavit was filed); and

(iii) Ten Thousand Dollars (\$10,000.00) per month until the Decree Absolute is granted.

[16] It is to be noted however that counsel for Mrs. Levermore, Mr. Oraine Nelson, in his submissions is now only requesting orders for the two lump sum payments as stated in (i) and (ii) above.

FACTORS TO BE CONSIDERED – APPLICABILITY OF THE MAINTENANCE ACT

[17] It is clear that the court has the jurisdiction to grant the orders sought pursuant to the latter part of **MCA** section 20(1) and section 20(2), which provide for interim orders for the payment of money and weekly/monthly maintenance sums, respectively. Further, the **MCA** section 23, is applicable generally where orders are being made for spousal maintenance in proceedings for dissolution or marriage before the final decree.

APPLICATION OF BOTH SECTION 14 (4) and 5(2) of the MA

[18] What is abundantly clear is that the above sections of the **MA** would apply to every application for maintenance preceding the grant of the decree absolute (see: sections 20(4) and 23(2) of the **MCA**). This view is supported by the learned author, Karen Nunez-Tesheira who opines at page 182 of her recent publication, **Commonwealth Caribbean Family Law: Husband, Wife and Cohabitant, 2016** under the heading 'The Applicable Factors: Preliminary Jurisdictional Points';

In arriving at a fair and just outcome, the spousal maintenance factors which are to be taken into account in the case of Jamaica apply equally to the married spouse and statutory spouse upon termination of cohabitation and are set out in the Maintenance Act 2005 (MA). Section 23(2) MCA provides in effect that with respect to an order of maintenance made to the supreme court [sic], whether during or upon dissolution of marriage, the provisions of the MA are to be applied in the making of such order. Section 20(4) of the MA provides that in making a spousal maintenance order in respect of divorce proceedings, the court shall have regard to the matters set out in s.14(4) of the MA. Section 14(4) provides that apart from the section 14(4) factors the court shall consider the matters specified in s. 5(2).

[19] Although not expressly provided by the **MCA**, the Board in the JCPC case of **Eutetra Bromfield v Vincent Bromfield** [2015] UKPC 19 went even further to state that modification of maintenance orders pursuant to the **MCA**, section 20(3) are subject to **Maintenance Act** considerations. Their Lordships opined as follows –

25. What were the considerations by reference to which Brooks J should have determined the wife's application for modification of the order for periodical payments and have determined whether, instead, to order the husband to make a lump sum payment to the wife in full and final settlement? In two separate places the Matrimonial Causes Act offered him the answer. For section 20(4) of that Act required him to have regard to the matters specified in section 14(4) of the Maintenance Act in determining the wife's application; and, as set out in para 21 above, section 23(2) required any order for a lump sum to be in accordance with the provisions of the Maintenance Act. He was therefore required to turn to section 14(4), which, like section 15, is in Part VI of the Maintenance Act, entitled "Maintenance Orders".

[20] Finally, it is critical to note that **MCA** section 20(4) does not mention section 20(3), however their Lordships interpreted it to apply to section 20(3).

[21] Both counsel Mr. Nelson and Mrs. Hines-Smith made submissions with regards to the **Maintenance Act** and in particular the section 14(4) considerations, which provide:

In determining the amount and duration of support, the Court shall consider all the circumstances of the parties including the matters specified in sections 5(2) ... and –

- (a) the respondent's and the dependant's assets and means;*
- (b) the assets and means that the dependant and the respondent are likely to have in the future;*
- (c) the dependant's capacity to contribute to the dependant's own support;*
- (d) the capacity of the respondent to provide support;*
- (e) the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;*
- (f) the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;*

- (g) *any legal obligation of the respondent or the dependant to provide support for another person;*
- (h) *the desirability of the dependant or respondent staying at home to care for a child;*
- (i) *any contribution made by the dependant to the realization of the respondent's career potential;*
- (j) *any other legal right of the dependant to support other than out of public funds;*
- (k) *the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;*
- (l) *the quality of the relationship between the dependant and the respondent;*
- (m) *any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.*

[22] Further, section 5(2) of the **Maintenance Act** provides:

In determining the amount and duration of support to be given to a spouse under a maintenance order, the Court shall have regard to the following matters in addition to the matters specified in section 14(4)-

- (a) *the length of time of the marriage or cohabitation;*
- (b) *the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;*
- (c) *the effect of the responsibilities assumed during the marriage or cohabitation on the spouse's earning capacity;*
- (d) *the spouse's needs, having regard to the accustomed standard of living during the marriage or cohabitation;*
- (e) *whether the spouse has taken the care of a child of eighteen years of age or over who is unable, by reason of illness, disability or other cause, to care for himself;*
- (f) *any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support;*
- (g) *the effect of the spouse's child care responsibilities on the spouse's earnings and career development;*
- (h) *the terms of any order made or proposed to be made under the Property (Rights of Spouses) Act in relation to the property of the parties;*

- (i) *the eligibility of spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme, and the rate of that pension, allowance or benefit.*

APPLICATION

[23] Prior to considering the statutory considerations for the grant of the interim maintenance orders sought, it is necessary to state the basis for the obligation to provide maintenance generally. To this end, it is useful to adopt the dicta of my brother, Brown E. J at paragraphs 17 and 18 from **Alfred Robb v Beverley Robb** unreported Claim No. D01148/2005 –

[17] An application for an order of spousal maintenance is governed in the first place by section 4 of the Maintenance Act. It is both convenient and instructive to set out section 4 in full:

Each spouse has an obligation, so far as he or she is capable, 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 [sic] meet the whole or any part of those needs having regard to –

The circumstances specified in section 14(4); and

Any other circumstances which, [sic] the justice of the case requires to be taken into account.

[18] The obligation to maintain the other spouse is, in the first instance, latent. It is activated by the inability of the other spouse to maintain himself or herself. So, the court has to make, as a condition precedent to a maintenance order, a threshold finding that the dependant spouse cannot practicably meet the whole or part of her reasonable needs. The maintenance order reflects that assessment, together with the respondent's capability to maintain the applicant to the extent that is necessary to meet her reasonable needs.

Whether a threshold finding may be made that the Applicant cannot practicably meet the whole/part of her reasonable needs

[24] The Applicant, Mrs. Levermore has expressed that she is unable to meet her needs and that she is in need of spousal support from Mr. Levermore. At paragraph 10 of her affidavit filed on the 15th of April 2015, Mrs. Levermore states –

"I am not in a financial position to adequately care for myself without receiving support in the form of maintenance from the petitioner."

- [25] Counsel for the Applicant, Mr. Nelson has submitted that there is evidence that “though working the Applicant is not in a position at present to financially meet all her needs at this time”. Firstly, exhibited (as **MSTCL-4**) is a letter from Mrs. Levermore’s employer, Jamaica Property Company Limited, dated the 15th of April 2015 which indicates that she is employed as an Accounts Payable Clerk and that her annual gross salary is \$1,416,776.00. This would equate to a monthly gross salary of \$118,064.67 as admitted by her counsel.
- [26] Mrs. Levermore however claims that her monthly gross, basic salary without overtime is \$109,418.83 and after automatic deductions she receives \$23,999.83. However, this assertion does not accord with Mrs. Levermore’s pay slips for the period January – March 2015 (exhibited as **MSTCL-2**) which indicate that her net pay for this period was \$53,860.33, \$116,156.94 and \$119,107.78 (respectively). Counsel, Mr. Nelson has submitted that these pay slips, (after accounting for overtime) gives a net salary of One Hundred and Sixteen Thousand and One Hundred and Fifty Six Dollars and Ninety Four Cents (\$116,156.94). However, Mrs. Levermore has indicated that payment for overtime work is only obtained periodically. Even taking into account the variation due to overtime, double time and meal allowance payments, it does appear that Mrs. Levermore receives more than the \$23,999.83. Further, Mrs. Levermore has not provided a single pay slip/advice which reflects her net pay as \$23,999.83.
- [27] In relation to these overtime payments, Mrs. Levermore has stated that she uses these sums to “pay down accrued debts” and to “supply other necessities.” She has also indicated that she would obtain overtime employment presently when it is available (from present employers) possibly once per week. In this event, she would take home an extra \$3000.00 weekly or a gross of \$12000.00 monthly. The only evidence provided to this court in respect of the accrued debts is a credit card statement dated the 20th of March 2015 (exhibited as **MSTCL-3**). The said statement reflects a balance of \$209,908.55 but save for the taxes and banking fees the descriptions of the only two (2) transactions captured do not

provide any information as to what the sums of \$28,000.00 and \$30,000.00 were applied towards. Mrs. Levermore also contends that she has been forced to resort to borrowing money from family members, in particular her brother Michael Caldwell who she indicated may assist her with \$1500.00 (twice per month) to assist with Akeem, however she has provided no figures representing any other alleged loans.

Mrs. Levermore's expenditure

[28] It is noted that Mrs. Levermore set out her "current basic expenses" in her Affidavit in support of the Answer and Cross Petition filed on the 16th of September 2014, which stated as follows:

Food	32,000.00
Mortgage	6,300.00
Water	2,500.00
Light	6,800.00
Internet	2,950.00
Transportation costs for Toni-Ann Maqueda Levermore	5,600.00
Transportation costs for Akeem Omar Williams	16,800.00
Transportation to work for Respondent	16,800.00
Clothing	4,000.00
Lunch for Toni-Ann Maqueda Levermore	7,000.00
Lunch for Akeem Omar Williams	9,200.00
Total	81,150.00

[29] School fees/tuition for Toni-Ann and Akeem were set out separately. It was indicated that these fees are paid yearly and total \$295,310.00. It is noted that Mrs. Levermore has not submitted an updated itemized monthly budget which

takes into account the maintenance for Toni-Ann which is being paid by Mr. Levermore .Therefore her current financial position must be ascertained from her affidavits and evidence given in cross-examination.

[30] Mrs. Levermore claims that from her net income of \$23,999.83 she does the following –

- i) Pays her portion of utility bills;
- ii) Does all the maintenance of the matrimonial home which she occupies with her children;
- iii) Pays her share of the maintenance of Toni-Ann Levermore; and
- iv) Pays for the full maintenance of Akeem Williams, who attends a tertiary institution (save for sporadic lunch money contributions from his father).

[31] After meeting the expenses i) – iv) above, Mrs. Levermore claims that she struggles with regards to –

- a) Purchasing groceries;
- b) Purchasing personal items; and
- c) Transportation expenses.

[32] She has indicated that Mr. Levermore would assist her (during the marriage) where necessary with funds to attend the hairdresser. He would also assist her at times with purchasing gas for her car, which she has estimated at \$2,500.00 weekly as well as swimming lessons at YMCA. Her expense for this activity would be \$1,600.00 for one month. He would also bring home food stuff or they would attend PriceSmart jointly and spend an average of \$20,000.00 monthly. She stated that his contribution was approximately \$34,000.00 monthly. During cross examination, Mrs. Levermore had indicated that while the marriage subsisted, Mr. Levermore shared all the expenses of the household (which included Akeem) with her. She avers that she has now lost all this support. It is to be noted also that both parties are presently responsible and share the expenses of the mortgage payment for the matrimonial home. It is also to be noted that Mr. Levermore had indicated that Mrs. Levermore had stated during the marriage that they were to share the family expenses equally.

- [33]** Mrs. Levermore claims that the loss of financial support from Mr. Levermore coupled with the loss of part-time employment from another employer (to which she ascribes blame to Mr. Levermore's interference) has resulted in her borrowing money from family members and withdrawing from her savings accounts at two (2) institutions where she makes monthly contributions. Further, she claims that her credit card debt has spiralled over its limit and will continue to do so without Mr. Levermore's assistance.
- [34]** Save for the breakdown (set out at paragraph [28] herein), there has been no receipts or documentation provided in relation to the expenses set out above at i)-iv) and a)-c), the family loans or the amount withdrawn from savings. Also absent is the balance of Mrs. Levermore's saving accounts which she states that she contributes a total of \$5,360.00, monthly.
- [35]** Mrs. Levermore speaks to an employee share purchase plan which she participates in and accounts for 4% of her salary. She also speaks of another effort to improve her financial situation namely a further educational course which she expects to complete in September 2016. She states that she is currently servicing two (2) student loans, one for herself and the other for Akeem, and has expressed (without more) that she will need to apply for another "next year" (this would be in 2016). It is to be noted that Mrs. Levermore has been pursuing various studies prior to and during her relationship with Mr. Levermore. During the course of these proceedings she was engaged in completing a Bachelor's Degree in Accounting and Finance and expected to graduate in September 2016. She states that she is currently servicing two (2) student loans, one for herself and the other for Akeem (who was attending the University of The West Indies and is now at the Caribbean Maritime Institute) and has expressed (without more) that she will need to apply for another "next year" (this would be in 2016). It is in light of this that she expresses a need for financial support from Mr. Levermore until her situation improves.

[36] Mrs. Levermore has indicated that she intends to use the lump sum payments sought to assist with a *“deposit to help me to secure a mortgage to purchase a property, upon the dissolution of the marriage as my husband/ Petitioner wishes to sell the matrimonial property and I am not financially capable of purchasing his share.”*

THRESHOLD FINDING

[37] In determining whether a threshold finding may be made that the Applicant cannot practicably meet the whole/part of her reasonable needs, it is clear and has not been challenged that Mr. Levermore would have been contributing equally to the expenses of the home during the marriage. Although the marriage appeared to have broken down in 2007, Mr. Levermore only departed from the matrimonial home in 2011, albeit he was rarely there and ate nothing at the home. He stated that in 2007, Mrs. Levermore had threatened to poison him. Bearing in mind that she would have been engaged in studies during those years, I can draw an inference and as she has testified, that she would have been affected to some degree financially in relation to reasonable needs i.e. expenses for food and fuel. She had stated that Mr Levermore would contribute about \$34,000.00 monthly during the marriage in relation to the food bill. He has not testified of spending this amount once the separation took place.

[38] Having said that however, it must be made clear that Mrs. Levermore could have demonstrated with more clarity her current inability to meet her needs by providing information such as her bank statements or even an updated monthly budget. Her failure to do so makes it difficult for the court to determine definitively whether her claim is exaggerated and if so which items to accept or reject.

[39] This view is bolstered by Mrs. Levermore’s current financial capacity and in particular the steps that she has already taken to secure her financial independence. In addition to pursuing further educational qualifications which Mrs. Levermore is expected to complete this year (2016), she is currently,

i. contributing to the two (2) saving schemes	\$5,360.00
ii. participating in the company share purchase plan	\$ 3080.97
iii. contributing to an additional voluntary pension plan (in addition to the required pension plan)	\$ 5470.94
TOTAL =	\$13,911.91

[40] In practical terms, Mrs. Levermore is already currently able to contribute more than \$10,000.00, the amount being claimed in monthly maintenance, towards her financial security. There is no evidence to suggest that Mrs. Levermore has considered diverting these funds to meet the basic needs set out at a)-c), above. This tends to demonstrate Mrs. Levermore's capacity to be financially independent of Mr. Levermore at this present time as she has been able to continue to do these things even in the absence of his financial support.

[41] It seems that Mrs. Levermore may be attempting to downplay her income at this present time. As previously mentioned, the amount claimed for both her gross and net monthly income does not appear to be supported by her own evidence. Having regard to the overtime payments it is accepted that this would result in variations in Mrs. Levermore's income, however she has not provided a single pay slip/advice which reflects her net pay as \$23,999.83. Instead the pay slips produced by her which all have overtime payments, show that her net pay has fluctuated between \$53,860.33, and \$119,107.78

[42] The dicta of my sister, Edwards J from **Gardener v Gardener** at paragraph [110] is particularly apt,

*"The provisions of the Maintenance Act recognize that there is an obligation by either spouse (practicably the one who is more financially able and then only to the extent that he or she is capable) to maintain the other, if it is necessary in order to meet the reasonable needs of the other spouse. This is only to the extent that the other spouse cannot meet all his or her reasonable needs and where certain circumstances exist. **This means that maintenance of a spouse***

is not automatic. It involves necessity, capacity and reasonability.”
(emphasis added)

[43] Having regard to the evidence, I am of the view that while Mrs. Levermore has not clearly demonstrated that she cannot meet her reasonable needs at this time, it is my opinion that her ability to provide for her reasonable needs was compromised for a period of time once the separation took place. Counsel, Mr. Nelson submitted that Mrs. Levermore would have relied on Mr. Levermore's contribution which ceased altogether consequent on the institution of the divorce proceedings. Both parties have apparently agreed that the separation date is to run from the 14th of May 2011 and I note that the divorce proceedings were filed on the 17th May 2012. I am therefore prepared to make a threshold finding that Mrs. Levermore was unable to meet her reasonable needs for that period of time.

Mr. Levermore's income and expenditure

[44] However, an order for maintenance could only be made having regard to Mr. Levermore's ability to provide the financial support sought (per **MA** section 14(4)(d)). Counsel for Mr. Levermore, Mrs. Leone-Hines Smith, submitted that the central question surrounds the reasonable needs of Mrs. Levermore considered against her ability to meet those needs, and Mr. Levermore's ability to meet any shortfall, in light of all the relevant circumstances.

[45] Mr. Levermore has resisted the application by stating that the maintenance sought is neither required nor reasonable. Mr. Levermore has given a breakdown of his expenses at paragraph 11 of his Affidavit filed on the 15th of April 2015. His monthly expenses are stated to be \$120,800.00 which excludes a figure of \$50,000.00 representing, *inter alia* deductions for loans and insurance deductions. At the time, he was earning a gross sum of between \$153,160.42 to 164,346.19 while employed to the Jamaica Defence Force (JDF) as indicated by pay slips attached for January to March 2015. Mrs. Levermore disputes this and states that it is actually \$200,000.00 for most of the months. However there is no documentary proof of this except a purported salary slip which is indiscernible at

this time. It is to be noted however that his reputed net salary is less than his stated monthly expenses and other deductions and loans. This may also be an indication that Mr. Levermore is not being entirely candid with the court. The net pay for January and March is \$80,794.01 and \$72,455.22 respectively. He was also entitled to a housing allowance.

[46] It is to be noted that this breakdown includes an item described as “Contribution to Paramour’s home” which accounts for \$10,000.00 monthly (the same amount being sought per month until the decree absolute is granted). In cross-examination, Mr. Nelson suggested to Mr. Levermore that, based on the evidence he did not live at his paramour’s house, to which Mr. Levermore responded that he lived with her since the 7th of November 2011 and that is where he would sleep when he was in Jamaica and not at the military base where he had living quarters. Further, in response to counsel’s assertion that Mr. Levermore was “placing as an expense an obligation that he was not legally required to do” Mr. Levermore stated that he had to, as that was where he slept, ate, and had his clothes washed and pressed.

[47] Mr. Levermore has also indicated a change in his circumstances, as he is no longer employed to the JDF following his resignation on the 19th of September 2015. He indicated that he is a plumber by trade but is currently unemployed. Mr. Levermore stated that he has sent out a number of resumes but has received no responses. In response to counsel’s question as to how he was maintaining himself since September 2015, Mr. Levermore explained that his paramour provided him with food and when he went on vacation his friends and/or family would buy him the airline ticket. He acknowledged that he has travelled twice since leaving the JDF. He claimed that he was in Atlanta from the 23rd of September 2015 to the 29th of February 2016 and in Canada from the 21st of March 2016 to the 3rd of May 2016 and that he was expected to travel again in July of 2016.

[48] When asked how he managed to keep up with his payments (i.e. child support and utility contribution) he responded that he had a little savings as he had borrowed money from the bank that had a compulsory savings element for over five (5) years. He stated that is how he is able to pay maintenance of \$18,000.00 per month (i.e. \$15,000.00 for Toni-Ann and \$3,000.00 for utility bills). Mr. Levermore stated that he did not know the current balance of his savings as he uses a bank card and does not get receipts. It is to be noted that Mr. Levermore is also now maintaining another child, Ashley, who was born during the separation of the parties as well as his son Carvel. At the time of the filing of the Affidavit, Ashley was seven (7) years old and Carvel was seventeen (17) years. As part of his obligations, Mr. Levermore had stated that each of these two (2) children received a monthly sum of \$12,000.00. In relation to Carvel, however, the circumstances have changed somewhat as Carvel is not presently pursuing maths classes (cost of \$2,000.00 monthly) and he is not sure at this point if he will be resuming. However, he still has a responsibility to take care of him.

[49] Neither Mr. Levermore nor Mrs. Levermore have been entirely forthcoming or frank with the court. It is noted in particular that neither party has sought to give any figures nor exhibit bank statements with respect to their savings accounts. This makes it difficult for the court to have proper regard to the respondent's and the dependant's assets and means. Further, the court in considering the "respondent's and the dependant's assets and means" pursuant to **MA** section 14(4)(a) is bound to have regard to the JCPC's criticisms from **Eutetra Bromfield v Vincent Bromfield** [2015] UKPC 19. Namely, the court in discharging its statutory duty (pursuant to the **Maintenance Act**) should seek to obtain credible information concerning the income and expenditure of the parties and not to accept any party's failure to provide credible financial information to the court. While the Board was opining in relation to the respondent spouse, their Lordships stated by way of example that they would expect copies of recent tax returns, bank statements, credit card statements, company accounts and passport to have shed light on the respondent's income and expenditure

[50] The court must also take into account that both parties' circumstances have changed, as indicated previously, since the application for spousal maintenance was originally made in August 2012 and amended in October 2014. At the time of the hearing, Mrs. Levermore, the Applicant, appeared to have been on track to complete her studies (in September 2016) and all things being equal would have so done. It is noted that completion of her studies was a major reason Mrs. Levermore put forward for needing financial support from Mr. Levermore. However it is clear also that this reason would no longer exist at the time of this judgment. The court does however bear in mind that she has stated quite clearly that the completion of these studies would not lead to a change in her working conditions. She stated that she is employed in a non supervisory position with her present employers and would have to be qualified by the Association of Chartered Certified Accountants (ACCA) to attain promotion within the organization in the position of a Payables Supervisor. It is to be noted also that she would still be in the process of repaying the loans taken out by her.

[51] On the other hand, Mr. Levermore has been unemployed for over one (1) year (since September 2015). He is no longer in receipt of a housing/living allowance from the JDF. Counsel, Mr. Nelson, has submitted also that Mr. Levermore has voluntarily left his job and that his unemployment is not a bar to the application nor should it inure to his benefit in his bid to resist the application. He further submitted that while the capacity of the respondent is a relevant consideration under **MA** section 14(4)(d), it is not the only consideration. Counsel has submitted that in **Gardener v Gardener**, the respondent's pending retirement and medical ailments did not prevent the court from making *inter alia* a maintenance order. The Gardener case is however distinguishable from the instant case as the respondent spouse had an income at the time of the order and it was uncontroverted evidence that all the bills were paid at the respondent's office or by the respondent in person (per paragraph 109).

OTHER CONSIDERATIONS

Duration of Marriage

[52] Mr. Nelson has asked the court to consider that the marriage has been of significant duration, eleven (11) years up to the commencement of the divorce proceedings. He has submitted that this is an important factor for the court as Mrs. Levermore would have relied on Mr. Levermore's financial contribution throughout those long years. He has submitted also that Mr. Levermore would have been aware that she was not in a position to fully contribute to the family or household because of the years of study and had to make ongoing financial payments to institutions where she was pursuing her studies. He has asked that the court bear in mind that she still has financial obligations regarding the studies and loans taken out by her to pursue the same as well as bearing half costs for Toni-Ann as well as Akeem's expenses. Mrs. Hines-Smith has however submitted that since the parties separated on the 2nd of February 2007 (according to Mrs. Levermore in her Answer and Cross Petition filed the 2nd of August 2012), the marriage is really of short duration.

Standard of Living

[53] According to Mr. Nelson, Mrs. Levermore was comfortable during the marriage and was able to take on loans to pursue further education. He stated that she had most of the amenities, including a motor vehicle, a house, utility services and she spent time at the hairdresser as well as in recreational activities including swimming at the YMCA (both herself and Toni-Ann) that were paid for. He further submitted that Mrs. Levermore now has to do the maintenance of the house as she stated that *"when he was there he would buy things for the home, he would pay for personal things like my hair."* Her evidence was also that he would assist her with travelling expenses (fuel) if she did not have it and asked him.

[54] Mr. Nelson has submitted that all the above needs are reasonable and Mr. Levermore knew prior to entering the marriage that she was pursuing further

education and was not financially able to meet all these needs and that it is clear from the evidence that he had accepted Akeem to be part of the family.

- [55] Finally, Mr. Nelson has also asked the court to consider that there is evidence that Mr. Levermore was physically abusive to Mrs. Levermore which affected her ability on different occasions to adequately prepare for and sit examinations with the result that she had to re-sit courses. He states that sufficiently gross conduct of either party should be considered by the court as accepted by my sister, Edwards J in **Gardener** (paragraph [105]). This he submitted would result in a loan period and loan amount of longer time than was originally contemplated. He submitted also that the evidence is clear that Mr. Levermore was responsible for making calls to an institution where Mrs. Levermore was employed part-time which resulted in the loss of an alternative source of income. He has submitted also that Mr. Levermore is making a financial contribution to a third party (i.e. his paramour) for which he has no legal obligation and has asked the court to note that he was financially irresponsible in fathering another child while still being legally married to Mrs. Levermore.

SUBMISSIONS BY COUNSEL FOR THE RESPONDENT

- [56] In considering the assets and resources of both parties, counsel, Mrs. Hines-Smith has submitted that the loans reflected on Mrs. Levermore's pay slip are in the amount of \$16,000.00 and \$12,000.00 (education and tuition). She further submitted that these loans as well as living expenses were not from a commercial bank but are interest free loans from her employer. She has asked the court to bear in mind that once these are repaid, there would be a consequent increase in her net pay.
- [57] Counsel has also submitted that Akeem, who is at the University of the West Indies, has a father who is an auditor at a major bank and that Mrs. Levermore has admitted that he has made contributions to the child's tuition and education expenses.

- [58] Counsel has also asked the court to note that Mrs. Levermore has health and life insurance which are deducted from her salary on a monthly basis as well as a pension plan. In particular, she has asked the court to note that Mrs. Levermore presently drives a Honda Partner 2001 which is an upgrade from the Nissan Sunny 1996, previously owned by herself and Mr. Levermore. She submitted that the evidence of Mrs. Levermore is that she was able to use savings in the purchase of both vehicles. The evidence reveals that when the first vehicle was purchased in 2005, Mrs. Levermore contributed \$120,000.00 from her savings while Mr. Levermore took out a loan. Mrs. Levermore sold the Nissan for \$165,000.00 and added \$35,000.00 from her own savings, \$100,000.00 from back pay money at her job and she also took out a car loan from her company in the amount of \$100,000.00 to purchase the Honda for \$400,000.00.
- [59] Mrs. Hines-Smith has asked that the court contrast her circumstances with that of Mr. Levermore. She has submitted that Mr. Levermore at this time has no life or health insurance. He provides ground provisions and groceries for the matrimonial home although he has no meals there. He purchases food for the dogs resident at the said matrimonial home. He still does purchase items for Akeem whenever he visits overseas as well as Toni-Ann although Mrs. Levermore told him not to *“try and manage Akeem as he cannot manage his own marriage.”*
- [60] In relation to the consideration of future assets (per section 14 (4) (b) of the **MA**), she has asked the court to contrast the position of Mrs. Levermore who has a degree and is a chartered accountant technician. She contends that Mrs. Levermore has a twenty (20) year employment record which would place her in a good potential position for any alternative employment. She stated that Mrs. Levermore would also have opportunities for part time work and her children are able to assist themselves at home and present no hindrance to her continued employment.

[61] On the other hand, she has submitted that Mr. Levermore has no degrees although he is certified by HEART as a plumber. She stated further that he is currently making an attempt to reorder his life after leaving the JDF and is reviewing his options in pursuing a new career. She asks that the court notes that while he is expected to find employment, he is currently using his savings to maintain himself and satisfy his legal obligations.

[62] In conclusion, she has submitted that Mr. Levermore also contributes to his mother's care periodically and whilst he has no legal obligation to support his paramour, it is the place where he eats, sleeps and his clothes are washed and this is against a background where he stopped eating at the matrimonial home since 2007 as Mrs. Levermore threatened to poison his food. It is counsel's submission that Mrs. Levermore currently earns more than Mr. Levermore and her future potential is more secure. She has stated also that Mrs. Levermore has not demonstrated any disadvantage resulting from the separation as she has been able to conclude her studies which began before she met Mr. Levermore. She also states that Mrs. Levermore has also not demonstrated any financial lack or deficiency and has a substantial amount of fixed and liquid assets.

CONCLUDING ANALYSIS

[63] The court bears in mind that both parties are apparently joint owners of the matrimonial home and will share this asset equally in due course. They are both maintaining the mortgage. Mrs. Levermore maintains Toni-Ann jointly with Mr. Levermore and is also maintaining her son Akeem with some help from his natural father and possible assistance from time to time from family members. Mr. Levermore also maintains Carvel (although it is not clear what this will be in the future) and a younger daughter Ashley as well as his mother. He resides (when he is in Jamaica) with his paramour. I bear in mind also that he is not benefiting presently from residence at the matrimonial home and this is against a background where Mrs. Levermore had threatened to poison his food. If he had

found alternative residence then this would necessarily involve rental expenses as he no longer has any accommodation at the JDF base.

- [64]** I consider that he pays \$3,000.00 monthly for utilities at the matrimonial home and it is not seriously disputed that he does provide some ground provisions and food for the dogs. On the other hand, Mrs. Levermore has demonstrated an ability to find funds to upgrade her car without any assistance from Mr. Levermore. She is benefiting from interest free loans and has stable employment. She has now completed her studies although she has indicated this will not advance her to any promotion at this time. In relation to the conduct of the parties, I am not of the view that this is relevant as both have not conducted themselves with an unblemished record. He has admitted using physical violence against her on three (3) occasions although not to the extent of any medical injuries being sustained. She has admitted that she did threaten to poison his food.
- [65]** Both parties have savings available although neither has disclosed the extent. At any rate, I bear in mind that the savings account for both would not be of such to trouble the court's consideration as both parties are not business owners with substantial assets but earn or earned a modest salary. Mrs. Levermore is enjoying the occupation of the matrimonial home at this time, although she has expressed concerns about being able to purchase Mr. Levermore's share in the future. However, bearing in mind the capacities of both parties at this time, this would not be a relevant consideration for this court.
- [66]** Although, Mr. Levermore is not working at this time, he appears to be comfortable in using the proceeds of his savings account (which is undisclosed) to fulfil his obligations. He appears to be an industrious and hardworking gentleman and I have no doubt he will be able to obtain employment in the near future.

[67] In relation to the maintenance generally, while Mrs. Levermore has not given an updated breakdown of related expenses, Mr. Levermore is presently giving \$18,000.00 for the maintenance of Toni–Ann and payment of utilities. He has also stated that he gives another sum of \$2,800.00 to Toni–Ann for her bus fare twice monthly. This is a total of \$23,600.00 monthly (plus ground provisions and dog food). It does appear therefore that there was a decrease in his contribution to the household since the separation. This would have had to be covered by Mrs. Levermore.

[68] Considering all the above circumstances, I am prepared to grant an interim order for maintenance to be paid by Mr. Levermore for the period from the date of separation to the date of the filing of the divorce proceedings (i.e. the 14th of May 2011 to the 17th of May 2012). This is a period of one year as indicated above. In making the order, I will be granting a lump sum of \$96,000.00 which is reflective of the amount of \$8,000.00 monthly.

DISPOSITION

[69] It is hereby ordered that -

- 1) The Respondent pay the Applicant maintenance in the sum of Ninety Six Thousand Dollars (\$96,000.00) which represents eight thousand dollars (\$8,000.00) monthly for the period between the separation and the filing of the Petition .
- 2) The Respondent is to make the said lump sum payment of Ninety Six Thousand Dollars (\$96,000.00) to the Applicant within four (4) months of the date hereof.
- 3) No order as to costs.
- 4) Liberty to apply.