[2022] **JMSC Civ 204**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 1999 FDM00201

BETWEEN	**MARY SALOME MORRISON**	**APPLICANT**
AND	**ERROL YORK ST. AUBYN MORRISON**	**DEFENDANT**

IN CHAMBERS (IN PERSON)

Ms. Carol Davis, Attorney-at-Law for Mary Salome Morrison

Mr. Andre Earle, K.C. with Ms. Diandra McPherson instructed by Earle & Wilson for Errol Morrison

HEARD: NOVEMBER 3rd and 17th, 2022

Matrimonial Causes Act – Wife's Application to Vary Order for Spousal Maintenance – Husband's Application to Discharge Order for Spousal Maintenance – Considerations for Applications to Vary and/or Discharge An Order for Spousal Maintenance Made Prior to the Maintenance Act Under The Matrimonial Causes Act – Whether Court Should Vary or Discharge the Order for Maintenance

DALE STAPLE J (AG)

BACKGROUND

[1] Mr. and the former Mrs. Morrison (hereinafter EM and MM) are divorced and have been so now for a number of years. Campbell J in December of 2002 made Orders for the maintenance of MM by EM.

[2] Things continued along this way until June 1 of 2021 when MM was stirred into action to bring this present application for variation of the aforesaid maintenance orders by Campbell J. She has asked for an increase in the monthly sum for

maintenance from $150,000.00 to $250,000.00 and for there to be a variation of the Order relating to the car to reflect that she is essentially to get a car every five years.

[3] Mr. Earle, on behalf of EM, submitted that this call to arms on the part of MM was spurred by her “bitterness” towards EM as a consequence of his having divorced her in the first place and left her to be remarried and not out of any genuine need for an increase in the sums ordered in 2002.

[4] Ms. Davis, on behalf of MM, submitted that this application was born out of a genuine need on the part MM for an increase in the sum being paid out to her as her financial means have severely depreciated whilst EM has been living quite well.

[5] EM has himself filed an application for a variation of the said Orders of Campbell J. He has asked that the monthly sum he is required to pay under the orders be discharged, or at the least reduced substantially from $150,000.00 per month to $70,000.00 per month. He bases his application on a substantial change in his means and circumstances since December of 2002 when the initial order was made.

[6] I will say that much irrelevant and scandalous information was put in the affidavits of both parties. I did my best to wade through the morass to find those bits of actually relevant evidence in the context of the application before me, but it was nonetheless unfortunate to have to go through such ugly and unsavoury matters. It is incumbent upon counsel to place before the Court only such matters that are of relevance to the issues for resolution and not pander to their client’s wishes to air out old grievances.

[7] Further, there were no findings of fact made at the time when Campbell J made his Orders in December of 2002. Accordingly, it was more difficult for me to determine what were the determined factual circumstances of the parties at the

time so that I might be able to say what, if anything, has changed about their respective circumstances to justify any variation of the award.

[8] I am grateful to both sides for the preparation of the bundles and their submissions and authorities as well as the spirited, but good natured, oral arguments.

THE LEGAL ISSUES

[9] The issues to be resolved can be conveniently divided into two headings. Firstly, the car issue; and secondly the amount of money to be paid for maintenance going forward.

[10] Relating to the car, I find that the core issue is whether or not the Order of Campbell J made on the 20th December 2002 meant that MM was to receive a car (not less than 5 years old) every five years for the rest of her life.

[11] Relating to the sum to be paid for maintenance, the essential question is, in my view, two-fold:

(a) Have the means of the parties changed since the making of the maintenance order on the 20th December 2002 changed so as to warrant the variation/discharge sought by either party; and

(b) If the answer to (a) above is yes, should the orders be varied or discharged as prayed by either party.

Discussion on the Issue Relating to the Variation of the Sum to be Paid as Maintenance

[12] The determination of the issues relating to the payment of the sum for maintenance warrant a broader discussion. I had regard to the ruling of the Privy Council in the case of ***Bromfield v Bromfield***[1] as well as the authorities submitted by both parties (which did not include this seminal case). In ***Bromfield*** the Appellant, EB,

[1] [2015] UKPC 19

had obtained an order for maintenance against her then husband VB, the Respondent, in the year 2000 from Harris J under the **Matrimonial Causes Act**. By the year 2006, however, the Appellant applied to the Supreme Court for an increase in the sum she was receiving for maintenance. There was another application concerning matrimonial property, but this is not relevant to this case. Brooks J (as he then was), ordered (insofar as is relevant to the instant case) that VB was to pay a lump sum of $3,000,000 to EB as full and final settlement of his maintenance obligations. EB appealed to the Court of Appeal. The Court of Appeal decided (among other things) to reject her appeal and upheld the award of the lump sum to EB.

[13] Said Panton P (as he then was)[2] on behalf of the Court of Appeal,

> *"Where a marriage has been dissolved, and one of the parties has remarried and thereby taken on further responsibilities including children, it ought not to be expected that that party will ordinarily continue to maintain the other party of the dissolved marriage indefinitely. That is the principle that ought to be regarded as guiding the instant situation. We are of the view that Brooks J (as he then was) approached the matter in the correct way. There could not be a lifetime award in a situation such as this … The appellant has not … demonstrated that the lump sum awarded is unreasonable in the circumstances."*

[14] Dissatisfied with that decision, EB took the matter to the Privy Council. Their Lordships held that Brooks J (as he then was) as well as the Court of Appeal took an incorrect approach to the issue regarding the award of the lump sum. The Board raised a question, which had not been considered by counsel, Brooks J or even the Court of Appeal, as to whether or not Brooks J even had the jurisdiction to make the lump sum order under the **Matrimonial Causes Act**. The Board invited submissions from the parties on this question. EB argued that Brooks J had no

---

[2] Id at para 17

authority to make a lump sum award to her on her application for variation of the Order under the **Matrimonial Causes Act**.

[15] However, the Privy Council determined that by virtue of s. 23 of the **Matrimonial Causes Act**, (which was inserted by the passage of the **Maintenance Act** 2005) when read together with s. 15 of the **Maintenance Act, 2005,** Brooks J had the power to make a lump sum award on an application for variation of a maintenance order made pursuant to the **Matrimonial Causes Act** but prior to the passage of the **Maintenance Act, 2005**.

[16] At paragraph 23 of the judgment, the Board said as follows:

> *23. In her written submissions to the Board following the hearing the wife argues that those two sections conferred no power on Brooks J to order payment of a lump sum because, although her application for modification of the order for periodical payments was issued after 7 December 2005, the order of Harris J was made before that date. But the Board sees no reason to attach significance in this context to the date of the order made by Harris J.*

[17] In my view therefore, the Board is simply saying that regardless of when the maintenance order was made under the **Matrimonial Causes Act**, when the question of variation arises, it is to the **Maintenance Act, 2005** that a Court must turn to ascertain its powers and the bases upon which it should exercise its powers as this was made express by the provisions of s. 23 of the **Matrimonial Causes Act**.

[18] Having determined that he had the power to make the lump sum order, the Board then went on to consider the factors that Brooks J (as he then was) ought to have considered on the wife's application to vary the maintenance order of Harris J.

[19] Having examined the law, the Board ruled that it is to the factors set out under s. 14 of the **Maintenance Act, 2005** that a Court should look to determine whether

to make a maintenance order for a dependant[3]. It seems to me that the Board treated the application for variation of maintenance as though the judge was making a fresh order for maintenance and that he should proceed as though he was making orders under ss. 20(1) or 20(2) of the **Matrimonial Causes Act**. In this regard, they relied on s. 20(4) which expressly incorporates the considerations under s. 14(4) of the **Maintenance Act** into the decision when a judge is going to make awards for maintenance under s. 20(1)(a) or 20(2)[4]. Section 20(4) expressly says that 14(4) can only be considered when the judge is making an order under either s. 20(1)(a) or 20(2).

[20] Curiously, no mention was made by the Board of the lone factor in s. 20(3) which is the provision that deals with applications to vary, discharge or suspend a maintenance order already made pursuant to s. 20. Section 20(3) says as follows:

> *"If, after any such order has been made, the Court is **satisfied that the means of either or both of the parties have changed** (emphasis mine), the Court may, if it thinks fit, discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money order to be paid, and subsequently revive it wholly or in part as the Court thinks fit".*

[21] It seems to me that on the face of it, the only factor for the Court to consider when determining whether to vary or discharge an order made under s. 20 is whether the means of the parties have changed. To take the analysis a bit further, s. 18 of the **Maintenance Act** does allow for a Court to vary or discharge a maintenance order. However, it does not list any factors for the Court to consider when so doing. It does not even refer back to s. 14(4).

---

[3] See paragraph 25 of the judgment of the Board.

[4] These two sections provide for initial awards of maintenance as gross sums or periodic sums respectively.

[22] However, the Board's position seems to me to be that when determining an application for variation of a maintenance order, one is essentially looking at the same factors as though you are making a maintenance order for the first time. I readily accept that there are subtle and nuanced differences in considerations between making a maintenance order for the first time and then subsequently deciding to vary, keep or discharge the said order. But, to my mind, and (most importantly) in the view of the Board, the differences are not so great that the same considerations cannot be taken into account. What is more, it seems to me that the change in means must be analysed in the broader context of the factors as set out in s. 14(4). In other words, the factors under s. 14(4) all relate, in one way or another to the means of the parties. All s. 14(4) does it to put "means" in specific contexts.

[23] The submission from EM in the case at bar, is for him to pay a reduced amount for maintenance, or, in the alternative, a lump sum of $6,000,000.00. So I found that the case of ***Bromfield v Bromfield*** and the principles set out therein was quite appropriate to apply to this case.

[24] I will adopt the position of the Board and the issues raised by them as appropriate for me to consider when determining these applications to vary the maintenance order made by Campbell J under the **Matrimonial Causes Act**. These factors are set out as follows:

> **(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) any contribution made by the dependant to the realization of the respondent's career potential;

(i) 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;

(j) the quality of the relationship between the dependant and the respondent;

(k) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account."

ANALYSIS

Issue 1 - whether or not the Order of Campbell J made on the 20th December 2002 meant that MM was to receive a car (not less than 5 years old) every five years for the rest of her life.

[25] I do not find that the effect of Campbell J's Order was that MM should get a motor vehicle every 5 years for the rest of her life as argued by Ms. Davis. In my view it was an executory order that was complete once it was that EM purchased and gave the car of the description set out in the Order to MM. In my view, Campbell J was merely setting out the description of the vehicle EM was to obtain for MM.

[26] Campbell J's order is set out here:

2. The Respondent provide a motor vehicle not older than 5 years for the Applicant during the same period and of a similar value to the one she presently drives.

[27] MM applied for the variation of the Order and the provision of a new Suzuki Vitara. I reject both applications.

[28] What is also borne out on the evidence is that MM was, at the time the order was made, driving a Toyota Prado. But what she received at the time of the Order was a Suzuki Vitara. I have no evidence of the age or value of that vehicle at the time the Order was made or the value of the Prado at the time the Order was made. But I can infer that the Vitara must have been of a similar value to the Prado at the time and that the Vitara was 5 years old or less otherwise there would have been a complaint by MM.

[29] So what this strongly suggests to me that MM received what was ordered; a vehicle 5 years or less that was the value of the Prado she was driving at the time. This translated into a Suzuki Vitara of whatever age it was at the time in December 2002.

[30] Despite the valiant submissions of Ms. Davis, the wording of the order simply meant, in my view, that MM was not to get an old car (hence the five year upper limit on the age) and it was to be a car of similar value to what she was driving **at the time** (emphasis mine) the order was made in 2002. This latter section was to ensure that MM would be able to drive a car of a similar **value** (as opposed to quality) to what she had been driving. In my view, the confining of the **value** of the vehicle to the one she was driving at the time strongly suggests that Campbell J did not mean for this to be an order for the rest of MM's life. Otherwise, there would be an internal incongruence in the order. This is so because a vehicle less than 5 years in 2022, would not be of the same **value** of a Prado in 2002.

[31] Had Campbell J intended for EM to give MM a car every 5 years, he would have clearly said so. The interpretation of judicial orders is the same as the interpretation of words in a statute or contract. Indeed, Ms. Davis was present at the time when Campbell J made the order. Why not ask the judge to make the order in the terms

she wanted, or at least apply for clarification subsequent whilst Campbell J was still on the bench[5]?

[32] Indeed, if it was that MM felt strongly that she was entitled to a car every 5 years, why not apply to the Court for enforcement of that order much sooner than now as her evidence is that EM only gave her a new car in 2007 and not since?

[33] In my view, the order of Campbell J was an executory order and it was carried out by EM as required. It was not an order that imposed a continuing obligation on EM. As such, it is not now capable of variance.

[34] In addition, I doubt I could vary that aspect of the order. Section 20(3) provides that I can only vary a **maintenance order** which is the order for the payment of a sum of money.

[35] Further, it does not appear that I even could vary same (perhaps under ss. 23(2) of the **Matrimonial Causes Act** and s. 15(1)(c) of the **Maintenance Act** being read together). This is because s. 15(1)(c) speaks to the **transfer** of property. Property here speaks to real property or chattel as opposed to sums (as sums are dealt with specifically under 15(1)(a) and 15(1)(b)). EM has no Vitara to transfer. Nor can I compel him, under 15(1)(c), to acquire *and then* transfer a Vitara.

[36] Accordingly, the application to vary the Order of Campbell J and to order EM to provide a new Suzuki Vitara for MM is refused.

---

[5] See decision in *Advantage General Insurance Co Ltd. v Hamilton* [2021] JMCA App 25 on the power of a judge to clarify their judgments.

ISSUE 2: The Sum to be Paid for Maintenance

Question 1: Have the means of the parties changed?

MM's Case

[37] MM and EM divorced in 2001 and EM has remarried and she has not. At that time of the Order, MM was 55/56 years old. However, since then she says that she has had difficulty finding work and as a matter of fact she has been under great stress since the divorce.

[38] When the Order was made, MM says that the initial sum was adequate to meet her needs insofar as she could supplement her income because at 6 Montclair where she lives there is a main building as well as a 2 bedroom flat ('flat") from which she received an additional $50,000 per month as rental income.

[39] This changed in 2014 when one of her daughters got married and the EM decided that she should move out and live in the flat. Importantly, MM, at the very least, complied without demur to this change. Exhibited in her affidavit at ("**MM2**") is the Certificate of Title for 6 Montclair. She says that the property at 6 Montclair was jointly owned by her and the Respondent initially, but after their divorce he transferred his 50% share to their four girls. This change meant that she would no longer be able to supplement her income by renting out, and it was then that he agreed to raise the maintenance by $50,000.

[40] But this was short-lived and only happened for 2 months. In addition, this change also meant that she would be living in an accommodation that was inferior to what she was used to before. Between 2014 and 2019 she rented out one of the bedrooms in the flat. She has not been able to rent since 2019 and 2020 because of the Corona Virus pandemic. But in cross-examination, she revealed that in July of 2022, she entered into a rental agreement with a tenant for $85,000.00 per month. This agreement, she testified, was only for 5 months and is to be terminated in December of 2022. There is no evidence that it is likely to be renewed. But it

does demonstrate that she did before the pandemic, and now since, have the capacity to rent out the flat and earn an income therefrom.

[41] MM has stated that since EM left the home, she has to pay the property tax every year, complete all the repairs notwithstanding that the property is jointly owned. At one point, MM says that she completed repairs on the roof after hurricane in excess of two million dollars ($2,000,000) and EM has never repaid her his share of the expenses.

[42] She asserted that since 2002 her expenses have increased to a total of two hundred and twenty-four thousand nine hundred dollars ($224,900.00), and she has no income to supplement and has to be borrowing to get by. She claims that her standard of living has reduced when compared to her 30 years of marriage. Importantly, she is unable to travel overseas because she cannot afford the airfare. Her medical expenses have increased and will be increasing which she cannot presently afford. Even so, she had sought to refurbish the flat to be more habitable but she cannot afford this. And while her standard of living has deteriorated, EM has become a rich man and his financial position has changed greatly since 2002.

MM's current monthly expenses

[43] It is to be noted that MM's "current monthly expenses" are stated as follows:

Supermarket	s	40,000.00
Pricesmart		20,000.00
Dog Food		5,500.00
Medical		7,000.00
Physiotherapy		2,000.00
House Insurance		5,300.00

Dentist	13,200.00
Medical Insurance	12,000.00
JPS Cable etc	14,000.00
Water	4,000.00
Phone	3,000.00
Property Tax	1,400.00
Furniture	7,000.00
Credit Card Fee	1.500.00
Repairs to Lawnmower/Wheelbarrow	2,000.00
Gas	18,000.00
Vehicle Insurance	4,500.00
Hairdresser	12,500.00
Gardner	18,000.00
Helper	12,000.00
Vehicle Repair	10,000.00
Miscellaneous	12,000.00
TOTAL	**224,900.00**

[44] These figures were not challenged by EM whether by affidavit in reply or in cross-examination. What the Court finds noticeably absent, was her statement of income. Certainly, she would list as her income the $150,000.00 per month. This would, by

simple arithmetic, leave a shortfall between income and expenditure of $74,900.00 conservatively.

[45] MM claims that EM's current address is 2 Rovan Heights, Jack's Hill and it is large spacious three bedroom house with swimming pool and grounds which is occupied by EM alone with his new wife. This was not disputed.

[46] MM confirms that EM contributed to the conversion of the flat but his estimation of the expenses was grossly exaggerated. And she requested that he produced the bills. MM said that EM made all the arrangements for the occupation of the house after he transferred his share to the children and it was her who spent money to maintain, refurbish and keep 6 Montclair up to date so that it was suitable for occupation. From what source of income, MM still has not disclosed fully except to say it was from her savings and loans (evidence of which was absent). If it was loans, how have these loans been repaid and what were the amounts? She claimed that the money EM assisted to the fixing up of the flat is relatively small.

[47] To bolster her claim that she is disadvantaged, MM said that her flat is 750.11 square feet or 17.68 % of the entire building and the main house is 4,423.89 square feet and EM has directed that she pay half the maintenance cost including utility bills. She conceded that EM built a perimeter wall for 6 Montclair, but it was done by him on his own volition without discussion with her. She said he did for the benefit of his children and it is true that he financed it. But she lives there too. So she also benefits from this. For her to act as though she is not also a beneficiary is disingenuous.

[48] MM avers that she had a meeting with EM and told him that the arrangement was not fair to her and he should increase the monthly sum. Two increase payment was delivered to her and then it stopped. This was vehemently denied by EM in cross-examination. I actually do not believe MM. She said the monies were delivered through a named source. But this person never came to testify. In fact

she said the sums were paid via cheque, but no proof was provided. I find her assertion dubious and rejected same.

[49] She claims also that she has to share light and water and gardener expenses which is unbalanced. The main house, which is occupied by her daughter, has a total of six persons as opposed to her. She says that she helps her daughter whenever she can but from what source of income, we are still uncertain.

[50] MM then sought to challenge the statement that EM has given up his medical practice. But no proof of this was provided. She claimed that EM is being untruthful in declaring his income and expenditure. However, the remainder of this evidence is hearsay as she says the information came from EM's secretary without calling her as a witness and she was relying on it as proof of the truth of the facts set out. As such I did not consider it.

[51] She went on to claim that between January 2021 and January 2022 the Respondent's monthly expenses have allegedly more than doubled moving from forty-seven thousand six hundred and six dollars and forty five cents $47, 606.45 in 2021 to one million one hundred and seven thousand four hundred and eighty-two dollars and sixty two cents $ 1,107,482.62 in 2022. However, EM sought to clarify this in his affidavit. I accepted the clarification made by EM.

[52] According to MM, EM married his new wife who is ten years older because she has money, she is rich. This claim is rejected as being without base. It is true that EM's new wife is a medical doctor and that she had a thriving practice for many years. It is also true that she has purchased one of the offices at the Diabetes Center Limited. However, as EM went on to explain, this was by way of an exchange between a property he had on Old Hope Road and the new Mrs. Morrison which evidence I accept.

[53] MM asserted that EM's wife would be the beneficiary on his insurance coverage and as a medical doctor she would benefit from reductions generally given to

doctors by their colleagues. I rejected this latter assertion as being purely speculative and without evidential support.

[54] MM also avers that the Diabetes Association has its own doctor's offices and EM did not claim to be paying rent in 2021, when he was still engaged in his practice. MM asserts that she is not sure who pays the loan as EM admits that the properties are owned by DCL. She asserted that the DCL is controlled by EM and their daughters are only in the Company as a matter of form, and for the purpose of EM's position. Again, no proof of this was provided by way of evidence from DCL or the daughters. This is therefore rejected.

[55] She asserted that EM collects the money. She asserted that EM has added his daughters to his account for succession purposes, but the money in the account belongs to him and is used at his disposal. Again, there is really no evidence to support this and it was rejected.

EM's Case

[56] He claimed that there was never any discussion to increase maintenance as one hundred and fifty thousand dollars ($150,000.00) was paid at all times and no more for all 19 years because it was clear that the amount was to take care of all MM's expenses. In addition, her asserted that MM actually shares all the expenses for the property with their daughter Colette because she (Colette) lives in the larger side of the house.

[57] He also claimed that the Claimant travels frequently to London with her male companion and elsewhere and has even assisted one of her daughter with money for overseas health insurance. However, this is properly hearsay and was not considered by the Court. EM stated that he found it strange of the Claimant to borrow money to get by because, the Claimant is a part owner of two houses along with her two brothers in a city called Msida in Malta, one which is a seafront and the other is 22N Sawmill Street for which she receives income for rent paid in Euros. No evidence of this was provided by EM. But one has to wonder from

whence did MM get money to refurbish the roof of the house at 6 Montclair as she said she did following Hurricane Ivan? She left teaching in Campion in 2001. (this evidence from MM was never challenged) and all she had was the money from EM (if she is to be believed). Clearly, MM must have had a source of income sufficient to allow her to expend, as she claims, over $2m to repair the roof post Ivan.

[58] Now MM did admit in cross-examination that she was the co-owner of the two Maltese properties with her brothers. However, she asserted that the properties were dilapidated and in no shape to be rented out or even sold. Mr. Earle suggested to her that they were not dilapidated. But, there was no evidence called by EM to support any such assertion. In light of the absence of such evidence from EM and bearing in mind that he would have an evidential burden, I cannot say that he has met that burden and I cannot find that the Maltese properties were in any way fit for rental or even for Air BnB short term leasing.

[59] According to EM, all of his 50% interest in 6 Montclair was transferred to his daughters because he wanted the house to remain in the family.

[60] He asserted that MM had no tenants because of her untenable behaviour and all her tenants have moved out because of her. She also has frequent intemperate behaviour and their daughter's overseas do not wish her to visit. He has also had to intervene several times at 6 Montclair because of complaints about her irritable, loud and ill-natured behaviour. These assertions were really without sufficient evidential foundation and were not considered. He is also unaware of any contractor report or any loan taken out by the Claimant to repair the roof of the house.

[61] In addition, he says that he built a wall to enclose the house including a recently purchased property behind the house in order to enhance security and space in and around 2020 and as proof exhibited as (**"EM3"**) a copy of the statement Account regarding purchase of the land part of Mona and Papine Estates, St.

Andrew and the Estimate Bill on the construction of perimeter wall and grill at 6 Montclair Drive, Beverly Hills.

[62] However, because of discontinuing his private practice, aging and other life changes, his expenses and income have decreased substantially. EM further stated that:

1. The house in which he lives is owned by his wife Mrs. Fay Whitbourne Morrison and her daughter through a Company named Kenhold Limited proof of which is exhibited as (**"EM4"**) through a Certificate of Title. His wife is an 85 years old retired physician without a pension and she has been battling cancer since 2019. All the expenses are borne by him.

2. Doctor's Office at 1 Downer Avenue rented for one hundred and eight thousand five hundred and ninety-eight dollars and twelve cents ($180,598.12), that he continues to use as office space to attend to patients at the Diabetes Association and in a letter at (**"EM6"**) dated 28th April 2022. The DCL confirms rental and maintenance per month.

3. All the properties were all bought and are owned by the DCL for which a loan of fifty million dollars ($50,000,000.00) was obtained from The Bank of Nova Scotia Jamaica Limited. The EM says that the loan was negotiated as a personal loan instead of a commercial loan and included the land acquired at the back of the property at DCL.

4. Each month the DCL pays EM three hundred thousand dollars ($300,000.00) however, as proof he exhibits at (**"EM7"**) an email showing the details of consolidated loan as well as a bank statement stating that two hundred and fourteen thousand four hundred and seventy-seven dollars and seventy-seven cents ($214, 477.77) is paid by him to The Bank of Nova Scotia Jamaica Limited ("Scotia").

5. Property at 2 Downer Avenue is not owned by Diabetes Center Limited but is leased by them and he shows as proof a lease agreement between Earle B. Frater and Margaret Rose Frater and DCL at (**"EM8"**).

6. EM is not a shareholder in DCL but their four daughters are.

7. Interest in the property at 96 ½ Old Hope Road in the parish of Saint Andrew was disposed of to Mrs. Fay Whitebourne Morrison and Sophia Whitbourne and in a letter dated 11th December 2014, captioned transfer as proof at (**"EM9"**).

8. The property held with Dr. Cheryl Sloley was transferred and the proceeds used to assist the Diabetes Association.

9. Scotia Annuity Fund amount one hundred and seventeen thousand seven hundred and thirty-five dollars ($117, 735.35).

10. Scotia Retirement Fund amount is seventeen thousand four hundred and sixty-five dollars and twenty cents ($17,465.20)

11. UWI pension received per month two hundred and thirty-five thousand one hundred and eight-six dollars and fifteen cents ($235,186.15)

12. NIS pension for the amount of twenty-one thousand and ninety-three dollars ($21,093.00) which began around September 2021.

13. Pharmacy on the third floor is leased by DCL and no money is received from the agreement and a copy of the lease agreement at (**"EM10"**) is proof which is between Tyrone Smith and DCL.

14. Apartment at Manor Court was sold and Mrs Fay Whitbourne Morrison was entitled to half and a portion was used to purchase the Mercedes Benz and in a vendor's statement of account with Fullerton Delisser & Company dated 25th January 2019 as proof shows at (**"EM11")** the sale of apartment 3B Manor Court, Manor Court Drive, Kingston 8.

15. All the bank accounts are jointly owned

Mr. Morrison's updated statement of monthly income and expenditure

Income

Rental Income : 4 Montclair Drive	J$393,750.00
Sagicor Annuity	J$117,735.56
Scotia Retirement Income Fund	J$17,465.20
NIS Pension	J$21,093.00
UWI Pension	J$235,186.15
Diabetes Association	J$300,000.00
UCJ Board Fees (Chairman)	J$2,812.50
TOTAL	J$1,088,042.41

Expenses

BNS Consolidated Loan Payment	J$214,477.77

Maintenance (Mary Salome Morrison)	J$150,000.00
Sagicor Cayman Health Insurance	J$16,469.93
CCRP Health Plan	J$12,374.00
MAJIF (Indeminity Malpractice Fund)	J$2,683.27
Guardian Life (Term Life)	J$61,605.83
Maintenance including pool at 4 Montclair Drive	J$38,480.00
Office at Diabetes Centre Limited (Rent and Maintenance)	J$180,598.12
Home and Medical	J$400,000.00
Royal College of Physicians and The American College of Physicians	J$1,291.67
Home Insurance	J$15,715.36
Firearm Licensing Authority licensing fee	$3,666.67
Hawkeye	J$10,120.00

TOTAL	**J$1,107,482.62**

[63] In light of the changes, EM claims that he cannot continue paying the maintenance much worse an increase. And asks the Court to discharge the Order by the Honourable Justice Campbell dated 20 December 2002.

Question 2: Has there been a Material Change in the Means of the Parties?

[64] I would say there has been a significant change in the means of the parties since the making of the Orders by Campbell J in December of 2002.

[65] For one, MM's living circumstances have changed dramatically. She went from having full control and occupation of the former matrimonial home, to being forced out of the main section into the smaller flat. She went from being able to live comfortably in the 3 bedroom section of the property and renting the smaller flat, to living in the flat and having to rent out a bedroom.

[66] MM no longer teaches regularly or at all and so that income has also fallen off substantially. Whatever savings she would have accumulated have now been depleted.

[67] Her expenses have certainly increased as well due, if nothing else, simply to the increases in the rate of inflation between 2002 and the present date. The income from the maintenance of $150,000.00 would also have declined in real terms as a result of the impact of inflation.

[68] On the other hand, EM's means have also been impacted. But it is my finding that he has not fared as badly as MM has and the impact to him of the ravages of the economy have not been as bad as on MM.

[69] EM has managed to sell a few of his properties and realised significant profits from them. He has also managed to acquire a few new assets. Indeed, in such a great financial position has he been, that he has been willing to lend his financial support to the DCL as well as the Diabetic Association. What is more, he was able to acquire a luxury vehicle for a cash price of well over US$100,000.00 with US$80,000.00 to spare as a result of the property sale. It is most telling that EM did not disclose this in his affidavits despite knowing of this from 2020. He did not even disclose the JMMB accounts into which the proceeds of sale was deposited. It had to be prised out of him on cross-examination. The Court takes a dim view of this failure to disclose such vital information in the context of an application to vary a maintenance order.

[70] I note the revised figure of EM's income and expenditure. To his credit he has provided both figures for income and expenditure. I found his explanations for the variations in the figures from the 2021 figure used at mediation to the one put into evidence for this matter to be reasonable and credible and he was able to stand up to the challenges on cross-examination.

[71] However, I am not sure what constitutes "Home and Medical" in his list of expenditure and how that is broken down. It seems to have been just a figure thrown out there and is not based in any real thing such as "grocery expenses" or such. Accordingly, I will have to discount that. This is so as well because, he would be sharing expenses with his wife unlike EM who is living on her own essentially.

[72] Despite all of this, I accept his evidence that EM has substantially given up his medical practice. That was a significant source of income. I also accept his evidence that his wife has now been battling a terrible disease and this has substantially affected her earning capacity – almost eroding it altogether.

[73] I am therefore satisfied that the means of the parties have changed since December 2002 when Campbell J made his Order. I am satisfied that it has

changed for the worse for MM and for EM, but that EM is in the stronger financial position of the two.

Issue 2: Whether to Vary to Increase or Reduce or to Wholly Discharge

[74] Having regard to the factors set out in s. 14(4) of the **Maintenance Act** as set out above and the evidence presented, I am minded to say that the Order for maintenance should be increased.

[75] I am satisfied that EM has the means to pay an increased amount for maintenance to MM and that MM is not in a position to properly maintain herself due to the shortfall between her present income and expenses.

[76] MM's expenses I found to be reasonable and credible. I generally found her to be credible if not overly emotional and prone to outbursts during the hearing. I am, however, minded to consider that she did not fully disclose her source of income. Her last affidavit was filed on the 27th July 2022. By this stage, it is my finding, she already had the tenant. Why not disclose the fact of this rental arrangement, even if temporary? She said she is earning $85,000.00 per month from this arrangement. That is not a small amount of money.

[77] Indeed, if one adds the $150,000.00 to the $85,000.00, she would have more than enough to cover her expenses as set out. However, she says that this arrangement was only temporary and is set to end in December of 2022. Nevertheless, as I stated earlier, it demonstrates that MM can generate rental income. Indeed, her own evidence is that she used to rent out a section of the flat in the pre-pandemic years. Clearly this has returned. This would therefore be a factor for me in reducing the amount of money MM would require from EM.

[78] I also bear in mind the evidence from EM that he now has his current wife to take care of. In the ***Bromfield v Bromfield*** decision, the Privy Council has rejected

Panton P's position (as set out above) regarding the former spouse viz the new spouse. They said at paragraph 27 of the judgment as follows:

> *"But, in dismissing the appeal against the orders under the Matrimonial Causes Act, the Court of Appeal, as noted in para 17 above, stated the guiding principle to be that, where following divorce the husband had remarried and taken on further responsibilities including children, he could not ordinarily be required to maintain his first wife indefinitely and that in such circumstances there could not be a lifetime award. In the view of the Board the Court of Appeal did not there accurately state the law. The accurate statement is set out in section 14(4)(g) of the Maintenance Act set out in para 25 above, namely that any legal obligation of the husband to provide support for another person is one of the matters, but no more than one of the matters, which the court is required to consider. Section 14(4)(g) reflects the principle in English law that "although it should not go so far as to give priority to the claims of the first wife, it should certainly not give priority to the claims of the second wife" (Vaughan v Vaughan [2010] EWCA Civ 349, [2011] Fam 46, para 38)".*

[79] So I do not attach any greater significance to this factor than to any other. I also bear in mind that both EM and MM are quite advanced in age. EM, however, I find, is still able to practice medicine, and he even assists the Diabetic Association with their patients through an office which he maintains at the DCL. So, if he wanted, he could resume his practice, even if reduced. However, MM does not, I find, have such a capacity.

[80] There is no compelling evidence that either EM or MM suffer from any debilitating disease or are significantly impaired. There is no evidence to suggest that getting the maintenance would allow MM to establish herself in any other viable career or allow her to set up herself to significantly ease her dependency.

[81] I have also considered that under the **Maintenance Act,** all four of the children now have a statutory obligation to maintain their parents to the extent they are able so to do. The evidence is that all four children are in good professions and have asset bases (for example the shares in DCL, several properties owned jointly with EM) that they would be in a position to assist MM in the future (even in the unlikely event that they have to be compelled so to do by a Court). This would, in my view,

contribute to reducing the requirement for EM to continue paying maintenance to MM for any significant period of time.

[82] What is also true is that MM does have 2 assets of her own in the form of her interests in the Maltese properties along with her brothers. It is high time that MM take steps to realise her share in those properties rather than just have the assets wasting away. There is no evidence from her which suggests that she would not be able so to do. But I do bear in mind that there is no evidence of the value of those interests and so I do not put much emphasis on these assets as a major factor in my decision.

[83] In all the circumstances therefore, I am minded to award an increased sum for maintenance to MM. However, it is not going to be as large an increase as she desires. I therefore refuse EM's application for a reduction in the maintenance payment. I find his application for such a drastic reduction to be unrealistic and grossly unfair.

But What Orders May I Make In Varying the Order?

[84] This is a crucial question to answer especially in light of the pronouncements of the Board in ***Bromfield***. When the Board asked Counsel in the ***Bromfield*** matter to locate the power of Brooks J (as he then was) to order a lump sum payment on an application to vary a periodic maintenance order under s. 20(3) of the **Matrimonial Causes Act**, they decided that his power so to do did not reside in s. 20(1) of the **Matrimonial Causes Act** as argued by Counsel but rather under s. 23[6].

[85] From the reasoning of the Board found in paragraphs 18-24 of the Judgment, it is clear that the orders I am empowered to make on an application to vary are found under s. 20(1)(a) of the **Matrimonial Causes Act** (secured periodic payments);

---

[6] n 1 at paras 18-24.

and s. 15(1) of the **Maintenance Act** as incorporated through s. 23 of the **Matrimonial Causes Act**. These latter orders are periodic maintenance orders **or** a lump sum payment **or** an order for the transfer of property.

How Much for the New Figure for Maintenance and for How Long Should EM Pay?

[86] I find that given the circumstances and evidence I have accepted, the level of acrimony and bitterness between MM and EM, and the uncertainties regarding renting out the flat to another paying tenant who is trust worthy, the appropriate sum to increase the monthly maintenance to would be $230,000.00. This would give MM sufficient sums of money to cover her expenses. It would also balance the competing needs for EM's monies.

[87] The next question is the duration of this payment. The average life expectancy of women in Jamaica is now 75 years old. MM has beaten the odds. That is good.

[88] I am aware that EM had suggested a lump sum figure of $6,000,000.00. But I reject that approach in this case as I simply do not have the necessary evidential foundation to make such an award. I would run into the same issues as Brooks J had in ***Bromfield v Bromfield*** as found by the Board. But should I impose a cut off period for the maintenance instead? The modern approach is towards a clean break[7]. I agree with this approach. The parties have been married for over 30 years. EM has now been paying maintenance for over 20 years. The parties are now well into their late 70s. EM has been faithfully paying the sum ordered all this time. A rough calculation shows that MM would have received approximately $36m in maintenance payments since 2002. I am of the view that in those circumstances

[7] See the decisions of Shelly-Williams J in *Antoinett Nancy West Lehmann v Peter Lehmann* [2017] JMSC Civ 186; and Wolfe-Reece J in *S.B.W. v V.W.* [2021] JMSC Civ 17 who adopted the reasoning of Shelly-Williams J in *Leshmann v Leshmann*. This is also reflected in the provisions of s. 14(4) of the **Maintenance Act.**

it is time for his maintenance to come to an end. I will have the maintenance determine after 3 years.

DISPOSITION:

1 Order 1 of the Order Campbell J dated December 20, 2002, is varied to say as follows:

a. Errol Morrison shall pay to Mary Morrison the sum of $230,000.00 per month for 3 years. The payments shall commence on or before the 28th November 2022. At the end of this period of 3 years, the payments shall cease.

2 The application for Errol Morrison to provide Mary Morrison a new Suzuki Vitara is refused.

3 The Application filed by Errol Morrison is refused.

4 Errol Morrison shall pay 50% of the costs on the Application filed by Mary Morrison and Errol Morrison shall pay 50% of the costs of Mary Morrison on his application.

5 Mary Morrison's Attorney-at-Law shall prepare, file and serve this Order on or before the 25th November 2022 by 3:00 pm.

……

D. Staple, J (Ag)