



[2025] JMSC Civ. 110

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FAMILY DIVISION
CLAIM NO SU2023FD02392**

BETWEEN	NERISHA NATHAN	CLAIMANT
AND	HOPETON BAINES	DEFENDANT

IN CHAMBERS (SUBMISSIONS)

Mr John G. Graham KC and Ms. Peta-Gaye Manderson instructed by John G. Graham & Company for the Claimant.

Mr. Michael Howell for the Defendant

Heard: 10th July, 2025 and 3rd October, 2025.

**Family Law – The Children (Guardianship and Custody) Act- The Maintenance Act-
Whether the sum claimed for maintenance by the Claimant is reasonable**

A. MARTIN- SWABY, J (AG.)

[1] By Fixed Date Claim Form filed on the 27th June, 2023, the Claimant seeks the following reliefs;

- i. Custody, Care and Control of **PMB**, hereinafter referred to as (“the child”) born on the 18th day of April, 2014 be granted to the Applicant;
- ii. That the Defendant pays to the Claimant monthly, the sum of \$80,000.00 for the maintenance of the child;

- iii. That the Defendant pays to the Claimant one-half of the fees related to childcare as well as one-half educational, medical, dental and optical expenses;
 - iv. That the Defendant may have reasonable access to the child at such times as are agreed with, and/or approved by, the Claimant;
 - v. Such further or other relief as this Honourable Court deems fit.
- [2] In support of this Claim, the Claimant has filed three (3) Affidavits which were received in evidence as her evidence in chief. In response to this Claim, the Defendant has filed four (4) Affidavits which were likewise received in evidence as his evidence in chief.
- [3] On the 10th July, 2025, the Claimant and the Defendant presented their case before the Court. It must be noted that at the commencement of the trial, King's Counsel Mr. John Graham informed the Court, and to which Counsel Mr. Michael Howell confirmed, that the parties have agreed that custody of the relevant child be joint as between the parties with care and control being vested in the Claimant. Therefore, the sole issue to be determined at trial is the contribution which is to be made by the Defendant for the maintenance of **PMB**.
- [4] At its conclusion, both parties requested that they be given an opportunity to present brief written submissions. Having received and considered these submissions, my findings are that the Defendant is to contribute the sum of Seventy-Three Thousand Dollars (\$73,000.00) per month plus half educational and half medical expenses as his contribution towards the maintenance of **PMB**.

The Claimant's Case

- [5] The Claimant's case is that she earns approximately Three Hundred Thousand Jamaican Dollars (J\$300,000.00) per month through her business of buying and selling motor vehicles. She outlined in her further Affidavit filed on the 08th December, 2023, a revised list of monthly expenses which are attributable to the

care of **PMB**. The total cost amounts to Two Hundred and Three Thousand, Seven Hundred Jamaican Dollars (J\$203,700.00) per month. These expenses include mortgage, water, electricity, internet and cable, groceries, transportation, hair grooming, lunch money, medical (including dietary supplements/vitamins), extra-curricular expenses, entertainment, nanny and clothing. The breakdown of the monthly expenses as per the schedule is as follows:

Mortgage	\$24,000.00
Water	\$ 2,600.00
Electricity	\$10,600.00
Internet/Cable	\$ 2,000.00
Food/ Groceries	\$30,000.00
Transportation	\$24,000.00
Hair Grooming	\$11,000.00
Lunch money	\$17,500.00
Medical	\$10,000.00
Extra-Curricular	\$ 7,000.00
Entertainment	\$ 5,000.00
Nanny	\$56,000.00
Clothing	<u>\$ 4,000.00</u>
Total	\$203,700.00

- [6] In cross examination, Counsel sought to challenge the Claimant's evidence regarding the schedule of expenses attributed to **PMB**. Counsel inquired whether the Claimant now uses a solar powered energy source. The witness agreed that she does use solar and therefore the expense for electricity of Ten Thousand Jamaican Dollars (J\$10,000.00) which was previously attributed to **PMB** and included in the schedule has been significantly reduced. In terms of medical expenses which was included in the schedule as Ten Thousand Jamaican Dollars (J\$10,000.00) per month, the Claimant agreed with Counsel that medical expenses are treated separately for the purpose of calculating the monthly

maintenance contribution. However, she indicated that this Ten Thousand Jamaican Dollars (J\$10,000.00) includes supplements which are purchased for **PMB** as well as day to day medications such as cough syrup and other incidentals.

- [7] Counsel sought to challenge the figure given for the nanny. He suggested to the Claimant that when the child is taken home from school, there is at least one adult at home. Therefore, there would be no need for a nanny. The Claimant explained that the nanny works for two (2) days each week. That she cleans **PMB's** room, prepares meals for her and the family and does other things for **PMB**. The cost of this nanny is Seven Thousand Jamaican Dollars (J\$7,000.00) per day. The Claimant agreed with Counsel that the current cost for the nanny would be less than Fifty-Six Thousand Jamaican Dollars (J\$56,000.00) per month.
- [8] Counsel sought to challenge the cost of Twenty-Four Thousand Jamaican Dollars (J\$24,000.00) associated with transportation. The Claimant indicated that the cost is now higher. She explained that the Twenty-Four Thousand Jamaican Dollars (J\$24,000.00) reflected the cost of a school bus service which was previously used to transport **PMB** home. However, this was discontinued, and she then hired a driver to take her home. Now, **PMB** is taken by a member of the family and the costs associated with this includes gas, toll and wear and tear on the vehicle which is higher than Twenty-Four Thousand Jamaican Dollars (J\$24,000.00) per month.
- [9] Counsel suggested to the Claimant that someone else has filed for child tax credit on their tax return for **PMB** with her consent. She agreed and indicated that this was done once in the year 2020. She stated that the person received One Thousand Five Hundred United States Dollars (\$1,500.00 USD). She gave the person Five Hundred United States Dollars (\$500 USD) and she received One Thousand United States Dollars (\$1,000.00 USD).

[10] In re-examination, the Claimant explained that the cost of installing the solar system was Four Million Jamaican Dollars (J\$4,000,000.00). She indicated that she made a deposit and was placed on a payment plan. The monthly cost for the solar system is Sixty Thousand Jamaican Dollars (J\$60,000.00). She indicated that her water bill has increased. It is now Sixteen Thousand Jamaican Dollars (J\$16,000.00) per month and that the cost for food and groceries for **PMB** has also increased to Forty Thousand Jamaican Dollars (J\$40,000.00) per month. She also explained that the cost for grooming **PMB** hair is Twenty Thousand Jamaican Dollars (\$20,000.00) per month as her hair is treated twice per month and it is Five Thousand Five Hundred Jamaican Dollars (\$5,500.00) per visit to the hairdresser.

Defendant's Case

[11] The Defendant sought to challenge the Claimant's expenditure for a nanny for **PMB** due to the age of the child and the fact that there are four (4) other adults living in the home along with the Claimant and **PMB**. In his Affidavit filed on the 31st October 2023, he explained that he is a contractor and that his income is irregular. Consequently, the parties made an arrangement whereby the Respondent purchased a Toyota Corolla which was used as a taxi and the proceeds of Fifteen Thousand Jamaican Dollars (J\$15,000.00) per week was given to the Claimant as his contribution towards **PMB**'s maintenance. He stated that the Claimant suggested that this vehicle be sold and the proceeds be used by her to import a vehicle from Japan and she would continue to turn over the income from this through the purchase of other vehicles and use the profits from this venture to care for **PMB**.

[12] The Defendant stated that his monthly income on average is Four Hundred and Eighty Thousand Jamaican Dollars (J\$480,000.00) and his monthly expenses amount to Four Hundred and Fifty Thousand Jamaican Dollars (J\$450,000.00). As such, the net income amounts to Thirty Thousand Jamaican Dollars (J\$30,000.00).

An income and expenditure statement prepared by accounting firm Dunkley and Partners is attached to his Affidavit filed 15th May, 2024. The Defendant states that given the financial hardship he faces due to his income and expenditure, he is asking the Court to make an order that he is to pay Twenty Thousand Jamaican Dollars (J\$20,000.00) per month as his contribution towards the maintenance of **PMB**.

- [13] In his Affidavit filed October 11, 2014, the Defendant averred that as a contractor, his income varied from time to time and on this basis, he made arrangements for a taxi to be purchased so that **PBM**'s maintenance would be consistent. He contends that the sums being claimed for **PBM**'s contribution to mortgage, water, electricity, transportation, nanny and other items are excessive and does not conform with realistic expenses.
- [14] In cross examination, the Defendant stated that he is a contractor by profession. He indicated that in the last ten (10) years, he has only managed to work on three (3) projects. One (1) being structural additions to his mother and sister's premises and one (1) which involved the building of an apartment complex which consist of nine (9) units. This project was spearheaded by a Company MB Developments of which he is a major shareholder. He stated that the units were sold by the company save and except one (1) unit which was transferred to him and in which he now resides. The transfer to him was done in the year 2020/2021. There is no mortgage on the unit which was transferred to him.
- [15] He accepted that he also has a property at 23 Derrymore Road which is registered in his name. He stated that this property is currently vacant. In the past, he used it as a garage and office. He stated that the last time a business was operated on the premises was on or about the year 2020 or before. He indicated that he is not earning an income from the premises as he no longer does garage work.
- [16] He stated that since the year 2024, he has been working on three (3) projects, namely, his sister's house in Greater Portmore, construction work from time to time

at Derrymore Road and a construction at Chancery Hall. When asked what his income was for the 14-month period ending June 2025, he indicated that it was Four Hundred Thousand Jamaican Dollars (J\$400,000.00) exclusive of his expenses.

[17] He agreed that the apartment units at Merryvale were sold by his company. He did not recall if he sold one (1) of those units to a Romaine Thompson for Twenty-Nine Million Jamaican Dollars (J\$29,000,000.00) but he indicated that this could have been so. It was suggested to him that there is a title with one of these units and the consideration was listed as Twenty-Nine Million Jamaican Dollars (J\$29,000,000.00). The Defendant indicated that he didn't know what the units were sold for. However, he agreed that the land was owned by him and the company that did the construction and sold the units, was his company. He agreed that he and his mother Marcia Baines are the only shareholders of this company each holding Five Thousand (5,000) shares.

[18] Counsel inquired whether he had a statement of his current income over the past fourteen (14) months. He indicated that he does not have one. However, he stated that his income has remained unchanged. He stated that he is aware that the cost of living has increased over the past eighteen (18) months. However, he is not certain whether it has steadily increased over the past five (5) years. He noted that over the past eighteen (18) months he has seen a small incremental increase in electricity, telephone, petrol, but the most significant is the electricity bill. He stated that he has not noticed an increase in the supermarket bill.

[19] He agreed that he is working on a townhouse complex in Chancery Hall where three (3) townhouses are being built. He stated that there is no projected end date for this project. There are two persons overseas who are doing this project. However, he owns the land and he agreed that he is earning an income from this project.

[20] As regards the interim order for the payment of Sixty Thousand Jamaican Dollars (J\$60,000.00), he indicated that it has been a struggle to pay this monthly sum. He stated that he is only able to pay this sum through borrowing from persons such as his mother and his friends.

[21] In answer to questions put to him by the Court, he stated that his other child is five (5) years of age and that he is to pay the sum of Thirty Thousand Jamaican Dollars (J\$30,000.00) per month for maintenance. However, there are some months when he is only able to pay Twenty Thousand Jamaican Dollars (J\$20,000.00).

Claimant's Submissions

[22] King's Counsel for the Claimant posited that the primary issues to be considered by the Court are (i) what is the appropriate quantum of monthly maintenance for **PBM** having regard to her needs and the means and capacity of the parties and (ii) whether the sum of \$80,000.00 per month as claimed by the Claimant is reasonable and justified.

[23] King's Counsel pointed the Court to the obligation of both parties to maintain the child and the fact that the Court ought to consider both the needs of the child as well as the capacity of the parents. He further posited that regard should be taken of the standard of living that the child has become accustomed to, the evidence of which has been supported by receipts. He contended that the Defendant's assertion that he can only afford Twenty Thousand Jamaican Dollars (J\$20,000.00) per month is not supported by credible or up-to-date evidence. King's Counsel asserted that the evidence shows that the Defendant is in fact, more than capable to afford maintenance. He indicated that the Defendant failed to provide an up-to-date financial information and has instead relied on vague and dated statements which has been undermined by his own admission that he has chosen not to rent his commercial property or apartment.

[24] King's Counsel has asked the Court to find that the Claimant's evidence is clear, detailed and supported by documentation. On the other hand, he asserts that the Defendant's evidence is lacking in detail, credibility and transparency. He contended that the Defendant has failed to provide full and frank disclosure of his means and should not be allowed to avoid the maintenance obligation by underutilising his assets or income. He submitted that the Court should accept the Claimant's evidence as the most reliable account of **PMB**'s needs and that Eighty Thousand Dollars (\$80,000.00) per month is reasonable and necessary for maintenance.

Defendant's Submissions

[25] Counsel for the Defendant asserted that the primary issue for deliberation is how much should the Court award for the monthly maintenance of **PMB**. He gave a description of the parties' income and expenditure and contended that the Defendant has always demonstrated his involvement in **PMB**'s life by paying for maintenance for food, clothing, schooling and other expenses. He asserted that the interim payment Court Order for the payment of Sixty Thousand Jamaican Dollars (J\$60,000.00) has created severe hardship owing to the rising costs of living. It is submitted that the monthly payment should be fixed at Twenty Thousand Jamaican Dollars (J\$20,000.00) per month in addition to one-half medical, dental and education expense. Counsel argued that the Court should deny the orders sought by the Claimant.

The Issues

- i. Whether the monthly expenses attributable to the relevant child **PMB** is reasonable or exaggerated?
- ii. Whether the Defendant has the capacity to contribute more than \$20,000.00 towards the maintenance of the relevant child?

Law, Analysis & Findings -

- [26] Section 8 of the Maintenance Act (the Act) creates an obligation on the part of a parent to maintain his/her unmarried child where the parent is capable of doing so. In the case at bar, the Defendant does not seek to challenge the fact of his responsibility as it concerns the welfare of **PMB**. However, he avers that he is incapable of providing more than Twenty Thousand Jamaican Dollars (J\$20,000.00) per month plus half educational and medical expenses. He asserted that he would endure tremendous hardship if he were obliged to pay more than this figure.
- [27] The Court is guided by section 9 (1) of the Act which states that the responsibility to maintain a child is to be apportioned between parents according to the capacity of each parent to pay. Therefore, in examining the evidence in this case, I must consider carefully the capacity of Ms. Nathan as well as that of Mr. Baines to contribute towards **PMB's** maintenance.
- [28] However, before examining the capacity of the parent to contribute, the court must determine a suitable amount and the duration of the maintenance. The factors which must be determined are contained in section 9(2) of the Act. This section provides that in considering the circumstances of the dependent, the court must have regard to the factors which are outlined in section 14(4) of the Statute as well as the three (3) factors listed in section 9(2) which are the obligation of each parent to maintain their child, the child's aptitude and reasonable prospects for obtaining an education, and the child's need for a stable environment.
- [29] Section 14(4) lists several factors which must be considered in determining the duration and amount of the maintenance contribution. The factors include, but are not limited to, the respondent's current assets and means, as well as the assets and means which the respondent is likely to have in the future. The court must also examine the capacity of the respondent to provide support for the dependent and the respondent's obligation to provide support for another person.

[30] In addition to the statutory framework, I have also found the Court of Appeal decision in **NG v MSG** [2024] JMCA Civ 34 and the decision of **McEwan v McEwan** [1972] 2 All ER 708 to be helpful.

[31] I am guided by paragraph 28 of the Court of Appeal decision of **NG v MSG**, particularly the following principles which have been extracted and applied to the case at bar;

Where a party avers that they are unable to pay the sum which has been requested in respect of maintaining their dependent child, the Court must *“apportion the obligation according to the capabilities of the parents to provide.”* See paragraph 28 **NG v MSG**;

The party who avers that he/she is unable to pay the sum requested bears the burden of *“making full and frank disclosure of his means”*. The principle is that the parent who has primary day to day responsibility for the child should receive “adequate provision in terms of maintenance” for the child to ensure that the well-being of the child is not impaired.

[32] **McEwan v McEwan** is helpful for the purposes of this discourse in so far as it establishes that the Court must consider the Respondent’s potential earning capacity. In **McEwan v McEwan**, the Appellant was a retired police officer who sought a variation of a maintenance order which obliged him to pay the sum of six pounds 6£ as his contribution for the maintenance of his wife who he had abandoned. The Judge at first instance refused the orders sought. On appeal, the court ruled that in exercising their duty under section 2(1)(b) of the Matrimonial Proceedings (Magistrate’s Court) Act 1960 UK which allowed the Court to make an order that a husband pay a weekly sum which the Court considers reasonable in all the circumstances of the case, due regard should be had not only to the actual income but the potential for income.

[33] Reed J in delivering the judgment on behalf of the appellate Court referred to Lord Merrivale P's pronouncements in two cases, **N v N** (1928) 138 LT 693 at 697 and **Klucinski v Klucinski** [1953] 1 All ER at 683. In the former, Lord Merrivale P stated as follows;

"The court not only ascertained what moneys the husband had, but what moneys he could have had if he liked, and the term "faculties" describes the capacity and the ability of the respondent to provide maintenance. And the principle went to this extent, that if a man were living at ease upon an income which was given him voluntarily by other parties, that income could be taken into account. And it went further than that: If a man were living in idleness and chose to refuse to earn money, his "faculties" were not treated as non-existent for that reason."

[34] In **Klucinski**, Lord Merrivale P summarized the principle as follows:

"It is elementary law that, in assessing the amount of maintenance, justices ought to take into account, just as we are bound to do here, not merely the husband's basic wage, but his earning capacity."

[35] It is the considered view that notwithstanding the fact that the above authorities touch and concern the issue of spousal maintenance, the principles are transferrable to the maintenance of children. In analysing section 14(4), the language specifically includes the capacity of the Respondent as well as the assets and means which the Respondent is likely to have in the future. If I am wrong in this generous interpretation to these phrases which are included in section 14(4), I wish to state that the section also widens the discretion of the Court to consider any circumstance which in the opinion of the Court, the justice of the case requires to be taken in to account.

Whether the Court accepts the Claimant's quantification of her means and the expenses for the relevant child?

[36] The Claimant has indicated that her income is approximately Three Hundred Thousand Jamaican Dollars (J\$300,000.00) per month and the overall expenses

which are attributable to **PMB** is Two Hundred and Three Thousand, Seven Hundred Jamaican Dollars (\$203,700.00). She has presented no documentary evidence which could be considered by this Court. However, she gave evidence and was cross examined. This afforded an opportunity for the Court to assess the creditworthiness of her assertions. Fraser JA noted in **NG v MSG** at paragraph 21 of the judgment, that there is no requirement for the evidence concerning means and expenses to be corroborated through documentary evidence although this may assist the Court in its determination.

[37] I have considered carefully the list of expenses which have been advanced by the Claimant. I do not find that the figures are excessive or exaggerated. The sums which have been listed are in keeping with the high cost of living faced by individuals living in Jamaica at this time. In terms of what has been indicated for water and electricity, I bear in mind that the Claimant now utilizes a solar system. However, I accept her explanation that she pays Sixty Thousand Jamaican Dollars (J\$60,000.00) per month towards the loan being serviced for the solar power system and this should be apportioned.

[38] In terms of the cost for groceries, the Claimant has indicated that it now costs approximately Forty Thousand Jamaican Dollars (J\$40,000.00) per month. I do not believe that this is excessive. In fact, I asked the Respondent whether he had observed that the cost of food has increased significantly over the past few years. He indicated that he had not observed this at all. However, I asked him how much he believes it costs to feed **PMB** per month and he indicated Twenty Thousand Jamaican Dollars (J\$20,000.00). I have considered the cost of snacks, juices, breakfast and dinner each day for a twenty (20) day period (excluding lunch on the basis that the cost of lunch during the school day is accounted for elsewhere) as well as the cost of three (3) meals for eight (8) days which accounts for the four (4) weekends each month. Having considered this, I do not believe Forty Thousand Jamaican Dollars (J\$40,000.00) is excessive. In fact, I believe it may be more than this.

- [39] However, I do have a concern regarding the cost of grooming **PMB's** hair. I believe this is excessive. I appreciate that the child is taken to have her hair treated twice per month and this cost Five Thousand Jamaican Dollars (J\$5,000.00). I am prepared to include this cost within the schedule. However, Twenty Thousand Jamaican Dollars (J\$20,000.00) per month towards **PMB's** hair is exorbitant. As such, I will allocate Ten Thousand Jamaican Dollars (J\$10,000.00) per month as the cost to groom her hair.
- [40] I accept the Claimant's explanation regarding the cost associated with a nanny who takes care of **PMB's** meals and does other things for **PMB** and the family. She states that this person is paid Seven Thousand Jamaican Dollar (J\$7000.00) per visit and works two (2) times per week. She also acknowledged that this cost would be less than is included in her schedule. I bear in mind that this person does duties for the entire family and as such this should also be apportioned. Having done so, I have calculated Eleven Thousand Two Hundred Jamaican Dollars (J\$11,200.00) as the cost which is attributable to **PMB**.
- [41] The other expenses which are included therein are in my view reasonable. However, for lunch money, I am minded to include this under the umbrella of educational expenses and will therefore exclude this figure in my calculations of the fixed monthly contribution towards maintenance. I have also excluded extra-curricular activities which should be included in educational expenses.
- [42] In terms of transportation cost, **PMB** now attends a high school in the corporate area. As such, the Claimant's evidence is that she has to be transported from an adjoining Parish. Consequently, she stated that she has to utilize the toll road to facilitate such travel on a daily basis. Although the Claimant did not state the cost for using the toll road, I bear in mind that she resides in Saint Catherine. Given the current tariff to use this road as well as the distance being traversed, I am of the view that Twenty-Four Thousand Jamaican Dollars (J\$24,000.00) is not an

exorbitant figure. In fact, the cost for petrol and wear and tear may very well increase this figure as well.

- [43] Based on the above, I have calculated the total cost of expenses attributable to **PMB** as One Hundred and Forty-Five Thousand Four Hundred Jamaican Dollars (J\$145,400.00). I believe that both parents should share the cost of maintaining **PMB** equally. As such, on the basis of the equal share rule, the Defendant should contribute Seventy-Three Thousand Jamaican Dollars (J\$73,000.00). I have arrived at this figure by dividing One Hundred and Forty-Five Thousand, Four Hundred Jamaican Dollars (J\$145,400.00) by two (2) and then rounding it off to the nearest one hundred (100). I wish to include a breakdown of the figures;

Mortgage	\$24,000.00
Water	\$ 3,200.00
Light	\$12,000.00
Internet	\$ 2,000.00
Food	\$40,000.00
Transportation	\$24,000.00
Hair	\$10,000.00
Medical	\$10,000.00
Entertainment	\$ 5,000.00
Nanny	\$11,200.00
Clothing	<u>\$ 4,000.00</u>
Total =	\$145,400.00

What is the capacity of the Respondent to contribute towards the maintenance of the relevant child?

- [44] However, in this case the Defendant stated that he is unable to contribute anything above Twenty Thousand Jamaican Dollars (J\$20,000.00). I bear in mind that he is

responsible for also contributing towards the maintenance of another child who, based on the evidence is five (5) years old.

[45] I have heard the evidence of the Defendant and had the opportunity to assess his credibility through observing as I did with the Claimant, his demeanour and his testimony as a whole. The Defendant provided a statement which was prepared by an Accounting Firm. In his evidence, his income and expenditure remain the same as outlined in the statement.

[46] As per the statement, his yearly income and expenditure is reflected as being Five Million, Seven Hundred and Sixty Thousand Jamaican Dollars (\$5,760,000.00) and Five Million, Four Hundred and Seven Thousand, Five Hundred and Fifty-Seven Jamaican Dollars (\$5,407,557.00) respectively. I bear in mind that he is responsible for contributing an annual sum of Seven Hundred and Sixty-Two Thousand Jamaican Dollars (J\$762,000.00) towards the maintenance of his five (5) year old son. This sum includes his monthly contribution towards the maintenance of that child together with educational expenses.

[47] In terms of his income, there is no documentary proof of such income. However, I approach it in the same way as I did with respect to the Claimant. The Defendant stated that he is a contractor. The premises he now resides at was built by his contracting company on land which was owned by him. Several apartments were built, nine (9) in all and he kept one for his own use. It was put to him that the units were sold for approximately Twenty-Nine Million Jamaican Dollars (J\$29,000,000.00) each. He stated that he did not know what the units were sold for. However, he stated that this could have been the figure. The court finds it unbelievable that the defendant indicated that he did not know what the units were sold for and found the Defendant to be quite evasive during this aspect of the cross examination.

[48] Nevertheless, what do I make of this aspect of the evidence? If this unit was sold for Twenty-Nine Million Jamaican Dollars (J\$29,000,000.00), then the eight (8) lots

would have been sold for on or about Two Hundred and Thirty-Two Million Jamaican Dollars (J\$232,000,000.00) if they were all sold for the same price. Even if they were not all sold at that price, the Court considers that it is more likely than not that the value of the properties was within that range of prices.

[49] Further, the property at Derrymore Road, which is also owned by him, was previously used as a garage and an office. He stated that no business is carried on there as he no longer operates a garage. However, I must consider the capacity of the Respondent. I find that he is disposed of this asset from which he could operate a business or earn rental income. However, he has elected not to do so.

[50] As it concerns the current construction project which involves the construction of units at Chancery Hall, Saint Andrew, the Defendant also owns this property and he has indicated that he is earning an income from this business venture. Consequently, I have no confidence in the estimated income which has been put forward in the Statement of Account. Even if that were his income for the twelve (12) months leading up to the year 2024, his capacity for earning far exceeds what he has placed before this Court. Additionally, I find that there is the potential to earn greater income.

[51] I bear in mind that the Defendant stated that he and the Claimant had an arrangement whereby a motor vehicle which was purchased in the year 2012, was to be used as a taxi to facilitate a steady income from which **PMB's** welfare could be covered through the payment of Fifteen Thousand Jamaican Dollars (J\$15,000.00) per week. His evidence is that the taxi driver would give the Claimant Fifteen Thousand Jamaican Dollars (\$15,000.00) per week. After this arrangement was in place, the Claimant suggested that the motor vehicle be sold and the proceeds used to import other motor vehicles. His evidence is that the Claimant's plan was to use this facility to support **PMB** from the income earned from buying and selling vehicles. The Defendant has asked the Court to take this into consideration in my determination. I bear in mind that the Claimant has denied

this and states that this motor vehicle belonged to her and there was never an arrangement for it to be used to maintain **PMB**.

[52] What do I make of this? It is my considered view that I cannot use this as a basis to refuse the orders sought for maintenance. The Defendant has an ongoing responsibility to maintain **PMB**.

[53] Therefore, it is my considered view that the Defendant has the capacity to pay one half of the costs attributable to **PMB's** care and as such I will make the following order.

Orders:

1. By consent and with the agreement of the parties, the following orders are made;
 - i. Custody of the relevant child **PMB** is joint as between the parties, with care and control being granted to the Claimant.
 - ii. The Defendant is granted residential access to **PMB** on alternate weekends inclusive of one-half of all major holidays.
2. The Defendant is to pay the sum of Seventy-Three Thousand Jamaican Dollars (\$73,000.00) per month plus one half educational, medical, dental and optical expenses, as his contribution towards the maintenance of the relevant child until she attains the age of eighteen (18) years. Should the relevant child be enrolled in a tertiary institution these payments shall be extended until she attains the age of twenty-three (23) years.
3. Liberty to Apply.
4. Cost is awarded to the Claimant to be taxed if not agreed.
5. Claimant's Attorney-at-Law is to prepare, file and serve this order.

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A. Martin - Swaby,
Puisne Judge (Ag.)