



IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION

2018 No: 109

BETWEEN:

A

Petitioner

and

A

Respondent

JUDGMENT

Before: **Hon. Alexandra Wheatley, Assistant Justice**

Appearances: **Both parties appeared as Litigants in Person**

Date of Hearing:	6 March 2026
Date Court Requested Further Submissions on Points of Law:	14 August 2026
Date of Further Submissions:	21 August 2026
Date Draft Ruling Circulated:	24 September 2026
Date Ruling Issued:	29 September 2026

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Extension of Time to Appeal Registrar's Decision; Rule 89 of the Matrimonial Causes Rules 2023; Order 58 of the Rules of the Supreme Court 1985; Inherent Jurisdiction; Reasons for Delay in Pursuing Appeal; Reasons for Delay in Filing Correct Pleadings for Appeal; Merit of Appeal; Appeal by Way of Rehearing; Matrimonial and Non-Matrimonial Property; Fairness Principle; Needs vs Sharing; Treatment of Non-Matrimonial Property in Needs Cases; Importance of Ensuring Housing; Provision for Life Interest in Property; Spousal and Child Maintenance

JUDGMENT of Assistant Justice Alexandra Wheatley

INTRODUCTION

1. This is an appeal arising from the decision of the Acting Registrar dated 12 March 2025 (**the Ruling**), wherein the parties' respective applications for ancillary relief were determined following the dissolution of their marriage.
2. The parties were married for approximately 12 ½ years and there are three children of the family (collectively referred to as **the Children**). By the time the ancillary relief applications were heard, the parties had agreed to joint care and control of the Children on an alternating weekly basis. They had also reached agreement on a number of ancillary matters, including equalisation of their pension entitlements, the continuation of the Children's health related benefits and the Husband's continued payment of certain expenses associated with the former matrimonial home (**the FMH**).
3. The Respondent (hereinafter referred to as **the Wife**) sought the following relief in her Amended Notice of Application for Ancillary Relief dated 1 July 2019 (**the Wife's Application**):
 - (i) A property adjustment order in relation to the FMH where the parties resided during the marriage and where the Wife continues to reside;
 - (ii) An equitable split of all marital assets;
 - (iii) A lump sum or sums; and
 - (iv) Such other relief as the Court deems just.

4. The Petitioner (hereinafter referred to as **the Husband**) filed his Notice for Ancillary Relief on 17 August 2020 (**the Husband's Application**). In essence, the Husband sought a full and final determination of the Wife's Application and the parties' outstanding financial claims.
5. By Order dated 25 August 2020, the Wife's Application and the Husband's Application were consolidated to be heard together. I shall refer to them collectively as the Ancillary Relief Applications. It should be noted that proceedings surrounding the care and control of the Children continued for several years and contributed to the delay in the determination of the Ancillary Relief Applications. There were also significant periods during which the proceedings were not progressed by Counsel then acting for the parties.
6. The principal issues before the Acting Registrar were whether any further order should be made for child or spousal maintenance, whether the FMH should be transferred into the Wife's sole name by way of a property adjustment order and whether the Husband should be granted a Mesher Order.
7. Of particular note, there was no dispute that the FMH was matrimonial property. The parties also agreed that two other properties owned by the Husband, both acquired prior to the marriage (one in 2002, and the second in 2005), were non-matrimonial property.
8. In determining the Ancillary Relief Applications, the Acting Registrar considered the statutory factors set out at section 29 of the Matrimonial Causes Act 1974 (**the Bermuda Act**), together with the authorities of *White v White* [2001] 1 AC 596, *Miller v Miller*; *McFarlane v McFarlane* [2006] 2 AC 618 as well as the Bermuda cases of *C.R.M.R. v K.L.R.* [2019] SC (Bda) 7 Div and *Wife v Husband* [2025] SC (Bda) 12 Div. The Acting Registrar correctly identified fairness as the objective and considered the parties' respective needs, resources, earning capacities and contributions, whilst recognising the distinction between matrimonial and non-matrimonial property.
9. The Acting Registrar accepted the Husband's evidence as it related to his financial circumstances and found that, since separation, he had continued to support two households whilst operating at a significant monthly deficit. His financial disclosure was supported by documentary evidence and greater weight was placed upon it. By comparison, the Wife's evidence as to her financial needs and expenditure was found to be less comprehensive and inadequately supported. Although the Wife maintained that she remained unemployed, the Acting Registrar relied upon earlier findings made in a variation of spousal and children maintenance application determined in March 2021 that the Wife possessed qualifications and previous employment experience which enabled her to obtain employment. It was found that no satisfactory explanation had been given for her continued unemployment.
10. The Wife's position that, by agreement, she had assumed the role of a traditional homemaker throughout the marriage was rejected by the Acting Registrar. Nor was it accepted that the

Husband was attempting to diminish the standard of living enjoyed by the family during the marriage. The evidence demonstrated that the Husband continued to make substantial financial provision for the Wife and the Children. This included maintaining the FMH and meeting the associated housing expenses whilst also sharing the care of the Children equally. In those circumstances, the Acting Registrar found that an additional order for child maintenance would produce an unfair result.

11. As it relates to the FMH, the Acting Registrar found that the Court did not have jurisdiction to make a Mesher Order and adopted the reasoning in *Wife v Husband*. The Husband's application for such an order was therefore dismissed. The portion of the Wife's Application seeking that the FMH be transferred into her sole name was also refused. The Acting Registrar took into account that the Husband was solely responsible for servicing the mortgage and had demonstrated that he was able to continue maintaining the property. The Wife, on the other hand, had not established that she could meet the mortgage and other financial obligations if the property were transferred to her. Notwithstanding this, the Acting Registrar considered that the Wife should remain in exclusive occupation of the FMH until the youngest child attained the age of eighteen so as to provide stability for the Wife and the Children.
12. Having considered the value of the matrimonial assets, the FMH being the principal asset, the Acting Registrar determined that the Wife should receive a lump sum equivalent to one half of the net equity in the FMH. Deductions were then made to reflect the Wife's liability for costs previously awarded to the Husband and the Husband's overpayment of spousal maintenance pursuant to an earlier ruling. This resulted in a lump sum of just under \$180,000, payable by the Husband at the rate of \$1,500 per month.
13. It was further ordered that the parties' pension interests be equalised and that each party retain the non-matrimonial property and cash held in his or her own name absolutely and free from any claim by the other. As referenced above, the Husband owns two properties in addition to the FMH. By agreement of the parties, and as found by the Acting Registrar, both were treated as non-matrimonial property.
14. No continuing order for spousal maintenance or child maintenance was made. Instead, the Husband was directed to continue meeting the agreed housing expenses, to maintain the Children on his health insurance, to pay their medical co-payments and to maintain life insurance naming the Children as beneficiaries for so long as the mortgage remained outstanding. There was no order as to costs.

THE APPEAL

15. The Wife's former Counsel, Bruce Swan of Bruce Swan & Associates, filed a "*Notice of Appeal*" on 6 May 2025 (**the Notice**). Not only was the Notice filed substantially out of time,

i.e. over 7 weeks, but it was also not filed in the manner prescribed by the Rules, i.e. by Notice rather than by summons with a supporting affidavit.

16. In or around May 2025, the Court advised Mr Swan that an appeal from a decision of the Registrar was required to be commenced by summons supported by affidavit evidence. The correct appeal documents were not filed until 10 October 2025 (**the Wife's Appeal**). Thereafter, the Court attempted over a period of several months to list the matter having regard to the availability of the parties and Counsel. A first directions hearing was listed for 23 October 2025 and by consent of the parties was relisted to 4 December 2025, at which time Mr Swan remained on the record for the Wife albeit he did not appear.
17. Following that hearing, and whilst the Court was attempting to secure a date for the substantive appeal, the Wife advised that Mr Swan would no longer represent her. She was therefore afforded additional time to seek alternative legal representation and the appeal was ultimately listed in March 2026.
18. During the midst of the Wife's Appeal being listed, the Husband filed an application seeking to strike out the Wife's Appeal on 5 January 2026 (**the Husband's Strike Out Application**) seeking the following relief:
 - (i) *An Order striking out the Respondent's Appeal in its entirety under Order 18, Rule 19 of the Rules of the Supreme Court 1985;*
 - (ii) *An Order that costs be awarded to the Petitioner on an indemnity basis;*
 - (iii) *In the event the Court declines to strike out the matter, that an Unless Order requiring the Respondent to file and serve, within 14 days, an affidavit exhibiting all evidence relied upon to substantiate each ground of appeal, with failure to do so resulting in the Appeal being struck out with costs awarded to the Petitioner; and*
 - (iv) *Such further relief as the Court may deem just.*
19. The Wife's Appeal and the Husband's Strike Out Application were consolidated and therefore both listed for final hearing on 6 March 2026. Accordingly, the parties filed two sets of written submissions: (1) the Wife's written submissions in support of the Wife's Appeal, and the Husband's written submissions in reply to the Wife's Appeal; and (2) the Husband's written submissions in support of the Husband's Strike Out Application, and the Wife's written submissions in reply to Husband's Strike Out Application.
20. Following the hearing, and upon further consideration of the evidence and the applicable law, I considered it necessary to invite supplemental written submissions from the parties. Given the limited Bermuda jurisprudence addressing the issues arising in this appeal and bearing in mind that both parties were litigants in person, I undertook further research and identified several authorities which I considered might assist the Court in determining the issues before it. I

therefore directed the Court administration to provide the parties with copies of *M-L v P* [2016] SC (Bda) 12 Div, *Martin v Martin* [1977] 3 All ER 762, *Standish v Standish* [2024] EWCA Civ 567 and *Dinch v Dinch* [1987] 1 All ER 818¹, and to invite their written submissions on those authorities. The cases were provided to the parties on 14 August 2026, with their respective submissions to be filed by 21 August 2026.

21. I am grateful to both parties for the assistance provided by their written and oral submissions throughout these proceedings, particularly given that neither was legally represented. Their supplemental submissions on the authorities identified by the Court were also of considerable assistance in determining this appeal. I am equally grateful for the parties' patience and understanding regarding the time taken to deliver this decision, the reasons for which were communicated to them by email in August 2026.

THE FACTS

Assets

22. There is no dispute between the parties regarding the facts of this case. The values as well as the categorization of the real properties owned by the Husband as either matrimonial or non-matrimonial property were agreed. The values and categorization of the real property are as follows:

(i) Matrimonial Property

FMH: \$437,813.35

(ii) Non-matrimonial Property

Pembroke Property (Husband's 50% share): \$592,500.00

London, UK Property: \$239,130.70

23. Set out below are the balances of the Husband's matrimonial and non-matrimonial bank accounts and pension accounts:

- (i) BNTB Main Account: Balance of \$6,794.64. This is the primary account into which the Husband's monthly salary is paid and from which living expenses and the mortgage for the FMH are paid.

¹ I have not referred to this case in this judgment, having subsequently concluded that it does not materially assist the Court in its consideration of the principle of finality in matrimonial proceedings. That principle is addressed in *Minton* and *De Lasala*, both of which are considered in the Ruling.

- (ii) BNTB Olive Hill Account: Balance of \$12,301.25. This savings account is maintained for improvements and maintenance relating to the FMH.
- (iii) HSBC Joint Account: Balance of \$1,392.39. This is a joint savings account held by the Husband and Wife for child support payments.
- (iv) HSBC Joint Account for Husband's Pembroke Property: Balance of \$17,531.59. This joint savings account is used by the property owners to receive rental income from the Husband's Pembroke Property, which is identified as non-matrimonial property.
- (v) HSBC Husband and Mother Account: Balance of \$1,228.53. This joint savings account is held by the Husband and his mother and is used to meet general expenses.
- (vi) HSBC Statement Savings Account: *Nil balance*. This account was established for the purpose of funding the children's university education.
- (vii) NatWest UK Main Account: Balance of \$154.34. This current account is used to receive rental income and make mortgage payments in respect of the Husband's United Kingdom property, which is identified as non-matrimonial property.
- (viii) BNTB Car Loan Collateral: Fixed deposit of \$22,000. This sum was required by BNTB as collateral for the parties' car loan and is described in the table as having restricted access until January 2025.
- (ix) BMA/BF&M Private Pension: Value of \$86,199.08. This represents a mandatory private pension arising from the Husband's employment with the BMA and is inaccessible until the age of 65.
- (x) ACE/FMI Private Pension: Value of \$12,159.28. This represents a mandatory private pension arising from the Husband's employment with Chubb and is inaccessible until age 65.

24. The stated total of \$61,402.74 in the Ruling does not represent the aggregate of all the balances listed at paragraph 25 therein. The balances provided, including the two pension investments, total \$159,761.10. Excluding the two pensions, the remaining listed assets total \$61,402.74, which explains the stated total.

Income and Expenses

25. At the time of the hearing the Husband's net income from his salary was \$13,644.45. The Husband records total monthly expenditure of \$16,916.19. His household expenses amount to

\$4,500 per month, comprising rent of \$2,100, food and groceries of \$2,000, cleaners of \$200 and cellular telephone expenses of \$200. His transportation costs total \$1,064.78 per month, including a car loan payment of \$441.07, fuel of \$300, parking of \$150, insurance of \$79.55, maintenance of \$58.33 and licensing costs of \$35.83.

26. The Husband further records personal expenses of \$4,249.41 per month. The principal items within this category are a church tithe of \$1,550, debt repayment of \$1,500, entertainment of \$500 and term life insurance of \$194.40. The balance comprises clothing, laundry and dry cleaning, barber, medical expenses and provision for vacation expenses.
27. Expenses attributed to the children amount to \$3,235 per month, of which \$2,500 represents child support. The remaining \$735 comprises an education savings plan of \$300, babysitting of \$150, camp fees of \$100, medical co-payments of \$75, school lunches of \$60 and barber expenses of \$50. In addition, the Husband records expenditure of \$3,867 per month in respect of the FMH, comprising the mortgage of \$3,104, electricity of \$350, landscaping of \$200, house insurance of \$167, land tax of \$31 and water of \$15.
28. At the time of the hearing, the Wife was unemployed and had no monthly income save for the contributions made by the Husband. The Wife's evidence of the household expenses for herself and the Children are as follows: The Wife records substantial household expenditure of \$4,695 per month. This comprises groceries of \$4,000, cleaners of \$150, miscellaneous household maintenance of \$350, cellular telephone expenses of \$100 and internet expenses of \$95. Her transportation costs amount to \$829 per month, comprising fuel of \$250, car maintenance of \$250, car insurance of \$164.67 and vehicle licensing costs of \$164.33.
29. Her personal and insurance expenses total \$1,630 per month. These comprise care items and clothing of \$500, medical insurance of \$1,030 and life insurance of \$100. She additionally records legal fees of \$1,000 per month.
30. There is, however, an arithmetical discrepancy in the Wife's schedule. Although the schedule states total monthly expenses of \$8,185, the individual expenses provided total \$8,154, resulting in a difference of \$31 per month. Accordingly, unless there is an omitted expense of \$31, the correct total based upon the figures presently provided is \$8,154 per month.

THE LAW

Extension of time to appeal

31. Rule 89 of the Matrimonial Causes Rules 2023 (**the Rules**) requires an appeal from a decision of the Registrar to be brought by summons issued within five days of the decision. It is important to bear in mind that an appeal under Rule 89 proceeds by way of rehearing. This

Court may therefore make the order which ought to have been made on the facts established before it. Where the material facts and the classification of the assets are agreed, it is not necessary for the oral evidence to be repeated.

32. The case of *M-L v P* [2016] SC (Bda) 12 Div is directly relevant. In that case the Court accepted that it had a discretion to extend the five-day period for appealing a decision of the Registrar. In exercising that discretion, the Court considered the length of the delay, the reasons for it, the prospects of success and any prejudice to the other party. Time was extended to the date upon which the appeal had been filed and the appeal proceeded by way of rehearing.

Ancillary Relief

33. Sections 27 to 29 of the Bermuda Act provide the statutory framework applicable to applications for ancillary relief. Section 28 of the Bermuda Act gives the Court power to make a transfer or settlement of property and states as follows:

“Property adjustment orders in connection with divorce proceedings, etc

28 (1) *On making a divorce order, nullity of marriage order or judicial separation order or at any time after making such an order (whether, in the case of a divorce order or nullity of marriage order, before or after the order is made final), the court may make any one or more of the following orders—*

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;*
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;*
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;*
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement,*

subject, however, in the case of an order under paragraph (a), to the restrictions imposed by section 33(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

(2) The court may make an order under subsection (1)(c) notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under section 34 for the settlement of an instrument by the Registrar, where an order is made under this section on or after making a divorce order or nullity of marriage order, neither the order under this section nor any settlement made in pursuance of it is to take effect unless the divorce order or nullity of marriage order has been made final.

34. Accordingly, a property adjustment order can be structured to address housing needs without requiring the immediate and outright transfer of the entire legal or beneficial interest in a property. The Court may, where appropriate, preserve a reversionary interest, impose a charge or provide for occupation for a defined period. Unlike the position in the UK, Bermuda does not have a statutory provision which permits the Court to order the sale of property².
35. Section 29 (1) of the Bermuda Act requires the Court to have regard to all the circumstances of the case and identifies the particular matters which must be considered when determining applications made under section 27 (periodical payments, lump sum, etc.) and/or section 28 (property adjustment order) of the Bermuda Act. The statutory factors to be considered are set out in section 29 (1) of the Bermuda Act as follows:

“Matters to which court is to have regard in deciding how to exercise its powers under ss.27 and 28

29 (1) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*

² Section 24A of the UK Act gives the UK Courts remit to order a sale of property in circumstances where the court has made an order for payment of costs, a secured periodical payments order, periodical payments, a lump sum order or a property adjustment order. Therefore, an order for sale under section 24A of the UK Act is not a form of relief available in ancillary relief proceedings, but rather a means of enforcement.

- (c) *the standard of living enjoyed by the family before the breakdown of the marriage;*
- (d) *the age of each party to the marriage and the duration of the marriage;*
- (e) *any physical or mental disability of either of the parties to the marriage;*
- (f) *the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;*
- (g) *in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring...”*

36. It is well established in Bermuda that, when considering English authorities, the relevant corresponding legislation is the Matrimonial Causes Act 1973 of the United Kingdom (**the UK Act**). Section 24 of the UK Act corresponds with section 28 of the Bermuda Act, while section 25 of the UK Act corresponds with section 29 of the Bermuda Act.
37. The objective when exercising this discretion is to achieve fairness between the parties. *White* makes clear that there is to be no discrimination between the party who has been the principal income earner and the party who has made his or her contribution within the home. *Miller; McFarlane* identify needs, compensation and sharing as the principal strands by which fairness is considered.
38. The principles articulated in *White* and *Miller; McFarlane* have long been applied by the courts in Bermuda. *A.R.M.F. v A.J.F.* [2018] SC (Bda) 61 Div is one example of their application in this jurisdiction. Importantly for present purposes, the available assets must first be considered against the parties’ housing and financial needs. Where the resources are insufficient to provide two homes in the manner the parties may each wish, the Court is required to stretch the available resources as fairly as possible, whilst keeping the welfare and needs of the children firmly in mind.
39. Additionally, the UK cases of *Minton v Minton* [1979] AC 593 and *De Lasala v De Lasala* [1980] 1 AC 546 recognise the importance of finality and, where practicable, a clean break between former spouses. I accept the importance of that objective. However, finality must follow an order which is fair. It cannot be used as a substitute for fairness.
40. As it relates to matrimonial and non-matrimonial property, the distinction remains important, particularly when the sharing principle is being applied. However, that distinction is not necessarily determinative where the parties’ reasonable needs cannot otherwise be met. Where the matrimonial assets are insufficient, the Court may have regard to non-matrimonial resources

to the extent necessary to meet need and achieve a fair outcome. This does not amount to an equal sharing of non-matrimonial property. It remains a needs-based exercise. This is addressed further in the paragraphs that follow.

41. *Martin v Martin* [1977] 3 All ER 762 is a decision of the UK Court of Appeal concerning the exercise of the Court's discretion under section 25 of the UK Act. The parties had no children and the matrimonial home was their only substantial asset. The husband sought an immediate sale of the property and division of the proceeds. The Court rejected that approach, placing particular emphasis upon the need, where possible, to secure appropriate housing for both parties. The significance of *Martin* is therefore not confined to cases involving dependent children. It establishes that the respective housing needs of both spouses are an important consideration when applying the statutory factors, particularly where the available resources are insufficient readily to provide separate accommodation for each party.
42. Stamp LJ addressed this principle at pages 765 to 766. His observations are particularly relevant to the present appeal because section 25 of the UK Act is the equivalent of section 29 of the Bermuda Act. He stated as follows:

"It is of primary concern in these cases that on the breakdown of the marriage the parties should, if possible, each have a roof over his or her head. That is perhaps the most important circumstance to be taken into account in applying s 25 of the Matrimonial Causes Act 1973 when the only available asset is the matrimonial home. It is important that each party should have a roof over his or her head whether or not there be children of the marriage."

The judge in the instant case, in my judgment, approached the matter correctly. After a careful review of a number of authorities he turned to consider and apply the provisions of s 25 of the 1973 Act. In relation to s 25(1)(a), the income and earning capacity of each of the parties in the instant case disclosed that each had a reasonable earning capacity, and that the wife's earnings were such that the registrar made only a nominal order for periodical payments in her favour. I would interrupt the recital of the judge's judgment by remarking that if the wife is allowed to remain in occupation of the matrimonial home the risk that the husband will ever be ordered to make periodical payments to her is, as I see it, negligible. In the absence of the unlikely event of a dramatic improvement in his fortunes he will as a practical matter be relieved by the effect of the judge's order of the risk of having to make periodical payments to the wife in the future, for she will have a roof over her head for as long as she requires it and will be under no liability to pay rent."

The learned judge continued by referring to s 25(1)(b) of the 1973 Act, relating to the financial needs, obligations and responsibilities which each of the parties to the marriage had or was likely to have in the foreseeable future. He pointed out that there was no evidence that the husband had any immediate need for a capital sum in order to support his present way of life, and that he had a secure roof over his head. He went

on to say a little later in the judgment that the wife, on the other hand, needed either the matrimonial home in which she was presently living or some alternative accommodation. He pointed out that the learned registrar had found that 'even with the sale of the matrimonial home the net equity available to the wife would not enable her to purchase alternative accommodation'..." [Emphasis added]

43. The judgment also makes clear that the assessment of housing needs must be undertaken by reference to the circumstances of the particular case rather than by applying a predetermined approach to the matrimonial home. Of particular relevance is the Court's rejection of unsupported assumptions about a spouse's ability to obtain alternative accommodation. Ormrod LJ also cautioned against treating the conclusion of a child's dependency as automatically determining when the capital of a matrimonial asset should be realised. At page 769, he stated:

*"...whenever it is to be argued that the wife could find alternative accommodation for herself out of her share of the equity, whatever that may be, or obtain council accommodation, there should be evidence put before the court to that effect. The unsupported assertions and speculations which are made in the course of argument in these cases are not satisfactory. It means that the court has to use its own imprecise knowledge of the property market and may well make mistakes. So if it is going to be said that the wife could get alternative accommodation, let there be some evidence to that effect. Otherwise it will have to be assumed that it is not possible. The only other matter on which I want to comment is this. Counsel for the wife in his submissions to the judge below commented on the fact that a practice seems to be developing of postponing the sale of matrimonial homes in similar cases to this until after the youngest child has reached the age of 18 or whatever the appropriate age may be and no further. Counsel for the wife made the point that that practice is in danger of ousting the general discretion of the court under s 25 of the 1973 Act. I think there is a good deal of force in that. As Stamp LJ pointed out in argument, that form of order originated in this court in a case called *Mesher v Mesher*², where it was no doubt aptly suited to the circumstances prevailing in that case. But it was never intended to be a general practice. There is no magic in the fact that there are children to be considered. All it means is that the interests of the children take priority in these cases, so that often there can be no question of sale while the children are young. But the situation that will arise when the children reach the age of 18 requires to be carefully considered. Otherwise a great deal of hardship may be stored up in these cases by treating it as a rule of thumb that the matrimonial home should then be sold. It is not a rule of thumb. In some cases it is the only way of dealing with the situation. For example, take a husband who has an onerous mortgage round his neck. He may badly need some capital as soon as it is reasonable to give it to him. In such a case a wife who remains in the matrimonial home with the children may have to endure the hardship of giving up the matrimonial home to relieve the husband's hardship. But that is a matter of weighing each individual case on its merits, of*

weighing up each side's resources and trying to ensure that neither party is rendered homeless." [Emphasis added]

44. Applying those principles, the Court of Appeal upheld an order which permitted the wife to remain in the matrimonial home for life, subject to remarriage or voluntary departure, with the property thereafter to be sold and the proceeds divided equally. An immediate sale would have left the wife without sufficient resources to purchase suitable alternative accommodation, whereas the husband already had secure housing. The Court also rejected the suggestion that the wife could simply obtain council accommodation and emphasised that any contention that suitable alternative accommodation is available should be supported by evidence rather than assertion or speculation.
45. The importance of *Martin* for present purposes is therefore the approach which it requires to the parties' respective housing needs. The practical effect of the proposed financial arrangements and the resources available to each party must be considered. The termination of an occupation arrangement upon children reaching a particular age is not, of itself, determinative. The circumstances existing thereafter must also be considered. Where resources permit, the objective should be to make reasonable provision for the housing needs of both parties, rather than allowing the immediate realisation or division of capital to obscure that fundamental consideration.
46. As to the distinction between matrimonial and non-matrimonial property, the UK Court of Appeal in *Standish v Standish* [2024] EWCA Civ 567 considered its significance when applying the sharing principle under section 25 of the UK Act. The parties had total wealth of approximately £132 million, much of which derived from the husband's substantial pre-marital wealth. In 2017, approximately £77 million of investment assets, together with shares in an Australian farming business, were transferred into the wife's sole name as part of inheritance-tax planning. At first instance, Moor J treated those assets as having been "*matrimonialised*" and awarded the wife £45 million. The Court of Appeal concluded that this placed undue weight on legal title. For the purposes of the sharing principle, the focus is upon the source of the property. Matrimonial property is ordinarily the product of the parties' common endeavour during the marriage, whereas pre-marital wealth, inheritance and property derived from other external sources will ordinarily retain its non-matrimonial character.
47. Importantly, however, the Court of Appeal made clear that this distinction principally concerns the application of the sharing principle. It does not place non-matrimonial property beyond the Court's consideration when exercising its wider discretionary powers. Section 25 of the UK Act, the equivalent of section 29 of the Bermuda Act, requires consideration of the parties' property and financial resources generally. Accordingly, non-matrimonial property may be taken into account where the matrimonial assets are insufficient to meet a party's properly assessed needs.

48. In addressing the needs principle, the Court considered authorities demonstrating that a needs-based award may exceed the amount otherwise justified by sharing. This included *J v J* [2011] 2 FLR 1280, where an award based upon needs amounted to approximately 46% of the available wealth, notwithstanding that application of the sharing principle would have produced a lower award. The significance of the distinction is therefore that the non-matrimonial character of an asset may exclude it from equal sharing without necessarily excluding it from consideration when determining how the parties' needs are to be met.
49. Applying those principles, the Court of Appeal held that the 2017 transfer into the wife's sole name did not, without more, alter the source of the assets and concluded that at least 75% remained non-matrimonial. Application of the sharing principle therefore resulted in an award of approximately £25 million rather than the £45 million awarded at first instance. That conclusion did not, however, determine the wife's ultimate entitlement. Moor J had not separately assessed her needs, having concluded that the original award would comfortably meet them. As the Court of Appeal was not in a position to undertake that assessment, the issue was remitted for determination under the needs principle.
50. *Standish* therefore illustrates the distinction between sharing and needs. The non-matrimonial character of property is highly relevant to whether it should be shared between the parties but does not necessarily remove that property from consideration when assessing the resources available to meet their needs. Where the matrimonial assets are insufficient for that purpose, the Court may have regard to available non-matrimonial resources to the extent necessary to achieve a fair needs-based outcome.

THE WIFE'S POSITION

Extension of time to appeal

51. The Wife relies upon *M-L v P* and submits that an appeal from the Registrar proceeds by way of rehearing, requiring this Court to consider the relevant statutory factors afresh. These include the parties' income, earning capacity, property, financial resources and their present and foreseeable needs. During the hearing, I asked the Wife to explain the late filing of her appeal. She stated that she had understood that her former Counsel had complied with the necessary procedural requirements and applicable timelines. It is notable, however, that from the filing of the Notice until Mr Swan ceased to act as the Wife's attorney of record, no correspondence was provided by him to the Court explaining the reason for the late filing. Accordingly, I did not have the benefit of an explanation directly from Mr Swan as to the circumstances which resulted in the Notice being filed out of time.

Ancillary relief

52. It is submitted by the Wife that the Ruling fails to secure housing after her right to occupy the FMH ends. She says the deferred lump sum cannot support a mortgage and will lose practical value over time. She also says the Acting Registrar treated the non-matrimonial character of the Husband's other properties as decisive, even though the matrimonial assets were insufficient to meet both parties' housing needs.
53. As to the classification of the FMH, the Wife accepts it was correctly classified as matrimonial property and that she was awarded one half of the net equity. Her complaint is directed to the structure and practical effect of the Ruling. She seeks provision that will give her a secure home after the Children complete their respective educations.
54. The Wife's principal contention is that the Ruling did not sufficiently address her long-term housing needs. She accepts that the order provides her with present accommodation in the FMH until the youngest child attains the age of 18. Her complaint is that the order does not adequately address what will happen thereafter. At the conclusion of the occupation period, the Husband will retain the FMH absolutely, whereas the Wife will have no continuing proprietary interest in the property. Her entitlement is instead represented by a net capital award of \$179,906.68, which the Husband is permitted to discharge progressively during the period of her occupation.
55. Relying upon *Martin*, the Wife submits that the Court is required to consider the parties' housing positions in practical terms, including their respective resources, their ability to obtain alternative accommodation, and the hardship likely to arise from the order. She accepts that her inability to service the existing mortgage was a relevant consideration before the Acting Registrar. She argues, however, that an inability to afford that particular mortgage is not synonymous with an inability to make some other form of appropriate long-term housing provision. She further relies upon the fact that the Husband has secure accommodation and has not asserted an immediate need to realise his interest in the FMH. In her submission, these circumstances form part of the comparative assessment of the parties' respective housing needs and resources.
56. As to the Husband's contention that her future housing concerns are speculative, the Wife rejects that position. She submits that the order itself creates a foreseeable event at which her occupation will terminate while leaving the Husband as the absolute owner of the property. Although her precise financial circumstances eight years hence cannot presently be known, she argues that section 29 of the Bermuda Act expressly requires consideration of financial needs and resources which a party is likely to have in the foreseeable future. She points to the fact that she will be in her mid-50s when the occupation period ends and contends that her likely earning capacity, mortgage capacity, available capital and the cost of reasonable alternative accommodation ought therefore to have formed part of the assessment. She does not contend

that homelessness is inevitable. Her case is that the structure of the Ruling creates a sufficiently real and foreseeable risk of housing insecurity to require substantive consideration.

57. A further submission advanced by the Wife is that the capital award cannot necessarily be regarded as a fund which will remain intact and available for rehousing when her occupation ends. She observes that the Husband is permitted to discharge the award progressively and has been making monthly payments of \$1,500. She also relies upon the termination of the previous monthly child maintenance payment of \$2,500. In those circumstances, she submits that the relevant question is what capital and other resources are realistically likely to remain available to her at the end of the occupation period, rather than merely the nominal amount of the capital award made several years earlier.
58. In relation to *Standish*, the Wife places particular reliance upon the distinction between the sharing principle and the needs principle. She accepts that the Husband's Pembroke Property and the Husband's London Property were recorded as non-matrimonial property and does not seek, through her supplemental submissions, to reopen that classification. Her argument is instead that the classification of those properties as non-matrimonial did not render the substantial resources represented by them irrelevant to the assessment of needs. She relies on *Standish* as demonstrating that property which falls outside the sharing principle may nevertheless be relevant when assessing needs. She therefore contends that the Husband's other substantial property resources should have been considered when determining whether the overall financial provision adequately secured her housing needs.
59. The Wife, while accepting the importance of finality as addressed in the cases of *Minton* and *De Lasala*, submits that the principle cannot prevent the Court from considering whether the Ruling properly applied section 29 (1) of the Bermuda Act and achieved a fair result.
60. Finally, it is accepted by the Wife that any final determination of her housing needs must be based upon proper evidence. She submits, however, that if the evidence presently before the Court is insufficient to conduct that assessment, the appropriate consequence is not necessarily to leave the existing order undisturbed. She relies upon *Standish* as demonstrating that a needs issue may be remitted for further assessment where the appellate court lacks sufficient material to determine it fairly. Her primary submission is therefore that the Court should determine whether the Acting Registrar sufficiently considered her future housing position. If it did not, she asks that the order be varied to secure her reasonable long-term accommodation needs or, alternatively, that the needs issue be remitted for determination upon appropriate evidence. Transfer of the FMH is advanced as one possible solution, but not as the only available means of meeting that need.

THE HUSBAND'S POSITION

Extension of time to appeal

61. The Husband's preliminary position is that the five-day time limit is jurisdictional and, as a consequence, the appeal must be struck out. He also relies upon the considerable delay, the fact that portions of the Ruling have already been implemented as well as stressing the importance of finality in matrimonial proceedings in accordance with *Minton* and *De Lasala*.
62. The Husband relies upon *M-L v P* in support of his submission that the Wife has failed to provide an adequate explanation for the lateness of this appeal. He says that this weighs against the exercise of the Court's discretion in her favour. He further submits that the grounds of appeal do not identify any genuinely disputed issue capable of altering the Acting Registrar's Ruling. Separately, the Husband relies upon the same authority to emphasise the importance of reliable financial evidence when needs are being assessed. He maintains that there remain deficiencies in the Wife's financial disclosure and says that her assertion that she will be unable to rehouse should not be accepted without complete evidence of her financial circumstances.

Ancillary relief

63. As it relates to the Husband's Strike Out Application, the Husband argues that Order 18, Rule 19 of the Rules of the Supreme Court 1985 gives the Court jurisdiction to strike out the Wife's Appeal. He submits that the Court should do so on the basis that the Appeal discloses no reasonable cause of action and is otherwise an abuse of process given (i) the appeal was filed out of time contrary to the Matrimonial Causes Rules 2023; and (ii) the grounds of appeal are contradicted by the record and unsupported by evidence.
64. In his submission, the Husband highlights that the FMH was expressly treated as matrimonial property, the Wife was awarded one half of its net equity subject to the adjustments ordered, and provision was made both for satisfaction of that entitlement and for her continued occupation. He therefore characterises the Wife's appeal as an attempt to reopen the treatment of an asset whose disposition has already been determined.
65. In relation to the case of *Martin*, the Husband accepts that it demonstrates that equality of ownership does not invariably require the immediate realisation of equal shares and that the Court must consider housing needs, resources and likely hardship. He contends, however, that the Wife has not produced sufficient evidence to establish that she will be unable to obtain alternative accommodation when her occupation of the FMH ends. He emphasises that she presently occupies the property without paying rent or mortgage, while he remains responsible for specified utilities and property expenses. He also relies upon her employment and contends that any assertion of financial inability should be tested against full evidence of her income, expenditure, assets, liabilities, savings, credit and discretionary expenditure.

66. Additionally, the Husband maintains that it is speculative to determine now that the Wife will be unable to obtain accommodation approximately eight years in the future. He submits that the occupation period gives her a substantial opportunity to work, save and prepare for independent housing. He relies upon what he describes as earlier efforts during and after the marriage to encourage the Wife to improve her education and employment position. He also relies upon his previous proposal that she remain in the FMH until the youngest child attains the age of 18. In his submission, these matters are relevant to her earning capacity, the opportunities available to improve her financial position and whether her asserted future housing need is unavoidable. He further relies upon the clean-break principle and contends that financial dependence between former spouses should not be prolonged unnecessarily.
67. The Husband opposes the transfer of the FMH to the Wife. He contends that she has not demonstrated an ability to meet the mortgage and the associated expenses of ownership, including land tax, insurance, maintenance and upkeep. He argues that a transfer could therefore expose the property to default or foreclosure and thereby prejudice both parties and the children. He similarly opposes an indefinite or lifetime right of occupation. Such an arrangement, he submits, could postpone his ability to realise the property beyond his lifetime, frustrate the intended clean break and leave him exposed to long-term ownership and maintenance obligations without corresponding use of the property.
68. Notwithstanding his opposition to a transfer of the FMH, the Husband identifies alternative arrangements which could be considered if the Court concludes that in accordance with *Martin* the Wife requires greater housing protection. These include a lifetime right of occupation conditional upon the Wife assuming responsibility for the mortgage and her occupation expenses, or an arrangement under which the Wife remains in occupation while the parties share specified mortgage and property expenses and payment of her remaining equity entitlement is deferred until an eventual sale. He regards both alternatives as materially less satisfactory than the existing order because they would prolong the parties' financial relationship, create continuing risks of default and require ongoing financial cooperation between parties who presently have difficulty agreeing upon relatively simple matters. His preferred outcome remains the existing arrangement, under which he retains ownership, the Wife receives her quantified equity entitlement and she remains in occupation for the defined period ordered by the Acting Registrar.
69. The Husband also highlights the clean break principle and submits that the parties' financial affairs should, so far as possible, be brought to a final conclusion. In support, he relies upon *Minton* and *De Lasala*, which he says recognises the desirability of enabling former spouses to move forward without continuing financial ties. He further relied on *Wife v Husband*, as referenced in the Ruling, in support of the importance of finality in ancillary relief proceedings. Given the protracted and acrimonious nature of these proceedings since 2018, the Husband submits that a clean break is necessary to minimise the prospect of further litigation arising from the parties' former marital relationship.

70. Turning to *Standish*, the Husband accepts that the FMH is matrimonial property and subject to the sharing principle. His position is that the Acting Registrar already applied that principle by awarding the Wife one half of the net equity, subject to the ordered adjustments. He submits that legal title is therefore not the true issue. Rather, the relevant considerations are the fair implementation of the Wife's share, the parties' housing needs, the interests of the children and the financial sustainability of any order. He further contends that *Standish* reinforces the need for reliable evidence where a needs-based claim is advanced.
71. The Husband submits that the Acting Registrar applied the correct statutory test. He relies on the Wife's earning capacity, incomplete financial disclosure, the award of half the net equity, pension equalization, exclusive occupation, and his continuing payment of expenses. He says the appeal is an attempt to reopen matters already decided and that his non-matrimonial properties should remain outside the award. Therefore, he submits that the Wife's Appeal is vexatious and an abuse of process.
72. Accordingly, the Husband asks that the appeal be struck out or dismissed and that the Ruling remain undisturbed. If the Court considers the Wife's future housing position requires further examination, he submits that she should first be required to provide updated financial disclosure and documentary evidence concerning her income, expenditure, resources, housing options and ability to obtain alternative accommodation. His overall position is that the existing order strikes the appropriate balance between providing the Wife and Children with housing stability during the defined occupation period, satisfying the Wife's share of the matrimonial equity, preserving the FMH and ultimately achieving financial finality between the parties.

APPLYING THE FACTS TO THE LAW

Extension of time to appeal

73. There can be no dispute that the delay in this case was significant. Mr Swan filed the appeal well outside the prescribed period and thereafter failed, for a considerable period, to correct the form in which the appeal had been brought. I do not condone those failures. However, I am satisfied that they were failures of Counsel and not a deliberate disregard of the Rules by the Wife. The Wife had instructed Counsel and relied upon the professional advice she received. There is nothing before me to suggest that she knew the necessary procedural steps had not been properly taken.
74. I accept that the Husband has suffered some prejudice as a consequence of the delay. He has made instalment payments, pension equalisation has been completed and he has continued to meet expenses associated with the FMH. However, those matters are capable of being preserved and properly credited in any final accounting. More importantly, the appeal raises a substantive issue concerning the Wife's future housing. To refuse an extension would mean that issue is

not considered because of the procedural failures of her former Counsel. In all the circumstances, I am satisfied that the interests of justice favour an extension of time.

75. I do not accept the Husband's submission that Rule 89 removes the Court's power to extend time. The Supreme Court has an inherent jurisdiction to regulate its own process and to ensure that procedural rules do not operate so as to produce an injustice. That jurisdiction is reinforced by the Court's general procedural power to enlarge time. Rule 89 prescribes the ordinary period within which an appeal is to be brought. It does not provide that the period is incapable of being extended. Accordingly, time for the filing and perfecting of the Wife's appeal is extended to 10 October 2025, i.e. the date of filing the correct form of the Wife's Appeal.

Ancillary relief

76. I do not accept the Husband's submission that the Wife's Appeal discloses no reasonable cause of action or that its continuation amounts to an abuse of the process of the Court. As I have already addressed, an appeal from a decision of the Acting Registrar proceeds by way of rehearing. My task is therefore to consider the matters raised on appeal afresh, having regard to the evidence before the Court and the relevant statutory factors. It is not necessary for me to approach the Wife's Appeal solely by determining whether the Acting Registrar was "right" or "wrong" in reaching the decision that she did. Rather, I am required to exercise the Court's discretion for myself in determining the appropriate outcome.
77. I am equally unpersuaded that the late filing of the Appeal provides a proper basis upon which to strike it out. I have addressed the circumstances surrounding the delay in paragraphs 73 to 75 above. In particular, the Wife explained that she believed her former Counsel had taken the steps necessary to comply with the applicable procedure and time limits. For the reasons already given, I do not consider that the failure to file the Wife's Appeal within the prescribed period was attributable to the Wife personally. In those circumstances, I do not consider that the delay, whether viewed independently or together with the Husband's other complaints, renders the Wife's Appeal an abuse of process.
78. Nor do I accept that the Husband's contention that the grounds of appeal are contradicted by the record or unsupported by evidence justifies striking out the Wife's Appeal. Those matters are properly considered when determining the substantive merits of the issues raised at the rehearing. The Wife has identified matters concerning the application of the relevant statutory factors, including the treatment of the parties' respective financial resources and her present and foreseeable housing needs. Those are matters capable of consideration upon a rehearing and cannot, in my view, properly be characterised as disclosing no reasonable basis for the Wife's Appeal.
79. As it relates to the Ruling, I accept that the Acting Registrar was entitled to find that the FMH was matrimonial property. She was also entitled to take into account the Wife's earning capacity

and the deficiencies identified in her financial disclosure. However, in my view, those findings do not fully answer the question of the Wife's future housing. Earning capacity is not necessarily the same as mortgage capacity. Equally, the payment of a lump sum by monthly instalments of \$1,500 does not place the Wife in the same position as having an immediately available capital sum with which to secure alternative accommodation in Bermuda.

80. What concerns me about the structure of the Ruling is what occurs when the Wife's right of occupation comes to an end. Until that time, she has secure accommodation in the FMH. Thereafter, the Husband retains the real property and the security which accompanies ownership, whilst the Wife is left with whatever portion of the lump sum remains available to her, no continuing maintenance and no identified alternative home. This concern is heightened by the fact that the instalments are both unsecured and interest free.
81. I accept the Husband's submission that the source of the property remains relevant. I also accept that a clean break is desirable where it can fairly be achieved. However, neither proposition permits the Court to disregard an established housing need. The issue before me is not whether the Wife has an automatic entitlement to share in the Husband's non-matrimonial property. She does not. The issue is whether those resources must nevertheless be taken into account where the matrimonial assets are insufficient to meet the parties' reasonable housing needs.
82. I am satisfied that the matrimonial asset, standing alone, is insufficient to provide secure housing for both parties. In those circumstances, I do not accept that the Husband's non-matrimonial property can simply be disregarded because of its source. The authorities make clear that those resources may be taken into account where needs require it. Any recourse to them must, however, go no further than is reasonably necessary to meet the Wife's housing need and should, so far as possible, preserve the Husband's underlying capital.
83. I recognise that each case must be considered in light of its particular facts. The common law provides numerous examples of how established legal principles have been applied to differing factual circumstances, but those authorities do not necessarily establish new principles of law. The underlying principles have remained largely unchanged, although their application has been refined over time in particular areas, such as the concept of "*matrimonialisation*" considered in *Standish*. Ultimately, the objective remains the achievement of fairness, assessed by reference to the principles of needs, compensation and sharing.
84. Against that background, the circumstances of the present case are distinguishable from those in *Martin*. In *Martin*, the former matrimonial home was the only substantial asset available to the parties. Here, the Husband also holds non-matrimonial property which forms part of his available financial resources. There is, however, an important similarity between the two cases. In the present case, there remains uncertainty as to whether the Wife will be able to secure suitable alternative accommodation once her right to occupy the FMH comes to an end. That

issue must be considered in the context of all the parties' available resources, while also recognising that the Wife is entitled to receive 50% of the net value of the FMH.

85. It has not been established that there is any present need to realise the capital in the FMH. Requiring that capital to be realised at this stage would, in my view, prejudice the Wife's future housing position. I acknowledge the Husband's concerns regarding the Wife's financial evidence. However, it would be unrealistic to require the Wife to establish with any certainty what her financial circumstances will be approximately eight years from now, being the point at which, under the present terms of the Ruling, she would be required to vacate the FMH. What can presently be identified is the parties' respective asset positions at that time if the existing order remains unchanged. The Husband would have sole ownership of the FMH, together with his joint interest in the Pembroke Property, the net value of which will most likely increase as the mortgage is reduced over the intervening period. He would also retain the London Property in his sole name, again with the prospect of a reduction in the debt secured against it. By contrast, the Wife would have no property of her own and no continuing right to secure accommodation.
86. I also do not accept that the Wife should be expected to accumulate capital by "*saving*" the monthly instalments of \$1,500 paid by the Husband towards her capital entitlement, or from income which she may earn in the future. Such an approach would, in my view, fail to distinguish between income and capital. The monthly payments represent the progressive discharge of an existing capital entitlement. They are not periodical payments intended to provide the Wife with an additional source from which she is expected to create a future capital fund. To require her future income to perform that function would similarly have the effect of treating income as though it were a capital asset.³
87. In determining the appropriate outcome, it is also necessary to consider the present net equity in the FMH and the practical value of the Wife's 50% share. The relevant question is not simply whether she is entitled to receive one half of that equity, but whether the resulting lump sum would realistically enable her to purchase suitable alternative accommodation. On the evidence before the Court and having judicial regard to Bermuda's current housing market, I consider it highly unlikely that it would.
88. It is also speculative whether the payment of a future lump sum could remedy this issue; however, my view is that the Court does not have the jurisdiction to order some undefined lump sum to a party. Not only is the value of the matrimonial assets considered to be as at the date of the hearing, as previously highlighted, the Bermuda Act does not contain a provision equivalent to that found in the UK Act permitting the court to order the sale of property. It bears repeating

³ The UK Court of Appeal case of *Waggott v Waggott* [2018] 2 FLR 406 rejected the proposition that future earning capacity was to be considered as a capital asset.

that, under the UK Act, the power to order a sale is not a form of substantive relief in itself. Rather, it is a mechanism for enforcing an ancillary relief order.

89. A practical example illustrates the distinction. The Court cannot simply order that a property be sold at a future date and direct how the proceeds are to be divided, such as equally between the parties. Instead, the sale power operates only after the court has made a substantive financial order. For example, if one party is ordered to pay a lump sum of \$400,000 and lacks the means to satisfy that obligation, the court may order the sale of Property X to enable compliance with that order. Accordingly, even if the Bermuda Act contained a sale provision equivalent to that in the UK Act, it would not assist in determining whether a lump sum order should be made, nor the amount of any such order.
90. I have also taken into account that the Husband is currently able to meet his housing needs as he has done since the parties' separation many years ago and there was no suggestion by the Husband in his evidence or submissions to the contrary.
91. Having considered the parties' respective positions and the available assets as set out in section 29(1) of the Bermuda Act, I am satisfied that the fairest and most proportionate outcome is one which makes provision for the Wife's long term housing needs while recognising the non-matrimonial character of the Husband's other properties. Any such provision must also take account of the nature of the Husband's ownership of those properties and the extent to which an order may properly be made without affecting the proprietary interests of persons who are not parties to these proceedings. I also remind myself of the broad jurisdiction this Court has under section 28 of the Bermuda Act in relation to property adjustment orders (see paragraphs 33 and 34 above).
92. To achieve fairness and to ensure that both parties' long-term housing needs are met, I grant the following relief:
 - (i) The Wife shall have a beneficial life interest in the FMH. The Husband shall retain the reversionary interest in the FMH.
 - (ii) The Wife's beneficial life interest in the FMH shall terminate upon her remarriage or cohabitation with another person in a relationship akin to marriage. Upon the occurrence of either event, the Wife shall be required to vacate the FMH within 90 days. Thereafter, the Husband shall hold the FMH free from any interest or claim thereon by the Wife.
 - (iii) The Wife shall not sell, charge, sublet or otherwise dispose of her beneficial interest in the FMH. She shall be responsible for ordinary utilities, contents insurance and routine internal maintenance.

- (iv) The Husband shall continue to pay the following expenses of the FMH, which shall cumulatively be deemed to be paid in lieu of spousal and child maintenance:
- (a) The monthly mortgage payments for the FMH;
 - (b) Landscaping costs of the FMH;
 - (c) Belco for the FMH;
 - (d) House insurance for the FMH;
 - (e) Land tax for the FMH;
 - (f) Water for the FMH;
 - (g) Any costs related to the upkeep of the FMH;
 - (h) Maintain the Children on his major medical insurance;
 - (i) All the Children's medical co-payments; and
 - (j) To maintain a life insurance policy naming the Children as beneficiaries for so long as the mortgage secured against the FMH remains outstanding.
- (v) The expenses referenced in paragraph (iv) above shall continue to be paid by the Husband until the youngest child completes any first course of full-time tertiary education, or until further order. In my view, this better reflects the Children's actual educational needs than a provision which ends solely by reference to age. Either party shall have liberty to apply if a child's education is interrupted or materially extended.
- (vi) Alternatively, the Husband may elect to fund the purchase of suitable replacement accommodation for the Wife upon the Children's completion of their respective tertiary educations. Such accommodation must be in reasonable condition and shall be a minimum of two bedrooms and one bathroom. Upon purchase, the Wife's beneficial life interest in the FMH shall terminate immediately and she shall have 90 days to vacate the FMH.
- (vii) The Husband shall receive credit for all instalments of the \$1,500 monthly payments already made to the Wife in accordance with the Ruling. Should the parties fail to reach an agreement as to how this can be accounted for, the Husband is restricted from pursuing this debt until such time as the youngest child completes any first course of full-time tertiary education.
- (viii) The equalisation of the parties' pensions shall remain undisturbed.
- (ix) All other assets in the parties' sole or joint names not referenced herein shall remain as his or hers absolutely, free from any claim thereon by the other.

CONCLUSION

93. For the reasons set out herein, I am satisfied that the Court has jurisdiction to extend time and that this is an appropriate case in which to do so. I dismiss the Husband's Strike Out Application and grant the relief sought in the Wife's Appeal to the extent referenced in paragraph 92 above.
94. As it relates to the costs of the substantive appeal, I order that the parties bear their own costs. The Husband shall, however, be at liberty within 28 days to make an application for costs arising specifically from the procedural defaults of the Wife's former Counsel. Any such application must identify the work occasioned by those defaults and the legal basis upon which payment is sought. Should such an application be made, Mr Swan must be given an opportunity to be heard to ensure the Court has a comprehensive view before its final determination on costs.

DATED this **29th** day of **September 2026**



ALEXANDRA WHEATLEY
ASSISTANT JUSTICE OF THE SUPREME COURT