

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
FAMILY DIVISION
SUIT NO. F 1998/M163

BETWEEN SYDNIA MATHESON : PETITIONER
AND ANTHONY MATHESON RESPONDENT

Miss J. Cooper instructed by Chambers Bunny and Steer for the Petitioner
Miss S. Steadman for the Respondent

Heard: February 17, May 19, 2003

HARRISON J

Let me first apologize for the delay in handing down this judgment.

This is an application by the wife/petitioner for maintenance. She seeks an Order that the respondent do pay to her the sum of Thirty-five Thousand Dollars (\$35,000.00) per month for maintenance. In the interim he has been ordered by the Court to pay the sum of \$12,000.00 monthly pending the outcome of the application.

The parties were married in 1968 but separated in 1995 after twenty-seven (27) years of marriage. The marriage has now been dissolved and a decree nisi was granted on the 6th day of October 2000. The applicant has therefore prayed in aid the provisions of the Matrimonial Causes Act since the respondent has failed to provide reasonable maintenance for her.

The issue for determination therefore, is what should be a reasonable sum. I have had the benefit of reading the several affidavits filed and the parties have been

cross-examined upon their respective affidavits. I was therefore able to observe their demeanour and to make a proper assessment of the evidence.

The evidence

What are the facts supporting this application? The applicant states in her affidavit of the 18th May 2001, that she is an Enrolment Officer residing in the Parish of Saint Andrew. She is also a Sales Representative with Heritage International but earns strictly on a commission basis. She earns a commission of 25% of what is sold which totals One Thousand Dollars (\$1000.00) monthly. Her combined take home pay on an average is Seven Thousand Dollars (\$7,000.00) monthly.

She testified that she lives with her daughter who provides limited assistance. She also receives help from family members. Her monthly expenses as pleaded are set out hereunder:

Rent	\$18,000.00
Groceries	8,000.00
Helper and Gardener	2,600.00
Telephone	1,200.00
Water	300.00
Hairdresser	800.00
Transportation (petrol, maintenance Insurance)	4,500.00
Clothing	2,000.00
Medical	1,200.00
Electricity	1,200.00

Under cross-examination the applicant has admitted that she is still a beneficiary on the respondent's health insurance scheme. The coverage for the year includes \$4000 for drugs, \$5000 for optical and dental, either \$1000 or \$1200 for medical consultation and \$700 for visits to a general medical practitioner.

She has also deposed that the Respondent is a Project Manager for Ace Road and Paving Company and earns in excess of One Hundred and Twenty Thousand Dollars (\$120,000.00) per month after taxes. The respondent has deposed however, in his affidavit of the 24th May 2001, that he is presently employed as an Engineer to General Paving Company Ltd and that his monthly salary and expenses are as follows:

Salary

Gross salary	\$125,850.00
Deductions (including rent of \$29,000.00)	34,937.70
Net monthly earning	\$70,892.30

Monthly expenses

Helper	5,200.00
Gardening	1,600.00
Loan repayment - Credit Union	4,000.00
- PFAS	10,000.00
Credit Card	20,000.00
Food	16,000.00
Light	4,000.00
Telephone and Internet	6,000.00

He has further averred that he is heavily indebted. His liabilities include the following:

FINSAC	\$150,000.00
NCB loan	3,000,000.00
NCB Credit Card	2,000,000.00
Foreign Credit Card	770,000.00
Lawyers	666,666.66

Creditors - Gas station	786,000.00
TOTAL:	\$7,372,666.66

The applicant also deposed that the matrimonial home was mortgaged in order to finance the respondent's business. She had to borrow money in order to pay the monthly mortgage but eventually the property was foreclosed and sold. A car which she drove was also sold by the Bank. They were also forced to sell their home in Miami, Florida, U.S.A because the respondent had refused to pay the mortgage for that property.

She further avers that the respondent has a girl friend and that they have bought an unfurnished house. In response, the respondent has denied that he owns an apartment or any house whatsoever. She also asserts that he lives a luxurious life style and that he travels abroad frequently. He has deposed that his trips abroad are due mainly to free tickets made available to him from time to time. She contends as well that he eats at the most expensive restaurants and enjoys a high standard of living and that is why his Credit Card bills are so high.

The applicant believes her husband has money put away since he has received the sum of \$4,000,000.00 being the proceeds of sale of a house owned by his mother. She claims that \$1,000,000.00 was used to pay debts and he retained the balance. He contends however, that a trust company had to be repaid the sum of \$1,300,000.00 from the proceeds of sale. His wife had received \$75,000.00 and the balance was used to pay creditors and to provide gifts to family members.

The respondent has further stated that from time to time he gives the applicant whatever sum of money he can afford and that he is unable and cannot afford to pay the amount of thirty five thousand dollars (\$35,000.00) monthly. He has deposed that based upon his income, expenses and liabilities he would only be able

to contribute the amount of \$4,000.00 monthly towards the Applicant's maintenance.

He has also stated that he has to subsidize the living expenses of their last child who resides with him. In an affidavit in response, the applicant deposes however, that this son is an adult and is gainfully employed.

The evidence further revealed that the respondent had operated a service station and it was sold. Under cross-examination he agreed that the applicant has a 50% interest in the proceeds of sale after debts are liquidated. However, to date she has not received her share as yet. The service station was sold in 1996 for \$4,500,000.00 but the purchasers have failed to pay over the balance of \$1,000,000.00 with interest at a rate of 32% per annum. He has deposed that from this sale he has paid off some of the debts of the service station including the sum of \$1,700,000.00 to the National Commercial Bank, Browns Town. His other creditors are the Gleaner Company, Lee Singh's Tyre Centre, Facey Commodity and smaller businesses that he cannot recall the names now. He admits that none of these creditors have filed any suit against him. He has also stated that the balance of the proceeds of sale was used to pay outstanding redundancy payments and/or allowances due to employees of the service station and other creditors.

The respondent has exhibited copies of bank statements in proof of his outstanding debts. The documents exhibited relate to:

Credit Card a/c # 7777 7702 3006 9960	\$3,594,331.10
Credit Card a/c # 7777 7400 0013 1030	305,839.52
Credit Card a/c # 9999 9600 0056 9130	132,617.74
Credit Card a/c # 4559 7003 0952 0007	3,726.20
Credit Card a/c # 4487 9401 0000 1453	US \$67,289.94
Credit Card Arrow Financial	US \$567.56

Gleaner Co	\$102,061.37
Caribrake	167,767.99
KIG	23,402.50

He had also submitted other small US credit card bank statements.

He has said under cross-examination that he owes National Commercial Bank in excess of Four million dollars (\$4,000,000.00) but he has not had any discussions with the Manager about re-negotiating this loan. When asked why he has not done so, his response was, "you can only re-negotiate if you have something to offer". According to him, this debt was repurchased by FINSAC.

The applicant has admitted under cross-examination that the businesses they were engaged in suffered losses. When asked if the debts amounted to millions of dollars she said her answer to that question could be a yes or no. When further pressed she said she did not know about millions.

It was also suggested to her that she was well aware that there were debts still outstanding in respect of the service station. Her response was that there are debts but certainly not for the figures referred to in the respondent's affidavit.

The respondent has admitted under cross-examination that a \$4000.00 per month installment has ceased since the loan with the Credit Union has been repaid. He also admitted that the monthly sum \$10,000.00 payable to PFAS in respect of an outstanding loan has also ceased since that debt has been paid off. There is a current loan with the Credit Union however, for which he pays \$5000.00 monthly. He has said that that loan will be repaid in April or June 2003.

Albeit that the respondent is heavily indebted on his Credit Cards he still uses a credit card which was obtained from the Ellesmere branch of the Bank of Nova

Scotia. He has had this card for the past three years which he said he uses to purchase medical supplies, food and clothing. On an average he said he pays between \$20,000.00 and \$15,000.00 monthly to the bank. He further testified that he tries not to keep any outstanding balance on this card. He was then asked about the \$16,000.00 which he had deposed in his affidavit that he spent monthly on food. His response was that he does not exceed this sum monthly. When he was asked why he had to pay \$20,000.00 monthly on the credit card he said to purchase things as well as car parts for his daughter.

The parties were also the owners of a book shop which was sold. The applicant has agreed that the sum derived from the sale was to her sole benefit.

The submissions

Miss Cooper submitted that in determining this matter the Court should consider what the husband can afford and what are the wife's monthly expenses. She argued that there are other factors which ought to be taken into consideration in determining the quantum. In her view, these other factors include the duration of the marriage, and the standard of living of the parties. She submitted that the wife ought not to be relegated to a standard below that of the husband.

Miss Cooper further submitted that the husband has no obligation to legally maintain children who are now adults. Rather, his legal obligation is to maintain his wife. Furthermore, she has submitted that although bank statements have been submitted in respect of the respondent's indebtedness there is really no proof to substantiate it. She argued that the court ought to view with suspicion, debts itemized and for which there is no proof.

In her view, the respondent has treated the amount owing to National Commercial Bank with total disregard. The debt she argued does not seem to have any effect on

his everyday life. He has not actively sought to re-negotiate the amount owing and he could not say with certainty the sum that he now owes.

She also argued that it is obvious from the affidavit evidence that the respondent also subsidizes the cost of living for his daughter Tracy. She has stated in her affidavit of the 10th February 2003 that the respondent assists her in the purchase of grocery.

Finally, she submitted that the expenses set out by the applicant are reasonable and the court should make an order for the respondent to pay the \$35,000.00 monthly for her maintenance.

Miss Steadman has submitted that by virtue of section 20(1) of Matrimonial Causes Act the court has to look at the means of the applicant, the ability of the husband to pay and any other circumstances that the court deems reasonable.

She argued that the court ought to reduce the monthly sum of \$18,000.00 paid for rental by the applicant. She submitted that this sum should be shared with her daughter who is employed and lives at the premises with her child.

Miss Steadman also submitted that there was extensive medical coverage for the applicant and the court ought not to grant any further sum for medical expenses.

She has admitted that in the earlier years the parties had enjoyed an affluent life style but over the years the situation has worsened considerably. They had owned houses and businesses but due to the losses sustained in the several businesses, neither party owns a house any more hence they now have to live in rented accommodation. The respondent no longer owns a motor car and is assigned a 1992 model car by his company.

It was also argued by her that the respondent has had debts arising from the businesses but this was due to the monumental increase in the exchange rates. She agreed that he has made no effort to re-negotiate or meet with the bank regarding the outstanding credit card balances and other indebtedness.

With regards to the applicant's accusations of the respondent's luxurious lifestyle she submitted that she has really misled the Court. She submitted further that the applicant has not been candid either. She has made sweeping statements and has generalized without any proof or source upon which she has relied in making these statements.

Finally she argued that the educational qualification of the parties might be a relevant factor in determining their earning power. She argued that the applicant has not denied that she was a teacher by training hence she has skills and can obtain employment in this field. In the circumstances she submitted that the applicant is in a position to maintain herself and the summons for maintenance ought to be dismissed.

Application of the law to the evidence

It is indeed sad that these two individuals who once enjoyed an apparently affluent lifestyle have to resort to the Court for a determination of this matter.

Let me say quite clearly at the very outset that I am in total disagreement with the submissions made by Miss Steadman when she said that the applicant was in a position to maintain herself. No matrimonial wrong has been alleged against her so the respondent is obliged by law to provide reasonable maintenance for her.

In my view, the Court has to take into consideration the current cost of living so as to be able to determine the reasonable requirements of the wife. This husband is said by the wife to "continue to live in a very comfortable life-style and to enjoy

foreign travel." His response was that the foreign travel which he enjoyed was due to free tickets he had received due to a current relationship he has with a third party. With regards to the lifestyle it has been said that the applicant has not been candid in her disclosure and has even tried to mislead the Court.

What I am here concerned with is the husband's present ability to pay, because it is always open to the wife, if the means of the husband should increase at any future time, to apply to the court to increase the amount of any periodic payments which may now be ordered.

The court must therefore, ascertain not only what money a husband has but what he can have if he likes: see per Lord Merrivale in N v N ((1928), 138 LT 693, 44 TLR 324, 72 Sol Jo 156, 27 Digest (Repl) 618, 5772.) (44 TLR at p 327), and per Lord Greene in Howard v Howard ([1945] P 1, [1945] 1 All ER 91, 114 LJP 11, 172 LT 38, 61 TLR 189, CA, 27 Digest (Repl) 622, 5804.) ([1945] P at p 4), where he said:

'What has to be looked at is the means of the husband, and by 'means' is meant what he is in fact getting or can be fairly assumed to be likely to get.'

When one looks at the applicant's monthly expenses and compares it with her average take home pay it is indeed a miracle how she survives. Looking at her monthly expenses one could not say that they are exorbitant or unreasonable. However, certain items do need to be addressed. I am of the view that her monthly rental has to be reduced since the evidence clearly shows that her adult daughter who resides with her is gainfully employed. In the circumstances, the latter individual ought to be in a position to meet her own rental costs. No parent who is in such financial straits should bear those costs. Accordingly, it would be reasonable that the monthly rental ought to be reduced by one-half the sum claimed. For the

same reason, I hold that the costs of electricity should be reduced by one half of the sum claimed also.

I do recognize that the applicant still benefits from the respondent's health insurance scheme but I do believe that an additional monthly sum of \$1200.00 for medical expenses is not exorbitant. It is notorious that the cost of drugs and other medical needs can be exhausted quite quickly on any health insurance card in these times. I would therefore allow this additional sum for medical expenses.

The respondent is currently paying an interim monthly sum of \$12,000.00 and no complaint has been made to the Court about his ability to pay this sum. He has been relieved of paying \$4,000.00 monthly for a Credit Union loan as well as \$12,000.00 towards a loan due to a financial institution in Ocho Rios, St. Ann. His indebtedness to those institutions has now come to an end. Within a short time also he will be relieved of another monthly payment of \$5,000.00 to the Credit Union.

I also hold that he ought not to be responsible for debts incurred by adult working children. He had deposed that he would use his credit card to purchase motor car parts for his daughter as well as other things for himself hence he had to make a payment of \$20,000.00 monthly towards his credit card. The money saved here from the purchase of motor car parts could be used to assist with his wife's maintenance.

In so far as his indebtedness to the several financial institutions is concerned, I do agree with Miss Cooper that these outstanding sums have little or no effect on his lifestyle. He seems the least concerned about repayment and the indications are that his creditors are not placing any pressure whatsoever on him. He has not in my view provided real proof of his indebtedness. His financial obligations ought to have been

substantiated by the financial institutions. The mere exhibition of Bank statements which are not even current will not suffice.

Of course, there is the matter of the outstanding balance of One Million Dollars (\$1,000,000.00) owing on the sale of the service station. He ought to expedite the legal proceedings against the purchaser in order to enable the applicant to obtain her just share which he has admitted is owing to her.

I do believe that when the respondent spoke of affording only a sum of Four Thousand Dollars (\$4,000.00) monthly he could not be serious. He ought to reflect upon this and come to realize that such a ridiculous figure would place her at great disadvantage. She would indeed be relegated to a much lower standard of living than he is now enjoying. I do believe that when all the factors are taken into consideration which includes the respondent's ability to pay, a monthly sum of Twenty-five Thousand Dollars (\$25,000.00) would be reasonable in the circumstances.

It is therefore ordered that the respondent do pay to the applicant a monthly sum of Twenty-five Thousand Dollars (\$25,000.00) for her maintenance with effect from the 31st day of March 2003 until further order. There shall be costs of the application to the applicant to be taxed if not agreed.