[2025] JMCA Civ 1

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE BROWN JA
THE HON MRS JUSTICE G FRASER JA

SUPREME COURT CIVIL APPEAL NO COA2022CV000129

BETWEEN	**MARY SALOME MORRISON**	**APPELLANT**
AND	**ERROL YORK ST AUBYN MORRISON**	**RESPONDENT**

Miss Carol Davis for the appellant

Mr Andre Earle KC and Miss Crystal Nicholas instructed by Earle and Wilson for the respondent

13, 14 March 2024 and 24 January 2025

Family Law - Application to vary maintenance order - Variation of the duration - Jurisdiction to vary duration of maintenance orders - The applicable principles - Clean break principle - Interpretation of judicial order and the relevant principles - Standard of review - Section 20 of the Matrimonial Causes Act - Sections 5, 6, 9 10 and 14(4) of the Maintenance Act (as amended in 2005) - Matrimonial Causes Act 1989

MCDONALD-BISHOP JA

[1] I have read, in draft, the judgment of Brown JA and agree with his reasoning and conclusion. However, I am compelled to add a few words of my own in the light of the frank concession made by G Fraser JA (Ag), at paras [139] – [143] below, concerning an error of law in the case of **NG v MS-G** [2024] JMCA Civ 34 as it relates to the scope and applicability of section 6 of the Maintenance Act.

[2] The reasoning and conclusion of this court in the instant case, with which G Fraser JA (Ag) agrees, is that section 6 of the Maintenance Act does not apply to applications for maintenance made by spouses in a marital union but only to common law spouses.

This conflicts with the decision in **NG v MS-G**, which held, *inter alia*, that section 6 applies to married spouses so that an applicant for maintenance, who is married, would have a limitation period of 12 months from the termination of cohabitation, to bring an application for maintenance (see paras. [56]-[58] of that judgment).

[3] I endorse the declaration of my learned sister at paras. [140]-[143] below under the heading "**Correction of error of law regarding section 6 of the Maintenance Act**" and, would hold, consistent with the reasoning of Brown JA in this case (paras. [69]-[71], that section 6 of the Maintenance Act is not applicable to married spouses.

[4] Accordingly, I wholeheartedly agree with my learned sister that the decision of the court in **NG v MS-G** on this issue, was wrong, and therefore, should not be followed as it was based on an erroneous interpretation of the statute. We have acted out of the court's inherent duty to correct the error of law and provide clarity for the accurate application of the relevant statutory provisions, which is essential for the proper administration of justice within our jurisdiction.

BROWN JA

[5] This is an appeal from the decision of Staple J (Ag) ('the learned judge') (as he then was), made on 17 November 2022, (a) varying the duration of the maintenance order of Campbell J from the joint lives of the parties to one terminable at the expiry of three years from the date of his order; and (b) refusing to order the respondent to provide the appellant with a new Suzuki Vitara motor vehicle. The respondent also applied for a variation of Campbell J's orders, but that application was refused. There is no appeal from the refusal of that order. Before examining the bases of the challenges of the orders of the learned judge, it will be instructive to provide a background of the facts which led, first, to the making of Campbell J's orders and, second, the matters that exercised the mind of the learned judge in his consideration of the application for variation.

Background

[6] The appellant and respondent are former spouses. They were married on 30 March 1970. After the passage of approximately 31 years their marriage was dissolved on 16 November 2001. At the time of their divorce, the appellant was 55 years of age. Contemporaneous with the divorce proceedings, the appellant applied for spousal maintenance under the Matrimonial Causes Act ('MCA'), by way of a notice of motion. The notice of motion was heard by Campbell J (now retired) who, on 20 December 2001, made orders, as reflected in the formal order filed on 4 January 2003. Campbell J's orders are (so far as are relevant):

> "1. That the Respondent pay to the Applicant the sum of $150,000.00 per month for the maintenance and support of the Applicant during their joint lives.
>
> 2. The Respondent provide motor vehicle not older than 5 years for the Applicant during the same period and of a similar value to the one she presently drives.
>
> 3. Costs to the Applicant in the sum of $112,000.00 pursuant to Schedule A (11) of the Attorneys-at-Law Rules (1998)."

[7] On 1 June 2021, the appellant filed a notice of application for court orders, seeking a variation of the orders made by Campbell J, in the terms as set out below:

> "1. …
>
> 2. That the Order of Maintenance be varied so that the sum of $250,000 per month be paid for the maintenance and support of the Applicant during their joint lives or such other Order as this Honourable Court will determine.
>
> 3. That the Respondent provide to the Applicant a new [Suzuki] Vitara Motor [sic] vehicle within 30 days of the Order herein, or such other order as this Honourable Court may determine.
>
> 4. That the Respondent pay to the Claimant the costs of this application.

5. Further [or] other relief."

[8] The appellant grounded her application on two premises. Firstly, the periodical sum awarded in 2002 is now inadequate, on account of remaining static since the date of the order. Secondly, there has been a negative change in the material circumstances of the appellant since the date of Campbell J's order and, correspondingly, the income of the Respondent has significantly improved.

[9] As I intimated earlier, the respondent also filed an application for the variation of Campbell J's order. The respondent's application, filed on 25 June 2021, sought, in the alternative, the discharged of Campbell J's order. The respondent sought to ground his application on the following five propositions:

> "a) The financial position of the [respondent] has changed drastically since the making of the Order in December 2002. There has been a significant adverse change in the financial [sic]
>
> b) The Court Order, having been made approximately 19 years ago, was complied with by the [respondent], to the best of his ability in the circumstances.
>
> c) Notwithstanding the aforementioned, the [respondent], who is now retired, does not have the requisite financial means to abide by the terms of the Order.
>
> d) As 19 years have elapsed since the Order was made, the [respondent] is of the view that the [appellant] has had sufficient time to arrange her own financial affairs post retirement.
>
> e) In the circumstances, it is just and equitable to discharge the Court Order made by the Honourable Mr Justice Campbell on December 20, 2002."

Decision in the Supreme Court

[10] The learned judge summarised the applications then observed that there were no findings of fact made at the time when Campbell J made his orders in December 2002. The learned judge said that this made it more difficult for him to "[determine the] factual circumstances of the parties at the time", so that he could assess whether anything has changed about the parties' respective circumstances to justify a variation of the award. Notwithstanding, the learned judge distilled two issues that called for his resolution. Firstly, whether the order of Campbell J meant that the appellant should receive a motor vehicle, not less than five years old, every five years for the rest of her life. Secondly, what should the monthly periodic payments be, going forward.

[11] The learned judge went on to subdivide the periodic payments as appears immediately below:

> "(a) Have the means of the parties changed since the making of the maintenance order on the 20th December 2002 changed [sic] so as to warrant the variation/discharge sought by either party; and
>
> (b) If the answer to (a) above is yes, should the orders be varied or discharged as prayed by either party."

[12] The learned judge considered that the periodic payment required a broader discussion. To that end, he dissected **Bromfield v Bromfield** [2015] UKPC 19, an appeal from the decision of this court on an application to vary a maintenance order. The first instance judge, Brooks J (as he then was) had ordered a lump sum payment as a full and final settlement of the maintenance obligations of the husband.

[13] The Privy Council, based on the learned judge's recounting, raised the issue of Brooks J's power to make a lump sum award on the application for variation of the order. The Privy Council concluded that Brooks J had the power so to do, by virtue of section 23 of the MCA, when read together with section 15 of the Maintenance Act.

[14] After completing his analysis of **Bromfield v Bromfield**, the learned judge extracted the following propositions: (a) irrespective of when the order for spousal maintenance was made under the MCA, when the question of its variation arises, the court should be guided by the Maintenance Act 2005 (the court is so enjoined by section 23 of the MCA); (b) a judge considering an application for variation of a maintenance order should proceed as though making a fresh order for maintenance, that is, as if he was making an order under sections 20(1) or 20(2) of the MCA; (c) the question to be answered on the application for variation of the maintenance order is, has the means of the parties changed; and (d) the factors under section 14(4) of the Maintenance Act all relate to the means of the parties, in one way or another. Accordingly, the learned judge declared he would adopt the approach of the Privy Council in **Bromfield v Bromfield** in determining the applications to vary Campbell J's orders.

[15] The learned judge then turned his attention to the interpretation of Campbell J's order in relation to the motor vehicle. Specifically, he considered whether Campbell J's order meant that the appellant was to receive a car not less than five years old every five years for the rest of her life. He rejected the position that Campbell J's order could be so interpreted. At para. [25] of the judgment, he said:

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

[16] In giving his reasons for refusing the application for the provision of a new Suzuki Vitara motor vehicle, the learned judge stated that the wording of the order meant that the appellant was not to get an old car, and it was to be a car of similar value as the one she was driving at the time. He further opined, at paras. [30] and [31]:

> "… In my view, the confining of the **value** of the vehicle to the one she was driving at the time strongly suggests that Campbell J did not mean for this to be an order for the rest of [the appellant's] life. Otherwise, there would be an internal incongruence in the order. This is so because a vehicle less than 5 years in 2022, would not be of the same **value** of [sic] a Prado in 2002."
>
> [31] Had Campbell J intended for [the respondent] to give [the appellant] a car every 5 years, he would have clearly said so. The interpretation of judicial orders is the same as the interpretation of words in a statute or contract …" (Emphasis as in the original)

[17] In his concluding remarks the learned judge held, at paras. [33] – [35], that:

> "**[33]** In my view, the order of Campbell J was an executory order and it was carried out by [the respondent] as required. It was not an order that imposed a continuing obligation on [the respondent]. As such, it is not now capable of variance.
>
> **[34]** In addition, I doubt I could vary that aspect of the order. Section 20(3) provides that I can only vary a **maintenance order** which is the order for the payment of a sum of money.
>
> **[35]** Further, it does not appear that I … could vary same (perhaps under ss. 23(2) of the **Matrimonial Causes Act** and s. 15(1)(c) of the **Maintenance Act** being read together). This is because s. 15(1)(c) speaks to the **transfer** of property. Property here speaks to real property or chattel as opposed to sums (as sums are dealt with specifically under 15(1)(a) and 15(1)(b)). [The respondent] has no Vitara to transfer. Nor can I compel him, under 15(1)(c), to acquire *and then* transfer a Vitara." (Emphasis as in the original)

[18] In addressing the issue of the sum to be paid for maintenance, the learned judge directed his mind to the predicate question of whether the means of the parties had changed. Accordingly, he examined the evidence relating to the parties' income, expenses and earning capacity. At the end of that exercise, he concluded that there had been a

material change in the means of the parties. He encapsulated his finding as follows, at para. [73]:

> "I am therefore satisfied that the means of the parties have changed since December 2002 when Campbell J made his Order. I am satisfied that it has changed for the worse for [the appellant] and for [the respondent], but that [the respondent] is in the stronger financial position of the two."

[19] His assessment of the evidence, together with a consideration of the factors listed in section 14(4) of the Maintenance Act, led the learned judge to the view that the order for maintenance should be increased. He found that the respondent had the means "to pay the increased amount for maintenance to [the appellant], and that [the appellant] is not in a position to properly maintain herself due to the shortfall between her present income and expenses".

[20] The learned judge found the appellant's expenses to be reasonable and credible. He found the appellant to be generally credible although she did not fully disclose her source of income. The appellant did not disclose to the court that she had a new rental arrangement, although it was short term.

[21] The learned judge also assessed the evidence from the respondent concerning his present obligations to his present wife and applied the principles enunciated in **Bromfield v Bromfield**. The learned judge declined to attach any greater significance to the fact that the respondent had a new spouse, than to any other factor. He took into consideration the age of the parties, the fact that the respondent could still practice medicine and that there was no compelling evidence that either party was suffering from any debilitating disease or significant impairment. However, the learned judge concluded that there was no possibility of the appellant establishing herself in a viable career or positioning herself to significantly ease her dependency.

[22] He also took into his deliberation the fact that the children were all adults, who "are in good professions and have asset bases" (albeit with the respondent), and consequently would be able to assist the appellant in the future. The learned judge found that the children had a statutory obligation to maintain the appellant and therefore could be compelled through the courts to fulfil that obligation. As a result, he found that "[t]his would in my view, contribute to reducing the requirement for the respondent to continue paying maintenance to the appellant for any significant period of time". In the view of the learned judge, not much weight should be placed on the appellant's ownership of two properties in Malta. That view was premised on the absence of evidence of the value of the properties. Notwithstanding, the learned judge considered that the appellant should "take steps to realize her share in those properties rather than just have the assets wasting away". The learned judge's eventual conclusion was to grant an increase in the periodic payment to the appellant and, correspondingly, refuse the respondent's application for a reduction in the periodic payments to the appellant.

[23] The learned judge determined that the new maintenance sum should be $230,000.00 per month. This sum, the learned judge opined, struck a balance between the appellant's need to cover her expenses and the respondent's desire to appropriate his funds between competing needs. The learned judge articulated the position, at para. [86] of the judgment, as appears below:

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

[24] Having decided to increase the periodic payment, the learned judge next considered the duration of the payment. The learned judge accepted that the periodic

payment should not continue along the indefinite path ordered by Campbell J. He, however, rejected the payment of a lump sum as a means of terminating Campbell J's order. Instead, he adopted what he understood to be the modern approach to closure of this type of matter, the so-called 'clean break'. At para. [88], the learned judge said:

> "I am aware that [the respondent] had suggested a lump sum figure of $6,000,000.00. But I reject that approach in this case as I simply do not have the necessary evidential foundation to make such an award… But should I impose a cut off period for the maintenance instead? The modern approach is towards a clean break. I agree with this approach. The parties have been married for over 30 years. [the respondent] has now been paying maintenance for over 20 years. The parties are now well into their late 70s. [The respondent] has been faithfully paying the sum ordered all this time. A rough calculation shows that [the appellant] would have received approximately $36m in maintenance payments since 2002. I am of the view that in those circumstances it is time for his maintenance to come to an end. I will have the maintenance determine after 3 years."

[25] The learned judge made the following orders:

> "1. Order 1 of the Order of Campbell J dated December 20, 2002, is varied to say as follows:
>
> a. Errol Morrison shall pay to Mary Morrison the sum of $230,000.00 per month for 3 years. The payments shall commence on or before the 28th November 2022. At the end of this period of 3 years, the payments shall cease.
>
> 2. The application for Errol Morrison to provide Mary Morrison a new Suzuki Vitara is refused.
>
> 3 The application filed by Errol Morrison is refused.
>
> 4 Errol Morrison shall pay 50% of the costs on the application filed by Mary Morrison and Errol Morrison shall pay 50% of the costs of Mary Morrison on his application.

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

Grounds of appeal

[26] The appellant, being aggrieved by the orders made by the learned judge, filed four grounds of appeal challenging his decision. They are:

> "a. The Learned Judge erred in limiting the period for the provision of maintenance to the Appellant to 3 years.
>
> b. the Learned Judge erred in his interpretation of the Order of Campbell J.
>
> c. The Learned Judge erred in failing to proceed by way of variation of the Order of Campbell J
>
> d. The Learned Judge erred in failing to make Orders for the provision of a new Vitara motor car or some alternative motor car for the use of the appellant."

[27] The appellant is seeking the following orders:

> "i. That paragraph 1 of the Order of Staple J be set aside in so far as it provides that the payments to the appellant shall cease after 3 years.
>
> ii. That paragraph 2 of the Order of Staple J be set aside.
>
> iii. Further or other Relief
>
> iv. Costs to the appellant/Claimant."

Submissions

Appellant's submissions

[28] As it relates to the applicable law, the appellant submitted that section 18 of the Maintenance Act gives the court the power to vary a maintenance order "in such a manner as the court thinks fit".

[29] The appellant submitted that the jurisdiction to vary a maintenance order arises when there is a change of circumstances. Reliance was placed on Simmons J's (as she then was) decision in **Mr D v Mrs D** [2018] JMSC Civ 106.

[30] The appellant also submitted that these principles were further elucidated by the Privy Council in **Bromfield v Bromfield**. There, the appellant argued, the Privy Council made it clear that the jurisdiction to vary a maintenance order set out in section 23 of the MCA must be read together with section 15 of the Maintenance Act.

[31] The appellant agreed with the learned judge's conclusion, set out at para. [17] of his judgment, as to the approach to be taken in the light of the Privy Council's decision in **Broomfield v Broomfield**. The appellant also pointed out that, at para. [25], the Board had set out the matters to be considered by a court in an application for variation of a maintenance order.

[32] The appellant contended that the learned judge ought to have directed himself in relation to section 16 of the Maintenance Act.

Ground a

[33] The appellant submitted that the learned judge erred in limiting the duration of the order to three years. It was argued that due to the appellant's age, 76 years old at the time, it is clear from the evidence that she is unable to maintain herself by reason of old age. Reference was also made to the learned judge's finding regarding the inability of the appellant to establish a viable career or to do anything to ease her dependency.

[34] The appellant submitted that the learned judge referred to three ways in which the appellant could provide for herself and listed them. In relation to the learned judge's suggestion that the appellant could continue to rent out space in the two-bedroom flat that she occupied, the appellant submitted that bearing in mind the standard of living at

the time of her marriage, it would be entirely unreasonable for the appellant to continue to have to rent out part of her now very humble home.

[32] In relation to her co-ownership of two properties in Malta and the learned judge's suggestion that she should try and realise her shares in these properties, it was submitted that these were family properties owned by the appellant and her siblings. Further, the properties were dilapidated and could not be rented or sold. Also, the learned judge had found that the respondent had not established that the properties were not dilapidated and there was no evidence of the value of these interests. In addition, the learned judge stated that he would not put too much emphasis on these assets as a major factor for his decision.

[33] In relation to the obligation of her four children to maintain her, the appellant submitted that although there was evidence that the children are employed and have some assets, there was no evidence of their expenses and of their ability to maintain their mother. The appellant submitted that, in the circumstances the learned judge erred in expecting the children to fill any void in the appellant's maintenance, especially in circumstances where the learned judge found, at para. [75], that the respondent has the means to pay an increased amount for maintenance.

Respondent's submissions

Ground a

[34] The respondent submitted that an application for spousal maintenance is governed in the first place by section 4 of the Maintenance Act and that section 18 of the Maintenance Act gives the court the power to vary a maintenance order in such manner as the court thinks fit.

[35] The respondent submitted that the jurisdiction to vary a maintenance order arises when there is a change of circumstances. The principle is highlighted in section 20(3) of the MCA.

[36] The respondent then cited the case of **SS v NS (Spousal Maintenance)** [2014] EWHC 4183 (Fam) 46 and quoted seven points from the judgment of Moystyn J outlining the factors a court should consider when making a spousal maintenance award and determining its duration.

[37] The respondent also relied on the decision of the court in **B v S** [2022] NIFam 33 which was acting pursuant to section 25A of the Matrimonial Causes Act of England.

[38] The respondent then stated that the principle of one party not having the burden of maintaining the other party of a dissolved marriage indefinitely was laid down in the case of **Bromfield v Bromfield**.

[39] The respondent submitted that the learned judge was correct in the order he made on 17 November 2022.

[40] The respondent contended that after 30 years of marriage and having supported the appellant faithfully by providing spousal maintenance, as ordered by Campbell J on 20 December 2001, the appellant is unreasonable in her demand for more than $230,000.00 as ordered.

[41] The respondent submitted that the appellant has failed to recognise that the obligation of a party to maintain the other party is not one that should run indefinitely. One should demonstrate that there is a need and that the other party has the means by which to satisfy those needs.

[42] The respondent submitted that this court should take into consideration, according to section 20(3) of the MCA, that the decision to vary the order handed down by Campbell J is due to the fact that after examining the circumstances of the case, the appellant is in a better position to take care of her needs.

[43] The respondent referred to the reasons stated by the learned judge and his reliance on the fact that children have a statutory obligation to maintain parents to the extent that they can. The respondent also highlighted the fact that all four children are professionals and have asset bases that would position them to assist the appellant in the future. This, the respondent argued, would contribute to reducing the requirement for him to continue paying maintenance to the appellant for any significant period of time. The respondent also submitted that the appellant's dependence on the respondent would be reduced by her co-ownership of properties in Malta.

[44] The respondent submitted that the learned judge was correct in restricting the period in which the respondent should continue to pay the appellant spousal maintenance. The respondent supported the learned judge's application of the clean break approach. To this end, the respondent cited **B v S**, in which Rooney J, at para. 38 of the judgment, pointed out that, pursuant to Art 27A of the 1978 Order, the United Kingdom ('UK') court is under an obligation to consider the possibility of a clean break to maintain the balance of fairness between the parties. In the instant case, the learned judge mentioned that in these circumstances, the time had come for the respondent's obligation to maintain the appellant to come to an end.

[45] The learned judge, it was argued, considered the fact that the respondent had been faithfully paying spousal maintenance for 20 years, and ordering that he continues to do so for the rest of his and the appellant's joint lives would bring severe hardship on him. The hardship is made manifest in the respondent being responsible for both his own personal expenses, having given up his medical practice, and while shouldering the care of his sick wife who is terminally ill.

[46] This, it was argued, has shifted in the respondent's financial position and so the variation, restricting the period to three years, should stand. The respondent relied on the dicta in **Miller v Miller**; **McFarlane v McFarlane** as cited by Rooney J in **B v S**

applying section 25A (1) of the UK Matrimonial Causes Act. The respondent also relied on **SS v NS (Spousal Maintenance)**.

[47] The learned judge, in limiting the period, it was argued, was seeking to alleviate significant hardship. The respondent submitted that the case of **SS v NS** also speaks to maintenance being provided for a definite period. The order, it was argued, should not run for the entire duration of the parties' joint lives. This would, no doubt, add to the financial hardship already faced by the respondent. The respondent also relied on dicta from **Minto v Minto** [1979] AC 593.

[48] The respondent argued that it is in the interests of justice that when a maintenance order is granted it should be for a sufficient yet specified duration to enable the parties to make a clean break and exercise financial independence. The respondent has been compliant with the maintenance order from 2002. It was submitted further that it would be unjust and unreasonable for the respondent to continue to bear that financial burden indefinitely. The respondent contended that section 15(1) of the Maintenance Act gave the learned judge the power to make a monetary order for a limited period of time as he saw fit. It was argued that the learned judge was exercising his discretion based on the circumstances as he found them 20 years later.

Discussion

Campbell J's judgment

[49] As already indicated, neither the parties nor the learned judge in the court below had the benefit of Campbell J's written, but unreported, judgment (Suit No FD 1999/M201 judgment delivered 20 December 2002) which came to our hands after the completion of the hearing of the appeal. That was the result of the industry of a senior judicial counsel and the librarian of the Supreme Court library. This court made the judgment available to the parties who were asked to make further submissions in light of it. Those further submissions were received and have been considered by the court.

[50] I will summarise the relevant parts of Campbell J's judgment.

[51] By originating summons (Part 8 claim form under the Civil Procedure Rules) dated 8 December 1999, the appellant applied for either unsecured or secured orders for her maintenance, expressed in the alternative as follows: (a) such gross sum of money as the court deemed reasonable; (b) such annual sum of money in advance; or (c) during their joint lives, such monthly sum for her maintenance and support. I am constrained to set out paragraphs one and two of the originating summons:

> "1. That the Respondent pay to the Applicant for her life;
>
> 1) Such gross sum of money as this Honourable Court deems reasonable.
>
> 2) Alternatively [sic] such annual sum of money in advance or alternatively.
>
> 3) During their joint lives, such monthly sum for her maintenance and support.
>
> 2. That the Respondent be ordered to secure to the Applicant for life;
>
> 1) Such gross sum of money as this Honourable Court deems reasonable.
>
> 2) Alternatively [sic] such annual sum of money in advance or alternatively.
>
> 3) During their joint lives, such monthly sum for her maintenance and support."

Whether or not section 20 of the MCA is applicable

[52] That application was couched in the vein of section 20(1) of the MCA, as it stood in 1989, before the amendments of 2005. The relevant part of section 20(1) reads:

> "On any decree for dissolution of marriage the Court may, if it thinks fit, order the husband, to the satisfaction of the Court,

> to secure to the wife such gross sums of money or such annual sum of money for any term not exceeding her own life, as having regard to her means, to the ability of the husband, and to all the circumstances of the case it deems it reasonable …; and upon any petition for dissolution of marriage the Court shall have power to make interim orders for such payments of money to the wife as the Court may think reasonable."

[53] It is, therefore, convenient and appropriate at this time to address the submission of learned counsel for the appellant that section 20 of the MCA is not relevant for the present proceedings. The irrelevance of section 20 of the MCA, according to learned counsel, is plain because section 20 of the MCA relates only to the court making orders on the dissolution of a marriage, which the application before Campbell J was not. That conclusion is based on the chronology of dissolution of the marriage and the making of the order for spousal maintenance. This means that the marriage was dissolved on 22 November 2001, whereas the order for maintenance was made on 20 December 2002.

[54] Respectfully, this argument is unmeritorious, both in fact and law. The originating summons was filed on 8 December 1999, while the marriage subsisted. Additionally, as is patent from the orders sought, and observed above, the orders were drafted in the terms of section 20 of the MCA. It is, therefore, incorrect to say that the application before Campbell J was not one for maintenance on the dissolution of the marriage. The fact that the order dissolving the marriage was made, in pursuance of the application filed before, but after, the date of its dissolution, is of no moment by virtue of section 23 (1)(a) of the MCA. The relevant portions of section 23 (1)(a) are extracted below:

> "23. – (1) The Court may make such orders as it thinks just for the … maintenance of a spouse –
>
> a) in any proceedings … for dissolution or nullity of marriage before, by or after the final decree [.]"

It is, therefore, clear that the order for the maintenance of the appellant could, and was, properly made under section 20 of the MCA, although it was pronounced after the date

of dissolution of the marriage. The order having been made under section 20(1) of the MCA, section 20(3) is paramount, as will become evident later. And so, I return to Campbell J's judgment.

[55] Campbell J noted that, in furtherance of the application, an interim order was made on 2 March 2000 in the terms enumerated below:

> "2. The Respondent to continue to pay to the Applicant health insurance, and provide herewith a motor vehicle.
>
> 3. That in respect to premises at 6 Montclair Drive, Beverley Hills, the Respondent continue [sic] to pay all household expenses, utilities, maintenance, and insurance, and to pay the gardener and helper."

[56] After setting out the application and the interim orders, Campbell J adverted to the circumstances of the parties meeting each other in the UK, while the respondent was a post-graduate student. The appellant was a qualified teacher. At the time of the application before Campbell J, the respondent was an endocrinologist who was both a Pro Vice-Chancellor of the University of the West Indies ('UWI') and Dean of Graduate Studies and Research. In the words of Campbell J, the respondent had "distinguished himself nationally and internationally for his research and learning in respect of the disease of diabetes".

[57] It was urged upon Campbell J to award the appellant a monthly sum of $300,000.00 (one-fourth of the respondent's income). Campbell J accepted opposing counsel's submission that the applicable rule in this jurisdiction was one-fifth. Campbell J accepted that **Attwood v Attwood** [1968] 3 All ER 385, at page 388, encapsulated the considerations he should bear in mind. These were: a lowered standard of living for all the parties following the breakdown of the marriage; the standard of living of the wife and child should not be significantly lower than the husband's, neither should the wife's standard of living be placed substantially higher than the husband's; a determination of each party's standard of living is a factor of the inescapable expenses of each; and, in

the final analysis, the court was obliged not to depress the husband below subsistence level.

[58] Campbell J then reviewed the affidavit and oral evidence (both parties were cross-examined) and appears to have made his orders upon the following bases. In determining the appellant's means, together with circumstances deemed reasonable, Campbell J considered that the appellant occupied the former matrimonial home (6 Montclair Drive), which was in need of repairs; she was unable to attend the funeral of one of her parents in Malta, whereas during the marriage, she enjoyed trips abroad and local vacations; she had only recently left the classroom; and she did not enjoy the best of health and frequently required specialist treatment. The appellant's listed expenses in her affidavit amounted to $291,000.00. Campbell J quoted the appellant as stating in her affidavit that "[a]t present most of my expenses are met by the Respondent, and I verily believe that he can well afford to continue to maintain me at this standard".

[59] In seeking to assess the respondent's ability to meet the award, together with circumstances deemed reasonable, Campbell J found that the respondent was less than forthcoming concerning his income, other than his salary from the UWI. Against the background of testimony that was "replete" with inconsistencies and contradictions, it was concluded that the respondent was either unable or reluctant to assist the court. Accordingly, Campbell J, relying on **Hughes v Hughes** (1993) 45 WIR 149, adverted to the licence to draw inferences adverse to the respondent because of his failure to make full and frank disclosure. Campbell J found that the respondent's monthly income was $600,000.00. He also found that the respondent frequently travelled, and was altruistic, instanced by the legacy for his daughters.

[60] Coming to the orders, Campbell J found that the obligations imposed on the respondent by interim order number three was valued at $70,000.00 (see para. [75] above). Campbell J held this sum to be "inadequate to address these needs of the [appellant]". Accordingly, he ordered the respondent

> "… to pay the sum of $150,000.00 per month for the maintenance and support of the [appellant] during their joint lives and to provide herewith, a motor vehicle of a similar value to the one she presently drives. The vehicle so provided, not dated more than five years ..."

The application to vary the duration of the maintenance order made by Campbell J

[61] When the appellant made her application on 1 June 2022 to vary Campbell J's orders, the MCA had undergone legislative changes, by the passage of Act 30 of 2005. That amending legislation subdivided the former section 20(1) into three subsections which left the substance of the law unchanged. However, two fundamental changes were wrought by the amendment. Firstly, the old language, reflective of female powerlessness and disabilities, that expressed the authority of the court to make financial provisions for wives, passed into history's abyss, to be replaced by the modern language of gender neutrality and female empowerment. To that end, the court may make any of the orders it could previously make, directed to a spouse (the contributing spouse), for the benefit of the other spouse (the dependant spouse) (see MCA sections 20(1) and (2)).

The 'clean break' principle

[62] The learned judge, in deciding to order the maintenance to terminate after a period of three years, expressed a preference to impose what he described as a clean break. In **Minton v Minton,** Viscount Dilhorne regarded the principle of a clean break "as of great importance" (see page 601E of the judgment). In expressing himself in agreement with the judgment of Lord Scarman, affirming the decision of the court of appeal, Viscount Dilhorne (at page 601D) desired to "stress the desirability of the court being able to achieve finality as to the financial provisions made for a spouse after the breakdown of a marriage". This was a case in which the wife had applied for periodical payments for herself, after obtaining a decree of divorce. In three subsequent agreements, the financial affairs between her and the husband were settled and her claim for periodical payments dismissed. Approximately three years later, the wife applied for a variation of the order,

to increase the payments to her. The judge at first instance held he lacked jurisdiction to entertain the application. The Court of Appeal agreed.

[63] On further appeal to the House of Lords, it was held that once the application had been dealt with on its merits there was no subsisting jurisdiction to entertain future applications, save in the face of a continuing order as provided for under section 31 of the English Matrimonial Causes Act. The House of Lords was concerned with the interpretation of section 23(1) of the Matrimonial Causes Act 1973, which was quoted at page 593 of the judgment, as is reproduced below:

> "On granting a decree of divorce … or at any time thereafter … the court may make … (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order; …"

The question for Their Lordships was whether the wife was precluded by the consent order from invoking the jurisdiction of the court. Their Lordships concluded that the section did not clothe the court with jurisdiction to make a second or subsequent maintenance order after the dismissal of the original application. This provided Lord Scarman with an opportunity to comment on the object of the modern law, as undergirded by two jurisprudential principles. At page 608, he said:

> "There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other – of equal importance- is the principle of 'the clean break.' The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. … The court having made an order giving effect to a comprehensive settlement of all financial and property issues as between the spouses, it would be a strange application of the principle of the clean break if, notwithstanding the order, the court could make a future

order on a subsequent application made by the wife after the husband had complied with all his obligations."

[64] The clean break principle, upon which the learned judge in the present appeal based his decision to bring an end to the maintenance, originated in judicial policy but is now embedded in the English statute (see Family Law Welstead & Edwards 3rd edition at para. 7.84). Under section 25A of the English Matrimonial Causes Act, a court that is exercising its powers to grant ancillary relief, pursuant to the making of a divorce or nullity of marriage order, is enjoined to consider crafting that relief in determinate terms which expire proximate to the date of its pronouncement. I quote the section below:

> "25A Exercise of court's powers in favour of party to marriage on divorce or nullity of marriage order.
>
> 1) Where on or after the making of a divorce or nullity of marriage order the court decides to exercise it powers under section 23(1) (a), (b) or (c), …. in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable.
>
> 2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.
>
> 3) Where on or after the making of a divorce or nullity of marriage order an application is made by a party to the marriage for a periodical or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be

> imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be able to make any further application in relation to the marriage for an order under section 23(1)(a) or (b) above."

[65] The overarching duty cast upon the court in the making of spousal financial orders is to consider the appropriateness of including in that order with its date of expiration if, and only if, the court considers it 'just and reasonable' so to do. Therefore, the court upon which this duty is imposed is not bound to make a maintenance order based on the clean break principle, if it is not just and reasonable to do so (section 25A(1)). In similar fashion, the duration of periodical payments is to be made terminable after the expiration of a time considered sufficient to allow the payee to achieve financial independence, without unnecessary hardship (section 25A(2)).

[66] In **McFarlane v McFarlane; Parlour v Parlour** [2004] 2 FLR 893, Thorpe LJ, adverting to the amendments to the English Matrimonial Causes Act, which introduced section 25A, among others, in the context of the question whether capital orders could only be made "once-for-all", commented, at para. [53]:

> "The effect of these amendments, in cases where capital claims have already been dismissed, is first to impose upon the court a duty to terminate the only continuing financial relationship as soon as that can be achieved without undue financial hardship; and secondly to empower the court to compensate the payee for the discharge of the periodical payments order with additional capital. So the old principle has to be qualified thus: the original once-for-all capital division that resulted in the dismissal of capital claims may be supplemented by a later transfer of capital, agreed or adjudged to be the fair consideration for the dismissal of the surviving claim to periodical payments ..."

[67] Thorpe LJ went on to set out section 25A (see para. 64 above), referred to Lord Scarman's speech in **Minton v Minton** then made copious references to extracts from

the Law Commission's 1981 report (Law Com No 112) which articulated the policy objectives now embedded in the English Matrimonial Causes Act 1973. In the passage quoted from the Law Commission's report at para. 60, reference was made to the predominant view among those commenting on the Discussion Paper that greater importance should be accorded to each party striving to achieve financial self-sufficiency. This, it was said, should be reflected in the legislation. Against that background, and the court's existing power to make orders for a limited term, the Law Commission opined:

> "... that it would be desirable to require courts specifically to consider whether an order for a limited term would not be appropriate in all the circumstances of the case, given the increased weight which we believe should be attached to the desirability of the parties becoming self-sufficient."

The Law Commission gave two examples in which finality should be achieved, wherever it is possible. Firstly, a childless marriage of comparatively short duration where the wife has an income or earning capacity. Secondly, a long marriage which has an adequate measure of capital available for division (see para. 61 of the judgment). Courts should, therefore, be injunct to promote the discontinuance of financial obligations between the parties contemporaneous with their divorce (see para. 62 of the judgment). Further, where a periodical payments order is made in favour of the wife, the primary objective of that order should be a smooth transition from marriage to financial independence (see para. 62 of the judgment).

[68] It is small wonder that Thorpe LJ harboured no doubt concerning the legislative policy substructure of section 25A (see para. 63 of the judgment). In Thorpe LJ's understanding, the obligation of the court to consider a clean break transcends the making of the original order to any subsequent application for a variation of that order (see para. 64 of the judgment). The appellant's application before the learned judge was for a variation of Campbell J's order. Therefore, although Campbell J appears not to have been guided by its dictates, if the clean break principle applies, the learned judge would

not have been incorrect in applying it to his consideration of the application for a variation of Campbell J's order. This begs the question whether the policy of clean break similarly forms the substratum of the relevant provisions of the MCA 1989 and or the Maintenance Act.

[69] I propose to approach the answer to this question firstly, by reference to the obligation to maintain a spouse, on termination of cohabitation, under the Maintenance Act. Under the Maintenance Act, cohabit "means to live together in a conjugal relationship outside marriage". So, the use of the word 'spouse' here refers to a single man or single woman who cohabited with another single woman or man, for a period of not less than five years, as if they were in law, husband and wife (see section 2 of the Maintenance Act). Therefore, the obligation to maintain one's spouse referred to at this juncture is to common law unions, in contradistinction to married spouses. Under section 6 of the Maintenance Act, there is a mutuality of the obligation of spousal maintenance upon the termination of cohabitation. That obligation arises under the following condition: (a) the extent that he or she is capable; and (b) to supply the deficit in the other spouse's reasonable needs where that spouse cannot practicably meet the whole or part of those needs. In the assessment of these conditions, the court is similarly obliged to take into its consideration, as under the MCA 1989, the circumstances listed in section 14(4) of the Maintenance Act, as well as the omnibus proviso, "any other circumstances … the justice of the case requires to be taken into account" (see section 6(1)(a) and (b)).

[70] There is a 12-month timeline, post termination of cohabitation, within which the application for a maintenance order may be made (see section 6(2) of the Maintenance Act). By virtue of section 6(2), the court may make a maintenance order in accordance with the provisions of Part V1 of the Maintenance Act (section 14(4) falls under Part V1). In making the order under subsection (2), the court is enjoined both to apply the provisions of section 5 and couch its orders in the mould of the English embraced

legislative theory of clean break under section 6(3) of the Maintenance Act. I quote section 6(3):

> "(3) Where a Court acts under subsection (2)-
>
> a) …
>
> b) the Court shall, as far as practicable, make such orders as will finally determine the financial relationship of the parties and avoid further proceedings between them."

In sum, the court making orders between former spouses after the termination of cohabitation, is required, as far as practicable, adopting Lord Scarman's words in **Minton v Minton**, to make "a comprehensive settlement of all financial and property issues as between the spouses" to obviate the need for further litigation between them.

[71] There is no provision in the MCA which is in similar terms to section 6(3)(b) of the Maintenance Act. Neither is section 6(3)(b) incorporated into the MCA by any of the provisions of the latter. That section 6 (3)(b) is neither replicated nor incorporated in the MCA is reflective of its legislative circumscription. That is to say, although the Maintenance Act is of general application, applying as it does to spouses from a marriage or cohabitation, the legislature specifically restricted its applicative compass to orders made upon the termination of cohabitation. It is, therefore, plain that in determining the amount and duration of spousal maintenance orders, for married spouses, under either the Maintenance Act or the MCA, the court making those orders is not obliged by legislative edit to strive for a clean break, as contemplated by section 6(3)(b) of the Maintenance Act.

[72] The learned judge in the instant case, was attracted to, and agreed with, the clean break principle imbuing the English statute and set out in section 6(3)(b) of the Maintenance Act, when he came to consider the duration of the now varied Campbell J's order. In considering the duration of the order, he dismissed the respondent's entreaty to award a lump sum, then took this catechismal approach:

> "… But should I impose a cut off period for the maintenance instead? The modern approach is towards a clean break. I agree with this approach. The parties have been married for over 30 years. EM has now been paying maintenance for over 20 years. The parties are now well into their late 70s. EM has been faithfully paying the sum ordered all this time. A rough calculation shows that MM would have received approximately $36m in maintenance payments since 2002. I am of the view that in those circumstances it is time for his maintenance to come to an end."

The learned judge was persuaded by two cases of coordinate jurisdiction, **Antoinett Nancy West Lehman v Peter Lehman** [2017] JMSC Civ 186 ('**Lehman v Lehman**') and **SBW v VW** [2021] JMSC Civ 17, and section 14(4) of the Maintenance Act.

[73] Section 14(4) of the Maintenance Act directs the mind of the court to sections 5(2), 9(2) and 10(2), as well as an open-ended list of factors the court is mandated to consider in determining the amount and duration of spousal support, alphabetised (a) to (m). Factors (a) to (n) all address the circumstances of the parties, whether historical, present or prospective. Factor (m) gives the court the discretion to go beyond the considerations listed at (a) to (n) and take into its contemplation other circumstances, if, in its opinion, the justice of the case demands it. Similarly, section 5(2) enumerates a raft of additional factors to which the court shall have regard in coming to a determination on the amount and duration of spousal maintenance. Sections 9(2) and 10(2) address the circumstances pertinent to a dependant who is a child and parent or grandparent respectively. These latter two sections are irrelevant for present purposes. That said, a close reading of section 14(4) does not reveal, whether explicitly or implicitly, a legislative injunction to make clean break orders.

[74] In **Lehman v Lehman** the wife sought division of property and maintenance orders for herself and a disputed child of the marriage. The parties got married in 2009, following a period of cohabitation which began in 2007. They separated in 2010 and their marriage was dissolved in 2013. Although the wife's age was not given in evidence, the

court formed the view that she was much younger than the husband. She was unemployed, but there was no evidence that she suffered either from a debilitating illness or infirmity. The court granted only the application for spousal maintenance. Although the application was for a periodical payment order, the court made a lump sum award, "in keeping with the principle of a clean break and taking all the issues into consideration," (see para. [43] of the judgment).

[75] **Lehman v Lehman** was followed in **SBW v VW**. In the latter case the parties, although estranged for several years at the time of the trial, had been married for in excess of 20 years. The wife was a homemaker at the time of the trial but was previously employed as a teacher and statistician; she had also qualified as a realtor. There was one child for whom the husband assumed full responsibility. In the opinion of the court, the relationship between the parties was coloured by acrimony, regarding the maintenance and upbringing of the child. The court found the wife to be employable and "within the working age group". The court also found that there was no evidence that she suffered from any illness or infirmity. Although finding that the wife contributed significantly, even if indirectly, to the husband's professional and personal advancement, the court was of the view that, "given the nature of the parties [sic] relations, a clean break is what is best" (see para. [45] of the judgment). The court went on to quote paras. [42] and [43] of **Lehman v Lehman** and then made an order for a lump sum payment.

[76] With all due deference to the learned judge, neither **Lehman v Lehman** nor **SBW v VW** provides a sound base to apply the clean break principle to the present case. Without attempting to pronounce upon the correctness of both decisions, both are distinguishable upon their facts from the case that was before the learned judge. **Lehman v Lehman** was a childless marriage of short duration in which the wife, although unemployed, had an earning capacity. Those facts placed that case squarely within the four corners of the first iteration given by the Law Commission in which the

clean break principle should apply, as outlined in the judgment of Thorpe LJ in **Minton v Minton** (see para. [67] above).

[77] Turning to **SBW v VW**, the only real point of comparison is the length of the marriage. Whereas the wife in that case was adjudged to be both employable and within the working age group, the appellant, who was either 55 or 56 years of age at the making of Campbell J's order, attracted the acknowledgement of the learned judge that she had beaten the odds of the 75-year life expectancy for Jamaican women. The appellant, therefore, fell outside the usual working age group of up to 60-65 years. Neither did the appellant have the capacity to resume working for an income (see para. [79] of the judgment). In fairness to the learned judge, he found that the appellant earned rental income; further, she should take steps to realise her share in the dilapidated Maltese properties. However, the learned judge did not "put much emphasis on these assets as a major factor" in his decision. In any event, when the court is adjudicating upon the financial provisions of a long marriage, the appropriateness of a clean break appears to be dependent on the availability of an adequate measure of capital for division (see **Minton v Minton**, encapsulated at para. [67] above). In this case, the prospective rental income was used to reduce the periodic payments, not as a source of capital for the appellant. So, the factual distinctions aside, without an adequate measure of capital available for division between the parties, in spite of the length of the marriage, it is questionable whether this was a case that was apt for a clean break at all.

[78] Putting aside for the moment the absence of any legislative underpinning, in either the MCA or the Maintenance Act, for resort to the clean break principle to married spouses seeking spousal maintenance, the application of the principle must abide the presence of circumstances which make it "practicable" so to do (see section 6(3) of the Maintenance Act). Under the English Matrimonial Causes Act, the principle is applied if it is appropriate in the circumstances of the particular case (see para. [64] above). Welstead & Edwards accept the position in **Minton v Minton** that the absence of a capital sum may render

the imposition of a clean break not only impracticable but unfair. At para 7.85 of Family Law, they say:

> "… marriage generates financial responsibilities which may need to continue even after it has ended. Where the available financial resources are insufficient to provide a capital sum to compensate for past contribution or future maintenance, ongoing periodical payments may be the only solution for wives who have taken care of the family and home and supported their husbands' earning capacity. They may experience problems in re-entering paid employment and be unable to attain self-sufficiency. These spouses will remain locked into a financial connection with each other because it would be unfair to permit them to do otherwise."

In other words, the circumstances of the parties may only justify an order for periodic payments to be made to the wife which is coterminous with the end of her life or for the duration of their joint lives.

The variation made by the learned judge

[79] The learned judge modified Campbell J's joint lives order to one terminating at the expiration of three years from the date of commencement of his varied periodical payments order (28 November 2022). That modification supposedly gave expression to the modern approach of a clean break. He premised this approach on (a) the parties' marriage of 30 years; (b) the husband's payment of maintenance for 20 years; (c) the fact that both parties were in their late 70s; (d) the husband's faithfulness in making the payments; and (e) the wife's receipt of approximately $36,000,000.00 in spousal maintenance since 2002.

[80] The learned judge's power to modify Campbell J's order is one of three options available under section 20(3) of the MCA. The exercise of any of these options all rests on the same predicate, a change in the means of one or both parties. It is instructive to set out the section. It reads:

> "If, after any such order has been made, the Court is satisfied that the means of either or both parties have changed, the Court may, if it thinks fit, discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money order to be paid …"

While the learned judge had the discretion to modify Campbell J's order, the exercise of that discretion must reflect its legislative remit. Premises (a) to (d) of the learned judge's reasons for varying the order cannot be said to fall within the penumbra of the remit, changed means, however generously they are read.

[81] If premise (e), the receipt by the appellant of about $36,000,000.00 over the space of the 20 years of periodical payments, was meant to fall under the rubric, changed means, the learned judge did not explicitly say. However, the bald statement of the sum of $36,000,000.00 could never be regarded as representing changed means, without the corresponding rigorous analysis to demonstrate that some part of that figure was a surplus over the appellant's expenses, that accrued to the appellant as capital. Consequently, premise (e), like premises (a) to (d), cannot ground the exercise of the learned judge's discretion to modify the duration of Campbell J's order.

[82] The learned judge was aware that his discretion to vary Campbell J's order derived from section 20(3) of the MCA. However, he limited the discretionary power to modify Campbell J's order to an adjustment or discharge of the quantum of spousal maintenance. This is palpable from his identification of the legal issues for resolution. At para. [9] of the judgment he identified two legal issues for his resolution. The first issue related to the car, which will be discussed later. The second issue he identified as "the amount of money to be paid for maintenance going forward". At para. [11], he said:

> "Relating to the sum of money to be paid for maintenance, the essential question is, in my view, two-fold:
>
> **a) Have the means of the parties changed since the making of the maintenance order on the 20th December 2002 changed [sic] so as to**

warrant the variation/discharge sought by either party; and

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

The learned judge went on to quote section 20(3) of the MCA and expressed the view, correctly, that there was but one factor to be considered in determining whether to vary or discharge an order previously made under section 20 of the MCA, namely, changed means of the parties (see paras. [20]-[21] of the judgment).

[83] The learned judge then embarked upon a detailed assessment of the parties' expenses and income and concluded that there was "a significant change in the means of the parties" post the making of Campbell J's orders in 2002 (see para. [64] of the judgment). That conclusion led the learned judge to increase the periodical payments to the appellant. When the learned judge came to consider the duration of the periodical payments, he appears to jettison, or otherwise abandon his reasoning on changed means. In other words, he made no palpable attempt to relate that reasoning to the change in duration. This is evident from the leap he made from his rejection of the respondent's argument for a lump sum to the "modern approach" (see para. [88] of the judgment).

[84] And so, I return to the learned judge's adoption of the modern approach to a clean break. Deferentially, the learned judge's inclusion of the approximate grand total of spousal maintenance in the circumstances which propelled him to strive for a clean break is befuddling. That is, in deciding to increase the quantum of periodical payments, the learned judge expressly held that there was no evidence the continuation of the periodical payments would enable the appellant either to establish a viable career or significantly decrease her financial dependency on the respondent (see para. [80] of the judgment). A reasonable inference to be drawn from this is the expectation that the appellant's financial dependence on the respondent will continue.

[85] A proper consideration of the principle of clean break, as it relates to spousal maintenance, is the acute awareness of the relationship between the quantum of spousal maintenance and the termination of the order. Consequently, the learned judge, in deciding to make his order terminate at the end of three years, was required to show that, in his opinion, the appellant's adjustment to the termination of her financial dependence on the respondent could be achieved without undue hardship (see section 25A(2) of the English Matrimonial Causes Act at para. [64] above). This was necessary, especially in light of his finding that the deficit between her income and expenses rendered her incapable of maintaining herself. Merely to state the quantum of maintenance the appellant had received in the past does not advance the case for a clean break. The statement of the amount of spousal maintenance received over the life of Campbell J's order, in so far as it implies an advantage to the appellant or a favourable factor to terminate the award, flies in the face of the learned judge's finding that "[w]hatever savings she would have accumulated have now been depleted" (see para. [66] of the judgment).

[86] So then, was the learned judge entitled to modify the duration of Campbell J's order from the joint lives of the parties to termination at the expiration of three years from 28 November 2022? In reviewing the decision of the lower court, this court will only set it aside if the court below is shown to have acted on a wrong principle or was otherwise clearly wrong. This is the standard accepted by Rowe P in **John Valentine v Margaret Valentine** (1992) 29 JLR 35. At page 40, Rowe P accepted and applied the following dictum of Simon P in **Attwood v Attwood**:

> "An appellate court will not interfere with an award of maintenance unless, to use the words used in Ward v Ward …, 'it is unreasonable or indiscrete'; that is to say that the justices are shown to have gone wrong in principle or their final award is otherwise clearly wrong."

Therefore, before this court can interfere with the learned judge's order, it must be shown that he committed an error in principle or was otherwise plainly wrong.

[87] In deciding to make the varied spousal maintenance order terminate three years post 28 November 2022, the learned judge declared himself to be guided by the principle of a clean break. However, the first instance decisions (**Lehman v Lehman** and **SBW v VW)** on which he relied do not support him for the reasons already stated (see paras. [74]-[77] above). Similarly, his reliance on section 14(4) of the Maintenance Act founders (see para. [73] above). Furthermore, while the clean break principle is expressly written into the Maintenance Act, the legislature saw it fit to abridge its operation, limiting it to common law spouses whose cohabitation had terminated. The closed meaning of 'cohabit' (see para. [69] above), makes it plain that the appellant's application for a variation of Campbell J's order for spousal maintenance falls outside of the legislative injunction under section 6(3)(b) of the Maintenance Act (see paras. [69]-[71] above). Accordingly, the learned judge was wrong to have resorted to the clean break principle in deciding to modify the duration of Campbell J's order.

[88] The learned judge's discretion to modify a previously made order for spousal maintenance, under section 20(3) of the MCA, could only have been properly exercised on demonstrable evidence of a change in the means of either the appellant or the respondent, or both. Concluding, as he did, that the respondent fared better than the appellant over the passage of the years since Campbell J's order (see para. [68] of the judgment), there was no factual basis to disturb the duration of Campbell J's order. This is fortified by all his other findings (i) depletion of savings; (ii) inability to maintain herself owing to the deficit between expenses and income; and (iii) absence of evidence that the maintenance allowed for either a viable career change or significant decrease in financial dependency on the respondent. These facts are capped by the learned judge's pronouncement that the new amount he awarded was sufficient to cover the appellant's expenses (see para. [86] of the judgment). What is significant about this pronouncement

is the absence of any expectation on the part of the learned judge that his award could be capitalised. Therefore, it seems fair to conclude that his declaration concerning the sufficiency of his award was limited to defraying expenses without leaving any or any appreciable surplus.

[89] So then, if at the end of three years the appellant continues to beat the odds, to adopt the learned judge's characterisation, what should become of her? That is a future over which a pall of uncertainty is cast. Firstly, the capacity of her children to assume the obligation to maintain the appellant was not investigated at the trial to arrive at any conclusion one way or the other. Secondly, even if the appellant were to "take steps to realise her share" in the Maltese properties, the value of that share is an unknown quantity. Hence, the adequacy of those proceeds to sustain the appellant, and over what period, is anyone's guess. Thirdly, the appellant may or may not be able to attract a suitable tenant to share her close living quarters. Even if the appellant were to find such a candidate, on the learned judge's finding, the expected rental income would only be a supplement to, and not a replacement of, spousal maintenance from the respondent. These imponderables, taken separately or together, do not justify modifying the duration of Campbell J's order from the joint lives of the parties to one terminable at the end of three years from 28 November 2022. It appears to me that if this order is allowed to stand, it could unjustly expose the appellant, upon its termination, to wander the barren plains of penury or become a charge on the State; the very antithesis of the clean break, that is, an expectation that the appellant would become self-supporting at the termination of the order. I would, therefore, allow the appeal on these grounds, set this order aside and restore Campbell J's joint lives order.

Grounds b, c and d – The interpretation of Campbell J's order regarding the provision of a motor vehicle

Appellant's submissions

[90] The appellant submitted that the proper approach as to how to interpret a court order was set out in **San Souci Limited v VRL Services Limited** [2012] UKPC 6 ('**San Souci v VRL**') by Lord Sumption at paras. 13 - 14.

[91] The appellant argued that Campbell J's order was made pursuant to an application for spousal maintenance. It was submitted that the order was made in the circumstances described by the appellant, which was that during the marriage, she always had a modern car for her personal use. The court was directed to para. 15 of the appellant's affidavit, where she deposed that she understood the period being referred to in the order to mean their joint lives and that she understood the order to mean that she would be provided with a car not older than five years old, however the vehicle she is now driving is 15 years old and unreliable.

[92] The appellant also pointed to the respondent's response in his affidavit at para. 12, where he stated that there was no request for a new vehicle by the appellant; and submitted that he does not deny the substance of the rationale and circumstances for the order.

[93] The appellant observed that there was no appeal from Campbell J's order and in fact the parties acted on it. The appellant submitted that it was in evidence before the learned judge that the appellant drove a Prado at the time of the order and approximately five years later, she was provided with a Suzuki Vitara motor vehicle, which she still drives, and it is now 16 years old. It was contended that, in these circumstances, the learned judge should have granted the application for the provision of a car like the Suzuki. In supplemental submissions, the appellant argued that the appeal relates primarily to questions of law.

[94] It was submitted that it was very reasonable for the appellant to be provided with a car not older than five years old. The appellant submitted that the current vehicle is 16 years old and is in poor condition and throughout the marriage the parties always changed vehicles after five years.

[95] The appellant argued that the respondent currently drives a brand new Mercedes purchased for cash. It is only reasonable that the appellant should have a reliable car that is less than five years old and the evidence shows that the respondent has the means to provide it.

[96] The appellant argued that the court has the power to order a lump sum payment to meet the reasonable cost of the vehicle, and the amount could be determined by the average of two vehicles to be submitted, or by further information to be provided by the parties. In supplementary submissions filed the appellant argued that the appeal relates primarily to questions of law and made further submissions in relation to ground d.

[97] The appellant submitted that, under section 23 of the MCA, the court had wide powers to make orders for the maintenance of the wife. Further, that at the time Campbell J made the order for the respondent to provide a motor car for the appellant, he clearly had the power to do so.

[98] The appellant submitted that section 6(1) of the Maintenance Act also provides for the provision of maintenance for the wife, and, therefore at the time Campbell J made the order, he had determined that the provision of a motor car was part of the reasonable needs of the appellant and that the appellant could not practically meet those needs and that the respondent had the means to meet those needs.

[99] The appellant outlined sections 11 and 15 of the Maintenance Act and argued that section 15 of the Maintenance Act relates to monetary orders. However, section 15 does not preclude a court from making orders for the maintenance of a dependant that are not strictly monetary orders, as is clearly permitted under section 11.

[100] The court, the appellant argued, had the power to vary the maintenance orders under section 18 of the Maintenance Act. It was submitted that on the application for variation with respect to the provision of the motor vehicle, the starting point was the fact that up to 2002 when Campbell J made his order, it had already been determined that the appellant required a motor vehicle for her reasonable maintenance and that the respondent had the means to provide it.

[101] The question for determination, therefore, on the application for variation of the maintenance order, was whether the appellant still required the car, and whether there was any change in the respondent's ability to provide one. The undisputed evidence was that she still drove the Suzuki Vitara and the car was still needed for her maintenance, the appellant urged.

[102] The appellant submitted that there was no question, on the findings of the learned judge, that the means of the respondent had changed for the better, and that he had sufficient money to provide the car that was required for the appellant's maintenance. The court was referred to para. [69] of the learned judge's judgment in support of this submission.

[103] The appellant contended that the learned judge wrongly regarded the order of Campbell J as executory and wrongly found that only one vehicle should be provided based on the order.

[104] In the appellant's submission, the learned judge referred to section 20(3) of the MCA when he questioned whether he could vary the order in relation to the motor vehicle. However, the appellant argued that section 20(3) of the MCA is not relevant, as earlier argued, because this application was not an order pursuant to the dissolution of marriage.

[105] In respect of the learned judge's finding at para. [35] of his judgment, the appellant submitted that the learned judge erred because he had jurisdiction to provide

for a car as part of the reasonable maintenance of the appellant under section 23(1) of the MCA and section 6(1) of the Maintenance Act.

[106] The appellant then went on to submit that in the event that she is wrong with respect to the jurisdiction of the court, the learned judge ought to have provided the car because the matter before him was for the variation of the order of Campbell J, and there is no doubt that Campbell J provided for a car as part of the maintenance for the appellant.

[107] The appellant contended that, even if Campbell J made his order without jurisdiction, his order still stands, because there has been no appeal of the order. Further, that the role of the learned judge was to determine the variation of the order, and both judges had equal standing as judges of the Supreme Court and he effectively set aside an order of Campbell J to provide a car, when he found that Campbell J had no jurisdiction to provide a car; and he had no jurisdiction to do so.

[108] The appellant submitted that the learned judge had sufficient evidence before him to grant the order as requested. The application was for a new car and the respondent himself was driving a Mercedes Benz and the appellant a 16-year-old Suzuki Vitara motor vehicle on which she had to now be spending significant sums.

[109] For the purpose of varying the order, the learned judge had the discretion to grant a new Suzuki or any other car and there was no question that the respondent had sufficient money to pay for the car. In addition, the application before the court was for the learned judge to grant a new vehicle "or such other order as this Honourable Court may determine". It was maintained that since a car was required for the maintenance of the appellant, it was open to the court to determine some other appropriate vehicle. Also, if required, the court could have requested counsel to submit any further evidence before making a final order. In addition, it was contended that it was open to the court to provide

for a car by way of a lump sum and require counsel to submit further documents as to the cost of the car.

[110] It was submitted that it was the learned judge's view that the legislation did not permit the award of a car. Having taken that view, it was argued that further information should have been permitted to come from both or either party.

Respondent's submissions

Grounds b and c

[111] The respondent cited paras. 13 – 15 of **Sans Souci Ltd v VRL Services Ltd** [2012] UKPC 6, outlining the approach that a court should take when interpreting a judicial order.

[112] The respondent pointed out that there is no written judgment from Campbell J, however, based on the context and wording of the order regarding the vehicle, it is absurd to interpret it to mean that the appellant is entitled to a car every five years as the appellant has received more than $36,000,000.00 for maintenance.

[113] The respondent also argued that the learned judge was correct in highlighting the fact that the appellant never applied to enforce the order based on her understanding of it. It was further argued that this was not done because the order was meant to be an executory order, and the respondent has already complied. It was maintained that the learned judge did not err in his interpretation of the order.

[114] In written supplemental submissions, the respondent made additional arguments in relation to grounds b and c. The respondent relied on dicta from **Pan Petrolem Aje Limited v Yinka Folawiyo Petroleum Co Ltd and others** [2017] EWCA Civ 1525 (**'Pan Petroleum Aje v Y F Petroleum'**) to add to his earlier submissions concerning the approach to be taken when construing court orders.

[115] The respondent submitted that the order was not ambiguous and, based on the circumstances at the time that the order was made, it meant that the appellant was entitled to a vehicle as of 2002 no older than five years and of a similar value to the vehicle she had at the time of the order. The learned judge, it was submitted, rightly concluded that the order was fulfilled when the respondent give the appellant a Suzuki Vitara motor vehicle, pursuant to the order.

[116] The respondent submitted that the appellant could have sought clarification from Campbell J, if there was uncertainty regarding the interpretation of the order, but failed to request any such clarification. It was also contended that it is absurd for her to assume an unfair, unjust and strained interpretation, such as the one she is now seeking to ascribe to the 2002 order.

[117] The appellant, it was submitted, failed to provide the learned judge with any evidence of the age and value of the Toyota Prado and the Suzuki Vitara SUV to enable their proper assessment to determine whether it was in line with Campbell J's order. In addition, it was submitted that if the appellant was not satisfied and/or of the view that the order had not been complied with, she would certainly have taken legal action much earlier to ensure compliance with the order.

Ground d

[118] The respondent submitted that the learned judge coherently indicated in his judgment that, as per section 20(3) of the Maintenance Act, he could only vary a maintenance order for the payment of a sum of money; and a vehicle is not money.

[119] The respondent argued that coupled with the arguments in response to grounds b and c and the learned judge's inability to make such an order in the light of section 20(3) of the Maintenance Act, the learned judge exercised his discretion judiciously when he refused the appellant's order for a new Vitara. To decide otherwise, the respondent submitted, would have resulted in the learned judge acting in contravention of the law.

[120] In supplemental submissions filed, the respondent made the following further submissions regarding ground d.

[121] The learned judge assessed the order of Campbell J and concluded that it was executory, in that, Campbell J merely set out the description of the vehicle that the appellant should receive. Consequently, based on the order made by Campbell J, the only vehicle that the appellant would have been entitled to, was a vehicle not older than five years old as at 2002; and not multiple vehicles to be supplied during her lifetime each of which was to be less than five years old. The learned judge, it was submitted, correctly held that if Campbell J meant that the appellant was to receive a vehicle every five years, he would have made that explicit in the terms of his order.

[122] The respondent argued that the appellant drew an incorrect interpretation that the order meant that the respondent should provide a vehicle no older than five years during the same period of their "joint lives". This interpretation, it was submitted, would have resulted in gross injustice towards the respondent and financial hardship to provide a motor vehicle every five years in addition to monetary assistance in the sum of $150,000.00 monthly to the appellant. The appellant relied on the decision in **Herwin Wesley Kerr v Andrean Dejoy Kerr** (unreported), Supreme Court, Jamaica, Suit No FD 2002/K0 11, judgment delivered 30 June 2006.

[123] The learned judge, it was submitted, indicated his inability to vary the portion of Campbell J's order relating to the motor vehicle as there was no legislative provision to do so. Section 20(3) of the MCA deals only with variation of monetary orders and section 15(1)(c) of the Maintenance Act only provides for the transfer of property, counsel advanced.

[124] The respondent posited that the appellant could only get the vehicle she is seeking, if the respondent owned it and all that would be required is an order to transfer it. The respondent, it was submitted, never owned a Suzuki Vitara and the learned judge,

therefore, did not err in his decision to reject the appellant's application for the variation of the order for the provision of a Suzuki Vitara motor vehicle. The respondent contended that the learned judge in the performance of his discretionary power to vary the orders of Campbell J was well within his power to reject any variation of the order for the provision of another motor vehicle as he thought it fit to do so.

Discussion

[125] Grounds b, c and d may be conveniently considered together. The issue raised by ground b, whether the learned judge erred in his interpretation of Campbell J's order, is dispositive of all subsidiary issues concerning the provision of a motor vehicle for the appellant. Both sides accept that the applicable legal principles that are pertinent to the interpretation of Campbell J's order, are as laid down by the Privy Council in **San Souci v VRL** and followed in **Pan Petrolem v Y F Petroleum**. The facts of **San Souci v VRL** are of limited relevance to this appeal, save to say that the case concerned the interpretation of the order of this court, remitting an award to the tribunal for consideration of one factor, the tribunal omitted to consider or explain in making its award. At para. 13 of the judgment, Lord Sumption said:

> "… the construction of a judicial order, like any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the court made it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an over and authoritative statement of the circumstances which it regarded as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve."

[125] The construction of a judicial order is, firstly, a unified, logical and consistent exercise, as opposed to a two-tiered process of first discovering the meaning of the words

then resolving ambiguities, if any, by reference to the reasons given for making the order; secondly, on the contrary, the reasons for the order are admissible to elucidate the order; and thirdly, knowledge of what the court considered appropriate for its resolution may be crucial to the interpretation of the order.

[126] Campbell J made one composite order. He did not itemise his orders, although one part related to cash payments and the other to the provision of property. For the purpose of the analysis, I restate the order, disaggregated, as follows:

> "I make an award for the respondent to:
>
> a. pay the sum of $150,000.00 per month for the maintenance and support of the applicant during their joint lives; and
>
> b. provide herewith, a motor vehicle of a similar value to the one she presently drives. The vehicle so provided, not dated more than five years.
>
> c. Costs to the applicant to be agreed or taxed."

[127] Restated in this manner, the composite order becomes three distinct orders. I am unconcerned with the costs order, for the moment. The periodical payments order has a duration which cannot logically be extended to the provision of a motor vehicle. The adverb "herewith" in the phrase, "provide herewith" simply means 'together with'; meaning, the respondent, in addition to making the periodical payments, was to provide the appellant with a motor car, at some unspecified time. It is worthy of note that the interim order similarly had no date by which the respondent should have complied with the order. The absence of a date by which the order should be obeyed is consistent with it being a one-time obligation.

[128] It is appropriate at this time to contrast the order appearing in Campbell J's judgment with the formal order, filed on 4 January 2003, signed by the then registrar of

the Supreme Court and exhibited, as MM1, to the appellant's affidavit filed 1 June 2021. The orders only are extracted:

> "1. That the Respondent pay [sic] to the Applicant the sum of $150,000.00 per month for the maintenance and support of the Applicant during their joint lives.
>
> 2. The Respondent provide [sic] a motor vehicle not older than 5 years for the Applicant during the same period and of a similar value to the one she presently drives.
>
> 3. Costs to the Applicant in the sum of $12,000.00 pursuant to Schedule A (11) of the Attorneys-at-Law Rules (1998)."

[129] Were I to restate the order as it appears in the exhibited formal order, it would read:

> "The respondent is ordered to, during the joint lives of the parties:
>
> i. Pay to the applicant the sum of $150,000.00 per month for the maintenance and support of the applicant;
>
> ii. Provide a motor vehicle not older than five years for the applicant and of similar value to the one she presently drives;
>
> iii. Costs to the applicant in the sum of $12,000.00 pursuant to Schedule A (11) of the Attorneys-at-Law Rules (1998)."

For the sake of completeness, the costs order, in so far as it specifies a dollar figure, is not reflected in the orders recorded in Campbell J's written judgment. However, I consider myself bound by the formal order. In any event, this has no bearing on the outcome of the appeal.

[130] From the perspective of construction, the formal order seeks to make the provision of a motor vehicle a recurring obligation by substituting the words, "and provide herewith" with the phrase, "during the same period". If Campbell J intended the provision of the

motor car to be recurring, he would have recognised that he was really making two periodical orders. While he was careful to make the monetary periodical payments recur monthly, he did not similarly set a recurring cycle for the motor vehicle. However broadly order two is read, by itself or together with order one, it lacks this critical feature of recurrence. I go further. Do the circumstances admit of the recurring interpretation for which the appellant contends?

[131] Part of the circumstances surrounding the making of the order for provision of the motor vehicle is the fact that Campbell J was making final the interim order that was made on 2 March 2020. It is significant that Campbell J used the same phrase as reflected in his recount of the interim order, "and provide herewith a motor vehicle". Interestingly, although the order to provide a motor vehicle was part of a continuing order to pay health insurance, it is not implicit in the wording of the order that the provision of the motor vehicle was anything more than once-for-all time. This shows that it was the provision of one motor vehicle that was within the contemplation of the court, at all material times, whether or not Campbell J was the author of the interim order. It seems reasonable to conclude that this aspect of the interim order had not been complied with when Campbell J came to make the final order, approximately two years and nine months later, as it passed without any comment from him. Campbell J merely repeated its terms and added the conditions. That the 'failure' to provide the motor vehicle this distance in time from the making of the interim order was met with silence, is instructive. Instructive for this reason. If, the court contemplated a recurring order, even, for the sake of argument a five-year cycle, the respondent would not only have failed to honour his obligation, but also trespassed upon the time to be counted towards the provision of the next motor vehicle. This would have been appalling conduct that would have elicited Campbell J's rebuke, against the background of his assessment of the respondent's evidence as being riddled with inconsistencies and lacking frankness. Similarly, there is no indication that any complaint was made on behalf of the appellant. This too is remarkable.

[132] Beyond the reference to the interim order, the issue of the motor vehicle for the appellant appears but once in the judgment of Campbell J, before the final order is made. At page 17 of the judgment, Campbell J said this, "[s]he complains … that the vehicle that she drives is aging". Conspicuous by its absence is any reference to any condition or proviso that the appellant driving an aging vehicle was something the respondent was required to address prospectively, and on a recurring basis. Therefore, it seems fair to conclude that the issue Campbell J sought to resolve was the need for the appellant to be provided with a vehicle that was not old, delimited by the standard of zero (new) to five years, as a one-time obligation.

[133] Accordingly, I agree with the learned judge that Campbell J's order cannot be read to mean that it casts a continuing obligation upon the respondent to provide a motor vehicle to the appellant at intervals of five years. The learned judge's conclusion that Campbell J's order was executory and that once the respondent complied with it, he was divested of any further obligation under it, is unimpeachable. I would, therefore, uphold his finding on this aspect of the appeal.

[134] The second basis upon which the learned judge refused to vary the order for the provision of a motor vehicle is the absence of any legislative provision to ground the making of the original order. Before us, and in the court below, counsel for the appellant sought to rely on section 15(1)(c) of the Maintenance Act as the basis for this aspect of Campbell J's order. The learned judge addressed his mind to this section, together with section 23(2) of the MCA. Section 23(2) of the MCA merely directs that an order for spousal maintenance under subsection (1) shall accord with the provisions of the Maintenance Act. The operative provision is therefore section 15(1)(c). Section 15, far as is relevant, is extracted below:

> "15. – (1) In relation to an application for a maintenance order, the Court may make an interim or final order requiring
>
> (a) …

> (c) that property may be transferred to or held in trust for or vested in the dependant, whether absolutely, for life or a term of years;
>
> ..."

The subsection contemplates prior ownership of property by one spouse which may then be ordered to be transferred etcetera by the owning spouse to the dependant spouse.

[135] It is small wonder that the learned judge found that the respondent had no Vitara motor vehicle to transfer to the appellant; and that he could not order the respondent to acquire one, then transfer it to the appellant. Aside from taking issue with the learned judge's interpretation of Campbell J's order, counsel for the appellant argued that Campbell J had the jurisdiction to make the order, although learned counsel could not point the court to any statutory provision which explicitly, or by necessary implication, empowered him to do so. My research has revealed no provision of either the MCA or the Maintenance Act that could fairly be interpreted as giving a court the jurisdiction to make a maintenance order in those terms. I am, therefore, in agreement with the learned judge that he lacked the legislative authority to vary Campbell J's order for the provision of a motor vehicle.

[136] Amazingly, counsel for the appellant argued that even if Campbell J had no jurisdiction to make the impugned order, the order stands since it was not appealed. Therefore, the learned judge, being a judge of coordinate jurisdiction, had no power to set it aside. Accordingly, the learned judge's competence extended only to the variation of Campbell J's order.

[137] With all due deference to senior counsel, this submission is untenable. I need look no further than a judgment entered in default to debunk the submission that a judge of coordinate jurisdiction cannot set aside an order irregularly made by another judge exercising like jurisdiction. Beyond that, it would be jurisprudentially offensive to

perpetuate an order, unlawful in its origin, by varying it, in full knowledge that it was of questionable legal provenance.

[138] I would, therefore, allow the appeal in part, in relation to the duration of Campbell J's order, and dismiss the appeal in respect of the provision of the motor car. I would propose that 50% of the costs of the appeal be awarded to the appellants to be agreed or taxed.

G FRASER JA (AG)

[139] I, too, have read Brown JA's draft judgment, and I agree with his reasoning and conclusion. However, I wish to add a few words about his erudite interpretation of section 6 of the Maintenance Act as discussed at paras. [69] to [71] of the judgment, which, unfortunately, conflicts with the reasoning and conclusion of the court in **NG v MS-G** [2024] JMCA Civ 34.

Correction of error of law regarding section 6 of the Maintenance Act

[140] I wrote the single judgment on behalf of the court in **NG v MS-G**, where, in paras. [56] – [58], I stated the following concerning section 6(2) of the Maintenance Act:

> "[56] Without dissecting all the factual basis of any error made by the judge of the Family Court, this court can, nonetheless consider as submitted by the appellant that there was no jurisdiction conferred on the judge of the Family Court to order spousal maintenance in light of section 6(2) of the Act.
>
> [57] Section 6(2) provides the timeline within which to apply for spousal maintenance, it states that:
>
> > 'An application for maintenance upon the termination of cohabitation **may be made within twelve months** after such termination, and the Court may make a maintenance order in accordance with Part VI in respect of the application.' (Emphasis added)

> [58] The parties had been separated for more than 12 months, and the respondent had made no application to enlarge the time within which to make her application. The judge of the Family Court did not demonstrate an awareness of the limitations of her discretion as created by section 6(2) of the Act. In fact, she made no reference to the provision at all in determining her award for spousal maintenance. It is arguable, therefore, that the judge of the Family Court had not addressed her mind to that provision when she granted an order for spousal maintenance. In the circumstances, this court found much merit in the appellant's complaint that the judge of the Family Court erred in fact and law when she made an order for spousal maintenance."

[141] Upon closer examination of the statutory language, the legislative intent, and relevant jurisprudence in the instant case, I have concluded that the interpretation of section 6 of the Maintenance Act as being relevant to persons in a marital union, as detailed above, is incorrect, and, therefore is an error of law that ought to be corrected by this court.

[142] The legislative history and intent behind section 6 confirm its purpose as addressing the maintenance rights of persons in non-marital cohabiting relationships, ensuring their protection in circumstances where formal legal recognition of the relationship does not exist. The error in **NG v MS-G** arose from a misapplication of the distinction drawn between married spouses and common law spouse, thereby conflating the scope of section 6 with the broader provisions of the Maintenance Act.

[143] I would, therefore, depart from my reasoning in paras. [56]-[58] of **NG v MS-G** and endorse my learned brother's reasoning, in the instant case, that section 6 does not apply to legally married persons but is limited in its application to common-law spouses. For the avoidance of doubt, the rights of legally married persons to maintenance are to be determined under the provisions specifically applicable to such persons within the Maintenance Act. Accordingly, the decision of the court in **NG v MS-G** on this issue is wrong and should not be followed.

MCDONALD-BISHOP JA

ORDER

1. The appeal is allowed, in part.

2. The order of Staple J (Ag) made on 17 November 2022, varying the order of Campbell J made on 20 December 2001, and stating that "at the end of this period of [three] years, the payments shall cease", is set aside and substituted therefor is Campbell J's order, which is reinstated, that the payment of the periodic sum to the appellant shall be made "during the joint lives" of the parties.

3. The appeal against Staple J (Ag)'s order refusing the application to vary Campbell J's order for the provision by the respondent of a motor vehicle to the appellant is dismissed.

4. The appellant is awarded 50% of the costs of the appeal.