REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(FAMILY COURT)

FH2164 of 2010

BETWEEN

REUBEN KANHAI **Petitioner**

AND

GLENDA KANHAI **Respondent**

On the 23rd day of October 2015

Before the Honourable Madam Justice A. Ramkerrysingh

Appearances:
Mr Ronald Dowlath for the Petitioner
Mrs Lynette Seebaran-Suite for the Respondent

JUDGMENT

1803

1. The facts of this case contain all the classic features of a textbook assignment on matrimonial settlement, but disappointingly the matter grew out-of-control and metastasised into a litigation nightmare. Before the eleven-year marriage broke down, the parties (H and W) conducted their lives as is expected of a true domestic partnership. They worked in different spheres in their business and at home, equally shared parental responsibilities and together bore the rigours of house-building. The marriage bore three children and the parties shared the resources they generated together, for the joint benefit of the family, making each of them in my judgment, fully entitled to ancillary relief. This young, ambitious, hard-working couple continued to evoke the vestiges of their union even in the throes of litigation, when they arranged access between themselves outside the court orders.

2. Regrettably, as the proceedings stretched beyond 18 months, the unbridled hostility between the parties fuelled a multiplicity of applications, cross-applications, civil actions and appeals at almost every stage and threatened the working relationship of the opposing attorneys. Attempts were made to settle the issues, but the glimmer of hope that promised to bring a much earlier end to the proceedings, flittered away almost as soon as it sparked. What ought to have been uncomplicated applications for children and financial relief, turned into a four and a half year battle that only served to intensify the animosity between the parties and escalate costs.

3. I have delivered and/or written a number of decisions and judgments in this matter, on the 10th March 2011, 4th April 2011, 3rd May 2011, 29th October 2012, 2nd October 2014, 2nd March 2015 and 17th May 2015, dealing with injunctions, avoidance of disposition, variation of access, discharge of injunction, contempt, exclusion and joinder of parties. Having done so, I did not intend to write this judgment, especially since the substantive elements of the case were neither novel nor complex. What prompted the effort was the impact of two Summonses for Sale, and several other default judgments, filed by eleven Judgment Creditors in civil actions against the parties for various liquidated demands.

4. Two of the Summonses for Sale[1] were initially dismissed by my brother Seepersad J, but reinstated by the Court of Appeal and remitted to me for disposition. At least three other of the parties' Creditors[2] taking the cue from the first two filed Summonses for Sale before me. Predictably, the Judgment Creditors' attorneys were anxious to secure their clients' judgments and sought Orders for Sale on 17th March 2015. I felt constrained to make the orders, given that the substantive matrimonial applications filed by W in April 2011, ought to have been disposed of long before then, had they not been interrupted by the many intervening applications. I did not think it was fair to deprive the

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[1] CV2012-02682 *De Zwarte Band v Reuben Kanhai & Glenda Kanhai*; CV2012-02684 *Gerr Kraan Bandenservice B.V. v Reuben Kanhai & Glenda Kanhai*

[2] CV2013-02439 *A M Marketing Co Ltd v Glenda Kahnai & Reuben Kanhai*; CV2013-*04592 G.M.R. Tyre Service v Glenda Kanhai & Reuben Kanhai*; CV2011-04856 *Tyre Clinic Marketing Co. Ltd v Glenda Kanhai & Reuben Kanhai*

creditors of the fruits of their judgments, which in some cases were entered as far back as October 2012.

5. In fact the trial was set to begin on the 23rd March 2012, but the several intervening applications mentioned above[3], the unavailability at one time or another of one or other of the parties, or their attorneys and in one instance the court, saw the trial dates stretching over to the 15th May, 2012, followed by the 28th May 2012, 27th March 2013, 28th March 2013, 10th June 2013, 17th December 2013, 7th July 2014, 5th January 2015, 12th February 2015, 25th February 2015 and 13th March 2015, with the trial proceeding only on six of those dates. On the last date of the trial directions were given for written submissions with 23rd June 2015 being set as the date for delivery of the judgment.

6. It has always been W's position that H should bear the full liability of any judgment which should be reflected in any orders the court intends to make. But I have deliberately treated the two sets of proceedings separately and in the application under consideration, I have confined the division of the assets as between the parties only. My reasons for doing so are outlined below[4] and are really what give rise to this written judgment.

The Applications and the issues

7. W's Forms 8 and 10 seek relief in relation to the matrimonial home situate at LP 13 Guaico Tamana, Sangre Grande (LP 13), maintenance

[3] Para 3

[4] Para 25 et al

for herself and the three children and a lump sum payment. She is also desirous of getting a joint custody order in respect of the children, with care and control for herself and liberal access to H.

8. Turning first to custody and access: In spite of the many applications and orders for restricted access and variation, there is no evidence that H is not a caring or dedicated father to the girls. There is no dispute that the children should remain with W and although there have been some misgivings about access, I do not perceive that W objects to H spending time with the girls. They can I am sure, work with the timetable I have ordered at the end of this judgment.

9. The financial issues are not as straightforward. The acquisition and improvement of LP 13 is largely undisputed and uncomplicated, but the matrimonial business asset known as Kanhai's Tyre Centre (KTC) presents more of a challenge. H claims that the business had fallen onto hard financial times, forcing him to turn it over to his brother or brothers, Rishi and/or Rajesh, but W contends that H continues to manage the business under the guise of Kanhai's Tyre Traders (KTT) and that the purported sale or transfer of KTC is a sham. This aspect of the case turns on the facts as presented and the credibility of the parties. So too does H's claim that he is financially ruined, has little resources and is unemployed.

The matrimonial home, the business asset and resources

10. The assets that I have considered are LP 13, KTC and by extension, KTT, as well as capital sums in various accounts. From the evidence it is

clear that H and W played vital roles in the acquisition and development of LP 13. W's father assisted with the deposit. The parties designed the house together and through KTC, financed its construction without the help of a mortgage. They moved into the unfinished structure in 2008. From the pictures and plans filed in the proceedings it would be a spacious and well-appointed residence when it is completed.

11. W has made no claim on KTC but I am obliged to take it into account, as well as its alleged financial misadventures, as a possible resource and one of the circumstances of the case. KTC evolved from very humble beginnings in 2003 and by sheer dint of effort on both their parts H and W moulded it into a viable enterprise. It soon grew from a fledgling local tyre shop to a medium-sized affair, with international contracts and suppliers. The decision of the Court of Appeal to refer the Summonses for Sale to this court and W's Joinder Application, have given me some perspective on the performance of KTC and in my judgment it was and still is, a very successful business.

12. From its embryonic stage right up to just before the breakdown, the parties handled the operations themselves. W registered the business and opened its accounts, did the bookkeeping, invoicing and administration, while H was in charge of purchasing, contracting, procuring stock and recruiting staff. He also travelled to meet and negotiate with suppliers in Holland. The nature of the business did not call for employees at first, but as it expanded they hired Rishi and later

on three other persons. From the sale of tyres the business opened up to include the sale of second-hand motor-cars and eventually, tractors.

13. H and W held two joint accounts with First Citizens Bank and Scotiabank into which KTC's income was deposited. As business intensified, more accounts were opened, but were later closed when it became problematic to keep track of all of them. From what I can deduce, the parties commingled their funds to meet their personal needs, run their business affairs and the household and to construct the family home. As a side note, I commend both parties on their strident efforts in establishing their golden egg in a relatively short time. H was the brainchild behind the whole affair, but W worked side by side with him managing the business and using her rudimentary accounting and bookkeeping skills to good measure. I am satisfied that both contributed significantly to its success.

14. W challenges most strongly H's claim that KTC is no more and that Kanhai's Tyre Traders (KTT), which operates in the same location, is now a separate business owned by Rishi. She asserts instead that H continues to carry on and manage KTC under a new name and continues also, to turn over very high profits.

15. H denies this and claims to have given it to his brothers. But my observations of H over these many months do not support this characterisation. Someone like H who obviously possesses the tenacity, talent and skill enough to create a highly successful business out of very little, over a miraculously short period of time, is unlikely to

surrender it all without a fight or a desire to start afresh. I am not persuaded that H has either sold the business or that he is unemployed. I have analysed the evidence thoroughly and the findings of fact and conclusions I have drawn, paint a very different picture from the one that H is trying to portray.

16. H was quick to point out that of none of his brothers possesses the skill, knowledge or the expertise to operate a business like KTC and that he offered guidance and advice when Rishi opened KTT. I do not accept that H is being truthful about KTT or KTC for a number of reasons. The most obvious is the timing of the events leading to the purported collapse of KTC and the registration of KTT, which coincides too conveniently with the breakdown of the marriage and H's petition for divorce. The breakdown, downward shift in KTC's business and depletion of the parties' joint bank accounts all occurred around May, June and July of 2010, with July marking a significant turning point.

17. Secondly, it is W's evidence, which I accept having poured through the reams of statements and other bank documents, that May to July 2010 was about the same time she observed large withdrawals, without her prior knowledge, from accounts held in their joint names, most notably, some $400K in May 2010 from the KTC First Citizens Bank Linx account [CG1]. In July 2010 further withdrawals totalling an aggregate sum of approximately $700K from their Scotiabank Joint Account and FCB Account were made, again without her knowledge or consent. H initially claimed that the withdrawals were made to meet household expenses, then at the trial he added that a portion of the hefty

withdrawals was used to pay suppliers in Holland. But as the examination continued, he said that the sums were mostly used to pay suppliers. These inconsistencies are too obvious to ignore. And who were these suppliers, if KTC was no longer in business?

18. Thirdly W had stumbled upon two new accounts; the first of these being a personal Scotiabank account in the joint names of H, Rishi and Rajesh [KS4] and the second, a KTT First Citizens business account [CG5], on which his name appears and he is described as 'Partner'. When asked to explain the appearance of his name on the accounts, H said that he became a signatory to help his brothers set up the accounts, since the banks knew him from past dealings. He went on to say that he had removed his name about two months after the accounts were opened, but the statements produced for the period June 2010 to November 2011 all bear his name and in the case of FCB refer to him as 'Partner of KTT'. This raises an interesting point. If, as H says, he used his influence with the banks to facilitate Rishi and Rajesh, he must still have had some financial clout and it is reasonable to assume that his fiscal standing remained intact, which he could use to his advantage.

19. A fourth concern that affects H's credibility in my mind relates to the deposit transactions made to the Scotia and FCB accounts. A close examination of [KS4] and [CG5] for the period July 2010 through to November 2011 reflects very large sums being deposited into [KS4] averaging $200K per month and lesser but nonetheless steady amounts of around $45K monthly into [CG5]. H has very cleverly kept

Rishi and Rajesh out of the litigation limelight, so there is no information about their financial background and status. By the same token, there is no other source from which these deposits could have come, other than KTT. It is my finding that both sets of deposits emanate from KTT. Such healthy deposits are hardly indicative of a business that, according to H had virtually been financially ruined when he passed it over, which once more lead me to conclude that KTT, rather than being a revised version of a failed KTC, is in fact a continuation of a highly successful KTC.

20. Finally, another concern that makes me question H's credibility is his evidence in relation to his brother's (Rishi's) and/or brothers' (Rishi's and Rajesh's) involvement in KTT by July 2010. Whether KTC was given to Rishi alone, or Rishi and Rajesh jointly, is not clear to me, but H was certain that he was no longer running KTC, but that his 'brothers' had taken over. He then tried to clarify his answer saying that the brothers did not take over KTC but had registered a new business, but gave no further explanation.

21. I am not satisfied that KTC and KTT are two separate entities and I hold that KTT is KTC trading and operating under the name, Kanhai's Tyre Traders, and essentially that it is the same business activity owned, operated and managed by H, and started by the parties in 2003.

22. Assuming that I am wrong in my findings, it is my judgment that H has not done enough to support his case that: (1) KTC was a failed company, which he could not save; (2) he was forced to give up the

business to Rishi and (3) he is now unemployed. The integrity of H's case hinges on his decision to pass the KTC baton to Rishi and that he used his experience and reputation with the financial institutions to establish his brothers' banking initiatives. He spent much effort and energy in defending and filing applications in these proceedings and in the Court of Appeal, yet he failed to produce the two persons who could have strengthened his credibility. I find it hard to believe that neither Rishi nor Rajesh, whom he supposedly helped so generously, refused to step forward to help him. Rishi went as far as filing an affidavit but never presented himself at the trial. He was also given the opportunity to join in the proceedings in October 2014, but refused to do so. The Kanhai brothers' collective silence damages his credibility.

23. In summary, on a balance of probabilities I accordingly find as follows that:

1) KTC and KTT are one and the same business, of which H is the alter ego.
2) [CG5] and [KS4] represent earnings from KTT formerly named KTC and are capital resources available to H.
3) H deliberately tried to hide or spirit away KTC, either to protect it from creditors, or deprive W of her beneficial interest, or both.
4) H is not now nor has he recently or at all been unemployed.
5) H is the owner of the business formerly known as KTC, now registered as KTT.

How is the Petitioner's non-disclosure to be treated?

24. It is my judgment that H has deliberately failed to disclose the true nature of his employment and financial status. He also kept bank accounts and other resources hidden from W. That non-disclosure will work against him in the final determination. The several authorities[5] of which family law practitioners are very familiar, all endorse the imposition of robust inferences against the non-discloser. In this case H will feel the brunt of the fact-finding hammer strike against KTT, its business account and the joint account he holds with Rajesh and Rishi, all of which I declare to be assets belonging to him and or to which he has access. I am satisfied that any lump sum to be paid to W can be raised by him.

A word on Lot 38C Guaico Tamana, Sangre Grande

25. It is the evidence of both parties that it was their joint intention to sell Lot 38C to Rishi. The combination of the breakdown, the clandestine bank withdrawals by H, the opening of separate accounts with his brothers, and the alleged transfer of KTC, would undoubtedly have caused W to question the validity of the sale, leading her ultimately to withdraw her consent. But I find that the parties' initial intention was to sell the parcel to Rishi and I hold that it was in fact a bona fide transaction. In any event W did not include this lot as part of her claim for ancillary relief and so this conveyance shall stand.

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[5] *J-P v J-A F* [1955] P 215 per Sachs J; *F v F* [1994] 3 FLR 359; *Hibbert v Hibbert* HCA M134/2003 per Jones J; (*NG v SG Appeal: Non-Disclosure)* [2011] EWHC 3270 (Fam);

The Default Judgments and Orders for Sale

26. Eleven default judgments were taken up against H and W in several civil suits and five Judgment Creditors have filed Summonses for Sale, in which orders have been made. The auction is scheduled for the 12th November 2015 and has already been advertised.

27. W accuses H of colluding with all 11 civil Claimants as part of his scheme to deprive her of her beneficial interest, but such a plan would call for a great deal of collaboration among several attorneys and litigants, including litigants overseas for which the incentive to participate will be of no benefit to them. In any event W did not develop this argument and there is little the court could do about an allegation that has not been proved. Moreover on the face of it the default judgments have been duly entered, in some cases registered and recognised, accepted and ruled upon by the first instance Judge and the Court of Appeal. In those circumstances I cannot accept W's collusion theory.

28. W also puts forward the argument that any liability should be borne wholly by H and that the Judgment Debts ought to be deducted from his share of the assets. But is that fair to H? Here we have a wife who, from the very start of these proceedings has held the position, which I accept, that she played an integral role in the business and the marriage and is therefore entitled to a substantial beneficial share. In those circumstances she cannot expect to bear the glory without the pain. It is not fair, having worked to build their fortune together, that

W alone should walk away with all the assets and H left to bear all the debts.

29. That said I want to stress that no attempt will be made in these proceedings to order payments out to the judgment creditors. The unenviable coincidence that oversaw this court presiding over the Summonses for Sale, nonetheless places no burden on me to incorporate those liabilities as part of the matrimonial distribution. The judicial split between the matrimonial and civil proceedings was not helped by fact that the Order for Sale preceded this judgment, but I felt that to deprive the Judgment Creditors by delaying the hearing of the Summonses for Sale, until the determination of the matrimonial proceedings, was neither just nor fair, in circumstances when, as I have already mentioned, the matrimonial proceedings were particularly prolonged. The resumption of the trial of the substantive issues did not get underway until 13th March 2015, having begun almost two years before.

30. Two of the Judgment Creditors De Zwarteband and Bandenservice insisted on their Order for Sale. The Summonses had already been through the wringer of the Judge at the first instance and the Court of Appeal, and there was no reason to stall the hearing any further. Accordingly, donning my civil cap on the 17th March 2015 I ordered the sale of LP 13 and directed inter alia, that notice of the sale be advertised for four (4) weeks but not before 5th June 2015. I acknowledge that the order it put in motion the sale of the matrimonial home before W's financial application could be

determined, but the trial had been completed four days before the hearing of the Summons for Sale, that is, on the 13th March and directions given for the filing of submissions on the 20th April 2015, 18th May 2015, and 29th May, 2015. I reserved my judgment to the 23rd June, leaving ample time between my decision and the sale.

31. Balancing the interests of the civil and matrimonial parties, while exercising justice and fairness for all of them, was a first for me. By s. 27(1)(b) of the Act I am bound to consider the liabilities of the parties before me, but I will not work the civil judgments or other debts unconnected to the matrimonial proceedings, into the distribution order. To do so will be to put the Creditors' claims on the matrimonial property above W's financial relief and that certainly will not be fair to her and the children. Nothing in the Act permits me to append third-party civil debts incurred by parties, to matrimonial orders.

32. W missed the deadline for filing her written submissions and with the date for the publication of the sale fast approaching, her Attorneys filed an ex-Parte application on June 2nd 2015 to suspend the Order for Sale until the determination of the Financial Application, but this application was not heard. She also filed an application to extend the time for filing her submissions which was granted and the delivery date for the judgment was moved to 30th October 2015. On the 13th October, W's Attorneys filed a second urgent ex-Parte application in relation to the Order for Sale, this time asking: *'(t)hat the Registrar of the Supreme Court be restrained from selling the matrimonial home, ... pending the delivery of the court's decision on the Respondent's*

Application for Financial Relief which has been fixed for 30th October 2015.' I had confirmed with the Registrar that the sale was scheduled for November 12th 2015 and directed that the Judgment Creditors' Attorneys be served, and fixed the hearing for the 16th October 2015. Accordingly, I dismissed the application as I was of the view that to grant an injunction against the Registrar in the performance of her duties pursuant to an order made by this court would not be appropriate.

33. Dismissing W's latest application exposed LP13's volatility even further, so in order to protect the parties' interest, I brought forward delivery of the judgment to the 23rd October, as I felt that it was far better for them, more so W, to be 'in possession' and have a fighting chance against the Judgment Creditors, as opposed to being stranded *ab initio*.

34. H may have weaselled KTC/KTT from the clutches of potential creditors, but he simultaneously made LP 13 more vulnerable, but I am entirely confident that I am under no statutory obligation to consider the civil liabilities alongside the property adjustment orders. While bearing in mind that the sale is imminent, nothing in the MPPA authorises the Family Court to extend orders made pursuant to ss, 24, 25 and 26 to meet a civil judgment.

35. **Mullard v Mullard** (1982) 3 FLR 330 was a case very similar factually, to the instant case. There the husband had stacked up substantial debts in home improvement costs, which were drawn to the attention of the Registrar in the family proceedings. The Registrar ordered the

matrimonial home to be sold, applied half the proceeds of sale to the husband's creditors, and ordered further, that the surplus was to be given to the wife together with the remaining half. The wife appealed and the Court of Appeal held that while the court must have regard to the husband's liabilities, it was not right to prefer the claims of his creditors to the claims of the wife and children.

36. The issue was revisited in **Burton v Burton And Another** [1986] 2 FLR 419 where an Order for Sale was in place against the parties. The Registrar in determining the matrimonial financial application ordered the sale of the property and further ordered the debts to be discharged out of the proceeds. The Court of Appeal held that the Registrar had no jurisdiction under the Matrimonial Causes Act 1973, to order one party to pay out of the proceeds of sale of the matrimonial home, the debts of either or both of them, which said **debts** were **not connected** to an interest in the property. Butler-Sloss J, in recognising the court's power under s. 24A and s. 25 (4) of the MCA (UK) 1973 to order sale of property as between the parties or third parties having interest in the property, emphasized at para H p. 423 that:

> ***'it is not within the statute to make by order payment out to creditors of sums unconnected with the sale of the house.'***

He went on at p. 424, paras C and D to explain the risks of trying to settle creditors' debts within the matrimonial structure:

> ***'There is a danger that there may be preference to some creditors over others and there is the very real danger, as was shown in this particular case, that the lack of publicity as to the payment of debts may cause a great deal of injustice to other creditors. ... And there is a danger also that once the wife has got the whole of the net proceeds of sale, after***

payment of some of the debts, other creditors may exercise their undoubted right in bankruptcy proceedings and thereby upset the order of the registrar, and nullify the otherwise admirable proposals that are being arranged for the parties.'

37. Ewbank J faced a similar dilemma to the one before me in the case of Harman v Glencross [1985] Fam. 49, in which he deliberated upon simultaneous applications for matrimonial property and the execution of a charging order, both of which came up before him.

He said at p. 57:

'I am dealing with a wife who is a person interested in the matrimonial home and, in my judgment, I have to consider in deciding whether there should be a charging order in (sic) all the circumstance of the case. This means that I have to consider the circumstances of the wife and the circumstances of the creditor. I have a discretion as to whether a charging order should be made, having regard to the circumstances.'

And at p. 58:

'In considering the circumstances in the case, one has to consider what are the wife's rights and how they compare with the creditor's rights. ... The question is how are these rights to be balanced against the rights of a creditor to be paid his debt? The statute itself gives the answer: the answer is that all the circumstances of the case have to be taken into account and the judge has to come to a conclusion as to what is just in the circumstances.'

38. Finally, Wilson LJ in Paulin v Paulin [2009] 2 FLR 354 posited at [54]:

'... although I accept that in proceedings for ancillary relief a court will strive to quantify its award to W upon a basis which will enable H to meet all his liabilities as well, of course, as to maintain himself, it by no means follows, particularly where money is in short supply, that, whether in the context of capital

or in that of income provision, the interests of H's other creditors always take precedence over those of W.'

39. In my judgment, the connection between liquidated demands, debts and other civil judgments and liabilities, and matrimonial ancillary relief, is that while the court in the Family Division is bound to consider a party's liabilities, it must avoid interlocking its orders with debts and other liabilities that are not part of the matrimonial proceedings. In matrimonial litigation, claims by civil creditors cannot take precedence over claims between former spouses, especially if the competing claims involve matrimonial assets. The integrity of financial relief in matrimonial proceedings must be upheld and the Court should discount liabilities that are detached from the proceedings in favour of the parties' interests, unless of course there is consent or agreement to the contrary.

38. I caution that I do not wish to convey the notion that by keeping the unconnected debts separate and out of the calculation, the court is encouraging parties to adopt a cavalier approach to debts, or demoralizing creditors in pursuit of their claims. I simply mean that in the context of matrimonial proceedings, the Family Court is under no obligation to include or provide in its order for financial relief, payment or liquidation of debts owed to creditors who have no connection with the matrimonial property. Such an order goes beyond the Act and marginalises the claims of former spouses in matrimonial proceedings.

Section 27 guidelines

40. I remind the reader that the purpose of this judgment was to document my position on the relation between external liabilities and financial relief orders. Accordingly, the section 27 factors do not feature prominently in the judgment and so much has already been written on these guidelines, that there is hardly anything new to add. I have of course considered them as part of my overall adjudication in this case, although they are not fully amplified here. I have touched on some aspects of these factors earlier in the judgment, in relation to contribution, resources and responsibilities. I will now make brief mention of those not previously referred to.

41. The marriage partnership was spectacularly ordinary and this is hardly meant to be a criticism. By 'ordinary' I mean that before the breakdown, the parties' lives seemed to be on even keel. The evidence suggests a high level of cooperation, which to me was testament to the mutual commitment and respect in which they conducted their domestic and business affairs and allowed them to accomplish so much.

42. W and the children have always been in occupation of LP 13. An exclusion order was made against H in 2011. I would want to preserve the home for the children. The house remains unfinished. If W and the children are to continue living there it has to be completed. W's attempt to carry out improvements with her father's help during the

proceedings was brought to a swift halt by H[6]. I have no doubt that she can depend on her father to assist in the completion works.

43. H claimed that from about January 2012 his mother Radikha Premchand, had allowed him to occupy a one-bedroomed apartment at 50 Christina Gardens Arima. Ms Premchand's interest in the apartment has not been established, but by exhibit [RK83] H implied that she holds it as a tenant. In an affidavit filed by him on 7th July 2014, he deposed that by August 2014, the apartment would no longer be available to him, as his mother was asked to vacate, evidenced by [RK83] which purports to be a Notice to Quit. But up to March of this year, during his cross-examination he gave Christina Gardens as his residential address.

44. The unsuitability of the apartment as alternative permanent housing is without question. From the evidence it consists of one bedroom, where all the girls sleep when they come over, while H sleeps on a recliner in the common area of the apartment. It is obvious that this was only meant to provide temporary shelter. Now that the matter is at an end a more lasting solution will have to be found and from my findings, H has the ability to secure more suitable living space.

45. W has now qualified as an Aesthetician and operates a small salon close to home. Judging from the evidence and my observations of her in court, she has the determination to persevere in this effort and given

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[6] Petitioner's application - 22/10/2012

time, she can turn this into a rewarding and successful career. Her bookkeeping and accounting experience with KTC will serve her well.

46. I am not at all convinced that H is unemployed, but if I am wrong and he is, he has the experience, drive and know-how to turn his affairs around. But H presents as a resourceful, if not ruthless individual with such a tenacious spirit, shrewd business sense and an ambition to succeed, that I do not accept that since 2010 he has remained unemployed, while his brothers reap the rewards of a successful business, that he allegedly help them establish. I repeat my finding that H continues to operate his tyre, car and tractor business albeit under the pseudonym Kanhai's Tyre Traders, continues to earn high to very high income and has resources available to him.

47. The challenge of dividing a business that has not been properly assessed continues to rear its perennial head in the Family Court. Mr Shaffick Hosein a Chartered Accountant who H said was hired to prepare financial audits for KTC for the period 2007 to 2010, reports nothing earth shaking about the company. Apart from identifying and quantifying its liabilities, the court gained no further information of consequence about KTC and no attempt was made to value KTT. In the absence of more pertinent information I want to be careful to avoid unfairly padding W's award by overestimating H's worth.

48. From what I could infer from the evidence the parties' lifestyle was not particularly exceptional, but the family appeared to be comfortable. They travelled abroad with the children during the course of the

proceedings and went out to restaurants, but there is no indication that these activities were part of their everyday lives. Until the breakdown they seemed to have had no trouble meeting their needs and other commitments. Apart from the joint obligation to the children H and W have their own personal expenses. The outgoings on LP 13 have to be met and if W and the children are to occupy the premises, it is only fair that she should assume these payments, if not right away, she should begin soon.

49. Then there are of course the debts owed to various creditors, totalling approximately $2.74M and for which I have said that both parties are responsible. Arrangements will have to be made independently of this judgment for those debts to be paid. With the auction less than two weeks away, if LP 13 is to be saved they would need to act fast. Finally, Mr Hosein's audit shows a tidy tax liability that will also have to be satisfied.

50. Both parties are still quite young and can look forward to many more productive years. They had more than sufficient time to massage their respective businesses into lucrative ventures. They already have a proven track record and will undoubtedly benefit from their past experiences. Being in the prime of their adult years, provides each with the opportunity to access long-term loans if that becomes necessary and if they continue to enjoy good health and work privately, they can work well beyond mandatory age of retirement.

IEJS

51. Doing the best that I can to be fair to both sides I order and declare that:

1) Both parties are entitled to equal beneficial interest in the property known as and situate at LP 13 Guaico Tamana Road, Sangre Grande in equal share
2) The said property shall be held by the Petitioner and the Respondent on trust for sale with power to postpone the sale and pending sale the Respondent may occupy the said property to the exclusion of the Petitioner during her life until the child Chelsea shall have attained the age of 18 years, or completed full-time education and thereafter so long as the parties shall agree until the court shall otherwise order, the parties having liberty to apply for this purpose and upon sale to hold the net proceeds upon trust for the Petitioner and the Respondent in equal shares.
3) The parties shall within 14 days agree on a lump sum representing one-half of the business entity now or formerly known as Kanhai Tyre Centre and/or Kanhai's Tyre Traders.
4) The Petitioner shall within four (4) months thereafter pay to the Respondent the lump sum as agreed which said lump sum shall carry interest at the rate of 12% from the date due for payment
5) In default of agreement on arriving at a lump sum as prescribed in (3) above Kanhai's Tyre Traders shall be assessed by an agreed assessor who shall determine its net worth as a going concern and the Respondent paid a lump sum amounting to one-half the assessed value.

6) The assessment shall be concluded within 14 days of the failure to reach agreement prescribed in (3) above and the cost of the assessment shall be borne by the Petitioner.
7) The assessment shall be completed 21 days thereafter and submitted to both sides.
8) The Petitioner shall pay the Respondent within six (6) weeks of the presentation of the assessment and interest shall run from that time.

52. In relation to the children there were earlier concerns about them not wishing to see their father, but I have seen in the evidence where they have spent time with him. In any event it is time for this family to start to heal without this matter hanging over them. The order will be that:

1) Both parties shall have joint custody to the children
2) The Respondent shall have daily care and control
3) The Petitioner shall have access as follows:
    a. Alternate weekends from Friday 5 pm to Sunday 5 pm beginning the 30th October 2015
    b. The first half of all school holidays
    c. Part of the children's respective birthdays
    d. Fathers' Day from 9 am to 5 pm (Mothers' Day to the Respondent)
    e. Any other time as agreed
4) Neither party shall take the children out of the jurisdiction without the consent of the other party.
5) The Petitioner shall pay the sum of $2000 per month for the maintenance and general upkeep of each of the three children

of the family beginning the 30th day of November 2015, and continuing until each of them respectively attains the age of 18 years completes full-time education or training for a vocation or profession or until further order.

6) Both parties shall be responsible for the educational needs of the children as well as for their medical, dental and optical expenses.

The court declares that the arrangements for the welfare of the children have been made and are satisfactory.

53. Finally there shall be liberty to apply and the Petitioner shall pay the Respondent's costs fit for advocate attorney.

Dated 23rd October 2015

Allyson Ramkerrysingh

Judge