



[2018] JMSC. Civ. 28

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2012HCV 00950**

<b>BETWEEN</b>	<b>LEONIE AGATHA HUTCHINSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JOHNETTE GEORGE HUTCHINSON</b>	<b>DEFENDANT</b>

Mr Seyon Hanson instructed by HollisLaw for the Claimant  
Mr Leroy Equiano and Mrs Rose Duncan-Ellis instructed by Duncan-Ellis & Co., for the Defendant

Heard: June 13 and 27, 2017 and March 6, 2018 (Amended December 3, 2018)

**Claim for Entitlement to property - Property (Rights of Spouses) Act – Claim for Maintenance- Maintenance Act**

**LINDO, J.**

[1] The Claimant, now a retired Guidance Counsellor resides at 18 Willowdene Drive, Willowdene in the parish of Saint Catherine (the Willowdene property) and the Defendant, Assistant Manager for Client Services at the National Housing Trust, (NHT) resides at Lot 1021 Green Acres Boulevard, Green Acres in the parish of Saint Catherine, (the Green Acres property). They were married on August 12, 1978 and lived together as husband and wife at the Willowdene property which they acquired together and which was registered in their joint names. They also owned another property at 17 Queensway, in Willowdene which they subsequently sold and shared the proceeds equally.

[2] The marriage broke down in or around October 2008, the Defendant filed a Petition for Dissolution of Marriage on July 28, 2011 and on or about October 2011 he left the matrimonial home. A Decree Absolute for Dissolution of marriage was granted to the parties on April 18, 2013, in the uncontested proceedings.

### **The Claim**

[3] By Fixed Date Claim Form and Affidavit in Support filed on February 15, 2012, the Claimant claims, *inter alia*, a declaration that she is entitled to “a fifty per cent or one half legal and beneficial interest in that property now known as Lot 1021 Green Acres Boulevard, Green Acres, in the parish of Saint Catherine..., ... an order that the Respondent prepare file and serve on the Claimant’s attorneys-at-law an accounting for all funds held on account by the Respondent in his name or in the name of the Respondent and the Claimant or in the name of the Respondent and any other person in any branch of the National Commercial Bank and Scotiabank or any other financial institution within the island of Jamaica and overseas. An order for the payment of a reasonable sum for maintenance by the Respondent to the Claimant on a monthly basis...”

### **The Defendant’s Response**

[4] On September 27, 2012, the Defendant filed an affidavit in response to the Claimant’s claim and prayed that the court would order, *inter alia*, “that property located at 18 Willowdene Drive, Willowdene, in the parish of Saint Catherine is held in equal shares between the Claimant and the Defendant...”

[5] On March 12, 2014, the Defendant was ordered by the court to file and serve a Notice of Application for Court orders in relation to the prayer in his affidavit in response to the Claim. Pursuant to this order, the Defendant on April 10, 2014, filed a Notice of Application for Court orders and on September 16, 2014 he filed an Amended Notice of Application in which he sought orders, *inter alia*, “that the property located at 18 Willowdene Drive, Willowdene, in the parish of Saint Catherine is held in equal shares between the Claimant and the

Defendant...That the property located at Lot 1021 Green Acres Boulevard, Green Acres, in the parish of St Catherine belongs to the Defendant solely..."

### **The Evidence**

- [6] At the hearing of the matter on June 13, 2017, the Claimant relied on the evidence contained in five affidavits filed by her in the matter in support of her claim and in response to the Defendant's Claim and objection to her claim. The Defendant also relied on the evidence contained in five affidavits filed by him in the proceedings.
- [7] Both parties were cross examined on their affidavit evidence and they called no witnesses in support of their respective claims.

### **The Claimant's Case**

- [8] The Claimant's evidence is that the marriage lasted for 33 years and for the duration of the marriage she was financially dependent on the Defendant, who earned more than she did and managed the finances of the family, in terms of domestic and investment/retirement portfolio. She states that they lived together at the family home at 18 Willowdene Drive, which they owned jointly and that the Respondent moved out in October 2011. She also states that they owned property at 17 Queensway Drive in Willowdene which was sold and she received half of the proceeds which she used to purchase a motor vehicle and to offset personal expenditure during the period 2012-2015.
- [9] She expresses the view that the Defendant used the proceeds of their savings and investments to purchase the Green Acres property and that he then applied to the NHT for a loan. She also states that during the marriage they had a mutual understanding that the defendant would be responsible for the mortgage payment and to take care of the family and household expenses while she would be responsible for taking care of the home and raising the children.

- [10]** Her evidence further is that her monthly expenses are on average \$112,000.00, her monthly pension of \$59,000.00 is insufficient to maintain her, and that she retired as a result of ill-health and upon retirement she received a gratuity of \$2,300,000.00 but used it to offset expenses which she now has to bear as the Defendant stopped paying the household bills. She states that she suffers from various serious medical conditions, had suffered a stroke and her frequent visits to the doctor and dietary needs are a financial burden to her. She exhibited a medical certificate dated November 8, 2014, which indicates, among other things that “she has recently been diagnosed with cervical spondylosis...” to substantiate her claim in relation to her illness.
- [11]** The Claimant also gave evidence that the Defendant has a pension valued at over \$2.5million and that when she went to work as a Guidance Counsellor she gave up her seniority, “as a senior teacher”, and as a result her salary was less.
- [12]** Under cross examination, she admitted that the Willowdene property is the family home. She also stated that they had more than two joint bank accounts, a National Commercial Bank Capital Market account as well as a US dollars account and that her salary went to an account at the National Commercial Bank (NCB) while the Defendant’s salary went to a Scotiabank account. She said she has never made any deposits to the Defendant’s account, her name was on the NCB Capital Market account, she had never gone to the bank to lodge any money to it and she was not a party to the closing of that account on April 11, 2011.
- [13]** She admitted that she did not contribute financially but she did things around the house and paid for some of the expenses for the two children out of her salary. She added that she contributed to the marriage in terms of buying some groceries, as groceries were bought by the Defendant at the wholesale but have never been enough, and that she bought the “finer things in life”. She also stated that the Defendant paid the mortgage for the Willowdene property from his salary

and continues to do so and that when she got a refund from the NHT, it went towards the mortgage, which is also in her name.

- [14] She denied being paid more as a Guidance Counsellor, admitted to receiving travelling allowance during the last four years she worked, and that her income increased “a little” and she gave up her seniority, by choice.
- [15] She admitted that she did not know when the Green Acres property was bought but that she found out in 2011, indicated that she has never been there and agreed that she did not contribute to the mortgage and that she knew the Defendant’s salary while they were living at Willowdene. She also admitted that there is still a mortgage on the Willowdene property and the Defendant pays it and it was always deducted from his salary. She added that she receives a pension and has been taking care of her expenses since the Defendant moved out of the home.
- [16] In seeking to clarify her evidence in relation to the bills she said were paid by the Defendant, the Claimant repeated that the Defendant paid all bills, but that “in terms of grocery...it has never ever been enough”. She added that because he shops at the wholesale “certain finer things of life were not bought...” These, she indicated, were “like hand towels, foil, special snacks for the children, yogurt...”

### **The Defendant’s Case**

- [17] In his affidavit in response to the Claimant’s claim, the Defendant admits certain of the matters raised by the Claimant in relation to the breakdown of the marriage and when he left the matrimonial home as well as ownership of the Willowdene property as the family home. He agreed that they had joint accounts which he managed and these were used to pay for family vacation, expenses relating to the children and to pay for household expenses but denied that when he left the matrimonial home he had withdrawn ‘most if not all’ the money in the joint accounts. He states further that although the Claimant worked, he paid all the expenses including utilities, groceries, household helper, children’s educational

and medical expenses and mortgages. He also states that they had agreed that they would both have access to each other's bank accounts in the event something happened to either of them. He stated that the Green Acres property was purchased primarily from loans and his personal savings and that in 2009 he had stopped using the joint account at NCB and opened another in his name solely and that at no time were their finances as a couple mixed. He indicated that he has a pension that is valued at \$2.5m and denied that they had an account at NCB Capital market or that he closed any such account

**[18]** He stated that the Claimant insisted that the Queensway property be sold and it was put on the market and the sale was completed in October 2011. He later stated that they never lived at the Queensway property and that he begged the Claimant to sell it and the proceeds of sale were shared equally.

**[19]** When cross examined by Mr Hanson, the Defendant stated that he has been employed to NHT for 25 years and that during the marriage he was unemployed for three months, between December 1991 and March 1992 and he had funds which he used during that time as he got a 25% gratuity at the end of a contract at the Bank of Jamaica and he had accumulated leave for which he was paid. He agreed that the family home was purchased prior to him working at NHT.

**[20]** He admitted that the Claimant went overseas in 1988, but said that it was not to work to help with the mortgage and said he could not recall if when she returned from overseas they lodged money she had worked in one of the accounts. He admitted that the mortgage fell in arrears as they had a challenge in making payments, and that he cleared the arrears. When pressed in relation to whether the Claimant assisted in clearing any of the arrears, he at first said he had no such recollection and then said "it is possible".

**[21]** He admitted that during the marriage the Claimant was responsible for the household, and cleaning of the house was a shared responsibility and in the latter part, cooking became his responsibility, and by the time he started to cook, it was for his children and himself as "my wife was on a fish only diet"

- [22]** He agreed that he had joint accounts with his wife and that either of them could deal with all joint accounts as they wished and that it was true that money was treated as money of the family “because being married we wanted for each to have access to the other’s funds”. He also stated that they never made withdrawals from each other’s accounts but there might have been emergency situations.
- [23]** He denied that it was from the joint account to which his salary is lodged that he paid the bills for the family. He indicated that as a Minister of Religion, at the latter part of the marriage, he was getting a stipend and that he got a cheque, which he changed, and that he did not deposit it to the joint account. When asked how money got into the joint account he indicated that as a secondary source of income, he did photography and videography and whatever he got from that source, he saved. He admitted that he still does it “once a year”.
- [24]** He denied having closed any of the joint accounts or having withdrawn substantial sums from joint accounts and when pressed about withdrawals from the account No. 23547 held at Scotiabank, he agreed that in July and December 2010, he purchased manager’s cheques payable to Phil’s Hardware as he was in the process of constructing the house at Green Acres and his friend Anthony Bailey had allowed him to use his NHT benefits to get a construction loan. He admitted to closing the NCB Capital market account which was held jointly with the Claimant and that part of the sum previously held in that account was used to secure a loan to assist in the purchase of the Green Acres property. He denied getting a loan from the NHT to purchase of the Green Acres property.
- [25]** When asked if he ever used the Scotiabank account to pay household bills, he indicated that between 2011-2012 onwards he used credit and card with funds from the Scotia account where his salary goes. He stated that funds for vacation “may have come from account 23567 at BNS” and funds spent in relation to the children came from his salary.

- [26]** When confronted with evidence contained in his affidavit filed on September 27, 2012, he admitted that the Scotiabank and the NCB joint accounts were used to pay expenses for the children and the household, and that he did not speak about salary being paid by cheque. He also agreed that he no longer pays those bills, but still pays the mortgage and that the Claimant had been accustomed to him paying the bills, but indicated that he could not say if she depended on him to do so.
- [27]** He admitted that during the marriage he purchased a motor vehicle for use as a taxi and said he did not get a “net income” from it, but when, pressed, he admitted that he got an income. He agreed that the Queensway property was owned jointly with his wife, that the family has never lived there, but that it was tenanted and he got an income from it which he shared with his wife by giving her cash and this was “until the gentleman stopped paying rent.” He stated that sometimes he gave her half, after paying the mortgage.
- [28]** He admitted that the Claimant would buy and sell items from the United States of America on rare occasions, “once in three or four years” and disagreed that sometimes she asked him to do the shopping for that purpose, but stated that it is possible that he had gone overseas and brought back items that were later sold. He however agreed that proceeds of sale were for the benefit of the family.
- [29]** He admitted that during the course of the marriage he did a Masters and a Doctorate in Counselling Psychology and the Claimant supported him when the Masters was being done. He however denied that during the period of study, she eased the burden of his parental duty to allow him to study, as the children were big.
- [30]** He indicated that when they got married they discussed having her name added to accounts previously held by him and he informed her that he was going to open the NCB Capital market account and would like to have her name added that she could have access to the account if something happened. After much



pressing he agreed that a part of the sum from NCB Capital Market fund was used to secure a loan to assist with the purchase of the Green Acres property.

**[31]** He agreed that he sent an email to his children in which he suggested that the Claimant keep the Willowdene property and he keep the Queensway property, and indicated that Green Acres was not yet bought. He stated that the date it was sent was March 21, 2014 and that the email was started on August 12, 2013. He denied that the Green Acres was bought when the email was sent and admitted that he had previously agreed to give the Claimant half the value of the Green Acres property.

**[32]** The defendant indicated that he was not sure who typed the letter in relation to a loan he said he received from Patricia Birmingham, but, "it could have been" him. He agreed that the letter does not state when the loan was made and there was no agreed interest rate for the loan but stated that he has not yet started to pay it back. He indicated that Patricia Birmingham is now his wife and admitted to purchasing manager's cheques, payable to her, on March 2, 2011 and January 10, 2011 during the time he said he borrowed loans from her. When it was suggested to him that he was the one paying monies to her, and it was not in settlement of any loans, he said "I disagree, the evidence is there".

**[33]** He agreed to being aware that the Claimant had special medical condition that she was being treated for, but said he was not aware she required special diet. He agreed that he is now earning more and that he shares the bills with his wife, but he stated that the bills are higher, and he disagreed that he is able to meet all his expenditures without the assistance of his present wife.

**[34]** He stated that the Claimant was involved in catering a few times for the year and at Christmas she did more extensive baking. When asked how many months of the year he would say she would normally bake, he said he was not able to answer.

## **Claimant's Submissions**

- [35]** It was submitted on behalf of the Claimant that she has an equitable interest in the Green Acres property. Placing reliance on Sections 14, 15, and 23 of PROSA, Counsel submitted that these sections allow a finding in the Claimant's favour in respect of the Green Acres property whether or not she made a direct financial contribution to its acquisition. Counsel suggested that the Defendant's opposition to the Claimant acquiring an interest in the property is based on a misguided understanding of PROSA causing him to base his opposition on the fact that he "surreptitiously engaged in a scheme whereby he transferred and dealt with funds to give the impression that his funds were distinct from the Claimant's funds, and that as such she is not entitled to an interest in the property."
- [36]** It was contended that the Defendant's approach throughout has been one of deception and secrecy in his dealings with the Claimant and that it is clear that he manipulated the trust and confidence reposed in him throughout the relationship. Counsel emphasised the fact that it was the defendant who begged the claimant to sell the income earning property, Queensway, that he did not disclose to the Claimant that he was purchasing another property and he closed the NCB Capital Market account which they shared and used funds from it to secure a loan to assist with the purchase of the Green Acres property.
- [37]** Counsel added that even if the defendant was the only income earner and used the income earned to purchase the property in his name, the court has jurisdiction to vary his interest in the property. He placed reliance on the provisions of Section 14(4) of PROSA
- [38]** It was posited by Counsel for the Claimant that the defendant did not provide satisfactory evidence in relation to the two personal loans he said he received and used in purchasing the Green Acres property and indicated that the onus is on the Defendant to make full and frank disclosure of his means and that it would

be “fair and reasonable for the court to make an order for maintenance of the claimant”.

[39] Counsel asked the court to assess the credibility of the parties and note the evasive nature in which the defendant responded under cross examination, as well as the number of times he gave evidence which contradicted his evidence-in-chief, and urged the court to accept the claimant as a witness of truth and accept her evidence in preference to that of the defendant.

[40] It was also submitted that in relation to the claim for the payment of maintenance on a monthly basis, the approach taken by the court in the case of **Getfield Stewart v Pearlina Stewart** [2013] JMSC Civ 121, unreported, delivered September 16, 2013 be employed and that the Claimant should also be allowed to continue living in the family home for a period deemed just by the court, particularly in light of her medical situation, employment status and the difficulty she would have securing alternate accommodation upon the sale of the property. Counsel also submitted that the court could make an order for the payment of a reasonable sum “on a monthly basis, or by way of a lump sum”.

### **Defendant’s Submissions**

[41] Counsel for the defendant pointed out that there was no issue that the Willowdene property is the family home and that based on the evidence adduced there is no circumstance which gave rise to a departure from the equality rule.

[42] In relation to the Green Acres property, Counsel submitted that the Claimant is not entitled to an interest as it was purchased by the Defendant through his resources two years after the parties separated and it was never intended to be jointly owned. The funds, Counsel said were acquired by loans for which the Defendant is solely responsible, the Claimant has not contributed directly or indirectly and the property is the matrimonial home of the Defendant and his new wife.

- [43] He stated that the Claimant has not established that she made any contribution to the acquisition of the property and in this regard referred to the provisions of Section 14 of PROSA and the decisions in cases of **Judith Plummer v Andrew Plummer**, Claim No. 2006HCV00864, delivered June 15, 2009 and **Eutetra Bromfield v Vincent Bromfield** [2012] JMCA Civ 62, delivered December 20, 2012.
- [44] Counsel indicated that the preferred position is that upon a final decree of divorce there can be a clean break, to avoid future proceedings and acrimony between the parties as it relates to maintenance, and submitted that “there is no basis in law or in fact for the payment of a lump sum payment or maintenance”.
- [45] Counsel reviewed the evidence of the Claimant, noted that she has not substantiated any of her stated expenditure, and indicated that she has not provided to the Court her true financial position and can, by her income, meet the expenses outlined in her affidavit. Counsel added that the Claimant has no debilitating or terminal illness and enjoys good health and has the means, resources and income earning capacity to upkeep herself and purchase the defendant’s interest in the matrimonial property and urged the Court to dismiss her application.

## **The Issues**

- [46] There is now no issue joined between the parties that the Willowdene property was purchased jointly by the parties and is the family home. The application by the Defendant is that the Court orders that it is held in equal shares between them. It would have had to be determined whether there are any circumstances which would lead the Court to vary the general rule that each party is entitled to a 50% share but, the Claimant in her closing submissions sought an order that the Court declare that the property is held in equal shares between the Claimant and the Defendant and as such that issue has been resolved.

[47] With regard to the Green Acres property which was purchased in the sole name of the Defendant during the course of the marriage, the court has to determine whether the Claimant is entitled to an interest.

[48] The Court also has to consider whether the Claimant is unable to meet her reasonable needs, thereby requiring the Defendant to contribute towards her maintenance and whether the Defendant has the capacity to assist in her maintenance.

### The Law

[49] The claim has been brought under the **Property (Rights of Spouses) Act.** (PROSA). By Section 13:

*“.....(1) A spouse shall be entitled to apply to the Court for a division of property-*

- (a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or*
- (b) on the ground of a decree of nullity of marriage; or*
- (c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or*
- (d) where one spouse is endangering the property or seriously diminishing its value by gross mismanagement or by willful or reckless dissipation of property or earnings.*

[50] Section 12(2) states that:

*“a spouse’s share in property, shall, subject to section 9, be determined as at the date on which the spouses ceased to live together as man and wife or to cohabit, or if they have not so ceased, at the date of the application to the court.”*

[51] Section 14(1) provides as follows:

*“Where under section 13 a spouse applies to the Court for the division of property the Court may –*

- (a) make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*
- (b) subject to section 17(2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2)*
- (c) .....*

Subsection (2) states:

*“The factors referred to in subsection (1) are –*

- (a) the contribution, financial or otherwise, directly or in-directly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;*
- (b) that there is no family home;*
- (c) the duration of the marriage or period of co-habitation;*
- (d) that there is an agreement with respect to the ownership and division of property;*
- (e) such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.”*

**[52]** Section 3(2) of the Maintenance Act provides that:

*“in any case where an application is made for division of property under the Property (Rights of Spouses) Act, the Court hearing the proceedings under the Property (Rights of Spouses) Act may make a maintenance order in accordance with the provisions of this Act.*

**[53]** It is settled law that by virtue of the Maintenance Act 2005 each spouse has an obligation to maintain the other and on an application for maintenance, there must be evidence that the defendant has the capacity to pay maintenance, it is shown that the applicant is in need of maintenance and it is impractical for the claimant to wholly or partially satisfy those needs. Section 4 states:

*“Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to-*

- (a) The circumstances specified in section 14(4); and*
- (b) Any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.*

**[54]** Section 5(2) of the Maintenance Act lists matters to be considered by the Court in determining the amount and duration of support to be given to a spouse under a maintenance order and the Court must have regard to these matters in

addition to the matters to be considered listed in Section 14(4), in determining whether an award for maintenance ought to be made.

**[55]** The Court is required to have regard to assets and means of the parties, the Claimant's and Defendant's respective capacity to contribute to their support, the mental and physical health and age of the parties; the measures available for the Claimant to become able to provide for her own support as well as the length of time and the cost involved to enable her to be able to do so; any legal obligations that the parties have to provide support for another person; any contribution made by the Claimant to the realization of the defendant's career potential; the extent to which payment of maintenance to the Claimant could increase her earning capacity by enabling her to undertake a course of education or training or to establish herself in a business or otherwise obtain an adequate income; the quality of the relationship between the parties and any other fact or circumstance which in the opinion of the Court, the justice of the case requires to be taken into account.

**[56]** The Court is also duty bound to consider the duration of the marriage, the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse; the effect of the responsibilities assumed during the marriage on the spouses earning capacity; the spouse's needs having regard to the accustomed standard of living during the marriage; the eligibility of either spouse for a pension allowance or benefit under any enactment, rule superannuation fund or scheme and the rate thereof.

**[57]** By **Section 15** of the Maintenance Act, the court may make interim or final order requiring, inter alia, :

*(a) That an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;*

*(b) That a lump sum be paid or held on trust;*

*(c) That property be transferred to or held in trust for or vested in the dependant, whether absolutely, for life or for a term of years;*

(d) ....

(e) ....

(f) ....

(g) *The securing of payment under the maintenance order, by a charge on property, an order of attachment or otherwise.*

## **Discussion**

**[58]** The law is clear that in respect of the family home, the equal share rule should only be departed from on just and reasonable grounds. In view of the circumstances and facts of this case there are no grounds for varying the rule and both parties agreed that they are equally entitled to the Willowdene property, which was the family home.

**[59]** Credibility is vital to the determination by this Court of how this property is to be distributed. Having considered the evidence contained in the affidavits filed by the parties in support of their respective claims and having had the opportunity to see and assess their demeanour as they were cross examined, I find the Claimant's version in relation to the acquisition of the Green Acres property to be more credible. Where there is a conflict between the evidence of the parties I believe and prefer the evidence of the Claimant who was more forthright than the Defendant who I found to be evasive at times and gave evidence in cross examination which was in direct contradiction of evidence contained in his affidavits.

**[60]** The evidence of the parties on the issue of their financial contribution to the acquisition of the property is divergent. The Claimant states that the Defendant used the proceeds of their savings and investments in the joint NCB Capital Market account to purchase it and that he ultimately closed the joint account without her knowledge. The Defendant on the other hand, stated that he purchased the property primarily from loans and his personal savings. He had denied that they had an account at NCB Capital Market or that he closed it which is in direct contradiction to his evidence where, on cross examination, he



admitted to closing the account and using funds from that account to secure a loan to assist in the purchase of the Green Acres property.

**[61]** Although it is clear from the evidence of both parties that the Defendant was essentially the sole contributor to the joint accounts, it is uncontroverted that the Claimant and the Defendant treated those accounts as belonging to each other and it is clear that expenses of the household were funded from these joint accounts. The evidence discloses further that it was agreed during the course of the marriage that the Defendant would be in charge of the finances and the Claimant would have the responsibility of the care of the household. It is therefore understandable that the Claimant would not have had a significant financial contribution to the joint accounts, though there is evidence to suggest that during times of emergency, and particularly when the mortgage was in arrears, the Claimant could have made a contribution to the payment of the mortgage.

**[62]** I accept the Claimant's evidence that the Defendant used their joint NCB Capital Market account to help fund the purchase of the Green Acres property and closed the account thereafter. I find as fact that the Defendant did not purchase the Green Acres property using his personal funds only, and I accept that he also used the funds in the joint NCB Capital Market Account to secure a loan from the National Commercial Bank. I therefore, find that the Claimant made an indirect contribution to the acquisition of the Green Acres property.

**[63]** I accept as fact that the Claimant contributed to the marriage by caring for the children and the household by paying some of the children's expenses and buying additional groceries she considered "the finer things in life". I also accept that the Defendant contributed financially to the marriage by, purchasing groceries, paying the mortgage on the family home as well as the bills and funding family vacations. I accept that each party had a distinct role to play in the marriage and each made his or her own specific contribution. However, it is clear that at the time the Green Acres property was purchased the marriage had

already broken down and as such I take into consideration the fact that at the time the property was acquired by the Defendant, the parties had been separated for about two years. I find therefore that the contribution of the Claimant to the marriage would not be a significant consideration taking into account the fact of the separation of the parties.

**[64]** Having considered the relevant factors outlined in Section 14 (2), examined the authorities and the evidence of the parties, I am of the view that the Claimant would be entitled to a very small share in the Green Acres property. Her application for a 50% share in respect of the property has not been substantiated. I however find that in view of all the circumstances she should recover half of the sum from the account used by the defendant to secure the loan to purchase the property.

**[65]** The Maintenance Act provides that each spouse has an obligation to maintain the other. That obligation under the Act is understood to be limited to the former spouses' capacity to maintain each other. The case of **Suzette Ann Marie Hugh Sam v Quentin Chin Chong Hugh Sam** [2015] JMMD: FD1 is instructive on this point. Evan Brown, J. in his dictum, outlined the important principles that underpin the modern legislation on the issue of maintenance. He posits:

“[47] It is settled law, certainly since the passage of the Maintenance Act in 2005 (MA), that each spouse has an obligation to maintain the other. That obligation is now cast in a mould which recognises that few persons, if any, can support two households at the same standard. So, there is no longer any right to lifelong support from a former spouse. The emphasis is now on the former spouses becoming financially independent of each other at the earliest possible time post divorce.

[50] Financial independence is but one of the two bedrocks underpinning the modern legislation identified by Lord Scarman. Although he was speaking in relation to the English legislation, his dictum is entirely *apropos* the Jamaican context. In **Minton v Minton** [1979] AC 593,608 Lord Scarman said:

*“There are two principles which inform the modern legislation. One is the public interest that the 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.”*

**[66]** At paragraph 52 of the Hugh Sam case, Evan Brown, J. outlined what a judge looks for when considering whether to award maintenance to a former spouse. He states:

*“[52] It must be demonstrated by evidence, firstly that the spouse who is tasked with the responsibility of spousal maintenance has the capability to fulfil that role. Secondly, the claimed maintenance must be demonstrably necessary. Thirdly, the needs being considered must meet the bar of reasonableness. Finally, the evidence must show that it is impractical for the spouse to wholly or partially satisfy those needs.”*

**[67]** The central question to be determined is whether or not it is within the capability of the Defendant to satisfy the whole or part of the Claimant’s reasonable needs.

**[68]** The Claimant gave evidence on her current living situation and expressed to the Court how her standard of living has diminished since the Defendant left the family home in 2011. She alleges in her affidavit filed February 15, 2012 that “the Respondent’s conduct has robbed me of all financial security and has left me impecunious.” She expressed the view that the financial difficulty she is experiencing as a result of the actions of the Defendant is compounded by the various illnesses from which she suffers and the costs of the medication she has to take to maintain her health. She avers that her impecuniosity is a result of the Defendant using their savings and investments to purchase the Green Acres property, closing their retirement accounts and ceasing payments of the bills at the family home after his departure. She contends that she is now existing on a pension of \$59,000.00 per month which is significantly less than her monthly expenses which average \$120,000.00.

**[69]** Having evaluated the evidence of both parties, I am of the view that the Claimant is exaggerating her financial difficulties. The evidence, on a whole, paints a

picture of a marriage that had the Defendant as the sole contributor of the finances of the family with the Claimant, from time to time, purchasing the “finer things in life”. From all accounts, the Claimant was gainfully employed throughout the marriage earning income as a Senior Teacher and later as a Guidance Counsellor. It is uncontroverted that the Claimant made no significant financial contributions to the family. There is evidence from the Claimant that indicates that she earned a reasonable salary from her various posts and provided payslips that showed her salary to be approximately \$72,339.83 per month. In cross examination, she admitted that her salary was saved to her account, which, having regard to the evidence on the finances of the parties would have been preserved and utilized solely by her.

[70] A review of the Claimant’s evidence showed that she received \$2.5 million dollars in 2011, being a half share of the proceeds of sale of the Queensway Property. I note that the Claimant used this money to purchase a vehicle, pay expenses and care for her daughter and granddaughter. However, in 2012 she received an additional \$2.3 million dollars from her pension gratuity and her monthly pension of \$59,000.00. There is no evidence presented by the Claimant that she has substantial monthly expenses, medical or otherwise or has incurred any debts as a result of the Defendant’s departure, and as such I find it reasonable to conclude that her monthly expenses would consist of the usual grocery, utility and medical expenses. Furthermore, in cross examination, she stated that since the Defendant left the family home she has been meeting her own needs. This evidence has led me to the conclusion that the Claimant is in a position to adequately maintain herself.

[71] I also consider the current circumstances of the Defendant, bearing in mind his present marital status and the responsibility he has to his wife. I find the dictum of Panton P in the case of **Bromfield v Bromfield** [2012] JMCA Civ 62 to be instructive on this issue. He states at paragraph [36]:

“[36] Where a marriage has been dissolved, and one of the parties has remarried and thereby taken further responsibilities including

children, it ought not to be expected that the party will ordinarily continue to maintain the other party of the dissolved marriage indefinitely. That is the principle that ought to be regarded as guiding the instant situation.”

**[72]** The Defendant stated in his evidence that his net salary is \$137,908.00 and his monthly expenditure amounts to \$181,182.00 and that his wife assists with the monthly expenses. I do not consider the Defendant to be exaggerating his expenditure as he is currently paying the mortgages on both the Willowdene and Green Acres properties. He has also provided evidence in the form of his mortgage payments, loan payments to the NHT and his utility expenses. I therefore do not find on the evidence presented that the Defendant has the financial capacity to maintain the Claimant.

**[73]** The Claimant’s application for maintenance is therefore refused.

### **Disposition**

In view of all the foregoing it is hereby declared and ordered as follows:

1. That the Claimant and the Defendant are each entitled to the legal and beneficial interest in the property situated at 18 Willowdene Drive, Willowdene in the parish of Saint Catherine, registered at Volume 1059 and Folio 275 of the Register Book of Titles, in equal shares.
2. That the Defendant is entitled to the legal and beneficial interest in the property located at 1021 Green Acres Boulevard, Green Acres in the parish of Saint Catherine, registered at Volume 1131 and Folio 190 of the Register Book of Titles.
3. A valuation of the Willowdene property is to be carried out by a reputable valuator to be agreed on between the parties and the costs of such valuation is to be borne by the parties equally. If the parties are unable to agree a valuator, any one of the Registrars of the Supreme Court is empowered to appoint a valuator. The Claimant is given the first option to purchase the

Willowdene property and such option is to be exercised within ninety (90) days of the receipt by the parties of the valuation report in respect of each property.

4. If either party fails to exercise his/her option, the property shall be sold by private treaty or by public auction and the proceeds of sale be shared equally between the parties.
5. Any one, of the Registrars of the Supreme Court is empowered to sign any and all documents required to give effect to the sale of the property, should any of the parties be unable or unwilling to do so within twenty-one (21) days of being notified in writing.
6. The Defendant's attorneys-at-law shall have carriage of sale.
7. The Claimant's application for maintenance is refused.
8. Each party is to bear his/her own costs.
9. There shall be liberty to apply.