



**Oral Judgment**

**[2026] JMSC Civ 15**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE FAMILY DIVISION  
CLAIM NO. SU2024FD00770**

**BETWEEN                      SOPHIA DALEY                                      CLAIMANT**

**AND                                      RAYMOND DALEY                                      DEFENDANT**

**Mrs. Marjorie Shaw instructed by Brown and Shaw for the Claimant  
Mr. Raymond Samuels for the Defendant**

**Heard: November 18<sup>th</sup>, 2025  
Ruling delivered: February 6<sup>th</sup>, 2026**

**Matrimonial Property- Division of Matrimonial Property- Family Home- Equal Share  
Rule**

**A. MARTIN- SWABY J (AG.)**

**Introduction**

**[1]** This claim surrounds an application for division of property located at 1B Hibiscus Drive, Kingston. The Claimant and Defendant are the registered proprietors of this property which they hold as joint tenants. In this claim, both parties entered matrimony on the 18<sup>th</sup> day of December 2005. Cohabitation ceased in the year 2014 and the marriage was subsequently dissolved on the 27<sup>th</sup> day of April 2018.

[2] The claim for division of property was filed on the 04<sup>th</sup> day March 2024, some six years after the dissolution of marriage and 10 years after the termination of cohabitation. However, on the 12<sup>th</sup> day of July 2024, an application was granted to the Claimant extending the time within which a claim could be brought under the Property Rights of Spouses Act to the 4<sup>th</sup> day of March 2024. Consequently, the Fixed Date Claim Form filed on the 4<sup>th</sup> day of March 2024 is treated for the purposes of this application as properly filed and served. Therefore, I have jurisdiction to hear this claim.

[3] The Claimant is seeking a declaration by this Court that the property constitutes the family home and further that she is entitled to a fifty percent (50%) interest in this home. The Defendant's case is that the property is not the family home and further that it ought not to be shared equally between the parties.

#### **Matters Not in Dispute -**

There are several matters which are not in dispute in this claim. They are as follows;

- I. On the 12<sup>th</sup> day of December 2005, both parties acquired the subject property. That they lived at the property with their 3 children until they separated in the year 2014.*
- II. That the property was secured through the Claimant and the Defendant's sister contributing their NHT points as well as a loan which was secured by the parties through Jamaica National Building Society.*
- III. That since the Claimant left the property in the year 2014, she has not returned to the said property.*
- IV. That the Defendant was the proverbial "breadwinner" in the family. He paid the deposit and the entire mortgage as well as covered all the expenses for the family during the conjugal years of the marriage.*
- V. That the Defendant continues to pay the mortgage for the property and still resides there.*

## **Issues –**

1. Whether the property is the matrimonial home?
2. Whether the property ought to be shared equally between the parties?

## **The Evidence -**

- [4] The Claimant's case is that when this property was acquired, it was the intention of the parties that they would own it jointly and build a life together. Her case is that the Defendant, who was then employed to Red Stripe was in a better position financially. This was the reason for his payment of the deposit as well as the mortgage. The Claimant asserts that this property is the family home. The Defendant contends that it is not the family home.
- [5] The Defendant contends that he paid the entire deposit of One Million, Two Hundred Thousand Dollars (\$1,200,000.00) towards the purchase and he secured a mortgage through Jamaica National Building society and importantly he has paid all mortgage payments. His case is that in such circumstances and where the Claimant has removed from the property since the year 2014, he asserts that it is unfair for the Claimant to obtain a fifty percent (50%) interest in the property.
- [6] However, the Claimant avers that from the time of acquisition of the property, there was a verbal agreement between the parties that the Defendant would pay the mortgage and the Claimant would discharge the utilities, grocery expenses and care for their young child Daniel. This agreement remained in place until their separation in 2014 and survived the birth of their two (2) additional children.
- [7] However, she admitted that during the marriage, she was unable to contribute towards the running of the household due to the assistance she gave to her parents. However, she stated that she assisted with things in the home to include sourcing paint which was needed to paint the home and she paid the taxes twice.

[8] The Defence's case is that there was never such an agreement. In fact, he asserts that her contribution towards the home was negligible and inconsequential. Further, that the Defendant bore the burden of all expenses within the home because the Claimant went ahead and borrowed monies to fix her parent's home without his approval. The effect of this was that she had no disposable income to contribute towards the expenses within the home. It was also suggested that her contribution within the home were not extraordinary.

[9] The Claimant's case is that after separating, she contributed towards the children's educational and extra – curricular activities as well as purchase their clothing. She did not return to the home due to fear and having been told that the Defendant had moved another woman and her children into the home, she stayed away from the premises. This is her explanation for staying away from the premises.

[10] The Defendant has asserted that he has expended resources to improve the property through the construction of a one-bedroom flat as well as painting the house regularly. In cross examination, it was borne out that the improvements to the property amounted to the covering of the garage area thereby converting it into a bedroom. This venture cost him approximately Three Hundred Thousand Dollars (\$300,000.00). He also built a garage shed and raised the front wall to enhance privacy and security. His evidence is that the garage shed cost approximately Two Hundred and Eighty-Four Thousand Dollars (\$284,000.00). He provided no receipts for such expenditure and agreed that since 2019, the children have not resided with him.

### **Whether the property is the family home?**

[11] I find on a balance of probabilities that the property is the family home. I bear in mind the Defendant's argument that the property is not the family home on the basis that the Claimant voluntarily vacated the property in August 2014 and has not returned. He further argued that since the Claimant's departure, the Defendant solely occupied the property with their children until the children were given to the

Claimant after an order was made granting her custody. The Defendant's contention is that the Claimant has not treated the property as her residence since the year 2014.

- [12] The Claimant, on the other hand asserts that the property is the family home as it served as the sole place of residence for the Claimant, Defendant and their three (3) children during their conjugal years. The Claimant contends that departure from the family home at the termination of cohabitation does not remove its designation.
- [13] I have examined the definition of "family home" as contained in section 2 of the Property Rights of Spouses Act (PROSA) together with the explanation preferred by Sykes J (as he then was) in the case of **Peaches Annette Shirley Stewart v Rupert Augustus Stewart** (unreported), Supreme Court, Jamaica, Claim No 2007HCV03257, judgment delivered November 6, 2007.
- [14] In examining section 2, it is evident that the court must consider whether the spouses whether solely or jointly owned the property as well as the nature of the occupation of the property enjoyed by the parties during their relationship. As Sykes J (as he then was) suggested at paragraphs 21-25 of the judgment, the focus must be the use of the property by the spouses during the relationship. Counsel has invited the court to consider the actions of the spouses after the separation to disqualify the Claimant from seeking to assert that the property was in fact the family home.
- [15] The purpose of the PROSA is to treat with the division of property after the termination of cohabitation, dissolution of marriage though examining the parties' dealings with the property prior to the termination of cohabitation. Therefore, the focus of section 2 is whether the property was used by the spouses as their primary place of residence. Therefore, the question for the Court is not

how the parties treated the property after the relationship ended but during the relationship.

[16] At paragraph 24, the learned Justice stated as follows;

*"...The legislature, in my view, was trying to communicate as best it could that the courts when applying this definition should look at the facts in a common sense way and ask itself this question, "Is this the dwelling house where the parties lived?.."*

[17] In this case, the spouses acquired this property in their joint names around the time of the commencement of their marriage. They lived exclusively at this property with the children of the marriage for approximately nine (9) years. The Claimant used her NHT points to obtain this property. The Defendant's sister also contributed her points towards assisting the parties in acquiring this home. Notwithstanding the contribution made by a third party, the property was registered in the names of the parties. This demonstrates that the parties intended to own this property jointly and intended to use this property as their family home. The departure from the home does not raise an inference that the intention changed. In fact, the evidence discloses that the departure from the home was a consequence of the deterioration in the relationship. This does not in the circumstances of this case remove the operation of section 6 of the PROSA.

#### **Whether the Equal Share Rule should be varied?**

[18] Mr. Samuels argues that the lack of financial contributions made by the Claimant disentitles her to a fifty percent (50%) share in the property. Such contributions included those during cohabitation. I found this argument to be interesting and I am constraint to disagree with counsel in this regard. Whereas I form the view that the Court may take contributions made by one spouse in to account particularly where the justice of the case requires, **Llewellyn Bailey v Sharon Colquhoun**

**Bailey** [2024] JMCA Civ 44, I do not believe that the division of matrimonial property particularly the family home is determined by contributions.

[19] I do not believe that the Defendant being the breadwinner and contributing entirely to the mortgage or the expenses associated with the property during cohabitation as man and wife, disqualifies the Claimant from a half share interest in the property. I am careful to acknowledge that in marriage, persons arrange their day to day lives in differing ways. The court cannot countenance a situation where wives or husbands are punished for failing to contribute to the family pot. This may have the unfortunate consequence of forcing spouses to do accounting and auditing of individual income and expenditure to safeguard their interest should the marriage fail. This is not what the law intended to achieve. The purpose of the PROSA and in particular sections 6 and 7 was primarily geared towards preventing the automatic disqualification of a party who was not the breadwinner but rather the homemaker. I dare say that the non – monetary contribution need not be extraordinary for the simple reason that marriage is not about record keeping but more about persons seeking to embark on a life together. Therefore, I cannot agree with Mr. Samuels' arguments in this regard.

[20] My position stands firmly on the shoulders of the decision in **Donna Marie Graham v Hugh Anthony Graham** (unreported), Supreme Court, Jamaica, Claim No 2006 HCV 03158. Interestingly in that case, the Claimant also made no contribution towards the purchase of the property. Additionally, the Defendant as in this case, was the proverbial breadwinner. In paragraph 30 of the judgment in **Graham**, it was noted that the Claimant in her evidence admitted that the Defendant had met all the family expenses as her salary did not allow her to make a better financial contribution.

[21] In those circumstances, the learned Judge reasoned that the Claimant's contribution as mother to the children and homemaker must be viewed as substantial and not merely a token contribution. It was made clear

in **Graham** that there should be no discrimination in favour of the spouse who makes a monetary contribution.

[22] I bear in mind that McDonald Bishop J (as she then was) awarded the Claimant a forty percent (40%) share of the property in **Graham v Graham**. However, it was evident on examining the reasoning of the learned Judge that the third party contributions made by the Defendant's family members to the acquisition of the property and the improvements made to the property in favour of third parties specifically the mother of the Defendant and a child of the Defendant from a previous relationship, tipped the scales in terms of awarding a greater share to the Defendant in that case. The departure away from the equal share rule was not consequent on the lack of contributions made.

[23] I am not persuaded that the Claimant's lack of financial contribution should by itself tip the scales in favour of the Defendant.

#### **What is Fair & Just -**

[24] Notwithstanding my finding above, in examining section 7 of the Property Rights of Spouses Act, I bear in mind the recent Court of Appeal decision of **Llewellyn Bailey v Sharon Colquhoun Bailey** [2024] JMCA Civ 44. The Court of Appeal considered carefully the factors which may be considered by the Court when a determination is to be made concerning whether the equal share rule ought to be varied. In **Bailey v Bailey**, the Court of Appeal reasoned that the overarching principle in the division of matrimonial property to include the matrimonial home is one of fairness. The Court is therefore permitted to make such order as it considers reasonable taking into account such factors as it finds relevant. In **Bailey v Bailey**, the Court considered the contributions made by the parties as a factor which was relevant in that case in determining where fairness lies.

[25] However, the facts of **Bailey** were different to the case at bar. In **Bailey**, the marriage was of a relatively short duration and the property was already owned

solely by Mrs. Bailey at the commencement of cohabitation. It was financed through the sale by her of a previous property also owned by her and importantly the subject property was registered in her name alone. In that case, although the property was treated as the family home, Laing J (as he then was) awarded Mr. Bailey a ten percent (10%) interest. Laing J (as he then was) considered the contributions made by the parties as being relevant in the context of the circumstances of that case as a whole.

**[26]** In the case at bar, and as already stated, I do not find that the contributions made during cohabitation to be relevant.

**[27]** However, what is relevant in this matter is an examination of the delay in bringing these proceedings and the impact this may have on what is fair and just in this particular case. The undisputed fact is that the Claimant did not initiate these proceedings until 2024, some ten (10) years after separation and six (6) years after the dissolution of the marriage. The effect of this is that the Defendant continued to cover all the expenses associated with the property for ten (10) years between 2014 and the initiation of the claim. The evidence is also that to date he continues to single-handedly pay the mortgage and all the expenses associated with the property. Therefore, after cohabitation ended, he has singlehandedly managed the home without any assistance whether monetary or otherwise from the Claimant for ten (10) years.

**[28]** In addition to this, he did embark on some improvements to the property and regardless of whether these could not be viewed as being major renovations, he must be credited for this. His contributions towards the maintenance and upkeep of the property extends beyond mortgage payments. It would be unfair in the circumstances to give the Claimant a fifty percent (50%) share in these circumstances.

[29] Had these proceedings been initiated early, it is my firm view that the Claimant would have been entitled to her fifty percent (50%) share notwithstanding the lack of a monetary contribution towards the property during cohabitation. However, the intervening delay of ten (10) years must be assessed carefully and the consequence of it in my view is that the property should not be equally shared as to do so would be unfair to the Defendant given the fact that he has continued to invest in this property and manage this property for approximately ten (10) years prior to the commencement of this claim.

[30] I have carefully considered the Claimant's assertions that she was unaware of the divorce in 2018 and that she focused all her efforts on resolving the matter of custody of her children and further that one (1) child had to undergo surgery I believe it was in the year 2020 or thereabout. These factors are given as a basis for the delay in proceeding. I have carefully considered all these factors in assessing whether the equal share rule should still apply. I am not persuaded that these factors should shift the pendulum back towards an equal share of the property.

[31] The court is not saying that delay should automatically disqualify a spouse from benefiting from the equal share rule. This is not so and cannot be so as section 7 did not expressly include this as a basis for variation of the rule. However, and in accordance with **Bailey v Bailey**, section 7 left it open for the Court to assess each case on its merits and determine what factors weigh heavily against an equal division of property where such factors affect the fairness and justice of the particular case. Therefore, a delay of ten (10) years between the termination of cohabitation and initiating a claim may or may not affect the fairness of applying the equal share rule. It must be assessed on a case by case basis giving due regard to the particular circumstances of each case.

[32] Based on the circumstances of a case, the delay in initiating proceedings may make it unfair to one spouse should the other be granted an equal division of

property such as in cases like this where the other spouse continues to reside at the premises undisturbed for several years and expends resources in improving and managing the property and continues to reside there and invest in the particular property. The court considers that even if the sums expended on improving the property were approximately Five Hundred Thousand Dollars (\$500,000.00) in total, the court must consider that this improvement may have also had a bearing on the value of the property as the conversion of the garage in to a bedroom served to increase the number of bedrooms on the property.

**[33]** As such, I find that the property should be divided with a sixty-five percent (65%) share being given to the Defendant and a thirty-five percent (35%) share to the Claimant.

Orders;

1. The property situated at 1B Hibiscus Drive, Kingston 8 in the parish of Saint Andrew registered at Volume 1175 Folio 18 of the Register Book of Titles, hereinafter referred to as “the property”, is the Family Home.
2. The Joint Tenancy by which the parties hold the said property, be severed.
3. The Claimant is entitled to 35% legal and equitable interest in the property, and the Defendant is entitled to 65% legal and equitable interest in the property.
4. The property is to be valued by a valuator agreed by the parties herein and the cost of said valuation is to be shared between the parties equally.
5. The Defendant is given the first option to purchase the Claimant's interest which said option is to be exercised by the Defendant's execution of an agreement for sale and making a deposit within 60 days of the parties being provided with a copy of the valuation report.
6. In the event that the Defendant fails to exercise the first option to purchase the aforesaid property, the said property shall be sold on

the open market and the net proceeds be shared 35% to the Claimant and 65% to the Defendant.

7. The Claimant's Attorney-at-Law shall have conduct of the sale of the premises, should it be sold on the open market.
8. The Registrar of the Supreme Court is empowered to sign any and all documents to effect a registrable transfer if either of the parties herein is unable or unwilling to do so.
9. Liberty to Apply.
10. Each party is to bear their own costs.
11. Claimant's Attorney-at-Law is to prepare, file and serve this order.

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A. Martin-Swaby  
Puisne Judge (Ag.)