



[2025] JMSC Civ 77

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

**IN CIVIL DIVISION**

**CLAIM NO. SU 2024 CV 00799**

<b>BETWEEN</b>	<b>KARON DAVY</b>	<b>1<sup>ST</sup> CLAIMANT/APPLICANT</b>
<b>AND</b>	<b>JOAN DAVY</b>	<b>2<sup>ND</sup> CLAIMANT/APPLICANT</b>
<b>AND</b>	<b>DENNIS DAVY</b>	<b>1<sup>ST</sup> DEFENDANT/RESPONDENT</b>
<b>AND</b>	<b>ANTHONY DAVY</b>	<b>2<sup>ND</sup> DEFENDANT/RESPONDENT</b>
<b>AND</b>	<b>JUNIOR DAVY</b>	<b>3<sup>RD</sup> DEFENDANT/RESPONDENT</b>
<b>AND</b>	<b>NATHAN DAVY</b>	<b>4<sup>TH</sup> DEFENDANT/RESPONDENT</b>

**IN CHAMBERS**

**Mr Garfield Haisley instructed by Page and Haisley for the claimants/applicants**

**The defendants/respondents are unrepresented**

**HEARD: 22 MAY & 20 JUNE 2025**

**Civil Procedure Rules – Rule 15.2 – Whether the defendants have a real prospect of successfully defending the claim – Rule 26.3(1) – Whether the defence discloses reasonable grounds for defending the claim – Law of Real Property – joint tenancy – whether right of survivorship defeated**

**MASTER C THOMAS**

**Introduction**

**[1]** This claim concerns premises located at 140 Woodmere Avenue, Inglewood, May Pen in the parish of Clarendon, registered at Volume 1588 and Folio 215 of the Register Book of Titles (“the subject property”). The

claimants are the registered proprietors and have sought an order for recovery of possession of the subject property, among other orders.

[2] The particulars of claim reveals that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are the siblings of the claimants and they are all offsprings of Violet Buchanan (“the deceased”) who passed away, on 1 July 2019. The deceased previously owned the premises jointly with the claimants and resided there until her death. The claimants aver that “up until recently” the defendants occupied the premises with the permission and consent of the claimants but this permission was withdrawn. The claimants seek the following orders:

- i. Recovery of possession of premises located at 140 Woodmere Avenue, Inglewood, May Pen in the parish of Clarendon, registered at Volume 1588 Folio 215 of the Register Book of Titles;
- ii. An injunction restraining the Defendants, whether by themselves, their servants and/or agents, from entering upon or from continuing to trespass upon premises located at 140 Woodmere Avenue, Inglewood, May Pen in the parish of Clarendon, registered at Volume 1588 Folio 215 of the Register Book of Titles;
- iii. Mesne Profits from December 11, 2023 to the date of judgment herein;
- iv. Attorney’s costs;
- v. Interest;
- vi. Any further and other relief this Honourable Court deems just.

### **The defence**

[3] The defendants are unrepresented, appearing in the proceedings as litigants in person. In an effort to defend the claim against them, the 1<sup>st</sup> to 3<sup>rd</sup> defendants jointly filed a Defence and “Particulars of Defence”, on 19 March 2024 and on 8 April 2024 a “Rebuttal of Claimants’ Lawyers Reply to Defence and Particulars of Defence”. Although the 4<sup>th</sup> defendant filed an

acknowledgment of service, he was not a signatory to the defence filed on 19 March 2024 and has taken no further part in the proceedings.

- [4] In essence, the 1<sup>st</sup> – 3<sup>rd</sup> defendants' case is that the deceased died testate and that by her Will, the deceased appointed the 1<sup>st</sup> claimant and the 2<sup>nd</sup> defendant as executors and trustees of her Will which imposed certain legal obligations on the part of the 1<sup>st</sup> claimant with respect to the subject property. The 1<sup>st</sup> – 3<sup>rd</sup> defendants also contend that the deceased in her Will intended to devise and bequeath all her real and personal estate, including the subject property, to all five of her children.

### **The application**

- [5] By way of an amended notice of application for court orders, which was filed on 6 May 2025, the claimants seek the following orders: -

1. That Summary Judgment be entered on the claim in favour of the Claimants against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants with mesne profits to be assessed;
2. That in the alternative that the statements of case of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants be struck out with mesne profits to be assessed;
3. That Judgment in Default of Defence be entered against the 4<sup>th</sup> Defendant;
4. That the cost of this application and costs herein to the Claimants to be agreed or taxed.
5. ...

- [6] The application is grounded on the following bases: -

- i. That pursuant to Rule 15.2(b) of the CPR the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have no reasonable prospect of successfully defending the claim;
- ii. That pursuant to rules 16.4(1) and (2) of the CPR this Honourable Court has the power to give directions for

the trial of an issue of quantum on the hearing of an application for Summary Judgment;

- iii. That pursuant to rule 26.3(1)(b) and (c) of the CPR the statements of case filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants disclose no reasonable grounds for defending the claim, are an abuse of the process of the court and are likely to obstruct the just disposal of the proceedings;
- iv. That the time for the 4<sup>th</sup> Defendant to file and serve an Acknowledgment of Service has expired;
- v. That no acknowledgement of service or Defence or Counterclaim has been filed and served by or on behalf of the 4<sup>th</sup> Defendant;
- vi. That the Applicants are in a position to prove the amount of mesne profits they are entitled to;
- vii. That the granting of the orders herein will enable the court to proceed with the claim fairly and expeditiously;
- viii. That the Applicants estimate of the time required to deal with the assessment of mesne profits is one (1) hour.

[7] The application is supported by an affidavit sworn to by Kevin E. A. Page, an attorney from the firm of attorneys on record for the claimants which was filed on 22 January 2025. The 1<sup>st</sup> – 3<sup>rd</sup> defendants filed a document entitled “Defendants [sic] Objection to Application for Court Orders” on 24 January 2025.

## **Summary of Submissions**

### **For the claimants**

[8] Learned counsel Mr Garfield Haisley submitted that the 1<sup>st</sup> - 3<sup>rd</sup> defendants do not have a reasonable prospect of successfully defending the claim. Mr Haisley contended that the defendants have, by and large, disregarded the

legal effect of the fact that their deceased mother and the 1<sup>st</sup> and 2<sup>nd</sup> claimants were joint owners of the subject property. Mr Haisley submitted that the 1<sup>st</sup> - 3<sup>rd</sup> defendants have failed to recognize the right of survivorship and the fact that a joint tenancy cannot be severed by a Will. In this regard, Mr Haisley relied on the authorities of **Denniehal Myers v Byron Fletcher** [2023] JMISC Civ 123, **Simone Grant v Denise Forrest** [2023] JMISC Civ 225, **Sebol Limited et al v Ken Tomlinson et al** Claim No. HCV 2526/2004 and the 2<sup>nd</sup> edition of the text, **Elements of Land Law** by Kevin Gray.

[9] It was submitted that the court is entitled to enter summary judgment against the 1<sup>st</sup> - 3<sup>rd</sup> defendants as the statements of case disclose no reasonable prospect of success having regard to the legal consequences of the death of one joint tenant upon the joint tenancy. Alternatively, Mr Haisley submitted that the court is also entitled to wholly strike out the statements of case filed by the 1<sup>st</sup> - 3<sup>rd</sup> defendants on the basis that they disclose no reasonable grounds for defending the claim as they constitute an abuse of process and contain legal submissions, irrelevant material and inadmissible hearsay. It was submitted that the court is also entitled to enter a judgment in default of defence against the 4<sup>th</sup> defendant who has failed to file a defence to the claim.

[10] Mr Haisley also submitted that in the circumstances, the defendants should be ordered to vacate the subject premises either forthwith or by a date that the court deems reasonable, that an injunction be granted restraining the defendants from re-entering or continuing to trespass on the subject property. Counsel also urged the court to give directions for the trial of the issue of the quantum of mesne profits due to the Claimants.

#### **For the 1<sup>st</sup> – 3<sup>rd</sup> defendants**

[11] Mr Anthony Davy, the 2<sup>nd</sup> defendant, on behalf of himself as well as the 1<sup>st</sup> and 3<sup>rd</sup> defendants argued that the granting of the orders sought by the claimants will be injurious to the 1<sup>st</sup>- 3<sup>rd</sup> defendants. Mr Anthony Davy contended that there are at least four incidents of fraud/fraudulent actions attributable to the claimants that would render the current certificate of title

fraudulent. These were: (i) Equitable fraud committed by the 1<sup>st</sup> claimant when she breached the agreement made by all the deceased's children that they would be joint owners of the subject property. This was an agreement that was arrived at in 2019 after the death of the deceased (ii) The 1<sup>st</sup> claimant amended the original certificate of title registered at Volume 1090 Folio 153 from tenancy in common to joint tenancy. The original certificate could never have been a joint tenancy because the original tenants entered into an agreement in 1986 whereas the claimants were registered as proprietors in 1992. Mr Davy submitted that the claimants in being registered on title in 1992, failed to disclose key facts about the ownership which constituted fraud. For this latter submission, he relied on **Iris Anderson v Thomas Anderson & Registrar of Titles** [2014] JMSC. (iii) Despite the fact that the deceased's will was structured as a trust and had named the 2<sup>nd</sup> defendant as a beneficiary and trustee the 1<sup>st</sup> claimant failed to have the 2<sup>nd</sup> defendant registered on title. (iv) The 1<sup>st</sup> – 3<sup>rd</sup> defendants are in possession of video evidence recorded in August of 2016 that would demonstrate the intentions of the deceased with regard to the subject property and the fraudulent intentions of the claimants. Mr Davy submitted that the 1<sup>st</sup> – 3<sup>rd</sup> defendants should be given the opportunity to go to trial to adduce evidence including the witnesses to prove their counts of fraud and summary judgment would deny them this opportunity.

### **Discussion and Analysis**

- [12] The claimants' application seeks summary judgment as the first relief and as an alternative that the defendants' statement of case be struck out. The basis for seeking to strike out the defence as revealed by the grounds are that there are no reasonable grounds for defending the claim; that the claim is an abuse of process; and that the defence is likely to obstruct the just disposal of proceedings. Rule 15.2 of the Civil Procedure Rules provides that the court may grant summary judgment where there is no real prospect of successfully bringing or defending the claim. The summary judgment application requires that affidavit evidence must be filed in support of the

application and that if the party responding to the application wishes to rely on evidence, he must file affidavit evidence. There is no such stipulation where an application to strike out is concerned; and where the application to strike out is on the basis of no reasonable ground for defending the claim, there is authority from our Court of Appeal in **Gordon Stewart v John Issa** SCCA No 16/2009 (delivered 25 September 2009) that the court is only to examine the pleadings. However, at the heart of both reliefs is a challenge to the merits of the defence (whether on the basis that there is no real prospect of successfully defending the claim or that there are no reasonable grounds for defending the claim). The claimants have challenged the format of the defence filed. However, I am of the view that given that striking out is a remedy of last resort, to strike out a defence, especially one filed by a lay person on the sole basis that they have not complied with the formalities would not be in the interests of justice. I will therefore consider both aspects of the application within the broad context of the merits of the defence given that the defendants, who are not legally represented, filed no affidavit in opposition to the application but included or attached several documents in the documents they filed in defence of the claim.

- [13] To determine whether the defence has any real prospect of success or has reasonable grounds for defending the claim, it is necessary to consider the case of each parties.
- [14] The case of the claimants is comprised in their particulars of claim as well as the reply to the defence. In essence, the case of the claimant is to the effect that:
- (i) They are the current registered proprietors of the subject property registered at Volume 1558 Folio 215 of the Register Book of Titles.
  - (ii) The claimants and the 1<sup>st</sup> - 3<sup>rd</sup> defendants are the offsprings of the deceased Violet Buchanan.
  - (iii) The property was previously registered in certificate of title registered at Volume 1090 Folio 153 of the Register Book of Titles ("the cancelled title") in the names of the deceased and Howard George Lyons as joint tenants. The said title was surrendered and

cancelled on 15 December 2021 pursuant to section 79 of the Registration of Titles Act and the current title was issued to replace it.

- (iv) The deceased and the late Howard George Lyons transferred an interest in the said property to the claimants which was registered on 31 July 1992 and from that date all four of them owned the property together as joint tenants.
- (v) When the deceased executed her last Will and Testament on 8 December 2014 leaving the subject property to all her children, she did not have an interest in the said property capable of being willed and having regard to the deaths of the deceased and Howard George Lyons, the claimants are exclusively entitled to the said property pursuant to their rights of survivorship.
- (vi) Up until recently, the defendants occupied the said premises with the permission and consent of the claimants, but the said permission and consent was withdrawn by the claimants. Despite several demands by the claimants for the defendants to quit and deliver up possession of the premises including a formal demand letter from the claimants' attorneys-at-law dated 11 December 2023, which was delivered to the defendants on the said date, they have failed, neglected or refused to do so.

The claimants attached to their particulars of claim, a copy of certificate of title registered at Volume 1558 Folio 215, which was issued on 18 January 2022 and letter dated 11 December 2023.

- [15]** The 1<sup>st</sup> – 3<sup>rd</sup> defendants' case is contained in their (i) Defence; (ii) Particulars of Defence and (iii) Rebuttal of Claimants' Lawyers Reply to Defence and Particulars of Defence. Mr Haisley has impugned the filing of the documents listed at (ii) and (iii) as they are not recognised within the framework of the CPR. This notwithstanding, given that the defendants are lay persons and that the contents of the documents all overlap, I am of the view that to consider their contents will work no prejudice to the claimants. The primary contentions of the 1<sup>st</sup> – 3<sup>rd</sup> defendants as revealed by these documents are as follows:

- i. The deceased died on 1 July 2019 leaving her Will dated 8 December 2014 leaving all her real estate, both real and personal, to all her children. Her “penultimate Will” which she executed in November 2014 showed the deceased’s intention and desire to give the subject property to all her children in equal shares.
- ii. In the Will dated 8 December 2014, the 1<sup>st</sup> claimant and the 2<sup>nd</sup> defendant were named as trustees of the Will. The name of 1<sup>st</sup> claimant as trustee on the Will and the original certificate of title connects the original certificate of title to the Will. Therefore, the subject property is trust property as defined in section 2 of the Trust Act 2019.
- iii. The 2<sup>nd</sup> defendant as trustee and beneficiary must appear on the current certificate of title registered at Volume 1588 Folio 215 of the Register Book of Title pursuant to section 25 of the Wills Act along with the claimants. Consequently, the said certificate of title is null and void under section 178 of the Registration of Titles Act.
- iv. As joint executors and trustees, the 1<sup>st</sup> claimant and the 2<sup>nd</sup> defendant have fiduciary duties to act in the best interests of the trust and the beneficiaries. The 1<sup>st</sup> claimant failed in her responsibility to work with the 2<sup>nd</sup> defendant to distribute the legal ownership of the subject property in accordance with the Will.
- v. That the claimants’ claim is invalid because a trust exists under sections 4(1) and 4(2)(b) of the Trust Act 2019, and consequently, the registered owners and joint tenants of the subject property are all the beneficiaries

listed under section 4 of the deceased's Will dated 8 December 2014.

- vi. The claimants do not have exclusive rights of survivorship because section 4 of the Wills Act connects the original certificate of title to the Will dated 8 December 2014. Consequently, when the deceased and Howard Lyons added the claimants' names to the original certificate of title, they only transferred the beneficial interest on trust for the beneficiaries listed under section 4 of the Will.
- vii. That claimants falsely claim that maintenance is necessary to justify their desire to sell the property for personal financial gain. The 1<sup>st</sup> – 3<sup>rd</sup> defendants ensure that the property is properly maintained. Besides, the terms of the deceased's Will (Trust) did not impose any obligation on the beneficiaries as a condition for living in the property under Section 13(3) of the Trust Act 2019.
- viii. The claimants are making a dishonest claim for mesne profits, attorney's cost and interest because the certificate of title used to claim ownership of the subject property is null and void under section 25 of the Wills Act and section 178 of the Registration of Titles Act.

**[16]** The 1<sup>st</sup> – 3<sup>rd</sup> defendants attached a number of documents to their defence. These included certificate of title to the subject property registered at Volume 1558 Folio 215 of the Register Book of Titles; Last Will and Testament of Violet Buchanan dated 8 December 2014; certificate of title to the subject property previously registered at Volume 1090 Folio 153; Last Will and Testament of Violet Buchanan dated 4 November 2014; "Minute of Reading of Our mother's last Will dated 8 December 2014"; and photographs of the subject property.

- [17] It can be seen from the outline of the respective cases of the parties that the claimants' claim is that they were registered as joint tenants in 1992 along with the previous owners, who were their mother, the deceased, and Howard George Lyons.
- [18] The certificate of title for the subject property registered at Volume 1558 Folio 215 of the Register Book of Titles clearly shows that the claimants are the registered proprietors. The previous certificate of title, which was cancelled, shows that the claimants were registered on title along with the deceased and Howard George Lyons as joint tenants on 31 July 1992. The claimants having been registered on title in 1992, by virtue of sections 70 and 71 of the Registration of Titles Act, they had an indefeasible title in that their ownership of the property along with the deceased and Howard Lyons could not be challenged except for fraud (see **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley, Walters & RBTT Bank Jamaica Limited** [2010] JMCA Civ 46 per Harris JA at paragraph [30]). Harris JA in **Harley Corporation** relying on the case of **Waimiha Sawmilling Company Limited v Waione Timber Company Limited** [1926] AC 101 stated that the fraud that must be shown is actual fraud or dishonesty and not just constructive or equitable fraud.
- [19] In this case, the 1<sup>st</sup> – 3<sup>rd</sup> defendants have sought to challenge the claimants' title by asserting that the deceased's reason for having them added to the title was based on what was told to her by the National Land Agency and that it was with the intention that the claimants were to hold the beneficial interest in the property for the rest of the deceased's children. So, they are not imputing any dishonesty on the part of the claimants when the claimants were registered on title in 1992. Therefore, the circumstances surrounding the registration of the claimants on the certificate of title do not point to any fraudulent act on the part of the claimants. In addition, the information as to the intention of the deceased would be inadmissible hearsay evidence.
- [20] The 1<sup>st</sup> – 3<sup>rd</sup> defendants are also suggesting that there was some fraud on the part of the claimants when the previous certificate of title registered at

Volume 1090 Folio 153 was cancelled and the current one registered at Volume 1558 Folio 215 was issued in that the claimants were registered as joint tenants instead of tenants in common. However, section 79 of the Registration of Titles Act allows the Registrar of Titles to cancel a title “if in his opinion the number or nature of the entries on any certificate of title or the condition of the certificate of title or the duplicate or special certificate of title render it expedient so to do”. Therefore, the cancellation of the certificate of title and the issuance of a new one in and of itself does not amount to fraud. Also, when the title was cancelled, there was no change in ownership as the claimants were previously registered as joint tenants from 1992.

- [21]** In the “Defendants Objection to Application for Court Orders” the 1<sup>st</sup> – 3<sup>rd</sup> defendants stated that “there was the recent discovery of a video recorded by the 1<sup>st</sup> claimant in August 2016” showing that their mother refused to sign the property to the 1<sup>st</sup> claimant because all her children are joint property owners”. This, they argued, is a “pivotal piece of evidence”. This was not part of the pleadings contained in the defence and other documents by the defendants. Also, this video would have to meet certain evidentiary requirements imposed by the Evidence Act in order for it to be admitted into evidence at trial. Most importantly, I agree with Mr Haisley that this video purportedly recorded in 2016 can have no relevance or bearing on the title that was registered in the claimants’ name from as far back as 1992. The claimants having been registered as coproprietors in 1992, there was no necessity for the deceased to sign any further documents to “sign the property” to the 1<sup>st</sup> claimant.
- [22]** The 1<sup>st</sup> - 3<sup>rd</sup> defendants have therefore not put forward any evidence amounting to any specific act of dishonesty on the part of the claimants to amount to fraud so as to challenge the registration of the claimants as joint tenants in 1992.
- [23]** Therefore, the claimants having been registered on title as joint tenants in 1992, all the incidents or features of a joint tenancy applied. For the purpose

of this application, an important feature that applied is the right of survivorship also known as *jus accrescendi*. The authors of the 8<sup>th</sup> edition of the text **Megarry & Wade** at paragraph 13-003 explain the implications of the right of survivorship as follows:

**“13-003. On the death of one joint tenant, his interest in the land passes to the other joint tenants by the right of survivorship (jus accrescendi). This process continues until there is one survivor, who then holds the land as sole owner. A joint tenancy cannot pass under the will or intestacy of a joint tenant. In each case, the right of survivorship takes precedence.** It is often said therefore that each joint tenant holds nothing by himself and yet nothing depends upon whether or not he is the last joint tenant to survive. Whether he takes everything or nothing depends upon whether or not he is the last joint tenant to die.

...

**The right of survivorship does not mean that a joint tenant cannot dispose of his interest in the land independently. He has full power of alienation inter vivos, though if, for example, he conveys his interest, he destroys the joint tenancy by severance and turns his interest into a tenancy in common. But he must act in his lifetime, for a joint tenancy cannot be severed by will.”** (Empasis supplied)

- [24] Morrison JA (as he then was) in **Carol Lawrence et al v Andrea Mahfood** [2010] JMCA Civ 38, in citing the case of **Williams v Hensman** (1861) 70 ER 862, discussed the principles that govern the severance of joint tenancy. The learned judge of appeal stated: -

“[25] As Lord Denning MR observed in **Burgess v Rawnsley** (at page 146), “Nowadays everyone starts with the judgment of Page Wood V-C in **Williams v Hensman**”. In that case the principles governing the severance of a joint tenancy were laid down by the Vice-Chancellor as follows (at page 867):

“A joint-tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund- losing, of course, at the same time, his own right of survivorship. Secondly, a joint-tenancy may be severed by mutual agreement. And, in the third place, there may be severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all parties to the contest have been effected, as happened in the cases of **Wilson v Bell** and **Jackson v Jackson**.”

[26] The three methods of severing a joint tenancy are therefore: by alienation by one of the joint tenants of his share in the property, by mutual agreement between the joint tenants and by a course of dealing between them. In respect of Page

Wood V-C's second method (mutual agreement), **Burgess v Rawnsley** makes it clear that an oral agreement for the sale of his interest by one joint tenant to the other will suffice to effect a severance, even though that agreement may be unenforceable for the want of writing. But in order to effect a severance by this method, there must be an agreement, since, as Sir John Pennycuick observed (at page 447), "one could not ascribe to joint tenants an intention to sever merely because one offers to buy out the other for £X and the other makes a counter-offer of £Y". However, an agreement to sever need not be express, but can be inferred from a course of dealing (see per Browne LJ at page 444), which was Page Wood V-C's third method, although, as Sir John Pennycuick also observed (at page 447), this method is not "a mere sub-heading of the second, [but covers]...acts of the parties, including ... negotiations which, although not otherwise resulting in any agreement, indicate a common intention that the joint tenancy should be regarded as severed".

- [25] So, in order for the 1<sup>st</sup> – 3<sup>rd</sup> defendants to have a real prospect of successfully defending the claim or have reasonable grounds for defending the claim, they must show that they have a defence recognised in law, that is, that the joint tenancy was severed by the deceased doing some act while she was alive to sever the tenancy, or by all the co-owners agreeing to sever the tenancy or by some course of dealings between all the co-owners as between themselves which indicate that they regard the joint tenancy as being severed. In other words, in order to show that the claimants are not entitled to the entire property after the death of the deceased, the 1<sup>st</sup> – 3<sup>rd</sup> defendants would have to show that the joint tenancy was severed by one of the three methods while the deceased was alive resulting in the tenancy becoming a tenancy in common with each co-owner being free to dispose of her property by Will.

[26] The 1<sup>st</sup> – 3<sup>rd</sup> defendants sought to rely on the “penultimate will” that was executed by the deceased in November 2014 in which it was stated that “I GIVE BEQUEATH AND DEVISE my property situated at Lot 140 Woodmere Avenue, Inglewood, May Pen in the parish of Clarendon to my five children namely DENNIS, JUNIOR, ANTHONY, KARON and JOAN in equal shares”. They relied on this to argue that the subject property was included in the real property mentioned in the deceased’s Will executed 8 December 2014, in which it was stated “I GIVE AND DEVISE AND BEQUEATH all my estate both real and personal wheresoever situate to all my five children namely JOAN CAROLINE DAVY, KARON ALEXIS DAVY, DENNIS BARRINGTON DAVY, JUNIOR MICHAEL DAVY and ANTHONY MARIO DAVEY”.

[27] Firstly, I agree with Mr Haisley that the effect of the deceased executing the Will of December 2014 was that it revoked the previous will executed in November 2014 and the revoked Will could therefore not be used to interpret the valid Will. Secondly, as was stated by O Smith J (Ag) in **Simone Grant v Denise Forrest**, severance of the joint tenancy must take place during the lifetime of the joint tenant. Given that a Will takes effect after the death of a person, a Will cannot sever the joint tenancy. Therefore, neither of the two Wills would have been effective to sever the tenancy. So, neither the Wills Act or the Trusts Act is of any relevance to the principle of the right of survivorship and therefore neither is of any assistance to the 1<sup>st</sup>-3<sup>rd</sup> defendants.

[28] The 1<sup>st</sup> – 3<sup>rd</sup> defendants also pleaded that an agreement was made after the death of Violet Buchanan that the property would be owned by all her children. This is supported by a document which purports to be a summary of a meeting in which the agreement was reached. The claimants did not respond to this in their reply, but even if this were true, in any event, this having taken place after the death of the deceased, it could not operate to sever the joint tenancy.

- [29] This situation is starkly difference from the situation before the court in **Sunshine Dorothy Thomas and Ors v Beverley Davis** [2015] JMCA Civ 22, a case relied on by Smith J in **Simone Grant**, where the testator had signed the document severing the joint tenancy as well as his Last Will and Testament. This was done in circumstances where the instrument evidencing the intention to sever the joint tenancy (and the entry of the transfer in the Register Book of Titles) formed a part of the evidence that was before the court. The Court of Appeal found that the entry of the transfer of the property to the parties as tenants-in-common was evidence of the severance of the joint tenancy was valid and effectual. Importantly, the Court of Appeal found that because of this, the rule of the right of survivorship no longer subsisted at the time of the testator's death and consequently, legally he was at liberty to dispose of his interest in the property as he desired.
- [30] Therefore, in the instant case, no Will of the deceased could affect the operation of the joint tenancy which came into effect from the registration in 1992 and the operation of the principle of survivorship upon the death of the deceased in 2019.
- [31] The result is that after the death of the deceased the claimants became the only proprietors of the subject property by virtue of their registration on the title and are entitled to possession of the property to the exclusion of the whole world. As a consequence of this, they having withdrawn their consent or permission to the defendants to reside at the property and requiring that the defendants leave the premises on or before 31 January 2024 (see letter dated 11 December 2023), the issue which now arises is whether they are entitled to mesne profits.
- [32] The law in relation to the circumstances in which mesne profits may be ordered is explained by the learned authors of **Halsbury's Law** (5<sup>th</sup> edn. para 502) in the context of a landlord and tenant relationship. They state as follows:
- The landlord may recover in a claim for mesne profits the damages which he has suffered through being out of possession of the land or, if he can prove no actual damage

caused to him by the defendant's trespass, the landlord may recover as mesne profits the value of the premises to the defendant for the period of the defendant's wrongful occupation. In most cases, the rent paid under any expired tenancy is strong evidence as to the open market value. Mesne profits, being a type of damages for trespass, may be recovered in respect of the defendant's continued occupation only after the expiry of his legal right to occupy the premises

**[33]** Even though this is not a case of a landlord and tenant relationship, the principles apply equally. So, what may be gleaned from the above is that a person who is rightfully entitled to possession of premises is entitled to mesne profits from a person who is in wrongful occupation. The 1<sup>st</sup> – 3<sup>rd</sup> defendants have not disputed that they are still occupying the premises. In those circumstances, the claimants having revoked their permission effective 31 January 2024 are entitled to mesne profits for the period commencing 1 February 2024 to the date when the defendants vacate the property.

### **Conclusion**

**[34]** Having examined the statement of case of the 1<sup>st</sup> – 3<sup>rd</sup> defendants, I have come to the view that the claim being one for recovery possession that is grounded on the principle of survivorship in circumstances of a joint tenancy, the 1<sup>st</sup> to 3<sup>rd</sup> defendants though they have tried valiantly to defend the claim, have not put forward a defence that would satisfy the law that they have reasonable grounds for defending the claim or have a real prospect of successfully defending the claim. This is so as they have not put forward any pleadings or material that would satisfy the court that the operation of the principle of survivorship has been defeated by the severance of the joint tenancy between the deceased and the claimants while the deceased was alive. In light of this, although it may result in inconvenience and dislocation to the 1<sup>st</sup> – 3<sup>rd</sup> defendants, the law is on the side of the claimants and

therefore to allow the claim to go to trial would be a waste of the court's resource. It is therefore appropriate for summary judgment to be entered.

**[35]** The 4<sup>th</sup> defendant having failed to file a defence, it is also appropriate to grant default judgment against him.

**[36]** I therefore make the following orders:

- (i) Summary judgment is entered in favour of the claimants against the 1<sup>st</sup> – 3<sup>rd</sup> defendants.
- (ii) Judgment in default of defence is granted against the 4<sup>th</sup> defendant.
- (iii) The defendants are to vacate and deliver up possession of the property located at Lot 140 Woodmere Avenue, Inglewood, May Pen in the parish of Clarendon registered at Volume 1558 Folio 215 of the Register Book of Titles within 60 days of the date of this order.
- (iv) The matter is to proceed to assessment of damages for mesne profits to be assessed.
- (v) Costs of the application to the claimants to be taxed if not agreed.
- (vi) Leave to appeal is refused.