



[2026] JMSC Civ 62

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

**FAMILY DIVISION**

**CLAIM NO. SU2024FD03744**

**IN THE MATTER of Section 13 (2) of  
the Property (Rights of Spouses) Act**

<b>BETWEEN</b>	<b>JACQUELINE DUNBAR</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ANTHONY DUNBAR</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Ewan Thompson instructed by Ewan Thompson & Associates for the  
Claimant**

**Ms. Monique McLeod instructed by Rogers & Associates for the Defendant.**

**Dates Heard: 9<sup>th</sup> day of March 2026 and 18<sup>th</sup> day of May 2026.**

**Division of Matrimonial Property – Whether the Equal Share Rule should be  
applied – Property Rights of Spouses Act**

**A. MARTIN – SWABY J**

**[1]** The Claimant and the Defendant were married on the 6<sup>th</sup> day of August 1988. Thirty-five (35) years later, the marriage was dissolved on the 15<sup>th</sup> day of November 2023.

**[2]** The Claimant, Jacqueline Dunbar filed a Fixed Date Claim Form on the 08<sup>th</sup> day of 2024 seeking the following reliefs;

That she is entitled to eighty percent (80%) share and interest in the property situated at Lot 132, Moorlands, Mandeville in the Parish of Manchester and registered at Volume 1412 Folio 233 of the Register Book of Titles, which contains the family home.

An order that the equal share rule be varied pursuant to section 7 of the Property (Rights of Spouses) Act.

*An order that the Defendant holds his one- third share and interest in the property, part of Paradise in the Parish of Saint Elizabeth which is registered at Volume 1575 Folio 78 of the Register Book of Titles, on trust for the Claimant.*

*An order that the Defendant do transfer his registered interest in the property at Paradise in the parish of Saint Elizabeth which is registered at Volume 1575 Folio 78 of the Register Book of Titles to the Claimant within sixty (60) days of the Order of this Court.*

That the property registered at Volume 1412 Folio 233 of the Register Book of Titles which contains the family home be valued by a reputable Valuer within sixty (60) days of the Order of this Court and the cost of the valuation shall be borne equally by the parties.

That the Claimant shall have the option to purchase the Defendant's share in the property registered at Volume 1412 Folio 233 of the Register Book of Titles, within sixty 60 days of obtaining the Valuation Report, failing which the said property shall be sold on the open market and the net proceeds of sale be shared according to the parties respective interest.

That the Registrar of the Supreme Court shall be permitted to sign all documents necessary to give effect to the Orders of this Court in the event any of the parties shall fail to sign same.

Such further and other relief as this Honourable Court deems just.

Costs and Attorneys-at-Law costs.

**[3]** Ms. Dunbar filed two Affidavits in support of her claim – November 08, 2024, and April 15, 2025. Both Affidavits were received in evidence as her evidence in chief. Mr. Dunbar also filed two Affidavits in Response to this claim – February 19, 2025, and June 12, 2025. These Affidavits were also admitted as his evidence in chief.

**[4]** The issues in this matter are quite narrow. Firstly, as it concerns orders 3 and 4 which touch and concern a property in Paradise, Saint Elizabeth, the Defendant

agrees that he holds that 1/3 interest on trust for the Claimant. The real dispute in this claim surrounds the division of the family home. The Claimant asserts that she is entitled to 80% interest and that the equal share rule should be varied, whereas the Defendant asserts that he is entitled to 50% and the equal share rule should be applied.

**[5]** There are several matters which are not in dispute;

- I. (Fifteen years after they entered marriage), in the year 2003, both parties purchased a lot of land in Moorland estate with a view to erecting their family home. The Claimant paid \$1,000,000.00 towards the acquisition. They both secured loans from NHT to cover the balance of \$500,000.00 for the purchase price of the land. Each party *also* obtained a loan of \$365,632.05 towards the purchase of the lot.
- II. In the year 2008, the parties subsequently obtained construction loans from the National Housing Trust. The Claimant secured \$3,255,000.00 and the Defendant secured \$2,415,000.00.
- III. Both parties also secured a further loan of \$2,651,321.91 from the National Housing Trust in April 2019. Both parties agree that this loan was secured to erect a roof on the top floor of the premises.
- IV. It is agreed that Mr. Dunbar contributed towards the construction of the home in terms of manual labour and the overall management of the project.
- V. It is also agreed that he would cut the lawn and transport the children to and from school. However, the consistency of him doing the latter is in dispute.
- VI. It is not in dispute that the Claimant played the role as the breadwinner within the family. As a pharmacist, her earning was much greater and more consistent than the Defendant.

## **Matters in Dispute**

### Contributions Towards the Defendant's NHT Loans -

- [6] The Claimant's evidence is that in the year **2011**, the Defendant fell into arrears in respect of the loans he had with the NHT and had ceased making payments at the NHT. She asserts that since September 2011, she has been the one paying the Defendant's house lot and construction loans on a monthly basis. She did this to prevent the home being auctioned by the NHT. Her evidence is that all the payments were made by her in the name of Anthony Dunbar. Up to January, 2014, she had paid a total of \$284,200.00 to address the arrears owed by the Defendant to the NHT. Her evidence is that the NHT kept calling in respect of the arrears. Consequently, she sold her 1991 Toyota Noah motor vehicle and used the proceeds of the sale to make consistent payments towards the mortgage. She stated that she would give the Defendant the precise amount for the monthly payments and after making such payments, he had to show her the receipt as proof of payment. On the Defendant's own evidence he admits that whenever he made the payments towards the mortgage, he showed the Claimant the receipts to demonstrate that he paid the mortgage.
- [7] Her evidence is that by June 2022, she had completed payments for the house lot loan for the Defendant and in October 2024 she had completed paying his construction loan.
- [8] The Defendant's evidence is that he started experiencing financial difficulties in the year 2011 as his *"bus began having significant issues and there was a downturn in profit"*. Consequently, he was unable to pay the mortgage consistently. During that time, the Claimant made some of the mortgage payments on his behalf and he paid when he was able to do so. He stated that he was able to pay the mortgage sometimes. Further, that in 2018, he sold his bus and paid the entire amount of \$200,000.00 on the mortgage. Further, that he worked at Holsum bakery for fourteen months between 2016 and 2018 and paid

the mortgage each month of his employment. The Claimant challenges that the Defendant made consistent payments whilst he was employed to Holsum bakery. His evidence is further that he paid the final sum on both the construction and lot loans between 2023 and 2024 and exhibited receipts in proof thereof. In cross examination, the Claimant was confronted with these two receipts evidencing payment on these loans in 2023 and 2024. She accepted that she was not the one who made these payments.

**[9]** In this matter, the Defendant presented several receipts in support of the payments he made towards his NHT loans.

**[10]** Unfortunately, the evidence in this matter weighs heavily against my placing much reliance on the several receipts produced by Mr. Dunbar (except the two receipts for 2023 and 2024 which the evidence discloses were not payments made by the Claimant) for the following reasons,

- The evidence is that regardless of the party making the payment, the receipt generated from the NHT only reflects the account holder's name.
- Secondly, the evidence is that the parties kept a box for all receipts regardless of who made the actual payment. The result of this is that it would be difficult to differentiate who made the actual payment.
- Additionally, the Claimant's evidence which is not denied by the Defendant, is that she would also give the Defendant the money to pay on his account and he would then show her the receipt as proof of payment. Therefore, even if he physically made the payment, it does not mean that the monies which were used generated from his income as opposed to hers.

#### Other Contributions – Maintenance & household

**[11]** The Claimant asserts that the Defendant was responsible for paying the maintenance fee for the property at Moorlands estate. The arrangement was that

he would cover this cost whilst the Claimant paid the annual property taxes. In or around February, 2016, she was advised by the Property Management that they were in arrears and that the outstanding amount was \$173,800.00. She covered the arrears in June, 2016 which by then amounted to \$192,400.00. Since that date, she has been the person paying the monthly maintenance.

**[12]** The Defendant accepted that due to his financial difficulties he was unable to pay the maintenance each month. However, he paid it whenever he could. He disagreed that the Claimant has paid exclusively since 2016.

**[13]** The Claimant asserts that she pays most of the household bills and the full cost of education for the three children as well as transportation and medical expenses for them. The Defendant denies this. His evidence is that despite not having a steady income for several years, he paid utility bills for their home most months and brought the three children to school every day and picked them up when he could or made arrangements for them to be taken home. He states that he paid the light bill in its entirety until 2021 when the parties separated and that he has been an active father in his children's life. The Claimant denies that he paid the light bill. He also states that he gave the children lunch money for most of the years through their primary education and even during their high school years. The Claimant denies this stating that she gave them lunch money. He states that he would cut the yard, paint at his own expense. Particularly, he painted the interior of the property up until the year 2023. He also ensures that the electrical and plumbing systems were working properly. The Claimant does not deny that he painted the house, but she states that she bought the paint.

**[14]** In cross examination, the Claimant asserted that much of the cost in raising the children were borne by her. She believed that Mr. Dunbar, though being a present father, could have done more for the children. She agreed that the Defendant did contribute in terms of labour in respect of the building of the property. She agreed that he was not paid for his labour and that no one has ever attached a dollar figure to the labour he expended on the property. She

agreed that the labour he did served to save expenses in the construction of the property. She agreed that she earned more money than the Defendant during marriage. She accepted that neither of them kept an account of the expenditure of the other party during the marriage. She accepted that she does not have receipts which would demonstrate her spending approximately 10 million on the property. She agreed that the Defendant did make out of pocket contributions towards the household. This include utility bills. She disagreed that he contributed towards the children's education but agreed that he transported them to school. However, she qualified that this was only done sometimes. She also agreed that he contributed towards the upkeep of the property. She indicated that he would cut the lawn. However, she stated that she bought the lawn mower and the oil to put in it. The Claimant explained that her concern was the lack of effort on the part of the Defendant to seize employment opportunities which would have better enabled him to contribute towards the family. She explained that considering this, she believes it would be unfair in the circumstances to award him a 50% interest in the property. She indicated that she is disappointed in the husband he turned out to be.

**[15]** The Defendant was also cross examined. His evidence on cross examination is that when the lot of land was purchased in Mooreland, the Claimant paid the down payment of \$500,000.00 and the 2<sup>nd</sup> payment of \$500,000.00. He states that she was the one who paid as she had the money to make the payment. He agreed that the balance of the payment was obtained through loans from the NHT. He agreed that his loan from the NHT may have fallen into arrears from the year 2009 due to difficulties he was facing regarding his earnings. Further, that these difficulties escalated in the year 2011. He eventually became aware that his wife started making his payments. He insisted that whenever he had funds, he would make the payment on the mortgage, and he would also show her the receipt as proof of payment. He accepted that his wife also obtained a third loan from the NHT which was specifically to construct the roof. He accepted that he did not service the loan as he was unemployed. He agreed that when he fell on

hard times, his wife would pay the mortgage on his behalf and that this was discussed between them. He accepted that several receipts regarding his loans indicated that the payments were for arrears. He agreed that his wife took over the payments for the maintenance of the property as also the payment of land taxes.

**[16]** He accepted that his wife paid for their daughter Chantel's education. However, he insisted that they both paid for the other children's education. He states that regarding their child Jessica, the Claimant had paid her university fees initially but now Jessica pays her own fees whilst attending the University of Technology. He accepted that both loans which he had taken from NHT fell into arrears very early and that his wife had taken over the payments when he fell into arrears. He insisted that the receipts which he had presented to Court were paid by him which explains why they were in his possession and was able to furnish them.

**[17]** There is another aspect of the evidence which is very important. The Claimant changed her professional path in the early 1990's. On or about that time, she left the teaching profession to pursue a career path in pharmacology. At this time, the parties were married and had a young child. The Defendant asserts that he went overseas to do menial jobs so that he could assist the Claimant financially whilst she studied and to care for the expenses at home. The Claimant denies this. She says she took loans and sold sweets on Campus at the University of Technology and relied heavily on the financial contributions from family members. She does not deny that the Defendant did in fact go overseas to work but suggests that he did not help her financially. He states that he even continued to go overseas after the Claimant completed her studies so as to assist the family financially.

**Issues:**

- i. Whether the equal share rule should be varied?

- ii. If so, what variation would produce a just and reasonable result in the division of the family home?

**The Law -**

[18] I bear in mind that the Property Rights of Spouses Act sets out a statutory framework which governs the division of matrimonial property. In this matter, the most relevant provisions are sections 6,7, 12, 13 and 14 of the Statute. I have considered them all very carefully.

[19] It is not in dispute that the property falls within the definition of the “family home” as defined in section 2 of the Statute. The issue surrounds whether the equal share rule as pronounced in section 6 ought to be applied or whether it ought to be varied in accordance with section 7 of the statute. For ease of reference, I will reproduce both sections here.

[20] Section 6 (1) and (2) states as follows;

*“Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one- half share of the family home -*

*On the grant of a decree of dissolution of marriage or the termination of cohabitation;*

*On the grant of a decree of nullity of marriage;*

*Where a husband and wife have separated and there is no likelihood of reconciliation.*

*Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one – half share of the family home.”*

[21] By virtue of section 6, the Claimant Mrs. Dunbar is entitled to a one- half share in the matrimonial home. This is the presumptive position. However, Mrs. Dunbar is seeking an 80% share of the property. On the other hand, the Defendant is declaring an entitlement to a 50% share in the property. He is desirous of the application of the presumption which revolves in his favour.

[22] In addressing the competing positions, I bear in mind that section 7 of the statute does allow for a variation of the equal share rule. Its states as follows;

*“ Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one- half of the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following -*

*That the family home was inherited by one spouse;*

*That the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;*

*That the marriage is of short duration....”*

[23] I consider that none of the factors listed in section 7 are featured in the case at bar. This is a marriage of lengthy duration. Further, the property was acquired during the marriage.

[24] That having been said, I also bear in mind the words of Laing J (as he then was) in the case of **Kelly- Lasisi v Lasisi** [2016] JMSC Civ 25, at para [20] where he stated as follows;

*“The onus of disproving the applicability of the section 6 presumption is on the person who alleges that it would be unreasonable or unjust to apply it.”*

[25] Therefore, in the case at bar, the onus is placed on the Claimant Mrs. Dunbar to displace the presumption. Consequently, it is not for the Defendant to prove that he is entitled to a 50% share but rather for the Claimant to displace the presumption which enures to the Defendant's benefit.

[26] The issue for the Court to determine is whether based on the evidence in this case, the court is of the opinion that to apply the equal share rule will produce an unreasonable or unjust result.

[27] The Court has sought to carefully consider the recent decision of **Llewelyn Bailey v Colquhoun Bailey** [2024] JMCA 44. The main principles from the decision are as follows;

- The plain language in section 7(1) empowers the Court to consider any factor it deems relevant in determining whether preserving the equal share rule would be unreasonable or unjust. This includes, but is not limited to, the three circumstances identified in section 7(1) of the Act. Therefore, one of the factors in section 7(1) does not need to exist to vary the equal share rule. Once the court decides that a relevant factor exists in the “elements of the relationship between the spouses”, such as “the level of contribution by each party to the matrimonial home, their respective ages, behaviour, and other property holdings”, which would make it unreasonable or unjust for the equal share rule to be preserved, it may make adjustments to the equal share rule and determine the legal and beneficial interests of each spouse in the matrimonial home.”
- **Bailey v Bailey** followed Edwards JA in **Crooks – Collie v Collie**, where the learned Judge noted that although “contribution” is not listed as a factor (to be considered in section 7(1), a Judge can consider it without referring to section 14 when apportioning the interest in the family home [see paragraphs [74 ]– [78] of the judgment) and paragraph [34] Brooks JA in **Stewart v Stewart**. Harris JA states that a view could be taken that the deliberate omission of contribution ( as a factor under section 7(1) was intended to signify how little weight it should carry in redistributing the interest in the family home. It is evident that section 7(1) does not mandate that the Court compare the parties’ contributions and allocate a share to each in proportion to their contributions. The court should also be reluctant to undergo a detailed examination of their respective contributions.

- In **Bailey v Bailey**, the respective contributions were important as the property in question described as the Plymouth property was not purchased in contemplation of marriage, neither was it jointly purchased after marriage. It was wholly owned by Mrs. Colquhoun Bailey prior to the parties' marriage which was also of short duration. Therefore, two of the listed factors in section 7(1) were present in the case. In **Bailey v Bailey**, the learned Judge it was noted also considered the non-financial contributions and had regard to the contributions to the family's welfare and the household expenses.
- Application of PROSA relates to the value of the interests held in the family home at the date on which the party's terminated cohabitation and effectively separated. (section 12 PROSA). Harris JA indicated that they should disregard the evidence as to contributions made after their separation on 5 March 2014. The parties' entitlement at separation cannot be influenced by contributions made after the separation, as was plainly in **Stewart v Stewart** [at paras [67] to [73)].

#### **Findings of Fact & Application of the Law -**

**[28]** In considering the evidence in this matter and the above decisions, I accept and find proven on a balance of probabilities that since the year 2011, the Claimant has functioned as the proverbial breadwinner in the family. Due to the Defendant's constraints, the Claimant assumed full responsibility for the mortgage loans attached to the property. The Claimant also assumed much of the financial responsibilities within the home.

**[29]** However, I also find that the Defendant assisted where he was able to. The evidence does not reveal that the Defendant withheld financial support but rather that he was unable to do so.

**[30]** I must approach this case bearing in mind that when the Property Rights of Spouses Act entered in to force on the 01<sup>st</sup> day of April, 2006, exactly 20 years

prior to this judgment, the main concern being addressed by our legislators was the imbalance which existed in several spousal relationships. It was believed that several women were not on equal footing in respect of the monetary contributions made in the family and were potentially vulnerable when it came to the division of matrimonial property, particularly the family home. Whether this was so or not, a view could be taken that the statute sought to protect "*the financially weaker of the two*". Today, and in many instances, the roles are often reversed. Several women are now faced with similar circumstances to Mrs. Dunbar. They are increasingly becoming the breadwinners in the home similar to Mrs. Dunbar who has functioned in this role for several years in the marriage. However, I ask myself whether it would offend the true spirit behind the PROSA were I to accord the same protection to the male spouse as would have been accorded to the female spouse if she had not been the breadwinner.

**[31]** I am persuaded that the PROSA was written in the same way as statutes are usually crafted and intended. It is gender neutral. Therefore, the male spouse should not be disenfranchised simply because of his inability to make a meaningful financial contribution. In this case, Mr. Dunbar should not be disenfranchised because his minibus business failed rendering him incapable of meeting Mrs. Dunbar the proverbial "halfway". What he did was he mowed the lawn of their 1-acre property and transported their children to and from school. The evidence is that he painted the house and did other forms of manual labour around the house. That was his way of contributing to the home and reducing the expenses of the family.

**[32]** For these reasons, he deserves to benefit from the presumption which arises in the statute. I do not believe that the evidence which Mrs. Dunbar has placed before me displaces the presumption in circumstances where this is quite a lengthy marriage and one in which the parties obtained this property and built their family home thereon.

**[33]** I also did not find that Mr. Dunbar was dishonest and not forthcoming with this Court. I believe that both parties were quite credible and were forthright. The evidence does not disclose that Mr. Dunbar has any other property and he has surrendered his legal interest in the Paradise, Saint Elizabeth property. I bear in mind that when the family home was acquired, he took out loans and serviced those loans consistently prior to the downturn in his economic circumstances.

**[34]** Additionally, of extreme significance in this matter is the evidence concerning Mrs. Dunbar transition from teaching to becoming a pharmacist. I accept and must attach great weight to the fact that during those years, Mr. Dunbar went overseas and worked doing menial jobs. I accept that he did this to assist the family through holding things together financially. This allowed Mrs. Dunbar to pursue her dreams and aspirations. This is the same as the wife who stays home caring for the children to allow her husband to climb the proverbial ladder of success.

**[35]** How could I then, in fairness to Mr. Dunbar, reduce his interest in the property due to the later turbulent years when he was unable to contribute meaningfully towards the family home. The evidence suggests that it is this transition to becoming a pharmacist which allowed Mrs. Dunbar to enhance her financial capabilities which ultimately assisted the family. For these reasons, I place little significance on the relative contributions of the parties to the family home and apply the full weight of the statutory presumption in the division of this property.

Consequently, the following orders are made;

1. By consent and with the agreement of the parties;
  - i. The Defendant holds his one- third share and interest in the property, part of Paradise in the parish of Saint Elizabeth which is registered at Volume 1575 Folio 78 of the Register Book of Titles, on trust for the Claimant.

- ii. The Defendant is to transfer his registered interest in the property at Paradise in the parish of Saint Elizabeth which is registered at Volume 1575 Folio 78 of the Register Book of Titles to the Claimant within sixty (60) days of the Order of this Court.
2. The Claimant Jacqueline Dunbar and the Defendant Anthony Dunbar are each entitled to fifty percent 50% share and interest in the property situated at Lot 132, Moorlands, Mandeville in the parish of Manchester and registered at Volume 1412 Folio 233 of the Register Book of Titles, which contains the family home.
3. The property registered at Volume 412 Folio 233 of the Register Book of Titles which contains the family home is to be valued by a Reputable Valuer within sixty (60) days of the Order of this Court and the cost of valuation shall be borne equally by the parties.
4. The Claimant shall have the option to purchase the Defendant's share in the property registered at Volume 1412 Folio 233 of the Register Book of Titles, within sixty (60) days of obtaining the Valuation Report, failing which the said property shall be sold on the open market and the net proceeds of sale be shared according to the parties respective interest.
5. The Registrar of the Supreme Court shall be permitted to sign all documents necessary to give effect to the Orders of this Court should any party fail to sign when required to do so, provided that 30 days has elapsed since a written request has been made for such party to sign the document/s.
6. Each party is to bear their own costs.

7. Claimant's Attorney-at-Law is to prepare, file and serve this order.