



[2020] JMSC Civ 58

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 02484

BETWEEN	SUZIE-ANN DUNKLEY	CLAIMANT
AND	ERROL CLARKE	DEFENDANT

IN CHAMBERS

Tia Tomlinson and Fabian Campbell instructed by Frances J. Barnes for the Claimant
Kayann Balli for the Defendant

Heard: March 11, 2020 and April 3, 2020

Application for Declaration of Ownership – Matrimonial Property – Property other than the family home – Contribution –Section 14 PROSA

T. HUTCHINSON, J (AG)

[1] The application before me is a Fixed Date Claim Form which was filed on the 7th of May 2015 in which the Claimant sought a total of 10 orders. The majority of these orders had previously been dealt with by way of a Consent Order entered on the 11th of May 2017 and only three orders remain for decision. These are;

1. A declaration that the Claimant is the sole owner of a 2007 Green Toyota Hiace motor vehicle registration CH3720, Chassis No. KDH2005002008 and Engine No 2KD1305416.
2. An order that the Defendant deliver up the said 2007Hiace motor vehicle registered CH3720 to the Claimant forthwith together with all documents to the said motor vehicle and the Certificate of Title with the transfer duly

endorsed so as to effect a proper transfer of the said motor vehicle to the Claimant.

3. That the Defendant is to sign any and all documents necessary to facilitate the necessary processing of the transfer of the said vehicle to the Claimant solely.

CLAIMANT'S CASE

- [2] The Claimant provided a total of 3 affidavits in this matter in which she outlined her case and the basis of her claim to this vehicle. In her account she stated that she had been involved in a common law relationship with the Defendant for fifteen years during which they had two children. She outlined that they had also acquired a dwelling house in Portmore, St Catherine which was already disposed of by the Consent Order referred to above.
- [3] She stated that in August 2013 her father passed away leaving her as the beneficiary of his estate from which she received the sum of \$4,078,396.86. She outlined that at the time that this sum was due for payment to her she did not possess a savings account and she received the consent of the Defendant to have this sum deposited to his account at NCB. She later sent a letter to her attorney directing that the funds be deposited to this account.
- [4] The money having been deposited to the account, the Claimant stated that she had a conversation with the Defendant during which she indicated that she wished to purchase a vehicle to assist in her work and pursuant to this discussion funds were withdrawn from the account which were used to purchase, license and insure the vehicle. She recalled that the purchase price was \$1.4 million and she later stated that the total cost to deal with the vehicle was \$1.6 million.
- [5] She outlined that having purchased the vehicle she subsequently became aware that the Defendant had the transfer effected in his name only and the situation was the same in respect of the insurance. She denied that the vehicle had been

purchased by the Defendant from savings held at the Police Co-operative Credit Union combined with a partner draw. She also insisted that it was not true that the Defendant had such an account and she also denied that he had ever been involved in a partner. She stated that the Defendant used to sell for his sister using her (the sister's) vehicle and she, the Claimant, began assisting him in this enterprise when she lost her job in 2009.

- [6] She stated that although the Defendant had been in business with his sister, this relationship subsequently ended and it was just the two of them. She outlined that it was through her inheritance that the Defendant was able to travel to China as she provided over \$2 million to fund his trip and for spending money. She noted that she also covered the funeral expenses for her father from this money and these expenses along with the purchase of the motor vehicle ended up depleting the account.
- [7] She averred that the receipt for the vehicle, which bore both their names, had been retained by the Defendant and she denied destroying same. She also outlined that the papers for the vehicle had also been retained by him even though he had acknowledged that the vehicle was hers. She denied that she had ever held a debit card for the account and stated that there was only one card for the account which was held by the Defendant and she had access to it. She stated that a card would not have been provided to her as she was not named on the account.
- [8] In relation to the monies withdrawn for the purchase of the vehicle, to fund the trip to China and to finance her father's funeral expenses she outlined that the Defendant would have been present as the account holder in order for these withdrawals to be done.
- [9] She was cross examined and denied that the Defendant and his sister had been in business while she was working at Unipet. She later admitted that they had been but stated it was hard to just say yes and wanted to clarify. She denied that she had only gone into business with the Defendant after her father had died and

insisted that she had been involved in the business from 2009 along with the Defendant.

- [10]** She acknowledged that the vehicle initially being used in the business was registered in the Defendant's name but was in fact owned by his sister. She agreed that this vehicle was sold and the full value given to the Defendant's sister representing her investment in the business. She also agreed that the Defendant's investment while in business with his sister was his labour.
- [11]** She was shown the bank records for the Defendant's NCB account and acknowledged that on the 17th of September 2013 the sum of over \$4 million was deposited to the account. She also acknowledged that \$2 million was withdrawn that same day. She denied that this money was used to purchase the US dollars for the Defendant's trip to China and indicated that it was from this sum that the vehicle was purchased and insured and the balance left over was placed with the \$1.2 million dollars withdrawn the following day to purchase the US and finance the Defendant's trip to China.
- [12]** It was suggested to her that the \$2 million dollars was used to purchase the US dollars and the \$1.2 million to pay for his hotel and airfare and she denied this. It was suggested to her that the vehicle was purchased on the 23rd of September 2013 and she agreed it was September 2013 but denied it was on the 23rd.
- [13]** It was suggested to her that the sum of \$478,000 had been used to finance her father's funeral and she denied that all of it was used for that purpose. It was suggested to her that in her affidavits she had made mention of \$1.4 million being withdrawn to purchase the vehicle and later \$1.6 million withdrawn to cover purchase, insurance and registration but no such withdrawals appeared on the bank records. She accepted that it didn't and explained that this was because that wasn't how it was withdrawn, the sum of \$2 million was taken and the purchase and other payments were made from same.

- [14] She was shown a receipt dated the 23rd of September 2013 and it was suggested to her that this was the receipt provided by the vendor. She denied that it was. She stated that the receipt given would have had both their names. She then stated that the receipt produced probably had the Defendant's name only as he was the one who gave the money to the vendor.
- [15] She was asked if she had access to the account between the 25th September and 18th of October 2013 while the Defendant was in China and she agreed that she did by way of debit card and that the withdrawals in that period were done by her in association with household expenses.
- [16] In response to questions from the Court she stated that the \$2 million had been withdrawn from the account by her and the defendant. She outlined that the money having been withdrawn they met up with the vendor by Pastor Blair's Church in Portmore where the payment was made. She said they then went with the vendor to have the transfer effected after which the insurance and registration were effected through funds provided by her. In relation to the \$1.2 million she said this along with funds left over was used to purchase the US dollars for the trip to China.

DEFENDANT'S CASE

- [17] In outlining his defence, Mr Clarke provided two affidavits which stood as his evidence in chief. He acknowledged that he and the Claimant had been involved in a relationship during which they had two children. He also accepted that during this relationship they had acquired a dwelling house in Portmore.
- [18] He acknowledged that the Claimant had received a benefit under her father's estate and that he had agreed for her to use his account in order to receive this payment. He stated that part of their agreement was that she would get a debit card for this account which would be hers exclusively. He stated that he was aware that money went into the account but he was not aware of how much neither did he withdraw any of it. He stated that the Claimant had exclusive use of the account and he did not use that account at all.

- [19]** He denied that he had ever had a conversation with the Claimant about purchasing a vehicle whether together or exclusively for her. He said he was aware that his friend had a vehicle for sale and saw where he could use same to transport his goods and that was how he decided to make this purchase.
- [20]** He outlined that he had always been a higgler engaged in selling shoes and when the Claimant lost her job in 2008 she stopped working and he was the one who supported her. He also denied that she had ever helped him in the business. He stated that he used to save his money through his sister who worked at the Police Co-operative Credit Union and he was also involved in two partners.
- [21]** He stated that when he decided to purchase the vehicle he received his partner draw of \$700,000 which he combined with his savings and this was what he used to pay the full purchase price of \$1.4 million. He also denied that any money was used from the Claimant's inheritance to purchase the vehicle.
- [22]** In relation to the NCB account, Mr Clarke stated that any money that came from it the Claimant would have been the one who would have authorised it and she would have known exactly what it was for. He also pointed out that the vehicle was a 2005 model and not 2007. He stated that this vehicle was purchased in 2014 but this was struck out on his affidavit and changed to 2013 but not initialled.
- [23]** Mr Clarke stated that he did not know what the Claimant did with the money deposited to his account but asserted that she used to party hard and that is what 'eat out the money'. He then stated that he knew that some of the money was used in connection with her father's funeral expenses as well as to clear arrears on the house which had backed up. He then went on to state that he also knew that some of it was used to finance his trip to China in 2015 which included covering his plane fare, hotel as well as purchasing the goods. He stated that this trip was after the van was bought and he went to China with US\$20,000 in spending money.
- [24]** In his second affidavit, Mr Clarke exhibited the bank statement for his account for the period September 2013 to October 2014. He also stated that his trip to China

had in fact been in 2013 and not 2015. He averred that he had managed to locate a copy of the receipt that he had received at the time he purchased the van and this was also exhibited to his affidavit.

[25] He was cross examined and he agreed that as the account holder he was the only person who could get a card and provide a pin for same. He testified that he did this and the card was given to the Claimant. He was asked if he agreed that there was more than one way to get money from the account and initially he stated there was only one way but eventually agreed there was more than one way. He insisted however that he only used the machine and the Claimant was the one who had the card and she 'run things.'

[26] He agreed that the Claimant told him that money was deposited to the account but denied that he was the one who checked to see if it had been transferred. He agreed as well that the Claimant had told him exactly how much was deposited.

[27] He accepted that he accompanied the Claimant to withdraw the money but insisted that she could have gone alone to do this and he only went because of 'robbers and thieves'. He subsequently agreed that he had accompanied her to the bank as it was his account and in order for the Claimant to receive any money he would have had to be present.

[28] He stated that he was aware that \$2 million had been withdrawn but insisted it was used to purchase US dollars and not the vehicle. He agreed that he was present when the \$2 million was withdrawn as well as the \$1.2 million but denied he had been present when the \$478,000 was withdrawn. It was suggested to him that a cash withdrawal could not be made from his account at the bank without him being present and he disagreed. He insisted that the Claimant could have gone to the bank and withdrawn this amount from his account without him being present.

[29] In response to further cross-examination he accepted that he had no documents to show the savings or partner draw which he said had been used to make the purchase but maintained this was how the purchase was financed.

CLAIMANT'S SUBMISSIONS

- [30] In her submission Ms. Tomlinson identified the issue as one of credibility. She indicated that the Defendant had acknowledged that the money from the Claimant's inheritance was deposited to his account and that he had accompanied her to make the withdrawals of \$2 million and \$1.2 million. She asked the Court to find that he was not being truthful when he denied being present for the withdrawal of \$478,000 as this sum could not have been taken from the account in his absence as it was his account.
- [31] She asked the Court to find that it was the Claimant's funds that financed the purchase of the vehicle as even though the Defendant has sought to outline how the purchase was funded he has failed to produce any document in support of this.
- [32] She also submitted that it was highly coincidental that the vehicle was purchased within days of the Claimant receiving her inheritance monies and the withdrawal of funds from the Defendant's account which could have covered the purchase of same. In light of this observation she asked the Court to find the funds had in fact been used for the purchase.

DEFENDANT'S SUBMISSIONS

- [33] It was agreed by Ms. Balli that the issue for the Court is one of credibility. She also acknowledged that the Court possessed the requisite jurisdiction to deal with this matter pursuant to Section 14 of the Property Rights of Spouses Act. She submitted that it was for the Claimant to prove her claim as the presence of the Defendant's name on the documents indicates that without more he is entitled to the entire interest in the vehicle.
- [34] She argued that while it is accepted that the Claimant was in receipt of the sum of over \$4 million as her inheritance the Defendant had shown that the funds to purchase the vehicle came from elsewhere. She submitted that the Defendant is a higgler and has spent his entire adult life as a higgler and this hasn't been

disproven. She submitted further that this was a cash based employment and as such it is entirely plausible he would have had cash and even have invested same in Partner Schemes. Counsel noted that there would be no documentary proof of partners and the absence of same does not mean it didn't happen.

[35] Ms. Balli submitted that the issue was how the money in the account was spent. She argued that the parties had both agreed that it would be used to finance the Defendant's trip to China. Counsel submitted that the parties both agreed that the sum of US \$20,000 had been purchased for the Defendant to take. She also submitted that they also agreed that a total of \$3.2 million had been withdrawn to cover his hotel expenses, air fare and to purchase the US.

[36] Counsel submitted that this money was the Claimant's investment in the Defendant's business as she had now entered into business with the Defendant since his sister was no longer involved in same. She submitted that the Claimant stated for the first time during cross examination that she had been involved in the business before. Ms Balli also made reference to what she said were inconsistencies in the Claimant's account as she stated that the vehicle was for her but at another point she stated the vehicle was to be used for their mutual benefit.

[37] Counsel also submitted that the Claimant had made different remarks as to the amount withdrawn to purchase the vehicle being \$1.4 million at one point and \$1.6 million at another but no such deductions were seen on print out.

[38] Ms Balli made reference to the Claimant's indication that she did not recall if a receipt was received from the vendor and her subsequent remark that it should have had both names. She submitted that the registration of the vehicle in the Defendant's own name and the use of same in his business supports the position that the vehicle is in fact his. She asked the Court to find that the Claimant's

account was wholly inconsistent and to find on a balance of probability that the vehicle belonged to the Defendant.

LAW

[39] As indicated by Ms. Balli in her submission, this being a matter involving the division of matrimonial property the Court would be guided by the provisions of Section 14 of the Act. The application of this provision to assets which were not the family home was also recognised by Brooks JA in the decision ***Carol Stewart v Lauriston Stewart [2013] JMCA Civ 47*** where he stated as follows;

“It is in section 14, that the legislature stipulates the difference in approach between the family home and other types of property. That section must, therefore, be the next to be considered. Section 14(1) states:

14.-(1) Where under section 13 a spouse applies to the

Court for a 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), or,

Where the circumstances so warrant, take action under both paragraphs (a) and (b).”

[40] Having made this observation, Brooks JA then went on to examine subsection 2 and took note of the factors stated there which he outlined as follows;

(2) The factors referred to in subsection (1) are –

(a) the contribution, financial or otherwise, directly or indirectly 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 the period of cohabitation;

(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. (emphasis supplied)

[41] The meaning of the word contribution was also noted at subsection 3(a) as follows;

(3) In subsection (2) (a), 'contribution' means -

(a) the acquisition or creation of property including the payment of money for that purpose.

[42] The application of this provision was also recognised by K. Anderson J in ***Dixon v Dixon [2017] JMSC Civ 106*** where he stated as follows;

"S. 14 makes it clear that in determining proprietary interests in property other than the family home, the court should divide such property as it thinks fit, taking into consideration the following factors: contribution, the absence of a family home, the duration of the parties' marriage, an agreement with respect to the ownership and division of property and any other fact or circumstance, which the justice of the case requires to be taken into account."

[43] I have carefully reviewed the relevant statutory provisions which has been referred to above, as well as the case law on the point and the relevant principles have been considered and applied in arriving at my decision.

ANALYSIS AND DISCUSSION

[44] In relation to this application, the issue has correctly been identified as being one of credibility. While a number of facts have been agreed on between the parties, their accounts are poles apart as to the source of the funds used to purchase the vehicle in question.

[45] In her submissions on the matter it was accurately observed by Ms. Balli that even as the Court comes to examine the competing accounts, the burden of proof is that of the Claimant as he who asserts must prove.

- [46]** It is the Claimant's case that in September 2013 she received her inheritance which was deposited to an account held by the Defendant as she had no bank account. While it was not disputed by the Defendant that she received this benefit, she provided the Court with proof of this payment. She also attached a letter sent by her to her attorney outlining the account to which the sums should be paid as well as the name of the account holder.
- [47]** In examining the letter sent to the Attorney, I noted that the sum to be received was stated in the body of the document which was witnessed by Mr. Clarke as his signature appears at the foot of same. Having made this observation, I found it curious that at paragraph 6 of his affidavit filed on the 11th of October 2017, he stated that he was unable to say how much was deposited. This situation was further compounded when in response to questions in cross examination he completely contradicted this position when he agreed that he had in fact been aware of the amount as he had been told by the Claimant.
- [48]** It was asserted by the Claimant that after the funds had been deposited to the account, she went to the bank along with the Defendant and withdrew money to purchase the vehicle, after which she made another withdrawal from which she financed the Defendant's trip to China. It is interesting to note that in providing the sequence of events in his account the Defendant also stated that the vehicle was purchased first (albeit by him) after which the Claimant withdrew funds to finance his trip to China.
- [49]** In relation to these withdrawals, I have noted the submission of Ms. Balli that the account of the Claimant is inconsistent as to the sums withdrawn and cannot be relied. In considering this submission, I examined the Claimant's affidavit sworn to on the 28th of February 2017 as well as her affidavit sworn to on the 28th of February 2018 both of which were filed on the 1st of March 2018. It is noted that at paragraph 16 of the first affidavit in time the Claimant speaks of withdrawing \$1.6 million from the account to use for the purchase of the vehicle. At paragraph 17 she stated that the \$1.4 million for the vehicle was from the money she received

from her father's estate. At paragraph 20 of the same affidavit she again referred to the withdrawal of the \$1.4 million that was used to purchase the vehicle. This figure was repeated at paragraph 26 of the same affidavit. In respect of her affidavit sworn to in 2018 she stated at paragraph 5 that the \$1.6 million was withdrawn to facilitate the purchase of the vehicle, its licensing, insurance and the other necessities associated with the purchase and transfer of same.

[50] While it is clear that the Claimant has referred to the sum withdrawn to purchase the vehicle in varying ways, I note that she remained consistent in her position that the money was withdrawn within this period to facilitate this purchase. She also went further to indicate that the reference to \$1.6 million was to account for the fact that an additional amount had been taken to cover the other expenses associated with the purchase of a vehicle. In response to questions from Ms. Balli she agreed that neither the sum of 1.4 million or 1.6 million appeared on the print out and she explained that this was because the sum of \$2 million had been taken to cover the purchase and other eventualities. She also explained to the Court that \$2 million has been withdrawn which was used for the purchase of the vehicle and the amount left over was applied towards the Defendant's trip to China which the parties agree took place within a few days of this withdrawal.

[51] In respect of the 'inconsistencies' as they have been termed by Ms. Balli, I have carefully examined them as well as the Claimant's explanation. I also examined the print out provided in respect of the sums withdrawn. In addition to examining the documentary and viva voce evidence, I also took careful note of the Claimant's demeanour as she responded to Counsel's questions on this point as well as the questions posed by the Court. I was impressed with her demeanour and I found that her explanation was reasoned and logical. I accepted her account that more money would have been withdrawn than the purchase price of \$1.4 million dollars as the purchase of a motor vehicle would of necessity carry with it other expenses which would have to be met before the vehicle could be placed on the road. I also noted that her account and explanation stood in sharp contrast to the account of the Defendant on this point as he spoke of raising \$700,000 from his savings as

well as \$700,000 from his partner in order to purchase the vehicle. His evidence was silent however as to how the vehicle was licensed and insured before being placed on the road.

- [52]** It was the evidence of the Claimant that after this vehicle was purchased she made withdrawals from her account to assist the Defendant with his trip to China as well as to cover the funeral expenses for her father. In support of this she referred to the withdrawals, reflected on the print out, which were made on the 18th of September and 24th of September respectively which she said were used to meet these expenses. She also outlined that the Defendant as the account holder was present with her for these transactions. In considering her account in respect of these withdrawals and the reasons for them, I noted that at paragraph 6 of his affidavit filed on the 11th of October 2017 the Defendant denied that he was ever a party to any withdrawals from the account. A position which he affirmed at paragraph 13 of the same affidavit. He also added that if any withdrawals were made the Claimant would have known what it was spent on.
- [53]** His position was further entrenched in paragraph 18 of the same affidavit where he stated that he did not know what the Claimant had done with the money placed in his account. He averred that she used to party hard and that is what 'eat out the money'. It was noted however that this position was then dramatically departed from by him in paragraphs 19 through to 21 of the same affidavit as he outlined that the money was used to cover funeral expenses, including a nine night, to pay mortgage arrears and to finance his trip to China.
- [54]** The concerns in relation to the unreliability of the Defendant's evidence when measured against that of the Claimant were not assuaged as it was observed that in cross examination, contrary to what he had stated earlier in his evidence in chief he acknowledged that he was aware of how the money was spent but insisted that it was the Claimant's investment in the business.

- [55]** In respect of the Claimant's assertion that the Defendant had placed her vehicle in his name solely and kept all the documents, it was submitted by Ms. Balli that this evidence has been undermined by the production of a receipt which bears only the name of the Defendant and makes no reference to her at all. In my examination of the evidence of the Claimant I noted that she in fact denied that the receipt produced was the receipt provided at the time of the purchase as that document would have borne both names. She then stated that if it had been issued in the Defendant's name only, this was probably because he was the person who handed over the cash to the vendor.
- [56]** In examining Ms. Balli's submission, I also reviewed the evidence of the Defendant in respect of this receipt. At paragraph 13 of his affidavit filed on the 11th of October 2017 he stated that he did not have the receipt which he received from the vendor as it along with other documents relating to the motor vehicle were destroyed by the Claimant. Exhibited to the same affidavit however were documents for the vehicle. More importantly however, in outlining that the receipt was destroyed the Defendant made no reference to having made a copy of same which he would seek to locate and eventually produce. It was most curious however that at paragraph 5 of his affidavit filed on the 6th of July 2018 he was able to produce the receipt which he exhibited as ED4 with no explanation provided in respect of his earlier assertion.
- [57]** Having considered the conflicting positions, I had a doubt as to the authenticity of this document and whether it ought to be relied on by the Court. Additionally, I was left with questions as to how to treat with the Defendant's earlier remarks in respect of the Claimant's actions which he had sworn was the truth. In examining the 'receipt' I found that it was also highly coincidental that the date on this document fell within the very period of time when the 'inheritance money' had been received and later withdrawn.
- [58]** It was the evidence of the Claimant that she withdrew the sum of \$478,000 which was used to assist with her father's funeral expenses and clear mortgage arrears.

This withdrawal and the payments made were accepted by the Defendant in his subsequent version of events but he maintained that he was not present with the Claimant when the sum was withdrawn. It is not in dispute that he was the sole individual named on the account, it is also not in dispute that this withdrawal was done in one lump sum and was not taken by way of an ATM transaction.

[59] I did not believe the Defendant that he was absent at the time of this withdrawal and his insistence begged the question why he would deny being present when the evidence revealed that he was still in the island at the relevant time. I believe that his denial was nothing more than an attempt to reduce his involvement with the funds in this account, especially in light of his claim that the 2 withdrawals he accepted being present for were the Claimant's investment in the business. I was fortified in this conclusion as in further cross-examination he conceded that as the account holder he would have had to be present for cash withdrawals to be done.

[60] In considering the question as to how the money in the account was spent, I carefully examined the Claimant's evidence, with particular emphasis on paragraph 26 of her affidavit sworn to on the 28th of February 2017 where she gave a breakdown of this. I was satisfied that it presented a credible account in respect of this issue. In coming to this conclusion, I also examined the printout provided by the Defendant and I noted that the balance of funds in this account prior to the deposit of the cheque was \$82.04 as \$700 had been withdrawn on the 17th of September.

[61] Between the 17th of September 2013 and the 24th of September 2013 the inheritance amount was deposited and 3 large withdrawals were later made from the account all of which have been referred to above. This reduced the amount in the account to \$400,277.35, all three of these withdrawals were cash withdrawals indicating transactions done within the branch.

[62] Between the 25th of September which was the date of the Defendant's departure to the 18th of October 2013 when it is accepted that he returned, all the

transactions in respect of the account were either point of sale purchases or debit card withdrawals which would have been done using the debit card which the Claimant acknowledged the Defendant had given to her to use. The balance on the 18th of October 2013 was \$941, an amount which I accept was consistent with the Claimant's evidence that on the return of the Defendant there was no money in the account to clear the goods which had been purchased as it had all been depleted in spending on the household.

[63] Having conducted this review of the bank records, I found that far from contradicting the account of the Claimant, this document provided independent support to how she says the monies were withdrawn and bolstered her credibility on a whole.

CONCLUSION

[64] In light of the foregoing, I am satisfied on a balance of probabilities that the money used to purchase the vehicle had in fact been taken from the funds which had been given to the Claimant as a gift under her father's estate. I did not believe that the purchase was funded by the Defendant and I found his account to be untruthful, unsupported and riddled with contradictions. I did not believe his assertion that the Claimant had sought to invest in his company in 2013 and I believed her account that after she was made redundant in 2009 she immediately began selling alongside him from the time his sister was involved in the venture until it was only them.

[65] I did not believe his assertion that he had all the cash required to finance the purchase of the vehicle and I believed that his sister having pulled out of the business the receipt of this money by the Claimant was a godsend and this was why it was used to cover his trip to China.

DISPOSITION

[66] In light of these conclusions the matter is disposed of as follows;

1. Order made in terms of paragraphs 6, 7 and 8 of the FDCF filed on the 2nd of May 2015.
2. The Registrar of the Supreme Court is authorized to sign all and any documents herein if either part refuses or is unable to sign to give full effect to the orders made herein within 14 days of receiving notice in respect of same by the other party.
3. Costs to the Claimant to be taxed if not agreed.
4. Claimant's Attorney to prepare, file and serve order herein.