



[2022] JMSC Civ. 59

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU 2020 CV 04410

BETWEEN	WINNIFRED FULLWOOD	CLAIMANT
AND	PAULETTE CURCHAR	1st DEFENDANT
AND	THE REGISTRAR OF TITLES	2nd DEFENDANT
AND	ANDREA CURCHAR	INTERESTED PARTY

HEARD WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2021 CV 00038

**IN THE MATTER OF SECTION 2 OF
THE INTESTATES' ESTATES AND
PROPERTY CHARGES ACT**

AND

**IN THE MATTER OF AN
APPLICATION BY WINNIFRED
FULLWOOD FOR A DECLARATION
THAT SHE WAS THE SPOUSE OF
THE DECEASED HUNTLEY
CURCHAR WHO DIED
SEPTEMBER 24, 2009**

IN CHAMBERS

Tenneshia T. Watkins, of counsel, for the claimant/applicant

Marjorie Shaw, instructed by Brown and Shaw, for the 1st defendant and interested party

Heard: April 4, 5, 6, 7 and 8, 2022

**Claim for an equitable interest – Proprietary estoppel – Promissory estoppel
Claim for beneficial interest – Burden and standard of proof – Adverse possession against a party who no longer has title – Claim based on adverse possession – Whether claimant was a licensee - Whether the provisions of PROSA apply to disputed property – Proprietary/Promissory estoppel – Application for a declaration of spouse – Whether the deceased was a single man for the material period – Credibility of witnesses – Costs – The appropriate costs order to be made in respect of these matters**

ANDERSON, K.J

BACKGROUND

[1] Winnifred Fullwood (hereinafter called, ‘the claimant’ or ‘the applicant’) filed a further amended Fixed Date Claim Form in Claim No. 2020 CV 04410 (hereinafter referred to as: ‘*the earlier claim*’) on May 21, 2021, seeking several orders, namely:

1. Pursuant to Part 17.1(1)(a) an order for an injunction restraining the 1st defendant from registering any dealings with the property known as ALL THAT parcel of land part of Independence City formerly part of

Cumberland Pen in the parish of St Catherine being lot numbered Nine Hundred and Fifty Nine registered at Volume 1062 Folio 35 (hereinafter referred to as: '*the disputed property*') until the determination of the claim.

2. An interim declaration that caveat numbered 2243208 is not to be removed from the Certificate of Title at Volume 1062 Folio 35 of the Register Book of Titles until the claim is determined.
3. Pursuant to section 140 of the **Registration of Titles Act** and upon the claimant giving the usual undertaking, the Registrar of Titles is directed to delay registering any dealing with the said land until the trial of this action or further order.
4. The claimant is in occupation of the premises in which she has an equitable interest and potential beneficial interest.
5. By order of Supreme Court Civil Appeal No. 89/2014 delivered on June 19, 2015, the 1st defendant's interest in the property has been extinguished and she has no right of passing possession to a 3rd party.
6. The 1st defendant is in breach of order of the Court of Appeal in attempting to transfer the property to the interested party.

[2] The claimant has filed affidavits in support of that earlier claim and the interested party has filed an affidavit in opposition to same. The contents of those affidavits will be delved into, later in these reasons. The 1st defendant did not attend, nor lead evidence, in respect of either of these claims, which are being heard together.

- [3] On November 19, 2020, my sister, Thomas J, granted the orders Nos. 1, 2 and 3 above, on an ex-parte application.
- [4] The applicant filed a Fixed Date Claim Form on January 6, 2021, Claim No. SU 2021 CV 00038 (hereinafter referred to as: '*the later claim*') seeking an order that she was the spouse of the late Huntley Curchar at the time of his death in 2009, (hereinafter referred to as: '*the deceased*' or '*Mr. Curchar*').
- [5] She has filed affidavit evidence in support of that order. The children of the deceased have also filed affidavits, but those were filed, in opposition to that order.
- [6] On January 21, 2021, my sister, Reid J Ag. (as she then was) ordered, inter alia, that the claim against the 2nd defendant be struck out and that the interested party be joined.
- [7] On July 9, 2021, my sister Mott Tulloch-Reid J Ag. (as she then was), ordered, inter alia, that:
- i. The 1st defendant is permanently restrained from dealing with and otherwise disposing of the disputed property;
 - ii. Injunction against the interested party from dealing with the disputed property until the trial of the claim; and
 - iii. An order that the claims herein be heard together.
- [8] Both matters came for hearing before this court on April 4, 5, 6, 7 and 8, 2022. On April 8, 2022, I had announced my judgment on both claims orally and now, present my written reasons, as promised.

EVIDENCE

The claimant's case

- [9] The claimant led evidence in respect of both matters, as follows:

- i. She has been residing in the disputed property since 1985, having been invited by Mr. Curchar after his wife Paulette Curchar and children left for the United States in or around 1985. While she lived there, she lived with him, cared for him and assisted in the maintenance of the property until he died in September 2009 and she continued to be in exclusive possession of the disputed property after his death. The property was the family home of herself, Mr. Curchar and their children.
- ii. After migrating to the United States, the 1st defendant divorced the deceased and remarried. She is not in possession of any documentary proof which confirms that the deceased and Mrs. Curchar were divorced.
- iii. Mr. Curchar and herself lived together undisputed and enjoyed exclusive possession of the property for 24 years before his death.
- iv. She was a single woman who had lived with Mr. Curchar as husband and wife. Since she had lived with Mr. Curchar they adopted two children and raised them as their own. Those children were not biologically Mr. Curchar's, nor were they adopted by him. Those children were hers, but were treated by the deceased, as children of the family.
- v. Mr. Curchar played a very active role in the life of her daughter who was born in 1995, and would attend events such as graduation ceremonies.
- vi. They made decisions together about the household, health and education of the children. They shared a joint bank account and she was listed as his common law wife on documentation.
- vii. They went out together to social events such as church services, fundraising events and other entertainment activities. Neighbours and friends frequently referred to her as the deceased's wife and to him, as her husband.
- viii. When the deceased died, she led the efforts to organize his funeral and took care of the majority of the funeral expenses and caused the body to be buried.

- ix. She worked as a dressmaker and would use the proceeds to provide for the household and help with the deceased's medical bills and other bills.
- x. The deceased did not have a close relationship with any of his biological children, save for the interested party who, on visits to Jamaica would spend a night or two at the disputed property and Carlton Curchar, who visited the disputed property a few times. As such, they would not be in position to say what was happening at the disputed property.
- xi. None of the children stayed at the property long enough to be able to say she was not the spouse of the deceased, nor did they speak with the deceased enough, to ascertain her true relation with the deceased and her occupation of the property.
- xii. She has made payment towards the mortgage, property taxes and water bill and she had the deceased sign promissory notes to repay any sums advanced to him. The children provided little or no assistance to the deceased.
- xiii. When the deceased became ill in 2004, she was taking care of his medical and living expenses. Prior to 2004, no assistance came from the deceased, Mrs. Curchar and children.
- xiv. After the deceased's death, she was served a notice to quit, which led to her in 2012, lodging a caveat in respect of the disputed property, under the **Property (Rights of Spouses) Act**.
- xv. The total funeral expenses cost her almost \$200,000, of which the interested party sent a small sum.
- xvi. The deceased made it very clear that he wanted her to benefit from his assets. This is evidenced by a declaration of his assets which he signed in 2001.
- xvii. Mrs. Curchar brought a claim in the Supreme Court where Lindo J. (Ag.) (as she then was) in October 2014, granted the order for recovery of possession and removal of the caveat lodged by the claimant. She

appealed that judgment of this court and the Court of Appeal on June 19, 2015 and set aside the order on the basis that Paulette Curchar had no lawful claim to the property, because that property had been adversely possessed by the joint owner thereof, namely: Mr. Curchar.

- xviii. The claimant then lodged another caveat, wherein she claimed an interest in the property, pursuant to the Property (Rights of Spouses) Act and adverse possession.
- xix. The 1st defendant made an attempt to transfer the property to the interested party since the announcement of the Court of Appeal's ruling; and
- xx. She believes she is one of the beneficiaries in the estate of the deceased - Huntley Curchar, as she was his common law spouse.

[10] The claimant has also led evidence through Tanya Burgess who deponed, inter alia, that:

- i. She was aware that the claimant was in a common law relationship with the deceased from 1990 until the time of his death. She met the deceased as he worked with her husband; and
- ii. Throughout the time which she knew them, she considered them as husband and wife as they had a settled family and cared for the children that they adopted.

[11] Another affidavit was deponed to, by Rowena Lypher, who deponed to her affidavit on January 6, 2021. Unfortunately, that deponent had passed on and was unable to give oral evidence at trial. The claimant deponed to an affidavit on February 25, 2022. Exhibited thereto, is the obituary of Rowena Lypher, who it is said, died on September 21, 2021.

[12] The essence of her affidavit reveals that:

- i. She was a friend and neighbour of the claimant. She was aware that they were involved in a common law relationship for more than 20 years; and
- ii. She visited them occasionally and they treated each other as husband and wife.

The interested party's case

[13] The interested party gave evidence. The summary of her evidence is that:

- i. She is the daughter of the deceased and personal representative in his estate. At the time of his death in 2009, her parents were divorced. The disputed property belongs to her father's estate, in respect of which, she and her siblings, are the beneficiaries.
- ii. Over the years, the claimant's occupation of the disputed property was as a tenant, for her father to receive income and company in the house, following their departure in 1985.
- iii. Under the grant of administration and the Court of Appeal's ruling, she took steps to be registered on transmission in the deceased's estate, but that was rejected by the Tax Administration of Jamaica.
- iv. The 1st defendant having accepted that she holds the property on trust for the estate of the deceased, agreed to effect the transfer of the disputed property.
- v. She first met the claimant in 2000, on her visit to Jamaica.
- vi. From her observation, the interaction between her father and the claimant did not indicate an intimate, loving or familial relationship. The claimant stayed on one side and the deceased on the other side, of the disputed property. They never slept in the same room, nor was there any outward or subtle display of affection.

- vii. She sent monies to assist her father and supplement his pension.
- viii. The deceased loved children and if he was in the same residence as them, he would have treated them with love.
- ix. While her father was ill, given that she was unable to be present in Jamaica, she had offered and the claimant accepted compensation to take care of the deceased.
- x. While her father was getting treatment, the claimant attempted to ascertain information about his health. She would not get this information as she was not a relative of Mr. Curchar and so she represented herself as his common law spouse in order to receive this information.

[14] Evidence was also led by the children of the deceased, namely: Richard Curchar and Carlton Curchar. The evidence of Carlton Curchar reveals that:

- i. He was introduced to the claimant in the 1980s who was introduced to him as a tenant of his father. At no time during his father's life was he told that the claimant was his wife, spouse or lover;
- ii. The claimant moved into the disputed property, her sister, sister's husband and their children to assist with the payment of rent;
- iii. His father informed him that there were instances in which the claimant directed him to sign documents even though he was not feeling well;
- iv. He was told by members of the community that the claimant and her son were abusive and confrontational to the deceased; and
- v. At the time of his father's death, his health had deteriorated and he was practically dependent on the claimant.

[15] The evidence of Mr. Richard Curchar reveals that:

- i. He gained knowledge of the claimant in 2006 when he visited Jamaica. While there, he opted to stay at a hotel;

- ii. While in Jamaica he encouraged his father to have the courts intervene in removing the claimant, who his father described as a, 'menace tenant.' His father however, was reluctant to go that route; and
- iii. After his father's death, the claimant called, asking for money for the funeral home and inquiring what would be her inheritance.

ISSUES

[16] The following issues arise for determination, on the claims before the court:

- a. Whether the claimant can establish a claim for adverse possession in respect of the disputed property.
- b. Whether the claimant has acquired an equitable interest in the disputed property.
- c. Whether the claimant has met the requirements to be declared the spouse of the deceased.
- d. What is the appropriate costs order to be made in the circumstances?

THE LAW AND ANALYSIS

Burden and standard of proof

[17] The burden of proof in matters such as these, rests with the person who has instituted the claim, which is founded upon various allegations that are being vigorously disputed. Hence the well-known phrase, '*he who asserts must prove.*' The claimant/applicant has brought these claims before this court and she therefore, has the burden of proving her claims and the requisite standard of proof is, as applied, proof on a balance of probabilities.

The issue of credibility

[18] In assessing credibility, as between two (2) witnesses, one of whom is telling the truth in important respects and the other witness, who is either not doing so, or is significantly mistaken as to his or her factual recollection or

understanding as regards those same matters, it is always important for the court of first instance to consider contemporaneous documents, probabilities and possible motives.

This is especially important in cases involving alleged fraud, but is not exclusively important, in such cases.

The Privy Council made this clear, in the case: **Villeneuve and another v Gaillard and another – [2011] UKPC 1**, per Ld. Walker, at paragraph 67:

*'Furthermore it is implicit in the statement of Lord Macmillan in Powell v Streatam Manor Nursing Home [1935] AC 243 at p.256 that the probabilities and possibilities of the case may be such as to impel an appellate Court to depart from the opinion of the trial Judge formed upon his assessment of witnesses whom he has seen and heard in the witness box. **Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities.** It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.'* [Emphasis added]

See also: **Armagas v Mundogas SA (The Ocean Frost) – [1986] 1 AC 717**, at page 757, per Dunn, L.J. This court has adopted the approach as suggested immediately above, in assessing the witnesses' respective evidence.

[19] The court notes that the parties are at great odds concerning the facts of this case. In this regard, the ruling of the Privy Council is helpful in providing the court with the guidance on how to ascertain what are the facts which it believes to be true and ultimately determine the matters. The parties, no doubt as the court is aware, are presumed to be prejudiced by their possible motives in respect to the outcome of these matters. These motives, ought to be considered in light of the independent evidence, the proven facts and the contemporaneous documents which are before this court, in allowing this court to determine who ought to be believed and ultimately, which party, in the final analysis, ought to be successful.

Claim against the 1st defendant

- [20] There is presently, only one defendant as regards the claimant's claim for the disputed property (the earlier claim). That person is Paulette Curchar, who is alleged to have been the ex-wife of Mr. Curchar. The 2nd defendant was by means of an earlier order of this court, removed as a defendant to that claim. In order for the claimant to succeed in proof of her claim in that regard, firstly, it is imperative that she satisfy this court, on a balance of probabilities, that she has sued the correct person. Ordinarily, whether this is duly proven, is readily ascertainable from the evidence that has been presented to the trial court, by claimants, in proof of their claims. That though, is definitely not so, in the case at hand.
- [21] In respect of the earlier claim's factual substratum, the Court of Appeal had already paid regard to same, in some measure, in **Supreme Court Civil Appeal No. 89/2014 - Winnifred Fullwood and Paulette Curchar [2015] JMCA Civ 3**, which was an appeal which arose from a judgment of this court. That appeal arose from a claim by Paulette Curchar to deprive Winnifred Fullwood of the disputed property and obtain possession of that property from her. The Court of Appeal concluded that Mrs Curchar at one time, was a joint tenant of the disputed property and therefore held title, jointly to same, along with Mr. Curchar. However, after she left and went to the United States in the 1980's and never returned, Mrs. Curchar no longer had title to the disputed property. See paragraphs 26, 29-36, 86 and 87 of that judgment.
- [22] When one looks at that judgment, albeit, as regards a separate claim than either of those that are now being heard together and in respect of both of which, these are the reasons for judgment and albeit that the claimant was successful at the appellate court level, in that claim, the Court of Appeal examined extensively, both from a legal and a factual standpoint, what was the status of Mrs. Paulette Curchar to the disputed property and concluded that she had lost title to same.
- [23] To my mind, that was a legally, logical conclusion for the Court of Appeal to have reached in respect of that matter. The evidence in the claim at hand, as set out in paragraphs 3 and 5 of the claimant's affidavit which was filed on November 16, 2020, has disclosed that the claimant began living at the

disputed property in 1985, at Mr. Curchar's invitation and that she assisted in the maintenance of that property, until Mr. Curchar died in September of 2009. Ms. Fullwood remained living on that property, after Mr. Curchar's death. The 1st defendant, Mr. Curchar, along with their children, had resided on that property until the 1st defendant and children of the marriage, migrated to the United States, in or about the mid-1980s.

[24] After she migrated to the United States, the 1st defendant never returned to the disputed property for any purpose whatsoever, although she visited Jamaica and would pass the premises, from time to time. She received no rental or any other income from the property and she had no belongings there.

[25] In a circumstance as has been proven to exist in the case at hand, as I have accepted as being both truthful and accurate, bearing in mind the evidence of the claimant, which I have just referred to, **sections 68 and 85 of the Registration of Titles Act**, would have operated such as to have deprived the 1st defendant of her title to the disputed property from as of late 1997. That would be, based on the evidence that this court has accepted, over twelve (12) years since the 1st defendant left the disputed property and never returned to same and never made any contribution towards the maintenance and the upkeep of that property, which has properly led the Court of Appeal to conclude, on a balance of probabilities, that during that time period, the 1st defendant never exercised any acts of ownership, in respect of the disputed property.

[26] The combined effect of **sections 3, 14 and 30 of the Limitation of Actions Act**, would have operated to extinguish the 1st defendant's title to the disputed property. On this point, see: **Wills v Wills [2003] UKPC 84** and **Paradise Beach and Transportation Co. Ltd and Ors v Price-Robinson and Ors [1968] 1 All ER 530**.

[27] Thus, whilst it is correct, as a matter of law, to state as was stated by Slate LJ in the oft-cited case of **Powell v McFarlane [1977] 38 P and CR 452**, that in the absence of evidence to the contrary, the owner of land with paper title is deemed to be in possession, that dictum does not apply with respect to the case at hand, because in this case, there is evidence to the contrary. That

evidence as earlier set out in these reasons, was in fact led by the claimant herself and is undisputed, in so far as Mr. Curchar's occupation of the disputed property is concerned.

[28] Whomever or whichever is the party that has title to the disputed property needed to have been named as the defendant to this claim. The claimant has wholly failed to establish that the 1st defendant has title. With there being only one defendant in the earlier claim, who is to my mind, not the person who should have been named as a defendant to that claim, or perhaps, at the very least, as is presently the situation, the sole remaining defendant to the earlier claim, the earlier claim, cannot succeed, regardless of the basis/bases for the claimant's claim to the disputed property.

[29] The estate of the deceased as represented by Andrea Curchar, as the administrator of the estate of the deceased, has not been sued. The interested party has not been sued as a defendant. The interested party is merely joined so that she can be aware of what is happening and by having been so named, may give evidence to assist the court and if accepted, that evidence may be considered by this court, in determining the earlier claim.

[30] In the circumstances, I am firmly of the view that that claimant's claim against the 1st defendant, to the disputed property, whether in the form of an equitable interest, beneficial interest, or based on adverse possession, cannot succeed. In the event that I may be wrong, in having reached that conclusion, I think it prudent to go on, in further detail, to address the claimant's claim for an interest in the disputed property.

Adverse Possession against the 1st defendant

[31] Having looked carefully at the Further Amended Fixed Date Claim Form which was filed in respect of the earlier claim, the court notes that there is no express claim by the claimant, nor is there any declaration being sought as to title, based on the operation of the **Limitations of Actions Act** and the law of adverse possession. However, since it is that the claimant's case would have been set out, not only in her Fixed Date Claim Form, but also in her respective affidavits adduced for the purposes of this claim, I have chosen to treat with what has

been put forward by the claimant's attorney, as a claim based on the law regarding adverse possession, since the same clearly forms part of the claimant's statement of case. Also, the court notes that on more than one occasion, in her affidavit evidence and in more than one of the affidavits which she deponed to, the claimant has alluded to obtaining title to property by means of, adverse possession.

[32] The Court of Appeal in **Fullwood v Curchar [2015] JMCA Civ 37** at paragraph 36, noted that:

(36) 'So it is well settled on strong and binding authority that the combined effect of sections 3, 14 and 30 of the Act is that Mrs Curchar, a registered proprietor of the property, can lose her right to recover possession of it on the basis of the operation of the statute of limitations against her. The core live issue before Lindo J (Ag), therefore, was whether Mrs Curchar had a title that had not been extinguished by the operation of the statute of limitations thereby giving her the necessary locus standi to file a claim for recovery of possession in 2013. The validity of the paper title on which she relied to bring her claim against Miss Fullwood was a fundamental pre-requisite for the success of her claim.'

[33] The claimant has herself given evidence that the defendant's right to the disputed property, has been extinguished. See her affidavit filed on November 16, 2020 at paragraph 11. There is evidence that Andrea Curchar, with her mother's help assisted in paying the mortgage for the disputed property. That evidence though, does not assist the claimant in satisfying the court that whatever help may have been given to the payment of the mortgage by Andrea Curchar, was referable to Paulette Curchar and showed an intention to herself, possess the disputed property, or in any way, to dispute Mr. Curchar's exclusive possession of that property, as one of the joint owners of that property.

[34] In order to have succeeded on any claim for adverse possession as regards the disputed property, the claimant would have had to have established on a balance of probabilities, that she had a basis for making that claim against the 1st defendant, in that title now vests in the 1st defendant, since Mr. Huntley Curchar is now deceased. The claimant has failed to establish that the 1st defendant has title. By virtue of **the Limitation of Actions Act**, the 1st defendant was dispossessed of her title to the disputed property, by Mr. Huntley Curchar, who remained alive and living in the disputed property, long after Mrs. Paulette Curchar had left the disputed property and never returned there.

[35] In the final analysis, such a claim needed to have been brought against the estate of the deceased, with Andrea Curchar as the named representative of the deceased's estate. That is so because the Court of Appeal concluded that title to the disputed property was extinguished, in favour of the deceased.

Adverse possession against estate

[36] Alternatively, for completion, the claimant cannot be successful in establishing adverse possession, against the estate of the deceased. The Court of Appeal in **Fullwood v Curchar (op. cit)** had considered the status of the claimant in respect of the disputed property, while the deceased was alive. Having so considered, the court noted at paragraph 90 that she was a licensee. Accordingly, she cannot be said to have acquired any interest adverse to Mr. Curchar's interest, while he was alive. See in that regard also: **Seaton Campbell and Donna Rose Brown and Carlton Brown (2016) JMCA App 35**.

[37] The claimant's claim for the disputed property was filed in 2020, which is almost eleven (11) years after Huntley Curchar died, the date of his death being September 24, 2009. Twelve (12) years has not elapsed since the date of his death which would have been a pre-requisite which may then cause the court to be satisfied that she had met the twelve (12) years' period, per **the Limitation of Actions Act**. Furthermore, during that eleven (11) year time period, the claimant did not enjoy uninterrupted possession of the disputed property. She has not therefore met the statutory time period to be qualified for consideration as to whether she had gained an interest in the disputed property, by means of adverse possession.

Claim under the Property (Rights of Spouses) Act

[38] The claimant in reference to both caveats lodged by her, has stated that she claimed an interest in the disputed property by virtue of **the Property (Rights of Spouses) Act (PROSA)**. For that reason, the court will deal with same briefly as to whether such a claim for an interest in the disputed property by her could

have been successful, even though, it must be stated at this stage, that the claimant's counsel had during her oral closing submissions, submitted that her client is not pursuing any claim under **PROSA**. Nonetheless, I will briefly address same in these reasons, lest the claimant is minded to pursue a claim hereafter, to the disputed property, pursuant to **PROSA**.

[39] **Section 3 of PROSA** provides that:

'3.-(1) Except as otherwise provided in this Act and subject to subsections (2) and (3) and section 6, the provisions of this Act shall not apply after the death of either spouse and every enactment and rule of law or of equity shall continue to operate and apply in such case as if this Act had not been enacted.

(2) The death of either spouse shall not affect the validity or effect of anything done or suffered in pursuance of the provisions of this Act.

(3) If, while any proceedings under this Act are pending one of the spouses dies, the proceedings may be continued and be completed; and any appeal may be heard and determined and the Court may make such order as it thinks fit in the circumstances of the case as if the spouse had not died.'

[40] **Section 6(2) of PROSA** provides that:

'2) 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.'

[41] **Section 13(1) of PROSA** notes that:

'13.-(1) A spouse shall be entitled to apply to the Court for a division of property- (a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or

(b) on the grant of a decree of nullity of marriage; or

(c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or

(d) where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.'

[42] The wording of **section 3(1) of PROSA**, clearly states that the provisions of the Act, do not apply after the death of a spouse. That is no doubt why also **section 13 of PROSA** does not allow for an application for **PROSA**, as a matter of procedure, to be made, after marriage is terminated by death.

[43] Further, **Section 6(2) of PROSA** creates no special exception to **section 3(1) of PROSA**. All of these principles have been expressly recognized and lucidly set out by the Court of Appeal, in particular by Edwards JA with whose judgment the other members of that court's panel of judges that presided over the case- **Derrick Gentles v Kenneth Carr [2019] JMCA Civ 31** agreed with. At paragraphs 37 and 55 the following is stated:

'37. In this case, I found, that without a specific provision in section 6 of PROSA, exempting that section from the general rule, then the general rule applied. Section 13 provides when parties may apply. There is no provision there for application after termination by death. This gives lie to any notion that section 6(2) creates a special exception to section 3(1), or else section 13 would recognise that additional category, even if no time limit is placed on when that category can apply. That category however does not exist in section 13 and no procedure is provided for an applicant to apply for division of property after marriage is terminated by death. If the category is not provided for in section 13, which is a procedural section, then it is back to section 3(1) which states that PROSA does not apply to that category.'

...

'55. I took the view that the appeal had merit and should be allowed with no order as to costs. I also took the view that, it should not result in the cessation of the claim. Section 3(1) of PROSA clearly states that the provisions of the Act do not apply after the death of a spouse but in such a case, after the death of a spouse, the rules of law and equity would operate. I was of the view that there being a fixed date claim before the court, although it may not proceed under the provisions of PROSA, there is no rule of law known to me, to prevent it proceeding as an ordinary common law action. For that reason, I recommended, and the court made the orders set out in paragraph [3] above, inclusive of an order that the claim be remitted to the Supreme Court for a trial under the common law.'

[44] Accordingly, the claimant could not have succeeded under **PROSA**.

Equitable Interest

[45] The claimant has claimed against the 1st defendant, for an equitable and potential beneficial interest in the disputed property. When she was being cross-examined by the defence counsel, the following questions were posed to the claimant:

'Q What interest are you claiming in the property?

A: 100%

Q: You don't believe that the children are entitled to anything?

A: No ma'am.'

[46] The following excerpt of the claimant's cross-examination, is also noteworthy:

'Q: Did you ever had any discussions with Mr. Curchar about your name being on the title?

A: No ma'am.

Q: Did you ever have any dialogue about him leaving anything he has to you?

A: No.

Q: Have you ever been given any document in which Mr. Curchar expressed a desire for you to have everything?

A: He gave me a declaration, a letter.

Q: When was this letter given to you?

A: It's somewhere about 2001, June.'

[47] Shortly thereafter the claimant was asked: *'When did you become aware of it?'* The claimant's response was surprising to the court. That response was: *'I can't recall.'* The claimant also stated in cross-examination, that she was not present when that declaration was being prepared.

[48] The declaration/ letter referred to is, an agreed document between the parties which was entered into evidence as exhibit 29. The wording of that declaration reads as follows:

1. Feb 2001

Declaration of Assets

I Huntley E. Curchar been of sound mind and body this day declare that Winnifred I. Fullwood is and has been a benefactor to me for the past seventeen years (17 yrs)

I was married to Paulette M. McNeil who have deserted me from May 1982.

From that time I have not heard from her, even though I was told by our children and relatives of her that she has married and lives in the USA.

Ms. Fullwood has been at the forefront of all my doings pertaining to the house I have.

She has made the arrangements for all paying of bills.

She has as I write this in the process of paying the NWC twenty thousand dollars (\$30,000) for overdue water rates.

The Victoria Mutual Building Society twelve thousand dollars (\$12,000) for overdue mortgages.

She has spent thousands of dollars to make the premises secure eg. Grille works all around the house that I live in.

At present I am not well and seeing the doctor because of Miss Fullwood's generous dealings towards me.

Please note that I am declaring all my earthly [possession] in her care and protection if I should be deceased or infirmed.

Signed

Huntley Curchar

[Witnessed]

- [49] The claimant seeks to rely on that declaration to the effect that it created some equitable interest, for her benefit. If the document is one which creates equitable or legal interest, what it is important for the court to assess, is not the intention of a party, who was not privy to the making of that document, and who only became aware of it, if her evidence is to be believed, for the first time, at some unknown time after it was made, according to her, although it was allegedly handed to her, in or about, June of 2001.
- [50] The court is tasked at this juncture to engage in an act of deduction, concerning the intention of the deceased as regards the disputed property, by virtue of this declaration. This is an important act, as the deceased did not give evidence to this court. Every word of his, then becomes crucial for the court to assess, in order to best understand the overall intention of the deceased and to see whether, on the face of this document, any of the deceased's property, now emures to the claimant's benefit, as she is claiming, in this claim.
- [51] Firstly, it should be noted that this declaration, not being in conformity with the provisions for the **Wills Act**, cannot serve as a document indicating the testamentary intentions of the deceased and cannot pass any interest to the claimant after the deceased has died. This is so, as the document in question does not comply with the formalities of the **Wills Act**.

- [52] Secondly, that declaration is not a transfer of land. Though reference is made to his house and earthly possessions, there is not sufficient specificity which is present therein, so as to cause this court to be satisfied that the declaration is a transfer of land to the claimant, which was effected while Mr. Curchar was alive.
- [53] I will examine below, whether that declaration served in law to have passed any equitable interest to the claimant.
- [54] The court notes that in the last line of the declaration, the deceased's intention is clear. He declared his earthly possessions, 'in the claimant's care and protection.' The same was not given to her to use as she wishes, nor to treat with as, her own.
- [55] It is the court's determination of what interpretation is to be placed on that declaration, that will be utilized for the purpose of the court assigning to it, that purpose. Having reviewed same, the court is of the view that the declaration does not serve to pass any interest to the claimant. In fact, on the evidence of the claimant herself, while the deceased was ill, she was the one who handled his affairs and she assisted in maintaining the house.
- [56] It is important to note that the claimant believed that, by virtue of that declaration, Huntley Curchar gave her, '*everything*.' That was her evidence, given on that issue, while she was being cross-examined. There was never any discussion though, between her and Mr. Huntley Curchar as to his giving, 'everything,' to her, or as to him putting her name on the title, which this court has inferred as being understood, by both the questioner and the claimant as a reference to the disputed property.
- [57] With the greatest of respect therefore, to Ms. Fullwood's view as to what was the intent of Mr. Curchar in having prepared and at least, on the face of it, seemingly signed that declaration, and had that signature of his again, on the face of it, witnessed by a Justice of the Peace, or as to what is the legal or equitable effect if any, of that declaration, this court is of the considered view that on the face of that declaration, the claimant has not acquired an equitable interest to the disputed property, as she claims.

Proprietary estoppel / Acquiescence

[58] **Section 48 (d) of the Judicature (Supreme Court) Act** provides that:

'The Court and every Judge thereof shall take notice of all equitable estates, titles and rights, and all equitable duties and liabilities, appearing incidentally in the course of any proceeding, in the same way as the Court of Chancery would have done in any proceeding instituted therein before the passing of this Act.'

[59] Though the claimant has not made a claim for proprietary estoppel, by virtue of **Section 48 (d) of the Judicature (Supreme Court) Act**, I will examine to see whether the claimant can be said to have acquired an interest in the disputed property, by virtue of the operation of the doctrine of proprietary estoppel.

[60] Learned author Sampson Owusu in his text: **Commonwealth Caribbean Land Law 2007, at page 186**, summarized the principles of proprietary estoppel/acquiescence as follows:

'The doctrine of acquiescence allows a person who develops the land of another in the glare or with the knowledge of the landowner to lay claim to or recover the land together with the developments on the land effected by him. This is possible only if the land owner makes a promise of a grant of the land to the person or stands by and does not assert his title to the land while the person develops the land. The doctrine can be invoked not only where the land owner makes an express promise of a grant of the land but also where he stands by and by his silence encourages the person to develop the land.'

...

'There should therefore be a representation on which the stranger relied to his detriment. That is an encouragement or assurance or any conduct on the part of the landowner which makes the stranger believe that he has or will have title or some interest in the land.'

[61] The author notes that the doctrine of acquiescence is a manifestation of the maxim: *'equity acts in personam, it is based on fraud.'* He then went on to quote from Fry J in the case of **Willmott v Barber (1880) L.R 15 Ch. D 69, at page 106**, as follows:

'It requires a very strong evidence to induce the court of equity to deprive a man of his legal right... it has been said that acquiescence which will deprive a man of his legal right must amount to fraud, and in my view is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights.'

[62] I could not agree more, with the statement of the law, cited above.

- [63]** The evidence led by the claimant comes nowhere close to establishing that she built on, or developed the disputed property of Huntley Curchar, because she expected to derive a benefit from that land upon Mr Curchar's death.
- [64]** Further, this court is left with grave doubt as to whether the claimant acted to her detriment, that is, as to whether she was the person who provided all the monies which were expended, with respect to the disputed property and the deceased, as she has asserted.
- [65]** There is a big dispute between the claimant and the blood relatives of the deceased, as to who was paying for the expenses of Mr. Curchar after his wife had left the premises, while he was not working and while he was ill and even after he died, with the immediate expenses then being, funeral expenses. The claimant's evidence is that she is a dressmaker, but she gave no evidence as to whether that business was a successful one and even if so, how successful it was, or as to whether that work of hers, was earning her a specified sum of money, each or an approximation of how much was spent each month in order to take care of Mr. Curchar. This evidence would have assisted the court, to firstly, satisfy itself on a balance of probabilities, that she provided these monies and secondly that she acted to her detriment, in having incurred same.
- [66]** Though the interested party has not given that evidence as to her earnings, the court has, on the face of it, contemporaneous documentation which show monies being sent by her, to the deceased and the claimant between 2005 and 2009. Further, her position is distinguished from that of the claimant, in that, the claimant has the burden of proving the claim which she has brought, that she has some equitable interest in the disputed property. The interested party bears no such burden.
- [67]** The claimant has also advanced several receipts, evidencing payment for several items. These include: receipts to the Victoria Mutual Building Society of monthly mortgage repayment, receipts to the funeral home for the funeral arrangements of Mr. Huntley Curchar. These receipts do not assist in proof of the claimant's claim for an equitable interest. There is no dispute that the claimant was responsible for the day-to-day care and management of the

disputed property. The heart of the dispute is this regard, is whether those monies, were provided by her, and if so, were incurred under the representation that she would have had an interest in the disputed property, or whether the fact of her having incurred same, renders it fraudulent, for her not to be deemed to have an equitable interest in the disputed property. The evidence has not led me to so conclude.

[68] The claimant has contended that she has contributed to several improvements to the disputed property, such as grill work. The deceased has also made specific mention of such work in the declaration earlier referred to. If those works were financed by the claimant, it would have benefitted the claimant and her children who resided at the property, just as much as it would have benefitted Mr. Curchar, to carry out necessary work on the disputed property. While there is some evidence that she carried out grill work on the disputed property, there is no evidence that she did so, because she was acting under a representation that if she did so, she would have had a share of the property, much less 100% of the disputed property ,as she has claimed. Nor am I satisfied that such work, as she testified, was carried out by a friend, which she has advanced no independent or documentary evidence, in proof of, should lead to this court concluding that a fraud, or anything unfair would have been committed on her, by the deceased, if she does not receive an interest, in the disputed property.

[69] Alternatively, if the claimant had indeed supplied these sums, she has not presented any evidence to the court that same were not repaid by the deceased, or the interested party. This court accepts the evidence of the interested party that she had sent sums not only to her father, but also to the claimant. In the circumstances, I am not satisfied that the claimant may not have been repaid for those sums, which were spent by her.

[70] In the final analysis, there is no sufficient evidence to properly allow for the court to find that the claimant has acquired an equitable interest, in the disputed property by virtue of the equitable principles, as regards either proprietary estoppel or acquiescence.

Promissory estoppel

[71] The principle of promissory estoppel was considered by the Court of Appeal in **Manhertz and another v Island Life Insurance Company Ltd SCCA No 24/2006 (delivered on 27 June 2008)**. F Smith JA set out the circumstances required for promissory estoppel to operate. He said at paragraph 32 of his judgment:

'The principle of promissory estoppel usually arises where one party to a contract grants to the other party a concession, not supported by consideration, that he will not enforce his rights or a particular right under the contract.... Promissory estoppel may apply even though the representation is of a future conduct.'

[72] I am of the view that this does not arise on the facts of this case, now at hand. The claimant's evidence has not established that there was a contract, or an agreement between herself and Mr. Curchar, concerning an interest in the disputed property. In her evidence during cross examination, she stated that there was no conversation had between herself and the deceased, concerning her name being placed on the title. In the circumstances, I am satisfied therefore, that this does not require any further consideration, within the context of these reasons.

Claim No. SU 2021 CV 00038

Spouse

[73] **Section 2(d) and (e) of the Intestates' Estates and Property Charges Act** defines, 'spouse,' thus:

'd) (i) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and

(ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death;

(e) "single woman" and "single man" used with reference to the definition of "spouse" include a widow or widower, as the case may be, or a divorcee.

(2) Where for the purposes of this Act a person who is a single woman or a single man may be regarded as a spouse of an intestate then, as respects such estate, only one such person shall be so regarded.'

Single man/ single woman

[74] The court has received evidence that Ms. Fullwood was and has always been, a single woman. The same cannot be said about the deceased, as regards his marital status, at the material time.

[75] At paragraph 5 of the applicant's affidavit filed on February 25, 2022, the applicant states that:

'...I am not in possession of any documentary proof which confirms Mr. Huntley Curchar's divorce from his former wife Mrs. Paulette Curchar. I will say however that it is not in dispute that Mrs. Paulette Curchar migrated to the United States of America in the early 1980s and that Mr. and Mrs. Curchar later separated and were eventually divorced on petition of said Mrs. Curchar. Further in affidavit filed herein on March 8, 2021 (claim no. 2020 CV 04410) and deponed to by Andrea Curchar, daughter of the deceased and interested party herein, at paragraph 3 of said affidavit, she stated that her mother Paulette Curchar and her father were divorced from each other at the time of his death. The death certificate of the deceased also confirms his status as divorced.'

[76] There exists no credible evidence as to if/when Mr. Curchar was divorced from Paulette Curchar. In fact, the applicant has expressly given evidence that she has no documentation to establish when it was that the deceased became divorced from his wife. There is evidence which is capable though, of satisfying and which has served to satisfy this court, that at the time of his death, Mr. Curchar was then a divorcee, and was then, a single man, per **section 2(e) of the Intestates' Estates and Property Charges Act**. That evidence was by way of the death certificate of the deceased and partially, the evidence of Andrea Curchar.

[77] Andrea Curchar has given evidence that Huntley Curchar was divorced, as at the date of his death. In cross-examination she was asked about her statement in paragraph 3 of her affidavit in which she deponed, that at the time of her father's death, her mother, Mrs. Curchar and her father was divorced. She was asked:

‘Q: When did they get divorced?’

A: I don’t recall when they got divorced.

Q: Your mom remarried after she migrated?’

A: It was long after.

Q: You were at your mom’s wedding?’

A: No.’

[78] Her response may have been informed by her possible motive in not wanting to assist the claimant with this pertinent fact. In any event, this court has to make an adjudication based on the evidence, which is before the court. It is the applicant who has the burden of proof and the evidence has not been led, so as to allow the court to properly conclude that Mr. Curchar was divorced from at least September 24, 2004, being five (5) years before his death, so as to make him a single man. The undisputed evidence given at trial, was that the deceased died on September 24, 2009.

[79] There was also evidence given by the applicant that Paulette Curchar had divorced the deceased and had remarried. No evidence was provided to this court though, as regards when either of same occurred. Even in the declaration earlier referred to, Mr. Curchar stated – ‘I was married to Paulette re Ms. Neil who had deserted me from May 1982. From that time I have not heard from her even though I was told by our children and relatives of hers that she married and lives in the U.S.A. **Suffice to say I have no knowledge of any divorce between us ...’ (Highlighted for emphasis)**

[80] For present purposes though, the applicant needed to have satisfied the court, in order for her to have been successful in proving her later claim, on a balance of probabilities that the person that she had undoubtedly been living with for over two decades, was divorced for at least five (5) years prior to his death, because without that, the court cannot properly conclude that Mr. Huntley was a single man, residing with a single woman, for five (5) years prior to his death.

[81] Assumptions are not to be equated with proof. There is not even a reasonable inference that can be drawn as to Mr. Huntley Curchar having been divorced from Paulette Curchar, for at least five (5) years, prior to his death. A person

can be separated from his marital partner and live as a separated person, even entering into an intimate relationship with another person or other persons, without being divorced from his or her marital partner. In the circumstances, the applicant's application for a declaration as spouse, fails, as the same has not been duly proven.

[82] The term, 'spouse,' has a special legal definition. That is not a definition which can be singular in its application. In other words, it applies with respect to a single man and woman who have cohabited with each other as if in law, they were husband and wife for a period of not less than five (5) years immediately preceding five years of the death of one of the parties. As such, even though the applicant was undoubtedly, a single woman, during the relevant time period, she also needed to prove, on a balance of probabilities, that Mr. Curchar was a single man, during that same, time period. She has failed to prove the latter. Proof of the former, is not enough.

[83] The applicant has failed to prove that at all material times, that being the five (5) years leading up to the death of Mr. Curchar, that, Mr. Curchar had met that definition. Accordingly, whilst the applicant was perhaps living in the same house as Mr Curchar and although she alleged that she was his spouse, up until the time of his death and for long before he died, the evidence has failed to establish that Mr. Curchar was in fact her, 'spouse,' at that time, that time being, for the five (5) years, immediately prior to his death. Proof of Mr. Curchar having been single during that time was essential and that essential element proof, was lacking in the case at hand.

[84] I endorse entirely, the comments made at paragraph 32-35 of the judgment in **Millicent Bowes v Keith Alexander Taylor claim no 2006 HCV 05107** by McDonald-Bishop J. (as she then was) which address this very point, which is, that it is necessary for a person who applies for a declaration as spouse, to establish on the evidence, that up until the death and for five (5) years prior, the deceased and the applicant had been a single man and a single woman, which by virtue of **section 2 (e) of the Intestates' Estates and Property Charges Act** means that if previously married, that whomever among the relevant parties, that may, apply to, was divorced or widowed, for five (5) years prior to

the death of the deceased and therefore the relevant parties were, 'spouses,' whilst also, being a single man and a single woman.

[85] I also wish to mention that in the above cited case, which pertained to an application for declaration of spouse, the applicant was unsuccessful in obtaining such a declaration, not only because she had failed to prove that throughout the relevant period of time she was a single woman, but also because the quality and the sufficiency of the applicant's evidence in that case, were both below that which would have been required to meet the applicable standard of proof, which is proof on a balance of probabilities.

[86] In that significant respect therefore, though the applicant's evidence in that case is not the same as in this case, albeit that at first glance, there appears to be some similarities in some of the factual underpinnings surrounding that case and this one. With respect to the later claim, the applicant cannot succeed as regards obtaining judgment on that claim, in her favour, as she has not satisfied the court that the deceased was a single man for the relevant period.

Lived as husband and wife

[87] If even I am wrong in concluding that the evidence does not satisfy me that the deceased was single from at least 2004, I will go on to consider whether, based on the evidence before the court, the parties cohabited as husband and wife.

[88] Counsel for the applicant has submitted the useful guidelines in **Millicent Bowes v Keith Alexander Taylor (op. cit)** where McDonald-Bishop, J (as she then was) reviewed the authorities and accepted some '*signposts*' distilled by Tyner, J in **Kimber v. Kimber [2000] 1 FLR 384**, Those were:

- i. *Living together in the same household.*
- ii. *A sharing of daily life.*
- iii. *Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.*
- iv. *Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?*
- v. *A sexual relationship.*

- vi. *Children.*
- vii. *Intention and motivation.*
- viii. *The 'opinion of the reasonable person with normal perceptions'.*

[89] There is no litmus test as to whether a couple has cohabited as man and wife. What the case law has provided, are some signposts, to which the court may have regard, to assist it, in examining the overall circumstances of any alleged cohabitation before it.

Signposts

[90] The court accepts the evidence that the claimant lived at the disputed property along with the deceased. As to the reason or circumstances surrounding same, that/those, is/are, highly disputed in this court.

[91] The applicant has submitted that she and the deceased had shared finances. This is evidenced by a Jamaica Money Market Brokers account held in the names of the deceased and the applicant. That account was opened on June 29, 2009. The fact that the parties share a bank account raises the presumption that they had shared finances, and that may indicate an intimate relationship between them, when considered in the overall context of the case. A careful consideration of the circumstances surrounding said bank account however, based on the accepted facts before the court, may also serve, to rebut such a presumption. I will address that, in the next paragraph of these reasons.

[92] In this case, the court has evidence that the deceased fell ill, in or around 2004, having been diagnosed with cancer. He had later become unable to take care of himself. That account was opened three (3) months before his death. From the evidence of the declaration earlier referred to, it is clear that the deceased had some trust in the applicant to have '*care and protection*' of his possessions. Though the court is not supplied with any evidence as to any reason(s) why such an account existed with the applicant and the deceased, as joint account holders, in light of the independent facts before this court, this court is of the opinion that that account which was opened three (3) months before the deceased died, cannot serve to satisfy the court that the finances between the

deceased and the applicant were dealt with, in a manner which points to a common law relationship between them. This could have also been a matter of convenience, given that, at that time, Mr. Curchar trusted her.

[93] Further, from the evidence of the applicant, she had required Mr. Curchar to sign promissory notes, in respect of sums purportedly loaned by her to Mr. Curchar, for different expenses. No such promissory note though, was ever entered into evidence, in respect of this claim. Though there can be no litmus test as to how husband and wife conduct their finances, the court is not satisfied that the conduct of the parties overall, point to there being an intimate relationship between the parties.

[94] The court notes that the witnesses for the applicant have testified that the claimant and the deceased, adopted two children. This is contrary to the evidence of the claimant herself, that those children were hers and were never adopted by the deceased but were treated as children of the family. The interested party has contested this assertion and has deponed that her father was a loving man who would make most of children, without more. Though the opinions of reasonable persons with normal perception are usually considered, their evidence as to the true state of affairs of the life of the deceased and the applicant, may have been skewed. It is then probable for these witnesses to have a perception, but, when examined under the ambit of probability and the overall evidence in the case, that perception may, in appropriate circumstances, properly be viewed by this court, as being one which is inaccurate, as to the true state of affair, of the living situation, as between the deceased, the applicant and her children.

[95] In the case at hand, this court does not have any evidence, as to the sexual relations between the applicant and the deceased. This may have been omitted as a matter of decorum, however, nothing is to be presumed and it must always be recalled, that it is the claimant who has the burden of proof. The claimant has also omitted to mention any plans of marriage as between herself and the deceased. Though this information may seem trivial, Ms. Fullwood has given evidence that she is a church-going woman. She also testified that Mr. Curchar eventually started attending church and became a Christian. The absence of

any evidence as it relates to why/if any plans to solemnize that long-lasting union, according to her evidence, is noticeable. That evidence would have been helpful in allowing the court to understand, the overall circumstances of this common law relationship, as she has alleged.

[96] The court also has before it, the evidence of Mr. Curchar's children, who testified that they were never informed that there was any relationship between their father and Ms. Fullwood. The court believes this evidence. The probability does exist that the deceased may not have shared that detail, if it were true, at least initially, after the children migrated and were young. This court however, finds it improbable, that this information was not shared with any of the children, even in the latter part of the deceased's life, when his offspring were adults.

[97] This court has also considered the evidence of the applicant's now deceased witness, namely: Rowena Lypher and her witness that provided written and oral evidence at trial- Tanya Burgess. That evidence collectively, even when considered along with the claimant's evidence, still does not, to my mind suffice to satisfy this court, to the requisite standard, that for the relevant period of time, the applicant and Mr. Fullwood, were, 'spouses' as that quoted term is to be legally understood and bearing in mind the flexibility that must necessarily be associated with that understanding.

[98] In the final analysis, I am unsatisfied that the claimant has met, to the requisite standard, the necessary requirements required in proof of her claim. In that light her application for an order that she was the spouse of the deceased, fails.

Costs

[99] Part 64 of the Civil Procedure Rules which outlines the general rules concerning costs orders. **Rules 64.6 (3) and 64.6 (4) (a) (b) and (d)**, read as follows:

'(3) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(4) In particular it must have regard to –

a. the conduct of the parties both before and during the proceedings;

b. whether a party has succeeded on particular issues, even if that party has not been successful in the whole of the proceedings;

c...

d. whether it was reasonable for a party –

(i) to pursue a particular allegation; and/or

(ii) to raise a particular issue;'

[100] It is my view that in respect of Claim No. SU 2020 CV 04410, that since the 1st defendant's lead counsel, during trial, had contended that her client had no locus standi, and it was the court that had to dissuade her from that viewpoint, and given that the claimant was not completely unsuccessful, in respect of the orders which she has sought, each party ought to bear their own costs.

[101] In respect of Claim No. SU 2021 CV 00038, given that Andrea Curchar is not a party to this matter, though the applicant was unsuccessful in her claim, the court will order that there be no order as to the costs of that application.

CONCLUSION

[102] In the final analysis, the claimant has not succeeded in her earlier claim as she has not established to the requisite standard proof, that she has sued the correct defendant. Further, her evidence does not meet the requisite standard as regards any equitable or beneficial interest which she has sought, in respect of the disputed property.

[103] As regards the later claim, the applicant fails as she has not established, to the requisite standard of proof that the deceased was a single man for at least five (5) years immediately preceding death. Further, the evidence does not satisfy this court that the deceased and the applicant lived, as though they were husband and wife.

DISPOSITION

[104] In the circumstances, the orders in respect of Claim No. SU2020 CV04410, are as follows:

1. The 1st defendant and/or her servants are permanently enjoined from registering any dealing with the property known as ALL THAT parcel of land, part of Independence City, formerly part of Cumberland Pen in the parish of Saint Catherine being the lot numbered Nine hundred and fifty-nine and registered at Volume 1062 Folio 35 of the Register Book of Titles.
2. In respect of all of the orders sought in that claim, judgment on same is granted in favour of the 1st defendant.
3. Each party shall bear their own costs as regards this claim.
4. The 1st defendant shall file and serve this order.

[105] In the circumstances, the orders in respect of Claim No. SU 2021 CV 00038 are as follows:

1. Judgment on this claim is granted against the applicant.
2. It is declared that pursuant to section 2 of the Intestates' Estates and Property Charges Act, the applicant was not for the material period of time, the spouse of Huntley Curchar, who is now deceased.
3. No order as to the costs of this claim.
4. The applicant shall file and serve this order.

.....

Hon. K. Anderson, J