

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. 2004 HCV 2132

BETWEEN	QUILLO LOWTHAN	CLAIMANT
AND	COURTNEY HAYNES (Executor of the Estate of Josiah Lowthan, Deceased)	DEFENDANT

Mr. Charles Johnson instructed by H. Charles Johnson and Company for Claimant.

Mr. Kwame Gordon instructed by Frater Ennis and Gordon for Defendant.

Coram: D. McINTOSH, J.

HEARD: 28TH and 30th May, 2008

FACTS

On the 1st day of September, 2004 the Claimant filed this suit against Courtney Haynes, the Executor of the Estate of Josiah Lowthan (deceased) claiming a beneficial interest in land which was registered at Volume 1175 Folio 613 of the Register Book of Titles. The land had been registered in the sole name of Josiah Lowthan.

The basic facts are not in issue. The parties were married on the 20th December, 1975. They separated and ceased to cohabit in 1976.

By claimant's petition in the State of New York, United States of America, she obtained her Decree Absolute on the 5th July, 1999. At that time she indicated no interest in any division of property, wheresoever situate. In fact she indicated at that time there was no property to be divided.

The deceased died on the 12th November, 1999, having made a Will. In that Will he does not leave any part of the lands [supra] at Phoenix Park, in St. Ann for his former wife.

The Defendant Courtney Haynes, in carrying out his duties as Executor, disposed of the property on the 24th January, 2003.

LAW

The property at Phoenix Park was purchased in the sole name of the deceased.

At that time the parties were not married and the deceased was sole breadwinner.

The parties separated in 1976 and ceased cohabitation. Any interest Claimant would have had or gained in property, would have been lost by 1999 and certainly by 2004 when this action was filed.

- See -

Willis vs Willis

This is further emphasized by the fact that claimant in her petition for divorce made no claims on the property at Phoenix Park or for any property owned by the parties.

Under the Married Women's Property Act she would not have been able to pursue her claim after a period of over five (5) years.

Under the present Property Rights of Spouses Act, 2004 she could only do so now by Special Leave of the Court.

- See Section 13 -

The asset which she claims to have an interest in has been dissipated by the Executor selling property within the scope of his duties as trustees of the beneficiaries. This was done before this suit was filed.

In all the circumstances, this claim is dismissed with costs to the Defendant to be agreed or taxed.