



[2015] JMSC Civ. 196

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2011HCV05087**

**BETWEEN HYACINTH VERONICA LYNCH CLAIMANT
AND DERRICK BLACKWOOD DEFENDANT**

Mr. Deyabo Adedipe for the claimant
Mr. Hugh Hyman for the Defendant

Heard: 23rd February, 5th May, 6th May, 11th June and 8th October 2015.

Joint tenancy – Extinguishment – Limitation of Actions Act

In Chambers

Straw J.

THE PARTIES

[1] The claimant, Hyacinth Veronica Lynch is the sister and one of two executors of the estate of Rosemarie Elaine Blackwood who died under tragic circumstances on the 16th January 2010. Although the Fixed Date Claim Form was filed reflecting both herself and the second executor, Seymour Brown as claimants, the court granted an order to amend the claim removing Mr. Brown as a party. Ms Lynch was also given permission to continue this action in a representative capacity on behalf of the said estate.

[2] The defendant, Derrick Blackwood is the former husband of the deceased. Both the deceased and the defendant are joint tenants for property at lot 57 Glenco Housing Scheme, Santa Cruz, St Elizabeth which is registered at Volume 1180, Folio 591 of the Certificate of title of the Register Book of Titles. The joint tenancy was registered on the title on the 7th of February 1996.

[3] The claimant is seeking a declaration that the interest of Mr. Blackwood as a joint tenant has been extinguished pursuant to the provisions of The Limitation of Actions Act and that at the date of her death, the deceased was solely legally and beneficially entitled to the said property. She is also requesting that the court orders the defendant to deliver up possession of the said property and to refrain from entering therein, selling, or attempting to sell or otherwise deal with the property. The defendant has violently objected to this claim and has asserted that he remained in occupation at all material times and that the property in its entirety belongs to him as he is now the sole surviving tenant.

BACKGROUND

[4] The circumstances leading up to this action unfortunately involves the breakdown of a family unit, separation and divorce and eventual alienation between Mr. Blackwood and the children of the marriage, Marissa and Kerry-Ann. The deceased and the defendant were married on the 20th December 1980 and the union produced the two above named children. Mr. Blackwood stated that the property was acquired in 1982 via a sales agreement with the Jamaica Teachers Association Housing Co-operative. It appears that the marriage relationship broke down between 1995 and 1996 and the deceased applied for the dissolution of the marriage and a decree nisi was granted on November 3, 1997. The decree was made absolute on February 15, 2001.

[5] The deceased continued to occupy the property up to the time of her death in January 2010. The claimant is alleging that Mr. Blackwood left the premises in 1996 and never returned there. She also alleged that he had nothing to do with the property including making contributions to the mortgage, the payment of property taxes or its maintenance. She further stated that he did not benefit from the property in any way between 1996 and the time of Rosemarie's death.

[6] Mr. Debayo Adedipe, counsel for the claimant, is relying on the principles enunciated by the Privy Council in **Wills v Wills [2003] UKPC 84** and their application of section 14 of the Limitation of Actions Act[which was stated to be equivalent to

section 12 of the English Real Property Limitation Act 1833] as the basis for this action. Since the advent of **Wills**, it has been settled law that one joint proprietor of registered land in Jamaica can bar the interest of another under the provisions of the Limitation of Actions Act. It will be important however to analyse the particular circumstances of each case to see if they fall within certain parameters that could attract the application of the principle as laid down in **Wills**.

THE FACTUAL ASSERTIONS OF THE CLAIMANT

[7] It is important to note that while Ms Lynch testified in her affidavit as to the acquisition of the property, the breakdown of the marriage and divorce, as well as contributions made by the parties in relation to the property and the occupation of the property, she admitted under cross examination that she had no personal knowledge in relation to the financial affairs relevant to the property or about Mr. Blackwood's occupation or non occupation or whether he had benefitted from the property between 1996 and 2010.

[8] The claimant is therefore relying solely on the evidence of Kerry-Ann Blackwood, the younger daughter. Her evidence relates essentially to her father's occupation of the property and his lack of financial and emotional support for herself and Marissa. Kerry-Ann testified that her parents' marriage broke down about the time the property was acquired. At that time, her elder sister, Marissa, was sent off to boarding school at Hampton High. Her sister would return home every third weekend and during school holidays. Both parents were then occupying separate bedrooms and her father had a telephone installed in his room and would come and go as he pleased.

[9] She testified further that she began attending Hampton in 1995 as a day student and during that time herself and her mother lived alone at the home, her father lived elsewhere and did not come to the house. He had moved out sporadically after an incident in 1995 which resulted in injuries to her mother and damage to her father's car, and at some time in 1996, he had moved out fully. Her mother changed the locks after he moved out.

[10] Kerry-Ann stated that she also started boarding in September 1997 but would return home every third weekend, during mid-term and at end of term holidays. She explained that her visits were more frequent than Marissa's due to her participation in athletics as she was allowed to go home after sporting events. In 2000, she graduated from 5th form and then 6th form in 2002. During that time she continued returning home on 3rd weekends and other breaks as indicated above.

[11] After completing 6th form she lived at home till October 2002 when she commenced her tertiary education. She stated that her father's room in the house did not exist after 1996 and that when he left, it became her mother's office. She has denied that he lived there till 2002 and that he would make periodic visits. As only a grieved child can do she expressed her relationship with her father in the following words:

'He stopped communicating with us and did not tell us why.-----But his presence was gone ,at first it was in and out and then all his personal effects disappeared and he no longer came home.'-----Also the lack of participation in important days such as graduation---as well as financial, school supplies and down to the very basics such as clothing, books, food. He was never present for extracurricular such as track and field which afforded me the opportunity for a full scholarship to college in the USA. This is what caused the downfall between my father and I. I did not want this type of relationship---.Every female child needs their father's presence to teach them.'

[12] She has also denied that it is what her mother said that turned the minds of the siblings against their father. The substratum of the claimant's case therefore rests on the assertion that Mr Blackwood left the property sometime in 1996 and never returned to live there, that he also had no interest or benefited from the joint tenancy from that time up the year 2010 when his ex-wife died.

FACTUAL ASSERTIONS OF THE DEFENDANT

[13] Mr. Blackwood has substantially contradicted the evidence of his daughter, Kerry-Ann, in relation to his occupation of the disputed property. He stated that the said property was acquired in 1982 as indicated above. He paid the deposit by way of a manager's cheque and the house was handed over in early 1983 and was occupied shortly thereafter. He made improvements to the property in 1985 to 1986 with funds earned in the USA.

[14] He testified further that the balance of the purchase price was funded via a loan from the above named cooperative granted to both himself and the deceased and that both of them paid the monthly sums due on the loan. In 1984, he went to the USA and by 1989, the deceased had fully migrated there. The family therefore resided in that country until 1992 when they returned to Jamaica.

[15] Mr. Blackwood stated that the marriage fell apart in June 1996, however both himself and the deceased occupied the premises up to 2002. He moved out in October 2002, when he married his present wife, Sharon. During that period [1996—2002] his two daughters were attending boarding school and were only present on holidays. He did admit however, under cross examination, that Kerry- Ann would go home at other times. He explained that from November 2001, he would frequently stay over at Sharon's abode but would still return to the premises where he had his furniture and other belongings and that even after his marriage, he only took some of his clothes and left his room almost completely intact.

[16] According to Mr. Blackwood, after he remarried in October 2002, he still maintained his room at the premises and made periodic visits and that he had agreed with the deceased not to dispose of the property at the time so as to allow his children a place to stay as they were still young.

Telephone Bills.

[17] In support of his continued occupation, Mr. Blackwood stated that he had a telephone line installed in 1998 with reference number 966-3294. He explained that this installation was necessary as the previous line installed was being used only by the deceased. He explained further that Sharon [with whom he had started a relationship by then] went off to the University of the West Indies in 1998 and that new line was installed in his bedroom so that they could communicate. He produced some of these telephone bills for the court's inspection. Mr. Blackwood stated that he made various calls from his room at the house.

[18] It is noted that these bills are dated September 2001, October 2001, and November 2005. The bill for September 2001 includes the cost of two international calls to Montserrat on 2nd August 2001. Mr. Blackwood explained that he made these calls to one Cheryl Whyte, a social worker from Montserrat as a result of a reported volcanic eruption in Montserrat. It is noted also that the bill of 2005 actually carries forward a bill from 21st March 2003 in the amount of \$2143.25.

[19] Mr. Blackwood stated that this line was used exclusively at the premises and disconnected in March 2003 as he no longer needed it. A service enquiry-general information form dated 6th December 2012 was also exhibited with these bills. This form describes that service # 966 3994 is situated at address, lot 57 Glenco H/S, Santa Cruz, St Elizabeth. The customer is noted to be Derrick Blackwood and the account is described as closed.

[20] It is to be noted also that the bills are addressed to the defendant with an address of Ridge Pen District, Watchwell PA, St. Elizabeth. Mr. Blackwood explained that he used this address for bills as the deceased would get bills for him and not give it to him. It is noted also that these bills do not reflect much activity which suggests a minimal use of the services. However the evidence does support that this phone service was active at least up to 2002.

[21] During cross examination, Mr. Blackwood revealed that he had recently found other phone bills. Mr. Adedipe subsequently requested disclosure of these. This was done by way of a supplemental defendant's list of documents filed on May 5th 2015. It is noted that the list describes bills dated February, March, April, May, June, July, August and September of 1998 as well as June and September 1999.

[22] Mr. Blackwood is therefore disputing the evidence of his daughter that he had totally removed from the premises by 1996. His evidence has been supported by his wife Sharon and Mr. Lawrence Salmon. Mr. Salmon testified that he resides at lot 62 Glenco and is able to see Mr. Blackwood's house from that location. He spoke to knowing both the deceased and Mr. Blackwood and that he used to visit them at their house.

[23] According to Mr. Salmon, Mr. Blackwood was still residing at the said location up to the 7th February 2002 as he went there shortly after that date to inform Mr. Blackwood of the birth of his son. His son was born on the 7th February 2002. He saw and spoke to him on the premises that day. He also testified that he would pass the premises very often and would talk to the defendant and also that he would see Mr. Blackwood's vehicle, a white Toyota Levin, there. He said that he knew the defendant to be living there continuously and in occupation and possession for around 20 years up to that time in February 2002 and for sometime after.

[24] He stated specifically that Mr. Blackwood was living at the said premises between 1984 and 1992 and also between 1996 and 2010. Mr. Salmon described himself as a good friend of Mr. Blackwood, but he also said that he was close to both Mr. Blackwood and the deceased and used to visit them often. It is noted also that he was a guarantor for Marissa's student loan at the University of The West Indies.

[25] In relation to Sharon Blackwood, she testified that she met Mr. Blackwood in 1995 and they commenced a relationship in 1997. She resided in Williamsfield District with family members up to November 2001 but attended the University of the West

Indies from 1998 to 2001. Between 1998 to 1999 she resided on hall at the university and would receive and make calls to the defendant at the number 966 3294. She stated that this was the number displayed on her cellular phone as the number from which he was calling. These calls were frequently at night or early morning.

[26] She further stated that between 1999 and 2000, she resided in Mona and would call the defendant on the same number from a public phone at various times of day or night. She said she would frequently collect the bills for this number as well as for electricity that were sent to a postal agency in relation to the premises at Glenco.

[27] She explained further that between 1998 and 2001, she would travel by public transportation at least once per week between the university and Williamsfield. This route would take her directly past Mr. Blackwood's house, mostly late at nights. At those times she would frequently see his vehicle parked in the premises. She also saw the said vehicle when she travelled to Kingston early in the mornings at 6:00am. and that he would be frequently seen washing the car.

[28] She stated that between 1998 to 2002, in particular 2002, she would be in his vehicle on occasions when he would go to the said premises. She remained in the vehicle and would see him use a key to gain entrance to the premises. In November 2001, having left UWI, she moved from Williamsfield to Middle Quarters and Mr. Blackwood frequently visited her there and would sometimes spend the night. She stated that after they got married in 2002, he moved in with some of his clothes.

Submissions of the claimant in relation to the facts

[29] Mr. Adedipe has asked that I accept Kerry-Ann's evidence in relation to the date that her father left the premises. He also stated that Mr. Blackwood has provided no documentary proof of being the main acquirer of the property. I note, however, that the claimant has also failed to provide any such proof. He has also asked that I bear in mind that there is no documentary proof that the telephone line was actually installed in 1998 instead of an earlier date. He also spoke to the utter failure of Mr. Blackwood as a father to support his children emotionally and financially despite his protests. Counsel

submitted that this is clear from the fact that a maintenance order was obtained against him when he was ordered to pay \$2000 per week for each child as well as 70% of the school fee and that he gave no assistance to Marissa when she was attending the University of the West Indies. Based on the evidence, both he and his present wife would have been attending the said university at the same time at some point.

[30] Mr. Adedipe referred to Mr. Blackwood's statement that he wanted his daughters to benefit from the said property. However, when he was asked if they would benefit if the court ruled in his favour, he admitted that he would be selling the property to take care of his own medical bills.[He was diagnosed with colon cancer in 2010 but is apparently in remission at this time.] Counsel has also submitted that Mr. Blackwood's evidence that he still occupied the property between 1996 and 2002 is further suspect as he did not appear to know when Kerry- Ann started boarding at Hampton and when Marissa left Hampton and started attending the university. The evidence is that she started in 1999 but he said she would have started in 2000. The court note that his evidence is that he cannot recall what year Marissa started to board but it was thereabouts in 1995.

[31] Mr. Blackwood also admitted that he did say that he was not aware that Kerry - Ann would be at home at other times because of her involvement in athletics but that he did know that they would be at home apart from holidays when they were boarding. He explained that he knew they would be home on some weekends so when he said that they were only home on holidays, it was not entirely true. His explanation was that maybe 'it was how I classified as holidays the entire thing.' It is for these reasons that Mr. Adedipe has submitted that the court should accept Kerry-Ann as the more credible witness. It is the view of the court however that Mr. Blackwood's faulty recollection could be due to his diminishing involvement in his children's life over the period of time.

[32] In relation to Mr. Salmon, Mr. Adedipe has asked that the court to consider that he is a friend of Mr. Blackwood. He submitted further that his evidence cannot be relied on but should be viewed as contrived as he has the family living at the premises

between 1984 and 1992 .The evidence of Mr. Blackwood on this point was that he had gone to the USA to work in 1984 and that the deceased would visit and then fully resided there by 1989.He also stated that the entire family returned home to Jamaica in 1992.

[33] I am not of the view that this is a major inconsistency however, as the family never gave up possession of the premises during those years and there was apparently travel between USA and Jamaica until at least 1989. The family unit would have returned to Jamaica by 1992.The greater challenge to Mr. Salmon's reliability is his assertion that Mr. Blackwood was at the premises between the middle of 1996 to 2010. Mr. Blackwood has asserted that he moved out after October 2002, but still made periodic visits. Based on his assertions, one does get the impression that his presence at the property after late 2002 would have been minimal. However, the issue of Mr. Salmon's reliability in relation to 2002 has not been seriously challenged. He has disclosed the birth certificate of his son born on 7th February 2002 and I have no compelling reason to reject his testimony especially in light of his past relationship with the entire family. I also bear in mind that the telephone bills do provide documentary proof that is consistent with his testimony.

[34] In relation To Sharon Blackwood , Mr. Adedipe states that her evidence is also suspect as she was reluctant to admit Mr. Blackwood assisted her while she attended university. He has also asked that I assess her evidence as incredible when she states she would travel once per week between the said university and Williamsfield. He has questioned her financial capability to do so while she was engaged in full time study and while Mr. Blackwood was himself a student at the university. Counsel posed the question, 'Would she not travel with him?'

[35] He stated also that there is a discrepancy between her evidence and Mr. Blackwood's when she said that she would be with him when he was on the premises on several occasions. This statement was made within the context of an assertion that her husband was in occupation of the premises in 2002 'and continuously so up to then

for a number of years before'. She also testified that she knew he would continue to go on the premises after their marriage as she went there with him at times waiting in the car. Counsel pointed out that Mr. Blackwood stated that while he was dating his current wife, he did not bring her on to the premises. The court notes that neither party was asked to explain this issue and it remains unclarified as to what Mr. Blackwood meant by 'being on the premises'. Does this mean being present in the car on the premises or being in the house itself?

[36] I note however that Mr. Blackwood's evidence is given in the context of an agreement between himself and the deceased to keep any romantic relationships away from the premises and he said that to the best of his knowledge, neither of them took any lover there up to 2002. It is for this reason that I'm hesitant to draw any negative inferences without more that would impact my view of the credibility of these two witnesses on this point.

Telephone bills.

[37] Counsel, Mr. Adedipe, has asked the court to bear in mind that the telephone bill exhibited for 2001 has Mr. Blackwood's referred to merely as service number 'P30048758' and that the actual # 966-3294 was only displayed on later bills, therefore, Mrs. Blackwood could not have seen this number displayed on her cellular phone at the time she said she did. Mr. Adedipe submits that this evidence was clearly contrived to bolster Mr. Blackwood's case.

Submissions of the defendant on the facts.

[38] Mr. Hugh Hyman, counsel for the defendant, has submitted that Kerry-Ann Blackwood is not a credible witness and that she is also biased against her father because of what she perceived to be his inadequate treatment. He also submitted that she has manifested a vested interest in the outcome of the case even at the expense of the truth. He further submitted that she was shown to be absent from the property or infrequently there at the material time and she cannot therefore speak to the salient issues.

[39] He has asked the court to accept the evidence of Mr Blackwood, including the fact that he only ceased to reside at the premises after October 2002 and that the deceased's presence at the property was by virtue of the fact that he agreed not to dispose of the property then so as to allow his children a place to stay when they were around as they were still young.

[40] Mr. Hyman submitted that Mr. Blackwood is fully entitled to sole ownership as the sole surviving joint tenant and that he has never abandoned his ownership claim. He has asked that the court accept the following evidence as proof of continued asserted ownership:

- The installation of the telephone line in 1998 and use of that line including calls to Montserrat in August 2001. This line was only disconnected in March 2003.
- Subsequent telephone bills found and disclosed with bill dates of 1998 and 1999.
- Kerry-Ann's evidence that her mother and father did occupy separate rooms and that her father had his own telephone installed in his room.
- The evidence of Lawrence Salmon as recited above and Kerry –Ann's evidence that he is a friend of the family.
- The evidence of Sharon Blackwood as recited above.

Mr. Hyman contends that Mr. Blackwood's version is to be preferred as there is compelling independent corroborating evidence including documentary evidence. He has also submitted that Mr. Salmon is an independent witness with no ax to grind.

Analysis of the evidence.

[41] There are two contradictory accounts as to Mr. Blackwood's occupation of the property. I do not believe that Kerry Ann is a vindictive witness who seeks to be avenged against her father at any cost. At the same time the issues of this case cannot be decided based on Mr. Blackwood's failure as a father. It is clear that Kerry-Ann does

desire some acknowledgement and apology from her father who has not been available emotionally or financially in the father-daughter relationship. The issue is whether she is a reliable witness as to the date her father left the family home and whether he gave up possession completely at that point in time. It is her contention that he started moving out in 1995 and that this process was completed in 1996. She herself would have left for boarding school in September 1997, Marissa having preceded her. Once she left, she would not be knowledgeable of daily occurrences at the home, except when she returned on some weekends, after track meets and holidays. It is not inconceivable that Mr. Blackwood could be in and out of the house during these periods.

[42] Kerry-Ann has also stated that the property was acquired about the time of the breakdown of her parents marriage and that her father lived elsewhere in 1995 and did not come to the house. At that time she and her mother would have been living alone. Yet she also went on to say that he had started moving out after an incident in 1995 but sporadically returned and then moved out completely by 1996.

[43] It is the evidence of Mr. Blackwood that the family occupied the premises from 1983 and also that the family returned to Jamaica in 1992. I accept his testimony as reliable on this point. I am not convinced therefore that I can totally rely on her evidence in relation to dates when she stated that the breakdown of the relationship occurred at the time of acquisition of the property.

[44] In relation to the witness, Mrs. Blackwood, I do agree with the submissions of Mr. Adedipe that portions of her evidence may be contrived, in particular, the identification of the number on her phone between 1998 and 2001. However, it is clear that the telephone line put in by Mr. Blackwood, whether in 1998 or before as suggested by Kerry-Ann, remained in service until 2003. This is more consistent with him moving out after October 2002, than permanently disconnecting himself from the premises in 1996.

[45] In relation to the evidence of Mr. Salmon, I accept that he is a credible witness. He is described as a friend of the family and a guarantor of Marissa's student loan. This

last fact was unknown to Mr. Blackwood. I accept that he went to the premises after his son was born on the 7th of February 2002 and saw Mr. Blackwood there and gave him the information. There is no evidence to suggest that he is solely concerned with Mr. Blackwood's interest in the property. In the final analysis, it does appear and I accept that it is so, that Mr. Blackwood did not abandon his interest in the property from 1996 but maintained his connection up to, at least 2002, when he remarried.

THE LAW.

[46] Counsel, Mr. Adedipe is relying on the Privy Council case of **Wills v Wills** which established the principle that one joint proprietor of registered land in Jamaica can bar the interest of another under the provisions of the **Limitation of Actions Act**. The relevant sections of the Act as considered by the Privy Council are sections 3, 14, 16 and 30. Lord Walker of Gestingthorpe, who delivered the judgment, described the issue facing the court in the following words at para.1:

'This appeal raises issues as to the acquisition and extinction of title to and under the Limitation of Actions Act of Jamaica. The issues arise in an all too familiar context, that is where property is owned by a husband and wife as joint tenants and there is a breakdown of the marriage leading to a separation and divorce. It is however a very unusual context-----for a dispute as to whether one co-owner [in this case the husband] acquired title by possession from the other co owner [his first wife]

[47] This principle is based on section 14 of the above Act which is set out below:

"When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possess or receipt of the entirety, or more than his or their undivided share of shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them."

[48] In **Wills**, section 14 was said to be equivalent to section 12 of the English Real Property Limitation Act 1833 which had the effect of making the possession of co-tenants separate possessions. Lord Walker, at para. 15, spoke to the significance of the changes made by this 1833 Act as discussed by Lord Upjohn while giving the judgment of the Board in **Paradise Beach & Transportation Co Ltd v Price- Robinson** [1968] AC 1072,1082-3. In **Paradise**, reference was made to the judgment of Denham CJ in **Culley v Doe d Taylorson** [1841] 11 Ad &E 1008, 1015 et seq. who examined section 12 of the English Act.

[49] Denham CJ pointed out that at common law the possession of one tenant in common was possession by all and that there must be an ouster. He then quoted section 12 and held that the effect of the section was to make the possession of co-tenants separate possessions from the time they first became tenants in common and that time ran for the purposes of section 2 from that time.

Section 2 is the equivalent to section 3 of the Jamaican Act which designates that the right of entry to bring an action to recover land is limited to 12 years after the right first accrued. By virtue of section 30 of the Act, if the joint tenant makes no entry or fails to bring an action within the limitation period of 12 years, then the right of that joint tenant is extinguished.

[50] Lord Walker, at para 32, made it clear that the results in **Wills** turned on its own facts but sounded a warning in the following words:

But if [as sometimes happen] a Jamaican working overseas forms new attachments and starts a new life, and entirely abandons the former matrimonial home, he or she will [within the ample period of 12 years] have to consider the legal consequences of that choice.

Based on the legal principles in the Act and as settled in **Wills v Wills**, the claimant would have to establish that the defendant abandoned his interest in the property for at

least 12 years or that the deceased dispossessed the defendant or was in exclusive possession for that same period of time.

[51] Mr. Hyman submitted that there is no such evidence to support any of the above assertions. He has asked the court to pay regard to the tone of the judgment in **Wills** where the court emphasized that the evidence in that case revealed the total exclusion of the first wife from the disputed properties and the emphasis on the words ‘ **entirely abandon**’ by Lord Walker in para.32.[emphasis supplied.] He submitted further that the facts in that case are very distinguishable from the instant one. He has asked the court to examine the summary of the facts as accepted by the court in **Wills** as set out in para. 28 of the judgment:

“Shorn of these accretions, the issue does in the end come down to reasonably simple terms. It was established by the evidence that Elma never set foot in Sunrise Crescent after 1976. She never received any rental income, either from the flat at Sunrise Crescent or from Newleigh Avenue, for a longer period. From 1976 at latest, Myra was living with George at Sunrise Crescent, and joining with him in managing the rented property, to all appearances as if they were co-owners as man and wife. In 1991 Elma visited Jamaica but did not go to Sunrise Crescent because George did not invite her. She never positively challenged Myra’s evidence that none of her possessions (except her abandoned wedding ring) was to be found at Sunrise Crescent after 1971. In the Court of Appeal counsel for Elma conceded (as recorded in the judgment of Langrin JA (Ag)) that George had been in exclusive possession since 5 January 1974. Was there, in these circumstances, any possible basis for the conclusion that Elma had not discontinued her possession, or been dispossessed, more than 12 years before the issue of the originating summons?”

[52] Mr. Hyman submitted that in the present case there is no evidence that Mr. Blackwood was excluded from the premises. There is also evidence that he continued his occupation up to October 2002 and that he had left some of his possessions in his room subsequent to that date. It could not be concluded therefore that Mr. Blackwood had’ discontinued his possession or been dispossessed more than 12 years’ before the

institution of legal proceedings as was found to be the case in **Wills**. There was also a clear concession in that case that the deceased had been in exclusive possession since 5th January 1974. There has been no such concession in the proceedings before this court. He has submitted also that even if one were to accept that Mr. Blackwood discontinued possession after October 2002, his first wife died in 2010. This time frame would be less than 12 years before the instituting of legal proceedings by the Claimant in August 2011.

[53] Counsel cited the case of **JA Pye [Oxford] Ltd and another v Graham and another [2002] 3 All ER 865**, which was cited and approved by the Privy Council in **Wills**. In that case Lord Brown–Wilkinson, at page 876, spoke of the two elements necessary to prove legal possession, factual possession and the intention to possess. Factual possession speaks to a sufficient degree of physical custody and control. Intention to possess is the intention to exercise such custody and control on one's own behalf and for one's own benefit;

.....there has always, ... in common law, been a requirement to show an intention to possess in addition to objective acts of physical possession. Such intention may be, and frequently is, deduced from the physical acts themselves. But there is no doubt in my judgment that there are two separate elements in legal possession.....It is not the nature of the act which A does, but the intention with which he does them which determines whether or not he is in possession.

[54] In **Wills**, the Privy Council held that the evidence revealed that the deceased husband had the intention to possess and did have physical possession for the requisite period so the 1st wife's right was actually extinguished. Mr. Hyman has submitted that in this case, apart from the hurdle as it relates to factual possession faced by the claimant, there is also no evidence to substantiate the requisite intention necessary. He points to the following as the difficulties in mounting this hurdle:

- The deceased is not available to give evidence in this matter.

- There is no admission on the point by the defendant as in **Wills**.
- It is the evidence of the defendant that the deceased's presence at the property was by virtue of and with his consent.[to facilitate their children]

[55] I note that both Marissa and Kerry-Ann would have commenced high school in or about the time of the separation and resided in the home at Glenco. In **Wills**, there was no evidence of children of school age residing in the disputed properties. Mr. Blackwood's evidence on the issue of an agreement between himself and the deceased would therefore carry some weight and there is no evidence to the contrary..Counsel submits that for all the above reasons the claim ought to fail as there is no credible evidence of factual possession or the intention to possess.

[56] Mr. Adedipe's submissions in relation to the extinguishment of Mr. Blackwood's right rests on the court accepting that, on a balance of probabilities, certain factual circumstances existed for at least 12 years. This would be to the effect that the deceased occupied the premises solely from the time Mr. Blackwood left [1996] to the time of her death.[2010]Secondly, that no credible evidence exist of him making an entry or retaking possession of the premises.

[57] I am not of the opinion that there is any cogent evidence of these circumstances existing in relation to the length of time required. In **Wills**, one aspect of the evidence relied on by the court is that the 1st wife was excluded from benefiting from rent in relation to one of the disputed properties although letters were written to the deceased husband complaining of this fact. Apart from Kerry-Ann's assertion that the lock was changed after her father moved out, there is no other evidence on which I could find that the deceased had the intention to dispossess Mr. Blackwood. I am also of the opinion that I am unable to rely on this aspect of her evidence as there is contrary evidence to suggest that Mr. Blackwood maintained a presence [however minimal] on the premises.

[58] I am also of the opinion that the claimant has failed to prove that Mr. Blackwood left the premises in 1996 with all his possessions and never returned. In **Wills**, the evidence was unchallenged that the only possession left in the disputed matrimonial home belonging to the first wife was her wedding ring which she had apparently abandoned when she left Jamaica. Mr. Blackwood has disputed the evidence that he left with all his possessions. Bearing in mind all the above circumstances, the court is of the view that the claimant has failed to prove the case for extinguishment of the joint tenancy. It is the judgment of this court that Mr. Blackwood is entitled to sole ownership and possession of premises situated at Lot 57, Glenco, Santa Cruz, St Elizabeth described in certificate of title registered at Volume 1189 Folio 591 of the Register Book of Titles.

[59] THE COURT THEREFORE MAKES THE FOLLOWING ORDERS:

- Judgment entered for the defendant on the Fixed Date Claim Form with costs to the defendant to be agreed or taxed.
- The Registrar of Titles is ordered forthwith to remove the caveat lodged in relation to premises situated Lot 57, Glenco, Santa Cruz, St Elizabeth described in certificate of title registered at Volume 1189 Folio 591 of the Register Book of Titles.
- The Claimant is ordered to deliver up forthwith to the Defendant Attorney-at-Law, the Certificate of Title for the said property.