[2025] JMSC Civ. 137

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

CLAIM NO. SU2024FD01490

IN THE MATTER OF all that parcel of land located at 17 Maxfield Place, Runaway Bay P.O., in the parish of St. Ann registered under the Register Book of Titles at Volume 1233 Folio 290.

AND

IN THE MATTER of Property (Rights of Spouses) Act.

BETWEEN	**JENNIFER-ROSE-BROWN**	**CLAIMANT**
AND	**LENNIE LYNVAL BROWN**	**DEFENDANT**

Dates heard: 14th July, 2025 and 14th November, 2025.

IN CHAMBERS

Ms. Zara Lewis instructed by Zara Lewis & Co, Attorneys-at-law for the Claimant.

The Defendant appearing in person and unrepresented.

Family Law- Division of Matrimonial Property- Property Rights of Spouses Act – Whether it would be unjust to give each party a 50% share in the property.

A. Martin- Swaby J Ag.

[1] By way of Fixed Date Claim Form filed on the 23rd April, 2024, the Claimant seeks a declaration that property located at 17 Maxfield Place, Runnaway Bay, Saint

Ann and which is registered under the book of titles at Volume 1233 Folio 290 in the Parish of Saint Ann is the family home. She is claiming a 50% legal and equitable share in this property.

[2] The Claimant and the Defendant cohabited for several years before entering matrimony on the 06th August, 1988. Three (3) years into the marriage, particularly on the 02nd January, 1991, they became joint owners of land located at 17 Maxfield Place, Runaway Bay, Saint Ann. The Defendant financed the purchasing of this land. He also commenced construction of the property in the year 1992. Shortly thereafter, a most unfortunate event befell them. In 1992, the Defendant was incarcerated in the United States of America. He spent five (5) years in prison.

[3] However, whilst he was incarcerated, the construction of the property was largely financed through monies he left in a chequing account. On his release in the year 1997, the premises were habitable and as such the entire family which consisted of the parties and their three (3) children moved into the home. However, within months of so doing, the Claimant relocated to the United States of America. The evidence is that after she left in the year 1997, she visited the property on several occasions until the year 2006. She has not been back to the premises since that date.

[4] After a prolonged period of separation, a Decree Absolute was granted on the 15th November, 2023. This claim for a division of the property was initiated some five (5) months after the Decree Absolute was issued.

Claimant's Case –

[5] The Claimant, in her Affidavit, filed on the 4th February, 2025, asserts that the agreement between the parties was that the Defendant would fund the purchase of the land and they would share the cost of construction. However, the Defendant did not contribute towards the cost of construction. She indicated that they obtained a Ten Thousand Dollars ($10,000.00) discount on the purchase price from her former employers, J.C Wilmott. She indicated that after the Defendant's incarceration and on his return, she travelled to the United States where she lived and worked for several years. However, she sent monies to take care of the children as also for the general maintenance and payment of the property taxes. However, she later learnt that there was a balance of Ninety-Four Thousand Dollars ($94,000.00) on the property taxes.

[6] During the trial, permission was given to amplify the evidence in Chief. Her evidence is that when the property was purchased, although she was not formally employed, she was in the business of buying and selling goods. She stated that all three (3) children resided at the property. The last one to move out of the house and join her in the United States did so in the year 2009. She took care of them financially when they lived at the subject property.

[7] In cross examination, she accepted that she did not contribute anything towards the purchase of the property. The Defendant also suggested that she did not contribute anything towards the payment of taxes for the property and neither did she contribute towards any expenses on the property. In cross examination, the following questions were asked and answers given;

Question: I (the Defendant) return to Jamaica in 2005 and have been living in Jamaica. When I came back there were expenses for repairs of the house. I made it known to you and your reply was you did not have any money?

Answer: Could be yes.

Question: When did you send money re expenses for the house?

Answer: We did not discuss any expenses re the house. I send money and he decide what to do.

Question: I asked for money to put cabinetry in the kitchen, did you send any?

Answer: No.

[8] The Claimant accepted that the Defendant started building the house in 1991 and that whilst he was incarcerated, the monies to fund the construction were taken from a joint account. However, she had not added any monies to this account. The Claimant indicated that she did contribute towards the building of the house. Her evidence is that whenever there was no money in the chequing account, she paid the workers out of pocket. She also contributed towards getting the windows, as well as the painting and tiling and the bathroom fixtures. The funds to do this came from her earnings when she went to the United States in the year 1992.

[9] The Claimant stated that she lived in the house between March to August 1997 after the Defendant's incarceration ended. She has not lived in the house since that time. However, after 1997, she visited on several occasions where she would spend three (3) to four (4) months at a time. After the year 2005, she stayed in the United States. The Defendant left for England in the year 1999 and remained there until 2005. On his return in 2005, he has remained at the subject property.

The Defendant's Case –

[10] The Defendant's case is that he bought the property on October 5, 1990 and started building on the property in February 1991 – July 1992. In July 1992, he was incarcerated. However, sufficient funds were left in a chequing account to facilitate the continuation of the construction. In 1997, he was released from prison. On his return to Jamaica in June/July 1997, he found; two (2) bedrooms, living room, dining, kitchen, two (2) bathrooms and a carport. The entire family moved into the premises with the three (3) children.

[11] Two (2) months later, the Claimant went to the United States America to live. However, he remained on the premises until he migrated to the United Kingdom in October 1999 and remained there until the year 2005 when he returned. On his return, he completed two (2) to three (3) bedrooms upstairs and rented them as a means of earning an income. He states that the property has not been a part of their shared lives for over twenty-seven (27) years. All the property taxes were paid by him save and except during the divorce proceedings when the Claimant paid something for “2021-2022” and “2022-2023”.

[12] In cross examination, he accepted that when the family resided at the Claimant’s Aunt’s house “rent free”, this allowed him to save money towards the purchase of the subject property. However, he stated that he was also in a “partner” at the time and his draw was Fifteen Thousand Dollars ($15,000.00). That this was how he was able to purchase the property. In cross examination, he also reiterated that he gives the Claimant credit for managing things when he was incarcerated for five (5) years. Whilst incarcerated, he stated that it was difficult for her and the children. However, he stated that whilst he was incarcerated, he received Fourteen Thousand United States Dollars ($14,000.00USD) which arose from a motor vehicle accident and he arranged for her to collect this money.

[13] He was unable to place a monetary value on her taking care of the children during his incarceration. He agreed that for an entire year and a half during the marriage, the Claimant was the sole breadwinner. During that time, the Claimant sent money to pay the bills for the family.

[14] He stated that when he left in 1992, the windows and doors for the property were ordered and the property was enclosed. However, the property was inhabitable at that time. When he returned, it was habitable.

Issues:

1. Whether the property is the family home or may be classified as “other property?
2. If it is the family home, should the “equal share” rule be applied or varied?
3. In the alternative, if it is not the “family home”, what is the appropriate apportionment of the value of the property between the parties?

Law & Analysis-

[15] I bear in mind that the Property Rights of Spouses Act "PROSA" sets out the legal framework for the division of matrimonial property. Section 4 of the Act states as follows;

> *"The provisions of this Act shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between spouses in respect of property and, in cases for which provisions are made by this Act, between spouses and each of them, and third parties."*

[16] Section 13(1) of the Act provides that a spouse is entitled to apply for the division of matrimonial property within twelve (12) months of the grant of a decree of dissolution of marriage. In this matter, a Decree Absolute was granted on the 15th November, 2023. The Fixed Date Claim Form, having been filed on the 23rd April, 2024, places this application within the time limits prescribed by the statute. The Claimant is therefore entitled to pursue the reliefs sought under the Property Rights of Spouses Act.

[17] Having settled this aspect of the matter, an important issue in this case is whether the property which is the subject of this application is more appropriately classified as the family home or "other property". This distinction is important as the factors which are to be used to determine the division of the family home are expressly outlined in sections 6 and 7 of the statute whereas other matrimonial property is specifically addressed in section 14 of the Act.

[18] I bear in mind that in respect of the family home, the presumption or starting point is that each spouse is entitled to one half share of this property whereas no such presumption applies in respect of "other property". The court is given a wide discretion in determining the division of "other property". However, this discretion must be exercised in the context of applying the factors outlined in section 14(2) of the Statute.

[19] It is important at this juncture to determine what classification should be given to the subject property. This will allow for greater focus in terms of the statutory provisions which should be employed to this particular case.

[20] The term "family home" is defined in section 2(1) of PROSA,

> *"2. – (1) In this Act - ..." 'family home' means the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit;" (Emphasis added)*

[21] The orders sought within the pleadings are for the recognition by this Court that the subject property is the family home and further that the equal share rule ought to be applied. However, counsel has conceded that there is insufficient evidence on which this Court could find that the subject property is in fact the family home and has invited this Court to treat the property as "other property. The effect of this would be to consider the factors which are listed in section 14(2) of the statute as opposed to sections 6 and 7.

[22] Section 14 of the statute reads as follows;

> *14.--(I) Where under section 13 a spouse applies to the Court for a division of property the Court may-*

(a) make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or

(b) subject to section 17 (2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2), or, where the circumstances so warrant take action under both paragraphs (a) and (b).

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

(a) the contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;

(b) that there is no family home;

(c) the duration of the marriage or the period of cohabitation;

(d) that there is an agreement with respect to the ownership and division of property;

(e) such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.

(3) In subsection (2) (u), "contribution" means-

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

(b) the care of any relevant child or any aged or infirm relative or dependant of a spouse;

(c) the giving up of a higher standard of living than would otherwise have been available;

(d) the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which-

(i) enables the other spouse to acquire qualifications; or

(ii) aids the other spouse in the carrying on of that spouse's occupation or business;

(e) the management of the household and the performance of household duties;

(f) the payment of money to maintain or increase the value of the property or any part thereof

(g) the performance of work or services in respect of the property or part thereof;

(h) the provision of money, including the earning of income for the purposes of the marriage or cohabitation;

(i) the effect of any proposed order upon the earning capacity of either spouse.

(4) For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.

[23] In so applying section 14 of the statute, I approach the matter bearing in mind that there is no presumption that the property should be shared equally. The task of the court is to weigh the factors which are listed in section 14(2) and any other factor which I consider to be important in determining how this property should be apportioned.

[24] Notwithstanding, the absence of a presumption of equal share, I bear in mind the House of Lords decision of **White v White** [2001] AC 596 at p. 605 where Lord Nicholls was careful to point out that even in the absence of a presumption of an equal share principle being embedded in the particular statutory framework or provision, a Court when treating with the division of matrimonial property should consider his/ her views as against the principle that a marriage is a partnership of equals. Lord Nicholls noted that equality should only be departed from where there is good reason for doing so.

[25] Having considered the statutory provision, I bear in mind that I must consider the contributions made by each party. I accept and it is undisputed that Mr. Brown made significant contributions towards the acquisition of the land on which the intended family home was built. In fact, the evidence suggests that the deposit was paid entirely by him and further that the construction of the property was largely financed from funds left by him in a chequing account here in Jamaica. Therefore, notwithstanding that he was incarcerated shortly after the acquisition of the land and was absent during the construction of the dwelling home, his significant monetary contribution towards the acquisition and construction is unchallenged.

[26] However, Mrs. Brown also made significant direct and indirect contributions which must be credited to her. In terms of assisting in securing the financing, her unchallenged evidence is that Mr. Brown was able to obtain a discount on the deposit for the property due to the goodwill she had earned from her former employer. Additionally, and importantly, whilst the property was being constructed, Mrs. Brown cared for their three (3) infant children, the household and oversaw the project. Mr. Brown was incapable of making the day to day decisions regarding the construction. This fell to Mrs. Brown to manage whilst caring for their three (3) young children. The significance of this has not been lost on Mr. Brown. The court took note that he repeatedly indicated in evidence that he could not place a monetary value on her courage and strength during this most difficult time of their marriage and coincidentally the most important time in respect of the building of the intended family home.

[27] If there was ever a case where a person's non-monetary contribution towards acquisition and improvement of the property was to be recognized and given careful thought and consideration, it is this case. Mrs. Brown did not have the means to make a significant monetary contribution. However, she earned her interest in the property through the non-monetary contributions made during those years 1991 through to 1995. The evidence is that when Mr. Brown was incarcerated, the property was uninhabitable. However, at the end of his incarceration, the family was able to move into the dwelling house.

[28] Additionally, the court considers another important feature of this case. Prior to the family residing in the subject property, they were allowed to live rent free at the Claimant's Aunt's home. This is important as the Defendant accepts that this assisted the parties in saving towards the acquisition of their own home. This may be viewed as a non-monetary contribution indirectly obtained through the Claimant.

[29] In assessing the contributions made by each party, I bear in mind section 14(4) of the PROSA as well as the House of Lords decision in **White v White** supra. As it concerns the former, the statutory provision reads as follows;

> "*For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution...".*

[30] In respect of **White v White,** Lord Nicholls of Birkenhead was careful to point out that when assessing the value to be placed on the contributions made by each spouse, there should be no discrimination as regards monetary and non-monetary contributions. At page 605 of the judgment, the following guidance was offered;

> 1. *"Self-evidently, fairness requires the court to take into account all the circumstances of the case... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband*

runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contributions. This is implicit in the very language of paragraph (f): "the contributions which each ... has made or is likely... to make to the welfare of the family, including any contribution by looking after the home or caring for the family". (Emphasis added.) If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer."

[31] In **Miller v Miller; McFarlane v McFarlane** [2006] UKHL 24, Lord Nicholls used even more forceful words than in **White v White.** In the former, he stated as follows;

> *"Discrimination is the antithesis of fairness. In assessing the parties' contributions to the family there should be no bias in favour of the money-earner and against the home-maker and the child-carer. This is a principle of universal application. It is applied to all marriages"*

[32] Having examined the common law position as against the statutory framework, it is my considered view that the inclusion of section 14(4) within the provision was a deliberate step taken by the framers of the PROSA to ensure that in the exercise of the very wide discretion conferred by section 14(2), it was made clear that there was no displacement of the common law position in so far as the approach to be taken by the Court when assessing the value of contributions made by individuals during the course of the marital relationship.

[33] Therefore, the Court should not approach the monetary contribution made by a party with a settled resolve that it carries more weight than a non-monetary contribution. In a particular case, the monetary contribution made by one spouse may carry significant weight over and above the non-monetary contributions of the other spouse. However, this may not always be so. It will always be for the court to determine what weight should be attached based on an assessment of the peculiar circumstances of a particular case.

[34] In the case at bar, the non-monetary contributions made by Mrs. Brown particularly during those years when the home was being built in terms of managing the household as also overseeing the construction of the intended family home must be viewed as a contribution of equal measure to the monetary contributions made by Mr. Brown. I have arrived at this position simply because notwithstanding the funds being provided for the deposit as also the funds in the chequing account being available to fund the acquisition and improvement of the property, Mr. Brown was incarcerated and this rendered him incapable of carrying on the project. Although Mrs. Brown was able to oversee the project during those critical years, without the significant contribution of Mr. Brown in terms of the deposit and the resources to improve on the project, she would not have been able to carry on this venture without his contribution. Therefore, the contribution made by either party was critical. Consequently, I take the view that it must be given equal weight.

[35] However, it does not end here. The peculiarity of this case or as is sometimes common with matrimonial unions, between 1995 through to the year 2005, the marriage between the parties laboured under the weight of financial hardships. Both parties ventured outside of Jamaica to alleviate the challenges. The Claimant went to the United States and the Defendant went to the United Kingdom. Mrs. Brown stated that she visited the property several times during this period and also sent monies to Jamaica for the children and the household. However, in cross examination, Mrs. Brown conceded that during this period, Mr. Brown’s request for financial assistance to improve the property were denied. However, I also bear in mind that Mrs. Brown’s evidence is that during that period, she sent monies for the purpose of caring for the children who resided at the premises at the material time, as also to be used for whatever purpose. Therefore, she continued to contribute towards the household.

[36] However, after the year 2006, Mrs. Brown has not visited the property and neither has she contributed towards its development and maintenance. This is significant. This claim, having been filed in the year 2024, means that between 2006 through to 2024, Mr. Brown has solely maintained the property. During this period, the evidence is that he completed three (3) rooms and now earns rental income. His evidence is that it is his sole source of income.

[37] Mrs. Brown's evidence is that during this period, she had arranged with someone to pay the taxes for the property. This is challenged by Mr. Brown. I consider that this is a factor which the justice of the case requires me to take into consideration. In this case, it is the Defendant who has lived at this property and maintained it for eighteen (18) years to the exclusion of the Claimant. He has also expended monies to improve the property and obtains an income from the rental of the improved portions. It is my considered view that this must, in all fairness, be credited to him through the award of an enlarged share of the property. I accept the Defendant's evidence that he has solely contributed to the property after the year 2006 and paid the taxes throughout these years after 2006. I accept the Defendant's assertions that it was only after the decree absolute that the Claimant commenced paying the taxes.

[38] I consider that the division of the property in equal share would result in an unfair and unjust disposal of this matter. In all the circumstances of the case at bar, it is only fair that the Defendant should receive an additional apportionment based on his own steps to improve the property. Additionally, I bear in mind that the property has also become his sole source of income.

Orders;

1. The property known as all that parcel of land located at 17 Maxfield Place, Runaway Bay, P.O, registered under the Register Book of Titles, Volume 1233 Folio 290, in the Parish of St. Ann is not the family home.
2. The subject property is declared the matrimonial property of the Claimant Jenifer Rose Brown and the Defendant Lennie Lynval Brown.

3. The Claimant is entitled to 30% legal and equitable interest in the subject property and the Defendant is entitled to 70% legal and equitable interest in the subject property pursuant to section 14 of the PROSA.

4. The value of the property being all that parcel of land located at 17 Maxfield Place, Runaway Bay, P.O, registered under the book of titles, Volume 1233 Folio 290, in the Parish of St. Ann is to be determined by a valuation to be conducted by a valuator agreed between the parties within ninety (90) days of the date of this Order and the cost of the valuation is to be shared equally between the parties.

5. The Claimant's Attorney-at-Law is to have carriage of sale.

6. The Defendant shall allow inspection of the property by valuators, surveyors, realtors or prospective purchasers upon being provided with at least seven (7) days written notice.

7. The Defendant is permitted first option to purchase the Claimant's interest in the matrimonial property and shall exercise that option by delivering notice in writing to the Claimant's Attorney-at-Law.

8. By consent and with the agreement of the parties, given the impact of Hurricane Melissa on the Central and Western end of the Island, and bearing in mind that the property is located and the Defendant resides in the affected areas, the Defendant is permitted to exercise his option to purchase within six (6) months of the date of this order.

9. The Claimant's Attorney-at-Law shall within fourteen (14) days of receiving the Notice, deliver to the Defendant or his Attorney-at-Law, an Instrument of Transfer and any other document necessary to effect a transfer of the property and the Defendant shall execute and return same along with all sums due to the Claimant within sixty (60) days of receiving the said Transfer.

10. If the Defendant fails to exercise the option to purchase or to sign and return the Instrument of Transfer along with the sums due to the Claimant within the specified time frame, the matrimonial property shall be sold on the open market, by private treaty or public auction.

11. In the event of a sale of the matrimonial property, the net proceeds of the sale after deduction of the outstanding mortgages and other fees and expenses incidental to the sale (excluding legal fees), shall be divided with a 70% interest awarded to the Defendant and 30% interest awarded to the Claimant.

12. The Registrar of the Supreme Court is empowered to execute the Instrument of Transfer or any necessary document to give effect to the Orders made herein, if either party refuses or is unable to sign within fourteen (14) days of being requested so to do.

13. In the event of a sale of the property, the Defendant is to vacate and deliver up possession of the matrimonial property within thirty (30) days of completion of the said sale and transfer of the property to the purchaser(s).

14. Each party is to bear their own cost.

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

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A. Martin-Swaby (Ag.)
Puisne Judge