



[2023] JMSC Civ. 119

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2016HCV04813**

**IN THE MATTER** of the Intestates'  
Estate and Property Charges Act

**AND**

**IN THE MATTER** of the Estate of Paris  
Gayle

**AND**

**IN THE MATTER** of an application for  
the Declaration of Marva Tucker as  
spouse of Paris Gayle.

**BETWEEN** **MARVA TUCKER** **APPLICANT**  
**AND** **THE ADMINISTRATOR GENERAL OF JAMAICA** **DEFENDANT**

**IN CHAMBERS**

Mr. Raymond Samuels, Attorney-at-Law instructed by the Samuels Samuels, Attorneys-at-Law for the Applicant.

Mr. Brian Barnes, Attorney-at-Law instructed by Brian J. Barnes and Associates, Attorneys-at-Law for the Objector, Shakara Gayle.

**HEARD:** April 19, 20, and June 16, 2023

**Family law- Section 2 of the Intestates' Estates and Property Charges Act – Whether a Common Law relationship existed between the Applicant and the Deceased – Whether the Applicant is a spouse within the meaning of the Act.**

**P. MASON J (AG.)**

**FACTS/BACKGROUND**

**[1]** Ms. Marva Tucker, the Applicant, filed a Fixed Date Claim Form on November 14, 2016, seeking an order that she be declared the common law spouse of Mr. Paris Gayle, deceased, who died intestate on November 9, 2015. Mr. Gayle is survived by his adult daughter, Ms. Shakara Gayle, who is opposing the said application. On January 7<sup>th</sup>, 2021, permission was granted by the Honourable Miss Justice A. Nembhard for Shakara Gayle to participate in the trial of this matter.

**[2]** By virtue of an Affidavit of Shakara Gayle in Opposition to Fixed Date Claim Form filed on June 22, 2018, the gravamen of Ms. Gayle's opposition is stated at paragraph 6 as follows:

*“6. ....that the Claimant who is well aware that when she came to live with at my father's house came there with her two children solely as an employee of my father and who at the date of death of my father remained a shopkeeper in his employ....”*

**[3]** It is worth noting that in paragraph 8 of the said Affidavit, Ms. Gayle further states:

*“8. ....Marva Tucker to my knowledge and my belief was never my father's common law spouse and cannot be declared as such as my father's life relationship was with my mother...”*

**[4]** On the morning of the trial, it was revealed that the Administrator General of Jamaica is not a proper party to the claim, as there are no minor children involved in the deceased's estate.

## **APPLICANT'S SUBMISSIONS**

- [5]** Mr. Raymond Samuels, on behalf of the Applicant, submitted that there is no dispute that the Applicant and Paris Gayle were both single and cohabited together as if she were in law his wife for a period of not less than five years immediately preceding the date of his death. Counsel further submitted that based on the affidavit evidence, the Applicant resided together with the deceased at 342 Green Heart Place, Portmore Pines, Greater Portmore in the parish of St. Catherine ("the St. Catherine home") for upwards of twelve years preceding his death.
- [6]** Counsel further submitted that both the Applicant's children who were three (3) months old at the time the relationship began, were accepted by Mr. Gayle as children of the family. He further submitted that the St. Catherine home was the family home due to the fact that both the Applicant and the Deceased moved into the home together with her children and lived together at the home until his death.
- [7]** Counsel further asserted that the relationship was further confirmed by the fact that the deceased would provide for and maintain the household as well as the Applicant and her children. He also referred to the evidence of Mr. Ainsley Reid and Ms. Inez Fowler, a family friend and neighbour respectively. Counsel asserted that on both Mr. Reid and Ms. Fowler's observations both parties appeared to be in a committed relationship.
- [8]** Mr. Samuels further argued that the evidence put forward by the Objector is based on conjecture and replete with inadmissible hearsay and that it fails to refute the fact that Mr. Paris Gayle was a single man and that Marva Tucker was a single woman. However, she confirmed that the Applicant and her children resided with the deceased.
- [9]** Counsel further asserted that Shakara's evidence confirms that her parents did not reside in the same house and that their relationship ended in 1994 as they were living separate lives.

**[10]** Counsel further stated that neither Shakara nor her mother is in a position to speak about the relationship between the Applicant and the deceased since they both live overseas. However, they were both aware that the Applicant and the deceased were residing together for upwards of 12 years.

**[11]** Counsel further argued that the relationship between the Applicant and the deceased is further evidenced by the fact that the Applicant was the informant on the death certificate of the deceased, she was a joint account holder with the deceased at the National Commercial Bank (NCB), she was named as his beneficiary on his Insurance Policy and she was also recognized as the deceased's next of kin by the Accountant General's Department.

#### **OBJECTOR'S SUBMISSIONS**

**[12]** Counsel for the Objector, Mr. Brian Barnes, submitted that since the Applicant is not a person who qualifies under any of the items under the Table of Distribution set out in section 4 of the Intestates Estates and Property Charges Act (The Act), the claim must fail. Mr Barnes further claims that since there is no provision in the Act for the declaration of a common law spouse, the Fixed Date Claim Form (FDCF) should be dismissed as wholly defective.

**[13]** Mr. Barnes further indicated that on a detailed analysis of the Applicant's evidence, there are several unanswered questions. Mr. Barnes averred that this is a strong indication that the Applicant's case is on shaky grounds. He further stated that the Applicant's claim that she assisted the deceased by giving him \$20,000.00 towards the deposit on land he purchased, is unsupported by any evidence that the Applicant has ever worked anywhere or has any bank account from which the money was drawn.

**[14]** It was further submitted that there is no evidence of the Applicant making any funeral arrangements after the death of the deceased, nor is there any evidence

that the family members sent her any words or cards of condolences. He further averred that the Applicant did not claim the deceased 's body from the funeral home and that it was the Objector who travelled to Jamaica several days after the death of the deceased and paid storage charges and thereafter had the body of the deceased moved to a funeral home.

**[15]** He further stated that there is no evidence to support the Applicant's argument that she paid \$75,000.00 to the funeral home for the funeral.

**[16]** According to Mr. Barnes, the Applicant only brought this claim after discovering that the deceased was divorced. He asserted that the Applicant's evidence as to when the relationship started and her move to Lanark Avenue, is "*all over the place*". It was further submitted that contrary to the Applicant's evidence that the Deceased accepted her children as children of the family, the Applicant only moved into the deceased's home as a full-time worker with her children when they were 4 months old.

**[17]** It was further submitted that the Applicant's failure to respond to the Affidavit of Janice Gayle where she gave credible evidence as to a lifetime relationship with the Deceased, means that Janet Gayle's evidence stands unchallenged. He further averred that based on Janet Gayle's lifelong relationship with the deceased, it stands to reason that the Applicant could not have been a common law spouse with the requisite legal standing to be appointed common law spouse.

**[18]** Mr. Barnes urged the court to reject Mr. Ainsley Reid as a witness of truth. Mr. Reid, who gave evidence as to the relationship between the Applicant and the deceased, stated that he knew them to be living as man and wife from the time he knew the Applicant. Mr. Barnes insists that this is a bold-faced lie as Mr. Reid knew the Applicant well before she began living with the deceased.

**[19]** It was submitted that the arrangement made to have the Applicant live with the deceased was one which was approved by Janet Gayle and the Objector. It was also further submitted that the decision between the deceased and Janet Gayle to

divorce was one taken for the hope of a better life for the family, which did not pan out, however, the relationship between them was never terminated.

**[20]** Mr. Barnes further submitted that the insurance policy which was taken out by the deceased naming the Applicant as a beneficiary was one taken out for the purpose of paying off the Applicant's termination benefit on the death of the deceased and not because the Applicant was a common-law spouse of the deceased.

**[21]** It was further submitted that a letter from the Financial Secretary to the Administrator General is not evidence of the Applicant being the spouse of the deceased. Mr. Barnes averred that that information was provided to the government by the Applicant who failed to inform the Objector.

## **ISSUES**

**[22]** In order to determine whether Marva Tucker is the common law spouse of the deceased, Paris Gayle, the court must determine:

1. *Whether the Applicant was a single woman and the deceased a single man?*
2. *Whether the applicant lived and cohabited with the deceased as if in law they were husband and wife for not less than five (5) years immediately preceding the death of the deceased pursuant to the law.*

## **LAW**

**[23]** Section 2(1) of **The Intestates' Estates and Property Charges Act** (*hereafter referred to as "The Act"*) defines a "spouse" as follows:

*(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;*

**[24]** Section 2(2) of the Act further states:

*“(2) For the purposes of this Act, where a person who is a single woman or single man may be regarded as a spouse of an intestate then as respects such intestate---*

*(a) only one such person shall be so regarded; and*

*(b) to be identified as the surviving spouse*

*e, that single man or woman, as the case may be, shall make an application to the Court for an order declaring that person to the surviving spouse of the intestate.”*

**[25]** The Act also states:

*““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;”*

## **ANALYSIS**

**ISSUE I:** *Whether the Applicant was a single woman and the deceased a single man?*

**[26]** In order to establish whether the Applicant is a spouse of the deceased, it must first be determined whether the Applicant was a single woman and whether the deceased was a single man during the cohabitation period.

**[27]** After assessing the evidence, Ms. Tucker has not presented any evidence to prove to this court that she was, in fact, a single woman. The mere fact that she lived under the same roof as Mr. Paris Gayle is not enough to prove that she was in fact a single woman.

**[28]** In the case of **Millicent Bowes v Keith Alexander Taylor** Claim No. 2006/HCV05107, at paragraph [32], Marva McDonald –Bishop J (as she then was) in dealing with the issue of whether the Applicant was a single woman stated:

*“32. The first precondition that must be satisfied to fall within definition of spouse is that both parties must have been single during the period of alleged cohabitation. Evidence as to the marital status of both parties during the relevant period is therefore required. The Applicant has merely said that she is a housewife and the common law wife of the defendant. Apart from calling herself the common law wife, she has not demonstrated on the evidence that she is in fact so. She must show on the evidence that she was a “single woman”*

*at the material time. The defence has put the Applicant to strict proof of her averments. She asserts it, she must prove it. The duty is on her to bring evidence to satisfy every aspect of her claim. She has failed to do so."*

**[29]** It must be noted that even though the Applicant brought conclusive evidence as to the marital status of the deceased, she has failed to present any such evidence on her behalf. The Applicant in the instant case has not conclusively presented any evidence to show that she was a single woman as required by law. She kept referring to herself as the common law wife of Paris Gayle yet she has not demonstrated by way of evidence that she was so.

**[30]** During the period the Applicant indicated that the relationship began with Paris Gayle in 1998, Paris Gayle was a married man. As such, he was not a single man as required by law. It is only after the divorce was made final on November 14, 2002, that it was established that he was a "single man".

**[31]** As it relates to the deceased, the Applicant stated in her Affidavit in Support of the Fixed Date Claim Form at paragraph 3 that:

*"3. When I met him he was separated from his wife, Janet Gayle, who resided in New Brunswick, Connecticut in the United States of America. She subsequently divorced him and the divorce became final on November 14, 2002."*

**[32]** According to Ms. Janet Gayle, however, even though she and the deceased were legally divorced, she still regarded him as her life partner. She claims that the divorce was done in the hope that she could create a better life for her family which would include the deceased. Based on her evidence, I did not find Ms. Gayle to be a witness of truth. Throughout her evidence she continued to represent herself as the wife of the deceased, knowing that they were divorced in law.

**[33]** On cross-examination when pressed by counsel as to why she continued to refer to herself as the spouse of the deceased in several documents, she stated that "*my husband was still my husband*". The fact is that Ms. Gayle and the deceased



were divorced. She was at the time living in another country and then proceeded to represent herself as the spouse of the deceased in several legal documents, some of which were filed before this court knowing that that was not the case. At no point did Ms. Gayle acknowledge that she was not the spouse of the deceased. She claims that on paper, they were not married but they still referred to each other as husband and wife. I cannot accept that evidence. Ms. Gayle has presented no evidence to this court of any ongoing relationship between herself and the deceased. Further, there is no evidence of any communication or anything that would support any form of relationship between herself and the deceased.

[34] The court accepts that the deceased was married to Ms. Gayle. However, the fact is that the couple got divorced on November 14, 2002, as evidenced in the divorce document. Therefore, the deceased, Mr. Gayle was a divorcee, in other words, he was a single man at the time of his death.

[35] However, as it relates to Ms. Tucker's evidence, I find that she has failed to prove to this court that she was a single woman at the time she cohabited with the deceased. While this may be determinative of the claim, I will proceed to look at the other aspects in case I am wrong in my decision.

**ISSUE II:** *Whether the applicant lived and cohabited with the deceased as if in law they were husband and wife for not less than five (5) years immediately preceding the death of the deceased pursuant to the law.*

[36] As outlined in the Act, in order to be considered as a "spouse", not only are the man and woman required to be "single", they must have been cohabiting as if they were in law husband or wife for a period of not less than 5 years.

[37] In **Bromley's Family Law**, 10<sup>th</sup> ed., p. 102, the authors in defining "*living together as husband and wife*" stated as follows:

*“To live together ‘as husband and wife’ implies some quality in the arrangement which differs from, say, that of landlord and lodger, or flat-sharing friends, or even family members of different generations. It goes to the essence of the relationship.....”*

[38] The learned authors went on to outline various factors or ‘signposts’ as outlined in the case of **Kimber v Kimber [2000] 1 FLR 383** as being material in determining what it means to cohabit as “husband and wife”. The ‘signposts’ are outlined on page 103 of **Bromley** (supra) as follows:

*“(1) Living together in the same household*

*Generally, this means that the parties live under the same roof, illness, holidays, work and other periodical absences apart....*

*(2) A sharing of daily life*

*Living together seems to me to inevitably involve a mutuality in the daily round: a sharing of tasks and duties. ...*

*(3) Stability and a degree of permanence in the relationship; that it is not a temporary or infatuation or passing relationship such as a holiday romance....*

*(4) Finances*

*Is the way in which financial matters are being handled an indication of the relationship?....*

*(5) A sexual relationship*

*It is enough for me to state that this is admitted and is ongoing.*

*(6) Children*

*(7) Intention and motivation*

*(8) The opinion of the reasonable person with normal perceptions.”*

[39] In **Millicent Bowes v Keith Alexander Taylor** (Supra), McDonald-Bishop J (as she then was) made an assessment of the list of factors which would assist the court in determining whether a man and woman were living together as if they were in law husband and wife. Her Ladyship stated thus at paragraphs 49 and 50:

*“49. In examining the question before me against the background of the authorities I have had the opportunity to review, I too will agree that no single factor can be conclusive of the question whether a man and woman were living together as if they were in law husband and wife. I have come to the conclusion too that there is not (and there might never be) a closed and exhaustive list of criteria that may be used to determine the question. It requires, to my mind, a thorough examination of the circumstances of the*

*parties' interaction with each other as well as their interaction with others while bearing in mind that there will always be variations in the personalities, conduct, motivations and expectations of human beings. The court, indeed, will have to make a value judgment taking into account all the special features thrown up by a particular case to see whether the lives of the parties have been so intertwined and their general relationship such that they may be properly regarded as living together as if they were, in law, husband and wife. It has to be inferred from all the circumstances.*

50. *Whether parties share a conjugal union outside of marriage seems, ultimately, to be ascertainable upon the application of an objective test after taking into account subjective elements of the parties' conduct and interaction with each other. That is to say the consideration must be not only what the relationship, on the evidence, might have meant to the parties themselves or what they claim it to be but, above all else, what it would appear to be to the ordinary and reasonable person of normal perception looking on with full knowledge of all the pertinent facts.*

[40] For a relationship to qualify as a conjugal relationship outside of marriage, it must be one that bears a likeness to marriage, meaning that the union must be a single one and they must interact like a married couple. In the case of **Thomas v Thomas** [1948] 2 K.B. 294 at page 297, Lord Goddard, CJ in giving his opinion as to the nature of such a relationship stated:

*“Cohabitation does not necessarily depend upon whether there is sexual intercourse between husband and wife. “Cohabitation” means living together as husband and wife...cohabitation consists in the husband acting as a husband towards the wife and the wife rendering wifely duties to the husband and the husband cherishing and supporting his wife as a husband should.”*

[41] In her Affidavit evidence and in cross-examination, the Applicant did not provide any evidence that hinted on whether there was a lifetime commitment as would be expected of a couple. There is an absence of any level of any loving commitment. They did not present themselves to the world as a couple.

[42] Shakara Gayle, the Objector, in her affidavit at paragraph 6 states that *“the Claimant came to live at my father’s house with her two children solely as an*

*employee of my father and who at the time of his death remained a shopkeeper in his employ.”*

[43] Shakara Gayle further refutes paragraph 4 of the Applicant's affidavit to say that she lived with her father in 1998 at Lanark Avenue until 2001 and that up to that time Miss Tucker did not live with her father, nor was there a visiting relationship. She maintains that the Applicant, like Norma Davis, lived at her father's house with her children and was employed at his shop. That Norma lived and worked at Lanark Avenue until 2000 or 2001 when she migrated with her children.

[44] It, therefore, is my view that from the evidence contained in the Applicant's affidavit that there is no evidence to demonstrate that the Applicant was a common law wife of the defendant, there is absence of the parties sharing a conjugal union outside of marriage. Her claim remains unsubstantiated that she is a spouse of the defendant.

[45] In making a determination in this case, I will therefore look to the “signposts” as adopted by McDonald-Bishop J (as she then was) in ***Millicent Bowes v Keith Alexander Taylor*** (*supra*).

## **LIVING TOGETHER IN THE SAME HOUSEHOLD**

[46] It is not in dispute that the Applicant lived at the deceased's house at 342 Green Heart Place, Portmore Pines, Portmore in the parish of St. Catherine from 2003 up until the time of his death in November 2015. This is further evidenced by the fact that it was the Applicant who reported the death of the deceased as outlined on the death certificate. Further, it was the Applicant who informed the Objector of the death of the deceased.

[47] The Objector has however asserted that the Applicant and the deceased lived in separate bedrooms. She claimed that on a visit to Jamaica in 2014, she slept in

her father's bedroom and that there was nothing there that gave her the impression that a woman resided in that room as there was no item for a female in that room. It appears from the evidence that a conjugal relationship is absent, the interaction does not resemble that of a husband and wife.

**[48]** The Applicant, in response, stated that when the Objector came to stay at the house, she allowed her to stay in the main bedroom as she wanted to make her and her son feel comfortable. The Applicant further stated that while at the house, the Objector was well aware that the deceased shared the bedroom with the Applicant. The Objector, however, does not share this view.

**[49]** Based on her evidence, I find that the Applicant has not presented any evidence to convince this court that she shared a bedroom with the Applicant, and neither is there any demonstration of a mutual commitment between the parties. I therefore cannot conclude otherwise. Living under the same roof does not, by itself, indicate that a spousal relationship exists. The Objector maintains that the Applicant lived at the premises because she was an employee of the defendant and nothing more.

### **SHARING OF DAILY LIFE**

**[50]** The Applicant, in her Further Supplemental Affidavit filed on February 18, 2020, averred that she and the deceased ran a business together, the earnings from which were used to support the household along with the deceased's earnings as a Watchman. She further exhibited a copy of the opening page of a joint bank account she shared with the deceased.

**[51]** Apart from the averments above in her Further Supplemental Affidavit, the Applicant has not put forward any evidence of any sharing of any tasks and duties in the household which would indicate a sharing of their daily life. The Applicant avers that she ran a business with the deceased, however, there is no evidence led to convince the court that that was the case. The sharing of a bank account and showing the court the opening page is not enough to indicate the sharing of

daily life between the Applicant and the deceased. There is no evidence to substantiate that there was any activity on the account.

**[52]** Sharing a daily life must exhibit a level of commitment that must appear to be serious and stable with some level of permanence. This, to my mind, was absent in the relationship. The parties must present themselves to the world at large as having that level of commitment. There is no evidence that presents a level of commitment in this so-called common law relationship that the Claimant is proffering.

### **SEXUAL RELATIONSHIP**

**[53]** The Applicant has not presented any evidence suggesting a sexual relationship existed between herself and the deceased.

### **STABILITY AND A DEGREE OF PERMANENCE IN THE RELATIONSHIP**

**[54]** In *Kimber v Kimber (supra)*, His Honour Judge Tyrer indicated that:

*“(3) Stability and a degree of permanence in the relationship; that is not a temporary infatuation or passing relationship such as a holiday romance.”*

**[55]** In her affidavit evidence, Ms. Tucker indicated that she and the defendant began building on the property and they moved into the unfinished house with her twins and that they lived in that house until his death in November 2015. There is no evidence to substantiate this. The deceased’s daughter refutes this. She contends that her father built his house without assistance from the Claimant.

**[56]** The Objector had indicated that the deceased had a lifelong relationship with her mother, Janet Gayle. I cannot accept that evidence. The fact is that there is no evidence led to prove that there was any relationship between the Applicant and the deceased after she removed herself from his home in September 1990.

**[57]** Further, no evidence has been presented to suggest the existence of any subsequent romantic relationships of the deceased after Janet Gayle left the home.

## **FINANCE**

**[58]** According to His Honour Judge Tyrer in *Kimber v Kimber (supra)*, the court ought to consider the following question:

*“Is the way in which financial matters are being handled an indication of the relationship?”*

**[59]** The Applicant indicated that in 1998 when the deceased decided to acquire land at 342 Green Heart Place, Portmore Pines, Greater Portmore in the parish of St. Catherine (the property) through National Housing Trust (NHT), she gave him the deposit of Twenty Thousand Dollars (\$20,000.00). However, in cross-examination after examining the property title for the said property, she indicated that the property was acquired in 2001 against her assertions in her various affidavits that she gave the deceased the deposit to acquire the property in 1998. Additionally, the Applicant has failed to disclose the source of this deposit or present any evidence to corroborate her statement. This evidence I, therefore, cannot accept.

**[60]** She further asserted that she and the deceased started building on the land in or about August 2003 and when the house was partially built, she moved into the property with the deceased and her two children. There is no evidence to support this assertion. The Applicant has indicated that her children were, at the time of the application, twenty years old. I find it somewhat perplexing that the twins were not called to give evidence in this case in order to validate the evidence.

**[61]** The Applicant has failed to demonstrate to the court the extent of any contributions made by her towards the acquisition of the said property. I, therefore, agree with the Objector that the property was bought and the home was built using the deceased's resources.

**[62]** Further, the Applicant had exhibited the opening page to a bank account she shared with the deceased. The Applicant has led no further evidence to indicate the nature of this bank account. The opening page without more does not indicate the handling of the financial matters in such a way which would indicate that a spousal relationship existed. More significantly, there is no evidence provided by the Applicant of any banking transaction being funded through this bank account or any level of activities performed or carried out by the Applicant or the parties.

## **CHILDREN**

**[63]** There is no dispute that the Applicant and the deceased did not share any biological children. The Applicant has asserted, however, that the deceased accepted her twins as children of the family at 3 months old. However, in cross-examination, Ms. Tucker admitted that this was not true and stated that they were in fact 7 years old. Ms. Tucker gave further evidence that the deceased would provide regular support for her children's maintenance. This has not been substantiated, as such, it is not accepted by the Court. I would venture to say that the deceased provided food for the Applicant's children just as he did in the past for Norma Davis and her children.

**[64]** The Objector however asserts that none of the Applicant's children were introduced to her as children of the family. There is no evidence provided to indicate that Mr. Gayle accepted the Applicant's children as children of the family as indicated by the Applicant. There is also no evidence submitted that Mr. Gayle provided for them financially or contributed to their welfare. There is no information



presented for the Court to adopt the position of the Applicant that her children were accepted as children of the family by Mr. Gayle.

## **INTENTION AND MOTIVATION**

**[65]** There is no evidence led by the Applicant to convince this court that there was any motivation or intention on the part of either herself or the deceased to enter into any committed, monogamous and stable union on a permanent basis equivalent to marriage.

## **THE OPINION OF THE REASONABLE PERSON WITH A NORMAL PERCEPTION**

**[66]** The Applicant's application was supported by the evidence of Inez Fowler and Ainsley Reid. Inez Fowler did not appear at trial to be cross-examined.

**[67]** In examining the Affidavit evidence of the Applicant's witnesses, Mr. Ainsley Reid and Inez Fowler, there is not a thread of evidence to substantiate that both of them knew the Applicant and Mr. Gayle to be a single man and a single woman living together in a loving common law union. The Affidavits are bare and without any substance and are identical in content. Neither of them has provided any evidence of the "supposed" relationship between Miss Tucker and the deceased. This is crucial in establishing a foundation that Mr. Gayle ever treated the Applicant to be his wife or that they were seen out together conducting business or socialising as couples do. It is on that basis I have difficulty in accepting the Affidavit evidence of the Applicant's witnesses as credible. Both witnesses have not proffered any evidence to demonstrate to this court that the level of commitment between Miss Tucker and the Defendant exhibited any degree of permanence that resembled a serious and stable relationship indicative of a couple.

**[68]** Regarding the payment of the 50% interest of the insurance policy to the Applicant, the Objector argues that the policy was not acquired due to the Applicant's status

as a common law spouse, but rather as a protection plan to cover the Applicant's termination benefits in the event of the deceased's death. To my mind, this offers a reasonable explanation in the absence of any further details available.

## **CONCLUSION**

**[69]** I find that the evidence led does not support a spousal relationship between the Applicant and the deceased. I, therefore, find that the Applicant did not cohabit with the deceased as if they were in law husband and wife. I find that based on the "signposts" that the court is required to consider, the Applicant has failed on a balance of probabilities, to demonstrate these requirements. I therefore do not find the Applicant to be a common law spouse of the deceased for the purposes of the Act.

## **ORDERS**

**[70]** Accordingly, I make the following orders:

1. The Applicants Fixed Date Claim Form filed on November 14, 2016 is dismissed.
2. No order as to costs.
3. The Attorney-at-Law for the Objector/Interested Party to prepare, file and serve this order.