

Judgment Bosh.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. E509/1998

BETWEEN VILMA ELAINE WILLIS PLAINTIFF
A N D CAPETON WILLIS DEFENDANT

Ms. Arlene A. Gaynor, for the plaintiff instructed by Willaims and Gaynor Attorneys – at –law.

Ms. Judith Cooper for defendant instructed by Darby Darby & Associates.

THEOBALDS. J,

HEARD: 9TH, 10TH, NOVEMBER, 1999
18th, September, 2000

The plaintiff and the defendant are husband and wife. By an Originating Summons brought under the Married Women's Property Act dated the 5th October, 1998, the plaintiff sought an order from the court that the beneficial interest in property situated at Lot 434 Farm Pen in the parish of St. James is jointly held between the plaintiff and the defendant/husband. Additionally the plaintiff sought an order that the defendant pay to the plaintiff an appropriate sum for her portion of the current market value of the said property within four months of the date of the courts' order. The usual application for costs is made.

In support of her application the plaintiff filed affidavits. The defendant also filed affidavits in reply. There is no issue that the premises were acquired by the defendant through the assistance of the National Housing Trust. This was to be the matrimonial home. Title was issued in the name of the defendant only; this was done although the plaintiff contends that at the time of acquisition it was the common intention of the parties that they where both to acquire a joint interest in the property. The defendant

contends that this was never so. He paid the initial deposit and all future monthly payments towards the mortgage were made by monthly deductions from his salary. He produced a salary slip in support of this contention. The wife admits that she made no direct contributions towards the acquisition of the house either by way of deposit or payments towards the mortgage. Her claim is based on alleged contribution towards the maintenance of the family. The parties were married in 1975. The union had produced 2 boys. The plaintiff claimed they attended the National Housing Trust together with the common intention of having her name put on the title along with her husband's. It is her evidence that based on advice from the National Housing Trust that plan was altered in order that she could herself be eligible for another benefit in her own right. That suggestion she claims came from her husband, but more to the point she has not stated that she opposed the suggestion that his name alone should go on the title for the premises being acquired. The undisputed facts are that she made no contribution to either the deposit or the monthly mortgage payments so the burden of proving some other form of contribution substantial enough for either a constructive trust or a resulting trust to be inferred to have arisen in her favour is a heavy one. She attempts to discharge this burden but her allegations of facts are, in my view, as vague and nebulous as could be. Going to the United States Embassy in the company of her husband is no proof of a common intention between them that she should go to seek work in order to improve the quality of life for the family. Similarly going to the National Housing Trust together is no proof of a common intention to have title issued in their joint names. Indeed the one attempt made by the wife to produce documentary evidence that "she would send an average of \$400 U.S. per month towards the household expenses" is by way of an exhibited receipt showing money transfer of U.S. \$400 to the respondent in 1988. The Respondent's reply was that the money was sent to him to take care of plaintiff's brother who was living with Respondent at the time and also to pay school fees

for their son Richard. The plaintiff filed an affidavit in reply in which she says nothing by way of a denial that her brother was living with Respondent in Jamaica at the time. Further she claims that this was only one of many remittances she made to the defendant, yet fails to produce any other receipt or to account for her failure so to do. To say one worked at a store in Montego Bay without identifying the store when Respondents evidence was that a friend who operated a store asked for her assistance as plaintiff was not employed and paid plaintiff a paltry \$60 a week. To describe a marriage as good when each time she has sex with her husband she would become habitually infected are all matters incapable of belief by any tribunal of fact. I cannot accept the plaintiff as a truthful and reliable witness.

Accordingly I refuse to make the order sought in paragraph (1) of the Originating Summons dated 5th October 1998 to the effect that the property registered at volume 1216 folio 328 of the Registrar Book of Titles in the sole name of the defendant is jointly held between the plaintiff wife and the defendant husband. Further the plaintiff wife has no interest in law or in equity in the said property. All further consequential orders sought are refused.