



[2023] JMSC Civ 160

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

**CIVIL DIVISION**

**CLAIM NO. 2012HCV04738**

<b>BETWEEN</b>	<b>ANDRA JACKSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>VALENTINE DAVIDSON</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

**Mr. Bertram Anderson appeared for the Claimant**

**Mr. David Clarke appeared for the Defendant**

**Heard: 1<sup>st</sup> and 2<sup>nd</sup> December 2015**

**Delivered: 27<sup>th</sup> October 2023 in Chambers via Video Conference with leave of the Parties**

**Civil Procedure – Whether claim can proceed where the enactment upon which the claim is premised is not stated – Whether Claimant’s statement of case is sufficient – Prejudice – Overriding Objective of the Court – Exclusion of Hearsay Document – Civil Procedure Rules 1.1; 8.7; 8.8; 8.9; 26.9 and 29.1**

**Family Law – Division of Property – Whether claim was made in time – Whether the Parties were in a common-law relationship – Whether the parties separated in 2007 or 2011 – Whether claim is to proceed under section 6 or 14 of PROSA – Nature and Tenure of Claim – Whether Claimant is entitled to 50% in the property – Monetary Contribution of Spouses – Indirect and Non-Monetary Contribution of Spouses – Lump Sum Payment – Credibility of the Parties – Documentary Evidence – Property (Rights of Spouses) Act sections 2; 6; 7; 11; 13 and 14**

**L. PUSEY J**

[1] This matter came for hearing on the 1<sup>st</sup> and 2<sup>nd</sup> of December 2015. At the trial, the Court had embarked on a pilot project with audio recording equipment in which matters were tried without the usual note taking by the judge, as the Parties would rely on an audio recording system. Aspects of the project did not live up to

expectations which contributed to the inordinate delay in the delivery of this judgment. Additional unforeseen circumstances such as the theft of my personal laptop created further challenges. Therefore, the Court would like to apologize for the part it played in the delayed delivery of this judgment.

- [2] The Court would however wish to indicate that it had sufficient material to decide upon this matter and would like to thank Counsel for their filing of written submissions which aided in the completion of this judgment.

### **BACKGROUND**

- [3] This is a Claim for the division of property, all that parcel of unregistered land situated at Norris District, Yallahs in the parish of Saint Thomas, Jamaica (“the Property”). The Claim was filed by Miss Andra Jackson (“the Claimant”) against Mr. Valentine Davidson (“the Defendant”) on the 29<sup>th</sup> day of August 2012. The Claimant sought the following orders:

- (a) Declaration that the Claimant is entitled to fifty percent (50%) of the Property;
- (b) Valuation to be done on the Property, cost to be borne equally by the Parties;
- (c) An Order for sale of the Property and the proceeds divided in equal share; or in the alternative the Defendant compensate the Claimant for her interest in the Property;
- (d) Costs; and
- (e) Any order for any other relief which the Court deems fit.

- [4] The Defendant challenges the Claim for the division of the Property on the basis that:

- (a) The Claimant failed to state which laws her application was grounded in;
- (b) The Claimant is statute barred from relying on the **Property (Rights of Spouses) Act (“PROSA”)**; and

(c) It would be prejudicial at this stage to divide the Property.

[5] The undisputed facts of the case are that the Parties started a relationship in approximately 1989 which produced three (3) children. The Parties moved into the Property in 1993. The Parties' relationship has been rocky for quite some time resulting in them seeking mediation and/or counselling. The result of the mediation and/or counselling is that the Parties and their children agreed, among other things, to live in the house together, not harass each other and to conduct themselves in a civil manner (see: exhibits 1 and 2). At the time of the trial, the Parties were living in separate sections of the Property.

[6] These matters are essentially not in contention between the Parties however, not unexpectedly due to the nature of these matters, there are several factual variances between the Parties. The Court will only highlight those variances which shed light on the salient issues before it. Therefore, the Court will not detail the evidence of the Parties in toto, but has summarized the significant points of each Parties evidence accordingly.

#### **THE CLAIMANT'S EVIDENCE**

[7] Miss Andra Jackson's evidence was found in the pleadings of the originating documents and her witness statement filed the 31<sup>st</sup> day of January 2014 which was accepted as her evidence-in-chief. Miss Jackson's evidence is essentially that she and the Defendant, Mr. Valentine Davidson, has been in a common-law relationship for approximately twenty-three (23) years. The Claimant indicated that early on in the relationship, she and the Defendant resided with his mother for approximately five (5) years before moving to the Property in 1993.

[8] The Claimant avers that in 1993, she and the Defendant purchased unregistered land and built a two (2) bedroom house with all the usual amenities. The Claimant further avers that over the years she and the Defendant contributed to the upkeep and payment of bills for the Property. The Claimant's evidence also indicates that

she and the Defendant lived at the property together and raised their children there. Further, that there was a continuous cohabiting relationship between herself and the Defendant since approximately 1989 until their separation in 2011 despite their continuous arguments.

### **THE DEFENDANT'S EVIDENCE**

- [9] Mr. Valentine Davidson's evidence was found in his Defence, his witness statement filed the 31<sup>st</sup> day of January 2014 and the witness statements of Miss Opal Davidson and Miss Julet Davidson filed the 30<sup>th</sup> day of January 2014. Mr. Davidson's evidence was such that he indicates that while the Parties were in a relationship since approximately 1989, they lived separately and visited each other at their respective homes in Saint Thomas.
- [10] The Defendant avers that the visiting union was inconvenient and this motivated him to obtain a "piece of property" which was gifted to him by Mr. Kenneth Campbell on or about the 5<sup>th</sup> day of October 1992, this same property is the subject of this Claim. The Defendant's evidence suggests that the Defendant solely built the house on the vacant lot gifted to him by Mr. Kenneth Daley as the Claimant was unemployed at the time. Further, he received help, in the form of labour, from his friends and sister and material from the block factory that he was employed to at the time of constructing the Property.
- [11] The Parties moved into the Property in 1993 and the Defendant continued building on the Property, with no assistance from the Claimant, until it was a two (2) bedroom house with the usual amenities. The Defendant avers that he and the Claimant separated twice, briefly in 2002 until they resumed their relationship in 2003 and finally, in 2007 with no likelihood of reconciliation.

### **THE CLAIMANT'S SUBMISSIONS**

- [12] Mr. Betram Anderson, Counsel for the Claimant, admits that at the genesis of the Claim and at the time when orders were made to correct certain defects, there was

no specific pleading by the Claimant that the Claim was being brought pursuant to PROSA. Counsel submits however, that based on the nature of the Claim, the Court should make their decision using PROSA as the authority for which they rely. Further, that PROSA is the main, and often the only authority, used in the division of property between spouses. Counsel placed reliance on the cases of **Wilson-Malcom v Malcom** [2013] JMSC Civ 161 and **Brown v Brown** [2010] JMCA Civ 12 which established that PROSA is the authority which must be used to decide all matters relating to the division of property between spouses.

- [13] Counsel further submitted that there is no doubt that the Parties satisfy the definition of a spouse under section 2(1) of PROSA as both Parties were single and living together as if they were husband and wife for a period of not less than five (5) years. Counsel submitted that in the alternative, if the Parties were together for the period that the Defendant asserts, it would equal to a cumulative period of thirteen (13) years which makes any refutation by the Defendant, that no common-law relationship existed, immaterial. Further, that the Property is to be considered as the family home as it fell within the definition for family home as outlined at section 2(1) of PROSA.
- [14] It was Counsel's submission that the Claimant contributed significantly to the building and maintenance of the Property pursuant to section 14(3) of PROSA. This contribution, counsel submits, would arise in favour of the Claimant as a resulting trust since she paid all or part of the purchase price, did housekeeping duties and/or would spend her money on general household expenses. This, Counsel argued, would make the Claimant eligible for one-half of the said property pursuant to section 6(1)(a) of the PROSA.
- [15] Counsel argued further that there were indirect contributions of the Claimant such as contributing to the maintenance of the Property and caring for the children. Counsel submits that the Court ought to make an assessment of these

contributions, along with the contribution of the Defendant to determine whether the contributions of the Claimant is substantial.

- [16] Reliance was placed on the cases of **Falconer v Falconer** [1970] 3 All ER 449 and **Burns v Burns** [1984] 1 All ER 244 where the Court ruled that where a Claimant cannot prove their involvement in the substantial improvement to and acquisition or building of the property then they will have no entitlement to any beneficial interest in the property. However, Counsel argued there is an alternative approach that may be taken to accommodate persons who may not be in a position to prove their contribution, and this is through assessing the indirect contributions of the Claimant as was espoused in the case of **Hussey v Palmer** [1972] 1 WLR 1286 where it was indicated that a trust may be imposed whenever *“justice and good conscience would require it.”*
- [17] Further, the Claimant lived at the property for more than two (2) decades and has a legitimate expectation that she would rightly entitled to an equal share in rights to the Property or in profit made in the sale of the Property. Counsel submitted that during these years the Claimant would have contributed to purchasing the unregistered land which the Property is situated on, purchasing materials and paying for labour to construct the house and to various bills after the house was built, which are acts referable to an intention to create a beneficial interest in the Property. Counsel argued that the Parties were in a serious relationship which produced three (3) children and the Parties often spoke of settling in, enjoying and getting old and retiring in their home. Counsel avers that based on the foregoing, it could not be said that the Claimant’s contribution was negligible or merely acts that a wife would do.
- [18] Counsel submits that the contributions of the Claimant and the Parties having lived together as a family for so long, is evidence that the Claimant is entitled to one-half of the Property. Alternatively, Counsel submitted, that if the Court is minded to find that the Claimant is not entitled to an equal share of the Property, then the

Court may rely on section 7(b) of the PROSA to vary the equal share rule and award the Claimant such share that they think deserving in the circumstances. Subsequently, Counsel submitted that, the PROSA is the proper authority to determine this matter as it protects the Claimant's legitimate expectation and her rights as a spouse and a mother.

- [19] Counsel contended that, despite the Claimant not mentioning PROSA as the authority in the originating documents, it is reasonable for the Court to consider this matter under PROSA since it has been established practice for the Court to do so in similar matters. Further, that this would also ensure that the Defendant does not benefit unjustly as a result of his failure to make mention specifically of PROSA.
- [20] Counsel submitted that the Court relying on PROSA as their authority on which the Claim is grounded would not prejudice the Defendant since it was this same Act which the Defendant relied on in his Defence to state that the Claim is statute barred. Counsel avers that this is an indication which makes clear that the Defendant knew *"the spirit of the law rather than the letter"* where the Claimant failed to indicate the statutory provisions which she relied upon. Counsel submitted that this is a technicality and equity should not permit justice be withheld in the circumstances as *"equity looks to the intent and will regard substance rather than form."*
- [21] Counsel argued that equity regards form as secondary consideration and that actual substance is how a matter is dealt with. Equity, Counsel submits, *"pierces through the shell of a thing to what is within it does not suffer itself to be circumvented by formal devices."* Counsel further argues that, despite being cognizant that essential rules and procedures should not be disregarded, procedure should not permit a technicality to shroud the position of the Claimant nor the actual merits of the Claimant's case.

**[22]** Counsel submitted that the Court has a broad discretion to see to it that wrong and oppression are not inflicted under a guise of legal procedure. Counsel relied on the Civil Procedure Rules (CPR), Rule 8.7(b) which indicates that failure to state the specific remedy which the Claimant seeks does not limit the Court to grant any other remedy to which the Claimant may be entitled. Therefore, Counsel submitted, that this means that in an effort to give relevance to the overriding objective, the Judge has the duty to see to it that justice prevails in all cases and could do so in this case by granting such remedy as it sees fit.

**[23]** Counsel also relied on Rule 26.9 of the CPR which he argues gives the Court general powers to rectify matters where there is a procedural error. More specifically, Rule 26.9(2), Counsel argued, makes clear that the failure to comply with a Rule does not invalidate any step taken in the proceedings. On this point, Counsel closed his submissions by indicating that the Rules suggest that pleadings shall be construed so as to do substantial justice.

#### **THE DEFENDANT'S SUBMISSIONS**

**[24]** Mr. David Clarke, Counsel for the Defendant, relied on Rule 8.8 and 8.7 of the CPR which lists what should be included in the Fixed Date Claim Form ("FDCF") and the Claim Form, respectively. Counsel further relied on Rule 8.9 of the CPR for the possible consequences of not setting out a case in accordance with the rules. Counsel submitted therefore, that the Claimant's failure to set out what authority their Claim was grounded in when the matter begun by way of FDCF is a clear breach of the CPR.

**[25]** Counsel further submitted that, D. Fraser J (as he then was) ordered that the matter be commenced by way of Claim Form and Particulars of Claim which were filed on the 15<sup>th</sup> day of September 2013 at which point the Claimant had an opportunity to include the authority which her Claim was grounded in. Counsel argued further that the Claimant also did not ask to rely on any of the common law



principles such as constructive or resulting trust in neither the FDCF and its Accompanying Affidavit in Support nor the Claim Form and Particulars of Claim.

- [26] Counsel submitted that should the Court allow the Claimant to rely on PROSA then the Court must determine whether the Claim is being made within time pursuant to section 13(2) of PROSA. Counsel argues that the aforesaid section of PROSA allows for the Claim to be brought within twelve (12) months of separation and if an order was to be made as at the date of the trial, then the Claimant would be seeking to rely on PROSA over four (4) years after the separation. In light of this, Counsel argues that there is a burden on the Claimant to prove that her Claim is being made within time.
- [27] Counsel avers that though the Court has a discretion under Rule 8.7 of the CPR to grant any other remedy which the Claimant is entitled to and under Rule 26.9 of the CPR to correct any procedural errors, it would be and breach of natural justice and prejudicial for the Court to do so in this matter. Counsel buttressed this point by relying on Rule 1.1 of the CPR which speaks to the overriding objective of the Court. Counsel indicated, that the Defendant was unable to tender a document into evidence which the Defendant sought to rely on due to not filing a Notice of Intention to Tender a Hearsay Document into Evidence prior to the commencement of this trial. Counsel argued that this was a procedural error on the Defendant's part that the Court refused to exercise their discretion to remedy despite the said document being relied on in the Affidavit in Response and the Defence which was served on the Claimant for over a year and which Counsel for the Claimant made reference to in his submissions.
- [28] It was Counsel's further submission that any decision which allows the Claimant to rely on PROSA would create bias in the trial. Counsel placed reliance on the case of **Bartholomew Brown, Bridgette Brown v Jamaica National Building Society** [2010] JMCA Civ 7 where Harrison J.A. cited the case of **Porter v Magill** [2002] 2 AC 357 to outline the test of bias as being:

*“...one in which a fair minded, impartial observer who is cognizant of all facts of the case would find that a decision maker is biased...”*

- [29] Counsel submitted that PROSA is not the only authority for the division of all property between spouses as there are portions of PROSA like section 13 which is conditional, and a matrimonial property may not fall under its operation unless all the conditions are met. In addition to PROSA, Counsel argues that a Claim may be made for the division of the property in equity or at common-law or using the Partition Act.
- [30] Counsel commented on the Claimant’s reliance on the case of **Brown v Brown** (supra) by submitting that if the Defendant was able to rely upon the document which the Court prevented from being tendered in evidence, then the Property would have been excluded from PROSA and therefore, in those circumstances, the date of separation would not have been an issue. Counsel further submitted that the Property was a gift, and had the document been tendered into evidence, the Claim would have to be considered in light of the principles of common law and equity. Counsel relied on the cases of **Grant v Edwards** [1986] 1 CH 638 and **Tinsley v Milligan** [1994] 3 WLR 126 which speaks about the conditions which must be satisfied for a property to be divided at common law and/or in equity.
- [31] Counsel submits that the date of separation is an issue. Counsel indicates, relying on section 6 of the **Matrimonial Causes Act** and the cases of **Fuller v Fuller** (supra) and **Santos v Santos** [1972] Fam 247, that there is a mental element and physical element when considering separation between spouses. Counsel suggests that it is more likely than not that the parties separated prior to 2011 as they went to mediation because of the mounting issues that they were facing. Counsel further suggests that exhibits 1 and 2 are evidence from which the Court can infer that the Parties were having issues prior to 2011 and asks that the Court accept the Defendant’s year of separation which is 2007.

[32] Counsel argued that should the Court accept that separation was in 2007, the Claimant is statute barred from bringing a Claim for the division of property pursuant section 13 of PROSA. Further, that in the absence of an Application being granted by the Court to extend the time for a Claim to be brought under PROSA then the Claimant's case cannot succeed under PROSA and the Claim has to be brought by way of common law and equity.

[33] Counsel closed his submissions by arguing that the Claimant has failed to show sufficient proof of a common intention or her contribution to the Property which would create a resulting trust. Counsel indicates that no proof of payment was submitted for neither the land upon which the Property is situated on nor any materials bought to be build the Property by the Claimant. Further, there is no proof that the Claimant provided in the form of any contract, discussions or any conduct which would amount to a common intention under **Grant v Edwards** (supra) and therefore, the Claimant's case should fail.

## ISSUES

[34] The Court must first determine whether the Claimant's failure to indicate her reliance on PROSA and its relevant sections in the originating document(s) is a procedural error which should be corrected before it considers the substantive issues in this matter.

[35] Should the preliminary issue be decided in favour of the Claimant, the substantive issues which ought to be determined in this matter are as follows:

1. Whether the Claim was made in time;
2. Whether the Claim should be considered under section 6 or 14 of PROSA;
3. Whether the Claimant is entitled to 50% of the Property.

## LAW AND ANALYSIS

### Exclusion of Hearsay Document

- [36] Before the Court discusses the issues present in this case, it will comment on utterances made by the Defendant's Counsel, Mr. Clarke, in his submissions. Mr. Clarke argued that this Court, at trial, refused the Defendant the opportunity to tender a document into evidence which the Defendant intended to rely on for his Defence. Counsel for the Defendant indicates that this opportunity was refused because of his failure to first file a Notice of Intention to Tender a Hearsay Document into Evidence – which he believes is a procedural error since he had attached the said document to and filed it with the Defence and disclosed it to the Claimant.
- [37] The Court would like to categorically reject these allegations. The document was not tendered into evidence because Counsel failed to prove the provenance of the document which he sought to be tendered as evidence of fact to prove assertions made by the Defendant regarding the acquisition of the Property. Additionally, the Court made this decision based on the rules of evidence which govern the tendering of hearsay documents into evidence and not because the procedure at CPR 31.1 was not followed.
- [38] Mr. Clarke intended to tender into evidence a one-page document which is purported to prove that the land upon which the Property is situated was gifted in 1992 to the Defendant. This document is undoubtedly relevant to the question as to how the Property was acquired and further, whether the Property can be divided pursuant to PROSA sections 6 and/or 13.
- [39] Where a document is considered to be, on its face, legitimate and sufficient foundation has been laid for that document to be tendered, the document may be admitted into evidence. However, the document in issue, though being signed and sealed by a Justice of the Peace, was not deposited at the Island Records Office. Additionally, there was no evidence on the document or from the Defendant which

indicates that the document was deposited at the Island Records Office. Furthermore, Counsel for the Defendant did not bring the Justice of the Peace nor the person whom the document purported to be the person who gifted the land upon which the Property is situated, to give sworn evidence in relation to the said document.

[40] It is for these reasons that the Court had ruled that Mr. Clarke failed to prove the provenance of the document and that the relevant rules of evidence had not been satisfied for the document to be admitted into evidence. The Court is of the view that even if on the face of it the document is legitimate, sufficient foundation was not laid by Counsel for the Defendant for the document to be tendered and admitted into evidence. Therefore, the Court believes that in the circumstances it needed to exercise its discretion pursuant to section 31L of the **Evidence Act** and CPR 29.1 to exclude the document.

[41] In these circumstances, the Court is certain that even if a Notice of Intention to Tender a Hearsay Document into Evidence was filed by the Defendant, it would not have changed the Court's decision to exclude the document. Subsequently, had the Court allowed this document into evidence, it would have proven to be more prejudicial than probative, especially so in circumstances where there are issues with the provenance of the document.

[42] Having indicated the reasons of the Court in relation to the exclusion of the hearsay document, the Court will now consider the relevant issues in the trial.

### **Preliminary Issue**

[43] The Court recognizes that before it can proceed to determine the substantive issues in the Claim, it must first address a preliminary issue which is in contention in this matter. The issue concerns whether the Court should allow the Claim to proceed in circumstances where the Claimant has not indicated the authority which they rely upon for bringing the Claim.

[44] The crux of the Defendant's position on this issue, is that the Claimant's statement of case is insufficient in the circumstances. Mr. Clarke submitted that the Claimant's case was not adequately set out as she has failed to indicate the law or authority that grounds her Claim which is a requirement for Claims being brought by a FDCF. Further, it was implied by Counsel that there is not sufficient evidence in the Claimant's statement of case which would make clear to the Court or the Defendant the Relief being sought and what Claim the Defendant needs to respond to.

[45] In response to this, the Claimant's Counsel indicated that failure to indicate the law or authority which grounds the Claim is not an issue of substance, but form. Mr. Anderson submits, that there was adequate information in the Claimant's statement of case which would indicate the authority upon which the Claim is founded and the Relief being sought. Further, that the Defence responded to the Claim using PROSA, which is a strong inference that the Defendant understood the grounds of the Claim, and that the statement of case was adequately set out. This, Mr. Anderson submits, should not be fatal to the Claimant's case and the Court ought properly to exercise their discretion to correct the procedural defect pursuant to CPR 26.9.

[46] The starting point for considering this issue is to examine what the CPR indicate as being required for statements of case. CPR 8.8 outlines the contents which ought to be in a FDCF, the relevant portions of which are indicated below –

- (1) *Where the claimant uses form 2, the claim form must state –*
  - (a) *the question which the claimant wants the court to decide; or*
  - (b) *the remedy which the claimant is seeking and the legal basis for the claim to that remedy;*
  - (c) **where the claim is being made under an enactment, what that enactment is...** (emphasis mine)

[47] CPR. 8.7 indicates what ought to be contained in a Claim Form, the relevant portions are reflected as follows –

- (1) *The claimant must in the claim form (other than a fixed date claim form) –*
  - (a) *include a short description of the nature of the claim;*

(b) specify any remedy that the claimant seeks (though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled);

(c) give –

(i) the claimant's normal place of residence or business; and

(ii) an address for service in accordance with rule 3.11; and if and individual state his or her occupation.

[48] For completeness, CPR 8.9 is reflected as follows –

**Claimant's duty to set out case**

(1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.

(2) Such statement must be as short as practicable

(3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.

[49] In **Audley Deidrick v Donna Annmarie Deidrick** (unreported), SCCA No. 4/2008, Court of Appeal of Jamaica, oral judgment delivered on July 15, 2008, Cooke JA (as he then was) considered whether the Claimant could succeed with a FDCF that did not specify that the remedy was being sought by virtue of section 6 of PROSA. In the FDCF, the Claimant indicated that she sought a 50% interest in the property under PROSA. Cooke JA indicated that the Claim should not fail despite not sufficiently designating the particular section of PROSA. Cooke JA noted at paragraph 6:

*"In this particular case, there is no doubt that the case was conducted on the basis that 50% was being sought because of the assertion that Close Haven was the family home. The learned trial judge --- set out the contending positions which were --- that the claimant was seeking a division on the basis that it was the family home. She sets out the contention of the husband that the remedy provided by section 6 is rebutted principally on the basis that 2 Close Haven Walk was not within the provision of section 6 of the Act."*

[50] A similar position was adopted by Brooks JA in the case of **Carol Stewart v Lauriston Stewart** (unreported) SCCA No. 15/2011, Court of Appeal of Jamaica, delivered December 6, 2013. Brooks JA noted at paragraph 45 of the judgment:

*"The next relevant section of the Act is section 13. It provides for applications for division of property which either or both spouses are interested, including the family home. It is important to note that such application will not be defeated only for lack of proper form."*

[51] There is also a list of authority within these courts which have taken a similar position such as the cases above which the Court has considered, including inter

alia **Whilby-Cunningham v Cunningham** (unreported) Claim No. 2009HCV02358, Supreme Court of Jamaica, delivered September 16, 2011 per McDonald-Bishop J (see specifically paragraphs [9] – [11]); **Greenland v Greenland & Ors** (unreported) Claim No. 2007HCV02805, Supreme Court of Jamaica delivered on February 9, 2011 per Brooks J and **Brown-West v West** [2014] JMSC Civ 166 per Straw J (see specifically paragraphs [30] – [37]).

[52] In the case of **Hugh Sam v Hugh Sam** [2018] JMCA Civ 15, Edwards JA Paragraph [43], Edwards JA indicated the importance of indicating the enactment upon which a claim for division of property is being brought. Edwards JA noted:

*... This serves several useful purposes. Firstly, it complies with the rule that a claim by fixed date claim form for statutory relief should state the enactment under which such relief is sought, the question which the claimant wants the court to decide and the remedy which the claimant is seeking along with the legal basis for the claim to that remedy (see rule 8.8 (a), (b) and (c) of the Civil Procedure Rules (CPR)). Secondly, it alerts the defendant to the claim he has to meet and any defences he needs to put forward to such a claim. For instance, a claim to 50% of the family home can be met by an application to vary the half-share rule under section 7 of PROSA. If a defendant is not alerted to the fact that the claim is for a share to the family home or that the claimant is asking the court to treat a particular property as the family home, then a defendant will not be alerted as to how to meet that claim. **To merely state that that the application is for a share in all that parcel of land could not alert anyone, including the court, that such a claim was based on section 6 of PROSA, which deals with the division of the family home as opposed to a claim for a share under section 14, which deals with ‘other property’.** (emphasis added)*

[53] In its reasoning the Court of Appeal in **Hugh Sam v Hugh Sam** (supra) also relied on the case of **McPhilemy v Times Newspapers Ltd and Others** [1999] 3 All ER 775 in which Lord Woolf explained the purpose of pleadings at pages 792-793:

*“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. **Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules.**” (Emphasis added)*



- [54] Consequently, Edwards JA concluded that there was nothing in the circumstances which prevented the learned trial judge from considering whether or not the property fell to be treated as the family home (see: **Hugh Sam v Hugh Sam** (supra) paragraphs 45 – 48).
- [55] The Court must distinguish the case at bar from those mentioned in paragraphs [43] – [45] of this judgment. In the case at bar, there is no mention of PROSA nor any section thereof in the Claimant's statement of case. However, in the cases highlighted at paragraphs [43] – [45] herein, it was mentioned that the Claims were premised upon PROSA, but the Claimant's failed to indicate the section(s) of PROSA that was being relied upon. Therefore, it was in those circumstances, that it would have been determined that such was not fatal to the Claimant's case.
- [56] Notwithstanding this, the Court of Appeal's analysis in the case of **Hugh Sam v Hugh Sam** (supra) is relevant as it deals with circumstances where there was no mention of PROSA nor any section thereof in the statement of case of the Claimant. This, the Court believes, is a similar circumstance as in the case at bar.
- [57] The Claimant initiated this matter on a FDCF accompanied by an Affidavit of the Claimant in support. It is not disputed that the law or authority which the Claim was being made under was not mentioned in the FDCF. It is clear that this is a breach of the CPR. However, it is important to note that on the 10<sup>th</sup> day of October 2013, Orders made by D. Fraser J (as he then was) included an order which states that the matter is to be treated as if it were commenced by Claim Form and Particulars of Claim.
- [58] It is quite unusual for a matter relating to the division of property to be Ordered to have commenced by way of Claim Form and Particulars of Claim. Particularly so in circumstances where the matter is purported to have been pursuant to PROSA which indicates that matters brought pursuant to PROSA should be commenced by way of FDCF. The Court is cognizant of the fact that there is no explicit

requirement in the CPR that indicates that the enactment upon which the Claim is being brought should be stated in the Claim Form or its Particulars. Nonetheless, the Claimant still has a duty to ensure that his/her case is sufficiently set out. To borrow the words of Edwards JA in **Hugh Sam v Hugh Sam** (supra), the following should be identifiable in the Claimant's statement of case:

- (i) the question that the Claimant wants the Court to decide (the cause of action);
- (ii) the remedy being sought by the Claimant; and
- (iii) the relevant facts upon which the Claim is based;

Further, it should alert the Defendant to the Claim he has to meet and any Defence he needs to put forward to the Claim.

**[59]** Therefore, the Court must examine the pleadings and witness statements of the Claimant to determine whether there is sufficient evidence upon which to decide this preliminary issue.

**[60]** The Orders sought on the FDCF filed the 23<sup>rd</sup> day of August 2013 are as follows:

- “ ...
1. *A Declaration that the Claimant is entitled to fifty percent (50%) of the property situate at Norris District, Yallahs in the parish of Saint Thomas.*
  2. *Valuation to be done on the said property, cost to be borne equally by the Defendant and I.*
  3. *An Order for sale and the proceeds divided in equal share; or in the alternative the Defendant compensate me for my interest in the said property.*
  4. *An order for any other relief which the Court deems fit.*
  5. *Costs*
- ...”

**[61]** The grounds on which the Claimant seeks the above Orders are as follows:

- “ ...
1. *That the Claimant has made financial contributions to the development of the aforesaid property and is entitled to half interest in the said property;*
  2. *That the Claimant and the Defendant are in a common law relationship and have been having an ongoing dispute with the Defendant taking steps to remove the Claimant and the Defendant's children from the said property;*
  3. *That the Claimant and the Defendant has been to mediation and the Defendant has agreed to compensate the Claimant for her share of the property.*

4. *The Claimant has decided to make this application to protect her entitlement under the law.*  
...”

**[62]** The relevant portions of the Affidavit of Andra Jackson in Support of Fixed Date Claim Form filed the 23<sup>rd</sup> day of August 2013 are reflected as follows –

- “...  
4. *The Defendant and I have been in a common law relationship for more than twenty-three (23) years and the union produced three (3) children ...*  
5. *That earlier in the relationship the Defendant and I resided at the Defendant’s parent property for approximately five (5) years before we purchased property the subject of this claim and we moved to the said property in 1993 (hereinafter referred to as “the said land”).*  
6. *That the said land is unregistered and we have built on the said land a two (2) bedroom house with all the usual amenities where we reside with our children.*  
7. *That the Defendant and I have over the years contributed to the upkeep and payment of the bills for the said land.*  
...”

**[63]** The relevant portions of the Affidavit of Andra Jackson in Response to the Affidavit of Valentine Davidson filed the 27<sup>th</sup> day of September 2013 are reflected as follows:

- “...  
4 ...*The Claimant denies the allegation made by the Defendant that they were not in a relationship. The Defendant is being disingenuous and is not being honest with the court as we lived together at his mother’s house at Heartease District, in the parish of Saint Thomas for five (5) years before we moved to this property at Norris in 1993.*  
...  
7...*The Claimant denies the allegation by the Defendant that the Claimant did not contribute to the building of the house. We both pooled our finances and bought material and dealt with labour cost.*  
8... *The Claimant and the Defendant both contribute to the upkeep of the land and shared the bills up to last year when he stopped contributing to the utilities. The Claimant would pay one portion and the Defendant would pay another portion. As a result of the Defendant not paying his portion of the utility bill the light was disconnected. The Claimant paid the outstanding sum and had the light reconnected and the Claimant has been paying the total bill since.*  
...  
14... *The Defendant’s claim that the relationship ended in 2002 is untrue as both were [sic] living together as man and wife and even have a child born in 2004 [sic]. The relationship ended in 2011...*  
...”

**[64]** Pursuant to the Orders of D. Fraser, J, the relevant portions of the FDCF and the Affidavit in support are also considered as the relevant portions for the Claim Form and Particulars of Claim, respectively.

[65] In the witness statement of Andra Jackson filed on the 31<sup>st</sup> day of January 2014, the Claimant restates, verbatim, the information in her Affidavit in Support of the FDCF & Particulars of Claim. As such, all three (3) documents have the same or similar relevant portions.

[66] The Court has duly considered the case of **Wilson-Malcom v Malcom** (supra) relied upon by Counsel for the Claimant. Counsel argues that the aforesaid case is authority that indicates that PROSA is the enactment which must be used to determine all matters relating to property division between spouses. This is a misapprehension of the judgment of the Court in that matter. In the said matter, there was a conflict between the statutory provisions for the division of property between spouses where the Claimant made a claim for division of property pursuant to PROSA and the Defendant made a separate claim for division of property pursuant to the Partition Act. As a result of this, K. Anderson, J analyzed the intention of both statutes and indicated that in circumstances involving division of property by statute between spouses, PROSA will prevail.

[67] The Court has also given consideration of the case of **Brown v Brown** (supra) which Counsel for the Claimant relies. In that case, the Court of Appeal of Jamaica has extended the significant and far-reaching impact of PROSA. It was concluded that PROSA is to be interpreted and applied, as intended by Parliament, by the Courts in Jamaica pursuant to section 4 of PROSA. Morrison JA (as he then was) noted at paragraph 76 of the judgment:

*“The statement in Section 4 that the provisions of the Act ‘shall have effect in place of the rules and presumptions of the common law and of equity’ is further evidence in my view of the intention of the legislature that the 2004 Act should, as of the date it came into force, have effect in respect of all disputes as to matrimonial property, irrespective of the date of separation or divorce of the parties, as the case may be... I have been unable to discover anything in the language of the 2004 Act that can be construed as restrictive of the applicability of the concept of the family home, for instance, which is arguably the cornerstone of the ameliorative architecture of the new regime, to cases in which the parties’ divorce or separation occurred after the effective date of the Act. Indeed it seems to me that to so limit the operation of the Act is in fact contrary to the plain language of section 4, which mandates the substitution of its provisions in place of the old rules and presumptions which were equally central to the old regime.”*

[68] The Court is also guided by the decision of Sykes, J (as he then was) in the case of **Paulette Gordon v Vincent Gordon and Rohan Alphonso Gordon** (unreported), Claim No. 2007HCV04846, Supreme Court of Jamaica, judgment delivered April 7, 2009, where he stated at paragraph 18:

*“Once the application is properly under PROSA, then, so far as the rules of equity and common law would have applied, then those rules and principles are now displaced and the Act applies where the statute applies to the transaction between the spouses. Therefore, in relation to the family house, if the application is brought under section 11 the half-share default rule laid down in section 6 applies, unless it can be displaced under section 7. This is so because the rules of equity and common law would have normally applied to the acquisition of the property those rules have now been replaced by the statutory provisions.”*

[69] Bearing the authorities in mind, particularly those at paragraphs [67] and [68] above, the Court is inclined to disagree with the submissions of Counsel for the Defendant, that the absence of stating the enactment would be fatal to the Claimant’s case. Further, while the Court is of the view that the Claimant’s statement of case is meagre, it is not insufficient in the circumstances to prevent the case from being decided on its merits.

[70] The Court is of the view that the Claimant indicated the relevant facts upon which the Claim is founded. It is clear from the Claimant’s pleadings that the Relief being sought is the division of the Property. It is also clear from her pleadings that the question which the Court is being asked to answer is what her interest is in the said Property. Lastly, the Court is of the view that the pleadings are sufficient to enable the Defendant to mount a Defence.

[71] Furthermore, at this juncture, the Court is of the view that it would be highly prejudicial to the Claimant to have her statement of case struck out and would be a breach of the overriding objectives at CPR 1.1. Especially in circumstances where the Defendant has joined issue with the Claimant’s case. The Defendant has responded to the Claim, firstly, in his Affidavit in Response to the FDCF and then his Defence filed the 20<sup>th</sup> day of December 2013 denying certain allegations of the Claimant. In particular, the Defendant has indicated that they rely on the Defence of Limitation in accordance with section 13(2) of PROSA and noted this

as the reason why the Claim is fruitless. At no point in time was it ever suggested by the Defendant in his statement of case that there was no cause of action available for the Claimant under PROSA. This, the Court believes, is a strong inference that the Defendant understood the gravamen of the Claim.

[72] The Court is therefore guided by the authorities and approach of Edwards, JA in **Hugh Sam v Hugh Sam** (supra) and agree with Counsel for the Claimant that, prima facie, this matter could be dealt with as a matter under PROSA and as such will consider the substantive issues of the case accordingly.

**Issue 1: Whether the Claim was made in time**

[73] Having decided that the Claim can proceed, the Court must now consider whether the Claim was made in time. In order to determine this issue, it must also be ascertained whether the Parties were in a common-law relationship and further, whether the parties separated in 2007 or 2011.

[74] Section 2 of PROSA defines a “spouse” as including –

“(a) *a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;*

(b) *a single man who has 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 institution of proceedings under this Act or the termination of cohabitation, as the case may be.”*

[75] It also defines “cohabit” and “cohabitation” as –

*“...living together in a conjugal relationship outside of marriage...”*

There is some dispute surrounding whether the Parties started living together from approximately 1989 at the Defendant’s mother’s house or in 1993 at the Property. Nonetheless, generally, neither Party has denied that their relationship exceeded five (5) years nor have they denied living together for more than five (5) years. Having reviewed the evidence, the Court is satisfied that the Defendant’s evidence in relation to the date on which the parties started living together as man and wife

was more credible. Therefore, the Court accepts the evidence of the Defendant that he and Miss Jackson were in a visiting relationship prior to 1993 and were not living together as man and wife.

**[76]** In order to make a decision on the issue in contention, the Court must also determine the year the Parties separated – was it 2011 as the Claimant suggested or 2007 as the Defendant protested? A finding of fact in relation to this will indicate whether the Claim is being made within the time that is required under PROSA.

**[77]** Mr. Clarke, Counsel for the Defendant, argued that the Property cannot be divided pursuant to PROSA as the Claim was not brought in time. Mr. Clarke argues that the Parties separated in 2007 and the Claim was brought in 2012. It was Counsel's submission that a Claim being made under PROSA should be made within twelve (12) months of the separation or end of the cohabitation. Therefore, Mr. Clarke avers that the Claim should fail as it is statute barred and there is no evidence of there being any Application to extend time to bring the Claim under PROSA. This argument is fundamentally based on the provisions of section 13 of PROSA.

**[78]** Section 13 of PROSA, in so far as is relevant to these proceedings, reads –

*"13.- (1) A spouse shall be entitled to apply to the Court for a division of property-*  
*(a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or*  
*(b) ...*  
*(c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation;*  
*(d) ...*

*(2) An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation...or separation or such longer period as the Court may allow after hearing the applicant."*

**[79]** Counsel for the Defendant further submitted that the problems that the Parties were having would have been happening for a long time which would result in them going to counselling. On this basis, Counsel for the Defendant indicates that the Parties would have separated years prior to 2011. However, Counsel for the

Claimant submitted that while they were having arguments prior to 2011, they separated in 2011 because the continuous arguments became unbearable for the Claimant and her children.

[80] The Court has duly considered the submissions and authorities presented by Mr. Clarke in relation to how the Court must approach the issue of the Parties' separation. To determine the time of separation, the Court had to consider whether both the mental and physical elements for separation have been satisfied (see: **Alva Melford Heron-Muir v Maureen Veronica Heron-Muir** (unreported) Claim No. FD 00144 of 2004, Supreme Court of Jamaica delivered October 21, 2005). To do so, the Court assessed the evidence of the Parties in relation to the separation and the credibility of the Parties.

[81] The Court is of the opinion that the Parties separated in 2011. The Court is of the view that both the mental and physical elements for separation were present either shortly before or after the Parties approached the Ministry of Justice's Victim Support Unit on the 20<sup>th</sup> day of December 2011. Out of this meeting a non-binding agreement signed by the Parties was borne which was tendered and admitted into evidence as exhibit 1, the relevant portions of which are set out below –

**"AGREEMENT BETWEEN VALENTINE DAVIDSON and ANDRA JACKSON  
both NORRIS DISTRICT ST. THOMAS**

1. *Mr. Davidson wants closure of ongoing dispute between himself and his common-law wife, Andra Jackson.*
2. *Miss Jackson agrees to bring closure to dispute.*
3. *Miss Andra Jackson is willing to vacate the premises.*
4. *Miss Jackson wants all entitlement under the law.*
5. *Mr. Valentine Davidson is willing to compensate her entitlement.*
6. *Mr. Davidson will get a valuator. cost share (50/50)*
7. *Dialogue between the parties concerning arrangement for valuation will take place.*
8. *Both parties agree to have mediation done on January 18, 2012 at 10am at the D.R.F. 5 Camp Road.*

*This agreement is part of a preliminary discussion towards final settlement at the Dispute Resolution Foundation or in the court. We understand that this is not absolutely binding.*

..."



[82] Thought not binding, exhibit 1, in the Court's view, is strong evidence that separation happened around or about this time. The Court found the Claimant to be confident and resolute in her averments that the Parties separated in 2011 and she has maintained this position at the genesis of the Claim and at the trial. The Court did not find much confidence on the part of the Defendant regarding these allegations. Further, the Defendant had, on a previous occasion indicated that the Parties had separated much earlier in 2002 which the Court had duly considered in arriving at a decision on this point. A culmination of these findings of fact was the basis upon which the Court made its decision that separation was around or about 2011.

[83] Consequently, the Claim was made within time since the Court has ruled that the Parties separated around or about December 2011 and the Claim was filed in August 2012. Therefore, the Defendant's defence that the Claim was being made out of time must fail.

**Issue 2:     Whether the Claim should be considered under section 6 or 14 of PROSA**

[84] Following the finding of the Court that the matter should be dealt with under PROSA, it must also determine whether the Claim should be considered under section 6 or 14(1)(b) of PROSA. The Court is of the view that this Claim ought to be considered under section 14(1)(b) of PROSA.

[85] As is relevant to these proceedings section 6 of PROSA is reflected as follows:

*"6-(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home—*

*(a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;*

*(b) on the grant of a decree of nullity of marriage;*

*(c) where a husband and wife have separated and there is no likelihood of reconciliation.*

*(2) Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one-half share of the family home.*

**[86]** As is relevant to these proceedings, section 14 of PROSA is reflected as follows:

*"14.-(1) 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) (a), '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.”*

**[87]** The nature and tenure of the Claimant’s pleadings and subsequent arguments from Counsel for the Claimant indicate that the Claimant is seeking division pursuant to her alleged substantial financial and/or nonfinancial contribution in the Property and not on the basis that the Property is the family home.

**[88]** In circumstances where a division of property is being sought on the basis that a property is the family home, the pleadings would reflect evidence of the Property falling within the definition of what a family home is pursuant to section 2 of PROSA. Instead, the Claimant has outlined certain facts which is intended to show her alleged contribution to the Property and, as her Counsel put it, the “common intention”, “legitimate expectation” and “resulting trust” – concepts which are more aligned with a division of other property pursuant to section 14(1)(b) of PROSA. It is readily apparent to the Court, that it is on these basis or grounds that the Claimant has sought a 50% interest in the Property.

**[89]** The Court would also like to indicate, that it seems to have been the understanding of Defendant, that the Property was not being claimed as the family home. In response to the Claim, the Defendant made no mention of the Property not falling within the definition of the family because the land upon which it is situated was

gifted, which was a Defence that was available to him. The Defence as filed focused on the allegations of the contribution of the Claimant to the acquisition and improvement of the property, which were denied. The Property was mentioned as being a gift by the Defendant in his Defence in opposition to the Claimant's allegation that the Property was purchased by the Parties.

[90] The evidence that was provided for the Court to analyse in any event is the evidence of both Parties as to the circumstances of acquisition, improvement, nonfinancial and financial contribution, the order of the affairs of the household, the financial strength of both parties, the presence or absence of children in the household (see: **West-Brown v Brown** (supra)). The Court's position therefore, is that the gravamen of the Claim is that the Property is to be divided pursuant to section 14(1)(b) of PROSA and be treated as other property. Consequently, the Court will proceed with determining the entitlement of each Party in the case pursuant to section 14(1)(b) of PROSA.

**Issue 3: Whether the Claimant is entitled to 50% interest in the Property**

[91] The Court will analyse the evidence of the Parties under the various factors as required by section 14 of PROSA. The relevant sections for considerations are 14(2)(a) to (c) and (e). Section 14(2)(a) is supplemented by section 14(3)(a) to (i) and both parts will be considered. Additionally, section 14(4) makes it clear that there is to be no presumption that a monetary contribution is of greater value than a nonmonetary one.

***The Monetary Contribution of the Parties to the Property***

[92] In civil proceedings, he who alleges must prove and findings of fact are to be supported with evidence from which the Court could make reasonable inferences (see: **Watt (or Thomas) v Thomas** [1947] 1 All ER 582). The Claimant is under a duty therefore to prove on a balance of probabilities that she has contributed as she alleges to the acquisition and improvement of the Property. Likewise, the Court

suggests that the Defendant has a similar duty in relation to his allegations of his own contribution.

- [93]** There was a paucity of documentary evidence in this case. The Court accepts that not in all circumstances documentary evidence will be required as proof of an allegation. However, in a case where the Claimant asserts that she has made substantial monetary contributions towards the acquisition and improvement of the Property, then it would be appropriate that documentary evidence would be provided to prove this assertion. Further, in the absence of the documentary evidence, the Claimant could, at the very least, have witnesses of fact to speak to her alleged monetary contributions. The Claimant only had her word and nothing more, she was her only witness. The Court does not take this to mean that the Claimant is untruthful, but is of the opinion that the Claimant's testimony alone is not sufficient to discharge her legal and evidential burden that she substantially contributed, financially, to the acquisition and improvement of the Property.
- [94]** The Defendant too failed to provide documentary evidence in relation to the acquisition and improvement of the Property. However, the Defendant had two (2) other witnesses which assisted his evidence in this regard. The Court considers that the witnesses are his sisters, and that they may have an interest to serve. Despite this, the Court found these witnesses to be truthful and is willing to accept their evidence. Consequently, the Court is satisfied, on a balance of probabilities, that the Property was acquired as a gift, and that the Defendant solely bore the financial burden to construct the Property.
- [95]** The Court's finding does not mean that this is the end of the matter as the nonmonetary contributions are to be considered under several factors as set out in section 14(3)(a) to (i) of PROSA.

***Indirect and Non-Monetary of the Parties to the Property***

- [96]** The Court has to consider under this heading, the management of the household, the performance of household duties, the payment of money to maintain or increase the value of the property, the provision of money for the purposes of the marriage.
- [97]** The Court notes the sparse evidence of the Parties in relation to these other heads of contribution. The Court realizes that much of the Parties evidence rested on the alleged financial or monetary contributions to the acquisition and improvement of the Property.
- [98]** The Court has considered that this is not an application for the division of the family home, that the children are living at the home, the Parties have been cohabiting for approximately eighteen (18) years before separating, and the Claimant's evidence that both Parties contributed to the upkeep and payment of the bills for the land. The Court has also considered the evidence of the Defense, that the Defendant solely takes care of the Claimant and the children, pays for food for the household, finances the children's education and pays the utility bills.
- [99]** It was highlighted that both Parties were employed and as such the Court accepts that they both contributed to the payment and upkeep of the bills. The Court also accepts that, in the absence of anything to the contrary, the Defendant contributed as he so described.
- [100]** Section 14(3)(c) of PROSA also requires the Court to consider whether any party gave up a higher standard of living than would otherwise have been available. In this case, there is no evidence to suggest that either Party did so. Further, the Court is of the opinion that the Claimant did not act to her disadvantage by moving into the Property with the Claimant. The Court considers that the Claimant has been living in the Property rent free since 1993 up until the hearing of this matter.

***Other Relevant Factors***

[101] Section 14(2)(e) of PROSA allows the Court to take other facts or circumstances into account if the Court is of the view that it is just to do so. In accordance with this discretion, the Court has considered the tumultuous relationship between the Parties and their children which was brought out in their evidence and the Claimant's indication that she is willing to vacate the Property as relevant factors in dealing with the division of the Property. The Court also considers relevant that there is no indication that Mr. Davidson has access to any other property.

**CONCLUSION**

[102] Based on all the above, the Court is of the view that Miss Jackson should be awarded some interest in the Property as a result of her indirect and non-monetary contributions in the Property for a period of approximately eighteen (18) years. This interest however, will be modest as Mr. Davidson acquired the property as a gift and bore all financial burdens for the improvement and/or development of the Property. The Court also considered Mr. Davidson's indirect and non-monetary contributions in the Property for the duration of the common-law union as well.

[103] In light of this Miss Jackson's contribution is assessed to be 20% interest in the value of the dwelling house situated at Norris District, Yallahs in the parish of Saint Thomas, Jamaica. This assessment is made primarily on the basis of the length of common-law union, the fact that this is not a division for the family home and that Miss Jackson contributed to household in terms of her payment and upkeep of bills.

[104] Miss Jackson's contribution is to be compensated by a lump sum payment, as the Court does not believe that it would be just in the circumstances to order that the property be sold and the proceeds of sale divided. The Property must therefore be valued and the value of her interest paid to her by way of a lump sum payment. The orders of the Court are therefore as follows:

1. Miss Andra Jackson is awarded twenty percent (20%) beneficial interest in the dwelling house situated at Norris District, Yallahs in the parish of Saint Thomas, Jamaica ("the Property").
2. The value of the Property is to be ascertained by a valuator who shall be agreed upon by the parties and failing agreement, by a valuator who shall be appointed by the Registrar of the Supreme Court.
3. The value to be used is the value of the Property as at the date of this judgment.
4. Payment of the appraised value shall be made within ninety (90) days of the date of the valuation report being provided to Mr. Valentine Davidson.
5. Interest at the rate of 3% percent per annum shall begin to accrue on the appraised sum as at the date stipulated for payment in order #4 above and shall continue until the payment of the sum.
6. The cost of the valuator shall be borne by Mr. Valentine Davidson as to eighty percent (80%) and Miss Andra Jackson as to twenty percent (20%).
7. Miss Andra Jackson is granted the option to remain in the Property until the date of compensation and no later than fifteen days thereafter.
8. Each Party to bear their own costs.
9. Liberty to apply.