



[2023] JMSC Civ 14

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2020CV03010**

<b>BETWEEN</b>	<b>MADGE ROBINSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>CAROL ST. AUBYN ROBINSON</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Glenroy Mellish, Attorney-at-Law for the Claimant.

Wentworth Charles instructed by Wentworth S. Charles & Company Attorneys-at-Law for the Defendant.

***The Property Rights of Spouses Act- Division of Family Home- What constitute the Family Home- Variation of the Equal Share Rule- Property acquired before Marriage.***

**Heard: November 1, 2022 and February 2, 2023**

**P. MASON J (Ag)**

**BACKGROUND TO THE CLAIM**

[1] The Claimant and the Defendant met in or about 1992, and later got married on the 29<sup>th</sup> July, 2006, at the Prayer-Line Church of God in the parish of Saint Catherine. There are two children of the marriage, but only one is a minor. It is alleged by the Claimant that the property located at Greenwich Park in the parish of Saint Ann being all that parcel of land comprised in Certificate of Title registered at Volume 1201 Folio 400 of the Register Book of Titles (see marked for

identification 'CR2' exhibited to the supplemental affidavit of the Defendant filed January 21, 2022), is where the parties resided as husband and wife and is therefore the family home. The property was owned by the Defendant prior to the marriage and remain solely owned by him. It was acquired by way of mortgage in or about 1989, which was later discharged on 1<sup>st</sup> April, 2004.

- [2] The Claimant purported to have begun residing with the Defendant at the property in Greenwich Park from about 2002 until after their marriage. In or around 1993, the Claimant departed to the United States of America ("USA") and sometime thereafter, sought residency. While living in the USA during the marriage, the Claimant began visiting Jamaica occasionally. The process of filing for the Defendant was started by the Claimant after marriage, and he migrated to live in the USA in or around January 2009, where they resided in their marital home in Miramar, Florida, USA. The Defendant rented the property in dispute in 2008, before migrating and it has since remained so. The marriage broke down resulting in the parties separating in 2017, and a Judgment for dissolution of marriage made by the Circuit Court for Broward County, Florida, USA on the 16<sup>th</sup> October, 2019.
- [3] Many of these facts are essentially not in contention between the parties however, and not surprisingly due to the nature of these matters, there are several factual variances between the parties, specifically whether the Claimant truly resided at the premises as husband and wife for it to constitute the family home. I will highlight those facts that will determine the salient issues before the Court.

### **THE CLAIM**

- [4] This claim concerns a dispute surrounding the alleged matrimonial property being the family home. By way of a Fixed Date Claim Form filed on 12<sup>th</sup> of August, 2020, the claimant sought the following orders:

*"1. A Declaration that the Claimant is entitled to a one-half share in  
the family home at Greenwich Park in the parish of Saint Ann,*

*Jamaica being all those lands comprised in the Duplicate Certificate of Title registered at Volume 1201 Folio 400 of the Register Book of Titles, pursuant to the Property (rights of Spouses) Act.*

*II. An order restraining the Defendant whether by himself, his agents or otherwise from selling, leasing or in any other manner dealing with the property hereinbefore described, or any part thereof, or of disposing of any proceeds of sale of the said property or any part thereof, without the written consent of the Claimant or further order of the Court.*

*III. An order that the said property be valued by a real estate appraiser to be agreed by the parties or failing an agreement to be appointed by the Court, each party bearing half the cost of such valuation.*

*IV. An order that within 30 days of receipt of the valuation of the property the Defendant shall be at liberty to make an offer to purchase the share of the Claimant in the said property at a price equal to 50% of the appraised value of the property such offer to be made in writing and communicated to the Claimant or her legal representative.*

*V. An order that the Registrar of the Supreme Court is authorized to sign all and any documents necessary to give effect*

*to these orders, if either party neglects or refuses to sign any document(s) within fourteen (14) days of being requested to do so.*

*VI. The Claimant's Attorney-at-law is to have carriage of sale.*

*VII. Such other orders as this honourable court may deem fit.”*

**[5]** The Claimant supported her claim by Affidavits filed on August 12, 2020 and May 13, 2022. The Defendant in response to the claim, filed Affidavits on May 5, 2021, and January 21, 2022. She grounded her claim for the orders sought on these statements:

*“ ...*

*3. That I was married to the Defendant on 29th July 2006 at Prayer Line Church of God in the parish of Saint Catherine. I exhibit as "MRI " a copy of the Marriage Certificate.*

*4. I was divorced from the Defendant on October 16, 2019. I exhibit as "MR2" a copy of the Final Judgment for Dissolution of Marriage made by the Circuit Court for Broward County, Florida, U.S.A.*

*5. We lived together at the home which is the subject of this application from around 2002 and we continued to live there after our marriage in July 2006. In or around 2007 I began travelling to the United States every six months but I would always come back to that home when I am in Jamaica. I exhibit as "MR3" a copy of the duplicate certificate of title registered at Volume 1201 Folio 400.*

*6. After the marriage I began the process of filing for him since I was in possession of a United States Green card when we got married. He migrated to live with me in the United States in or around January 2009. We lived together until our separation which led to the eventual divorce.*

*7. The home in St. Ann was always considered our home while we were in Jamaica. Even after he came to live with me in Florida we would stay at that home when we visited Jamaica. At the time of our divorce I received an order from the court in Florida which confirmed our agreement for me to retrieve from the home my clothing and other personal effects, a dining table, stove, washer, dishes and utensils, books and Bibles and a compressor.*

*8. I claim a share of the home in which we co-habited as husband and wife until he joined me in Florida in 2009 and even after that remained our abode when in Jamaica.*

*...”*

- [6]** The Claimant argues that the facts mentioned in paragraph 5 above sets out her entitlement to one-half share in the property. This is on the premise that the alleged family home while registered and solely owned by the Defendant remained throughout the marriage the main residence of the parties while in Jamaica.
- [7]** The defendant is challenging this, however, and maintains, that he is the sole owner of the property on which the alleged family home is located. He contends that the property was never the family home, since the Claimant would stay with her parents at their residence while living in Jamaica. He further contends that during the visits to Jamaica, the Claimant would spend two to three nights at the Defendant’s residence and the remainder of the trip at her parents’ home in Spanish Town, St. Catherine. Hence, the parties never resided at the property together for more than three days in any given year prior to 2009, when the Defendant joined the Claimant in the USA.
- [8]** The main disputed fact among the parties is whether the parties resided as a family at the property located at Greenwich Park in the parish of Saint Ann being all that parcel of land comprised in the Certificate of Title registered at Volume 1201 Folio

400. This question will be grounded by the credibility of the witnesses that appeared before me.

## **ISSUES**

[9] The issues to be determined are:

1. Whether the property located at Greenwich Park in the parish of Saint Ann, being all that parcel of land comprised in the Certificate of Title registered at Volume 1201 Folio 400 constitutes the family home, in accordance with the provisions of the Property (Rights of Spouses) Act (hereinafter referred to as "PROSA").
2. Whether in the circumstances of this case, an application of the equal share rule would be unreasonable or unjust, so as to warrant a variation of the general rule.

## **SUBMISSIONS**

[10] I wish to thank both Counsel for their fulsome submissions as they greatly aided in the resolution of this matter.

[11] The Claimant in her submissions asserts that the law does not require the parties to be living at the home continuously, and that it is sufficient that the parties co-habit there from time to time or habitually. In support of this submission, counsel relies on section 2 of PROSA regarding the definition of the family home and the judgment of ***Cunningham v Cunningham Claim No. 2009 HCV 02358***. Counsel submits that based on the evidence of the Claimant at paragraph 4 of her affidavit in support, it should be accepted that the parties lived at the home from around 2002 and continued to do so after their marriage in 2006. Moreover, that the Claimant even after travelling to the United States every six months, would always come back to Jamaica and reside at the home in St. Ann.

- [12] Counsel maintains in his submissions that, even the Defendant has stated that the Claimant would come back to the home at St. Ann but for only two to three nights. Counsel further relies on paragraph 7 of the Claimant's affidavit which indicates that she was given permission from the court in Florida to retrieve from the home, her clothing and other personal effects. This, counsel submits, is additional proof that the property in question was the family home and as it stands before the Court, there is no admissible challenge to that conclusion.
- [13] In closing his submissions, counsel contends that the Claimant, on the evidence offered and supported by the law, is entitled to a 50% share of the property.
- [14] Counsel for the Defendant submits that section 2 of PROSA defines the term "family home". He further relied on the concept of "family home" as expounded on in ***Peaches Stewart v Rupert Stewart Claim No. HCV0327/2007 delivered November 6, 2007***. In support of his submission that the property in question was not to be considered the family home, counsel submits that the evidence shows that the Claimant only visited Jamaica occasionally during which time she would spend two nights with the Defendant at his residence and the remainder with her parents in Spanish Town. Counsel requests that the Court accept the evidence of the Defendant and states that the property was never occupied with the Claimant for more than three days prior to 2009, and was never considered the family home for the purposes of the law. Counsel argues that the property in St. Ann was never used as the family home and that there are no acts of the Claimant to support this. In fact, Counsel also submits that the Claimant's property was never stored at the property in dispute, but at the Defendant's brother's property in Priory, St. Ann. Counsel puts forward that the evidence of the property being rented in 2008 supports this submission, since it would be impracticable and inconvenient to store the Claimant's belongings there.
- [15] Further submissions made by counsel for the Defendant is that the law contemplated that there can only be one family home and this is made patently clear in the statutory definition cited by Justice Sykes (as he then was) in ***Peaches***

***Stewart v Rupert Stewart (Supra)*** and supported in ***Froome v Froome [2018] JMSC Civ 110***, where the learned judge stated that, there can only be one family home, as is evident from the definition, and the fact that the definition is stated in the present tense (using 'is'), suggests that the premises ought to be a current dwelling house, that is the main place of residence at the time of separation.

[16] Hence, Counsel for the Defendant submits that the Claimant has failed to establish on a balance of probabilities, any shares, interest or right in the property as the property was purchased prior to the marriage and funded exclusively by the Defendant. Counsel, in his submissions, argues that the Claimant, in her evidence, admitted that she made no contribution to the property in which she is seeking an interest. Counsel further submits that there is an issue with the Claimant's credibility under cross-examination and as such, invites the Court to find that she was not being sincere and that her evidence does not support her claim.

## **THE LAW**

[17] PROSA is the relevant legislation that deals with division of property among spouses. Section 6 of PROSA established the equal share rule and is therefore the accepted starting point in the resolution of this matter. **Section 6 (1) of PROSA** provides:

*“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.”*



The Court is given the power under **section 7 of PROSA** to vary the equal share rule where appropriate to do so in the circumstances. It provides:

*“7. -(1) Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following-*

*(a) That the family home was inherited by one spouse;*

*(b) That the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;*

*(c) That the marriage is of short duration;*

*(2) In subsection (1) “interested party” means-*

*(a) a spouse;*

*(b) a relevant child; or*

*(c) any other person within whom the court is satisfied has sufficient interest in the matter.”*

**[18]** Section 2 (1) of PROSA provides:

*““Family home” means the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one*

*spouse by a donor who intended that spouse alone to benefit”*

## **THE EVIDENCE**

**[19]** I will however, refer to pieces of evidence which are necessary to explain how I arrived at my findings. To the degree that there are discrepancies between the evidence of the Claimant and that of the Defendant, it is to be taken that I accept the evidence of the Defendant, whom I found to be more forthright and honest than that of the Claimant. I have found the Claimant, Mrs Robinson, to be vague, evading and inclined to overstate when giving evidence.

**[20]** The Claimant, while being cross-examined stated that she left Jamaica in 1993 and returned to Jamaica in 1993, 1997, 2005 and 2006. Prior to marriage, she lived in the USA and stayed in Jamaica for six months after the marriage and she lived with the Defendant at the property in St. Ann between 1991 and 1992. She further stated while giving evidence that she lived in Spanish Town with her parents from 1967 to 1991. I pause here to note that the Claimant got married in 1994 to a Mr. Maurice Lincoln and later divorced in 2005, one year before marrying the Defendant. After Counsel for the defence put to the Claimant that she never lived at the St. Ann property she stated that she did, in 1991 to 1993.

**[21]** Mr. Oral Allen, who is the Cousin of the Claimant, gave evidence in support, he is a Minister of Religion and a Senior Insurance Inspector. Mr. Allen gave evidence that he lived in Spanish Town at the time of the wedding and was also an attendee. He stated that the Claimant left Jamaica about two months after the wedding and visited Jamaica afterwards in 2006 to 2019, but not in 2020. He went on to state that he did visit the house in St. Ann with the Claimant and stayed for a day or two where he saw the Defendant in 2007 or 2008 at the property. Later, in his evidence, he stated that when the Claimant visited from Florida she stayed in Spanish Town by her parents. Mr. Allen, in his affidavit filed on October 20, 2022, stated that:

“ ...

2. *I also know Carol Robinson for over 20 years, that is, from he and Madge Robinson began their relationship.*

3. *I would visit Madge at least once per year for a number of years at the house in Greenwich Housing Scheme in St. Ann when she was in Jamaica. These visits took place for a number of years and I would stay at their house in St. Ann. My stay there would usually last for a day or two.*

4. *I recall that she would come to Jamaica and stop in St. Ann. Then the two of them would come to her parents' house in St. Catherine.*

...”

**[22]** I am likewise aided in concluding that the Defendant is more credible than the Claimant in light of several inconsistencies in the Claimant’s case. This, I find goes to the core of her credibility. One striking example is that the Claimant could not remember when she got married to her first husband, Mr. Lincoln. Later on the witness stand, her witness, Mr Allen, stated that she was never married before Mr. Robinson. With the aforementioned, I did not find the Claimant to be a reliable witness.

**[23]** The Defendant fervently gave evidence that the Claimant, after they migrated, would both return to Jamaica and would spend a day and a night with him then go to her parents in Spanish Town. He stated that the Claimant, when she came to Jamaica, stayed for two or three days at the most with him at the St. Ann property. Both witnesses of the Defendant being Mr. Dwight Davis and Ms. Doreen Ridley support the Defendant’s evidence that the Claimant never resided at the property in St. Ann. Mr Davis in his Affidavit filed on November 22, 2021, states:

“ ...

2. *I have known the Defendant, Carol Robinson for over forty (40) years. We both attended Priory Primary School and grew up in the same community in Priory, St. Ann.*

3. *I would see the Defendant regularly while he was living in Jamaica, as we would have drinks together at Priory after work.*

...

5. *On or about 1987, the Defendant informed me that he was leaving Priory to live at Greenwich Acres Housing Scheme, where he had acquired a property.*

6. *On or about 2006, the Defendant informed me that he was getting married to the Claimant, Madge Robinson, who lived in St. Catherine. He later sent me an invitation and I attended the wedding.*

7. *During my visits to the Defendant's home after the wedding, I observed that he was still living alone. On enquiries, I learned that Mrs. Robinson had returned to Florida after the wedding.*

8. *On or about 2009, the Defendant informed me that he was migrating to the United States of America to live with his wife.*

9. *The Defendant also informed me that he was going to rent the property at Greenwich before migrating to the USA.*

10. *To my knowledge, Mr. Robinson left Jamaica in 2009 and has only visited since with his family.*

11. *During the Defendant's visits to Jamaica, I would only see him at his parents' residence in Priory, St. Ann. I did not see his wife during her visits, as she was staying at her local residence in St. Catherine.*

12. *I have not known Mrs. Robinson to be living at Greenwich during the time that I visited the property.”*

Ms. Doreen Ridley in her Affidavit filed on November 22, 2021 states:

“4. *The Defendant and I lived in the same neighborhood in Greenwich, St. Ann for about Thirty-Four (34) years. I bought my house on or about 1986 and the Defendant acquired his house on or about 1987.*

...

6. *On or about 2006, the Defendant informed me that he was planning to get married to the Claimant, Mrs. Madge Robinson, who is from St. Catherine. He later sent me an invitation; however, I was unable to attend due to the weather.*

7. *After the wedding, I visited the Defendant at his home and was hoping to meet the Claimant; however, I was informed that the Claimant was staying at her local residence in St. Catherine before returning to Florida, where she resides in the United States of America.*

8. *In or about 2009, the Defendant informed me that he was migrating to the United States of America to join the Claimant.*

9. *Before 2009, I would see the Defendant regularly, when passing his home and other time, I would visit on several occasions to pick breadfruit on his property.*

10. *I have never seen the Claimant or anyone else at the property except the Defendant.*

11. *After the Defendant migrated, I saw him a few times on his visits to Jamaica. In our conversation, he informed me that he was staying at his parents' residence in Priory, St. Ann.*

12. *I enquired of the Claimant and I was informed by the Defendant that the Claimant was overseas, where they now reside.*

13. *After the Defendant migrated, I saw other persons at the property and formed the view that the property was tenanted.”*

## **ANALYSIS**

**ISSUE 1: *Whether the property located at Greenwich Park in the parish of Saint Ann being all that parcel of land comprised in Certificate of Title registered at Volume 1201 Folio 400 constitutes the family home, in accordance with the provisions of Property (Rights of Spouses) Act (PROSA).***

[24] Section 6 of PROSA requires the court to make a determination firstly as to whether the property in question was indeed the family home. In assessing this matter, and being decisive of the issues herein, this Court has found it prudent to first assess the status of the alleged family home and determine whether it constitutes a ‘family home’ as defined by PROSA and as explained at common law. One germane annotation is that the law provides that each spouse is presumed entitled to one-half share of the family home on the grant of a decree of dissolution of marriage, as provided under section 6 of PROSA. This presumption, therefore, upon the answer to the question of the family home in the affirmative, provides that each spouse, subject to the named sections, would be entitled to one-half share of that property, unless it is proven to be unreasonable or unjust in accordance with section 7 of the PROSA. Section 7 makes it clear that upon an application by a spouse, the Court may make an order varying the equal share rule provided for in section 6 thereby providing for the displacement of the presumption of equality.

[25] As highlighted in ***Margaret Gardner v Rivington Gardner [2012] JMSC Civ. 54*** at paragraph 17:

*“...The onus rests on the spouse who is alleging that it is unreasonable and unjust to apply the equal share rule to provide evidence to rebut the presumption. In this case the defendant made an application by way of notice of application for court orders supported by affidavit evidence.”*

[26] I accept the guidance of the valuable dictum of the Honourable Miss Justice Carol Edwards in the case of ***Margaret Gardner v Rivington Gardner (Supra)*** where at paragraphs 14 and 15, she stated as follows: -

*“PROSA is the relevant statutory regime which deals with claims for the division of matrimonial property on separation or divorce. PROSA gives this court jurisdiction to deal with claims involving the respective interest of spouses in both marital and common law unions. Section 6 PROSA provides in part that:*

*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 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) ....*

*Section 6 requires the court to make a determination firstly, whether the property in question was indeed the family home. Upon that*

*question being answered in the affirmative, each spouse, subject to the named sections, would be entitled, by virtue of the section, to a half share of the beneficial interest in the family home.”*

- [27] There is a dispute that the property was in fact the family home as defined by section 2 of PROSA, as to whether it was used habitually by both spouses and therefore, whether both spouses are presumptively, by statute entitled to a half interest in the property. The family home is defined under PROSA as the:

*“...dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit.”*

- [28] Phillips J.A., in ***Dalfel Weir v Beverly Tree***, [2014] JMCA Civ 12, cited at para. 39 that:

*“In Peaches Stewart v Rupert Stewart, Claim No. HCV0327/2007, delivered 6 November 2007, Sykes J in delivering the judgment dealing with sections 2 and 13 of PROSA analysed excellently, the definition of “family home” and the interpretation to be given to it. I endorse his comments in the main and have set out below most of his discussion in relation thereto, with which I agree. He stated the following in paragraphs 22 and 23:*

*22. It is well known that when words are used in a statute and those words are ordinary words used in everyday discourse then unless the context indicates otherwise, it is taken that the words bear the meaning they ordinarily have. It only becomes necessary to look for a secondary meaning if the ordinary meaning would be absurd or produces a result that could not have been intended...*



*23. it should be noted that the adjectives only and principal are ordinary English words and there is nothing in the entire statute that suggests that they have some meaning other than the ones commonly attributed to them. Only means sole or one. Principal means main, most important or foremost. These adjectives modify or in this case, restrict the width of the expression family residence. Indeed, even the noun residence is qualified by the noun family which is functioning as an adjective in the expression family residence. Thus it is not any kind of residence but the property must be the family residence. The noun residence means one's permanent or usual abode. Thus family residence means the family's permanent or usual abode. Therefore, the statutory definition of family home means the permanent or usual abode of the spouses."*

Phillips J.A went on to make further reference of the judgment by stating:

*'He then referred to the fact that in the definition of family home it was vital that the "property" was used habitually or from time to time by the spouses as the only or principal family residence, and those adverbs indicated how the property was to be used. I agree with that statement, but in my view, in the definition, that reference in respect of use with regard to property relates to the "dwelling house". Sykes J went on to say further in paragraph 24, that:*

*"The legislature, in my view, was trying to communicate as best it could that the courts when applying this definition should look at the facts in a common sense way and ask itself [sic] this question, 'Is this the dwelling house where the parties lived?' In answering this question, which is clearly a fact sensitive one, the court looks at things such as (a) sleeping and eating arrangements; (b) location of clothes and other personal items; (c ) if there are children, where*

*[do] they eat, sleep and get dressed for school and (d) receiving correspondence. There are other factors that could be included but these are some of the considerations that a court ought to have in mind. It is not a question of totting up the list and then concluding that a majority points to one house over another. It is a qualitative assessment involving the weighing of factors. Some factors will always be significant, for example, the location of clothes and personal items.”*

*“Of course I would add as always that each matter must be dealt with on its own peculiar facts. I will set out in summary the relevant facts within the above stated legal framework, as I deal with the first issue on the appeal.”*

- [29]** Therefore, it should be noted that, if on the evidence, it is not proven by the Claimant that the alleged family home was the dwelling house where the parties lived, it would not constitute, for the purposes of the PROSA, the ‘family home’ and pursuant thereto, the Claimant could not and would not be able to benefit from any the presumption of equality in the share of the property. The Claimant must therefore prove that, on a balance of probabilities, that they dwelled, meaning resided, from time to time as spouses. The Claimant must also prove the dwelling house as being the only or principal family residence, where the parties lived as husband and wife. A thorough analysis of the evidence given is required in order to make a correct determination of the issue at hand.
- [30]** In accordance with the requirement of section 6 of PROSA, I do so find that the house at property located at Greenwich Park in the parish of Saint Ann was not the family home for the purposes of the application of PROSA.
- [31]** The Claimant, in her evidence made no assertion that she made any contribution to the property in which she is seeking interest. While she asserted at paragraph 7 of her Affidavit filed on 12<sup>th</sup> August, 2020, that the ‘...home in St. Ann was always

*considered our home while we were in Jamaica*'. Further at paragraph 8 of said affidavit, Mrs. Robinson stated her claim under section 6 of PROSA is based on the parties' cohabitation as husband and wife prior to the Defendant joining her in Florida. On Cross-Examination, the Claimant confirmed that she migrated from Jamaica in 1993 and only returned a few times thereafter. The marriage took place in 2006 and she was joined by the Defendant in Florida in 2009 where they lived together until separation in 2017.

- [32]** Of particular note, was the fact that she initially maintained that she visited Jamaica every six months during which she resided as the property with the Defendant. This was, however, contrary to the evidence of all the other parties, and even by her own evidence on cross examination where she admitted that she visited Jamaica in 1993, 1997, 2005 and 2006. These dates are a far cry from every six months as she had previously stated. Her evidence was inconsistent with that of the Defendant and his witnesses Mr Davis and Ms Ridley and in more than one respect with her own witness and cousin Mr Allen.
- [33]** Mrs Robinson, made no reference to being previously married in any of her Affidavits relied on in support, and when asked, seemed reluctant to confirm this previous marriage. This brings the question to my mind as to whether this is by all indication a signal that this period in her previous life was conflicting with the dates she puts before this Court, when making her claim to establish habitual residence in Jamaica. Mrs. Robinson, in the circumstances, conveniently could not remember the date of her marriage to Mr Lincoln. The Claimant's witness was also unhelpful in his testimony. He was quite positive that she was not married before she had married the Defendant. He claimed to have visited the home, and even slept over for a night, but could not assist with the age of the children of the marriage.
- [34]** There is a significant issue as it relates to the Claimant's credibility under Cross-Examination. The court has not found Mrs. Robinson, the Claimant, to be a witness of truth and as such has given little to no weight to her evidence in deciding the

issue. In treating with her evidence, the Court has considered her claim to have resided at the property as husband and wife as untrue.

[35] Though, I have unequivocally found that the property is not the family home, I will go on to consider whether there exists a section 7 factor that vary the equality presumption.

**ISSUE 2: *Whether in the circumstances of this case, an application of the equal share rule would be unreasonable or unjust, so as to warrant a variation of the general rule***

[36] In the judgment of ***Graham v Graham Cl. No. 2006 HCV 03158***, McDonald Bishop J. (Ag) (as she then was), outlined the statutory basis for the equal share rule. This was later validated by Brooks JA (as he then was) in the Court of Appeal decision ***Carole Stewart v Lauriston Stewart [2013] JMCA Civ 47***, where he stated:

*“ The historical underpinnings of the Act, as set out in ***Brown v Brown***, are consistent with the opinion of McDonald-Bishop J (Ag) (as she then was) expressed in ***Graham v Graham Claim No 2006 HCV 03158*** (delivered 8 April 2008). She assessed the statutory basis for the equal sharing rule at paragraphs 15-16 of that case thus:*

*15. By virtue of the statutory rule, the Claimant [applying under section 13 of the Act] would, without more, be entitled to [a] 50% share in the family home ...and this is regardless of the fact that the Defendant is [the] sole legal and beneficial owner. It is recognized that the equal share rule (or the 50/50 rule) is derived from the now well established view that marriage is a partnership of equals (See ***R v R [1992] 1 AC 599,617 per Lord Keith of Kinel***). So, it has been said that because marriage is a partnership of equals with the parties committing themselves to sharing their lives and living and working together for the benefit of the union, when the partnership*

*ends, each is entitled to an equal share of the assets unless there is good reason to the contrary; fairness requires no less; Per Lord Nicolls of Birkenhead in Miller v Miller; McFarlene v McFarlene [2006] 2 AC 618,633.*

*16. The object of this Act is clearly to attain fairness in property adjustments between spouses upon dissolution of the union or termination of cohabitation...”*

**[37]** In the case of ***Kerry-Ann Thompson v Glenroy Smith [2018] JMSC Civ. 104***, Brown Beckford J, at paragraph 36, had this to say concerning the purpose of PROSA:

*“The provisions of the Act as to equal sharing was not intended to be a windfall for one party. It is intended to have persons equitably and fairly treated in the distribution of the fruits of their joint endeavours’.”*

**[38]** In assessing section 7, at paragraph 27, Brooks JA noted that:

*“At least three things are apparent from section 7(1):*

*a. The section requires the party who disputes the application of the statutory rule, to apply for its displacement.*

*b. The use of the word “including”, implies that the court is entitled to consider factors other than those listed in section 7(1).*

*c. The equal share rule has to be shown to be unreasonable or unjust; equality is the norm.”*

**[39]** Concerning the nature of the evidence that would be required to displace the statutory rule, at paragraph 31 he indicated that:

*“Based on the above analysis, it may be said that, if the door is opened, by the existence of a section 7 factor, for the consideration of displacement of the statutory rule, then very cogent evidence would be required to satisfy the court that the rule should be displaced.”*

**[40]** Brooks JA then observed, that time and knowledge would determine what other factors other than those listed in section 7, would qualify under section 7. He then went on to do a comparative analysis between sections 7 and 14 of the PROSA, where he concluded that a section 7 factor had to be shown to exist, before the court could go on to determine if a variation of the equal share rule was reasonable.

**[41]** Brooks JA stated at paragraphs 76 – 78 the following:

*[76] In order to displace the statutory rule for equal interests in the family home, the court must be satisfied that a factor, as listed in section 7 of the Act, or a similar factor, exists. Contribution to the acquisition or maintenance of the family home, by itself, is not such a factor, it not having been included in section 7. This is in contrast to its inclusion, as a relevant factor, in section 14, which deals with property other than the family home.*

*[77] If the court is satisfied that a section 7 factor exists, it may then consider matters such as contribution and other circumstances in order to determine whether it would be unreasonable or unjust to apply the statutory rule. The degree of cogency of that evidence is greater than that required for other property. In considering whether the equality rule has been displaced, the court considering the application should not give greater weight to financial contribution to the marriage and the property, than to non-financial contribution.*

**[42]** If the Court is of the view that justice demands it, then it may displace the equal share rule. It is also evident that each case must turn on its own facts. The burden

of proof rests with the Defendant, Mr Robinson, to satisfy the court with cogent evidence that the application of the equal share rule would be unreasonable and unjust in the circumstances. In making that determination, the Court may have regard to the factors as outlined in Section 7 of PROSA. It must also be pointed out that the mere existence of one of the factors for consideration per the section does not mechanically deprive Mrs Robinson of a share in the property.

**[43]** I have given careful consideration to these principles and considered the entirety of the evidence. It is not in dispute that the property was owned by the Defendant prior to the marriage, without the assistance of the Claimant. This, of course, is one of the grounds upon which the Court is permitted to consider the variation of the equal share rule. I am satisfied therefore, that a section 7 factor exists. That is to say, that “the family home” was already owned by the Defendant at the beginning of the marriage. The mortgage retained by Mr Robinson to pay for the home was paid off years before the parties got married. Even after the parties’ relocation to the USA, the property was rented out. This evidence coagulates my finding that on return to Jamaica Ms Robinson stayed at her parents and Mr. Robinson with his parents’ who resided in Priory, St. Ann, since it would have been impractical to reside as husband and wife at a rented property. I find the witness Ms Ridley as truthful when she states that after migration of the Defendant she saw other persons at the property and formed the opinion that the property was tenanted.

**[44]** It is noteworthy that, at no time did the Claimant give evidence or make any claim that any contribution, financial or otherwise, directly or indirectly, was made by her with the intention of securing any form of interest in the Defendant’s property located at Greenwich Park in the parish of Saint Ann. Mr Robinson, by all appearance seems to be truthful in his responses and I generally accepted him as an honest and credible witness, primarily in regard to the extent of the Claimant’s stay at the property versus her parents’ home in Spanish Town.

## **CONCLUSION**

[45] I find that the property located at Greenwich Park in the parish of Saint Ann being all that parcel of land comprised in Certificate of Title registered at Volume 1201 Folio 400 of the Register Book of Titles is not the family home. I likewise find that even if the property in question was the family home that this would be a proper case to vary the equal share rule provided for in section 6 of PROSA. The justice of the case calls for it. I find that the claimant is not entitled to any share in the beneficial interest in the property in question. Having regard to the foregoing, I find and accept that the Defendant, Mr Robinson, has on a balance of probabilities, shown that it would be unjust and unreasonable to apply the equal share rule to this case. Given the fact that the property in question was never the family home for the purposes of section 6 of PROSA, it would be unjust to permit the Claimant to have or benefit in any share of the said property.

## **ORDERS OF THE COURT**

[46] Accordingly, it is ordered that:

1. The Claimant is not entitled to any share or interest in the Defendant's property located at Greenwich Park in the parish of Saint Ann being all that parcel of land comprised in Certificate of Title registered at Volume 1201 Folio 400 of the Register Book of Titles.
2. Judgment for the Defendant in the claim.
3. Costs to the Defendant to be agreed or taxed.
4. The Claimant's Attorneys-at-Law shall prepare, file and serve these orders.