



[2025] JMSC Civ.31

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV04201

**IN THE MATTER OF THE PROPERTY
(RIGHTS OF SPOUSES ACT)**

AND

**IN THE MATTER OF THE PARTITION
ACT**

AND

IN THE MATTER of ALL THAT parcel of land part formerly known as IDE COTTAGE part of PUMPKIN GROUND now known as BELMORE in the parish of SAINT CATHERINE being the Lot numbered FORTY on the plan of the parts of Watson Grove, Belmore and Cedar Grove aforesaid deposited in the office of titles on the 14th day of April, 1999 of the shape and dimensions and butting as appears by the said plan and being part of land comprised in Certificate of Title registered at Volume 1360 Folio 260.

BETWEEN LORRIS WILLIAMS

CLAIMANT

AND CORIE PRINCE

DEFENDANT

IN CHAMBERS (VIA ZOOM)

Ms. J'Nae Peart instructed by Knight Junor & Samuels appearing for the Claimant

Mr. Marcus Moore appearing for the Defendant

Dates Heard: 13th November, 2024 and 28th March, 2025

Civil Practice and Procedure — The Property (Rights of Spouses) Act — Application for Extension of Time to Bring a Claim for Division of Property under Section 13 (2) of The Property (Rights of Spouses) Act — Factors to be Considered by the Court for an Extension of Time — Whether the Delay is Inordinate — Whether there is a Good Reason for the Delay — Whether There is a Prima Facie Case — Prejudice — Whether the Overriding Objectives is in Favour of the Granting or Denying the Extension of Time.

T. HUTCHINSON SHELLY, J

INTRODUCTION

[1] On October 6th, 2021, the Claimant filed a Fixed Date Claim Form seeking relief under the Property Rights of Spouses Act (PROSA) and the Partition Act. This claim was filed thirteen years after the dissolution of the marriage between herself and the Defendant. In her Fixed Date Claim Form, the Claimant seeks the following orders:

- i. A declaration that the Claimant and the Defendant are both equally entitled to fifty percent (50%) interest in the premises situated at Lot 79 Belmore

Avenue, Cedar Grove, Gregory Park in the parish of Saint Catherine registered at Volume 1320 Folio 260 of the Register Book of Titles.

- ii. That C.D. Alexander of 4a Marescaux Road, Kingston 5 be appointed to determine the current market value of the said property and the cost of the valuation be borne equally by the parties.
- iii. The Defendant be given the first option to purchase to be exercised within ninety (90) days of the date hereof, failing which, the property is to be sold on the open market and the net proceeds divided equally between the parties.
- iv. The cost of the transfer is to be borne equally by the parties.
- v. If either party refuses to sign the transfer and any other document necessary to give effect to transfer of the property, then Registrar of the Supreme Court is empowered to sign on behalf of the defaulting party.
- vi. The Claimant's Attorney-at-Law to have carriage of sale.
- vii. That the Defendant is to provide an accounting of all rental income earned from the property since 2008 and pay half the proceeds to the Claimant.
- viii. Such further and other relief as this Honourable Court deems just.
- ix. Costs to be cost in the claim.
- x. Liberty to apply.

BACKGROUND TO THE CLAIM

[2] The parties to the claim were married on December 12th, 1998. During the course of their marriage, they acquired a property located at Lot 79 Belmore Avenue, Cedar Grove, Gregory Park in the parish of Saint Catherine registered at **Volume 1320 Folio 260** of the Register Book of Titles, which they own as tenants-in-common. Shortly, after their marriage, the parties migrated to the United States of America in 2000. They resided together in the State of Florida and later acquired

three properties. The parties started to have marital problems which caused their marriage to be dissolved on March 8th, 2008. The Defendant relocated to Jamaica after the dissolution of the marriage.

- [3] The Claimant remained in Florida and was awarded possession of two properties in the divorce proceedings as the third property had been foreclosed on. The Defendant, on his return to Jamaica, completed the expansion and renovation of the subject property. It is the Claimant's contention that she had contributed to some of the materials that was utilized for this renovation. In 2010, the Defendant remarried and continued renovation of the subject property. The Claimant alleges that she sought to stay at the premises with the Defendant's two children on two occasions in 2014 and 2017, but she was denied access. She stated further that in 2017, she stayed there for a short time with the assistance of the Police after she was able to show the Police that her name appeared on the Title.
- [4] The Claimant still resides in the United States of America whilst the Defendant currently resides in Canada. In support of his case, the Defendant has produced several receipts which show proof of payment for building materials, National Housing Trust (NHT) payments, property tax payments as well as monies sent by his current wife from Canada to assist with the renovations.
- [5] The subject of the substantive claim concerns this property in Jamaica that was acquired by the parties during their marriage. The matter was case managed and eventually set for trial on July 2nd, 2024. By way of a Notice of Application filed on the same date, the Defendant sought to have the Claimant's claim for an interest in the matrimonial property dismissed by reason of her failure to obtain an extension of time under PROSA. In this application, he seeks the following orders:

“1. A declaration that the Fixed Date Claim Form filed in this matter on the 6th day of October 2021 is irregular;

2. That the Claim herein be dismissed for failure to seek the Courts permission to extend time to bring such a claim under PROSA;

3. That the limitation defence succeeds in this matter due to the Claimant's failure to meet the prerequisite of the time limitation under PROSA;

4. Cost the Defendant/Applicant;

5. Such further and other order that this Honourable Court deems fit.

[6] The ground on which the Applicant seeks the orders are as follows: -

- a) Pursuant to Section 13 (2) of the Property (Rights of Spouses) Act ("PROSA") where a spouse applies for a division of property, such application shall be made within twelve months of that dissolution of marriage, **'or such longer period as the court may allow after hearing the applicant.'**

[7] This Application is supported by two affidavits:

1. Affidavit of Marcus Moore in Support of Notice of Application filed on July 2, 2024.
2. Supplemental Affidavit of Corie Prince filed on July 2nd, 2024.

[8] In response to the Defendant's Application, on the 10th of October 2024, the Claimant applied for an extension of time to bring her claim under PROSA by way of a Notice of Application for Court Orders.

[9] The genesis of this application lies in the fact that while it is open to the Claimant to seek her remedies in equity under the Partition Act, the regime is markedly different under PROSA as the latter specifically requires that in order to proceed under this Act, the action must be brought within twelve months of the dissolution of the relationship or with an extension granted by the Court.

[10] In the Application to extend the time within which to make an application under section 13 (2) of PROSA, the Claimant seeks the following orders:

- “1. The Claimant is granted an extension of time under section 13 of the Property (Rights of Spouses) Act to bring a claim for division of matrimonial property.
2. That the Fixed Date Claim Form filed on October 6, 2021 be allowed to stand as having been filed in time.
3. Costs to be costs in the Claim.
4. Such further and other relief that this Honourable Court deems fit.

[11] The grounds on which the Applicant seeks the orders are as follows:

1. Pursuant to section 13(2) of the Property (Rights of Spouses) Act the court may extend the time for filing for division of property after hearing the applicant.
2. The property is jointly owned by the Claimant and Defendant as tenants-in-common.
3. The Claimant contributed to the renovations and expansion of the said property, which is the sole remaining matrimonial asset.
4. The Claimant stands to be severely prejudiced were time not be extended.
5. That the Defendant will not suffer any hardship by the grant of the said application.

[12] The Application is supported by one affidavit:

1. Affidavit of Lorris Williams filed on October 9th, 2024.

[13] Although the Parties filed separate applications, the issues raised within them are so inextricably intertwined that the submissions and authorities relied on largely overlapped. It is for this reason that the Court formed the view that any decision arrived at would determine both matters. In an effort to assist the Court, the parties made written and oral submissions. These submissions are summarized as follows:

Summary of the Applicant's Submissions

[14] Ms. J'Nae Peart, Counsel for the Claimant, submitted that the issues for the Court's determination are as follows:

- i. Whether the reasons provided for the delay makes the Applicant's claim a suitable one for the grant of an extension of time;
- ii. Whether any undue prejudice would be suffered by the Applicant if the Application was granted;
- iii. Whether the merits of the Applicant's case provide sufficient basis for the grant of the Application; and
- iv. Whether the overriding objectives are in favour of the extension of Time.

[15] Ms. Peart acknowledged that in treating with the abovementioned issues, the Court is required to determine whether it would be fair to allow the Claim to proceed out of time.

[16] With respect to the first issue she identified, Counsel acknowledged that sections 13(1) and (2) of PROSA confer upon a spouse the right to apply for the division of matrimonial property and specifically prescribed that the Application must be made within one year of the dissolution of marriage or of the termination of cohabitation. She submitted that the legislation makes no recommendation as to the factors which the Court must consider and it is a matter for the Court's discretion, taking into account the authorities and reason provided for the delay. In support of her submissions, Ms. Peart placed reliance on the following authorities:

1. **Sharon Smith v Vincent Service** [2013] JMSC Civ. 78
2. **Roy Dassado v Jennifer Brown** [2022] JMSC Civ. 42
3. **Delkie Allen v Trevor Mesquita** [2011] JMCA Civ. 36
4. **Calvern Gavin v Laretta Gavin** [2017] JMSC Civ. 11

5. **Natalie Tenn v Wayne Wiltshire** [2023]

6. **Polyseenia Lewis v Marlon Fitzroy Campbell** [2023] JMCA
Civ. 12

[17] Ms. Peart acknowledged that the claim was filed on October 6, 2021, approximately thirteen years after the parties separated, well outside of the prescribed timeframe stipulated in section 13(1)(a). She argued that Ms. Williams had provided plausible details of her reasons for the delay. These included:

- a. Her impecuniosity and unemployment status which caused a delay in retaining the services of an Attorney-at-Law to pursue a claim for division of the property;
- b. Her ignorance of the time limit within which the claim under PROSA should have been brought;
- c. Mental health issues;
- d. Her undocumented status in the United States of America; and
- e. Her homelessness which resulted in her living in a shelter with her children for some time.

[18] Ms. Peart submitted that although delay is discouraged by the limitation defence within the Act and a delay of thirteen years is inordinate, it is not dispositive of the issue. She relied on **Roy Dassado v Jennifer Brown** *supra* where despite a delay of eighteen years, the Court granted an extension of time to the Claimant to pursue his claim.

[19] Ms. Peart objected to Mr. Prince invoking the limitation defence on the basis that he had not pleaded this defence in response to the substantive claim but sought to gain the benefit of it at the trial of the matter on July 2nd, 2024, having filed his application the day before the trial.

- [20] On the issue of prejudice being suffered by the Defendant, Counsel submitted that the hardship faced by Ms. Williams far outweighs those claimed by Mr. Prince, who should have anticipated that this claim would have been pursued given their discussions up to 2017. In outlining the hardship faced by Ms. Williams, Ms. Peart asserted that Ms. Williams, has not benefitted fairly from the distribution of matrimonial assets after their divorce.
- [21] Ms. Peart submitted that although Ms. Williams had been awarded two of the three properties acquired by the parties in the USA (by virtue of the Broward County Court's ruling in 2008), she did not derive any substantial benefit from the award as she subsequently lost them due to foreclosure. Counsel argued that as a direct consequence of Mr. Prince abandoning the family, Ms. Williams had to solely take on the responsibility of caring for their children and servicing the two mortgages and she was unable to maintain the latter.
- [22] Ms. Peart contended that there would be no injustice or harm to Mr. Prince if Ms. Williams' application is granted, however if Mr. Prince's application is allowed, he would benefit disproportionately from the division of the matrimonial assets, the use and occupation of the premises and the rental income. Ms. Williams would be left empty-handed despite having contributed to the acquisition, maintenance and preservation of the subject property.
- [23] On the issue of whether there is any merit in Ms. Williams' case, Ms. Peart submitted that in accordance with the legislative provisions of PROSA, she is entitled to a share in the subject property. She directed the Court's attention to the authority of **Smith v Service** *supra*.

Summary of the Respondent's Submissions

- [24] Mr. Marcus Moore, in written submissions on behalf of the Defendant asserted that the application for an extension of time should be denied based on the fact that Ms. Williams has failed to put forward any good reason for the delay in bringing same. He asked the Court to consider the circumstances in **Roy Dassado v**

Jennifer Brown *supra* and argued that it can be distinguished from the instant case. He submitted that in that case, upon the termination of the union, the parties each had an identifiable half share in the family home, and as such it would be unjust to deny an application for an extension of time since the property was the designated family home in which the parties lived and cohabited.

- [25] Mr Moore contended that the claim not having been filed within the time frame prescribed by PROSA, the Application for division of the property cannot be heard under that legislation. Mr Moore relied on the limitation defence in support of this assertion and asked the Court to dismiss the claim.
- [26] In identifying the germane issues for the Court's consideration on both applications, Mr. Moore highlighted the authority of **Allen v Mesquita** *supra*. He submitted that since the parties' marriage was dissolved in May 2008, Ms. Williams should have filed her application by May 2009. He argued that the delay of thirteen years including the statutory period prescribed by the Act is inordinate and inexcusable.
- [27] Mr. Moore contended that Ms. Williams had not established a prima facie case worthy of a grant for an extension of time. He submitted that in deciding whether the extension of time should be granted, the issue of whether the subject property was the family home goes to the heart of the application under section 13 of PROSA.
- [28] In relation to the issue of prejudice, Mr. Moore submitted that if the Application is granted, Mr. Prince would be severely prejudiced as he would be deprived of the right to a defence of limitation. He further submitted that Ms. Williams' assertion of having to bear the sole responsibility of taking care of the Parties children as a reason for the delay is not sound in law. He relied on **Alcron Development Limited v Port Authority of Jamaica** [2014] JMCA App 4, **Tenn v Wiltshire** *supra* and **Smith v Service** *supra* in support of this point.

Applicable Legal Principles for a Section 13(2) Application

[29] It is settled law that applications under section 13 are subject to a twelve-month timeline and there must be an event that triggers the calculation of the passage of time. In the instant case, the triggering event that gave rise to this claim is the divorce of the Parties on March 8th, 2008.

[30] Section 13(2) provides as follows:

*(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, annulment of marriage, or separation or such longer period **as the Court may allow** after hearing the applicant. (emphasis added).*

[31] The language of section 13 (2) of PROSA makes it clear that the action should have been brought by March 2009. This claim was not filed until October 6, 2021 and as such it was filed out of time.

[32] Although Section 13 (2) does not specify the criteria which must be met in order to obtain an extension of time, it provides a specific time frame for the filing of these applications, subject to the Court's discretion. While the Act is silent as to the relevant factors which should be considered, useful guidance is provided in a number of decisions from the Supreme Court and Court of Appeal. In **Annette Brown v Orphiel Brown** [2010] JMCA Civ. 12, the Court of Appeal highlighted the principles to be considered on an Application for an extension of time under PROSA. In that case, at paragraph 77, Morrison JA (as he then was) examined the relevant considerations as follows:

"On an application under section 13 (2), it seems to me, that all the Judge is required to consider is whether it would be fair (particularly to the proposed defendant, but also to the proposed claimant) to allow the application to be made out of time, taking into account the usual factors relevant to the exercise of a discretion of this sort, such as the merits of the case (on a purely prima facie basis), delay and prejudice, and also taking into account the overriding objectives of the

Civil Procedure Rules of 'enabling the court to deal with matters justly.' (rule 1.1 (1)).

- [33] In the case of **Delkie Allen v Trevor Mesquita** [2011] JMCA Civ. 36, the Court of Appeal reviewed the issue of the Judge's exercise of his discretion. At paragraph 18 of the decision, Harris JA stated as follows:

"The Court, in exercising its discretion for an extension of time, is required to take into consideration such factors as the length of the delay, the reasons for the delay, whether an applicant has a claim worthy of a grant of an extension of time and the question of prejudice to the other party."

- [34] At paragraph 26 of that judgment, Harris JA stated:

"A Court in deciding whether a limitation period should take effect, is under an obligation to consider the circumstances of the particular case, taking into account whether there is any good reason which would prevail against the statute operating."

- [35] At paragraph 46 of the judgment, further guidance was given on the subject where Phillips JA said as follows:

"Of course it must be taken as a given that in order for the application for extension to be successful and to obtain the exercise of the discretion of the court in favour of the applicant, the applicant must set out the length of the delay, the reasons for the delay, whether the claim is worthy of the grant of extension and whether there is prejudice to the other party."

- [36] The case of **Sharon Smith v Vincent Service** *supra*, is also relevant, in that matter, Sykes J (as he then was) discussed the correct approach in considering such an application at paragraphs 10 and 13 as follows:

[10] "...in seeking an extension of time to file his claim, an applicant must also seek leave to extend the time and place before the court reasons to be evaluated by the court to justify his right to do so..."

[13] *'So there is clear authority consistent with Mr Cowan's position that limitation defences under PROSA should be upheld unless there is good reason not to do so. The Court's starting point then should be in favour of the defence when it is raised and that benefit which accrued to the defendant should only be taken away on good reasons being shown.'*

[37] It is settled law that the filing of a claim under PROSA outside the twelve-month period makes it an irregularity. This status can only be addressed by an extension of time being granted. This position was clearly enunciated by Sykes J (as he then was) at paragraph 20 of **Sharon Smith v Vincent Service** *supra* where he stated:

"a claim filed before an extension of time is granted is in procedural purgatory orin a state of suspended validity, and any irregularity (as would be the case if the claim is filed before the extension of time is granted) can be cured by a subsequent order. Thus a claim form filed before an application for extension of time is made or granted is not a nullity (modifying Mesquita on this point) and can be validated by a subsequent order. If extension of time is not sought before the claim is filed that 'omission is not a fundamental irregularity and can be cured nunc pro tunc' (italics in original), meaning that the later order (granting the extension and therefore taking the claim form out of its state of suspension) operate to correct the earlier procedural irregularity. Thus the Saddler claim form was not fatally flawed 'and could be cured if the application before the court is successful' ([88])"

ISSUE

[38] Applying the legal principles enunciated in these decisions to the instant claim, it is evident that the main issue which the Court must determine is whether the Claimant's application for an extension of time should be granted. In treating with this issue, it is imperative to look at the relevant factors which arise for consideration. These are as follows:

- i. The length of the delay;
- ii. The reasons for the delay;

- iii. The prejudice to the parties; and
- iv. Whether the Applicant has a prima facie case/meritorious claim.

Should the Application for an extension of time have preceded the Fixed Date Claim Form?

[39] Before embarking on an examination of the factors identified above, it is necessary to examine the assertion made on behalf of the Defendant that the entire process was flawed as the application should have preceded the Claim. In support of this contention, Mr Moore relied on paragraphs 6, 7, 8 and 9 of his affidavit which state as follows:

“6. That to date, despite this claim being filed from 2021, there is no application for extension of time made by the Claimant, nor are there any affidavit evidence by the Claimant addressing the issue of the long delay of about thirteen years between the period of separation and the filing of the application for division of property.

“7. That this claim is being brought almost thirteen years after the parties separated and without any prior application being made to the Court for an extension of time, and no permission given by the court, this claim cannot continue.”

“8. For this claim to be allowed to proceed, without the court first hearing an application from the Claimant and in its discretion allowing the time period to be extended, would be in breach of the specific words in section 13 (2) of PROSA.”

“9. There is nothing before the Court to consider, therefore it is fair the Court orders that time to bring this claim is not extended, therefore the matter cannot proceed and the limitation defence succeeds.”

[40] In considering this point, the Court notes that the authorities have made it clear that while the claim is an irregularity and in a state of suspension, it is not barred from proceeding. This is seen in the decisions of the Court of Appeal where the Court found that all that was required was for an application for an extension of time to be filed for consideration by the Court.

[41] In **Angela Bryant-Saddler v Samuel Oliver Saddler and Fitzgerald Hoilette v Valda Hoilette & Davion Hoilette** [2013] JMCA Civ. 11, where the action had preceded an application for an extension and the Applicant had requested that the Claim as filed be amended and allowed to stand, Phillips JA stated at paragraph 89 that:

“...the order made by P Williams J was appropriate in all the circumstances, as it recognized the amendment of the claim form to include the claim under PROSA, it ordered the claim as amended to stand, **which in effect was also recognizing the power of the court to extend the time for the filing of the claim after the time allotted in section 13, and did so nunc pro tunc.**”(emphasis added)

[42] The Court adopts the legal principles enunciated in this decision, while the application was later in time, this does not operate to prevent Ms. Williams seeking orders to regularize her claim. Additionally, there was no need for her to seek leave to apply for an extension of time. Once the application has been made, the Court’s role is to consider if the application can be granted. Accordingly, the assertion of Mr Moore on this point cannot stand.

Whether the Claimant’s Application for an Extension of Time to bring a claim under PROSA should be granted?

Length of the delay

[43] The Court having found that there was no bar to the application being filed after the claim form, an examination of the relevant factors must then be conducted. The first consideration is the length of the delay on the part of the Applicant. In light of the statutory provision under PROSA which governs the timeline for bringing a claim, the Court must determine when time begins to run in respect of the termination of the relationship. In the case at bar, the Applicant gave evidence that their marriage dissolved in May 2008. Therefore, this claim should have been brought no later than May 2009.

- [44] Based on the evidence, this Claim was brought thirteen (13) years after the grant of the Decree Absolute in May 2008 and approximately twelve (12) years after the statutory period within which to file a claim in PROSA. It was conceded by Ms Peart that the period of delay was inordinate and on this point the Court is in agreement with her.

Reasons for the delay

- [45] The fact that the delay was inordinate is not dispositive of the matter however, as the Court then had to consider the reason for the delay. In her affidavit, Ms. Williams provided a number of reasons for the delay. In summary, she highlighted her impecuniosity which affected her ability to retain legal representation, her lack of awareness of her rights in relation to the division of the matrimonial property, her undocumented status in the United States of America which affected her ability to travel to Jamaica and her ignorance of the limitation period.
- [46] Although Mr Moore has questioned the merits of these assertions, he did not provide evidence to refute them. From a careful examination of the Affidavit evidence of Mr. Prince, the Court did not find any evidence that would have challenged the Claimant's assertions at this stage.
- [47] In treating with this factor, the Court must consider whether the reasons advanced by the Applicant for the delay are credible. At paragraph 21 of **Smith v Service** *supra*, Sykes J stated the position of the law as follows:

"[21] ... under the present law even if the parties were separated many years before PROSA, provided the applicant can satisfactorily explain the delay and there is no injustice to the Defendant then a claim can be brought under the legislation."

- [48] On a careful examination of the Claimant's evidence, I observed that there was some documentary evidence provided by her to substantiate her assertions. She relied on Exhibit **LW-1** which is correspondence dated January 9th, 2008 sent from her Attorney in the United States of America to the Defendant's Attorney. In this

letter, her Attorney outlined the actions of the Defendant who is alleged to have breached an injunction prohibiting him from interfering with the Claimant by informing her employers of her undocumented status.

[49] Exhibit **LW-5**, a psychological evaluation of the Claimant by Dr. Michelle Demenkow, a Clinical Psychologist also provides relevant information. This report is dated the 7th of October 2008 and states that the Claimant was assessed and diagnosed with Major Depression and Post-Traumatic Stress Disorder. The assessment was done post-divorce proceedings. Interestingly, apart from the diagnosis, the report provides other pertinent information about Ms. Williams as there is reference made therein to the fact that she had resided in a shelter with her children after losing her properties due to foreclosure. The final judgment of foreclosure in respect of the properties foreclosed on in the United States of America, which bears the date October 20th, 2009 is also attached and exhibited as **LW-3**. It confirms that she lost the properties due to her inability to honour the mortgage payments.

[50] Although these documents are rather dated, they confirm the downward trajectory which the Claimant says her life had taken following her divorce from the Defendant. The Claimant also asserted that she was unable to travel to Jamaica between 2002 and 2014 due to her undocumented status in the United States of America and this also impacted her ability to take steps to enforce her rights. While no documentation was provided by her on this point, **LW-1** confirms that she was undocumented up to January 2008. On a review of the respective affidavits of the Parties, it is evident that there was no communication between them following the Defendant's departure from the United States of America. The subject property had been jointly owned by them and the Claimant had never indicated that she did not have an interest in it. In fact, she stated that she visited the property twice, the first time in 2014 when she was denied access and again in 2017 when she managed to stay there with the intervention of the police. Neither of these visits have been denied by the Defendant. It was on the visit in 2017 that she became aware that her interest was being disputed.

[51] In analysing the reasons proffered by the Claimant for the delay, I accept that the documentary evidence relied on provide some support for the adverse changes which the Claimant says occurred in her life. Her explanation as to her inability to travel is also of some significance as it was only on her arrival in Jamaica that she became aware that her interest in the property was being challenged.

[52] As it relates to her impecuniosity which ‘*affected her ability to instruct Counsel in Jamaica*’, the Court is mindful of the remarks of Sykes J in **Smith v Service** *supra*, who indicated that this would not be a sufficiently meritorious explanation by itself where he stated:

“I do not place great weight on the lack of funds. There is no evidence that Miss Williams sought to engage the Legal Aid Clinic which has reduced fees.”

[53] This position was echoed by Barnaby J (Ag.) at paragraph 14 of her judgment in **Natalie Tenn v Wayne Wiltshire** *supra* where she stated:

*“It is quite easy for a party who has failed to abide by procedural timelines which have been imposed by legislation or rules of court to claim impecuniosity when he asks the court to exercise a discretion it has in extending time. This can no doubt lead to abuse. It is for that reason that an applicant who approaches the court must convincingly demonstrate that impecuniosity caused the delay: **Alcron Development Limited v Port Authority of Jamaica** [2014] JMCA App 4. In my view, this is not accomplished by the Applicant merely stating that she was taking care of her children for the last fourteen (14) years; that they are no longer financially dependent on her; and she now has the means to pursue litigation. After the passage of so many years, I believe that something more is required.”*

[54] While impecuniosity may be accepted in certain instances as providing a good reason for not being able to pursue legal action (see **Leymon Strachan v Gleaner Company Ltd. And Dudley Stokes** (Motion No 12/1999 – judgment delivered 6 December 1999), there should be cogent evidence to support such an assertion. While the exhibits admitted into evidence show that the Claimant had several challenges following the dissolution of her marriage, some of which had been of a

financial nature, they do not support her claim of impecuniosity as they only relate to the period 2008 to 2010.

[55] In respect of the Claimant's assertion that she was ignorant of the legal requirements to file her claim within a specific time, while the Court does not endorse the position that residence outside of the jurisdiction is an excuse for being aware of and complying with legal requirements in Jamaica, it is entirely conceivable that the Claimant was unaware. On reviewing her affidavit, it appears that Ms Williams had formed the mistaken view that the subject property had been dealt with by the Judge who conducted her divorce in the United States of America and her interest in same had been preserved.

[56] Having carefully considered the totality of explanation provided and the objections raised by the Defendant, I find that while individual reasons such as impecuniosity were not very persuasive, the cumulative effect of the circumstances as outlined by the Claimant provide a reasonable explanation for the delay.

The Prejudice to the Parties

[57] I then considered any prejudice which may have been occasioned by the delay. In respect of this factor, the Claimant in seeking an extension of time must show that there are substantial reasons why the Defendant should be deprived of his right to the Limitation Defence. In considering this issue, the Court must embark upon a balancing exercise which requires that consideration be given to any prejudice that would result to the Claimant, if the application for an extension of time is not granted. The Court must also consider the prejudice to the Respondent, if the application were to be granted.

[58] In conducting this exercise, the Court finds the dictum of Lord Griffith in **Donovan v Gwentys Ltd.** [1990] 1 WLR 472 at paragraph 479A to be quite useful where he said:

“...the primary purpose of a limitation period is to protect a Defendant from any injustices inherent in having to face a stale claim which he never expected to have to face.”

[59] In treating with the issue of prejudice, Harris JA in **Allen v Mesquita** (supra) stated at paragraph 22 that:

“The real question is whether the appellant would suffer hardship if the application is granted. A duty resides with the party who seeks an extension of time to show that he would suffer hardship if it is not granted”.

[60] At paragraphs 26, 30 and 31, the Learned Judge stated:

“[26] A court, in deciding whether a limitation period should take effect, is under an obligation to consider the circumstances of the particular case, taking into account whether there is any good reason which would prevail against the statute operating.”

“[30] The common thread which runs through these cases is that a court will not grant an extension of time to file a claim, on the application of one party, where to do so may cause prejudice to the other party and that an applicant must show that there are substantial reasons why the other party should be deprived of the right to limitation given by the law.”

[31] “Section 13 (2) of the Act places a limit on the time within which a party may initiate proceedings. This limitation is a benefit which the appellant is entitled to enjoy. Such entitlement should operate to her advantage after the expiration of the one year permitted for the respondent to file a claim.... He advanced no reasons for the failure to file his claim, nor has he proffered any reason to show why the appellant should be deprived of the accrual of her right.”

[61] It is the Claimant’s position that she stands to suffer grave prejudice if she is not permitted to pursue her claim as despite the fact that the parties had acquired four (4) properties during the course of their marriage, she has not benefitted fairly from the distribution of the assets as the properties awarded to her have been lost to

foreclosure. It is not disputed that the properties awarded to the Claimant in the United States were foreclosed on shortly after the divorce. What is being asserted by the Defendant is that the Claimant already had the benefit of these properties and it would be unjust for her to have a share in the Jamaican property as well; especially in circumstances where he was solely responsible for its expansion and refurbishing. Aside from the loss of the limitation defence, Mr Prince has not provided any evidence of any prejudice which he would suffer.

- [62] While the Court accepts that granting the application would deprive the Respondent of the limitation defence, I note that it would still be open to him to lead evidence in support of his contention that he had dispossessed her by passage of time. It would also be open to him to show by evidence presented that her interest should be reduced on the basis of contribution. On the other hand, if the application is refused, the Claimant would not be able to be heard on a claim in respect of property for which she is a registered owner and which she contends was acquired and refurbished by her own efforts as well. In the circumstances, I find that the possible prejudice would be far greater to the Claimant than it would be to the Defendant if the Application for extension of time is refused.

Whether the Applicant has a meritorious claim

- [63] Another important factor which has to be considered by the Court is the merits of the claim. In deciding the merits of the case, the Applicant must prove on a balance of probabilities that she has a prima facie case that justifies the exercise of the Court's discretion in her favour.
- [64] In **Natalie Tenn v Wayne Anthony Wiltshire** [2020] JMSC Civ.246, Barnaby J (Ag.) permitted the claim to proceed despite the fact that fifteen (15) years had elapsed between the divorce and the institution of the claim and no satisfactory reason had been provided for the delay. The Court found that the Claimant had a meritorious claim and therefore the exercise of the discretion was warranted.

- [65]** On a careful assessment of the evidence, there is no dispute that the parties were married in 1998 and separated in 2008. There is also no dispute that the property which is the subject of the claim is registered in the names of both parties as tenants-in-common. At paragraphs 3 and 4 of the Defendant's' Affidavit filed on the 16th of June 2023, he averred that they bought their first home at Lot 40 Belmore Avenue, Cedar Grove Estate, Gregory Park in the parish of Saint Catherine. He stated that they both used their National Housing Trust benefits to obtain a mortgage for the property. It was their intention that payments to the mortgage be a joint effort. However, this was not possible as his wife eventually lost her job as a Teacher at Ewarton High School.
- [66]** The subject property was the family home for a short duration as it was the residence of the parties before their departure from Jamaica to live in the United States of America. Once they had settled in the United States of America, they discontinued cohabiting at the subject property and treated it as income property as it was rented and the rent was utilized for mortgage payments and its maintenance. The Claimant asserted that she played a role in the refurbishing of the property as she had assisted in purchasing the fixtures subsequently installed in the house by the Defendant as these had been purchased by them before his departure in 2008. It is acknowledged that apart from the fact that her name is on the title, she has provided no evidence at this stage in proof of this financial role.
- [67]** On the other hand, the Defendant has asserted that after their divorce, he returned to Jamaica and was solely responsible for all major repairs, renovations and construction works on the property. He averred that the only assistance that the Claimant gave towards the purchase of the property was by using her NHT benefits to help with acquiring same and the purchase of a stove. In support of his assertion of being solely responsible, he furnished the Court with extensive documentary evidence of his contributions to the subject property. This included proof of payment of the property taxes, the mortgage, invoices for major repairs and construction on the subject property. These receipts span from 2008 to 2020. I

also observed that the statements from the National Housing Trust indicate that the mortgage loan is current.

- [68] Contrary to the Defendant's assertions, the Claimant has not sought these declarations on the basis that the subject property was the family home. The applicable section for properties which are not the family home is section 14 of PROSA which allows the Court to consider financial and other contributions in the allocation of interests in property. For this section, there would be no presumption of a half share interest in the property. The Claimant is registered on the Certificate of Title as a tenant-in-common, which raises the presumption that she would have an identifiable share in the subject property.
- [69] Although the Defendant has urged the Court to determine the matter on the evidence which has been filed, the Court notes that there are competing assertions on the issue of how the property was acquired and the contribution made by the respective parties. This would properly fall to be considered in a trial where the accounts would be tested by cross examination. For the purpose of the application which is before me, I am only tasked with determining whether the Applicant has met the requirements outlined above which includes a meritorious claim. In circumstances where the Claimant's name appears on the title and the Defendant acknowledges that the property was acquired by them obtaining their NHT benefits, it is evident that the Claimant has satisfied the threshold of a prima facie case.
- [70] In respect of Mr. Moore's alternate submissions that the Court should make a final determination on the matter at this stage and find that the Claimant had abandoned her interest in keeping with the ruling in **Valerie Freckleton v Winston Freckleton (unreported)** Claim No HCV01694 of 2005, the Court is mindful that at this stage, there are disparities between the accounts as to how long the Defendant had possession of the property before the Claimant sought to stay/visit there. On the Defendant's own account, he was there from 2008. He does not deny that she visited in 2014 and again in 2017. Even though the claim was not filed until 2021,

the Court would have to consider whether he had been in undisturbed and exclusive possession for a continuous period of twelve years. Given these disparities, evidence would need to be taken and cross-examination conducted of the parties in order to determine if such a ruling could be given by the Court.

THE OVERRIDING OBJECTIVE

[71] In considering whether to exercise the discretion to extend time, I also considered the overriding objectives. The overriding objective requires the court to deal with cases justly. Dealing with a case justly includes ensuring that a case is dealt with expeditiously and fairly. In this regard, I find that the denial of this Application would deny the Claimant the right of an expeditious and fair resolution of the matter. Similarly, granting this Application would deny the Defendant the right of his limitation defence. The justice of the matter however demands that if there exists a prima facie case, then the Application should be granted and the alternative is also true.

[72] Having carefully examined the evidence and considered the circumstances under which permission may be granted, the Court is of the view that this is a fit case in which the Court should exercise its discretion in favour of the Claimant and grant the extension. In that regard, time is therefore extended to the 6th of October 2021 for the claim to proceed under section 13(1)(c) of the PROSA and the orders sought in her Application are hereby granted.

ORDERS

[73] I therefore make the following orders:

1. The orders sought in the Defendant's Notice of Application for Court Orders filed on July 2nd, 2024 are refused.
2. The Claimant's Application for an extension of time is granted.

3. Each party to bear their own costs in the Defendant's application. In respect of the Claimant's Application, costs are awarded to the Defendant to be taxed if not agreed.
4. The matter is scheduled for trial on the 20th of November 2025 before a Judge alone in Chambers.
5. A Pre-Trial Review is scheduled for the 23rd of July 2025 at 2:00 p.m. for 30 minutes. If either party wishes to be heard on an Application, the Application and the Affidavit-in-Support are to be filed and served by the 2nd of July 2025.
6. The Claimant's Attorney- at-Law is to prepare, file and serve the order.