



[2015] JMSC Civ 245

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

THE CIVIL DIVISION

CLAIM NO. 2012 HCV 00634

IN THE MATTER of the estate of
Carlton Roy Campbell

AND

IN THE MATTER of the
Intestates' (Estates and Property
Charges) Act

AND

IN THE MATTER of the Property
(Rights of Spouses) Act

BETWEEN	WINSOME BENNETT	CLAIMANT
AND	THE MINISTER OF FINANCE	1ST DEFENDANT
AND	THE JAMAICA CONSTABULARY FORCE	2ND DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	3RD DEFENDANT

IN CHAMBERS

Mr. Akin Adaramaja instructed by Messrs. Forsythe & Forsythe for the Claimant.

Ms. Paula Tyndale and Ms. Desreen Pearson, Attorneys-at-Law for the 1st Defendant.

Ms. Hazel Edwards instructed by the Director of State Proceedings for the 2nd Defendant and 3rd Defendant.

Heard: 26th February 2013 & 11th December 2015.

Declaration for entitlement to widow's pension – Section 62 of the Constabulary Force Act – Whether the Claimant is entitled to widow's pension – Whether a widow is a person legally married to the deceased – Status of Children Act - Equality of children regardless of parents being married - Reformative legislations – Shift from Literal Statutory Interpretation - Purposive approach in Statutory Interpretation - Spouse include unmarried persons in common law unions – The ordinary meaning and popular sense of the word widow include a common law spouse.

Campbell J,

The delay in the delivery of the judgment is regretted. Further submissions in writing were allowed to be filed within seven (7) days of the hearing. The files were placed away from the regular reserved judgments to facilitate the process. The Claimant's submissions were never received.

[1] Ms. Winsome Bennett, a teacher, of Golden Grove, Lydford Post Office, Saint Ann claimed to have lived with the deceased, Mr. Carlton Roy Campbell, for a period of five (5) years immediately preceding his death. That is not being disputed in this application. The parties also agree that the deceased, Carlton Campbell, was an Inspector of the Constabulary Force, stationed at the Port Maria Police Station, the in parish of Saint Mary, and he died of natural causes on the 22nd September, 2008.

[2] It is common ground that on the 1st October, 2009, an Order was made in the Supreme Court declaring the Claimant as the common law wife and sole surviving spouse of Carlton Roy Campbell, the deceased, within the meaning of the **Intestates' Estate and Property Charges Act, 1937**. By letter dated 7th December 2009, to the Ministry of Finance, Ms. Bennett was identified as the Residuary Legatee of the estate of Carlton Campbell and requested that the Ministry of Finance and the Public Service provide information as to the gratuities or pension payable to the estate of the deceased.

Ministry of Finance's opinion on Section 62 of the Constabulary Force Act.

[3] The Senior Legal Officer, of the Ministry of Finance in an affidavit dated 20th November 2012, said at paragraph 9;

“That sometime in September 2010, the Ministry of Finance and the Public Service completed its review of the estate of Carlton Roy Campbell deceased, in accordance with section 62 of the Constabulary Force Act. In accordance with this determination, a decision was made to pay a pension to Rory Campbell, son of the deceased and a gratuity to the legal personal representative of the estate of the deceased.”

Further at paragraph 10;

“That no death benefits were paid to Miss Winsome Bennett as it was the view of the Ministry of Finance and the Public Service that she did not qualify for such payments as she was not legally married to the deceased and was not his “widow” or “surviving spouse”, within the meaning of section 62 of the Constabulary Force Act.”

[4] The Ministry’s determination was referred to the Attorney General Chambers. The Ministry of Finance has not paid any death benefits to Miss Winsome Bennett and continues to hold the opinion that a “surviving spouse” within the meaning of the **Constabulary Force Act is one who was legally married to the deceased. Therefore, the Claimant does not qualify for death benefits pursuant to Section 62 of the Constabulary Force Act.**

[5] Ms. Bennett is contending that such a determination is contrary to Section 2(d) (1) of the **Intestates’ Estates and Property Charges Act, 1937** and is in breach of the said Order of the Court made on the 1st October, 2009.

The Claim and Orders Sought.

[6] On the 27th January 2012, the Claimant filed a Fixed Date Claim Form seeking the following declarations /orders;

1. A declaration that as the declared spouse of the late Carlton Roy Campbell who was a member of the Jamaica Constabulary Force, that she is lawfully eligible for a widow’s pension.

2. A declaration that by virtue of an Order dated October 1, 2009 made in this Honourable Court that she is lawfully entitled to claim and obtain the widow's benefit/pension and the other allowances payable on death as it relates to the service of the late Carlton Roy Campbell, as a member of the Jamaica Constabulary Force.

3. An Order directing the First Defendant, The Minister of Finance and the Second Defendant, The Jamaica Constabulary Force to pay to the Claimant the widow's benefit/pensions and the other allowances payable on death as it relates to the service of the late Carlton Roy Campbell, as a member of the Jamaica Constabulary Force.

[7] The Claimant had alleged in her application, that she had met the deceased in 1971, and an intimate relationship developed between them. They had a daughter born in 1973, and later in the 1970s the relationship ended. The relationship was resumed in 1991, and the couple started living together that same year and continued to live as man and wife until the time of his death on 23rd September 2008. Mr. Akin Adaramaja, Counsel for the Claimant submitted, that the issue before the court was, how the term "surviving spouse", is to be construed.

Intestates' Estate and Property Charges Act, 1937

[8] The **Intestates' Estate and Property Charges Act**, of 1937, deals with the distribution of estates of intestate and the administration of intestate estates in certain cases and charges on property. The Act defines "*residuary estate*" to mean every beneficial interest ... of the intestate in real and personal estate ... which otherwise than in right of a power of appointment he could, if of full age and capacity, have disposed of by his will. The term "*intestate*" is defined to include a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate.

[9] In 1988, the **Intestates' Estate and Property Charges Act**, 1937 was amended to cause the definition of spouse to be brought in line with the social norms of the Jamaican Society, by a recognition of the common law unions. This definition of "*spouse*" was reproduced in several pieces of legislations, including the **Property (Rights of Spouses) Act**, 2004, **Pensions (Superannuation Funds and Retirement**

Schemes) Act, 2005, Employees Share Ownership Plan Act, 1995, and the Maintenance Act, 2005.

The Property (Rights of Spouses) Act,

[10] In the Court of Appeal decision of **Brown v Brown** [2010] JMCA Civ 12 Morrison JA, speaking of a definition of “spouse” in the **Property (Rights of Spouses) Act, 2004**, at paragraph 36 said;

*“although an almost identical definition of spouse may be found in a number of pieces of modern legislation (see for example , S2 Maintenance Act). It is clear that, as Cooke JA has observed, **the recognition of common law relationships ‘will have fundamental and salutary consequences’** in this regard (see para. 5 above).The Act at S. 2(2) provides that the term single woman and single man used with reference to the definition of spouse include a widow , widower or divorcee . The only significance of this in my view is to make it clear that, for the purposes of the definition of spouse in section (2(1), a widow, widower or divorcee as the case may be, who has cohabited with a single man or woman, or indeed with another widow, widower or divorcee as the case may be, for the requisite period, will also qualify as a spouse.” [Emphasis added].*

[11] The fundamental and salutary consequences to which the learned judge of Appeal referred to in **Brown v Brown**, was in respect of the **Property (Rights of Spouses) Act**. The consequences are no less significant in the distribution of estate of intestate, pensions and gratuities pursuant to Section 62 of the **Constabulary Force Act**.

[12] The 1988 amendment of the **Intestates’ Estate and Property Charges Act**, provided at Section 2;

(d) “spouse” includes –

(i) *a single woman who has lived and cohabited with a single man as if she were in law his wife for a period*

of not less than five years immediately preceding the date of his death; and

(ii) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death.

(2) Where for the purposes of this Act a person who is a single woman or a single man may be regarded as a spouse of an intestate then, as respects such intestate, only one such person shall be so regarded.”

The Status of Children Act, 1976.

[13] The **Status of Children Act**, 1976, made all children equal, and provided at Section 3(1), inter alia;

“for all purposes of the law of Jamaica the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are married to each other, and all other relationships are to be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary intention is hereby abolished.”

[14] The term, “*all other relationships*” in Section 3(1) of the **Status of Children Act**, must include, the relationship between the parents of the child. It is expressly provided that such other relationships are to be determined accordingly, that is, it shall be determined irrespective of whether the father and mother are married to each other. Therefore, any rights that would accrue to a child of a police officer, could not be affected by whether his parents were married or not. The relationship between a surviving spouse and her deceased police officer spouse for all purposes of the law of Jamaica ought not to be determined by whether the surviving spouse was married to the police officer or not.

[15] The ordinary Jamaican has long described persons in stable common law union as husband and wife. It is not unusual in a marriage to have the couple's grown children and sometimes grandchildren participating in the ceremony. It is not a novelty. The ordinary man has long been accustomed to long stable common law relationships. The **Status of Children Act** and the **Property (Rights of Spouses) Act** recognised such a social reality. The scope of Section 3(1), is all embracing, the change in the law that its effects are relevant, "*for all purposes of the law of Jamaica*". Its applicability to Section 62 of the **Constabulary Force Act**, cannot be called into question. It makes impermissible the determination of the relationship of a surviving spouse and the deceased dependent on whether they were married or not.

[16] What is clear is that the police force as an organisation was not expressly excluded from the reach of any of these reformative legislations. There is no denial that Ms. Bennett would be entitled to claim Inspector Campbell's residuary estate pursuant to the **Intestates' Estate and Property Charges Act**. The Claimant did not argue that grants of pensions and gratuities pursuant to Regulation 16, as provided for by Section 61, of the **Constabulary Force Act**, are residuary estate for purposes of the **Intestates' Estate Property Charges Act**. Neither was it contended that it constitute "*some beneficial interest in the deceased real or personal estate*." Neither was it not claimed for gratuities or pensions pursuant to section 62 constituted "*property*" for the purposes of the **Property (Rights of Spouses) Act**.

Discussion and Analysis.

Does the definition of "*surviving spouse*", in Section 61(2)(b) of the **Constabulary Force Act** exclude the Applicant from the receipt of a grant of pension or gratuity as provided for by Section 62(1)(a) of the **Constabulary Force Act**?

[17] The Defendants in their written submissions raised no opposition to the Applicant's claim that the deceased died of natural causes on September 22, 2008, while serving as an inspector in the Force and affirms that; "*in the circumstances any relevant death benefits would be payable pursuant to Section 62 of the Act*". The

Defendants' opposition to the application is that, the Applicant is not a "surviving spouse" for the purposes of Act.

[18] The Defendants are driven to this position by a reliance on the ordinary dictionary meaning of the words "widow" and "spouse". **Black Law Dictionary (Bryan A Garner, 7th Edition, St, Paul, Minnesota, 1999)** defines the word "spouse" as "one's *husband or wife by lawful marriage, a married person.*" This source defines the "widow" as "a woman whose husband has died and who has not remarried". "*Husband*" is defined as a married man, a man who has a lawful wife. "*Married*" is further defined as a "legal union of a man and woman as husband and wife". The essentials of a valid marriage are; (1) parties legally capable of contracting marriage; (2) the mutual consent of agreement; and (3) an accrual contracting in the form prescribed by law.

[19] It was further submitted at paragraph 18, of those submissions that;

"Having regard to the foregoing the ordinary meaning of the words "spouse", "husband" and "widow", refers to an individual who is lawfully and legally married. It is submitted that the expression "surviving spouse" and "widow/widower" as used in the Act refers to an individual who is lawfully married to the deceased at the time of the latter's death to persons cohabitating together, as husband and wife."

[20] I cannot agree with the Defendants' submission that the ordinary dictionary meaning of the words "widow" or "widower" is the relevant meaning that should be attached to these words. The case law is supportive of the view that the question whether or not the words "widow or widower" or "spouse" meant a person who was married, was to be answered on the understanding of the ordinary man using the words in their popular sense at the time of the death of Inspector Campbell. (See; **Dyson Holding Ltd. v Fox** [1976] Q.B. 503).

[21] And at paragraph 19 of the Defendants' written submission it was stated that;

"In the instant case, the Claimant was not lawfully married to the deceased at the time of the latter's death. The deceased may not be properly described as her "husband" nor she is widow for the purposes of the Act. She is therefore not a

“surviving spouse” within the meaning of Section 62 of the Act.”

[22] The Defendants further submitted that, it is the first and elementary rule of statutory construction that the words of a statute are to be given their ordinary meaning, if there is nothing to modify, alter or qualify the language which the statute contains. The words must be assigned their ordinary and natural meaning. (See; **Barrell v Fordee** (1932) A.C 676.)

[23] The literal approach in Section 62 of the **Constabulary Force Act**, urged by the Defendants is recognised as having been overtaken by a purposive approach to statutory interpretation. Professor Burrows, Professor of Law, University of Canterbury, contrasted the two approaches, in an article entitled, **“The Approach to the Interpretation of Statutes”** (2002) 33 VUWLR;

“What I might describe as the old style of interpretation persisted to at least the middle of the twentieth century. It was marked by a literalism, which placed great store on the dictionary meanings of words and the rules of grammar. There were many mechanical rules which went by Latin names: ejusdem generis, expressio unius, etc. [Emphasis added].

[24] The learned author has noted a shift since then to the purposive interpretation which should facilitate the implementation of policy rather than obstructing it. This is how Professor Burrows puts it;

*“The purposive approach allows statute to keep pace with the times. It allows, for example, elderly statutes referring to “documents” to be applied to computer programmes; and statutes using the word “photograph” to be applied to Internet images. The smooth progression of our law would be impeded if this were not the case. Parliament would have to be constantly amending and updating legislation. There are numerous examples of such “ambulatory” or “updating” interpretation, including a number of very striking cases in the House of Lords. (See; **R v Ireland** [1998] AC 147*

(HL); McCartan Turkington Breen v Times Newspapers Ltd [2001] 2 AC 277 (HL); Fitzpatrick v Sterling Housing Association Ltd [2001] 1 AC 27 (HL).” [Emphasis added].

[25] It is clear that, the meaning of the word “spouse”, has been altered and modified by several Acts of Parliament which have brought about the “*fundamental and salutary changes*” in society as observed by Cooke JA in **Brown v Brown**. Cooke JA, pointed out that a change in the meaning of the words “widower” and “widow” had come about in that by section (2(1) of the **Property (Rights of Spouses) Act**, a widow, widower or divorcee as the case may be, who has cohabited with a single man or woman, or indeed with another widow, widower or divorcee, as the case may be, for the requisite period, will also qualify as a spouse. So the definition of “spouse”, may include a married or an unmarried person for the purposes of the establishing property rights of spouses. The ordinary meaning of a word is to be determined by the understanding of the ordinary man using the word in its popular sense. The popular sense of the word in Jamaica may not necessarily be consistent with the meaning in an English dictionary. Moreover, the meaning of the word is susceptible to change in keeping with the social reality.

[26] The role of the Court in construing Section 62 of the **Constabulary Force Act** is to work for, and not against, the rights conferred on parties in common law unions by Parliament in the various statutory provisions. That right was conferred upon parties in a common law union, of at least five (5) years. The essence of those rights was to ensure that persons in a defined common law relationship is not disqualified or is placed at a disadvantage by not having been constituted in wedlock.

[27] Section 62 of the **Constabulary Force Act**, was enacted in 1985, with retrospective effect to the 1st July 1974, to provide pension benefits to surviving spouses, child or children, legal representative of constables who had died in the Force. It is for a limited class of persons. This amendment came nine (9) years, after the **Status of Children Act**, 1976, which ensured that children born out of wedlock enjoyed the same rights as children born in wedlock. Since the passage of Section 62 of the **Constabulary Force Act**, the **Property (Rights of Spouses) Act**, has made,

fundamental and salutary changes to entitlement to property, particularly for those couples in defined common law unions. It is against these legislative changes and the consequential social adjustments, that the meaning of the words in Section 62 of the **Constabulary Force Act**, come to be construed.

[28] There is no definition of “widow and widower”, in the **Constabulary Force Act**, therefore counsel relied on the dictionary meaning. Such an interpretation would exempt the Claimant from the receipt of any benefit pursuant to Section 62 of the Act, on the basis that she was not married. This court should consider relevant that it would be inconsistent with the social justice that the reformatory legislation sought to achieve by construing Section 62 of the Act so as to exclude surviving spouses of common law unions access to the gratuities and benefits pursuant to that section.

[29] Lord Scarman, in **Williams and Glyn's Bank v Boland, Williams and Glyn's Bank v Brown** [1980] 2 All ER 40, noted in a conjoined appeal, brought by the bank that each of the house, subject of the appeal, was on registered land, to which the wives contributed and was transferred in the sole name of the husbands. The lands were charged with a mortgage, but the bank did not advise the wives of the mortgage. The husband defaulted on payments and the bank started proceedings. The question was whether the legal mortgage takes effect against the matrimonial home, or whether the wives beneficial interest has priority over it? Legal interests in land are the only interests that a registered proprietor can register. Other interests take effect as minor interests, which are overridden by legal interest. A hybrid class, are overriding interest and legal dispositions take effect subject to them. These “overriding interests” are listed in Section 70 of the **Land Registration Act**, and included are easements, leases not exceeding twenty-one (21) years. At Section 70 (1)(g) it was noted that;

*“The rights of **every person in actual occupation** of the land and in receipts of the rent and profits thereof, save where enquiry is made of such person and the rights are not disclosed.”*

The question therefore was whether the wife was a person in actual possession?

[30] At page 416 of the judgment Lord Scarman said;

*“The Court of Appeal recognised the relevance, and stressed the importance, of the social implications of the case. While the technical task faced by the courts, and now facing the House, is the construction to be put on a paragraph in a subsection of a conveyancing statute, **it is our duty, when tackling, to give the provision, if we properly can, a meaning which will work for, rather than against, rights conferred by Parliament, or recognised by judicial decision as being necessary for the achievement of social justice. The courts may not, therefore, put aside, as irrelevant, the undoubted fact that if the two wives succeed the protection of the beneficial interest which English Law now recognises that a married woman has in the matrimonial home will be strengthened, whereas if they lose, this interest can be weakened, and even destroyed by an unscrupulous husband.** Nor must the courts flinch when assailed by arguments to the effect that the protection of her interest will create difficulties in banking or conveyancing practiceNevertheless, the judicial responsibility remains, to interpret the statute truly according to its tenor. The social background is, therefore, to be kept in mind but can be decisive only if the particular statutory provision under review is reasonably capable of the meaning conducive to the social purpose to which I have referred. If it is not, the remedy is to be found not by judicial distortion of the language used by Parliament but in amending legislation.”*
[Emphasis Added].

The effect of the court’s construction was that although the wives interest was regarded as a minor interest under a trust for sale within Section 3(xv) of the Act, it was capable of becoming an overriding interest and therefore entitled to the protection of Section 70(g) of the Act conferred on every person in actual possession.

[31] The statutory provision of the English **Rent and Mortgage Interest Act** of 1920, demonstrates the ability of words in a statute to change in meaning in order to keep abreast of changes in the society. There is a duty on the court to recognise those changes. Section 12(1)(g) of the **Rent and Mortgage Interest Restriction Act, 1920** (now **Rent Act, 1977**) provided that;

“the expression ‘tenant’ includes the widow of a tenant...who was residing with him at the time of his death, or where a tenant...leaves no widow, or is a woman, such member of the tenant’s family so residing as aforesaid as may be decided in default of agreement by the country court.”

[32] In 1950 the Court of Appeal decided, in **Gammans v Ekins** [1950] 2 All ER. 140, that the tenant’s ‘common law husband’ who had had no children by her was not a **member of the tenant’s family** within the meaning of the subsection in spite of a prolonged residence with her.

[33] However, in 1975, the Court of Appeal in **Dyson Holding Ltd. v Fox** [1976] Q.B. 503, a case in which, the defendant had lived in the tenant’s home for twenty-one (21) years as if she were his wife. They never married nor had children. The tenant died in 1961 and the defendant continued paying rent, as if she were his wife until 1973 when the landlord found out she was not the tenant’s widow. Her claim that she was a member of the family was rejected at first instance. The judge felt bound by the decision in **Gammans v Ekins**.

[34] She appealed, and her appeal was upheld. The Court of Appeal held that;

“the question whether the appellant was a member of the tenant’s family was to be answered on the understanding of the ordinary man using the word “family” in its popular sense at the time of the death of the tenant. That Gammans v Ekins was only binding as to the meaning to be given to “family” in 1949, that its meaning had since changed radically so that the claimant would now be included as a part of the tenant’s family, and should be so included in the tenant’s family at the time of his death in 1961.” [Emphasis Mine].

[35] Lord Denning, opined that **Gammans v Ekins** was wrongly decided, that although that decision recognised, that the words to be construed should be given their ordinary and popular meaning, the tribunal of fact should use its own understanding of the word and apply it to the facts which have been proved. A Court of Appeal should not, as was done in **Gammans v Ekins**, interfere with facts finders unless it was

unreasonable in the sense that no reasonable tribunal acquainted with the ordinary use of language could reasonably reach that decision.

[36] Bridge LJ said at page 513 of the judgment;

“if the language can change its meaning to accord with changing social attitudes, then a decision on the meaning of the words in a statute before such a change should not continue to bind thereafter, at all events in a case where the courts have constantly affirmed that the words is to be understood in its ordinary accepted meaning.”

[37] Fundamental and salutary changes have been brought about by the reformative legislation which conferred rights upon spouses in a common law union of five (5) years or more. In construing the meaning of the words “widow and widower” in Section 62 of the **Constabulary Force Act**, the court is of the view that even if the word widow would be construed as a married woman whose husband has died when Section 62 was enacted, that interpretation must now be made in light of current social conditions. I find the meaning has changed so that the Claimant would not be a surviving spouse for the purposes of the **Constabulary Force Act** and would be so at the time of Inspector Campbell’s death in 2008.

[38] Similarly, the relationship between the parents of the child cannot be determined by whether they are married or not. Section 3(1) of the **Status of Children Act** has the effect of altering the meaning of terms describing the parties in such a relationship, in so far, as those terms were restricted to, persons married to each other. Regard has to be made to the changes in social habits and opinions. The words are given their ordinary popular meaning. That ordinary popular meaning would not restrict the words “spouse”, “widower” and “widow” to only persons who are married.

[39] I find that the Claimant is a surviving spouse for the purposes Section 62 of the **Constabulary Force Act** and hereby make the following Orders;

1. A declaration that as the declared spouse of the late Carlton Roy Campbell who was a member of the Jamaica Constabulary Force, the Claimant is lawfully eligible for a widow’s pension.

2. The First Defendant, The Minister of Finance and the Second Defendant, The Jamaica Constabulary Force are directed to pay to the Claimant the widows benefit/pensions and the other allowances payable on death as it relates to the service of the late Carlton Roy Campbell, as a member of the Jamaica Constabulary Force.
3. Costs to the Claimant to be agreed or taxed.