



[2020] JMSC Civ 155

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017HCV00845

**IN THE MATTER OF THE INTESTATES'
ESTATES AND PROPERTY CHARGES**

AND

**IN THE MATTER OF AN APPLICATION FOR
THE DECLARATION OF LISA COHEN AS
SPOUSE OF RALSTON RICARDO HYMAN**

BETWEEN

LISA COHEN

APPLICANT

AND

**ADMINISTRATOR-GENERAL
FOR JAMAICA**

RESPONDENT

IN CHAMBERS

Ms. Saverna C. Chambers for the Applicant

**Mrs. Allia Leith-Palmer instructed by the Administrator-General for Jamaica for the
Respondent**

HEARD: May 7, 2019, July 5, 2019 & July 17, 2020

**FAMILY LAW: SECTIONS 1 & 2 OF THE INTESTATES' ESTATES AND PROPERTY
CHARGES ACT – WHETHER A COMMON LAW RELATIONSHIP EXISTED BETWEEN
THE APPLICANT AND THE DECEASED – WHETHER THE APPLICANT IS A SPOUSE
WITHIN THE MEANING OF THE ACT**

WOLFE-REECE, J

- [1] I would like to apologise to the parties and Counsel for the delay in the delivery of this judgment. It was an unfortunate oversight and I hope that such delay has not caused you any inconvenience.

INTRODUCTION

- [2] Anthropologists such as Michael G. Smith have described the varied Caribbean family structures as being impacted by certain historical and socioeconomic factors that continue to plague our society. Common law unions form a predominant part of the Caribbean social system and I must say that I am a firm believer that the law must reflect the morals and values of the society and ought not to be out of touch with the realities of those whom it was intended to serve.
- [3] The applicant, Miss Lisa Cohen, filed a Fixed Date Claim Form on the 14th March, 2017; seeking an order that she be declared as the spouse of the late Ralston Ricardo Hyman who died, intestate and unmarried on the 16th September, 2015. Miss Cohen's application was met with opposition when members of the deceased man's family filed affidavits refuting Miss Cohen's argument that at the time of Mr. Hyman's death he lived with the applicant as if she were in law his wife.
- [4] At the time of Mr. Hyman's death, he was survived by his two children, namely; Raesha Hyman born on the 4th May, 2000 and Akeem Hyman born on the 14th April, 2004. The fact that the children were minors at the time of his death prompted Miss Sophia Edwards, the mother of Raesha Hyman, to report his death to the Administrator General for Jamaica on the 18th January, 2016. In keeping with section 12 of the Intestate Estates and Property Charges Act and the Administrator General's (Amendment) Act, 2015 the Administrator General issued her Instrument of Administration on the 14th July, 2016, thus becoming the Personal Representative of the deceased's estate.

APPLICANT'S CASE

[5] Miss Cohen filed three affidavits in support of her application on the March 14, 2017, December 28, 2017 and February 14, 2019 respectively. In her affidavit filed on March 14, 2017 she expressed that she started a visiting relationship with the deceased in March, 2005. She further noted that this relationship progressed to the point where in June, 2005 the parties agreed to share a common residence when Mr. Hyman moved into her house at Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of Saint Catherine where they lived as husband and wife up to the time of his death in September, 2015.

[6] Miss Cohen' noted that she enjoyed an undisturbed common law union with Mr. Hyman for ten (10) years during which period the deceased resided at the aforementioned address with the applicant and her minor son as a family. She also made mention of the children who were fathered by Mr. Hyman. She expressed that she was acquainted with both children as they would visit her residence to spend time with their father. She made specific reference to Raesha when she expressed that she developed a close relationship with her as she would see her on Sundays when she accompanied Mr. Hyman to drop off the child's lunch money.

[7] The applicant noted that throughout the marriage the deceased constantly asked her to marry him and she finally agreed in September, 2015. At paragraph 11 of her affidavit file on March 14, 2017 she stated as follows:

That I considered myself to be the deceased's wife and he my husband. Throughout our relationship, the deceased constantly asked me to marry him. In fact, the night before he died we discussed having a small wedding in December later that year. I accepted his proposal and was looking forward to becoming his wife.

[8] The applicant also gave evidence that the parties handled their financial affairs as husband and wife. According to Miss Cohen the deceased named her as trustee for Raesha on his Credit Union account. She also noted that the deceased and her

jointly purchased property situate at 45 Seaforth Boulevard, Hellshire, St Catherine.

- [9] Miss Cohen's application was supported by the evidence of Miss Pamela Blackwood, a family friend and neighbour and Mr. Williston Willis, who is purportedly a neighbour of Miss Cohen. Miss Blackwood's Supplemental Affidavit filed on the 17th November, 2017 was allowed to stand as her evidence. She noted that she met the applicant when she moved to live in the Silverstone community. She corroborated Miss Cohen's assertion that Mr. Hyman lived with her at Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of Saint Catherine. Miss Blackwood expressed at paragraph 2 of her affidavit as follows:

That I met the Applicant many years ago when she moved into the Silverstone housing scheme where I live. That overtime we began a friendship and so I met Mr. Ralston Hyman (Ricky) when he moved in to live with Lisa sometime in 2005 at her house at Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of Saint Catherine.

- [10] Miss Blackwood gave further evidence that she had a close relationship with the couple and would often visit their home where she observed that they lived as husband and wife. At paragraph 9 of her affidavit she stated as follows:

"That I can say that from the time Ricky moved in and began living with Lisa in 2005 at Lot 313, 35th Central Way, he continued living there up until when he died on September 16, 2015. During this period, I saw them living as husband and wife."

- [11] Mr. Williston Willis gave evidence that he was the immediate neighbour of the applicant and Mr. Hyman, who he referred to throughout his affidavit as 'Ricky'. He too spoke to the fact that Mr. Hyman moved in to live with Miss Cohen in 2005. At paragraph 8 of his affidavit he stated as follows:

"That I can say Lisa and Ricky lived at the aforementioned address as a couple, and that they lived together for more than five (5) years continuously up to the date of Ricky's death."

- [12] Learned Counsel, Miss Saverna Chambers, identified three issues to be determined by the Court, that is:

“Was the applicant a “single” woman and the deceased a single man at the requisite time?

Did the applicant live and cohabit with Mr. Ralston Hyman as if in law they were husband and wife for not less than five (5) years immediately preceding the death of the deceased pursuant to the law.

Was the applicant the spouse of Mr. Ralston Hyman up to the time of his death?”

- [13] Miss Chambers asked the court to accept that Mr. Hyman was a single man at the time of his death. She pointed out that on his death certificate and the Oath of Administrator-General, Mr. Hyman was described as a bachelor which is clear confirmation of his status as a single man at the time of his death.

THE OBJECTOR’S EVIDENCE

- [14] The objector’s evidence, stripped of all the fluff is simple and straight forward. Counsel, Mrs. Leith-Palmer who appeared on behalf of the Administrator-General for Jamaica placed a great deal of focus on the fact that the applicant failed to provide evidence to suggest that the parties resided as husband and wife. Counsel submitted that living together or at the same address is not sufficient evidence of cohabitation to satisfy the court that a common law union exists. She asked the court to conclude that the applicant had no evidence of a decade long relationship with the deceased because their relationship had ended long before the deceased died. Members of the deceased’s family were called to give evidence in this regard.
- [15] The daughter of the deceased, Raesha Hyman and her mother Miss Sophia Edwards gave evidence that the deceased started a new relationship with one Miss Lashawna Orr in about 2014 at which time he no longer resided primarily with the applicant, rather he spent time at the residence of both women.

LAW AND ANALYSIS

[16] The task of this court is to determine whether the applicant is a 'spouse' within the meaning provided under section 2(1)(d) of The Intestates' Estates and Property Charges Act. The act provides that a 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;*

Was the Applicant a “single” woman and the deceased a “single” man?

[17] The starting point in addressing matters of this nature is to ascertain whether the applicant was a 'single woman' and the deceased a 'single man' within the meaning of the act. The applicant's evidence is that she was a single woman, her status in this regard is not in dispute. After looking at the evidence on a whole, I accept Miss Cohen's evidence that she was a single woman.

[18] The objectors raised the issue of whether the deceased was a single man at the time of his death. When cross-examined on the issue Ms. Edwards (who referred to Ralston Hyman as Shabba) gave the following responses:

Ques: But you do know that up to Shabba's death he was single?

Ans: Wouldn't say he was single; he was with someone else.

Ques: Who?

Ans: Lashawna.

Ques: But he wasn't married to her or Ms. Cohen?

Ans. No

[19] The objectors seemed to have formed the erroneous view that indiscretion on the part of the deceased would invalidate an otherwise valid common law union. For reasons that will be discussed in more detail hereunder, it will be highlighted that this is a misconception that is not founded in law. In fact, the drafters of the Act contemplated that there might be instances where there are competing interests as it relates to declaration of spouse and for this reason, section 2(2) was incorporated to make it clear that where such instances arise only one such person shall be regarded as the spouse. The section provides as follows:

“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.”

[20] I have taken notice of the fact that when asked whether the deceased was married to either women, Miss Edwards responded in the negative. Also, the deceased was described as a bachelor in both the death certificate and the Oath of Administrator-General. When all these factors are assessed against the law I find that no other conclusion can be drawn but to say that Mr. Hyman was a single man at the time of his death.

Whether the deceased and Miss Cohen cohabited as husband and wife for five years immediately preceding the date of death of the deceased?

[21] It is not sufficient for a single man and a single woman to share a sexual relationship or a visiting relationship, in order for the parties to fall within the definition of a spouse, they must have cohabited as man and wife for a period of not less than 5 years. Lord Denning M.R. explained in the case of **Davis v Johnson** - [1978] 2 WLR 182 that a ‘*common law wife*’ should be distinguished from a mistress. His Lordship expressed as follows:

*“...She might be a wife properly married to her husband: or she might only be a woman called, falsely, a “common law wife.” No such woman was known to the common law, but it means a woman who is living with a man in the same household as if she were his wife. **She is to be distinguished from a “mistress,” where the relationship may be casual, impermanent, and secret.”** [Emphasis mine]*

[22] The dicta of Lord Denning M.R. is even more relevant to present day Jamaica where common law unions predominate the social sphere and has since been given statutory recognition. The need for common law unions to be distinguished from less stable unions was also expressed by McDonald-Bishop J (as she then was) in the case of **Millicent Bowes v Keith Alexander Taylor** unreported Claim number 2006HCV05107 delivered January 19, 2009. Her Ladyship expressed that while common law unions are not identical to marriages the nature of the cohabitation should be similitude to that of a marriage in order for the classification to be lawfully ascribed to it. Her Ladyship opined as follows:

“So, it seems safe to argue that the conjugal union outside of marriage, even if not identical to marriage, must be, at least, akin to it. This means too that the union should be monogamous in that there can only be one common law spouse at a time (as distinct from mere sexual partners or lovers) for the purposes of the law since in marriage there can only be one husband and one wife at any given time. This would be necessary in order to give effect to the statutory phrases “as if she were in law his wife” and “as if he were in law his husband.” I believe that to hold otherwise would be an affront to common sense”.

[23] In determining whether the parties have cohabited as if they were in law ‘*man and wife*’, have stressed the need to avoid a blanket approach due to the multifaceted nature of marital relations and in this case; common law unions. In the often cited case of **Kimber v Kimber** - [2000] 1 FLR 383 on page 391 of the judgement Tyrer, J expressed as follows:

“It was held that the matter should be determined by asking whether, in the opinion of a reasonable person with normal perceptions, it could be said that the two people in question were living together as husband and wife. Consideration of the question should not ignore

the multifarious nature of marital relations. The detail is to be found at 883–884 of the judgment.

It is foolhardy to attempt to reduce to a judicial soundbite a comprehensive list of criteria and the authorities are replete with warnings of the dangers of doing so. But through what I hope has been a careful reading of the cases, whilst it is impossible to provide a checklist or set of tests, factors or criteria to cover every scenario, it is possible to draw some factors together. Such factors cannot be complete nor comprehensive but should be sufficient to cover the facts of the case that I am called upon to decide”.

[24] While it is clear that Tyrer J stressed the point that it is not wise or practical to try to develop a comprehensive list or criteria in determining whether a common law union existed, after exploring the authorities, he found a list of factors which he thought would be useful in determining the issues which were before him. These factors or ‘*signposts*’ have been applied in several cases which came before this court to include the case of ***Millicent Bowes v Keith Alexander Taylor***, *supra* and ***Re Robert Charles Morrison*** [2016] JMSC Civ 18.

[25] To adopt the term used by McDonald Bishop, J in ***Millicent Bowes v. Keith Alexander Taylor***, *supra*, the ‘*signposts*’ which were distilled by Tyrer J and applied by Her Ladyship are as follows:

- i. Living together in the same household*
- ii. A sharing of daily life.*
- iii. Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.*
- iv. Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?*
- v. A sexual relationship.*
- vi. Children.*
- vii. Intention and motivation.*
- viii. The ‘opinion of the reasonable person with normal perceptions’.*

[26] In coming to a conclusion it is important to assess the evidence against each signpost to determine whether the applicant can rightfully be considered as Mr. Hyman's 'common law wife.'

[27] Before I embark on the process of dissecting the evidence, I find it prudent to outline the contents of letter dated January 26, 2016 signed by Miss Natalie Gordon (the case officer) on behalf of the Administrator-General's Department which I will refer to in parts throughout this judgment. Miss Gordon stated therein as follows:

Dear Ms. Cohen,

Re: Ralston Ricardo Hyman, deceased, intestate

The death intestate on the 16th day of September, 2015 of the captioned deceased has been reported to this department and we are investigating his estate with a view of raising Letter of Administration.

From the information received we gather that you paid the funeral expenses for the above-named deceased. If this information is correct and you wish to make a claim on the estate for a refund, kindly complete the enclosed Claim Form. Your signature should be witnessed by a Justice of the Peace and the original receipts from the funeral home must be attached to prove payment.

In order for us to proceed with further investigation of this estate, we hereby request the original death certificate, National Insurance Scheme registration card, original motor vehicle document for the Blue Honda Civic, Grey Toyota Corolla plate number 3073GW, Grey Toyota Caldina plate number 9584FD, Black Nissan Lafesta Minivan and Black and Red R6 Honda Motor Cycle for Ralston Ricardo Hyman, deceased to this department to prove that these assets fall to the deceased estate.

It was also reported that you are the spouse of the deceased. Kindly let us know if you will be applying for a Declaration of Spouse-ship Order in the Court.

If you should have any queries or concerns, kindly contact the undersigned upon receipt of this letter for further clarification.

...

Living together in the same household

[28] The applicant alleges that the deceased came to live with her at her home at Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of Saint Catherine where the parties cohabited as man and wife up until the time of his death in September, 2015.

[29] I find that all the evidence before the court coincides with the applicant's argument that she shared the same address as the deceased. While being cross-examined Ms. Edwards gave evidence that she is the one who reported Mr. Hyman's death to the Administrator-General's Department and that she was the one who filled out the '*Form of Particulars.*' She admitted that in filling out this document, Miss Cohen's address was listed as the deceased residence.

[30] It is also worthy to note that the said address is noted as the deceased man's address both in the Oath of Administrator-General and the Affidavit in Proof of Death. These documents were prepared by the Administrator-General's Department based on information provided by Miss Edwards.

[31] I find that the objector has failed to put forward sufficient evidence that would cause this court to conclude otherwise than that the deceased lived at Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of Saint Catherine.

A sharing of daily life.

[32] Tyrer, J expressed at page 391 of the judgment that "*living together seems to me to inevitably involve a mutuality in the daily round: a sharing of tasks and duties.*" Miss Pamela Blackwood, a neighbour and mutual friend of the couple, spoke to the fact that whilst Miss Cohen and Mr. Hyman were cohabiting together they

shared the tasks and duties of the household. In her Supplemental Affidavit filed on the 17th November, 2017, she stated at paragraphs 5-7 as follows:

5. *On a number of my visits to their house I would see Ricky and Lisa doing chores together or Lisa doing the chores by herself.*
6. *I know that they shared a very close relationship just by how I saw them talking to each other and acting around each other. In my mind they were a loving couple.*
7. *On May 10, 2016 which was celebrated as Mother's day I went to their house. Lisa was not at home, I saw Ricky in the Kitchen, he told me that he was cooking Lisa's mother's day dinner.*

[33] Having had the opportunity to access the witness while she was giving her evidence, I find Miss Blackwood to be a credible witness. Also, she had no interest to serve in the matter that would motivate her to lie to this court.

[34] Miss Cohen also gave evidence of the couple attending social gatherings together. At paragraphs 21 & 23 of her affidavit filed on the 31st January, 2018 she expressed as follows:

21. On Saturday May 2, 2015, Ralston and I attended the wake for his mother which was held at Lot 155 Boston Road, Waterford, St. Catherine. Gilbert was there, we saw each other. Ms. Edwards was also there and she saw myself and Ralston together. Raesha was there too and she saw me and Ralston together, Raesha and I spoke. Raesha indicated to Ralston that she would not be attending her grandmother's funeral as she did not have any clothes to wear. Ralston instructed her to find something to wear as her decision was unacceptable.

22.

23. That Ralston, myself and his two (2) children Raesha and Akeem travelled together to Lewis Store in the parish of St. Mary for Mrs. Hyman's funeral service. Ms. Edwards did not attend the funeral service.

Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.

[35] It is Miss Cohen's evidence that she started a relationship with Mr. Hyman in March, 2005. She explained that the relationship got more serious to the point that Mr. Hyman decided to move in with her in June, 2005 and remained with her up to the point of his death 10 years later in September, 2015. This evidence was corroborated by the evidence of Mr. Williston Willis and Miss Pamela Blackwood.

[36] Both Miss Edwards and her daughter, Raesha Hyman, made attempts to minimize the permanence and seriousness of the relationship between Miss Cohen and the deceased. During cross-examination Miss Edwards noted that she did not know Miss Cohen prior to 2012 when she met her over the telephone. Miss Edwards expressed as follows:

"I met her over the telephone in 2012. She called my work phone because she didn't have my cell phone number."

[37] In her affidavit filed on the December 28, 2017 Miss Edwards stated that in 2014 Mr. Hyman ceased cohabiting primarily with Miss Cohen. According to Miss Edwards, Mr. Hyman started a new relationship with one Lashawna Orr in 2014 which led to Mr. Hyman staying at the house of both ladies. At paragraphs 8-9 of her affidavit she stated that:

8. I was advised by Raesha and verily believe that the deceased started a new relationship with Miss Lashawna Orr in approximately 2014. I observed that on Sundays when the deceased picked up Raesha, LaShawna would be in the car and Raesha would go and spend time with them. Raesha told me that she went to LaShawna's house and she loved when LaShawna re-did her hair on Sundays. I also would hear her and LaShawna talking on the phone or she would tell me very often that she and LaShawna are text messaging each other.

9. I was advised by Raesha and verily believed that in the year 2014, a year immediately preceding his death, the deceased

was not primarily living with Miss Cohen, but was staying at the house of both women at the same time.

- [38] Miss Edward's daughter, Raesha Hyman, gave similar evidence to that of her mother. My first observation is both Raesha and Miss Edwards seem to be acknowledging that the relationship persisted up to his death, however, they argue that he started a new relationship with LaShawna in 2014 which persisted alongside the relationship with the applicant.
- [39] As it relates to the evidence of Miss Edwards and Raesha Hyman, I find that the argument being put forward by them holds little weight in law. At no point have the two ladies argued that the relationship between the deceased and Miss Cohen ended. Rather, they seem to have formed the erroneous view that infidelity on the part of Mr. Hyman would invalidate an otherwise valid common law union.
- [40] As highlighted earlier, section 2(2) of The Intestates' Estates and Property Charges Act provides that only one person shall be ascribed the status of spouse of an intestate person. Much guidance may also be taken from the reasoning of Batts J in the case of **Re Intestate Estate and Property Charges Act and Dexter Ogilvie Harriott** [2016] JMISC CIV 15 where a similar issue was explored. In coming to his conclusion the learned Judge reasoned as follows:

I am of the view and so find that on the facts of this case Mr Harriott and Miss Adams were living together as man and wife. She performed wifely duties in the traditional sense. Furthermore, they attended events together such as their neighbour's wedding. On the eve of his death, they had planned to attend a funeral together. He implored her to go without him because the relative of the deceased would "feel a way" if neither of them attended. I am fortified in this conclusion by the observations and opinion of their neighbour in Portmore. His view I find reflects the perception of the ordinary reasonable person looking on at them with full knowledge of all relevant facts. That perception does not change because Mr Harriott is sexually involved with someone else at the same time. To so hold would be to abandon common sense and ignore the reality of life in Jamaica today. I daresay it would disenfranchise many a spouse whose otherwise legitimate claim would be defeated by proof of an

“extra-marital” liaison. The day may come when this court may have to determine whether it is possible for there to be two legitimate claimants to the status of spouse, if for example it is proven, that all three lived in the same home for the requisite period sharing conjugal relations. I need express no view on that today.

Finances

- [41] Miss Cohen gave evidence that she and Mr. Hyman were involved in a business partnership that grew and flourished. She also gave evidence that indicated that she largely supported and encouraged the deceased man as it relates to his finances. According to Miss Cohen when she met Mr. Hyman he did not have a relationship with his children. She stated in her affidavit filed on January 31, 2018 that at the commencement of their relationship the deceased was not close to his children neither did he play a significant financial role in the children’s life. She argued that it was at her bidding that Mr. Hymn began to improve in this regard.
- [42] The applicant also gave evidence that she encouraged the deceased to invest in real estate. According to her, she ensured that Mr. Hyman made monthly contributions to the National Housing Trust. She further noted that both parties acquired property situate at 45 Seaforth Boulevard, Hellshire, St. Catherine.
- [43] The Respondent urged the court to reject Ms. Cohen’s evidence. According to the Respondent Miss Cohen failed to provide any documentary evidence to prove that she operated a business with Mr. Hyman. In addition, the Respondent asked to court to reject Miss Cohen’s contention that she jointly purchased to property at 45 Seaforth Boulevard, Hellshire, St. Catherine with Mr. Hyman as she failed to provide any documentary proof to rebut the presumption that Mr. Hyman is the sole owner given that it was his name only that was endorsed on the registered on the title.
- [44] While it must be admitted that documentary proof of the applicant’s alleged investments and business relationship would undoubtedly strengthen her case.

However, I find that the absence of same is not fatal. I find that all parties to the application accept that Miss Cohen was largely involved in the financial affairs of Mr. Hyman. Miss Edwards confirmed this fact when the following exchange was expressed during cross-examination:

Q: *You told your case officer Ms. Cohen was Mr. Hyman's spouse?*

A: *I don't remember*

(document shown to witness)

Q: *Having read the paragraph do you still say I don't remember what I told the case officer?*

A: *No ma'am*

Q: *Did you tell the case officer she was Shabba's spouse?*

A: *No I never said spouse she was the person responsible for whatever was left for Raesha*

[45] Also, in the aforementioned letter dated January 26, 2016 from Administrator-General's Department, Miss Natalie Gordon wrote to Miss Cohen requesting original documents for both personal and real property which was formerly held by the deceased which to my mind is a clear indication that at the very least, Miss Cohen was entrusted by Mr. Hyman with the handling of his finances and possessions.

A sexual relationship

[46] Counsel for the Respondent argued that no evidence was offered to this court to show that a sexual relationship existed between the parties. I disagree with this line of reasoning. At paragraph 2 of the applicant's affidavit which was filed on the 14th March, 2017, Miss Cohen noted that shortly after she met the deceased and started communicating with him the couple developed an intimate relationship. I find that this statement sufficiently directs the court's attention to the nature of the

relationship between Miss Cohen and the deceased without the need to delve into graphic details.

Children

[47] It is an undisputed fact that the union between Miss Cohen and the deceased did not produce a child. However, her evidence is that at the time when Mr. Hyman moved in to live with her she was residing with her son who was 5 years old at the time. At paragraph 6 of her affidavit filed on the 14th March, 2017, Miss Cohen expressed that she formed a relationship with Raesha Hyman who would visit her home from time to time. She expressed as follows:

That early in our relationship the deceased advised me and I verily believe that he fathered two (2) children namely: -

- i. RAESHA HYMAN born on the 4th day of May, 2000, aged 16 years; and*
- ii. AKEEM HYMAN who is aged 13 years.*

I developed a relationship with Raesha Hyman and she would visit with her father at the house from time to time. The deceased even named me as trustee for Raesha Hyman on his Credit Union's account. As regards to Akeem, he would visit occasionally with his father.

[48] Miss Cohen gave further evidence at paragraph 11 of her Affidavit filed on the 14th February, 2019 that she provided lunch money for Raesha for four months after Mr. Hyman's death.

[49] Both Raesha and her mother, Miss Edwards, denied that any such relationship existed. During cross-examination Miss Edwards argued that the first time that she spoke to Miss Cohen was in 2012 when she contacted her work phone. She also noted that Miss Cohen did not have the relationship with Raesha which she alleges. Instead, Miss Edwards argued that Miss Cohen only contacted her daughter a few times after Mr. Hyman's death. She however accepted Miss

Cohen's evidence as true that after Mr. Hyman's death, the applicant contributed to the maintenance of Raesha for about 4 months.

[50] I accept the evidence of Miss Cohen in this regard. To my mind, Mr. Hyman's act of naming Miss Cohen as the trustee for Raesha on his credit union account cannot be undermined. What it signals to the court is that Mr. Hyman did not see the relationship between himself and Miss Cohen as trifling; rather he expected that Miss Cohen would assume the role of a step-mother in executing the affairs entrusted to her in the best interest of his child.

Intention & Motivation

[51] According to Miss Cohen, Mr. Hyman constantly asked her to marry him throughout the marriage. She expressed that the night before he died they had agreed to a small wedding in December of the same year.

[52] The objectors are asking this court to conclude otherwise. They have argued that Mr. Hyman commenced a new relationship with Miss Orr. I find it difficult to accept this version because while the objectors have flaunted the idea that Miss Cohen was replaced by Miss Orr, this mystery woman has not filed a single affidavit in the matter nor has she come forward to give any evidence.

[53] I therefore conclude that the objectors have failed to provide sufficient evidence to convince this court that Miss Cohen's status as spouse was displaced by a later relationship. In general, their evidence was wanting and the I do not find them to be credible or reliable witnesses.

The 'opinion of the reasonable person with normal perceptions'

[54] The applicant's application was supported by the evidence of two neighbours who attested to the existence union between the parties. Mr. Willis stated at paragraph 3-4 of his affidavit filed on the 17th November, 2017 that:

3. *In about 2005 Ricky became my neighbour. He moved in with Lisa and began living with her at Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of St. Catherine. Ricky lived at this house from then until he died on September 16, 2015.*
4. *That over the years I observed Lisa and Ricky and would describe their relationship as close and strong. From time to time I would see them going out together and I would hear them joking with each other.*

[55] Likewise, Miss Pamela Blackwood described the relationship between the parties in her supplemental affidavit filed on the 17th November, 2017 as follows:

5. *On a number of my visits to their house I would see Ricky and Lisa doing chores together or Lisa doing chores by herself.*
6. *I know that they shared a very close relationship by how I saw them talking to each other and acting around each other. In my mind they were a loving couple.*

[56] The most compelling evidence I find to be the Form of Particulars and the letter dated January 26, 2016 from Administrator-General's Department. Miss Gordon expressed in her letter that she was advised that Miss Cohen was the spouse of the deceased. Her exact words were that:

It was also reported that you are the spouse of the deceased. Kindly let us know if you will be applying for a Declaration of Spouse-ship Order in the Court.

[57] While Miss Edwards denied that she told her case officer that the applicant was the spouse of the deceased I question the truth of her statement. If Miss Edwards genuinely believed that Miss Cohen was replaced by Miss Orr, why then wasn't Miss Orr named as the spouse of the deceased or why wasn't her address provided to the case officer? I find that even Miss Edwards accepted Miss Cohen to be Mr. Hyman's common law spouse as evidenced by the information provided in the forms of particulars which led Miss Gordon of the Administrator-General's Department to pen the letter dated January 26, 2016.

CONCLUSION

[58] For all the reasons that have been discussed above I find that Miss Cohen cohabited with Mr. Ralston Ricardo Hyman as if she were in law his wife and he were in law her husband for a period of approximately 10 years since June 2005 to the time of his death in September, 2015.

DISPOSITION

[59] Order granted that Lisa Cohen is declared the spouse of Ralston Ricardo Hyman, deceased and late of Lot 313, 35th Central Way, Silverstone, Greater Portmore in the parish of St. Catherine by virtue of the Intestates' Estate and Property Charges Act.

[60] Each party to bear their own costs.

.....
Hon. S. Wolfe-Reece, J