[2017] JMSC Civ. 106

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2014HCV00841

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

BETWEEN	**DOREEN DIXON**	**CLAIMANT**
AND	**QUENSTON DIXON**	**DEFENDANT**

IN CHAMBERS

Mrs. Janet P. Taylor, instructed by Taylor, Deacon & James, for the claimant

Mr. Samuel Smith, for the defendant

THE PROPERTY RIGHTS OF SPOUSES ACT-WHAT CONSTITUTES THE FAMILY HOME-INTEREST IN THE FAMILY HOME-THIRD PARTY'S INTEREST-FIXTURES AND CHATTELS-LAND ACQUIRED BEFORE THE PARTIES WERE SPOUSES-ENTITLEMENT TO PROPERTY-FINANCIAL AND NON-FINANCIAL CONTRIBUTION- PARTY'S SHARE IN PROPERTY NO LONGER IN THE POSSESSION OF SPOUSE-ADVERSE POSSESSION

Heard: April 5, 6 & 8 and May 2 and June 29 & 30, 2016 and July 21, 2017

ANDERSON, K. J.

BACKGROUND TO THE CLAIM

[1] This claim concerns a dispute surrounding alleged matrimonial property. The parties herein, who were married on April 17, 2006, obtained a Decree Absolute dissolving their marriage, on May 30, 2014. Thereafter, this claim was filed, with the claimant essentially contending that she is entitled to fifty percent (50%) interest in four (4) properties and two (2) motor vehicles owned and/ or previously

owned by the defendant. Further, that she is entitled to a hundred percent (100%) interest in the furniture and appliances, in the alleged family home.

[2] This is on the premise that the alleged family home is owned by the defendant and they both worked together to construct it over time. That in so doing, she expended significant sums, which were greater than the financial contribution of the defendant. She also contributed to the income of the household, partnered with the defendant in his farming business and took loans to assist the defendant in purchasing the other family assets.

[3] The defendant is challenging this however, and maintained, that the land on which the alleged family home is located, is part of the property of the estate of Mabel Elliott, his maternal grandmother, and the alleged family home belongs solely to his mother, Florence Dixon. The parties were only given a licence to stay there and he was the one who primarily dealt with the financial concerns of their family.

THE CLAIM

[4] The claimant, on February 20, 2014, filed a fixed date claim form and an affidavit in support, seeking, inter alia, the following orders:

(1) A declaration that the claimant and defendant are entitled each to a fifty percent (50%) share in the former matrimonial home being **ALL THAT PARCEL OF LAND** part of **OLD BOTTOM, JUNCTION** in the parish of **ST. ELIZABETH** being approximately an acre in size butting and bounding on the north by Linval Powell and Howard Elliott, South by Nathaniel Gayle, West by Florence Dixon and Nathaniel Gayle and East by Delorica Ebanks and Janet Banton being lands contained in undated common law indenture between Florence Dixon and Quenston Dixon and common law indenture dated January 30, 1993, between Nathaniel Gayle and Quenston Dixon; (For the purposes of this judgment, this property has been and is hereinafter continually referred to as, ‘the alleged family home’).

(2) A declaration that the claimant and defendant are entitled each to a fifty percent (50%) share in lands situate at Old Bottom, Junction, in the parish of St. Elizabeth, being lands estimated to be one acre in size butting and bound on the north by parochial road and lands belonging to Basil Dixon, on the south by lands belonging to Quenston Dixon, on the east by lands belonging to Delorica Ebanks and on the west by lands belonging to Florence Dixon being in lands contained in common law indenture dated August 18, 2003, between Linval Powell and Howard Elliott and Quenston Dixon.

(3) A declaration that the claimant and defendant are each entitled to fifty percent (50%) share in unregistered lands situate at Tryall in the parish of St. Elizabeth, being lands estimated to be half an acre with shop thereon.

(4) A declaration that the claimant and defendant are each entitled to fifty percent (50%) in unregistered lands part of Ballards Valley in the parish of St. Elizabeth, being approximately one acre in size purchased from Danny Dixon.

(5) A declaration that the claimant is entitled to a fifty percent (50%) interest in Toyota Mark II or to fifty percent (50%) of the proceeds of sale therefrom.

(6) The valuations of the properties by a valuator agreed by the parties be taken and the costs be borne equally by the parties.

(7) If no valuator can be agreed within twenty-one (21) days of the order of this honourable court, then the valuation shall be done by a realtor appointed by the Registrar of the Supreme Court.

(8) The claimant be given the first option to purchase the defendant's fifty percent (50%) interest in the alleged family home, at the value outlined by the valuator and must, within sixty (60) days after the date of the order of this honourable court, pay fifteen percent (15%) deposit towards the purchase of the said interest in the said property.

(9) The defendant be given the first option to purchase the claimant's interest in the other lots of land at the value for each outlined in the respective Valuation Reports. The defendant is to exercise his option by paying a fifteen percent (15%) deposit in respect of each lot of land and signing of an agreement for sale within sixty (60) days of the date of the orders herein.

(10) The transfer of the alleged family home shall be exempted from transfer tax in accordance with the provisions of section 9 of the family **Property (Rights of Spouses) Act** (hereinafter described as **PROSA**).

(11) If the claimant fails to exercise her option to purchase the alleged family home within the stipulated time, it be ordered that the said land and house be sold on the open market and the net proceeds of sale be divided equally between the parties.

(12) If the defendant fails to exercise his option to purchase any of the lots within the time stipulated, it be ordered that any lot for which he has not exercised an option be sold on the open market and the net proceeds of sale be divided equally between the parties.

(13) Taylor, Deacon& James, Attorneys-at-Law, be appointed as attorneys having carriage of sale in respect of the properties the subject of this suit.

(14) Costs and attorneys' costs incurred in the transfer of the alleged family home and other properties be borne equally between the claimant and defendant.

(15) In the event that either party fails and/ or refuses to sign the agreement(s) for sale and/ or instrument(s) of transfer, the Registrar of the Supreme Court be authorized to sign for and on behalf of the defaulting party.

(16) A declaration that all furniture and appliances to be found in the subject property is owned by the claimant herein.

(17) A declaration that the claimant and defendant are each entitled to a fifty percent (50%) interest in 1990 Volkswagen Motor Truck bearing registration number 8215 EK.

(18) The claimant and defendant agree a valuator to determine the value of the 1990 Volkswagen Motor Truck bearing registration number 8215 EK and the cost of the valuation be borne equally between the parties.

(19) If no valuator can be agreed within twenty-one (21) days of the order of this honourable court, then the valuation of the above-mentioned motor vehicle shall be done by a valuator appointed by the Registrar of the Supreme Court.

(20) The defendant be given first option to purchase the claimant's fifty percent (50%) interest in Volkswagen Motor Truck bearing registration number 8215 EK to be exercised by the paying of the fifty percent (50%) purchase price within sixty (60) days of the date of this order.

(21) A declaration that the claimant and defendant are each entitled to a fifty percent (50%) interest in 1994 Toyota Mark II motor car.

(22) The defendant be required to account to the claimant for 1994 Toyota Mark II motor car removed from the possession of the defendant in or about 2012.

[5] An acknowledgment of service by the defendant and an affidavit of service by the claimant were both filed on July 23, 2014 and the matter was first heard on July 24, 2014, but subsequently adjourned to March 19, 2015. On March 19, 2015, Laing J., inter alia, set the matter to be heard on November 18 and 19, 2015. On November 18, 2015, the matter was adjourned to April 05 and 06, 2016.

[6] On April 05, 2016, the trial of the matter commenced before this court and continued on April 06, 2016. On the latter date, the matter was adjourned to April 08, 2016. On April 08, 2016, the trial of the claim continued and was adjourned to May 02 and 03, 2016. The trial of the matter continued on May 02, 2016, but was adjourned to June 29 and 30, 2016. The trial of the matter continued on June 29,

2016 and concluded on June 30, 2016. Thereafter, judgment in this claim was reserved.

BURDEN & STANDARD OF PROOF

[7] In addressing this claim, this court acknowledges that he who avers, must prove. The claimant has averred that she has interests in the real and personal properties mentioned above. She must therefore prove that, on a balance of probabilities, she is entitled to the Declarations and Orders sought herein, if she is to succeed in proof of either her entire claim or any part thereof.

SUMMARY OF DISPUTED AND UNDISPUTED FACTS

[8] ***Disputed Facts***

(1) There is a dispute as to the ownership of the land on which the alleged family home is located, and as to who built the said house and the source of funding;

(2) There is a dispute as to the number of properties acquired and whether the said properties were acquired jointly by the parties during the course of their alleged relationship and marriage; and

(3) There is a dispute as to the parties' financial status and contribution to the acquisition of the properties in question.

[9] ***Undisputed Facts***

(1) The parties were married on April 17, 2006 and obtained a Decree Absolute dissolving their marriage, on May 30, 2014.

(2) The parties were married for eight (8) years and have five (5) children.

(3) They both resided in the alleged family home, as husband and wife.

[10] **ISSUES:**

(1) Whether the alleged family home constitutes a 'family home', in accordance with the provisions of **PROSA.**

(2) Whether the claimant is entitled to a fifty percent (50%) share in the following properties:

(i) the alleged family home;

(ii) lands situated at Old Bottom, Junction, being one acre in size and purchased from Linval Powell and Howard Elliott;

(iii) lands situated at Tryall in the parish of St. Elizabeth, being lands estimated to be half (½) an acre, containing two rooms and a shop thereon;

(iv) lands situated at Ballards Valley in the parish of St. Elizabeth, being approximately one (1) acre in size, purchased from Danny Dixon;

(v) Toyota Mark II or to fifty percent (50%) of the proceeds of sale therefrom; and

(vi) 1990 Volkswagen Motor Truck bearing registration number 8215 EK.

(3) Whether the claimant is entitled to one hundred percent (100%) interest in all the furniture and appliances contained in the alleged family home.

[11] **SUMMARY OF SUBMISSIONS:**

(i) Counsel for the claimant essentially contended, that:

(a) The alleged family home is situated on two parcels of land and both parcels are owned by the defendant. Further, that, if the defendant had been

living on the property between 1981 and 2004, he would have had over twelve (12) years possessory title and would have acquired title by means of the law of adverse possession;

(b) if the land was a gift to one of the parties, it would be exempt from being considered a 'family home'. There is no evidence that, even if the property was obtained as a gift from Florence Dixon, the same was a gift to the defendant solely;

(c) the land which the defendant purchased from his brothers in 2003, is appurtenant to the family home. The claimant used the parcel of land that the defendant bought from his brothers to rear animals and the lands are physically contiguous and adjoin that home and based on the use, it should be viewed by the court as matrimonial property;

(d) the parties were living together at the time when that property (the one purchased from the defendant's brothers) was purchased. The claimant indirectly contributed to the defendant's purchase of that property, by taking on the responsibility of the home, so as to have enabled him (the defendant) to purchase seeds, fertilizer and hire personnel to work on the farm and helped to enable him to sell at the market;

(e) the defendant's evidence in respect of the claim pertaining to the alleged family home, should not be believed and he and Wakelyn Stephenson are not credible witnesses;

(f) the defendant was not engaged in gainful employment while he was in England as his passport stamp, which permitted him to enter and remain, prohibited the defendant from engaging in employment or in any profession. Further, there is no evidence of the defendant's earnings from any job or profession while in England and he has not assisted the court with information as to how he acquired the properties, on his own. The evidence

as to the acquisition of the properties and the price paid for them, have exclusively been provided to the court, by the claimant;

(g) the Tryall property was constructed by the efforts of the parties, who were married at the time;

(h) As regards the property at Ballards Valley, although there was no title exhibited for this property and the defendant has denied the existence of this property, the court should conclude that this property was owned jointly by the parties; and

(i) the claimant's unchallenged evidence is that she contributed two hundred thousand dollars ($200,000.00) towards the purchase of the Volkswagen Pickup, which was purchased in 2009 and the sum of two hundred and eighty thousand dollars ($280,000.00) should be taken as the value of the Toyota Mark II vehicle.

(ii) Counsel for the defendant essentially submitted that:

(a) The alleged family home does not fit within the legal definition of a 'family home.' Further, the court cannot make an order divesting someone of that home, who is not a party to these court proceedings;

(b) the property purchased and sold prior to the parties' marriage, cannot be divided under **PROSA**;

(c) the evidence concerning the acreage of land is evidence that ought properly to be given by an expert and the court should not act on that evidence;

(d) it was sometime around 2000 that the house next door was built, following upon the claimant having been promised by Florence Dixon that she would build a house for the claimant;

(e) the claimant did not know about the existence of the title to the Tryall property until the title was removed from the defendant's safe;

(f) there was no Mitsubishi Pickup that was bought and sold, nor were the proceeds of sale used to purchase any land from Danny; and

(g) the claimant is not entitled to receive anything.

PRELIMINARY POINT

[12] Before addressing the primary issues of this case, this court notes, that there was an issue raised by the defendant, as it pertains to how the claimant came into possession of the common law indentures, which she exhibited in this matter. He alleged that the claimant broke into his vault and stole money and the said documents, and exhibited a copy of the Jamaica Constabulary Force Customer Reference Form, indicating a report being made on February 06, 2012, for lost documents. The claimant refutes this and said the defendant gave her the titles to put up for safekeeping during the marriage. This court has not however, placed reliance or made any finding on that evidence, as the allegations are of a criminal nature and a criminal court is the most appropriate forum in which, that issue should be determined.

LAW

[13] **S. 6(1) (a)** of the **PROSA p**rovides:

'Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home on the grant of a decree of dissolution of a marriage or the termination of cohabitation.'

[14] **Section 7**, when considered carefully, along with **s. 6**, makes it apparent that the, 'entitlement' referred to in **s. 6**, is a presumptive entitlement. **S. 7(1)** of the **PROSA**, reads as follows:

'Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the

family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following-

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

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

(c) *that the marriage is of short duration.'*

[15] In assessing this matter and determining the issues herein, this court has found it prudent to first assess the status of the alleged family home and determine whether it constitutes a 'family home' as defined by **PROSA** and as further expounded on, at common law. It is pertinent to note, that the law provides that each spouse is presumptively entitled to one-half share of the family home on the grant of a decree of dissolution of marriage, as is applicable in this case. This is a presumption. Therefore, if it is found that the alleged family home is in fact the 'family home', each party, unless it is proven to be unreasonable or unjust or there is an agreement to the contrary, is entitled to one-half share of the net value of that home. (See **ss. 7** and **10** of the **PROSA**) By parity of reasoning, the house must first qualify as the 'family home', before the presumption of equal entitlement will apply.

[16] **S. 2** of the **PROSA** defines the family home as the *'dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit.'*

[17] In **Dalfel Weir v Beverly Tree**, [2014] JMCA Civ 12, Phillips J.A. at para. 39 stated that: *'In **Peaches Stewart v Rupert Stewart**, Claim No. HCV0327/2007,*

delivered 6 November 2007, Sykes J in delivering the judgment dealing with ***sections 2*** *and* ***13*** *of* ***PROSA*** *analysed excellently, the definition of "family home" and the interpretation to be given to it. I endorse his comments in the main and have set out below most of his discussion in relation thereto, with which I agree. He stated the following in paragraphs 22 and 23:*

"22. It is well known that when words are used in a statute and those words are ordinary words used in everyday discourse then unless the context indicates otherwise, it is taken that the words bear the meaning they ordinarily have. It only becomes necessary to look for a secondary meaning if the ordinary meaning would be absurd or produces a result that could not have been intended…
23. it should be noted that the adjectives only and principal are ordinary English words and there is nothing in the entire statute that suggests that they have some meaning other than the ones commonly attributed to them. Only means sole or one. Principal means main, most important or foremost. These adjectives modify or in this case, restrict the width of the expression family residence. Indeed, even the noun residence is qualified by the noun family which is functioning as an adjective in the expression family residence. Thus it is not any kind of residence but the property must be the family residence. The noun residence means one's permanent or usual abode. Thus family residence means the family's permanent or usual abode. Therefore, the statutory definition of family home means the permanent or usual abode of the spouses."
'*He then referred to the fact that in the definition of family home it was vital that the "property" was used habitually or from time to time by the spouses as the only or principal family residence, and those adverbs indicated how the property was to be used. I agree with that statement, but in my view, in the definition, that reference in respect of use with regard to property relates to the "dwelling house". Sykes J went on to say further in paragraph 24, that:*

"The legislature, in my view, was trying to communicate as best it could that the courts when applying this definition should look at the facts in a common sense way and ask itself [sic] this question, 'Is this the dwelling house where the parties

lived?' In answering this question, which is clearly a fact sensitive one, the court looks at things such as (a) sleeping and eating arrangements; (b) location of clothes and other personal items; (c) if there are children, where [do] they eat, sleep and get dressed for school and (d) receiving correspondence. There are other factors that could be included but these are some of the considerations that a court ought to have in mind. It is not a question of totting up the list and then concluding that a majority points to one house over another. It is a qualitative assessment involving the weighing of factors. Some factors will always be significant, for example, the location of clothes and personal items."

Of course I would add as always that each matter must be dealt with on its own peculiar facts…'

[18] In **Pameleta Marie Lambie v Estate Leroy Evon Lambie (Deceased)**, [2014] JMCA Civ 45, McDonald-Bishop J.A. (Ag.), at para. 56, in assessing the learned trial judge's finding of the family home, expressed that: '*What is palpably missing from the learned judge's analysis, and which has given Mrs Lambie a meritorious basis for her complaint, is his treatment of the 'ownership element' in the statutory definition of the family home. It does appear, as advanced on behalf of Mrs Lambie, that the learned judge only applied the 'residence test' in determining whether the property was the family home and had failed to take into account the 'ownership' component of the definition up to the point he declared it to be so. For Farringdon to qualify as the family home, it must satisfy all the elements of the statutory definition and one of those elements is that it must be "wholly owned by either or both of the spouses". The fulfillment of the 'residence test' is, therefore, not the only criterion for a dwelling house to qualify as a family home within the meaning of* ***PROSA****.'*

[19] The parties herein were married for eight (8) years and it has been accepted from the evidence given, that the alleged family home was the house the parties shared, as husband and wife, until the defendant moved out. This court therefore concludes, that for the duration of the marriage (2006-2014), the alleged family

home was the '*permanent abode of the spouses'*. In accordance with the **PROSA**, on the evidence proffered, it would constitute the only family residence used for the purposes of the household.

[20] There is however, another tier to establishing in law, the family home. (**See** McDonald-Bishop J.A. (Ag.) dictum above in **Pameleta Marie Lambie v Estate Leroy Evon Lambie (Deceased)**) The **PROSA** also requires that the dwelling-house be wholly owned by either or both of the spouses and a 'family home' does not include a dwelling-house which is a gift to one spouse by a donor, who intended that spouse alone to benefit. Therefore, it should be noted that, if on the evidence it is not proven by the claimant that the alleged family home is owned either by her, or by the defendant, it would not constitute, for the purposes of the **PROSA,** a 'family home' and pursuant thereto, the claimant would not and could not benefit from any presumption of equal entitlement to same, as stated above.

[21] The claimant must therefore prove that, on a balance of probabilities, the alleged family home, is owned either by herself or the defendant or jointly, not being a gift to the defendant for his sole benefit. This second tier will require a thorough analysis of the evidence, in order to make a proper determination.

[22] Before doing so however, the court observes that counsel for the claimant submitted that if the land was a gift to one party, it could not constitute the family home but in any event, there was no evidence that even if the property was a gift from Florence Dixon, it was a gift to the defendant solely. This court finds that there was actually no evidence adduced in this matter to show that the alleged family home was donated as a gift to either or both of the parties. The defendant has essentially proffered that he has a licence to reside at that premises and so does the claimant.

[23] In any event, the evidence that his mother allegedly gave him the land is not evidence on which the court could find that, even if, it was purportedly done, it was a lawful gift. It cannot be taken to be a legal gift, as there was no evidence that a grant of administration or probate was obtained in the estate of Mabel

Elliott. Thus, any evidence of a gift is tenuous because of the uncertainty as to whether it is a legal and enforceable gift from the mother to her son, the defendant. In such circumstances, the issue of the alleged family home constituting a gift, can go no further.

EVIDENCE

[24] This court wishes to make it clear that, even though, it has not, by any means, referred to all, or even most of the evidence presented, it has nonetheless carefully considered all of same but has only referred to the evidence that is most pertinent for the purposes of the judgment reached.

The property situate at Old Bottom, Junction, in the parish of St. Elizabeth, on which the alleged family home is located.

[25] The claimant essentially stated that the land on which the alleged family home is located is owned by the defendant. She explained that the alleged family home is situated on half (½) acre of land which the defendant purchased from Nathaniel Gayle and another half (½) acre of land which was purchased from the defendant's mother for ten thousand dollars ($10,000.00). An undated common law indenture is exhibited reflecting the payment of ten thousand dollars ($10,000.00) by the defendant and the conveyance of a quarter (¼) acre of land, known as Gully, by Florence Dixon, the beneficial owner, to the defendant.

[26] Accordingly, she denied that Florence Dixon, the defendant's mother, remains in possession of the lands since the death of Mabel Elliott (the defendant's grandmother) and that the land on which the alleged family home is built, is part of seven (7) acres of land belonging to the Mabel Elliott. She however admitted, that she did not know that the property known as 'Old Bottom' belonged to Mabel Elliott and was in the possession of the defendant's mother and was ignorant about the payment of taxes for the said property. She also admitted that she did not contribute to the purchase of the property the defendant bought from Nathaniel Gayle and that she was unaware that the defendant and Mr. Gayle had

a matter in court in Santa Cruz in 1992 and that, the lot of land was sold to the defendant, on the basis of the settlement of a court matter that was held in Santa Cruz.

[27] She maintained that it was her and the defendant who built the alleged family home and not the defendant's mother. She said she expended significant sums and made the greater financial contribution towards its construction, which as completed, is a four (4) bedroom house with all modern amenities. She exhibited several invoices and receipts as proof of purchase of materials in 2004, 2007 and 2010 for the construction of the alleged family home.

[28] She explained that she was able to do this as she maintained a steady salary as a teacher during the course of the relationship and she used this salary, with the assistance of loans, which were repaid via her salary, to fund the construction of the alleged family home. She stated that she was also responsible for purchasing the material and furniture for the alleged family home. She exhibited copies of hire purchase agreements and receipts for payment made to Singer Jamaica Limited for furniture to furnish, on her evidence, the said alleged family home.

[29] She also exhibited copies of printouts from the Jamaica Teachers Cooperative Credit Union Limited and from the Teacher Income Protector (TIP) Friendly Society, showing a loan repayment schedule of successive loans via salary deductions. She further exhibited a statement of account and passbooks from the RBC Royal Bank which indicated that she had obtained two loans and reflected loan repayments.

[30] Conversely, the defendant averred that the alleged family home is not situated on land owned by him, rather it is on approximately seven (7) acres of land, owned by his maternal grandmother, the late Mabel Elliott, and remains up to this time, the property of Estate Mabel Elliott and his family continues to pay property tax for the said land in the name of Mabel Elliott, as owner. A Certificate for Payment of Taxes and a tax receipt, bearing the date, november 30, 2015, was exhibited.

[31] He insisted that the quarter (¼) acre of land that his mother gave him was a gift and that he did not pay her any money for the land. A figure of ten thousand dollars ($10,000.00), was placed on it, at the Justice of the Peace's direction. He admitted to purchasing half (½) acre of land from Nathaniel Gayle as a consequence of a dispute he had with him on account of his using the said land as a short cut to drive to the alleged family home, as a consequence of the flooding of the usual road to the said house. A common law indenture dated january 30, 1993 was exhibited as proof of purchase of land by the defendant from Nathaniel Gayle for twenty-five thousand dollars ($25,000.00) and it contains at the end of the first page a note indicating that '*road agreed by sale for five thousand dollars ($5000.00).'*

[32] He denied that the alleged family home was built by him and the claimant and testified that it was built by his mother between 1978 and 1980 and further addition done by her, in or around the year- 2000. He stated that during the marriage, it was his sole responsibility to provide for the family and that he did. He expressed that the claimant was at all material times an infant school teacher but that her salary was exceptionally poor, as her net salary during the marriage varied from '*twenty add to thirty add thousand dollars'* per month, an amount with which she could barely feed and clothe herself.

[33] Howard Elliott, the defendant's brother, agreed that the property is owned by their late grandmother Mabel Elliott and not the defendant. He also agreed that the alleged family home was built by his mother in or around 1978-1980. He stated that he was one of the masons who constructed this house on behalf of his mother, in the latter part of the 1970s and the defendant, who was around sixteen to seventeen years old at the time, assisted with work as a labourer. He also said that it was no secret that basic school teachers get very little pay but admitted that he did not know how much money basic school teachers earn.

[34] Ms. Stephenson, the mother of the defendant's first child, also agreed that the alleged family home is owned by the defendant's mother. She averred that she

and the defendant lived together in the said house and there has been no additional work done to the house over the years. She eventually admitted that she did not know whether any additional work had been done on the house since she lived in it.

ANALYSIS

[35] The evidence offered by the parties in relation to the ownership of the alleged family home and the land appurtenant, was extensive and at best, divergent and conflicting. There has been little, if any concurrence, on the salient factual events. Nevertheless, having considered the evidence in great detail, this court has found the evidence of each witness, to be contradictory and in many respects, not credible.

[36] The court has not found Wakelyn Stephenson to be a witness of truth and in treating with her evidence, it has considered the fact that she is the mother of the defendant's first child. Her evidence was inconsistent with that of the claimant, the defendant and Howard Elliott, in more than one respect. Of particular note was the fact that she initially maintained that the alleged family home had remained in the same condition, as it was in, over thirty years ago and that no additional work was done to it. This was however contrary to the evidence of all the other parties, that the house had since undergone further construction and renovation.

[37] Further, when later confronted with the evidence of the defendant that the house was improved in 2002, she responded that she did not know if he was lying and that she did not know whether any additional work has been done on the house, since she lived in it. This is in the face of her evidence and earlier averment that she lives close to the alleged family home. In the circumstances, this court has not found her evidence on disputed issues, to be truthful and accordingly, has not placed any reliance on the evidence of Ms. Stephenson, in forming its conclusion.

[38] Mr. Elliott's evidence was also contradictory in certain respects. Although he challenged the credibility of the claimant as to her contribution to the construction of the house, he admitted that he did not know the salary she earned. His evidence also contradicted that of the defendant, when he said that he knew when the defendant brought the claimant into the alleged family home, as he went over there, the day after the wedding and he saw her. The parties were married in 2006 but it has been the evidence of the defendant that, the claimant moved into the alleged family home in 2004. He further admitted that he only knew the defendant was a building contractor based on phone communications.

[39] The defendant's evidence was in certain respects, contradictory too. Of particular note was that he disagreed that the materials purchased by the claimant in 2004, 2007 and 2010 were used on the alleged family home, as the house was finished from he moved in. This was clearly contradictory, as it had been his evidence that there were subsequent additions to the house. He seemed to be uncertain whether it was quarter (¼) or half (½) acre that he received from his mother and he admitted that on requesting the Certificate of Payment of Taxes, he told the representative, that Mabel Elliott is the person in possession of the land.

[40] Further, he admitted to purchasing half (½) acre of land from Nathaniel Gayle in 1993 and that he received land from his mother in 1993 but on cross-examination, he testified that the first piece of land he owned was the piece from Nathaniel Gayle and that the transaction with Nathaniel Gayle was years before the transaction with his mother. The common law indenture from his mother is undated but the common law indenture from Nathaniel Gayle is dated january 30, 1993. He also accepted that the parcel of land that he received from his mother (at which point he said it was quarter (¼) acre) was indeed part of Mabel Elliott's estate.

[41] The claimant's testimony was also plagued by inconsistencies. Although she denied that the alleged family home was built by the defendant's mother, she admitted that when she moved into the alleged family home, she did not know

who built it. She also testified that when she moved into the alleged family home, the defendant's mother was at her house, about six (6) or seven (7) metres away from their house. This was however contradictory to her affidavit evidence that the defendant told her that his mother was in the process of building her own house next to the alleged family home and that his mother later moved into her own house next door, as he had told her she would. She acknowledged this inconsistency.

[42] She also testified that she knew that the defendant paid his mother ten thousand dollars ($10,000.00) for the land because he told her so and she saw the paper. She agreed however, that she was not present when the defendant's mother gave her three sons, land. There were also discrepancies in her evidence as to the actual size of the land, on which the alleged family home is located. The common law indenture however states, that it was a quarter (¼) acre of land, that was purchased from Florence Dixon, by defendant.

[43] There was no evidence by any of the parties that a survey was done to ascertain the actual size of the properties contained in the common law indentures. In any event, it seems to this court, that on an evaluation of all the evidence offered, in these circumstances, the claimant does not actually know who owns the said land but has been operating pursuant to the information told to her by the defendant and others.

[44] This court accepts that the defendant did represent to the claimant that he was the owner of the alleged family home and the land appurtenant. It is further accepted, that the claimant accepted and acted on this belief, and accordingly, expended money to further the construction of the alleged family home. This court rejects the evidence of the defendant and his witnesses, that it is the defendant's mother who continued the construction of the house.

[45] In any event, having assessed, in entirety, the relevant evidence appertaining to the alleged family home, this court is of the considered view, that, the claimant has not proven, that, on a balance of probabilities, the alleged family home is

situated on lands which the defendant purchased from his mother and Nathaniel Gayle.

[46] This court has fully examined and considered the several documents exhibited by the claimant, in support of her claim and as aforementioned, it is accepted that the claimant did make financial contribution to the construction of the alleged family home. This court has found however, that the claimant's oral evidence has been marred by inconsistencies and admitted uncertainties, which have in the end, cast doubt on her credibility and undermined the utility of the evidentiary exhibits on which she has placed reliance. By parity of reasoning, she has not offered sufficient evidence to prove that the said house and land appurtenant is owned by the defendant, or by her, or by them, jointly.

[47] This court has not found it useful to consider the property in light of other statutory provisions under the **PROSA** or to consider the entitlement of the parties at common law, in light of the following observations: the evidence offered in this case has strongly led to the inference, that the property in issue, is owned by a third party, who was not joined as a party to these proceedings. The evidence also indicated, that the house in issue has become a fixture to the land, on which it is situated.

[48] This court observes firstly, the maxim of, 'quicquid plantatur solo, solo cedit': 'whatever is affixed to the soil accedes to the soil'. In the words of the learned editors, Charles Harpum, Martin Dixon et al, '*a physical object will usually be either land or a chattel, but its nature may change according to the use made of it. The materials used for building a house are thereby converted from chattels into land, and so automatically pass out of the ownership of the person who owned them as chattels and become the property of the owner of the land to which they are attached; and it makes no difference whether the person who attached them had a right to do so or not. Conversely, when a house is pulled down, the person who severs the materials from the building converts them from*

land into chattels'.- See **Megarry and Wade: The Law of Real Property**, 8th edition, p. 1105.

[49] Furthermore, this court refers to the dictum of McDonald-Bishop J.A. in **Pearline Gibbs v Vincent Stewart**, [2016] JMCA Civ 14. Therein, her Ladyship, in addressing the issue of whether the learned trial judge erred in finding that Mr. Stewart was entitled to a fifty percent (50%) share in the entire beneficial interest in the Tucker and Anchovy properties, in circumstances where the parties did not have legal title to those properties, made the following observations:

'[42] It is against this background that Miss Mullings submitted that the order made by the learned trial judge, in relation to the property at Tucker, should have been more specific as it could be construed from the language he used that he had given the parties a freehold estate when they, in fact, only had the leasehold estate. That argument is not without merit. The learned trial judge, in making the order he did, should have made it clear, by being specific, that it was a share in the leasehold interest that Mr Stewart has in the land at Tucker and not in the freehold. By not doing so, the learned trial judge would have fallen into error because such an order would have had the effect of granting Mr Stewart an interest in the property that he does not have in law. [43] The learned trial judge would also have had to go a bit further with his analysis and be more specific and careful in the terms of his order because of the absence of evidence to assist him in determining, within the context of the dispute between the parties, whether the house constructed on the land is a chattel house or a fixture. The law as it relates to chattels and fixtures would have evoked the need for caution in resolving a dispute such as this that concerns leased land. This is so in the light of the well established principle, "quic quid plantatur solo, solo cedit", that is to say, "whatever is attached to the soil becomes part of it". [44] In practical application to this case, the principle would mean that if the house is permanently affixed to the freehold, then, it would have become a part of it and as such belongs to the owner of the freehold. The fact is that legal title in the fixture is in the landlord until the tenant chooses to exercise his power and sever it: Megarry and Wade,

The Law of Real Property, Fifth edition, page 735. The law is also clear that, prima facie, the beneficial title in land follows the legal title. So, as the person with the legal title, the freehold owner, would also, prima facie, own the beneficial interest in the house. So, for the tenant to successfully claim a beneficial interest in the fee simple estate, he would have to invoke in his favour some legal doctrine, such as proprietary estoppel or adverse possession, depending on the circumstances. The reverse would also be true, that is to say, if the house is not permanently attached to the land, then it would not, in the ordinary course of things, become the property of the freehold owner but would remain the property of the parties who put it there. See, in this regard, Greaves v Barnett (1978) 31 WIR 88; Patsy Powell v Courtney Powell [2014] JMCA Civ 11; Simmons v Midford [1969] 2 Ch 415; and Royco Homes Ltd v Eatonwill Construction Ltd [1979] Ch 276. [45] In the light of the foregoing principles of law and given that the owner of the freehold estate was not a party to the proceedings, the court would have had to ensure that any order made would not have been prejudicial to the interest of the freehold owner. It is only if it were established beyond question that the house is a chattel house, properly so called as a matter of law, could the parties' interest in the house (as distinct from the land) be properly declared and divided between them without prejudice to the freehold owner. Without sufficient evidence before the learned trial judge in this regard, there was no legal basis on which the entire beneficial interest in the property at Tucker could have been divided between the parties who holds interest in the property merely as lessees. [46] There was no analysis along this line by the learned trial judge and so the order he made did not reflect accurately the real interest of Mr Stewart in the property as established by the evidence presented. The order should have been confined to the leasehold interest and not extended to what seems to be the entire beneficial interest in the freehold estate. An order in such terms as now being proposed would not cause any prejudice to the interest of the fee simple owner in the property. [47] It may be concluded, then, that the learned trial judge, in so far as the property at Tucker is concerned, did err when he, without qualification, awarded Mr Stewart a 50% share in the "entire beneficial

interest" in that property. There is, therefore, merit in ground of appeal (a) as it relates to the property at Tucker. [48] Accordingly, the order of the learned trial judge, as framed in relation to the Tucker property, cannot be allowed to stand and, as agreed by counsel for both parties, a more appropriate order ought to be made to give effect to the true state of affairs concerning the parties' interest in that property. The appropriate order should be that Mr Stewart is entitled to a 50% interest in the leasehold estate.'

[50] In the instant case and as mentioned above, the evidence suggests that a third party may be the owner of the land, on which the house in issue is situated. That person or a representative thereof, was not made a party to these proceedings. The above cited authority makes it clear, that, the owner of the freehold's interest must not be prejudiced. It has not been the evidence in this matter, that the house in issue is a chattel house, for the parties' interests in the house to be determined, as distinct from their interests in the land. On the contrary, the evidence in this case has depicted a house which is affixed to the land, such as to have become a fixture and accordingly, belonging to the land and by extension, the owner of the freehold.

[51] This court goes further to note that in claims for interests in land, the law requires that the owner of the land, that is, the person who is legally entitled to the property, be joined in the proceedings and be brought before the court, so that they may be heard and the court can properly adjudicate on the matter. In any event, even if that was done, the claimant had to bring cogent evidence to show that the alleged family home is situated on the two properties, on which she says the house is located.

[52] Thus, this case was one in which, the evidence of a land surveyor, would have been most helpful. A land surveyor would have been able to determine accurately where the alleged family home is situated and accordingly, proffer such evidence before the court. An ordinary witness cannot accurately speak to the actual size and location of property. A land surveyor would have helped this

court to determine if the house is on the two properties as averred by the claimant or if it is a part of the estate of Mabel Elliott.

[53] In the circumstances, this court has found that the alleged family home is not the 'family home' of the parties. This court reiterates that it is not at liberty to consider the alleged family home pursuant to the provisions of **s. 14** of **PROSA**, as there is a third party interest. A great deal of evidence has been proffered as regards contribution to the construction of this house, particularly by the claimant. However, since the legal owner of the property was never made a party, that evidence does not assist in resolving this claim and it is not open to this court to consider the extent of the contribution, whether direct or indirect and to divide the property as per the provisions of **s. 14.** For a proper understanding of this section, see paras. 61 and 71-73 below.

[54] It may be open to the claimant to pursue proceedings founded in equity against the administrator of the deceased's estate, vis-a-vis, any development of that property, to which she contributed. However, since the estate has not been made a party to these proceedings and since no claim of that nature, against the deceased's estate, is before this court at this time, it is not open to this court to address that, at this time. Therefore, in the circumstances of these proceedings, the court finds that the claimant, on a balance of probabilities, has not proven her claim to an interest in the alleged family home.

[55] This court views this as an appropriate juncture at which to address a submission by counsel for the claimant that if the defendant had been living on the property between 1981 and 2004, he would have had over twelve (12) years possessory title and would have acquired title by means of the law of adverse possession. The court disagrees with the claimant's counsel on this legal submission. There has been no evidence adduced before this court to establish that the defendant has acquired a title to the premises, by virtue of adverse possession.

[56] The defendant did give evidence that he has lived in the alleged family home since its construction in about 1981 and that no one has objected to him living

there. He has also however, consistently maintained that it is his mother's house. In the absence of any evidence by the claimant to show, that on a balance of probabilities, the defendant obtained a possessory title, the court infers, that the defendant has been residing in the house as a licensee. As is well established, a licence to live on property, does not give rise to title by adverse possession.

[57] In **Recreational Holdings (Jamaica) Ltd v Carl Lazarus and the Registrar of Titles**, [2014] JMCA Civ 34, Morrison J.A. enunciated at para. 39, that:

'More to the point, perhaps, is the following well-known statement of Slade LJ, delivering the principal judgment of the English Court of Appeal in ***Buckinghamshire County Council v Moran*** *[1989] 2 All ER 225, 232-233:*
"Possession is never 'adverse'…if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by licence of the owner with the paper title and his licence has not been duly determined, he cannot be treated as having been in 'adverse possession' as against the owner of the paper.'

[58] In **Seaton Campbell v Donna Rose-Brown and Carlton Brown**, [2016] JMCA App 35, Morrison J.A. P. made the following observation at para. 16:

'But the problem with this approach, as it seems to me, is that, as Lord Millett put it in ***Ramnarace v Lutchman****, "[p]ossession is not normally adverse if it is enjoyed by a lawful title* ***or with the consent of the true owner****". The position is more fully explained by the learned authors of Gray and Gray, Elements of Land Law , under the rubric, "Adverse possession cannot be consensual", as follows:*

"The adverse quality of a claimant's possession is more generally negatived by any consent by the paper owner to the claimant's presence on the land. Thus possession is never "adverse" if enjoyed under a lawful title or by the leave or licence of the paper owner. For example, the presence of a landlord-tenant relationship between the paper owner and the occupier is plainly inconsistent with a claim of adverse possession. Nor can adverse possession stem from other forms of mandate or permission given by the paper owner. Thus no adverse

possession arises on the basis of occupation which is exercised at the request or with the consent of the paper owner. The courts have tended, in any event, to guard against the possibility that acts founded on mere 'amity and good neighbourliness' may ripen into some form of unassailable adverse possession. The permission which negatives adverse possession may be present even where it is unaccompanied by any obvious process of offer and acceptance and unsupported by any consideration."

[59] His Lordship in the two above mentioned authorities has put it beyond doubt, that a possessory title is not acquired, where the possessor was given a licence to occupy the property. Accordingly, the defendant, however long he has resided in the alleged family home, would not have obtained a possessory title to the property, whilst he remained there with the permission and/ or consent of his mother.

[60] There are five (5) remaining properties, three real and two personal, for which the claimant claims equal entitlement. In determining the proprietary interests in these properties, the court in its assessment, will treat with these properties, individually and in accordance with the provisions of **s. 14** of the **PROSA**. **S. 14** provides the factors which ought to be considered when the court is determining proprietary interest in property, other than the 'family home'. The section also defines contribution and makes it clear that monetary contribution is not of greater value than non-monetary contribution

LAW

[61] **S. 14** of the **PROSA** makes provision for the division of property, other than the family home. It provides:-

(1) *Where under section 13 a spouse applies to the Court for a division of property the Court may-*

(a) *make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*

(b) *subject to section 17(2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2),*

or, where the circumstances so warrant, take action under both paragraphs (a) and (b).

(2) *The factors referred to in subsection (1) are-*

(a) *the contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;*

(b) *that there is no family home;*

(c) *the duration of the marriage or the period of cohabitation;*

(d) *that there is an agreement with respect to the ownership and division of property;*

(e) *such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.*

(3) *In subsection (2)(a), "contribution" means-*

(a) *the acquisition or creation of property including the payment of money for that purpose;*

(b) *the care of any relevant child or any aged or infirm relative or dependant of a spouse;*

(c) *the giving up of a higher standard of living than would otherwise have been available;*

(d) *the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which-*

(i) *enables the other spouse to acquire qualifications; or*

(ii) *aids the other spouse in the carrying on of that spouse's occupation or business;*

(e) *the management of the household and the performance of household duties;*

(f) *the payment of money to maintain or increase the value of the property or any part thereof;*

(g) *the performance of work or services in respect of the property or part thereof;*

(h) *the provision of money, including the earning of income for the purposes of the marriage or cohabitation;*

(i) *the effect of any proposed order upon the earning capacity of either spouse.*

(4) *For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.*

The property situate at Old Bottom, Junction, in the parish of St. Elizabeth, being lands estimated to be one acre in size and contained in common law indenture dated august 18, 2003, between Linval Powell and Howard Elliott and Quenston Dixon.

[62] According to the claimant, in 2003, she and the defendant purchased the said land from the defendant's brothers, Linval Powell and Howard Elliott, for two hundred thousand dollars ($200,000.00). They were given possession of it and they worked a farm on it. She maintained that it was always the parties' intention for the land to be jointly owned and she only signed as a witness based on the directions of the Justice of the Peace.

[63] The land was paid for over time from her salary and the money they earned from farming and even though she was unable to recall her exact financial contribution, she averred, that it was more than half of the cost of the land. She

further explained that she had to take loans, which were then deducted from her salary, in order to assist the defendant with the payment. She also stated that the defendant sent money from England to his brothers and they came and collected money from her, as payment for the property.

[64] On cross-examination, she agreed that she signed to the purchase of the property as a witness but stated that she did not read before signing same, although she knew what the conveyance which was being executed, was for. She was unaware of the exact date of the agreement for the purchase but testified that it was before their marriage. She stated that she had no interest in her name being on the title as part-owner and that it was later, that she found out that if her name was placed on the title, it would indicate that she is a owner/ part-owner of the land.

[65] She maintained that she contributed about half of the cost of the property or perhaps more and that she made a lot of payments to the defendant's brothers. She denied that the payments were made solely by the defendant and she only knew about the details of the purchase, when she was asked to witness the conveyance. She testified that the source of her income which enabled her to finance everything was her employment as a trained teacher and the farming that she and the defendant did together.

[66] The claimant gave evidence that her salary in 1998, was in the twenty thousand dollars ($20,000.00) bracket and that up to 2004, her net monthly salary was around twenty-two thousand, four hundred and five dollars and twenty-one cents ($22, 405.21). She also made the following admissions: that in 2004, she was not able to spend the entire sum of her salary, as she had to repay a loan from it; that what was available to her in terms of her salary, could not assist alone; and that her earning power as a trained teacher did not allow her to participate equally with the defendant in purchasing the properties and motor vehicle. She did however also offer evidence that though her salary was not very large, it was

steady and she was able to access loans from banks and credit unions because of this fact.

[67] According to the defendant, the acre of land that he purchased from his brothers, Linval Powell and Howard Elliott, was purchased solely with his own resources and without any input from the claimant. He purchased the land while still living in England and during his vacation in or around 2000, he negotiated the purchase with his brothers. Upon agreement, he made a token deposit of five thousand dollars ($5,000.00) on the land and agreed to pay the balance in instalments which he did alone.

[68] He paid the purchase price in instalments by sending monies from England, as well as paying his brothers directly while on vacation. The payment was completed in 2003, on a visit to Jamaica, when his brothers executed the conveyance in the presence of a Justice of the Peace. At the time arranged for signing, the claimant was present, as he invited her to be there, to witness the signing. The common law title was read over in her presence and she also read it to him, as she knows that he cannot read well.

[69] The purchase price for this land was never paid from any farming done by him and/ or the claimant or any contribution from her salary. If there was any intention for the claimant to be part owner of that land, the document which she witnessed, would have shown her name as such and he is absolutely sure that she read the entire conveyance before signing. On cross-examination, he agreed that the land that he purchased from his brothers was used to do farming and that his family assisted him with his farming project on that piece of land. The produce from that farm, were made available to his family. The produce were also taken to the market and sold in the community and the money he earned, benefitted his family. He also stated that the claimant was the one who raised the pigs and chickens and same was butchered and used at home.

[70] Howard Elliott averred that the claimant is not speaking the truth as regards the transaction for this parcel of land. His evidence is that the land was sold to the

defendant only and was paid for by monies sent directly to him by the defendant from England. He denied that he was always going to the claimant for money out of the two hundred thousand dollars ($200,000.00), he sold the land to the defendant for; that it was only on one occasion that he got money from the defendant towards the purchase of the land and that sometimes the claimant had to take a loan to give him the money to pay for the land. He also stated, that when he sold the land to the defendant, the claimant would only make casual visits to the defendant, whenever he visited from England, and she never had a steady relationship with him, at that time.

ANALYSIS

[71] **S. 14** makes it clear that in determining proprietary interests in property other than the family home, the court should divide such property as it thinks fit, taking into consideration the following factors: contribution, the absence of a family home, the duration of the parties' marriage, an agreement with respect to the ownership and division of property and any other fact or circumstance, which the justice of the case requires to be taken into account.

[72] That section further elaborates on the meaning of contribution and specifies that contribution means, as is relevant in this case: '*the acquisition or creation of property including the payment of money for that purpose; the care of any relevant child; the giving up of a higher standard of living than would otherwise have been available; the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which enables the other spouse to acquire qualifications or aids the other spouse in the carrying on of that spouse's occupation or business; the management of the household and the performance of household duties; the payment of money to maintain or increase the value of the property or any part thereof; the performance of work or services in respect of the property or part thereof; the provision of money, including the earning of income for the purposes*

*of the marriage or cohabitation; and the effect of any proposed order upon the earning capacity of either spouse.' (**See s. 14(3) of the PROSA**)*

[73] As aforementioned, **s. 14** also makes it obvious, that, monetary contribution is not of a greater value than non-monetary contribution and it is clear from the section that contribution may be financial or otherwise and may be directly or indirectly made. Accordingly, contribution does not have to be calculable or readily calculable, financially. The parties do not have, a 'family home', but the evidence reveals that they were married for eight (8) years. Therefore, for a considerable period of time, they had shared lives and the claimant would be entitled to a fair share of the matrimonial property.

[74] Further, there was no evidence adduced as to any agreement between the parties, as to the ownership and division of property, and in light of the conflicting evidence proffered by the parties in regards to these properties, this court finds that there has been no such agreement. The court will now assess the contribution of the parties as regards this property. This court also notes that it is of no moment for the purposes of **s. 14**, that the claimant's name is not on the common law indenture.

[75] In determining the interests of the parties, if any, in this property, this court acknowledges that there was a submission by the defendant's counsel that property purchased and sold prior to the parties' marriage, cannot be divided under **PROSA**. In the circumstances, this court views this as an appropriate juncture at which to make the following observations. The effect of the definition of spouse in **s. 2** of the **PROSA**, means, that the claimant would not have qualified as the spouse of the defendant until 2006, when the parties married. The defendant was a divorcee at the time of the marriage, having married his first wife, Ada Dixon in 1989 and divorced her in 2005. The property was acquired in 2003, some three years prior to the parties' marriage.

[76] It is clear therefore, that when the property was acquired, the parties were not spouses. This however, makes no difference as to whether her claim in the

property should succeed. What is determinative is whether or not she made a contribution to the property. (**See s. 14(2) above**). The said property, on the evidence of both parties was brought into the marriage and therefore became matrimonial property.

[77] It has been accepted by the parties, that, subsequent to their marriage, they utilized the property in a mutually beneficial manner. Further, they both contributed to its profitability and sustainability. The defendant returned home permanently, at the earliest, in 2007, but the parties were married in 2006. Therefore, the inference drawn is that, for at least a year, the property would have benefitted significantly, from the contribution of the claimant. In any event, even if he acquired the property solely with his own financial resources and even though, the property was acquired prior to marriage, those are not factors which will determine the claimant's share. This is not the 'family home' and so the factors to be considered are those mentioned at para. 61 of these reasons for judgment.

[78] It is in these circumstances, that this court is of the view, that the claimant is entitled to claim a proprietary interest in the property pursuant to the **PROSA**, having become the defendant's spouse in 2006 and made contributions to the property, thereafter. In any event, it is not only the claimant's contribution to the development and for maintenance of that property, which would be relevant for present purposes. That is only one relevant factor, as specified by section **14(2)(a)** of the **PROSA**. As earlier set out, in para. 61 of these reasons, there are several other pertinent factors and, it is worthy of further repetition that additionally, **s. 14(4)** of the **PROSA** has specifically provided that-'… *there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.'*

[79] The claimant exhibited a common law indenture dated august 18, 2003, in relation to this property. It indicates, inter alia, that the purchase price of the property was two hundred thousand dollars ($200,000.00) and that same was

conveyed to the defendant by Linval Powell and Howard Elliott. This however, does not determine the matter. As recognized before, the parties were spouses for eight (8) years and accordingly, the defendant's monetary contribution would not outweigh the claimant's non-monetary contribution. Hence, the circumstances of the case have to be assessed.

[80] The defendant purchased this land while he was still residing in England and on his evidence, he was employed as a general builder and contractor in England. He acquired this skill by working with a cousin and going to school and he denied that he had no money whilst in England and worked occasionally, as a casual labourer. However, other than these averments, he did not adduce before this court, any documentation proving said employment.

[81] Furthermore, the court observed that, one of the pages of the defendant's passport which was exhibited, clearly expresses that leave to enter the United Kingdom was on condition that the holder does not enter employment, paid or unpaid and does not engage in any business or profession. He sought to explain, that the said term of his entry, was put into his passport when he entered England for the first time. This exhibit indicates that between the years of 1989 and 2003, the defendant had visited England quite frequently. In fact, the exhibit also reveals that on occasions, the defendant was given leave, by the United Kingdom authorities, to remain there for an indefinite period.

[82] This evidence suffices to prove that the defendant entered the United Kingdom legally. It is however, insufficient to establish that the defendant was qualified as a building contractor and worked in England, legally. He has not exhibited a work permit or anything proving that after his first travel, he obtained permission to work legally in England. The evidence of Howard Elliott, who agreed that the defendant was a building contractor in England, does not carry much weight, as, aforementioned, he admitted that he only knew the defendant was a building contractor in England, based on phone communications.

[83] The claimant disagreed with the suggestion that between 1989 and 2007, the defendant worked in England as a building contractor and builder and amassed a great amount of wealth to buy property to invest in farming and hence, he bought all of these properties to do farming. She repeated that she had a steady salary and she was in a position to assist with purchasing the lands and the defendant was never in a position to purchase all the properties without her assistance.

[84] The claimant's unchallenged evidence has been that she commenced working as a basic school teacher in 1998 and that she obtained several loans which were repaid via salary deduction. She exhibited a statement of account from the RBC Royal Bank, which indicated that she obtained two loans: one on november 8, 2002 in the sum of two hundred and twenty-two thousand, two hundred and twenty-two dollars ($222,222.00) and on july 1, 2004, she obtained another loan, for two hundred thousand dollars ($200,000.00).

[85] As aforementioned, the defendant has not challenged the acquisition of these loans by the claimant and their repayment, via salary deductions. He maintained however, that in 2000, he negotiated the purchase with his brothers and over a three year period (2000-2003), he paid the purchase price in instalments by sending money from England, to his brothers. The payment was completed in 2003.

[86] The difficulty with such evidence is however, that, not only is it challenged by the claimant, but the defendant has not proffered any documentary evidence, which this court could properly accept, in the face of a passport which indicated that he ought not to be employed in England. It is pertinent to note that if it is money earned from unlawful means which the defendant used to purchase said property, the court cannot consider or taken into account such evidence.

[87] In any event though, even if he was employed while there, that may mean that he made significant financial contribution towards the purchase of that property, if not, that he paid for same entirely, from his own funds. That though, would not

negate or lessen the significance of any non-financial contribution made by the claimant or any 'contribution' made by her, as defined by **s. 14(3)** of the **PROSA.**

[88] This court notes that the property in issue cost two hundred thousand dollars ($200,000.00). At the time of the purchase of the property, the claimant was working and had, several months prior thereto, obtained a loan in the value of two hundred and twenty-two thousand, two hundred and twenty-two dollars ($222,222.00). Although, this court has found that the parties did not become spouses until in 2006, it is clear that the parties had relations with each other, prior to marriage. The evidence has revealed that the parties have several children together, and their eldest son is in his twenties. The parties were only lawfully married for eight (8) years and just over one (1) month.

[89] Further, this court rejects the defendant's evidence that prior to the parties' marriage, he had only a casual relationship with the claimant and that there was minimal communication between him and the claimant whilst he was overseas. It is this court's finding, that, in the circumstances, and upon careful consideration of the evidence presented in this case, including that of Howard Elliott (the defendant's brother), the claimant has proven that, on a balance of probabilities, at the time of the purchase of the property from the defendant's brothers, she was in a position to have made a financial contribution to the said purchase and may very well have done so.

[90] This court goes further however, to consider the claimant's non-financial contribution to this property, after they were married. It has been her evidence that she worked side by side with the defendant on the farm and by that, she meant that she helped with the planting of seeds, watering of plants and reaping. She further explained that while the defendant was away, it was her responsibility, with the help of the children, to water and attend to the farm. Further, from time to time, the defendant would hire someone to assist with the farm but this was done sporadically and only when necessary, such as when there was a large yield and he needed assistance. According to her evidence, if it

were not for her efforts and that of their children, the defendant's farming attempts would not have been successful.

[91] The defendant did dispute that he and the claimant worked 'side by side'. However, he has admitted that this land was used for farming and that his family assisted him with his farming project on this piece of land. Furthermore, he testified that the produce were made available to his family and any money earned, benefitted his family and the claimant raised the pigs and chickens and the same was butchered and used at home.

[92] The court also considers that the parties have five (5) children together, with the eldest being in his twenties and the youngest, an infant at the time this claim was filed. The defendant on his evidence, returned to Jamaica permanently in 2007, having lived in England for about eighteen (18) years. The claimant disputed this and contended that the defendant returned home in 2010. In any event, accepting that the defendant returned permanently in 2007, their eldest child was then thirteen years old and by then, the parties had three (3) children.

[93] The defendant maintained that he has always provided for and maintained their children '*since birth'*, and that he was solely responsible for the financial running of the house, including catering to the claimant's needs, as her salary was unhelpful. The claimant refutes this averment and contended that the defendant was never solely responsible for the financial running of the household and providing for the whole family, as often he would not. She admitted however, that the defendant contributed to the household from the earnings he acquired through farming and that whilst he was away, he would send a '*little money'* for the children but this support was never steady.

[94] She explained that the responsibility of providing for the family was shared between the two of them and she was always in a position to feed herself and her children and had done so over the years when the defendant's contribution was intermittent, while he resided in the United Kingdom and she continues to do

so now, when he fails to pay maintenance. Both parties gave evidence that a maintenance order was obtained against the defendant.

[95] That in and of itself, belies the defendant's evidence that he has maintained their children '*since birth'*. If that was so, then why would a court have made a maintenance order against him? This court is of the view, that the defendant was not being truthful to the court, as regards his evidence, in that particular respect.

[96] Upon a consideration of the circumstances as stated above, this court is of the considered view, that having regard to the claimant's income bracket, between 1998 and 2004, the claimant's ability to singlehandedly care for her three children would have been constrained. Nevertheless, in the absence of any evidence from the defendant, up to 2003, (the time at which he acquired the property which he utilized for farming), of his earning capacity, this court accepts that it was the claimant who primarily cared for the children financially, until he returned home permanently, at the earliest, in 2007.

[97] Further, after marriage and for at least one (1) year, that is, between, 2006-2007, the claimant was the sole caregiver of the children. Equally between 2006 and 2007, she was also assisting in the running of the farm, in the defendant's absence and then partnered with him on his return. Furthermore, if, which this court does not find, the defendant was legally employed as a building contractor in England, it is the claimant's actions in undertaking to care for the children and having attended to the farm, which would have made it easier for the defendant to pursue his occupation overseas, or at the very least, to have resided overseas and away from his wife and children.

[98] In the circumstances, this court finds that, on a balance of probabilities, the claimant has proven that she is entitled to fifty percent (50%) interest in this property.

The property known as Old Bottom, in the parish of St. Elizabeth, containing by survey/ estimate 2020 M2 and contained in common law indenture dated september 25, 2006, between Richard Albert Pusey and Quenston Dixon.

[99] The claimant is of the view that she is the owner of fifty percent (50%) interest in this property. She averred that, she and the defendant bought half (½) acre of land from Richard Pusey and that said land is situated in Tryall, in the parish of St. Elizabeth. She explained, that they bought a pickup truck that had been involved in an accident for seventy thousand dollars ($70,000.00), and thereafter repaired and resold it for three hundred and fifty thousand dollars ($350,000.00). She contributed fifty thousand dollars ($50,000.00) and defendant gave the remaining balance of twenty thousand dollars ($20,000.00), to purchase the vehicle.

[100] She further stated that they built a shop and two (2) small rooms on the land, which have been rented since about 2007. She expressed that the defendant has always been the one to collect the rent and as far as she is aware, he still does and the funds were used for the benefit of their family. Since their separation in april 2012, however, neither their children nor the claimant, has benefitted from the aforementioned rental.

[101] She admitted that the title for the land at Tryall reflects the defendant's name as the sole owner. She thereafter, sought to explain that all of the family's assets appear in the defendant's sole name, as on acquisition, he always placed the assets in his sole name but she maintained, that it was for the benefit of their family. She denied that she has never benefited from any interest in the property and explained that, before 2010, she regularly collected rent from the tenant who rented the shop in Tryall. The rent would be brought to their home and she would write a receipt. Since 2010, however, she has not received any rent therefrom.

[102] On cross-examination, she disagreed with the suggestion that the defendant maintained two accounts: a foreign exchange account and a local account, from which he bought the Tryall property, in cash. She however, agreed with the

suggestion that the bankbook from which the money was taken, is one that was taken from the defendant's vault. She later stated that the bankbook was not in the vault but that she found it at home.

[103] Interestingly, she admitted that she was not aware that the receipt received from Mr. Pusey, which showed that the defendant paid the full purchase price of three hundred thousand dollars ($300,000.00), also showed that he was refunded twenty thousand dollars ($20,000.00). It was then suggested to her that she knew nothing of the purchase as if she did, she would have known this, to which she replied that she knew about the purchase of the land.

[104] She agreed that she did not meet Mr. Pusey but stated that she contributed to the purchase of the property and that it was true that she used to collect rent from the tenants at the property. She denied that she only assisted the defendant in writing receipts for the rent he collected and stated that the rent came to her. She admitted however, that, she did not rent any of the shops to the tenants. She further said that the property at Tryall was bought because they discussed that they were going to buy the land, build the shop and it would go towards their third and fourth child. She agreed with counsel though, that the fourth child was not born until after the property was purchased.

[105] The defendant strongly denied that this property was bought by himself and the claimant and that the shop was built thereon, with any contribution from the claimant. He stated that the claimant has no interest in the property and that she knew absolutely nothing about the purchase and became aware of some aspect of the purchase, having stolen his title from his 'chest', which she broke into. The title only reflects his name consistent with the fact that he was the sole purchaser.

[106] He further stated that the claimant knows well that he rented his shop but she has never had anything to do with it. He expressed that the purchase of the land had nothing whatsoever to do with the pickup truck he purchased, as a crashed vehicle and repaired. The claimant also knew nothing about the purchase of said

vehicle and made no contribution to its purchase. The claimant has never benefitted directly from any income derived from that property before or after their separation, on may 15, 2011.

[107] On cross-examination, he maintained that the claimant did not contribute to the purchase price of the property at Tryall. He was unable to recall the price of the property but testified that he was the contractor who built the shop and two rooms on the property. He stated that he got the workers with him and he paid them two thousand dollars ($2,000.00) and the tradesmen three thousand dollars ($3,000.00). On re-examination, he clarified that the people who built the house at Tryall were paid two thousand dollars ($2000.00) per day for their labour.

[108] He denied the suggestions that since the break-up, his family has not benefitted in any way, from his rental income from this property; and that prior to 2010, his wife collected the rental from the shop at Tryall. He said that his wife and family have benefitted from the property at Tryall, in that, he collects the rent and give the money to the claimant and she gave him a receipt for the said money. On re-examination, he clarified that he paid the rent to his wife, as he used it to make up child maintenance.

ANALYSIS

[109] The claimant, despite averring that she had no document in respect of this land, exhibited a common law indenture bearing a date, which this court accepts as being, september 25, 2006, indicating the sale of land known as Old Bottom from Richard Pusey to Quenston Dixon, for the sum of three hundred thousand dollars ($300,000.00). Although it was the contention of the defendant, no receipts were exhibited to show that the defendant was refunded twenty thousand dollars ($20,000.00) by Mr. Pusey and the common law indenture did not reflect such an occurrence.

[110] The parties' evidence regarding this property was conflicting. The claimant stated that it was the defendant who had always collected the rent and that he

continues to do so. Nevertheless, she also said that she collected rent and she would give the tenant a receipt. There was however no receipt exhibited. The defendant staunchly opposed this and stated that the claimant has never benefitted directly from any income earned from the rental before or after separation but later denied that since the break-up, his family has not benefitted from any rental income. To that end, he testified that he collected the rent and gave the money to the claimant who gave him a receipt. He did not exhibit a receipt in proof of this.

[111] The claimant admitted that she did not rent any of the shops to the tenants. Furthermore, whilst the claimant disagreed that the defendant had two accounts from which he purchased the Tryall property in cash, she admitted that the bankbook from which the money came, was one taken from the defendant's vault, but she said she found the bankbook at home. The court has found this evidence to be curious at best and outrightly dishonest at worst, since she had also testified that she had no knowledge of the existence of a vault. This court disbelieves the claimant's evidence that the bankbook was found by her at home.

[112] The claimant also explained that the property was purchased with a view to making adequate provisions for two of the parties' children, one of whom was born, from the defendant's evidence and the court infers, in 2001 and the other in 2007. She however agreed with counsel, that the fourth child was born after the purchase of this property. The defendant in his evidence however, did not challenge this aspect of the claimant's evidence and further agreed, that the property benefitted his family.

[113] Finally, on a careful consideration of the information contained in the copies of the printouts and passbooks exhibited by the claimant, the evidence as to her salary and the fact that by 2006, she was providing for three (3) children, this court, in the absence of any other evidence, is not entirely convinced, that the claimant contributed such a large portion of the sum, which was used to purchase the pickup. Conversely, the defendant did not present any evidence as

to how he was able to contribute to and/ or purchase the pickup, which was eventually resold and the resale value obtained from same, utilized to purchase the property from Richard Pusey.

[114] This court is however mindful, that at the time of the purchase, the parties did operate a farm, which this court has found to be a joint venture, and may very well have acquired earnings from this medium.

[115] In any event, as has been made clear, contribution is not limited to finances. This court accepts that when the parties married in april, 2006, it was their intention for their family to benefit from their joint undertakings. This is so, as both parties maintained that they have provided for their family and prior to 2006, they acquired a farm, which they operated jointly and through which, they provided for their family. Further, this court accepts, that the claimant did not rent any of the rooms or shop to anyone but that whilst the defendant was overseas, between 2006 and 2007, she was overseeing the affairs of the property and collected the rent.

[116] During this time too, she was also solely responsible for attending to all the needs of their children, maintaining their household and the running of the farm. Finally, this property was purchased in late 2006, a few months after the parties' marriage and before the defendant's permanent return. This court finds that, on a balance of probabilities, the claimant has proven that she is entitled to fifty percent (50%) interest in the property at Tryall.

The one acre lot of land situated at Ballards Valley

[117] The claimant contended that before she and the defendant got married, he was given an acre of land by his parents, at Ballards Valley. The defendant's brother, Danny Dixon, was also given an acre and the two lots of land adjoined each other. She explained, that they owned a mitsubishi pickup, which both of them had bought to use to transport produce to the market. The defendant's brother, Danny Dixon, agreed to accept the pickup in exchange for his one acre lot of

land. The exchange and agreement took place before they got married in 2006 but she cannot recall exactly when. She knows that a common law title was prepared in respect of that transaction, but she cannot locate it, as the defendant has it. She also contended, that the defendant gave the land to his son. She is claiming fifty percent (50%) interest in this property.

[118] On cross-examination, she denied the suggestion that the defendant did not acquire any property from his brother, Danny, by swapping the land for his pickup truck or by purchase or any other means. She maintained that it was the defendant's father who gave the defendant and his brother, Danny, one acre each of land but she did not remember when this was and that the defendant gave the pickup truck to Danny.

[119] The defendant absolutely denied the claimant's assertions and stated that his parents did not give any land, situated at Ballards Valley, to himself or his brother, Danny. He further denied that he and the claimant owned the mitsubishi pickup. He maintained that he owned it and that he did not use it to transport produce to the market, as the same week he purchased it, the engine was destroyed and he just parked it. He further contended that he has never bought or exchanged any pickup for land with his said brother.

[120] He recalled giving his brother a mitsubishi pickup he owned solely, as the engine was damaged and he is of the view that his brother subsequently repaired the vehicle. On cross-examination, he agreed that he had a brother named Danny but testified that he did not enter into a transaction with Danny concerning a vehicle and land.

ANALYSIS

[121] The evidence presented to this court, as regards this parcel of land, has been via the testimony of the parties, which has been contradictory. The claimant opined that the defendant acquired the land from his brother but the defendant denied ever acquiring such land. This court acknowledged that Howard Elliott did state

that the defendant owns three (3) pieces of land around Old Bottom; however, these lands were not specified. In the circumstances, it is the classic case of 'he said, she said' and one would appreciate, that this is a situation in which, in the absence of any documentary proof, substantiating or disproving either of the parties' assertions, the parties' credibility as assessed in respect of this particular land parcel, solely based on their oral testimony, is critical.

[122] This court goes further however, to observe that, having regard to the nature of this matter and the subject matter involved, the claimant would have had to have adduced further evidence, to prove that on a balance of probabilities, the defendant did acquire and does own this parcel of land. The court therefore feels constrained to hold, that in the absence of a common law indenture and/or any other documentation, substantiating the existence and/or acquisition of said property by the defendant, the claimant has failed to prove, that on a balance of probabilities, the defendant got this land from his brother Danny, in exchange for a pickup truck.

[123] In any event, in the absence of a common law indenture, transferring title to that property, to the defendant, it follows that a claim for that property also would have had to have been made against the defendant, with Danny, the defendant's brother, joined as an interested party. That was clearly, not done and property cannot be transferred by word of mouth. Danny could still have the title and the legal interest, in fact the sole legal interest. If that legal interest is to be interfered with, the law requires that Danny be named as an interested party. Having not done that, this court would not have been minded and cannot properly make an order in this claim, with respect to the legal interest in this property, as the legal ownership of that property, is uncertain in the court's mind.

The 1990 volkswagen pickup truck

[124] The claimant averred that she and the defendant purchased a 1990 volkswagen pickup for four hundred thousand dollars ($400,000.00), in 2009. She stated that she contributed two hundred thousand dollars ($200,000.00) towards its

purchase but that when the defendant moved out of the matrimonial home, in april, 2012, he took it with him. She acknowledged, that the vehicle is registered in the defendant's name solely but she wished to recover her interest in the said vehicle.

[125] She further explained that the defendant went to the tax office and finalized the transfer, as she was at work and he arranged to have the title for the car reflect his name only. Pursuant thereto, the document does not properly reflect the ownership of the car. On cross-examination, she denied that she did not know or have anything to do with the purchase of the volkswagen pickup truck. She however admitted, that she has never seen the receipt proving purchase of the volkswagen pickup truck.

[126] The defendant testified that he is in possession of his 1990 volkswagen pickup, which he took with him after he and the claimant separated, and that he purchased same without any contribution from the claimant. He contended that the claimant undoubtedly only became aware of the particulars of purchase of the said pickup, after she stole his documents, including the receipt and certificate of title for the said vehicle from his, 'chest'. This court understood that by using the word- 'chest' in that context, the defendant was referring to what he had earlier described as being his vault. The title for the said vehicle is in his sole name and that is because, the claimant has absolutely no interest therein.

[127] On cross-examination, he testified that he did not recall how much exactly he paid for the 1990 volkswagen and stated, that it could be two hundred and eighty thousand dollars ($280,000.00), but he was not sure. It was suggested to him that he paid four hundred thousand dollars (400,000.00) for it, but he maintained that he did not remember. He denied that his wife paid two hundred thousand dollars ($200,000.00), out of the four hundred thousand dollars ($400,000.00) for the volkswagen pickup.

ANALYSIS

[128] A motor vehicle certificate of title was exhibited by the clamant as regards this vehicle. It indicated, inter alia, that the vehicle is owned by the defendant and that it was acquired on february 05, 2009. There was no evidence however, presented to this court regarding the purchase price of the vehicle. The defendant contended, that the claimant took the title and receipt from his 'chest' but the claimant stated that she has never seen the receipt.

[129] The claimant's copies of printouts from the Teacher Income Protector (TIP) Friendly Society indicated that in july, 2008, the claimant acquired a loan of two hundred thousand dollars ($200,000.00). The copies of printouts from the Jamaica Teachers Cooperative Credit Union Limited indicated that she acquired a loan of sixty thousand dollars ($60,000.00) on november 03, 2009. Prior thereto, the last time she acquired a loan from the TIP Friendly Society was in june, 2007, in the sum of twenty five thousand dollars ($25,000.00). None of those documents however, indicated that the claimant obtained any loan in early 2009.

[130] The court notes however that there is a six (6) month period between the time the claimant acquired the loan in july, 2008 and the date when this vehicle was acquired. The defendant has offered no evidence to this court as to how he was able to purchase the car. The court does accept though that he was operating a farm from 2003, selling the produce from that farm and the claimant did agree that in 2007/2008, the defendant bought an Isuzu pickup. So, he may very well have been a man of sufficient means, at the time when this vehicle was purchased, to have purchased same, using only his financial resources.

[131] By the time of the purchase of this vehicle, the parties had been married for almost three (3) years. They were then jointly operating a farm and caring for their four (4) children. The defendant averred that his family benefitted from the produce of his farm and that the animals which his wife reared, also benefitted the family. From all indications, in 2009, the parties were living as husband and

wife and making a meaningful contribution to the life of each other. There has been no evidence proffered by either of the parties to suggest otherwise, and the parties separated, at the earliest, on may 15, 2011. For these reasons, the court finds that it is within this partnership of equals, that the volkswagen pickup was acquired jointly and for the benefit of the family.

[132] From the evidence, the vehicle remains in the possession of the defendant. The fact however, that he has the vehicle in his possession, does not mean that the claimant has relinquished her right to an interest in it. In the circumstances, this court has determined that both parties are entitled to fifty percent (50%) interest in the vehicle.

The 1994 Toyota Mark II

[133] The claimant averred that she and the defendant purchased a 1994 Toyota Mark II, which she used to drive to work and transport the children to and from school. She explained that she retained the car, when the defendant moved out. However, sometime in the latter months of 2012, the defendant's son by another relationship, visited the island with his family, and his wife asked to borrow the car, to take her family on a trip, to which the claimant agreed. Since then, she has not seen the vehicle and she has been forced to rely on taxis to get to work and to take their children to school.

[134] She stated that the vehicle was bought for the purpose of taking her to work and the children to school and it had very good gas mileage. The vehicle was taken from her under the guise of being borrowed by the defendant's son. She is of the view that the defendant has sold the vehicle. She asserts that she was a part owner of that vehicle and she wishes to recover her interest in the said vehicle or the proceeds of sale of same. On cross-examination, she disagreed that she had nothing at all to do with the purchase of the Mark II.

[135] The defendant stated that the claimant had no interest in the 1994 Mark II motor car that he owned, as he owned the vehicle solely, having purchased same, with

his own resources and without any input from the claimant. He explained that after separating from the claimant, he left the car at home, as she asked to use it for transportation to school. The claimant however, he expressed, always complained that the engine was too big and that she could not afford to buy gas for it, as her small salary did not allow her to do so.

[136] He expressed that he had no intention to make a gift of his car to her and it became clear that he had to sell same, particularly in order to recoup some of the money she stole from his vault. In may, 2012, he went to the alleged family home to have discussions with the claimant about the documents and the use of the said car, when she held him from behind and caused her son, now twenty (20) years old to chop him several times in his face, a matter which was before the St. Elizabeth Resident Magistrate Court, now St. Elizabeth Parish Court.

[137] Since then, he has not returned to the said home and thereafter, he sent his eldest son for his car, which the claimant willingly gave up. The claimant is not being truthful in her statement that his son borrowed the car from her, as the car did not belong to her, wholly or partly. The claimant never had an interest in said motor car and therefore, is not entitled to recover any interest in the said car or the proceeds of its sale.

[138] On cross-examination, he maintained that he alone owned the vehicle but agreed that it was used by his wife to drive to work. He stated that he loaned it to her to drive to work and agreed that sometimes, his wife used this same vehicle to transport his children to and from school. He denied that sometime in 2012, he sent his son's wife to borrow the car. He said that he sold the vehicle for two hundred and eighty thousand dollars ($280,000.00).

ANALYSIS

[139] There has been no documentary evidence adduced by either of the parties to prove the existence and/or cost of this vehicle. Equally, the court is unclear as to when the vehicle was purchased and/ or when it was sold. Both parties do

however agree, that the vehicle did exist and was sold by the defendant and this evidence is accepted.

[140] This court also accepts too that the vehicle was being used by the claimant to transport the parties' children to school and this certainly would have made transportation more convenient for the claimant and the children. The claimant may also have incurred vehicle related expenses during the time she had the vehicle. The date of the vehicle's purchase is unknown but it is clear from the parties' evidence that during their marriage, even though separated, the car was utilized by the family and the claimant most likely contributed to its upkeep.

[141] Finally, the giving of the vehicle to the defendant's son and/or daughter-in-law, does not constitute the relinquishing of interests in the vehicle by the claimant. Further, this court finds that, because the defendant was of the view that the car was solely his property and that the claimant had stolen documents and money from his vault, he arranged to obtain the vehicle and sold it, in an effort to, reimburse himself. This he has admitted. In the circumstances, this court finds that the claimant is entitled to half of the proceeds which the defendant obtained from the sale of the car.

[142] One may wonder how it would be that property which previously existed but was sold during the course of the marriage can be the subject of an application. That property may no longer exist now, as is the state of affairs in the instant case. This court is however, empowered to dispose of interest in such a property. **S. 2** of the **PROSA** defines property as '…*any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled*'. Therefore, even though the car is no longer in the possession of the defendant, it remains property which is subject to the provisions of the **PROSA.**

[143] **S.11(3)** provides that:-'*A spouse may make an application to the Court in respect of any title, interest or rights to the property which had been in the possession or*

under the control of the other spouse but has ceased to be in the possession or under the control of that other spouse.' **S.11(4)** provides that –'*The Court may, on an application under subsection (3), make such order as it thinks just for the payment of a sum in respect of-*

(a) *money to which the application relates or the spouse's share thereof, as the case may be;*

(b) *the value of property to which the application relates or the spouse's interest therein, as the case may be,*

if the Court is satisfied that the property was in the possession of or under the control of the other spouse who has not made to the applicant, such payment or disposition in relation to the property as would have been appropriate in the circumstances.

S. 11(3)&(4) makes it clear that the claimant is entitled to claim an interest in the said vehicle and the court, so long as the standard of proof is satisfied, can order accordingly.

[144] **S. 23(2)** of the **PROSA** provides that- '*Where the Court makes an order directing one spouse to pay to the other spouse a sum of money, the Court may direct that payment be by a lump-sum payment or by instalments and either with or without security and otherwise in such manner and subject to such conditions as the Court thinks fit'.* This provision allows the Court to make an order for payment by instalments.

[145] In the circumstances, this court accepts that the vehicle was sold by the defendant for two hundred and eighty thousand dollars ($280,000.00) and accordingly, orders that the defendant pay to the claimant twenty thousand dollars ($20,000.00) per month for seven (7) months, commencing as of the last work day of each month, beginning with the last work day of next month. Those payments are to be made to the claimant through the claimant's attorney's office and will, in sum, total fifty percent (50%) of two hundred and eighty thousand

dollars ($280,000.00), which is: one hundred and forty thousand dollars ($140,000.00).

Furniture and Appliances

[146] The claimant stated that she was responsible for purchasing materials and buying furniture for the alleged family home. She exhibited two hire purchase agreements dated october 12, 2001 and december 18, 2002, respectively. Therein, she purchased a living room suite and Foster H-Shaped Buffet 'WhatN' (the court interprets this to be presumably that which is described in Jamaican business parlance, in the furniture industry, as a "What Not"). She claimed a hundred percent (100%) interest in the furniture and appliances in the house.

[147] The defendant did not challenge this aspect of the claimant's evidence. In the circumstances, this court finds that there is sufficient evidence of the purchase of the living room suite and Foster H-Shaped Buffet 'WhatN'. This is also matrimonial property, undoubtedly acquired and used for the benefit of the family.

[148] The claimant would not therefore, be entitled to one hundred percent (100%) of the value of the said furniture and appliances, but rather, just as with the other matrimonial property, which she had claimed for fifty percent (50%) of, bearing in mind the factors set out in **s. 14** of the **PROSA**, it is only appropriate for the claimant to be awarded fifty per cent (50%) of the value of the said furniture and appliances.

[149] **S. 12(1)&(2)** of **PROSA** provides that:-

(1) *subject to sections 10 and 17 (2), the value of property to which an application under this Act relates shall be its value at the date the Order is made, unless the Court otherwise decides;*

(2) *A spouse's share in the property shall, subject to section 9, be determined as at the date on which the spouses ceased to have lived together as man and*

wife or to cohabit or if they have not so ceased, at the date of the application to the Court.

[150] Date of value of real and personal properties:

Finally, this court wishes to make it clear, that, since no application was made for the court to determine otherwise, valuation of the properties herein is to be as at the date of this Order.

CONCLUSION

[151] The credibility of the parties' evidence in this matter has been in many instances, less than desirable. Upon careful consideration and detailed review of said evidence, this court has concluded that the proprietary interest of the parties, is to be divided in accordance with the findings made above and the terms specified in the order below.

ORDERS:

[152] It is hereby declared, that:

(i) The claimant is entitled to fifty percent (50%) interest in lands situate at Old Bottom, Junction, in the parish of St. Elizabeth, being lands estimated to be one acre in size butting and bound on the north by parochial road and lands belonging to Basil Dixon, on the south by lands belonging to Quenston Dixon, on the east by lands belonging to Delorica Ebanks and on the west by lands belonging to Florence Dixon being in lands contained in common law indenture dated august 18, 2003, between Linval Powell and Howard Elliott and Quenston Dixon.

(ii) The claimant is entitled to fifty percent (50%) interest in unregistered lands situate at Tryall in the parish of St.

Elizabeth, being lands estimated to be half an acre with shop thereon.

(iii) The claimant is entitled to a fifty percent (50%) interest in the proceeds of the sale of the Toyota Mark II, in the sum of One Hundred and Forty Thousand Dollars ($140,000.00). It is to be paid in accordance with the terms of paragraph 145 of this judgment.

(iv) The claimant is entitled to fifty percent (50%) interest of the proceeds of the sale of the 1990 Volkswagen Motor Truck bearing registration number 8215 EK.

(v) The claimant is entitled to fifty percent (50%) interest in the furniture or the proceeds of the sale of the furniture specified at paragraph 148 of this judgment.

(vi) Valuations of the real and personal properties to which the claimant is entitled by this judgment, are to be done by a valuator agreed by the parties and the costs are to be borne equally by the parties.

(vii) If no valuator can be agreed within twenty-one (21) days of the order of this honourable court, then the valuation shall be done by a valuator appointed by the Registrar of this Court.

(viii) The defendant is given the first option to purchase the claimant's interest in the real properties to which she is entitled at the value for each outlined in the Valuation Report. The defendant is to exercise his option by paying a ten percent (10%) deposit in respect of each lot of land and signing of an agreement for sale within sixty (60) days of the date of the orders herein.

(ix) If the defendant fails to exercise his option to purchase any of the lots within the time stipulated, it is ordered that any lot for which he has not exercised an option be sold on the open market and the net proceeds of sale shall be divided equally between the parties.

(x) Taylor, Deacon & James, Attorneys-at-Law, are appointed as attorneys having carriage of sale in respect of the properties referred to in orders nos. (i) and (ii) above.

(xi) Attorneys' costs incurred in the transfer of the properties referred to in orders (i) and (ii) above are to be borne equally between the parties.

(xii) In the event that either party fails and/ or refuses to sign the agreement(s) for sale and/ or instrument(s) of transfer within a reasonable time after having been requested to do so by the attorney who has carriage of sale, the Registrar of this court is authorized to sign for and on behalf of the defaulting party.

(xiii) The defendant is given first option to purchase the claimant's fifty percent (50%) interest in Volkswagen Motor Truck bearing registration number 8215 EK to be exercised by the paying of the fifty percent (50%) purchase price within sixty (60) days of the date of this order.

(xiv) If the defendant fails to exercise his option to purchase the Volkswagen Motor Truck bearing registration number 8215 EK within the time stipulated, it be ordered that said vehicle be sold on the open market and the net proceeds of sale be divided equally between the parties.

(xv) Each party shall bear their own costs as regards this claim.

(xvi) All other reliefs sought by the claimant in this claim, are denied.

(xvii) The claimant shall file and serve this order.

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Hon. K. Anderson, J.