



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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2022FD01658**

<b>BETWEEN</b>	<b>YVONNE DOUGLAS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>CURTIS DOUGLAS</b>	<b>DEFENDANT</b>

**Matrimonial Property - Division of family home and other matrimonial property – Marriage of long duration'**

**Carol Davis for the Claimant**

**Kawayne Henry for the Defendant**

**Heard: 11<sup>th</sup> & 12<sup>th</sup> October, 2023; & 29<sup>th</sup> February, 2024**

**MILWOOD MOORE, J, Ag.**

**Background**

[1] The parties were married in 1986 and their union produced three children, all of whom are now adults. When married for nearly thirty years, according to the Claimant, the Defendant indicated to her that he had nothing left to give. With that, the Claimant admitted that both made efforts at restoring the marriage, however, the marriage was ultimately dissolved in June of 2022. Prior to that, they separated in 2021, when the Claimant left the matrimonial home after being held up by gunmen who were reportedly asking for the Defendant. Mr. Douglas had spent most of his working life with CARIMED, while Mrs. Douglas was a talented hairdresser. She worked for other entities until the couple opened their own salon business later in the marriage which was operated by Mrs. Douglas.

[2] Within a year of the divorce in April of 2022, the Claimant filed a Fixed Date Claim form, by which she seeks orders from the Court that she is entitled to a 50% share in four items of property which were acquired during the marriage. This Court therefore has jurisdiction under the *Property Rights of Spouses Act*, to entertain the Claimant's application for division of property.

[3] The items of property were:

- Property known as 684 New Town Braeton, Greater Portmore in the parish of St. Catherine and registered at Volume 1067 Folio 849, purchased in 1995.
- ALL THAT PARCEL OF LAND known as strata lot 4 Number 1½ Downer Avenue, Kingston 5, St. Andrew and registered at Volume 1293 Folio 241, purchased in 2002.
- ALL THAT PARCEL OF LAND KNOWN AS WAUGH HILL in the parish of St. Catherine measuring approximately 1151.9 square feet, being land referred to in survey report P.E. 386995 by Vernon A. Kentish Commissioned Land Surveyor, purchased in 2015
- 1996 ISUZU 5 Ton truck bearing registration 5717, purchased in or around 2019.

[4] The first mentioned property consists of a house and land and represents the residence of the parties throughout the marriage. The second property is a commercial unit which was previously the location of Douglas Hair Skin & Body Care Co. Ltd., prior to its closure. The said property is the location of the Claimant's currently operated salon business. The property mentioned at the third item as Waugh Hill, consists of unregistered land only.

[5] In addition, the Claimant seeks an order from this Court that the Defendant is to pay to the Claimant \$500,000.00, being the amount collected by him for the sale of a Nissan Tiida motor car, which was owned by the Claimant.

## **Family Home**

- [6] The Court finds that the house at Braeton was indeed the family home and that it was purchased jointly by the parties and that it was indeed the family home. The Defendant paid the mortgage and both parties contributed to the extension, improvement and furnishing of the home. Additionally, the Claimant and Defendant, both made significant non-financial contributions to the home and general life of the family. The Court in this regard accepts the evidence from both parties. While Mrs. Douglas had primary responsibility for care of the children of the marriage and most of the domestic chores, as it relates to laundry, Mrs. Douglas washed while Mr. Douglas did most of the ironing for the family.

## **The Law**

### **The Property Rights of Spouses Act**

*Section 2(1) defines the family home to mean:*

*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;*

*Section 6 of the Act addresses the entitlement to the family home and states:*

*(1)*

- a) 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-*

- b) On the grant of a decree of dissolution of a marriage or the termination of cohabitation;*
- c) On the grant of a decrees of nullity of marriage;*
- d) Where a husband and wife have separated and there is no likelihood of reconciliation.*

*(2) Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one-half of the family home.*

[7] The legislation therefore raises as the starting point, that each spouse shall be entitled to one-half share of the family home. However, an interested party is entitled to apply to the Court to vary this equal share rule. The application need not be made formally and in the case at bar, the Defendant has made an application for the variation based on statements made in his Affidavit. Section 7 of the Act is instructive in this regard. It provides as follows:

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

- (a) that the family home was inherited by one spouse;*
- (b) that the family home was already owned by one spouse at the time of the marriage or the beginning of the cohabitation;*
- (c) that the marriage is of short duration.*

### **Section 13 PROSA**

*13.-(1) A spouse shall be entitled to apply to the Court for a division of property-*

- (a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or*

- (b) *on the grant of a decree of nullity of marriage; or*
  - (c) *where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or*
  - (d) *where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.*
- (2) *An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment of marriage, or separation or such longer period as the Court may allow after hearing the applicant*
- (3) *For the purposes of subsection (1) (a) and (b) and section 14 the definition of "spouse" shall include a former spouse.*

#### **Section 14 PROSA**

- 14.--(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) (u), "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.*

That fairness to the parties in all the circumstances when dealing with entitlement to the family home upon the breakdown of marriage or cohabitation is well established.

- [8] In ***Annette Brown v Ophelia Brown [2010] JMCA Civ 12*** Fraser J, D., referred to the words of Morrison, JA as he then was, in highlighting the special treatment accorded to the family home by the legislature. It was stated that

***“Because it was thought that the matrimonial home called for special consideration, as it was in most cases the principal asset of the parties, as well as the family home, the committee recommended that the legislation should provide for equal ownership of the matrimonial home between the spouses, subject to provisions to be made for exceptional cases.”***

- [9] Quite often and perhaps understandably, upon the breakdown of the marriage or union, the essence of what the partnership represented can be easily forgot. Courts called upon to adjudicate thus find it necessary to offer the reminder which is best stated in ***Graham v Graham***<sup>1</sup> where in delivering her decision McDonald-Bishop, J as she then was, quoted from the words of Lord Nicholls of Birkenhead in ***Miller v Miller; McFarlane v McFarlane [2006] 2 AC 618*** -

***“So it has been said that marriage is a partnership of equals with the parties committing themselves to sharing their lives and living and working together for the benefit of the union, when the partnership ends, each is entitled to an equal share of the assets, unless there is good reason to the contrary, fairness requires no less.***

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<sup>1</sup> Claim No. 2006HCV03158

[10] The Court has recognized that where the Claimant wishes to have the court vary the equal share rule, that party bears the burden of proof to satisfy the court by cogent evidence that the application of the equal share rule would be unreasonable and unjust in the circumstances. The Court of course will have regard to the factors set out in section 7(1) and any other factors deemed appropriate.

[11] Of note, Brooks, JA, as he then was, stated in ***Carol Stewart v Lauriston Stewart***<sup>2</sup>that

***“If the Court is satisfied that a section 7 factor exists, it may then consider matters such as contribution and other circumstances in order to determine whether it would be unreasonable or unjust to apply the statutory rule. In considering whether the equality rule has been displaced, the court considering the application should not give greater weight to financial contribution to the marriage and the property, than to non-financial contribution.” Similarly, Brooks, JA stated “If the door is opened, by the existence of a section 7 factor, for the consideration of displacement of the statutory rule, then very cogent evidence would be required to satisfy the court that the rule should be displaced.”***

[12] In highlighting the words of McDonald-Bishop, J in ***Graham v. Graham***, Brooks JA, as he then was stated in ***Stewart v Stewart*** that the equal share rule may be displaced in circumstances where the court is of the view that justice demands it.

### **The Submissions The Braeton Property**

[13] Both parties agreed in their submissions to the Court, that this property constituted the family home. The issue related to their respective entitlements. The Claimant submitted that the Defendant is not entitled to any variation of the 50% share rule, as he failed to establish that the circumstances satisfied any of the qualifying criteria, set out in section 7 of the Act. The Claimant emphasized the evidence

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<sup>2</sup> [2013] JMCA Civ 47



which demonstrated that she made significant contribution to the family and to the improvement and extension of the Braeton property. According to her evidence, based on their agreement, the Defendant paid the mortgage, while she paid for extensions, furniture and several improvements which were necessary to accommodate the family. The Claimant asserts that the Court should award each party 50% with respect to the Braeton home. She has however also submitted that she has no objection, should the Defendant wish to purchase her ½ share.

- [14] The Defendant submitted to the contrary, that the equal share rule should be varied, as he not only shouldered the initial purchase, but also made all subsequent mortgage payments. Further, that he contributed to the extensions of the home, did some of the actual work himself, such as tiling and plumbing, as well as made significant non-financial contributions to the family. It was the Defendant's position that all this justified a variation of the equal share rule to allow him a more significant percentage share in the value of the family home than the Claimant.

#### **The Downer Avenue Property**

- [15] The Claimant submits that shop 41 ½ Downer Avenue should be determined to be owned 50% each by the Claimant and Defendant. Both parties agree that this property was purchased by them jointly and the mortgage financed by their joint contributions. The Claimant has expressed an interest in being given an option to purchase the Defendant's share of the property, which is to be used for the operation of her business.
- [16] The Defendant had also argued in written submissions that he is entitled to rent for the period in which the premises were occupied by the company Douglas Hair Skin and Body Care Ltd. The Claimant rightly submits in response, that the company is not a party to the proceedings and that as a result, no rent can be recovered in these proceedings. The Claimant further argued that the evidence disclosed that there was no agreement for rent and that none had been paid in the

twenty years over which the company occupied the premises. The Court accepted this to have been the position based on the evidence presented from both sides.

[17] The Defendant also submitted that he engaged in carrying out work as a handyman, doing many odd jobs at the property to make it better suited for the Claimant's salon and that this fact entitled him to a greater share of the property. This position was however not supported by the evidence, as cheques were presented to the Defendant in cross-examination which he identified as paid to him by the Claimant's business. While some cheques appeared to have constituted repayment of small loans to the Claimant, the Court accepts the evidence of the Claimant that several of the cheques represented payments to the Defendant for work done at the property.

[18] The Defendant also argued that for a period of time, since the parties separated, he visited the Downer Avenue property, only to find that the locks had been changed and he had no access. The Claimant admitted that the changing of the locks was action taken unilaterally by her without any notice to the Defendant as the joint owner of the property.

### **The Waugh Hill Property**

[19] The Claimant submits that though the Defendant alone purchased the property by paying the purchase price, there was an agreement between the parties that the property at Waugh Hill belonged to them both. According to the Claimant, the agreement was that initially the property would be used for farming purposes, but would later be used as their retirement home when the appropriate time came. The Claimant's evidence was that relying on this agreement, she worked on the farm twice per week and further that she paid for architectural drawings to be done for the retirement plan that was proposed. The Defendant conceded that he instructed the surveyor to put the Claimant's name on the survey plan for the Waugh Hill property. The plan names both parties as the persons for whom the survey was done.

[20] This is in contrast to the account given by the Defendant who maintained that he never agreed to any retirement home, and that the Claimant proceeded to obtain the architectural drawings without his consent or agreement. Further, that he did the farming of the property and any planting done by the Claimant was in respect of bougainvillea plants at the border of the property.

[21] The Claimant asks this Court to consider whether in addition to a share in the Waugh Hill property, she is also entitled to an account for 50% of profits said to have been received by the Defendant from that location.

### **ISUZU 5 Tonne Truck**

[22] The Claimant's evidence was that the Isuzu Truck was purchased by both Claimant and Defendant and that pursuant to an agreement, the Claimant paid \$200,000.00 as part of the deposit of \$400,000.00. The Defendant paid the other half and the truck was delivered to the parties. The full price was \$850,000.00. The arrangement was that the remaining \$450,000.00 would be paid out of the earnings from the truck, as facilitated by the vendor who had been a longstanding customer of the Defendant.

[23] The Defendant submits that he alone purchased the truck and that the \$200,000.00 from the Claimant was a loan. As submitted by the Claimant however, this loan was not in writing, no terms were indicated to the Court and though four years had passed, the "loan" still remains owing. This the Claimant says supports the submission that there was never a loan and that the parties jointly purchased the truck. Further, that the truck should be declared to be 50% owned by both the Claimant and Defendant.

[24] The Claimant also asks this Court to determine whether the Claimant is entitled to an account of the earning of the truck and 50% of the profits received by the Defendant.

**Whether the Claimant is entitled to be paid \$500,000.00 from the sale of the Tiida Motor car sold by the Defendant**

- [25] The Claimant submits that she purchased a Nissan TIIDA motor car and made all monthly payments for the relevant loan through which the transaction was financed. She further submits that the Defendant ought to repay the amount of \$500,000.00, being the amount for which he sold the motor vehicle which was owned by her. According to the Claimant, she did not agree for the Defendant to retain the proceeds of the sale for his own benefit. From the Claimant's perspective, it seems this position is in no way affected by her acknowledged receipt of a Suzuki Swift Motor car which was gifted to her by the daughter shared between herself and the Defendant. That Suzuki motor vehicle was bought by the Defendant alone.

**Discussion and Analysis**

**The Braeton property**

- [26] It is not in dispute that the Braeton property was indeed the family home, shared by the parties throughout the marriage, fitting squarely within the definition provided by section 2 of the Act. None of the factors set out in section 7 of the Act exist in the instant case, which "would open the door" as described by Brooks, JA in *Stewart* supra, to an application for variation of the equal share rule.
- [27] On the evidence, as argued by the Claimant, it was the intention of the parties that the property be jointly owned and hence it was registered in their joint names. Subsequent to the purchase, both parties made significant contributions to the development of the property.
- [28] This Court has not been moved by any aspect of the evidence to the conclusion that justice demands any variation of the equal share rule. The marriage was approximately 36 years in duration and the family home was not owned by either of the parties prior to their union as man and wife. Nor was it a gift intended to benefit either party alone.

- [29] The evidence of one of the more refreshingly objective witnesses, daughter of the parties, painted a picture of the Claimant and Defendant as persons who were working together for the good of their family, sharing duties and responsibilities to the best of their abilities. The Claimant herself testified and the Court accepts that she would use her earnings towards meeting the needs of the family. All speaking to her general contribution to the family and the home.

### **Maintenance Post Separation**

- [30] The Defendant has quite correctly raised as an important point, the fact that he has incurred the cost of maintaining the property since the separation, especially as regards addressing termite infestation. As joint owners of the property, given the breakdown of the marriage, it is only fair and just that these expenses should be borne equally by the parties, though not altering the respective proprietary interests, as reflected in the orders below.
- [31] In the circumstances and having considered all the evidence that has been led, this Court is satisfied that justice demands that the family home be shared equally between the parties. I am not convinced that an application of the equal share rule to the case at bar, has been shown to be “unreasonable or unjust” in any way. In light of the interest expressed by the Defendant alone, he should be given the first option to purchase the Defendant’s share in the property.

### **The Remaining Property to be Divided**

- [32] The Court has been mindful that the remaining property for which the Claimant has applied for a division as this Court deems just in the circumstances, falls within the category of “*other property*” under the PROSA regime. The factors listed in section 14 have therefore formed the backdrop for the Court’s consideration and assessment as to the proportion for the division which is suitable in each instance, having regard to the evidence which has been presented as also the overall circumstances of the case. The Court therefore considered the contributions made to the acquisition of each item of property, financial and otherwise, as well as the

fact that the Court has determined there is a family home, which is to be divided for both parties. Due regard was given to the fact that this marriage was of a considerably long duration, spanning over thirty years, during which time the Claimant bore three children, for whom she provided great care. In fact, the Court notes that the Claimant testified to the continued care she renders to the twin grandchildren of the parties, whose mother perished early in their lives and whose father, the couple's son, seems to suffer from other challenges which limit his earning potential. These grandchildren who are minors would certainly in the mind of this Court constitute dependants, particularly in circumstances where on the evidence, there does not appear to be anyone else capable of satisfactorily attending to their care and upbringing.

[33] For the part of the Defendant, it was submitted that he gave greater non-financial contributions to domestic matters, to include child care and ironing of the family's clothing as well as hiring a housekeeper for assistance from time to time. This it was said enabled the Claimant to pursue her ambitions in terms of the operation of her salon and her doing dance lessons.

[34] It is however, the conclusion of this Court, that on the evidence, the Claimant remained the primary force as caregiver to her children and bearing the greater responsibility for the home. While the Claimant washed, the Defendant ironed, which was said to be a preference of his, in contrast to the Claimant. The evidence of both the daughter of the couple and the nephew of the Defendant spoke to the effectiveness of the Claimant in this regard. There was nothing to suggest as was submitted, that the Defendant bore the overwhelming share of household responsibilities during the marriage. The Court accepts that the Claimant's dance classes were a recommendation based on medical challenges she faced. More importantly, the Court also accepts the evidence of the Claimant that she spent much of her earnings from the salon on groceries and other matters relating to the family and household.

- [35] In addition, both made non-financial contribution to the family, by way of caring for the children and collaborating in the performance of domestic chores. The Court noted the Defendant's valiant fight to convey that it was he who did the majority of the domestic duties, while the Claimant was running the business of her choice.
- [36] This Court was however unconvinced, as the evidence demonstrated that both parties contributed to their union and family. The Defendant's witness, who this Court found highly credible, vividly described the Claimant carrying the bulk of domestic responsibilities. This witness it was who gave useful evidence of how the Claimant would assist the children with homework, while attending to customers in the salon. Both parties clearly were committed to their union and working together for the overall good of their family.
- [37] The Court formed the view that the parties in what would have been referred to as the best of times of their marriage, had a formidable partnership, in which they pooled their resources in significant ways and sought to compliment and support each other as they cared for their growing family. It is in this context that the evidence has been analysed irrespective of the differences of opinion which now emerge understandably, in light of the breakdown of the union.

**Whether it would be fair and just for Shop 4, 1 ½ Downer Avenue to be shared equally**

- [38] The Claimant has asked that both the Claimant and Defendant be awarded an equal interest in the Downer Avenue Property. This property was purchased jointly by the parties and an intention towards joint ownership is certainly suggested by the registration of both parties on the certificate of title.
- [39] There does not appear to be any dispute as to the joint ownership of this commercial unit. The divergence of views seems to lie in the Defendant's claim for rental from the company which previously occupied the unit but which was closed prior to these proceedings. As indicated by the Claimant, there was never an agreement for payment of rent by the company to the Defendant. Further that any claim for rental should be made to the company, which is not a party to these

proceedings. The Court accepts the evidence of the Claimant that there was no agreement for the payment of rent.

### **Rental Income from subletting Downer Avenue**

[40] The Defendant claimed that the Claimant rented a portion of the jointly owned property at Downer Avenue and that having never benefitted from such rental, he now seeks to claim his portion to date. The Court however accepts the evidence of the Claimant that based on an agreement between the parties, the sums collected as rental income from the Downer Avenue property, were to be used for the maintenance of the couple's twin grandchildren, who appear to be virtually the sole responsibility of the Claimant. There is therefore no order made for any accounting or compensation of rental in this respect.

[41] This Court finds that each party is entitled to a 50% share in the value of the unit. It is also considered that justice demands that given the fact that the Claimant operates a business at this location, it is appropriate for her to be given the first option to purchase the Defendant's share in the value of the property.

### **Period in which the Defendant was Denied Access**

[42] The Court takes careful note that on the submission of the Defendant, he was dispossessed of the Downer Avenue property for a period during which the Claimant changed locks without notice being given to him or a set of keys. He was therefore effectively denied access to jointly owned property. This is the case notwithstanding the Claimant's explanation that she was concerned for security reasons based on "*strange things*" that had been happening at the salon and equally with misgivings she harboured over the associations of the Defendant at the time. The Claimant is therefore to compensate the Defendant with his share of rental for the Downer Avenue property from the period of the dispossession to present.



**Whether the property known as Waugh Hill being the property contained in the survey No. PE 386995 by Commissioned Land Surveyor Vernon Kentish should be divided 50% to the Claimant and 50% to the Defendant**

- [43] This was unregistered land and the Court therefore has to examine other indicators to include the conduct of the parties, in order to determine what are the appropriate proportions for the division of property and what was the intention of the parties.
- [44] The property was surveyed by Mr. Vernon Kentish, a commissioned Land Surveyor on behalf of Mr. and Mrs. Douglas. Though no information had been initially provided as to the purchase price of the land, when purchased in 2015, the parties through their attorneys, indicated when asked by the Court, *that it was valued at between 950,000.00 and 1,050,000.00.*
- [45] The Claimant seeks to rely on the principles of proprietary estoppel to ground her claim for a fifty per cent share in the value of the Waugh Hill property. She contends that while she made no contribution to the purchase price of the property, there was an agreement between herself and the Defendant that the land was purchased on behalf of them both and was intended to be owned jointly by them. According to the Claimant, she relied on the agreement between herself and her husband that the Waugh Hill land was to be jointly owned. According to her evidence the intention was that the land would be used as a retirement home for both parties when that time came. Mrs. Douglas claims that she relied on this agreement to her detriment, in that she paid for the architectural drawings for the land. Further, that until the retirement home became a reality, the land was to be used as a farm, whereby the Claimant states that she purchased and planted permanent crops. Further, that herself and the Defendant worked without pay on the farm at least twice per week and sometimes more.
- [46] The Defendant stoutly denies that there was any agreement that the Waugh Hill property be jointly owned by himself and the Claimant. He says that he purchased the Waugh Hill land by himself. He says that he placed the Claimant's name on the tax papers for convenience, in the event that anything happened to him. He also had her name placed on the survey. While admitting that there was some

discussion about the land being used as a retirement home, the Defendant testified that he did not agree to this and in evidence, he stated several reasons why he didn't.

[47] It is also the evidence of Mr. Douglas, that he alone paid for the material and labour cost for the fencing of the Waugh Hill property. He indeed provided details as to the sources from which he purchased the posts and fencing materials. The Defendant in fact, agreed that the Claimant planted starfruit and oranges but that many of these died. The Court further accepts the Defendant's evidence that shortly after purchasing the property, he asked the vendor what crops would do well on the land and that based on the recommendation received, he alone purchased tools, equipment and seeds, with which he started to plant cabbage. The Court further accepts the evidence of the Defendant that due to a glut on the market, he lost after planting cabbages and that this was therefore his only attempt at commercial farming. That thereafter, he planted ground provisions for the use of the household, excesses were given away and some were sold by the Claimant.

[48] The Claimant seeks an award of fifty per cent of the value of the Waugh Hill property and an account for the profits she claimed have been retained by the Defendant, who has been working the farm for his own use.

[49] Having carefully observed the demeanour of both parties and their witnesses, the Court accepts that on the evidence presented, the Waugh Hill property was purchased exclusively by the Defendant. That there were discussions between the parties about the way the land was to be utilized, but what is clear is that at some point, perhaps not unrelated to the general breakdown of their relationship, the Defendant was not committed to this idea of the couple building a retirement home on the property. The Court also accepts that the decision was made to use the land for farming of some basic cash crops. The Court does not form the view that this was to be a general profit making machinery but for the most part, what seems to have been a passion of Mr. Douglas. Though the parties visited the property and engaged in planting together in the better days of their relationship, the Court accepts that as stated by them both, it was the Defendant who was the

real farmer. As shown from the evidence, the Claimant had very little knowledge of farming both in general and more specific to the details of the crops planted at Waugh Hill.

[50] As happens on many occasions, the vicissitudes of life derail what might have been expected once upon a time. The Court considers it particularly important that no work had actually been done towards any building on the property, save and except a small shed made of ply board, which provided a dignified means for the parties to relieve themselves when visiting.

[51] Notwithstanding these findings, the Court does accept that the Claimant expended sums in order to procure architectural drawings for the plans that were at some stage discussed. Both witnesses called by each party had some knowledge of the Waugh Hill property and the plans that existed.

[52] In light of all this, this Court holds that taking into consideration the length of the marriage, which spanned in excess of three decades, the fact that the Claimant expended sums for architectural drawings, purchase of plants and small fruits crops, invested her time in some planting activity at Waugh Hill, the parties are entitled to a share in the value of the property, with 90% of the value to the Defendant and 10% to the Claimant. The Court finds no basis on which to order that the Defendant should provide an account of any profits generated through the basic farming activity that was done on the Waugh Hill property over the relatively short period of time. The Court does not find that there was any common intention held by the parties, which would justify such an order being made.

**Whether the respective interest of the parties in Isuzu 5 Ton Truck be 50% to the Claimant and 50% to the Defendant**

[53] The truck was purchased in 2019 from an associate of the Defendant. There is no dispute that the purchase price was \$850,000.00, which was financed through an arrangement whereby a down payment of \$400,000.00 was to be paid from the equal contributions of the parties to the tune of \$200,000.00. The balance of the purchase price was to be financed from the earnings of the truck.

- [54] The Claimant's evidence is that she and the Defendant purchased the truck together. She indicates that they each paid \$200,000.00 toward the deposit and possession of the truck when delivered.
- [55] The Defendant admits that both himself and the Claimant paid \$200,000.00 towards the deposit for the purchase price of the truck, however, he says that the sum paid by the Claimant was merely a loan to him. According to the Claimant, other than his saying so, no evidence of this loan was provided to the Court and more importantly, the loan amount has not been repaid to date.
- [56] The Claimant seeks an order that the truck is owned by the parties in equal shares and further, seeks an account of the income and expenditure of the truck, and an order that 50% of the profits be paid to her. The Claimant further contends that the truck was put to work and all the proceeds paid to the Defendant, thus depriving her of any benefit from an asset of which she submits she is part owner.
- [57] This Court is satisfied on a balance of probabilities that the 200,000.00 contributed to the purchase price by the Claimant was not a loan, but a joint investment between the parties, attaching to it a legitimate expectation on the part of the Claimant, that she would have benefitted from the earnings of the truck. The Defendant testified and the court accepts that there were periods of interruption where the truck was underutilized due to the event of the COVID pandemic as well as deterioration which required significant repairs.
- [58] The Court therefore finds that the parties are equally entitled to a 50% share in the value of the truck, which should be sold and the proceeds divided accordingly. Further, that within thirty days of this order, the Defendant is to provide a detailed statement of account to indicate the income and expenditure of the truck to date. As stated previously, the Claimant is entitled to 50% share of the net earnings of the truck.

### **Tiida Motor Car**

- [59] The Claimant submits that she purchased a TIIDA motor car from her own funds, although it was registered in the name of the Defendant, who she says sold the said motor vehicle for \$500,000.00 and kept the proceeds for himself. The Claimant therefore claims that the Defendant should now repay her the sum of \$500,000.00.
- [60] The Defendant denies that any money is owed to the Claimant. His evidence was that he was the one who purchased all the cars for the family, financed with loans which he negotiated himself. It was acknowledged that neither of the parties have produced any documentation with respect to the cars or details of their purchase. The Defendant does however admit that the TIIDA motor car was sold for 500,000.00. The Defendant indicates that he gave the Claimant a Suzuki Swift motor vehicle which is valued more than twice the value of the TIIDA motor car. While the Claimant testified that the motor vehicle was given to her, by her daughter, it was also stated that the Defendant provided another motor vehicle for the use of his daughter. The fact is that from the outset, the Douglas's daughter had no motor vehicle of her own to give to the Claimant or anyone else. The vehicle was purchased by Mr. Douglas so it is he who facilitated that gift to the Claimant. To underscore the point, the Defendant ultimately transferred the Suzuki Swift motor car into the name of the Claimant as its registered owner, making his intention clear.
- [61] It seems to this Court that in all the circumstances, the Defendant would have duly reimbursed the Claimant the value of her \$500,000.00 given the comparatively greater value of the Suzuki Swift motor vehicle which he has in turn given to her. There is absolutely no reasonable basis for any further payment in respect of the TIIDA motorcar. Any indebtedness which existed has been more than fully cleared by the Defendant.

[62] The Court therefore orders:

**Braeton Property**

1. The Claimant and Defendant are each entitled to a 50% share in the family home.
2. A valuation is to be carried out by an agreed valuator and the cost of the valuation is to be borne by both parties.
3. If the parties fail to agree to a valuator, the Registrar of the Supreme Court is empowered to appoint a valuator and this appointment will be binding on the parties.
4. Within 30 days of the valuation being received, the Defendant is to indicate whether he will exercise the first option to purchase the Claimant's 50% share of the property.
5. If the Defendant fails to exercise the first option within 60 days of the date of this order, the property should be sold and the proceeds divided equally between the parties.
6. The Registrar of the Supreme Court is to take an accounting based on the sums paid by the Defendant for maintenance of the property since the separation and half of this sum is to be refunded to him by the Claimant.
7. The Claimant's Attorney-at-Law is to have carriage of sale.

**Downer Avenue Property**

8. Each party is entitled to a 50% share in the value of the commercial unit.

9. The Registrar of the Supreme Court is to take an accounting of the rental for the period during which the Claimant had exclusive use and occupation of the premises, having denied the Defendant access to the jointly owned property, ½ of which sum is to be paid to the Defendant.
10. A valuation should be carried out by an agreed valuator and the cost of the valuation is to be borne equally by the Claimant and Defendant.
11. Within 30 days of the valuation being received, the Claimant is to indicate whether she will exercise the first option to purchase the Defendant's 50% share of the property.
12. If the parties fail to agree to a valuator, the Registrar of the Supreme Court is empowered to appoint a valuator and this appointment will be binding on the parties.
13. If the Claimant fails to exercise the first option within 60 days of the date of this order, the property should be sold and the proceeds divided equally between the parties.
14. The Defendant's Attorney-at-Law is to have carriage of sale.

### **Waugh Hill Property**

15. A valuation is to be carried out by an agreed valuator and the cost of the valuation is to be borne equally by the Claimant and Defendant.
16. If the parties fail to agree to a valuator, the Registrar of the Supreme Court is empowered to appoint a valuator and this appointment will be binding on the parties.

17. The Claimant and Defendant are each entitled to the property in the proportions: 90% of the value to the Defendant and 10% to the Claimant.

#### **5 Tonne ISUZU Truck**

18. The Claimant and Defendant are each entitled to 50% share in the value of the truck which must be sold and the proceeds divided equally.
19. The truck must be valued by an agreed valuator and the cost of the valuation is to be borne equally by both parties.
20. If the parties fail to agree to a valuator, the Registrar of the Supreme Court is empowered to appoint a valuator and this appointment will be binding on the parties.
21. No order as to costs.
22. The Registrar of the Supreme Court is empowered to sign any and all documents to give effect to any or all orders made herein if any of the parties is unable or unwilling to do so.
23. Liberty to apply.
24. The Claimant's Attorney-at-Law is to prepare, file and serve the formal order.