

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008 HCV 00410

BETWEEN EVELYN WEBBE FREEMAN-WYNTER PETITIONER
A N D LENWARD REGINALD WYNTER RESPONDENT

Saverna Chambers for Petitioner/Applicant

Debayo Adedipe for Respondent instructed by Clarke, Nembhard &
Company

Heard – the 7th day of January 2009

**The Property (Rights of Spouses) Act – Application for
Extension of Time written to bring action – Time within which
Application to be made**

Cor.: Rattray, J

1. Evelyn Freeman-Wynter, a native of Nevis migrated to England, where she later met a Jamaican, Lenward Wynter in the early 1960's. They eventually were married on the 4th July, 1992 in the district of Leeds in England.
2. By way of Fixed Date Claim Form filed on the 28th January, 2008, Mrs. Freeman-Wynter applied pursuant to the Property (Rights of Spouses) Act, for, inter alia, an Order that the parties own property at Thornton District in the parish of St. Elizabeth in equal shares of

50% each. The hearing of this Fixed Date Claim Form is set for the 17th February, 2009.

3. However, before this Court Mrs. Freeman-Wynter brought a Notice of Application for Court Orders dated the 19th December, 2008 seeking the following Orders:

1. (i) That the Applicant/Claimant be granted leave to proceed with her application (stated in the Fixed Date Claim Form...) under the Property (Rights of Spouses) Act 2004 although one (1) year has passed since the separation of the parties.

(ii) Such further or other relief as may be just.

4. In her Affidavit in Support, she stated that the parties were separated in April, 2005 and although they continue to live in the family home at Thornton District in the parish of St. Elizabeth, they live separate lives.

5. She went on to state that she filed a Petition for Dissolution of Marriage on the 31st August, 2007 and in his Acknowledgement of Service, the Respondent Lenward Wynter, admitted that the marriage had broken down irretrievably and there was no reasonable likelihood of cohabitation being resumed. To date however, no Decree Nisi nor Decree Absolute has been granted.

6. The issue in this matter is whether the wording of Section 13(2) of The Property (Rights of Spouses) Act obliges the Applicant, who

seeks an extension of the twelve (12) month period within which to bring an application for division of property, to make that application before that time frame expires. The relevant portions of Section 13 reads: -

“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) ...

(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.”

7. On the face of Section 13(2), an Applicant has a twelve (12) month period after dissolution of marriage, termination of cohabitation, annulment of marriage or separation to make an application for division of property under that statute. That subsection however grants the Court a discretion to extend that twelve (12) month period, after hearing the Applicant.

8. I am of the view that on a literal interpretation of that subsection, there is no absolute obligation on the Applicant to bring the application for extension of time within which to bring an application for division of property, before the expiry of the stipulated twelve (12) month period. If that was the intention of the legislature, it could and would have stated this clearly. I am satisfied that the words "or such longer period as the Court may allow after hearing the applicant" in Section 13(2), means that such hearing could take place after the twelve (12) month period referred to therein.
9. It is of course for the party who is out of time to satisfy the Court that proper circumstances exist for the exercise of the Court's discretion in his or her favour. The Affidavit of the Petitioner has not been challenged by the Respondent and I am satisfied on the evidence before me that the Order sought ought to be granted.
10. Order in terms of paragraph 1(i) of Notice of Application for Court Orders dated December 19, 2008. Leave to Appeal refused.

Richard S.