



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013HCV05156

**IN THE MATTER OF SECTION 2 OF
THE INTESTATE'S ESTATES AND
PROPERTY CHARGES ACT**

AND

**IN THE MATTER OF AN
APPLICATION BY OLIVE ADAMS
FOR A DECLARATION THAT SHE
WAS THE SPOUSE OF THE
DECEASED KNOWN AS DEXTER
OGILVIE HARRIOTT, WHO DIED ON
THE 13TH DAY OF April 2013**

AND

**IN THE MATTER OF SECTION 2 OF
THE INTESTATE'S ESTATES AND
PROPERTY CHARGES ACT**

Intestates Estates & Property Charges Act - Application to be declared a Spouse - Deceased lived with Applicant during the week but stayed elsewhere on weekends - Whether fact of another intimate relationship prevents Applicant being declared spouse - Whether Applicant a housekeeper - Whether Applicant lived and cohabited with him as his wife.

**David Clarke instructed by the Kingston Legal Aid Clinic for Olive Adams
(Applicant)**

**Oraina Lawrence instructed by Kinghorn & Kinghorn for Kenesha Harriott
(Objector)**

IN CHAMBERS

HEARD: 29th October, 18th November, 19th November, 3rd December, 2015 & 29th January 2016

BATTS J

- [1] In this matter the applicant Olive Adams, claims to be the spouse of one Dexter Ogilvie Harriott who is now deceased. The application is opposed by his daughter Kenesha Harriott who is supported evidentially by her uncle, her fiancée, another female who claims also to have been on intimate terms with the deceased and two others being a neighbour and a co-worker of the deceased.
- [2] Miss Olive Adams relied on her affidavits dated 23rd August, 2013 and 7th April 2013. She was allowed also to give further oral evidence provided it was a response to the other Affidavits filed. Her claim is supported by the evidence of one witness who said he was her neighbour. .
- [3] Miss Adams said she is an ancillary worker. She was 53 years of age in 2013. Her intimate relationship with Dexter Ogilvie Harriott began in 1983. They lived together until the time of his death on the 13th April 2013. She alleges that they lived in a common law relationship which was open and known by family and friends. She said they commenced living together in 1990. She knew Kenesha Harriott as Dexter Harriott's daughter. Kenesha was then a baby who lived at 27 Sackville Road. Kenesha's mother was alive when she first met Kenesha. She states,

“Kenesha mother died. I ask Mr. Harriott for me to take Kenesha because he was the one that rent where I was living. He said that Miss Yvonne Forbes who work where he is working have 3 small children and have a bigger house so he felt best if Kenesha go to Miss Yvonne Forbes.”

Mr. Harriott however continued living at 27 Sackville Road. She said that he sometimes stayed with her and at other times, they both slept at Sackville Road, but “not regular.”

[4] As regards the acquisition of a Portmore house jointly by Miss Forbes and Mr. Harriott, she said,

“Because Miss Forbes got the house in Portmore. But Mr. Harriott said when Miss Forbes got it she could not pay for it. Come up with deposit so he Mr. Harriott put $\frac{3}{4}$ of the payment. He told me because Kenesha was a baby and he did not have money to pay Mrs. Forbes to take care of Kenesha so they (Harriott and Forbes) join together and purchase the quad, a one bedroom house.”

Miss Adams deponed further that she lived at the Portmore house from 2004 until the present. Herself and Mr. Harriott lived there together until he died. In response to the question whether Mr. Harriott and Miss Forbes were on intimate terms she responded,

“Mr. Harriott went around there Miss Forbes house but I don’t know what he did when he went around there. If they were having a relationship it would be in the 1990’s because Debbie father was living there with Miss Forbes from Kenesha living there.”

[5] Interestingly, and somewhat inconsistently with her affidavit she states that she was intimately involved with Mr. Harriott since 1979. At that time she was living at King Street. It was then she had her “first encounter” with Mr. Harriott. She stated “I don’t know why Kenesha putting me down like I am nobody.” She asserted that Miss Forbes was aware of her relationship because she had come to Sackville and seen Mr. Harriott and herself in the one room. The first occasion, on which Miss Forbes visited, it was to support Mr. Harriott after they had stolen his television. Miss Forbes came with Kenesha and Debbie. They saw her there and told her good night.

[6] When asked about the addition to the house in Portmore Miss Adams stated that this occurred because the owner of the house at Sackville Road decided to sell it but Mr. Harriott did not want to buy it. He said that he was going to put on an

addition to the house in Portmore and move there to live. She said he borrowed \$400,000 to do that addition. She said when they moved to Portmore Mr. Harriott stayed there with her every day of the week.

[7] The witness stated that Mr. Harriott's name is on her bank account and OMNI health but provided no documentary proof of that. She explained that Mr. Harriott and Miss Forbes were in business together having to do with cooking and sale of food. Miss Forbes' address at Truman was used for his mail because they used to steal mail from his letterbox at Sackville Road.

[8] When cross-examined Miss Adams was asked about an inconsistency, that is were they living together at Sackville Road or did she only visit. She responded,

"I went to Sackville in 1990 and we lived there from then."

She was asked about her contribution to the Portmore House,

"Q: At that time did you contribute anything to the deposit

A: Not to deposit but when we move he was finding it difficult to put in windows and doors and I did. Miss Forbes don't put a cent."

[9] The witness was asked about the Health Card allegedly held with Mr. Harriott. She stated that it was cancelled because she was told that since he was deceased it could not be used. She therefore went down to Blue Cross and his name was removed. The witness stated that Kenesha's mother died around 1987 or 1988. She met Kenesha before her mother died. Kenesha was then around 3 years old. Kenesha was "12, 13 or 14" years old when she got to know Miss Adams. She called her "Olive". Kenesha called Miss Forbes "mommy." It was suggested that while in Portmore she occupied the back room and Mr. Harriott the front room. This was stoutly denied.

[10] She admitted owning a property in Trelawny. Mr. Harriott promised to help her complete a house on it. It was suggested that she was allowed to stay in Portmore to facilitate the construction in Trelawny. This was denied.

[11] An interesting exchange occurred,

“Q: Where were you when he died.”

A: The Saturday morning I woke up prepare his meal as we plan to go funeral. I left to go to a funeral in Hanover the Saturday. He was outside washing dog pen. The Friday he said he was not going but told me that Dulcie going feel a - way. He was going to do a work.”

[12] The witness also explained that she was asked to assist with mortgage and bills. She did this not just from her pay but her “partner” draw as well as from proceeds of sale of things sent to her in “barrel.” She said some Christmases he would stay or other times go around to Truman Avenue that is to where Miss Yvonne Forbes and his daughter lived,

“Q: When he go to Truman at Christmas did you go with him?

A: They did not invite me so I did not go. My family have dinner and I cook for them.”

[13] Ms. Adams stated that on the night he died she kept “a nigh night” in Portmore. She was asked where was he buried, and responded,

“I don’t know what Kenesha did with the ashes. Kenesha block me out. I went to the funeral because I love him. He was cremated. He was to bury in Manchester but I don’t know if they did it.”

[14] In the course of cross examination another telling exchange occurred,

“Q: You were given permission by Miss Forbes and Harriott to stay there until you could build your house.

A: Why Miss Forbes a young lady would let a young lady live with her young man?

Q: Suggest Miss Forbes allowed you to stay because of friendship between you and Mr. Harriott and her.

A: Not true. Miss Forbes is deacon in church I expect better.”

[15] At the close of her evidence the applicant applied for an adjournment because the next witness was absent. I acceded to the request after hearing submissions and made the following orders;

- a. Adjourned to the 18th and 19th November, 2015
- b. Para 4 of the supplemental affidavit of Olive Adams struck out and the exhibits in that Paragraph disregarded
- c. Parties to file and exchange affidavits of any further witness to be called on or before the 6th November 2015.
- d. ½ days costs to the Respondent in any event
- e. Respondents attorney to prepare file and serve this Order.

[16] At the resumption on 18th November 2015 two new affidavits had been filed on behalf of the Respondent Kenesha Harriott who is the objector. Mr. Howard James was called to give evidence on behalf of Miss Adams. His affidavit of the 8th April, 2014 stood as his Evidence in Chief. He stated that he was a neighbour of Miss Adams and Mr. Harriott, her common law spouse. He was employed as an Assistant Registrar of the University of the West Indies. The couple he says were both invited to his wedding in May 2012. He had seen them together on numerous occasions and observed the “beautiful” relationship they shared.

[17] When cross-examined he did not vary much from this theme. He was asked what he observed to lead to a conclusion they were in a spousal relationship. His response,

“A: When he moved into dwelling they both came. I observe them. Cooking, washing. She cook for him. I spent time with him. I would be at the gate. He had outside garden. I hear Miss Olive call him for dinner and she wash his clothes.

J: She call him how

A: ‘Mr. Harriott’, ‘Dexter’, or ‘Harriott’, is a mixture of names.”

[18] The following very telling exchange occurred:

“Q: I suggest you never been introduced to Mr. Harriott’s daughter

A: I beg to disagree. I discovered something happened to him. took him to where she live. So myself and a neighbour drove my car in search of his daughter in Richmond Park. So because on a previous occasion I had left him at his daughter’s house. So when I went there she was not there. At university graduation I seated him and he introduced me to her at the graduation.

The witness gave a graphic account of the circumstances under which Mr. Harriott was found dead in the house in Portmore.

[19] The applicant (Miss Adams) closed her case. The objector’s first witness was Mr. Linton Harriott. The objector (Kenesha Harriott) was asked by her counsel to wait outside. His affidavit was dated 5th November 2015. He is the brother of Dexter Harriott. He states that the little he knows about Olive Adams is based on conversations with his brother. He was not a frequent visitor either to Sackville Road or to Portmore, because he resides in Mandeville. He recalls visiting his brother in Portmore and seeing a woman. “Upon leaving” he asked his brother who she was and he was told, she was Olive Adams. The witness states,

“The information that he gave me lead me to believe that she was a tenant of his and that she was also a tenant at the house my brother occupied in Vineyard Town. She had come to live at the house because when they all got notice and she had nowhere to go so he was helping her out till she found somewhere to live.”

[20] Cross-examination revealed that the witness was not very aware of his brother’s personal affairs. He could not recall the name of Kenesha’s mother or when she died. He did not know where Kenesha lived after the mother died. He did not know with whom his brother lived after Kenesha’s mother died. He had lived in Mandeville since 1983. He rarely visited Kingston. He usually visited his brother’s workplace and rarely went to his house. On the sole occasion he visited Portmore he saw Olive Adams but apart from a greeting, he did not speak to her. There followed this exchange.

“Q: Did Dexter tell you why she was living with him

A: When we left the house and were driving, I asked him. He said she was a tenant and he was helping her out because she was tenant who was living at 27 Sackville Vineyard Town.

Q: Suggest that Miss Olive Adams was living in common law relationship with Dexter.

A: I don't know I can only say what he told me. Tenants at 27 Sackville, property was sold and they had to relocate. That's what he told me.”

It is to be noted that Dexter was his older brother by 5 or 6 years.

[21] I pause to observe that in his affidavit the account of what was told to him about Miss Adams by his brother was very vague. He there stated that “the information led me to believe” she was a tenant. In cross-examination he at first says she was a tenant and then said, they were “tenants” at Sackville and that when that place was sold they moved to Portmore. It appears to me that his older brother was being deliberately vague about Miss Adams. The ambiguous nature of the information may well have been deliberate. It was just enough of the truth to allow his younger brother to draw his own conclusions.

[22] The objector Kenesha Harriott was the next witness to give evidence. Her affidavits of 17th December 2014 and 8th April 2015 stood as her evidence in chief. She describes herself as a Service Support Agent. Her mother and father had a common-law relationship which produced one child. In the period, 1981 to 1988 that relationship continued and all three lived at Sackville Road, Vineyard Town. In 1988 her mother died.

[23] After her mother died, she states that her father sent her to live with Miss Yvonne Forbes a good friend and co-worker. This was at 22 Truman Avenue, Richmond Park. He remained at Sackville Road. She asserts that her father developed a common law relationship with Miss Yvonne Forbes but due to “housing constraints”, they all could not live under one roof. Miss Forbes and her father

bought a studio house in Greater Portmore St. Catherine. The plan was to build on it and move there. However, the owner of 22 Truman Avenue died and Miss Forbes gained ownership of that house. She accounts for Miss Adams residing at Sackville Road by saying that her father being the "kind" person he was acceded to a request by Miss Adam's sister to allow Miss Adams to stay at 27 Sackville Road.

[24] Her account accords with Miss Adam's when she stated that the owners of 27 Sackville Road decided to sell it. Her father obtained a NHT home improvement loan and did an addition to the Portmore Studio. It was, she said, Miss Forbes who suggested that he allow Miss Adams to stay with him in Portmore. At Para 10 of her affidavit Kenesha states,

"There was no need for Miss Forbes to stay in Portmore and additionally my father was at our house, at 22 Truman Avenue Richmond Park Kingston 10 most of the time, the major reason for him being in Portmore was convenience for him to travel to work.

[25] The witness states that Miss Adams did not conduct affairs jointly with her father. Miss Forbes is on his health card. Utility bills for the house at Portmore go to Truman Avenue and her Uncle Linton Harriott is on her father's NCB account, insurance policy and credit union book.

[26] Her second affidavit establishes that she obtained a Grant of Administration for the estate of her father and that she is the sole child and beneficial owner of a ½ share of the house in Portmore.

[27] When cross-examined she confirmed that her mother died before her 7th birthday. She then went to live at 22 Truman Avenue Richmond Park with Yvonne Forbes. She was unable to say whether or not Miss Olive Adams then went to live with her father. She recalls as a teenager seeing Miss Olive Adams at the Sackville Road address whilst she was visiting with her father. She said there were two bed rooms, a living room and one bathroom at the Sackville Road address. She says that her father told her to call Miss Yvonne Forbes "mommy"

and that himself and Yvonne Forbes slept in the same bed. The following exchange occurred:

“Q: Why did he not go to live with Miss Yvonne Forbes

A: She had a 2 bedroom at Truman Avenue. She had 3 daughters. They in one room she in another. So I went and share with them. Her aunt and her husband occupied the other three rooms and they had a tenant. The aunt’s husband mother also was there. I assume, I was a child, but I don’t know, I assume that’s why he chose not to live there.

Q; he did not because he was in a relationship with Miss Adams.

A: I can’t say I was a child.”

[28] She admits that she rarely visited Sackville or Portmore when her father lived at those places. She says she never saw her father sharing a room with Miss Adams in either place. The following exchange occurred.

“Q: House in Portmore he slept most nights

A: not necessarily so

Q: what do you mean

A: in week he come and stop by Truman Thursday, Friday, Saturday and go back over in the evening on Sunday.”

Q: why when Dexter went Forbes did not go and live there

A: she acquired 22 Truman Avenue, I don’t know.”

[29] The witness says that her father lived in Portmore because of the availability of a convenient bus to work. A government bus took employees from Portmore straight to work. If he lived at Truman Avenue he would have had to walk up to Half Way Tree to get the bus. She admitted that while at Sackville Road he spent more time at Truman than when he moved to Portmore. In re-examination the witness explained that her father told her Olive Adams was in Portmore with him because she was building a house in Trelawny. He also told her that they shared Sackville because of “affordability” of the rent.

[30] The objector's next witness was Melva Morris. Her affidavit dated 17th December 2014 stood as her evidence in chief. She describes herself as a co-worker of Mr. Dexter Harriott the deceased. She knew him for over 8 years. She described him as friendly and talkative and said he shared his personal life with her. She says it was well known he was involved with Miss Forbes as he took puddings baked by her to the office and bragged it was his fiancée who baked them. She went to 22 Truman Avenue and was introduced to Miss Yvonne Forbes who he said was his fiancée. He told her he loved Miss Forbes. This witness stated that she also visited the house in Portmore and saw Miss Olive Adams. She said,

"I asked a lot of questions. I found that although there is one house, there are two bedrooms and two bathrooms. Mr. Harriott stayed in the smaller bedroom with the bigger bathroom. He gave Miss Adams the bigger room because her niece was staying at the house at the time and would better accommodate both ladies. He told me that Miss Adams helped him with his washing and to show his gratitude he would share whatever he buys with her. I was never given the impression that Miss Adams was his partner."

She says he told her,

"The house is for Kenesha and so I have to fix it up for her."

[31] When cross-examined she said she did not know Olive Adams. She had seen her but had never spoken to her. She had never visited the Sackville Road address. She only visited the house in Portmore on one occasion. She went there to collect birds that Mr. Harriott sold her. She was at the house for about 2 hours. The following exchange occurred:

"Q: Did it seem unusual that Dexter living with one woman

A: No, the staff bus go Portmore. He stayed with fiancée over weekend.

Q: You know that Dexter permanently reside at house in Portmore

A: yes

Q: Mr. Harriott visit Truman Avenue

A: Every weekend he sleeps there overnight

Q: Suggest it was a visit

A: What I know he stopped there for the weekend”

` In answer to the court the witness said,

J: “you went to Truman for birds also

A: Yes, he raise majority at Truman and have some at his home in Portmore.”

[32] Dwayne Robinson was the objector’s next witness. His affidavit, which he read carefully before acknowledging was dated the 17th December, 2014 and stood as his evidence in chief. He is a Customer Service Representative and describes himself as the common law spouse of Kenesha Harriott. He was a frequent visitor to 22 Truman Avenue. He met and knew Mr. Harriott for two years. He saw him at Truman Avenue every weekend except at the time of his illness leading up to his death. One room at Truman Avenue was shared by Mr. Harriott and Miss Forbes. He said Mr. Harriott spent the last two Christmas dinners with the family at 22 Truman Avenue. The witness stated,

“I have visited the house owned by Miss Forbes and Mr. Harriott at greater Portmore St. Catherine where Miss Adams stays. There I observed that he was independent of Miss Adams, as he would stay in his room most of the time while he is there. He had his own room and bathroom and so did Miss Adams. He bought his furniture separate from her and the only joint affairs that I heard him mention was her washing and ironing for him. He never told me that Miss Adams was his partner.”

[33] When cross-examined he asserted that he visited the house in Portmore some three or four times. He could not recall the occasion for each visit. He said,

“Second visit I carried something Miss Forbes gave me to give him. The 3rd visit can’t recall. 4th visit I brought his sister to house. One more time carried sister from house to Truman Avenue. Also I collected a radio and brought to him.”

[34] On each visit to the Portmore house he said he spent approximately 10 minutes. On one occasion he visited with Kenesha and spent ½ hour to one hour. The following exchange occurred with the court:

“J: You observe his room

A: I went into his room because he showed me his room.

J: How you know which is her room

A: After he passed on I discovered which was her room.”

In questions arising the witness admitted he was unaware of where the parties slept in the Portmore house. He could not recall if he had seen Miss Adams on the occasion that Mr. Harriott had shown him his room.

[35] The next witness was Miss Inez Clue. Her evidence in chief was by affidavit dated 17th December 2014. She also read it very carefully before identifying it as such. She has been a neighbour of the Truman Avenue house for over 19 years. She knew Mr. Harriott affectionately as “Brownman.” She found himself and Miss Forbes to be a remarkable couple. She said after Miss Forbes became the owner of the premises Mr. Harriott would be seen “everyday” on the property. She said,

“6. That over the years I have observed that although Mr. Harriott and Miss Forbes were not married both of them did everything together. They reared birds together and they would sell those birds. They loved plants and I would often see them both doing gardening or attending to the birds.

7. That Mr. Harriott was caring and considerate and his love for Miss Forbes and his family in general was quite evident. It was for this reason I asked Mr. Harriott to be the godfather of my granddaughter and he gladly accepted. He would visit my home almost every night and when he left my house he went next door, not to Greater Portmore.

[36] When cross-examined the witness said she was unaware Mr. Harriott had at one time lived at Sackville. She was aware when he left Richmond Park to live in Portmore. She said “we all worked together at “Services

Commission,” meaning Mr. Harriott and herself. She denied he moved from Sackville Road to Portmore. The following exchange,

“Q: Mr. Harriott did not permanently live at Truman Avenue.

A: he was living there. Miss Forbes bought the house in Portmore.

Q: Did you know Dexter Harriott and Yvonne Forbes bought the house in Portmore.

A: he never tell me that. Miss Forbes say she buy the house and going ask Mr. Harriott to stay there as she have nobody to stay there.

Q: have you ever visited the house in Portmore

A: no, he only show me the picture.”

[37] The witness denied that Mr. Harriott only came to Truman Avenue on weekends. She insisted he was there every night playing dominoes. She did not know Olive Adams.

[38] Miss Yvonne Forbes was the final witness called by the objector. She looked carefully at her affidavit dated 3rd November 2015. That affidavit stood as her evidence in chief. She describes herself as the “spouse” of the deceased Dexter Harriott. She first became friends with him in 1977, when he worked at the Ministry of the Public Service. Her intimate relationship with him commenced after the death of his common law wife Cynthia Palmer. She says he asked her to take his then 7 year old daughter to live with her at the house at which she resided in Truman Avenue, Richmond Park. The house was then owned by the witness’ uncle and aunt. Mr. Harriott remained at Sackville Road but would visit Truman Avenue everyday to get his laundry done.

[39] The witness said that a friend asked Mr. Harriott to assist by finding a place for Olive Adams to live. She explains the circumstances in which that room became available thus:

“8 Dexter’s landlord informed him that she was no longer renting one room. She was willing to rent the premises to someone who could afford to rent both rooms. At the time Dexter’s salary was very small and as such I agreed with him to sublet the extra room to Olive. He spoke to his landlord and an agreement was reached for the extra room to be sublet to Olive. Dexter and Olive lived in separate rooms while they occupied the premises at Sackville Road.”

[40] Initially the witness says herself and Olive attended the same dressmaking course and would walk partway home together. She stated that she did not visit Sackville Road very often, but Dexter visited her frequently at 22 Truman Avenue. The following interesting evidence is stated,

“I never knew who Olive was until I realized that Dexter kept telling me everything that I did at school. I cursed him one day because he wouldn’t tell me his source. He then asked me if I knew Olive Adams and I said yes. That is when I realised that Olive that lived at Sackville Road was the same person that I walked with in the evenings while coming from classes. That was as close to a friendship that Olive and I came.”

[41] She stated that she was Dexter’s common law spouse. That he would sleep over whenever he visited her house and sometimes for an entire week. He spent holidays there and was there on average 3 or 4 times per week. He referred to her children as his stepchildren. They opened an account together and purchased furniture and property in Greater Portmore together. She attaches proof of their respective salaries. She used redundancy monies received to assist in the purchase of the Portmore home. They took a joint decision to rent the original unit of the house, “the quad”, to Miss Olive Adams who would assist Dexter with his laundry, his housework and his cooking. She said that Dexter complained that he wanted Miss Adams to leave. They decided to stop collecting rent from her so she could build on land she had in Trelawny. She said all his bills and mail came to 22 Truman Avenue.

[42] When cross-examined Miss Forbes described herself as a caterer. She also stated that she is a Christian, and had been so for 20 years. The following exchange is I think important,

“Q: After he left Sackville Road he went to live in Portmore.

A: Yes with explanation

Q: Explain

A: He left Vineyard Town because the landlord died. His things move over to Portmore but he stayed in Richmond Park.

Q: When you say stayed he stayed in Richmond Park how many days

A: At that time he go over to Portmore to see that everything was ok.

Q: Suggest Dexter did not live at Richmond at any time he went to live in Portmore after leaving Sackville.

A: He lived at my house.”

[43] The witness reaffirmed that the reason Mr. Harriott lived in Portmore was the convenience of the government bus taking staffers to work from there. The following exchange is important:

“Q: You agree he lived in Portmore for more than 5 years.

A: Yes

Q: The last 5 years of his life he just visited and did not live with you

A: But he visit my home just the same. Sometimes 3 – 4 times for the week

Q: He visit mainly on a weekend

A: Yes sometimes during the week from Thursday right up to Sunday.”

[44] The witness stated that she lived for a short time in the Portmore house. The following exchange occurred:

“Q: When he start living in Portmore was Olive Adams living there

A: When he start living in Portmore yes she went there because when he left Sackville she had nowhere to go. He was staying by me and did not want the place to be empty. He ask me to let her go over until when we did addition. He had his room and she had the quad. They were not living together in the quad.

Q: When you lived with Mr. Harriott for a short period in Portmore was Miss Adams in Portmore.

A: No, it was rented out when we moved from Portmore.”

[45] The witness was asked why she never lived with Mr. Harriott after Kenisha’s mother died and their relationship commenced. Her answer was:

“Sackville was not convenient for me to go there. He used to come to Truman but because of the children not convenient also.”

The following exchange followed:

“Q: Suggest Dexter did not live with you because you did not have a relationship with him.

A: We do

Q: Suggest if you were his spouse he would take you to live in Portmore with him.

A: We had an understanding. I operate a canteen have to get to work 2:30 to 3 in the mornings, so not convenient for me to live in Portmore.

Q: Were you in love with Mr. Harriott

A: Yes

Q: He in love with you.

A: Yes”

[46] The witness was asked whether she visited the Portmore house. She stated that she did more frequently at the time when the addition was being constructed.

“J: Was he there then, when, how often would you visit Portmore.

A: Sometimes on a weekend. He stays in Richmond most of the time.”

- [47] Importantly the witness went on to deny knowing Mr. James, the neighbour. Also denied seeing him at the house on the day she went there. She also denied that he came by her house in Truman Avenue.
- [48] The objector’s Counsel sought permission and I granted it to recall Kenesha to give evidence as to her knowledge or otherwise of Mr. Howard James. She also said she had not seen Mr. James and did not know him. She says news of her father’s death was communicated by one “Bigga” a friend of her father. The objector’s case was then closed.
- [49] The matter was adjourned to the 3rd December, 2015. Submissions were to be filed and served by the 30th November 2015. Oral submissions were limited to ½ hour and each party was to speak to the written submissions of the other. I will not repeat the respective contentions and the parties are to rest assured that I have carefully considered them all.
- [50] Having seen and heard the witnesses I find Olive Adams (the Applicant) and her witness Mr James, to be witnesses of truth. It is not only their demeanor whilst giving evidence that impressed me. Miss Adams was clearly in earnest and genuinely bemused that Kenesha had turned against her. Mr James a neighbour had no real interest to serve. His account, of the discovery of Mr Harriott’s body and his efforts to locate Kenesha to inform her, were too graphic to be imagined. Additionally it is improbable that Mr. Harriott would have continued to reside with Miss Adams for such an extended period even after relocating to Portmore, for reasons of charity. On the other hand, save for Miss Inez Clue who overstated the frequency and extent of Mr. Harriott’s visits to Truman Avenue, I also find that Kenesha and her witnesses were generally truthful. How is this possible? When carefully examined much of what they conveyed was information obtained from Mr Harriott. He explains his reason for taking in Miss Adams at Sackville, Miss Forbes did not even know that Miss Adams was her fellow student until Mr

Harriott told her! Also he explains to them his reason for moving Miss Adams to Portmore and his reason for living there. The information as to sleeping arrangements is based on what he told each witness, and always outside of Miss Adam's hearing. It is important to note that even when he fell ill in the period shortly before his death he remained in Portmore, see the evidence of Dwayne Robinson and Miss Adams. Almost all witnesses say that Mr. Harriott spent most days of the week in Portmore and that he visited Truman Avenue on weekends. Importantly also, Miss Adams never visits or stays at Truman and Miss Yvonne Forbes never visits or stays in Portmore. To the extent there is inconsistency I prefer the account of Miss Adams and Mr. James.

[51] I therefore make the following findings of fact:

- (a) Olive Adams and Mr Dexter Harriott have been in a long standing sexual relationship that predated the death of Kenesha's mother.
- (b) They commenced living together at Sackville Road in or about the year 1990. They removed from there to live in Portmore in or about the year 2004. They continued living there until Mr. Harriott's death in the year 2013.
- (c) The house in Portmore was purchased and improved by the joint contributions of Mr. Harriott and Miss Yvonne Forbes. Miss Adams assisted Mr. Harriott with the cost of some fixtures and utilities from time to time, she also provided domestic and "wifely" duties for him.
- (d) Mr. Harriott also enjoyed a visiting and intimate relationship with Miss Yvonne Forbes. She it was who had taken care of his daughter since the death of Kenesha's mother. They, Miss Forbes and Mr. Harriott, also went into business together, she cooking/catering and he rearing birds at Truman Avenue and in Portmore.
- (e) Mr. Harriott therefore found it necessary to keep the full details of his relationship with Miss Adams away from Miss Forbes and those who knew

her. He even felt it advisable to keep his younger brother in the dark about the situation.

(f) Miss Forbes I believe suspected but chose to go along with Mr. Harriott's duplicitous lifestyle. It is important to note that Yvonne Forbes does not say whether they ever discussed marriage, even though she said she has been a Christian for over 20 years. Jamaicans I will note judicially do not lightly make such a claim. Kenesha, in her affidavit, offers an explanation for Miss Forbes and Mr Harriott not getting married but I found it unconvincing .It is more likely that there was no desire on the part of Mr Harriott to get married to Miss Yvonne Forbes.

(g) In Portmore Mr. Harriott lived openly as "man and wife "with Miss Adams and did so for a period in excess of 5 years. Miss Olive was happy to play that role and therefore turned a blind eye to his weekend visits to Truman Avenue. There is similarly no discussion about marriage. However Miss Adams has not professed to becoming a Christian and therefore the absence of a discussion about marriage is not as significant.

[52] These being my findings of fact the question now to be answered is, what are the legal consequences? The **Intestates Estate and Property Charges Act** defines spouse thus :

Section 2 (1)

(d) (i) "a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and

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

(e) "single woman" and "single man" used with reference to the definition of "spouse" include a widow or widower ,as the case may be,or a divorcee.

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

The Property (Rights of Spouses) Act defines spouse thus:

Section 2 (1)- “:Spouse” includes :

“(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years

(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years ,

immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be”

- [53] The sections differ in the definition of “spouse” only to the extent that the one says “lived and cohabited”, whilst the other says “cohabited”. I hold that the word “lived” adds nothing to the word “cohabited”. It is difficult to imagine a scenario where one cohabits but does not live with another. There is no doubt that Mr. Harriott and Miss Adams “lived and cohabited” for the requisite period.
- [54] The next question therefore is what is meant by “as if she were in law his wife”. This imports something more than the joint sharing of the same space. Conjugal relations may be involved here, as well as an openness about the relationship, and stability with a degree of permanence. Finances and the way financial affairs are handled, the role of and attitude toward children, the parties’ intention and motivation as well as the opinion of the reasonable person looking on, are all factors to consider, see **Kimber v Kimber** [2000] 1 FLR 384, where the court considered the meaning of “cohabitation” in a slightly different context. Justice McDonald Bishop (as she then was) after reviewing authorities suggested a further ingredient. This being that the union should be monogamous in that there can only be one common law spouse at a time (as distinct from mere sexual partners or lovers) see **Williams v Thompson** 2010 HCV 03404 unreported Judgment 19th January 2009. I pause to observe however that whereas the Intestates Estates and Property Charges Act expressly so provides, the Property Rights Of Spouses Act has no such prohibition. The learned Judge summarised the approach thus:

“In examining the question before me against the background of the authorities I have had the opportunity to review I too will agree that no single factor can be conclusive of the question whether a man and woman were living together as if they were in law husband and wife. I have come to the conclusion too that there is not (and there might never be) a closed and exhaustive list of criteria that may be used to determine the question. It requires, to my mind, a thorough examination of the circumstances of the parties’ interaction with each other as well as their interaction with others while bearing in mind that there will always be variations in the personalities, conduct, motivations and expectations of human beings. The court, indeed, will have to make a value judgment taking into account all the special features thrown up by a particular case to see whether the lives of the parties have been so intertwined and their general relationship such that they may be properly regarded as living together as if they were, in law, husband and wife. It has to be inferred from all the circumstances.”

[55] I am of the view, and so find, that on the facts of this case Miss Adams was living with Mr. Harriott as if she was in law his wife. She performed wifely duties in the traditional sense. Furthermore they attended events together such as their neighbour’s wedding. They had lived in this way for in excess of 20 years. On the eve of his death they had planned to attend a funeral together. He implored her to go without him because the relative of the deceased would “feel a way” if neither of them attended. I am fortified in this conclusion by the observations and opinion of their neighbour in Portmore. His view I find the perception of the ordinary reasonable person looking on at them with full knowledge of all relevant facts. That perception does not change because Mr. Harriott is sexually involved with someone else at the same time. To so hold would be to abandon common sense and ignore the reality of life in Jamaica today. I daresay it would disenfranchise many a spouse whose otherwise legitimate claim would be defeated by proof of an “extra-marital” relationship. The day may come when this court has to determine whether it is possible for there to be two legitimate claimants to the status of spouse if, for example, all three lived in the same home for the requisite period sharing conjugal relations. I need express no view on that today.

[56] In this case Mr. Harriott cohabited with Miss Adams as man and wife. It was for the requisite period. He did not live with Miss Yvonne Forbes. He chose not to divulge the real truth of his relationship with Miss Adams to Miss Forbes. Miss Forbes was content to have a visiting association with him and hence never lived or cohabited with Mr. Harriott as man and wife. I find in favour of the Applicant Miss Olive Adams, and Declare as follows;

1. That the late Dexter Ogilvie Harriott, deceased who died on the 13th day of April 2013 was the spouse of Olive Adams by virtue of the Intestates Estate and Property Charges Act.
2. That the cost of the application be paid out of the Estate Dexter Ogilvie Harriott.

David Batts
Puisne Judge