



[2020] JMSC Civ 127

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV05378

BETWEEN	CARL JOHNSON	CLAIMANT
AND	SHERENE SALMON	DEFENDANT

IN CHAMBERS

Mr George Clue for the Claimant

Mr Stokely Marshall and Mr Lance Rose instructed by Stokely Marshall for the Defendant

Heard: February 20, and June 23, 2020

Property dispute – Claim for 50% interest in properties – Parties unmarried – Dwelling houses built on lands not owned by either party — Whether family home – Whether the equal share rule should apply – Property (Rights of Spouses) Act

LINDO, J

The Claim

[1] This is an application by way of Fixed Date Claim Form (FDCF) under the Property (Rights of Spouses) Act, filed on November 7, 2014. The Claimant, Carl Johnson, (Mr Johnson) is seeking orders that “it be declared that the relationship of spouse exist between the parties; that the properties situate at Springfield in the parish of Clarendon be declared the matrimonial properties and that the Claimant is entitled to half (½) interest in the properties...”

[2] The grounds on which he is seeking the orders are stated as follows:

1. The parties commenced a relationship on or about the year 2004
2. That the said relationship ended on or about November 12, 2013
3. That the parties through their joint efforts acquired two (2) dwelling houses at Springfield District, Springfield in the parish of Clarendon
4. That the relationship between the parties has broken down and there is no likelihood of reconciliation between the parties.

[3] The Fixed Date Claim Form is supported by the affidavit of Mr Johnson, sworn to on November 6, 2014.

The Response

[4] Ms Salmon by way of her affidavit in response filed on June 22, 2015, has denied all the assertions made in respect of the claim save and except that the Claimant lives in Springfield and that she gave birth to their child.

Chronology

[5] The chronology of events leading up to the hearing of the FDCF provides some background for the manner in which this matter has proceeded in the court and the issues which need to be determined by this court.

[6] On February 10, 2015, the Defendant acknowledged service of the claim and on June 22, 2015, her affidavit in response was filed, out of time. When the matter came on for first hearing, on June 24, 2015, it was adjourned and the parties were referred to mediation and a further hearing date set for January 12, 2016, at which time it was further adjourned to June 10, 2016.

[7] On June 10, 2016, the matter was fixed for a further hearing on February 2, 2017, Ms Salmon's affidavit in response was allowed to stand as filed, and further orders were made for the matter to proceed. When the matter came on for a further hearing/case management conference on February 2, 2017, the court

was informed that the issue of whether the parties were spouses was no longer being contested. This was the relief sought in paragraph 1 of the FDCF. The court therefore made an order in terms of paragraph 1 of the FDCF and the matter was treated as part heard and was adjourned to March 24, 2017, at which time Mr Johnson was absent.

- [8] The court was informed that settlement proceedings were ongoing and mediation was to be attempted by April 7, 2017. The matter was again adjourned, “as part-heard”, to May 26, 2017 when the court gave a “further and final extension of time” for Counsel for Ms Salmon to file and serve skeleton submissions and list of authorities on or before June 30, 2017. The trial was “adjourned and part heard” to February 15, 2018. The formal order in respect of this adjournment was not served on Counsel on the record for Ms Salmon until September 26, 2017
- [9] By Notice of Application for court orders filed on February 6, 2018, Mr Johnson sought judgment in terms of the Fixed Date Claim Form on the grounds that “... since the Defendant’s statements of case are struck out the Claimant is entitled to have judgment entered in his favour against the Defendant.” This application was set down for hearing on February 15, 2018, the adjourned trial date, and at that hearing, the court was informed that the parties had arrived at a ‘consent order’. The matter was therefore fixed for February 19, 2018 at 9:30 am, for the consent order to be approved and the ‘unless order’ made on May 26, 2017 was set aside, pending the ‘final consent order’.
- [10] There is no record on the court’s file of what took place on February 19, 2018. By Notice of Adjourned Hearing issued by the Registrar of the Supreme Court, the parties were informed that the hearing of “the approval of final consent order is set for hearing on May 21, 2018 at 10.00 am before the Honourable Mrs Justice L. Palmer Hamilton ...”

[11] On May 18, 2018, Stokely Marshall, attorney-at-law, filed a Notice of Change of Attorney and a Notice of Application for Court orders seeking the following orders:

1. "That the Consent Order made on February 15, 2018 be set aside;
2. That the hearing for approval of final consent order set for the 21st May, 2018 be withdrawn;
3. Costs to the Claimant."

[12] The grounds on which these orders were sought were stated as follows:

- i. The Defendant does not have a proprietary estate in the subject property;
- ii. That the subject property constitutes Crown Lands;
- iii. The Defendant has no authority in law to sell the subject property;
- iv. The Consent Order made on the 15th day of February, 2018 was erroneously/mistakenly entered into by the Defendant.

[13] When the matter came on for hearing on May 21, 2018, there was no appearance by Ms Salmon or her Counsel and it was further adjourned to November 29, 2018 and again, there is nothing on record to show what took place on that date. However, the court records show that a Notice of Adjourned Hearing was filed on that date, indicating that the Notice of Application seeking, *inter alia*, orders that the Consent Order made on February 15, 2018 which was set for November 29, 2018, was adjourned and would be heard on May 2, 2019. Once again there is no record of what took place on May 2, 2019

[14] On July 1, 2019, on the application of Ms Salmon, the court granted the orders sought on the application filed on May 18, 2018. This is to the effect that the consent order entered into was set aside, the hearing was withdrawn and costs awarded to the Claimant. The substantive claim (paragraphs 2 and 3) in the FDCF was then set for hearing on February 20, 2020.

[15] By Notice of Application to vary order filed on February 13, 2020, Ms Salmon sought an order that the order made on July 1, 2019 be varied to read as follows:

“i. Order in terms of paragraphs 1 and 2 of the Notice of Application for Court Orders dated 17th May 2018 and filed 18th May 2018; and

ii. Costs to the Defendant.”

[16] This application which is in effect seeking an order that costs be awarded to her instead of the Mr Johnson, in relation to the application which was heard by the court on July 1, 2019. This application was set down for hearing on February 20, 2020, the date set for the hearing of the substantive claim.

[17] The parties, on February 13 and 19, 2020, respectively, filed skeleton submissions. Much of the discussion by the Claimant centred around the application by the Defendant to set aside the consent order which was granted on July 1, 2019 and the fact that the Defendant had put forward a title registered at Volume 1270 Folio 543 as being the title to the property in dispute. Counsel for the Claimant pointed out, quite correctly, that the question for the court is in relation to items 2 and 3 of the FDCF. The Defendant placed focus on the issue of whether the parties were spouses and whether the Defendant had any proprietary interest in the properties to which the claim is made. Counsel expressed the view that the entire claim is “ill conceived”.

Preliminary Observations by the Court

[18] On a close examination of the matter, it is clear that there was no order made by the court in relation to the two properties in question. The court is satisfied that there is no longer an issue whether the parties are spouses, as by order of the court made on February 2, 2017, it was declared that “the relationship of spouse exist between the parties”.

The Trial

- [19] At the trial which took place on February 20, 2020 the affidavit of the Claimant dated November 6, 2014 was admitted as his evidence in chief, permission was granted for him to amplify aspects of the evidence, and he was cross examined.
- [20] The Defendant's affidavit filed on June 22, 2015 was admitted as her evidence in chief and she too was cross examined.

Claimant's Evidence

- [21] Mr Johnson states that in about 2004 he met Ms Salmon and they commenced a relationship shortly thereafter. At the time he was a bachelor and she was a spinster. He says they started living in rented accommodation at Omni Mews, May Pen in Clarendon, about 2005 and they started to pool their resources and both contributed to the rent which was \$4,500.00 per month.
- [22] He states that at the start of their relationship he was engaged in farming and rearing chicken and was also earning \$12,000.00 per week as a sideman on a tractor at Monymusk Sugar Factory and that while living at Omni Mews they decided to build their family home at Springfield and he intensified farming, rearing livestock and commenced construction about 2005. He says his mother gave him 600 blocks on or about 2006, they completed the construction of a two bedroom house, and started living in it shortly after. He states also that he contributed financially and did some of the construction work
- [23] He states further that their son was born on October 29, 2006 and they continued to live at Springfield and continued to do farming, rearing livestock and used the income to finance the expansion of "our family home".
- [24] He adds that, over time, the family home was developed to the point where they now have two floors, and another bedroom and a garage were added to the first floor of the original structure and upstairs had a master bedroom, a living room and a veranda. He also says in about June 2013, they decided to construct

another dwelling house on the same piece of land at Springfield, and the construction was completed by November 2013. He says he provided financial contribution and labour towards the building of the home and continued to care for his family. The funding he says came from their farming activities. He also states that his dwelling house consists of 2 bedrooms, a bath room, kitchen, living room and a veranda.

[25] Mr Johnson states that about November 12, 2013 he discovered that Ms Salmon was being unfaithful, decided to end the relationship, and continued to live in the same house with her until September 2014, when he was taken before the then Clarendon Resident Magistrates Court and “the magistrate barred me from returning to my home”

[26] Under cross examination, he admitted that he started an intimate relationship with Ms Salmon about late 2003 to 2004 and also agreed that he only visited her at Omni Mews where she was living with her daughter in a one bedroom. He denied that Ms Salmon had already built the 2 bedroom with veranda and kitchen when she moved in or around 2006.

[27] He denied that he did not work at all between 2007 and 2014, maintained that they both worked and contributed towards the property and denied that Ms Salmon was maintaining him. He disagreed that the other house to which he was making claim was owned by a sister of Ms Salmon and told the court that he did “scrap cane and side man work 1990 to 2000 up”

Defendant’s Evidence

[28] Ms Salmon says she is a business woman and that she moved her business to Springfield in 1998, rented a shop and operated a variety store and held parties and joined ‘round robin groups’ to supplement her income from the store. She says these ventures were successful and she was able to save regularly, and when she commenced farming and the bar business, she was living with the father of her first child and when the relationship with him ended in 2000 she

rented a room at Omni Mews along with her daughter and paid \$4000.00 monthly.

- [29]** She says further that in 2000 she became aware of a lot on government land in Springfield, and she sought and obtained permission to occupy it and construct a house on it. She adds that in 2001, with the help of family and friends she started clearing the land and within two years, while still living at Omni Mews, she completed two bedrooms and a bathroom and in 2004 she continued the expansion and received assistance from her mother and relatives overseas.
- [30]** She indicates that she knew Mr Johnson as a child and when she returned to Springfield to do business, they renewed acquaintances, in 2005 he started visiting her at Omni Mews, and she became pregnant in 2006. She says that after giving birth to the child, she decided to move into the unfinished house and Mr Johnson continued to visit her, and in 2007, after Hurricane Dean, he became homeless and she agreed for him to move into her house and when he did, she realized that he was not working.
- [31]** Ms Salmon also states that she travelled overseas doing part-time work, received assistance from relatives and was able to complete her house and that “consequent onabuse” she decided to end the relationship and obtained a Restraining Order from the Clarendon RM Court and Mr Johnson was directed to live upstairs and avoid contact with her and subsequently he was charged and a condition of his bail was that he remove from her house.
- [32]** She adds that in 2014 an unfinished house beside her house was being sold, her sister bought it and along with her sister, they worked on it and it is now a two storey house which is not yet completed. She states that Mr Johnson has never put any financial resources into either property as he has not worked since moving into her house. She denies all the assertions made by Mr Johnson save and except where he states that he lives at Springfield and that she gave birth to their child.

- [33] When cross examined, she said that her house is “a flat and a 1 bedroom on top including a bathroom and patio” and that when Mr Johnson was asked to remove from the house he moved from the flat.
- [34] She admitted that at the time the house, which she states belongs to her sister, was being constructed she was still in a relationship with Mr Johnson. She disagreed that both houses are on the same property and are part of “matrimonial property” and when she was asked if she agreed that she was in a common law relationship with Mr Johnson, she said she did not agree “to the fullest” and explained that “it wasn’t a relationship where I consider Mr Johnson to be my husband at any time.”
- [35] In seeking to clarify her evidence, she indicated that the house she lived in with Mr Johnson was built on “Sugar Company of Jamaica land” while the other house is on another property, next to it. She stated that she had no documents for the land and had never seen any documents for it.

The Submissions

- [36] At the end of the hearing the court ordered that written submissions be filed by the parties. On February 25 and 28, 2020, respectively, the submissions were filed and the court took some time to consider the matter.

The Issues

- [37] The court has to determine whether the properties in question could be declared ‘matrimonial properties’ and whether the Claimant is entitled to half ($\frac{1}{2}$) interest in them to entitle him to the reliefs sought in the FDCF.

Law and Analysis

- [38] The claim is brought under the **Property (Rights of Spouses) Act**, (the Act). **Section 13 of the Act** allows for an application to be made by spouses who are

no longer cohabiting, for the division of property, where there is no reasonable likelihood of reconciliation.

[39] **Section 2(1) of the Act**, provides that *““property” means any real or personal property, any estate or interest in real or personal property, ... or any other right or interest whether in possession or not to which the spouses or either of them is entitled...”*

[40] Mr Johnson is asserting that the parties lived together as man and wife in one of the properties, that they ceased cohabitation in September 2013 and he is entitled to half interest in both properties which he is asking the court to declared “matrimonial properties”. He therefore has the burden to prove on a balance of probabilities that he is so entitled.

[41] Ms Salmon is resisting the claim on the basis that she does not own the land on which the houses are built, and that Mr Johnson made no contribution to the construction of either house, one of which belongs to her sister. She has asserted that at the time Mr Johnson came to reside at her home, he was not working as he said “work was too hard”.

[42] **Section 14(1) of the Act** provides that on an application under sec 13, the court shall divide the family home in accordance with section 6 or 7 of the Act.

[43] The “family home” is defined under section 2 of the Act 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.”

[44] In relation to the division of the family home, section 6 of the Act states:

“6.-(1) 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

(a) On the grant of a decree of dissolution of a marriage or the termination of cohabitation;

(b)

(c)

- [45]** A finding on the issue as to whether any of the properties is the family home determines whether the equal share rule under section 6(1) should be invoked, and if the properties are not found to be the family home, section 14 (1) (b) would apply. Section 14(1) (b) provides for the division of property other than the family home, and section 14(2) sets out the relevant factors to be taken into account when dividing property which is not the family home.
- [46]** I note that from the evidence of Mr Johnson that he is relying on financial contribution and labour in relation to the construction of the house in which he lived as a basis for his entitlement, although he has stated that the claim is in respect of “matrimonial property”. Ms Salmon is also relying on financial contribution in respect of the house they resided in and her assertion that the property on which that house is built does not belong to her and the other house belongs to her sister.
- [47]** In coming to a determination, I found the credibility of the parties to be vital. I therefore paid particular attention to their demeanour as they gave evidence and were cross examined.
- [48]** I found both parties to be inconsistent in their evidence. Neither party impressed me overall as a witness of truth. Mr Johnson’s evidence in chief that he lived with Ms Salmon at Omni Mews is inconsistent with that on cross examination where he admitted that they had a visiting relationship when she lived there while Ms Salmon claims that the house is on government land and she was given permission to build on it but later said the lands belong to the Sugar Company of Jamaica.

- [49]** Additionally, I do not believe Ms Salmon's story that Mr Johnson did no work for the time they lived together and find it incredible that he would be living in the household for over six years and make no contribution whatsoever. I also find that Ms Salmon could not be speaking the truth about the house she claims to belong to her sister, if, on the one hand she says Mr Johnson was still in a relationship with her at the time it was purchased, and she also states that it was an unfinished house in 2014 when it was purchased for her sister.
- [50]** Both parties therefore gave conflicting evidence in relation to time and as to the true ownership of the land on which the two houses are built, to whom the houses belong, as well as the source of funding for the building of each. In fact, Mr Johnson admitted that he did not know who owned the lands, while Ms Salmon, who stated she was given permission by a Member of Parliament to build on the land, indicated that she has never seen any document for the land although she has claimed that it is was owned by the Sugar Company of Jamaica.
- [51]** Notwithstanding the inconsistency in the evidence of Mr Johnson in relation to whether he lived with Ms Salmon at Omni Mews, or had a visiting relationship with her then, which I did not find to be so material as to be fatal to his case as pleaded, I conclude that he is more credible than Ms Salmon. Of note is the fact that she said he did not work at all for the period they lived together (and this would mean for at least 7 years), but it was suggested to him that he worked in a shop operated by her near to the end of their relationship.
- [52]** I reject Ms Salmon's evidence that the house they lived in was built by her solely, and with the help of family and friends. Her evidence that Mr Johnson was allowed to live in the home on the understanding that he would return to his own house at some time and that he has never put any financial resources into either property as he has not worked since moving into her house is also difficult to believe especially in view of the fact that they were in a relationship prior to the birth of their child, and I find that it was subsequent to that that they started

residing at the house in Springfield which I find on a balance of probabilities was constructed by them both. I therefore do not agree with the submission of Counsel for the Defendant that “the impermanent nature of the Claimant’s living arrangement at the property... negated them being in a common law relationship”.

[53] I find on a balance of probabilities that the house in which they both resided was built by them both and therefore belongs to them both. It is in this house that they lived together as spouses for about six or seven years. On the evidence, I find it was their principal place of residence during the time they cohabited as man and wife. I find that it is more likely than not that the parties were both involved in farming and that it was by their joint effort that they built the dwelling house in which they resided and it was therefore “wholly owned” by them.

[54] There was no evidence led as to whether there was any land, buildings or improvements appurtenant to the dwelling house, and used mainly for the purposes of the household or what use was made of the land on which the house in which they resided was built, so that I could determine whether the land, together with the house, could be deemed to be the family home. In the circumstances, I find that the said dwelling house would not fit squarely within the definition of family home, as defined by the Act so that each of them would be entitled to an equal interest in it.

[55] Additionally, there is no evidence provided by either party, from which I can find that the other property to which a claim is made by Mr Johnson, can be the family home. The evidence of both parties which I accept, however, point to a finding that the two houses in issue were acquired and or developed during the currency of the spousal relationship which existed between the parties.

[56] There is uncertainty as to the legal ownership of the properties in question (that is the land on which the houses are built) which have been identified by Ms

Salmon as two separate properties, but by Mr Johnson as “the same piece of land”. I cannot accept the submission of Counsel for the Defendant that the court cannot make an order that the Claimant is entitled to any portion of the properties because Ms Salmon has no title to the lands.

[57] I have examined, carefully, the evidence as to the circumstances surrounding the acquisition of the land itself, on which the dwelling house in which the parties resided is built, and the construction of the building, which I find was by both parties. It is clear that neither property is owned whether in whole or in part by either Ms Salmon or Mr Johnson. It is also clear that construction on the house next to the one in which they resided was carried out during the time they were both in a relationship and they both resided in the house they both constructed.

[58] I cannot accept the submission of Counsel for the Defendant that “the property is not owned whether in whole or in part by either the Defendant... or the Claimant and is in fact owned by SCJ Holdings Limited and ...leased to Pan Caribbean Sugar Company.....” and that “...the key requirement of ownership as required under the Act has not been met”. No evidence of the legal ownership of the property has been properly placed before the court but it clear that Ms Salmon has asserted ownership of one of the houses.

[59] I am of the view that the Act does not preclude a person’s entitlement to property if there is no registered title to the property in the name of either party, and I agree with Counsel for the Claimant that the court need not be detained about who has the proper title for the properties in question. As stated by McDonald-Bishop J (as she then was) in **Thelma May Whilby Cunningham v Leroy Augustus Cunningham**, Claim No. 2009HCV02358, delivered September 16, 2011, “*The definition of property in the Act is wide enough to cover an equitable or beneficial interest in land...*” and as such I find that the parties, would have, on the face of it, an equitable interest in the land on which they built the house in which they resided.

- [60] Based on my finding that the dwelling house in which they resided would not pass the test of being the family home, although I find that the dwelling house itself, (that is the building), was wholly owned by them both, I will therefore examine the claim within the context of Section 14(1) (b) of the Act, and section 14(2) of the Act.
- [61] Section 14 (2) provides that, in determining interests in property other than the family home, the court should divide the property as it thinks fit, taking into consideration factors such as contribution; that there is no family home; that there is an agreement with respect to the ownership and division of property and such other fact or circumstance which in the opinion of the court, the justice of the case requires to be taken into account. I accept that the court has the power to alter interest in property, other than the family home, where the court is of the view that it is just and equitable so to do (See Sec 15 of the Act. See also dictum of Morrison JA (as he then was) in **Brown v Brown** [2010] JMCA Civ.12, paragraph 46).
- [62] During the time the parties cohabited as spouses, they occupied the house which Ms Salmon is saying is her exclusive property. I find on the evidence that both houses were constructed during the currency of the relationship, and I also accept that they both resided in one of the houses after the birth of their child and it is the house from which Mr Johnson removed as a result of the court order, and was their principal place of residence.
- [63] In determining how the property ought to be divided, I have therefore considered that both parties contributed to the construction of the house in which they lived; there is no family home; and Mr Johnson, the father of one of Ms Salmon's children, resided there with her and is no longer residing there as a result of an order of the Court. I bear in mind that neither party provided any documentary evidence to substantiate any financial contribution towards the acquisition or construction of the two houses and neither have they shown how, if at all, they shared financial resources when they cohabited. The evidence of both parties in

respect of their respective financial contribution towards the construction of both houses is quite vague.

[64] I find however that Mr Johnson's evidence that he worked during the period of their cohabitation has not been discredited on cross examination and I have no reason to doubt that he assisted financially and also did some of the construction on the house they lived in. I find that his evidence in relation to the fact that he worked during the entire period he was in a relationship with Ms Johnson is plausible.

[65] It was submitted by Counsel for the Defendant that Mr Johnson "was never a spouse in law as contemplated by the Act therefore is not entitled to any relief in law or in equity..." Counsel expressed the view that there was never a common law union because "the factual circumstances and ...the impermanent nature of the Claimant's living arrangement at the property ... negated them being in a common law relationship". Counsel opined that "any order that had been made that the parties are spouses ... would have been made without full knowledge of the facts and hence the relevant law would not have been applied".

[66] The question of whether Mr Johnson is a spouse of Ms Salmon is a question of both fact and law. He gave evidence that he was a bachelor and she was a spinster and his uncontroverted evidence also is that they lived together for at least six years.

[67] I note however that the order, made by the court, declaring that the parties were spouses, was made in the presence of the parties and their Counsel, albeit, the former Counsel for the Defendant, and had any of the parties been in disagreement, they had ample opportunity of appealing the ruling of the court. There was no objection to the order then, and the Defendant did not choose to appeal the order of the court and is therefore bound by that ruling.

[68] When all the evidence is evaluated, it is clear that Mr Johnson, who has the burden of proof, has shown on a balance of probabilities that he made an input in

the construction of the dwelling house in which he resided up to the time when he was ordered to occupy a particular section, and from which he was later removed. I prefer and accept his evidence that he worked and that together they constructed the house. I accept that they built the house on land which belonged to neither of them and it therefore falls within the definition of property other than the family home.

[69] I find that there would be nothing preventing the particular house in which they resided and which I find was owned by them both, from being valued, separately from the land on which it is built, and entitlement apportioned as the court sees fit.

[70] The same cannot be said of the other house. In all the circumstances, I am unable to make a finding that it is the family home or that it would be property other than the family home. Mr Johnson maintained, in cross examination, that he contributed to the building of both houses, but he has not shown how he contributed to both, except to say he got 600 blocks from his mother and personally carried out some of the work, which I understand to be on the dwelling house in which he resided. He also sought to explain that this other property, does not belong to a sister of Ms Salmon, but he has failed to provide any evidence to satisfy the court on a balance of probabilities that this is so. Additionally, Mr Johnson has not provided any evidence to substantiate any form of contribution by him or Ms Salmon towards the acquisition or construction of that house for the court to be able to make a determination as to whether it is owned by either or both of them.

Conclusion

[71] Mr Johnson has not shown that both houses and/or the lands on which they are built would fall within the definition of family home, as defined by the Act. However, on the evidence the court finds on a balance of probabilities that the dwelling house in which the parties resided would be property other than the

family home as defined by the Act. Based on the totality of the evidence presented, this court is left to infer that the lands on which the dwelling houses are built, are owned by a third party.

- [72]** There is a dearth of evidence as to the expenditure by either party towards the acquisition or construction of the two houses to which Mr Johnson is seeking a half share but the court finds that the dwelling house in which they resided for at least seven years is owned by them and that they both contributed to the construction of the house. In the absence of evidence as to any value to be placed on each party's contribution towards the construction of the dwelling house, the court was left to assess their demeanour and to determine who is more credible.
- [73]** Additionally, there was no sufficient evidence led from which the court could find that the parties owned the other house or from which to assess the value of any contribution made by either party in relation to it. The evidence presented by Mr Johnson falls woefully short of establishing, on a balance of probabilities, that he is entitled to an interest in that other property which is said to be on lands adjoining the one with the dwelling house in which they both resided.
- [74]** This court finds, on a balance of probabilities, that Mr Johnson made an input in the construction of the dwelling house in which he resided with the Defendant and as such it (the house itself) has been found to be wholly owned by them both and even in the absence of evidence from which the court can make an assessment of the financial contribution of the parties, it is my view that he is entitled to an equal share in it. I find that in the interest of justice, each party should be entitled to a half share as it would be unjust and unreasonable for him not to be awarded an interest in the dwelling house.

Disposition

1. It is hereby declared that the Claimant is entitled to 50% share in the dwelling house in which he resided with the Defendant situate at Springfield, in the parish of Clarendon.
2. The said dwelling house is to be valued by a valuator to be agreed between the parties and the cost of the said valuation is to be borne by the parties equally
3. If the parties fail to agree a valuator within 30 days of the date hereof, any one of the Registrars of the Supreme Court is empowered to appoint one, upon the application of either party.
4. The Defendant is given the option of purchasing the Claimant's 50% share in the said dwelling house, the said option is to be exercised within 90 days of the date of receipt of the valuation report, failing which the house shall be sold on the open market and the net proceeds divided equally between the parties.
5. In the event the house cannot be sold due to the issues concerning the ownership of the land on which it is built, or due to any other issues, the Defendant is to pay to the Claimant the monetary equivalent of his interest in the said dwelling house, failing which the said sum shall be recoverable by the Claimant against the Defendant as a debt due and owing.
6. If either party fails, neglects or refuses to sign the documents necessary to give effect to the orders made herein, within 21 days of being required to do so, any one of the Registrars of the Supreme Court is empowered to sign all such documents.
7. Each party to bear his/her costs.
8. Liberty to apply.