



[2024] JMSC Civ 164

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV01388

IN THE MATTER of The Estate of Nathaniel Samms, Also Known as Taddius Samms, Late of Haughton District, Lacovia P.O. In The Parish of St. Elizabeth, Farmer, Deceased, Intestate

AND

IN THE MATTER of The Intestates Estate & Property Charges Act, Section 2 (d) (i)

BETWEEN

HOPIE ROBINSON

CLAIMANT

AND

DELORIS SAMMS

DEFENDANT

IN CHAMBERS

Mr. Jason Jones instructed by Georgia Hamilton & Co. appearing for the Claimant/Applicant

Ms. Audrey Clarke instructed by Judith Clarke & Co. appearing for the Interested Party

Heard: October 17th, 2024 and December 6th, 2024

Intestates Estates & Property Charges Act — Application to be declared a Spouse — Whether the deceased was a single man — Whether the Applicant and the deceased lived together as a spouse — Whether the applicant and the deceased

lived together as though they were husband and wife for a period of not less than 5 years prior to the death of the deceased

T. HUTCHINSON SHELLY, J

BACKGROUND

- [1] The Applicant, Miss Hopie Robinson filed a Fixed Date Claim Form on the 4th of May 2020 seeking an order that she be declared the common law spouse of the deceased, Mr. Nathaniel Samms also known as Taddius Samms, who died intestate on the 25th of May 2010. Miss Robinson claims that they were involved in a common law relationship from 2001 until the time of his passing. She therefore seeks a declaration that she is the deceased's surviving spouse within the meaning of the Intestates' Estates and Property Charges Act (hereafter referred to as "The Act").
- [2] The deceased, Mr. Nathaniel Samms also known as Taddius Samms is survived by his adult children, two of whom have given affidavit evidence in this matter. Miss Robinson's claim for a declaration of spouseship is supported by her own affidavit evidence as well as the Affidavits of Antigo Samms, the son of the deceased. His affidavit evidence bolsters the Applicant's assertion that she and the deceased lived together as man and wife for a period of not less than five (5) years prior to the death of the deceased.
- [3] The application is opposed by Deloris Samms-Brown, the daughter of the deceased, who is the Objector/Interested Party.

ISSUES

- [4] There are two (2) issues that arise for the Court's determination:
- Whether the Applicant was a single woman and the deceased, a single man?

- Whether the Applicant cohabited/lived together as though they were husband and wife for a period not less than five (5) years prior to his death?
- Whether the Applicant has met the requirements to be declared the spouse of the deceased?

LAW

[5] Section 2(1) of the Act defines a “spouse” as follows:

- (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;*

[6] Section 2(2) of the Act provides that:

“(2) For the purposes of this Act, where a person who is a single woman or single man may be regarded as a spouse of an intestate then as respects such intestate---

(a) only one such person shall be so regarded; and

(b) to be identified as the surviving spouse e, that single man or woman, as the case may be, shall make an application to the Court for an order declaring that person to the surviving spouse of the intestate.”

THE EVIDENCE

[7] In support of her application, Ms Robinson relies on the three (3) affidavits sworn to by her as well as the two (2) Affidavits of Antigo Samms. The Objector/interested party also relies on her affidavit.

Hopie Robinson's Account

- [8] The Applicant is a retired higgler. She said that she met the deceased in 2001 at Mr. Brown's Shopping Centre in Santa Cruz in the parish of Saint Elizabeth, whilst was purchasing a drink. Following that first encounter, they met weekly and the deceased took her out on dates. At that time, Ms Robinson was working as a higgler and also did farming. She would travel to Mandeville and Montego Bay to sell in the markets. The deceased was a cattle farmer and his farm was located in Haughton District, Lacovia in the parish of Saint Elizabeth.
- [9] Their relationship soon became intimate and she eventually moved in with him in January 2002. They lived together as husband and wife until his death on the 25th of May 2010. When they began to live together, the deceased was a single man and she was a single woman. She stated that she loved Mr. Samms and considered him to be her common-law husband. She stated further that their relationship was known and accepted by members of their community as well as the deceased's two children who were known to her, namely Antigo Samms and Vaneta Samms. The house in which they lived was regarded by her and Mr Samms as the family home.
- [10] Ms Robinson averred that she and Mr Samms would go shopping at the market on Saturdays. She also recounted his professed love for her cooking and his favourite meal on the weekend being a big pot of beef soup. On Sundays, he enjoyed either brown stewed or fried chicken with rice and peas.
- [11] The deceased introduced her to two of his children, Antigo Samms (who visited frequently) and Vaneta Samms (who visited on occasions). She said that Mr Samms never told her about any more children. She stated that both Antigo and Vaneta Samms had accepted her as their father's partner/his common-law spouse. During the relationship, the deceased had informed her that he was ill and suffered from lung cancer as well as heart related issues.

- [12]** In her further supplemental affidavit, Ms Robinson sought to address an issue which had arisen in her first affidavit. She stated that she made an error as to her age and she was actually fifty-eight (58) years old when she met the deceased. She was born in 1943 and met him in 2001. She is the mother of eight adult children and also a grandmother. Her youngest child was twenty-eight (28) years old when she met the deceased. She clarified that Vaneta only visited the house once whilst she was living there but Antigo would visit more than once every year. He had visited them the month before the deceased passed away.
- [13]** Ms Robinson explained that Mr Samms and Vaneta did not get along and he only became aware that he was her father when she was nine (9) years old. It was after his death that she learnt that he had fathered other children. Ms Robinson stated that she did not know these children and she never met them as the deceased was private and spoke very little about his past.
- [14]** Ms Robinson conceded that she did not possess any documentary evidence which showed that she and the deceased lived together. She explained that when they met each other, they had already established themselves and had their own homes. The utilities at the family home, namely water, electricity and landline telephone services were all in the name of the deceased. He paid these bills and there was no need for her to apply to have them reflect her name as well. She was unable to produce any mail sent to her at that address as there are no numbered street addresses. The area was simply referred to as Lacovia.
- [15]** She was actively involved in the raising of her four (4) grandchildren who lived with them at the house with the consent of the deceased. They lived in a 2-bedroom, 1-bathroom house. Their bedroom was located in the back. The front bedroom was reserved for Antigo Samms when he visited, otherwise it was used by her grandchildren.
- [16]** She explained that she was described as a 'friend' on the funeral programme because Antigo Samms had asked a retired teacher Ms. Bacchas to prepare the

funeral programme and she therefore had no control in the way in which she was described. She indicated that she had not been troubled by that particular reference as she had been grieving and had to rely on her daughter to deliver the tribute that she had prepared.

- [17] She indicated that apart from sharing an intimate relationship with the deceased, she catered to his domestic needs which involved preparing his meals, cleaning the house and doing his laundry. She also assisted him with tending to his cattle when his lung condition worsened. She would round up the cows and move them to a new pasture, when the deceased was not able to.
- [18] She explained that they never opened a joint bank account because at the time when they met, they were both accomplished in their own right. She stated that he would involve her in his business affairs as they often had discussions in which he asked for her input. She also stated that his son, Antigo Samms always ensured that they were both well taken care of.
- [19] Ms Robinson further indicated that while the deceased handled the utility bills, they both contributed to the groceries. The groceries were supplemented by the crops that she farmed. She recounted that whenever the deceased went out he never returned home without purchasing a bottle of her favourite Grace Tropical Rhythms for her.
- [20] When she moved in with the deceased, in addition to taking her clothes and cooking utensils, she purchased furniture and appliances to ensure that they were both comfortable. She recalled paying **Sixty-Seven Thousand Dollars (\$67,000.00)** for a living room suite, **Eight Thousand Dollars (\$8,000.00)** for a dresser and **Fifty-Thousand Dollars (\$50,000.00)** for a washing machine. She was unable to produce these receipts as Deloris Samms had allegedly discarded all of her personal possessions/belongings which had been in the house. She accused Ms Samms of barring her from the house, changing the locks and commencing court proceedings in respect of same.

- [21] Ms Robinson insisted that the deceased had intended to marry her and on one occasion stated; "*B, yuh a good woman eh nuh. Mi a go marry yuh.*" He had however failed to act on these words and asked her not to be a nag about it. They did not have an active social life but enjoyed watching the television, listening to the radio and discussing the news.
- [22] She accompanied him to his doctor's appointments and cancer treatment at Kingston Public Hospital. When he was admitted to the Black River Hospital, she visited him twice a day to collect his laundry, provide him with fresh clothes and supplies and socialize with him.
- [23] In cross-examination, Ms Robinson said that when Deloris Samms came for her father's funeral, she thanked her for taking care of him. She did not agree that this had not occurred. She was shown some photographs taken by Ms Samms and denied that she had taken these with Ms Samms after the death of Nathaniel Samms. She denied the suggestion that Ms Samms had stayed at the house with her two (2) children in 2008. When it was suggested to her that she did not see Deloris Samms because she never lived at the house she responded that she had lived there from 2002. When questioned why her affidavit did not mention that Deloris had thanked her for taking care of her father and shown the affidavit she indicated her inability to see the words which appeared jumbled.
- [24] Ms Robinson was questioned about the length of time she knew the deceased as paragraph 4 of her affidavit filed May 4th, 2020 stated that she knew Nathaniel Samms for nineteen (19) years but they had been together from 2001 until his death in 2010. She insisted that this was correct as she knew him from 2001. She disagreed with the suggestion that she had lived at a separate residence. She denied knowing or knowing of Thelma Smith or whether she had ever seen a photograph of her.
- [25] When asked if any of the members of her community knew about her relationship with Nathaniel Samms and if she had considered having an independent person

corroborate her account, she responded that she had asked but they did not come forward. She was asked if she knew that she had been referred to as a friend in the funeral programme and stated she was not aware.

- [26] Ms Robinson denied the suggestion that she merely visited the deceased on a few occasions and insisted that they had lived together. She stated that she had no knowledge of a room at the house being rented and denied that a tenant resided there. She strongly refuted the suggestion that the deceased's neighbour Marcia would cook for him while he was alive.

Antigo Samms

- [27] Mr Samms gave evidence that he is the only son of the deceased and knew the applicant as his father's common law spouse. He professed that he is "*well acquainted with the applicant whom he calls "Stepmom", "Miss Hope" and "Mom."* Ms Robinson and his father lived together at the home they shared at Haughton District, Lacovia for eighteen years (18) until the death of his father on May 25th, 2010. He stated that they '*shared a loving and committed relationship up until the time of his death.*' When he visited his father, he observed Ms Robinson caring for him especially during the time of his suffering and pain from his illnesses. He recalled that Miss Hopie would cook beef soup for his father because he was fond of this meal. He recounted that Miss Hopie and his father often travelled to the market together in order to purchase groceries. He described her as quite distraught when his father passed and he often saw her crying.

- [28] In his supplemental affidavit, Mr Samms averred that his father had other children but his family is "*a bit complicated and the relationship is complicated.*" By this, he meant that his father did not formally introduce him to his sister Vaneta, rather he was informed by a stranger that she is his sister when she came to visit her stepfather who lived adjacent to their paternal grandfather's house. He stated that his father migrated to England in January 1971 and at that time, he was only aware of his father having himself and his sister Vaneta as his biological children. He

further stated that his father lived in England for a long time, from October 1959 and 1982. He recalled that Deloris visited his father in 1970. He was subsequently told by him that a lady in England said that she had a daughter for him. At the time of her visit, Deloris was not yet ten (10) years old and she did not visit again for the rest of the time that he lived with his father. He saw her again when he was working as a bus driver, they exchanged numbers and she visited him at his home. In 2008 she asked for the deceased's number and he later heard that she travelled to Jamaica to visit their father. He also saw her after their father died.

[29] According to Mr. Samms, Deloris and his father did not share a close father-daughter relationship so he was surprised that she obtained a Grant of Letters of Administration in his name after he passed. He explained that he was advised by his sister Vaneta Samms that Deloris is not their father's biological daughter as her mother was already pregnant with her which was why she adopted the name, Deloris Brown. He questioned Deloris's standing to dispute the relationship between Ms Robinson and his father as she barely had a relationship with his father and was not around.

[30] He informed the Court that his father had a major conflict with Vaneta Samms because he disapproved of her relationship. This led to the breakdown of their relationship and she didn't visit him at the home he shared with Miss Hopie. His father had entrusted him to take care of his business dealings as he could neither read nor write and he also added name to his Jamaica National account. This was the account to which the deceased's pension from the United Kingdom was sent and he used funds from it to pay for his father's funeral expenses.

[31] He professed that he was the only child of the deceased who financially cared for the deceased as the monies received for his pension were insufficient to fully cover his medical expenses. He made improvements to the house in 2006 or 2007 in order to make his father and Miss Hopie comfortable. He explained that his father built the house while he was living in England and Mr. Broomfield oversaw the construction. When his father relocated to Jamaica, the kitchen was incomplete.

The improvements that he made to his father's house were the completion of the kitchen and general repair of the house.

- [32]** He stated that from the beginning of 2002, he visited Jamaica at least two (2) or three (3) times annually. He would stay at his home in the community of Newton which is approximately 1.5 miles from where his father and Miss Hopie lived. He stated that he would visit them almost every day and stayed over some days. He celebrated Christmas holidays with his father and Miss Hopie as he would stay in Jamaica for at least six (6) to eight (8) weeks. He also spent time with them when he visited Jamaica in the Easter holidays. He would visit Jamaica at different times and spend time with them at their house. He knew that some of Miss Hopie's grandchildren lived at the house at different times because whenever he visited, they would allow him to sleep in the bedroom they normally slept in and sleep in the sitting room.
- [33]** He confirmed that Miss Hopie's clothes were at the house and shared that she had purchased a washing machine because the deceased did not have one. She bought a living room suite as the previous one was old and tattered. She also purchased a four-burner gas stove when the previous one started to malfunction. He observed from his visits to their home that Miss Hopie looked after the deceased, prepared his meals, did his laundry and ensured that the house was clean.
- [34]** He stated that he was not aware of his father and Miss Hopie socializing very often as his father had been sick for decades before he passed away. His father never discussed his relationship with Miss Hopie with him and he never witnessed any public display of affection between them. He was aware however that they shared a bedroom. He observed that his father treated Miss Hopie well and was concerned about her wellbeing. He remembered that his father was attentive to the payment of bills and the necessary repairs to the house in order to make Miss Hopie happy. Although he arranged his father's burial and selected the funeral

package, Miss Hopie was the one who chose his burial clothing. He recalled that this was a challenging period for her and he offered as much support as he could.

[35] In cross-examination, Mr Samms did not agree that the fact that the section on his birth certificate which identifies the father is blank meant that there is no proof that Nathaniel Samms is his father. He indicated that he did not know that Deloris Samms had applied for a copy of Grant of Administration and received it. He strongly disagreed with the suggestion that his father and Hopie Robinson did not share an intimate relationship. He was not aware of any part of his father's house being rented and he denied placing locks on the doors there.

[36] When he was asked about the mention of the Grant of Administration to Delores in his affidavit, he said that Deloris told him about it. He acknowledged that he had heard that Thelma Smith was the mother of Deloris Samms. He also told the Court that he was aware that Deloris Samms had destroyed Miss Hopie's documents when she visited Jamaica.

[37] In further cross-examination, he stated that he knew Marcia and explained that she was not his father's neighbour but actually lived elsewhere in the district. He disagreed with Counsel's suggestion that she lived right across from his father and insisted that Melvin lived next door and his aunt lived line by line with his father. He indicated that in addition to his aunt, the other neighbour was Mr Parkinson. He was unsure about the year that his aunt died and said that it could have been 2010. He subsequently corrected this response to state that his aunt died 3 to 4 years ago. He admitted that he had been informed by Miss Hopie of an issue between herself and Deloris Samms in relation to the house but could not recall which year it began.

[38] Mr Samms rejected the suggestion that he did not have sufficient information or knowledge whether Miss Hopie was his father's spouse. In addressing the contents of the funeral programme, he stated that while he provided the

information to his former teacher who assisted in preparing it for him, she put it in her own words.

THE INTERESTED PARTY – Deloris Samms-Brown

- [39] Deloris Samms-Brown informed the Court that she resides in the United Kingdom and is the estranged daughter of the deceased. In September 2008, when she visited Jamaica with her two (2) children, she stayed at her father's house and witnessed that a neighbour Marcia prepared meals for her father as she did the same for her and two (2) children whilst she was there. She stayed at the deceased's home for two (2) weeks from the 30th of September 2008 to the 12th of October 2008, and at no time did she see Hopie Robinson living at her father's home.
- [40] On the 18th of June 2010, she was introduced to Ms Robinson by Marcia as the daughter of Nathaniel Samms from England. On the eve of her father's funeral, she took photographs with Ms Robinson even though she was not actively involved in the funeral service. She stated that on the 20th of June 2010, she was in the company of Vaneta Samms, Marcia Wright, Kenesha Dixon and Vanya Rigby when she heard Ms Robinson say, "*the bitch should a dead long time.*" She confronted her and there was a heated exchange following which they never spoke again. She also refuted the contents of the Affidavits of Antigo Samms and Ms. Robinson.
- [41] In cross-examination, Ms Samms stated that her visit to Jamaica was in September 2008 and that her second visit was to attend Nathaniel Samms' funeral. She indicated that she lived in Haughton District at her fiancé's address for two (2) years from 2011-2013 during which she travelled back and forth from England to Jamaica. She further stated that she met her fiancé at her father's funeral. She disagreed with the suggestion that she stayed with her spouse when she visited Jamaica in 2008. When asked to clarify her name as she wrote/signed Deloris Samms-Brown or Deloris Brown-Samms interchangeably, she stated that her birth

certificate has her name as Deloris Samms-Brown. When she was shown her birth certificate and asked to show where this was stated she agreed that it was not.

[42] Ms Samms acknowledged that her use of name Samms occurred more recently. She explained that her father left when she was a child and she didn't reconnect with him until September 2008 when she visited with her daughters. She initially disagreed that the only time she visited her father was September 2008, but subsequently accepted that this was correct. She then explained that it was because she didn't know where he was from she was a child and only learned his whereabouts from a friend. She agreed that after this visit she didn't return until after father's death. She couldn't speak of own knowledge who resided at the house with father.

[43] She told the Court that when she came for the funeral she took photos with her sister on at least two occasions and stated that Ms Hopie was in the centre of both photos. It was her position however that Ms Hope would only come to clean house and was not involved with her father.

[44] She disagreed with the suggestion that there was no photograph of her mother on Nathaniel Samms' dresser. She insisted that she heard Ms Robinson utter the words, "*the bitch shoulda dead long time.*" She indicated that Ms Robinson said those words straight and plain to her face. She agreed with Counsel that the only time she visited her father's house was in 2008.

CLAIMANT'S SUBMISSIONS

[45] In submissions filed on behalf of the Applicant, Ms Georgia Hamilton submitted that the applicant entered into a relationship with the deceased in 2001 and began cohabiting with him at his home in Haughton District, Lacovia P.O. in the parish of Saint Elizabeth in January of 2002. Her account was supported by the evidence of Antigo Samms that they lived as man and wife.

[46] Counsel directed the Court's attention to the following authorities which she described as being helpful in respect of applications of this nature. These are:

1. **Lisa Cohen v The Administrator General for Jamaica [2020] JMSC Civ. 155**
2. **Ivan Williams v Yvonne Thompson 2010HCV03404 unreported judgment heard on the 15th of July 2011.**
3. **Olive Adams v Kenesha Harriott [2016] JMSC Civ. 15**
4. **Huntley Golding v Maragh Blossom Monica [2016] JMSC Civ. 233.**
5. **Millicent Bowes v Keith Alexander Taylor Claim No. 2006HCV05107 January 19, 2009**

[47] On the issue of the stability of the union and degree of permanence, Counsel pointed out that Antigo Samms acknowledged the relationship between Miss Hopie and his father. He also recognised his father's house as the family home. Counsel argued that the Court should accept his evidence as he and the deceased shared a close relationship and communicated often. Counsel emphasized that the union of the parties was not only depicted in their cohabitation on the deceased's premises, but also by evidence that the deceased's son referred to Miss Hopie as "mom."

[48] In relation to the issue of finances, Counsel submitted that when their relationship began, the couple had been leading separate lives which were fully established and cannot be likened to two individuals just starting their lives. She asked that their union be examined as one in which an elderly bachelor and an elderly spinster found love and companionship in each other which eventually led them to cohabit as if they were man and wife.

[49] She submitted further that given the fact that they already had established lives and owned their own properties, the grocery bill was the only shared expense between them. The deceased already had utilities and paid for them therefore, the status quo remained as it was convenient. Counsel argued that there are no

allegations challenging the stability of the relationship between Miss Hopie and the deceased. She submitted that even the Ms Samms stated that she took pictures of Miss Hopie on the eve of her estranged father's funeral. Counsel asserted that this action contradicts Ms Samms' claim that she was unaware of the union between Miss Hopie and her estranged father. She stated that her own evidence demonstrates her respect for Miss Hopie as her father's companion.

[50] Counsel further submitted that although Miss Hopie was referred to as a "friend" in the deceased's funeral programme, this in no way reflects the nature of the relationship that the two shared. She asked the Court to note that the funeral programme was organized by a family friend of Antigo Samms who was tasked with helping the family during their time of grief. The programme was not approved by Miss Hopie or Antigo Samms. Counsel asked the Court to favourably consider Miss Hopie's participation in the funeral in preparing a tribute on the life of the deceased as showing a level of intimacy.

[51] Counsel submitted that the authority of **Olive Adams (supra)** is comparable to the case at bar as Olive Adams was an ancillary worker who cohabited with her partner, Dexter Harriott. Dexter hid his relationship with Olive from his daughter Kenesha Harriott. Kenesha opposed Miss Adams' claim for a declaration of spouseship on the ground that she was unaware of a relationship between her father and Miss Adams and contended that he had relations with another woman. The Court found that the circumstances alleged by Ms Harriot did not negate the validity of the union between Miss Adams' and the deceased, Mr. Harriott. The Learned Judge highlighted the norms in the Jamaican society and in condemning the view that extra-marital affairs invalidate the legitimacy of a claim to the status of spouse commented:

"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."

His Lordship found that even though Mr. Harriott chose not to divulge the real truth of his relationship with Miss Adams, they resided as man and wife for the requisite period and by virtue of the Intestate Estate and Property Charges Act, Miss Adams was his spouse.

- [52] Counsel submitted that considering all of the circumstances before the Court, Miss Robinson has demonstrated that she and the deceased were living together as man and wife for the requisite period and that their relationship was one that was apparent to the ordinary and reasonable person of normal perception looking on with full knowledge of all the pertinent facts, one such person being the deceased's own son, Antigo Samms.

INTERESTED PARTY'S SUBMISSIONS

- [53] In submissions opposing the grant of the orders, Miss Judith Clarke indicated that the Claimant's evidence cannot be trusted, not only because of the discrepancies in her account, but also because she has not provided any documentary evidence in proof of her alleged relationship with the deceased. She highlighted the fact that the application was filed in May of 2020 although Mr. Nathaniel Samms died approximately ten (10) years prior to this and the official record of his death refers to him as a bachelor at the time of his death. The Court was also asked to carefully examine the fact that the informant as to Mr Samms death was Oscar Williams.
- [54] Ms Clarke argued that on a comprehensive analysis of the Applicant's evidence, and that of the purported "only son" of Mr. Nathaniel Samms, the Court is left with no other material capable of confirming that the Applicant and the deceased were common law spouses during the period claimed by the Applicant. She posited that despite the fact that there is no requirement for there to be any independent material to assist a Court to objectively assess such a claim, it would have been desirable. She submitted that there is no evidence to show that the relationship between the deceased and the Applicant was widely publicized and accepted in the community of Haughton District, Lacovia P.O. in Saint Elizabeth.

- [55] Counsel further submitted that various details provided by the Applicant to Court about the deceased which were wholly inadequate and grossly inaccurate. She argued that the inability of the Applicant to quote the deceased's correct age at the time of the start of their relationship is a strong indicator that they were not in a close and loving relationship. Counsel argued further that the Applicant has not divulged any intimate details of her relationship with the deceased to persuade the Court to grant any of the orders being sought.
- [56] **Ms Clarke contended** that the Applicant could not have known the deceased for nineteen (19) years, if she met him in 2001 and he died in 2010. Counsel also cast doubt on the assertion of Antigo Samms that the applicant whom he affectionately called 'stepmom' shared or cohabited in the home with his father for over eighteen (18) years.
- [57] Miss Clarke submitted that Deloris Samms version of the facts further discredits the allegations of the Applicant as when she visited Jamaica in 2008, she did not meet the Applicant. They only met after the death of Mr Samms. Counsel argued that the visit clearly happened as Antigo Samms, Ms Robinson's witness confirmed it. She contended that the internal integrity of the applicant's case is questionable as there is no substance which supports her claim.
- [58] **Ms Clarke contended** that there is insufficient evidence that the Applicant and the deceased lived together as husband and wife in the meaning of the Act. She argued that the existence of a friendship and offering some measure of care is not what the law contemplated as falling within the meaning of a spouse.
- [59] Counsel argued that it is quite odd that the Applicant was unaware that the deceased had other children apart from the two whom she was introduced to. She vehemently argued that if the Applicant was in fact living with the deceased, how is that she did not meet Deloris/the Objector and her two (2) children when they visited the deceased at his home in Lacovia between September 2008 to October 2008.

[60] Counsel contended that the evidence of the witness for the Applicant is on shaky ground and amounts to hearsay based on the lack of specific details and the fact that Antigo Samms appeared to reside principally out of Jamaica. Ms Clarke submitted that during cross-examination, Antigo Samms disavowed some important aspects of his affidavit as although he had averred that the Applicant shared a home with the deceased for eighteen (18) years, in his viva voce evidence, he said that he did not know about this. Ms Clarke invited the Court to examine Ms Robinson's assertion of a close relationship with the deceased when she did not know about all his children.

DISCUSSION AND ANALYSIS

[61] In order to succeed on this application, Miss Robinson needs to prove on a balance of probabilities that she was a single woman, that the deceased, Mr. Nathaniel Samms was a single man and that they both lived together as husband and wife for a period of not less than five (5) years immediately before the death of the deceased on the 25th of May 2010.

Whether the Applicant was a single woman and the deceased a single man within the meaning of the Act?

[62] The Court is tasked with determining whether the Applicant is a spouse of the deceased. In order to do so, the Court must first determine whether the Applicant was a "*single woman*" and the deceased a "*single man*" during the cohabitation period within the meaning of the Act.

[63] In the case of **Millicent Bowes v Keith Alexander Taylor Claim No. 2006HCV05107 January 19, 2009**, at paragraph 32 of the judgment, McDonald Bishop J (as she then was) **gave** useful guidance on how to treat with the issue of whether the Applicant was a single woman. She stated that:

"32. The first precondition that must be satisfied to fall within definition of spouse is that both parties must have been single during the period of alleged cohabitation. Evidence as to the marital status of both parties

during the relevant period is therefore required. The Applicant has merely said that she is a housewife and the common law wife of the defendant. Apart from calling herself the common law wife, she has not demonstrated on the evidence that she is in fact so. She must show on the evidence that she was a “single woman” at the material time. The defence has put the Applicant to strict proof of her averments. She asserts it, she must prove it. The duty is on her to bring evidence to satisfy every aspect of her claim. She has failed to do so.”

- [64] There is no evidence before the Court that the Applicant was lawfully married or in a legally recognized common law relationship with another man during the time in which she says she cohabited with the deceased. The Applicant’s evidence is that she was a single woman and her status was not in dispute.
- [65] Ms Deloris Samms has not sought to challenge this assertion and there have been no submissions as to Ms Robinson’s status. Having carefully assessed the evidence, I find that Miss Hopie Robinson was a single woman during the material time being 2001 to 2010.
- [66] In relation to the deceased, it is agreed among the parties that he was never legally married. The evidence before the Court in relation to the status of the deceased is that he was involved with other women who produced children for him. This all occurred before he met the Applicant. He was also described as a Bachelor in his Death Certificate. Given that there is no evidence before the Court which shows that the deceased was either married or in a common law union during the time that the Applicant alleges that he was in a relationship with her, I find that the deceased was a single man at the time of his death.

Whether the Applicant cohabited/lived together as though they were husband and wife for a period not less than five (5) years prior to his death?

[67] It is not sufficient that the man and woman are “*single*”, the second criteria which must be met requires that they must have been cohabiting as if they were in law husband or wife for a period not less than five (5) years.

[68] Some useful guidelines/signposts were enunciated by the Learned Judge in **Millicent Bowes v Keith Alexander Taylor (supra)** which were extracted in part from the ruling of the Court in **Kimber v Kimber** [2000] 1FLR 384 and state as follows:

- i. *Living together in the same household.*
- ii. *A sharing of daily life.*
- iii. *Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.*
- iv. *Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?*
- v. *A sexual relationship.*
- vi. *Children*
- vii. *Intention and motivation.*
- viii. *The ‘opinion of the reasonable person with normal perceptions’.*

[69] Paragraphs 49 and 50 of the **Millicent Bowes v Keith Alexander Taylor (supra)**, decision are also highly instructive where the Learned Judge stated;

“49. 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.

50. Whether parties share a conjugal union outside of marriage seems, ultimately, to be ascertainable upon the application of an objective test after taking into account subjective elements of the parties' conduct and interaction with each other. That is to say the consideration must be not only what the relationship, on the evidence, might have meant to the parties themselves or what they claim it to be but, above all else, what it would appear to be to the ordinary and reasonable person of normal perception looking on with full knowledge of all the pertinent facts."

[70] In order to arrive at a decision on whether Ms Robinson can be granted the declarations sought, a careful examination of the evidence was conducted against each signpost.

LIVING TOGETHER IN THE SAME HOUSEHOLD

[71] It is evidence of the applicant that she entered into a relationship with the deceased in 2001 and they began cohabiting in January 2002 after she was invited to move in by him. In her affidavits, she explained the supportive and wifely role she played in preparing his meals, sharing his bed, doing laundry and cleaning the house. She recalled preparing his favourite meal, which was beef soup and fondly remembered his preference for American Khaki pants as it could withstand the dirt which came with being a cattle farmer.

[72] Ms Robinson shared that she was welcomed by the deceased to make his house hers, which led to her purchase of a number of items to make their lives more comfortable. These included a DVD player, a blender, a washing machine, a living room suite, dresser, a four-burner gas stove and other items. Mr Antigo Samms confirmed that Miss Hopie made major purchases to make the house more comfortable for her and his father. His evidence provided important corroboration for the account of Miss Robinson as even though he resided overseas, I am satisfied that he was a frequent visitor to the household and in a position to observe these differences. He was also in regular contact with his father and the Court accepts that he would have been informed by him of who had made these changes. He also provided important evidence that the couple shared a bedroom,

a situation which was sufficient to refute any suggestion of mere friendship or domestic service.

[73] Although Deloris Samms sought to assert that the Applicant merely visit her fathers house as a helper and resided at her own home, she was not able to show that she had actual knowledge of this. While she maintained that she did not see Ms Robinson during her visit to her father's home in 2008 and sought to rely on the evidence of Antigo Samms in support of this visit, the evidence of Mr Samms did not go this far. He stated that he heard that she went to Jamaica in September 2008 to visit their father but he gave no evidence of where she stayed or the length of time of her visit.

[74] On a careful review of the evidence of Ms Samms, the Court had grave concerns in respect of her credibility. It was clear that she did not enjoy a close relationship with her father as she only reconnected with him in 2008, having last seen him when she was a child. Having visited in 2008, she never returned until his funeral and it does not appear that she participated in this. Ms Samms also exhibited signs of untruthfulness as she insisted that her birth certificate bore both her mothers and fathers name and had to accept that this wasn't true when she was shown the document. She also sought to deny that her first visit to her father was in 2008 before admitting that it was.

[75] These responses all called into question her ability to credibly refute the assertions of Ms Robinson or Mr Samms as to the nature and length of the relationship between Ms Robinson and her father. I did not believe her assertion that Marcia, 'her father's next-door neighbour' was the one who prepared his meals as she was not in a position to see this. Accordingly, I was unable to find that her evidence had rebutted the Applicant's assertion of enjoying a shared household with the deceased.

SHARING OF DAILY LIFE

- [76] In outlining their lives together as a couple, Ms Robinson stated that even though they did not socialize much, they would go to the market on a Saturday. The deceased would request beef soup on a Friday or Saturday and fried or brown stewed chicken with rice and peas on a Sunday, all of which she lovingly prepared. Although he covered the utility bills, they shared the costs of groceries. They also enjoyed sitting and watching his cows graze on his farm. They also engaged in long conversations on several topics.
- [77] Ms Robinson also recounted that they loved to remain indoors and spent their time, watching television, listening to the radio and discussing the news. This evidence was supported by that of Antigo Samms who shared that during the times when he stayed at the house he observed Miss Hopie looking after his father. She catered to his needs, prepared his meals, kept the house clean and organized his laundry. While he never observed displays of affection between them he confirmed that they shared a bedroom.
- [78] I find that the Applicant has put forward cogent evidence which would indicate that she and Nathaniel Samms shared every aspect of their daily lives and I am satisfied that they presented themselves to the world at large as a married couple.

SEXUAL RELATIONSHIP

- [79] At paragraph 6 of her first affidavit Miss Robinson stated that *‘our encounters became serious and we began an intimate relationship.’* This statement speaks for itself as it clearly indicates that the relationship between her and the deceased was consummated. There is no independent evidence of this and the Court is not surprised by this fact, especially taking into account the maturity of the individuals. I therefore find that the Applicant has presented sufficient evidence to establish suggest that a sexual relationship existed between herself and the deceased.

STABILITY AND A DEGREE OF PERMANENCE IN THE RELATIONSHIP

[80] In her evidence, Ms Robinson indicated that the relationship commenced in 2001. In 2002 he asked her to move in with him which she did and they were together until his death in 2010. Her account of a stable long-term relationship was corroborated by the evidence of Mr. Antigo Samms. In considering the stability and permanence of their union, it has not escaped the Court that there were some issues arising as to the length of same.

[81] In Ms Robinson's account she was adamant that they were together from 2001 until 2010 and began living together in 2002. Her affidavit however also outlined that they were together for 19 years. When pressed on the length of time, Ms Robinson was insistent as to the years involved. In considering this inconsistency in her account, I noted that Ms Robinson, while consistent as to calendar years, showed some weakness in calculating the number of individual years. An example of this was seen in respect of her own age at the time the relationship began. It was also apparent to me that she seemed to have challenges educationally and this was seen in her remark when asked to read a particular section of her affidavit. I was struck however by the fact that she did not waiver as to the calendar years during which the relationship commenced and ended and I believed that she was speaking the truth in this regard.

[82] There was a similar observation in respect of the evidence of Antigo Samms, as even though he maintained that the individuals had been together for years, when asked about the eighteen (18) years stated in his affidavit he was ambivalent as to the figure and indicated he was not able to say if that figure was correct. In assessing this response, I took note of the fact that Mr Samms is a mature individual and this would have been the case during the course of his father's relationship with Ms Robinson. His reference to addressing her as stepmom or mom indicated to the Court a situation where she had been a stable and

longstanding presence in his father's life and home and had 'earned' this designation. While he was unable to provide the number of years, I was satisfied that it was for a period in excess of what is required by the Act and while it lacked specifics it still served to support the evidence of Ms Robinson on this point. Accordingly, the Court finds that there was a serious, stable and permanent union which was only brought to an end by the passing of Mr Nathaniel Samms.

[83] In respect of the evidence of Deloris Samms to the contrary, the Court notes that she does not live in Jamaica, was not close to her father and could not have known what was occurring in the life of her father for the eight (8) years that he cohabited with Miss Robinson. It was also interesting to note that while she strongly disputed Ms Robinson's claim and denied having any knowledge of her being in a relationship with her father, Ms Samms took no less than two photographs with Ms Robinson and her sister. The Court found it quite telling that in both photographs the persons stood closely together in what appeared to be an embrace and Ms Robinson was in the centre. I did not believe that the positions of the individuals and placement of Ms Robinson was consistent with her being a weekly helper but find it to be an acknowledgment of her as a member of the family, that is their father's spouse.

[84] The Court finds that there is no merit in the submissions advanced on Ms Samms behalf that the evidence does not reveal a close, loving and intimate relationship. I am satisfied that Antigo Samms had a close relationship with his father and was suitably placed to provide details of his life as he visited regularly from the UK, he dealt with his father's business and financial affairs and he stayed at the house on occasion.

[85] In respect of the question of the paternity of Antigo Samms, which was raised by the Interested Party, I found this to be ironic given the fact that Ms Samms was not given her father's name and only sought to assume same informally. She did not dispute the evidence of Ms Samms that he was living with their father in England when she met him as a child. Neither did she dispute his evidence of the clear

acknowledgment of Mr Samms by the deceased and even by their sister Vaneta. While this suggestion was also without merit, the Court was cognizant of the fact that while Mr Nathaniel Samm's name did not appear at the section delineated for father's name, his name was nonetheless present at the section for informant. The latter being the individual who would have been present and providing the details for the registration of the child including his surname. The Court believes that this appeared to be a tacit recognition by the deceased that the child was his but in any event, this assertion was irrelevant for the purpose of these proceedings.

FINANCE

[86] Miss Robinson candidly acknowledged that she did not share an account with the deceased. Her explanation for this was that because of the age at which they commenced their union, they had already established themselves in life. There was no need for her to deal with his finances and banking as his son clearly had this covered. In spite of this separation of accounts, I accept that they commingled finances in the provision of groceries and she spent on furnishings in the house and did not demand repayment.

[87] While she did not provided any documentary support for these assertions, I note that this was over a decade ago and she has been displaced from the home by Deloris Samms. She also explained that her possessions and documents there were destroyed by Ms Samms after she evicted her. While I make no finding on whether her possessions were in fact destroyed, the Court accepts that the passage of time and displacement would have impacted her ability to produce these documents. Her account of the expenditure on furnishings was supported by Mr Samms and I accept that where the question of finances is concerned there is sufficient evidence to show that commingling of same.

It is important to note that the absence of evidence of a shared bank account does not, by itself, mean that the parties were not cohabiting together as man and wife.

The dicta of McDonald Bishop J (as she then was) in **Millicent Bowes (supra)** is instructive on this point:

“...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.”

CHILDREN

[88] There is no dispute that Ms Robinson and the deceased had no biological children.

INTENTION AND MOTIVATION

[89] According to Miss Hopi Robinson, Mr. Nathaniel Samms expressed an intention to marry her in 2008. She explained that although he never mentioned this again, he subsequently told her that not having a ring, did not change anything in their relationship. While it was unfortunate for Ms Robinson that this did not materialise, the Court finds that the remarks of the deceased were consistent with an acknowledgement on his part that even without a ring theirs was a permanent union.

[90] I find that there is sufficient evidence before this court to prove that there was an intention on the part of the deceased to be part of a committed, monogamous stable and permanent union equivalent to marriage.

THE OPINION OF THE REASONABLE PERSON WITH A NORMAL PERCEPTION

[91] Apart from Ms Robinson the only other evidence of her relationship with Mr Samms came from his son. In cross examination she denied that this was because no one knew of the relationship and asserted that she had asked other persons when the claim was brought and they refused to come forward. While it was not unreasonable to expect that her claim could have been supported by others to include members of her family, it was quite revealing that her sole support came from the biological child of the deceased who had no familial ties to her. In

assessing the absence of any other witness, I find that her explanation had the ring of truth to it as not many persons wish to become involved in Court proceedings, especially given their acrimonious nature where disputes as to property are concerned.

[92] In examining the evidence of Antigo Samms, I find it to be neutral and compelling. He candidly acknowledged that his father had been a single man living with Ms Robinson, a single woman, in an affectionate, caring and committed common law union. There was no effort to hide the nature of their relationship from him during his visits. I accept that in doing so this was sufficient to provide notice to a 'reasonable person with a normal perception' that theirs was a stable and permanent union.

THE ISSUE OF CREDIBILITY

[93] In my assessment of the evidence of Miss Robinson and Antigo Samms, I was impressed with their demeanour and found them to be witnesses of truth who were credible and candid. While it was clear that some areas of Ms Robinson's recollection were lacking, I had no doubt as to the accuracy of her account on the seminal issue and accepted her explanations without reservations. I found her to be a simple woman who is now 81 years old and the Court is cognizant of the fact that recalling certain specifics could prove challenging at her age. I did not form the view that her difficulty in responding was an attempt to deceive the Court but at times she did not appear to understand the questions.

[94] On the other hand, I was not impressed with the evidence or demeanour of Delores Samms. In cross examination, she offered information which had not been provided in her affidavit. She was also somewhat evasive in her responses. While she had never visited her father before 2008, she initially sought to deny this but eventually accepted that this was the case. She also sought to claim that her name on her birth certificate was Brown-Samms knowing full well it wasn't as the document had been provided by her. Additionally, all her assertions against Ms

Robinson were based on hearsay as she visited only once. I did not find her to be a witness of truth and rejected her account as providing a basis to deny the orders sought.

CONCLUSION

[95] The Court finds that the evidence accepted proves that a spousal relationship existed between the Applicant and the deceased on a balance of probabilities.

ORDERS

[96] Accordingly, the following orders are made on this claim;

1. Order granted in terms of paragraph 1 of Fixed Date Claim Form filed on May 4, 2020.
2. Costs awarded to the Applicant against the Interested Party to be taxed if not agreed.
3. The Attorney-at-Law for the Applicant to prepare, file and serve this order.