

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE LAING JA
THE HON MRS JUSTICE SHELLY-WILLIAMS JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2021CV00128

BETWEEN	RO-YEN SIMONE CHIN FORBES	APPELLANT
AND	RICHARD HOWARD DELANO FORBES	RESPONDENT

Gordon Steer instructed by Chambers, Bunny & Steer for the appellant

Miss Stephanie Williams instructed by Henlin Gibson Henlin for the respondent.

24 November 2025 and 16 October 2026

Family Law – Division of property – Property held to be the family Home – Home jointly owned by both spouses in equal shares – Contribution to purchase price by parent of one spouse – Names of both spouses placed on the title as joint tenants at time of purchase – Intention for both spouses to benefit – Whether unreasonable and unjust to apply the equal share rule because the parent of one spouse contributed to the purchase price of the family home – Whether factors such as financial contribution to the purchase or improvement of the family home sufficiently relevant to invoke a section 7 variation in such circumstances - The Property (Rights of Spouses) Act, sections 2, 6 and 7

EDWARDS JA

[1] I have read, in draft, the reasons for decision given by Shelly-Williams JA (AG) and it accords with my reasons for agreeing to the orders made on 24 September 2025 as set out in para. [3] below. I wish to add nothing further.

LAING JA

[2] I, too, have read the draft reasons for judgment of Shelly-Williams JA (Ag). They accord with my reasons for agreeing with the orders of the court.

SHELLY-WILLIAMS JA (AG)

[3] On 24 November 2025, we gave our decision and orders in this matter and promised that the reasons for doing so would follow later. This is a fulfilment of that promise. The orders given were that:

“1. The appeal is allowed.

2. We declare that the appellant is entitled to 50% of the legal and beneficial interest in the property located at 2 Cherry Hill Drive, Townhouse no. 3, Kingston 8, in the parish of Saint Andrew.

3. The property located at 2 Cherry Hill Drive, Townhouse no. 3, Kingston 8 in the parish of Saint Andrew is to be valued by a reputable valuator to be agreed between the parties within 30 days and the costs of the valuation is to be borne equally, if the parties cannot agree a valuator, the registrar of the Supreme Court is empowered to select one at her sole discretion, upon the application of either party

4. The respondent herein is to be given first option to purchase the appellant’s interest in the property located at 2 Cherry Hill Drive, Townhouse No. 3 Kingston 8 in the parish of Saint Andrew. This option is to be exercised within 90 days of receipt of the valuation report failing which the property will be sold on the open market and the net proceeds divided.

5. The registrar of the Supreme Court is empowered to sign any and all documents to give effect to the orders herein if either party fails or is unwilling to sign.

6. Each party is to bear their costs.

7. Liberty to apply.”

Background

Before the Supreme Court

[4] The genesis of this matter lies within the Supreme Court where, on 23 November 2022, Mason J (Ag) (‘the learned judge’), having heard the matter in chambers, made the following orders:

"1. A declaration that the Claimant is entitled to twenty (20%) of the legal and beneficial interest in the property located at 2 Cherry Hill Drive, Townhouse No. 3, Kingston 8, in the parish of St. Andrew.

2. The property located at 2 Cherry Hill Drive, Townhouse No. 3, Kingston 8, in the parish of St. Andrew is to be valued by a reputable valuator to be agreed between the parties within 14 days and the cost of the said valuation is to be borne by the parties equally. If the parties cannot agree to a valuator, the Registrar of the Supreme Court is empowered to select one, at her sole discretion, upon the application of either party.

3. The Defendant herein is to be given the first option to purchase the Claimant's interest in the property located at 2 Cherry Hill Drive, Townhouse No. 3, Kingston 8, in the parish of St. Andrew. This option is to be exercised within sixty (60) days of receipt of the valuation report failing which the property will be sold on the open market and the net proceeds divided between the parties in accordance with their respective share allotment.

4. In the event the property cannot be sold due to issues concerning the subdivision of the land and/or title, the Defendant, in any event, is to pay to the Claimant the monetary equivalent of her 20% interest in the said house, failing which the said sum shall be recoverable by the Claimant against the Defendant as a debt due and owing.

5. The Registrar of the Supreme Court is empowered to sign any and all documents to give effect to the orders herein if either party fails or is unwilling to sign.

6. No order as to costs.

7. Liberty to apply.

8. A stay of execution is granted pending the Claimant's filing of the Notice of Grounds of Appeal. The said Notice of Appeal is to be filed within 42 days of the date of this Order.

9. The Claimant's Attorneys-at-Law shall prepare, file and serve this Order."

[5] The appellant, not being pleased with these orders, appealed same in this court on the following grounds:

"1. Having found as a fact that 2 Cherry Hill Drive was the family home the Learned Judge was precluded from finding that the property was a gift.

2. The Learned trial [sic] judge erred in finding that a Section 7 factor under the Property (Rights of Spouses) Act existed.

3. The Learned trial [sic] judge erred in using financial contribution as a means of determining that the Appellant had a 20% interest in the property.

4. The Learned trial judge erred when she found that the dwelling house was a gift to the Defendant alone which is against the weight of the evidence.

5. The Learned trial judge erred in Law when it was found that there was a gift of a dwelling house and not that of money for the purchase of the family home.

6. The learned trial judge erred in finding that the father of the Defendant made a gift of a dwelling house to the Defendant.

7. The Learned trial judge erred as the evidence showed that the purchase price was from pooled funds."

[6] The matter involved a claim brought by the appellant under the Property (Rights of Spouses) Act ('PROSA') in the Supreme Court, arguing that she was entitled to 50% interest in the property, which is located at 2 Cherry Hill Drive, Townhouse No 3, Kingston 8, in the parish of Saint Andrew (hereinafter referred to as 'the property'). She argued that this entitlement resulted from the property being the family home of herself and her husband, the respondent. Consequently, the appellant requested that the court below make orders that, *inter alia*, the property be valued, and she be granted the first option to purchase the respondent's share.

[7] The appellant's claim was supported by affidavit evidence sworn by her, which is summarised as follows:

I. Her place of abode at that material time was at the property. However, in 2011, (after they entered into a relationship in July of 2010), the respondent commenced living with her at East Kings House Road in her parents' townhouse. She paid all the household bills at that time.

II. Eventually, they decided to commit and start a family. Consequently, they began searching for a family home. She heard of the property, and they went and viewed it and made several inquiries. Eventually, they viewed the plans, selected lot 2, and made a 20% down payment in May of 2013. Their preferred lot 3 became available later, and they switched to receive same.

III. The property took two years to construct, and during that time, the respondent proposed to her in December of 2013, and they were married in November of 2014. The property was transferred to them as joint tenants in equal shares in June of 2015.

IV. They both recommended and agreed to changes to the property with the contractor and eventually occupied the property in April of 2015. The property was furnished by purchasing and recycling some of the furniture from her parents' home. Thereafter, their son was born whilst living at the property in April of 2016.

V. She and the respondent separated in October of 2020; albeit they both lived at the property/ their family home thereafter.

[8] In an affidavit in response to the appellant's, the respondent requested a variation of the equal share rule and indicated that:

I. He and the appellant developed an intimate relationship in early 2011, and it was in the latter part of 2012 that he moved in with her at the East Kings House Road townhouse. The appellant advised him that she owned that townhouse because her father had gifted it to her. Further, he contributed to food and paid the household helper.

II. In 2012, he and his family, including his parents, searched for a home because his father, who was seriously ill, wanted to gift him a house before he passed away. He was having trouble obtaining a housing loan from the National Housing Trust. At that time, he and the appellant were just beginning their relationship and had no plans to buy a home together. The appellant went with him to view the property and discuss the plans, as they were dating at the time, but she did not make any decisions regarding it. The decision-making was solely between him and his mother, who initially met with the developer and chose the preferred lots based on finances and availability. His father contributed financially to the purchase of the property with cash.

III. The down payment for lot 2 was made in January 2013, and the appellant did not have knowledge of the deposit, which was made from his family's personal account. He

proposed to the appellant only after she issued an ultimatum, by which time a significant amount had already been paid for the property. Her involvement in property decisions occurred after they were married, towards the end of the acquisition process, including modifications to the home. He financed these changes entirely himself, with additional funding from his parents.

IV. Most items in the family home were bought by him, with a list and invoices provided as proof. Only a few items, like a one-bedroom set and two wooden chairs, were brought from the East Kings House Road Town House to furnish the property. The appellant purchased a work desk, a lamp, and rugs using her credit card for her own benefit, and he reimbursed her for these items. He also paid most of the household bills, including those for household and yard help.

V. The appellant's name was added to the property's transfer document because "...my mother, who is an advocate for women's rights, suggested that the Claimant's name be added to the title to limit contention and promote peace within my new marriage". His mother wanted her name, in addition to the parties', to be on the property's title, but he did not realize this, so his mother's name was never added to the title.

VI. The appellant communicated their physical separation to him in December of 2019, and they later lived as roommates.

[9] The appellant responded to the respondent's affidavit and averred that her husband occasionally paid the helper and would purchase takeout meals, and that she was always involved in the process of purchasing the property. Further, the deposit for

Lot 2 was transferred to Lot 3 (which became available in May 2013), and they received a letter of possession in February 2015. She separated from him due to abuse stemming from his alcohol issues. The marriage deteriorated in December 2019, but the decision to end the marriage came in October 2020. She left the property because of his actions, prior to the claim being filed. She was never advised that his mother had any interest in the property.

[10] The appellant attached email correspondence dating back to April 2012 to prove her involvement in the initial query about the property and the eventual modification of the property. Of note are:

- i. emails dated 2 December 2014 at 1:51 pm, from the respondent to Mr Stiebel (the appellant being copied on same) regarding how detailed the appellant - his wife – was;
- ii. email dated 3 February 2015 at 6:30 pm in which the appellant detailed the look “we are going for...”, the respondent being copied on the email;
- iii. other emails ranging from 2014 to 2015 regarding the blinds estimate being sent to the appellant, grill works, Frigidaire products, the appellant querying where cheque payment ought to be made for window; and
- iv. WhatsApp messages between the appellant and respondent regarding, *inter alia*, tile selections.

[11] The attorney-at-law who had conduct of the property’s sale on behalf of the respondent also deposed in the matter. Her affidavit evidence was that the respondent contacted her by telephone in December 2012 to represent him in the purchase of the property. That at all material times, she represented the respondent in the sale, which was initially to be via a mortgage.

[12] She further deposed that the draft agreement for sale - which was received in April 2013 and was returned to the attorney with carriage of sale in July 2013 - reflected that the respondent was the sole purchaser, and to the best of her knowledge, the respondent was the only person who paid for the purchase of the property.

[13] Her affidavit evidence was also that, in January 2015, the respondent advised that he wished to add his wife's name to the property's title although the sale was far advanced (the certificate of practical completion was received by the vendor and the title was to be ready in two weeks) because he wanted to protect his wife and future children in the event that something happened to him. The sale was completed on 5 February 2015, and the amended transfer was received on 1 April 2015, with the parties being stated to be joint tenants - the effect of which was explained to the respondent, who stated that it was consistent with his intention. The fact that his wife was a woman of means was of no moment to him, as his only intention was to plan for her and any future children's security. Further, on 27 January 2021, the appellant requested all correspondence regarding the purchase of the property, and she was advised that this was not possible because she was not the firm's client at the office where the attorney-at-law practised.

[14] The respondent's mother, Mrs Marcia Forbes, also gave affidavit evidence in the matter. In said evidence, she deposed that her son failed to obtain a National Housing Trust loan benefit, and her ailing husband wished that their son would acquire his own home before he died. Consequently, they searched for a home for the respondent. This was when the respondent and the appellant commenced a relationship, but the appellant was not a part of the search and decision-making process. The appellant was included in the process (upon her encouragement) after December 2013, when the appellant and respondent's engagement was announced. In January 2015, she encouraged her son to include his wife in the decision-making process and to add her name to the property's title. The intention was also to add her name to the property since she "co-funded" the purchase, but when she realised this had not been done, she did not pursue it.

[15] She further deposed that she and her son discussed houses, and in January 2013, she advised that she preferred unit 3, a stand-alone property with better lighting than unit 2; however, someone else had already purchased unit 3. Eventually, unit 3 became available, and they acquired it. The property was always intended as a gift to their son, and the appellant was added to the title out of “mere convenience and planning for any eventualities,” not to enable her to claim a half interest after a brief marriage, as the appellant had her own family wealth.

[16] In response to the respondent’s mother’s affidavit, the appellant submitted an additional affidavit stating that, upon her name being added to the property title, she became a client of the law firm managing the case, as evidenced by email correspondence. She also stated that both she and her husband were informed about the implications of joint tenancy, which they intended, and that they were living on the property when the transfer was executed. Additionally, she mentioned that they separated in October 2020 due to her husband's abusive behaviour and alcohol issues, despite previous counselling.

Before this court

The appellant’s submissions

[17] Counsel for the appellant submitted that the appellant was entitled to 50% interest in the family home. The appellant submitted that, in **Carol Stewart v Lauriston Stewart** [2013] JMCA Civ 47, Brooks JA (as he then was) pronounced that other factors must be considered under section 7 of PROSA, as the section is not closed. However, before varying the equal share rule, the court must be satisfied that the relevant circumstances exist under section 7 of PROSA.

[18] It was further submitted that aspects of the decision in **Carol Stewart** were overruled in **Llewelyn Bailey v Sharon Colquhoun Bailey** [2024] JMCA Civ 44 at para. 150, where it was held that even when none of the factors stated in section 7 are present,

the rule can be displaced because of the court's "broad discretion to consider any relevant factor".

[19] The appellant argued that the case of **Claudette Crooks-Collie v Charlton Collie** [2022] JMCA Civ 7, on which the learned judge placed great emphasis in the written decision, is distinguishable from the instant case. The appellant submitted that section 7 is not applicable to the case at bar because none of the stipulated exceptions exist. This is so as the property was the family home and the marriage was not short, as the learned judge found.

[20] Counsel for the appellant lamented that the learned judge failed to state which factor(s) in section 7 were considered. Further, the learned judge addressed the issue of contribution toward the property's acquisition with great emphasis and concluded that it would be 'unreasonable and unjust' for the appellant to have an equal share in the family home.

[21] It was further submitted on the appellant's behalf that a spouse's name need not be present on a property's title for it to be deemed a family home. Further, once a home is determined to be a family home, contributions towards its acquisition become otiose; likewise, the issue of it being gifted solely to benefit one spouse cannot arise. More so, in this case, where:

- a. documentary evidence reflected that the parties were living on the property when it was transferred in both their names in June 2015;
- b. they were married in November of 2014; they both signed the transfer document on the said date; and
- c. they are registered as joint tenants on the property's title.

[22] It was argued that the property was not a gift from the respondent's parents, but that they gifted him money (the amount and portion not stated), which he used to purchase the property in the appellant's and respondent's joint names.

[23] Additionally, it is argued that the evidence showed the intent was for both the appellant and respondent to co-own the home and to protect the appellant and any future children in the event of any eventualities, even though the appellant had her own money and was not destitute.

[24] The appellant's position, with respect to the gift of money, was that neither parent claimed any interest in the property. Further, although common intention does not fall directly under PROSA, the court at times considers it at the time of purchase. One must have regard to the fact that the parties were cohabiting before the deposit was paid; they resided at the property at the point of its transfer; the respondent decided, with his mother's consent, to place the appellant's name on the title; he was advised of the consequences of a joint tenancy, and that the appellant indicated that he wanted to protect his child - who was born in April 2016. Therefore, it is apparent that the respondent intended to provide for his wife and child(ren) in the event of any occurrence.

[25] It was further argued that the learned judge's findings, at para. [82](b) of the written judgment, that the contribution towards the property's purchase came substantially from the respondent's father, cannot be sustained because there was no evidence supporting such a finding. There was no evidence of what each person contributed. Although the evidence showed that his mother made significant contributions, she did not insist on having her name placed on the title, nor was she added as an interested person to the matter to enable her to obtain relief.

[26] The appellant also argued that **Mary Maud Taylor v Mike Alphonso Taylor** [2015] JMSC Civ 121, on which the learned judge relied, was distinguishable because, in that case, a section 7 factor existed. The learned judge, in the case at bar, did not make

a finding that section 7 factors existed but merely held that it was unreasonable and unjust for the appellant to be granted a 50% interest in the property.

[27] The appellant relied on the case of **Dalfel Weir v Beverly Tree** [2014] JMCA Civ 12, at para. [17] and submitted that it was similar to the instant case. In that case, the parties were married before the transfer was completed, and Phillips JA (as she then was) ultimately found, at paras. [60] and [61], that the property was the family home and the marriage was not of a short duration. Phillips JA, after examining the relevant law, concluded that section 7 applied where one spouse inherits the family home, owns it at the start of marriage or cohabitation, or the marriage is short. She noted that, in that case, the property was purchased in anticipation of marriage, even though one party owned and financed it in advance and did not inherit it. Relying on para. [49] of the **Carol Stewart** case, Phillips JA concluded that without a section 7 factor, the equal share rule remains unchallenged. She clarified that financial contribution alone toward purchasing the family home does not qualify as a section 7 factor, meaning the judge had no basis to consider deviating from the equal-share rule.

The respondent's submissions

[28] The respondent argued that the learned judge's ruling rested on the conclusion that the appellant lacked credibility. They also claimed the appellant's account was entirely fabricated to secure an interest in the property. The appellant's failure to identify any factual or legal errors made by the learned judge stems from her appeal being based on alleged factual errors, which appellate courts are generally hesitant to overturn, absent clear error.

[29] In relation to how this court ought to approach correcting errors of fact by the lower court, the respondent referred to the case of **Bahamasair Holdings Limited v Messier Dowty Inc** [2018] UKPC 25, paras. 32-36, for its argument that it must be shown that the learned judge was "plainly wrong" and this is determined "on the rarest of occasions".

[30] It was also submitted on the respondent's behalf that the learned judge's finding that the property was a gift from his parents was not wrong because it was based on the parents' intention when the property was purchased. That is, the money to purchase the same was obtained from the respondent and his parents' combined finances, and the property was substantially purchased prior to the appellant's and respondent's marriage. When the agreement for sale was signed, the intention was for the property to be solely the respondent's, as reflected by his name being the only name on all receipts and payments.

[31] It was put forward on the respondent's behalf that the appellant's name was added at the end of the transaction in the event of the respondent's demise, and her evidence that she was involved in identifying the property was shown to be untrue. Her involvement was limited to fixtures and layout, and her claims that she had bought furniture were also proven false by documentary evidence adduced by the respondent in the lower court. It was also argued that the appellant had the capability to contribute more but chose not to do so. Therefore, it is submitted on the respondent's behalf that any finding that the application of the equal share rule was unjust and unreasonable was well-founded.

[32] It was also argued that financial contribution played a key role in assessing each party's interest in the property, as supported by the cited case law. The learned judge's decision that the appellant's contributions were non-financial (para. [61] of the written judgment) and that the marriage was not a partnership because there were no pooled funds (paras. [60]-[61] of the written judgment) was well supported.

[33] It was further submitted that the distinction as to whether the house was purchased as a gift or the money given as such is a facade created by the appellant. It was also proffered that a purposive interpretation should be given to the definition of gift as per section 2 of PROSA, and its exclusion from the equal variation rule is to protect property obtained by one spouse from a third party, as a gift, for his or her sole benefit.

Therefore, it was applicable to the present case because the parents gave the money to the respondent as a gift to obtain the property, and the learned judge likewise found.

[34] Additionally, the learned judge's finding that the home was a family home and that the gift was likewise a family gift was not an error.

[35] It was submitted that the variation of the equal share rule and the basis stated for same by the learned judge, at para. [82] of her judgment, is sound.

Analysis

[36] The grounds of appeal can be summarized under the following issues: -

Grounds 1 – 6 dealt with the issues of:

- a. Whether the property was the family home?
- b. Was the respondent entitled to 50% of the family home?
- c. Was section 7 of PROSA invoked?
- d. Was the property a gift from the respondent's father to the respondent alone?

Ground 7 raised the following issue: Whether the property was purchased from pooled funds?

Whether the property was the family home?

[37] The appellant filed a claim for 50% of the property, which the appellant asserted was the family home. The learned judge concluded that the property was the family home and awarded the appellant a 20% interest. The first issue to be addressed was whether the property qualified as the family home. Under section 2(1) of PROSA, the family home is defined as follows:

“‘family home’ means 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;"

[38] Section 6 of PROSA dictates that once a property is defined as the family home, each spouse would then be entitled to 50% of it unless it fell into one of the exceptions. Section 6 of PROSA states that:

"(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) on the grant of a decree of nullity of marriage;

(c) where a husband and wife have separated and there is no likelihood of reconciliation.

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

I noted that the parties were separated at the time this claim was filed and, as such, fell under section 6(c).

[39] The meaning and scope of section 6 of PROSA have been analysed in several cases, and two tests have been established in these cases, to determine whether a property is the family home. In the case of **Pameleta Marie Lambie v Estate Leroy Evon Lambie (Deceased)** [2014] JMCA Civ 45, McDonald Bishop JA (Ag) (as she then was) opined, at para. [56], of her decision on what must be established for a property to be deemed the family home, as follows:

"What is palpably missing from the learned judge's analysis, and which has given Mrs Lambie a meritorious basis for her complaint, is his treatment of the 'ownership element' in the

statutory definition of the family home. It does appear, as advanced on behalf of Mrs Lambie, that the learned judge only applied the 'residence test' in determining whether the property was the family home and had failed to take into account the 'ownership' component of the definition up to the point he declared it to be so. For Farringdon to qualify as the family home, it must satisfy all the elements of the statutory definition and one of those elements is that it must be 'wholly owned by either or both of the spouses'. The fulfillment of the 'residence test' is, therefore, not the only criterion for a dwelling house to qualify as a family home within the meaning of PROSA."

[40] This two-pronged test of residency and ownership is the approach taken based on the definition of family home in PROSA. The learned judge adopted the two-pronged test applied in cases such as **Weir v Tree** and **Lambie v Lambie** and concluded, at para. [39], that:

"This court in applying these two tests to the case at bar is of the view that the property in question was registered and transferred in the names of the Claimant and the Defendant as joint tenants (the ownership test). Thereafter, it was used as their primary place of residence from 2015 up until the date of final separation in 2020 (the residency test). Based on section 2 (1) of PROSA and the evidence herein, I am of the view that the property located at 2 Cherry Hill Drive is the family home shared by the Claimant and the Defendant."

[41] There is a third element to the definition of the family home under PROSA. The definition excludes a gift of a dwelling house to one spouse intended by the donor for the sole benefit of that spouse. Such a gift cannot be the family home.

[42] In the instant case, the parties owned the property and were registered as joint tenants, satisfying the ownership test; both resided in the property, satisfying the residence test; and the house was not a gift to one spouse for his sole benefit. I found that the learned judge did not err in finding that the property was the family home.

Whether the appellant was entitled to 50% of the family home?

[43] The learned judge then turned to the issue as to whether the appellant should be awarded 50% of the family home. The learned judge invoked section 7 of PROSA and found, at paras. [82] and [83] of the judgment, that the property was, among other things, a gift from the respondent's parents and awarded the appellant 20% interest in the property. She stated that:

“[82] Upon the authority of **Collie (supra)** the circumstances in the case at bar ought to be the primary consideration in determining how to vary the rule. In the instant case the court finds that it would be unjust and unreasonable to grant the Claimant 50% in the 2 Cherry Hill property taking into account that:

- a. The Claimant made no financial contribution to the acquisition of the property.
- b. The money used to purchase the property was a gift from the Defendant's parents, especially his father who was ill and wanted to fulfill his dying wish of buying a home for his son.
- c. The process to purchase the property started prior to the parties' marriage and was completed after the marriage.
- d. The Claimant made no contribution to the purchase of major furniture and appliances in the home and when she moved out of 2 Cherry Hill she took the furniture that she had moved from her East Kings House Road home with her. The furniture she bought during the marriage was for her own benefit and the Defendant would have to give her a refund for the purchase.
- e. The Claimant did not make any improvements to the property during the marriage. Also, her suggestions to make changes to the plan of the house for a better flow is the extent of her contribution which would be considered miniscule in the grand scheme of things as they were more of a cosmetic nature than structural, even though these changes may have been permanent.

f. The Claimant and her parents are co-owners of the property at 17 East Kings House Road, Townhouse No. 3, Kingston 8 in the parish of St. Andrew and she is a woman of means

[83] Based on the evidence in the case at bar I find that the Defendant has proven on a balance of probabilities that it would be unjust and unreasonable to grant the Claimant the 50% share that she is claiming in the property located at 2 Cherry Hill Drive, Townhouse No. 3, Kingston 8, in the parish of St. Andrew."

[44] Section 6 of PROSA indicates that a spouse's 50% interest in the family home is subject to sections 7 and 10. Section 7 of PROSA states that:

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

(a) that the family home was inherited by one spouse;

(b) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;

(c) that the marriage is of short duration

(2) ..."

[45] The approach to be adopted in relation to section 7 of PROSA has been opined upon in several cases. In the case of **Stewart** Brooks JA (as he then was) carefully analysed several provisions in PROSA and, in addressing section 7, opined at paras. [34] and [50] of his decision that:

"[34] The third point to be noted is that the existence of one of those factors listed in section 7 does not lead automatically to the entire interest being allocated to one or other of the spouses. What may be gleaned from the section is that each of these three factors provides a gateway whereby the court may consider other elements of the relationship between the spouses in order to decide whether to adjust the equal share

rule. It is at the stage of assessing one or other of those factors, but not otherwise, that matters such as the level of contribution by each party to the family home, their respective ages, behaviour, and other property holdings become relevant for consideration. For instance, the family home may have been inherited by one spouse, but the other may have, by agreement with the inheriting spouse, solely made a substantial improvement to it at significant cost. In such a case the court would be unlikely, without more, to award the entire interest to the spouse who had inherited the premises.

...

[50] Based on the analysis of the sections of the Act, it may fairly be said that the intention of the legislature, in sections 6 and 7, was to place the previous presumption of equal shares in the case of the family home on a firmer footing, that is, beyond the ordinary imponderables of the trial process. The court should not embark on an exercise to consider the displacement of the statutory rule unless it is satisfied that a section 7 factor exists."

[46] The position that the court should not embark on an exercise of displacement of the statutory rule unless it is satisfied that a section 7 factor exists has been revisited by this court in the case of **Bailey**. V Harris JA, in paras. [147], [148] and [150] of her decision, after looking at the statutory interpretation of section 7, concluded that:

"[147] The ordinary language of section 7(1) is plain and unambiguous, and it does not result in any absurdity or inconsistency with the purpose of PROSA. Alternatively, a narrow construction of that provision would be contrary to the intention of PROSA, as it would fetter the court's discretion and possibly result in unreasonable or unjust outcomes. Therefore, it is my opinion that it is in the public interest that this court should depart from the earlier statement of principle that the factors listed in section 7(1) provide a gateway for the court to consider other factors in determining whether to vary the equal share rule, as laid down in **Stewart v Stewart**.

[148] In its stead, I propose a construction that the factors listed, along with any other relevant factors, simply aid the court in determining the true question, which is whether it

would be unreasonable or unjust for each spouse to be entitled to a one-half share of the family home. If the court finds that the equal share rule would be unreasonable or unjust in the circumstances, it is those same factors that will influence the extent to which the respective interests will be varied. For the avoidance of doubt, I would like to emphasise that, bearing in mind the diverse circumstances in such cases, it is not inherently implied that a decision that followed **Stewart v Stewart** was incorrectly decided.

...

[150] The merits in these grounds is confined to a reconstruction of the operation of section 7(1); that is, the equal share rule can still be displaced even if none of the factors listed are present since the court has a broad discretion to consider any relevant factor. In this case, however, the learned judge correctly found that two of the specified factors were relevant to his consideration. This means that even under the restrictive application of section 7(1), it was open to him to consider other relevant factors in arriving at his decision."

[47] The position of this court, as per **Bailey**, is not that **Stewart** is no longer relevant, but that the court is not curtailed by the three categories laid down in section 7 as the basis or bases to vary the 50% interest of spouses.

[48] What then was the evidence before the learned judge? This court will not lightly interfere with the trial court's factual findings. In **Bahamasair Holdings Limited v Messier Dowty Inc** [2018] UKPC 25, the Privy Council set out the approach the Court of Appeal should adopt in reviewing findings of fact. At paras. 32 and 33, Lord Kerr, writing on behalf of the board, opined:

"As was observed in *DB v Chief Constable of the Police Service of Northern Ireland* [2017] UKSC 7, para 78 the United Kingdom Supreme Court on a number of occasions recently has had to address the issue of the proper approach to be taken by an appellate court to its review of findings made by a judge at first instance. And, as was said in that case, perhaps the most useful distillation of the applicable principles

is to be found in the judgment of Lord Reed in the case of *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477.

In para 1 of his judgment Lord Reed referred to what he described as “what may be the most frequently cited of all judicial dicta in the Scottish courts” - the speech of Lord Thankerton in *Thomas v Thomas* [1947] AC 484 which sets out the circumstances in which an appeal court should refrain from or consider itself enabled to depart from the trial judge’s conclusions. Lord Reed’s comprehensive and authoritative discussion ranged over the speech of Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* (1919) SC (HL) 35, 36-37, where he said that an appellate court should intervene only if it is satisfied that the judge was “plainly wrong”; the judgment of Lord Greene MR in *Yuill v Yuill* [1945] P 15, 19, and the speech of Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* [2003] UKHL 45; 2004 SC (HL) 1, para 17 where he stated that:

‘It can, of course, only be on the rarest of occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion.’” (Emphasis as in the original)

[49] The decision of this court was based on the disputed facts presented to the learned judge. The undisputed facts in this case were that prior to the completion of the property sale, the appellant and the respondent decided to marry. The respondent and his mother agreed that the appellant’s name would be added to the property and that the parties would hold it as joint tenants. The respondent received legal advice on the implications of a joint tenancy and agreed to have the property registered as such. The respondent’s mother, although she swore an affidavit and gave evidence at trial in this matter, never claimed an interest in the property.

[50] There appeared to be a paradox in the learned judge’s decision. The learned judge, in para. [39] of her judgment, found, with reference to section 2 of PROSA, that the property was the family home. The learned judge then, in para. [70] of her decision, concluded that the property was a gift for the defendant alone. She stated, in para. [70] of her decision, that:

“In examining the evidence as it relates to the acquisition of the 2 Cherry Hill property, the cogency in the evidence will illustrate how the property was purchased as a gift for the Defendant alone from pooled family funds. It was the last dying wish of the Defendant’s father who was terminally ill, that his son should own a home. On the other hand, the Claimant relies on the principles in *Abbott v Abbott* [2017] UKPC 53 which illustrates that financial assistance to a newly married couple to acquire the matrimonial home is intended as a gift to both rather than to one alone. However, in the case at bar, the financial assistance was not given to a “newly married couple” but was given to the Defendant even before the parties were ever engaged. Therefore, it could not have been intended as a gift to the both of them.”

[51] Section 2 provides that if a court finds that the property in question was a gift from a donor to one person, it cannot be considered the family home. The learned judge, having found that the property was the family home, could not then find that the property was a gift to one party to the marriage with the intention that only that party should benefit. Further, having found that the property was a gift, the learned judge was precluded by section 2 from finding that the property was the family home.

[52] In the case at bar, the evidence before the court was that the respondent's parents funded the purchase of the property. After the respondent received legal advice, the property was placed in the joint names of the appellant and the respondent. The learned judge, therefore, erred in finding that the property was a gift from the respondent's parents to him for his sole benefit.

[53] The learned judge then sought to rely on section 7 of PROSA to deviate from the award of 50% interest in the matrimonial home. She did not indicate which factor or element she utilised pursuant to section 7 but merely referred to the fact that it would be ‘unjust and unreasonable’ to award a 50% interest in the property to the appellant.

[54] Section 7 of PROSA allows the court to award less than 50% of the family home. To justify such a reduction, the court must consider the factors listed in section 7 or any other relevant factors. In this case, the marriage lasted over five years, so it is not

considered short. The residence was purchased during the marriage, although payments and efforts toward the purchase began before the marriage. It is undisputed that the funds originated from the respondent and his parents; however, both the respondent and his mother agreed and clearly intended to include the appellant's name on the title. The respondent sought legal advice before agreeing to register the appellant as a joint tenant. Given these circumstances, the property purchase cannot be viewed as a gift from the respondent's parent to him. I found that the judge misapplied section 7 of PROSA by granting the appellant only 20%. Since this is the family home, the appellant should receive a 50% interest. Therefore, the court allowed the appeal on the basis of grounds 1 to 6.

Ground 7: whether the property was purchased from pooled resources.

[55] No evidence was presented in court, either through affidavits or *viva voce*, to prove that the property was purchased with pooled resources. The learned judge was correct in her conclusion in para. [82] (a) of her decision, where she stated:

“The [appellant] made no financial contribution to the acquisition of the property.”

However, the absence of pooled resources for purchasing the property does not alter the fact that, as previously discussed, the appellant is entitled to a 50% interest in the property.

Conclusion

[56] The property at 2 Cherry Hill Drive, Townhouse No 3, Kingston 8, in Saint Andrew, was the family home purchased during the marriage; it is jointly owned by both parties. Since they were married for more than five years, their marriage is not considered of short duration. The respondent and his parent provided the funds for the purchase, but they agreed and intended to include the appellant as a joint tenant. As a result, we found that the appellant was entitled to 50% ownership of the family home. These considerations influenced the court's ruling, as detailed in para. [3].