

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD BISHOP P
THE HON MR JUSTICE LAING JA
THE HON MRS JUSTICE G FRASER JA**

SUPREME COURT CIVIL APPEAL NO COA2022CV00111

BETWEEN	ROSA LAWRENCE	APPELLANT
AND	JERMAINE MCLEAN	RESPONDENT

**Lemar Neale and Chrisann Campbell instructed by NeaLex for the appellant
Ms Dennese Smith for respondent**

17 February and 25 June 2026

Trust – Family home purchased in joint names – Unequal contribution – No express agreement as to respective beneficial interest – Whether unequal shares justified

Appeal – Evidence – Findings of fact – Principles governing appellate intervention – Whether learned judge erred in findings of fact

MCDONALD BISHOP P

[1] I have read the draft judgment of my brother Laing JA, and I agree with his reasoning and conclusion.

LAING JA

Introduction

[2] This is an appeal arising from the decision of Henry-McKenzie J, a judge of the Supreme Court ('the learned judge'), after hearing fixed date claim forms for the division of property filed by the appellant and the respondent.

Background

[3] The claims concerned the division of property between former cohabiting parties whose relationship spanned approximately 14 years and produced one child. The central dispute concerned the ownership of real property and the division of the rental income derived therefrom, as well as ownership of a motor truck and personal chattels.

[4] The real property is situated at 40 Lanark Avenue, Bridgeport, Saint Catherine ('the house'). It was purchased in 2008, and the parties' names were entered on the certificate of title as joint tenants. The appellant contributed the greater share of the purchase price. The house is the focal point of the dispute between the parties, with the respondent contending that the beneficial interest follows the legal title and that the parties should therefore be declared equal owners. The appellant asserted that, although the property was held in joint names, she was entitled to 80% of the beneficial interest.

The orders

[5] The parties filed affidavits in support of their respective positions, and those affidavits filed in compliance with the applicable case management orders were permitted to stand as their evidence in chief. There was a hearing in chambers at which the parties were cross-examined on their affidavits. The learned judge delivered a written judgment and made the following orders:

- "a) The claimant Jermaine McLean and the defendant Rosa Lawrence are each entitled to 50% legal and beneficial interest in all that parcel of land part of Portmore and Port Henderson but now known as Bridgeport in the parish of St. Catherine, being lot numbered one thousand two hundred and fifty-two registered at Volume 1109 Folio 230 of the Register Book of Titles, with civic address known as 40 Lanark Avenue, Bridgeport P.O. St. Catherine.
- b) An updated Valuation Report is to be prepared by a certified Valuator to be agreed upon by the parties within 28 days of the date of this order. Any costs associated with same must be shared equally by both parties.

- c) The claimant is given the first option to purchase the defendant's 50% interest in the property within 90 days of the date of the receipt of the Valuation Report. In this event, the claimant's attorney-at-law shall have carriage of sale and each party shall bear the individual costs associated with the sale.
- d) If the claimant is unwilling or unable to exercise his option to purchase the defendant's interest in the property within the time specified, then the defendant shall have the option to purchase the claimant's interest in the property within 90 days of the expiration of the specified time. In this event, the defendant's attorneys at-law shall have carriage of sale and each party shall bear the individual costs associated with the sale.
- e) If the defendant is unwilling or unable to exercise her option to purchase the claimant's share in the property, the property shall be sold on the open market and the net proceeds of the sale divided equally between the parties. In this event, the attorneys-at-law for both parties shall have joint carriage of sale.
- f) The consequential costs arising from the exercise of the sale of the property to a third party must be shared equally by the claimant and the defendant.
- g) Should either party fail or refuse to execute any documents necessary to give effect to the terms of this order, the Registrar of the Supreme Court is empowered to execute the requisite documents.
- h) The defendant is not entitled to any rental income from the subject property.
- i) The claimant is the sole owner of the motor truck registered CJ4735.
- j) The items namely: water tank, glass tv stand, washing machine and stove are the properties of the defendant and are to be returned to her forthwith.
- k) Each party is to bear his / her own costs.
- l) Liberty to apply."

The grounds of appeal

[6] The grounds of appeal filed by the appellant are as follows:

- a. The learned trial judge erred as a matter of fact and/or law in finding that the parties had intended an equal beneficial interest in the disputed property at inception, which remained throughout the years of their cohabitation.
- b. The learned trial judge erred in disregarding or insufficiently regarding the totality of the Appellant's evidence, which caused her to derive an erroneous conclusion that the Appellant was not entitled to a greater interest in the disputed property.
- c. The learned trial judge erred in finding that the Respondent is the sole owner of the motor truck registered CJ4735.
- d. The learned trial judge erred in failing to award the Appellant a portion of the rental income from the disputed property."

The application to adduce fresh evidence

[7] On 24 April 2023, the appellant filed a notice of application to adduce fresh evidence on appeal. The application was heard and addressed as a preliminary issue, and the following documents comprised the fresh evidence sought to be adduced:

- i. Copy of letter dated December 9, 2022, from Advantage General Insurance Company Limited;
- ii. Copy of letter dated March 8, 2021, from Advantage General Insurance Company Limited;
- iii. Copy of letter dated December 21, 2022, from Sagicor Bank Limited;
- iv. Copy of statements received from Sagicor Bank on February 16, 2021, in respect of loan accounts numbered 440141360000066868 and 44020101004092727; and

- v. Copy of statement from Sagicor Bank for the period July 1, 2015 to July 4, 2019.” (collectively referred to herein as (‘the proposed evidence’))

[8] The essence of the submissions of Mr Neale for the appellant was that the proposed evidence demonstrates that the respondent’s evidence was not credible in certain respects. Firstly, it would discredit the respondent’s evidence that he used the money he received as his severance package when leaving the Jamaica Defence Force (‘JDF’) to assist the appellant in purchasing and repairing her salvaged vehicle. Secondly, the truck’s earnings were used to make a \$300,000.00 payment towards the truck’s purchase.

[9] Mr Neale submitted that the proposed evidence satisfied all the limbs of the test for adducing fresh evidence as set out in **Ladd v Marshall** [1954] 1 WLR 1489 (‘**Ladd v Marshall**’). The documents also show that although the appellant took steps to obtain the relevant information before the trial, it was not provided until after the trial. Counsel further submitted that the proposed evidence would have been admissible if it had been available, produced before the trial, and attached to a notice of intention to tender it into evidence.

[10] The court explained that the evidentiary principles governing the admissibility of documents as fresh evidence follow the same rules as those applicable at trial, such as the hearsay rule, subject to the additional requirements set out in **Ladd v Marshall**, which arise because the proposed evidence was not before the court of first instance. These **Ladd v Marshall** criteria are as follows:

- a) The evidence could not have been obtained with reasonable diligence for use at the hearing before the lower court;
- b) The evidence is such that if it had been admitted, it would probably have had an important influence on the outcome of the case, although it need not be decisive; and

c) It must be apparently credible, though it need not be incontrovertible.

[11] The documents sought to be admitted comprised two classes, letters and bank statements. The letters contained assertions of fact. The bank statements are arguably “business documents”, the admission of which is provided for in section 31F of the Evidence Act. As this court pointed out in **National Water Commission v VRL Operators Limited and others** [2016] JMCA Civ 19 as follows:

“[19] ...The combined effect of section 31F(1) and (2) is that such a statement in a document is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible if–

(a) the document was created or received by a person in the course of a trade, business, profession or other occupation or as the holder of an office, whether paid or unpaid;

(b) the information contained in the document was supplied (whether directly or indirectly) by a person, whether or not the maker of the statement, who had or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the statement;

(c) each person through whom the information was supplied received it in the course of a trade, business profession or other occupation or as the holder of an office, whether paid or unpaid.”

[12] The court's decision to admit fresh evidence is discretionary. The court concluded that the proposed documents to be tendered by the appellant as fresh evidence constituted documentary hearsay. For this court to consider the documents as fresh evidence, the appellant was required to file an affidavit explaining what the proposed evidence was and how it came into existence. This is typically done by an affidavit in support of the application. The appellant did not file an appropriate affidavit in support of the application but sought to rely on counsel's submissions and the contents of the letters themselves. This approach was inappropriate given the nature of the documents.

Consequently, the court refused the application to admit the documents as fresh evidence.

The appeal

The appellant's submissions

Ground a: The learned trial judge erred as a matter of fact and/or law in finding that the parties had intended an equal beneficial interest in the disputed property at inception, which remained throughout the years of their cohabitation.

[13] Mr Neale submitted that the appellant's evidence demonstrated that she was almost solely responsible for the acquisition, repair, renovations and maintenance of the house. It was submitted that the respondent could not have used proceeds from the sale of his property in Greater Portmore to finance the purchase of the house because, at that time in 2008, the parties were living at the Greater Portmore property. He conceded that at the outset, the parties both intended to contribute to the purchase of the house in exchange for an equal share in the property. It was submitted that the respondent obtained a mortgage to finance the purchase of the house, intended as his contribution to its acquisition, but the appellant was the one burdened with making the monthly repayments of that mortgage.

[14] It was further submitted that the house required repairs and renovations, which the appellant financed through loans she obtained and repaid, with the respondent's only contribution being the use of the truck to transport materials from the store to the house.

[15] It was also asserted that the appellant solely furnished the house and, contrary to the respondent's assertions, did not do so using funds from a joint account because the appellant did not have access to it at that time.

[16] The crux of the appellant's submissions was that although the parties may have intended equal shares in the house based on their contributions to its purchase and maintenance, the respondent failed to prove his contribution, and therefore the presumption of equal beneficial ownership was rebutted. Accordingly, the learned judge

erred in finding that the parties maintained the intention of equal beneficial ownership formed at the outset.

Ground b. The learned trial judge erred in disregarding or insufficiently regarding the totality of the Appellant's evidence, which caused her to derive an erroneous conclusion that the Appellant was not entitled to a greater interest in the disputed property.

[17] The appellant's complaint is that the respondent was unable to identify the source of the funds he asserted he used to contribute to the household. The appellant's position is that the respondent remained unemployed after leaving the JDF until the appellant began the haulage venture, to which the respondent was employed as a driver.

[18] It was submitted by Mr Neale that although the learned judge indicated that it was difficult for the court to accept that the appellant covered all the household expenses with little or no assistance from the respondent, the respondent admitted that the appellant did so during his period of unemployment after leaving the JDF and for a number of years.

[19] It was advanced by the appellant that, on the totality of the evidence, the contribution to the acquisition and maintenance of the house was unequal. Therefore, the learned judge disregarded or insufficiently regarded the appellant's evidence in erroneously concluding in the judgment that there was clear and/or abundantly clear evidence that the parties pooled their resources, made decisions together, and acted as joint beneficial owners. Accordingly, it was argued that the learned judge was wrong in finding that the appellant was not entitled to a greater interest in the house.

Ground c. The learned trial judge erred in finding that the Respondent is the sole owner of the motor truck registered CJ 4735.

[20] The appellant asserted that the truck's purchase price was \$1,500,000. It was paid by an initial payment of \$900,000.00, which was the proceeds of the sale of her motor vehicle, an installment payment of \$300,000.00, which she made, and a final payment,

which had been increased to \$375,000.00 because the payment was late, and this was made by the respondent.

[21] The appellant maintained that the truck was not meant to be solely owned by, or for the exclusive benefit of, the respondent, but was an additional source of income for the appellant and the means by which the respondent earned a salary as a driver. It was asserted that, in addition to the funds expended directly on the acquisition of the truck, the appellant used the proceeds from the sale of a second truck to fund repairs while the truck was out of commission.

[22] Mr Neale challenged the veracity of the respondent's evidence that the source of the \$900,000.00 used by the appellant to fund the purchase of the truck was ultimately money she had borrowed from him to do vehicle repairs after an accident before their trip to Canada. Counsel argued that this assertion was not credible, given the relevant timelines and that in 2010, when the parties took their trip to Canada, the respondent had not yet received the gratuity payment, which he asserted was the source of his loan to the appellant.

[23] Counsel advanced the position that the learned judge erred in finding that the respondent was the sole owner of the truck, as it was unreasonable to conclude that the parties intended the truck to be owned solely by the respondent, given that the appellant was the major contributor to its acquisition and repairs.

Ground d. The learned trial judge erred in failing to award the Appellant a portion of the rental income from the disputed property.

[24] Mr Neale's submission was an expansion of the ground as stated above. He submitted that, having regard to the appellant's contribution to the acquisition, maintenance, repair, and renovation of the house, the appellant should benefit from the income generated from the rental of a portion of it after the separation of the parties. It was therefore contended that the learned judge erred in failing to make an award to that effect.

The respondent's submissions

[25] Ms Smith, counsel for the respondent, in her brief submissions, relied heavily on **Stack v Dowden** [2007] 2 AC 432 ('**Stack v Dowden**') and the principles enunciated therein. Counsel urged the court to find that the learned judge had correctly applied these principles to the facts that she found. Counsel submitted that the learned judge recognised the unequal contribution of the parties to the acquisition of the house but correctly found that the common intention of the parties at the time of acquisition, for the parties to have equal ownership, was not displaced. Counsel contended that the appeal was essentially a challenge to the learned judge's findings of fact. Counsel advanced the position that the manner in which the parties conducted their affairs meant that the acquisition of the house and the truck were intertwined, and this was correctly appreciated by the learned judge in her treatment of the unequal contributions to the purchase of each. Consequently, counsel urged that those findings, including the learned judge's treatment of the rental income, should not be disturbed by this court.

The applicable law and standard of review

[26] Regarding the dispute over the house and whether the learned judge was correct in awarding an equal beneficial interest, the applicable law is set out in **Stack v Dowden**. In that case, a cohabiting couple purchased a home in their joint names, but a dispute arose as to their respective interests in the property. The judge at first instance awarded the claimant, Mr Stack, 65 % of the beneficial interest in the home, and he appealed to the United Kingdom House of Lords. The learned judges, in their speeches, took nuanced approaches in their opinions. The majority (Lord Neuberger of Abbotsbury dissenting) concluded that where domestic property that is to become their home is conveyed into joint names without an express declaration of trust or an explicit declaration of their respective beneficial interests, it proceeds on the footing that the parties intended joint and equal beneficial ownership.

[27] The court agreed that the appeal should be dismissed, and Lord Neuberger of Abbotsbury concurred in the result. The court found that the defendant had made

substantially greater financial contributions to the acquisition of the property, that the parties had throughout maintained strictly separate financial arrangements, and that they had never pooled their resources for the common good. The joint ownership of the home represented a limited and isolated departure from that broader pattern of financial separation. These factors, taken cumulatively, were strongly indicative of an intention that their beneficial shares should not be equal, thereby justifying the division of 65:35 in the defendant's favour.

[28] The court stated that the burden lies squarely upon the party who contends that beneficial ownership is not equal to establish, on the evidence, that the parties had a common intention that their beneficial interests should differ from their legal interests and to demonstrate the extent of that difference. That presumption may only be displaced by cogent evidence of a different common intention, to be ascertained objectively from the whole course of dealings between the parties. The court made it clear that while financial contributions remain relevant, they are not decisive and the court must undertake a holistic evaluation of all relevant circumstances bearing on the parties' shared intentions.

[29] An important conclusion of the court was that, in practice in the domestic context, particularly where a property is acquired as the parties' home in joint names, it will ordinarily require compelling evidence to displace the presumption of equality; accordingly, cases in which unequal beneficial ownership is established are likely to be exceptional.

[30] The court's position was rooted in the fact that the law has moved away from a rigid application of resulting trust principles under which beneficial shares are determined primarily by financial contributions and instead recognises that, in domestic situations, such contributions are not determinative and must be placed within a broader evaluative framework.

[31] It was acknowledged that the central task of the court is to ascertain the parties' shared intention as to beneficial ownership. In determining that shared intention, the court must consider the parties' words and, where appropriate impute it from the entirety of the circumstances so as to reflect what they must be taken to have intended by undertaking a holistic assessment of the parties' entire course of dealings in relation to the property, rather than confining itself to a narrow or mechanistic examination of financial contributions or any single factor.

[32] The inquiry into intention may involve consideration of a broad, non-exhaustive range of factors, including any discussions or advice at the time of acquisition, the reasons for placing the property in joint names, the purpose for which the property was acquired, the nature of the relationship between the parties, the presence of children, the method of financing the purchase and mortgage repayments, the manner in which the parties arranged their finances, their respective contributions to household outgoings, and their overall conduct and dealings in relation to the property.

[33] At para. 69 of the judgment, Baroness Hale offers a non-exhaustive list of the factors that may be considered in undertaking this inquiry into intention, and this is worth reproducing in full as follows:

"69 In law, 'context is everything' and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple

are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual."

[34] The grounds of appeal, at their core, challenge the learned judge's findings of fact. A derivative complaint is that, following these findings, the learned judge erred in her treatment of the parties' respective interests.

[35] It is a well-established principle in this jurisdiction, reiterated in **Rayon Sinclair v Edwin Bromfield** [2016] JMCA Civ 7, by Brooks JA (as he then was), at para. [7], who said: "[i]t has been stated by this court, in numerous cases, that it will not lightly disturb findings of fact made at first instance by the tribunal charged with that responsibility" (see also **Watt (or Thomas) v Thomas** [1947] 1 All ER 582).

[36] In **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd** [2014] 4 All ER 418 (**Beacon Insurance**), an appeal from Trinidad and Tobago, the Privy Council noted that there may be circumstances entitling the appellate court to conclude that it ought to interfere with the findings of fact of the trial judge where the appeal court is satisfied that the judge at first instance has gone "plainly wrong".

[37] In **Christo Gift and another (Respondents) v Dr Keith Rowley (Appellant)** [2025] UKPC 37, the Privy Council at para. 3 of the judgment referred to the case of

Volpi v Volpi [2022] EWCA Civ 464; [2022] 4 WLR 48 (**'Volpi'**) and quoted with approval the principles extracted by Lewison LJ in that case, including that:

"...(ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

[38] The degree of weight to be attached to the advantage the trial judge had of seeing the parties and witnesses when deciding questions of credibility and making primary factual findings will vary from case to case. In **Beacon Insurance** at para. [17], the court refers to the following passage of Lord Bridge of Harwich in **Whitehouse v Jordan** [1981] 1 All ER 267 at 286, which acknowledges that reality in the following statement:

"...

'[T]he importance of the part played by those advantages in assisting the judge to any particular conclusion of fact varies through a wide spectrum from, at one end, a straight conflict of primary fact between witnesses, where credibility is crucial and the appellate court can hardly ever interfere, to, at the other end, an inference from undisputed primary facts, where the appellate court is in just as good a position as the trial judge to make the decision.'"

This is important to note because the learned judge's view of the credibility of the parties' evidence is a consideration in this appeal.

Review of the learned judge's analysis

[39] The grounds of appeal comprise challenges to the learned judge's findings in respect of the house and its rental proceeds, as well as her findings regarding the truck. The learned judge was required to determine whether the presumption that joint legal

ownership imports joint beneficial ownership had been rebutted, and, if so, to what extent.

[40] As has been aptly demonstrated in **Stack v Dowden**, to which I have referred, the court's determination of parties' entitlement to specific property may be affected by an analysis of how the parties organised their financial affairs generally. For this reason, elements of the learned judge's overall findings of fact have a bearing on her conclusions in respect of each of the specific disputed properties. Consequently, I find it inefficient and potentially repetitive to address each ground of appeal individually. They can be most efficiently interrogated by examining whether the learned judge demonstrated an appreciation of the relevant law and appropriately applied it to her findings of fact. The findings of the learned judge, which comprise a ground of appeal, will be considered within the constraints of an appellate tribunal's role, as discussed earlier.

[41] The learned judge commenced her analysis by reviewing the course of the parties' relationship and critically assessing each party's narrative to evaluate the credibility of their assertions. The learned judge expressly stated in her conclusion that there were instances where both parties were less than forthright. However, having had the opportunity to observe their demeanour and compare the consistency of their evidence, she expressly found that the respondent's account was more credible. Accordingly, the learned judge found the respondent's evidence to be more reliable and internally consistent and preferred it where it conflicted with the appellant's evidence.

[42] The learned judge formed the view that the appellant, at times, sought to embellish her role in the parties' financial affairs, portraying herself as having single-handedly borne the economic burdens of their ventures, including the acquisition and maintenance of the home and the establishment of the haulage business. The court regarded that portrayal as improbable in light of the ordinary realities of family life, including mortgage payments, household expenses, child-rearing responsibilities, and vehicle maintenance. The learned judge acknowledged that her finding that the

respondent's account was more credible was not reached without considering deficiencies in his case, particularly the absence of supporting documentary evidence.

The house

[43] In addressing the acquisition of the house, the learned judge noted that it was undisputed that the house was purchased in 2008 for \$6,000,000.00 and that the parties' names were entered on the certificate of title as joint tenants. The learned judge accepted that, although both parties secured loans through the Jamaica National Building Society, the appellant obtained an additional loan through the National Housing Trust. Consequently, the appellant's financing totalled \$3,675,000.00 while the respondent's was \$2,025,000.00. It was undisputed that the appellant also paid a \$600,000.00 deposit. The learned judge noted that the appellant asserted that she incurred additional costs, including valuation and surveyor's fees, and that she funded the correction of a breach of covenant through further borrowing. The respondent maintained that he contributed to closing costs and associated expenses and that proceeds from the sale of his Greater Portmore residence were used to assist with the acquisition. The learned judge noted that both parties failed to provide documentary proof of many of these assertions.

[44] The learned judge accepted that the appellant undertook a more active role in managing the transaction relating to the acquisition of the house, primarily because the respondent was away on training with the JDF. However, the learned judge did not regard this as influencing beneficial ownership. She found that the evidence established that the decision to purchase the house was a joint one, conceived and executed as a shared enterprise. The learned judge expressly acknowledged that although the appellant's loan was larger and her initial financial outlay may have exceeded that of the respondent, that disparity in financial contribution does not, without more, rebut the presumption of equal beneficial ownership where property is purchased in joint names in a domestic context.

[45] In addressing the importance of the relative proportion of financial contributions, the learned judge carefully reviewed the applicable legal principles and relied principally on **Stack v Dowden** and **Jones v Kernott** [2012] 1 AC 776. She reiterated the

principles to be extracted from those cases, that where property is conveyed into joint names, equity follows the law, and the starting point is that the beneficial interest mirrors the legal title. The burden rests on the party asserting that beneficial ownership differs from legal ownership, and that burden is a heavy one. In considering these authorities, the learned judge appreciated that the court is not to embark lightly upon an inquiry designed to displace the presumption, particularly in the context of intimate domestic relationships where parties commonly pool resources and do not reduce their intentions to formal agreements.

[46] The learned judge referred to Baroness Hale's confirmation in **Stack v Dowden** that unequal contributions to the purchase do not, without more, justify disturbing the presumption of equality. She also noted the principle that the court's task is to ascertain the parties' shared intentions, actual, inferred, or imputed, having regard to their whole course of conduct in relation to the property. In addition, the learned judge acknowledged that the more expansive approach articulated in **Stack v Dowden** and the subsequent authority of the United Kingdom Supreme Court of **Jones v Kernott** now governs the inquiry in joint-name cases.

[47] Applying these principles, the learned judge examined the parties' conduct both at the time of acquisition and throughout their cohabitation. She found that the house was acquired as a family home for their joint occupation and for the eventual birth of a child. The parties maintained a joint account into which the respondent's earnings, including his JDF salary, were deposited. Both had unfettered access to that account. The appellant also maintained a personal account, but the learned judge found that the evidence established that the respondent had access to it and used it for household purposes. The learned judge concluded that the parties substantially pooled their resources and conducted their financial affairs in a manner consistent with a joint domestic enterprise.

[48] Regarding mortgage servicing, the court found that both parties made their respective payments. Following his departure from the JDF, the respondent's period of employment was interrupted, resulting in arrears and the threat of foreclosure. The

respondent denied knowledge of certain restructuring measures asserted by the appellant were undertaken to clear the arrears but admitted receiving assistance from his brother. The learned judge found that, although the appellant may have made greater efforts at times to regularise arrears, the overall pattern was one of joint responsibility for the mortgage, with the respondent resuming payments when able and seeking assistance where necessary. The court was not persuaded that these circumstances evidenced any common intention to alter their beneficial shares.

[49] The appellant also relied on her assertion that she solely funded the home's renovations and improvements. The learned judge accepted that works were carried out but found that they were jointly undertaken and, at least in part, jointly funded from the joint account into which proceeds from the haulage business were paid. The learned judge rejected the suggestion that the renovations demonstrated a change in the beneficial interests, as there was no evidence that the parties formed any subsequent common intention to adjust their respective shares in the house.

[50] Having reviewed the entire course of dealings between the parties, the learned judge concluded that the appellant failed to discharge the heavy burden of rebutting the presumption of equality. She found that the evidence demonstrated that the house was conceived, acquired, and maintained as a joint enterprise, and that the parties acted throughout as joint beneficial owners. The learned judge expressly found that there was no evidence of any change in the parties' intention to own the house equally after its acquisition. Accordingly, she declared that each party was entitled to a 50% legal and beneficial interest.

Rental income

[51] With respect to rental income, the learned judge found that after the appellant vacated the property, she ceased making payments on the mortgage and property taxes. The learned judge accepted that the respondent rented the house and applied the rental proceeds towards the mortgage obligations associated with the house. In those circumstances, the learned judge considered it inequitable to require the respondent to

account to the appellant for the rental income, and consequently, the appellant was denied any entitlement to such income.

The truck

[52] Two motor trucks were purchased. There was no dispute that the second motor truck ('the second truck') was purchased by the appellant. The gravamen of the dispute concerns ownership of the first motor truck purchased and registered as CJ 4735 ('the truck').

[53] The dispute concerning the truck and by extension the haulage business in which it was utilised, required the learned judge to determine whether the truck, which was registered solely in the respondent's name, was nonetheless jointly beneficially owned. The appellant asserted that she conceptualised the haulage business, funded the deposit from the proceeds of the sale of her motor car, borrowed additional sums to operationalise the venture, and secured the initial contract. The respondent maintained that the business was consistent with his prior experience as a truck driver in the JDF; that he used his gratuity funds to finance the purchase; that the monies allegedly provided to the appellant were, in fact, loans repaid to him; and that he secured the haulage contract through his own contacts.

[54] On this issue, the learned judge preferred the respondent's evidence. She regarded his account as more plausible in light of his occupational background as a driver and the registration of the truck in his sole name. The learned judge also placed weight on the parties' treatment of the second truck, which was subsequently purchased, with no contribution from the respondent and registered solely in the appellant's name. The learned judge concluded that the arrangement of their affairs regarding the two motor trucks suggested an intention that each motor truck be owned separately. The court therefore concluded that the truck belonged solely to the respondent.

Analysis

[55] The learned judge's reasoning reflects a careful application of the modern law governing constructive trusts in joint-name domestic property disputes. She began with the presumption of equal beneficial ownership, subjected the appellant's case to the rigorous burden articulated in **Stack v Dowden** and **Jones v Kernott**, evaluated the parties' whole course of conduct, and made clear findings based on her assessment of each party's credibility. Having found no evidence, either at acquisition or subsequently, to depart from the principle of equality, the learned judge declared the parties to be equal beneficial owners of the house.

[56] The learned judge demonstrated a clear understanding of the applicable law and applied it to the facts as she found them. In my view, there is no basis for the court to interfere with her findings of fact, having regard to her meticulous analysis of the evidence of each party, and her resolution of conflicting arguments which would have been influenced by any advantage she may have had (even if minor), in seeing the parties give evidence in person.

[57] Considering the observation of the court in **Stack v Dowden** that "cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual", the learned judge placed appropriate weight on how the parties organised their financial affairs. She determined that, as far as the house was concerned, the parties, by placing it in their joint names, intended to have an equal legal and beneficial interest. Accordingly, there is no basis to interfere with her conclusion that there was insufficient evidence to rebut the presumption that that was their intention.

[58] At the same time, the learned judge treated the truck and certain personal items as separately owned based on registered title, conduct, and her assessment of credibility. The learned judge, by her approach, implicitly acknowledged the reality, as demonstrated by the facts of **Stack v Dowden**, that couples may organise their financial affairs to simultaneously provide for joint ownership of an asset, such as a house, while maintaining

individual ownership of another asset, such as a motor vehicle. The learned judge's approach to the analysis of the conflicting versions of the reason for the acquisition of the truck, the origin of the idea, its use and the proceeds derived therefrom, is logical, clearly explained and provides no basis for this court's interference.

Disposition

[59] The orders of the learned judge, which are the subject of the grounds of appeal, were thus grounded in both established legal principles and reasoned factual findings that favoured the respondent in material areas where the parties' accounts diverged. For the reasons stated herein, I find that the learned judge did not err in her approach to the resolution of the disputed claims and assertions. Accordingly, there is no merit in the grounds of appeal, and I would recommend that the following orders be made:

(1) The appeal is dismissed.

(2) Costs of this appeal are awarded to the respondent to be taxed if not agreed.

G FRASER JA

[60] I, too, have read the draft judgment of my brother Laing JA and agree with his reasoning and conclusion.

MCDONALD-BISHOP P

ORDER

1. The appeal is dismissed.
2. Costs of the appeal to the respondent to be taxed if not agreed.