[2026] JMCA Civ 20

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE BROWN JA
THE HON MR JUSTICE LAING JA

SUPREME COURT CIVIL APPEAL NO COA2023CV00014

BETWEEN	**DAVID JADDOO**	**APPELLANT**
AND	**DONNETTA JADDOO**	**RESPONDENT**

Ms Terrisha Grant instructed by Robinson & Partners for the appellant

Mrs Jacqueline Cummings instructed by Archer, Cummings & Co for the respondent

3, 4 February 2025 and 17 July 2026

Civil law – Division of matrimonial property – Whether the learned judge erred in her findings of fact – Whether the learned judge erred in her application of the considerations outlined in section 14 of the Property (Rights of Spouses) Act to the share entitlement of the parties – Whether the learned judge erred when awarding the costs of the litigation – Whether the learned judge erred in awarding the first option to purchase all three properties to one party – Whether orders made by the learned judge are unjust, unreasonable and inequitable – The Property (Rights of Spouses) Act 2004, sections 12 and 14 – Civil Procedure Rules 2002, rules 35 and 64 – The Judicature (Supreme Court) Act, section 28E

STRAW JA

[1] I have read in draft the judgment of my learned brother Brown JA and agree with his reasoning and conclusion. I have nothing further to add.

BROWN JA

Introduction

[2] This appeal concerns the division of matrimonial property, following the trial of a claim brought in the Supreme Court by Donnetta Jaddoo ('Mrs Jaddoo') against David Jaddoo ('Mr Jaddoo'), her former husband. On 19 December 2022, I Reid J ('the learned judge') made orders awarding the parties ('the Jaddoos') equal shares in their previous family home, an apartment complex and one other property (all acquired during the currency of the marriage), as well as orders for the accounting of rental income and lost income from their previously operated business. The learned judge also made consequential orders such as the first option to purchase the properties and an award of costs of the proceedings (see **Donnetta Jaddoo v David Jaddoo** [2022] JMSC Civ 246). There was no appeal against the order awarding each of the Jaddoos a 50% share of the family home. However, the other orders were hotly contested. The orders, and the subsequent challenge, arose from a not altogether unfamiliar set of facts but one which has its own nuances. These provide the background which is largely taken from the Jaddoos' affidavits.

Background

[3] This was not a marriage of short duration, lasting as it did from 4 June 1989 to 9 May 2016, when the bonds of matrimony were dissolved by the court, following the Jaddoos' estrangement in 2006. The dissolution was the result of Mr Jaddoo's petition for divorce, filed in 2013. Three children were born during the subsistence of the marriage. The story of the Jaddoos began in 1987 when Mrs Jaddoo was employed at a well-known company and Mr Jaddoo was in business on his own account. Before the solemnisation of their union, the Jaddoos lived in rented premises for about one year. Sometime after they got married, a plot of undeveloped land was purchased in Mr Jaddoo's name only. Their family home was constructed upon that land. The Jaddoos took up occupation of the family home in 1990.

[4] Before the Jaddoos commenced residency in the family home, they operated a frozen meat distribution business. The business was subsequently relocated to the family home. The source of the start-up capital for this business was disputed. Mrs Jaddoo asserted they started the business together from scratch, through obtaining goods on consignment (a credit arrangement). The working capital came from three sources - joint savings, an overdraft facility at the bank and a loan from her father. She was responsible for keeping the books while Mr Jaddoo did the deliveries. Mr Jaddoo countered that he alone started the business with his own funds as Mrs Jaddoo was impecunious. Further, it was he who did the books. Whatever the origins of its start-up capital and however it came into being, the business prospered, earning a disputed net monthly sum of $300,000.00. The frozen meat distribution business ceased to be a going concern in or about 2013.

[5] Before the business was shuttered, and after the birth of the Jaddoos' second child, Mrs Jaddoo ceased working outside the home. The care of the children and management of the household became her responsibility, with the assistance of a full-time helper. Additionally, Mrs Jaddoo concentrated on the day-to-day running of the frozen meat distribution business. Mr Jaddoo contradicted this. He asserted that Mrs Jaddoo became a housewife, highlighting that the business was mainly done on the road as its core was buying and selling.

[6] During the years when the frozen meat distribution business was a going concern two other properties were acquired. The first was a parcel of undeveloped land in Linstead in the parish of Saint Catherine. The land was registered in the joint names of the Jaddoos. They built six two-bedroom one-bathroom units on the land ('the Apartment Complex'). The Jaddoos agreed that the money for the purchase of the land and construction of the Apartment Complex came from their joint savings, revenues from the business and a bank loan. The Apartment Complex yielded a net monthly income of $105,000.00. Mr Jaddoo admitted this income stream was the brainchild of Mrs Jaddoo,

to provide for them in their twilight years when they would be too infirm to continue the frozen meat distribution business.

[7] The second property the Jaddoos purchased during this period, again in their joint names, was another undeveloped lot, part of Mickleton, in the parish of Saint Catherine ('the Mickleton property'). The Mickleton property was bought with cash from the Jaddoos' joint bank account, asserted Mrs Jaddoo but not admitted by Mr Jaddoo. Eventually a dwelling house was constructed on the Mickleton property. Mr Jaddoo did not admit, as Mrs Jaddoo asserted, that this acquisition was again the product of a proposal she made to buy a small piece of land and construct a small house for their retirement.

[8] The trajectory of the Jaddoos' partnership never led to retirement. In 2006, Mr Jaddoo left the family home, leaving behind Mrs Jaddoo and their three children who were all minors. In the wake of Mr Jaddoo's departure came a reorganising of the Jaddoos' business and domestic affairs. Firstly, Mr Jaddoo removed the frozen meat distribution business away from the family home to the Apartment Complex. Secondly, Mrs Jaddoo's involvement in the operations of the business was downgraded to writing the occasional cheque and calling the mechanic whenever that became necessary. This partial exclusion was made complete in 2010. Thirdly, perhaps a corollary of the relocation and partial exclusion, Mrs Jaddoo no longer received any income from the frozen meat distribution business. Prior to this 2006 separation, Mrs Jaddoo would receive $40,000.00 monthly. Fourthly, Mrs Jaddoo collected the rent for four of the six units in the Apartment Complex. According to Mr Jaddoo, he instructed Mrs Jaddoo to collect the rental for the maintenance of herself and the children.

[9] The arrangement for the collection of the rental from the Apartment Complex knew no longevity and was otherwise beset by problems between Mrs Jaddoo and the tenants. The birth of a new arrangement came about when Mr Jaddoo assumed care and control of their eldest child soon after the Jaddoos separated. Mr Jaddoo changed the arrangement, which saw him collecting the rental for one of the units to assist with that

child's maintenance. Meanwhile, Mrs Jaddoo's tenants at some point refused to continue paying the rent to her, resulting in court action to recover the outstanding rent. Upon their departure, all the tenants surrendered their keys to Mr Jaddoo. The upshot of all this was Mr Jaddoo's assumption of control of all the units in the Apartment Complex from February 2011. Each of the units attracted a rental of $16,000.00. Mr Jaddoo made no admission concerning Mrs Jaddoo's allegations about the tenants.

The decision below

[10] Mrs Jaddoo filed a fixed date claim form ('FDCF') on 30 June 2017. By that FDCF, Mrs Jaddoo sought a declaration that she was entitled to one half interest in the three properties together with consequential orders for the disposal of the properties. Mrs Jaddoo also sought, among other orders, orders for Mr Jaddoo to account for the rental collected at the Apartment Complex between 2011 and the date of filing of the FDCF and the valuation of the business for her to receive the equivalent net value of her share of the business and its assets.

[11] The learned judge distilled the following five issues for her resolution:

> "1. How should the family home be divided between the parties?
>
> 2. Whether there is sufficient evidence of contribution on the part of the Claimant for her to be entitled to any interest in the Apartment Complex and the Mickleton property.
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> 3. If the answer to question #2 is in the affirmative, what is the extent of the Claimant's entitlement in these properties.
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> 4. Is the Claimant entitled to any interest in the business; and if yes, how is her entitlement to be apportioned.
>
> 5. Should the Defendant account for the rental received from the family home?"

[12] The first issue did not detain the learned judge as the Jaddoos agreed that the equal share rule should apply, with the consequence that no appeal was lodged against that order.

[13] The learned judge addressed issues two and three together. The learned judge adverted to sections 13, 14, 15 and 23 of the Property (Rights of Spouses) Act ('PROSA'), declaring these to be the relevant law when dealing with matrimonial property other than the family home. Section 14 was isolated for special mention. The learned judge noted that under section 14 of PROSA there is no presumption of equal entitlement. Rather, contribution is a pertinent consideration. The legislature's equivalence of monetary and non-monetary contribution was noted before going on to say the court must consider the Jaddoos' respective contributions to ascertain the interest of each of the Jaddoos in the other two properties.

[14] The learned judge formed the view that the evidence required her to consider sections 14(2)(a), (c), (e) and sections 14(3)(a), (b), (d), (e), (g) and (h) and section 14(4) of PROSA. As a prelude to the assessment of the evidence, the learned judge declared that credibility was important and, wherever there was conflicting evidence the evidence of Mrs Jaddoo was preferred as she was "more truthful and forthright as opposed to [Mr Jaddoo] … whom I find, throughout, to be mostly untruthful at times and evasive" (see [2022] JMSC Civ 246, at para. [77]).

[15] The learned judge considered that a finding on the source for the commencement of the frozen meat distribution business was pivotal to any finding of entitlement to an interest in the other properties. That premise rested on the predicate finding that there was agreement between the Jaddoos that the other properties were purchased from "the profits obtained from [the frozen meat distribution] business and bank loans through their joint efforts" (see [2022] JMSC Civ 246, at para. [78]).

[16] To that end, the following are the significant findings made by the learned judge: (i) Mr Jaddoo belatedly agreed with Mrs Jaddoo that the working capital to start the

business came from obtaining goods on consignment, on credit through the use of their joint account, an overdraft facility and loans from the bank and Mrs Jaddoo's father; (ii) Mr Jaddoo admitted that they held a joint chequing account and that as husband and wife they shared everything; (iii) the vehicles were purchased from the proceeds of the business; (iv) Mr Jaddoo admitted that Mrs Jaddoo assisted in the business in the writing of cheques, doing the accounts, receiving goods and making arrangements for the repair of disabled vehicles with the mechanic; (v) the actions of the Jaddoos were indicative of the intentional integration of their financial affairs and shared property; (vi) Mrs Jaddoo was fully in charge of the household and contemporaneously very active in managing the administrative aspect of the business; (vii) resiling from an initial refusal "to admit the pivotal role" Mrs Jaddoo played in the growth and increase of the business, Mr Jaddoo accepted that Mrs Jaddoo was always integral to the operation of the business; (viii) the responsibilities of the business were undertaken by both Mr Jaddoo and Mrs Jaddoo; and (ix) Mrs Jaddoo made both monetary and non-monetary contributions to the business and advancement of Mr Jaddoo, working, as she did, in both financial and non-financial respects.

[17] Following on the making of those major findings in relation to the acquisition and growth of the business, the learned judge found that Mrs Jaddoo's contribution to the business and household led to the acquisition of the properties. The major findings in respect of the Apartment Complex are collated as follows: (a) as the business expanded Mrs Jaddoo proposed, and Mr Jaddoo accepted, it was prudent to purchase land and construct the Apartment Complex to generate income in their old age; (b) the acquisition of the land for and construction of the Apartment Complex was financed by the Jaddoos' joint savings, earnings from the business and a bank loan, (c) the net monthly income from the Apartment Complex was about $105,000.00. The learned judge went on to order Mr Jaddoo to pay to Mrs Jaddoo $5,868,000.00 representing her 50% share of the rental from the Apartment Complex for the period February 2011 to June 2019.

[18] Turning to the Mickleton property, the significant findings were: (a) like the Apartment Complex, the Mickleton property was acquired by the Jaddoos based on Mrs Jaddoo's suggestion, in this instance, that land be purchased and a bungalow-type house built in contemplation of the years when they could no longer navigate the stairs of the family home ; (b) the purchase price for the Mickleton property was discharged by cash allotment from the Jaddoos' joint bank account; and (c) giving short shrift to Mr Jaddoo's claim of extinguishment of Mrs Jaddoo's interest under the Limitation of Actions Act, namely, that the limitation period under that Act had not been established (2006-2017, date of separation to the date of filing of the FDCF).

[19] The learned judge then segued into the fourth issue ("[i]s [Mrs Jaddoo] entitled to any interest in the business; and if yes, how is that entitlement to be apportioned?"). The learned judge noted three admissions or concessions made by Mr Jaddoo in this area. The first admission was that Mrs Jaddoo "played a pivotal role in the commencement, operation and growth of the business". The second admission or concession was that after departing from the family home and removing the business from there, he excluded Mrs Jaddoo from both the operation of the business and its proceeds. The third admission was that, during the pre-separation period, Mrs Jaddoo received sums ranging between $25,000.00 per fortnight or $40,000.00 per month; Mrs Jaddoo said she received $16,000.00 per week.

[20] The learned judge went on to find that the business survived for 10 years after the Jaddoos separated.

[21] Noting the absence of documentary proof, the learned judge concluded that to do justice by Mrs Jaddoo, Mr Jaddoo should pay to her a monthly sum representing the equivalent of that given to her for work done in the business while they cohabited, for each of the 10 post-separation years. The learned judge arrived at a figure of $30,000.00 monthly as the "reasonable and fair … amount". Therefore, for the period 2006 - 2016, the learned judge ordered Mr Jaddoo to pay to Mrs Jaddoo $3,600,000.00.

[22] In respect of the rental of the family home, each of the Jaddoos asked for an order for the other to account. The learned judge found that there was no evidence that Mrs Jaddoo rented the family home. On the other hand, upon Mr Jaddoo's admission that he rented the family home and her finding that he retained that rental for himself, the learned judge ordered Mr Jaddoo to account for all the rental collected by 20 January 2023. Additionally, Mr Jaddoo was to hand over that rental within 14 days of the date of the learned judge's order.

[23] Turning to the rental of the Apartment Complex, these were the learned judge's findings. (1) When Mrs Jaddoo had control of four of the units, the rental was used to take care of herself and the children, with Mr Jaddoo's consent. (2) Mr Jaddoo agreed that he stopped giving Mrs Jaddoo money after his departure from the family home. (3) Mrs Jaddoo's only source of income was the rental from the apartments, "having effectively lost her job" in the business. The learned judge, therefore, concluded that it would not have been just to require Mrs Jaddoo to account for the rents received during those years.

[24] The learned judge made the following declarations and orders from the preceding findings:

> "1. All that parcel of land part of Begonia Lodge, situate at Linstead in the parish of St. Catherine being the lot numbered twenty-three on the Plan of part of Begonia lodge aforesaid deposited in the Office of Titles on the 3rd September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed and being part of the land comprised in certificate of title registered at Volume 398 Folio 88 now comprised in Certificate of Title registered at Volume 950 Folio 499 is declared the family home.
>
> 2. The Claimant and the Defendant are each entitled to a 50% share in the said family home.
>
> 3. The Claimant and the Defendant are each entitled to a 50% share in all that parcel of land part of the

Mickleton Property called Venecia Lane in the parish of St. Catherine containing by survey eight hundred and twenty-three square meters and seventy-seven-hundredths of a square meter of the shape and dimensions and butting as appears by the plan thereof comprised in Certificate of Title registered at Volume 1369 Folio 976 of the Register Book of Titles hereinafter referred to as "the Mickleton property".

4. The Claimant and the Defendant are each entitled to a 50% share in all that parcel of land part of Begonia Lodge situate at Linstead in the parish of Saint Catherine being the lot numbered twenty-five on the Plan of Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd day of September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed, and being the land formerly comprised in Certificate of Title registered at Volume 1164 Folio 792 now comprised in Certificate of Title registered at Volume 1327 Folio 784 of the Register Book of Titles hereinafter referred to as "The Apartment Complex".

5. All three properties are to be valued by a reputable valuator to be agreed between the parties; failing which the Registrar of the Supreme Court will appoint a valuator.

6. The costs of the valuation will be borne equally between the parties.

7. The Claimant shall have the first option to purchase the Defendant's 50% interest in all the properties within 60 days after the receipt of the valuation reports; failing which the Defendant shall have the option to purchase the Claimant's 50% shares in all the said properties within 60 days after the expiration of the Claimant's options or after the Claimant has declined to exercise the options to purchase.

8. Any agreement for sale shall be executed by the parties within 30 days of the written indication by that party that he/she will exercise the option to purchase.

9. If at the end of the expiration for the options to purchase neither party has acted to exercise the options, then the properties are to be sold on the open market.

10. The net proceeds from the sales mentioned at order #9 are to be divided equally between the parties. The costs of the transfers are also to be borne equally between the parties.

11. In the event that the option to purchase is exercised by either party within the time stipulated herein the cost of the transfer shall be borne solely by the party exercising the option.

12. The Claimant's Attorney-at-Law is to have carriage of sale of any of the properties to be sold on the open market.

13. Carriage of sale for each property that will be purchased by either party shall be the vendor's attorney-at-law.

14. The Registrar of the Supreme Court is empowered to sign all such documents necessary for the completion of any of the transfers and/or sales of the properties the subject of this order, in the event of the incapacity, neglect or wilful refusal of either the Claimant or the Defendant to sign any such documents.

15. The Defendant is to deliver up the keys and vacant possession of the family home forthwith to the Claimant or her designated agent.

16. The Defendant is to give an account of all monies collected as rental in respect of the family home by January 20, 2023.

17. All the monies collected from the tenants in respect of the occupation of the family home is to be turned over to the Claimant within 14 days of this order.

18. The interim order that the Defendant is to pay the Claimant the sum of $75,000.00 per month as her ½ share of the Apartment Complex shall continue until

the property is purchased or sold and the claim is paid her ½ share.

19. The Defendant is to pay the Claimant the sum of $5,868,000.00 representing her 50% share of all the monies collected from the Apartment Complex for the period February 2011 to June 2019.

20. The Claimant is entitled to benefit from the business that she shared with the Defendant. The Defendant is to pay the Claimant the sum of $3,600,000.00 for the period 2006-2016 representing the years that she was excluded from the business until its demise.

21. All the sums due and owing to the Claimant as per Orders #17, 18, 19 and 20 are to be deducted from the Defendant's share of the net proceeds of the sale of the properties and paid over to the Claimant before he receives his share of the proceeds.

22. Costs to the Claimant to be agreed or taxed.

23. Liberty to apply.

24. …"

The appeal

[25] In the amended notice of appeal, filed on behalf of Mr Jaddoo on 31 July 2023, the plethora of grounds in the original notice of appeal, lettered from (a) to (q) were reduced to (a) to (h). The written submissions filed by his counsel were confined to grounds (a) to (h). Similarly, the submissions in response for Mrs Jaddoo addressed only grounds (a) to (h). Accordingly, only grounds (a) to (h) are listed below:

"a) The Orders made by the Learned Trial Judge are unjust, unreasonable and inequitable.

b) The learned Trial Judge erroneously stated that the business ended in 2016 and/or lasted for 10 years to the exclusion of the Respondent in circumstances where the evidence is clear and unchallenged that the business ended in 2013, and in reliance of [sic] same, incorrectly calculated the amount due to the respondent for the period she was excluded.

c) The learned Trial Judge erred in determining that the Appellant and the Respondent are each entitled to 50% share in both The Mickleton Property and The Apartment Complex in circumstances where in excess of ten (10) years, subsequent to his separation from the Respondent, the Appellant was solely responsible for the maintenance and further development of the properties and as such would be entitled to a larger share in both properties than the Respondent. There [sic] findings would be against the weight of the evidence and/or not consistent with the law under section 14 of PROSA.

d) The learned trial judge was wrong to determine that there was no evidence before the court of Mrs Jaddoo renting out the family home when in fact paragraphs 33 and 42 of the Appellant's affidavit clearly state that the said home was rented for a period of eight (8) years and the Respondent made no challenge to his evidence.

e) The learned trial Judge failed to balance justice by not taking into account the fact that the children resided with the Appellant from 2011 onward and it is during that period that he would have been collecting all the rental from the Apartment Complex and used the said income to maintain the children: in failing to do so this resulted in the order for the Appellant to account for rental income collected in this period, and entitling the Respondent to half of same, to be unfair and unjust having consideration for all the evidence.

f) The Learned Trial Judge's order that the Respondent has the first option to purchase all three properties was against the weight of the evidence and not consistent with the principle of fairness intended under PROSA.

g) The learned Trial Judge erred by awarding the Respondent costs in circumstances where an order for each party to bear their own cost [sic] would be fair and in keeping with the objective of PROSA.

h) The Learned Trial Judge erred in fact when she determined that Mrs Jaddoo need not account for monies withdrawn from the parties' joint savings account in circumstances where the said sum was taken without the consent of Mr Jaddoo."

The issues

[26] These grounds of appeal raise five broad issues. Firstly, whether the learned judge erred in her findings that (i) the business ended in 2016, (ii) there was no evidence that Mrs Jaddoo rented the family home, and (iii) there was no need for Mrs Jaddoo to account for funds withdrawn from the Jaddoos' joint account? (grounds (b), (d) and (h)). Secondly, whether the learned judge erred in her application of the considerations outlined in section 14 of PROSA to the evidence when determining the share entitlement of Mr Jaddoo and Mrs Jaddoo in the Mickleton property and the Apartment Complex? (grounds (c) and (e)). Thirdly, whether the learned judge erred in awarding the costs of the litigation to Mrs Jaddoo? (ground (g)). Fourthly, whether the learned judge erred in ordering that Mrs Jaddoo had the first option to purchase all three properties? (ground (f)). Fifthly, whether orders made by the learned judge are unjust, unreasonable and inequitable? (ground (a))

Issue #1: Whether the learned judge erred in finding **that (i) the business ended in 2016, (ii) there was no evidence that Mrs Jaddoo rented the family home, and (iii) there was no need for Mrs Jaddoo to account for funds withdrawn from the parties' joint bank account (grounds (b), (d) and (h**)).

[27] I will take the complaints as they are itemised in the statement of the first issue. In respect of part (i), Ms Grant, in her written submissions, advanced that in multiple places, including paras. [123] and [133] of her judgment, the learned judge erroneously stated that the Jaddoos' business ended in 2016 and/or lasted for 10 years to the exclusion of Mrs Jaddoo. On the contrary, the unchallenged evidence of Mr Jaddoo was that the business ended in 2013. This error, it was argued, resulted in the inaccurate

calculation of the sum due to Mrs Jaddoo for the time she was excluded from the business.

[28] In her written submission, Mrs Cummings disagreed with the submission that the learned judge erred in concluding that the business survived for 10 years after the Jaddoos separated. However, during oral arguments, Mrs Cummings frankly admitted that she misled the learned judge on the point in her submissions and conceded the challenge in ground (b). That concession was followed by an apology.

[29] From there I move to the second alleged error of fact (part (ii)), that concerned Mrs Jaddoo's letting of the family home. Ms Grant submitted that it was an error for the learned judge to have found there was no evidence that Mrs Jaddoo rented the family home in the face of Mr Jaddoo's affidavit evidence that Mrs Jaddoo did so for eight years. That evidence remained unchallenged at the end of the day. The consequence of this error, it was submitted, was the learned judge's failure to make an order for Mr Jaddoo to be compensated for half of the rental for that period.

[30] Mrs Cummings, in her written submissions, submitted there was no error in making this finding. It was submitted that neither Mrs Jaddoo nor Mr Jaddoo gave evidence to support the claim that Mrs Jaddoo rented the family home. Adverting to Mr Jaddoo's affidavit evidence of an eight-year rental by Mrs Jaddoo, Mrs Cummings argued that the mere assertion in his affidavit was insufficient material for the learned judge to decide the question, since Mr Jaddoo was not found to be a credible witness. Supporting evidence was needed. Therefore, Mr Jaddoo failed again to discharge his evidentiary burden. Additionally, the matter was not raised by Mr Jaddoo's counsel during the taking of the evidence of the Jaddoos.

[31] Contrary to Mr Jaddoo's assertion, Mrs Cummings submitted during her oral presentation, and as the learned judge found, that it was Mr Jaddoo who rented the family home. He did so after breaking off the lock to the family home after Mrs Jaddoo left the island in 2021.

[32] The third complaint in this area challenged the learned judge's conclusion that there was no need for Mrs Jaddoo to account for the monies withdrawn from the Jaddoos' joint savings account (part (iii)). In her written submissions, Ms Grant argued that the unsoundness of that conclusion is to be found in Mrs Jaddoo's failure to deny Mr Jaddoo's contrary assertion that she withdrew the funds and her limited response that she also contributed to the children's education. The immediate result of this error, it was argued, was a denial of Mr Jaddoo's compensation for half the funds withdrawn.

[33] Ms Grant sought to bolster the written submissions challenging the learned judge's conclusion that Mrs Jaddoo need not account, in her oral presentation. She asserted that there was agreement on the evidence that Mr Jaddoo was the main contributor, or contributed significantly, to the children's maintenance. This, Ms Grant argued, underlines the point that Mrs Jaddoo should have been made to account, consistent with the order for Mr Jaddoo to account for the rental of the Apartment Complex notwithstanding his assertion that he used the money to maintain the children. Fairness demanded the equivalent order in respect of Mrs Jaddoo, Ms Grant concluded.

[34] It was Ms Grant's position that these mistakes in the learned judge's evaluation of the evidence are sufficiently material to undermine the learned judge's conclusion. The ultimate result impacted the orders, making them unfair, unjust and inequitable as Mrs Jaddoo was compensated in similar circumstances.

[35] In response to Ms Grant's submission on this point, Mrs Cummings advanced, in her written submissions, three bases upon which she said the learned judge's decision can be supported. Firstly, there was the apparent abandonment of the request for Mrs Jaddoo to account by Mr Jaddoo's counsel. Secondly, although Mrs Jaddoo admitted withdrawing funds from the account, the money withdrawn was not diverted from the intended purpose of the account, that is, the children's education. Thirdly, although Mrs Jaddoo lacked Mr Jaddoo's financial clout, she always cared for the children and contributed to their education. A fourth point was added during oral arguments. That is,

the money in the joint account belonged equally to Mrs Jaddoo, so there was no need for her to account.

Discussion

[36] These grounds of appeal, ((b), (d) and (h)), all challenge findings of fact emanating from a judge-alone trial. Therefore, a short statement of the parameters within which those findings may be disturbed by this court is apt. The following is a restatement of Lord Thankerton's guiding principles, as declared in **Thomas v Thomas** [1947] AC 484, at 487- 488:

> 1. Unless the judge has misdirected himself, an appellate court should not come to a contrary conclusion unless satisfied that the judge's conclusion cannot be explained or justified by the advantage the judge had of having seen and heard the witnesses.
>
> 2. The appellate court may take the position that it is unable to arrive at any satisfactory conclusion on the record of proceedings, since it neither saw nor heard the witnesses.
>
> 3. The matter may become at large for the appellate court if satisfied that the trial judge did not take proper advantage of having seen and heard the witnesses. The appellate court may be so satisfied for one of two reasons. First, the reasons given by the trial judge for the findings are not satisfactory. Second, from a perusal of the evidence it is indubitable that the opportunity to see and hear the witnesses was squandered.

In short, appellate interference is both circumspect and circumscribed. Or, in the oft cited abridgement of Lord MacMillan's judgment, before interfering with the trial judge's findings, the appellate court must be satisfied on the printed record that the judge was "plainly wrong" (see **Thomas v Thomas** at page 491).

[37] The phrase, "plainly wrong" is an injunction to the appellate court to take a global look at the impugned finding. That is, was it permissible for the judge to make the findings of fact upon a consideration of all the evidence. Not only is the appellate court to identify a mistake in the judge's evaluation of the evidence, but it must also go on to assay the materiality of that mistake in relation to the integrity of his conclusions (see **Beacon Insurance Co Limited v Maharaj Bookstore Limited** [2014] UKPC 21, at para. 12 ('**BICL v Maharaj**')).

[38] So that, it appears to be a fundamental rule that primary facts are seldom reversed. The bedrock of this fundamental rule is the opportunity the trial judge had, systemically denied to the appellate court, of seeing and hearing the witnesses in which a running assessment of both the witnesses and evidence is made. To that end, before overturning a conclusion on primary facts, it must be demonstrable that the conclusion (i) lacked evidentiary support, (ii) was the product of a misunderstanding of the evidence, or (iii) was irrational, in the sense that no rational or reasonable judge could have arrived at it (see **In re B (A Child) Care Proceedings: Threshold Criteria)** [2013] 1 WLR 1911, at para 53) ('**In re B**').

[39] In **BICL v Maharaj**, at para. 17, it was said that similar appellate caution is to be exercised in relation to inferences from primary facts derived from the assessment of a witness' credibility or reliability.

[40] In the claim giving rise to this appeal, neither Mrs Jaddoo nor Mr Jaddoo relied on any documentary evidence in support of their assertions of disputed facts. Therefore, the honesty of each of the Jaddoos was essential to the learned judge's findings of fact, as she correctly observed. So that, the advantage the learned judge had in assessing the

Jaddoos' credibility and reliability as they were tested in cross-examination of their affidavit evidence, is not available to this court.

[41] That said, the challenge in ground of appeal (b), that the learned judge erred in finding that the Jaddoos' business ended in 2016 or survived for 10 years after the Jaddoos separated in 2006, had no evidential support. Mr Jaddoo's affidavit evidence was that the business was closed in 2013 (at paras. 8 and 14). Paras. 8 and 14 were direct responses to Mrs Jaddoo's evidence that they had a business of considerable worth and the source of the working capital to start the business. Mrs Jaddoo's equivocal response to Mr Jaddoo's assertion of closure in 2013 came in her further affidavit. There she said, at para. 3, "I am not aware of the business being closed since 2013". The date of the close of the business was not broached during the taking of Mrs Jaddoo's oral evidence. However, in the learned judge's summary of Mrs Jaddoo's evidence, the learned judge recounted that Mrs Jaddoo maintained that she was excluded from the business since 2010 and her ignorance of its closure in 2013.

[42] The year 2016, as the relevant date of closure of the business, made its way into the learned judge's consideration when she summarised the submissions of counsel appearing for Mrs Jaddoo (who also appears in this court). It was submitted before the learned judge, incorrectly, that Mr Jaddoo had said the business closed in 2016. Therefore, it was submitted to the learned judge that $40,000.00, Mrs Jaddoo's monthly allowance before the separation, be used "… to calculate the amount of monies due and owing to [Mrs Jaddoo] for the 10 years that … [Mr Jaddoo] excluded her from the business before its demise" (see [2022] JMSC Civ 246, at para. [65]). Mrs Cummings' concession that ground of appeal (b) has merit was, therefore, well-made and, together with her apology, a signal demonstration of the highest traditions of the Bar.

[43] It has, therefore, been demonstrated that the learned judge was plainly wrong in finding that the Jaddoos' business ceased operation in 2016, standing as it did, without any evidence to support it, warranting this court's intervention: **Thomas v Thomas** and **In re B**. Based on the evidence, the exclusion years were from 2006 - 2013, or seven

years. Following on the guidance from **BICL v Maharaj**, I will go on to assess the materiality of this error on the learned judge's conclusion in respect of Mrs Jaddoo's entitlement resulting from what may be termed, the exclusion years.

[44] As was stated earlier, at paras. [21] and [24], the learned judge ordered Mr Jaddoo to pay to Mrs Jaddoo $3,600,000.00 for the exclusion years ($30,000.00 x 120 months/10 years). No issue was otherwise taken with the learned judge's formula for arriving at Mrs Jaddoo's entitlement for the exclusion years. Applying the same formula but substituting the correct termination year (2013), Mrs Jaddoo's entitlement for the exclusion years is $2,520,000.00 ($30,000.00 x 84 months).

[45] And so, I come to part (ii) of the first issue, ground of appeal (d), the learned judge's finding that there was no evidence that Mrs Jaddoo rented the family home. Ms Grant, in her written submissions, stated that this finding is contrary to Mr Jaddoo's affidavit evidence. At para. 33 of his affidavit, Mr Jaddoo deposed that Mrs Jaddoo had sole occupation of the family home for 10 years and "[f]or at least eight of those years she had a portion of that property rented, from which she alone benefits [sic]". Mr Jaddoo went on to ask that Mrs Jaddoo be made to account for the rental collected from the "[family] home for the last [eight] years and continuing" (see para. 42 of his affidavit). The learned judge's error in this finding resulted in the denial of compensation to Mr Jaddoo, it was submitted.

[46] Mrs Cummings supported the learned judge's finding in this way. This was a claim by Mr Jaddoo and neither he nor Mrs Jaddoo provided any evidence to prove it. Further, since the rental of the family home was Mr Jaddoo's averment, he had an evidential burden to discharge, which he failed to do. Finally, Mr Jaddoo's counsel did not explore this issue during the eliciting of oral evidence from any of the Jaddoos. During her oral presentation, Mrs Cummings, in addition to agreeing with the learned judge, pointed to the evidence that Mrs Jaddoo left the island in 2021 and Mr Jaddoo forcefully gained entry to the family home and after that rented it.

[47] Respectfully, Mrs Cummings' position that the affidavit evidence was a claim devoid of proof, the burden of which rested on Mr Jaddoo which he failed to discharge, is untenable. As I earlier observed, neither Mr Jaddoo nor Mrs Jaddoo placed reliance on any independent material in support of their several assertions (see para. [39] above). The learned judge was acutely aware of this, and the consequence that the claim was fact dependent. Hence, her pronouncements on credibility and whose evidence she preferred where there was a conflict. That was an acceptable way to resolve disputed facts. But what of undisputed facts?

[48] Mr Jaddoo's assertion that Mrs Jaddoo rented the family home went unanswered. That made it an undisputed fact. In that event, the learned judge was required to address her mind to the evidence and say whether she accepted or rejected it, giving reason or reasons for either position. Having regard to her views on Mr Jaddoo's credibility ("untruthful at times and evasive"; "prevaricating"), it was open to her to say she rejected his unchallenged evidence except where it was supported by documents, there being no other oral evidence. I will return to this point below (at para. [49]). That said, it was not competent for the learned judge to treat Mr Jaddoo's unchallenged evidence as no evidence, without more. Therefore, the learned judge, perhaps through an oversight in an otherwise comprehensive judgment, clearly fell into error in finding that there was no evidence that Mrs Jaddoo rented the family home.

[49] Was the learned judge's error, that there was no evidence that Mrs Jaddoo rented the family home, in the learning of **BICL v Maharaj** of such materiality that it undermined her conclusions concerning the accounting for rental of the family home? Mr Jaddoo's evidence that Mrs Jaddoo rented the family home lacked specificity. In one instance Mr Jaddoo gave the rental period as "at least eight" years and in the next "the last [eight] years and continuing". The first named period is clearly speculative and the last is not only speculative but undermined by his own admissions, one, that he had broken off the locks to gain admission and two, that he had been the landlord since the previous year (2021). Therefore, even if the learned judge had accepted his evidence

that Mrs Jaddoo rented the family home, there was no reliable evidence before her relating to the length of the tenancy. Secondly, there was a dearth of evidence of the rental that Mrs Jaddoo supposedly let the family home for.

[50] It is convenient at this juncture to return to the point broached at para. [48]. After considering Mr Jaddoo's evidence that Mrs Jaddoo rented the family home, in view of the learned judge's low opinion of his credibility, it is highly probable that she would have rejected his claim. This likelihood of rejection of Mr Jaddoo's claim is derived not only from the learned judge's unflattering opinion of his demeanour but from two other factors, both inherent in the claim. Firstly, the lack of particularisation (speculative term and no rental figure) of the contention that Mrs Jaddoo rented the family home, reduced the evidence to a bald assertion. Secondly, the obvious overlap between "the last [eight] years and continuing" and his admission that since 2021 he had been renting the family home, undermined the veracity of his assertion.

[51] In fine, while it was an error for the learned judge to have found that there was no evidence that Mrs Jaddoo rented the family home, the error was benign. In short, the error was immaterial for all the reasons advanced at paras. [49]-[50]. Consequently, the integrity of the decision not to call upon Mrs Jaddoo to account for rental of the family home was left undisturbed. Accordingly, Mr Jaddoo would not have derived any benefit from the correct finding.

[52] Before leaving this ground of appeal, it is appropriate to make an observation concerning the rental of the family home. Although there was no direct complaint by Mr Jaddoo about order numbers 16 and 17 of the learned judge's orders, order number 17 commanded Mr Jaddoo to hand over "[a]ll the monies collected from all the tenants in respect of the occupation of the family home … to … [Mrs Jaddoo] within 14 days of this Order". This conflicts with the learned judge's order awarding a 50% share of the family home to each of the Jaddoos. By virtue of the equal share rule, Mrs Jaddoo would only be entitled to one half of the rental collected. The learned judge was therefore plainly wrong to have directed that all the rental collected should be turned over to Mrs Jaddoo.

[53] And now I come to part (iii) of the first issue, did the learned judge err in finding that there was no need for Mrs Jaddoo to account for funds withdrawn from the Jaddoos' joint bank account (ground of appeal (h)). Mr Jaddoo, at para. 43 of his affidavit, asked that Mrs Jaddoo be made to account for monies exceeding named sums, she allegedly withdrew from each account held at Victoria Mutual Building Society ('VMBS account') and the Bank of Nova Scotia ('BNS account'), in excess of J$250,000.00 and US$6,000.00, respectively. The VMBS account was said to be for the purpose of R's (their daughter) university education. Mr Jaddoo was not cross-examined about the accounts. At the end of the cross-examination, in answer to the learned judge, Mr Jaddoo said he and Mrs Jaddoo held one joint account, the BNS account.

[54] In Mrs Jaddoo's further affidavit, filed after Mr Jaddoo's, she did not specifically deny the alleged withdrawals. The closest thing to a response was said at para. 7. There Mrs Jaddoo asserted equal financial contribution to their children's education and upbringing, although acknowledging her financial asymmetry with Mr Jaddoo, on account of his sole control over the business and Apartment Complex.

[55] As the learned judge noted, correctly, Mrs Jaddoo was cross-examined on the withdrawal from the joint account. The cross-examination was by no means robust, limited as it was to obtain an admission from Mrs Jaddoo that a trust fund was set up to assist with R's tertiary education and to query how much money she gave towards that end. The cross-examiner was apparently satisfied with Mrs Jaddoo's bland answer that she gave R money.

[56] In re-examination Mrs Jaddoo said they did not hold separate bank accounts during the marriage. Money for the business went to the BNS account and a small amount to the VMBS account.

[57] It was against that evidential background that Ms Grant sought to take apart the learned judge's decision not to make an order for Mrs Jaddoo to account as Mr Jaddoo requested. Ms Grant's criticism of the learned judge's holding had three bases. Firstly,

Mrs Jaddoo did not deny withdrawals from the joint account. Secondly, there was agreement on the evidence that Mr Jaddoo was the main or more significant contributor to the children's education. Thirdly, against the background of the order for Mr Jaddoo to account for rents received from the Apartment Complex, fairness demanded that a similar order be made against Mrs Jaddoo in respect of the joint account.

[58] Mrs Cummings submitted that the learned judge did not err in concluding as she did, for the following reasons. Firstly, repeating what the learned judge said at para. [131] of her judgment, that there was an apparent abandonment of Mr Jaddoo's request for Mrs Jaddoo to account, in the submissions of his then counsel. Secondly, the admitted withdrawals were put to the intended purpose (R's education). Thirdly, the learned judge took into her consideration that Mrs Jaddoo always cared for the children and contributed to their education. Fourthly, in any event, the Jaddoos being joint contributors to this account, Mrs Jaddoo was entitled to a portion of the funds.

[59] The learned judge appears to have concluded that she was not required to make an order for Mrs Jaddoo to account in relation to the joint account. That conclusion had two bases. The first basis was the apparent abandonment of the request to account in the closing submissions of Mr Jaddoo's then counsel. It is clear from the learned judge's language that Mr Jaddoo's reversal of position was not expressly communicated. In fact, the learned judge said Mr Jaddoo "seemed to have abandoned this request", which she gathered from "[a] careful reading of the submission …". Unfortunately, the sections of the submissions which led the learned judge to this finding of abandonment were excluded from the summary of the submissions appearing in the judgment. In like manner, Mrs Cummings did not reproduce any part of the submissions upon which the learned judge relied, although she supported the learned judge's understanding of the submissions.

[60] This was not a finding drawn from the evidence. Consequently, this court would be in as good a position as the learned judge to evaluate this supposed ground of abandonment (see **BICL v Maharaj**, at para. 17). However, I am hamstrung by the

absence of the relevant sections of the submissions. Without those submissions, I am unable to say whether the learned judge's inference of abandonment was a misunderstanding or plainly wrong. However, that is not the end of the matter.

[61] The second pillar of the learned judge's reasoning appears to be that any withdrawal made by Mrs Jaddoo was not profligate but explained to her satisfaction. The explanation had two tributaries. The first was direct. That is, Mrs Jaddoo gave R money towards R's tertiary education. The second was indirect. Although lacking the breadth of resources possessed by Mr Jaddoo, Mrs Jaddoo had contributed to her children's education. Those were permissible findings on the evidence coupled with the learned judge's advantage of viewing the Jaddoos and making assessments during the trial process which cannot be replicated in the printed record. Accordingly, applying the learning in **BICL v Maharaj**, this court has no cause to interfere with the learned judge's finding that it was unnecessary to call upon Mrs Jaddoo to account for the withdrawn funds.

[62] Before moving on from this issue, I acknowledge the submissions made by Mrs Cummings that Mrs Jaddoo would be entitled to withdraw funds from the account as Mrs Jaddoo was a joint contributor to the account. It suffices to say, that was not a basis on which the learned judge sought to anchor her conclusion. And, in the absence of a cross-appeal, this court is not allowed to have regard to the submission. In any event, this ground is not sustainable on the second limb of the learned judge's reason for her refusal to order Mrs Jaddoo to account for the funds withdrawn from the joint account. The ground, therefore, fails.

Issue #2: Whether the learned judge erred in her application of the considerations outlined in section 14 of the Property (Rights of Spouses) Act to the evidence when determining the share entitlement of each spouse in the Mickleton Property and the Apartment Complex. (grounds (**c**) **and** (**e**))

[63] In the submissions of Ms Grant, the learned judge's error in relation to both properties flowed from her failure to calculate Mrs Jaddoo's interest in the Mickleton property and the Apartment Complex as at the date of the Jaddoos' separation in 2006,

as required by section 12(2) of PROSA and applied in **Georgia Margaret Hogg v Dennis Athlone Hogg** [2013] JMSC Civ 7 and **Carlene Miller and Ocean Breeze Suites and Inn Limited v Harold Miller and Ocean Breeze Hotel Limited** [2015] JMCA Civ 42 ('**Carlene Miller v Harold Miller**').

[64] In further support of this argument, it was submitted that the learned judge failed to consider the following agreed or unchallenged evidence:

I. The Mickleton property was just land at the time of separation. Mr Jaddoo constructed a house on the premises post separation.

II. Mr Jaddoo lived at and maintained the Mickleton property for several years up to the date of trial.

III. The Apartment Complex had only six units at the date of separation.

IV. Mr Jaddoo constructed a seventh unit some years after the separation.

V. Mr Jaddoo expended over $300,000.00 to renovate the premises in or about 2011.

VI. Mr Jaddoo maintained the Apartment Complex since 2006.

VII. The Jaddoos' first child started to reside with Mr Jaddoo sometime between 2006 and 2008 (para. 27 of his affidavit).

VIII. The Jaddoos' other two children commenced residing with Mr Jaddoo sometime in 2011.

IX. Mrs Jaddoo indicated Mr Jaddoo was the one mainly responsible for the maintenance of the children (paras. 7 and 8 of Mrs Jaddoo's affidavit, filed 28 August 2018).

X. Mrs Jaddoo did not challenge any of the preceding items of evidence, save to say the monies used to develop the Mickleton property came from their joint resources namely, the business.

[65] The gravamen of this submission is, the learned judge either failed to consider the above-mentioned factors or, in considering them, accorded equal weight to Mrs Jaddoo's share of the profits and rental income as all the contributions made by Mr Jaddoo. This, it was submitted, was an error. The error makes the learned judge's orders for Mrs Jaddoo to be compensated problematic. That is, while Mrs Jaddoo is to be compensated for the exclusion years from the business, she also supposedly contributed to the development of the properties from her share in the business. Therefore, the learned judge ought to have calculated Mrs Jaddoo's half share in both properties as of 2006 before Mr Jaddoo further developed the properties. Alternatively, it was argued, no order should have been made for Mrs Jaddoo to receive compensation for rental income for the exclusion years. In short, the learned judge's approach resulted in Mrs Jaddoo being excessively compensated in the receipt of repayment for her interest in the business, as well as half share in both properties.

[66] Following on that submission, it was also contended that the learned judge erred in calculating Mrs Jaddoo's contribution from the rental income for the period 2011 - 2017. That is, the learned judge did not take into her consideration the fact that the children resided with Mr Jaddoo throughout that period and, consequently, the rental income was largely used for their care and maintenance. This was especially so in the years beyond 2013 when the rental income became his only source of income. This, it was submitted, would be like the determination the learned judge made that Mrs Jaddoo

need not account for rental income from the Apartment Complex from 2006 - 2011 as it was used to care for her and the children.

[67] Mrs Cummings submitted that the learned judge's findings concerning both properties should not be disturbed. Following an expansive review of the learned judge's findings relative to the two properties, Mrs Cummings submitted that the award of a 50% share in the Mickleton property and Apartment Complex is consistent with both the weight of the evidence and section 14 of PROSA. Furthermore, Mrs Cummings submitted, the argument that Mr Jaddoo is entitled to more than a 50% share of these properties, because he was solely responsible for their maintenance and further development after their separation, is out of step with section 14 of PROSA. In this submission, since fairness is the objective of PROSA in the division of property, that cannot be obtained by claiming a larger share in property from which Mrs Jaddoo was intentionally excluded.

<u>Discussion</u>

[68] By virtue of section 12(2) of PROSA, a spouse's share in property is to be determined as at the date on which the parties separated. I quote the relevant section:

> "12 –(1) …
>
> (2) A spouse's share in property shall, subject to section 9, be determined as at the date on which the spouses ceased living together as man and wife …"

Section 9 concerns the exemption of transfer tax on spouse-to-spouse transfers of interest in the family home and bears no relevance to the present discussion. Returning to section 12(2) of PROSA, this court has applied the statutory prescription on several occasions (see, for example **Dalfel Weir v Beverley Tree** [2014] JMCA Civ 12, **Carlene Miller v Harold Miller**).

[69] In this case, the learned judge did not explicitly relate her apportionment of a 50% share in the Mickleton property and Apartment Complex to the date the Jaddoos separated (2006). Section 12(2) came up for mention during the learned judge's

discussion of the accrual of time for the purpose of disposing of Mr Jaddoo's claim of adverse possession of the Mickleton property. On one view, it may be said that that reference shows the learned judge had the section 12(2) injunction in mind when she considered the division of these two properties. However, I incline to the better view, advanced by Ms Grant, that the effect of the orders concerning the business and the properties does not support an inference that the respective interests in the properties were determined as at the date of the Jaddoos' separation. I have come to this conclusion for the following reasons.

[70] Firstly, in awarding Mrs Jaddoo a 50% share of the business, there was no allusion to the dictate of section 12(2) of PROSA in her reasoning, making her resort to 2006 a mere incident of her calculation of the number of Mrs Jaddoo's exclusion years, for the purpose of ascertaining her compensation. Having accepted the submission that Mrs Jaddoo should be compensated to the tune of 50% share of the business (including profits) for the exclusion years, the learned judge next turned her attention to the quantification of Mrs Jaddoo's 50% share.

[71] The undisputed fact was that Mrs Jaddoo's exclusion from the business was coterminous with the Jaddoos' separation in 2006. Therefore, the learned judge was correct in commencing the exclusion years from 2006. Although the learned judge used 2016, I have already showed that the termination year should properly be 2013 (see paras. [41]-[43] above). The learned judge determined that the formula for quantifying Mrs Jaddoo's 50% share should be $30,000.00 per month for each of the 10 years of exclusion (2006-2016). So, at order number 20 the learned judge ordered that Mrs Jaddoo was entitled to $3,600,000.00 "for the period 2006-2016 representing the years that she was excluded from the business until its demise".

[72] Secondly, the global allocation of Mrs Jaddoo's interest in both the Mickleton property and Apartment Complex does not account for the improvements made to these assets after their acquisition. I take first the Apartment Complex. It is undisputable on the evidence that at the time of the Jaddoos' separation, the Apartment Complex

comprised six units. Equally without disagreement is the fact that Mr Jaddoo subsequently added a seventh unit. This bit of evidence appears to have escaped the scrutiny of the learned judge as it is conspicuously absent both from her summary of the evidence and her reasons for judgment.

[73] Thirdly, the learned judge's acute awareness of the factors to be considered in the division of matrimonial property, set out in section 14 of PROSA, was abridged to contribution in the acquisition in allocating the interests in the Mickleton property and Apartment Complex. This is most evident in the discussion of the ownership of the Mickleton property. There are two critical findings here. First, the acquisition came about not from Mr Jaddoo's solo finances but from the Jaddoos' business. Second, when he was building on the property, Mr Jaddoo was aware of Mrs Jaddoo's joint ownership of the property. The latter finding should have telegraphed a consideration of the improvement of the property between its acquisition and the separation of the Jaddoos. And if that opportunity was missed, another appeared in the consideration of the question of adverse possession.

[74] It is, therefore, clear that although the learned judge twice made reference to the years the Jaddoos separated, it was to achieve subsidiary ends and not as the location point to determine the respective interest in the Mickleton property and Apartment Complex. This was not too dissimilar to the judge at first instance in **Dalfel Weir v Beverley Tree**. The learned judge was plainly wrong in failing to determine the Jaddoos' interest in the Mickleton property and Apartment Complex in accordance with section 12(2) of PROSA and therefore warrants this court's interference with her findings (see **Thomas v Thomas**).

[75] I agree with Mrs Cummings that the evidence supports the learned judge's apportionment of a 50% interest in both properties to Mrs Jaddoo, but its ambit must be abridged to accord with the date of separation and reflect the improvements made after the separation. Therefore, applying section 12(2) of PROSA, that is, declaring Mrs Jaddoo's 50% interest as of 2006, requires an assessment of the following factors. Firstly,

and fundamentally, the learned judge accepted that the Mickleton property and Apartment Complex were acquired by the Jaddoos, using funds from the business which was birthed and prospered from the joint contribution of the Jaddoos. Secondly, and equally critical, Mrs Jaddoo was awarded a 50% share of the business and its profits. Thirdly, the learned judge accepted, contrary to Mr Jaddoo's assertions, that the development of the Mickleton property came from the business Mr Jaddoo operated, having excluded Mrs Jaddoo. Fourthly, Mrs Jaddoo's only response to the improvement of the Mickleton property was that the home built there was financed from income generated by the business and the Apartment Complex. Fifthly, the seventh unit in the Apartment Complex was financed by a bank loan. The learned judge did not make the last finding but that was the unchallenged affidavit evidence from Mr Jaddoo.

[76] A consideration of the foregoing factors brings into focus the issue of double counting in favour of Mrs Jaddoo, or overcompensation in Ms Grant's submission. Taken to its granular level, the problem is this. Mrs Jaddoo was awarded a 50% interest in the Mickleton property and Apartment Complex, based on the finding that both were purchased with funds generated by the business they owned. Following their separation, Mr Jaddoo excluded Mrs Jaddoo from the business. For the exclusion years, although incorrectly calculated, Mrs Jaddoo was awarded a share of the business and its profits. Mr Jaddoo then used money from the business to build on the Mickleton property. The question becomes, when Mr Jaddoo used that money, whose was it? The answer must unequivocally be his, as Mrs Jaddoo's share had already been allocated. Mrs Jaddoo cannot, to resort to an idiomatic expression, have her cake and eat it too. Once her share had been awarded, no claim could justly be made on the appropriation of the remainder.

[77] The Apartment Complex suffers from the same lopsided compensation. However, there was no attempt on the evidence to speak to the seventh unit built by Mr Jaddoo. The burden of servicing the bank loan for the additional unit would have been Mr Jaddoo's sole expense. It is only fair that he should have the benefit of that burden. Mrs Jaddoo's 50% share in the Apartment Complex must therefore exclude a share in the seventh unit.

[78] It may, therefore, be said that the learned judge's reasoning in relation to the division of these properties, without being uncharitable, shows gaps in the understanding of the law. Section 12(2) of PROSA required deliberate fixing of the Jaddoos' interest in the properties as of 2006, the year they separated. Following on that, the learned judge should have proceeded beyond the issue of acquisition to a close examination of conservation or improvement of the properties. In as much as the learned judge's reasoning did not traverse the further ground alluded to, there is evidently a basis upon which her decision may be set aside. This ground of appeal has merit and Mrs Jaddoo's 50% share in the Mickleton property and Apartment Complex must be particularized accordingly.

[79] It is convenient to take the Mickleton property first. The award of a 50% share to Mrs Jaddoo is made as of 2006, the year the Jaddoos separated. This means Mrs Jaddoo's 50% share of the Mickleton property is to be apportioned upon the value of the undeveloped lot, excluding the value of the dwelling house erected on the property after they separated. In similar fashion, Mrs Jaddoo's 50% share in the Apartment Complex is to be assessed on the value of the six units, as of the date of separation in 2006. That is, excluding the value of the seventh unit added by Mr Jaddoo.

Issue #3: Whether the learned judge erred in awarding the costs of the litigation to Mrs Jaddoo. (ground (g))

[80] Ms Grant submitted that the learned judge erred by awarding Mrs Jaddoo costs in circumstances where an order for each party to bear its own costs would have been fair and in keeping with the objective of PROSA. It was further submitted that the Jaddoos made an effort to settle the matter before the claim was filed. However, Mr Jaddoo's several efforts to arrive at an amicable settlement were scuttled by Mrs Jaddoo as all his proposals and counterproposals were rejected.

[81] Mrs Cummings made three points in response to Ms Grant's submissions. Firstly, she pointed to the general rule under rule 64.6 of the Civil Procedure Rules 2002 ('CPR') that the unsuccessful party pays the costs of the successful party. That is coming to the

decision of who should pay the costs, the court looks at all the circumstances, including the conduct of the parties before and during the proceedings and whether the party has succeeded on particular issues. Secondly, Mrs Cummings highlighted Mr Jaddoo's repeated attempts to mislead the court below, evidenced by the learned judge's assessment of him as someone who was mostly untruthful and evasive, in contradistinction to Mrs Jaddoo who was more truthful and forthright. Para. [77] of the learned judge's judgment was cited in support. Thirdly, since Mrs Jaddoo was the overall victor, the costs order was not only fair as between the parties, but also as required by the overriding objective of the CPR and PROSA.

Discussion

[82] The award of costs is at the discretion of the court by virtue of section 28E of the Judicature (Supreme Court) Act. Rule 64.6, to which Mrs Cummings referred, is sub-headed "Successful party generally entitled to costs" and underlines the discretionary tone of the award of costs in legal proceedings (see, for example **Suzette Hugh Sam v Quentin Hugh Sam** [2018] JMCA Civ 15). It is convenient to set out the rule, so far as is relevant.

> "64.6 (1) If the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to the costs of the successful party.
>
> (2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.
>
> (3) In deciding who should be liable to pay costs the court must have regard to all the circumstances.
>
> (4) In particular it must have regard to-
>
> (a) the conduct of the parties both before and during the proceedings;

> (b) whether a party has succeeded on particular issues, even if that party has not been successful in the whole of the proceedings;
>
> (c) any payment into court or offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Parts 35 or 36);
>
> (d) whether it was reasonable for a party –
>
> (i) to pursue a particular allegation; and/or
>
> (ii) to raise a particular issue;
>
> (e) the manner in which a party has pursued –
>
> (i) that party's case;
>
> (ii) a particular allegation;
>
> (iii) a particular issue;
>
> (f) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
>
> (g) whether the claimant gave reasonable notice of intention to issue a claim".

[83] From rule 64.6(1) the learned judge, in the exercise of her discretion, had to first decide whether costs should be awarded at all. Once it was decided that costs should be awarded, the general rule, or default position, is that the unsuccessful party should pay the costs of the successful party. By making it the general rule, the intent is clear that it is competent for a court to depart from it, in the exercise of its discretion. The discretion to be exercised however, does not spring from the fickle, foibles and fallacies of the individual judge. In short, the discretion must be exercised judicially, not arbitrarily. That is to say, the discretion must manifestly be exercised in accordance with established principles and the facts of each case (or circumstances as expressed in rule 64.6(3) above); as well as the factors enumerated in rule 64.6(4).

[84] The learned judge, in the exercise of her discretion, not only decided that this was an appropriate case in which to make an order about the costs of the proceedings but also to apply the general rule that costs follow the event. Therefore, Mr Jaddoo should pay Mrs Jaddoo's costs of the proceedings. Mr Jaddoo's contention, through his counsel, is that the learned judge erred in the exercise of her discretion in following the general rule rather than departing from it, and ordering instead, that each party should bear his or her own costs. A proper exercise of her discretion, the argument ran, would have led the learned judge to a consideration of the Jaddoos' conduct before the claim was issued. That consideration would have revealed that Mr Jaddoo made several offers and counteroffers to settle the claim.

[85] Since this ground of appeal calls into question the exercise of the learned judge's discretion under rule 64.6 of the CPR, this court ought properly to defer to the learned judge's exercise of her discretion and not interfere with it merely on the ground that the members of the court would have exercised the discretion differently (see **Hadmor Productions Limited v Hamilton** [1982] 1 All ER 1042). So that, following that counsel of caution, this court will only interfere with the exercise of the learned judge's discretion where it can be shown that she acted "based a misunderstanding of the law … or the evidence …, or on an inference - that particular facts existed or did not exist – which can be shown to be demonstrably wrong, or where the judge's decision is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it" (see **The Attorney General of Jamaica v John MacKay** [2012] JMCA App 1, at para. [20]); (these two decisions are referred to below as the **Hadmor-MacKay** principles).

[86] The learned judge's exercise of her discretion to award the costs of the proceedings to Mrs Jaddoo was only expressed at the end of her judgment as one of the orders. That is, there was no discussion of the basis or bases upon which the order was made. In reviewing her decision, the starting point is to answer the question, who was the winner or successful party? In the FDCF, Mrs Jaddoo asked for a declaration of half

interest in the three properties and for an accounting and valuation of the assets of the business, with a request for one half of the established net value. She succeeded in all areas. Mr Jaddoo raised two issues of accounting in his affidavit, rents from the family home and withdrawals from a joint account. He failed to establish both. So, Mrs Jaddoo was the absolute successful party on the claim and the subsidiary issues raised.

[87] Having succeeded absolutely on the claim, Mrs Jaddoo therefore had a reasonable expectation that her costs should be paid by Mr Jaddoo and, the learned judge was accordingly within her rights to start at the default position. Although Mrs Jaddoo's expectation was not the equivalent of a right, representing the default position or general rule as it did, the learned judge would have needed a reason, clearly articulated, to depart from it.

[88] Mr Jaddoo's position is that his conduct before the proceedings, reflected in the several offers and counter offers to resolve the matter, warranted a departure from the general rule. Rule 64.6(4)(c) required the learned judge to take within the compass of her considerations, "any … offer to settle made by a party which is drawn to the court's attention …". It is perhaps noteworthy that the word "settle' is not used in the ground of appeal. However, that may be pure semantics as "resolve" is an acceptable synonym for "settle".

[89] What Mr Jaddoo relied on was his evidence in response to Mrs Jaddoo's affidavit evidence. For context, I reproduce paras. 7 and 8 of Mrs Jaddoo's affidavit filed on 30 June 2017:

> "7. In an effort to have the matter resolved amicably, my Attorneys-at-Law, Mesdames Archer Cummings & Company have been in negotiations with the Attorneys-at-Law for the Defendant, Messrs DunnCox, Attorneys-at-Law regarding the division of matrimonial property herein since as early as May 11th, 2016. There have been several letters making proposals and counter proposals between my Attorneys and the Defendant's Attorneys in this regard, however, I am advised by my Attorneys-at-Law and I do verily believe that as these

> letters are WITHOUT PREJUDICE letters they cannot properly be exhibited to my affidavit.
>
> 8. The negotiations broke down in or around January 2017 as myself and the Defendant were unable to agree on how "The Apartment Complex" and the business should be shared".

Mr Jaddoo responded in his affidavit at para. 11:

> "Paragraphs 7 and 8 are accepted, and I will add that despite all my efforts to amicably resolve the matter the Claimant has rejected all our proposals and counter proposals. The business ceased to be in operation since 2013".

[90] These paragraphs indicate that the Jaddoos, through their attorneys-at-law, were engaged in the expected negotiations prior to the filing of the claim. Since this information was taken from the affidavits, the learned judge would have been aware of it. However, negotiation is not what the CPR required the learned judge to have regard to when exercising her discretion as to who should bear the costs of the proceedings. The fruit of the negotiation (an offer), reduced to writing is what the CPR contemplates, with the procedure for its revelation to the court clearly set out. Neither the fact of the offer nor its particulars can be communicated to the court before all questions of liability are decided (see rule 35.5). There is no evidence that after the learned judge gave judgment for Mrs Jaddoo, the fact that Mr Jaddoo had made an offer of a settlement to Mrs Jaddoo was communicated to the learned judge. To be fair, neither is there evidence that the Jaddoos were given the opportunity to make submissions on the point before the learned judge. That leaves the negotiations referred to in the submissions and affidavits.

[91] That said, the learned judge would have been within her rights to view the issue of costs through the lenses of the conduct of the Jaddoos during the negotiations, to trespass beyond the submissions. I am of the view that this falls within the ambit of "the conduct of the parties … before … the proceedings" (see rule 64.6(4)(a), extracted at para. [82] above). An examination of conduct during negotiations to settle a property dispute is legitimated, if legitimacy is necessary, by the modern approach of promoting a "settlement culture", rather than resort to litigation. Some of the reasons undergirding

this enlightened posture are: (i) reduction of legal costs by avoiding trial, (ii) saving court time, (iii) possible avoidance of any addition to the general unhappiness and sometimes bitterness that is normally associated with the breakdown of a marriage, and (iv) the uncertainty of the outcome of adversarial proceedings in courts possessing wide discretionary powers. There are also historical reasons to promote a settlement culture which are not relevant to this case (see Bromley's Family Law, tenth edition, at pages 9-10). Accordingly, generally, a party who unreasonably and obstinately resisted reasonable settlement offers deserves an adverse exercise of a judge's discretion in the award of the costs of the claim.

[92] While it is important to promote the settlement culture, it would be inequitable to allow one party (Mr Jaddoo) to rely on proposals and counterproposals to the detriment of the other party (Mrs Jaddoo), arising from the cut and thrust of negotiations without overt evidence of bad faith. Implicit in Mr Jaddoo's reference to the negotiations, without the context of Mrs Jaddoo's evidence, is the notion that he was alone in proposing and counter proposing. That provided fertile ground for the unspoken, but unsubstantiated, allegation that Mrs Jaddoo was unreasonably uncooperative or, adopted an otherwise uncompromising stance, that led to the claim being filed and so she should bear her own costs. However, if Mr Jaddoo's opposition of Mrs Jaddoo's application for an extension of time to bring the claim under PROSA is any yardstick of his general attitude, that would fly in the face of his allegation.

[93] Although the learned judge did not give any reason for making the costs order, it is not difficult to appreciate the unfavourable exercise of her discretion towards Mr Jaddoo. Here I return to the authority given to the learned judge, under rule 64.4(a), to have regard to the conduct of the Jaddoos during the proceedings. Mrs Cummings highlighted the learned judge's unflattering opinion of Mr Jaddoo's conduct during the trial of the claim. The following snippets formed the bedrock of the learned judge's character sketch of Mr Jaddoo: "mostly untruthful at times and evasive"; " … after facing strenuous pressure in cross-examination, [he] eventually agreed …"; "…several pieces of

[Mrs Jaddoo's] evidence that [were] vigorously challenged by counsel for [Mr Jaddoo] … [were] later reluctantly admitted by [Mr Jaddoo] in cross-examination"; "I found [Mr Jaddoo] to be prevaricating quite often" he had a "… haughty manner …" and was "… disingenuous …".

[94] From the foregoing bits of evidence, it is reasonable to think the learned judge's low opinion of Mr Jaddoo would have weighed heavily in her consideration of the award of costs. The correlation between an elongated trial and a prevaricating witness who required strenuous cross-examination to obtain concessions, would have been apparent to this seasoned judge. Unnecessarily lengthening a trial process runs against the grain of the overriding objective to ensure that cases are dealt with expeditiously and fairly. That conduct arguably warranted an unfavourable costs order.

[95] It follows that Mr Jaddoo has failed to demonstrate that the alleged conduct of Mrs Jaddoo during the negotiations was such that the learned judge ought to have exercised her discretion otherwise than she did. Rather, by adverting to the conduct of Mrs Jaddoo during the negotiations, unsupported by evidence of unreasonable demands, he placed his conduct during the trial into sharp relief. Accordingly, Mr Jaddoo has not demonstrated that by ordering him to pay Mrs Jaddoo's costs of the proceedings, the learned judge's exercise of her discretion was either demonstrably wrong or so aberrant that it must be set aside as no judge, regardful of her duty to act judicially could have reached it. This ground of appeal therefore fails.

Issue #4: Whether the learned judge **erred in ordering that Mrs Jaddoo has the first option to purchase the three properties. (ground (f))**

[96] The burden of this ground is that the learned judge, by this order, failed to consider the practical realities of sale of the Mickleton property and Apartment Complex upon Mr Jaddoo. That is, by bestowing upon Mrs Jaddoo the first option to purchase the Mickleton property, if exercised, has the potential of making Mr Jaddoo and the children residing with him homeless. This court was therefore asked to reverse the option to purchase the Mickleton property, investing it in Mr Jaddoo, as was done in **Carlene Miller v Harold**

Miller. In relation to the Apartment Complex, the risk is depriving Mr Jaddoo of his primary source of income. The cumulative effect of these orders, it was submitted, is to make them unfair and inequitable, with hardship, their ultimate result.

[97] Further to those submissions, questions of Mr Jaddoo's advanced years with the accompanying difficulty of maintaining himself and obtaining a mortgage were also raised. Reference was made to the judgment of Brooks JA (as he then was) in **Carlene Miller v Harold Miller**, at para. [36], where he said that "the object of the PROSA is to achieve fairness between the parties upon the breakdown of their marriage" based on Morrison JA's (as he then was) comprehensive review of **Annette Brown v Orphiel Brown** [2010] JMCA Civ 12. Also highlighted for our consideration was the contrast made in PROSA between the provisions for the division of the family home and other matrimonial property. In the composite approach of PROSA, there is a presumption of equal share of the interest in the family home. However, that presumption is not extended to other matrimonial property. In respect of the latter, the division is according to what is fair in the circumstances (see **Carlene Miller v Harold Miller**, at para. [38]).

[98] Mrs Cummings did not dispute the submission that fairness, as a principle, imbues PROSA. She sought, however, to pour cold water on Mr Jaddoo's appeal to fairness. In that vein she highlighted the evidence of Mrs Jaddoo's exclusion from the business and Apartment Complex, Mr Jaddoo's forcible takeover of the family home then renting it and Mr Jaddoo's use of his dominant financial position to intentionally deprive Mrs Jaddoo of the fruits of her labour.

[99] Therefore, by giving Mrs Jaddoo the first option to purchase all three properties, the learned judge gave effect to the principle of fairness by ensuring that Mrs Jaddoo was not disadvantaged by Mr Jaddoo, the greater financial power. This approach, it was argued, was consistent with the overriding objective of the CPR to deal with cases justly. That is, to ensure that parties are on equal footing and not prejudiced by their financial position.

Discussion

[100] The question of who should have the first option to purchase any or all the properties fell to be answered by an exercise of the learned judge's discretion. I therefore bear in mind the appellate constraints imposed by the **Hadmor-MacKay** principles (see para. [85] above). A perusal of the learned judge's judgment does not reveal what factors guided her to assign the first option to purchase all the properties to Mrs Jaddoo. In the face of that silence, I will examine the material that was before the learned judge to see if she was faithful in her duty to act judicially.

[101] Both sides agreed, and I concur, that the yardstick by which the assignment of the first option to purchase ought to be measured is what is fair as between Mr and Mrs Jaddoo in the circumstances. Fairness, through the spectacles of Mrs Jaddoo, was a transfer of all her interest in the Mickleton property to Mr Jaddoo without consideration, apparently for the like transfer of Mr Jaddoo's interest in the family home to her (see para. 10 of her further affidavit). It seems a reasonable inference from that evidence that Mrs Jaddoo, while acknowledging her interest in the Mickleton property, had no desire to own it in the post-division of property era.

[102] The opposite desire can be attributed to Mr Jaddoo from the mere fact that that was his home, one that he had built. In this regard, Mr Jaddoo is in a similar position to the husband in **Carlene Miller v Harold Miller**. In that case, the wife who resided abroad asked to be given the first option to purchase the property on which the husband had his home. The fact that the husband lived on the property was the fulcrum upon which Brooks JA's (as he then was) decision turned. That the husband's home was on the property made it felicitous or, "more appropriate for him to be given first option of purchasing her interest …" (see para. [65] of the judgment). Although Brooks JA used the phrase "more appropriate", he was applying the principles undergirding PROSA that he had earlier articulated, emphasising fairness. Therefore, it is unarguable that Brooks JA was satisfied that allocating the first option to purchase to the husband was grounded in what was just and equitable in those circumstances.

[103] In the light of the guidance from **Carlene Miller v Harold Miller**, there is much to commend the submissions of Ms Grant. Reposing the first option to purchase in Mrs Jaddoo carries with it the risk of residential dislocation that is neither counterbalanced nor outweighed by any jeopardy to which Mrs Jaddoo may be exposed, if Mr Jaddoo first exercises the option. In circumstances where it is expected that the sale will be conducted through the Jaddoos' respective attorneys-at-law, Mr Jaddoo's superior financial position is unlikely to play any commanding role. As a result, I am not persuaded that the learned judge's order will give effect to the objective of fairness under PROSA.

[104] That said, it is difficult to take issue with Mrs Cummings' effort to paint Mr Jaddoo's appeal to fairness as cynical, against the background of his conduct before the claim was filed. However, that conduct cannot be used as a basis to give Mrs Jaddoo the first option to purchase the home he occupied. To do so would arguably be retributive for his past sins rather than just and equitable. Respectfully, it cannot be said that a judge who was regardful of her duty to act judicially would have exercised her discretion by giving Mrs Jaddoo the first option to purchase the property on which Mr Jaddoo lived, in these circumstances. Consequently, the first option given to Mrs Jaddoo to purchase the Mickleton property ought properly to be set aside.

[105] The first option to purchase the Apartment Complex must be similarly treated. Since the dominant consideration is fairness between the Jaddoos, what they consider to be fair is pertinent although not prescriptive. In this vein, Mrs Jaddoo explicitly said she is willing to allow Mr Jaddoo to purchase her 50% interest in the Apartment Complex at current market value (see para. 10 of her further affidavit). Mr Jaddoo simply expressed a desire for this property to be transferred to him. On that score, the contention that the Apartment Complex represented Mr Jaddoo's primary source of income was not before the learned judge and ought to be excluded at this stage.

[106] While the learned judge was not bound by Mrs Jaddoo's wishes concerning the Apartment Complex, nothing arises on the face of the evidence to warrant a departure from it. On the other hand, save for the conduct about which Mrs Cummings made ample

submissions, there is nothing to explain the exercise of the learned judge's discretion. Regrettably, without reasons or inferential support from the evidence, the exercise of the learned judge's discretion in relation to the Apartment Complex seems arbitrary. On that basis, applying the **Hadmor-MacKay** principles, this decision must be set aside.

Issue #5: Whether the orders made by the learned judge are unjust, unreasonable and inequitable. (ground (a))

[107] Ms Grant, in her written submissions, discussed this ground together with grounds (f) and (g), which she argued raised the issue of "[w]hether or not the learned [judge] failed in taking into consideration pertinent aspects of the evidence which resulted in a decision that is unfair, unjust and inequitable to [Mr Jaddoo] thereby defeating the object of PROSA?" I have already discussed separately the matters raised by grounds (f) the first option to purchase (see paras. [96]-[106] above) and ground (g) the award of costs to Mrs Jaddoo (see paras. [80]-[95] above). Ms Grant did not make any specific submissions in relation to ground (a). Rather, the essence of the charge under ground (a) was adverted to in relation to the first option to purchase by asserting that its award to Mrs Jaddoo was "unjust and unfair" and that an order for each party to bear his/her own costs would have been fair and reflective of the objective of PROSA.

[108] Mrs Cummings, for her part, treated with ground (a) separately. Mrs Cummings understood ground (a) to be an attack upon all the orders made by the learned judge. To that end, she submitted that it was Mr Jaddoo's conduct that was unjust, unreasonable and inequitable, which the evidence highlighted. The submissions went on to instantiate that conduct by reference to several of the matters already covered in this judgment, such as Mr Jaddoo's attempt to diminish Mrs Jaddoo's contribution to the business, Mrs Jaddoo's exclusion from the business and Apartment Complex and Mr Jaddoo's breaking into the family home.

<u>Discussion</u>

[109] On one view, ground (a) does not require additional consideration since Ms Grant did not extend her submissions beyond grounds (f) and (g) to the rest of the judgment.

If, as Mrs Cummings understood it, ground (a) was meant to be a global challenge of the learned judge's orders, the ground does not have much to commend it, having regard to my overall decision. While there were some errors of fact and instances in which the learned judge's discretion could have been otherwise exercised, there was a studious application of the law and relevant principles to the facts.

Conclusion

[110] This appeal called into question the learned judge's findings of fact, understanding of the law, as well as the exercise of her discretion. The contention that the learned judge erred in finding that the Jaddoos' business was shuttered in 2016, and not 2013, as the evidence disclosed was unanswerable. Equally irrefutable was the complaint that there was no evidence that Mrs Jaddoo rented the family home. However, applying the relevant principles, neither error materially affected the learned judge's ultimate decisions.

[111] More compelling was the criticism that the learned judge failed to demonstrably apply the provisions of section 12(2) of PROSA. That is, the award of an equal share of the interest in the Mickleton property and Apartment Complex was not expressly assessed as at the year of separation, 2006. Consequently, no or no proper account was taken of the subsequent improvements to those assets and how that would impact their final distribution.

[112] Similarly, there was error in the exercise of the learned judge's discretion to award Mrs Jaddoo the first option to purchase the Mickleton property and Apartment Complex. Mr Jaddoo resided on the Mickleton property. In that event, Mr Jaddoo stood to be prejudiced if Mrs Jaddoo chose to exercise the option to purchase. On the other hand, reversing the order of the option to purchase would not similarly expose Mrs Jaddoo. In respect of the Apartment Complex, in the absence of any reason to assign the first option to Mrs Jaddoo, fairness is best manifested in giving effect to the Jaddoos' reasonably expressed wishes. Mrs Jaddoo had no desire to purchase the Apartment Complex while Mr Jaddoo apparently intended to retain ownership and possess it as a source of income.

[113] Standing outside the above successful challenges to the exercise of the learned judge's discretion is the award of costs. Mrs Jaddoo succeeded on all aspects of her claim and triggered the default position of costs following the event. There was no reason to depart from this general rule. Therefore, the exercise of the discretion in favour of Mrs Jaddoo is unassailable.

[114] Against the background of the preceding discussion, I propose that the appeal be allowed in part, affirming some of the learned judge's orders and varying others, as part of the final orders of this court:

1. The appeal is allowed, in part.

2. Orders 1, 2, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 21 and 22 of the order of I Reid J, made on 19 December 2022, are affirmed.

3. Orders 3, 4, 7, 10, 17 and 20 of the order of I Reid J, made on 19 December 2022, are varied to read as follows:

> (3) The Claimant and the Defendant are each entitled to a 50% share of the value, as at December 2006, in all that undeveloped parcel of land part of the Mickleton Property called Venecia Lane in the parish of St. Catherine containing by survey eight hundred and twenty-three square meters and seventy-seven hundredths of a square meter of the shape and dimensions and butting as appears by the plan thereof comprised in Certificate of Title registered at Volume 1369 Folio 976 of the Register Book of Titles hereinafter referred to as "the Mickleton property" but excluding the value of the dwelling house constructed on the property after 2006.
>
> (4) The Claimant and the Defendant are each entitled to a 50% share in the value in all that parcel of land part of Begonia Lodge, together

with six of the apartments as at December 2006, situate at Linstead in the parish of Saint Catherine being the lot numbered twenty-five on the Plan of Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd day of September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed, and being the land formerly comprised in Certificate of Title registered at Volume 1164 Folio 792 now comprised in Certificate of Title registered at Volume 1327 Folio 784 of the Register Book of Titles hereinafter referred to as "The Apartment Complex" but excluding the value of the seventh apartment that was constructed after 2006.

(7) (i) the Claimant shall have the first option to purchase the Defendant's 50% interest in the family home within 60 days after the receipt of the valuation reports; (ii) the Defendant shall have the first option to purchase the Mickleton property and the Apartment Complex within 60 days of the receipt of the valuation report. If either party fails to exercise his/her option within the 60 days, the other party shall have the option to purchase the defaulting party's 50% shares in the respective property within 60 days after the expiration of the relevant option or after the party has declined to exercise the option to purchase.

(10) The net proceeds from the sales on the open market are to be divided between the parties according to their respective shares as determined by reference to the valuations as of 2006. The costs of the transfers are to be borne equally between the parties.

(17) 50% of the monies collected from all tenants in respect of the occupation of the family home are to be turned over to the Claimant.

> (20) The Claimant is entitled to benefit from the business that she shared with the Defendant. The Defendant is to pay the Claimant the sum of $2,520,000.00 for the period 2006 - 2013 representing the years that she was excluded from the business until its demise.

4. 50% of the costs of the appeal to the appellant, to be taxed if not agreed.

LAING JA

[115] I too have read in draft the judgment of my learned brother Brown JA. I agree with his reasoning and conclusion.

STRAW JA

ORDER

1. The appeal is allowed, in part.

2. Orders 1, 2, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 21 and 22 of the order of I Reid J, made on 19 December 2022, are affirmed.

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Register Book of Titles hereinafter referred to as "the Mickleton property" but excluding the value of the dwelling house constructed on the property after 2006.

(4) The Claimant and the Defendant are each entitled to a 50% share in the value in all that parcel of land part of Begonia Lodge, together with six of the apartments as at December 2006, situate at Linstead in the parish of Saint Catherine being the lot numbered twenty-five on the Plan of Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd day of September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed, and being the land formerly comprised in Certificate of Title registered at Volume 1164 Folio 792 now comprised in Certificate of Title registered at Volume 1327 Folio 784 of the Register Book of Titles hereinafter referred to as "The Apartment Complex" but excluding the value of the seventh apartment that was constructed after 2006.

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(10) The net proceeds from the sales on the open market are to be divided between the parties according to their respective shares as

determined by reference to the valuations as of 2006. The costs of the transfers are to be borne equally between the parties.

(17) 50% of the monies collected from all tenants in respect of the occupation of the family home are to be turned over to the Claimant.

(20) The Claimant is entitled to benefit from the business that she shared with the Defendant. The Defendant is to pay the Claimant the sum of $2,520,000.00 for the period 2006 - 2013 representing the years that she was excluded from the business until its demise.

4. 50% of the costs of the appeal to the appellant, to be taxed if not agreed.