

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO COA2025CV00005**

**APPLICATION NO COA2025APP00114**

<b>BETWEEN</b>	<b>PATRICK GOULDBOURNE POWELL</b>	<b>APPLICANT</b>
<b>AND</b>	<b>MAUREEN GREEN</b>	<b>RESPONDENT</b>

**Steven Powell for the applicant**

**Kemar Robinson instructed by Robertson & Partners for the respondent**

**21 October and 27 November 2025**

**Civil law – Security for costs – Whether the relevant circumstances support an order for security for the costs of the appeal – the Court of Appeal Rules, 2002, rule 2.11**

**IN CHAMBERS**

**V HARRIS JA**

[1] This is an application for security for costs made by the applicant, Mr Patrick Gouldbourne Powell, consequent to a notice of appeal filed by the appellant, Ms Maureen Green.

[2] The background to the application can be briefly stated. Mr Powell brought a claim in the Supreme Court against Ms Green and her daughter, Ms Simonique Campbell, to determine their respective property rights in premises located at 24 Hurlingham Drive, Meadowbrook, Kingston 19, in the parish of Saint Andrew, which is comprised in Certificate of Title registered at Volume 891 Folio 78 of the Register Book of Titles ('the property'). The parties and Ms Green's daughter held the property as joint tenants.

[3] On 20 December 2024, following a trial, Hutchinson Shelly J (‘the learned judge’) found that Mr Powell was entitled to 95% of the legal and beneficial interest in the property, while Ms Green’s entitlement was 5%. The learned judge also ordered that Ms Green account to Mr Powell for 95% of the rental income she collected from leasing part of the property, along with other consequential orders.

[4] Dissatisfied with the learned judge’s decision, Ms Green filed notice and grounds of appeal on 28 January 2025. She also filed a notice of application for a stay of execution of the judgment in the court below, together with two supporting affidavits on 13 February 2025. A single judge of this court heard the application for stay of execution on 18 March 2025 and refused it on 4 April 2025. The property has since (on 11 June 2025) been transferred to Mr Powell as the sole registered proprietor.

[5] On 5 April 2025, Mr Powell’s attorney-at-law wrote to Ms Green’s attorney-at-law requesting that she provide security for the costs of the appeal in the amount of \$2,500,000.00. There was no response to this letter. Following that request, Mr Powell filed a notice of application for security for costs on 13 June 2025, with a supporting affidavit filed on the same date. He is seeking an order that Ms Green give security for the costs of the appeal in the sum of \$3,500,000.00 within 90 days of the hearing of the application, and that that sum be paid into an interest-bearing account in the names of the attorneys-at-law representing the parties until the determination of the appeal.

[6] I heard submissions from counsel for the parties on 21 October 2025, and at that time, I promised to provide a decision by 13 November 2025. With apologies for the delay, which was due to circumstances well beyond my control, I now do so. For the brief reasons that follow, I have concluded that the application must be granted.

[7] The main ground of the application is that there are reasonable grounds for believing that Ms Green is not in a position to satisfy any order for costs made against her by the court if she is unsuccessful in the appeal.

[8] On behalf of Mr Powell, counsel Mr Steven Powell, submitted that the evidence clearly indicates that Ms Green is impecunious. He also submitted that her impecuniosity is further compounded by the fact that, in the light of the judgment in the court below, she is indebted to Mr Powell for a considerable sum of money (95% of the rental income that she has collected over the last 17 years in respect of the property). Counsel also argued that, in any event, the appeal is devoid of merit since the learned judge's decision is based mainly on findings of fact. Given these prevailing circumstances, the argument continued, the application for security of costs should be granted. The cases of **Speedways Jamaica Ltd v Shell Company (WI) Limited and another** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 66/2001, judgment delivered 20 December 2004, **Cablemax Limited et al v Logic One Limited** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 91/2009, Application No 203/2009, judgment delivered 21 January 2010, **Keary Developments Ltd v Tarmac Construction Ltd and Another** [1995] 3 All ER 534, **Watt (or Thomas) v Thomas** [1947] AC 484 and **Alan Deans v Patricia Deans** [2021] JMCA App 6 were cited in support of these submissions.

[9] Counsel Mr Kemar Robinson, appearing for Ms Green, has submitted that she has a real prospect of success because the appeal raises substantial questions of law and fact, including the learned judge's failure to give sufficient weight to the parties' intention at the time that the property was acquired. He further contended that if the application were granted, this would effectively stifle the appeal and "bar [Ms Green] from pursuing the appeal, thereby insulating [Mr Powell] from scrutiny of the trial process". Counsel also argued that Ms Green's 5% legal and beneficial interest in the property, which remains unpaid, despite Mr Powell transferring the property to himself, is valued in the region of \$2,280,000.00, which is sufficient to satisfy any costs order that the court makes. As a result, the application is wholly without merit and ought to be refused. Reliance was placed on **The Shell Company (WI) Ltd v Fun Snax Ltd and another** [2011] JMCA App 6, as well as **Speedways Jamaica Ltd v Shell Company (WI) Limited and another**, in support of these submissions.

[10] The jurisdiction of a single judge of appeal to make an order for security for costs of an appeal is derived from rule 2.11(1)(a) of the Court of Appeal Rules 2002 ('the CAR'), which provides that a single judge of appeal may order the appellant "to give security for the costs occasioned by an appeal". Rule 2.11(3) of the CAR further specifies:

"In deciding whether to order a party to give security for the costs of the appeal, the court or the single judge must consider –

(a) the likely ability of that party to pay the costs of the appeal if ordered to do so; and

(b) whether in all the circumstances it is just to make the order."

[11] When deciding whether to grant an order for security for costs, which is an exercise of discretion, all relevant circumstances of the case must be considered (**Jamaica Edible Oils & Fats Co Ltd v MSA Tire (Jamaica) Limited and another** [2018] JMCA App 8, paras. [25]-[27]). In considering all the relevant circumstances, the court is required to take into account the appellant's chances of success, "... though it is not required to go into the merits in detail unless it can be clearly demonstrated that there is a high degree of probability of success or failure" (per Morrison JA in **Cablemax Limited and Others v Logic One Limited** at para. [14]).

[12] I am inclined to agree with counsel for Mr Powell that in the present case, on an examination of the judgment of the learned judge, the grounds of appeal and the submissions of counsel, it would appear that the decision of the learned judge hinged mainly on findings of fact based on the credibility of the witnesses. The learned judge was very detailed in her judgment and considered the facts as well as the applicable law. Therefore, in keeping with the case of **Watt (or Thomas) v Thomas** and the plethora of authorities along that line, such as **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21 (which all establish the settled principle that an appellate tribunal will not lightly interfere with findings of fact made by a trial judge unless it can identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his or her conclusions), Ms Green will be hard-pressed

to convince the court that the learned judge was plainly wrong in arriving at her conclusion. Nonetheless, I will go on to consider what the interests of justice appear to require in the circumstances.

[13] In his affidavit (filed on 13 June 2025), Mr Powell avers that not only has Ms Green failed to satisfy any of the costs orders made against her in the court below as well as the order for costs in this court (regarding the application for a stay of the execution), but also that, in her affidavit (filed on 13 February 2025 in support of her application for a stay of execution), she indicated that she was experiencing financial hardship, and so if the orders of the court below were executed, she would become homeless since she could not afford a suitable home to rent given her income.

[14] Ms Green, in her affidavit in response filed on 26 September 2025, has opposed the application on the basis that she has a real chance of succeeding on the appeal on both factual and legal grounds. Therefore, any order for costs that was made in the court below will be set aside. She also averred that, in any event, her 5% interest in the property (as declared by the learned judge), which Mr Powell has transferred to himself, is sufficient to satisfy any order for costs that is made against her in the appeal.

[15] I am also mindful that counsel, Mr Steven Powell, has exhibited a proposed bill of costs for the proceedings in the appeal so far that exceeds \$3,500,000.00. This does not include the costs Ms Green has been ordered to pay in the application for a stay of execution (proposed at \$1,000,000.00), or the costs incurred by Mr Powell in the court below. It is evident that even on a conservative view of the cumulative costs in these proceedings to date, they would be quite substantial. However, I observe that the proposed bill of costs has not yet been taxed. Nonetheless, against this background, it seems to me that Ms Green is not in a position to pay the costs of the appeal if ordered to do so.

[16] Accordingly, considering Ms Green's chances of success on the appeal (which appear to be negligible) and her likely inability to pay the costs of the appeal if ordered

to do so, in my judgment, the justice of the case requires that an order for security for costs be made.

[17] Turning now to the assessment of the amount of costs that Ms Green should be ordered to pay, I have taken into account her interest in the property which is the subject of the appeal. I note the fact that Mr Powell has not paid over to Ms Green the amount representing her 5% interest in the property, although he has already transferred it to himself as the sole proprietor. I also have regard to Mr Powell's averment (in his further affidavit filed on 10 October 2025) that he owes legal fees in excess of \$6,000,000.00 and continuing. I would, therefore, order that Ms Green pay the sum of \$500,000.00 as security for the costs of the appeal.

[18] For the preceding reasons, the order of the court is as follows:

- (a) The application for security for costs of the appeal filed on 13 June 2025 is granted.
- (b) The appellant, Maureen Green, shall give security for the respondent's, Patrick Gouldbourne Powell, costs of the appeal in the sum of \$500,000.00 within 90 days of the date of this order.
- (c) The appellant, Maureen Green, shall pay the sum of \$500,000.00 into an interest-bearing account in the names of Mr Steven Powell and Mr Kemar Robinson (the parties' attorneys-at-law on record) at a financial institution to be agreed on by the parties.
- (d) If the appellant, Maureen Green, fails to pay the sum of \$500,000.00 as security for costs within 90 days of the date hereof, the appeal shall stand dismissed with costs.
- (e) Costs of the application for security for costs to be costs in the appeal.