

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT**

Civil Division

[Unreported]

Suit No: CV1113 of 2009

**IN THE MATTER of the
Estate of GEOFFREY
GARRETT BLACKMAN,
Deceased also known as
GEOFFREY BLACKMAN**

**AND IN THE MATTER of the
SUCCESSION ACT, CAP.249
of the Laws of Barbados**

BETWEEN

ELMA CARMEN GITTENS-BLACKMAN - 1st CLAIMANT
MARCIA ANNETTE GITTENS-GRANT - 2nd CLAIMANT

AND

JUNE BLACKMAN a.k.a. JUNE GILL - DEFENDANT

Before The Honourable Madam Justice Maureen Crane-Scott,

Judge of the High Court

2011: November 28

December 20

**Miss. Nicole Roachford in association with Miss. M. Caroline Herbert for
the Claimants and Mr. Keith Robertson for the Defendant**

DECISION

- [1] **Introduction:** The 1st and 2nd Claimants are the second wife and biological daughter respectively of the deceased, Geoffrey Garrett Blackman (hereinafter called Mr. Blackman) who died on July 20th, 1999. The Defendant is the daughter and the executrix and sole beneficiary under the will of Kharis Blackman who was Mr. Blackman's first wife until their divorce on December 21st, 1989.
- [2] Although she was not Mr. Blackman's biological daughter and was never formally adopted by him following his marriage to her mother, the Defendant nonetheless changed her surname from Gill to Blackman in the year 1973. Sometime during the year 1982, she went to live with her mother and Mr. Blackman as part of their household.
- [3] During the course of Mr. Blackman's first marriage and by way of a conveyance dated October 12th, 1979, Mr. Blackman and the late Kharis Blackman, purchased a property situated at Lots 31 and 32 Coverley, in the parish of Christ Church as joint tenants. After residing in the Coverley property for a number of years, the couple moved to New York in the United States of America in the year 1983 leaving the Defendant in possession.
- [4] The marriage did not last, and in 1989 Kharis Blackman filed for and obtained a Final Judgment of Divorce from the New York Supreme Court against Mr. Blackman. Following her divorce, Kharis Blackman returned to Barbados and continued to reside with the Defendant in the Coverley property until her death on January 28th, 1993.

- [5] Following the divorce, neither party commenced property settlement proceedings either in New York or in Barbados in relation to the division of their jointly owned property. However, by letter dated November 16th, 1990, (***JB 5***) Kharis Blackman's Barbados attorney-at-law wrote to Mr. Blackman at his address in New York informing him of her wish to have the title of their jointly owned property at Coverley, Christ Church transferred fully to her and inquiring whether he would consent to the transfer.
- [6] By letter dated December 17th, 1990, (***JB 6***) Mr. Blackman's New York attorney-at-law replied indicating that Mr. Blackman was willing to convey his one-half interest in the property provided that the consideration for same was one-half of its fair market value.
- [7] Negotiations for the transfer of Mr. Blackman's share in the Coverley property did not progress beyond the initial exchange of letters. Nor were other steps taken by either party to sever the joint tenancy.
- [8] Kharis Blackman died on January 28th, 1993 and on March 2nd, 1996, the 1st Claimant and Mr. Blackman were married. In the month of January 1997, Mr. Blackman caused a Notice to be issued to the Defendant to deliver up possession of the Coverley property on the basis that he was entitled to the entire property by right of survivorship.
- [9] Mr. Blackman died intestate on July 20th, 1999 survived by the 1st and 2nd Claimants. On September 6th, 2002, the 1st and 2nd Claimants (asserting rights under the *Succession Act, Cap. 249*) formally requested the Defendant to deliver up possession of the Coverley property. The Defendant has refused to vacate the property and remains in possession up to and including the date of the hearing.

[10] **Nature of the Proceedings:** On July 16th, 2009, having initially applied for and obtained a grant of Letters of Administration in Mr. Blackman's estate, the 1st and 2nd Claimants applied by Originating Summons for the following Orders:

1. A declaration that the Claimants are entitled to possession of the dwelling house and land situated at Coverley, Christ Church;
2. A declaration that the Defendant is in occupation of the premises and remains in unlawful possession and occupation of the premises;
3. An order that the Defendant deliver up possession of the subject dwelling house and land to the Claimants immediately;
4. Such other orders as the Court deems fit;
5. Costs.

[11] **The Issues:** The contending issues submitted for the Court's determination were identified by both Counsel in the joint Pre-Trial Memorandum filed on June 1, 2011 and are as follows:

- i) Was the joint tenancy in the Coverley property severed prior to Kharis Blackman's death on January 28th, 1993?
- ii) If not, did Kharis Blackman's interest in the property pass to Mr. Blackman by right of survivorship?

[12] **Issue 1- Was the joint tenancy severed before Kharis Blackman died?:**

As the surviving beneficiaries of the late Mr. Blackman's estate, the

Claimants argued that they are entitled to the entire estate in the Coverley property on the basis that the joint tenancy was not severed during the lifetimes of Mr. Blackman and his former wife Kharis Blackman and that consequently, the sole ownership vested in Mr. Blackman upon Kharis Blackman's death.

[13] For her part the Defendant contended that on the facts, the joint tenancy was severed during Kharis Blackman's lifetime. Counsel for the Defendant asked the Court to find that correspondence exhibited with her affidavit filed on May 27th, 2010 as "**JB 3**", "**JB 5**" and "**JB 6**" respectively, disclose severance of the joint tenancy by (i) notice in writing; (ii) mutual agreement or alternatively, by (iii) a course of dealing sufficient to intimate severance of the joint tenancy.

[14] The legislative framework for severance of a joint tenancy in Barbados is found in section 43 of the *Property Act, Cap. 236* which corresponds in some respects with section 36(2) of the *1925 English Property Act* and provides:

*"43. (1) Where land is vested in joint tenants, any tenant not being a trustee or personal representative may sever the joint tenancy by giving to the other joint tenants **notice in writing** of such desire or by '**doing such other acts or things**' as are effectual to sever the tenancy.*

(2) Notwithstanding anything contained in this Act, it is hereby declared that a notice in writing given under this section is a conveyance for the purposes of being recorded under sections 56 to 58."

[15] The historical background and statutory effect of section 36(2) was explained by Waite LJ in *Edwards and Anor v. Hastings*, in the following terms:

*“It [section 36(2)] introduced a new facility for severance of a joint tenancy-the service of an express notice. At the same time the less formal means of severance recognized by the pre-1926 law were preserved. The subsection described those means as: “doing such other acts or things as would have been effectual to sever the tenancy in equity.” The classic definition of those “acts or things” is to be found in the judgment of Sir. William Page Wood V-C in *Williams v. Hensman [1861] 1 Johnson and Hemming 546 at page 557* where he said:*

“A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund- losing, of course, at the same time, his own right of survivorship. Secondly, a joint tenancy may be severed by mutual agreement. And in the third place, there may be severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common.””

[16] In *Harris and anor v. Goddard et al* [1983] 3 All E.R. 242 Dillon LJ explained the nature of a joint tenancy and the concept of severance as follows:

“Joint tenancy is a form of co-ownership, or concurrent ownership, of property. Its special feature is the right of survivorship, whereby the right to the whole of the property accrues automatically to the surviving joint tenants or joint tenant on the death of any one joint tenant. Severance is, as I understand it, the process of separating off the share of a joint tenant, so that the concurrent ownership will continue but the right of survivorship will no longer apply. The joint tenancy may come to an end through other acts which destroy the whole concurrent ownership, e.g. if one joint tenant acquires the entire beneficial interest of the other joint tenants so as to become solely and absolutely entitled beneficially to the property, or by all joint tenants resettling the property on other trusts not involving concurrent ownership but such acts do not involve severance and would not be called severance of the joint tenancy.”

[17] In the current proceedings, it is the Defendant’s case that the joint tenancy in the Coverley property was severed during Kharis Blackman’s lifetime (i) by notice in writing, (ii) by mutual agreement or alternatively, by (iii) a course of dealing sufficient to intimate severance of the joint tenancy. These claims will each be examined under the following subheadings.

[18] Was notice in writing given pursuant to section 43?: Section 43 of the Barbados *Property Act, Cap. 236*, clearly facilitates the severance of land

held under a joint tenancy by service of an express notice at the instance of any of the joint tenants. [See above at paragraphs [14] to [16].]

- [19] The section does not prescribe any particular form of notice to be served and the cases establish that a notice in writing of a desire to sever may take different forms. It has even been held that the commencement and service of legal proceedings between joint tenants, coupled with the swearing and service of a supporting affidavit may constitute written notice of severance pursuant to the section. [See *Marshall v. Marshall* [1998] EWCA Civ 1467 and *In re Draper's Conveyance* [1969] 1 Ch. 486).
- [20] It also appears that when a formal notice in writing of a desire to sever a joint tenancy is served pursuant to section 36(2) of the *UK Property Act, 1925*, the severance takes effect forthwith. Further, a desire to sever must evince an intention to bring about severance immediately. It has also been held that a notice which expresses one party's desire to bring about the wanted result at some time in the future will not constitute a notice in writing within section 36(2). [See *Harris and anor v. Goddard et al* [1983] 3 All ER 242 per Lawton L.J];
- [21] In *Gibson v. Walton* (1992) 28 Barb. L.R. 113, the Barbados High Court had occasion to consider whether the joint tenancy in 2 properties had been severed during the lifetime of one of the co-owners. Though section 43 was not under consideration, *Belgrave J.* held, applying the principles in *Draper's Conveyance* (cited above) that an application by a wife to the High Court for an order under section 191 of the Barbados *Property Act, Cap. 236* directing the husband to pay to the wife such sum of money as adjudged by the court as the wife's share in property held by them as joint

tenants, constituted notice by the wife to the husband of her intention to sever the joint tenancy which existed between them.

[22] Relying also on the English Court of Appeal decision in *Burgess v. Rawnsley* [1975] Ch. 429, *Belgrave J.* further held that even if the wife's application itself did not *per se* sever the joint tenancy, the husband's affidavit-in-response filed and served in the proceedings in which the husband had deposed expressly that he was desirous of having the joint tenancy between the wife and himself severed, would also have operated to sever the joint tenancy thereby making the parties tenants in common. [*Gibson v. Walton* (cited above) @ p. 127.]

[23] In the current proceedings, Counsel for the Defendant has urged the Court to find that a letter ("**JB 5**") (reproduced below) which had been written to Mr. Blackman by Sir. Henry Forde, Q.C. on Kharis Blackman's behalf on 16th November, 1990, constituted service of written notice of Kharis Blackman's desire to sever the joint tenancy for purposes of section 43. The letter in question is reproduced in full hereunder:

16th November, 1990

Mr. Geoffrey Blackman
c/o Stanton Blackman
115-36-217
Cambria Heights 11411
New York
U.S.A.

Dear Mr. Blackman,

Re: Mrs. Kharis Blackman

I have instructions from your wife to take steps to have transferred to her the full title of the property in Barbados. I should be pleased if you would let me know whether you will consent to this being done, without the necessity for an application to the Court. The application to the Court will

involve you both in expensive litigation and I am sure you and your wife will be anxious to avoid this.

I should be pleased if you or your legal advisor would let me have a response as soon as possible.

Yours truly,

H. de B. Forde, Q.C.

HdeBF:mh

cc. Mrs. Kharis Blackman

[24] Mr. Robertson further submitted that if the Court found that the letter of 16th November, 1990 did not sever the joint tenancy, the letter of reply ("**JB 6**") (also reproduced below) which was forwarded to Sir. Henry Forde by Mr. Blackman's attorney-at-law, Mr. Reginald T. Brewster on 17th December, 1990, would constitute sufficient notice of severance of the joint tenancy within the meaning of section 43 of the *Property Act*. The letter of 17th December, 1990 is also reproduced below:

Mr. Henry de B. Forde
Kays House, Suite 205
Roebuck Street
Bridgetown
Barbados, W. I.

December 17, 1990

Re: Mrs. Kharis Blackman

Dear Mr. Forde,

Your letter dated November 16th, 1990, was turned over to me by my client, Geoffrey Blackman for reply. Please be advised that Mr. Blackman has no objection to the conveyance of his one-half interest in the subject property as long as the consideration for same is one-half of the fair market value of the property.

Please let me know what steps are to be taken to consummate same.

Very truly yours,

Reginald T. Brewster

- [25] For her part, Counsel for the Claimants, Miss. Roachford submitted that the letters (“**JB 5**”) and (“**JB 6**”) which passed between the attorneys-at-law for Kharis Blackman and Mr. Blackman respectively, disclosed neither an intention to sever nor severance of the joint tenancy. Rather, she contended, the letters showed an intention on the part of both parties for one to own the entire property.
- [26] Miss. Roachford further submitted that as the joint tenancy had not been severed prior to Kharis Blackman’s death, the principle of survivorship prevailed and the entire property vested in Mr. Blackman and passed to his estate upon his death. She cited *Harris and anor v. Goddard et al [1983] 3 All ER 242*; *Marshall v. Marshall (cited above)*; *Gore and anor v. Carpenter [1990]*; *Edwards and anor v. Hastings [1996]* and *McDowall v. Hirshfield Lipson & Rumney & Smith [1992]*.
- [27] Having reviewed the 2 letters which the Defendant says constituted notice in writing sufficient to sever the joint tenancy, the Court is in complete agreement with Counsel for the Claimants that the initial letter of November 16th, 1990 (“**JB 5**”) amounts to nothing more than a mere request by one joint tenant for the other’s consent to effect a transfer to her of the entire interest of the other thereby enabling her to become solely and absolutely entitled beneficially to the entire property. Furthermore, as the letter clearly expressed Kharis Blackman’s desire to effect the transfer at some time in the future, it does not constitute written notice of severance within section 43.[See *Harris and anor v. Goddard et al [1983] 3 All ER 242* per Lawton L.J];

- [28] Similarly, rather than constituting notice of Mr. Blackman's intention to sever the joint tenancy, the letter of December 17th, 1990 ("**JB 6**") operated as a mere response to Kharis Blackman's request and did no more than communicate, as the letter itself states, Mr. Blackman's non-objection to the proposed transfer of his share in the property at some future date provided certain conditions were met.
- [29] The Court is satisfied that Mr. Blackman in his letter of December 17th ("**JB 6**") was doing no more than expressly asserting his ownership of a one-half share in the property and advising Kharis Blackman that his consent to the proposed transfer was conditional upon his receiving a consideration of one-half the fair market value of the property. Furthermore, nothing in the letter can or should be read as constituting express notification to Kharis Blackman of his desire to bring about the immediate severance of the joint tenancy within section 43.
- [30] Section 43(2) provides that a notice in writing given under the section is a conveyance capable of being recorded under section 56 to 58 of the *Property Act*. Although a written notice under section 43 need not take any particular form, the Court is satisfied that in order to comply with the statutory requirement of being a conveyance capable of being recorded under the Act, the notice relied on must expressly, and in the most unambiguous of terms, communicate the desire of the notifying joint tenant to sever the joint tenancy with immediate effect. In short, the notice to sever must be clear on the face of the document and a Court should not be expected to draw inferences or discern what the joint tenant had in mind. As the Court has already held, nothing in ("**JB 5**") or ("**JB 6**") satisfies any of these requirements. [See also paras [14] to [22] above.]

- [31] Did severance take place by mutual agreement?: As the Court is satisfied that nothing in the correspondence amounted to an express notice of severance for purposes of section 43, the first limb of the Defendant's argument fails. The Court turns next to consider the second limb of the Defendant's submissions and the question whether the joint tenancy was severed by mutual agreement of the joint tenants which, according to Mr. Robertson, is disclosed in the letters of November 16th ("**JB 5**") and December 17th ("**JB 6**") respectively.
- [32] The case of *Burgess v. Rawnsley* [1975] 3 All ER 142 provides one instance where a joint tenancy was held to have been severed by mutual agreement. In that case, Mr. Honick, a widower and the defendant, Mrs. Rawnsley bought the rented house in which Mr. Honick lived. The conveyance was taken in both their names as joint tenants, each providing half of the purchase price. Mr. Honick purchased the house in contemplation of marriage, while Mrs. Rawnsley was minded to live in the upstairs flat and said that Mr. Honick had never mentioned marriage to her.
- [33] Ultimately, the parties never married and Mrs. Rawnsley never moved into the house. Following Mr. Honick's death, his daughter and administratrix brought an action claiming, *inter alia*, that the joint tenancy had been severed by an oral agreement between Mr. Honick and Mrs. Rawnsley for the sale of her share in the house to him for £750. Mrs. Rawnsley claimed that severance had not taken place and the house was hers by survivorship upon his death. The county court judge accepted that there had been an oral agreement between Mr. Honick and Mrs. Rawnsley for the sale of her share in the house to him for £750 and that

she had subsequently refused to sell. He held for the plaintiff on the basis, *inter alia*, that the joint tenancy had been severed in equity.

[34] On appeal by Mrs. Rawnsley, the Court of Appeal, held, *inter alia*, that the beneficial joint tenancy had been severed by the oral agreement to sell her share in the house to Mr. Honick for £750 even though that agreement was not specifically enforceable.

[35] Another instance where a claim to severance by mutual agreement was judicially considered may be seen in *Edwards and Anor v. Hastings*. In that case, a husband and wife, being both fully aware of the law relating to the right of survivorship and in contemplation of their impending divorce, put certain arrangements in place through their solicitor for the disposal of the matrimonial home which they held as joint tenants. They also stipulated how the proceeds of sale would be divided following a sale. The property remained unsold for a considerable period of time following their divorce and was still unsold at the date of the wife's unexpected death.

[36] The husband claimed that the house devolved upon him in its entirety as the surviving joint tenant, while the couple's children opposed their father's claim citing the existence of the arrangement between their parents during their mother's lifetime which, they contended, had severed the joint tenancy and replaced it with a tenancy in common in the proportions 25% to the husband and 75% to the wife.

[37] The Court of Appeal overturned the trial judge's finding that the joint tenancy had been severed by a letter signed by both joint tenants instructing the family solicitor as to the proportions in which the proceeds of a sale of were to be divided as between them.

- [38] The Court of Appeal found that the case was one where a husband and wife facing divorce in middle life, had tried to reach a financial settlement in an environment where they were alert to the risk that due to a depressed property market, the sale of the jointly owned property might be delayed and were seeking to provide for the eventuality that one of them might die before the property was finally sold.
- [39] The Court of Appeal held that the trial judge had erroneously and without good reason disregarded other evidence in the case which strongly suggested that the parties had agreed to select a tenancy in common as the basis for sharing the proceeds of an eventual sale of the property, while seeking to preserve the rights of survivorship by keeping the joint tenancy intact as long as the property remained unsold.
- [40] The Court of Appeal gave effect to the totality of the various arrangements which the couple had put in place and reversed the trial judge's finding that severance had taken place. In delivering the judgment of the Court, Waite LJ remarked:

“...if the judge thought that it was unnecessary for him to consider such evidence at all because of some overriding principle of law that severance of a joint tenancy follows automatically whenever joint tenants reach an agreement of any kind about a future division of the proceeds of a future sale of the property, then his error was one of law. Equity has traditionally been said to lean against a joint tenancy, but such maxims were never meant to be elevated to the status of a formula to be applied blindly to every agreement that is intended to pave the way to a future division of undivided shares. Every such case must depend in the last analysis

upon what the evidence shows about the actual intention of the parties.”

- [41] Applying the foregoing principles to the present case, the Court has concluded that the letters of November 16th, 1990 (“**JB 5**”) and December 17th, 1990 (“**JB 6**”) do not disclose the existence of a mutual agreement by Kharis Blackman and Mr. Blackman to sever the joint tenancy.
- [42] In considering the effect of letters of November 16th, 1990 (“**JB 5**”) and December 17th, 1990 (“**JB 6**”), the Court found it significant that neither letter expressly mentioned either party’s desire to sever the joint tenancy. The omission was, in the Court’s view, a very strong indication that severance of the joint tenancy was likely not within the contemplation of either party on whose behalf the letters were issued.
- [43] While conceding that the word ‘severance’ had not been used in Sir. Henry’s letter of November 16th, Mr. Robertson for the Defendant, nonetheless asked the Court to have regard to a third letter dated March 15th, 1990 (“**JB 3**”) which preceded the letter of November 16th (“**JB 5**”) and in which the preparation of a conveyance severing the joint tenancy was expressly mentioned.
- [44] The letter of March 15th, (“**JB 3**”) he submitted, would provide the background to Sir. Henry’s subsequent letter of November 16th and was evidence which, in his view, established that Kharis Blackman had always intended to seek severance of the joint tenancy by the transfer to her of ‘full title’ to the property. He urged the Court to interpret (“**JB 5**”) against the background of Kharis Blackman’s express intention to sever the joint tenancy disclosed in (“**JB 3**”).

[45] The letter of March 15th 1990 (“**JB 3**”) to which Mr. Robertson referred is reproduced hereunder:

March 15, 1990

Clinton Thousand, Esq.
Attorney-at-law
160 Broadway, Suite 705
New York, N.Y. 10038
U.S.A.

Dear Sir,

Re: Mrs. Kharis Blackman – Lot 32 Coverley, Christ Church

Mrs. Blackman of Jamaica, New York, who was on a visit to Barbados, consulted with me in connection with the transfer to her of property situate at Coverley, Christ Church.

I understand that although the property was purchased by Mr. & Mrs. Blackman as joint tenants, Mrs. Blackman has always paid the mortgage to Life of Barbados Ltd. Of \$517.00 per month in addition to the premium on the Life Assurance and Comprehensive Insurance on the property which form the collateral security for the loan.

I can prepare a conveyance severing the existing joint tenancy but, before doing so, I would need to know the terms of the divorce settlement made between the joint owners as it refers to this property.

Since Mr. Blackman would need to sign the conveyance to my client, I will need his consent to the transfer and be advised who will be settling the cost of completing same. A copy of the conveyance to Mr. & Mrs. Blackman is enclosed for your perusal.

Should you need further information, please do not hesitate to ask.

Yours truly,
H. de B. Forde, Q.C.

Per: Jeanette R. Clarke (Mrs)
Legal Executive

JRC/bh

- [46] Miss. Roachford for the 1st and 2nd Claimants submitted that Counsel for the Defendant could not properly rely on Sir Henry's letter of March 15th, 1990 ("**JB 3**") to establish that Kharis Blackman wished to sever the joint tenancy because that letter had neither been addressed to Mr. Blackman or his attorney-at-law.
- [47] Referring to The Final Judgment of Divorce which issued from the Supreme Court of the State of New York ("**JB 4**"), Miss. Roachford submitted that on the face of the Order it was obvious that Mr. Blackman had neither appeared or answered the complaint and that as a consequence of his non-appearance, the divorce judgment had been granted to Kharis Blackman unopposed.
- [48] Miss. Roachford further submitted that ("**JB 4**") established that Mr. Clinton Thousand, was not Mr. Blackman's attorney-at-law, but rather, had acted for Kharis Blackman's in the New York divorce proceedings. In the circumstances, she contended, Mr. Robertson could not rely on Sir Henry's letter to Mr. Thousand of March 15th, 1990 ("**JB 3**") to buttress the Defendant's claim that the parties had reached agreement to sever the joint tenancy.
- [49] Having considered the matter, the Court is unable to hold that there was prior to Kharis Blackman's death on January 28th, 1993, any mutual agreement between herself and Mr. Blackman to sever the joint tenancy in the Coverley property. In the first place, neither Kharis Blackman's letter of November 16th, 1990 ("**JB 5**") nor Mr. Blackman's response of December 17th, 1990 ("**JB 6**") expressly mentioned the issue of "severance". Secondly, while it is clear from Sir Henry's initial letter of March 15th, 1990 ("**JB 3**") to Mr. Thousand, that Kharis Blackman may have contemplated severance, her intention was never communicated

expressly to Mr. Blackman in Sir Henry's letter of November 16th, 1990 (**"JB 5"**) sent on her behalf. Nor was there any suggestion of Mr. Blackman's desire to sever in his response of December 17th, (**"JB 6"**).

[50] While the Court is aware of the maxim that equity leans against joint tenancies and favours tenancies in common, the cases clearly show that Courts have generally only done so in the clearest of situations when there is good reason for so doing. As Waite LJ said in *Edwards and Anor v. Hastings*: "...such maxims were never meant to be elevated to the status of a formula to be applied blindly to every agreement that is intended to pave the way to a future division of undivided shares. Every such case must depend in the last analysis upon what the evidence shows about the actual intention of the parties."

[51] The Court is satisfied that there is nothing in the wording of Kharis Blackman's proposal in (**"JB 5"**) seeking a transfer from Mr. Blackman of 'the full title' of their jointly owned Barbados property" from which the Court can find that she was, expressly or by implication, making an offer to sever the joint tenancy.

[52] In any event, even if the letter of November 16th (**"JB 5"**) could be regarded as an offer by Kharis Blackman to sever the joint tenancy, the offer was, in the Court's view, too vague to have been capable of unconditional acceptance by Mr. Blackman. The Court is convinced that upon receipt of Kharis Blackman's proposal (**"JB 5"**) Mr. Blackman would have had no clear idea as to what exactly he was being offered in exchange for the proposed transfer to her of 'the full title' of the Coverley property.

- [53] Mr. Blackman would doubtless also have asked himself whether Kharis Blackman was expecting him to consent to a transfer to her of the “*full title*” for no consideration at all. Then, even if he felt she could not reasonably have been harbouring such an expectation, he would no doubt also have wondered what her view may have been as to what share or percentage she considered they each held in the jointly owned property?
- [54] The Court is satisfied that the letter of November 16th, (“**JB 5**”) contained no firm proposal by Kharis Blackman either declaring her entitlement to a specific share or proportion of the Coverley property, or in the alternative, offering to buy-out a specific share or proportion of the property which she regarded as his. Nor was there any mention of a price to be paid to Mr. Blackman as consideration for the transfer. In short, with so many crucial elements of the proposal not having been addressed, the Court holds that Kharis Blackman’s letter of November 16th, (“**JB 5**”) contained no serious offer which was capable of acceptance by Mr. Blackman.
- [55] Given the nature of the proposal contained in the letter of November 16th., (“**JB 5**”), it is hardly surprising that in his letter of response of December 17th, (“**JB 6**”) Mr. Blackman sought to make it abundantly clear to Kharis Blackman that he regarded himself as entitled to a one-half share in their jointly owned property and further, that he would not object to the transfer of his interest to her, provided that the consideration to be paid for the transfer was one-half of its fair market value.
- [56] Viewed from a purely contractual point of view, the Court has concluded that Mr. Blackman’s response of December 17th, (“**JB 6**”) amounted, in law, to a firm offer or counter proposal to transfer his half-share in the property for a consideration of one-half of the fair market value, which

Kharis Blackman was free to accept or reject. As there was no evidence that Kharis Blackman ever responded to Mr. Blackman's offer or counter proposal of December 17th, the Court holds that no agreement was reached between them for the sale and purchase or for the severance of Mr. Blackman's half-share. In the result, the Defendant's submission that the joint tenancy was severed by mutual agreement also fails.

[57] Did severance take place by a 'course of dealing'?: As clearly appears from the much quoted passage from the judgment of Sir William Page-Wood VC in *Williams v. Hensman* a distinction is to be drawn between severance 'by mutual agreement' and severance by a 'course of dealing'.

[58] The cases also establish that a 'course of dealing' need not amount to an agreement, expressed or implied for severance and that what is important is that there is a 'course of dealing' in which one party makes clear to the other that their shares should no longer be held jointly but in common. Similarly, it is sufficient to sever a joint tenancy if both parties enter on a course of dealing which evinces an intention by both of them that their shares shall henceforth be held in common and not jointly. [See *Burgess v. Rawnley* @ p. 439 paras C-E per Lord Denning M.R.]

[59] In the current proceedings, the 'course of dealing' relied on as establishing severance are the very same letters of November 16th ("**JB 5**") and December 17th ("**JB 6**") relied on in support of the Defendant's claim to severance by 'mutual agreement'. After further considering the evidence, the Court is satisfied that the evidence in these proceedings discloses no 'course of dealing' between Mr. Blackman and Kharis Blackman in which either of them made it clear to the other that their shares should no longer be held jointly but in common. Nor can any such intention be implied from the wording of either letter. In the

circumstances, the Court holds that there was no severance by a ‘course of dealing’ between Mr. Blackman and Kharis Blackman prior to her death on January 28th, 1993.

[60] **Issue 2- In the absence of severance, did Kharis Blackman’s interest pass on her death to Mr. Blackman by right of survivorship?:** The right of survivorship (*jus accrescendi*) is an important characteristic of a joint tenancy. It essentially means that on the death of one joint, his/her interest automatically accrues to the surviving joint tenant, so that he/she has no interest to transfer under his/her will or upon intestacy.

In Gilbert Kodilinye’s text, *Commonwealth Caribbean Property Law, 2nd Edition*, mention is made of the Jamaican Court of Appeal case of *Panton v. Rawlstone (1976) 24 WIR 462 @ p. 469*, in which the right of survivorship was explained by Robinson P. in the following terms:

“As against third parties, [joint tenants] are in the position of a single owner, but as against each other, each has equal rights. Each has an equal interest in the land. And the interest of each is severable, should he care to do so in his lifetime. It is only if he dies without having severed that interest, that his interest is extinguished and accrues to the survivor.”

[61] As the Court is satisfied that severance of the joint tenancy did not occur, as the Defendant alleges, by (i) notice in writing; (ii) mutual agreement; or (iii) course of dealing or at all, the Court holds as a matter of mixed law and fact that upon her death on January 28th, 1993, Kharis Blackman’s interest in the joint tenancy in Lots 31 and 32 Coverley, Christ Church, devolved on Mr. Blackman by right of survivorship and passed to his estate upon his death intestate, on July 20th, 1999.

[62] **Disposal and Order:** In the result, the Court makes the following orders:

1. It is declared that the 1st and 2nd Claimants are entitled to possession of the dwelling house and land situated at Lots 31 and 32 Coverley, Christ Church and that the Defendant is, and remains in unlawful possession and occupation of the premises;
2. The Defendant having resided in the subject premises for almost 30 years, the Court has determined that she will require a reasonable time to make alternative living arrangements, it is therefore ordered that the Defendant deliver up possession of the subject dwelling house and land to the Claimants on or before the **30th day of June, 2012;**
3. The Claimants are entitled to the costs of the application to be assessed by the Registrar, if not agreed. Such costs are certified fit for one attorney-at-law;
4. Liberty to apply.

Maureen Crane-Scott
Judge of the High Court