BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 14 of 2010

BETWEEN:

ALBERT ANTHONY PETER SELBY **Appellant**

AND

KATRINA SMITH **Respondent**

Before: The Hon. Chief Justice Sir Marston C.D. Gibson, K.A., The Hon. Sandra P. Mason and The Hon. Kaye C. Goodridge, Justices of Appeal

2016: January 14
2017: February 14

Mrs. Beverley Walrond, QC in association with Mrs. Dawn Shields-Searle for the Appellant

Ms. Cicely Chase, QC in association with Ms. Santia Bradshaw for the Respondent

DECISION

MASON JA:

Introduction

[1] The **Succession Act, Cap 249 (Cap 249)** introduced a number of innovations in relation to succession law in Barbados. One such innovation is contained in **s. 2 (3)** and **s. 2 (4)** which provide:

> "2. (1) ...
>
> (3) For the purposes of this Act, reference to a "spouse" includes
>
> (a) a single woman who was living together with a single man as his wife for a period of not less than 5 years immediately preceding the date of his death;
>
> (b) a single man who was living together with a single woman as her husband for a period of not less than 5 years immediately preceding the date of her death.
>
> (4) For the purposes of subsection (3), a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced."

[2] The sole issue in this appeal is the determination of who constitutes a single person for the purposes of **s. 2(3)**.

Background

[3] The brother of the appellant died intestate on 11 April 2008. He had no children and was predeceased by his parents. At the date of his death, he was cohabiting with but not married to the respondent. At the commencement of that cohabitation, the deceased was married to another woman. A decree nisi of that marriage granted on 29 March 2004 became absolute on 30 April 2004.

[4] The appellant applied to the High Court for various orders pertaining to the administration of the deceased's estate.

The High Court Action

[5] As a consequence of the admitted facts, the parties asked the High Court to determine (i) whether the respondent was capable of being regarded in law as the deceased's spouse for the purposes of **Cap 249,** given that the deceased was a married man during a part of the five year period immediately preceding the date of his death; and (ii) whether the respondent should be given a discretionary grant if held or found not to be the spouse of the deceased. This second question though not decided in favour of the respondent did not give rise to a source of significant contention and was in fact excluded from the details of the judge's order which was appealed.

[6] In response to the first question, namely whether the respondent could rightly be regarded as the deceased's spouse, **Alleyne J (ag.)**, as he then was, in an admirably detailed and provocative decision, undertook an examination of the principles of statutory interpretation. He also considered the mainly English case law and the rather limited West Indian authorities.

[7] After briefly considering the social mischief that **Cap 249** was intending to remedy - "*inter alia* to confer significant benefits on previously excluded categories of persons" – the judge laid the foundation for coming to the conclusion that since **Cap 249** "serves a distinct social purpose", he was

inclined to the view that "its purpose is best served if it is given as literal and beneficial an interpretation as it allows linguistically".

[8] In contemplation of what he termed "the interpretational issues", the judge pondered 3 questions.

[9] The first was whether it was open to the court to construe the term "spouse" as defined in **s. 2(3)** of **Cap 249** to cover categories of relationships other than marriages and those between "single" persons. **Alleyne J (ag)** held that this section of **Cap 249** is exhaustive of the meaning of the term "spouse" and must be taken to embrace married couples and single persons who otherwise satisfy the statutory criteria. He stated that the term "spouse" had already been extended to include "single" and that it is therefore not open to the court to enlarge the term further. He opined that that was a function for Parliament to perform.

[10] The second, which ultimately formed the basis of this appeal and which was answered by the judge in the affirmative, was whether the term "single man" as it appears in **s. 2(3)** includes a married man who has separated from his wife and is cohabiting with a woman in a relationship of some degree of permanence.

[11] The judge's support for his position came in part from the decisions in a number of English affiliation cases in which married women separated from

their husbands were regarded as single women for the purpose of receiving benefits. **Alleyne J (ag)** considered the Jamaica case of **Murray v Neita No. 2006 HCV0176 (Murray)** in which the Jamaican High Court had to determine an issue similar to that in the present case under similar legislation and came to a conclusion different from his. **Alleyne J (ag)** asserted at para 84 of his decision:

> "However, the interpretation of a provision contained in a statute regulating succession rights in one jurisdiction need not accord with that of a similar provision in a statute regulating spousal property rights in another jurisdiction."

[12] **Alleyne J (ag)** was not persuaded that the effect of **s. 2(4) -** characterised as a removal of doubt provision – was to limit the categories of persons that may be considered as "single" for the purposes of the legislation. He posited that the word "includes" served to settle a doubt rather than add a meaning and therefore "it does not follow that the absence of a reference to married but separated persons in **s. 2(4)** manifests an intention by Parliament that such persons are not to be included within the term "single". Thus, according to the judge, it is a matter for judicial interpretation since it is unclear whether in the context of **Cap 249** married, but separated persons, should be regarded as single, that category of persons having been omitted from the clarifying nature of **s. 2(4).**

[13] Consequently, **Alleyne J (ag)** declined to accept application of the maxim *expressio unius est exclusio alterius* to **s. 2(4).** In his view, the intent behind that **subsection** is to settle doubt or to provide certainty as to its application to the included items and not to exclude others.

[14] The judge indicated that he had considered the statute as a whole particularly taking into account **s. 102** which sets out the circumstances in which spouses are excluded from succession. He regarded that the presence of **subsection 5** of **s. 102** demonstrates that the legislation has taken cognisance of the social reality that some married persons who separate may choose not to get married but go on to establish new relationships of some permanence.

[15] **Alleyne J (ag's)** opinion can be summed up by reference to para 104 of his decision where he stated:

> "I find it difficult to accept that parliament could have intended that such a man and the woman with whom he establishes his new relationship are to be excluded entirely from the statutory benefits conferred by the Succession Act. Clear language would be required to compel such a conclusion."

[16] The third question to which the judge gave consideration in his reflection of the interpretational issues was whether **s. 2(3)** requires that both or either party to the spousal relationship must have been single throughout the period of five years immediately preceding the date of death. From his perspective, that section of **Cap 249** is capable of two interpretations. He was of the view that

the term "single" is adjectival, merely descriptive of a quality which the parties to the relationship must have possessed at the point in time immediately before the death of the deceased and not a state which must have endured for the five years period". He concluded that it is sufficient that both parties are single at the date of death.

Grounds of Appeal

[17] These as set out in the Notice of Appeal filed on 28 October 2010 are as follows:

> "(a) That the Learned Trial Judge (Ag.) erred as a matter of law when he held that the definition of "single man" as it appears in **section 2(3)** and **section 2(4)** of the **Succession Act, Cap. 249** includes a married man who has been separated from but is not divorced from his wife;
>
> (b) That the Learned Trial Judge erred in law and/or misdirected himself and/or failed to apply the definition of "single man" as defined by the **Succession Act** when he held that the fact that the deceased was a married man during a part of the cohabitation with the Defendant and was not divorced for a period of 5 years immediately preceding his death does not exclude the defendant from being regarded as the "spouse" of the deceased within the meaning of the word as defined in **section 2(3)** and **2(4)** of the **Succession Act**;
>
> (c) That the Learned Trial Judge erred in law and misdirected himself when he held that the word "single" which qualifies the term "man" and "woman" is merely descriptive of a quality which the parties to the relationship must have possessed at the point in time immediately before the death of the deceased and is not a state which must have endured for the five year period."

Submissions by Counsel

[18] Mrs. Beverley Walrond QC, counsel for the appellant, addressed grounds 1 and 2 together.

[19] Counsel commenced her oral and written arguments by stating that the appellant was placing reliance on the plain language of **s. 2 (3)** of **Cap 249** which provides for the definition of "spouse". She emphasised that the word "single" had been expressly placed before the gender of either party thereby providing a clear indication of the required personal status of any party who wished to rely on the same. Counsel disagreed with the judge that a further extension to the meaning of **subsection 4** was warranted in order to "update the meaning of the statute". She stated that the interpretation given by the court "is not within the permissible bounds of interpretation to give effect to Parliament's purpose". In her estimation, there was no need for the court to go behind the clear and simple statement of that section in order to interpret what has been made clear because **Cap 249** has defined with great particularity who is to be deemed "single".

[20] In support of her contentions, Mrs. Walrond QC relied on the Barbados High Court case of **Kinch v Clarke et al (1986) 2 Barb. L.R 60 (Kinch),** the Trinidad Court of Appeal case of **Narine v Chune et al TT 2012 CA 19 (Narine)** and the Jamaica High Court case of **Murray**.

[21] In sum, Mrs. Walrond QC denied the judge's interpretation of who is a single man. She considered it inconceivable that Parliament when enlarging the meaning of who is a single man and who is a single woman and expressly stating that a divorced person is a single man, also meant to include without saying so, a person who remained married but is separated. She contended that if a statute needed updating, it was the function of the court merely to call attention to it but it was not permissible for the court to redefine that statute. That was the role of Parliament.

[22] Ms. Cicely Chase QC, counsel for the respondent, was naturally in full agreement with the decision of **Alleyne J (ag)** and argued for the purposive approach rather than the literal approach to statutory interpretation. Counsel contended that the judge's use of permissible tools of statutory interpretation resulted in the identification of additional categories of persons not expressly provided for in the statute and who are eligible to rely on the rights provided for by the relevant statutory provisions. She considered that this approach by the judge, namely to engage in statutory interpretation where a matter is not clear, to be well within the powers of judicial interpretation.

[23] Ms. Chase QC sought to distinguish the cases of **Kinch, Narine** and **Murray** but to rely on the English Court of Appeal case of **R (Quintavalle) v Secretary of State for Health [2003] 2 A C 687** (**Quintavalle)** which had

been cited by **Alleyne J (ag)** and in which Lord Bingham justified a purposive approach to interpretation. Ms. Chase QC in accepting this approach taken by **Alleyne J (ag)**, reckoned that **s. 2** ought not to be viewed as a "closed" or a restrictive section, since the word "includes" permitted the court to address the social mischief which the legislation sought to remedy.

Discussion

[24] While of very ancient vintage, the resolution in **Heydon's Case 3 Co. Rep. 7a** continues to influence statutory interpretation. In 1584, the Barons of the Exchequer resolved as follows:

> "That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:
>
> (1) what was the common law before the making of the Act;
>
> (2) what was the mischief and defect for which the common law did not provide;
>
> (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and
>
> (4) the true reason of the remedy;
>
> and then the office of the judge is always to make such construction as shall:
>
> (a) suppress the mischief and advance the remedy;
>
> (b) suppress subtle inventions and evasions for the continuance of the mischief *pro privato commodo* (for private benefit), and

> (c) add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono public* (for the public good)."

[25] In response to this directive and in order to interpret the **Succession Act**, this Court must therefore initially consider (a) our laws previous to the passing of the Act; (b) what mischief for which that previous legislative status did not provide; and (c) the remedy Parliament provided by this Act to cure that mischief.

[26] This we will do very briefly.

[27] Prior to the enactment of the **Succession Act,** devolution of property under intestacy was governed by the common law doctrine of descent. This limitation was contained in various pieces of legislation including the **Inheritance Act 1891**, **The Administration of Estates Act 1898, The Intestates Act 1910** and the **Real Property (Devolution) Act 1935** to name a few. Many of these existing Acts did not benefit persons born out of wedlock or persons living together without the benefit of matrimony. Parliament, recognising the resulting inefficiencies and inequities of such discriminatory legislation, especially in light of the especial nature of familial situations prevailing in the country, sought to enact legislation to define and interpret the social realities of our country in the twentieth century.

[28] Consequently in 1975, as the long title to the Act states, Parliament enacted legislation to "amend and consolidate the law relating to succession to the property of deceased persons, and, in particular, the devolution, administration, testamentary disposition and distribution or intestacy of such property, and to provide for related matters".

[29] Among these related matters, Parliament introduced a provision intended to decipher the existing social acceptance of the word "spouse" and consequently the word "single" in order to reflect the true Barbadian society.

[30] As indicated before, the issue for this Court is whether in accordance with the canons of construction or interpretation of legislative enactments, it is too simplistic to state that "single" carries the connotation of being not married or whether that connotation must be widened or enlarged to include estranged married persons in new relationships.

[31] The Oxford Advanced Learner's Dictionary of Current English (Seventh Edition 2006) defines single as the state of being not married or having a partner. In legal definitions of interpersonal status, a single person is someone who is not married or in any form of relationship.

[32] While dependence on the dictionary for the authoritative proponent of the meaning of words is not to be encouraged and while we do not intend "to make a fortress out of the dictionary", we are of the view that in the absence

of any judicial guidance or authority, the dictionary may still be consulted and especially when the word to be construed has no hidden meaning.

[33] It is established that the first rule of statutory interpretation is that where the legal meaning of a word is plain, it must be followed. According to Lord Reid in the English House of Lords case of **Pinner v Everett [1969] 1 WLR 1266** at **1273**:

> "In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase."

[34] Thus the courts must seek to interpret what the legislature intended and not to import a construction not intended by Parliament. Similarly, a situation not provided for in the Act ought not to be dealt with merely because there seems no good reason why it should have been omitted and the omission appears to have been unintentional.

[35] Lord Diplock in **Duport Steels Limited v Sirs et al [1980] 1 WLR 142 (Duport Steels)** stated at page **157**:

> "where the meaning of statutory words is plain and unambiguous, it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral."

[36] In other words, if the words are plain the court must always give effect to them and the ordinary meaning is to be followed. Thus a sense of possible injustice of an interpretation ought not to induce the judge to do violence to well settled rules of construction.

[37] **Alleyne J's (ag)** approach to the interpretation of **s. 2(3)** conjectured that the language of the **section** is elliptical, for having given the word "single" its ordinary signification, and having applied it to the circumstances of the case, it produced in his estimation an inconsistency, an ambiguity, an inconvenience so great, he was convinced that Parliament's intention could not have been to use the word in its ordinary meaning. He consequently declared his preference for the purposive approach and thus could not avoid filling in the gaps he was convinced that Parliament had left. The purposive approach permitted him a degree of liberality which he considered to be influenced by the social implication of the Act.

[38] We cannot but agree with **Alleyne J (ag)** that in questions of statutory interpretation the courts have tended to move away from the purely literal towards the purposive construction.

[39] However, it is our opinion that while the purposive approach may in some instances be appropriate, it must be remembered that:

> "the judicial responsibility remains, to interpret the statute truly according to its tenor. The social background is, therefore, to be

> kept in mind but can be decisive if the particular statutory provision under review is reasonably capable of the meaning conclusive to the special purpose (of the achievement of the **Act**). If it is not, the remedy is to be found not by judicial distortion of the language used by Parliament but in amending legislation."
>
> per Lord Scarman in **Williams & Glyn's Bank Ltd v Boland [1981] AC 487** at **510**:

[40] The desire to achieve a purposive construction does not entitle the court to disregard the clear requirement of a statute as to the manner in which it is to operate. In **Independent Commissions of Investigations v Digicel Jamaica Limited JM 2015 CA 57**, one of the issues to be determined by the Court of Appeal of Jamaica was whether the trial judge erred in not interpreting the Independent Commission of Investigators Act purposively to allow the commission to conduct an investigation as a constable would have been able to do. The court held that there was no basis for inserting words into a statute which is clear in its terms.

[41] Brooks JA in delivering the judgment of the court made reference to the dicta of Lord Diplock in two cases of note. Firstly, in **Baker and another v R [1975] J.L.R 169** at page **174** it was said:

> "where the meaning of the actual words used in a provision of a Jamaican statute is clear and free of ambiguity, the case for reading into it words which are not there and which, if they would alter the effect of the words actually used can only be based on some assumption as to the policy of the Jamaican legislature to which the statute was intended to give effect. If, without the added words, the provision

> would be clearly inconsistent with other provisions of the statute it falls within the ordinary function of a court of construction to resolve the inconsistency, and if this be necessary, to construe the provision as including by implication the added words. But in the absence of such inconsistency it is a strong thing for a court to hold that the legislature cannot have really intended what is clearly said but must have intended something different.
>
> In doing this a court is passing out of the strict field of construction altogether and giving effect to concepts of what is right and what is wrong which it believes to be so generally accepted that the legislature too may be presumed not to have intended to act contrary to them".

[42] The second reference used in that case was that of Lord Diplock's judgment in **Duport Steels Limited** previously cited at para [35] above.

[43] The Jamaica Court of Appeal was of the view that a statute passed to remedy what is perceived by Parliament to be a defect in existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed. If this be the case, it is for Parliament alone, not the judiciary, to decide whether any changes should be made to the law.

[44] **Alleyne J (ag)** declined to accept the argument of counsel for the appellant that the dictum of **Williams J** (as he then was) in **Kinch** ought to be applied to this case. He correctly stated that the decision of that court, which was a

court of concurrent jurisdiction, was not binding on him and so he preferred to consider anew the definition of "single".

[45] The facts of that case are somewhat similar to the case at bar, except that the application in **Kinch** was made under the **Family Law Act.** The unmarried Ms. Kinch was claiming entitlement to a share of the married Mr. Clarke's property with whom she had lived for a period of 15 years immediately preceding his death. The court accepted that the parties lived together in a union other than marriage. Ms. Kinch's application was however unsuccessful partly because it was filed some days after the first anniversary of Mr. Clarke's death and the **Family Law Act** had required that there be cohabitation within the year immediately preceding the institution of the proceedings.

[46] In declaring his opinion on the definition of "spouse" within **Cap 249, Williams J** stated:

> "... It should be observed that it does not appear that the plaintiff is within the definition of "spouse" in the *Succession Act. Subsection (3) of section 2* enacts that for the purposes of the Act, reference to a "spouse" includes a single woman who was living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death. Subsection (4) enacts that, for the purposes of subsection (3) a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced. It appears that Alfred Seymond Clarke was not divorced from the second defendant Osyth Clarke until September 5, 1978. It follows that up to that date the plaintiff was living not with a single man but with a married man and, Alfred Seymond Clarke having died in August 1982, the plaintiff could not qualify as a

> spouse under the *Succession Act* because she had not been living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death".

[47] Unlike **Alleyne J (ag),** this Court prefers to embrace this dictum of **Williams J**, because in our view, it satisfactorily declares the intention of Parliament as to who is a spouse and who is single. Applying **Williams J's** dictum to this case, we find that at the date of Mr. Selby's death, the circumstances of his living together with the single respondent had not reached the threshold required by **s. 2(3)** of a period of not less than 5 years immediately preceding the date of his death.

[48] **Alleyne J (ag)** also considered the Jamaica High Court case of **Murray.** There too, the unmarried Ms. Murray lived together with the married Mr. Neita for over 20 years. On the breakup of that relationship, Ms. Murray filed a claim under the Property (Rights of Spouses) Act for half of Mr. Neita's property. The court also had to decide whether for the purposes of s. 2(1) of the Act, Mr. Neita could be declared a single man. This section of the Act is very similar to our **s. 2(3).**

[49] Sykes J noted that the word "single" restricts the class of men and women who can be living together and be regarded as spouses under the Act. He was of the opinion that had it been intended that "spouse" included any man and any woman living together then the word "single" would not have been

included in that definition. Sykes J determined that Parliament did not extend the section to include a person who is lawfully married but separated from his or her spouse and living with some other person in the term "single". He continued at para 25:

> "The case of the separated married person who might be living with someone else is so obvious that if there were the intention to include such a person within the definition of spouse the ideal place to have made this clear would be section 2 (2). The fact of its omission is a powerful and determinative argument in favour of the conclusion that such a person was not intended to be a single man or single woman for the purposes of the legislation."

[50] **Alleyne J (ag)** distanced himself from the decision in **Murray** on the basis that while the separate statutes bear some similarity, our Act was regulating succession rights and it did not need to be interpreted in accordance with the Jamaica Act which was regulating spousal property rights.

[51] While *prima facie* this position might in some measure be defensible, the determination by Sykes J is however more consistent with the express words of our Act. We are also of the opinion that Parliament enacted what it meant and that if it wanted a married man estranged from his wife and living with another woman to be regarded as a single man, then it is up to Parliament to amend the law accordingly. It is not for the court to seek to import a construction not intended by Parliament.

[52] The interpretation of an Act is not to be determined by any notion which the court entertains to be just and expedient. The task of the court is to deduce the intention of Parliament from the language used, not to fill the gaps but to leave any remedial adjustment to the legislature. According to *Bennion on Statutory Interpretation (Fifth Edition)* at p. *867*, it is clear that mere speculation will not justify departure from the literal meaning. There must be real doubt before the question should be even entertained by the court. Lord Haldane LC in **Lumsden v IRC [1914] AC 877** at **892** expressed the principle thus:

> "... a mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used, if they be literally interpreted, is no sufficient reason for departing from the literal construction."

[53] **Alleyne J (ag)** indicated that in coming to the conclusion that a single man as appears in **s. 2(3)** includes a married man separated but not divorced from his wife, he considered the Act as a whole. He is of the view that the specifics of **s. 102 (4)** and the presence of **s. 102(5)** are proof that Parliament has taken cognisance of the social reality that married but not divorced persons in alternate relationships of some permanence should be considered to be single for the purposes of the Act.

[54] We consider it necessary to set out fully that part of the Act which appears as **Part X1** under the caption "Exclusion from Succession and Disinheritance".

> "102. (1) A spouse against whom the deceased obtained a judicial separation, a spouse who failed to comply with a decree of restitution of conjugal rights obtained by the deceased, and a spouse guilty of desertion which has continued up to the death for 3 years or more, shall be precluded from taking any share in the estate of the deceased as a legal right or in intestacy.
>
> (2) A spouse who was guilty of conduct which justified the deceased in separating and living apart from him shall be deemed to be guilty of desertion within the meaning of sub-section (1).
>
> (3) A person who has been found guilty of an offence against the deceased or against the spouse or any child of the deceased (including a person to whom the deceased was in *loco parentis* at the time of the offence), punishable by imprisonment for a maximum period of at least 2 years or by a more severe penalty, shall be precluded from taking any share in the estate as a legal right or from making an application under section 100.
>
> (4) Where a husband and wife have ceased to cohabit with each other and have been living apart continuously for a period of 5 years or more immediately preceding the date of death of either of them, the survivor shall be precluded from taking any share in the estate of the deceased as a legal right or on intestacy.
>
> (5) Any share which a person is precluded from taking under this section shall be distributed as if that person had died before the deceased."

[55] At para 56 of his decision, **Alleyne J (ag)** reproduced the statement of Lord Bingham in **Quintavalle** in which was summarised what **Alleyne J (ag)**

referred to as the required approach to interpretation. Notably included in that statement is the following observation:

> "The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

[56] While we do agree that in statutory interpretation one of the guiding principles is that the Act is to be regarded as a whole because the meaning of a section may be controlled by other individual sections of the Act, this use of other provisions for purposes of construction must not however be carried too far because the meaning of a section may be determined not so much by reference to other individual provisions of the Act as by the scheme of the Act regarded in general. In other words, a specific provision within the Act is sometimes of not much relevance in construing one of the Act's general provisions on other aspects.

[57] **Alleyne J (ag)** appears to be divorcing **subsection (4)** from the rest of the **section** which deals principally with circumstances under which the parties separate and as a consequence are not entitled to succeed to each other's estate. **Subsection (1)** covers instances of judicial separation, non compliance with a decree of restitution of conjugal rights obtained by the deceased and desertion; **subsection (2)** refers to constructive desertion by one of the parties

and **subsection (3)** relates to exclusion from benefitting where a party has been convicted of a criminal offence against the deceased or against the spouse or any child of the deceased.

[58] It is clear that **subsection (4)** must be construed within the context it appears namely **Part X1** and more particularly **s. 102**. It cannot be considered as a stand alone provision. As reflected by this Court in the case of **James Ifill v The Attorney General and the Chief Personnel Officer Civil Appeal No. 3 of 2013** quoting the English House of Lords case of Colquhoun v Brooks (1889) 14 App. Cas. 493 at 506 (HC) per Lord Herschell:

> "It is beyond dispute, too, that we are entitled and indeed bound when construing any other parts of the Act which throw light upon the intention of the legislature and which may serve to shew that the particular provision ought not to be construed as it would be [construed] if considered alone and apart from the rest of the Act".

[59] **Section 102** is under the rubric of exclusion from succession and occasion of disinheritance. While the **Act** does not start specifically by prefacing **subsection (4)** with any particular words indicating its inclusion in the circumstances of **subsections 1** to **3**, given the accepted rules of construction and statutory interpretation, it is evident that this **Part X1** has its own limited purpose – that of determining the instances when married persons will be excluded from succession to and inheritance of each other's estate.

[60] In any event, in order to claim inheritance or to succeed to the estate of the deceased, the claimant must first clear the hurdle of being classified as a spouse which includes for our purpose the condition of being single.

[61] In the "historical context of the situation which led to the enactment", Parliament, in recognition of the fact that parties in our society have over the years lived together without the benefit of matrimony, sought to address this option by granting it legitimacy. There was no indication that Parliament intended to disregard the sanctity of marriage. We cannot therefore agree with **Alleyne J (ag)** that **s. 102** leads to the conclusion that Parliament intended to regard as a single man, a married man who leaves his wife and establishes a new relationship with another woman provided that new relationship endured for a period of 5 years. It is safe to say that within the historical context of the situation, if Parliament, being fully cognisant of both the social and legal inequalities inherent in persons establishing such relationships, had intended to extend the meaning of "spouse" to them, it would have clearly responded. Parliament would not have left it to the courts to make the deduction that it really intended to extend the category to such persons.

[62] Unlike **Alleyne J (ag),** we see no ambiguity in **s. 2(3).** In our opinion the language of **s. 2(3)** is simplicity itself and begs of no borrowed connotation. To be kept firmly in mind is that it was Parliament's intention to address a

social condition – the common law union or in local parlance, the "live wid" relationship – which in the context of our history and heritage needed to be regulated and regularised. The language of **s. 2(3)** is specific. It is specific as to who is a spouse: a single man/woman living with a single woman/man as husband and wife. It is specific as to the period of this condition of living together: a period of not less than 5 years immediately preceding the date of death.

[63] **Alleyne J (ag)** states that it is because of the lack of clarity in **s. 2(4)** which allows for judicial interpretation to permit the inclusion of married but separated persons to the category of single persons. But **s. 2(4)** is specific in its identification of who is single: a widow/widower who becomes single after her husband/his wife has died; a divorced person who becomes single through effect of law.

[64] **Alleyne J (ag)** was of the view that while the word "includes" in **s. 2(3)** is an example where the word gives rise to a restrictive definition, such was not the case with respect to **s. 2(4).** According to the judge, **s. 2(4)** is a clarifying provision whose intent is to settle doubt or provide certainty as to its application to the included items and not to exclude others.

[65] This position cannot however be sustained if the court takes into account the reason for which the **Act** was passed and the historical context in which it was enacted.

[66] Unlike **Alleyne J (ag)** we do not consider the term "single" to be merely descriptive of a state that may endure over a five year period or a state that can be changed within that period. Rather we view the term "single" as a condition which must have been maintained for a definitive period of at least 5 years during which the parties were cohabiting.

[67] The stipulations in **s. 2(3)** of the Act when allied to the facts before us must persuade us whether the decedent can be considered a single man and thus the respondent's spouse. Mr. Selby's marriage was dissolved on 30 April 2004, he died on 11 April 2008, making it 19 days short of 4 years which is in turn short of the requisite period to be considered a spouse, namely a period of 5 years immediately preceding the date of death. In words reminiscent of **Williams J** in **Kinch**, it follows that Mr. Selby not having divorced Mrs. Selby, the respondent was not living with a single man but with a married man and consequently, she cannot qualify as a spouse nor can Mr. Selby qualify as a single man under the Act because the respondent had not been 'living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death". Put another way, Mr. Selby

though separated but not divorced from his wife for the requisite period of not less than five years immediately preceding the date of his death cannot be considered as single. To determine otherwise would be a feat of statutory constructive imagination.

Disposal

[68] In these premises the appeal is allowed.

[69] Costs to the appellant to be assessed if not agreed and made payable by the estate of the deceased.

Chief Justice

Justice of Appeal **Justice of Appeal**