

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE COURT OF APPEAL**

**MONTSERRAT**

**MNIHCVAP2021/0003**

**BETWEEN:**

**DENISE TUITT**

Appellant

and

**ROSANNA TUITT**

Respondent

**Before:**

The Hon. Mde. Gertel Thom  
The Hon. Mr. Paul Webster, QC  
The Hon. Mr. John Carrington, QC

Justice of Appeal  
Justice of Appeal [Ag.]  
Justice of Appeal [Ag.]

**Appearances:**

Mr. Jean Kelsick for the Appellant  
Mr. Sylvester Carrott for the Respondent

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2022: February 8;  
May 23.

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*Civil appeal – Grant of letters of administration in deceased’s estate – Competing claims by two women claiming to be the lawful widow of deceased – Deceased married twice – Whether deceased was divorced from first wife at time of marriage to second wife – Presumption of marriage – Whether presumption of marriage arose in relation to deceased’s second marriage – Burden of proof – Whether burden of rebutting the presumption of marriage on first wife or second wife – Standard of proof – Balance of probabilities – Whether there was clear, positive and compelling evidence to rebut the presumption of marriage in relation to the deceased’s second marriage.*

On 11<sup>th</sup> August 2020, Rosanna Tuitt (“the respondent”) applied for letters of administration of the estate of John Tuitt (“the deceased”), stating that she was his lawful widow. She exhibited her marriage certificate which showed they had been married on 15<sup>th</sup> November 1975 (“the first marriage”). Denise Tuitt (“the appellant”) filed a caveat opposing the application, claiming that she was the deceased’s widow and that they had been married on 30<sup>th</sup> November 1994 (“the second marriage”). The appellant also exhibited a marriage certificate issued by the high court registrar which stated that the deceased was divorced at

the time of the second marriage. The appellant claimed she only knew that the deceased was not divorced in July 2020, when she became aware of a certificate of “no divorce” issued by a different high court registrar. The respondent asserted that she and the deceased had never been divorced.

The learned judge determined that the central issue was whether the deceased and the respondent had been divorced. The learned judge considered that the burden was on the appellant to show that the deceased was divorced from the respondent at the time of the second marriage. He also considered the alternative position; that the burden was on the respondent to prove that there was no divorce. On considering the evidence, the learned judge found that the respondent discharged the burden, proving that there was no divorce, and granted her application. The appellant, being dissatisfied with the decision, appealed.

The central issues on appeal were: (i) whether there was a presumption of marriage in relation to the deceased’s second marriage; and if so, (ii) whether the burden was on the appellant or the respondent to rebut the presumption; (iii) what was the applicable standard of proof for rebutting the presumption; and (iv) whether the learned judge erred in finding that the presumption had been rebutted by the respondent. The appellant argued that the presumption of marriage arose in relation to the deceased’s second marriage and that the burden was on the respondent to rebut the presumption. The appellant further contended that the learned judge applied an incorrect test as to the standard of proof and in so doing, he erred in concluding that the respondent rebutted the presumption.

**Held:** dismissing the appeal and ordering that each party shall bear their own costs, that:

1. The presumption of marriage may arise in several circumstances. This includes instances where parties have undertaken a ceremony of marriage and subsequently cohabited or where there has been no evidence of a marriage, but the parties have cohabited for such a long period as to have acquired the reputation of being spouses. On the facts, the appellant’s marriage certificate and her affidavit evidence, though not very detailed, were sufficient evidence to raise the presumption of marriage in favour of the deceased’s second marriage. Whilst counsel for the appellant argued that the burden should have been on the respondent to rebut the presumption, the learned judge, having considered the issue of the burden of proof to be on the respondent, as contended by the appellant and having arrived at the same conclusion, did not err in his decision.

**Chief Adjudication Officer v Bath** [2000] 1 FLR 8 applied and **Pazpena de Vire v Pazpena de Vire** [2001] 1 FLR 460 considered.

2. In order to rebut the presumption of marriage, there must be clear, positive and compelling evidence, which shows that on a balance of probabilities, there was no valid marriage. Even though the learned judge, in referring to the standard of proof, did not explicitly state the standard as being on the balance of probabilities, he applied the correct test and therefore did not err.

**Chief Adjudication Officer v Bath** [2000] 1 FLR 8 applied; **Pazpena de Vire v Pazpena de Vire** [2001] 1 FLR 460 considered and **Hayatleh v Modfy** [2017] EWCA Civ 70 applied.

3. An appellate court will exercise restraint before departing from a trial judge's evaluation of evidence and facts before him. The appellate court will only depart if the trial judge has made an error of law or of principle, or reached a decision which no reasonable court, applying law and principle could have reached. The learned judge had to determine whether the evidence before him was clear, positive and compelling so as to rebut the presumption of marriage in relation to the deceased's second marriage. There was no evidence before him of a divorce between the deceased and the respondent and there was a certificate of "no divorce" from the high court registrar in relation to the deceased's first marriage. This evidence was clear, positive and compelling, and sufficient to rebut the presumption of marriage in relation to the deceased's second marriage. It follows that, there was no error of law or principle in the learned judge's finding and no basis upon which this Court could interfere with his decision.

**Biogen Inc v Medeva plc** [1998] 1 LRC 21 applied; **Singh v Public Service Commission** [2019] UKPC 18 applied and **Asaad v Kurter** [2013] EWHC 3852 considered.

## JUDGMENT

- [1] **THOM JA:** This appeal arises from a decision of the learned judge in which he granted letters of administration to one of two competing women, who both claimed to be the lawful widow of the deceased, John Tuitt.

### Background

- [2] John Tuitt ("John") was a resident of Montserrat who was born on 26<sup>th</sup> November 1942. He married Rosanna Tuitt ("Rosanna"), the respondent, in Montserrat on 15<sup>th</sup> November 1975. Two children were born to them, being a daughter, Grenette and a son, Kevin.
- [3] Denise Tuitt ("Denise"), the appellant, and John were married in Montserrat on 30<sup>th</sup> November 1994. The validity of this marriage is disputed. It is also disputed that John is the father of Denise's son.

- [4] John died on 22<sup>nd</sup> March 2017 intestate. His estate includes a motor vehicle valued at EC\$15,000.00 and a property valued at EC\$200,000.00.

**The Court below**

- [5] On 11<sup>th</sup> August 2020, Rosanna applied for letters of administration of the estate of John. In her oath of administration, Rosanna stated that she was the lawful widow and personal representative of the deceased, John, and that at the time of his death, there was no minority interest not settled. She exhibited her marriage certificate to John.
- [6] Denise filed a caveat opposing the grant of letters of administration. In her affidavit, she stated that she was the widow of John. She was formerly resident in Montserrat, but now resides in the United Kingdom ("the UK"). She was married to John on 30<sup>th</sup> November 1994 at the high court registry in Montserrat. It is stated on the marriage certificate issued by the registrar that John was divorced at the time of the marriage. Denise further states that she was not aware of John's previous marriage to Rosanna. She only became aware of the marriage as a result of the application for the grant of letters of administration and the marriage certificate of John and Rosanna which was exhibited. She contended further that her marriage certificate issued by the registrar of the high court showed that John was divorced at the time of their marriage. It was only in July 2020 she became aware of a certificate of no divorce issued by the registrar of the high court (a different person from the registrar who performed her marriage) indicating that John was not divorced from Rosanna and would therefore have still been married to Rosanna at the time of her marriage to John.
- [7] Rosanna filed an affidavit in response in which she deposed that she was married to John on 15<sup>th</sup> November 1975 after banns of marriage were published. She was never divorced from John. She was never served with a petition to be divorced from John and there had never been any divorce proceedings in any court in respect of her marriage to John. As a result of the volcanic crisis in Montserrat, she relocated

to the UK while John remained in Montserrat. John subsequently took ill and went to the UK for medical treatment. He was admitted to a hospital in Birmingham. She and her daughter visited him on occasions at the hospital. While in the UK, John transferred all his banking transactions to herself and their daughter. He handed over the deeds to his property in Montserrat to Grenette. After his death, they arranged his funeral. Grenette bore all the funeral expenses, while she paid tribute to John in song at the funeral. At no time during the hospitalisation of John did Denise, who lived in London, visit him, nor did she attend the funeral or contribute to the funeral expenses. Rosanna was not aware that John had married Denise. It was only after the death of John that she learnt that Denise was claiming to be married to him.

- [8] In her affidavit in reply, Denise deposed that it was with John's agreement that she and their son moved to the UK while he remained in Montserrat. He visited them in the UK before he took ill. When he became ill, he travelled to the UK but insisted on going to a hospital in Birmingham. Although they spoke and prayed together on the phone, she and her son did not visit John at the hospital as John did not want them to see him in his state of illness and she respected his wishes. She did not attend John's funeral because of differences with some members of his family against her son and she wanted John to have a peaceful and respectful funeral. She and her son opted to have a private mourning with family and friends.
- [9] The learned judge, having reviewed the various affidavits and exhibits and having considered the submissions of counsel on both sides, determined that Rosanna was the lawful wife of John and granted her letters of administration for his estate. In so finding, the learned judge determined that the central issue was whether John was divorced from Rosanna.
- [10] The learned judge also determined that the burden was on Denise to show that John was divorced from Rosanna at the time of her (Denise's) marriage to him. The learned judge considered the evidence adduced by Denise, being her marriage

certificate that referenced that John was divorced at the time of their marriage and her affidavit evidence, and Rosanna's evidence of a "no divorce certificate" from the registrar of the high court which evidenced that there was no divorce proceedings in Montserrat in relation to the marriage of John and Rosanna, and found that Denise had failed to prove that John was divorced from Rosanna.

- [11] The learned judge also considered the alternative position that the burden was on Rosanna to prove that there was no divorce. The learned judge considered the authorities relied on by Mr. Kelsick being, the case of **Asaad v Kurter**<sup>1</sup> and the following passage from **Rayden and Jackson on Divorce and Family Matters**<sup>2</sup> at paragraph 7.12 which was referred to by counsel for the petitioner in **Asaad**. It reads as follows:

"Where there is evidence of a ceremony of marriage having been gone through, followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed, in the absence of decisive evidence to the contrary..."

- [12] The learned judge found that Rosanna had discharged the burden. He reiterated that her affidavit evidence and the evidence of the registrar's certificate of no divorce was sufficient to establish that there was no divorce. The learned judge also noted the absence of Denise from the funeral and that it was Rosanna who applied for letters of administration approximately three-and-a-half years after John's death.

### **The Appeal**

- [13] Denise, being dissatisfied with the judgment of the learned judge, appealed the judge's decision and in her notice of appeal she outlined the following grounds of appeal:

- (a) The trial judge erred at paragraph 8 of his ruling in treating the registrar of the high court's certificate of no divorce as an affidavit and accepting it established

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<sup>1</sup> [2013] EWHC 3852.

<sup>2</sup> William Rayden and Joseph Jackson: *Rayden and Jackson on Divorce and Family Matters* (18<sup>th</sup> edition, LexisNexis Butterworths UK, 2016).

that the deceased was still married to the respondent (“the first marriage”) at the time he married the appellant (“the second marriage”).

- (b) In contravention of the principle of the presumption of marriage, the trial judge erred at paragraph 10 of his ruling in holding that the burden of proving the validity of the second marriage rested on the appellant.
- (c) The trial judge misapplied the principle of presumption of marriage.
- (d) The trial judge also erred at paragraph 10 of his ruling by holding that the record in the appellant’s marriage certificate of the deceased being divorced at the time of the second marriage was incapable of rebutting the certificate of no divorce and the respondent’s affidavit evidence.
- (e) The trial judge erred at paragraph 11 of his ruling in holding that if the burden of establishing that the deceased was not divorced rested on the respondent, she had discharged it by her affidavit evidence and the said certificate of no divorce, when neither provided decisive evidence.
- (f) The trial judge applied the wrong test at paragraph 12 of his ruling for establishing that the second marriage was invalid in that the test he adopted was a preponderance of the evidence and a probability there was no divorce, when the presumption of marriage requires a higher threshold, namely decisive evidence.
- (g) The trial judge erred at paragraph 13 of his ruling in holding that the respondent’s evidence under oath claiming to be married to the deceased and there was no divorce and producing her marriage certificate was decisive.
- (h) The trial judge erred at paragraph 14 in holding that the case turned on the facts and not the law, when it turned solely on the latter.

- (i) The trial judge erred by failing to consider the effect of the **Marriage Act**,<sup>3</sup> despite this issue being raised by the appellant in her written submissions.

[14] In his written submissions in reply and at the commencement of the hearing, learned counsel for Denise, Mr. Jean Kelsick, conceded that the registrar's certificate of "no divorce" was admissible evidence and the learned judge therefore did not err in admitting it into evidence.

[15] Based on the written submissions and the oral submissions at the hearing, the following issues arose for determination; firstly, whether there was a presumption of marriage in relation to the marriage of John and Denise, secondly, if there was a presumption of marriage, who had the burden of rebutting the presumption; thirdly, what was the standard of proof; and fourthly, whether the learned judge erred in finding the presumption was rebutted.

[16] Rosanna filed a counter notice of appeal, however at the hearing, the counter notice was rightly not pursued since it simply amounted to submissions in response to the grounds of appeal contained in Denise's notice of appeal.

### **Issue 1: The Presumption of Marriage**

[17] Mr. Kelsick submitted that the marriage certificate which was issued by the registrar of the high court who had performed the marriage, after a licence permitting the marriage was granted by the Governor pursuant to section 26 of the **Marriage Act**, when considered conjointly, raised a presumption of marriage of John and Denise. He relied on the following passage from **Phipson on Evidence**<sup>4</sup> at paragraph 6-25 in support of his proposition that there was a presumption of marriage when parties undergo a marriage ceremony:

"A strong prima facie presumption is, except in cases of bigamy or petitions for damages for adultery, made by law in favor of the validity of a marriage proved to have been celebrated de facto.... However, the presumption may

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<sup>3</sup> Chap. 5:01, Revised Laws of Montserrat 2019.

<sup>4</sup> Sidney Lovell Phipson: Phipson on Evidence (20<sup>th</sup> edition, Sweet & Maxwell UK, 2021).



be rebutted by positive evidence that the marriage ceremony did not comply with the Marriage Act 1949.”

Mr. Kelsick also relied on the passage from **Asaad** referred to in paragraph 11 above.

- [18] Mr. Sylvester Carrott, learned counsel for the respondent, in response, submitted that the evidence adduced by Denise did not raise the presumption of marriage. He contended that the mere presentation of a marriage certificate which described the deceased as divorced, without more, was not sufficient. Further, Denise did not adduce any evidence that she and John cohabited together as man and wife, nor did she adduce any evidence that John was the father of her son.

### Discussion

- [19] Authorities such as **Halsbury’s Laws of England**,<sup>5</sup> **Rayden and Jackson on Relationship Breakdown, Finances and Children**,<sup>6</sup> **Chief Adjudication Officer v Bath**,<sup>7</sup> and **Pazpena de Vire v Pazpena de Vire**<sup>8</sup> show that there are several circumstances in which the presumption of marriage may arise. In **Rayden and Jackson on Relationship Breakdown, Finances and Children**, the learned authors explained circumstances in which the presumption will arise at paragraphs 3.154 to 3.158 as follows:

“Where there is no positive evidence or any evidence of any marriage having taken place, where parties have cohabited for such length of time and in such circumstances so as to have acquired the reputation of being spouses, a lawful marriage may be presumed to exist. This is particularly so when the relevant facts have taken place outside the jurisdiction...Where the court has evidence that the parties have undertaken a ceremony of marriage and have subsequently cohabited then, unless there is cogent evidence to the contrary, the existence or happening of all other things necessary for the validity of the marriage will be presumed. This extends to making a presumption about the granting of a special license.”

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<sup>5</sup> Halsbury’s Laws of England Volume 72 (5<sup>th</sup> edition, Lexis Nexis London, 2019).

<sup>6</sup> William Rayden and Joseph Jackson: Rayden and Jackson on Relationship Breakdown, Finances and Children (LexisNexis UK, 2016).

<sup>7</sup> [2000] 1 FLR 8.

<sup>8</sup> [2001] 1 FLR 460.

[20] Similarly, in **Halsbury's**<sup>9</sup> the authors explained that the presumption could arise where there was cohabitation but there was no positive evidence of a ceremony of marriage. Also in **Bath**, Evans LJ reasoned that the common law had long presumed that a marriage exists where parties have cohabited as husband and wife. In **Pazpena de Vire** the Family Division found that there was a presumption of marriage where the couple had lived together as a married couple for approximately 35 years after they had undergone a proxy marriage where unknown to the wife the husband had forged a marriage certificate.

[21] Turning to the circumstances of this case, while Denise's affidavit was sparse as regards their marital relationship, I agree with learned counsel Mr. Kelsick that a certificate of marriage under the hand of the registrar of the high court, which ceremony was conducted after a licence was issued by the Governor pursuant to section 36 of the **Marriage Act**, together with the evidence of Denise, although not detailed, that she migrated to the UK with John's agreement, would be sufficient to raise the presumption of marriage. This was positive evidence on which the presumption of marriage of John and Denise could be based.

## **Issue 2: The Burden of Proof**

[22] Learned counsel Mr. Kelsick submitted that the learned judge erred in finding that the burden of proof was on the appellant to prove that John was divorced at the time of her marriage to him. He contended that the presumption, having been raised, the burden was on Rosanna to rebut the presumption. Learned counsel relied on **Asaad** and the passage **Rayden and Jackson on Divorce and Family Matters** cited earlier.

[23] In my view, the short answer to Mr. Kelsick's submission is that the learned judge considered the case from the alternative position that the burden was on Rosanna to prove that she was not divorced from John and the learned judge arrived at the same conclusion. This ground of appeal accordingly fails.

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<sup>9</sup> Supra n.5 at paragraph 9.

### Issue 3: The Standard of Proof

- [24] Learned counsel Mr. Kelsick, relying on **Rayden and Jackson on Divorce and Family Matters**, referred to earlier, submitted that decisive evidence was required to rebut the presumption of marriage. He submitted that the learned judge applied a lower standard of proof, being the preponderance of evidence. In so doing, learned counsel submitted that the learned judge erred.
- [25] Mr. Carrott submitted in response that the standard of proof required to rebut the presumption of marriage was on a balance of probabilities.

### Discussion

- [26] The issue of the standard of proof to rebut the presumption was considered by the UK Court of Appeal in **Hayatleh v Modfy**.<sup>10</sup> In **Hayatleh**, the Court reviewed the decisions of **Mahadervan v Mahadervan**,<sup>11</sup> **Bath** and **Pazpena de Vire**. In **Mahadervan** the UK Divisional Court held that the presumption of marriage could only be rebutted by evidence proving the contrary beyond all reasonable doubt.
- [27] In **Bath**, the Court of Appeal, considering the issue, reviewed several cases including **Piers v Piers**,<sup>12</sup> **Russell v Attorney-General**,<sup>13</sup> and **Hill v Hill**<sup>14</sup> but **Mahadervan** was not cited to the Court. Evans LJ in delivering the judgment of the Court stated:

“In my judgment, these authorities show that the common law presumed from the fact of extended cohabitation as man and wife that the parties had each agreed to cohabit on that basis, and the presumption was extended to include an inference that the statutory requirements first introduced by Lord Hardwicke’s Marriage Act 1753 had been duly complied with; but in each case the presumption was capable of being rebutted by clear and convincing evidence. It is understandable why clear evidence was required to rebut the presumption after a long period of unchallenged cohabitation as man and wife, because the evidence in rebuttal would refer to events

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<sup>10</sup> [2017] EWCA Civ 70.

<sup>11</sup> [1964] P 233.

<sup>12</sup> (1849) 2 HL Cas 331.

<sup>13</sup> [1949] PAGE 391.

<sup>14</sup> [1959] 1 All ER 281.

many years in the past and might be concerned with matters that were not easily susceptible of proof at that distance of time.”

[28] In **Pazpena de Vire**, the court adopting the test in **Bath** stated:

“From this case, the appropriate test would appear to be that evidence sufficient to rebut the presumption as to compliance with formalities must be ‘clear’ and ‘positive’ or ‘compelling’. Whichever formulation is adopted, the position is plainly that a long-standing marriage will not lightly be struck down on account of some want of compliance with formal technicalities of local law relied on many years later. The public policy behind this approach is obvious.”

[29] This was also the approach endorsed in the Court of Appeal in **Hayatleh**, that there must be evidence that is clear, positive, or compelling which shows on a balance of probabilities that there was no valid marriage.

[30] It is to be noted that while learned counsel Mr. Kelsick referred to the passage in **Rayden and Jackson on Divorce and Family Matters** as cited in **Asaad**, which states there must be “decisive evidence”, the passage is taken from the 18<sup>th</sup> edition of **Rayden and Jackson on Divorce and Family Matters**. The 19<sup>th</sup> edition of **Rayden and Jackson on Divorce and Family Matters**<sup>15</sup> at paragraph 3.154 -3.155 referring to **Pazpena de Vire** states that the evidence must be “strong and weighty”.

[31] The learned judge in his judgment at paragraphs 11 and 12 stated as follows:

“[11]....so that the burden is on Rosanna to show that there was no divorce, to my mind she has on balance met it....

[12] Overall, irrespective of on whom the burden falls, the preponderance of evidence shows it is more probable than not there was no divorce....”

[32] While the learned judge could have stated the standard of proof in different terms, the learned judge did apply the correct test as seen from the cases referred to above.

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<sup>15</sup> William Rayden and Joseph Jackson: *Rayden and Jackson on Divorce and Family Matters* (19<sup>th</sup> edition, LexisNexis Butterworths UK).

#### **Issue 4: Whether the Presumption was Rebutted**

- [33] Mr. Kelsick contended that the learned judge erred in finding that the presumption of marriage was rebutted.
- [34] Mr. Kelsick submitted that the evidence adduced by Rosanna, being, the marriage certificate evidencing the marriage to John and the certificate of marriage from the registrar of the high court and her affidavit evidence that she was not divorced from John was not sufficient to rebut the presumption of marriage of Denise and John. He contended that the learned judge placed too little weight on the certificate of marriage between Denise and John. This certificate he submitted was issued after a licence was issued by the Governor. Mr. Kelsick submitted further that much weight should have been given to this evidence since it must be inferred that the registrar, being cognisant of the offence of bigamy and her duty to rule it out, would not have recorded John as divorced unless she had made the necessary checks and satisfied herself that John was in fact divorced. He contended further that the learned judge also did not consider the effect of the provisions of the **Marriage Act**. Under the **Marriage Act**, the registrar was required to give advance notice of the intended marriage and the registrar was also required to satisfy herself that the parties were single.
- [35] Mr. Kelsick contended further that the learned judge erred in placing too much weight on the evidence of Rosanna that firstly, Denise did not visit John while he was hospitalised in the UK even though she resided in the UK. Secondly, Denise did not contribute to John's funeral financially or otherwise, and thirdly, Denise did not attend the funeral.
- [36] Mr. Carrott submitted in response that Rosanna led cogent evidence showing that there was no divorce. Against that evidence, Denise's affidavit evidence was simply that she was not aware that John was married to Rosanna until the application was made by Rosanna. Denise adduced no evidence relating to John's divorce. No divorce certificate was produced, and no details of a divorce had been given, such

as where and when the divorce occurred. Mr. Carrott submitted that in view of the overwhelming evidence in favor of there being no divorce in the marriage of Rosanna and John, the learned judge did not err in finding that the presumption was discharged.

### Discussion

[37] As stated earlier, the authorities show that clear, positive or compelling evidence was needed to rebut the presumption of marriage. The learned judge therefore had to consider the evidence and determine whether there was clear, positive or compelling evidence which showed on a balance of probabilities that John was divorced from Rosanna.

[38] Mr. Kelsick's complaint under this ground related to the learned judge's evaluation of the evidence. The approach to be adopted by an appellate court in such circumstance is well-settled and has been outlined in several decisions in the Privy Council and the UK Supreme Court and have been consistently applied by this Court. In **Biogen Inc v Medeva plc**<sup>16</sup> Lord Hoffmann stated:

"The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

[39] More recently in **Singh v Public Service Commission**,<sup>17</sup> the Board stated at paragraph 37:

"An appellate court (and especially a court hearing a second appeal) will exercise disciplined restraint before departing from an evaluative decision by a lower court. In short, it will not do so merely because it would, considering the matter afresh, have reached a different evaluative decision. It will only do so if the lower court has made an error of law or of principle,

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<sup>16</sup> [1998] 1 LRC 21.

<sup>17</sup> [2019] UKPC 18.

or reached a decision which no reasonable court, applying law and principle correctly, could have reached.”

[40] Indeed, there was a marriage certificate which stated that John and Denise were married by the Registrar-General (who also holds the office of registrar of the high court), after a licence was granted by the Governor, dispensing with the need for publication of notice of marriage. The licence was issued pursuant to section 33 of the **Marriage Act** which reads as follows:

“The Governor, subject to the restrictions hereinafter mentioned, may, if he thinks fit in any case, grant a licence to marry without publication of banns, or notice of marriage under this Act.”

[41] Section 36 of the **Marriage Act** outlines the procedure for obtaining a licence from the Governor. It reads:

“36. (1) Any persons intending marriage who desire to obtain such licence shall apply to the Governor therefor by petition.

(2) The petition shall state –

(a) the Christian or other names and surnames of the parties, their respective rank, profession or occupation;

(b) whether the marriage is to be solemnized or celebrated by a Marriage Officer or by the Registrar-General, and if by a Marriage Officer, the place where, and the Marriage Officer by whom, the marriage is to be solemnized;

(c) whether the parties or either of them have or has been previously married;

(d) that they know of no impediment of kindred or alliance or other lawful cause to prevent the proposed marriage;

(e) ....

(f) ...

(3) The petition shall be signed by both parties and shall be accompanied by such evidence of the statements therein made as the Governor may prescribe in the case of such petitions.”

[42] There are no rules or regulations outlining what evidence should be submitted to the Governor with a petition. Subsection 2(c) requires the parties to state whether either of them has been previously married while section 3 requires both of the parties to be married to sign the petition. Therefore, for Denise and John to be able to obtain a licence from the Governor, both would have had to sign the petition. There was no evidence before the learned judge of a certificate of divorce in the

marriage of John and Rosanna. On the other hand, the learned judge had before him a certificate from the registrar that there was no evidence of a divorce in the marriage of Rosanna and John. This was clear and compelling evidence that John was not divorced from Rosanna. This was sufficient to rebut the presumption of marriage. Denise's evidence was that she never knew John was previously married even though she had signed the petition.

[43] While the learned judge made reference to the close relationship between John and Rosanna, this was not the primary basis for his finding. This was merely additional evidence which led to the same finding.

[44] Throughout his submissions, Mr. Kelsick placed much reliance on the case of **Asaad**. In **Asaad**, the petitioner was a Syrian national and the respondent was a Turkish national. They underwent a ceremony of marriage in Syria. The marriage was not registered in Syria, nor was the required permission to marry obtained by the respondent. After the ceremony, they lived in the UK for approximately 2 years and thereafter the petitioner filed for divorce. The petitioner subsequently amended her petition to claim divorce predicated on a declaration that there was a presumption that the marriage was valid. In doing so, she relied on the ceremony of marriage, the marriage certificate and the period of cohabitation after the ceremony. Alternatively, she claimed a decree of nullity. There was written expert evidence before the court that in the absence of registration of the marriage and the permission required, the marriage would not be valid. The learned judge found that in light of the uncontradicted evidence of non-compliance, the presumption could not prevail.

### **Conclusion**

[45] In conclusion, like **Asaad**, there was cogent evidence from Rosanna on which the learned judge could have found, as he did, that John and Rosanna were not divorced at the time of John's death. The presumption of marriage therefore could not prevail. There is no discernible error of law or principle in the learned judge's



reasoning. There is therefore no basis on which this Court could interfere with the finding of the learned judge.

**Order**

[46] For the reasons stated above, the appeal is dismissed. No costs were awarded in the court below and having regard to all of the circumstances, I order that each party shall bear their own costs.

I concur.  
**Paul Webster**  
Justice of Appeal [Ag.]

I concur.  
**John Carrington**  
Justice of Appeal [Ag.]

**By the Court**

**Chief Registrar**