

## SUPREME COURT JUDGMENT

### Common-Law Relationships – ‘When are you entitled to half?’



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**In the recent Supreme Court decision of *Bowes v Taylor* in which our Attorneys, Jermaine Spence and Teri-Ann Lawson, representing the Defendant, received judgment in their favour, the Court held that to establish that one is in a common law relationship, one must prove that it was more probable than not, that cohabitation existed.** The issue in this case was whether the Claimant was a ‘spouse’ for the purposes of the ‘equal share rule’ which exists between common law parties under the Property (Rights of Spouses) Act, 2004.

In considering whether the Claimant was the Defendant’s common law spouse the Judge noted the following factors must be considered in respect of cohabitation as husband and wife:

- That both parties were ‘single’ at the time of the alleged cohabitation;
- That cohabitation existed as husband and wife, bearing likeness to a marriage; existing in the same household and including a sexual relationship. This means also that the union should be monogamous, as there can be only one common law spouse at a time;
- A daily sharing of life together – providing evidence of shared tasks, obligations and duties in the course of everyday life;
- Stability and permanence in the relationship that is, the need to establish that the relationship was an emotional one of mutual lifetime commitment rather than one of convenience;
- Finances – evidence of sharing in financial undertakings would increase the chance of a favourable finding for the claimant;
- Children – evidence as to the role in the care and upbringing of the children of the household would be grounds to the claim;
- Intention and motivation – there must be an intention on the part of the claimant and the defendant to enter into a committed, stable union on a permanent basis equivalent to marriage;
- The opinion of the “reasonable man” perceptions - The reasonable onlooker should be able to be able observe and conclude that the parties were living together as if they were in law husband and wife.

The judge concluded by saying that the Claimant would only be entitled to half-share if the relationship had the essential quality necessary for it to be akin to a marriage as outlined above. Having failed to establish that she was indeed a spouse within the meaning of the Act, the Claimant was unsuccessful in proving the existence of the necessary qualities to establish a claim to a half-share interest in the property in question, and her claim was therefore dismissed.

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