COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

APPEAL DIVISON

2025/APP/Mag/014

BETWEEN

KWAME FINLAYSON

Appellant

AND

LAURENA FINLAYSON

Respondent

Before: The Honourable Madam Justice Joyann Ferguson

Appearances: Mrs. Simone Smith-Bean of the Appellant
Mr. David Cash of the Respondent

Hearing Date: 3rd March, 2026

JUDGEMENT

FERGUSON, J

1. At the commencement of the hearing, Counsel for the Appellant raised a point in limine, asserting that the transcript before the Supreme Court had omitted material factors from the record and accordingly, was inaccurate.

2. In addressing this submission, the Court noted that no affidavit evidence had been filed in support of this assertion. Counsel properly conceded to this point that a proper affidavit should have been filed.

3. The Court indicted that the usual practice when relying on submissions, if the record of the Court of first instance is said to be inaccurate or omits relevant evidence; is for an affidavit to be filed setting out the material which is said to be missing from the record. The Court ruled that in the absence of such an affidavit, that objection cannot be sustained. Counsel conceded that she failed to file such an affidavit. Similarly, Counsel for the Respondent concurred that the record was very brief and was silent on the learned Magistrate's reasons for coming to her final determination. Further, the Court noted that the hearing in the lower Court was devoid of legal representation by both side and only the Defendant, Mr. Kwame Finlayson was present at the hearing who was not called upon to give sworn evidence.

4. Counsel for the Appellant further submitted that the learned Magistrate erred in law by relying on unstamped documents produced by the Respondent, namely a Deed of Gift, and a Power of Attorney. In support of this submission, Counsel relied on section 2 of the Conveyancing and Law of Property Act and Section 21 of the Stamp Act, which states that unstamped instruments are not to be admitted or relied upon by the Court.

5. In response, Counsel for the Respondent submitted that the learned Magistrate did not rely on the Deed of Gift, or Power of Attorney but rather on the Mortgage referred to at paragraph two (2) of the Magistrate's transcript.

Conclusion

6. The Court finds that the transcript of the proceedings is woefully brief and does not provide the reasons for the learned Magistrate's final determination.

7. Having regard to the gravement of the family dispute which lies at the root of this matter between a brother and sister, and the potential long-term implications arising therefrom, this Court finds that, in the interest of justice, the matter ought to be remitted to the Magistrate Court to be heard ***de novo.***

8. Each party shall bear their own costs.

9. **Remitted to Chief Magistrate for reassignment.**

Dated 03rd March, 2026

Honourable Madam Justice Joyann Ferguson