

IN THE SEYCHELLES COURT OF APPEAL

RUBY FRICHOT

APPELLANT

Versus

GILBERT FRANCE FRIHOT

RESPONDENT

Civil Appeal No: 33 of 1996

[Before: Goburdhun, P., Silungwe and Ayoola, JJA]

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Mr. J. Hodoul for the appellant

Mr. B. Georges for the respondent

JUDGMENT OF THE COURT
DELIVERED BY SILUNGWE, JA.



Ruby Frichot, nee Pardiwalla, and Gilbert Frichot, petitioner/appellant and defendant/respondent, respectively, were joined in matrimony at Bel Ombre, Mahe, on July 21, 1986. They lived happily together and were blessed with three children of the marriage. As it happened, the marriage ran into trouble as a result of which the appellant was granted an order by the Supreme Court on July 25, 1995, for judicial separation; and she was given custody of the children. Subsequently, the Supreme Court made the following orders pertaining to ancillary relief for the welfare of the children:

"1. That the respondent pays in respect of each of the children of the marriage the sum of R.1000 per month, making a total of SR.3000 per month.

2. The respondent must also be solely responsible for the payment of school fees at primary, secondary and

university levels in respect of all his children.

3. The respondent is to have free access to his children during the week. He will visit them at their mother's house with prior arrangement and agreement with her. Every weekend he has to get his children, either on Saturdays or Sundays, from 11 to 7 pm. He should pick them up from their mother's house and bring them back by 7 pm.

4. During school vacations, each parent will have the children for half the school holidays. If they spend Christmas with their mother, they must spend New Year's day with their father."

The appellant is so aggrieved by the orders above-mentioned that he is now before us in pursuit of redress. She further seeks an order for costs in respect of which the Supreme Court made no pronouncement; and another one for "domestic expenses."

The first ground of appeal is that the order that the respondent pays Rs.1000 per month per child is manifestly inadequate and incomplete.

As to the allegation of inadequacy, it is common ground that the relevant children enjoyed a very high standard of living prior to the disintegration of the household into two households. Mr. Hodoul, learned counsel for the appellant, underlines in his argument the significance of maintaining the children's high standard of living. This, he submits, is achievable in the light of the financial ability of the respondent - an

architect by profession - who allegedly "admitted" in his examination-in-chief "that his average monthly income for 1994 was Rs. 25,000."

In the third paragraph of his affidavit dated October 12, 1995, the respondent stated his financial ability in these terms: "In my business as an architect, I draw from the business on average the sum of R6,000 per month." And in the fourth paragraph, he listed his monthly expenses which totalled R11,100.

In the third paragraph of her replying affidavit dated December 11, 1995, the appellant had this to say:-

"3. As regards paragraph 3 of the affidavit, I aver that until March, 1995, and for the previous 8 years, I was responsible for the administration of the respondent's business office - which included correspondence, preparation of projects, typing, filing - and I know that the business generated an average monthly income of approximately SR25,000."

When the respondent gave evidence, what emerged at the outset of his examination-in-chief was as set out hereunder, at pages 135 and 136 of the record:-

"Q: Now you have yourself seen a copy of the affidavit that has been produced in reply to your own affidavit and in that affidavit has been stated that the business that you are now running generated an average above the income of Rs. 25,000. Could you tell the court if this is correct please?"

A: There are variations in business as I learned (sic) and it may be the case for some years

*and it might not be the case for other years.
In 1994 it is a fair average.*

Q: Now that we are at the end of 1995 can you tell the court what salary you have drawn from the business on average...?

A: I tried to draw Rs. 6,000 when it is necessary. On average I would say Rs. 6,000 is the amount I drew from the business monthly.

Q: And this is as you maintained as you stated in your affidavit this is what you are actually earning now?

A: Yes.

Q: Now, further more Mr. Frichot, you have given your monthly expenses in your affidavit and in it you have stated that your actual monthly expenses run to about Rs.11,100...?

A: That is correct.

Q: If we are to assume that your income is Rs. 6,000 and your expenditure is Rs. 11,000 can you tell the court how you have been able to make ends meet?

A: I've been spending my savings and reserves from account Frichot Associates.

Q: Has your business suffered any decrease in work over this 1995?

A: *Yes. I would say generally the business is less since building activity has dropped.*"

The issue of financial relief was considered by the Supreme Court which came to the conclusion that the respondent had not been fully candid to the court as regards his total income for the year 1995. The following continuation appears in the judgment:-

"It will be recalled that his monthly income in the year 1994 was SR25,000 per month and this has, according to him gone down to SR6,000 per month in the year 1995. The respondent had traveled abroad on a few occasions in the course of 1995. No one earning such a meagre monthly income would be able to travel abroad so often."

As can be seen, the court's finding that the sum of SR25,000 of the appellant's, that is, "his monthly income in the year 1994", must have been based on a misunderstanding of his evidence which showed that that figure represented business, not personal, monthly income. That figure was, therefore, irrelevant as a basis for the purpose of fixing the ancillary relief for the benefit of the relevant children. In any event, it seems enigmatic whether or not that figure was relied upon by the court for, if it were, the ancillary relief that was awarded would have been inadequate; if, on the other hand, the said figure had not been relied upon, the award would have been an arbitrary one. In the final analysis, we are left with the figure of SR6,000 which was rejected on the basis that "no one earning such a meagre monthly income" would have "travelled abroad on a few occasions in the course of 1995." However, as the appellant's explanation for his overly expenses revealed that he had had to spend "his savings and reserves from" his business account, the explanation was credible and should have been accepted. In the circumstances, the only figure that could, and ought to, have been used was SR6,000. Consequently, it can hardly be said that the award of SR1,000 per month per child was "manifestly inadequate." Hence, the appeal based on this ground cannot succeed.

Before we can consider the next ground of appeal, an adjunct of the first ground needs to be addressed; this is that the order for ancillary relief was incomplete in that it was not given a retrospective effect from the date of presentation of the appellant's petition, namely, July 20, 1995. It is noted that on October 6, 1995, an interim order for the children's ancillary relief (i.e SR3000 per month for the three of them) had been made and directed to take effect from the beginning of that month. As this order was not varied on August 16, 1996, the period that the appellant wishes to be covered as well is about two and a half months.

As these proceedings relate to judicial separation (not to a divorce or nullity petition) section 20(3) of the Matrimonial Causes Act, 1992 does not apply. The applicable section is 21 which provides for the commencement of a financial relief under section 20 of the Act. In our view, as the respondent has the responsibility and the ability to maintain his relevant children, the petitioner's prayer with regard to the commencement of the financial relief should, in the circumstances of this case, have been granted.

The second ground is an attack against the Supreme Court's failure to provide financial relief in respect of domestic expenses. This ground is misconceived because the ancillary relief granted for the welfare of the relevant children was global and no prayer had been sought for the maintenance of the appellant.

The final ground of appeal is that there was an omission on the part of the Supreme Court to make an order for costs which had been prayed for by the appellant. We see merit in this ground as the appellant was entitled to her costs in the Supreme Court, and we so order. In the result, this ground succeeds.

All in all, and apart from costs in the Supreme Court in favour of the appellant, as well as the aspect relating to the commencement date of the ancillary relief, the appeal is dismissed.

There is a cross appeal against the Supreme Court's orders "for the payment of school fees at primary, secondary and university levels in respect

of all his children"; and weekend access to the children which excludes over night stays on Saturdays or Sundays.


With regard to the first ground of the cross appeal, Mr. Georges for the respondent contends that the Supreme Court's order, in so far as it relates to university education, is too far reaching into the future as to make it onerous on one party - the respondent. We do not think that there is merit in this ground, regard being had to the fact that the education of the respondent's children is a responsibility that falls squarely on his shoulders.


Finally, we are of the view that there is no good reason to justify any variation to the order for access.

It follows from what we have said above that the cross appeal cannot succeed and it is hereby dismissed.

There shall be no order as to costs in this court.

H. GOBURDHUN
President


A.M. SILUNGWE
Justice of Appeal


E.O. AYoola
Justice of Appeal

Dated this^{3rd}..... day of^{April}..... 1997.

*Judgment delivered in open Court by me
in person, today the 28th April 1997*


Judge

IN THE SEYCHELLES COURT OF APPEAL

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Ruby Frichot

Appellant

v/s

Gilbert Frichot

Respondent

Cv. APP; 33/96

Mr. J. Hodoul for the Appellant

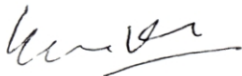
Mr. B. Georges for the Respondent

COURT;

1. The Supreme Court's order R1000/- per child per month is not manifestly inadequate and is upheld commencement if this order is effective from the date of the appellant's presentation of the petition.
2. The appellant's appeal for Domestic expenses is dismissed.
3. The appellant is entitled to costs in the Supreme Court to be assessed.
4. Subject to the 3rd ground, the appellant's appeal is dismissed.
5. The Respondent's cross-appeal is dismissed.
6. No order as to costs of this appeal.

Reasons later.

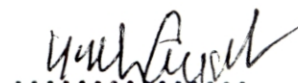
Dated this 4th day of April 1997.



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H. GOBURDHUN
PRESIDENT



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A. SILUNGWE
JUSTICE OF APPEAL



.....
B. AYoola
JUSTICE OF APPEAL