# IN THE SEYCHELLES COURT OF APPEAL

**DOREEN ROSEMARY BRESSON** APPELLANT

versus

**THOMAS GERALD BRESSON** RESPONDENT



Civil Appeal No: 29 of 1998

*[Before: Ayoola, P., Silungwe & Pillay, JJ.A]*

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Mrs. N. Tirant-Gherardi for the Appellant
Mr. J. Hodoul for the Respondent

## JUDGMENT OF THE COURT

*(Delivered by Ayoola, P.)*

On granting a provisional order of divorce on the petition of the wife on October 2, 1996, the trial judge (Bwana, J) made orders of property adjustment and financial relief pursuant to Section 20(1) of the Matrimonial Causes Act, 1992 ("the Act") in relation to some family assets which consisted of movable and immovable properties. He rejected the wife's prayer for a lump sum payment of SR200,000 as maintenance. In regard to the parcel J1295, he ordered as follows:-

> "The petitioner is directed to remove the restriction she imposed on parcel J`1295 so that the respondent can transfer the same to their son, Galen Bresson."

And, in regard to the matrimonial home (parcel J1296) he ordered the respondent to pay off the petitioner the sum of SR150,000 as her half

share in the matrimonial home, such payment to be made within three months from the date of the judgment.

The wife ("the appellant") has appealed from that decision. The husband ("the respondent") cross-appealed. The appeal and cross appeal did not concern those parts of the decision relating to movable property.

The parties were married on 24th April 1945 and cohabited at several places and, finally, in Seychelles. There are two children of the marriage born respectively on 11th November 1969 and 25th February 1973. At the time the petition for divorce was brought, the appellant was an executive secretary and the respondent a technical manager employed by the Seychelles Petroleum Company. On her petition the appellant obtained a conditional order of divorce on the ground of irretrievable breakdown of the marriage she having alleged and established against the respondent unreasonable behaviour and adultery. It is common ground that there was a property described as parcel J309 registered in the sole name of the respondent which had been subdivided into three parcels, viz: J1295, J1296 and J1299. J1299 was transferred to Kevin the elder child of the marriage, the matrimonial home remained on J1296 while J1295 remained in the sole name of the respondent.

The trial judge rejected the appellant's application for maintenance on the grounds that the appellant was employed and was earning SR3500 per month, was without "additional responsibilities" and would get a lump sum payment of SR150,000 representing her half share of the matrimonial home. He neither made any order for the benefit of the appellant in respect of parcel J1295 nor took it into account, for the purposes of the financial provisions for the appellant, because of the intention which the respondent had at a time declared, to transfer that parcel to his younger son, Galen. Hence, he made the order earlier stated relating to that parcel.

The two main issues raised by the appellant's appeal are (i) whether the trial judge's approach to determination of the issue of maintenance was correct and (ii) whether the trial judge was right in excluding J1295 from consideration as part of the matrimonial property to be divided. A third issue relating to use and occupation of the matrimonial home which was raised by the appellant's additional ground of appeal, is evidently without merit. The respondent, being not satisfied with the order made in respect of title J1295, has also appealed against that order. In the result, this appeal and the cross-appeal fall to be decided on the two main issues.

It is difficult to agree with the submissions of counsel for the appellant that in rejecting the prayer for lump sum payment the trial judge had adopted a wrong approach. In making an order pursuant to section 20(1) of the Act, the court is expected to take a global view of all the circumstances of the case, including the ability and financial means of the parties to the marriage. Doing that, the judge should not shut his eyes to the fact, as the case may be, that a spouse may soon be receiving a considerable amount of money resulting from a division of assets of the family. We venture to think that any factor that would enable the judge to exercise his powers under section 20(1) of the Act so as to place the parties, so far as is practicable, in the financial position they would have been if the marriage had not broken down, is a relevant factor. In determining such financial position it is to be assumed that "each had properly discharged his or her financial obligations and responsibilities towards the other." The purpose of making financial provisions provided for in section 20(1) of the Act, as we observed in the case of **Renaud v Renaud** (Civil Appeal No. 48 of 1998), is:

> "to ensure that upon the dissolution of the marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by

> reason of the breakdown of the marriage and, as far as such is possible, to enable the party applying maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution."

It may well be added that the standard of living which is to be maintained is the standard which the parties are capable of, having regard to the means available to them.

A convenient but flexible starting point in assessing the amount to be awarded as maintenance to a spouse is to take the combined resources of the parties and award a fraction thereof, one-third, to the spouse in need of maintenance. However, several considerations would go into the determination of what is just in each case and much would depend on the circumstances of the case. Circumstances which can be taken into consideration as having a bearing on the calculation of the amount to be awarded include, without being exhaustive:-

(i) the share of the capital assets awarded to the wife;
(ii) the length of the marriage; and
(iii) the question of whether the wife can go out to work.

In this case, the prayer for a lump sum payment of SR200,000 to the appellant has not been supported by any clear data. If we go by the disclosed facts that the monthly income of the respondent was SR7800 and that of the appellant SR3500, there seems to be no basis for the prayer for a lump sum payment of SR200,000. Furthermore if, as is now contended on this appeal, the appellant is entitled to a further share of half of parcel J1295, it cannot be reasonably held that she would be in need of further financial support by the respondent. The first issue must therefore be resolved against the appellant.

We now turn to a consideration of the second issue. In regard to title J1295, some prefatory remarks are expedient. First, the decision of the trial judge to divide the capital assets half and half has not been contested on this appeal. Secondly, the judge held, and that opinion has also not been contested, that:-

> "... although the petitioner did not contribute directly and financially for the purchase of parcel J309, she did so through the various services she offered to the family. The respondent did – eventually – acknowledge this sober truth and agreed, on 20th November 1997, to pay the petitioner half the value of the matrimonial home (J1296)"

Thirdly, the judge regarded the three parcels comprised in title J309 as "matrimonial property" when he said –

> "In so far as the matrimonial properties are concerned, there is one movable (a car) and three parcels of land at Bel Ombre."

It is evident that, from these views of the trial judge which have not been challenged on this appeal, if there was no justification for the exclusion of title J1295 for division as matrimonial property, the judge should have divided it as he did title J1296 and in the same proportion.

The only reason why the trial judge had excluded title J1295 was because the parties, and particularly the respondent, had, at a time, evinced an intention to transfer it to the younger of the two children. None of the parties has requested the judge to order that the property be

transferred to that son of theirs. In terms of Section 20(1)(g) of the Act, the court is empowered to make an order in respect of any property of a party to a marriage for the benefit of a relevant child. However, that was not the power exercised by the trial judge when he made the impugned order. It is clear that the order made in respect of title J1295 should not stand, there being no justification for excluding that parcel from consideration, it being part of the matrimonial property of the parties, as earlier held by the judge.

It is expedient to comment briefly on the submission made by learned counsel for the respondent that the relief claimed by the appellant in regard to the matrimonial property was not competent because provisions of the Act were not appropriate for determination of property rights. Reliance was placed on the decision of this court in **Renaud v Renaud** (supra). It suffices to say that the issue raised by the relevant prayer of the petitioner in the petition was not one which could have been dealt with by the Status of Married Women Act and that **Renaud v Renaud** was not relevant. In that case we held:-

> "Where the objective is to ascertain the respective rights of the husband and wife to disputed property the appropriate jurisdiction to invoke is that under Section 21 of the Status of Married Women Act which provides for the determination of property disputes between husband and wife." (emphasis supplied).

The present case was not about disputed property at all.

For the reasons which we have given, this appeal must succeed in part and the cross-appeal dismissed.

In the result, the appeal of the appellant is dismissed in regard to the decision of the Supreme Court rejecting the prayer for lump sum payment and allowed (i) in relation to the order directing the appellant to remove the restriction she imposed on title J1295 so that the respondent could transfer the same to their son, Galen Bresson and (ii) in relation to the exclusion of that property from property available for division as matrimonial property. Since the order made by the judge in relation to title J1295 will be set aside in its entirety, the cross-appeal lacks any significance and is dismissed.

In summary, it is ordered that:-

(i) the order that the petitioner remove the restriction she imposed on parcel J1295 be set aside.

(ii) the parties are entitled to parcel J1295 in equal shares.

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| **E. O AYOOLA** | **A. M. SILUNGWE** | **A. G. PILLAY** |
| **PRESIDENT** | **JUSTICE OF APPEAL** | **JUSTICE OF APPEAL** |

Dated at Victoria, Mahe this 13 day of August. 1999.