IN THE SEYCHELLES COURT OF APPEAL

MARIE HOTENCE LESPERANCE ***Appellant***

VERSUS

RALPH ARMAND LESPERANCE ***Respondent***

Civil Appeal No. 3 of 2001

Mr. B. Georges for the Appellant
Mr. A. Juliette for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen,JA.)

This is an appeal against a judgment of Juddoo, J., who, on an application by the appellant for a settlement of the land H720 with the house standing thereon (called *"the matrimonial property"*) following the divorce of the parties, granted to her, pursuant to section 20(1)(g) of the Matrimonial Causes Act, 1992, one third of the value of the matrimonial property, as assessed by a valuer appointed by the mutual consent of both parties.

The appeal is being made on the single ground that the learned Judge erred in the circumstances of the case and in the state of the case-law on the matter in not awarding to the appellant a half share in the value of the matrimonial property.

The facts leading to the application were not disputed. The parties had been married for 28 years and all their three children are now of age. Parcel H720 was purchased by the respondent in his own name and with

his own monies. From his own savings he financed the construction of the house thereon. At the time of the divorce the construction of the house was only completed to the tune of 75%. There was no financial contribution by the appellant either to the purchase of the land or to the construction of the house. The appellant, for her part, raised the children and contributed in kind to the maintenance of the family. She also helped physically in the construction of the house whilst at the same time providing secretarial assistance to the respondent who operated a private electrical business until the latter employed a secretary.

The learned Judge rightly appreciated that the basis of the application was not for ascertainment of right to property and, after correctly stating the facts and the applicable law and after alluding to the case-law on the matter, the learned Judge found that the granting of a one-third share in the value of matrimonial property to the appellant would be just in the circumstances.

Learned Counsel for the appellant has urged before us that, in substantially identical circumstances in Florentine v Florentine [1990] SLR 141 and Ho Peng v Ho Peng No. 71 of 1993, a half-share was granted to the wife and that a half-share would have been more appropriate in the circumstances of the present case as the facts were for all intents and purposes similar in those cases. It is not disputed that the situation in Florentine was identical to that of the present case. In that case the marriage had lasted 25 years, as opposed to the 28 years in the present one, and the wife had equally not been employed but had brought up the children and minded the home. As in the present case, the wife, who was

also about 50 years old, had occupied the matrimonial property after the divorce. The Court had granted the wife a half-share in the matrimonial property. Likewise, in Ho Peng the Court granted to the wife a half-share in the value of the house, after she had waived her interest in the land. This is the only feature that distinguishes that case from the present one.

We agree that the task of the Court in weighing the competing claims of both parties and seeking to do what is right and just is not an easy one. However, after taking into consideration the submissions of Counsel for the respondent that the Judge was not bound to follow the awards in Florentine and Ho Peng, we take the view that there must be equality of treatment in cases based on similar facts. On the basis of the facts as accepted by the trial Court and bearing in mind the conclusion reached in similar situations in the cases of Florentine and Ho Peng, we hold that the trial Court was wrong in the circumstances not to have awarded one half in the value of the matrimonial property to the appellant.

Consequently we allow the appeal and amend the judgment of the learned Judge by varying the share granted to the appellant from one-third to one half in the value of the matrimonial property.

E. O. AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe, this 09th day of **August** 2001