

**Hoareau v Hoareau**

**(2013) SLR 155**

MacGregor PCA, Fernando, Msoffe JJA

3 May 2013

SCA 37/2011

**Counsel**      L Pool for the appellant  
                    N Gabriel for the respondent

**The judgment was delivered by  
MSOFFE JA**

[1] The parties were wife and husband, respectively, having married at the Civil Status Office in Seychelles on 26 December 1996. The marriage was blessed with one issue, Darius Joseph Hoareau who was born on 11 April 1997. In the course of the marriage they acquired a plot of land Title S6693 whereon a house was built presumably with the intention of making it their matrimonial home. Unfortunately the marriage did not last long. On 21 November 2007 a decree nisi was issued. The marriage was eventually dissolved by a decree absolute issued on 5 March 2010. Following the decree of divorce the petitioner filed an application in the Supreme Court for settlement of matrimonial property acquired and held during the subsistence of the marriage. In a carefully written, properly analyzed and well thought-out judgment, the Supreme Court (Dodin J) looked at the evidence, addressed itself to the applicable law thereby citing a number of authorities, and finally held, inter alia, as follows:

In the final analysis therefore I conclude that the petitioner should not be entitled to more than a 15 percent share in the matrimonial property based on its value which I calculate to be Rs 276,000 being the cost of the land at Rs 63,000 plus the loan of Rs 225,000 taken and after deducting Rs 12, 000 which the respondent still has to pay. The respondent is entitled to 85 per cent share and should complete payment of the outstanding balance of the loan.

I therefore calculate the Petitioner's share in the property to be Rs 41,400 which she has earned by her very minimal contribution to the maintenance of the family by her presence during the period of the marriage to date. I calculate the Respondent's share at Rs 234,600 reflecting his overwhelming contribution to all aspects of construction and maintaining the property and the family for the duration of the marriage to date.

As both parties wish to purchase the share of the other party, I also find that the investment of the Respondent in the property is such that it would be unfair to accede to the petitioner's prayer to purchase the Respondent's share. Instead I would grant the Respondent's prayer to purchase the share of the Petitioner by making full payment thereof within 6 months of today failing which the Petitioner shall then have the option to purchase the Respondent's share within the next 6 months. Upon payments of the full share of the Petitioner the Petitioner shall move out of the house not later than 6 months from today. The same condition shall apply to the Respondent in the event of payment by the Petitioner at the expiration of 1 year from today. If neither party has fully paid for

the shares of the other at the expiration of the period given, the property shall be sold by auction by the Court and the proceeds shall be apportioned according to this judgment.

[2] In the notice of appeal there are four grounds which read as follows:

- 1) Having correctly set out the law and principle governing the division of matrimonial property, the Learned Judge misapplied the law and principle to the facts of the appellants' case.
- 2) The finding of the Judge that the petitioner's claim for a share in the matrimonial property based solely on the fact that she was married to the respondent at the time the property was acquired is contrary to the evidence adduced and a failure on the part of the said Learned Judge to take into consideration all the circumstances of the case.
- 3) The Judge was wrong to hold that there was a lack of will on the part of the appellant to contribute to the matrimonial home when there was overwhelming evidence of the appellant's contribution both in monetary terms and kind.
- 4) The Judge's decision refusing the appellant's prayer to purchase the respondent's share within six months from the date of judgment was biased and unfair in all the circumstances of the case.

[3] In essence this is an appeal against the quantum awarded to the appellant by the Supreme Court. Indeed, all the above grounds of appeal crystallize on this major ground of complaint. It is the appellant's general view that the relief granted to her is on the low side. It is for this reason that she is asking this Court to make an order that she is entitled to a half share in the matrimonial property, that she be allowed to buy the respondent's share in the property, and the respondent be ordered to vacate the matrimonial house.

[4] The crucial question in this appeal is whether there is basis for us to interfere with the decision of the Supreme Court.

[5] As conceded by the appellant in the first ground of appeal, the Judge properly addressed himself to the law and principle governing division of matrimonial property.

[6] In Seychelles the law relating to a case of this nature is governed by ss 20 and 21 of the Matrimonial Causes Act 1992. Section 20(1) of this Act is the key provision on the division of matrimonial property and it reads:

Subject to section 24, on the granting of a conditional order of divorce or nullity or an order of separation, or at any time thereafter, the Court may, *after making such inquiries as the Court thinks fit and having regard to all the circumstances of the case, including the ability and financial means of the parties to the marriage-*

- a) order a party to a marriage to pay to the other party ... such periodical payments for such period, not exceeding the joint lives of the parties, as may be specified in the order;

- b) pay to the other party or to any person for the benefit of the other party such lump sum in such manner as may be specified in the order;
- c) secure to the satisfaction of the Court a payment referred to in paragraph (a) or paragraph (b);
- d) order a party to a marriage to pay to any person for the benefit of a relevant child such periodical payments for such period as may be specified in the order;
- e) order a party to a marriage to pay to any person for the benefit of a relevant child such lump sum as may be specified in the order;
- f) order a party to a marriage to secure to the satisfaction of the Court a payment referred to in paragraph (d) or paragraph (e);
- g) make such order, as the Court thinks fit, in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child.  
[Emphasis added]

[7] In our view, the words “and having regard to all the circumstances of the case” in the above provision are very important. We say so because ultimately each case has to be decided on the basis of its own facts. This is so because all cases are not the same. The facts and circumstances surrounding one case may not necessarily be the same as the other.

[8] The law is settled that in deciding on the share that each party is entitled to, the court must not only look at the financial contributions of the parties but all the circumstances surrounding the

acquisition, development and maintenance of the property as well as other indirect contributions which the family explicitly or impliedly intended during the subsistence of the marriage. This is the view which was also expressed by this Court in *Chetty v Emile* SCA 11/2008 – a case which was also cited by the Judge in his judgment which is the subject of this appeal.

[9] Of equal importance is the principle discerned from this Court’s decision in *Renaud v Gaetan* SCA 48/1998 – a case which was also cited by the Judge where the following passage is relevant:

The purpose of the provisions of the subsections is to ensure that upon dissolution of the marriage, *a party to a marriage is not put at an unfair advantage in relation to the other*, by reason of the breakdown of the marriage and as far as possible, *to enable the party applying to maintain a fair and reasonable standard of living, commensurate or near the standard the parties have maintained before dissolution.*

[Emphasis added]

[10] The case of *Renaud v Gaetan* (supra) contains an aspect which is sometimes forgotten by courts when dealing with a case of this nature. Sometimes the tendency is to look at the contributions made in monetary terms only. It is important not to forget to ensure that a party is not put at an unfair advantage. In the process, the court should try, as far as possible, to come up with an award that will enable the other party to maintain a fair reasonable living which is “commensurate or near the standard” the parties were maintaining before the dissolution of the marriage. We know and appreciate that this is not an easy task but courts should keep on trying so that the

wider goal of ensuring that one party is not put at an unfair advantage in relation to the other is achieved.

[11] In this case, the Judge made the necessary inquiries. In the process, he addressed himself to the evidence that the appellant was instrumental in the purchase of the land parcel S6693. All the monetary contributions towards the purchase and construction of the house were made by the respondent. That as far as the running of the household was concerned the evidence shows that the respondent contributed far more than the appellant mainly because of the large disparity in the incomes of the parties and the erratic employment record of the appellant. Then he opined that the appellant's claim for a share in the property is based solely on the fact that she was married to the respondent and her presence in the matrimonial household as mother and wife, respectively.

[12] In principle, we have no serious quarrel with the findings and conclusions by the Judge in the matter before him. He did the best he could in arriving at a fair decision. However, in the circumstances of the case we still think that the appellant was entitled to something slightly more than what she got. We say so in view of certain facts in the case which were not seriously disputed. In terms of exhibit P2 the property is in the names of both parties. Further, under exhibit P3 the loan of R 225,000 towards the construction of the property was given in the names of both parties. It is not easy to believe that during the construction of the house, which took three years or so, and the eventual upkeep of the same, her contribution was almost nil. There is at least some evidence that she bought furniture including curtains and other stuff for the house. She also did some domestic chores that a wife would normally do like cooking, cleaning, looking after the house and taking care of the child, etc.

[13] At the hearing the respondent told us that he is willing to increase the respondent's share in the matrimonial property from 15 percent to 25 percent. This was no doubt an important gesture in the advancement of justice in the matter for which the respondent should be commended. We also learnt that the respondent has so far been paid a sum of R 41,400 ordered by the Supreme Court towards the appellant's share in the property. We were also told that the appellant is currently employed as a personal secretary in the Ministry of Health where she is earning a net salary of R 3,800 per month.

[14] In the end, given the facts and the overall circumstances of the case, we are of the considered opinion, and accordingly so order, that the appellant is entitled to 30 percent as her share in the matrimonial property which we calculate at R 82,800. Since the appellant has already paid R 41,400 the remaining sum should be paid to the respondent within a period of three months from the date of this judgment. We hope that the total sum of R 82,800 will somehow help her in maintaining a fair and reasonable living commensurate or near the standard she was maintaining before the dissolution of the marriage. Thus, we allow the appeal to the above extent only. The appellant shall have the costs of this appeal.