

IN THE SEYCHELLES COURT OF APPEAL

[Coram: S. Domah (J.A) , M. Twomey (J.A) , J. Msoffe (J.A)]

Civil Appeal SCA 33/2013

(Appeal from Supreme Court Decision DV 104/2011)

Marie Rosine Georges

Appellant

Versu
s

Clifford Benoit

Respondent

Heard: 12 April 2016

Counsel: Mr. Francis Chang Sam for the Appellant

Mr. Charles Lucas for the Respondent

Delivered: 12 April 2016

JUDGMENT

J. Msoffe (J.A)

[1] The parties in this matter got married on 8th December 1979 in Seychelles and lived at various places before settling down at their matrimonial home at Plaisance, Seychelles. The marriage was blessed with three issues all of whom are adults.

[2] In the course of time the marriage relationship got sour thereby prompting the Appellant to petition for divorce. On 15th March 2012 the Supreme Court granted a decree *nisi* which was later followed by a decree absolute on 17th May 2012.

- [3] In the meantime, pursuant to section 20(1) (b) and (g) of the Matrimonial Causes Act (Cap 124), on 12th January 2012 the Appellant filed an application claiming, *inter alia*, a lump sum of SR2,000,000 as compensation, land parcels V3849 and V6494 situate at Plaisance (the matrimonial property) together with the house thereon held in co-ownership be declared to belong and be transferred to her “after the Respondent shall have caused all the charges burdening the said land parcels to be discharged”, and that besides the Respondent’s personal effects all other contents of the house be declared as solely belonging to her.
- [4] On 30th May 2012 the Respondent filed an affidavit in reply opposing the application and praying for an order that titles V3849 and V6494 remain in joint ownership, that the Appellant should continue to occupy the main house on title V3849 and that he should continue to occupy the attached self-contained studio apartment on the ground floor with modifications to stop access to the main house and to continue to have sole use of V16827 on which he has a garage and storage facilities for his car hire business.
- [5] The parties gave evidence in support of their respective positions in the matter and in the process they were each subjected to thorough cross-examination. All along, the Appellant reiterated that she was entitled to the whole matrimonial property plus the two million rupees. On the other hand, the Respondent testified and stated that he was not agreeable to transferring his half share of the matrimonial property to the Appellant nor to pay her a lump sum of SR2,000,000 as compensation.
- [6] The trial Judge, Dodin, J. carefully analysed the evidence. In the end, he decreed the parties’ rights as under:-

- i The Petitioner and the Respondent are entitled to half share each in parcels V3849 and V6494 upon which the matrimonial home is situated.
- ii The Petitioner's claim to be entitled to the half share of the Respondent has not been proved to the satisfaction of the Court and is hereby rejected accordingly.
- iii The Petitioner is further entitled to a lump sum of Rs200,000 as full and final settlement for her share in the car hire business King Cars.
- iv The Petitioner shall remain in the matrimonial house and shall have six months to pay to the Respondent the sum of Rs1,800,000, being Rs2,000,000 for his half share minus Rs200,000 due to her as her share in the car hire business and the matrimonial house and the two parcels on which it is situated shall be registered into her sole name upon payment.
- v. Should the Petitioner fail to pay the Respondent in full the amount stated above within six months, the Respondent shall have the option of paying the Petitioner a sum of Rs2,200,000 being her half share in the matrimonial home plus Rs200,000 compensation for her share in the car hire business and the Respondent shall have the matrimonial house and the two parcels upon which it is situated registered in his name and the Petitioner shall vacate the matrimonial home forthwith.
- vi The claim for a lump sum of Rs2,000,000 by the Petitioner as further compensation has not been proved to the satisfaction of the Court and is dismissed accordingly.

vii. The Respondent shall retain in his sole name parcel V16827 upon which the garage for the car hire business is situated with reasonable access to the same being built and maintained by the Respondent without inconveniencing the Petitioner. Further should the Respondent wish to sell that land in future, the Petitioner shall have the first offer to purchase provided that she is the owner of the matrimonial home.

viii. The Respondent shall have access to the matrimonial home to recover his personal properties from the same upon making suitable arrangements with the Petitioner and if necessary with the assistance of the police.

[7] Aggrieved, the Appellant is appealing. She has canvassed ten grounds of appeal. However, all the grounds essentially crystalize on two major aspects: That the Judge did not properly consider and interpret section 20 (supra); and that he did not properly evaluate the evidence on record.

[8] Hence, the Appellant is seeking an order quashing the decision of the Supreme Court in so far as it relates to:-

(i) the Respondent's undivided half share in land parcels V3849 and V6494 and the former matrimonial house thereon (the "Property");

(ii) the payment of the lump sum of SR2,000,000;

(iii) the removal of the personal belongings of the Respondent.

[9] It is not in dispute that in dealing with a case of this nature the court has to be guided by the provisions of section 20(1)(g) of the Matrimonial Causes Act and its equitable powers under section 6 of the Courts Act to settle

property. Fortunately, in the case of **Marie Andree Renaud v Gaetan Renaud** 1998 SCAR 48 (also cited by Dodin, J. in his Judgment) this Court had occasion to pronounce itself on the import and sense of section 20(1)(g) thus:-

the powers of the Court pursuant to Section 20 (1) (g) of the Act must be read within the context of the totality of Section 20 of the Act which is designed for the grant of financial relief. Such relief may consist of a periodical payments (Section 20 (1) (d) or lump sum payment (Section 20 (1) (b) for the benefit of relevant child or property adjustment order (Section 20 (1) (e).

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 disadvantage in relation to the other, by reason of the breakdown of the marriage and or as far as possible, to enable the party applying to maintain a fair and reasonable standard of living commensurate with or near the standard the parties have maintained before dissolution.

[10] We wish to observe that a look at the proceedings, and the Judgment for that matter, will show that much effort was spent in considering whether or not each party should be awarded half share of the properties V3849 and V6494. With respect, this was uncalled for, unnecessary and time wasting because that was the obtaining position anyway. This is evident from the Appellant's own averment under paragraph 4 of her affidavit in support of the application and she was supported that much by the Respondent under part of his averment in paragraph 4 of his affidavit in opposition to the

application. Thus, the properties are registered in the joint names of the parties, with each party listed as owning half share of the properties and it was therefore needless for the court to repeat the same. It was not upon the court to give each party the half share of the properties, they already each own half share anyway.

- [11] What was in contention was whether the court could grant the Appellant the half share owned by the Respondent.
- [12] Perhaps all this happened because no issues were framed by the court and agreed upon by the parties at the beginning of hearing. As we pointed out in **Lucine Vidot and Others v Jeanne Lesperance** SCA 38 of 2013 the importance of drawing issues at commencement of hearing is to focus the Court, and the parties for that matter, on only those matters in which the parties are at issue. In the process time, expense and energy would be saved.
- [13] Reverting to the contention under paragraph (11) (supra), it is our view that granting the Appellant the half share owned by the Respondent would not serve justice considering that no evidence was led to show the Court that the Respondent has another house. Depriving him of his half share may render him homeless.
- [14] It is also our view that the car hire business is the source of livelihood of the Respondent, the same way teaching is the source of livelihood of the Appellant. The Respondent had in an (earlier) affidavit admitted that he and the Appellant co-owned the business. However, there were no books of account brought to the attention of the court to estimate the value of the business. Without books of account to estimate the worth of the business, it

would be difficult to estimate what values if any, the Respondent would be required to pay the Appellant from the business.

[15] The parties had earlier agreed that the Respondent would dispose of the properties H4038 and H6758, and pay the Appellant a sum of SR3,000, 000.

[16] On the 8th April, 2011, the Respondent had written to the Appellant expressing his agreement to pay the Appellant SR3,000,000 in full settlement of their division of the property. Consequently, on 18th April, 2011, the Appellant in her acknowledgement of the sealed offer and acceptance expressed her desire that the agreed amount would be paid in one lump sum.

[17] The parties had formally closed discussion on the amount of money to be paid to the Appellant, and what remained to be discussed was the modalities of implementing the agreement, whether payment in instalments would be acceptable to the Appellant, whether the Respondent would allow the Appellant to stay in the matrimonial home for a further 14 days after closure of the divorce and settlement, etc.

[18] The Respondent further swore an affidavit on 5th December, 2011, in his application for the removal of restriction against the properties, explaining that much to the Registrar of Lands.

[19] In an affidavit sworn on the 30th May 2012, five months after he had deponed to that he needed to sell the properties to, among others, pay the Appellant the sum of SR3,000,000, the Respondent swallowed his words and denied that the Appellant was entitled to any money from the sale of the

properties or at all.

[20] In our view, the offer and acceptance to pay the SR3,000,000 to the Appellant constituted a natural obligation as envisaged in Article 1235 of the Civil Code of Seychelles and rightly held by Justice Sauzier JA in *Hallock v d'Offay SCAR 1983-1987 295* at pg 306 in his dissenting judgment.

[21] What the Appellant asked the court to do in her substituted Divorce Petition was to increase that amount from SR 3,000,000 to SR4,000,000.

[22] The properties were sold, in the words of the Respondent for:

- i. C 5234- sold at SR250,000,
- ii. H 4038 & H 6758 sold at SR3,000,000,
- iii. The Respondent sold a boat they owned (to his attorney) at SR 250,000.

[23] The total declared sale price for the properties was SR3,500,000. Landed property V 16827 and Kings Car Hire remained unsold.

[24] Although the offer stated for the H 4038 and H 6758 was SR6,000,000, the Respondent in his evidence said he could not remember how much he had sold the properties for and referred the court to the transfer documents. While it could be probable that the transfer documents reflect the purchase price as indicated, the attitude of the Respondent and his answers raise questions as to the true value of the properties, the reasons behind the abrupt need to dispose of all his known properties, and his explanations as to how the proceeds were utilized.

- [25] The proceeds were allocated by the Respondent without the participation of the Appellant. The Appellant remains in doubts on the value of the property at the time of sale, as well as the actual sale price.
- [26] In ***Renaud v Renaud* SCA CA 48/1998** in respect of property disputes between the parties, following the divorce, the Court of Appeal held that the Supreme Court has jurisdiction pursuant to section 25(1)(c) of the Act, without prejudice to any other power of the court, on an application by a party to the marriage, to grant order as it thinks fit in relation to the property of a party to the marriage or the matrimonial home. In addition, the Court may even exercise its equitable powers to make any order in the interests of justice under section 6 of the Courts Act. Section 20 (1)(b) of the Matrimonial Causes Act, Cap 124, further gives the court power to consider lump sum payment to any one of the parties in divorce or separation proceedings.
- [27] The description of matrimonial property is property owned by one or both parties who are married to one another, which upon the application of one of the spouses to a court, is subject to division between them. Both parties were working for most, if not the entire period of their marriage. All assets in issue were acquired during the course and subsistence of the marriage. The starting point must be that the assets are shared equally – See the case of ***M v M [2013] EWHC 2534 (Fam)***.
- [28] It is our view that the properties listed as having been disposed of while divorce proceedings had commenced were jointly owned by the parties. Unless good reason is shown, the Appellant should have been involved in the sale as well as in the allocation of the proceeds of sale, to the various

needs that the Respondent explained.

[29] We award the Appellant SR1,000,000 from the proceeds of the sale of the boat, and property reference C5234, H4038 and H6758. The appeal is thus partly allowed to the extent that the Appellant is awarded a lump sum amount of SR1,000,000. For the avoidance of doubt, this sum is in addition to her half share in the matrimonial home. Regarding the latter the Appellant has the first option of purchasing the Respondent's share in the matrimonial home situated on parcels V3849 and V6494 within six months. In the eventuality she fails to exercise this option within the time prescribed the Respondent shall have the option to purchase the Appellant's share in the matrimonial home within six months after the expiration of the Appellant's option, failing which the matrimonial home shall be sold and the proceeds distributed between the parties in the shares indicated by our above decision.

[30] As was also ordered by the Supreme Court, we too order that each party shall bear its own costs.

J. Msoffe (J.A)

I concur:.

S. Domah (J.A)

I concur:.

M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 22 April 2016