

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2021] SCCA 22

SCA 42/2018

(Appeal from Civil Side DC 31/2013)

In the matter between

LISE MARIE-ALINE MONNAIE

(Rep. by Guy A Ferley)

Appellant

and

AUGUSTIN OCTAVE CHOPPY

(Rep. by Frank J. Elizabeth)

Respondent

Neutral Citation: *Monnaie v Choppy (SCA 42/2018) [2021] SCCA 22 11 June 2021*

Before: Robinson, Tibatemwa-Ekirikubinza and Dingake, JJA.

Summary: Matrimonial property- division of shares in a company held by a spouse.

Heard: 26 May 2021.

Delivered: 11 June 2021

ORDER

The appeal fails on all grounds. It is therefore dismissed with costs to the respondent. The judgment and orders of the lower Court are upheld.

JUDGMENT

TIBATEMWA-EKIRIKUBINZA, JA

The Facts

1. The appellant (Lise Marie-Aline Monnaie) and the respondent (Augustin Octave Choppy) got married on 2 April, 2003 at Anse Reunion, La Digue, Seychelles.

2. In an amended petition dated 5 March, 2015, the respondent in line with **Section 4 (1) (d) of the Matrimonial Causes Act** petitioned for divorce on ground that the marriage had irretrievably broken down and the parties had lived separately for a continuous period of at least two years. Shortly before the presentation of the petition for divorce, the appellant granted her consent to annul the marriage and at the hearing, the Respondent produced a document of Consent of Divorce signed by the appellant.
3. The trial judge, E. Carolus, Master of the Supreme Court, found that the marriage of the parties had irretrievably broken and granted a conditional order of divorce to be made absolute after six weeks. Thereafter, the marriage was dissolved by a decree absolute on 9 May, 2016.
4. Consequently, the appellant petitioned the Supreme Court vide MC 2017/DV 31/2013, for payment out of the shares held by the respondent in the company known as **Anse Reunion Villas (Proprietary) Limited** (hereinafter ‘the Company’). The Appellant sought orders that:
 1. The shares held by the respondent in the Company be valued;
 2. She be awarded a half share of the market value of the shares held by the Respondent in the Company; and
 3. Any other order that the Court deemed fit and reasonable in the circumstances of the case.
5. According to the appellant, in 2003, the respondent purchased a piece of land (Parcel LD1275) from his father in order to construct a tourism project for the benefit of himself and the Appellant. Furthermore, that the respondent enlisted the help of a business partner, Mr. Tony Wong, with whom he incorporated the Company and together became the shareholders as well as directors. The company then obtained a bank loan and constructed four chalets on the land which were used to operate a guesthouse business.
6. The appellant testified that while she was running the business, the respondent informed her that his share in the business belonged to both of them and that for that matter, she put a lot of effort in running it as anybody with a proprietary interest would. She averred that she

invested considerably in the business by way of labour, management and kind contributions. The appellant further stated that she solely ran the business until her marriage to the respondent began to fail and she was forced out of the business.

7. In his reply, the respondent stated that there had been no intention that the land, which he received as a gift from his father, and the guesthouse business that he started thereon, would be investment for mutual benefit of himself and the appellant. He also stated that the fact that the appellant had not been given any shares in the Company was proof of the intention that she would not have an ownership stake in it.
8. Furthermore, the respondent stated that:
 1. While working for the Company, the Appellant received a monthly salary;
 2. After the Appellant left the Company, she filed a case against the Company and was paid SCR 68,000 as compensation;
 3. It had been agreed between the Appellant and the Respondent that at the time of the divorce, he would not claim a share of their matrimonial properties and the Appellant would equally not claim a share of his guesthouse business.
9. The Supreme Court rejected the appellant's claim and noted that:
 1. The appellant had failed to prove that she had done additional work in respect of running the company;
 2. The appellant had not adduced evidence of her salary to show that it was in fact too low and that she was participating in the venture in consideration of the promise that shares would be allotted to her in return;
 3. The appellant admitted that the respondent had contributed SCR 50,000 toward the construction of their matrimonial home, although the Respondent had contributed nearly SCR 1,000,000 and that it had been agreed that the Appellant would keep both matrimonial houses and not claim any share in the company;
 4. The appellant had been paid SCR 68,000 as compensation when her employment with the Company was terminated.
10. Dismissing the appellant's petition with costs, the Supreme Court noted that it had found no basis for ordering a valuation of the shares in the Company or granting the Appellant any shares in the Respondent's stake in the Company.

11. Dissatisfied with the judgment of the Supreme Court, the appellant appealed to this Court on the following grounds:

1. The Learned Judge erred in law in [that] he failed completely to apply the law, practice and principle of partition of matrimonial property in that he failed to take into consideration the provision of section 20 (1) (g) of the Matrimonial Causes Act in that:

- i) He erred in finding that the Appellant is not entitled to shares from the Petitioner, when the question before him was to order a valuation of the shares the Respondent held in the Company Anse Reunion Villas Company Limited, so that the Petitioner could be awarded the monetary value of a share thereof;**
- ii) He failed to appreciate nor to take into consideration all the circumstances of the case as borne out in the evidence before the court. He rested his finding on a misinterpretation of the law namely whether the Respondent had promised the Appellant shares in the Company rather than to determine whether the said shares constitute matrimonial property.**

2. The Learned Judge erred in his assessment of the evidence before the court in regards to the contribution the Respondent purportedly made towards the house belonging to the Petitioner.

Prayers

12. The Appellant sought the following reliefs from the Court:

- 1. An order allowing the appeal on all the grounds,
- 2. An order of valuation of the shares that the Respondent held in the company, Anse Reunion Villas (Pty) Limited; or, in the alternative
- 3. An order referring the matter back to the Supreme Court for a re-hearing on assessment and partition of the matrimonial property which consists of the shares of the respondent in the Company.

Appellant's submissions

13. Although the appellant's Memorandum of Appeal contained two grounds, the appellant's counsel advanced arguments in respect to ground 1 only. The Court's decision will therefore be premised on the arguments made on this ground.

Ground 1

14. The Appellant's counsel submitted that the shares held by the Respondent in the company were matrimonial property within the meaning of **Section 20 (1) (g)** of the **Matrimonial Causes Act, Cap. 124** and that they are intangible assets which appreciated in value due to the contribution of the Appellant. That the appellant worked at the company 24/7 and never took any leave for four years which showed she was not a conventional employee of the Company.
15. Regarding ground 1 (ii), counsel argued that it was never submitted nor pleaded that the appellant expected to be allotted shares in the Company. That what was pleaded and supported by evidence was the fact that the appellant gave her labour freely in expectation that the prosperity of the business would benefit her husband and herself as a family unit as far as her husband's share in the business was concerned. That had the trial Judge properly examined this evidence in light of **Section 20 (1) (g) (supra)**, he would have come to a different conclusion. That the correct analysis of the said Section was rightly demonstrated in the cases of **Hoareau vs. Hoareau**¹ and **Anthony Herbert Dave Pillay vs. Gracy Sybil Pillay**².

Respondent's reply

16. In reply, the respondent's counsel supported the findings of the lower Court and submitted that the Appellant had failed to discharge her burden of proving that she made any contribution to or was entitled to any share within the Respondent's business.
17. Counsel also argued that having found that the Appellant had failed to prove any entitlement to the Respondent's shares in the Company, the Court could not make a futile order for valuation of the same shares.

¹ (2015) SLR 155.

² [2018] SCSC 98.

18. The Respondent further submitted that the Appellant had only been an employee of the Company and had received a monthly salary in addition to compensation of SCR 68,000 following the termination of her employment.
19. Furthermore, the respondent's counsel submitted that the Appellant had admitted that the Respondent had contributed toward their two matrimonial houses and yet had not claimed any share in them.
20. The Respondent also argued that the Appellant's affidavit was defective in the following aspects:
- i) The Appellant had failed to expressly plead the existence of the company and attaching documents such as its certificate of incorporation, memorandum of association, and documents evidencing the shareholding; and
 - ii) The Appellant failed to plead the number of shares held by the Respondent in the Company and those held by Mr. Tony Wong;
21. Counsel argued that the failure to plead the above matters was fatal to the Appellant's application before the Supreme Court. To buttress this argument, counsel relied on the case of **Monthy vs. Seychelles Licensing Authority and another**.³

Court's consideration

Ground 1

22. The appeal before Court raises two central arguments.
1. That the appellant was promised or that it was understood between her and the Respondent that the shares he held in the Company were held by him for their mutual benefit. She was merely realising what was a pre-existing rightful share in the Company; and
 2. In any case, the shares held by the Respondent in the Company are matrimonial property and therefore *ipso facto* liable to distribution upon the dissolution of the marriage. It would therefore be irrelevant whether or not the Respondent promised her a share of his Company shares once it was established that they qualify as matrimonial property.

³ SCA 37/2016 [2018] SCCA (14 December 2018).

23. The appellant's arguments call for determination of the question: *whether the shares held by the respondent in the company qualify as matrimonial property and thus liable for distribution between the parties.*

24. The law and principle governing the division of matrimonial property is provided for in **Section 20 (1) (g)** of the **Matrimonial Causes Act, Cap. 124** as follows:

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-

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 of Court)

25. The above provision generally provides for the criteria to be followed by courts in distribution of property upon dissolution of a marriage.

26. The court is empowered under **Section 20 (1) (g) (supra)** to make inquiries as it thinks fit and have regard to all circumstances of the case, including the ability and financial means of the parties.

27. In the present case, the respondent claimed that the appellant did not adduce evidence to show that she contributed financially to the acquisition of shares in the company. Where a party has legal ownership of property, a spouse who seeks to have a share in it must adduce evidence to the effect that they contributed to the property. The appellant in this case presented evidence of her labour given to the company as indirect contribution to her husband's shares. Indeed, this Court in **Samori vs. Charles**, held that a marriage is not only about financial contributions; it is also about love, friendship, security, commitment, moral

and emotional support, which combine together to make a success of the lives of the two people to the marriage. These are matters that cannot easily be measured in monetary terms and also cannot be ignored when a court is called upon to make a determination on matrimonial property.⁴

28. Be that as it may, I note that the appellant was employed by the company and not by the husband. In law, a company is an independent entity from its shareholders. The company used to pay the appellant a monthly salary for her labour and hard work. It is the same company that paid compensation of SR 68,000 when the appellant's employment was terminated. Therefore, whatever contribution the appellant made was to the company and cannot be considered as indirect contribution to the property in which legal ownership is with the respondent- the shares held by the respondent. It follows that the appellant's argument that she worked hard at the company cannot prima facie be taken as contribution to matrimonial property.

29. Furthermore, courts in exercising their discretion in division of matrimonial property are to be guided by the goal of ensuring that one party is not to be put at an unfair advantage in relation to the other. In my view, this is the principle of fairness and equity. In **Hoareau vs. Hoareau**⁵, this Court emphasized the principle as follows:

“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.” (See also: **Renaud vs. Gaetan SCA 48/1998**).

30. The respondent in his affidavit in reply at paragraph 6 averred that the appellant had walked away with two of the residential houses. This evidence was not disputed by the appellant.

⁴ SCA No: 38/2009 [2012] SCCA 35.

⁵ SCA 37 of 2011.

31. In such circumstances, it would be inequitable to grant the appellant a 50% share of the respondent's stake in the Company while he obtained no share at all in their matrimonial properties. Such a decision would leave the respondent in a financially disadvantaged position compared to that of the appellant who has two of matrimonial properties already given to her.
32. I therefore hold that the appellant is not entitled to share in the respondent's stake in the Company.
33. The appellant also faulted the lower court's finding that she was not entitled to a share of the respondent's stake in the company, when the question before him was to order a valuation of that stake so that the appellant could be awarded the monetary value of a part thereof.
34. I agree with the respondent's reply to the above submission which was to the effect that the lower court could not order a valuation of those shares without first determining whether or not the appellant was entitled to a share in the property.
35. The Court was bound to first determine whether the Appellant was entitled to the said shares before making a valuation order because a court should not act in vain. Having found that the appellant was not entitled to the shares sought, the prayer for an order of valuation had to fail.
36. With regard to the respondent's submission that the appellant's affidavit had been defective due to failure to expressly plead the existence of the Company and to attach its certificate of incorporation, memorandum of association and documents evidencing the shareholding structure, I find the argument irrelevant. The respondent did not dispute the existence of the company nor the fact that he and Mr. Tony Wong were shareholders in the said company. I also do not see any prejudice that the Respondent has suffered merely because the appellant did not attach documents that prove something the respondent does not dispute.

37. Furthermore, the case of **Monthy vs. Seychelles Licensing Authority and Another**⁶ cited by the respondent is itself clear. The case is to the effect that a pleading must state facts and not the evidence by which they are to be proved.

38. I therefore find that the respondent's argument above does not have merit.

Conclusion and Orders

39. Arising from the analysis above, I hold that the appeal fails on all grounds and order that:

1. The appeal be dismissed with costs to the respondent.
2. The judgment and orders of the lower Court are upheld.

Dated and signed on this 11th day of June, 2021.



Tibatemwa-Ekirikubinza, JA.

Dingake JA

I agree with the conclusion that the appeal should be dismissed with costs to the respondent and that the judgment and orders of the lower court are upheld.

Robinson JA

⁶ **SCA 37/2016 [2018] SCCA (14 December 2018).**

