

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2020] SCCA 16 30 April 2021
SCA 31/2018
(Appeal from MA322/2016
arising in DV78/2015)

In the matter between

GRACY ARISSOL
(rep. by Mrs. A. Amesbury)

Appellant

and

DAVE PILLAY
(rep. by Mr. Serge Rouillon)

Respondent

Neutral Citation: *Gracy Arissol v Dave Pillay* (SCA 31/2018) [2021] SCCA 16 30 April 2021
Before: Fernando President, Robinson JA, Govinden CJ
Summary: Property and financial adjustments under the Matrimonial Causes Act 1992 [CAP 124] - Appeal partly allowed and partly dismissed. Each party shall pay her/his costs.
Heard: 23 August 2019, 14 July 2020 & 7 April 2021
Delivered: 30 April 2021

ORDER

1. Ground 1 of the grounds of appeal is allowed.
2. The order awarding Gracy Arissol thirty (30) percent in the value of parcel J1606 and the four bedroom-house standing thereon (SCR1,200,000) is set aside and replaced by the following orders —
 - (i) The share of Gracy Arissol and Dave Pillay in parcel J1606 and the four bedroom-house standing thereon shall be fifty (50) per cent each;
 - (ii) The share of Gracy Arissol and Dave Pillay in parcel J1606 and the four bedroom-house standing thereon shall be SCR2,000,000 each;

- (iii) Order is made substituting for the sum of SCR1,200,000 for the share of Gracy Arissol in parcel J1606 and the four bedroom-house standing thereon, the sum of SCR2,000,000.
3. Grounds 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the grounds of appeal are dismissed.
 4. Gracy Arissol is ordered to vacate the house standing on parcel V10596 within six (6) months of the date of the judgment of the Court of Appeal.
 5. Gracy Arissol and Dave Pillay shall pay her/his costs of this appeal.

JUDGMENT

ROBINSON JA (FERNANDO PCA AND GOVINDEN CJ concurring)

The Background

1. Dave Pillay, the respondent (then the petitioner), and Gracy Arissol, the appellant (then the cross-petitioner), were husband and wife. They had met in 1998 before marrying on the 5 December 1999 at Bel Ombre, Mahe. The marriage between Gracy Arissol and Dave Pillay lasted for about fifteen and a half years. They got divorced on the 31 July 2015. There is one minor child of the marriage. Dave Pillay and Gracy Arissol both applied for property and financial adjustments under the Matrimonial Causes Act 1992.
2. Dave Pillay's amended petition neither asked for any specific amount nor a percentage of the value of the matrimonial property, but left the determination of all amounts to the learned Judge. Gracy Arissol's cross-petition asked the Supreme Court to make the following orders —
 - "(a) [...] an order of full lawful and beneficial ownership of land parcel in J1606 and the matrimonial home and accompanying structures thereon for and in the entire interest of the Cross-Petitioner in accordance with rule 4 (1) (j)
 - (b) [...] an order of half of the lawful and beneficial ownership of the land parcels S6399 and V10596 and accompanying structures for and in the interest of the Cross-Petitioner in accordance with rule 4 (1)(j)

- (c) [...] an order that the Cross-Petitioner be granted, forthwith, sole occupancy of land parcel J1606 and the matrimonial home and accompanying structures thereon, forthwith, in accordance with rule 4 (1)(j)
- (d) [...] an order restraining the Cross-Respondent from entering and remaining on land parcel J1606 and the matrimonial home and accompanying structures thereon forthwith, in accordance with rule 4(1)(h)(j)
- (e) [...] an order that the Cross-Petitioner is awarded the sum of 4,000,000 (four million Seychelles Rupees), in respect of her shares in the business owned by the Parties
- (f) [...] an order in respect of maintenance of a relevant child in accordance with Rule 4 (1)(i)
- (g) [...] an order in respect of the education of a relevant child in accordance with Rule 4 (1)(i)."

3. The learned Judge set out the matters at issue, in this case, following amendments made to the cross-petition by Gracy Arissol —

"Court: So the only matter at issue therefore is that you have full ownership and occupancy of the Le Niole property which is V10596 and a share in parcel J1606. Do I understand you correctly?"

A: That is correct my lady and if I may ask the court V10596 is charge free.

Court: And you are also asking the court under (e) for an order of R6 million in respect of your shares in the business. Is that still going ahead?"

A: May I make an amendment too?"

Court: You can indeed yes through your lawyer.

Mrs Amesbury: It has been amended from 6 million to 4 million.

A: R4 million as the shares of the two companies.

Court: Both Sterling and Impact Logistics. The amendment is granted without any objection from Mr Rouillon for Mr Pillay

Mrs Amesbury: That is all my Lady."

4. Gracy Arissol testified to the effect that she was not asking to be awarded any share in parcel S6399.

5. After reviewing the evidence, the learned Judge delivered a judgment on the 27 June 2017, hereinafter referred to as the "*Judgment*". The Judgment decided as follows —

"[62] Parcel J1606 has been valued at SR 4 million by the petitioner. The respondent has not challenged this valuation nor offered an alternative valuation. Her share in that property is therefore SR 1.2 million and I so Order.

[63] I shall make further orders in respect of how her share in Parcel J1606 is to be realised on receiving the valuations of her shares in the other two companies, namely Impact Logistics (Pty) Ltd and Sterling Investment (Pty) Ltd and by inference in Parcels V10596 and V10450.

[64] In respect of the appointment of an Auditor to audit the companies' accounts and provide the court with a valuation of the shares of the parties in Impact Logistics (Pty) Ltd and Sterling Investment (Pty) Ltd, after consultation with the parties it is agreed that Jean-Marie Moutia, of ACM Associates, English River, is appointed for the work. A copy of this Judgment is to be forwarded to the Auditor, whose fees shall be met by the parties' jointly on or before the 15 July 2017. The Auditor is to report to the Court on or before the 14 October 2017. The Parties are ordered to fully cooperate with the Auditor and to surrender all relevant documents to him so that he may carry out his work.

[65] This case is adjourned for the consideration of the report and further Orders of the Court to 18 October 2017."

6. During the hearing of this case, on the 8 November 2017, Mr Spencer gave the learned Judge a report, titled "*VALUATION OF SHARES Sterling Investment (Pty) Ltd Impact Logistics (Pty) Ltd*", dated 8 November 2017, prepared by ACM Associates, hereinafter referred to as the "*Expert Report*".
7. The learned Judge delivered an order on the 5 February 2018, based on the Expert Report, which ordered as follows —

"[7] I have already ordered that the Petitioner pay the Respondent the sum of SR1.2 million for her share in the matrimonial home on Parcel J1606. In addition and in view of the circumstances outlined above, I make the following additional orders:

*1. I order the Petitioner, Dave Herbert Pillay to pay SR 853,512.30 to the Respondent, Gracy Sybil Pillay for her one share in the company Sterling Investment (Pty) Ltd with a deduction of SR 24,269 for her shares in Impact Logistics (Pty) Ltd. This amounts to a total of **SR829,243.30** to be paid by the Petitioner to the Respondent.*

2. I make no order as to costs."

8. On the 5 April 2018, the learned Judge made the following "final orders", which read as follows —

"1. The Respondent is to vacate the house on parcel V10596 at le Nirole within 6 months of this order.

2. The Petitioner is to pay the Respondent the sum of 1.2 million for her share in J1606 and SR829,243.30 for her combined shares in Sterling Investment V10450 and Impact Logistics V10596 a total of 2,029,243.30.

3. Should the petitioner fail to make the payment in relation to Parcel J1606 as ordered within six months hereof, the respondent is entitled to pay the petitioner the sum of SR 2,700,000 corresponding to his share in the same and he shall vacate the property forthwith.

4. Should the Petitioner fail to make payment in relation to the Respondent's shares in Sterling Investment and Impact Logistics, the Companies are to be wind up pursuant to Section 95(c), (d) and (h) of the Insolvency Act 2013 with the extending debts to be paid in accordance with the parties respective shares in the Companies.

5. Each party shall bear his/her own costs."

The grounds of appeal

9. The grounds of appeal are —

"1)The Learned Judge erred by assessing the Appellant's (Gracy Arissol's) share as only 30 % or 1.2 million Rupees when the property is valued at 4 million.

2) On 5 April 2018 ordered that the Appellant and the minor child vacate parcel V 10596 within six months, failing to consider the housing and other needs of the Appellant and child.

3) The learned trial Judge failed to consider or to adequately consider that the Auditor was precluded from making a fair assessment of the assets of Impact Logistics (Pty) Ltd. due to the production of incomplete accounts.

4) The learned Judge erred when neither the Appellant's submissions in regard to the Auditor's report nor the Respondent's (Dave Pillay's) testimony on this point was considered by the court in assessing the Appellant's share of the company's liability.

5) The learned Judge acted in error when she failed to consider that personal funds cannot be deducted from the Appellant's award to pay for the Company's liability without first selling the company's Assets to pay the liabilities.

6) *Despite the court being mindful of other factors brought into the evidence at the hearing when determining the Appellant's share in the businesses the court failed to consider the evidence of the Bank Officer and the fact that the auditor's report was based on "incomplete records" of the company's financial affairs.*

7) *In considering the division of matrimonial properties the learned Judge failed to consider the applicable law as stated in the MCA section 20(1)(g) and to attach sufficient weight to all relevant factors and attached weight to irrelevant facts.*

8) *Despite the court having made several orders in the present case in regards to division of matrimonial property both movables and immovable the court failed to make any orders in regards to the parties relevant minor child as per section 24(2) and section 25(2)(b) of the MCA.*

9) *The learned Judge erred in finding that the **Totality of the Appellant's combined shares in Sterling Investment, V 10450, Impact Logistics and the matrimonial home totals SCR 2, 2029, 243/-.***

10) *The multiplicity of the orders and applications made by the Respondent and the total lack of consideration of the Appellant's substantial submissions at every stage of the case the Appellant was denied her right to have her case heard by an independent and impartial court as guaranteed to her under Article 19 (7) of the Constitution."*

10. By way of relief, Gracy Arissol sought the following orders —

"3.1 A judgment reversing the findings and decision of the learned trial Judge and awarding the Appellant her just and equitable shares in the properties and the jointly owned businesses, as per section 20(1)(g) of the MCA.

3.2 Ordering the Respondent to pay the Appellant's costs of this Appeal and in the court below.

3.3 Any other orders in regards to the minor child's housing and Educational needs pursuant to section 24 (2) and section 25 (2)(b) of the MCA."

The evidence

11. Before considering the grounds of appeal, and the written and oral submissions submitted on behalf of Gracy Arissol and Dave Pillay, it is convenient to summarise the facts.

The evidence of Dave Pillay (the petitioner then)

12. Dave Pillay was a sole trader before he and Gracy Arissol were married to each other.

Before he met Gracy Arissol, he purchased parcel J1606 situated at Beau Belle for SCR400,000 from one Herbert Hoareau, on the 11 November 1999, (exhibit P1), from the proceeds of his business activities. Gracy Arissol did not contribute to the purchase price of parcel J1606.

13. On the 17 July 2001, Dave Pillay sold parcel J1606 for SCR670,000 to Georges Francois Gill (exhibit P2), his brother in law. As I understand it, regarding the sale and transfer of parcel J1606, Georges Gill gave him two cheques drawn in his [Dave Pillay's] favour, one for SCR600,000 and the other one for the same amount. Dave Pillay used the money to finance his tax debt for SCR1,200,000. He was going to the United States to train to be a pilot, at the time.
14. On the 8 April 2010, Georges Gill transferred parcel J1606 and the house situated thereon, jointly and in an equal share, to Dave Pillay and Gracy Arissol for SCR1,200,000 (exhibit P4).
15. Dave Pillay and Gracy Arissol have ninety shares and ten shares in Impact Logistics (Pty) Ltd, respectively; a company incorporated in 2005. Gracy Arissol, a director and an employee (a sales representative) of Impact Logistics (Pty) Ltd, never paid in cash for her ten shares. Dave Pillay and Gracy Arissol earned the same salary as employees of Impact Logistics (Pty) Ltd. Gracy Arissol stopped working for Impact Logistics (Pty) Ltd in October 2014.
16. On the 4 April 2013, Dave Pillay and Gracy Arissol transferred parcel J1606 and the house situated thereon to Impact Logistics (Pty) Ltd for SCR1,200,000. Hubert Alton & Co. valued parcel J1606 and the four-bedroom house situated thereon for SCR4,000,000.
17. Impact Logistics (Pty) Ltd represented by Dave Pillay, in his capacity as a director, bought parcel V10596 and the house situated thereon, at Le Niole, from Robenson Louis and Louis Hoareau, for SCR2,500,000, on the 4 April 2013 (exhibit P15).

18. A printed copy of an interim statement, Barclays Bank (Seychelles) Ltd ("*Barclays Bank*"), dated 17 October 2016, for account number 2000986 for Impact Logistics (Pty) Ltd, showed a current balance of minus SCR312,500.14 (exhibit P23). Dave Pillay claimed that the current balance, as mentioned, represented the amount of money outstanding for the repayment of the loan taken to finance the purchase of parcel V10596.
19. Nadia Gray and Michel Felix and Dave Pillay and Gracy Arissol entered into an agreement dated 26 August 2014, in terms of which Nadia Gray and Michel Felix sold to Dave Pillay and Gracy Arissol the following shares in Sterling Investment (Pty) Ltd (exhibit P20). Nadia Gray transferred her nine shares to Dave Pillay, and Michel Felix transferred his one share to Gracy Arissol. The said ten shares were sold for SCR6,500,000. That agreement also provided that Gracy Arissol was holding the said one share transferred to her on behalf of Dave Pillay.
20. Sterling Investment (Pty) Ltd is the owner of the leasehold interest over parcel V10450, under the lease agreement entered into by it with the Seychelles Industrial Development Corporation on 3 November 2007. Dave Pillay and Gracy Arissol took a loan from the Development Bank of Seychelles for SCR6,398,000 "*for the acquisition of an existing company including a building comprising of storage facilities used for rental services*" (exhibit P24). Dave Pillay repaid the said loan for Sterling Investment (Pty) Ltd. Gracy Arissol neither helped finance the leasehold interest nor took part in the affairs of Sterling Investment (Pty) Ltd.
21. Hubert Alton & Co. valued the leasehold interest for SCR6,500,000; its report is dated the 24 February 2014 (exhibit P12). Currently, the shareholders of Sterling Investment (Pty) Ltd are Dave Pillay and Mrs Flory Gill, who hold nine shares and one share in the said company, respectively. Mrs Flory Gill, who is Dave Pillay's sister, is the wife of Georges Gill.
22. He went on to testify that Gracy Arissol was an employee of Air Seychelles when they

met. She worked for Air Seychelles from 1999 to 2010; after that, she took a sabbatical leave. She earned a monthly salary of about SCR6,000 to 7,000 and a monthly allowance of Euros (€)300 to 350.

23. He denied that Gracy Arissol supported the family from her salary and foreign exchange allowance earned from Air Seychelles. He also explained that her "*meagre*" salary would not have been enough to finance business activities. He borrowed money from Georges Gill to finance some of his business activities.
24. He denied that Gracy Arissol supported him in the United States. When his family moved to the United States, he sold his car and used the proceeds of the sale to fund his family's stay and studies.
25. Regarding a court judgment CA30/2015, an appeal from the Family Tribunal, dated 28 June 2016, Dave Pillay stated that Gracy Arissol owes him the sum of SCR83,644. That sum includes utility fees from Gracy Arissol's stay at Beau Belle.
26. Gracy Arissol drives a Toyota Rav4, an asset paid for by and belonging to Impact Logistics (Pty) Ltd, which is in her name.
27. He produced a directors' report and financial statements for the year ending the 31 December 2015 for Impact Logistics (Pty) Ltd. He also tendered financial statements for Impact Logistics (Pty) Ltd for 2006, 2007, 2008 and 2009 (exhibit P28 collectively).
28. He claimed that he is in debt and is living off family and friends. He had not seen his child, whom Gracy Arissol has full custody of, for over two years.
29. When cross-examined, he stated that he returned from the United States in 2002. He was employed by "*IDC*" and worked there for about one and a half years or two years. He could not recall when he stopped working there. After leaving IDC, he incorporated a

company in 2005 with money given to him by Georges Gill. Between 2001 and 2005, he was a sole trader and obtained money from Georges Gill to fund business activities.

30. Gracy Arissol worked for Air Seychelles as a flight attendant. He denied that she supported him financially in 2001 to repay his tax debt to the sum of SCR1,200,000.
31. Every year he receives SCR70,000 to 74,000 from Sterling Investment (Pty) Ltd. He does not pay any rent for the use of the warehouse. He owes the bank about SCR5,000,000 for the warehouse.

The evidence of Georges Gill

32. Georges Gill is a contractor doing pest control. He has known Dave Pillay for about forty years and Gracy Arissol for about thirteen to fourteen years. He helps Dave Pillay with his business activities.
33. Dave Pillay has repaid him the sum of SCR1,200,000 that he borrowed concerning parcel J1606.
34. From October 2014 to July 2015, he [Georges Gill] and Gracy Arissol had a cordial relationship. Gracy Arissol stayed at his house because she had problems with Dave Pillay. Georges Gill assisted her with money, and in any way he could.
35. When cross-examined, Georges Gill stated that he assisted Dave Pillay financially with respect to his business activities, and that Dave Pillay owes him SCR1,500,000. We note that there is no documentary evidence supporting this claim, except for Georges Gill's oral evidence.

The evidence of Gracy Arissol (the cross-petitioner then)

36. Gracy Arissol is currently employed as a supervisor in the legal department at the Seychelles Commercial Bank. She met Dave Pillay in 1998, and they got married in December 1999. She was then a flight attendant for Air Seychelles and Dave Pillay, a

sole trader.

37. She could not assist Dave Pillay with his tax debt. She confirmed his testimony to the effect that Georges Gill helped him in paying his debt.
38. In July 2001, Gracy Arissol and her family moved to the United States. Dave Pillay wanted to train, in the United States, to become a commercial airline pilot. She sold a white tipper to Georges Gill for SCR120,000 (exhibit D1), and Dave Pillay sold his car. They used the money to pay for their move to the United States. Dave Pillay paid for his flight training. Gracy Arissol and her family returned to Seychelles in 2002.
39. Upon his return to Seychelles, Dave Pillay started as a trainee pilot with "IDC". Dave Pillay left his employment to do mandatory military training at the military academy, which he did not complete. Thus, he stayed at home. He was also a sole trader at the time. As they had just returned to Seychelles, the business was not doing well. Since she was working as a flight attendant, she supported the family and the company financially. She earned a monthly salary of about 1000 pounds sterling (£). She used her salary to purchase goods abroad, which she sold at a profit. She used the proceeds to pay for her family purchases and expenses. She also purchased goods abroad for the business, which Dave Pillay sold at a profit. Moreover, as there was a foreign exchange crisis in the country, her salary, paid partly in foreign exchange, greatly assisted the business.
40. As an employee of Air Seychelles, she also obtained rebated tickets, which Dave Pillay and her family enjoyed. Dave Pillay travelled on rebated tickets and stayed at the same hotel where she stayed while working abroad, thus significantly reducing the family's and business' travelling and other expenses.
41. She took a loan of SCR20,100 from the Youth Enterprise Scheme in 2003, which Dave Pillay used to purchase goods abroad to be sold by the company, (exhibit D2). She repaid the loan.

42. Dave Pillay and Gracy Arissol purchased shares in Sterling Investment (Pty) Ltd (exhibit P20). In their capacity as the directors of that company, they borrowed SCR6,398,000 from the Development Bank of Seychelles for the said company. She is no longer a shareholder of the said company. She never received monetary benefits from Sterling Investment (Pty) Ltd. She drives a car given to her by Impact Logistics (Pty) Ltd.
43. She is now occupying parcel V10596 at Le Niol, which was financed by Impact Logistics (Pty) Ltd from the proceeds of a loan obtained by it.
44. Gracy Arissol stopped working as a flight attendant in 2010. At the time, her marriage was rocky. She used all her work compensation to buy goods for Impact Logistics (Pty) Ltd. Gracy Arissol stated that she had injected about SCR1,300,000 into Impact Logistics (Pty) Ltd from 1998 to 2010.
45. Gracy Arissol asked the Supreme Court for full lawful and beneficial ownership of parcel V10596 and the matrimonial home and accompanying structures thereon and a share in parcel J1606. She is not asking for any shares in S6399. She is also asking for SCR4,000,000 for her share value in both Sterling Investment (Pty) Ltd and Impact Logistics Pty Ltd.

The evidence of Frantina Bamboche

46. Frantina Bamboche is the Relationship Manager at Barclays Bank. Impact Logistics (Pty) Ltd holds a current rupee account and a loan rupee account with Barclays Bank. The loan account statements concerning Impact Logistics (Pty) Ltd was tendered as exhibit D6, and the current account statements pertaining to Impact Logistics (Pty) Ltd as exhibit D7. Concerning Impact Logistics (Pty) Ltd, there exists only one loan. The outstanding amount of the loan is SCR52,083.49. She tendered statements from 2010 to 2017.

The evidence of Joeliff Yocette

47. Joeliff Yocette is an Immigration Officer. He produced the immigration records for Dave Pillay (exhibit D8), which depicted the following —

Year	Number of trips undertaken outside of Seychelles
2005	29
2006	34
2007	30
2008	26
2009	21
2010	10
2011	18
2012	14
2013	10
2014	13
2015	19
2016	12

The evidence of Mr Danny Pierre

48. Danny Pierre is the Head of Recovery and Collection at Barclays Bank. Impact Logistics (Pty) Ltd had a business loan with Barclays Bank, dated 19 April 2010, for the sum of SCR1,600,000, to purchase a property for business activity. That loan has been repaid.
49. Impact Logistics (Pty) Ltd also took an overdraft facility from Barclays Bank for SCR400,000/- (exhibit D11) in January 2013, for working capital for the said company.
50. On the 25 March 2013, Barclays Bank offered the directors of Impact Logistics (Pty) Ltd a long term loan facility to the amount of SCR2,500,000 (exhibit D12). Repayment for that loan was SCR52,083/- per month. That loan has been repaid. Danny Pierre

stated that there is no debt owing from Impact Logistics (Pty) Ltd, in answer to a question from the learned Judge to that effect.

The evidence of Cindy Blakemore

51. Cindy Blakemore, the Acting Commissioner for Customs, testified that Impact Logistics (Pty) Ltd imported about seventy-five containers of goods from 2008 to 2016. From 2015 to 2016, about twenty containers of goods were imported. When cross-examined, she stated that figure "seventy-five" referred to "import consignments".
52. It is against this background that I consider the grounds of appeal.

Analysis of the contentions of Gracy Arissol and Dave Pillay

53. I have considered the evidence on record, the Judgment, the order of 5 February 2018, the order of 5 April 2018, the grounds of appeal and the written and oral submissions submitted on behalf of Gracy Arissol and Dave Pillay.

Ground 1

54. I consider ground 1, which challenged the quantum awarded to Gracy Arissol by the learned Judge concerning parcel J1606 and the four-bedroom house situated thereon. I pause to state that Impact Logistics (Pty) Ltd has transferred parcel J1606 to one Sithra Lakshmi Chetty on the 21 June 2018, after the conclusion of the case at first instance.
55. The learned Judge declared the sale of parcel J1606 to Impact Logistics (Pty) Ltd null and treated parcel J1606 "as still being in the joint names and in equal shares to the parties". There is no issue raised with respect to this finding. The learned Judge assessed the share of Gracy Arissol and Dave Pillay in parcel J1606, based on the following factors —

"that although the starting point for the Court's assessment of the parties share in this property is 50/50 as is evident on the transfer document of 2010, other factors need to be taken into consideration in arriving at a fair adjustment. In the circumstances given all the evidence adduced before the Court, bearing in mind the length of the marriage, the acrimonious and rocky state of the marriage from very early, the periods spent living apart, the financial contributions and other efforts towards the parties' business and other undertakings I find it reasonable to assess the share of the petitioner as 70 % and that of the Respondent as 30 % of this property."

56. The learned Judge also stated: *"Courts do take into account the efforts of parties to a marriage to the caregiving and homemaking in assessing their share in a matrimonial home [...]. She found that: "both parties' efforts in this respect cancel each other out as both were away from home and their child for long periods, the Respondent as an air hostess and the Petitioner on his more than frequent business trips"*.
57. The heads of argument contended that the learned Judge erred in the circumstances of the case and on the state of the case law in not awarding Gracy Arissol a half share in the value of parcel J1606. The heads of argument submitted on behalf of Dave Pillay, concerning this ground of appeal, primarily argued that Gracy Arissol's contribution to the running of the household was negligible.
58. Counsel for Gracy Arissol has referred us to the case of *Lesperance v Lesperance Civil Appeal No. 3 of 2001* (delivered on 9 August 2001). In **Lesperance**, a fifty per cent share in the matrimonial home was awarded to the appellant-wife. The respondent had purchased parcel H720, on which stood the matrimonial home, in his name and with his money and the construction of the house was from his savings. I observe that the facts in **Lesperance** were materially different from the facts of this case. In **Lesperance** the appellant and the respondent had been married for twenty-eight years and all their children were of age. The appellant, for her part, raised the children and contributed in kind to the maintenance of the family.
59. The Court of Appeal in **Lesperance** considered the cases of *Florentine v Florentine [1990] SLR 141* and *Ho Peng v Ho Peng No. 71 of 1993*, in which, in identical

circumstances, a half share was granted to the wife. In **Florentine** the marriage had lasted for 25 years, as opposed to twenty-eight years in **Lesperance** and the wife in **Florentine** had equally not been employed but had brought up the children and minded the home.

60. I note that the facts in the above cases were materially different to the facts of this case. After giving this ground of appeal my best consideration, I conclude that there is merit in the submission of Gracy Arissol by Counsel that the learned Judge had attached too much weight to the financial contribution made by Dave Pillay to parcel J1606 in assessing her share in parcel J1606. The Judgment revealed that Dave Pillay's more significant share (seventy (70) per cent) in parcel J1606 reflected his financial contribution to it and was because he had bought parcel J1606 in the first place. The learned Judge stated at paragraph 55 of the Judgment: "*[55] I am not of the view that either party has been totally forthcoming in their evidence as to their shares in that property. However, given the fact that it is the Petitioner who bought the property in the first place, despite its subsequent transfer and retransfer I am prepared to give him a greater share in the property to reflect his financial contribution to it. I do not see much evidence of the Respondent's financial contribution to that property.*"

61. There are various matters on the evidence that would have a bearing on an award under section 20(1)(g) of the Matrimonial Causes Act, which provides—

"20.(1) 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."

62. The evidence, as accepted by the learned Judge, revealed that Gracy Arissol worked during the marriage. She worked as a flight attendant from 2002 till 2010 and a sales representative for Impact Logistics (Pty) Ltd later on during the marriage.

63. She explained in detail how her salary paid partly in foreign exchange, at a time of acute foreign exchange crisis in Seychelles, greatly assisted the business and the family, which evidence the learned Judge accepted. Moreover, the learned Judge also accepted her evidence to the effect that, with her salary, she also bought goods abroad, which Impact Logistics (Pty) Ltd sold at a profit.
64. Also in *Chetty v Emile SCA 11/2008 SCAR (1998 – 1999)* 65, referred to the Court of Appeal by Counsel for Gracy Arissol, the Court of Appeal held: "*[30] Contributions towards matrimonial property cannot be measured in pure monetary terms, in hard cash. As stated earlier the love and sweat and the long hours of vigil to bring up a family by the spouses all have a role to play in the accumulation of matrimonial property. [...]. We also find it difficult to accept that once a party makes a choice of his or her partner and decides to live together as husband and wife, one party cannot be heard to say that I had the better job or I am a person who brought in more money when the relationship goes sour as the respondent has done in this case. The position certainly would be different if there was evidence to the effect that one party squandered the wealth or deliberately omitted to do what is reasonably expected of that party as a spouse.*"
65. Although the learned Judge found that the efforts of Gracy Arissol and Dave Pillay to the care-giving and home-making in assessing their respective share in the matrimonial home cancel each other out, there is no evidence to suggest that Gracy Arissol had neglected her responsibilities as a wife or mother. Moreover, it is worthy of note that nowhere does the record of proceedings reveal any specific mention of "*the acrimonious and rocky state of the marriage **from very early***" as found by the learned Judge. Emphasis supplied. Thus, this finding by the learned Judge is unfortunate.
66. It is not clear whether or not the learned Judge took into account that Dave Pillay travelled on rebated tickets and stayed at the same hotel where Gracy Arissol stayed while working abroad, thus reducing the family's and business' expenses. These are

matters that cannot be valued in monetary terms, as stated in **Chetty**, *supra*.

67. Given the facts and circumstances of this case, I am of the considered opinion that the learned Judge was in error in awarding Gracy Arissol thirty (30) per cent as her share in J1606 and the four-bedroom house standing thereon, which the learned Judge calculated at SCR1,200,000. I am of the considered opinion that Gracy Arissol is entitled to fifty (50) per cent as her share in parcel J1606 and the four bedroom-house standing thereon, which I calculate at SCR2,000,000. I reject the contention of Counsel for Dave Pillay with respect to this ground.
68. For the reasons stated above, I allow ground 1 of the grounds, reverse the learned Judge's valuation of Gracy Arissol's share in parcel J1606 and the four-bedroom house situated thereon and award her a total sum of SCR2,000,000.

Ground 2

69. Ground 2 is untenable and stands dismissed. With respect to this ground, Counsel has invited the Court of Appeal to treat the transfer of parcel V10596 as "*suspect*". She claimed that the transfer had been done to frustrate any orders the Court of Appeal might deem fit to make on appeal to defeat Gracy Arissol's claims. As for parcel J1606, she questioned at length, in her heads of argument, whether or not its transfer was null. These are matters that we cannot entertain at this appeal.

Grounds 3, 4, 5 and 6

70. Counsel argued grounds 3, 4, 5 and 6 together. Given the tenor of these grounds, on the 14 July 2020, the Court made an order remitting the case to the Supreme Court for the single auditor, Mr Jean Marie Moutia, appointed by the Supreme Court, in terms of the Judgment, to provide it with a fair value of the companies.
71. The Court of Appeal made such an order for the following reasons —

"1. We find that the audit report (valuation of Shares Sterling (Pty) Ltd Impact Logistics

Pty Ltd) for the valuation of the shares relied upon by the trial Judge to base her decision with respect to the shares of Impact Logistics (Pty) Ltd had inter alia not been properly produced before the court.

2. *The learned trial Judge, by her Order dated the 27 June 2017, in Civil Side: MA 322/2016 and MA43/2016 had ordered Mr Jean Marie Moutia to do a valuation of the shares of the appellant and the respondent in Impact Logistics (Pty) Ltd and Sterling Investment (Pty) Ltd.*
3. *It is clear from the proceedings of 8 November 2017, that the said report had not been produced by Mr Jean Marie Moutia, who had been ordered to do so. It was handed over to court by one Mr Spencer. The said report does not bear either the name or signature of the person who prepared it. We only find the report on the letter head of ACM and Associates Certified Chartered Accountants."*

72. Grounds 3, 4 and 6 concerned whether or not Mr Moutia had determined a fair market value of equity of Impact Logistics (Pty) Ltd. Counsel for Gracy Arissol complained, in her heads of argument, that Mr Moutia could not have determined a fair market value of Impact Logistics (Pty) Ltd as Dave Pillay did not provide all documents necessary for the conduct of the Supreme Court ordered "*financial audit*" of Impact Logistics (Pty) Ltd.

73. The Supreme Court heard the evidence of Mr Moutia on the 30 November 2020. I record the interactions between Counsel for Gracy Arissol and Mr Moutia (in chief) —

"Q [...] but you did state that we are unable to determine a fair market value.

A. Under one method.

Q. Which was the only method that you used.

A. No we used two methods.

Q. And under the other method were you able to get a fair market value?

A. The other method was a negative method but it says.

Q. [...]. How much credibility did ACM and Associates give to the valuation report because it is clear that based on the fact that you did not receive enough information to value Impact Logistics in the same manner as Sterling would you say that the report to the court was incomplete and could not and should not have been the basis of an apportionment of my client's share in Impact's Logistics.

A. I do not understand the question can you elaborate.

Q. I am just asking that based on the lack of information the report that was produced – [...].

Q. [...] because it was incomplete, it should not have been used on the basis of the apportionment of my client's shares in Impact Logistics, I am putting that to you.

A. How much credibility did the ACM give to the valuation report; what valuation report are you referring to?

Q. The one you used.

A. Yes but we used the valuation report so it has to be credible if we are doing it ourselves [...].

Q. Because you asked by the court to produce a valuation report and based on that the court was to make a determination on the apportionment of my client's share in Impact Logistics. Because it was incomplete should the court have used that report to apportion?

A. No you are telling me it is incomplete. I am telling you it is incomplete. So the report was based on information that we had. If you are questioning the valuation it is up to you but I am telling you that we did the report based on the information that we had.

Q. However you did say we are unable to determine a fair value.

A. No I said unable to determine a fair value on the income method.

Q. Question 33, [...]. Was an attempt made by ACM to obtain the company's bank statement to ascertain the real liabilities of the company?

A. No because we relied completely on the audited statement. We had no mandate to go looking for the bank statement anyway.

Q. I thought it was to determine the real liability and the assets of the company.

A. That is on the audited statement.

[...].

Q. Therefore, so was a fair report of the value of the company's assets produced before the court?

A. The report was produced based on the information available.

Q. But there was lots of information that was not available.

A. We don't know how relevant that would have been." Emphasis supplied

74. I mention in passing that Mr Moutia, the single expert witness, did a valuation of Sterling Investment (Pty) Ltd using two approaches: a net asset approach and an income approach. Gracy Arissol by Counsel did not dispute the valuation of "Sterling Investment (Pty) Ltd".

75. With respect to Impact Logistics (Pty) Ltd, he did only one valuation for its shares based on the net asset approach. The learned Judge used that valuation to calculate the share of

Gracy Arissol in Impact Logistics (Pty) Ltd. The record of 30 November 2020, showed that Gracy Arissol by Counsel did not seriously challenge the valuation for the shares of Impact Logistics (Pty) Ltd based on the net asset approach. It appears from the interactions reproduced above that Counsel for Gracy Arissol was unaware of the method of share valuation used by Mr Moutia in relation to Impact Logistics (Pty) Ltd and, thus, could not seriously challenge the Expert Report.

76. Hence, I conclude that the learned Judge cannot be faulted for accepting the valuation for the shares of Impact Logistics (Pty) Ltd based on the net asset approach.
77. For the reasons stated above, grounds 3, 4 and 6 stand dismissed.
78. With respect to ground 5, I state that I cannot entertain this ground in the absence of adequate submissions from Gracy Arissol by Counsel. Ground 5 stands dismissed.

Ground 7

79. It appears that ground seven has already been particularised in the other grounds. Ground 7 cannot add anything to the grounds specifically given. I conclude that it is a mere surplusage, which would have been better left out.
80. Ground 7 stands dismissed.

Ground 8

81. Under ground 8, Counsel contended in her heads of argument that the learned Judge did not consider the needs of the minor child, despite those needs having been pleaded in the cross-petition as follows: "*3. [a]n order in respect of the maintenance of a relevant child of the Matrimonial Causes Rule 3 (4) (b); 5. [a]n order in respect of the education of a relevant child of the Matrimonial Causes Rule 4 (1) (i).*"
82. I mention that Counsel for Gracy Arissol, in her heads of argument, stated that she informed the learned Judge of "*matters still outstanding in the 2 cases*". I have

scrutinised the record of proceedings, which did not reveal what those two cases related to. According to the heads of argument of Counsel for Gracy Arissol, it appears that one of those cases concerned a motion filed concerning the education of the minor child, MA254/2016. Counsel for Gracy Arissol claimed that the learned Judge was not desirous to hear the application, but she was only concerned with hearing MA322/2016.

83. I am at a loss to understand the submissions of Counsel for Gracy Arissol in relation to this ground. Suffice it to state that the record of proceedings revealed that no evidence at all was led with respect to the issues of the education and maintenance of the minor child.
84. I conclude that the learned Judge was correct to find at paragraph 16 of the Order (of 5 February 2018) concerning the issue of the education of the minor child, that —

"[16] [s]imilarly, as concerns the Respondent's submission relating to the education of the child of the parties, this issue although canvassed in the pleadings was not raised at the hearing nor any evidence adduced about it. This Court therefore cannot at this eleventh hour entertain this matter."

85. I dismiss ground 8 of the grounds.

Ground 9

86. Ground 9, like ground 7, does not add anything to the grounds specifically given. I conclude that it is a mere surplusage, which would have been better left out. I give reasons for my conclusion.
87. In the orders dated 5 February 2018 and 5 April 2018, the learned Judge ordered Dave Pillay to pay Gracy Arissol SCR853,512.30 for her shares in "*Sterling Investment V10450*". Gracy Arissol by Counsel did not dispute the valuation of "*Sterling Investment (Pty) Ltd*". Thus, the learned Judge cannot be faulted for accepting the valuation for the shares of "*Sterling Investment V10450*".

88. With respect to her shares in Impact Logistics (Pty) Ltd, I have concluded under grounds 3, 4 and 6 that the learned Judge cannot be faulted for accepting the valuation for its shares based on the net asset approach.
89. In relation to the quantum awarded by the learned Judge to Gracy Arissol concerning parcel J1606 and the four-bedroom house standing thereon, I have made a determination under ground 1 reversing the learned Judge's valuation of Gracy Arissol's share in the said property.
90. Hence, I cannot entertain ground 9, which stands dismissed.

Ground 10

91. Ground 10 complained that Gracy Arissol was denied her right to have her case heard by an independent and impartial court as guaranteed to her under Article 19(7) of the Constitution of the Republic of Seychelles. Counsel for Gracy Arissol did not press this ground at the appeal, which stands dismissed.

The Decision

92. For the reasons stated above, the appeal partly succeeds and partly fails.
93. I allow the appeal under ground 1. Thus, the learned Judge's order awarding Gracy Arissol thirty (30) per cent in the value of parcel J1606 and the four-bedroom house situated thereon (SCR1,200,000) is set aside and replaced by the following orders —
- (i) The share of Gracy Arissol and Dave Pillay in parcel J1606 and the four bedroom-house standing thereon shall be fifty (50) per cent each;
 - (ii) The share of Gracy Arissol and Dave Pillay in parcel J1606 and the four bedroom-house standing thereon shall be SCR2,000,000 each;

(iii) An order is made substituting for the sum of SCR1,200,000 for the share of Gracy Arissol in parcel J1606 and the four bedroom-house standing thereon, the sum of SCR2,000,000.

94. Grounds 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the grounds of appeal stand dismissed.

95. Gracy Arissol has been occupying the house situated on parcel V10596 since the order of 5 April 2018, which ordered her to vacate the house situated on parcel V10596 within six months of the date of that order. Gracy Arissol is ordered to vacate the house on parcel V10596 within six (6) months of the date of the Court of Appeal judgment.

96. Gracy Arissol and Dave Pillay shall pay her/his costs of this appeal.

Robinson JA

I concur

Fernando President

I concur

Govinden Chief Justice

Dated at Ile du Port, Mahe Seychelles, this 30th April 2021.