

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 26 (29 April 2022)
SCA 44/2019
(Appeal from CS 164/2014)

In the matter between

Bella Mein Nee Cushion
(rep. by Mrs Domingue)

Appellant

and

Bernard Mein
(rep. by Mr Rajasundaram)

Respondent

Neutral Citation: *Cushion v Mein* (SCA 44/2019) [2022] SCCA 26 (Arising in CS 164/2014)
(29 April 2022)

Before: Fernando President, Robinson, Tibatemwa-Ekirikubinza, JJA
Summary: Divorce - Property adjustments - section 20(1)(g) of the Matrimonial Causes Act - Home that the parties occupied after their marriage - Appellant continued to occupy the home with the three children - Beneficial share of the parties in the matrimonial home

Heard: 12 April 2022

Delivered: 29 April 2022

ORDER

1. The orders that the beneficial share of each party in the matrimonial home is half and that each party is entitled to SCR1,150,000 as their respective share in the matrimonial home are quashed.
2. The beneficial share of the Appellant and the Respondent in the matrimonial home is apportioned as sixty-one percent and thirty-nine percent, respectively.
3. Award the Appellant the sum of SCR1,281,000 as her share in the matrimonial home.
4. Award the Respondent the sum of SCR819000 as his share in the matrimonial home.

5. The Appellant is given nine months from the date of this judgment within which to pay the Respondent the sum of SCR819,000, failing which the Respondent shall have nine months to pay the Appellant the sum of SCR1,281,000.
6. If either party is unable to pay the other, the matrimonial home, the subject matter of the award, shall be sold to the highest bidder on the open market, and the proceeds of the sale shall be shared sixty-one: thirty-nine (61:39) between the Appellant and the Respondent.
7. Each party shall bear her or his costs of these proceedings.

JUDGMENT

**ROBINSON JA, (FERNANDO, PRESIDENT, TIBATEMWA-EKIRIKUBINZA JA
concurring)**

8. The Respondent and the Appellant were husband and wife. They got married to each other on the 22 September 1994. Two of the three children born of the marriage are minors.
9. The Appellant and the Respondent were married for about twenty-one years. Their marriage was dissolved on the 9 March 2015 because of its irretrievable breakdown. A decree absolute was granted on the 12 May 2015. Although they separated in 2012, the Respondent stayed on in the house until 2014.
10. The Appellant applied for property adjustments under the Matrimonial Causes Act, 1992, on the 8 June 2017. She applied for an eighty percent share in the home and the first option to buy out the Respondent.

11. In a judgment delivered on the 24 June 2019, a learned Judge of the Supreme Court found each party's share to be half in the matrimonial home. Hence, she ordered that each party is entitled to SCR1,150,000 as their respective share in the matrimonial home.
12. She also ordered the Appellant to pay the Respondent his share in the matrimonial home in six months, failing which the Respondent shall then have six months to pay the Appellant her share. Further, she ordered that if either party cannot pay the other, the house shall be sold to the highest bidder on the open market, and the parties shall equally share the sale proceeds.

The grounds of appeal

13. The Appellant appealed on the grounds that —

"A. On the Facts

1. *The learned Chief Justice erred in finding that both parties are entitled to a half share in the matrimonial property as this finding is not supported by the evidence.*
2. *The learned Chief Justice erred in her finding that the property had been paid for by the parties instead of accepting the evidence of the Petitioner and her half brother that Peter Tirant had gifted all of his children, including the Petitioner, with the property on which the parties built their matrimonial home. As a consequence, the learned Chief Justice should have made a finding that the Respondent was not entitled to any share in the property Title V9850.*
3. *The learned Chief Justice erred in not calling for a third valuation of the Property.*
4. *The learned Chief Justice though recognizing that the Petitioner had contributed more than the Respondent, still awarded the Respondent a half share in the matrimonial home and property.*
5. *The learned Chief Justice erred by not taking into account that the family of the Petitioner had helped the Petitioner and the Respondent by giving them accommodation and assisting them financially during the course of their marriage and further by assisting in obtaining the matrimonial property and building their matrimonial home on it.*

6. *The learned Chief Justice erred by not taking into account that two of the children of the parties are still living with the Petitioner and that they are still minors whilst she took into account that the Respondent had moved out of the matrimonial home since 2014 and that the Respondent had to pay for alternative accommodation whilst the Petitioner had full use and occupation of the home.*

B. On the Law

The learned Chief Justice although alluding to the Matrimonial Causes Act of 1992 and the authorities cited by the parties did not apply the law and the authorities to the case".

14. The Appellant has abandoned ground 4 of the grounds.

The evidence

15. Before considering the grounds of appeal, and the written and oral submissions submitted on behalf of the Appellant and the Respondent, it is convenient to summarise the facts relevant to this appeal.
16. *The evidence of the Appellant.* After getting married, the parties moved to the house of the Appellant's parents. She contributed SCR500 monthly to household expenses from her earnings. She was working for Mahe Shipping Company Limited at the time.
17. The Appellant and the Respondent later moved from the house of the Appellant's parents to a small one-bedroom flat at Le Niolo. The Appellant paid SCR500 monthly for the flat's rent from her earnings.
18. When the Appellant gave birth to their first child in 1977, the family moved to the house of the Appellant's aunt. She gave her aunt SCR1000 monthly for living expenses from her earnings. The Respondent gave her SCR1,000 monthly from his earnings to buy food. The family moved out of her aunt's house in 2005.
19. Mr Tirant, who is her stepfather, gifted her a parcel of land V9850 (327 square metres) (hereinafter referred to as the "*Land*") after she and the Respondent got married. As her

earning power was insufficient to raise a loan, the Land was registered in their joint names on the 4 December 1997 to obtain loans. The Respondent merely lent his name to the transfer of the Land. They did not pay for the Land, although consideration of SCR15,000 was inserted in the Land transfer.

20. They prepared the Land to build the house by excavating the big rocks and clearing. The Appellant testified that the proceeds of various loans financed the construction of the house.
21. The parties took a loan of SCR150,000 in 2000 from the Housing Finance Company Limited. The Appellant claimed that she paid the monthly loan instalments from her salary, exhibit P4. On the 18 March 2005, Housing Finance Company Limited gave the parties a forty percent discount on the amount still owed on the loan on the condition that the parties paid the amount of SCR97,061.62 within two weeks, exhibit P5. The Appellant paid off that amount in March 2005, exhibit P5. She claimed that the Respondent did not contribute to the loan payment.
22. The Appellant took a "*Member Loan*" of SCR116,02.21 from the Seychelles Credit Union in 2005. She applied SCR97,000 from the proceeds of the Seychelles Credit Union loan to pay off the loan she had taken from the Housing Finance Company Limited. The Appellant paid off the loan in September 2014, exhibit P6. She claimed that the Respondent did not contribute to the loan payment.
23. The Appellant took a loan of SCR25,000 from the Seychelles Savings Bank in 2005. The Respondent guaranteed the loan of the Appellant, exhibit P7. She purchased a mortgage protection assurance from the State Assurance Corporation of Seychelles concerning this loan in 2005, exhibit P7. She repaid the loan. She used the proceeds of the loan to buy building materials. The Respondent did not contribute to the payment of the loan.
24. The Appellant took a loan of SCR45,000 from Barclays Bank (Seychelles) Ltd in 2007, exhibit P8. She paid off the loan. The Appellant applied the loan proceeds to buy home furnishings and some extras. On the 28 June 2007, she purchased a mortgage protection

assurance from State Assurance Corporation of Seychelles concerning this loan. The Respondent did not contribute to the payment of the loan.

25. The Appellant took a "*New Home Improvement Loan*" of SCR34,000 in 2008 from the Housing Finance Company Limited. The Appellant paid the monthly loan instalments from her salary, exhibit P11. She purchased a mortgage protection assurance from State Assurance Corporation of Seychelles concerning this loan, exhibit P11. The Respondent did not make any contribution to the repayment of the loan.
26. The Appellant took a loan of SCR131,000 from Barclays Bank (Seychelles) Limited in 2013, exhibit P10. She paid the loan in monthly instalments of SCR3579. She paid off the loan. She applied the loan proceeds to fix up and improve the house. The Respondent did not contribute to the payment of the loan.
27. She made financial contributions as she was in employment during the subsistence of the marriage and is still in employment. She worked for Mahe Shipping Company Limited for over twenty years, from the 3 August 1992 to the 3 December 2012. After leaving Mahe Shipping Company Limited, she worked for Benelux Shipping (Seychelles) Co. Ltd, from 4 September 2012 to 1 June 2015. After that, she formed Seyline Forwarding Agent in 2015. She also worked for ASL Seychelles Limited. When she worked for the different companies, her salary varied from SCR6,000, SCR8,500, SCR10,000 and SCR25,000 (see the salary receipts and other miscellaneous documents collectively referred to as exhibit P12).
28. In addition to making loan repayments from her earnings, she applied her earnings to provide for and support her three children; pay for household expenses and utilities; pay the Respondent to paint the house – SCR1,000 yearly and pay her uncle to clean the exterior of the home. The Appellant did the household chores. She was the only one to care for the children when they were ill.

29. During the subsistence of the marriage, the Respondent gave the Appellant SCR1,000 monthly for living expenses as he did not earn very much. The Respondent worked for Cable and Wireless; after that, he worked for Echo Car Hire and Classic Car Design. He also gave her that said amount after they had separated. The Respondent earned between SCR3,000 and SCR4,500.
30. The Respondent took two loans - SCR127,000 and SCR142,000. With the proceeds of the loan of SCR 142,000, he financed the construction of the retaining wall, which cost about SCR135,000. The Appellant made two monthly payments on the Respondent's behalf towards the loan of SCR142,000, as he had defaulted on SCR4,200.
31. When cross-examined, the Appellant stated that they started cohabiting one and half years before marriage. They lived at her parents' house. She was nineteen years old, and the Respondent was 21 years old when they got married in 1994.
32. One Mr Joubert, a small building contractor, built the house. The parties provided the building materials. The Appellant gave money to the Respondent to buy the building materials.
33. She could not state that the money given to her by the Respondent was insufficient because he could not give her more money as he did not earn more than SCR4,000 and was repaying a loan of SCR2,000.
34. *The evidence of Mr Georges Tirant.* Mr Tirant is the half brother of the Appellant. All five siblings have inherited land from Mr Tirant and did not pay any consideration for their land. He was present in the office of Attorney Mr Gerard Morel when the parties to the transfer of the Land executed the said transfer. He ensured that no one misled Mr Tirant, who could not read and write, into signing the wrong document. Although a sum was inserted in the transfer of the Land, no money had exchanged hands. Mr Tirant has passed away.

35. *The evidence of Mrs Gerda Cushion.* Mrs Cushion, who is sixty-nine years, is the Appellant's aunt. After the Appellant had her baby, the family moved to her house. They lived with her for seven years. The Appellant gave her SCR1000 monthly for living expenses. The Respondent did not give her any money. After the family had moved out, she assisted the Appellant and her kids financially and provided them with food. She helped the Appellant as she was paying loan instalments. Her brother cleans the exterior of the Appellant's house.
36. *The evidence of the Respondent.* The Respondent worked for Cable and Wireless as a technician and then for Echo Car Hire as a salesman for ten years, where he earned SCR3,500. He has been working for Classic Car Hire for over fourteen and a half years.
37. The transfer of the Land took place in the office of Mr Gerard Morel, a notary. He paid SCR8,000 for the Land, although consideration of SCR15,000 was inserted in the transfer of the Land. At the time, they lived with the Appellant's aunt. After that, the family rented a flat at Le Niole for a year. The family moved back to the house of the Appellant's aunt while building their home. They gave the Appellant's aunt SCR1,000 for food.
38. The parties started building their three-bedroom house in 2001. The Respondent paid a monthly instalment of SCR1,258 for the first loan of SCR150,000 taken from the Housing Finance Company Limited to build their home, exhibit R1. He paid the loan for about four to five years. He also took a loan of SCR127,500 from the Seychelles Credit Union, exhibit R3, the proceeds of which were used to rebuild the retaining wall. He paid a monthly instalment of SCR1,950 for that loan, which was increased to SCR2,100. The Appellant took a loan for which she paid a monthly instalment of SCR2,200. He took a second loan of SCR142,100.58 from the Seychelles Credit Union on the 11 March 2004, exhibit R4 concerning the building of the house. He was unaware that the Appellant had taken more loans to improve or renovate the house.

39. He ironed the children's school uniforms; took them to school every morning; picked them up in the evening; paid the utility bills; provided the washing machine, fridge, and cooker, and installed the kitchen cabinets. The Appellant earned about SCR500 more than him during the subsistence of the marriage.
40. When cross-examined, the Respondent stated that they both paid the rent of SCR500 for the Le Niole flat. Both of them gave SCR1,000 to Mrs Cushion for food. They lived with Mrs Cushion for about six to seven years. He accepted that Mrs Cushion assisted the family.
41. Concerning the Housing Finance Company Limited loan of SCR150,000, Counsel stated that the Appellant was not disputing that he paid a monthly instalment of SCR1,258 from 29 November 2000 to 28 February 2005. The Respondent was not sure whether or not the Appellant paid off the Housing Finance Company Limited's outstanding balance of SCR97,000.
42. He took a loan of SCR127,500 from the Seychelles Credit Union. He agreed with Counsel for the Appellant that the loan of SCR142,158 was not new but a top-up of the loan of SCR127,500. He stated that he missed two payments of the said loans, which the Appellant paid. He remembered only the Appellant's loan from Seychelles Savings Bank because he helped with the payment. He denied that the house had to be renovated as it is still a new house.
43. He took the children to school and did the cooking as the Appellant did not know how to cook. He agreed that the Appellant cleaned the house; ironed the clothes, and did the washing except for his washing and cared for the children. After the marriage broke down in 2012, he was still contributing and taking the children to school. He knew only of the basic salary of the Appellant, which was SCR4,500. He does not know of any other money that she was earning.

Analysis of the contentions of the parties

Ground 3 of the grounds of appeal

44. Counsel for the Appellant, in her written submissions concerning this ground, contended that the learned Judge was wrong not to have called for a third quantity surveying report as there was a difference of SCR800,000 between the valuation of Mr Nigel Roucou (SCR1,700,000) tendered for the Appellant, and that of Mr Gustave Larue (SCR 2,500,000) tendered for the Respondent. The valuation tendered by Mr Roucou was the valuation at the date he prepared his report, 29 May 2018. Mr Roucou inspected the home on the 23 May 2018. The valuation given by Mr Larue was the valuation at the date he re-inspected the home, the 14 July 2017. I find this ground of appeal and the very brief supporting submissions devoid of merit. I give reasons for this finding.
45. In her judgment, the learned Judge stated that Counsel for the Appellant had submitted in her closing written submissions that the valuation by the Appellant's quantity surveying expert and that of the Respondent has a discrepancy of SCR800,000, which could be resolved by joint valuation. The learned Judge did not accede to such a request made at the eleventh hour. She took an average value of the two valuations in dealing with the conflict of valuation evidence. The learned Judge held the view that *"given the fluid housing market in Seychelles, it is not totally unexpected that such variations in valuations can occur. To seek yet another valuation as proposed will not resolve the difference in values."*
46. In coming to her determination, the learned Judge was guided by the opinion of Mr Larue that the difference between the two valuations *"was not that really huge"*. This dialogue between the Court and Mr Larue set out partly the opinion of Mr Larue —

"COURT TO WITNESS

Q: In normal valuation processes, does it often happen that there is the variation in valuation prices between 2 different valuations?

A: It always happens.

[...].

Q: *What is your experience in Seychelles is it a huge margin?*

A: *Normally it is not that really huge.*

Q: *Okay a couple of 100,000?*

A: *Hundred maybe million as well.*

Q: *Sometimes million?*

A: *Yes it does.*

Q: *That has happened?*

A: *Yes."*

47. I observe that Counsel for the Appellant, during the cross-examination of Mr Larue, suggested briefly that his valuation was on the high side. Mr Larue explained why he gave the home the higher value. There is no evidence to suggest that the valuation of Mr Larue was wrong or on the high side. Overall, I observe that the Appellant did not materially dispute the valuation of Mr Larue. There is also no evidence which materially contradicts the valuation of Mr Roucou.
48. In light of the above, I hold the view that the learned Judge cannot be faulted for accepting the evidence of both experts, on the whole, to be reliable and *"for closing the gap by taking an average of the two valuations"*.
49. The learned Judge found the difference between the two valuations to be SCR400,000. She incorrectly stated the valuation of Mr Roucou to be SCR2,100,000. Hence, she came to an average value of SCR2,300,000 for the matrimonial home. Counsel for the Appellant is correct in her written and oral submissions that the learned Judge should have reached an average value of SCR2,100,000, reflecting a fairer approach. I accept the submission of Counsel for the Appellant and find that the value of the matrimonial home is SCR2,100,000.
50. For the reasons stated above, ground 3 stands dismissed, save for the finding that the average value of the matrimonial home is SCR2,100,000.

Ground 6 of the grounds of appeal

51. Concerning ground 6, I state that the learned Judge did not err in refusing to take into account the financial needs of the two minor children of the parties under the Matrimonial Causes Act, as the pleadings of the Appellant do not state any case concerning their financial needs and do not pray for any order for their benefit. The pleadings averred that proceedings concerning the financial needs of the two minor children were pending before the Family Tribunal. In *Charlie v Françoise Civil Appeal No 12/1994* (delivered on the 12 May 1994), the Court of Appeal stated —

"The system of civil justice in this country does not permit the Court to formulate a case for the parties after listening to the evidence and to grant a relief not sought by either of the parties that such evidence may sustain without amending the plaint. In the adversarial procedure the parties must state their respective cases on their pleadings and the plaintiff must state the relief he seeks on his plaint". [Emphasis supplied]

52. The Appellant also complained that the learned Judge erred in considering that the Respondent had to pay for alternative accommodation because the Respondent's pleadings do not state such a case, and the evidence does not support such a finding. Counsel for the Appellant is correct in her submissions.
53. In exercising her discretion in adjusting the parties' property rights, under section 20(1)(g) of the Matrimonial Causes Act, the learned Judge considered that the Respondent paid for alternative accommodation since he vacated the home in 2014. I find that the learned Judge was wrong to attach any weight to the fact that the Respondent paid for alternative accommodation since it did not arise on the pleadings, and there is no evidence to support such a finding.
54. For the reasons stated above, ground 6 stands dismissed save for the finding that the learned Judge was wrong to attach any weight to the fact that the Respondent paid for alternative accommodation.

Ground 2 of the grounds of appeal

55. Under ground 2, Counsel for the Appellant contended in her skeleton heads of argument that the learned Judge erred in not accepting the evidence of the Appellant and Mr Georges Tirant that Mr Tirant, her stepfather, had gifted her the Land.
56. In her judgment, the learned Judge found that the evidence relating to this fact and what took place in the notary's office amounted to back letters which are not admissible against the authenticity of the sale agreement registered on 4 December 1997, given the absolute nature of the provisions of Article 1321 *alinéa* 4 of the Civil Code of Seychelles. The learned Judge concluded that the Land was bought in equal shares on this basis.
57. Since the Appellant is objecting to the conclusion of the learned Judge that the Land was bought in equal shares, the Appellant, in her ground of appeal, is also required to set forth the conclusions of the law to which the Appellant is objecting, rule 18(3) of the Seychelles Court of Appeal Rules, 2005, as amended. The said rule 18(3) stipulates — "*(3) [s]uch grounds of appeal shall set forth in separate numbered paragraphs the finding of fact and conclusions of law to which the appellant is objecting and shall also state the particular respect in which the variation of the judgment or order is sought*". I also observe that the skeleton heads of argument provided on behalf of the Appellant do not at all address the reasoning and conclusions of law of the learned Judge. At the appeal hearing, the Appellant did not even address Article 1321 *alinéa* 4 of the Civil Code of Seychelles.
58. I refuse to entertain ground 2 of the grounds of appeal for the above reasons. Hence, ground 2 of the grounds of appeal stands dismissed.

Ground 1 of the grounds of appeal

59. Under ground 1 of the grounds, the Appellant contended that the learned Judge erred in law in determining the beneficial share of the Appellant and the Respondent in the

matrimonial home at fifty per cent each, given the substantial evidence which proved otherwise.

60. In her supporting written and oral submissions, Counsel for the Appellant contended that the learned Judge failed to attach sufficient weight to the fact that she contributed far more and earned more than the Respondent. In this respect, she contended that the learned Judge erroneously found that she contributed SCR329,000 towards the matrimonial home. I observe that the parties did not question the approach of the learned Judge with respect to the computation of their financial contributions towards the matrimonial home.
61. Counsel for the Respondent submitted that the learned Judge was correct in law to find that this was a case for a 50/50 split. He based his submissions on the cases of *Esparon v Esparon* 12/1997, [1998-1999] SCAR 191 and *Chetty v Emile* [2008-2009] SCAR 65. He explained that *Esparon* and *Chetty* remove the reliance upon assessing contributions in money or money's worth towards the recognition of marriage as a relationship in which each spouse contributes what they can in different ways.
62. I have to determine whether or not the learned Judge erred in law in determining the beneficial share of the Appellant and the Respondent in the matrimonial home at fifty per cent each based on *Esparon* [supra] and *Chetty* [supra]
63. The Land and the house situated thereon were the parties' matrimonial home. This was the home they lived in after their marriage and brought up their children. Section 20(1)(g) of the Matrimonial Causes Act stipulates —

"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".

64. The Supreme Court has a wide discretionary power to grant financial relief to adjust the parties' property rights when granting a divorce or after that. The Court must exercise its discretion judiciously by considering all relevant factors. For example, the Court of Appeal in *Esparon* [supra] stated —

"[15] There is little doubt that by the deliberate use, in s 20(1) of the Matrimonial Causes Act, of the phrase the "court may, after making such inquiries as the Court think fit and having regard to all the circumstances of the case including the ability and financial means of the parties of the marriage", the Supreme Court when looking at "all the circumstances of the case, may have regard, without being exhaustive, to such matters as the standard of living enjoyed by each of the parties before the breakdown of the marriage, the age of the parties and duration of the marriage, any physical or mental disability of either party, the contributions made by each to the welfare of the family including looking after the home or caring for the family and the value to either party of any benefit (like a pension) which a party will lose as a result of the divorce. As for the "ability and financial means" this covers such matters as income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future and the financial needs and obligations each party has or is likely to have in the foreseeable future".

65. The Court of Appeal in *Chetty* [supra] stated —

"[30] Contributions towards matrimonial property cannot be measured in pure monetary terms, in hard cash. As stated earlier the love and sweat and long of vigil to bring up the family by the spouses all have a role to play in the accumulation of matrimonial property. The cooking, the sweeping, the cleaning, the sewing, the laundering, tendering to the children and the many other nameless chores in a home are not things for which a value can be put on, but certainly, contribute towards the building up of the matrimonial property".

66. The presumption is that each party has an equal share (*Charles v Charles*) (2004-2005) SCAR 231).

67. This case is a twenty-one-year marriage (although the parties separated in 2012) with three children; both parties worked during the subsistence of the marriage and had made financial contributions. The Appellant progressed in her work, resulting in differences in earning power between the parties.
68. The learned Judge stated in her judgment that "[25] ... *There is evidence that the Petitioner contributed more towards the household expenses to enable the Respondent to make these repayments [loan repayments]*". The Appellant stated in her evidence that the Respondent could not give her more than SCR1,000 as he did not earn more than SCR4,000 and was paying a loan of SCR2,000.
69. The learned Judge found that the Respondent had contributed SCR333,000 towards the matrimonial home, which amount Counsel for the Appellant contended was incorrect. The learned Judge came to this finding concerning the Respondent's financial contribution on the following basis — " [27] *I make a similar finding of a contribution of SCR75,000 by the Respondent in respect of the SHDC loan. He also borrowed SCR127,500 and SCR131,000 from the Credit Union which shows a total contribution of SCR333,000 towards the matrimonial home.*"
70. I do not question the learned Judge's finding that the Respondent contributed SCR75,000 for the *SHDC loan*. I am concerned with the loan of SCR131,000, which the learned Judge found the Respondent took. The Respondent stated in paragraph 7 of his affidavit evidence —
- "7a. That I took on my own a loan of SR127,500 for the construction of the house on V9850 and from the balance remaining at that time and the balance outstanding from the previous loan was carried forward to have a loan amount of SCR142,158.44 ... I aver that I was the one who was solely paying the loan".*
71. When cross-examined about the loan of SCR142,158, he agreed with Counsel for the Appellant that it was not a new loan but a top-up of the loan of SCR127,000. He missed two payments of the said loan, which the Appellant paid in the sum of SCR 4,200.

72. Hence, I find that the financial contribution of the Respondent towards the matrimonial home is about SCR213,000, in line with the calculation of the learned Judge.

73. I turn to the loan amount paid by the Appellant. In her supporting submissions, Counsel for the Appellant submitted that the Appellant paid SCR369,959.79 (or SCR343,490.60) and not SCR329,000 as found by the learned Judge.

74. The learned Judge explained her finding as follows —

"[26] In particular, I find that the initial sum of SR150,000 was shared by both parties and in that respect I make a finding of a contribution of SR75,000 each. I allow an extra SR19,000 from the Credit Union loan taken by the Petitioner over and above what was borrowed to pay off the SHDC loan. I also accept her evidence that she borrowed the following sums towards the improvement of the home: SR25,000, SR45,000, SR24,000 and SR131,999 from the bank and the Credit Union. I find, therefore, that in total, she contributed SR329,000 towards the matrimonial home."

75. Concerning the first loan of SCR150,000, the Appellant contended that the learned Judge erred in her determination that the parties shared that loan. She claimed that she solely paid the amounts of SCRSCR97,061 + SCR52,938 = SCR150,000. I have stated above that I do not question the finding of the learned Judge that the Appellant and the Respondent shared the loan of SCR150,000. Hence, I reject the contention of Counsel for the Appellant concerning this loan.

76. I turn to the loan of SCR161,02.21, which Counsel for the Appellant claimed that the Appellant paid in full. The learned Judge found that the Appellant took the said loan to pay off the *SHDC loan*. As I have accepted the finding of the learned Judge that the Appellant and the Respondent shared the loan of SCR150,000, I conclude that the learned Judge did not err in allowing "*an extra SR19,000 from the Credit Union loan taken by the Petitioner over and above what was borrowed to pay off the SHDC loan*".

77. Next, I conclude that there is no evidence of a loan of SCR24,000. The record revealed that the Appellant took a loan of SCR34,000, exhibit P11, evidence the learned Judge has

accepted. Despite this error, I note that the learned Judge had considered the loan of SCR34,000 in her calculation of the loan amount taken by the Appellant. Hence, I find that the contribution of the Appellant towards the matrimonial home was SCR334,199 (+4200) and not SCR329,000 as found by the learned Judge.

78. In light of the above, the total loan amount taken by the Appellant and the Respondent was about SCR547,200 (SCR213,000 + SCR334,199). The Appellant took about sixty-one percent of the total loan. The Respondent took about thirty-nine per cent of the total loan.
79. Under ground 6 of the grounds of appeal, I had found that there was no basis to support the learned Judge's finding that the Respondent paid for alternative accommodation when he left the matrimonial home in 2014.
80. Further, there is evidence that the Appellant cleaned the house and did the laundry; the Respondent did the cooking and took the children to school every day and ironed the children's school uniforms, which contributed to the building of the matrimonial home.
81. Having regard to all the circumstances of this case, I hold that the learned Judge erred in finding that the parties' respective contributions towards the matrimonial home were equal. I find that the Appellant contributed about sixty-one percent towards the matrimonial home and that the Respondent contributed about thirty-nine percent. This finding takes into account the conclusion of the learned Judge that "[25] ... [t]here is evidence that the **Petitioner contributed more towards the household expenses to enable the Respondent to make these repayments [loan repayments]**" and that the Appellant continued to occupy the house with the children after the Respondent had moved out in 2014. [Emphasis supplied]
82. I allow ground 1 of the grounds of appeal.
83. In light of my conclusion concerning ground 1, the ground formulated by Counsel based on the law does not arise for consideration.

Ground 5 of the grounds of appeal

84. Having considered ground 5 and the submissions of the Appellant and the Respondent with respect to this ground, I hold that the learned Judge did not err in not attaching any weight to the assistance given to the Appellant by her family. For instance, there is evidence that they both made a financial contribution to living expenses when they stayed with the Appellant's family.
85. Ground 5 of the grounds of appeal stands dismissed.

Decision

86. For the reasons stated above, the appeal is partly allowed. Hence, I quash the order of the learned Judge that the beneficial share of each party in the matrimonial home is half, and that each party is entitled to SCR1,150,000 as their respective share in the matrimonial home.
87. I have distributed the beneficial share of the Appellant and the Respondent in the matrimonial home to be sixty-one percent and thirty-nine percent, respectively.
88. I have found the value of the matrimonial home to be SCR2,100,000 and not to be SCR2,300,000. I award the Appellant the sum of SCR1,281,000 and the Respondent the sum of SCR819,000 as their respective share in the matrimonial home.
89. I order the Appellant to pay the Respondent the sum of SCR819,000.
90. The Appellant is given nine months from the date of this judgment within which to pay the Respondent the sum of SCR819,000, failing which the Respondent shall have nine months to pay the Appellant her share.

91. If either party is unable to pay the other, in that case, the matrimonial home, the subject matter of the award, shall be sold to the highest bidder on the open market, and the proceeds of the sale shall be shared sixty-one: thirty-nine (61:39) between the Appellant and the Respondent.
92. Each party shall bear her or his costs of these proceedings.

Robinson JA

I concur:

Fernando, President

I concur:

Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated and delivered at Ile du Port on 29 April 2022.