

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 11 (26 April 2023)
Civil Appeal SCA 23/2021
(Arising in MA 290/2018 out of
DV 159/2017) SCSC 462

In the matter Between

John Maxime Faure

(rep. by Mr. Serge Rouillon)

Appellant

And

Marie-Therese Christianne Sinon

(rep by Mr. Joshua Revera)

Respondent

Neutral Citation: *Faure v Sinon* (Civil Appeal SCA 23/2021) [2023] SCCA 11 (Arising in MA 290/2018 out of DV 159/2017) SCSC 462 (26 April 2023)

Before: Dr. M. Twomey-Woods, Dr. L. Tibatemwa-Ekirikubinza, Andre JJA

Summary: Appeal against a decision of the Supreme Court – Declaration of share of parties in Matrimonial Regime in terms of section 20 of the Matrimonial Causes Act (Cap 124)

Heard: 13 April 2023

Delivered: 26 April 2023

ORDER

The Court makes the following Orders:

- (i) The appeal is dismissed.
 - (ii) Costs are granted in favour of the Respondent.
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JUDGMENT

ANDRE, JA

INTRODUCTION

- [1] This is an appeal by John Maxime Faure (Appellant) against Marie-Therese Christianne Sinon (Respondent), being dissatisfied with the decision of learned Judge Carolus given at the Supreme Court on 22 June 2022 in Civil Side No. CS No. 462 of 2021 (arising out of MA 290/18 out of DV 159 of 2017), wherein the honourable Carolus J made a determination regarding the parties' shares in their matrimonial property.
- [2] The appellant raised two grounds of appeal as set out below.

BACKGROUND

- [3] The Appellant and Respondent were married on the 9th of April 1999 in London, the United Kingdom (UK). One child Samantha Ashley Faure was born of the marriage on 25th February 2003.
- [4] During the marriage, both parties cohabited and worked in the UK. They shared a joint bank account. They also shared a one-bedroom flat and subsequently moved into a three-bedroom house financed by a mortgage from the Halifax Bank in the UK in their joint names and which they eventually paid back.
- [5] On 10th October 2003, the parties jointly purchased land parcel H4328 at North East Point, Mahe in the sum of SCR250, 000 and registered the same on the 16th day of October 2003, jointly in their names.
- [6] At some point, the marriage irretrievably broke down, and a certificate of conditional Order of divorce was made absolute on the 20th of February 2018.
- [7] On the 22nd November 2018, the Appellant petitioned the court for the **final division of the parties' matrimonial property Title H4328 and the house and improvements made thereon, in particular, to declare the parties' respective shares in the matrimonial property.** The said property was evaluated for a sum of Seychelles Rupees Three Million One Hundred and Thirty Thousand (SCR3, 130,000/-).

(The emphasis is mine).

[8] Carolus J in her judgment of 22 June 2022 in Civil Side No. CS No. 462 of 2021 (supra), found that each party was entitled to a half share of the matrimonial property comprising Title H4328 and the house and all developments thereon amounting to Seychelles Rupees One Million Six Hundred and Twelve Thousand and Five Hundred (SCR1, 612,500). Bearing in mind that the Appellant (then the Petitioner) had informed the court that he did not wish for the Respondent and his daughter to be evicted from their home, but only sought for the court to make a declaration of the shares of the parties to the matrimonial property, the court made the following orders:

(a) That the Respondent pay the Appellant the sum of Seychelles Rupees One Million Six Hundred and Twelve Thousand and Five Hundred (SCR1, 612,500) representing his share of the matrimonial property within six months of the judgment.

(b) That upon payment of the said sum to the Appellant, the Appellant shall transfer his share in the said property to the Respondent.

(c) That in the event that the Respondent failed to effect payment as ordered under paragraph (a), that the Appellant was to pay the Respondent the sum of Seychelles Rupees One Million Six Hundred and Twelve Thousand and Five Hundred (SCR1, 612,500) representing her share of the matrimonial property within the succeeding six months whereupon the Respondent was to transfer the property to the Appellant's sole ownership.

(d) That in the event that neither party is able to comply with the foregoing, the property would be sold and the proceeds thereof shared 50:50 between the parties.

[9] Carolus J further ordered the Appellant to pay the Respondent the sum of Seychelles Rupees Seventeen Thousand Five Hundred (SCR17, 500) within three months of the date of her judgment as her share in the vehicle with registration number S15720 as the Appellant had undertaken to do.

GROUNDS OF APPEAL

[10] The Appellant raises the following grounds of appeal:

Ground 1: that the learned Judge erred in law and fact in her assessment of the parties' shares and contributions to the matrimonial regime on the basis of the evidence which clearly showed a much greater contribution by the Appellant certainly more than a half share.

Ground 2: that the learned Judge erred in law in making a final order for the sharing out and sale of the matrimonial property when the Appellant had only asked for a declaration of each his share in the said property.

[11] It is the prayer of the Appellant that this Court conducts a proper reassessment of the evidence of each party's contribution to the matrimonial regime based on the evidence and then makes a declaration of each party's share in the matrimonial regime thereon.

SUBMISSIONS OF PARTIES

Ground 1: that the learned Judge erred in law and fact in her assessment of the parties' shares and contributions to the matrimonial regime on the basis of the evidence which clearly showed a much greater contribution by the Appellant certainly more than a half share.

APPELLANT'S ARGUMENTS IN SUPPORT OF THE FIRST GROUND OF APPEAL

[12] In accordance with Rule 24 of the Court of Appeal Rules of 2005, the Appellant filed heads of arguments through his counsel Mr Serge Rouillon on 27 February 2023.

[13] With regards to ground 1, the Appellant argues that the application before the trial Judge was solely for a declaration of the shares of the parties in the matrimonial property of the Appellant in response to an application by the Respondent for a share greater than 50%. He argues that the trial judge erroneously awarded the parties a 50% share of the matrimonial property. The Appellant however disputes this finding by the trial judge as he avers that he always earned substantially more than the Respondent, having held management positions whilst the Respondent was often "simply a sales person," consequent to which he made a greater contribution to the matrimonial property of the parties throughout their marriage.

- [14] As proof of this, the Appellant furnished proof of the fact that at the time of his marriage to the Respondent, he had already owned an apartment in the UK. He testified that later a three-bedroom house was bought using a deposit from the sale of this apartment; that throughout the marriage, his higher salary contributed more to the development of their matrimonial home and property, covered the family expenses, the education and welfare costs of their daughter.
- [15] The Appellant posits that the court in its division of the matrimonial property should have considered the fact of his being a father of two more children from a previous relationship whom he takes care of. Had the trial Judge properly examined this evidence in light of Section 20(1)(g), she would have come to a different conclusion.
- [16] The Appellant submits that the correct analysis of the said section was rightly demonstrated in the case of *Hoareau v Azemia* (SCA 43 of 2019) [2022] SCCA 24 where the trial court looked at the actual contribution of the parties in readjusting the order of the trial judge according to the evidence produced. The Appellant felt that his evidence had been corroborated by his parents whilst the Respondent had provided sometimes conflicting evidence which the court ought to have found prejudiced her position. The Appellant also referred to the cases of *Esparon v Esparon* (1998-1999) SCAR 191; *Waye Hive v Waye Hive* DV92 of 2009; *Etheve v Etheve* DC 2003 of 2009; and *Samuel Lau-Tee v Virginia Lau Tee*, M.A. 176 of 2019 arising out of D.C. 134 of 2018 to support his perspective.

RESPONDENT’S ARGUMENTS COUNTERING THE FIRST GROUND OF APPEAL

- [17] The Respondent counters the Appellant’s submissions on ground 1 and contends that the trial court’s decision was right. She argues that the judgment takes cognizance of the entirety of the case, and specifically, that it took into account all relevant factors in making an appropriate order under the Matrimonial Causes Act.
- [18] The Respondent avers that the general principle is that when courts are considering the division of the matrimonial home under section 20(1)(g), “*the starting point is that the parties own in equal shares therein.*” She argues that when the Court takes into account all relevant factors it will consider the parties’ contributions towards the

purchase price of the property and any additional works associated therewith in the construction of the land and matrimonial home.

[19] The Respondent alludes to some of the Appellant's claim pertaining to monies borrowed to purchase title H4328, which he testified was repaid by both himself and the Respondent, and that later the Respondent had obtained a loan used to pay the balance of the purchase price of the property.

[20] The Respondent refers to the fact that the £30,000 profit from the sale of the Appellant's one-bedroom apartment could not have been used towards the purchase of the matrimonial property in Seychelles, as the Appellant had testified that he had used the same to pay for the deposit on the three-bedroom house in the UK.

[21] Essentially, the Respondent agrees with the court *a quo*'s finding and prays that this Court leaves it as is: that either party pays the other, their half share in the property, a sum which is valued in the amount of SCR3,130,000/ upon payment of which the other party shall subsequently transfer their share in the property in the name of the purchaser and in the event that neither party is able to comply with the order; the property shall be sold and the proceeds equally shared between the parties. She thus requests the court to dismiss the appeal with costs.

ANALYSIS OF THE GROUND 1 OF THE APPEAL

[22] Under Ground 1, the Appellant faults the trial judge for failing to appreciate the weight of the evidence he had adduced illustrating the disparity in contributions of the parties to their matrimonial property, and not properly evaluating the documentary evidence furnished to the court. The central issue for determination, therefore, is whether the trial judge followed the correct principles in granting an award for contributions made towards the matrimonial property of the parties and whether the Appellant is entitled to a share greater than 50%. At the hearing Counsel for the Appellant submitted that a fair redistribution of the shares would be 70% for the Appellant and 30% for the Respondent.

[23] Careful scrutiny of the proceedings in the court below shows that the Appellant's case was based on affidavit evidence, oral evidence resulting from examination in chief as

well as in cross-examination. Evidence led indicated the loans accessed by the two parties, the funds received from the sale of the house in the UK, the mortgage loan from Halifax Bank obtained to purchase the three-bedroom house, and the acquisition of the property in Seychelles. Evidence was led by the Appellant, the Respondent, the Appellant's mother Louisianne Hoareau, and the quantity surveyor, Mr. Nigel Roucou. A perusal of the record illustrates that the learned Judge adequately and correctly captured the content and context of each of their testimonies and the facts of the case.

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

“Financial relief

(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.” [Emphasis added]

[25] In ***Esparon v Esparon (1998-1999) SCAR 191***, the court held that when considering “*all the circumstances*” under section 20(1) of the Matrimonial Causes Act, the court may have regard to factors such as –

- (a) The standard of living of the spouses before the breakdown of the marriage;
- (b) Age of the parties;
- (c) Duration of the marriage;
- (d) Physical and mental disability of either party;
- (e) Contributions made by each party to the welfare of the family, including housework and care roles; and,
- (f) Any benefit which a party loses as a result of the divorce

[26] The Appellant submits that the trial judge did not place much weight on the fact that throughout the parties' marriage, the Appellant earned more than the Respondent, and therefore should have factored that when determining the Respondent's entitlement to

the matrimonial property. It is the view of this Court that a party's contribution to the matrimonial property is only **one** of the factors that the court will consider when enquiring into "all the circumstances of the case." Notably, the court in the *Esparon* case did not name as a factor "*financial contributions*" of the parties as significant, but instead that the "*contributions of each party to the welfare of the family, including housework and care roles*" are relevant. The court's finding should be revelatory to the Appellant who also cited this case in support of his submissions. Further, in her judgment, the trial judge made references to the fact of the Appellant having earned more money when compared to the Respondent, stating, among other things, "*I have found above that at the time that the parties were in the UK the Respondent's income was substantially less than the petitioner's*" [Paragraph 139]; and, "*It is clear that throughout the marriage the petitioner was the one with the job which brought in more money*" [Paragraph 140]. Thus the trial judge was very cognizant of the Appellant's superior earning status- at least when compared to the Respondent's earning power.

[27] Having alluded to the Appellant's obvious higher earnings, the trial judge however, acknowledged the Respondent's contribution to the matrimonial property declaring "*However, although the respondent's monetary contributions to the purchase and development of the matrimonial property were substantially less than the petitioner's, this does not mean that her contributions were any less important*" [Paragraph 140]. She also accepted the evidence, which even the Appellant had testified to, to the effect that the Respondent contributed to the running expenses of the household from the time she began working, including contributing to credit card repayments, groceries, and their child's school fees expenses. The Appellant had also testified to the Respondent spending money on modernizing the home, that other than money she spent on transport costs, the Respondent spent little money on herself, with the bulk of her salary spent on ensuring the comfort and wellbeing of their family [Paragraph 140]. Carolus J, added, "*I believe that during their marriage her sole purpose was to build a more comfortable house and lifestyle for the family and that she directed all her funds towards that goal.*"

[28] In all conscience, the trial judge appreciated that the Appellant contributed more "financially" to the marriage than the Respondent, but relied on the authority of

section 20(1)(g) and the above-quoted case law to find that the Respondent rightfully was entitled to the matrimonial property by virtue of the contributions she had made to the marriage, thus accruing to the marital property. To have found otherwise would have resulted in an inequitable decision.

[29] The trial judge cited the case of ***Freddy Chetty v Carole Emile SCA No. 11 of 2008 (8 May 2009)*** where the court dealt with facts similar to the present case whereby the appellant sought the court's intervention on the basis that he had contributed more than the respondent. To which the court made it clear that section 20(1)(g) grants a court the discretion "*to make an order in respect of any property of a party to a marriage for the benefit of the other party even though the other party has not contributed financially in any way to the acquisition of such property provided the circumstance so warrant.*" In the present case, the facts showed that the Respondent did contribute to the matrimonial property. She had met the Appellant when he had already advanced career-wise while she was a crew member. When they got married she got a job as a sales agent. She later left employment to raise their daughter for two years. Meanwhile, he did not have to take career breaks due to childbirth and to raise their child. His career progression could not be compared to hers. However, her contribution to the marriage was no less than his. During her maternity leave, she brought some salary which had been reduced, she took care of their child, and their home and provided as much support to the Appellant and their child as she could. While such contributions cannot be translated into monetary form per se, none can suggest they are any less valuable. The Appellant refers to the Respondent as a "*lowly paid sales person*" in an obvious attempt to diminish her contribution to the marriage. The law and the facts augur in her favour as can be apparent further below.

[30] The Respondent might not have made a lot of money, but in a real sense, they were in partnership in so far as their accumulated wealth should be shared between the two of them. For instance, the stay-at-home mother should have no more claim or ownership of the children, more than her executive husband who spent more time at the office and thus had little to do with actual caregiving at the time of divorce. So too should the husband have no more claim on the matrimonial property acquired using funds earned from his profession when such property was acquired during the time when the parties were together and at the time unitedly building a home together. In ***Freddy***

Chetty v Carole Emile SCA No. 11 of 2008 (8 May 2009) the court dismissed the notion of marriage partners being like business partners where careful tabs are kept of contributions into the marriage but stating that doing so would “*deny marriage the love, affection and the sanctity that goes with it...To look into the monetary contribution that goes into the acquisition of the matrimonial property and make an award purely on that consideration would mean to leave the other party who toiled and sweated to keep the home fires burning, destitute.*”

[31] **Article 815 of the Civil Code** lends credence to the Respondent’s argument in so far as it provides “*Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.*” In **Maurel v Maurel (1998-1999) SCAR 57**, the court held that in cases where spouses do not enter into a property contract, assets held in the name of one spouse should be regarded as that spouse’s property unless it is established that that was not the intention of the parties. It follows, therefore, that if the property is registered in the name of both parties as in the present case, the rights to such property should accrue to both parties equally.

[32] This was confirmed in **Charles v Charles (CA01/2003 [2005] SCCA 13 (22 June 2005)**, where the Court of Appeal held, “*In my view, therefore, both parties are vested with absolute ownership of the house in question. It follows, in my judgment, that such ownership is in equal shares as this would accord with the intention of the parties.*” Commenting on the parties’ intention, the court added “*Bearing in mind that they registered the property in question during the height of their love affair, probabilities are overwhelming, in my view, that the parties intended co-ownership in equal shares. In this regard, it must always be borne in mind that what matters is the intention of the parties at the time when they registered the matrimonial property and not at the time of divorce.*” [Emphasis added]

[33] Similarly, in the case of **Marie Hortense Lesperance v Ralph Armand Lesperance SCA 3 of 2003** where despite the fact that the matrimonial property was in solely on the respondent’s name, the court found that it had established that the petitioner had made substantial contributions by assisting in the physical construction, even providing secretarial services from where the respondent had made money used for the acquisition of the property. While in **Lesperance v Lesperance SCA No. 3 of**

2001, this Court laid down the principle that there must be equality of treatment in cases based on similar facts and thus ordered the matrimonial property in question to be held by the parties in equal shares. The court in **Charles** case stated that “*One must, however, guard against elevating the principle of equality above the statutory discretionary power given to the courts in s. 20 (1) (g) of the Act to make appropriate matrimonial property settlements according to the justice of each individual case.*”

[34] Accordingly, the Respondent adequately demonstrated, with the Appellant’s acquiescing to her statements, that she had contributed to the family’s welfare, home, caregiving of their child, contributing to the payment of the matrimonial debts, and others. In addition, the parties had been married for almost 19 years when their marriage was dissolved. The parties had enjoyed a comfortable life which the Appellant attested to and therefore both parties should not be denied the benefits of this long-term partnership and should be able to enjoy the benefits of such toil despite the breakup of the marriage.

[35] In the circumstances, the crucial decision of **Renaud v Renaud SCA No. 48 of 1998** is apt where it was held, “*The purpose of the provisions of these subsections (i.e. 20(1)(g) of the Act) is to ensure that upon the dissolution of the marriage, a party to the marriage is not put at an unfair advantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to enable the party applying to maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution.*”

[36] It is the view of this Court that the trial judge took account of the contributions of both parties to the purchase and development of the matrimonial property, and concluded that a fair assessment of the parties’ share to the matrimonial property would be a half share each. For the reasons canvassed above, we believe that the trial judge’s decision was justified and within reason.

[37] On consideration of the above, I find no merit in ground 1 thus it fails accordingly.

SUBMISSIONS OF PARTIES

Ground 2: that the learned Judge erred in law in making a final order for the sharing out and sale of the matrimonial property when the Appellant had only asked for a declaration of each his share in the said property.

APPELLANT’S ARGUMENTS IN SUPPORT OF THE SECOND GROUND OF APPEAL

[38] The Appellant argues that the trial court was wrong in granting an order for the division of the matrimonial property and making an allocation to the parties when the court ought to have simply made a declaration of the parties’ shares in the property and ended there. The Appellant seeks this Court’s intervention to only declare his share in the matrimonial property, and not for an order for sharing out of the property as per the trial court’s finding.

RESPONDENT’S ARGUMENTS COUNTERING THE SECOND GROUND OF APPEAL

[39] In reply, the Respondent pointed out that the Appellant filed for a division of matrimonial property between the parties. She also referred to the Appellant’s testimony that he left the matrimonial home to avoid conflict with the Respondent and that the only way this matter can be resolved is if such declaration and allocation to the parties are made to be effective.

ANALYSIS OF THE GROUND 2 OF THE APPEAL

[40] Under ground 2 of his appeal, the Appellant is of the view that the court should not have made an order for the sharing out and sale of the matrimonial property when the Appellant had only requested for a declaration of rights to the said property. Reference may be made to the aforementioned section 20 of the Matrimonial Causes Act wherein the section speaks to the court making such order “*as it thinks fit*”, having made such inquiries as are necessary in each given case.

[41] In *casu*, even if the Appellant had requested the court for a declaration of his share of the matrimonial home, in the Respondent’s supporting affidavit to the

petition/counter-claim dated 6th March 2019 the Respondent included as her prayers the following:

“(i) that land title H4328 with the matrimonial home thereon be transferred into my sole name by the Petitioner/Cross Respondent; or

(ii) alternatively, to the above, that the court orders that I am entitled to a share greater than 50% of the matrimonial home; or

(iii) alternatively, to the above, that the court orders that I am entitled to 50% of the matrimonial home; and,

(v) that the Petitioner/Cross-Respondent pays me my share of the matrimonial home...

(ix) any orders that the Court deems fit and reasonable in the circumstances.”

[42] Relying on **section 80(1) of the Seychelles Code of Civil Procedure** which provides for counter-claims, the trial judge cited the case of ***Chetty v The Estate of Regis Albert & Ors* [2020] SCSC268 [CS 2/2019] (8 May 2020)**, finding that the cross-petition amounted to a counter-claim. The court further cited the case of ***Sabadin v Sabadin* [2014] SCSC35 [MA 247/2011] (31 January 2014)** where the respondent had made a counterclaim and the petitioner’s counsel argued that if the court did not grant the petitioner’s prayer it had to dismiss the petition than to grant any other order as the respondent had not made a cross-petition. The court making reference to section 20(1)(g) stated:

“17. The court is empowered to make such order as it thinks fit in light of the inquiries it will have held. The decision is not restricted to only particular orders that the petitioner applied for. The court’s hands are not tied in this regard. The court is granted a broad discretion to settle the issues at stake...”

[Emphasis added]

[43] Thus on the basis of these authorities, the trial judge could make any finding, and under section 20(1)(g) could consider the claims of the Respondent. This Court is of the view that the rationale of the trial judge in granting an order which had been prayed for by the Respondent in her counterclaim, was made explicitly clear on this

question, and the Appellant has not furnished any facts or relevant authorities to warrant a finding that the trial judge's finding was not justified. Further, Respondent's argument that the Appellant's original application was filed for a "*final division of the parties' matrimonial property Title H4328 and the house and improvements made thereon, in particular, to declare the parties' respective shares in the matrimonial property*" is a valid point, which the trial court obliged accordingly.

[44] In addition, considering the fact that the matter had been referred to mediation, the outcome of which, dated 6th March 2019 the Mediator declared: "*The parties' positions are too far apart and neither wishes to compromise on their respective positions,*" It is obvious that due to the acrimonious nature of the situation between the parties, the best outcome was for the trial judge not only to make a declaration on the shares on the matrimonial property but to also specify how such division should be made to give effect to the judgment as it could not be left to the parties to suddenly settle their differences harmoniously. Carolus J's judgment appropriately offers the parties a clean break and for each to determine their destiny independent of the other.

[45] Therefore Appellant's ground 2 has no basis and is without merits and fails as a result.

CONCLUSION

[46] In conclusion, arising from the analysis above, the appeal fail son both grounds.

ORDER

[47] It follows that this Court orders as follows:

- (i) The appeal is dismissed.
- (ii) Both parties shall bear their own costs.

S. Andre, JA

I concur

Dr. M. Twomey-Woods

I concur

Dr. L. Tibatemwa-Ekirikubinza, JA

Signed, dated, and delivered at Ile du Port on 26 April 2023.