

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA19
(26 April 2023)
SCA 8/2021 and SCA
9/2021
(Arising in MA 176/2019
out of DC 134/2018)
SCSC 26

SAMUEL LAU-TEE

(rep. by Serge Rouillon)

Appellant

and

VIRGINIA HOAREAU (born HOAREAU)

(rep. by France Bonté)

Respondent

And

VIRGINIA HOAREAU (born HOAREAU)

(rep. by France Bonté)

Cross-Appellant

and

SAMUEL LAU-TEE

(rep. by Serge Rouillon)

Cross-Respondent

Neutral Citation *Lau-Tee v Lau-Tee* (SCA 11/21 & 14/21 [2023] SCCA 19 (26 April 2023)
(Arising in MA 176/2019 out of DC 134/2018) [2021] SCSC 26

Before: Twomey-Woods, Tibatemwa-Ekirikubinza, André JJA

Summary: division of matrimonial property - open-ended order of the court *a quo* –
necessity in order for division of matrimonial property for final date for
operation of orders

Heard: 14 April 2023

Delivered: 26 April 2023

ORDER

The appeal and cross-appeal are both partly allowed. No order has been made as to costs.

JUDGMENT

DR. M. TWOMEY-WOODS JA

(Tibatemwa-Ekirikubinza and André JJA concurring)

Background

- [1] The appeal before this court concerns a dispute pertaining to the distribution of matrimonial property (Title S5256) belonging to Samuel and Virginia Lau-Tee after their divorce. At the time the matter was heard, the matrimonial home had been sold to the Seychelles Civil Aviation Authority, although the transfer document still needed to be executed. Mr. Lau-Tee claimed a share in the sale proceeds while Mrs. Lau-Tee prayed for a declaration of full ownership of the matrimonial home in her favour. It bears mentioning that the property was and remained in the sole name of Virginia Lau-Tee.
- [2] It also bears mentioning that monies owed to Mrs. Lau Tee's mother (as her share in the suit property) and the agent (who facilitated the sale of the property) have been paid.

Order of the court *a quo*

- [3] After hearing the matter and noting deductions from the proceeds to be paid to the various persons as stated above, the court *a quo* made no formal orders but ruled as follows:

"[21] ... [], I consider a share of 40% to the Respondent (Virginia Lau-Tee) and a share of 60% to the Petitioner (Samuel Lau-Tee) ... The parties have Seychelles Rupees five million seven hundred and twenty-two thousand and six hundred and sixty-three (SR5,722,663.00) to be distributed between them. Therefore, the Petitioner will be entitled to Seychelles Rupees three million four hundred and thirty-three thousand and five hundred and ninety-seven and cents eighty (SR3,433,587.80) and the Respondent to Seychelles Rupees two million two hundred and eighty-nine thousand and sixty-five hundred (sic) and twenty cents (SR2,289,065.20).

[22] Each party shall bear its own costs.

The appeal before this court

- [4] It is from this decision that both parties have appealed. Mr. Lau-Tee's grounds of appeal and submissions are to the effect that Mr. Lau-Tee "is left with an empty judgment as the trial judge has set no limits on the methods of satisfaction of the final judgment by the parties towards each other...." Mrs. Lau-Tee has sought a reallocation of the shares in the matrimonial property by this Court.

- [5] At the appeal hearing, both parties abandoned their grounds of appeal, conceding that a final date for the transfer of the proceeds of the sale of the matrimonial ought to be inserted in the orders made by the trial court. Counsel for Mrs. Lau Tee has assured this Court that he has no objection to the execution of any court order and that “the money is there”.
- [6] We have scrutinised the decision of the court *a quo* and closely examined the “orders” made by the trial judge as set out in paragraph 3 above. We agree that the order relating to the parties’ respective shares is ineffectual.
- [7] It cannot be gainsaid that parties to a dispute who litigate before the courts have an unenumerated constitutional right to an effective remedy as a corollary to the constitutional right to a fair hearing. Every litigation must end, and open-ended orders do not facilitate this process. They also do not permit judgments to be executed, depriving successful litigants of the fruits of their judgment.
- [8] We are informed by the parties that there is a pending case between the Seychelles Civil Aviation Authority and Mrs. Lau Tee in which the former claims the legal transfer of the property title, for which they have paid consideration in full. The proceedings reveal that an order of inhibition against the transfer of Title S5256 subsists – presumably until the determination of the present appeal.

Our decision and order

- [9] In the circumstances, we accede to the prayers of both parties in this appeal and quash the order of the court *a quo* and substitute the following orders instead:
- i. The parties are entitled to the following shares in the proceeds of the sale of the matrimonial home: 60% to Samuel Lau-Tee in the sum of Seychelles Rupees three million, four hundred and thirty-three thousand, five hundred and eighty-seven and eighty cents (SR3, 433,587.80) and 40% to Virginia Lau-Tee in the sum of Seychelles Rupees two million two hundred and eighty-nine thousand and sixty-five and twenty cents (SR2, 289,065.20).

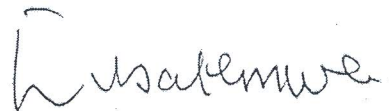
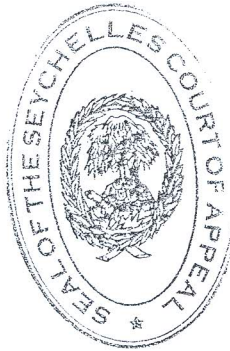
- ii. Virginia Lau-Tee is given three months from the date of this judgment to pay Samuel Lau-Tee his share, failing which Samuel Lau-Tee shall subsequently have three months to pay Virginia Lau-Tee her share.
- iii. If either party is unable to pay the other, the matrimonial home, the subject matter of the award, shall be sold to the highest bidder by public auction, and the proceeds of the sale shall be shared sixty: forty (60:40) as set out above.
- iv. Each party is to bear its costs.

Signed, dated and delivered at Ile du Port on 11 May 2023.



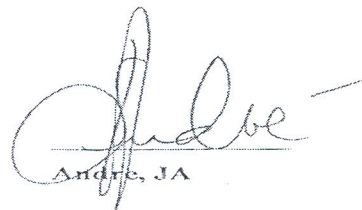
Dr. M. Twomey-Woods, JA.

I concur



Tibatemwa-Ekirikubinza, JA

I concur



Andre, JA