IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2024] (19 August 2024)
SCA 08/2024
(Arising in CS 30/2021)

DENIS DONALD FIDERIA **Appellant**
(rep. by Mrs. Karen Domingue)

versus

VANESSA MARY VIDOT **Respondent**
(rep. by Mr. Daniel Belle)

Neutral Citation: *Fideria v Vidot* (SCA 08/2024) [2024] (Arising in CS 30/2021) (19 August 2024)

Before: Twomey-Woods, Tibatemwa-Ekirikubinza, Andre, JJA.

Summary: Cohabitation – dispute over contributions to acquisition of property during cohabitation. Cohabitation – relevant factors in determining which of the parties should have first option to buy out the other.

It may be that courts are not required to provide a detailed arithmetic breakdown of how they arrived at a specific percentage apportionment. However, as a fact finder, a judge ought to provide a clear rationale and reasoning process that justifies the allotment.

Heard: 6 August 2024.
Delivered: 19 August 2024.

ORDERS

1. The appeal succeeds.
2. The orders of the Trial Judge are quashed.
3. The Appellant's contribution to the loan repayment is valued at 75% and that of the Respondent is at 25%.
4. The market value of the property is 938,601.21 SCR.
5. The outstanding amount on the loan as of 1st August 2024 is 41,780.70 SCR.
6. The Appellant is granted the first option to buy the Respondent's interest in the property.

7. The Appellant is to pay the Respondent the sum of SR224,205 which represents 25% of 938,601.21 (the current market value), less SCR 10.445, the latter being the Respondent's responsibility towards the outstanding loan.
8. The Appellant must pay the amount of 224,205 SCR to the Respondent within 6 months from the date of the judgment.
9. Upon payment of the said sum by the Appellant to the Respondent, the Property Management Corporation will remove the name of the Respondent from the Purchase Agreement and retain the sole name of the Appellant on the agreement.
10. Upon payment of the sums due by the Appellant, the Respondent shall vacate the house.
11. In the event of the Appellant not exercising the first option to purchase the Respondent's interest, then the Respondent will have the second option to purchase the Appellant's share within 6 months, failing which the house will be sold, and the proceeds divided as per the shares allocated in this judgment.
12. Each party shall contribute SCR 2, 300 representing one-half of the cost of the valuation of the property.
13. I make no order as to costs.

JUDGMENT

DR. TIBATEMWA-EKIRIKUBINZA, JA

Background

1. The Appellant (Fideria) and Respondent (Vidot) lived together in a cohabiting relationship for approximately 9 years. Prior to their living together, the Appellant made an application for a house under the state housing scheme.

2. It is an agreed fact that the Respondent initially had her own application for housing but after she started a relationship with the Appellant, she applied for a merger of her application with that of the Appellant in a letter dated 27th August 2010.

3. In a letter dated March 17, 2011, the two parties were allocated a three-bedroom house located at Ex-Teachers, Grand Anse, Praslin – the impugned house.

4. On 30 March 2011 while the parties were still cohabiting a purchase agreement was entered into between the Housing Finance Company Ltd (HFC) on the one hand and the Appellant and Respondent on the other hand, for the sum of SR 325,000.00. This money

was a loan jointly obtained by both parties. According to the agreement, the parties were to pay a monthly sum of 1780 SCR towards servicing of the loan. Following a government concession, the said sum was reduced by 25%.

5. Prior to the parties being allocated the house in contention, the Appellant had started building a house on property belonging to the mother of the Respondent. He had spent around SCR 25,000 but the project was abandoned after the foundation had been built.
6. When the parties moved into the house, the occupants were the Appellant, the Respondent, a son of the respondent, the son of the parties who was and is still a minor, and a niece of the Respondent who was being cared for by the parties. During the subsistence of the relationship, the Respondent bore another child, but DNA results proved that the child was not fathered by the Appellant. At the time of the trial and the appeal, this child too lived with the Respondent.

7. The Appellant is a mason contractor and lived with the Respondent in the said house together with three children. The Appellant claimed that he left the house in January 2019 but still comes and goes as he pleases since he kept a room exclusively for himself.

8. The Appellant also averred that despite not living continuously in the said house, he maintained the house in a good state.

9. On the other hand, the Respondent is a child care provider. She lives in the house together with her three offspring. The Appellant is the father of the second child only. The other two children are from a previous relationship. The eldest off spring is an adult.

The Plaint

10. On 10 March 2021, the Appellant (Fideria) filed a plaint in the Supreme Court seeking orders that:

    a. the Respondent (defendant at the lower court) furnishes court with a statement and proof of her contribution towards the acquisition of House No. F02 at Ex-Teachers, Grand Anse, Praslin;

b. The Appellant repays the Respondent for her contribution as proved;
c. An order that upon payment of the Respondent's contribution by the Appellant the name of the Respondent is removed from the Purchase Agreement; alternatively, on proof shown that the Appellant has paid the Respondent for her contribution that Housing Finance Company Limited removes the name of the Respondent from the purchase agreement and retains the sole name of Appellant on the agreement.
d. Upon payment of the Respondent's contribution by the Appellant, the Respondent should vacate the said house;

e. Any other orders that the Court would deem fit.

The Counter Claim

11. The Respondent filed a counterclaim moving the Court to order as follows:
a) the Appellant to vacate the property as he no longer lived there on a regular basis.
b) the Respondent is entitled to at least one half share in the property.
c) the Respondent is granted the first option to purchase the Appellant's share in the property.
d) upon such purchase, the Appellant's name be struck off the purchase agreement and the Respondent becomes the sole owner of the property.

12. She averred that after her application had been merged with that of the Appellant, she started making payments towards the house and the loan which was in their joint names. That whenever she was in employment, payments were made by direct deductions. She also contributed towards the household and the family needs and throughout the years attended to the normal chores of laundry, ironing, shopping, cooking and taking regular care of the minor children.

13. The Respondent also averred that she maintained the house throughout and even after the Appellant had vacated the house, she occupied the house consistently together with the children.

14. The Appellant opposed the counterclaim and maintained that initially and during certain periods of time, he was the only person contributing towards the payment for the house because the Respondent was jobless or between jobs. He however admitted that the Respondent made contributions towards the household and towards the loan repayments when she was in employment. That as a contractor, he paid lump sums whenever he received contract payments to cover any arrears that may have accumulated. He also made considerable improvements to the house, such as putting tiles, cabinets and marble tops.

The Law Applicable.

15. As indeed stated by the Trial Court, since the parties were not married, the Court can only deal with the present dispute using its inherent powers recognised by Section 6 of the Courts Act, as a Court of Equity.

The evidence in support of the Appellant's case.

16. At hearing in the Trial Court, the Appellant averred that throughout the course of their cohabitation, he was in continuous employment. He serviced the loan and provided for his child who is still a minor. That in addition to repaying the housing loan, he paid for the tiling of the entire house, paid all utility bills as well as all other expenses for the house and the family.

17. The Appellant also averred that the Respondent only started to repay the loan in June 2020 whereas he was paying for the house prior to entering the agreement with HFC. He therefore stated that he was ready and willing to repay the Respondent whatever sums she had paid towards the house and/or expended in terms of payment with regards to the said house or any furniture and/or fittings therein.

18. The Appellant further testified that in January 2019 he vacated the house but kept most of his personal belongings in the house as he went back and forth to his house.

19. The Appellant called two witnesses: Marie-Chantale Nichole who was his foster mother and Aline Sanguignon, a legal officer working at the Property Management Corporation (PMC).

20. Marie-Chantale Nichole testified *inter alia* that that she assisted the Appellant with his housing application and at the time, Fideria was single. She was also aware that Fideria had been allocated a house for which he was paying for in installments but she admitted that Vidot made contributions to the household expenses as did Fideria.

21. The legal officer of the Property Management Corporation testified that Fideria made the original housing application in 2007 and started paying on his own until August 2011 when Vidot's application was merged with that of Fideria. Ms. Sanguignon opined that based on the records with the company, Fideria made the greater contribution to the loan for the purchase of the house.

Evidence in support of the Counter Claim by the Respondent

22. In her defence, the Respondent testified at the trial and did not call any other witness. The Respondent testified that the Appellant moved out of the house in 2015 but kept a room where he returned to stay occasionally and also stored some tools there. She maintained that since the Appellant was already living with another woman while she has no other place to go and has custody of the children, of which one is fathered by the Appellant, the Court should allow her to remain in the house. That she is prepared to pay the Appellant his contributions towards the house and the loan.

23. The Respondent submitted that for the benefit of their child, who is still a minor, and also for the benefit of her other two children, she was eager to purchase the share of the Appellant determined by the Trial Court. That this will be possible since her first son is an adult who is employed and will therefore contribute toward the repayment of the loan as well as payment of the Appellant's share.

24. The Respondent also stated that she feared the hardship that she and her children will have to endure if the house is attributed to the Appellant and she is left with only money's worth for her share in the property. That this would mean that together with her three children, she will have to vacate the house compared to the Appellant who is a professional builder and would have less problems to build or buy a house.

25. Having evaluated the evidence of both parties, the Trial Judge ordered as follows:
    a. *An order that Vidot furnishes the Court with a statement of proof of her contribution towards the acquisition of House No. F02 at Ex-Teachers, Grand Anse, Praslin, … the Court is satisfied from the evidence adduced that Vidot made substantial contributions amounting to 40% towards the housing loan.*
    b. *An order that Fideria repays Vidot for her contribution as proved to the Court; the Court finds it more equitable to grant to Vidot the first option to repay Fideria his 60% contribution in view that Fideria is not permanently residing in the house while Vidot is still residing there with the minor children of whom one is the child of Fideria.*
    c. *An order that upon payment of Vidot's contribution by Fideria that Vidot removes Fideria's name from the Purchase Agreement; the Court finds that only if Vidot is unable to repay Fideria his 60% contribution within one year, then Fideria shall have the option to pay Vidot her the 40% contribution and have her name removed from the purchase agreement.*
    d. *An order that upon proof showed that Fideria has paid Vidot for her contribution that Housing Finance Company Limited removes the name of Vidot from the Purchase Agreement and retains the sole name of Fideria on the Purchase Agreement; the Court repeats order c. above.*
    e. *An order that upon payment of her contribution, Vidot vacates the said house; the Court repeats order c above.*
    f. *The Court establishes 60% contribution made by Fideria towards the loan repayment less the outstanding balance as at the date of judgment.*

g. *The Court Awards Fideria the sum of SCR 25,000 spent on the construction of the proposed house for Vidot which Vidot shall pay not later than one year from the date of this judgment.*

h. *Vidot is given one year to make all of the above payments after which the name of Fideria shall be removed from the loan agreement and Fideria shall have no right to remain in the house, failing which Fideria shall have the subsequent one year to pay Vidot her 40% share calculated in the same formulae as order f. above, after which payment, Vidot's name shall be removed from the purchase agreement and Vidot shall have no right to remain in the house.*

i. *In view of the above findings and orders, the Plaint and the counterclaim only succeed as far as they are consistent with the above decisions and orders.*

j. *Since the case is legal aided, I make no order for cost.*

26. The Appellant being dissatisfied with the decision of Judge G. Dodin appealed to this Court on the following grounds:

1. The learned Trial Judge erred in his finding that the Appellant only contributed 60% to the loan repayment and the learned Trial Judge failed to explain his reasoning as to how he came to the conclusion that the Respondent contributed at least 40% to the housing loan and that the Appellant contributed at least 60% to the housing loan. The learned Trial Judge failed to take into account that the Respondent stressed on her non-monetary contribution rather than on her monetary contribution. The learned Trial Judge erred in making an arbitrary finding that the Respondent contributed 40% towards the housing loan, when clearly she contributed less.

2. The Learned Trial Judge failed to take into account that just because the Respondent contends that she contributed towards the welfare of the family, cooking and taking regular care of the children, the Appellant contributed both in kind and in cash for some years for the Respondent's niece and 2 of the children of the Respondent who were not fathered by him. Consequently, since the Learned Trial Judge has found in favor of the Respondent that with her

monetary and non-monetary contribution her share should equal 40% the same logic should be extended to the Appellant thereby increasing the share of the Appellant to more than 60%.

3. **……..……**
4. **……..**

5. **The learned Trial Judge erred in allowing sympathy and bias to cloud his judgment on the facts which led to the Learned Trial Judge giving the Respondent the first option to purchase the Appellant's share. Further the Learned Trial Judge erred in showing sympathy towards the Respondent's children, who should not be made party to the claim of the house. In addition, given the finding that the Appellant should have given first option to pay the Respondent and not the other way round. The Learned Trial Judge was clearly biased and in favor of the Respondent when he gave her the first option to repay the Appellant. (sic)**

6. **The Learned Trial Judge failed to take into consideration that the first born of the Respondent is now an adult and employed thereby well able to find accommodation for himself. The Respondent clearly stated that her eldest son can help her with the Loan repayment and payment of Fideria's share. (At Page 10 of the Judgment.)**

7. **……..**
8. **The learned Trial Judge failed to take into account that with the existing foundation built by the Appellant, on the Respondent's mother's property, together with the payment of her contributions by the Appellant the Respondent could clearly build a home for herself and children. The learned Trial Judge failed to take into consideration that whilst the Respondent has the possibility of building on her mother's property and with a head start already, the Appellant has no land to build on and neither does he have alternative**

accommodation as his accommodation is precarious in that he is living at a girlfriend's place and may be asked to vacate at any time.

9. The Learned Trial Judge erred in not taking into account the strained nature of the relationship of the parties and the fact that granting one year to the parties to repay one another, would add to the strain, be inequitable and that it would be more equitable to grant the parties 6 months to repay the contributions as this would be more equitable and ample time for either party to raise a loan for the purpose of the repayment.

Reliefs sought:

27. The appeal be allowed and the orders of the Learned Trial Judge be reversed by:

    i. increasing the contribution of the Appellant;
    ii. reducing the contribution of the Respondent to 25%;
    iii. granting the Appellant the first option to repay the Respondent her contribution;
    iv. shortening the repayment period from 1 year to 6 months.

Appellant's submissions

28. Although in the written submissions, Counsel for the Appellant argued grounds 1, 2, and 4 together, at the hearing of the appeal, Counsel withdrew Grounds 3 and 4. It is also noted that in the written submissions, ground 7 was abandoned.

29. The written submissions addressed grounds 5, 6, and 8 together. Ground 9 was argued separately.

Grounds 1, 2.

30. Counsel submitted that the Appellant made a sole application for the house in question under a housing scheme as early as 2007 and began contributing towards the scheme in May 2010 by authorizing a deduction of SCR1500 from his salary as evidenced by a letter dated 13th April 2010 to the Housing Finance Company. The letter was adduced in evidence and marked as Exhibit P 12.

31. That in contrast, although there was an agreement between the Ministry of National Development and the Respondent for the latter to make a monthly contribution of SCR240, no clear evidence of such payment towards the loan was provided. Furthermore, in her testimony, the PMC officer stated that there were no records of any letter from the Respondent authorizing any entity to deduct SCR240 from her salary. When prompted about the length of time she had repaid the SCR240 towards the loan scheme, the Respondent did not provide a clear response. Counsel argued that in her testimony, the Respondent stated that she was unsure if her contributions towards getting a house made prior to the merger of her application with that of the Appellant, were merged with those of the Appellant against the housing loan, nor did she inform the court how much she had paid towards the loan or the period of time taken to clear it.

32. Counsel therefore argued that the Respondent's prior contribution towards the housing scheme was unclear throughout the case. Counsel emphasized that when the Respondent was asked by the Trial Judge whether the payments she had made prior to the grant of the 3-bedroom house were refunded to her, she answered in the negative. And at the same time, she could not confirm whether the said payments were merged with those of the Appellant or not. Thus, counsel submitted that it was more probable that the SCR7500 captured by the Housing Finance Company as the first payment credited on the joint loan account (see Exhibit P14) was the Appellant's initial contribution arising from the Appellant's letter dated 13th April 2010 to the Housing Finance Company already referred to above.

33. In light of the above, counsel submitted that it was for the same reason that upon the merging of the applications in August 2010, the parties were able to secure the house only seven months later, in March 2011. This was because the Appellant had consistently contributed SCR1500 per month towards the scheme on his own, enabling the parties to be awarded the 3-bedroom house.

34. Furthermore, counsel argued that the loan statements, Exhibits P14A and B at Pages 101-105 of the Record, produced by the PMC Officer, clearly indicated that the Appellant contributed significantly more to the repayment of the loan than the Respondent. The

Appellant's repayments were always above the minimum payments of SCR1780 per month, sometimes reaching as high as SCR10,000 per month, as per the testimony of the PMC officer at Page 288 of the Record. Counsel argued that the PMC officer testified that while the Respondent made some attempts to contribute towards the repayment of the housing loan, she consistently paid only the bare minimum, typically SCR1000, which was well below the agreed minimum monthly repayment amounts. The Respondent made payments of SCR2000 on only two or three occasions, when she had an agreement with Lemuria, her employer, to deduct that amount from her salary for the housing loan. However, such payments were made only twice by Lemuria. Furthermore, the Respondent's employment at Lemuria lasted only about four months, meaning the authorization for those payments did not continue.

35. Counsel argued that in contrast, the Appellant, despite having ended his relationship with the Respondent for five years and partly vacating the house, continued to maintain the repayment of the housing loan. The Respondent, through her own testimony, acknowledged at Pages 332 and 333 that the Appellant provided her with money for the loan repayment, even after vacating the house. Counsel therefore submitted that the Respondent's claim of having paid the loan by herself since June 2020 was unfounded. Regarding other non-financial contributions made by the Appellant, Counsel pointed out that throughout their cohabitation, the Appellant consistently contributed to the household's daily expenses, including food, utilities, the children's needs, and general maintenance and improvement of the house. The Appellant also supported all three minor children, even though only one was his biological child.

36. Furthermore, counsel noted that the Appellant significantly contributed his labour towards maintaining the house by tiling, repainting, building cabinets, and performing other general maintenance tasks. He also constructed a foundation for the Respondent's mother, valued at SCR25,000.

37. Counsel argued that, in contrast to the Appellant, who made both financial and non-financial contributions, the Respondent primarily focused on her non-monetary contributions. While she played a significant role in the family's welfare through

activities such as cooking, shopping, and caring for the children, her financial contributions were made only when possible and to the extent that she could manage.

38. Counsel further argued that although the Respondent sought to create the impression that the Appellant was neglecting the house by highlighting materials left around, these materials were actually used by the Appellant in his trade as a contractor, which provided him with the finances needed to pay the housing loan and cover most household and family expenses.

39. Counsel submitted that despite the Respondent's counterclaim regarding the Appellant's alleged neglect of the house, she never reported the situation to HFC nor did she attempt to maintain the house in good repair during the time she occupied it permanently.

40. Counsel concluded that based on the testimonies and documentary evidence presented, the Learned Trial Judge clearly erred in making an arbitrary finding that the Respondent contributed 40% towards the housing loan, when she in fact contributed far less. Counsel faulted the Learned Trial Judge for failing to explain how he concluded that the Respondent contributed at least 40% of the loan while the Appellant contributed only 60%.

Respondent's submissions

41. On the other hand, Counsel for the Respondent argued that the Respondent, in her evidence before the Supreme Court, had been very meticulous in detailing how she earned a living before and after June 2020, the year the relationship ended. The Respondent had been employed in several positions, most recently at a Day Care Centre, earning a revenue, albeit less than what the Appellant had earned. She had been repaying the loan entirely by herself since June 2020, a fact that was not challenged by the Appellant. Therefore, the finding of the learned trial judge was neither unreasonable nor arbitrary in the circumstances of the case.

42. Regarding Ground 2, Counsel for the Respondent argued that this ground of appeal failed to appreciate that the Appellant had moved out of the house in 2019, following the

breakup of the relationship in 2017. The Respondent had her own application with the HFC prior to March 2011 but decided to merge it with that of the Appellant when they accepted to be beneficiaries of the loan. The Respondent's niece moved in with them only because her father had been incarcerated. The normal chores in the house were carried out by the Respondent, and the Appellant's connection with the household was limited to maintaining a room to which he had the key. Therefore, the reasoning of the learned trial judge to allocate the shares at 60-40% was just and equitable.

Grounds 5, 6 and 8

Submissions by Counsel for the Appellant.

43. Counsel for the Appellant submitted that it was evident the Learned Trial Judge allowed sympathy for the children to influence and guide his final judgment. The Learned Trial Judge should have been mindful that only one minor child was the Appellant's. That child had been, and continued to be, supported by the Appellant. The Respondent's first child was already an adult, and the Respondent's third child was not the Appellant's.

44. Counsel submitted that the Learned Trial Judge should have been mindful that it was not equitable to consider only the well-being of the children of the parties, especially since only one child was fathered by the Appellant. The Appellant's substantial and remarkable efforts from the very beginning to secure a home, first for his own benefit and later for the benefit of the Respondent and the children, had unfortunately been unfairly and inadequately considered by the Learned Trial Judge, resulting in a clear bias and injustice towards the Appellant.

45. Counsel also argued that the Learned Trial Judge erred in allowing sympathy and bias to cloud his judgment regarding the facts, which led him to give the Respondent the first option to purchase the Appellant's share. The Learned Trial Judge erred in showing undue sympathy to the children, who should not have been made parties to the claim regarding the house. The Learned Trial Judge was clearly biased in favor of the Respondent when he granted her the first option to repay the Appellant.

46. Counsel submitted that, while considering the children in his judgment, the Learned Trial Judge failed to take into account that the Respondent's firstborn was an adult, employed, and capable of looking after himself and finding accommodation. The Respondent herself admitted in her testimony on Page 347 that her adult child would be a "big help" in repaying the Appellant by possibly raising a loan to cover the Appellant's share and secure the house. This was her response when prompted about how she would raise the funds to pay the Appellant's share.

47. Counsel maintained that, just as the Respondent's son could have helped her secure a loan to purchase the Appellant's share, he could equally assist her in obtaining a similar loan to finish the foundation on her mother's property. This was the very same foundation that was initially built at the Appellant's expense, while envisioning the Respondent's and his own future stability.

48. Counsel further submitted that the Learned Trial Judge erred in Paragraph 28 of his judgment when he stated that he "takes into account" that, along with the minor children, the Respondent's adult child was also living in the house. It appeared that the Learned Trial Judge had considered the well-being of the adult child together with the minor children, when in fact, the adult child was well able to maintain himself. It was therefore apparent that the Learned Trial Judge, in his judgment, failed to take into account relevant considerations but instead considered irrelevant factors.

49. Counsel submitted that the Learned Trial Judge should have been mindful that, according to the Appellant's own testimony and that of his foster mother, he had had a difficult childhood. However, his perseverance in overcoming his childhood hardships enabled him to complete school, learn a professional skill as a mason, and eventually be granted tenders from a government entity (PMC). The Appellant's sustained efforts to turn his life around were clearly apparent throughout the case. His early decision to apply for the housing scheme and his pre-loan contributions towards a house enabled him to eventually secure a house.

50. Counsel submitted that through his conduct and testimony, the Appellant had shown that he was reliable, consistent, and dedicated in ensuring stability in both his and what he

thought would be his family's life. Unfortunately, the Appellant's envisioned plan to keep his family stable became challenging upon the Respondent's infidelity, which resulted in her bearing a child not fathered by the Appellant. It would only be fair to say that most of the subsequent problems that followed in the co-habitation of the parties started with the Respondent's bad choices.

51. Counsel submitted that the Appellant, having contributed more in all aspects and being in a financially better position to repay the Respondent's share in the house, was unfairly considered by the Learned Trial Judge regarding the granting of an equitable remedy. In contrast, the Respondent, who had contributed significantly less and had been inconsistent in maintaining a long-term job, inconsistent in contributing to the household needs as a result and making ad-hoc payments towards the house purchase agreement, was placed in a non-deserving advantageous position in the Learned Trial Judge's judgment.

52. Counsel submitted that coming from a troubled childhood with familial issues involving accommodation and financial difficulties, the Appellant was placed in a more disadvantaged situation compared to the Respondent.

53. Counsel posited that the Learned Trial Judge failed to take into account that while the Respondent had the possibility of building over the foundation on her mother's property, the Appellant had no land to build on and no alternative accommodation. The Learned Trial Judge also overlooked that the Appellant's current accommodation at his girlfriend's rented place was precarious, and he could be asked to vacate at any time.

54. Counsel submitted that the Learned Trial Judge further failed to consider that awarding the Respondent the first choice to repay the Appellant meant that the Appellant would find himself in a position similar to that of 2007, having to go back and forth with applications to secure accommodation of his own. Given the circumstances, he might find himself homeless until he could rent or buy alternative accommodation. This would severely impact the Appellant, who had made remarkable efforts to secure a house of his own, and to see himself repeat that cycle would be unjust and very unfair to him.

Submissions by Counsel for the Respondent.

55. On the other hand, the Respondent's Counsel argued that in arriving at the decision that the first option to buy out the other party be given to the Respondent, the Trial Judge cannot be faulted for basing his decision on the principle of the welfare of children, one of them a child of the Appellant. That a look at the judgment shows that it is the minor children and not the adult offspring of the Respondent who was considered by the judge.

56. Counsel further submitted that the argument by the Appellant that - the Respondent can use the foundation earlier developed by the Appellant on the land of the Respondent's mother - was speculative - since no evidence was led at the trial as to the ability of the Respondent to make use of the "structure".

Ground 9

Appellant's Counsel

57. The Appellant argued that given the strained relationship between the parties, the one-year period granted in the judgment by the Learned Trial Judge for the parties to repay one another was too long. Counsel submitted that it was possible to raise a loan within six months, providing either party with ample time to repay one another.

The Respondent's Counsel

58. On the other hand, Counsel for the Respondent argued that the trial judge had made his determination in equity and had provided ample time for each party to settle all payments. Granting a short period of six months to do so would have been very unfair.

59. In conclusion, counsel for the Respondent prayed that this Court dismisses the appeal with costs.

Consideration by the Court.

60. Although the Appellant argued several grounds, the essence of the appeal calls for answers to the following questions:

1. Whether on the available evidence the finding of fact by the Trial Judge that the Appellant's contribution to the loan repayment was just 60% could be supported.

2. Whether the Trial Judge was justified in giving the first option of purchase to the Respondent whose contribution was far less than that of the Appellant.

Grounds 1 and 2

61. The first question is based on grounds 1 and 2. The essence of these grounds was that the Trial Judge's finding regarding the contribution of each party to the loan repayment - 60% vs 40% - could only have been arrived at because the Judge did not consider the full extent of the Appellant's contribution. Counsel seeks a re-evaluation of the percentage of the Appellant upwards from 60% to 70 or 75%.

62. I find that although the judge stated that he had considered the evidence adduced - having made a finding that '*the Appellant made more efforts towards the allocation of the house and also made a greater contribution towards the repayment for the loan than Vidot'* - the judge did not adequately expand how he arrived at the *60% to 40% proportion.*

63. It may be that courts are not required to provide a detailed arithmetic breakdown of how they arrived at a specific percentage apportionment. However, as a fact finder, a judge ought to provide a clear rationale and reasoning process that justifies the allotment.

64. To determine whether the trial judge's conclusion of a 60%:40% loan repayment contribution split between the parties was justified, I primarily relied on the documentary evidence presented, particularly the account statements related to the house purchase prepared by the Property Management Corporation. The first statement of accounts, labelled P14A, detailed transactions from the account's inception on April 14, 2011, until June 30, 2022. The second statement, P14B, covered the period from January 2022 to July 2023. During the appeal hearing, the Court ordered that an updated Statement of Account be filed in the Court as one of the documents which would be relevant in resolving the various matters in dispute. The document was filed in line with the Court's directions and has been analysed alongside what was already on record. The document reflected the captured payments made from 14th April 2011 to August 2024.

65. In scrutinising the relevant payments, I worked according to specific periods guided by parameters which I identified as follows:

1. **Initial Loan Application and Early Payments Made to Housing Finance Company**:

a. Appellant

66. On the 12th of September 2008, the Ministry of National Development communicated to the Appellant that they had received his application for Housing Assistance from the government and that his request was being processed. **(See Exhibit P2 at page 65).**

67. On 13th April 2010, the Appellant authorized the Housing Finance Company Limited to deduct a sum of **SR 1500** each month with effect from May 2010 towards the repayment of the home savings contribution. (**Exhibit P12 at page 99).** On 26th April 2010, the Housing Finance Company then informed the Appellant that they would expect him to start making mandatory contributions to the Home Savings Scheme via his savings account with the company **2010HSS1485 (Exhibit P13 at page 100).**

68. The Appellant made his first contribution to the Home Saving Scheme via this Housing Finance Company account **2010HSS1485** to a tune of 1000 on 8th June 2010. Between July 2010 and June 2011, he made the following payments 2000, 1500, 1500, 1500, 150 and 2000 for a grand total of SR**9650.**

69. This SR**9650** amount is reflected in the balance brought forward transfers from Housing Finance Company to the Property Management Corporation. There is a Transfer payment of 7500 from 10HSS1485 to 11HP0187 on the 14th April 2011. The transfer of SCR 7500 can be linked to the letter dated 13th April 2010 to the Housing Finance Corporation referred to in the submissions of Counsel for the Appellant. By August 2010 when HFC started documenting payment towards the loan, deduction of 1500 SCR for 3 months would have occurred (may, June July) and the total sum of 7500 could not have been a coincidence. In addition to the 7550, there is a Transfer payment of 2150 on the 28th of April 2011. After these transfers, the account with Housing Finance was closed.

Therefore, the initial loan repayments made by the Appellant to the Housing Finance were SR9650.

b. The Respondent

70. On 28th November 2007, the Respondent made an application for Housing Assistance to the Ministry of Land Use and Habitat (**Exhibit P10 at page 92).** In an agreement signed between her and the Ministry of National Development on the 12th of April 2010, she agreed to contribute **SR240** to Housing Finance Company on a monthly basis (**Exhibit D1, page 107)**.

71. Unlike the Appellant, we do not have the Home Saving Scheme account statement of the Respondent with the Housing Finance Corporation and a look at the Account Statement of the PMC tendered in evidence does not capture a figure of 240 SCR anywhere. However, since there are transfers from two different Housing Finance Accounts, 10HSS1485 belonging to the Appellant, we can safely assume account **10HSS1500** belonged to the Respondent. This particular account **10HSS1500** transferred **SR2902** to the Property Management Corporation joint account on 28th June 2011.

Therefore, the initial loan repayments made by the Respondent to the Housing Finance were SR2902.

72. The payments of both parties is presented below in a table showing the percentages.

Initial payments with Housing Finance Company	
Appellant	Respondent
SR9650	**SR2902**
76.8%	**23.2%**

2. **Payments made to Property Management Corporation**

a. April 2011 to January 2014

73. Under this heading we should firstly note that besides the transfers from Housing Finance Company, there are two SR1780 payments made to the account before the Respondent was added to it. We can safely assume that these were made by the Appellant. We note four more payments of SR1780 all the way to February 2012 for a total of **SR10,680.**

74. On 27th August 2010, the respondent wrote to the Director of Housing and Loans to have her housing assistance application merged with the appellant (**Exhibit P11, page 98).** On 30th March 2011, the two parties enter a purchase agreement with the Housing Finance Company via **Exhibit P6.**

75. There were two cash payments of SCR 1800 in December 2011, a lump sum of SCR 3560 in January 2012, SCR 1800 in May 2012, SCR 2400 in October 2012, SCR 4000 in November 2012, SCR 2000 in February 2013, and SCR 2600 in May 2013. The first documented evidence of the Respondent contributing towards the Property Management Corporation house loan after the initial Housing Finance Company payment is a letter dated January 14th, 2014, in which she authorizes monthly loan repayments of SCR 2000 to be deducted from her salary **(Exhibit D2, page 109).** Given this timeline, it is reasonable to infer that the payments totaling SCR 19,960 made prior to this authorization likely did not originate from the Respondent.

2011 to January 2014	
Appellant	Respondent
SCR10,680 + SCR 19,960 **SCR30640**	**0**
100%	**0%**

b. January 2014 to March 2015

76. There are six payments of SCR 2000 made between January 2014 and March 2015, which can be attributed to the Respondent's monthly salary deductions. Although the Respondent stated in her examination in chief that she believed these deductions occurred for no more than three months, the records indicate otherwise.[1] Given the passage of time and the potential for memory lapses, it is reasonable to conclude that during this period, she likely paid a total of SCR 12,000 (6 months x 2000) as indicated in the loan statement.

77. In this same period, there were additional payments made, including SCR 2500 on February 6, 2014, SCR 2500 on March 5, 2014, SCR 1800 on April 14, 2014, SCR 1800 on May 7, 2014, SCR 1800 on June 6, 2014, SCR 2000 on July 14, 2014, SCR 1800 on August 26, 2014, SCR 1800 on October 6, 2014, SCR 3000 on December 9, 2014, and SCR 1800 on January 7, 2015. Given the likelihood that the Respondent did not make double payments during these months, it can be inferred that her financial contribution was limited to the documented **SCR 12,000** over the six-month period. The other entries made during that time were therefore likely the Appellants and these sums total to **SCR20,800**.

January 2014 to March 2015	
Appellant	Respondent

[1] Q: And D2 again there is deduction which you were to make from 2014 in the sum of SCR 2,000 and that was with Lemuria, yes?
A: Yes.
Q: Did they deduct SCR 2000 from your salary
A: Yes.
Q: For how long?
A: I did not work for long, I think three months or – three to four months.
Q: Okay so three months. So that would be SCR 6000 towards the loan?
A: Yes.

SR20,800.	**SR12000**
63.4%	**36.6%**

c. May 2015 to 4th November 2020

78. With the exception of four lump sum payments, the account statement reveals that a total of 28 monthly non-cash repayments of SCR 1800 were made. The first such payment of SCR1800 in this period was made on the 8th of June 2015 and the last was made on the 23rd June 2020. We can, on a balance of probabilities, assume these payments originated from the same source because they were consistently made over an extended period, reflecting a regular payment pattern typical of a single contributor. The uniformity in the payment amount and frequency suggests a deliberate and systematic approach, likely indicating that the payments were consistently made by the same individual or entity committed to meeting the loan obligations. These payments were also not in cash but rather by bank transfers suggesting a single person made them. These sums total to **SCR50,400.**

79. During that period, there were also three lump sum payments of SCR 3600 each, made following a month in which no payment was recorded. This pattern suggests that the individual responsible for the payments was making up for a missed SCR 1800 monthly contribution. These three lump sum payments together amount to a total of **SCR10,800** further reinforcing the likelihood that the same person was consistently managing and rectifying the payment schedule. The other lump sums made were SCR6000 made on 11th March 2016 and SCR9000 on 8th August 2019 for a total of **SCR15,000.** The grand total of the lump sums made in this period then comes to **SCR25,800.**

80. It is highly likely that the Appellant was the one making these specific payments. This conclusion is drawn from the fact that after the relationship ended in 2014, the Appellant continued to take responsibility for the house payments. Both the Respondent and officers from the Property Management Corporation acknowledged that the Appellant was the one who made the lump sum payments towards the loan, further supporting this

conclusion. The Appellant also stated that the was earning on average SCR25,000 per month and as such was capable of sustaining these payments.[2]

81. During the same period, the bank representative noted the names of the parties against certain entries. As previously mentioned, the entries for the Appellant have been addressed. For the Respondent, there were consistent allocations of SCR 1000 each month from May to November, amounting to a total of **SCR6000.** This uniformity in the recorded payments suggests a structured approach to the repayment schedule, with each party contributing as documented.

May 2015 to 4th November 2020	
Appellant	Respondent
(SR 50400[3]+25800[4]) **SR 76,200**	**SR6,000**
92.7%	**7.3%**

d. December 2020 - 1st August 2024

Assigned contributions

82. For most of this period, the bank representative indicated on the Statement of House Purchase at page 103 of the brief, how much each of the parties had contributed towards the loan.

[2] Q: And would you agree with me that Mr. Fideria from this same document has been making quite high repayment of 9000, 4000, 2000 and so on. Take a look at this documents can you were you see his name just look. Yes?
A: Yes, he earns more than I am it's normal.

[3] Reflecting the 28 deposits of SCR1800

[4] Reflecting the total of lump sums made in that same period

83. For the Appellant, the representative assigned the following payments, 3000, 4000, 2000, 2000, 2000, 2000, 2000, 10000, 2500, 2500, 3000 amounting to **SCR35000.**

84. For the Respondent, the representative assigned the following payments; 1000, 2000, 1000, 1000, 2000, 1000, 1000, 1000 for a total of **SCR10,000.**

85. Furthermore, although not specifically attributed to the Respondent in the records, there are four deposits of SCR 1000 each made since the beginning of 2024. Both parties have agreed that these contributions were made by the Respondent, bringing the total of these deposits to **SCR4,000. T**his brings the Respondents to **SCR14000** in regards to assigned contributions.

Unassigned contributions.

86. There are deposit entries that were not specifically assigned by the bank representative; however, inferences can be drawn on a balance of probabilities. Based on the testimonies of the Appellant, the Respondent, and the bank representatives, it was established that the Appellant typically made payments in amounts exceeding SCR1000. Consequently, it can be inferred that any deposit exceeding SCR1000 was likely made by the Appellant, maintaining a consistent pattern in his payment behaviour.

87. There are 3 unassigned deposits from December 2020 to December 2023 that exceed SCR1000 and as such can be attributed to the Appellant. These include 2000, 2000 and 3000 for a grand total of **SCR7000.**

88. There are 33 unassigned deposits from December 2020 to December 2023 that did not exceed SCR1000 and as such can be attributed to the Respondent. These include the following 900, 1000, 750, 750, 1000, 1000, 250, 250, 500, 250, 500, 250, 500, 500, 500, 500, 500, 500, 500, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000, 1000 for a total of **SCR24,900.**

December 2020 - 1st August 2024		
Type	**Appellant**	**Respondent**
Assigned	**SCR35000**	SCR10,000 + 4000 **SCR14,000**
Unassigned	**SCR7000**	**SCR24,900**
Total	**SCR42,000**	**SCR38,900**
Rate	51.8%	48.2%

89. Based on the analysis provided, we can calculate the final distribution percentage of contributions made by the Appellant on the one hand and the Respondent on the other hand, throughout the entire period under review:

Total Contributions:

1. **Initial Contributions made to the HFC:**
   - Appellant: SCR 9650
   - Respondent: SCR 2902
2. **Payments from 2011 to January 2014:**
   - Appellant: SCR 30,640
   - Respondent: SCR 0
3. **Payments from January 2014 to March 2015**
   - Appellant: SCR 20,800
   - Respondent: SCR 12,000

4. Payments from May 2015 to 4th November 2020

- Appellant: SCR 76,200

- Respondent: SCR 6,000

5. Payments from December 2020 to 1st August 2024:

- Appellant: SCR 42,000

- Respondent: SCR 38,900

Total Contribution Over the Entire Period:

- Appellant: SCR 9650 + SCR 30,640 + SCR 20,800 + SCR 76,200 + SCR 42,000 = SCR 179,290

- Respondent: SCR 2902 + SCR 0 + SCR 12,000 + SCR 6,000 + SCR 38,900 = SCR 59,802

Final Distribution Percentage:

- Appellant's Share: (SCR 179,290 / (SCR 179,290 + SCR 59,802)) X 100 = 75%

- Respondent's Share: (SCR 59,802 / (SCR 179,290 + SCR 59,802)) X 100 = 25%

Final Distribution:

- Appellant: 75%

- Respondent: 25%

90. This represents the overall distribution of financial contributions towards the loan payments, reflecting the Appellant's significantly higher financial input across the periods analyzed. I note that the percentages I have derived from the documents support the averment by the Appellant’s Counsel that based on the testimonies and documentary evidence presented, the Learned Trial Judge erred in finding that the Respondent contributed 40% towards the housing loan, when she in fact contributed far less. The

analysis supports the relief sought by the Appellant that the contribution of the Respondent be reduced to 25%.

91. It must be pointed out that the percentages derived do not reflect the construction and upgrades to the house done by the Appellant. Similarly, the percentages do not reflect the money spent on the foundation that the appellant built on the respondent's mother's land.

92. Arising from the analysis above, I find that the Trial Judge erred in his finding of 40%: 60% as the contribution of the Respondent on the one hand and the Appellant on the other. I therefore revise the Appellant's percentage upwards from 60% to 75%.

Grounds 5, 6 and 8

93. I now move to answer the second question: *Whether the Trial Judge was justified in giving the first option of purchase to the Respondent whose contribution was far less than that of the Appellant.*

Where cohabiting parties contribute towards purchase of property, what factors are relevant in guiding a judge to determine which of the parties should have first option to buy out the other? In answering these questions, I will be dealing with the essence of grounds 5,6 and 8.

94. In making the decision that the Respondent be given the first option to repay the Appellant his contribution, the judge justified his decision with two reasons albeit inter-twined. He said:

> "the court finds it more equitable to grant to the Defendant the first option to repay the Plaintiff … in view that the plaintiff is not permanently residing in the house whilst the Defendant is still residing there with the minor children of whom one is the child of the plaintiff."

95. We must however consider the reason why the Appellant left the premises. Both parties agreed that the relationship had so broken down that living together in the same space

was not tenable. It was the contention of the Appellant that he left the house because the Respondent frequently reported him to authorities, albeit falsely, that he was violent. On the other hand, the Respondent stated that although the Appellant did not physically abuse her, the arguments the parties frequently had were mentally and psychologically having an effect on her and the children. That the psychologist advised them that one of them had to leave. It is nevertheless noted that the Respondent admitted having hit the Appellant with a flower pot.

96. In such circumstances equity would demand that the departure of the Appellant from the residence cannot be used to disadvantage him.

97. On the other hand, given the finding that the Appellant contributed **significantly** more than the Respondent, I find it more equitable to grant him the first option to repay the Respondent, in line with the rationale in cases such as **Monnaie v Waye-Hive**[5] which I find persuasive.

98. In the **Monnaie case**, following her finding that the Plaintiff had contributed four fifth to the loan and the defendant had contributed one fifth to the property in issue, *Twomey, CJ* as she was then, gave the Plaintiff the first option to purchase the Defendant's share. The facts in **Monnaie** are rather similar with the appeal before us. The Plaintiff and Defendant were cohabiting before the relationship became untenable. They too had a child between them who was a minor at the time of separation and whose custody was with the Defendant. The Plaintiff filed a suit praying for a valuation and apportionment of his share in a property and a house which he had bought and built together with the Defendant with a bank loan. He asked for the first option to purchase the Defendant's share. In her statement of defence, the Defendant admitted that the property had been purchased and built together with the Plaintiff by way of a bank loan but stated that she was solely making the loan repayments for the preceding two years. Similar to what pertains in the case before us, she also stated that the Plaintiff had vacated the house. She prayed for the court to declare that each party had a half share in the property. After her

[5] (CS 19/2012) [2016] SCSC 57

finding that it would appear that the Plaintiff has contributed about four fifths of the cost of the home and the Defendant about one fifth, *Twomey CJ* gave the first option to the plaintiff to purchase the defendant's share.

99. The significantly higher loan repayment made by the Appellant together with factors such as the Appellant having expended labour to upgrade the house diminishes any other factors which could have supported a decision that the first option be granted to the Respondent to buy out the Appellant.

100. The question whether the Trial Judge was justified in giving the first option of purchase to the Respondent whose contribution was far less than that of the Appellant is therefore answered in the negative. And I give the Appellant the first option to pay to the Respondent an amount representing 25% of the current market value of the property. The property has been valued at 938,601.21 SCR.

101. I also take note of the outstanding amount on the loan which according to the Accounts Statement of the Property Management Corporation filed in the registry is at 41,780.70 SCR as at 01 August 2024. Each party will be responsible for the loan in proportion to their interest in the property as determined by this Court: 75% for the Appellant and 25% for the Respondent. Consequently, the Respondent is responsible for SCR 10,445 and the Appellant is responsible for 31,335.7 SCR. The Appellant will deduct SCR 10,445 from the amount he will give to the Respondent.

Ground 9.

102. The Appellant will pay the amount due to the Respondent within 6 months from the date of this judgment.

Conclusion and Orders

103. The appeal succeeds and the Orders of the Supreme Court are reversed.

ORDERS

1. The Appellant's contribution to the loan repayment is valued at 75% and that of the Respondent is at 25%.

2. The market value of the property is 938,601.21 SCR.

3. The outstanding amount on the loan as of 1st August 2024 is 41,780.70 SCR.

4. The Appellant is granted the first option to buy the Respondent's interest in the property.

5. The Appellant is to pay the Respondent the sum of SR224,205 which represents 25% of 938,601.21 (the current market value), less SCR 10.445, the latter being the Respondent's responsibility towards the outstanding loan.

6. The Appellant must pay the amount of 224,205 SCR to the Respondent within 6 months from the date of the judgment.

7. Upon payment of the said sum by the Appellant to the Respondent, the Property Management Corporation will remove the name of the Respondent from the Purchase Agreement and retain the sole name of the Appellant on the agreement.

8. Upon payment of the sums due by the Appellant, the Respondent shall vacate the house.

9. In the event of the Appellant not exercising the first option to purchase the Respondent's interest, then the Respondent will have the second option to purchase the Appellant's share within 6 months, failing which the house will be sold, and the proceeds divided as per the shares allocated in this judgment.

10. Each party shall contribute SCR 2, 300 representing one-half of the cost of the valuation of the property.

11. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 19 August 2024.

_____

Dr. Prof. Lillian Tibatemwa-Ekirikubinza, JA.

I concur _____

Dr. M. Twomey- Woods, JA.

I concur _____

S. Andre, JA