

IN THE SUPREME COURT OF SEYCHELLES

J C

PETITIONER

VERSUS

M P C

(NEE ESPARON)

RESPONDENT

Divorce Side No 39

of 2002

Mr. F. Bonte Counsel for the Applicant
Mr. J. Renaud Counsel for the Respondent

JUDGMENT

B.Renaud

The parties were married in April 1984 and the marriage was dissolved on 27th March 2003.

The Petitioner by Notice of Motion entered on 15th July 2003 moved the Court on an application for a property adjustment order.

The Applicant, Mr. Jose Charles, deponed to an affidavit setting out the properties in issue and prayed for an order:

- a) *appointing a valuer to value the two properties i.e. PR2328 and C47;*
- b) *upon the valuation the Applicant would like to retain PR2328 and to pay the Respondent half of the value as per the valuation;*
- c) *that the property C47 be transferred to the Respondent and that she be made to pay the Applicant the value of his half share of the property as per the valuation;*
- d) *that the Respondent does not own any share other than in the two*

properties above-mentioned and further that she should pay her share of the of the premium of the life insurance if she wants to so benefit.

The Respondent in her answer to that Notice of Motion and Affidavit averred that **parcel C47** is jointly owned by the parties and that the Applicant ought to transfer his half share to the child of their marriage in lieu of maintenance. The Respondent further averred that she also worked, either in the family business or with the Insurance Company in Seychelles as well as in Great Britain where the parties resided for eight years. When she was not working the Respondent was managing the household. The Respondent also averred that she contributed towards the costs of the **vehicles** as well as towards the payment of electricity, water and other bills through her employment and house keeping effort. As regards the **take-away business**, the Respondent averred that she was the one who mostly managed that business and worked from 10 a.m. to 8 p.m. each working day, for which she was not paid a salary. The Respondent further averred that she managed the **video business** and was not paid a salary as well. She averred that another parcel of land, namely, parcel **PR2327** was bought by the parties during the marriage and is mortgaged to secure the loan used in the business.

Mr. D. Blackburn, Quantity Surveyor, submitted valuation reports of the three immovable properties, as follows:

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| (a) | <i>Parcel PR2327</i> | <i>- SR350,000.00</i> |
| (b) | <i>Parcel PR2328</i> | <i>- SR300,000.00</i> |
| (c) | <i>Parcel C47</i> | <i>- SR960,000.00</i> |

Mr. Hubert Alton & Co another Quantity Surveyor, also submitted valuation of the three immovable properties, as follows:

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| (a) | <i>Parcel PR2327</i> | <i>- SR143,920.00</i> |
| (b) | <i>Parcel PR2328</i> | <i>- SR279,370.00</i> |
| (c) | <i>Parcel C47</i> | <i>- SR900,000.00</i> |

At the sitting of the Court on 9th June 2004 the parties agreed to settle the issue of immovable properties as follows:

“The parties agreed that for the property C47 situated as Anse La Mouche to be of the value of SR930,000.00; the parcel of land PR2327 situated at Praslin to be SR247,000.00 and PR2328 to be SR290,000.00.”

The parties further agreed that:

“... the shareholding of each party is 50% of each of the three properties.”

As regards the businesses, the parties agreed to appoint T.S.K. Nair & Co, Accountant, to submit accounts regarding the businesses of the parties namely, vehicle S6631; take-away and video businesses; carry out an inventory of the musical equipment of the Petitioner as well as all other related fixtures and fittings. As regard physical equipment, etc, the Accountant was requested to submit an inventory of these with his report. He was also requested to state his opinion as to the value of these businesses as at 30th June 2002. It was also agreed that the fees of the Accountant is to be paid equally by the parties.

The Accountant submitted his report, copy of which was made available to the parties. Whereupon the Respondent filed a “*further application for division of matrimonial property*” stating that she accepts the report of Commissioner Nair and Co. and proceeded to set out how she would like the assets to be divided between the parties.

The Respondent proposed as follows:

1. *Half share of Vehicle S6631 valued at SR80,000.00*

*SR38,727.00 being half of original value of Business
SR8,000.00 as her share in the Video Rental business
SR10,000.00 as her share in*

2. *SR100,000.00 as her share in the shop business*

*SR30,000.00 as her share of Vehicle S4235
Half share in the ongoing business of “Aquarius Supplies”.*

The Applicant likewise responded by setting out in an affidavit his objections to the proposals of the Respondent and reasons therefor.

The Applicant deponed that the pick-up truck was purchased by himself and registered in his sole name and was paid for from the proceeds of sale of his previous vehicle which was sold for SR150,000.00. That due to depreciation the truck was thereafter sold for SR125,000.00. He further deponed that when he left the matrimonial home in February 2002 he had to pay for the housing loan to SHDC at SR2,500.00 per month totaling SR67,345.01 until the debt was cleared. He also paid the monthly Electricity bills, water & telephone charges; school fees; annual house insurance; pest control charges – all amounting to SR95,230.00. He sold the truck to help meet those expenses even after the divorce. He thereafter applied for and obtained a loan with which he purchased the present truck. In 1997 after obtaining a loan he set up the take-away business which was registered in his sole name and the Respondent was employed therein and received her salary. That business was sold for SR95,000.00. He took an additional loan to purchase vehicle S4235 whilst the business was still in operation and the outstanding balance of that loan was cleared after the sale of the take-away business and the balance was used to meet the household expenses. The video rental business was set up with a loan in his personal name and the Respondent was employed therein earning SR2,000.00 per month. That business was running at a loss and was closed down. As regards musical instruments, the Applicant deponed that he obtained another Bank loan to purchase these and the earnings he obtained therefrom were used to repay the loan and pay for household expenses. Vehicle S4235 was sold in 2001 when the parties were still living together and the proceeds deposited in their joint account from which the Respondent withdrew money to meet household expenses. The business Top Notch was set up by means of a loan and was eventually closed down due to foreign exchange difficulty and the stock worth SR53,000.00 was transferred to Aquarius Supplies to clear the loan. The house contents valued at SR218,000.00 were purchased by himself and part from his previous marriage. He deponed that he purchased most of the house contents from earnings received from his personal musical performances and sale of CDs; doing purchasing for Sheraton Hotel; and working as an account receivable supervisor for that hotel in addition to transporting night staff for the hotel.

Learned Counsels jointly submitted and agreed that the issue of matrimonial assets be adjudicated by the Court based on the affidavits of the parties. This I will now proceed to do.

In settling matrimonial assets between the parties to a marriage, I believe one should start by setting out certain principles that should apply. In this case I would allow myself to be guided by

the following principles:

1. *That whatever assets belonging to and in the name of the parties **before** the marriage ought to be awarded to that party exclusively.*
2. *That movables and immovable property(ies) bought during the marriage by one party through his/her own personal means ought to be awarded to that party, subject to the principle of "**intention**" stated hereunder.*
3. *That all matrimonial assets be they movable or immovable bought by either of the parties during the marriage with common resources of the parties ought to be divided on half and half basis. Here it is immaterial who was employed or who was not, or who earned more or who earned less.*
4. That the **intention** of the parties ought to be a paramount factor. It is deemed that the parties were married to lead a common and joint life for their mutual benefit. Whatever was gained during that period was intended to be for the mutual benefit of both through to the end of their lives.
5. *When a marriage ended in divorce the parties should be afforded such opportunity to enable them to continue to maintain as far as possible the same standard in life that they used to enjoy.*

On the basis of those principles enunciated above, I will now venture to apply them in the present case in arriving at what I consider to be a fair settlement.

Before I proceed to share the assets, other than the immovable properties, I need to establish what those assets are. Here I accept and would rely on the findings of Nair & Co. as contained in its Report. The findings contained in that Report have been agreed to by the parties.

a) Immovable Properties

Firstly, as regards the immovable properties parcels C47; PR2327 and PR2328, I find that this issue is already settled by the parties on the basis of half share each in each of the three properties. I will maintain and uphold this as fair settlement.

(b) Vehicle S6631

That vehicle was purchased by Mr. Jose Charles in April 2001 from his personal funds. Obviously

these funds must have been earned by Mr. Charles during the marriage. I find that although that vehicle belonged personally to Mr. Charles it was intended to be used for the benefit of the family. Mrs. Charles is therefore entitled to a **half share** thereof. It was sold for SR125,000.00 and the proceeds applied to pay the balance of the housing loan and to meet other household expenses. However, as Mr. Charles had paid over SR67,000.00 to SHDC as housing loan, and the house is now shared equally between the parties, Mr. Charles is now not required to pay Mrs. Charles her half share under that head.

(c) Takeaway Business

That business started in October 1997 in the name of Mr. Jose Charles financed by a loan of SR90,000.00 in his name. Mrs. Charles was employed and paid a salary by that business. That business was a personal venture of Mr. Jose Charles. It was closed in February 2000 when it had accrued a loss of SR144,457.00. It was sold for SR96,400.00 which amount was used to repay the bank loan. I find that Mrs. Charles is **not entitled to any share** in that business. In any event that business ended up more as a liability than an asset.

(d) Video Rental

That business started in June 1999 in the name of Mr. Jose Charles by means of a loan of SR15,000.00. That business belonged solely to Mr. Charles. It was making a loss of SR48,150.00 in the year 2000. It has since closed down. I find that Mrs. Charles is **not entitled to any share** in that business. Again that business venture ended up as a liability.

e) Musical Equipment

That business was started in March 1999 by Mr. Jose Charles by means a loan of SR20,000.00 to purchase musical equipment which cost SR22,358.00. Mr. Charles is a musician and operate as such. That business belonged to Mr. Charles solely, so I find. Mrs. Charles is **not entitled to any share** in that business.

f) All other related fixtures and fittings

The household contents as per inventory is valued at SR218,650.00. Mr. Charles brought in some personal items from his previous marriage. These items should be excluded from the inventory value and removed by him. I find the rest of the items, to be matrimonial assets belonging equally to both parties and ought to be shared on **half and half share** basis.

*Mr. Charles took a loan of SR175,000.00 to start a small business in his name in January 2002. That must be what has been referred to by the Respondent as, "Aquarius Supplies". Mrs. Charles only guaranteed that loan. I find that that business belongs to Mr. Charles personally. The year 2002 was when the parties broke up. I find that Mrs. Charles **is not entitled to any share** therein.*

g) Vehicle S4235

That vehicle was purchased in September 1999 in the name of Mr. Jose Charles for SR65,000.00 and sold in February 2001 for SR65,000.00 and the money deposited in joint account of the parties at the bank. I find that **moneys in the joint account,**

No.4325300 at Barclays Bank, if any, belong to both parties and should **be shared equally.**

Top Notch

That business started in 2001 under the partnership name of Mr. Jose Charles and Mrs Marguerite Charles by a loan of SR50,000.00. It was closed after 9 months of operation because it was making a loss standing at SR60,463.14. Mr. Jose Charles repaid the balance of the loan that was outstanding. I find that this business belonged equally to both parties. Mr. Jose Charles was a partner thereof and if he repaid any outstanding loan after the closure of the business, he did so as a partner and therefore cannot claim deductions from any asset now due to Mrs. Charles. So I find.

In conclusion, it is my considered judgment that the matrimonial assets of the parties be shared on the basis set out in paragraphs (a) to (h) above. I order accordingly.

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B. RENAUD

JUDGE

Dated this 1st day of December 2004

