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IN THE SUPREME COURT OF SEYCHELLES

AA

Petitioner

VS

JA

Respondent

Divorce Side No.43 of 2005

Ms. Pool for the Petitioner

JUDGMENT

Gaswaga, J

The parties herein were married on the 12th day of July 1994. There

marriage, which this court dissolved on the 5th of August 2005 was blessed with two children to wit C J M A born on the 6th day of August 1993 and C J N A born on the 7th day of June 1995. The petitioner has two other children from a previous relationship. The present application is for matrimonial property adjustment. The respondent was duly served with the application but he did not respond nor attend court as directed in the summons hence the court granted leave for the matter to proceed ex parte. **See Mona Jeanny Leon Vs Koudaoga Mathias Kabore Civil Side No. 233 of 2002.**

The petitioner avers that the property management authority assigned her and the respondent a three bedroom house located at Marie-Jeanne Estate, Baie Ste Anne, Praslin Island in 1998 (see P2) and they accordingly signed a house purchase agreement in respect of the same. The parties also obtained a loan of SR 233.129.02 from the Seychelles Housing Development Corporation, now known as the property management corporation, and were asked to pay monthly installments of SR 700.00 (see statement of loan account P3). The petitioner, who was from 1997 to 2003 when they separated working with Casino des Iles at Praslin stated that she was the one repaying the monthly installments of SR 700 until the time she left the house

and that the respondent started repaying the loan then but stopped in January this year. Her salary was SR 2700 (see P4) and the loan repayment she made totals to approximately SR 25.200.00. The applicant obtained a number of small loans from her employer and from the Seychelles Savings bank which were guaranteed by the respondent but repaid by her and the balance currently stands at SR 2.546.44 (see P10). The money was used for buying furniture and the maintenance of the house. A sum of SR 13.300.00 was borrowed from the savings bank on the 10th April 2001 and another sum of SR 15.000.00 on the 4th November 2002. (See P8 and P9 respectively). The applicant's employer also approved small loans to her for general purpose which totaled to SR.7.400 (see P4 and P7) and were eventually deducted from the salary.

It is imperative to consider the intention of the parties in relation to the property in issue before proceeding to make any order in a matrimonial adjustment matter. Although according to P6 the house was allocated to the applicant the final documentation from property management corporation for the said property was in the joint names of both parties and therefore the loan, effectively, meaning that each owns a half share. It was immaterial to regard the party who paid most of the loan as the one having more share than the other because each one of them were contributing according to their means and capability towards their entity with a common aim. Their daily matrimonial responsibilities consisted of a number of activities to be funded jointly apart from that of repaying the loan. It was held in **Maurel V/s Maurel SCA no. 1 of 1997 that**

“It follows that any assets acquired during the marriage does not necessarily mean that such assets are held by such spouse in co-ownership of half share each. Spouses can enter into pre-nuptial and post nuptial contracts relating to a property. ***But when this is not***

the case, assets owned in the name of each spouse must be regarded as prima facie as such spouse's property unless it can be established that that was not the intention of the party or parties."

Section 20 (1) of the Matrimonial Causes Act (Cap 124) provides that the court may, after making 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 order periodical payments, or lump sum payment to a party to a marriage, or periodical payments or lump sum payments for the benefit of a relevant child or make a property adjustment order under section 20 (1) (g). It was held that the purpose of those provisions of these subsections is to ensure that upon the dissolution of a marriage, a party to the marriage is not put to an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and as far as is possible, to enable the party applying maintain a fair and reasonable standard of living commensurate with or to the standard the parties have maintained before the dissolution. See **Renaud V/s Renaud SCA No. 48 of 1998**.

In July 2003 the petitioner together with her four children fled the matrimonial home because of domestic violence and since then she is living in appalling conditions at a relatives house which cannot accommodate all her children. Meanwhile the respondent continues to occupy the matrimonial

home where he is cohabiting with another person and has since January 2006 ceased all payments of the loan. It is however obvious that since the petitioner's departure the respondent has been maintaining the home. It was also deposed that for the whole 2005 the respondent never contributed towards the maintenance of their children until early 2006 when he was reported to and consequently ordered by the family tribunal.

It is for these reasons that the petitioner urges the court to make an order allowing her to re-occupy the house together with her children and also resume repayment of the loan. She is also prepared to refund monies contributed by the respondent towards the loan. The holding in the case of **Mary Figaro V/s Guy Figaro (1982) SLR 200** is to the effect that the court may under section 21 of the status of married women Act exclude one spouse from the matrimonial home.

Having considered all the circumstances of this case regarding the parties and the relevant children, I now come to the following conclusions. That the furniture and household items acquired during the time the parties were living together was for the common good and benefit of the family and should be shared equally.

The matrimonial home, although not yet transferred into the names of any of the parties or both of them is jointly owned by the two and the outstanding loan balance as at 1st

may 2006 is SR 231.621.82. However, the letter (P6) by the Member of the National Assembly for Baie Ste Anne, Praslin clearly indicates that the provision of accommodation for the applicant together with her children was a social problem to be treated as a priority. Unfortunately the applicant and her children are not living in the house and some of the children are separated from the applicant. It was deposed that the respondent has alternative accommodation at his mother's place in case the court excluded him from the matrimonial home. In these circumstances, where the parties are already divorced and the respondent is cohabiting with another person yet there are allegations of violence, it would be intolerable for them to continue living together. There will not be much hardship caused if the respondent is excluded as compared to the continued hardship facing the applicant and the children. It is therefore ordered that taking the loan amount, as submitted by Miss pool, as the value of the property (ie SR 233.000.00) the respondent should be paid up to the amount of his contribution towards the loan repayment to represent his share. This in my view will not put him at an unfair disadvantage.

I further order that given the above reasons and as the petitioner is the one living with the relevant children of the marriage should be allowed to have

the first option to reimburse the respondent in cash for the latter's declared share of all the matrimonial assets within a period of four months from the date hereof and would thereafter become sole owner thereof. Failing that, the respondent is allowed a period of four months thereafter to reimburse in cash the petitioner for her declared share in the assets and contribution towards the loan repayment and further inherit the outstanding loan balance, and would then become sole owner thereof. Failure herein by the parties shall result into the matrimonial property being sold on the market and each party to have their respective share in the net proceeds after fully repaying the housing loan.

I so order.

D. GASWAGA

JUDGE

Dated this Day of October, 2006.