

**IN THE SUPREME COURT OF SEYCHELLES****DORIS      MOLLY      ESTICO****PETITIONER****VERSUS**

SAMUEL BUTLER ESTICO

**RESPONDENT**Divorce SideNo 81 of 2005

Mr. F. Bonte for the Petitioner  
Ms Domingue for the Respondent

**JUDGMENT****Perera J**

This is an application for the adjustment of matrimonial property consequent to a dissolution of the marriage.

The Applicant has averred that although the marriage with the respondent was dissolved on 18<sup>th</sup> January 2006, both of them are still sharing the movable and immovable items in the matrimonial home on land Parcel V. 8421 at Le Rocher. The Applicant further avers that the property was purchased in their joint names through a loan obtained from Seychelles Savings Bank. It was the Respondent who applied for the loan, while she stood in as the guarantor. She avers that repayments of the loan were directly made from a joint account to which both their salaries were transferred.

The Applicant further avers that she borrowed a total of Rs.50,000 under the House Improvement Loan Scheme of the SHDC, and also obtained three other loans from the Seychelles Savings Bank to complete the house. It was the Respondent who stood in as guarantor to those loans. She therefore prays that the property be valued and that she be permitted to purchase the half share of the respondent, in which event the respondent should vacate the matrimonial home.

The Respondent, in his answer avers that the land Parcel V. 8421 was purchased partly from the loan from Seychelles Savings Bank, and that it was he who repaid that loan. He further avers that at the time the house was being constructed, the Applicant was still attending the Polytechnic, and that he built the house with the Assistance of his brothers. He however admits that subsequently, when the Applicant was employed, she made certain contributions. As regards the loans taken by the Applicant, the Respondent avers that they were utilized by her for her personal needs. In these circumstances, the Respondent seeks an order of the Court requiring the Applicant to leave the matrimonial home, upon being paid whatever amount the Court finds she has contributed.

The Applicant filed a counter affidavit to that answer, averring that she borrowed a total of Rs.25,000 from the Home Improvement Scheme in three loans with the Respondent standing as guarantor. She also avers that from 10<sup>th</sup> February 1992 she was employed at the Ministry of Employment and Social Affairs on a salary of Rs.2300. The Construction of the house commenced in 1992 on the land given to her by her father in view of her impending marriage with the Respondent. She also avers that a joint Account no. 43241112774 9022 was opened

on 1<sup>st</sup> October 1993 at the Seychelles Savings Bank to which her salary of Rs.2300 and the Respondent's salary of Rs.2700 were transferred. The Applicant claims the first right of purchase as the land belonged to her father and as the construction of the house was done by joint contributions from their salaries and loans.

When the case was taken up for hearing of a motion filed by the respondent to restrain the Applicant from bringing third parties to the house, Mr Bonte, Learned Counsel for the Applicant mooted a settlement of the main application. In this settlement, the Applicant offered the Respondent Rs.446,000, (being half the value of the property valued at Rs.893,000) to the Respondent, payable within 30 days. If she failed to pay that sum within that period, she was prepared to receive the same sum of money from the Respondent. The Respondent agreed with these terms but sought the first choice to purchase.

In view of these contradictory claim, the parties agreed to adduce evidence to enable this Court to determine who should have the first choice to purchase, based on respective contributions towards the purchase of the land and the construction of the house.

The Applicant testified that her father transferred the land to her and the Respondent on 26<sup>th</sup> November 1998. A part payment of Rs.15,000 was made by her on 14<sup>th</sup> September 1992 (R1). On 5<sup>th</sup> November 1996, the Applicant obtained a loan of Rs.40,000 from the Seychelles Savings Bank, and that sum was credited to their joint Account (R4). She also produced proof of three other loans obtained by her from the Seychelles Savings Bank, Rs.16,500 on 7<sup>th</sup> May 2001,

Rs.15,000 on 2<sup>nd</sup> June 2003 and Rs.10,000 on 1<sup>st</sup> August 2003.

As regards the sum of Rs.25,000 obtained from the SHDC Home Improvement Scheme, she produced a letter dated 29<sup>th</sup> July 2002 authorizing the Ministry of Employment and Social Affairs where she was employed to deduct Rs.700 per month from her salary. In that respect a statement from the bank was produced with an opening balance of Rs11,972 as at May 2004 and with details of payments from 30<sup>th</sup> June 2004 to August 2005. She stated that the house has still not been completed. That sum of Rs.25,000 was paid to her father for the land, so that the total purchase price was Rs.40,000.

The Applicant also produced the utility bills which are in the name of the Respondent. She however claimed that she paid them for at least three years.

As the present consideration is limited to the immovable property, I shall not consider the dispute between the parties regarding the household items.

The Applicant further testified that the Respondent was a taxi driver before the dissolution of their marriage. He also had a contract with the SPTC to transport staff in his taxi. She produced to agreements he entered with the SPTC in which he received Rs.3500 per month from 1<sup>st</sup> September 1996 to 28<sup>th</sup> February 1997, and Rs.4500 per month from 1<sup>st</sup> November 1998 to 31<sup>st</sup> October 1999. The Applicant also stated that the Respondent had two mini buses which he later sold and utilized the proceeds for his own use.

The Applicant testified that he presently lives with his mother at

Corgate Estate and comes to the matrimonial home occasionally to wash his car. She also stated that he stays with his concubine at the Police Quarters at Mont Fleuri.

The Respondent in his testimony stated that the father of the Applicant had a lease on Parcel V. 8421 which was State land. However he paid Rs.7000 to him and subsequently after his title was regularized with the government, and after obtaining the loan of Rs.25,000, the payment for the land was finalized. He claimed that he had sufficient income from rearing pigs and doing masonry work initially, and later as an SPTC driver, and a taxi driver. He stated that the lowest monthly income from his taxi business was around Rs.6000 to Rs.7000 during the period 1996 to 2001. He stated that the Applicant contributed only Rs25,000 towards the construction of the ceiling and the roof of the house, and that money taken from loans was used on her trips abroad. He admitted that he resides mostly with his mother and his concubine. He stated that he could not adduce proof of the loans obtained by him as statements are not available in the banks. He further stated that he had no place to reside and therefore wanted to be given first choice in purchasing the half share.

I have considered the evidence adduced by both parties. The evidence of the Applicant as regards contributions is supported by documentary evidence. She is at present residing in the house and paying the utility bills and also maintaining the property. Although the Respondent may have been earning more than the Applicant, he has failed to satisfy the Court that he contributed much towards the purchase of the land and the construction of the house. In those circumstances, he should be satisfied that the Applicant has conceded a half share in his favour and offered to pay Rs.446,000 within 30 days

of an order being made by this Court. In this respect, the Court holds that the Applicant shall have the first choice to offer that amount to the Respondent. If she fails to do so within that period, the Respondent shall have the right to offer that amount to the Applicant within 30 days of her default. Upon payment of Rs446,000 by either party, he or she shall transfer the ½ share to the party who paid, forthwith. Failing which, the party who paid would be entitled to register this judgment at the Land Registry for the purpose of registering his or her title to the whole property.

Judgment entered accordingly.

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A. R.  
PE  
RE  
RA

**JUDGE**

Dated this 31<sup>st</sup> day of October 2007