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**IN THE SUPREME COURT OF SEYCHELLES**

**LAURE SAMORI  
VS.  
MICHEL MELTON CHARLES**

Divorce Side No. 169 of 2008

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Mr C. Lucas for the Plaintiff (Absent)  
Mr C. Camille for the Defendant

**JUDGMENT**

**Burhan J**

This is an application for property and financial adjustments under the Matrimonial Causes Act No 3 Of 1992. The parties were married on the 30<sup>th</sup> May 2006 and on an application made by the wife (Petitioner) Laure Cecile Noela Charles nee Samori, an order absolute granting the divorce was issued by this court on the 16<sup>th</sup> of February 2009.

The aforementioned Petitioner in this application seeks;

- (i) An order for the benefit of the Petitioner in respect of any of the property or any interest or right of the Respondent in any property including the matrimonial home,

(ii) An order for monthly payments, starting from the date of presentation of the petition for the benefit of the Petitioner,

(iii) An order that monthly payments starting from the date of presentation of petition or a lump sum payment to the Petitioner being contributions towards domestic expenses,

An order to secure to the satisfaction of court the payments ordered under paragraphs (i) (ii) and (iii),

(iv) An order that the Petitioner be made to occupy the matrimonial home and that the Respondent be restrained from entering and remaining in the matrimonial home.

The Petitioner further averred in her affidavit that she was a French national and the Respondent a Seychellois. She stated that she had prior to presentation of the petition cohabited with the Respondent for a period of 10 years and been married to him for over two years during which time the following movable and immovable properties were acquired,

(i) Land parcel PR 2590 and a house built thereon at Baie St Anne Praslin.

(ii) A motor car bearing registration number S 7434

(iii) A fishing boat bearing the name Lady Marie

She further averred that she had advanced a sum of SR 65,000/= for the purchase of the abovementioned property and given a further sum of Rs 20,000/= for the purchase of the said motor car. She stated she also contributed towards the upkeep and maintenance of the matrimonial home. She further avers that she helped in the fishing business without drawing a salary. She also moved court that the Respondent be made to pay maintenance towards household expenses namely utilities payments until the determination of the said application.

Giving evidence under oath Noela Samori the Petitioner testified to the fact that she was a French National who had met the Respondent Melton Charles while she was on holiday in Seychelles. They had become friends and he too had visited France. She stated she periodically had given him sums of money from her account in France for the purchase of the property in Praslin, building materials for the house and for the purchase of a boat and car. During their friendship she had travelled on several occasions to France and back. She testified that the Respondent ran a pleasure boat for tourist and she helped him when he conducted tours on islands. She stated that when she married him in May 2006 the house

was not yet complete. In France she had been employed in Gillette Company which she quit in March 1999 and whilst in Seychelles worked at the French school, Steve ice cream on a commission basis and at Mango Lodge for a short period of time. Being a foreigner she was not able to have the property written in her name as well. She stated that she is now in occupation of the said house and had filed a case in the family tribunal and obtained an order preventing the Respondent from entering the premises. She further stated she had no money to support herself and has to go back to France and start life again as she has lost everything. Whilst living with the Respondent, she had paid rent for a house they were living in the year 2000 before they went to live with his aunt (also referred to as cousin sister). In July 2002 Melton had begun to do sea cucumber business. She admitted that he would earn about SR 100/= on a sea cucumber and on each trip would catch between 750 to 1000 sea cucumbers.

She stated she was the one who had purchased the cement for the house, electrical appliances and tiles for the house. She denied the Respondent had given her money to be converted and deposited in an account in France in their names. She denied the existence of such an Euro bank account or that there was a balance of 200,000 Euros in it. She denied he had given her any money for her medical expenses and operation in Mauritius. In June or July 2008 he had told her not to meddle with his affairs, hit her and accused her of being responsible for his mother's death. She had thereafter filed a case in the Family Tribunal. She denied she was

renting the master bedroom of the house to tourists and stated her home was only open to family and friends. She stated that the Respondent had advised her to bring foreign currency and he would sell it for her.

Mr Melton Charles giving evidence testified that the Applicant Noela Samurai had shown bank statements that she had withdrawn money from France but this money was money she bought with her on holiday and had not spent anything on him. He stated his first car was S 5710 and in 1998 purchased S 7434. He further stated he had a charter boat and a contract with Therese Island to ferry people. The Applicant would accompany him as a guest. He would give her some money when she was on holiday. He stated sometimes the Applicant would overstay her ticket and he would with his money buy her another ticket. Since he was not well educated she would do all the paper work for him. He testified that he never took any loans except to purchase a boat. He admitted borrowing 20,000/= Rupees from her to purchase two out board engines but had returned the money to her. He had paid for everything in the construction of the house. When she was working at the French school she would come to Praslin on Friday and go back on Sunday. Her money she earned she would use for her own expenses. They had discussed about retirement and he had told her to open an account in France and they would send the excess money to that account. They had not sent any bank transfers but her friends would take the money

when they were going back to France. He had once seen the balance in the account which was 200,000 Euros. This money he stated was meant for his retirement. He stated that on each of his sea cucumber trips he would earn for himself after deductions around SR 37,000/=. He stated he had been doing the sea cucumber business for about 9 years and would do 2 trips for a month and he would give her Rs 5000/= for her personal use and Rs 3000/= separately for house expenses. He would give her the balance money to bank. The only time he would withdraw money from the bank was for building the house. He stated he was not willing to give any share of the house to her as he was now getting old and could not build another house.

Undercross examination he stated he paid for his airfare the first time he went to France. He denied that she had rented out any house and stated it was he who had rented a house. He stated he gave her Rs 10,000/=:, 40,000/=: and 25,000/=: in November to purchase a land for him. The receipt he admitted was in her name. He explained that he had the receipt written in her name as at that time, he was married and he was afraid that his wife would claim the land if he bought it in his name as he had subsequently divorced her. He stated the land cost him Rs 75,000/=:, to flatten the land he had to pay Rs 50,000/=: while the house cost SR 600,000/=: to 700,000/=: . He

denied obtaining any money from the Petitioner for construction of the house. He stated as he trusted her he opened an account in France. He further stated he initially worked on the Lady Marie boat and subsequently bought it. All purchases for the house made by her was with his money. He further testified that the house and property was valued at SR 742,000/= when it was almost completed. He further stated that he had an old vehicle which he gave to a friend for spare parts and thereafter purchased a car which he allowed the Applicant to drive. He had mortgaged the house and land and obtained a loan to purchase Lady Marie. He had paid a deposit of Rs 100,000/= to Mr Timothy Morin for the boat. He had from his own funds paid the loan instalments and still was doing so. He stated that he paid for all the materials and the workers in the construction of the house with his own money and when he left the house he had kept back everything including his passport. He further stated he was claiming all the movables in the house.

Witness Mr Jimmy Morin testified to the fact that it was Mr Melton Charles who bought Plywood and tiles from him for the construction of his house and that he was aware that Mr Charles was in the sea cucumber business with his brother Timothy Morin. He stated the Applicant the ex-wife of Mr Charles had not purchased anything from him.

Witness Mr Timothy Morin testified that he was the previous owner of the boat Lady Marie. He had known Mr Melton Charles for 12 years and he had worked as captain and diver in his boat. He stated further that Mr Melton Charles had given him an advance deposit of Rs 100,000/= for the purchase of the boat and finally purchased the boat from him. They still were doing the cucumber business. He would provide the supplies food, diesel, bottles and compressor. Mr Melton Charles would come in with his catch of sea cucumber and he would deduct his expenses from the sale. He stated the boat sets off for its voyage from Mahe. They would do about three trips every two months as each trip would take 14 to 20 days and time to rest had to be included. Everything in respect of the sea cucumber business was done in Mahe and not in Praslin. He was aware that the wife of Melton Charles lived in Praslin.

When one considers the evidence of the Respondent Melton Charles it is clear that he was in receipt of an income throughout his relationship with the Petitioner, the most lucrative being the sea cucumber business with he did in collaboration with one Mr Timothy Morin. According to the evidence of the Respondent which is corroborated by Mr Morin it is clear that the Respondent was to get a minimum of Rs 37,000/= on each trip and he

would do a minimum of 3 trips for a period of two months which would mean the Respondent earned a minimum of over Rs 52,000/= SR a month on the said sea cucumber business. Furthermore the Petitioner admittedly states that he had been doing this business since July 2002. Hence this court is satisfied that he would have had sufficient funds to construct his house which according to the valuation report P23 is valued at 511,000.00 SR.

It is the evidence of the Petitioner that she had given a sum of SR 65,000/= to purchase the Parcel of land .In support of this she produced receipts P21 and P22. Receipt P21 is in the name of the Petitioner while receipt P22 is in the name of the Petitioner and the Respondent. The Respondent denies this and states he had paid for the land and that he did not wish to get the receipt in his name as he was afraid his former wife would claim the land if the receipt was in his name. However it is to be noted that in receipt P22 he has permitted his name to be entered and in his affidavit filed he admits that she had lent him SR 20,000/= for the purchase of the land. Furthermore the evidence shows that during this period of time the Respondent was working as a fisherman and a boat operator and not carrying out his more lucrative sea cucumber business and the Petitioner has marked P1 showing that in January 1999 she had transferred a sum of 80,000 French Francs from her account in France.

Payment for the land has been done soon after according to receipt P21 dated 2<sup>nd</sup> February 1999. Other bank statements marked also show that there were transfers of funds from the Petitioners account in France prior to the payment on the land of SR 25000 on 25<sup>th</sup> September 2009 (P22). Although the Respondent has stated he paid her back there is no proof of it and the Petitioner categorically denies he did so. Therefore this court is satisfied that the Petitioner did contribute a sum of SR 65,000 for the purchase of the said land. Though she contributed, it is apparent that the said parcel of land was not written in her name as she was a foreigner.

However it is clear that the boat Lady Marie was paid for by the Respondent Mr Melton Charles. This fact is corroborated by the evidence of Mr Timothy Morin and an advance for the boat of Rs 100,000 was paid by mortgaging the property to the bank. This fact is admitted even by the Petitioner.

Although the Petitioner claims she contributed towards the purchase of the car there is no documentary proof of same and the Respondent denies this fact. Furthermore the said vehicle is registered in the name of the Respondent.

Learned counsel for the Respondent took up the position

in his submissions that the Respondent disputes the fact there was a cohabitation relationship as common law husband and wife until October 2004 and it was only after that cohabitation commenced. He stated that until October the relationship was that of "lovers". However the Respondent admits that he went to France and lived with her parents and that her mother did not like him. It is clear that they had lived together in a rented house and at his relation cousin sisters Lizzette's for a considerable period of time. She had helped him in his charter boat business and had accompanied him on his charters in fact the property transaction where she advanced money also commenced prior to 2004 as confirmed by the receipts as such in the light of all this evidence it cannot be accepted that they were mere "lovers" and not cohabiting with each other.

The Petitioner states that at present being a foreigner she has no means to support herself and has to incur expenses amounting to SR 3000 as maintenance and utility expenses. The Respondent in evidence states that she is renting out a room to tourist in the house which at present she is in occupation of and earning an income and going about in hired vehicles. The Petitioner denies this fact. Other than the evidence of the Respondent there is nothing to establish the fact that the Petitioner is renting out a room to tourist and deriving an income, as

such the Respondents evidence cannot be accepted. The Respondent has also stated in evidence that the Petitioner had transferred large sums of his money with his consent to a bank in France to be used in his retirement and the balance in the said account he recalls to be 200,000 Euros. However he has failed to show any documentary proof of transfer of money from Seychelles to such an account or to furnish any bank statement or an account number to establish that such an account is in existence. Therefore his evidence lacks proof in this regard.

When one considers the evidence of the Petitioner, it is clear that she has on and off made certain payments for rent, household expenses payment of utility bills purchase of house appliances. She has also shown that she has transferred sums of money regularly from her bank account in France. No doubt a portion of this sum of money would have been spent on her travelling and holiday expenses. With regard to the immovable matrimonial property although she has contributed money for the purchase of the land being a foreign national it would not be possible to transfer to her name a share of the house. Hence it would be appropriate to order a cash payment in settlement of above. According to the marriage certificate filed in the case record she would be around 46 years of age and would now have to

go back to France and start her life afresh. In the case of ***Florentine v Florentine 1990 SLR pg 141*** court took the following factors into consideration in determining the division of the property,

“Now fast approaching 50, her prospects of remarrying are greatly diminished and the balance of hardship in adjusting a new way of life without the security of a husband would seem to weigh heavily in her favour.”

Considering all the relevant circumstances of this case, in addition to the said sum of SR 65,000 to be paid back to the Petitioner in respect of the purchase of the land, a sum of SR 50,000 is hereby ordered to be paid as a lump sum for the above. Therefore considering all the aforementioned factors and relevant circumstances of this case, court makes order that in terms of section 20 (1) (b) of the Matrimonial Causes Act the Respondent pay a lump sum of SR 115,000 ( One Hundred and fifteen thousand) to the Petitioner as settlement of matrimonial property and financial adjustments. The Petitioner shall have the right of occupation until the full sum due to her is paid by the Respondent. Thereafter she shall peacefully vacate the house and hand over vacant possession to the Respondent. Failing which writ of possession shall issue forthwith. The ownership of the house and property shall be with the Respondent.

Each party to bear their costs.

**M.N. BURHAN**

**JUDGE**

Dated this 16<sup>th</sup> day of November, 2009.