

**THE REPUBLIC OF SEYCHELLES**  
**IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT**  
**VICTORIA**

Divorce Cause No. 84 of 2002

Georgette Jovana Pillay nee Agricole=====Petitioner

Versus

Egbert Pillay=====Respondent

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*Wilby Lucas for the Petitioner*

*Basil Hoareau for the Respondent*

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**RULING**

**Egonda-Ntende, CJ**

1. The divorce between the petitioner and respondent was made absolute on 9 January 2004. The parties are now before this court pursuant to Section 20 (1) (g) of the Matrimonial Causes Act, Chapter 124, for settlement of matrimonial property. The property in question is land and a house thereon in Parcel V 3194 which is registered in the names of both parties hereto. The parties are not in agreement with regard to the division of the said property.
2. A report from a Quantity Surveyor described this property in the following terms:

‘A two-story house building stands on the plot of land. The building comprised of two houses, one on the lower ground floor and the other on the upper ground floor. Each house has its own private entrance. The lower ground floor is

access from the front directly off the driveway. The upper ground floor is either access through the kitchen side from a rough pathway or down the neighbours' steps and through the back entrance.

The lower ground floor comprised a two bedroom-house and is complete with two bathrooms of which one is en-suite, a dining room, kitchen, sitting room and a veranda.

The upper ground floor comprised of a three-bedroom house complete with three bathrooms of which 2nos are en-suite, a kitchen, sitting/dining room and a balcony.'

3. The land on which the house is sitting is over 1,785 square metres of land and it is possible to sub divide the plot in two parts with one portion (Plot A) being the portion on which the house is situate of approximately 1000 square metres of land and the balance of approximately 777 square metres of land (being Plot B) with a right of way to Plot B provided over Plot A to the access drive and secondary road network.
4. What principles is this court to apply in resolving this dispute before it?  
Case law from this jurisdiction provides sufficient guidance. In *Marie Charles v Jason Charles* SCA 1/2003 the Court of Appeal held that where the parties own a house jointly, they are presumed to have intended to own the house in equal shares. Secondly that the Court has discretion to make orders to settle matrimonial property. This discretion must be exercised judicially taking in consideration of all relevant factors. The starting point is one of equal shares. And so it will be in this case but taken together with all other relevant factors.
5. The scanty evidence before this court shows that the respondent is a builder. He is the one who developed the property in question. The petitioner claims to have made some contribution while she worked but this stopped when she lost her job. This is denied by the respondent who stated that the petitioner made no monetary contribution to the

development of the property. In fact part of the property was developed while the petitioner had deserted the respondent.

6. There is evidence to show that the respondent obtained a loan from Nouvobanq of SR150,000.00 and that a sum of SR85,774.00 was still outstanding on that loan. The petitioner concedes that the respondent actually physically built the house as he was a builder. Even if one accepted the petitioner's contention that she made some financial contribution which is not supported by any proof it is clear that the burden for development of the property in question largely rested on the respondent's shoulders and continues to do so with the outstanding loan/mortgage account.
7. The petitioner has proposed 2 options. Firstly that she be allowed to own the whole property and she would pay off the respondent's share to the respondent. In the alternative that she takes the upper floor and the respondent takes the lower floor and each house would have its own access including off the property so as to avoid crossing paths.
8. The respondent proposed that the whole property should be sold and that they divide up the proceeds according to the respective shares of their contribution or as the court would determine. He was of the view it was impossible to live in the same building with the petitioner who provoked the respondent continually with her new friends and or partners.
9. I have looked at both parties hereto. They are old. They are retired. None has a job. It would be difficult for them to start anew. If one ordered the sale and share of the proceeds it might put them at grave risk of not having shelter over their heads. I am therefore inclined, in spite of the obvious acrimony that exists between the two of them, not to order a sale

of the property. Neither is it feasible to offer one party the house and the other money for the same reasons.

10. As it is possible for the house to be occupied by 2 separate families with minimal contact with each other I am left with the possibility of confining each party to one of the two apartments that make this property while still allowing joint ownership of the same. But taking into account that both apartments are not the same in size, amenities and value as well the fact that the respondent was responsible for the development of the property and the continuing obligation to settle the mortgage, provision must be made to take account of that.
11. Parcel V3194 shall be sub divided into 2 plots of land. Plot A shall comprise the land where the house is situate which is about 1000 square metres of land. This Plot A shall continue to be jointly owned by both parties, each owning one half thereof. The house on the upper floor (Apartment A2) shall be owned and occupied by the Petitioner. The lower floor (Apartment A1) shall be occupied by the respondent. The respondent shall enjoy the main access to the house.
12. Plot B which is approximately 777 square metres shall be registered in the names of the respondent alone as he is obliged to complete the mortgage payments in respect of the existing mortgage, to compensate for the smaller apartment he has obtained on Plot A as against the larger apartment that the petitioner has received, and taking into account the fact he was substantially responsible for the development of the matrimonial property, the subject matter of these proceedings.

13. A 3 metre right of way shall be provided for Plot B over Plot A to the access road. This right of way shall be registered so as to encumber Plot A on the basis of this judgment.

14. The respondent shall bear the costs of the sub division of the land. And this judgment shall be authority for cadastral authorities and Registrar of Lands to authorise sub division and registration of the same.

15. Each party shall bear his/her own costs of these proceedings.

Signed, dated and delivered at Victoria this 29<sup>th</sup> day of February 2012

FMS Egonda-Ntende

**Chief Justice**