

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 224 OF 2016

Arising out of DV. 31/2016

[2018] SCSC 196

JACQUELINE CHRISTELLE LAU-TEE NEE SERVINA

Petitioner

versus

JOSE CLAUDE LAU-TEE

Respondent

Heard: 18th May and 3rd November 2017

Counsel: Mr. F. Bonte for the Petitioner
Ms. V. Gill for the Respondent

Delivered: 27th day of February 2018

JUDGMENT

Govinden S-J

[1] This Judgement arises out of a Petition of the 7th July 2016 filed by Jacqueline Christelle Lau Tee ne Servina (“Petitioner”), pursuant to Section 20(g) of the Matrimonial Causes Act (“Act”), for a share in the proceeds of the sale of the matrimonial property and other joint assets with her former husband, Jose Claude Lau-Tee (“Respondent”).

- [2] The Respondent on his part filed an Affidavit in Reply of the 19th October 2016 contesting the Petition and moving for its dismissal.
- [3] For the purpose of this Judgement, the following are the salient factual and procedural background to the pleadings.
- [4] Petitioner and Respondent were married in the Seychelles on 16th December 2010 and they have three children who were born prior to their marriage.
- [5] On 13th April 2016, their marriage was dissolved due to irretrievable breakdown (*SCSC 276 of 2016*). The Provisional Decree was made final and Absolute on 31st May 2016.
- [6] In her Affidavit of the 7th July 2016, Petitioner maintained that she lived with her former husband the Respondent for eleven years prior to their marriage. She maintained that in August 2007, prior to their marriage, they jointly purchased a property at Au Cap Parcel No. S7299 (“the Property”).
- [7] After their divorce, she averred that the Respondent approached her and asked her to sign a transfer of documents to sell the Property, which was sold for Seychelles Rupees Eight Hundred (SCR 800, 000/-). She maintained that the Respondent stated that he would transfer her share of the proceeds of the sale, but to date she indicated that she had not received any proceeds for the sale.
- [8] The Petitioner maintained that they jointly contributed to the purchase of the Property and that she is entitled to half share of the proceeds of sale. And she testified that: *I am “also entitled to a car for the use of the family from our joint assets. I would like to keep the car which has been in my possession.”*
- [9] In his Affidavit in Reply dated 19th October 2016, the Respondent contended that the Property was not jointly purchased and that he was the sole financial contributor. Moreover, he maintained that she is not entitled to obtain a car from joint assets, as he does not have any cars registered in his name to give to the Petitioner.
- [10] The Petitioner in furtherance to her averments afore-mentioned testified on the 18th May 2017, that she accepts the car Respondent proposed to give her, a Kia Picanto. She testified that the Property was jointly purchased and jointly owned, but that Respondent sold it for SCR 800, 000. She testified that she is asking for half of the sale price.
- [11] On 3rd November 2017, the Petitioner testified that she was co-owner of the Property (*Exhibit P1*), which was purchased for Seychelles Rupees Sixty Thousand (SCR 60,000/). She testified that she consented to the sale of the Property, but that she did not get any of the proceeds. She testified that Respondent promised her a car, but that she has not received one. She testified that she needs a car for her and her children.
- [12] On cross-examination, the Petitioner testified that she earned less than Respondent and that as result she was not able to spend a lot of money on her family. She testified that she

helped to pay for water and electricity and that most of the time she was responsible for feeding and clothing the children though Respondent helped.

- [13] She testified further and agreed that Respondent paid for the loan for the Property; she testified that she had not contributed to the purchase of the Property, but that she was helping with other issues like running the household. She testified that though he was earning more, she was doing her part to enable them to purchase the land. She testified that he accepted to pay as he was earning more. She testified that she did not contribute financially toward the purchase of the parcel of land, but that she contributed indirectly in other ways.
- [14] She testified that she has three children: her seventeen year older daughter lives with her; her fourteen year old lives with Respondent; and her eleven year old temporarily lives with Respondent. She agreed that Respondent takes care of his children's food and upkeep and takes them to school. She testified that her boyfriend assists her with getting around.
- [15] The Respondent on his part testified in support of his afore-mentioned Reply, that Petitioner's name was on the title of the Property so that it would enable him to purchase the land because they had kids. He testified that she never contributed to the purchase of the Property. He testified that Petitioner signed and consented to the sale of the Property and that he used the proceeds to pay some debts and use some because he was not working.
- [16] He testified that he does not believe Petitioner needs a car because when children need a ride they call him. He denied ever reaching an agreement to give her a Kia Picanto.
- [17] I will now address the legal standards and its analysis based on the above-depicted salient evidence specific to the Petition and Reply thereto.
- [18] The relevant law to be considered in this matter is the Matrimonial Causes Act of 1992 which clearly does not establish, "in any form, the system of community of property between spouses during marriage so as to constitute 'Matrimonial Property'." (*Reference is made to [Maurel v Maurel, SCA 1/1997 (9 April 1998) at pp. 4-5]*). Section 20(1)(g) of the Act, entitled "Financial relief" provides that:

"Subject to section 24, on the granting of a conditional order of divorce or nullity or an order of separation, or at any time thereafter, the court may, after making such 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

(g) make such order, as the court thinks fit, in respect of any property of a party to a marriage or any interest or

right of a party in any property for the benefit of the other party or a relevant child.”

[19] Now, although parties that own a house jointly are in principle entitled to equality of shares, this is only a starting point for the Court’s determination under Section 20(1)(g). (Reference to **[Charles v Charles [2005] SCCA 13, 22-23]**). The Court is enjoined by Section 20(1)(g) to make such matrimonial property adjustment as is fair and just in the circumstances of a case.

[20] The Court must, “determine the contribution both financial and otherwise of both parties to the family enterprise and apportion ownership accordingly.” (Reference to **[Sabadin v Sabadin [2014] SCSC 35]**),

[21] In exercising its broad discretion, the Court may consider *inter alia* who paid the purchase price and the loans for the family home as well as,

- (a) Standard of living before the breakdown of the marriage;
- (b) Age of the Parties;
- (c) Duration of the Marriage;
- (d) Physical and mental disability of either party
- (e) **Contributions made by each party to the welfare of the family, including housework and care roles;** and
- (f) Any benefit which a party loses a result of the divorce.

(Reference to **[Esparon v Esparon, SCA 12/1997]** and Emphasis added.

[22] As the court in **[Esparon v Esparon [2012] SCSC 5]** held, there is, “no mathematical formula by which matrimonial property should be divided, and each case is considered on the merits.” Where the Court concludes that the matrimonial assets belong to both parties, it must then determine what proportion of ownership each party holds depending on the level of contribution made by each party.

[23] In the present case, it is not disputed that the Property, which was legally jointly owned, was sold by Respondent for SCR 800, 000 with the consent of the Petitioner. It is uncontested that the Respondent paid for the Property and Petitioner did not contribute financially to the Property. However, Petitioner testified that she assisted with taking care of the children along with the Respondent. Moreover, she testified that she contributed indirectly to the home by paying certain utility bills during their relationship.

[24] In my considered view, based on the evidence adduced as illustrated and analyzed, I find that Petitioner is entitled to SR 300,000/- out of the proceeds of sale of the Property.

[25] Since there is no proof of any further agreement as to the existence of an agreement for the alleged car and or existence of such car, no Order to that effect is made in the circumstances.

[26] Interest and costs is further awarded in favour of the Petitioner.

Dated this day of 2018.

Govinden S. -J
Judge of the Supreme Court