

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 628
DV 102/2006

In the matter between

FRANKY HOAREAU
(rep. by Mr. Charles Lucas)

Applicant

and

MARY AZEMIA
(rep. by Mr. Rajasundaram)

Respondent

Neutral Citation: *Franky Hoareau v Mary Azemia* (DV102/2006) [2019] SCSC
(10 July 2019)

Before: F. Robinson sitting as a Judge of the Supreme Court

Summary: The Court's decision in relation to property adjustment is based on the financial contribution of the Applicant to the building of the matrimonial home and a retaining wall built on the Respondent's property

Heard:

Delivered: 10 July 2019

ORDER

Ordered the Respondent to pay to the Applicant the sum of SR 450,000/- with interest at the legal rate of four percent from the 10 July 2019, until the day of payment of the entire sum of SR 450,000/-. With no order as to cost.

JUDGMENT

ROBINSON J

The background:

1. The Applicant, who is now a Major in the Seychelles People's Defence Forces

(the "SPDF"), and the Respondent were married in 2004. In July 2006, the Respondent started proceedings for divorce on the ground that the marriage between the Applicant (then the respondent) and the Respondent (then the applicant) had irretrievably broken down as they had been living separately and apart for a continuous period of more than one year immediately preceding the presentation of the divorce petition. The marriage was dissolved in March 2007. There is one child of the marriage. The sole asset is the matrimonial home built on land belonging to the Respondent. The Respondent continues to live in the matrimonial home.

2. The Applicant is making a claim for a property adjustment order in respect of the matrimonial home.
3. The *Affidavit* set out the claim of the Applicant as against the Respondent as follows —

"	SR
(i) Exhibit 1 - from proceeds of J435	100,000
(ii) Exhibit 2 – Barclays loans	96,000
(iii) SPDF gratuity (50%)"	175,000
(iv) Exhibit 3 – SPDF loans and labour for works	47,000
(v) Exhibit 4 - Electrical installation + materials	18,768
(vi) Building materials for tiling, bathroom, kitchen, plumbing and labour	50,000
(vii) Exhibit 5 - Building materials	79,013
(viii) Exhibit P6 - One third share in household movables	50,000
<i>Total SR</i>	<i>615,781"</i>

The Applicant is claiming the sum of SR 615, 781/- from the Respondent.

4. The Respondent opposed the application.
5. At the hearing, the Applicant made application for leave to amend the application by adding a fresh claim in the affidavit as follows: "[...][a]s a result of the above, I aver that I am entitled to at least 50 % of the commercial value of the matrimonial home, the annex

and retainer walls." The proposed addition was granted. The affidavit in support, dated the 9 June 2017, averred:

"16. I therefore claim the following as my personal contribution and input into the construction of the matrimonial home, the annex and retainer walls from the Respondent:-

"	SCR
i. Exhibit 1 – From proceeds of J435	100,000.00
ii. Exhibit 2 – Barclays loans	96,000.00
iii. SPDF gratuity (50 %)	175,000.00
iv. Exhibit 3 – SPAF loans and labour for works	47,000.00
v. Exhibit 4 – Electrical installation and materials	18,768.00
vi. Building material for tiling, bathroom, kitchen, plumbing and labour	50,000
vii. Exhibit 5 – Building materials	79,013
viii. Exhibit 6 – One third share in household movables	50,000.00

As a result of the above, I aver that I am entitled to at least 50 % of the commercial value of the matrimonial home, the annex and the retainer walls."

6. Section 20 of the Matrimonial Causes Act (Cap 124) deals with financial provision and property adjustment orders in connection with divorce proceedings. The property adjustment orders for the purposes of section 20 (1) (g) of the Act are the orders concerned with property rights available for the purpose of adjusting the financial situation of the parties to a marriage and the children of the family on or after the grant of a conditional order of divorce, nullity of marriage or judicial separation.
7. Section 20 (1) (g) of the Act provides:

"20 (1) 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."

(Emphasis added)

The evidence:

The evidence of Mr. Franky Hoareau.

8. In support of his claim for *"at least 50 % of the commercial value of the matrimonial home, the annex and the retainer walls"*, the Applicant testified as follows. The Applicant and the Respondent have lived together for a period of nineteen years. Out of the period of nineteen years of cohabitation, they have lived together as husband and wife for two years. The Applicant and the Respondent started building the matrimonial home in 1992. At the time, the Applicant and the Respondent cohabited at Glacis and the Respondent was a clerk working at *"Maison Du Peuple"*. In 1992, her salary was about SR 1500/- to SR 1700/-.
9. The building contractor quoted a price of SR 400,000/- to build the matrimonial home. The Respondent obtained a bank loan from the Seychelles Housing Development Corporation (the *"SHDC"*), for the sum of SR 150,000/-, which she contributed to the building of the matrimonial home. According to the affidavit evidence of the Applicant, the Respondent contributed only the said sum of SR150,000/- to the building of the matrimonial home. He contributed the rest of the money to aid in building the matrimonial home.
10. The Applicant owned a plot of land comprised in title number J435 situated at Bel Ombre. The said plot of land was sold to his brother, Cliff Hoareau, and his brother's wife, Ghislaine Hoareau, at the price of SR150,000/- , through the SHDC, on the 14 December 1994. Out of the proceeds of the said sale, the Applicant contributed SR150,000/- to the

building of the matrimonial home. According to the Applicant's affidavit evidence, the Applicant contributed SR100,000/- from the proceeds of the sale of the said plot of land and house to the building of the matrimonial home.

11. According to the Applicant's affidavit evidence, he joined the SPDF in 1978. He stated in his affidavit and testified in court that, as from 1984, he received a gratuity of SR35,000/- from the SPDF at the end of every two consecutive years. Between 1984 and 2004, he received a total sum of SR350,000/- in gratuity. Out of that sum of SR350,000/-, he contributed SR175,000/- to the building of the matrimonial home and a retaining wall on the Respondent's property. It is observed that he stated in court that he contributed the sum of SR100,000/- to the building of the retaining wall on the Respondent's property.
12. Next, he explained that he took three loans from Barclays Bank, amounting to the sum of SR96,000/-, which he contributed to the building of the matrimonial home for the reason that he and the Respondent were in need of more money to build the matrimonial home. Miscellaneous documents pertaining to the aforementioned loans are before this court as P2 collectively.
13. The Applicant ushered in evidence miscellaneous documents including invoices and receipts which, according to his evidence, showed that he bought building materials from the Seychelles Marketing Board, "UCPS", "P&J" and other building material retail outlets, between 1993 and 1994, and in 1996, for the construction of the matrimonial home. The miscellaneous documents are before this court as P4 to P14 and P17 to P45. According to the affidavit evidence of the Applicant, he spent about SR79,013.88/- on building materials. Objections were taken to most of these documents being ushered into evidence on the ground that they are not made out in the name of the Applicant. The Applicant explained that some of the receipts and invoices are made out to individuals who bought the building materials on his behalf. This court noted that the documents, including the receipts and the invoices, related to the period of construction of the matrimonial home, according to the evidence of the Applicant. This court admitted those disputed documents

and, further, ruled that it will decide on the weight that should be attached to them at the time of judgment.

14. Objection was also taken to the Applicant tendering into evidence a document, dated the 2 October 2006, emanating from one Maxime Laurencine, which stated that the said Maxime Laurencine had done electrical installation works at the matrimonial home. According to the document, the works amounted to SR18,768/-. In the light of the objection, Counsel for the Applicant informed this court that he will call Mr. Laurencine to give evidence. Mr. Laurencine was not called.
15. The Applicant also purchased furniture and equipment for the matrimonial home. On the 10 June 2006, before he left the matrimonial home, he conducted an inventory of the furniture and equipment found in the main house and the bedsit. The total value of the furniture and equipment was SR150,000/- (P15 refers). He mentioned that he was not claiming the total sum of SR150,000/- for the furniture and equipment, but he was claiming only SR50,000/- because his son used the furniture.
16. He stated that his work allowed him to borrow money from the Children Welfare Fund. In May 1996, he borrowed SR10,000/- from the said Fund, which he contributed to the building of the matrimonial home. In 2000, he borrowed an additional sum of SR12,000/-, which he contributed to the building of the matrimonial home. With reference to P5, this court remarked that the Applicant borrowed an extra sum of SR10,000/- in 2005 from the Children Welfare Fund, and not the sum of SR15,000/- as stated in the affidavit evidence of the Applicant and his evidence in court. Miscellaneous documents in relation to the Children Welfare Fund loans are before this court as P5. He paid those loans out of his salary.
17. The Applicant claimed to have spent about SR50,000/- on the purchase of some building materials for tiling, plumbing, bathroom and kitchen works. He added that he had spent more than the said amount, but he was only claiming SR50,000/-.
18. He stated that the Respondent did not have to borrow SR150,000/ from Nouvobanq in relation to the matrimonial home because it was in good state of repair when he left it.

19. The Applicant is asking for fifty percent of the market value of the matrimonial home, including SR50,000/- for the furniture and equipment, and the costs of this case.
20. When cross-examined, the Applicant stated that he and the Respondent lived together for nineteen years. They divorced in 2006, and they had lived together as husband and wife for two years before their divorce. When the Respondent started to build the house, he and his ex-partner, late Monica, were living together at Bel Ombre. He lived with late Monica for seven years. He added that the Respondent was also his partner at the time he and late Monica were living together.
21. He further stated that, when he left late Monica, he and the Respondent lived together in his house at Bel Ombre before it was sold in 1994. He denied the suggestion of Counsel that he used the proceeds of sale of the house and land to finance in whole or in part the purchase of the land comprised in title number H2240 for late Monica. He also denied the suggestion of Counsel that he contributed money to the building of a house for late Monica. He stated that he was presently living in a flat together with one of his children, built on H2240 by late Monica, funded by a loan from the Development Bank. He admitted that he is the executor of the estate and succession of late Monica.
22. He reiterated that he borrowed sums of money from Barclays Bank, amounting to SR96,000/-, at the time that the Respondent's house was being built, which he contributed to the building of the house. The money was used, for example, to fund "*extensions*" to the matrimonial home, to buy building materials and pay workers. He added that the sum of SR150,000/- was used to purchase building materials to complete the building of the matrimonial home. He testified that the sum of SR79,000/- which paid for building materials was not taken out of the Barclays Bank loans. He explained that the loans were taken in 1998, and that some building materials were also bought in 1993, 1994 and 1996. When asked to account for the sums of SR96,000/- and SR150,000/-, the Applicant explained that the money was used to pay for blasting works, to hire excavators to clear the building site which was steeply sloped, to pay for the retaining wall built on the Respondent's property and to pay workers for the works. He accepted that he did not have

any documentary evidence to establish the aforementioned claims. However, the Applicant was adamant that he contributed the sum of SR100,000/- out of the proceeds of the sale of his land and house; the entire amount of the Barclays Bank loans, the sum of SR79,000/-, and the loans he obtained from the Children Welfare Fund, to the building of the Respondent's house.

23. He, further, explained that he hired one Mr. Pool, a building contractor, to build the house at the price of SR450,000/-. He admitted that the Respondent took a loan of SR150,000/- from SHDC to build the house. However, he was adamant that the Respondent who was receiving a meagre salary at the time, could not have obtained a loan of more than SR150,000/- from a bank. The Applicant could not take out a loan with the Respondent at the time because he had a house at Bel Ombre to look after.
24. In relation to the gratuity payment, because he had been in the SPDF for over 38 years, he could not recall about how much he had received. He clarified that he spent about SR175,000/- of his gratuity payment in the building of the house.
25. He admitted that the disaster fund assisted the Respondent to build a retaining wall on her property at the price of SR150,000/-.
26. He was not aware of whether or not the Respondent had taken a loan at Nouvobanq to renovate the matrimonial home.
27. In relation to the furniture, he stated that it was for the house that he sold. He sold only the house and took the furniture to the Respondent's house at Glacis. Afterwards, some of the furniture was replaced and some was sold. He added that he did not have receipts for the furniture because he gave money for its purchase. He calculated the price of the furniture based on its value at the time.

The evidence of Mr. Nigel Roucou.

28. Mr. Roucou, a quantity surveying expert, tendered into evidence his report titled "CURRENT MARKET VALUATION OF PROPERTY H3299, H1742 AND H5687) BUILDINGS AND EXTERNAL STRUCTURES ONLY) AT GLACIS, MAHE" (the "quantity surveying report").

29. The quantity surveying report reported that:

<i>"Main Dwelling House</i>	<i>SR</i>	<i>1,765,200.00</i>
<i>Annex Dwelling House</i>	<i>SR</i>	<i>565,600.00</i>
<i>External Works</i>	<i>SR</i>	<i>644,200.00</i>
<i>Stone retaining wall</i>	<i>SR</i>	<i>207,200.00</i>
<i>Block/reinforced concrete retaining wall</i>	<i>SR</i>	<i>296,500.00</i>
<i>Block work boundary wall</i>	<i>SR</i>	<i>55,900.00</i>
<i>Pavings</i>	<i>SR</i>	<i>84,600.00</i>

We have been informed that the followings were built after the divorce, should this be proved right the values given, need to be omitted from the above.

<i>Carport and external shower</i>	<i>SR</i>	<i>95,000.00</i>
<i>Extension to kitchen</i>	<i>SR</i>	<i>77,800.00</i>
<i>Extension to master bedroom</i>	<i>SR</i>	<i>85,100.00</i>
<i>Extension to verandah</i>	<i>SR</i>	<i>300,000.00</i>

In addition to the above, we were told that the concrete retaining wall was done by others, again it value is shown separately and its value excluded, if proven right.

<i>Blocked reinforced concrete retaining wall</i>	<i>SR</i>	<i>295,500.00</i>
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VALUATION DATE

The site was visited on the 28 October 2012 and the valuation date is the date of this report

VALUATION METHOD

The valuation method is a combine type

[...]

2. Building depreciated replacement cost method used with the owner's other expenses added on.

BASIS OF VALUATION

Site visit on the 28 October 2017 and general discussion with one of the owners

Current construction cost

Values of similar properties in the vicinity

Exclusions

The followings are excluded from this report:

Loose furniture and fittings

Works to the property after our visit

Professional and statutory fees.

PHOTOS [...]."

30. Mr. Roucou stated that he spoke to the Respondent in relation to matters raised in the quantity surveying report.
31. In relation to the car port, he was questioned about whether or not he would be able *"to tell the difference of the age of the carport and the house generally"*. Mr. Roucou briefly answered *"different"*. Counsel queried further about whether or not the roof *"... [i]s ... not a roof that was built in unison with the remainder of the house, probably at the same time?"* He answered: *"It looks like it but another point of view would be probably the roof has been changed after the extension. Or when the extension was being built as I said earlier I would not know. But it looks unison but there is also the 2nd view of it might have been changed when they were doing the extension of the carport. But I do not know but it looks as one pointed out."*
32. When cross-examined, Mr. Roucou stated that the property is not *"old, but it is somewhere in the middle"*. He explained that, *"the state and the building and external structures are in good status. Repair with minor maintenance work requires except for the annex that needs some more renovation, repair, works of structural cracks."*

33. He reported that the Respondent pointed out to him that she caused to be built the "*car port and external shower*", "*extension to kitchen*", "*extension to master bedroom*", and "*extension to veranda*".
34. In relation to the current market value of the property, he was questioned about whether or not it was a "*current market value that [he] has compared with another property in that region*". Mr. Roucou stated that he used a comparable property. However, he refused to state the current market value for properties in that area on the ground that he had just bought a property "*further up*".
35. In relation to the building, Mr. Roucou opined that he applied the depreciated replacement cost method of valuation plus the owner's expenses, such as architect's, surveyor's and engineer's fees, to arrive at the market value of the building. He could not give a breakdown of the valuation because a valuer does not normally give any such breakdown. He stated that the quantity surveying report is based on what the Royal Chartered Institute of Quantity Surveyors expects and requires of a report.
36. When asked about the percentage of depreciation he had applied to the building, Mr. Roucou stated that "*it will not be in [his] head*". He told the court that, "*[he] [was] just saying something on top of [his] head probably around 10-15% [...]*". When pressed by Counsel as to the percentage of depreciation he had applied, he stated that, "*[he] would not remember on top of [his] head as [he has] said it will be 10-15%*".
37. In relation to the costs of construction, Mr. Roucou expressly stated that they assessed the construction costs in order for them to come up with the valuation. When asked by Counsel about the construction costs in relation to the building, he stated, "*On this building as I say it would not be on top on my head but I would think around 10,000 [per square metre] on this one*". When asked about how he came to that figure of SR10,000/-, Mr. Roucou stated that, "*we do every day*".
38. Counsel suggested to Mr. Roucou that, in the absence of any supporting materials, he considered the valuation to be on the high side, to which Mr. Roucou answered that he disagreed with Counsel's suggestion on the grounds that "*back up calculations*" are not

provided with quantity surveying reports, that their knowledge in construction proves that the valuation is "spot-on", and that the comparable property used proved that what they had said was correct.

39. This court formed the opinion that the testimony of Mr. Roucou and the quantity surveying report did not convey a clear understanding of the opinions being expressed by him, and sought the following clarifications from him:

"Q. So for my benefit which method have you used for the building?"

A: Depreciated.

Q. Could you explain it to me [...]?"

A: Yes, depreciated method what it means we take the building as if it were new because we value current. We take the building as if it is new, a brand new building, what is the cost of the building now as it is. And then we depreciate it to reflect its condition, we look at the roof, we look at the painting. We look after all little bits and pieces, not in a very finite detail but overall... What is the condition of the roof, what is the condition of the wall and what is the condition of the painting, all that kind of little things and then we will depreciate that. So each of this element of the building we give it a certain percentage, like the sub structure will cost 20 % of the overall cost, the wall will cost around 10 % of the overall cost and the finishing will cost around 15 % of the overall costs. So if the finishing is 18% correct so 80 % of 15 % of the initial costs. So we take 80 % of the 15 % of the initial cost, so that is the depreciated – so we deduct against that value and once that is done we arrive at 1 figure. And with that figure we put what we call the owner's add-on. That is all his or her expenses related to when they were going to build that building. They would need to employ someone, a surveyor, a Quantity Surveyor, Engineers. So we add that in and that explains the depreciated method.

[...]

Q. You said building, are you talking about the dwelling house, the annexed house, the annexed dwelling, the external works. Is that what is building under valuation?"

A. When we said building this will include the external, all the structures."

The evidence of Miss Mary Azemia.

40. The Respondent stated that she and the Applicant had an *on-off* relationship for about eighteen years before they got married in 2004. When she met the Applicant, he was in a relationship with late Monica, with whom he had one child. The Respondent would spend the night at her house and leave in the morning. This state of affairs endured for a while. When late Monica left the Applicant, she went to stay with him in his house at Bel Ombre. When the Applicant sold his house, she moved out and went to live at her mother's house.
41. The Applicant and the Respondent lived together for a while after their marriage. In 2005, the Applicant rented a State Assurance Corporation of Seychelles ("*SACOS*") flat at Anse Etoile where he moved in with another woman. She stated that the Applicant never left late Monica.
42. She took a loan of SR150,000/- from the SHDC to pay for the houses. At the time she was working at the Youth Enterprise Services. She could not remember how much she earned monthly. She stated that one late Mr. Yvon Pool built the houses. The Applicant did not spend any money on the building of the matrimonial home. She produced miscellaneous documents, including receipts with respect to building materials, furniture and so forth which she had purchased, which are before this court as exhibits. She insured the house with SACOS after its completion. She added that the house is no longer insured.
43. She stated that the retaining wall was built by a contractor hired by the Ministry of Local Government after the wall was damaged by the tsunamis in 2004. SACOS paid her some money for the damaged furniture because she had insured the house furniture with SACOS. She added that she bought all the furniture with her own money.
44. When they were together she was the only one working. The Applicant only paid the utility bills.
45. In 2004, the tsunamis caused damage to part of her house, the furniture and the retaining wall. In 2005, she took a loan of SR260,000/- from Nouvobanq to finance home and wall repairs. She is still paying off that loan. Later in the proceedings, it transpired that she took

the said loan in 2011. She added that she took another loan from Nouvobanq to buy new furniture for the house.

46. She stated that she and the Applicant have a son together. Their son had always lived with his grandmother. The Applicant barely contributed anything towards the upbringing of their son. She contributed SR500/- each month.
47. According to her evidence, one Mr. Ah-Kon did all the electrical wiring works and one Mr. Monthly did all the plumbing works.
48. In relation to the quantity surveying report, she stated that she paid for the carport, the external shower, the extension to the kitchen, master bedroom and veranda.
49. She denied that the Applicant is entitled to any share in the matrimonial home.
50. When cross-examined, she stated that she and the Applicant lived together as husband and wife for about three years from 2003 to 2006. She denied that she cohabitated with the Applicant for 27 years. She stated that in 2002 she was living in the house. The Applicant did not stay with her in the house after the marriage. The Applicant rented a flat at Anse Etoile where he still resides today with another woman, namely one Jessica.
51. She admitted that she was in a relationship with the Applicant who was, at the same time, in a relationship with late Monica. The Applicant has three children with late Monica.
52. She accepted that the Applicant sold his house at Bel Ombre for the consideration of SR150,000/- , but denied that he contributed any of the proceeds of sale to the building of the matrimonial home.
53. She could not recall exactly when she started building the house, but stated she must have started at about 1992. She used the loan of SR150,000/- from SHDC to build her house. The loan from Nouvobanq financed the retaining wall. Upon the suggestion of Counsel that she did not take any loan from Nouvobanq between 1992 and 1995 to complete the

building of the house, her response was that she took a loan from Nouvobanq, but she could not recall the exact date.

54. In relation to the SHDC loan, she could not recall how much she paid towards the loan monthly. She could not recall how much she earned in 1992. She accepted the suggestion of Counsel that she paid the SHDC SR1,220/- monthly for the loan (Exhibit R1). She denied the suggestion of Counsel that the Applicant maintained her two children, who lived with their grandmother. She could not recall how much she gave to her mother towards the upkeep of the children. She denied the suggestion of Counsel that the money she received would not have been enough to repay the loan and maintain her children.
55. The Respondent stated that the SHDC drew her structural plans, but then accepted the suggestion of Counsel that one Mr. Franky Petrouse drew the plans. She could not recall the price quoted for building the house, which Counsel suggested was SR450,000/-. She explained that she took a loan from the SHDC for the sum of SR150,000/-. Because she was told that building the house will cost more than SR150,000/-, she went to one Mr. Gopal and told him that she will pay the outstanding sum out of her own pocket. She built a small house which she improved in 2004.
56. She stated that the land was steeply sloped, and that boulders had to be crushed. She claimed to have financed the preparation of the construction site. She explained that crushed rocks were used to build the retaining wall. She paid one "Lefevre" to prepare the site. On the suggestion of Counsel that she could not have afforded to pay workers to prepare the construction site, her response was that she could not recall whether or not the workers were paid or they were just helpers.
57. She denied the suggestion of Counsel that she and the Applicant were charged SR450,000/- by Mr. Yvon Pool to build the house. She explained that Mr. Yvon Pool started building the house, but she found somebody else to complete it. She also denied the suggestion of Counsel that the Applicant paid for a retaining wall to be built before the construction of the house started. She denied the suggestion of Counsel that it was heavy rain and not the tsunamis which caused damage to the boundary wall. She also denied the suggestion of

Counsel that it was the Applicant who organised through State House for repairs to the retaining wall. She explained that she was assisted financially by one Mrs. Shroff of the Disaster Fund to build the wall.

58. She stated that the annex (bedsit) was built during the construction of the main house. She agreed that when she and the Applicant separated in 2006, the house, the annex and the car port had already been built. However, she insisted that she rebuilt everything in 2004. She accepted that she got a discount on her housing loan from the SHDC from SR76,000/- to SR45,000/-.
59. She stated that while the divorce process was ongoing, she took a loan from Nouvobanq to complete her house. She extended her bedroom and the veranda, refurbished the roof and redid the electricity wiring, through conduits. All this she had to do because her house was damaged by the tsunamis.
60. In relation to furniture purchased after 2006, it is the position of the Applicant through Counsel that he is not interested in them. She denied the suggestion of Counsel that loans she took after 2006 were not for the house, but for personal use.
61. In relation to jobs that she did at the material time, she stated that she worked at a bank where she was mainly involved with opening of bank accounts in the savings account section, at the Youth Enterprise Services where she started as a Secretary, and then promoted to account technician, and at the Chambers of the Attorney-General where she was employed as a secretary.
62. She agreed with Counsel that the Applicant paid for electricity, water and telephone bills, but denied he paid for food. She stated that the Applicant ate with the women with whom he was fooling around with.

The evidence of Mr. Brian Kilindo.

63. Mr. Kilindo is a licensed contractor (class number 2). He has been a contractor for fifteen years. He stated that he does not know the Applicant. He was contracted by the Disaster Fund of the Ministry of Local Government to build the retaining wall. The price was about SR80,000/-.

64. When cross-examined, he stated that the brick wall had been damaged by heavy rain.

The analysis:

65. Much documentary and oral evidence has been ushered in by these parties in relation to their respective contentions. Arguments on the issues have also been offered by the parties through written submissions. This court has considered all the evidence and the written submissions with care.

66. Firstly, I consider the evidence of Mr. Roucou, the quantity surveying expert. This court found Mr. Roucou to be a poor witness. This court states that the quantity surveying report did not convey a clear understanding of the opinions being expressed by Mr. Roucou and was not couched in terms that can be read and understood by this court, which had no prior knowledge of the subject assets. Mr. Roucou stated in cross examination that he had used the depreciated replacement cost valuation method in relation to the evaluation of the building. However, this court observes that Mr. Roucou had difficulty remembering the percentage of depreciation he had applied to the building. Moreover, Mr. Roucou could not remember the estimated costs of construction of the building. All that Mr. Roucou could do was to suggest a figure for both the percentage of depreciation and construction costs. There is also no evidence before this court about the comparable property. This court found the evidence of Mr. Roucou to be ambiguous. It follows, therefore, that this court found the block estimates of Mr. Roucou in the form of the quantity surveying report devoid of any calculations, to be of no use whatsoever. This court adds that there were no other pieces of evidence capable of supporting the evidence of Mr. Roucou.

67. Secondly, this court, in 2008, ordered a valuation of the property at Glacis, by Lester J.W. Quatre & CO, Quantity Surveyor, Construction and Property Consultant. The quantity

surveying report of Mr. Quatre is dated the 10 October 2008. It is mentioned in the quantity surveying report that the property was inspected on the 10 October 2008. Neither the Applicant nor the Respondent applied for cross-examination of Mr. Quatre. Mr. Quatre valued the property (land and structures) at the sum of SR1,875,000/-. This court has considered the report of Mr. Quatre, and states that it is of very little use to it. The block estimates are devoid of any calculations whatsoever and, therefore, do not assist this court in any way.

68. Thirdly, this court, exercising powers under the provisions of the Act, at the time of writing the judgment, invited both Counsel to provide it with further expert evidence in relation to the value of the matrimonial home at the time of the separation of the parties. This court made available to the parties expert reports which are on file. The suggestion of this Court was well received by both Counsel. However, the Applicant through Counsel had a change of heart and insisted that he was relying on the quantity surveying report of Mr. Roucou.
69. This court now considers the evidence of the Applicant and the Respondent.
70. This court is satisfied that the Applicant provided his best recollection, and that his recollection had not been coloured or diminished by the passage of time. This court has based its assessment on the impression made by the oral evidence of the Applicant against the conclusions to be drawn from the miscellaneous documents produced by him. However, this court observes that the evidence of the Applicant with respect to some of the items being claimed, is not clear.
71. This court observes that the Respondent did her utmost to discount the monetary contribution of the Applicant in relation to the construction of the matrimonial home. This court found the Respondent to be evasive and her evidence to be scant in relation to the facts in issue. The Respondent had difficulty in remembering any of the salaries she earned at the material time, and gave imprecise evidence of loans she took, except for the SHDC loan. This court concluded that it was due to the bitterness still being felt by the Respondent towards the Applicant that resulted in her not wanting the Applicant to receive any share in the matrimonial home.



72. The Applicant is asking this court for the sum of SR615,718/-. Having considered the evidence of the Applicant and the Respondent and all the documents with care, this court is satisfied that the Applicant made monetary contributions to the building of the matrimonial home in the following sums:

- under claim (i) – SR75,000/-
- under claim (ii) - SR96,000/-
- under claim (iii) - SR150,000/-
- under claim (iv) - SR25,000/-
- in relation to claim (v), Mr. Laurencine was not called. No award is made.
- under claim (vi) - SR24,000/-
- under claim (vii) - SR60,000/-
- under claim (viii) – SR20,000/- .

The decision:

73. Accordingly, this court makes order awarding the Applicant the sum of SR450,000/- with interest at the legal rate of four percent from the 10 July 2019, until the day of payment of the entire sum of SR450,000/- . This court makes no order as to costs.

Signed, dated and delivered at Ile du Port on 10 July 2019.

F. Robinson

Sitting as a Judge of the Supreme Court