

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

MA29/2018 arising in CS DV20/2013  
[2020] SCSC 142

In the matter between

**HARINA NICETTE (FORMERLY LEPATHY)**  
*(rep. by Lucy Pool)*

**Petitioner**

and

**BERNARD LEPATHY**  
*(rep. by Edith Wong)*

**Respondent**

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**Neutral Citation:** *Lepathy v Lepathy* CS 33/2015) [2020] SCSC 142 (24 February 2020)  
**Before:** Twomey CJ  
**Summary:** division of matrimonial property-property on name of one spouse only-  
contribution and factors to be taken into account  
**Heard:** 10 July 2018, valuation of property 25 October 2019, submissions 10  
December 2019  
**Delivered:** 24 February 2020,

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**ORDER**

Each party has a half share in the property, that is half of SR515, 000 being SR258,0000. The house worth SR 213,000 was demolished and the Applicant has lost its use and half of its value to which she was entitled, that is that is SR106, 500. Her share is therefore now worth SR364, 500.

The Respondent is ordered to transfer to the Applicant Parcel C9108 after payment by her to him of the sum of SR 150,500. A receipt of this sum produced to the Registrar of Lands will suffice to effect the said transfer. If the Applicant fails to make this transfer within six months hereof, the Respondent may on the payment of SR 364,500 to the Applicant within a further term of six months maintain ownership of the property. If neither party make the payment as ordered, the whole property will be sold and the proceeds shared in the ratio specified in paragraph 43 below.

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**JUDGMENT**

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**TWOMEY CJ**

- [1] The parties were conditionally divorced on 26 February 2014 with decree absolute granted on 6 May 2014.
- [2] The Petitioner by way of ancillary relief to the divorce applied to the Court for orders determining her share in the matrimonial property and the transfer of the matrimonial home on Parcel C9108 into her sole name.
- [3] She averred in the affidavit in support of her application that she was married to the Respondent for eleven years and have four children with him of which one is still a minor. She also averred that whilst the Respondent occupies a recently constructed house situated on Parcel C9107, she and the children of the marriage are occupying a small CI sheet house on Parcel C9108.
- [4] She further averred that she was employed during the marriage, had personal income, throughout the subsistence of the marriage looked after, and maintained the family and household and that she is therefore entitled to a share in the matrimonial property.
- [5] In answer to the application, the Respondent has averred that the application falls afoul Rule 34(1) of the Matrimonial Causes Act (Matrimonial Causes Rules). This point relating to the time limit for bringing applications for ancillary relief after an order absolute without leave was not pursued at trial or in submissions and is therefore disregarded for the purposes of this case.
- [6] The Respondent has also admitted to the living arrangements of the parties as referred to by the Applicant but has added that he built both houses on two adjacent properties belonging to him with the help of the Applicant. He also avers that the Applicant was unemployed throughout the marriage. He admits that the Applicant looked after the family but avers that he did the same including maintaining and caring for a child of whom he is not the father.
- [7] The Applicant testified that she had lived with the Respondent for a total of twenty-two years - eleven years before marriage and a further eleven years during the subsistence of the marriage. They have four children and the minor child, Clara, is fifteen years old.

- [8] The house she was currently occupying was where they had originally all lived and they had in 2012 moved into the home the Respondent was currently occupying. That house is still not completed and on an adjacent property.
- [9] The house they had first occupied was made of corrugated iron. She now lived in that house with her children. It was not safe as it had no locks or windows, so sometimes she has to spend the night at her mother's or at her partner's. The house is also rat infested. The Respondent owned both houses and properties. Both houses had originally occupied the same property, Parcel C301, which was subsequently subdivided into Parcels C9108 and C9107. The larger house in which the Respondent resided was now on Parcel C9107 and the small CI sheet house she occupied on Parcel C9108.
- [10] She would like to fix the small house she resided in to make it more habitable but the property was not in her name. The Respondent had asked her to leave the house and he would pay her SR 150,000 as her share in the matrimonial property (Exhibit P4). She had refused the offer.
- [11] Bank loans in both their names of SR 148,000 in 2006 and SR211,000 in 2010 had been taken in respect of the construction of the homes on the two properties and these were secured by charges on Parcel C301. They had since been paid off by the Respondent.
- [12] She had started work at Anse Boileau day-care in November 2005 and as a trainee received SR1300 monthly. In 2006 she changed work and remained in employment until now. She produced some of her payslips. She earned between SR2000 to SR5000 over the years in the different jobs she had held.
- [13] The Respondent worked as a driver with SPTC and they pooled their resources to build the home. He would use his salary to buy materials and she would use her salary for the household expenses. He was also repaying the bank loans. Some months he would give her some money towards the household and other months he couldn't. They were difficult times as she had five children, one of whom was a child she had had before her relationship with her husband. Her mother and her sister helped maintain the children. She also did her household chores and washed and cleaned and cooked while her husband

was good with gardening. He was absent from the home a lot as he worked overtime to get more money.

- [14] The new house put a lot of strain on their relationship, it cost a lot and it made them argue. When she left she never removed her things from the house. Even when they moved into the bigger house they still returned to the smaller house because the bigger house had no kitchen and she had to cook in the smaller house. This carried on even after the divorce.
- [15] The house she now lived in was dilapidated and she was currently living with her partner in overcrowded conditions at Perseverance. The children were scattered at their father's her mother's and with her.
- [16] She did not want money but rather Parcel C9108 where she could build her home. She did not think it would inconvenience the Respondent even if she lived in close proximity to him. She also had an emotional attachment to the older matrimonial home. She still paid for the electricity bill for the small home while he paid the water bill. She still spends the day at the house but doesn't sleep there anymore.
- [17] She sometimes sleeps at her partner's or at her mother's or in daughter's room in the house occupied by the Respondent. The Respondent had a partner and he stayed with her at Anse la Mouche. Neither she nor her partner had one single home they stayed at night.
- [18] The Respondent testified that he lived at Sancta Maria Estate and that he had married the Applicant with whom he had had four children. He accepted that he had acknowledged the Applicant's other child.
- [19] He owned two properties, Parcel C9107 and C9108. They had been subdivided from Parcel C101 which he had purchased in 1992 for SR 28,000 from his own resources although he had met the Applicant in 1991 and had a child with her born the same year. On each property, there was a house. On Parcel C9108 was the corrugated iron house in which he had first lived with the Applicant. He had subsequently built a concrete house on Parcel C1907. He obtained a loan from Nouvobanq for this purpose, which he paid off

from his salary but agreed that the charges securing the loan was both his name and that of the Applicant. He also contributed towards household expenses.

[20] The house he had taken the loan for was still incomplete. The older house was dilapidated but he was maintaining it and paying bills for it. The Applicant did not live in the dilapidated house but came there on certain occasions to cook food and wash her clothes.

[21] He was opposed to transferring the small house to the Applicant as she had got married and had become a Muslim. Their relationship had broken down because of her boy-friend and it would not be healthy for them to live in close proximity. He was however prepared to pay the Applicant a share of the value of the matrimonial property.

[22] In cross-examination he accepted that he had lived with the Applicant since 1992. He maintained that he had bought the land prior to their cohabitation and subdivided the property after the divorce.

[23] He admitted that his wife had done the household chores while he constructed the house on Parcel C9107 and had played a key role in terms of supporting him and the family. He had worked different jobs at different times during their marriage. He earned SR2500 when he worked for SPTC and currently SR9500. He had also done supplementary casual work earning SR150 a day. He also admitted that his wife had worked during their marriage.

[24] He stated that he went to his house every day but lives with his new partner at her home. In his view it should be the Applicant's partner who should look for a place to house her and not the Applicant bringing him to her home. He had quarrelled with the Applicant over it and blamed her partner for the troubles they had had. He was not of the view that the Applicant's partner should move into the house. He did however state that the Applicant could purchase his share of the property.

[25] Mr. Jacques Renaud, Quantity Surveyor valued the land and house on Parcel C9108. He valued the land and house at SR516,000 with the house at SR213,000 and the land at SR303,000.

- [26] Subsequent to the hearing, the Court was informed on 13 November 2019 that the parties' daughter had obtained permission from the Respondent to build on Parcel C9108 and had demolished the house thereon.
- [27] In her written submissions the Applicant has submitted that as the Respondent gave permission to their daughter to build on the land, the value of the property has changed. She further submits that as the parties have now moved on with their lives with respective partners, there is no reason why the Applicant's partner should be a deciding factor in the case. She has further submitted that the Court also ought to take steps so as to avoid leaving the Applicant and her minor child without an abode. The Applicant has referred to the authorities of *Renaud v Renaud* CA 48/1998, *Maurel v Maurel* CA 1/1997, and *Esparon v Esparon* CA 12/1997 for the proposition that the provisions of section 20(1) g and 25(1) of the Matrimonial Causes Act 1992 protect a party to a marriage being put at an unfair advantage in relation to the other by reason of the breakdown of the marriage and enable the party applying to maintain a fair and reasonable standard of living commensurate with or near to the standard the parties had maintained before the dissolution of the marriage.
- [28] In terms of the Applicant's contribution to the matrimonial property the Court was referred to the cases of *Chetty v Chetty* SCA 11/2008 and *Finesse v Banane* (1991) SLR 103 as authority that the contributions to matrimonial property cannot be measured in pure monetary terms and that love and sweat and the long hours of vigil to bring up the family of the spouses all have a role to play in the accumulation of matrimonial property.
- [29] The Court has received no submissions from the Respondent.
- [30] I note first of all that no claim has been made by the Applicant in respect of Parcel C9107. The Court therefore limits its consideration of the division of matrimonial property to Parcel C9108.
- [31] I further note with dismay the contempt for this Court shown by the Respondent. While there was no specific order in relation to maintaining the status of the matrimonial property pending the completion of this case, the Respondent gave a permission to build,

allowed the demolition of the matrimonial property and has in the event limited the remedies the Court can give in relation to Parcel C9108. In this respect, it is observed that Parcel C9108 is only 757 square metres. The building of the house by the parties' daughter restricts the development of the parcel of land and will now have to form part of the court's consideration.

[32] Section 20 (1) (g) of the Matrimonial Cause Act provides in relevant form that the Court :

*“... may, after making such enquiries 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...make such order as the court thinks fit, in respect of any property to a marriage or any interest or right of a party in any property for the benefit of the other party.”*

[33] Case law has established that the point of departure in the division of matrimonial property where only one party has title to the property is to consider the assets held in the name of one spouse as that spouses' property unless it is established that that was not the intention of the parties (see *Etienne v Constance* (1977) SLR 233 and *Maurel v Maurel* (1998-1999) SCAR 57. However, it is also firmly established in Seychellois jurisprudence that where the legal ownership of a matrimonial asset is vested solely in

[34] one party but there is overwhelming and convincing evidence that the other party made significant contributions towards the matrimonial asset in issue, the matrimonial property should be vested in both parties given the express terms of section 20 (1) of the Matrimonial Causes Act giving a large discretion to the court with regard to all the circumstances of the case (*Esparon v Esparon* (1998-1999) SCAR 191).

[35] Contributions to matrimonial property as submitted by Counsel for the Applicant are not only in monetary terms but may consist of contributions in terms of love, friendship, security, commitment, moral and emotional support as well as the maintenance of the home and bringing up the children of the marriage (See *Chetty* (supra) *Desaubin v Perriol* ( 1996) SLR 90 *Samori v Charles* (2012) SLR 371

[36] In the present case although the property at issue is registered in the sole name of the Respondent, and by his own admission, the Applicant has contributed to the household in

monetary terms allowing the Respondent's finances to be put to the building of the matrimonial home and another home to which she has laid no claim. She has also maintained the home, cared for the Respondent and their five children. She still has the minor child living with her. He has provided no evidence that he intends to provide a roof for the minor child.

[37] It is in the circumstances fair and equitable that she should get a share in the matrimonial home and vested legal ownership of the same as well and I so find.

[38] In determining that legal share, I note that the Respondent has stated that the Applicant's partner should not be permitted to stay in the matrimonial home. Presumably, that is why he tried to thwart her chances of obtaining occupation of the property and allowed a third party to demolish the home and build on the land.

[39] However, that is not a matter I can take into account. The parties are divorced and should be allowed to move on with their lives; the likes or dislikes they might have for each other's respective partners is neither here nor there.

[40] It is certainly unusual to divest a legal owner of his rights and transfer the same to his ex-spouse. However, the Court is granted that power under section 20(1) g (supra).

[41] I find that the economic and proprietary loss to the Respondent that would be caused by the divestment of the ownership of the property from the Respondent and its transfer into the sole name of the Applicant would be counterbalanced by a reduction in his responsibility for providing an abode for the minor child. He also has another property which the Applicant made no claim against.

[42] The Respondent has by granting a permission to build to a third party diminished the value of the property. The Respondent has also lost any benefit she might have had in the home which was demolished. I have no indication how much the property has been devalued by but she cannot at this juncture use the house that was there.

[43] Given all her contributions into the home, the length of her cohabitation and marriage to the Respondent, I grant the Applicant a half share in the matrimonial property home, that



is half of SR515,000 being SR258,0000. The house worth SR 213,000 was demolished and the Applicant has lost its use and half of its value to which she was entitled, that is that is SR106, 500. Her share is therefore now worth SR364,500.

[44] In the circumstances, I order that the Respondent transfers to the Applicant Parcel C9108 after payment by her to him of the sum of SR 150,500. A receipt of this sum produced to the Registrar of Lands will suffice to effect the said transfer. If the Applicant fails to make this transfer within six months hereof, the Respondent may on the payment of SR 364,500 to the Applicant within a further term of six months maintain ownership of the property. If neither party make the payment as ordered, the whole property will be sold and the proceeds shared in the ratio specified in paragraph 43 above.

Signed, dated and delivered at Ile du Port on 24 February 2020.

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Twomey CJ