

**SUPREME COURT OF SEYCHELLES**

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**Reportable/Not Reportable / Redact**  
[2020] SCSC 198  
MC53/2020

In the matter between:

**ALEXANDER UGNICH**  
*(rep. by France Bonte)*

**Petitioner**

and

**ANNA LAVRENTIEVA**  
*(rep. by Anthony Derjacques)*

**Respondent**

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**Neutral Citation:** *Ugnich v Lavrentieva* (MC 53/2020) [2020] SCSC 198 (11 March 2020).

**Before:** Andre J

**Summary:** Division of matrimonial property – Section 20 (1) (g) of the Matrimonial Causes Act (Cap 124) – section 3 (1) (a) of the (Immovable Property (Transfer Restriction Act) (Cap 95).

**Delivered:** 11 March 2020

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**ORDER**

The following Orders are made by the Court:

- (i) Parcel C 2914 is registered in the sole name of the Petitioner pursuant to its powers under Section 20 (1) (g) of the Matrimonial Causes Act (Cap 95);
- (ii) Prayer (iii) with respect to granting of sanction and or exemption from payment of sanction fees is dismissed on the ground that it is not within the powers of this Court to do so;
- (iii) No Order as to rent is made for lack of evidence; and
- (iv) Costs are granted to the Petitioner.

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**JUDGMENT**

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**ANDRE J**

## **Introduction**

[1] This Judgment arises out of a Petition filed by Alexander Ugnich (“Petitioner”) as against Anna Lavrentieva (“Respondent”) on the 19 July 2018 and related to the division of matrimonial property. The parties were married on 14 February 1998 and divorced on 22 February 2011, effective as of 20 January 2012. The parties are not resident in Seychelles but have spent several holidays here. In 2005, a Seychelles property Title C2914 with a house thereon (“the property”), was transferred into the name of the Respondent. The ownership of the property forms the subject of the present Judgment.

## **Petitioner’s case**

- [2] The Petitioner filed a petition dated 19 July 2018, with an affidavit attached, seeking various orders, most notably that the Court makes a declaration that the property is registered in his sole name. The Respondent filed a Defense of 12 March 2018 raising three points of law and a defence on the merits.
- [3] During the hearing on 14 November 2019, Counsel for the Respondent, following the presentation of the case of the Petitioner, made a submission of no case to answer. This was overruled in the Court Ruling of the 12 December 2019.
- [4] In a gist, the Petitioner avers in his petition, that although the property is registered in the sole name of the Respondent, it was purchased by the Petitioner with his funds from an account in his sole name. The property was registered in the name of the Respondent because she is a Seychelles citizen, which the Petitioner is not. By virtue of not being a citizen of Seychelles, he could not purchase immovable property in Seychelles. The petitioner further avers that he subsequently paid for renovations to the property.
- [5] Reference is made to the Judgment No. 125 of 2012 of the Supreme Court. In that case, the Petitioner sought to reverse a transfer of the property from the Respondent to her mother. The Supreme Court did so and placed a restriction against the property. The petition submits that the Respondent has been benefitting from renting out the property, the rent from which has not been shared with him.
- [6] It is further confirmed by the Petitioner that the parties’ divorce has been registered in Seychelles in CS No 131 of 2017.
- [7] Petitioner as a result seeks for Orders that, the property is registered in his sole name; that the Petitioner is granted sanction or exempted from payment of sanction application fees; that the Respondent pays the Petitioner half of the rent earned on the property from the date the tenancy of the house; Costs of the case; and any such Orders that the Court deems fit and necessary in the circumstances of the case.

## **Respondent’s case**

[8] In her defence, the Respondent seeks for dismissal of the petition with costs. Three pleas in limine are raised and addressed below. On the merits, the Respondent avers that she is the lawful and beneficial owner of the property and the house situated thereon. Respondent further avers that the house was purchased for her by the Petitioner and that ‘it was intended that she would be and remain the owner, as she was Seychellois and she had just delivered a son for the Petitioner’. The Respondent further avers in her defence that the Petitioner has not maintained their four children, who now live with her mother in the United States (the children’s grandmother). The Respondent thus sought to transfer the property to her mother so that the latter could use the money from renting out the property to help maintain the children.

### **Pleas in limine**

[9] The Petitioner raised three pleas in limine litis in that the petition is res judicata on the basis of the case between the same parties with citation [2017] SCSC 326; that the petition is not actionable for having been determined in the Tushinsky District Court of the City of Moscow on 10 July 2012; and that, owing to procedural deficiencies, the divorce proceedings between the parties were not properly concluded.

### **Res judicata**

[10] The first plea in limine raised by the Petitioner is that the petition cannot be sustained for it is res judicata. Pursuant to Article 1351 of the Seychelles Civil Code (“the Procedure Code”), there must be the threefold identity of subject matter, cause and parties between the first and second case for a plea of res judicata to be upheld. In this case, the parties are evidently the same in both cases, though in the earlier case Ms. Nathalie Legg, the mother of the present Respondent, was the second Respondent. The subject matter and cause are also not the same. The Judgment at issue, delivered on 3 April 2017 ([2017] SCSC 326), concerned an alleged illegal transfer of the property (Title C2914) from the first Respondent (Ms. Lavrentieva) to Ms. Legg (the second Respondent). The Court found in favour of the petitioner and ordered that the property be transferred back into the name of the Respondent (Ms. Lavrentieva) and for a restriction to be placed on the Title until further Order from the Court. The present claim is therefore not res judicata. Indeed, the matter before the Court now is in fact expressly envisioned in the Judgment of 3 April 2017.

### **The Petition not actionable**

[11] As for the second plea in limine liti, that the claim is not actionable, this also cannot be sustained. The translated judgment of the Tushinsky District Court of the City of Moscow of 10 July 2012, which is attached to the defence, in no way indicates that the matter relating to the Seychelles property has been determined. The Respondent appears to have withdrawn her counter-claim relating to the Seychelles property, which was accepted by the Petitioner. The proceedings in relation to this matter therefore, appear to have been terminated. The Court was not provided with further details as regards these proceedings. If anything, the translated judgment suggests that the Seychelles property has not been determined. The Petitioner did not accept when giving evidence that the matter was settled already. The Respondent did not appear so gave no testimonial evidence on this matter.

### **Procedural deficiencies**

[12] As for the third plea in limine liti, concerning the alleged unlawful summons in the matter relating to the registration of the divorce, the Court rejects this. The order of Govinden J (Exhibit P1) states:

*I am satisfied that the plaint which is seeking to register the divorce judgment of the parties was duly served upon the defendant, who failed to effect appearance before this Court and as a result of this, this proceeding is proceeding ex parte.*

[13] Learned Counsel for the Respondent submitted that there is no evidence of service on file. I have reviewed the file (Exhibit P2). It indicates that there were problems with service. However, the transcript of 30 May 2018 notes that there is service at an address of Anna Lavrentieva in the USA. In support of this, there is a proof of receipt to Ms. Levretieva's USA address, which has been returned to the Registrar. The Court therefore rejects this plea.

### **Evidence presented at the hearing**

[14] It is to be noted foremost, that the manner in which the evidence has been presented to this Court has been unhelpful in resolving the present dispute as follows. Firstly, the Respondent did not appear to give evidence and Counsel for the Respondent eventually made a submission of no case to answer. The consequences of this submission, which was rejected in an Order of the Court delivered on 12 December 2019, was that the defence did not call any evidence in this case. Secondly, various documents were attached to the pleadings by both parties, none of which were subsequently admitted as evidence. This was raised by Counsel for the Respondent in his written submissions. He notes: 'In a plaintiff action, affidavits and attached documents are not filed, and do not constitute evidence, until admitted by the Court, during the hearing.' It is trite law that the Petitioner must make out their case. Connected with this is the process of admitting evidence, which ensures that the defendant can challenge that evidence by way of cross-examination of the relevant individual. The Court has taken note of this, and has accordingly limited itself to that evidence which is properly before the Court.

[15] This brings us to the issue of the evidence that has been admitted. Firstly, two judgments of the Supreme Court were admitted as evidence for the Petitioner. The admission of this evidence was uncontroversial. The case files associated with these judgments (CS 125/2017 (P3) and CS 131/2017 (P2)) were also admitted as evidence by the Petitioner. Admission of the former case file (CS 125/2017 (P3)) was objected to by Counsel for the Respondent. He noted that a Judge should not rely on the findings of another Judge, but hear the evidence and decide for themselves. The objection was ultimately over-ruled, however the Court noted that the file was admitted *only* for the purpose of ensuring the proper illustration of the Judgment of CJ Twomey. As it happens, on reviewing the Judgment of my Learned CJ Twomey, it has not been necessary for this Court to consider the files produced, the Judgment being clear on itself.

[16] The main issue in this case is who the beneficial owner of the property is. It is not disputed that the property is registered in the sole name of the Respondent. The Petitioner however avers that he is the rightful and beneficial owner of the property, having made full payment for the purchase of the property from an account in his own name in Switzerland. The plaint is clear on that point and the affidavit on oath of the Petitioner also states so clearly in that:

*“ I made payment for the purchase of the land and house by transferring the sum of Euro 375,000 into the bank account of seller Mr Harry Savy and Euro*

*22,000 into the bank account of the lawyer doing the transaction Mr Serge Rouillon, amounting to Euro 397,000 in total for the purchase of the property. That the property was which I bought namely parcel C2914 was registered in the sole name of the Respondent as I was waiting for my Seychellois citizenship, it is further averred that despite the fact that the property is registered in the respondent's sole name, that I made full payment for the purchase of C2914".*

- [17] These averments were repeated in the Petitioner's testimonial evidence, on which he was lengthily cross-examined by counsel for the Respondent.
- [18] The Respondent, on the other hand, in her statement of defence avers that the Petitioner purchased the property for her and accordingly registered it in her name. Her position is essentially that the purchase of the property was a gift.
- [19] Having reviewed the evidence properly before the Court, I find that the Petitioner did in fact pay for the property in full. The Court makes this finding on the basis of the Petitioner's affidavit and testimonial evidence. This finding is further supported by the findings of the Judgment of CJ Twomey (supra). The facts as presented in this case by the Petitioner were the same in that case in regards to the purchasing of the property. This Court has also taken note of the reference in the Judgment that the Petitioner '*produced documentary evidence of the transfers of money*' in relation to the purchase of the house.
- [20] For completeness, it is noted that counsel for the Respondent raised the issue of an illegal back-letter in his written submissions. This was not raised in his statement of defence nor during cross-examination. The Court has not therefore addressed this issue. It was however subject to attention in the abovementioned Judgement of CJ Twomey and dealt with accordingly.

### **Analysis**

- [21] The Petitioner has requested that this Court '*declare that Parcel C2914 is registered in the sole name of the Petitioner*'. The Petitioner is claiming that the Court make this Order pursuant to its powers under the Matrimonial Causes Act (MCA), though this is not abundantly clear from the petition. The Court reminds the Petitioner of the requirements of Section 71 of the Code of Civil Procedure. Nevertheless, section 20(1)(g) of the MCA provides that:

*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.*

[22] The question therefore is whether the Court should order that the property be registered in the Petitioner's name under section 20(1)(g) of the MCA. In that respect, the Court has broad powers under this provision. The parties' divorce has been registered in Seychelles and the Court is open to making the requested Order it being '*any time thereafter*'. Here, the property was acquired in the course of the marriage. It was a property that they enjoyed as a family, frequently spending holidays there while married. The testimonial evidence of the Petitioner was that the property is matrimonial property, and this was not challenged by the Respondent. The Court has made inquiries as to the circumstances surrounding the property. Such inquiries have shown that the Petitioner solely paid for the property and renovations to it. Accordingly, the Court determines that, on the facts of this particular case, it is appropriate for the Court to grant the requested Order that the property be registered in the sole name of the Petitioner, pursuant to its powers under section 20(1)(g) of the MCA.

[23] As noted in the Ruling already issued by this Court dated 12 December 2019, the Court is not precluded from making a property Order under section 20(1)(g) of the MCA if the Petitioner is not a Seychelles citizen, as is the case here. Section 3(1)(a) of the Immoveable Property (Transfer Restriction) Act provides that:

*A non-Seychellois may not -*

*(a) purchase or acquire by any means whatsoever and whether for valuable consideration or not, except by way of succession or under an order of the court in connection with the settlement of matrimonial property in relation to a divorce proceedings any immovable property situated in Seychelles or any right therein*

[24] The Petitioner has made a further request for an order *‘that the petitioner is granted sanction or exempted from payment of sanction application fees’*. The Court does not have the power to grant this Order, and would not in any case consider it appropriate to do so.

[25] Regarding the request for an Order for half of the rent earned on the property to be paid, the Court has not been provided with any particulars or evidence to support this prayer. Although such information may have primarily been in the hands of the Respondent, who did not appear, the Petitioner is clearly aware that the property has been rented out. He could therefore have provided further details as to the period of time and the rate, which he has failed to do. Counsel for the Petitioner notes that the property was rented for 5 years in his written submissions, though this was not led in evidence and therefore the Respondent has not had a chance to challenge this submission. It is not appropriate thus, to include for the first time such evidence in written submissions, and thus Counsel should not be surprised that this evidence has not been taken into account.

### **Conclusion**

[26] The Court accordingly makes the following orders:

- (i) That Parcel C 2914 is registered in the sole name of the Petitioner pursuant to its powers under section 20 (1) (g) of the Matrimonial Causes Act;
- (ii) Prayer (iii) with respect to granting of sanction and or exemption from payment of sanction fees is dismissed on ground that it is not within the powers of this Court to do so;
- (iii) No Order as to rent is made for lack of evidence; and
- (iv) Cost of the Petition is granted to the Petitioner.

Signed, dated and delivered at Ile du Port on the 11 March 2020.

**ANDRE J**