

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 288
MA 130/2018
Arising in DV 117/2015

In the matter between:

SINGLETON RAPHAEL NANCY
(rep. by Bryan Julie)

Applicant

and

SUZANNA MARINETTE NANCY NÉE BIBI
(rep. by Nichol Gabriel)

Respondent

Neutral Citation: *Nancy v Nancy* (MA130/2018) [2020] SCSC 288 (22 May 2020).
Before: Carolus J
Summary: Matrimonial Property Settlement – Matrimonial Causes Act
Heard: 4th May, 2nd July and 16th October 2019.
Delivered: 22 May 2020

ORDER

- (a) The applicant is awarded a 35% share and the respondent a 65% share in the matrimonial property of the parties namely parcel B350 and the house thereon.
- (b) The respondent shall pay to the applicant the sum of SCR449,050 representing his 35% share in the matrimonial property within 9 months of this judgment and upon such payment, the applicant shall transfer his undivided half share of parcel B350 and the house thereon to the respondent.
- (c) If the respondent fails to make the aforesaid payment within 9 months of this judgment, the property shall be sold and the proceeds thereof shared between the applicant and the respondent according to their entitlement of 35% to the applicant and 65% to the respondent.

- (d) Each party is to bear his or her own costs.
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JUDGMENT

CAROLUS J

Background

- [1] The parties were married on 7th July 2007 and are now divorced. The conditional order of divorce granted on 07th November 2016 dissolving their marriage was made absolute on 21st July 2017.
- [2] The applicant has now filed an application for Matrimonial Property Adjustment which is supported by an affidavit sworn by himself. In terms of his application, he claims that the parties are co-owners of land parcel B350 situated at Morne Blanc, Mahe, on which their matrimonial home is situated. He avers that he purchased the property and agreed to register it in the names of both of the parties, and that by reason of ownership and payments he is entitled to 80% ownership and interest in the said property. He therefore prays to be declared as the owner of 80% interest in parcel B350; for a property adjustment order appropriate in all the circumstances; for a valuation of the parties' respective interests in the said parcel; and for an order transferring ownership of the said parcel to the respondent subject to payment of 80% of the market value thereof to the applicant, or in the alternative that the property be sold and 80% of the proceeds to awarded to the applicant.
- [3] The respondent contests the application and filed an affidavit in reply thereto. She admits that parcel B350 on which the matrimonial home stands is co-owned by the parties but avers that the applicant has vacated the matrimonial home which is occupied by her and their four children. She denies that the applicant purchased parcel B350 or that he owns any interest therein, and avers that it was purchased from her uncle Mr. Theophile Denis who offered it to her for the sum of SCR 75,000 which she paid. She avers that the

applicant was only included in the transfer deed because the parties were married and were advised that it would facilitate loan applications. She denies that the applicant has an 80% of interest in the property and avers that she took out loans for the purpose of building the matrimonial home which remains uncompleted. She further avers that that she maintained the house, children and family, repaid the housing loan monthly until its repayment in full, paid the utility bills and provided for the school needs of the children and their daily stipends. She prays for a declaration that the applicant is not entitled to any share of parcel B350 or the matrimonial home; that the applicant vacates the matrimonial home; and any orders that the Court deems fit in the circumstances of the case.

The Evidence

Testimony of the Applicant

- [4] At the hearing of the application, the applicant testified that he is a retired mason and now lives at English River but used to live at Morne Blanc. He confirmed that he was married to the respondent but that they are now divorced and produced the Certificate of Making Conditional Order Absolute dated 21st July 2017 as **Exhibit P1**.
- [5] He testified that he owns the property where he used to live at Morne Blanc which he purchased from one Theophile with money he was paid from the “tarmac fund”. He explained that before he purchased the property, he and the Respondent had been living in the house situated on that property but that Theophile had taken a loan from the Housing Department on which he defaulted payment, as a result of which the respondent informed him that the house was going to be repossessed. He therefore asked the respondent to check how much they owed because they had been paying SCR550 per month at the time, and they found out that up to then they had only been paying interest. It is unclear what the payment of SCR550 had been for, the applicant merely stating that the respondent had been in charge of such payments as she had more time on her hands as he was working on a vessel at the time. The applicant then purchased the property for the sum of SCR75,000 from Theophile. The money was paid to the Housing Department in settlement of the loan and the applicant reiterated that the entire sum was paid by

money which belonged to him, having obtained the same from the “tarmac fund”, although it was the respondent who effected the payment. He stated that he had given the money to her in cash.

[6] The applicant produced as **Exhibit P2**, the title deed to parcel B350 dated 15th January and 16th October 2001, and signed by the Mr. Theophile Denis as the transferor, the parties as transferees and Notary Gerard Maurel. According to the title deed Theophile Denis transferred the land comprised in Title No. B350 to the applicant and the respondent for an undivided half share each in consideration of the sum of SCR75,000 which sum was stated to have been paid. The applicant testified that it was he who decided that the transfer deed should be in the name of both he and the respondent, on the advice of Notary Gerard Maurel because they had a child together.

[7] The applicant testified that after he had purchased the property, he carried out repairs to the house with the help of another mason. He stated that he bought 21 tonnes of sand, 21 tonnes of aggregate and four slings of cement for that purpose with his own money, but admitted that the respondent paid the mason for the six months that he was working on the house, after which the applicant did all the work himself.

[8] He denied that the respondent took any loan which was used to repair the house. He recalls her taking a loan from the JJ Spirit Foundation at a point in time to carry out further repairs. At the time he had been working for Mr. Ramadoss and was only doing masonry work on the house on weekends, but was laid off due to the business closing and went to work for the Agro Industries which he then also left. Since he was not in employment for a few months he asked her for the money from the loan so that he could carry out masonry works on the house but she responded that she did not have any because she had already lent SCR50,000 to her relatives. He stated that that money was never used to finance repairs to the house.

[9] The applicant claims that after that, he took two loans of SCR30,000 each from the Credit Union to repair the house for which a charge was placed on parcel B350. He produced as **Exhibit P3**, a charge over parcel B350 dated 16th October 2001, signed by both parties as

chargors, by the applicant as borrower and Mr. Emile Esparon as the chargee. The charge was to secure the payment by the applicant to the Seychelles Credit Union of the principal sum of SCR30,000 with interest, repayment of which was to be made in monthly instalments of SCR833 the first repayment to be paid on 30th November 2001. He also produced as **Exhibit P4** Seychelles Credit Union statement for a General Purpose/ Personal Loan Account in the name of Nancy Singleton Raphael showing an opening balance of SCR29,000 with details of the loan repayments from 1st March 2002 until completion thereof on 18 April 2013. The applicant confirmed that he was the only one who repaid the loan as his wife had no money and was unemployed at the time, although he could not recall for how long she remained unemployed during the time that they were cohabiting.

[10] The applicant however admitted that the respondent had been caring for their two small children during the time that she was unemployed. He further admitted that since they both planted vegetables which they sold to hotels, they both contributed to the maintenance of the two children. The Applicant testified that the parties now have four children, two of which are still minors and that he has always maintained them as he has always worked. He stated that after the separation of the parties he did not want to pay maintenance for the children as one of them was on drugs but that he still provided for them. However pursuant to a court order he had to pay maintenance and is currently paying a sum of SCR1000 for both minor children in addition to SCR700 as tuition fees.

[11] The applicant testified that although according to the title deed to parcel B350 he is entitled to 50% of the property, he is claiming 80% of the value the property because he did all the work on the matrimonial home by himself except for the work that was carried out by the other mason for only 6 months after which he did all the work himself. He stated that he wants his share of the property so that he can build himself a house because he doesn't have a place of his own and is currently living in a store. He further stated that he moved out of the matrimonial home when his son refused to bring him to hospital in the early hours of the morning.

- [12] The Applicant stated that should his alternative prayer be granted and the matrimonial property sold and he is paid 80% of the proceeds thereof, the respondent and the children can live in her late mother's house comprising two floors, one of which can be occupied by her brother and the other by herself and the children.
- [13] The applicant further stated that he had the matrimonial property valued by a surveyor whose name he cannot remember but whose office is located near the Credit Union Building and who submitted a valuation report in which the property was valued at about SCR one million. He requested that he be paid 80% of the value of the property as per the valuation report.
- [14] In cross-examination the applicant stated that he is 74 years of age and retired as a mason about two years ago. He admitted that Theophile Denis from whom he purchased parcel B350 is the respondent's uncle and reiterated that he purchased the property because it was about to be repossessed by the Housing Department.
- [15] He maintained that he was paid SCR75,000 from the "tarmac fund" which he gave to his wife for safekeeping, until they used it to purchase the property. He agreed that the land was purchased by both of the parties and that according to the transfer deed they both own half of it. He further admitted he had nothing to show that it was his money from the "tarmac fund" that was used to purchase the property and stated that he had requested for documents proving the same but was told that they had been put in the archives.
- [16] He was also cross examined regarding the loan borrowed from the Seychelles Credit Union. Although he agreed that he had produced only one statement (Exhibit 4) with an opening balance of SCR29,000 he maintained that he had taken two loans from the Seychelles Credit Union. He also maintained that the loan to which the statement related was used to repair the matrimonial home in spite of being described as a General Purpose Loan in the statement, stating in that regard that at the time he was building a house and could not have spent the money on anything else.

- [17] He admitted being aware that his wife had sold her property at Anse La Mouche but denied that she used the proceeds thereof to contribute to purchasing the matrimonial property.
- [18] The applicant stated that when he and his wife purchased parcel B350 the house thereon which they had been occupying was dilapidated and the roof was leaking badly. He therefore obtained planning permission to build a new house around the walls of the existing house and while construction was going on they continued living in the old house. After roofing of the new house been completed, he broke down some walls of the old house to partition the house. The mason he engaged to assist him in the construction worked for 6 months until they reached the level of the ceiling after which he left and the applicant continued working on his own with no assistance from anyone else.
- [19] He stated that during the time the house was under construction, the respondent attended to the house and family, looked after the children, cooked, washed the clothes, and did the ironing. The applicant tended to the chickens and cultivated crops like bananas.
- [20] The applicant stated that he moved out of the matrimonial home because he was ill and he could not live that far. He agreed that when he moved out in 2017, the house was not yet completed and that there are still many things to be done including plastering. He stated that since he left he has not done any work on the house but still visited it until he fell ill.
- [21] He denied that with the amount of material he had supposedly purchased, construction of the house should have been completed. He explained that the old house had been built on boulders which had cracked and which had to be filled with a lot of cement and rocks. He responded in the affirmative when asked whether he had paid for the materials himself, and stated that he had not taken any loans to do so. However he stated that he had no proof of the same as he had left all the documents with the respondent. He then admitted that he had not paid for rocks as they were all over the property and he had used his own machine to crush them. He vehemently denied that he had taken any construction materials from the UCPS which were being given away on the instructions of the SPPF at

the time the property was purchased, stating that he was not an SPPF supporter. He admitted that he was given some coral fill by Dr. Ramadoss for whom he had been working. He maintained that the loan of SCR50,000 borrowed by his wife from the JJ Foundation had not been used in the construction of the house as she had lent it to one of her family members.

[22] He maintained that he is entitled to 80% of the value of the matrimonial property because of the work he has done on it. He further stated that he is not aware that the respondent is repaying a loan for the house, that it was his money that was spent on the building, that he is not aware of what she does with her money and that in any case any loan that she might have taken and is still repaying was not used in renovating the house. When it was pointed out to him that the respondent is the one occupying the house with their 3 children and therefore looking after the house, he stated that he had told her to leave the house as it is pending these proceedings. When it was further put to him that there are many things still to be done to the house and many expenses, he replied that the house would have been completed if she had not given the money from the loan she had taken to her relatives. Further they had each agreed to put aside some money to go towards completion of the house but that because she did not keep to the agreement he had used his money to buy chicks to maintain the family as the money from his pension was not enough.

[23] When it was also put to him that he could not claim 80% of the value of the property because he had not contributed that much, he maintained that he was the one who had done all the work on the house and that if he still had all his documents he would have been able to prove that he had bought all the construction materials to rebuild it.

[24] When it was further put to him that he had lost interest in the house because he had moved out, he denied this saying that the NDEA had also come to their house at 6a.m. and that this affected him as he was sick. The applicant also stated that no one had forced him to leave the house, that he can go there any time he wants, that he has personal belongings there and that he has not lost interest in the house. He also stated that no

political parties offered him any assistance nor did he receive any from them. Further, the house was not completed when it was valued and remains to be plastered.

- [25] Finally the applicant averred that over and above the SCR1,000 for maintenance and SCR700 for tuition fees that he pays for his minor children, when his daughter Christy comes to see him, they usually go to the shop where he buys her something.

Testimony of land surveyor

- [26] Mr. Michel Leong, a land surveyor of long years of experience and whose evidence has been accepted by the Courts on numerous occasions, testified that he had been instructed by the applicant to carry out a valuation of land parcel B350 and the dwelling house thereon. Pursuant to that he visited the property in March 2017, and compiled a valuation report dated 31st March 2017 which he produced as **Exhibit P5**. According to the report the land which is of an area of 1,390 square meters is valued at SCR500,400 calculated at the rate of SCR360 per square metre. The rate is based on the price of 3 properties namely T3467, C7217 and B7018 situated at Val D’Endor, Mont Plaisir and La Misere respectively. The building which is only 60% completed is valued at SCR783,000. Together the value of the land and building amounts to a total of SCR1,283,000 which Mr. Leong opined is a true valuation of the property.

- [27] In cross examination as to his observations on the dwelling house, Mr. Leong stated that the block-work is already up but is not plastered, that although the roof is up there is still timber sticking out, that the frames are in and that the house is still in a state of construction. He also stated that the house was being occupied despite still being under construction, and he presumed it was the applicant who lived there since the applicant met him at the premises when he went there in March 2017. The outside of the house was not landscaped yet as the house is still under construction. Access to the house was through an unsurfaced, motorable road, and the property was in a residential area although houses are few and far between in that area.

- [28] Mr Leong was asked to clarify what he meant in his report by “the property requires some maintenance to bring out its value whilst the building in its present state would

hardly be attractive to a potential purchaser” and stated that he formed this opinion because the building was being lived in but still only half constructed and no landscaping had been done and the grounds were overgrown. He stated that given these findings he would still maintain the value of the property as stated in his report at the time the report was made. As for the three properties, the value on which he had based the rate on which he had calculated the value of parcel B350, he stated that he did not recall if they had any buildings on them.

Testimony of Respondent

[29] The respondent Suzanne, Marinette Bibi 53 years of age residing at Morne Blanc, Mahe testified that she has four children and that Singleton Nancy from whom she is divorced has brought her to Court regarding their matrimonial property.

[30] She testified that her uncle Theophile Denis was the executor of the estate of his late parents who had 10 children. She stated that the house and land she is presently occupying used to belong to Mr. Denis who had taken a housing loan which he was having difficulty repaying and that he asked the respondent to help him repay the loan which she did, until the loan was completely repaid. Mr. Denis left Mahe to live on Praslin at some point, and because the respondent had requested to be allocated a plot of land, he offered her his plot of land on which the house for which she was repaying the loan stood, so that when she completed the loan repayments she would not have to also pay him for the land. She agreed and thereafter Mr. Theophile Denis transferred the land to her.

[31] The respondent confirmed that the title deed for land parcel Title No. B350 (**Exhibit P2**) was for the transfer of the said parcel to herself and Raphael Nancy. She testified that the SCR75,000 stated to be the consideration for the transfer was paid by her by means of loan repayments which she had made by monthly instalments until the loan was completely repaid. She stated however that the title deed was signed sometime after she had completed the loan repayments. She clarified that at the time she was making the loan repayments, the loan was in the name of Mr. Theophile Denis but that the receipts

for such repayments were in her name since she was the one who had made the payments. She stated that she had put the receipts in a bag at her home but that the bag had disappeared.

[32] The respondent explained that it was the applicant's idea for his name to be included in the transfer deed because he said they had two children together at the time, and he insisted that his name be included on the transfer deed. She stated that she did not speak to the notary Mr. Maurel about his name being included in the deed at the time of signing it. She then stated that she had not realised at the time that according to the transfer deed a half share of the land had been transferred to the applicant.

[33] The respondent testified that there was an old house on the land which was habitable but that the roof leaked so badly that every time it rained she had to use about seven buckets to catch the rainwater. They therefore had to rebuild the house, although they occupied it while construction was ongoing, living in one part of the house while the other part was undergoing construction.

[34] She testified that she paid for the labour to rebuild the house which was done by a mason. She stated that she obtained the money to do so by selling a plot of land she owned at Anse a la Mouche for the sum of SCR90,000, which was mostly used to pay the mason. She stated that that she sold her plot of land at the insistence of the applicant even if she had been reluctant to do so in order to pay someone else to do work that he could have done, given that he was a mason himself.

[35] She also stated that she bought the materials for rebuilding the house and further obtained some crusher dust and aggregate from Mr. Bonte who was supplying people with whatever they needed around election time. She stated that Mr. Nancy assisted in building the house by "putting some bricks".

[36] The respondent further testified that she applied for a loan of SCR50,000 from the Housing Finance Company ("HFC") through the District Administrator to install windows for the house. She then asked for a further loan of SCR50,000 but since she had not completed repayment of the first loan and such loans were limited to SCR50,000,

they could not give her a full SCR50,000 but only loaned her a sum which in addition to the unpaid amount of the first loan came up to SCR50,000. She did not say how much of the first loan she had repaid before such adjustment was done. She testified that there is still an outstanding sum of about SCR10,000 on the loan which she was repaying by monthly instalments of SCR1,063. She produced a statement of account from the HFC for a “New Home Improvement Loan” in her name as **Exhibit D1** for the period 01/06/2014 to 28/06/2019. The statement of account showed the various loan disbursements amounting to SCR50,000 and repayments made from 07/08/2015 to 31/05/2019 at which point in time the outstanding balance on the loan stood at SCR10,912.63.

[37] The respondent admitted being aware that the applicant had taken a general purpose loan from the Credit Union and that the property had been charged as security for the loan, because she had also signed the charge. She also admitted that the loan had been taken to finance the purchase of corrugated iron sheets for the roof of the house but stated that to date the house is not completely covered. She confirmed that **Exhibits P3 and P4** related to that loan and that it has been completely repaid.

[38] The respondent testified that she has encountered many difficulties with regards to the children when they were still very young as the applicant refused to give her money to provide for them. Sometimes she had nothing to give them and had to go all the way from Morne Blanc to her mother’s place at Intendance to ask for money. Her brothers also helped her sometimes with money and at other times by providing food. More recently she was also receiving assistance from social security to provide for her children when they went to school. She testified that once she took SCR100 from money the applicant had obtained from selling eggs and he told her to return it. She stated the applicant only started paying maintenance for the children upon the order of the Family Tribunal once divorce proceedings were under way and that even then he is sometimes late with the payments. Originally he was paying SCR500 for each of their then three minor children but when the elder one turned 18 he started paying only SCR500 for each of the two remaining minor girls aged 16 and 13 years respectively. She stated that the Court had

originally ordered him to pay SCR700 for each child but that he said he could only pay SCR500 each and that because she did not want to keep absenting herself from work to attend the Family Tribunal sessions, she accepted that sum.

[39] The respondent testified that she has always been the one who pays the utility bills. She further stated that she has always been in employment and that when she first started working it was at the Equator Hotel when it just opened. Thereafter she had other jobs with the final one being at the residence of the then American Ambassador Karl Stock at Sans Soucis.

[40] She stated that the applicant never informed her that he was moving out of the house and that it was her brother who called her one day and told her that the respondent was loading all his clothes in the car and that he appeared to be leaving. She told him to let him leave and she did not call him to ask him why he had left. The applicant did not leave any money for the respondent when he left.

[41] The respondent confirmed Mr. Leong, the land surveyor's statement in his valuation report **Exhibit P5** that the house was only 60% completed and that there were still many things left to be done. She stated that the house has only a makeshift door, that she was the one who had all the windows installed and that the respondent left just as the last window was being put in. According to her the applicant protested every time the carpenter came to put in the windows saying it was not time yet so that they had been staying without doors and windows for about 14 years.

[42] The respondent disagreed with Mr. Leong's valuation of SCR 1,283,000 for the house and land but declined to say what the proper valuation should be stating that she was not qualified to do so. She went on to state that she never known that a valuation of her house had been carried out because she had never been informed of the same and only became aware when she was served with Court summons. She added that she saw Mr. Leong for the first time when he was testifying in Court.

[43] The respondent testified that the applicant had a chicken coop on the property in which he used to keep 300 to 400 chickens for their eggs, but that even if she and the children

fed the chickens, the money he received did not benefit the family. He used to tell people who purchased the eggs not to pay him when she was present as she would think he had money. She confirmed that they also grew crops on the land.

[44] The respondent vehemently disagreed with the applicant being given 80% of the value of the matrimonial property. She stated that he should rather have asked for 20% as she had been given the property as part of her inheritance from her grandfather, and further stated that he does not even deserve 20% because he has just been doing everything to her detriment instead of helping with the property. She stated that she did understand why she has to pay him anything at all as he has not contributed anything towards the property or the family, and that when she met him she had money but that she is now penniless. She therefore prayed for dismissal of the petition.

[45] In cross-examination the respondent stated that she met the applicant in 1995, after which they entered in what she describes as an “on off relationship”. They only started living together permanently more than 3 years later after the birth of their second child, after which they got married in 2007.

[46] She reiterated that parcel B350 previously belonged to her uncle and that he had taken a housing loan from the Housing Department to build the house thereon. She confirmed that she never paid any money for the property directly to him but that she repaid his housing loan, in lieu, the loan repayments being made directly to the Housing Department.

[47] The respondent explained that the SCR75,000 stated in the transfer deed **Exhibit P2** to be consideration for the transfer of title No.B350 was paid in monthly instalments to the Housing Department to settle Mr. Theophile Denis’ housing loan from them, and not in a lump sum. She further stated that the applicant’s name features on the title deeds because he pressured her into adding his name thereon when they went to sign the transfer deed.

[48] When she was asked whether the SCR75,000 referred to in the title deed was consideration for the land or the house thereon, she stated that it constituted the loan repayments for the house. She explained that the land was family land that had belonged

to her late grandfather and was given to her as a gift according to his wishes and for which no consideration was paid. Her uncle as the executor of the estate of her grandfather was fulfilling the latter's wishes in gifting her the land.

[49] The respondent insisted that the SCR75,000 referred to the loan repayments that she had made for the house only and was not consideration for the land. She also insisted that she was the one who had repaid the loan by monthly instalments from her own money as she was working, and that she had her receipts at home but that they were now all gone. She vehemently denied that the applicant had given her money to pay for the property stating that he never had any money. When she was asked whether she had any proof that she had repaid her uncle's loan, she stated that she had kept the receipts in a bag but that the applicant had thrown it away because he knew that it contained important things.

[50] The respondent stated that the applicant's only contribution in rebuilding the house was by "passing bricks" which he did mostly at night, which she stated she also did. She further stated that she also carried stones and cement to the house, as did the children although they were very small.

[51] She recalls that she first started work at the Equator Hotel when it was opened by Mr. Ferrari in 1982, where she had been working when she started paying off the loan, although she does not remember the year. However she remembers that she started living on parcel B350 in 1987. She also does not remember when the last instalment for the loan repayment was made but states that this was a long time before the transfer deed was executed.

[52] Reference was made to the respondent's claim that the applicant forced her to include his name in the transfer deed and that she did not know at the time of signing it that the applicant was stated to own a half share of the land and, in reply to whether the Notary Mr. Maurel had not explained the contents of the deed to her she stated that the applicant insisted on accompanying her and Mr. Theophile Denis to Mr. Maurel's office to ensure that his name was included in the transfer deed. When asked whether she did not read the document she stated that she did not know what the applicant did with them but that they

were all confused that day. When asked to explain this further she stated that she kept her copy of the title deed in a safe place at home and only looked at it when the applicant started to ask about his share in the property, and it was only then that she understood the contents of the document. When pressed she admitted that she might have seen that the title deed transferred a half share of title B350 to the applicant at the time of signing but that she did not take it seriously at the time. She stated that after signing the document, she and her uncle had been discussing the matter and questioned the fact that the applicant was given a half share of the property and her uncle told her that she had not read the document properly.

[53] When the respondent was cross examined about the truth of her claim that the applicant made no contribution towards providing for the children, utilities and household expenses as well as to the property during the ten years that he lived with her, although he was employed and was also a mason, she stated that he only pretended to care for the children a long time back but that during the difficult moments he did not contribute to their welfare and she had to seek help from her mother to feed her children.

[54] When it was put to her that she had taken him to the Family Tribunal to claim maintenance for the children, she explained that she had sought the assistance of the social services because of the inappropriate behaviour of the applicant in the house and that it was they who had recommended that she file a case against him before the Family Tribunal. She also explained that she claimed maintenance although he was still living with them because he was not contributing to the children's upkeep. He only bought chicken and cheese and because children also have other needs she preferred that he make monetary contributions so that she could buy what the children actually needed.

[55] The respondent reiterated that she took two loans of SCR50,000 from the Housing Finance Company, the second one being a house improvement loan to which **Exhibit D1** relates having been taken in 2015 two years before the parties' divorce for the purpose of installing windows in the whole house. When it was put to her that she lent her sister the money obtained from this loan and that her sister never repaid the money, the respondent admitted that she did lend the money to her aunt as she always helps the respondent when

she is in need but claims that her aunt returned the money. She states that when she was in hospital although the applicant did not even visit her, her aunt took care of her, gave her everything she needed and even bathed her. The respondent claims that her aunt returned the money to her even before the applicant moved out but that she kept quiet about it so that the applicant would not bother her and ask her for it, as he had no interest in completing the house but would have spent the money on other things. She recounted that once she told the applicant that she was going to purchase construction materials that they needed and she gave him SCR5,000 out of that money to give his son to buy and transport the materials for them and that until now she has not seen the materials. She stated that the applicant wanted her to give him the money from the loan but if she had done so the work on the house would not have progressed and she would not have been able to install the windows. She explained that although the applicant was living in the house, he had no interest in completing it and even prevented her from doing so because he knew the house was hers.

[56] With regards to the proceeds of sale of the respondent's land at Anse a la Mouche, the respondent reiterated that she used the money to pay a mason Winston Francoise and a carpenter Mr. Octave of Sans Soucis to construct the house. She stated that the applicant is not as qualified as Mr. Francoise to undertake construction of the house.

[57] The respondent contested that the applicant is entitled to 80% of the matrimonial property although she conceded that maybe he deserves 1% thereof.

[58] With regards to the material that the applicant purchased, she admitted that he bought a sling of cement, some metal to put on the house as well as some wood which was in addition to wood from the old house that they used, and wood that she got when Port Glaud school was being demolished. Some of that material still remains at the respondent's place but she claims that the applicant sold some of the crusher dust to their neighbour.

[59] When it was put to the respondent that had upon obtaining his benefits from the "tarmac fund" the applicant had given her the same to pay for parcel B350, and allowed her to be

included as a co-owner thereof, she strenuously denied ever receiving any money from him. Although she admitted that she had never paid SCR75,000 to Mr. Theophile Denis she maintained that she had repaid the loan for him although any proof she had was destroyed. She also denied that the applicant had spent money to repair the house while the loan she had procured was not used to contribute to the same. She stated that she used money from the loan to pay a carpenter to install windows and to pay a mason to do the bathroom but that the house has only a makeshift door because she does not have the money to do everything all at once. She further denied that she had lied to the Court or that she was trying to deny the applicant of his rightful share of the matrimonial property.

[60] In re-examination the respondent confirmed that the parties were married for 10 years from 2007 to 2017, that she had always been employed during that period but that at some point during that period the applicant retired. She also confirmed that construction of the house started during that period and that according to the valuation report (**Exhibit P5**) it is only 60% complete. She stated that the house is not plastered, the roofing has not been completed, there is no ceiling and the electricity wiring has not been completed.

[61] She also stated that before the title deed to parcel B350 was executed she used to live in the house situated on that land built by Mr. Theophile Denis by means of a loan he had borrowed from the HFC which the respondent had continued repaying. The applicant only moved in with her in that house later. Afterwards the house was demolished and rebuilt on the advice of one Mr. Pillay because of termites and because it was cracked everywhere. Construction of the new house started before the parties were married in 2007.

[62] The respondent confirmed that the case she had filed against the applicant before the Family Tribunal because of his inappropriate behaviour around the house and the children and also behaviour intended to deter anyone coming to work on the house from doing so.

[63] She further confirmed that she was the one who paid Winston Francoise and Mr. Octave to do masonry and carpentry work for her. She added that there was also one Mr. Lewis Pirame of Maldives who did the roofing for the house and whom she also paid.

Testimony of Theophile Denis

[64] Mr. Theophile Denis currently residing at Anse Boudin, Praslin testified as a witness for the respondent. She testified that the respondent is her niece and when asked if he knows or has ever met the applicant, responded in the negative stating that he had only seen him when he came to Court. He stated that he used to own a plot of land at Morne Blanc and that he took a loan of about SCR50,000 from HFC to build a house on that land. He explained that he started paying off the loan but lost his work contract and was unable to continue doing so. He entered into an agreement with the respondent for her to continue repaying the outstanding balance of the loan which she did. He does not know the outstanding balance of the loan which the respondent had to pay.

[65] Mr. Theophile Denis explained that his father who was also the respondent's grandfather had promised to give the respondent a plot of land belonging to the said grandfather also situated at Mornes Blanc. Since the respondent was going to apply for a loan to build a house on that plot when it was given to her, in view of his circumstances, it made more sense for him to transfer his plot of land to her.

[66] He stated that he went with both the Respondent and Applicant to sign the transfer deed at the Notary Mr. Maurel's office and that it was the respondent who proposed to Mr. Maurel to include the applicant's name in the transfer deed, despite the loan being repaid by her. Thereafter he never visited the land or the house.

[67] In cross examination Mr. Denis confirmed that he had never met the applicant before he came to Court. When he was asked why he had testified that the applicant had been present when they went to sign the transfer deed, he replied that it was the respondent who had asked Mr. Maurel to include the name of the applicant in the deed and not him. He confirmed that he was not privy to any arrangement that the respondent may have made with the applicant and that he knew only of the arrangements between himself and

the the respondent. He also confirmed that despite the transfer deed stating that SCR75,000 had been paid as consideration for the transfer of title No. B350, he had never received any money from either the respondent or the applicant but that the respondent had made the loan repayments directly to the HFC. Mr. Denis further stated that he does not know where the respondent got the money to repay the loan. In reply to whether or not he even knows if it was the applicant who gave her the money, he stated that he never saw the guy and does not know him. He also confirmed that the loan repayments were in respect of the house only and that the land was transferred pursuant to the wishes of the respondent's grandfather.

[68] When he was re-examined, Mr Denis stated that the land at Morne Blanc used to belong to his parents, his father being Villard Denis. Further, despite the mention of SCR75,000 in the title deed, he never received any such money, the arrangement between him and the respondent being for her to repay the arrears of the loan directly to the HFC. He also stated that the house was not in good condition but that he does not know whether it was repaired or not.

No Submissions

[69] Counsels for both parties were given time to file written submissions which they failed to do.

Analysis

[70] The parties were married on 7th July 2007, and divorced on 21st July 2017. It is not disputed that prior to their marriage in 2007 and even prior to the transfer of parcel B350 to them in 2001, they lived together in a house on the said parcel B350, which at the time was the property of the respondent's uncle Mr. Theophile Denis. It is also not in dispute that the house was transferred to the parties pursuant to financial difficulties which led to Mr. Denis being unable to repay the housing loan borrowed to construct the house as a result of which parcel B350 was going to be repossessed. Further it is common cause that after the transfer of parcel B350 to them, because of the poor state of the existing house on the property, the parties built a new house on the property construction of which is

only partly completed. It is this parcel and the new house thereon which comprise the matrimonial property of the parties and is the subject matter of this application for matrimonial property adjustment. The applicant claims that he is entitled to 80% of the matrimonial property because he paid the consideration of SCR75,000 for the land, contributed substantially to the construction of the house by carrying out the construction work and providing materials, contributed to the household duties and expenses as well as provided for the family during the subsistence of the marriage. The respondent on the other hand, denies this and claims that she is the one who paid for all those things with minimal contribution from the applicant who, she claims is entitled to only a 1% share of the matrimonial property.

[71] The present application is made under section 20(1)(g) of the Matrimonial Causes Act Cap 124, which provides as follows:

Financial relief

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.

[72] In the present case, according to the title deed to parcel B350 (**Exhibit P2**), the land comprised in title No B350 was transferred to “(i) Singleton Nancy and (ii) Marinette Bibi ... for an undivided half-share each)” for a “consideration of the price of Seychelles Rupees Seventy-Five Thousand (which sum has been paid)”. The title deed was made in the prescribed form, attested to by Notary Gerard Maurel and duly registered.

[73] The Land Registration Act in its section 20(a) and (b) provides that:

20. Interest conferred by registration

Subject to the provisions of this Act –

(a) the registration of a person as the proprietor of land with an absolute title shall vest in him the absolute ownership of that land, together with all rights, privileges and appurtenances belonging or appurtenant thereto;

(b) the registration of a person as the proprietor of land with a qualified title only shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the proprietor and subsisting or capable of arising at the time of registration of that proprietor; but save as aforesaid shall have the same effect as registration of a person with an absolute title.”

[74] The evidence does not establish whether the applicant and the respondent are registered as the owners of the land with an absolute or a qualified title. However, even if they were registered as proprietors with a qualified title it would have the same effect as their registration as proprietors with absolute title, except that any person having a right or interest adverse to or in derogation of their title of proprietor and subsisting or capable of arising at the time of their registration as proprietors would have the right to enforce such right or interest. There is no evidence that any person has such right or interest.

[75] Article 815 of the Civil Code of Seychelles Act further provides as follows:

Article 815

Co-ownership arises when property is held by two or more persons jointly. In the absence of any evidence to the contrary it shall be presumed that co-owners are entitled to equal shares.

[76] The Court of Appeal case of **Charles v Charles (CA01/2003) [2005] SCCA 13 (22 June 2005)** concerned an appeal against a judgment given in an application for settlement of matrimonial property consisting of a plot of land and a house thereon which was registered in the joint names of the parties. The Court considered the applicable law namely section 20(a) of the Land Registration Act, Article 815 of the Civil Code and section 20(1)(g) of the Matrimonial Causes Act (reproduced above) and discussed the

implications of these provisions. In considering section 20(a) of the Land Registration Act, the Court stated at paragraph 19:

19. ... In my view, therefore, both parties are vested with absolute ownership of the house in question. It follows, in my judgment, that such ownership is in equal shares as this would accord with the intention of the parties. Bearing in mind that they registered the property in question during the height of their love affair, probabilities are overwhelming, in my view, that the parties intended co-ownership in equal shares. In this regard, it must always be borne in mind that what matters is the intention of the parties at the time when they registered the matrimonial property and not at the time of divorce.

and further in the same paragraph in regards to Article 815 of the Civil Code:

... Article 815 of the Civil Code (Cap. 33), in my judgment, also supports the proposition that the Appellant as co-owner is entitled to an equal share of the matrimonial house in question as a starting point.

[77] On section 20(1)(g) of the Matrimonial Causes Act, the Court had this to say:

20. ...The use of the word “may” in this section confers a discretion on the court to make an appropriate order of settlement of matrimonial property. That, as it seems to me, however, is not an arbitrary discretion. On the contrary, it is a judicial discretion that must be exercised after due consideration of all the relevant factors. Although such factors are not, and need not be circumscribed, it is nevertheless pertinent to bear in mind that the court is enjoined by s. 20 (1) (g) of the Act to take into account the ability and financial means of the parties to the marriage “for the benefit of the other party” thereof.

The principle underlying this section is, in my judgment, one of equity designed, as it does, to ensure that no party to a settlement of matrimonial property shall remain destitute while the other party drowns in a sea of affluence so to speak. In this regard, it is salutatory to bear in mind what this court said in Renaud v Renaud SCA No. 48 of 1998 namely:-

“The purpose of the provisions of these subsections (i.e. 20 (1) (g) of the Act) is to ensure that upon the dissolution of the marriage, a party to the marriage is not put at an unfair disadvantage in relation to the other by reason of the breakdown of the marriage and, as far as such is possible, to

enable the party applying maintain a fair and reasonable standard of living commensurate with or near to the standard the parties have maintained before the dissolution.”

See also Bresson v Bresson SCA 29 of 1998.

21. *It is salutary, further, to note that in Edmond v Edmond (supra) which bore remarkable similarity to the present case, this Court upheld the Supreme Court order that the matrimonial home of the parties be held in equal shares. The same approach was taken by the Supreme Court itself in Florentine v Florentine, Seychelles Law Reports [1990] 141 in which again the facts were substantially similar to the facts in the instant case.*

22. *In Lesperance v Lesperance SCA No. 3 of 2001, this Court laid down the principle that there must be equality of treatment in cases based on similar facts and thus ordered the matrimonial property in question to be held by the parties in equal shares. That remains a sound principle. One must, however, guard against elevating the principle of equality above the statutory discretionary power given to the courts in s. 20 (1) (g) of the Act to make appropriate matrimonial property settlements according to the justice of each individual case. This is more so since in practice it is, in my judgment, hard to imagine any two cases being exactly “similar” or identical.*

[78] The Court then went on to state at paragraph 22 of its judgement:

22. ... On this approach therefore, I would lay it down as a general principle that equality of shares in cases such as this one must obviously be considered as a starting point for the Court in making a determination under s. 20 (1) (g) of the Act.

[79] In the present case, the applicant testified that since parcel B350 was going to be repossessed he purchased it and paid the consideration of SCR75,000 for parcel B350 from money he received from the “tarmac fund” which he gave to the Respondent in cash to pay off the outstanding amount of the loan which she duly paid to the Housing Department. He further stated that it was he who had decided that the transfer deed should be made out in the name of both parties, on the advice of Notary Gerard Maurel because they had a child together. In cross examination he admitted that he had no proof

that the consideration for parcel B350 was paid for by money that he received out of the tarmac fund.

[80] The respondent on the other hand denies receiving any money from the applicant to pay for parcel B350. She avers in her affidavit in reply to the application that she purchased parcel B350 from her uncle Mr. Theophile Denis who offered it to her for the sum of SCR 75,000 which she paid, and that the applicant was only included in the transfer deed because the parties were married and were advised that it would facilitate any loan applications.

[81] In examination in chief, she testified that when parcel B350 was going to be repossessed, she entered into an agreement with Mr. Theophile Denis that she would pay the outstanding balance of his housing loan upon completion of which he would transfer the parcel to her. She therefore continued making the monthly loan repayments to the Housing Department until completion thereof, and it was these monthly loan repayments which constituted the consideration for parcel B350. Further on in her examination in chief, the Respondent stated that she was given parcel B350 as part of her inheritance from her grandfather. In cross-examination she stated that the SCR75,000 referred to in the title deed consisted of the loan repayments which was for the house, and that the land was given to her as a gift according to her late grandfather's wishes for which no consideration was paid. I observe that although the respondent stated that she paid the outstanding amount of the loan repayments due no evidence was led as to how much she actually paid.

[82] I note that the respondent never produced any proof of the repayments she allegedly made to the Housing Department. She testified that the bag in which she kept the receipts for the loan repayments which were in her name "had disappeared". In cross-examination she stated that the applicant had thrown the bag away.

[83] As to how the title deed for parcel B350 came to be in the name of both parties, although the respondent averred in her affidavit that the applicant was only included because the parties were married and were advised that it would facilitate loan applications, in her

examination in chief she stated that it was the applicant's idea and that he insisted that his name be included on the transfer deed because they had children together. She also stated that she did not speak to the notary Mr. Maurel about his name being included in the deed at the time of signing it, and then stated that she had not realised that according to the transfer deed a half share of the land had been transferred to the applicant. Under cross examination she first maintained that the respondent pressured her into adding his name thereon when they went to sign the transfer deed but subsequently admitted that she might have seen that the title deed transferred a half share of title B350 to the applicant at the time of signing but that she did not take it seriously at the time.

[84] The testimony of Mr. Theophile Denis corroborates the respondent's testimony that parcel B350 was transferred to the parties in accordance with the wish of the respondent's grandfather that she be given a plot of the family land, and that the payments that she made in the form of the housing loan repayments was only for the house. Although I might have been inclined to believe the respondent's claim that the land was part of the family inheritance for which she did not pay but that the loan repayments were for the house standing on the land at the time, I cannot ignore that the title deed to parcel B350 states that the sum of SCR75,000 was paid in consideration of the said parcel or disregard the fact that in her affidavit in reply, the respondent stated that she purchased parcel B350 from her uncle Mr. Theophile Denis who offered it to her for the sum of SCR 75,000 which she paid. There is no mention in the title deed or affidavit of the payment of SCR75,000 being payment solely for the house on parcel B350 which only came up when the respondent testified. I also note that her testimony has been somewhat inconsistent casting some doubt as to its reliability. In the circumstances, I cannot but find that any consideration paid by the parties was for the transfer of parcel B350 although it may have been paid by way of monthly instalments to the Housing Division in settlement of the loan borrowed by Mr. Theophile Denis and not directly to the latter.

[85] In that respect, I take note that although the respondent has stated that the SCR75,000 referred to in the title deed to parcel B350 referred to the loan repayments she made, there is no evidence to show how much of the loan repayments the respondent had

actually paid. As I observed previously no evidence was led by the respondent in that respect. Mr. Denis testified that he does not know how much of the outstanding loan repayments the respondent paid. According to him, he borrowed a loan of SCR50,000 which he had started repaying. There is no evidence as to how much interest was payable on that loan or how much of it he had repaid before defaulting on his repayments.

[86] As to whether it was the applicant or the respondent who paid the consideration for parcel B350, Mr. Denis further confirmed that he was not privy to any arrangements between the parties, does not know where the respondent got the money to repay the loan, and does not know whether or not the applicant gave her the money to make the loan repayments.

[87] Further, according to his testimony both the respondent and the applicant were present when they went to sign the transfer deed at Notary Mr. Maurel's office and it was the respondent who proposed to Mr. Maurel to include the applicant's name in the transfer deed.

[88] Having considered the testimony of the parties and that Mr. Theophile Denis as well as other evidence on record, I find that that neither party has succeeded in rebutting the presumption laid down in Article 815 of the Civil Code. Neither the applicant nor the respondent has brought any proof that either of them solely paid for parcel B350. Further, neither of them have brought any credible evidence to substantiate their reasons for the other party to be added in the title deed as a proprietor of an undivided half share of the land without being so entitled. Therefore, in my view, the principle laid down in *Charles v Charles (supra)* should be followed, namely that the starting point for determining the share of the parties in the matrimonial property, insofar as it concerns parcel B350 is that each party has an equal share therein.

[89] Although this takes care of the land i.e. parcel B350, there is also the contribution of the parties to the construction of the house to consider. The applicant contends that he carried out most of the construction work, although he admits that the respondent paid another mason to assist him whom he stated worked for about 6 months after which he continued

the work by himself. Under cross examination he stated that the other mason left only after they had worked on the house until they reached the level of the ceiling. The respondent on her part claims that she paid a mason and a carpenter to do the construction works from money obtained by selling land she owned at Anse a La Mouche for the sum of SCR90,000. She further claims that she also paid one Mr. Lewis Pirame to do the roofing of the house. Although he admits being aware that the respondent sold her property, the applicant denies that she used the proceeds thereof to contribute to the matrimonial property. Further, according to the respondent, the applicant's contribution in terms of the construction work was almost non-existent and confined to "putting some bricks" and "passing bricks" which she claims she also did. The respondent further claims that she also contributed to the construction works by carrying stones and cement.

[90] The applicant also testified that he bought most of the construction material with his own money, (21 tonnes of sand, 21 tonnes of aggregate and four slings of cement) but stated that he had no proof of the same as he had left all the documents with the respondent. He admitted that he had obtained rocks on the property itself which he had crushed using his own machine and that he had given some coral fill by Dr. Ramadoss for whom he had been working at the time. The respondent, on the other hand claims that she bought the construction materials and also obtained crusher dust and some wood for free but in cross examination she admitted that the applicant had bought a sling of cement, some metal to put on the house as well as some wood.

[91] The applicant also claims that he took two loans of SCR 30,000 from the Credit Union to finance the construction works. One of these loans is evidenced by Exhibit P3 - a charge over parcel B350 signed by both parties for a general purpose loan borrowed by the applicant, and Exhibit P4 - a statement showing details of the loan repayments from 1st March 2002 until completion thereof on 18th April, 2013. The applicant claims that this loan was repaid entirely by himself as the respondent was unemployed at the time. The respondent admitted that the applicant had taken the loan to finance the purchase of corrugated iron sheets for the roof of the house but claims that to date the house is not completely covered although she gives no explanation if this is because the money was

insufficient or because it was not used for its intended purpose. I note however that there is no evidence of another loan having been taken by the applicant.

[92] The respondent brought evidence of a home improvement loan in the sum of SCR50,000 she had borrowed from the HFC in the form of Exhibit D1 and for which the outstanding amount as at 31st May 2019 stood at 10,912.63. She claims that the money was used to pay a carpenter to install windows to the house and to pay a mason to do work on the bathroom. However there is nothing to support her claims that she had taken two loans of SCR50,000 or that the amount of the first loan had been readjusted back to SCR50,000 after she had partly repaid the loan. The applicant claims that the money from that loan was never used on the house but that the respondent had lent it to one of her relatives who had never returned it. The respondent whilst admitting that she had lent the money to her aunt claims that the latter had returned it but that she had not told the applicant for fear that he would pressure her in giving it to him and maintains that it was used the money for installing the windows and on the bathroom.

[93] As stated in *Charles v Charles (supra)* section 20(1)(g) of the Matrimonial Causes Act confers a discretion on the Court to make an appropriate order of settlement of matrimonial property that must be exercised after consideration of all relevant factors. It would be remiss of this Court to make a determination without also considering the contributions of the parties towards looking after their children and the household and the associated expenses.

[94] The applicant claims that he has always maintained and provided for the four children as he has always worked except for a short time. He admitted that after the separation of the parties he was reluctant to pay maintenance as one of the older children was on drugs but that he still provided for them. It is not disputed that he is now paying maintenance of SCR1000 for the remaining two minor children as per an order of the Family Tribunal as well as SCR700 as tuition fees. He further states that he buys things for one of his daughters when she comes to see him. He admits that the time of construction of the house, the respondent who had been unemployed cared for their two small children attended to the house and family, cooked, washed the clothes, and did the ironing. She

also contributed to the maintenance of the children by cultivating crops and planting vegetables which they sold and tending to the chickens whose eggs they also sold.

[95] In her affidavit in reply, the respondent claims that she maintained the house, children and family, paid the utility bills and provided for the school needs of the children and their daily stipends. She also claims that she contributed to the farming activities and taking care of the chickens thereby contributing to the family's earnings. She paints a very negative picture of the applicant as a father even during the time before the parties separated claiming that he did not provide for the children and that she had to seek help from her mother, brother and eventually more recently social services. It would appear from her testimony that he only provided for the children when ordered to by the Family Tribunal. According to the respondent she was able to provide for the family because she has always been in employment during the subsistence of the marriage.

[96] Although both parties claim that they were employed neither of them have given any evidence as to how much they earned. The applicant has stated that he is a mason by profession and at a point in time worked on a vessel of some kind after which he worked for one Mr. Pragassen although he does not state the nature of his work. He has also stated that at one point he also worked for Dr. Ramadoss and later for Agro Industries after which he was unemployed for a while. He is now retired. The respondent stated that she has been in employment since she started work in 1982 but other than she worked at a hotel and later at the residence of the then American ambassador to Seychelles, the nature of her work is not evident from her testimony.

[97] Having heard the parties, this Court has formed the impression that both parties are being less than truthful and exaggerating their contribution to the construction of the house as well as to the household and family expenses including maintenance of the children while minimising the other party's contribution thereto. I also observe that had the Court been provided with certain documentary evidence, some of which in my view could have been easily obtained, it would have facilitated the task before it. It is with this in mind that this Court approaches the unenviable task of attempting to determine the share of each party

to the matrimonial property on the basis of their testimony and the documentary evidence they have produced.

- [98] In respect of construction of the house, there is documentary evidence of a loan of SCR30,000 borrowed by the applicant which has been repaid in full and which the respondent admits was taken for the purpose of roofing the house. Although I do not believe the applicant that he carried out most of the construction work especially in light of his own testimony regarding the employment of another mason for a period of six months until the construction reached ceiling level, I believe especially in view that he is a mason, that he did carry out some of the construction work. I disbelieve the respondent's claim that his only contribution was confined to "putting some bricks" and "passing bricks". I also do not believe that the applicant purchased most of the construction material but do believe that he did purchase some of it especially as he was in employment for most of the subsistence of the marriage until his retirement, and in light of the respondent's admission that the applicant did purchase some material.
- [99] There is also documentary evidence that the respondent took a loan of SCR50,000 which despite the applicant's assertion to the contrary, I believe was used to contribute to construction of the house. In light of the applicant's admission that the respondent paid for the services of a mason, I also believe that she used the proceeds of the sale of her land at Anse a La Mouche amounting to SCR90,000 to contribute towards the construction of the house including the mason's fees and other labour costs such as for carpentry. I also believe that the respondent purchased some material although it is difficult to place a value on such materials in the absence of relevant evidence. I am also satisfied that she assisted in carrying certain construction materials to the site.
- [100] The evidence shows that the respondent has made the greater monetary contribution to the construction of the house made up by the loan of SCR50,000 and SCR90,000 being the proceeds of sale of her land amounting to a total of SCR140,000. The applicant has only contributed SCR30,000 also obtained from a loan. Both of them have purchased material the amount and cost of which is unknown. I further find that the labour for the

masonry work was shared between the applicant and another mason who was paid by the respondent from her financial contribution.

[101] On the basis of the testimony of the parties, I believe that the respondent was mainly responsible for taking care of the children prior to the marriage of the parties and during the subsistence of the marriage. I take note that the children lived with her before the parties started cohabiting and after the applicant moved out of the matrimonial home. As to their maintenance, in the absence of any evidence showing that one of the parties was solely or mainly responsible therefor, and in view that both parties were employed and were involved in the cultivation and egg production activities which supplemented the family's income, I find that the parties contributed equally up to the time that their marriage started to breakdown which led to the respondent having to apply for maintenance through the Family Tribunal. For that reason I also find that they contributed equally to the utility bills. I also believe that the respondent had the greater part of the responsibility for the household duties such as cooking, cleaning, washing and ironing. I therefore find that the respondent made the greater contribution with respect to the family as well.

[102] As to the respondent's contention that the applicant has vacated the matrimonial home thereby showing that he has lost interest therein, I note that he left in 2017, the year that the parties divorce became absolute. In my view the applicant cannot be faulted for leaving the matrimonial home in view of the fact that the marriage was already on the rocks and this cannot be held against him to deprive him of his share of the matrimonial property. I also note that there is no evidence that any further work was carried out on the house after the valuation.

Decision

[103] Having considered all of the above, I find that a reasonable assessment of the share of the parties to the matrimonial property is 35% for the applicant and 65% for the respondent. I take note that the valuation report values parcel B350 at SCR500,400 and the house at SCR783,000 bringing the total value of the matrimonial property to a sum of

SCR1,283,000, that no serious objection has been made against such valuation and that in any case no alternative valuation has been offered. Accordingly I award the respondent 35% of the sum of SCR SCR1,283,000 representing the total value of the matrimonial property of the parties.

[104] Accordingly I make the following orders:

- (a) The respondent shall pay to the applicant the sum of SCR449,050 representing his 35% share in the matrimonial property, within 9 months of the date of this judgment and upon such payment, the applicant shall transfer his undivided half share of parcel B350 and the house thereon to the respondent.
- (b) If the respondent fails to make the aforesaid payment within 9 months of this judgment, the property shall be sold on the application of either party, and the proceeds shared between the applicant and the respondent according to their entitlement of 35% to the applicant and 65% to the respondent.
- (c) Each party is to bear his or her own costs.

Signed, dated and delivered at Ile du Port on this 22nd May 2020.

Carolus J