

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC .!!
CS 55 of 2018

In the matter of:
GEMMA ERNESTA
(rep by Ms. L. Pool)

Petitioner

and

ROGER MOREL
(rep by Mr. F. Elizabeth)

Respondent

Neutral Citation: *Ernesta Gemma v Morel Roger* (CS 55 of 2018) [2021] SCSC .!!... (21 January 2021)

Before: Andre J
Summary: Unjust enrichment
Heard: 30 November 2020
Delivered: 21 January 2021

ORDER

The Court makes the following orders:

- [i] The defendant shall pay to the plaintiff the sum of Seychelles rupees one million (SCR 1,000,000/-) which shall represent her share of contribution;
- [ii] No separate order is made as to moral damages which same is included in the award made in favour of the plaintiff;
- [iii] No order is made as to transfer of parcel LD 1659 which shall remain in the sole name of the defendant; and
- [iv] Each party shall bear their own cost.

JUDGMENT

ANDRE J

Introduction

[1] This Judgment arises out of a plaint by Gemma Ernesta (plaintiff) of 4 May 2018 against Roger Morel (defendant) on the ground of unjust enrichment. The parties cohabited for a period of approximately twenty-seven years and during their cohabitation, several assets were acquired, which are in the sole name of the defendant. The plaintiff prays the Court to award her Seychelles rupees two million (SCR 2,000,000/-) as her contribution in the properties and business and moral damage; to order the defendant to transfer Parcel LD1659 and the house thereon to the plaintiff and any other order that the Court thinks just and reasonable.

[2] The defendant by way of statement of defence of 9 July 2018 admits that the said interests and properties have been registered solely in his name and that he worked tirelessly and diligently and that through his own efforts and initiatives and manpower, he was able to acquire the assets registered solely in his name. He thus avers no knowledge of the plaintiff's recent major surgery and in addition, places the plaintiff to strictest proof of all the averments of unjust enrichment to her detriment.

Plaintiff's case

[3] The plaintiff testified that she was about 22 years old and the defendant was 27 years old when they started to live together and they had a son together and that they had no immoveable properties or bank accounts at that time.

[4] The plaintiff further testified that soon after she left her job at L'union Estate and devoted her time entirely on the activities of the businesses set up by the defendant. Together, they began to do farming on a plot of land leased from L'union Estate. The plaintiff further testified that she helped the defendant prepare the land for cultivations of crops such as cassava, sweet potatoes etc.

[5] She further testified that that they also reared pigs, which were later slaughtered and sent to the butchery for sale. She also claims that she baked creole cakes, *galettes* and other goods to be sold in order to generate more income for their family. The plaintiff further

testified that all revenues from their businesses were handle by the defendant, who banked the money and used it in the financing of their businesses. She added that the defendant did not pay her a salary and that she did not hold any bank accounts.

- [6] The plaintiff testified that during those times if she needed money, she had to ask the defendant. She added that the defendant acquired three (3) plots of land while they were living together and they built a house on one of the plots, which they occupied while raising their son. The plaintiff stated further that the defendant also acquired a boat, named "*Sombrero*", which was used for excursions and she prepared the food and beverages for the clients.
- [7] The plaintiff admitted to the court that she started to feel unwell in the year 2000, but despite of her health condition, she continued to work and later in the year 2017 she went overseas for treatment and to undergo a major surgery in Mauritius. She claims that the defendant refused to pay for her treatment and she had to rely and borrow money from a friend that she later reimbursed.
- [8] The plaintiff further testified that there were 3-4 short instances during the cohabitation when she went to live with her mother, because the defendant was not taking care of her. However, she added that the defendant came to visit her at her mother's place and begged her to come home, which eventually she did.
- [9] The relationship according to the plaintiff, ceased when she had to undergo a major surgery and she was unable to work anymore. At that point, the defendant ended the relationship and the plaintiff moved back in with her mother.
- [10] The plaintiff further testified that when they started cohabiting, she and the defendant had nothing to their names and that what the defendant has solely registered in his name today is a result of her hard work.
- [11] The mother of the plaintiff was also called as a witness on her behalf. She testified that the plaintiff is her fifth child and that when the plaintiff moved back in with her on two occasions, that is when she was feeling unwell. She added that the defendant would visit the plaintiff and bring vegetables for her.

- [12] The plaintiff's mother added that she loved the defendant like a son in law and that she would encourage and advise them to continue their life together. She testified that while she visited them, she observed the plaintiff working hard alongside the defendant, albeit her health conditions.
- [13] The Court was shown a video program entitled "*Tranche de Vie*" produced by Seychelles Broadcasting Corporation (SBC) in 2014, which shows the plaintiff working alongside the defendant during their business activities. The defendant did not deny that the plaintiff worked on the land.
- [14] The plaintiff's mother claims that even with her medical situation, her daughter continued to work. She helped her daughter with some household chores and took the children to school. She added that she went to Reunion with the plaintiff for medical treatment and that the relationship ended in 2017, when the plaintiff could not work anymore.
- [15] The plaintiff also called as a witness, Captain Lenny Durup, who is a certified marine surveyor and who was commissioned by the defendant to carry out a survey on the vessel "*Sombrero*" and to ascertain its value. He submitted to the Court that the estimated value was of Seychelles rupees ninety-five thousand (SCR 950,000/-).

Defendant's case

- [16] The defendant testified that he bought three (3) plots of land, which are registered in his sole name, namely, title numbers LD821, purchased from L'Union Estate in July 1998 for the sum of Seychelles rupees thirty thousand (SCR 30,000/-); LD1659, purchased from the Government of Seychelles in September 2008 for the sum of Seychelles rupees seventy thousand (SCR 70,000/-); and LD996, a leasehold of sixty years from L'Union Estate acquired in February 2001 at a monthly rent of Seychelles rupees nine hundred (SCR 900/-).
- [17] The defendant claims to not recall whether he and the plaintiff were living together when he purchased the above-mentioned titles. He went further to state that after a period of eight years during the relationship, the plaintiff fell ill and was unable to work, resulting in him

having to carry out all the duties by himself. He admits to handling every and all the finances and that he would give the plaintiff a monthly allowance.

[18] He further testified that he and the plaintiff were residing in a small colonial house situated on title LD821, which he later renovated and is currently renting it out for the sum of Seychelles rupees four thousand (SCR 4,000/-) monthly.

[19] In addition, he testified that they built a 3-bedroom house on title LD996, which they resided in while raising their son until 2017, when their relationship ended. Their son currently resides in the said house along with his family.

[20] On title LD821, the defendant testified that he is farming and has employed two foreigners to help him out, each at the rate of Seychelles rupees eleven thousand (SCR 11,000/-) monthly.

[21] The defendant also claims that he purchased a catamaran, constructed by Larueglass for the sum of Seychelles rupees nine hundred and fifty thousand (SCR 950,000/-). In order to make the payment, he borrowed euros forty-five thousand (€ 45,000/-) from a friend and euros fourteen thousand (€ 14,000/-) to buy the engine. He later began a charter business and he was able to pay off his debts. Further, the defendant had the boat insured for the sum of Seychelles rupees nine hundred and fifty thousand (SCR 950,000/-).

[22] The defendant testified further that he paid all the expenses of the plaintiff whilst she was unwell and had to travel to several countries for treatments and surgery. He admitted though that the plaintiff had borrowed money from a friend to pay part of her treatment, and he contributed towards the reimbursements.

[23] In his own testimony, the defendant agreed that the plaintiff ought to have a share in the assets that they acquired while they were cohabiting. He prays that the Honourable Court would dismiss the plaintiff's action with costs.

Applicable law and analysis

[24] It is established case law that cohabitation does not confer rights in property, and there is no place for property adjustment orders where the property is in the name of one of the

parties and not jointly (**Dupres v Balthilde (1996) SLR 101; Dodin v Arrisol (2003) SLR 197**). It is also recognised that more and more couples cohabit together without getting married and their rights in assets acquired during cohabitation should also be protected.

[25] As was held in **Esparon v Monthy (1986) SLR 124**, the principles of division of property between married parties cannot be applied to cohabittees, however, ‘*the intention of the parties determines the issues*’ and ‘*where two parties by their joint efforts acquire property for their joint benefit it would be inequitable for the holder of the legal estate to deny the other party the beneficial interest*’. Although, it should also be noted regarding beneficial interest, that Seychelles cases also held that principles of the English Law of trusts and concept of constructive trust cannot be applied to separation of property of cohabittees (**Monthy v Esparon (1983-1987) 2 SCAR 12; Hallock v D’Offay (1983-1987) 1 SCAR 295; Jouanneau v Government of Seychelles (2006-2007) SCAR 145**). The intention of the parties in the present case quite clearly was to build a life together and is evident from the facts of the case: they lived together for 27 years, had nothing to start with, had a son together and grew businesses to provide for their family.

[26] One of the ways that the relief can be obtained by the plaintiff in cohabitee cases is on the basis of unjust enrichment under art 1381 of the Civil Code, (**Monthy v Esparon (1983-1987) 2 SCAR 12; Dodin v Arrisol (2003) SLR 197; Edmond v Bristol (1982) SLR 353; Dora v Curator of Vacant Estates (1963) SLR 66; Michel Larame v Neva Payet (1987) SCA 4; Magnan v Desaubin (2012) SLR 58**), which is pleaded by the plaintiff in current case.

[27] The Court in **Dodin v Arrisol (CS 134/1994) [2003] SCSC 8 (06 March 2003)** cited Eric Law JA comments on the nature and scope of enrichment without cause stated in **Michel Larame v Neva Payet (1987) SCA 4** in relation to cohabittees:

“Concubinage itself does not confer rights or obligations, but the action “de in rem verso” will operate to compensate a concubine who has suffered detriment without lawful cause to the advantage of the other party to the concubinage.”

[28] Article 1381-1 provides:

“If a person suffers some detriment without lawful cause and another is correspondingly enriched without lawful cause, the former shall be able to recover what is due to him to the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that detriment has not been caused by the fault of the person suffering it.”

- [29] With regards to the rights of a partner to recover contributions made, Perera J in **Dodin v Arrisol** also cited Amos and Walton in the Introduction to French Law:

“The amount recoverable is limited on the one hand by the value of enrichment. More than this the solvents cannot recover and the value is assessed not, as in gestion d'affaires at the time of the intervention but at the date of the action. If at the date the value of the benefit has disappeared, the action will fail. The amount recoverable is limited on the other hand by the amount of the solvents' own expenditure: It is immaterial that at the time of the action the value of the benefit enjoyed is considerably higher.”

- [30] The above citation suggests that recoverable amount is limited to the amount contributed. In **Larame v Neva Payet** it was also stated that it is *“immaterial that at the time of the action the value of the benefit enjoyed by "L'enrichi" is much more”* than the contribution that was made. However, such approach is not always helpful when exact monetary contributions cannot be ascertained.

- [31] In the present case the plaintiff averred in the plaint that she had made considerable contribution in cash, however, the exact amount is not supported by documentary evidence. It is also evidence of the plaintiff that any income from the businesses that she had assisted with was banked by the defendant and the plaintiff did not usually receive any salary from the defendant and had to ask the defendant for the allowance. Therefore, as it appears from the facts of the present case, the defendant was in charge of the family and business budget and in such circumstances, it would have been difficult for the plaintiff to actually make direct contributions in cash. That is not to say that the plaintiff has not contributed. The defendant himself agreed that the plaintiff ought to have a share in the assets that they acquired while they were cohabiting, therefore, acknowledging that the plaintiff had indeed contributed much of her time and effort towards them building their life together.

- [32] The plaintiff's evidence is that the parties had no assets when they started the cohabitation. A few years after the birth of their son, they both left their jobs to set up several businesses and the plaintiff states that she devoted her time entirely on the activities of the businesses. She testified that she helped the defendant to prepare the land for cultivations of crops, the parties reared pigs and the meat was later sent to the butchery for sale, that she baked cakes and other goods to be sold to generate more income for the family, that after the defendant acquired a boat, which was used to do excursions, she prepared the food and beverages for the clients.
- [33] The defendant stated that after around eight years of cohabitation the plaintiff got sick and was unable to work, resulting in him having to carry out all the duties by himself. The plaintiff and her mother, however, stated that the plaintiff continued to work disregarding her health conditions. Furthermore, the video program entitled "*Tranche de Vie*" produced by Seychelles Broadcasting Corporation (SBC) shown to Court, illustrate that in 2014 the plaintiff worked alongside the defendant during their business activities. It would be problematic to ascertain with certainty the exact physical and mental effort that each of the parties put into development of the business for the purpose of ascertaining monetary value that they can claim. Although, the defendant stated that the plaintiff did not work after getting ill, his agreement that the plaintiff should have a share in the assets that they acquired while they were cohabiting shows that the defendant does acknowledge the contributions made by the plaintiff. Therefore, it can be said that the plaintiff has contributed to family businesses with her time and energy and was not provided separate salary for her work.
- [34] Some cases suggest that in action *de in rem verso*, a partner can claim remuneration for domestic services if she has suffered impoverishment of her own patrimony, but where a defendant has maintained and looked after a plaintiff as a wife, it would be considered that the plaintiff has not suffered any impoverishment (**Cadeau v Leveaux (1984) SLR 69**).
- [35] In **Dodin v Arrisol (CS 134/1994) [2003] SCSC 8 (06 March 2003)** it was stated:

"The law, as it stands gives no recognition to rights of those living in concubinage. It is generally considered that a concubine goes to live with a man, expecting to

be housed, fed, clothed and maintained in return for which she runs the household and looks after the children if any. However where she renders services additional to those normally rendered by a concubine, such as assisting in the man's business, or contributing her own funds to purchase property or to construct a house, the position would be different. Even in such situations, property adjustment orders of the nature granted to married parties on dissolution of marriage would not be made.” (emphasis added)

[36] From the passage above, it appears that assisting in the man’s business is considered to be services additional to those normally rendered by a concubine. Unfortunately though, adjustment orders still would not be made in cases of concubines.

[37] Nevertheless, even though the property adjustment orders are not made, the courts have used their equitable powers under the Courts Act to rectify an inequitable situation (**Monthy v Esparon (1983-1987) 2 SCAR 12**) even where action for unjust enrichment was not satisfied or not pleaded, for example (**Louis v Marie (CS 10/2014) [2018] SCSC 289 (22 March 2018)**).

[38] The potential difficulties in satisfying requirements for the unjust enrichment were pointed out in **Monnaie v Waye-Hive (CS 19/2012) [2016] SCSC 57 (03 February 2016)** and **Louis v Marie (CS 10/2014) [2018] SCSC 289 (22 March 2018)**. Twomey J (CJ at that time) pointed out that five conditions need to be satisfied and stated in **Louis v Marie** (supra):

“[31] Such an action is maintainable so long as all the five conditions specified in Article 1381-1 are fulfilled, that is: an enrichment, a corresponding impoverishment, a connection between the enrichment and the impoverishment, the absence of lawful cause or justification for the enrichment or impoverishment and there being no other remedy available (see Dodin v Arrisol (2003) SLR 197, Gangadoo v Cable and Wireless (2011) SLR 253)”

[39] In analysing the facts of **Monnaie v Waye-Hive (CS 19/2012) [2016] SCSC 57**, where unlike present case it appears that parties were co-owners of the property, it was observed:

“[21] It is clear that the circumstances of this particular case do not meet the conditions of the provisions of Article 1381 (1). The Defendant has not evicted the Plaintiff. She has not been enriched as she has not alienated his rights in rem or in personam. He has in any case been the source of his own detriment in the sense of not enjoying his own house in that he has left it of his own accord. Similarly the

Defendant cannot ask for a share of the property over and above what she has financially contributed in this case.” (Michel Larame v Neva Payet (1987) SCA 4).

[40] In **Louis v Marie** (supra), it was observed:

“[32] I am not however satisfied that the conditions above would have been satisfied, first, I have no doubt from the evidence that the Plaintiff has been enriched from the energy expended and financial contributions of the Defendant whilst they cohabited. He is now the sole occupant of the properties that was constructed during the concubinage. However she moved out of her own volition and her resulting impoverishment is as a result of her own acts partly. Secondly, there are also difficulties with the Defendant satisfying the fourth condition, that is, the absence of lawful cause or justification for the enrichment or impoverishment. The nonfulfillment of these conditions are fatal to the claim as has been discussed in a number of similar cases, namely Charlie v Françoise (1995) SCAR 49 (judgment of Silungwe JA), Dodin v Arissol (2003) SLR, Labiche v Ah-Kong (2010) SLR 172, Waye Hive v Monnaie (unreported) CS 19/2012.”

[41] In the present case, the plaintiff had moved in with her mother after the relationship with defendant has ended, thus, potentially facing similar issues with regards to unjust enrichment action as in **Louis v Marie** (supra). In both cases dissenting judgement of Sauzier J in **Hallock v D'Offay (1983-1987) 3 SCAR (Vol 1) 295** was cited:

“...it would be a denial of justice if the Supreme Court were to decline to use such powers on the ground that there is no remedy and that the solution to these problems are better left to the legislator.”

[42] The court applied its equitable powers under sections 5 and 6 of the Courts Act:

“5 The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.

6 The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.”

[43] In **Louis v Marie** (supra) the Court awarded the plaintiff monetary equivalent of a one third share in the total value of all the properties, but no monetary award was made in respect of pickups purchased during cohabitation as there were no sufficient evidence adduced in relation to financial contributions towards the purchase.

[44] Therefore, in the present case, even if the plaintiff does not satisfy all the five requirements of the unjust enrichment action, they Court may exercise its equitable powers to make a monetary award.

[45] Now, in line with the above analysis, this court finds that this is a fit case where the dissenting judgment of Sauzier J in **Hallock v D'Offay** (supra) should have proper application more particularly when he stated:

“.... It would de a denial of justice if the supreme court were to decline to use such powers on the ground that there is no remedy and that the solution to these problems are better left to the legislator.”

[46] The court thus, in deciding monetary equivalent to the contributions of the plaintiff takes into careful consideration the personal circumstances of both parties. As per the evidence provided by the plaintiff, she has devoted many years of her life assisting the defendant in the businesses without express salary. After 27 years of personal and working relationship she does not own the property nor has stable income, as she testified she lives with her mother on an invalidity pension. Additionally, the plaintiff's current career prospects are not clear, also taking into account her ongoing health issues. The plaintiff is in this unfortunate situation, even though during 27 years of parties' cohabitation and business partnership, although not formal one, three plots of land were acquired and several businesses developed by efforts of both parties in the proportions that they could contribute. It could have been beneficial for the plaintiff if some kind of ongoing maintenance fee from the income of the businesses that she assisted with could have been paid to her, proportionate to her contributions as her current working abilities are not clear and at least she would have ongoing maintenance money to support herself. It appears from the Court Sitting on the 31st August 2020 that the defendant did actually offer the plaintiff in mediation to give her Seychelles rupees eight thousand (SCR 8,000/) every month. This

is obviously not claimed in the plaint by the plaintiff, but the claimed amount representing the value of contribution in all businesses and property value could take into account the potential difficulty of the plaintiff to work in the future and her past contributions and devotion to family businesses.

[47] On the other hand, as admitted by the defendant he is still farming on one of the plots of land and earning profits for he is employing foreigners as farmers and they are being paid and the catamaran is generating business income for there is no proof to the contrary adduced by the defendant.

[48] It stands to logic therefore, that the balance should be found in awarding the plaintiff her share of contributions over the years and also not to deprive the defendant of his livelihood.

[49] I find thus, based on the above analysis of the personal circumstances of both parties and assets existing in the sole name of the defendant and their value as per exhibits produced, that the defendant pays to the plaintiff the sum of Seychelles rupees one million (SCR 1,000,000/-) , which shall represent her share of contribution as described above.

[50] The plea in limine as raised by the defendant automatically fails in view of the court's exercise of its equitable powers under sections 5 and 6 of the Courts Act.

Conclusion and Final determination

[51] In the result, following the exercise of the equitable powers of the court as analysed above in the specific facts of this case I thus order as follows:

- (i) The defendant shall pay to the plaintiff the sum of Seychelles rupees one million (SCR 1,000,000/-) which shall represent her share of contribution for reasons given;
- (ii) No separate order is made as to moral damages which same is incorporated in the award made in favour of the plaintiff;
- (iii) No order is made as to transfer of parcel LD 1659 which shall remain in the sole name of the defendant; and

(iv) Each party shall bear their own cost.

Signed, dated and delivered at Ile du Port on 21 January 2021.



The image shows a handwritten signature in blue ink over a circular official seal. The seal contains the text "Supreme Court of the Seychelles" and "Sania C. B. Andre". A dotted line is drawn across the seal, and the name "ANDRE J" is printed in bold black letters below it.

ANDRE J