

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 26

MA 176/2019

(Arising in 134/2018)

SAMUEL LAU-TEE
(rep. by Serge Rouillon)

Petitioner

and

VIRGINIA LAU-TEE (born Hoareau)
(rep. by Joel Camille)

Respondent

Neutral Citation: *Samuel Lau-Tee v Virginia Lau-Tee (born Hoareau)* (MA 176/2019) [2021] SCSC 26 (2 February 2021).

Before: Vidot J

Summary: Matrimonial property section 25(1) (c) of Matrimonial Causes Act and section 5 of Courts Act

Heard: 20-01-20, 10-02-20 and 29-09-2020

Delivered: 22 February 2021

ORDER

The Respondent is allocated 60% of shares in the matrimonial property and the Respondent 40% after several deductions being made.

JUDGMENT

VIDOT J

[1] The parties were married on the 10th November 2007. However, the marriage broke down and was dissolved on the 15th April 2019 by this Court granting a conditional order of divorce and that was made absolute 6 week after. A certificate making the conditional order of divorce absolute was issued on 22nd August 2019. Now the parties come before this Court over dispute pertaining to distribution of “*matrimonial property*”. At the core of this

dispute is a matrimonial home situated on land parcel S5256. The Respondent claims shares in 2 businesses in which the Petitioner has 65% shares. These are Samron Truck Services and Samron Maintenance. She also claims shares in the sale of a Honda Vezel vehicle.

- [2] The Petitioner is praying to Court to assess his share in the house. He is not claiming the house itself but a share of the proceeds of sale of the same. The property has already been the subject of a sale for the sum of seven million rupees (SR7,000,000.00). The sale was in favour of the Seychelles Civil Aviation Authority ("the SCAA"). Payment of the consideration was made to the Respondent. By Order dated 17th January 2019, this Court lifted an order of inhibition and refused to impose an order of injunction against the property, so as to allow the sale to go through. There were also Charges registered against the property that needed to be discharged. The bank loan was secured by way of these Charges. They are dated 22nd December 2010 for the sum of SR575,000.00 and 06th December 2013 for the sum of SR250,000.00, (Exhibits P10 and P11 respectively). However, the Court ordered that half of the proceeds of sale less SR660,000.00 which had been paid to the Petitioner's bank account against the balance of a loan that was taken to effect some of the repairs and renovations to the house, to be kept in escrow with the Respondent's Attorney or Notary. That sum was to be considered for disbursement at such time that the Court pronounces itself on the distribution of proceeds of sale of the property.
- [3] The Respondent filed an Affidavit in Reply together with a Counter Application. As already mentioned, the Respondent claims a share in the two businesses Samron Truck Services and Samron Maintenance. However, she prays to Court the following;
- (i) That the court declares her full ownership share over the matrimonial property;
 - (ii) That the court declares that the Petitioner has no share in land title S5256 and that the house thereon and that he has been sufficiently and fully been paid his share already;
 - (iii) Such other orders that the Court shall deem fit and necessary and reasonable in the circumstances; and

(iv) Costs of the case.

- [4] The Respondent claims that the Petitioner has been adequately compensated because the parties reached an agreement prior to the sale that the Petitioner will only accept the settlement of the loan balance, the payment of SR250,000.00, that the Respondent surrenders a family car, namely a Honda Vessel, valued at SR350,000.00 and that the Petitioner will lay no claims in the two above mentioned businesses. She maintains that she kept her side of the agreement though there is no indication that she paid the SR250,000.00. At this stage, I maintain that as per evidence adduced that that was not a concluded agreement. It was merely aspects of negotiations that were ongoing between the parties. In fact, Counsel for the Respondent suggested to the Petitioner that he had made "*proposals*" to the Respondent. That is not a concluded agreement. Such negotiations could not have precluded the Petitioner from asserting his legal rights. Therefore, I shall attach very little consideration to that ongoing negotiation. In fact even when cross-examined the Petitioner made it clear that the parties had discussions regarding their matrimonial property and that nothing was concluded.
- [5] Land parcel S5256 initially belonged to the Respondent's foster mother, Lucille Hoareau. The latter gave evidence that she transferred the land parcel with existing house thereon to the Respondent prior to her marriage to the Petitioner. In fact, the transfer was made signed on 24th October 2007, (exhibit P3), less than a month before the wedding. Ms. Lucille Hoareau testified that she transferred the property prior to the wedding because she does not trust men. I assume that she wanted security for the Respondent that in the event that the marriage ended in divorce, as it did, then the Respondent would secure ownership of the property over the Petitioner. That is that the property will remain with the Respondent. However, that is not what the Petitioner had in mind and it appears, that was neither the intention of the Respondent. In the pleadings of the Respondent, the property is referred to as the "*matrimonial property*". Even during the hearing of this case, many times the property is referred to under that same appellation I think it was always the intention of the Respondent to treat the property as such especially after the old house had renovated or reconstructed.

[6] I find that if the Respondent had no intention of treating the property as matrimonial property, she would not have engaged the Petitioner with the sale of the same. Throughout the hearing, Learned Counsel for the Respondent, pressed upon the Petitioner that he was involved in the sale of the property. He insisted that it was the Petitioner who engaged services of Mr. Jimmy Bonnelame, an agent to find a buyer. Mr. Lau-Tee was cross examined on the fact that he was involved with negotiation till the agreement for sale was secured with the SCAA. The Respondent also gave testimony of the Petitioner involvement in negotiation of the sale of the property. Therefore, it is clear that though Ms. Lucille Hoareau's intention was to transfer the land solely to the Respondent, the latter's intention was in the least to treat the house thereon as matrimonial property. It was clear that the the Petitioner and Respondent were to use the reconstructed as their home, thus the reason why the latter allowed the former to reconstruct the house by him investing extensively in the reconstruct of the house.

[7] The relevant and applicable legal provision in regards to claims or disputes to claims between parties to a marriage in matters of matrimonial causes is found in section 25(1)(c) of the Matrimonial Causes Act which provides as follows;

"S25(1) Without prejudice to any power of the court, the court may, on an application by a party to the marriage, grant order as it thinks fit;

(a)

(b)

(c) in relation of property of the marriage or the matrimonial home."

[8] In **Dijoux v Dijoux [2012] SLR 1**, quoting **Renaud v Renaud SCA 48/1998**, the court remarked that *"in respect of property disputes between the parties, following the divorce, the Court of Appeal held that the Supreme Court has jurisdiction pursuant to s25(1)(c) of the Act, without prejudice to any other power of the Court, on an application by a party to a marriage, to grant order as it thinks fit in relation to the property of a party to the marriage or the matrimonial home. In addition, the Court may exercise its equitable power to make any order in the interest of justice under s 5 of the Courts Act."*

- [9] Indeed, section 5 of the Courts Act confirms this Court equitable powers. It provides that this Court has inherent powers vested in, or capable of being exercised by the High Court of Justice in England. In **Mathiot v Mathiot SC105/1994**, the court used both its inherent powers as well as statutory powers to determine property disputes between parties in granting ancillary relief following dissolution of their marriage. In **Esparon v Esparon [2012] SLR 39**, it was held that there is no mathematical formula for which property should be divided. The cardinal principle is that there must be a level of equity in that each party is not deprived of their fair share of contributions to their matrimonial asset despite such assets being registered in the name of one party. It further held that where legal ownership of the matrimonial asset is vested solely in one party but there is overwhelming and convincing evidence that the other party made contributions towards the matrimonial asset in issue, the matrimonial property should be vested in both parties. **Esparon v Esparon SCA 12/1997, LC 148**, provides factors the Court may have regard to in considering allocations of shares of matrimonial property. These include (a) standard of living before the breakdown of the marriage; (b) age of the parties; (c) duration of the marriage; (d) physical and mental disability of either party; (e) contributions made by each party to the welfare of the family, including housework and care roles; and (f) any benefit which a party loses as a result of the divorce.
- [10] In evaluating the evidence it is abundantly clear that the Petitioner, Mr. Lau-Tee made substantial contributions towards the renovations and rebuilding / extension of the house. I have the benefit of having known the property (at least from the exterior) prior to and after such works were carried out. The house thereon was quite old. In fact Ms. Lucille Hoareau described the house as a "*colonial house*". The property has been fully transformed to an absolute superior standard, to a well built one storey house. This is well supported by evidence. The land itself is of a very small area. An evaluation report compiled by Lester Quatre, Quantity Surveyor filed together with the Notice of Motion, noted that the land was a mere 559 meters square. I fully believe the Petitioner's evidence regarding his investment in the property. He secured 2 loans from Barclays Bank as identified in paragraph 2 above. He presented exhibit P12, which is his bank statement showing that he was making the repayments at SR5,189.95. On top of that sum he was paying interest at nine per centum (9%) on the SR475,000.00 loan calculated on a daily balance and 5.99% fixed rate interest for 12 months and thereafter 9% for the loan duration on the SR250,000.00 loan. Actually, being an airline pilot with Air Seychelles, the

Petitioner had a salary elevated enough to have allowed him the possibility of servicing the loans. The Petitioner testified that his salary was SR65,000.00 to SR70,000.00 per month.

[11] The Petitioner also testified that he used his savings towards the cost of the works on the property. He owned a car hire business together with his parents. That business was sold and all the proceeds of the sale was used towards rebuilding the house. This is evidence that is not challenged. Actually, his parents gave him their shares of proceeds of the sale. He also borrowed money from his grandmother which was used towards reconstruction of the house. The Petitioner travelled to Thailand and got some of construction materials therefrom so as to limit the cost of such reconstruction. He gave uncontroverted evidence that he spent SR85,000.00 on the first floor slab of the house, SR90,000.00 on steel rods, SR84,000.00 on labour and SR30,000.00 on painting the house. Actually, the sale price of the property was SR7,000,000.00, (which to my observation was an excellent price) serves as an excellent indication as to the value of the reconstruction.

[12] The Respondent and Ms. Lucille Hoareau testified that the latter made contributions towards the construction. This is not denied by the Petitioner. The Petitioner denies the amount of such contribution. Ms. Hoareau states that her contribution was less than forty percent (40%). The Petitioner testified that she did not know the exact amount. I believe that Ms. Hoareau made contributions towards the reconstruction. What I do not believe was the amount of such contribution. She was arrogant when being cross-examined and I considered some of her answers as not worthy of consideration. Actually, her demeanour was the reason why her evidence could not be trusted whole heartedly.

[13] Ms. Lucille Hoareau said that she took loans from her employer, Cable & Wireless. The documents she wanted to produce as exhibit as confirmation of such loans were challenged. They had not been attached to the bundle and their authenticity was challenged. In the end they were not admitted. She also testified that when Cable and Wireless was sold off, she received certain compensation. She also stated that she transferred money to the Petitioner's account, yet such proposition was never put to the Petitioner and she provided no documentary evidence to support the same. However, like Mr. Lau-Tee testified I believe that she made contributions towards the part of the house downstairs which she

occupied. She also paid the cost of the kitchen units. I don't believe that she used all the money received or borrowed from her employer towards the house. She said she paid for some of the works when the Petitioner was away and she contributed towards the purchase of materials but this was not supported by documents. To the contrary the Petitioner produced several receipts to support payment he made. Indeed, I considered her contribution to have been about 20% and if more, not much more.

- [14] The Respondent claims that she made contributions towards the reconstruction of the house. I do not believe that to be true and if she did make any such contribution it would not have been in excess of SR50,000.00. Indeed, she admits that she did "*not contribute much*". She did not earn enough to make contribution and as testified by the Petitioner, she used her salary on herself but I do believe her she at times used the money to pay for household necessities. One has to also bear in mind that for quite a while she the parties lived with the Petitioner's parents. They went to reside in their house on parcel S5256 only when their child was 2 years old. In any case the house became habitable in 2012 – 2013. The Respondent admitted that their everyday commodity such as groceries were bought by the Petitioner whenever he travelled. The Petitioner also paid utilities though I find that this was when the parties were still living together.
- [15] When considering the parties share in the house, I also considered that the Petitioner paid the architect and a structural engineering. These sums were respectively SR15,000.00 and SR18,000.00. This evidence was deemed admitted by the Respondent as she did not challenge that aspect of evidence.
- [16] The Respondent claims a share in the Honda Vezel which the Petitioner repossessed from her. That vehicle was sold for SR200,00.00 according to the latter. I take it that it was purchased during the marriage as such vehicle only reached in the Seychelles market the last six to seven years. That vehicle was clearly bought by the Petitioner for use by the Respondent as she needed transportation for her and the child of the marriage. So, her claim is legitimate and I feel that she is entitled to half of the proceeds of sale. Therefore, I shall take that into consideration when deciding the percentage of the parties shares in the matrimonial property.

- [17] The Respondent claims a share in the business Samron Truck Services and Samron Maintenance. The Petitioner has only 65 % shares in both businesses. The Petitioner states that the business though still existing are not operational. Neither parties have provided proof of either. However, I note that Ms. Lucille Hoareau who claims that she has invested in the business and therefore hold shares in them, has not yet has made any claims against Mr. Lau-Tee and the other partner.
- [17] I note nonetheless that only the only party to the marriage who made investment in the businesses is the Petitioner. It is clear nonetheless that the businesses were set up to benefit the family. It brought income to the Respondent in that she was paid a “salary” for doing in my view very little work. Profit made by the business was used to pay for the family yearly holiday. It does not appear that apart from the holiday that the Petitioner benefitted from the businesses. In any case, I have no evidence that the businesses are still operating and therefore find it impossible to make any allocation of shares as part of settlement of matrimonial property.
- [18] I also note that Ms. Hoareau testified that when the Petitioner left the home he did not take any furniture from the matrimonial home. He contributed towards cost of the furniture. Nonetheless, I order that the Respondent keeps the furniture.
- [19] In this situation where one party claims a share in the matrimonial home and the other claims ownership of the entire property, whilst claiming shares in other properties which are said to be considered part of matrimonial property, one has to exercise reasonableness in making a decision. The Respondent also claims that the Petitioner has also been adequately compensated further to an agreement. I have stated that, that was not an agreement but rather negotiations towards a settlement and that does not preclude the Petitioner from making other demands when he became aware that his legal entitlement was different.
- [19] In considering what is reasonable in the circumstances the Court needs to look at all the circumstances of the case. In **Cumming v Danson [1942] 2 ALL ER 653 (p 656)** Lord Green MR noted that in

“considering reasonableness, it is in my opinion perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of hearing that he must do, in what I venture to call, a broad common-sense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little weight; others may be decisive but it is wrong for him to exclude from his consideration matters which he ought to take into consideration”

I have identified above pertinent matters that the Court needs to take into consideration where deciding the shares of the parties.

[20] Firstly, it is my view that the Respondent should solely benefit from the value of the land. Mr. Lester Quatre evaluated the land two hundred and eighty thousand rupees (SR280,000.00) in 2010. At the time of sale to SCAA, I consider the land to have been worth in the least to around Seychelles Rupees four hundred and fifty thousand rupees (SR450,000.00). The fee that was paid to Mr. Bonnelame in the sum of Seychelles rupees one hundred and seventy-five thousand (SR175,000.00) should be deducted from the sale consideration of Seven Million (SR7,000,000.00). I also deduct the sum paid against the loans in the sum of Seychelles Rupees six hundred and fifty-two thousand three hundred and thirty-seven (SR652,337.00) (as per evidence of the Petitioner) from the consideration paid for the purchase of the property. Thereafter, I note that the Respondent made negligible contribution towards the property. However, I acknowledge that Ms. Lucille Hoareau contributed towards the reconstruction and this Court thinks it is only fair that I consider that contribution to the benefit of the Respondent.

[21] I consider of Ms. Hoareau's contribution to have been around 20%. However, I do consider that the Respondent is entitled to a share in the sale of the Honda Vezel and that she was the one who kept the household together though I feel that the Petitioner was the main provider. Therefore, I consider a share of 40% to the Respondent and a share of 60% to the Petitioner after deduction of the sums above mentioned to the total consideration. The deduction amounts to Seychelles Rupees one million two hundred and seventy seven thousand three hundred and thirty seven (SR1,227,337.00). The parties have Seychelles

Rupees five million seven hundred and twenty-two thousand and six hundred and sixty-three (SR5,722,663.00) to be distributed between them. Therefore, the Petitioner will be entitled to Seychelles Rupees three million four hundred and thirty-three thousand and five hundred and ninety-seven and cents eighty (SR3,433,597.80) and the Respondent to Seychelles Rupees two million two hundred and eighty-nine thousand and sixty-five hundred and twenty cents (SR2,289,065.20).

[22] Each party shall bear its own cost.

Signed, dated and delivered at Ile du Port on 22 February 2021


Vidot J